

Money in Taiwanese Politics: A Historical Analysis of Taiwanese Campaign Finance Law

Po Liang Chen

A dissertation

submitted in partial fulfillment of the

requirements for the degree of

Doctor of Philosophy

University of Washington

2018

Reading Committee

Daniel H. Foote, Chair

Mary Fan

Robert J. Pekkanen

Program Authorized to Offer Degree:
School of Law

©Copyright 2018

Po Liang Chen

University of Washington

Abstract

Money in Taiwanese Politics – A Historical Analysis of Taiwanese Campaign Finance Law

Po Liang Chen

Chair of the Supervisory Committee: Professor Daniel H. Foote

School of Law

Since the establishment of the modern system of government and the dichotomizing of public and private interests, the issue of combatting political corruption, and the question of public office being abused for private/personal use, have become significant challenges for rulers seeking to ensure the public interest while also maintaining their legitimacy.

As a young democratic nation, Taiwan is no exception. Under the shadow of colonial and authoritarian rule and the uneven path to democracy, money has played a unique role in Taiwanese politics. While the Taiwanese legislature enacted the Political Donation Act (PDA) of 2004, mainly reflecting the U.S. and Japanese campaign finance law models, the legislative efforts have seemed slight. This dissertation argues the situation has arisen because Taiwanese legislators and reformers underestimated two main factors on the demand side of the campaign finance: the value of transparency and the role of clientelism. This dissertation has adopted the approach of historical institutionalism, on the one hand, vertically analyzing the evolution of mandatory report/ disclosure rules and their interaction with clientelism in four eras: the Japanese colonial rule era (1935-1945), the ROC-KMT rule era (1945-1991), the democratic era (1991-2004), and the PDA era (2004-present). Also, this dissertation undertakes a comparative analysis of the texts, legislative means and ends of

mandatory report/ disclosure rules between the host jurisdiction, Taiwan, and the donor jurisdiction, Japan, and the US.

From 1895, the Empire of Japan established a colonial regime in Taiwan. The Government-General of Taiwan (GGT) did not hold local congress elections until 1935. To control the social order and electoral outcome, the GGT enacted election laws, mainly extending from Japan, authorizing the police to monitor campaign activities and finance closely. The GGT cooperated with local elites via exchanging interests and suppression of the dissent. As a result, the racial minority regime, the GGT, controlled the majority. The election of 1935 marked the start of election and electoral clientelism in Taiwan.

After World War II, the Republic of China (ROC), dominated by the ruling party, the Kuomintang (KMT), took over Taiwan. The ROC called a general election in 1946 and extended its election laws from China to Taiwan. After the outbreak of the Chinese Civil War, the Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion (temporary provisions) were enacted in 1948, suspending all elections. In 1949, the ROC moved its central government to Taiwan, transforming Taiwan from an extended territory to a de facto nation. The ROC suspended elections at the central government level but opened the local assembly elections to gain support from local factions by distributing interests. Without an effective regime to regulate and monitor campaign finance, the arbitrary enforcement granted advantage to obedient local factions over the opposition. As a result, the ethnic minority regime, the ROC-KMT, controlled the majority in each level of local congress; and electoral clientelism took root in Taiwanese society.

With the end of the temporary provisions, the ROC reopened elections at all levels in 1991. Given the rise of electoral competitiveness, electoral clientelism boomed. In response to the people's outrage, the PDA, a milestone in campaign finance law, was enacted in 2004. Nonetheless, the effects of PDA have been slight. This dissertation contends that sunlight is

the best of disinfectants. The appropriate financial disclosure rules could increase political accountability, suppress clientelism, and lay the bedrock of a cleaner form of government. As the value of transparency spreads among Taiwanese people, a broader disclosure of campaign finance represents the essential destination for reform.

Table of Contents

Chapter 1. Introduction	1
I. The Hydraulic Effects of Campaign Finance Regulation	1
II. Fundamental Questions and Hypothesis of the Dissertation	7
III. Why Taiwan?	8
A. The World’s Richest Political Party– KMT	8
B. The Unique Form of Legal Transplant and Reception: from Extension of Japanese and Chinese Law to Independent Reception	13
IV. Research Methodology: Historical Institutionalism	17
Chapter 2. The Landscape in Taiwan: The Prevalent Electoral Clientelism and its Implications to Campaign Finance	29
I. Clientelism in Taiwan	29
A. The Essential Elements of Clientelism.....	30
B. Terminology of Clientelism	34
C. Prevalent Electoral Clientelism and Vote-Buying in Taiwan	38
II. The Legislative Goals of Campaign Finance Law in Taiwan: Addressing Political Corruption	40
III. The Value of Transparency and its Development in Taiwanese Campaign Finance	46
Chapter 3. The Historical Institutional Roots of Electoral Clientelism: the Japanese Colonial Ruling Era (1935- 1945).....	52
I. Background on Extending Japanese Law into Taiwan	53
A. A Debate over Colonial Policy: Non-assimilation vs. Assimilation	54
B. Debate over the Extension of the Meiji Constitution and Law No. 63 Regime.....	56
C. Shift of Colonial Policy and Reform of the Local Government System in 1921	59
D. The Petition Movement for the Establishment of the Taiwanese Parliament (TPPM)	61
E. Shift of Colonial Policy for War Mobilization and the Election in 1935	64
II. The First Election of 1935 and the Beginnings of Electoral Clientelism	66
A. GGT’s Four-pronged Strategy and the Implications of the SNTV Electoral System	67
B. The Implications of SNTV: Personal Votes and Localized Campaigning	71
III. The Campaign Finance rules in Taiwan and their Implications	72
A. The Campaign Finance Law in Japan: <i>The Election Law on House of Representatives</i> and its Regulatory Rules.....	72
B. The First Campaign Finance Rules in Taiwan: <i>Taiwan Local Election Regulatory Rules</i>	77
C. Implications for Following Elections: The Rise of Electoral Clientelism and Local Factions	79
Chapter 4. Campaign Finance Laws under the Shadow of Institutionalizing Electoral Clientelism: The ROC-KMT Rule Era (1945- 1991).....	82
I. The Establishment of the Electoral Institution and the Extension of the Republic of China’s Election Laws into Taiwan (1945-1949).....	84
A. The Regime Shift from Japanese Colonial Rule to the ROC-KMT Regime	85
B. The First Universal Suffrage Election in Taiwan in 1946 and the Perpetuation of Local Factions.....	86
C. The 228 Massacre and its Implications in the Development of Local Factions.....	90
D. The Promulgation of the ROC Constitution and the Short era of Constitutionalism	93
II. The Authoritarian Rule and Party-state Regime at Central Government (1949-1991)	94

A.	The ROC's Administrative Structures in Taiwan.....	95
B.	Political Controls under Martial Law.....	97
C.	The Establishment of Party-State System.....	99
III.	Elections at the Local Government Level and the Development of Electoral Clientelism (1950-1969).....	103
A.	The Dualist structure of Political Elites.....	104
B.	The Interaction between Local Factions and the KMT and the Rise of Electoral Clientelism 107	
IV.	The Taiwan Provincial Election Regulatory Rules (1950-1979).....	123
A.	Taiwan Provincial Election Regulatory Rules of 1950.....	124
B.	TPERR of 1952 and 1953.....	128
C.	TPERRR of 1959 and 1963.....	131
D.	TPERRR of 1971.....	132
V.	The By-and-Supplementary Election at Central Government Level, the Rise of Electoral Clientelism, and the End of Martial Law (1969-1991).....	133
A.	The By-and-Supplementary Elections from 1969 to 1989.....	133
B.	The Defection of Local Factions and the Rise of the Opposition in 1977.....	136
C.	The Rise of the Opposition and Electoral Clientelism.....	138
VI.	The Civil Servant Election and Recall Act of 1980 and its Revision in 1983.....	140
A.	The Civil Servant Election and Recall Act of 1980.....	140
B.	The Revision of The Civil Servant Election and Recall Act of 1983.....	143
VII.	Conclusion: The Negative Effects of Electoral Clientelism during Authoritarian Rule.....	147
Chapter 5. Campaign Finance Law and the Transformation of Electoral Clientelism in the Democratic Era (1991-2004).....		
149		
I.	The Revival of the ROC Constitution and the Reopening of National Elections in 1991 ...	152
A.	The Revival and Revision of the ROC Constitution.....	153
B.	The Founding Elections in 1991 and 1992.....	159
C.	The Split of the KMT and Implications for Local Factions and Electoral Clientelism.....	163
D.	The DPP's Strategy: Summoning the Defecting Local Factions from the KMT.....	167
II.	The Revisions of the Civil Servant Election and Recall Act (CSERA).....	174
A.	The Revision of CSERA in 1989.....	175
B.	The Revision of CSERA in 1991.....	178
C.	Other Legislative Efforts for the Sunshine Law in the 1990s.....	181
Chapter 6. A New Perspective on Taiwanese Campaign Finance law (2004-2017): Public Disclosure Rule and its Challenges.....		
183		
I.	The Deliberation of Political Donation Act (PDA) of 2004.....	183
A.	The Background of the PDA Bills.....	184
B.	The Mandatory Reporting Requirement and Challenges to It.....	189
C.	Public Disclosure and its Limits.....	195
II.	Revisions of the Requirements of Mandatory Reports & Public Disclosure.....	196
A.	The Revision of Standards Governing Residual Political Donations.....	197
B.	The Revision of Mandatory Reporting Rules.....	198
C.	The Bill Revising Public Disclosure Rules.....	199
Chapter 7. A New Challenge to Transparency: Information & Political Privacy Rights.....		
202		
I.	The Jurisprudence of Public Disclosure in the U.S.....	203
A.	Public Disclosure and its Application in U.S. Campaign Finance Law.....	203
B.	The Threats of Public Disclosure.....	207
C.	The New Challenge to Public Disclosure in the Digital Era.....	209
II.	A Distinct Evolution of Privacy Rights in Taiwan.....	210
III.	The Concern over Information Privacy Rights.....	216

IV.	A New Species of Privacy Rights: The Political Right to Privacy	219
V.	The Future of Taiwanese Campaign Finance Law	220
	A. Procedural Model: The Disclosure of Mechanism.....	221
	B. Less Disclosure Model	222
Chapter 8. Conclusion: Answering an Unanswered Question		224
I.	The Big Picture of Campaign Finance Reform: Restraining Political Decay.....	224
II.	Electoral Clientelism and its Interaction with Campaign Finance Laws	228
III.	Hydraulic Effects and the Value of Transparency	231
IV.	The Future of the PDA in Taiwan: More and Less Transparency	234
V.	Conclusion	236
BIBLIOGRAPHY		239
BOOKS		239
Articles & Other secondary sources		245

Chapter 1. Introduction

I. The Hydraulic Effects of Campaign Finance Regulation

The desire for political power is human nature for politicians and cannot be suppressed by any regulation.¹ But, power can be guided, by rules, into different forms and means.² If money has the determinative effect on the outcomes of elections or public policies, the moneyed political interests will continue trying to influence public policies and electoral outcomes, whatever the rules. This dissertation adopts the strategy of “watching the money” to reexamine the previous and current Taiwanese campaign finance laws, which (re-) shaped the exchange mechanism between political power and economic interests. Instead of deferring to comparative constitutional principles or criminal law doctrines, on a pragmatic ground, I ask, in the case of Taiwan, where the political money has gone, is going, and will go when new campaign finance rules are enacted? Under the shadow of authoritarian rule and electoral clientelism, new campaign finance rules were promulgated in Taiwan in 2004. However, the new laws have only increased the dark money and strengthened the incumbent advantage, rather than dampening the role of money in Taiwanese politics.

Compared to the existing practices of daily constituent services or lobby activities, of which the public is us

ually unaware, campaign finance laws and related enforcement tend to draw more public concern over money politics. However, contrary to public intuition or the expectation that campaign finance rules will dry up or block the flow of money to politicians, this dissertation

¹Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705 (1999).

²*Id.* at 1708.

views campaign finance as a matter of hydraulics.³ Political money is like water and has to go somewhere.⁴ Moreover, political money is part of a broader ecosystem.⁵ The best way to regulate it is to guide the flow of political money into designated and transparent channels, thereby allowing scrutiny by the public, rather than becoming dark money without any means of holding politicians to account.⁶

The metaphor of hydraulics does not imply a normative argument of laissez-faire. The fact that behaviors will shift rather than cease does not mean there should be no rules. As Sewell has argued, “what happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time.”⁷ The hydraulic analysis seeks to provide legislators with a pragmatic instrument to review previous and current campaign finance laws and practices, thereby helping the legislators to predict the potential consequences of reform proposals and to avoid the risks of unintended outcomes.⁸

In viewing the practices of campaign finance as a hydraulic system, the first question is why we need to regulate political money and intervene in campaign finance, rather than adopt a pure laissez-faire approach. The answer will vary between jurisdictions because of their distinct political, social, and cultural backgrounds. Since the modern government and the bureaucratic state have been established, formally dichotomizing the public and private interests, the issues of combatting political corruption, and the use of public office for private purposes, have become the biggest challenges for rulers to ensure public interests and maintain the rulers’ authority and legitimacy over the ruled.

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*Id.* at 1705, 1708 (1999).

⁷William Sewell, *Three Temporalities: Toward an Eventful Sociology*, in *THE HISTORIC TURN IN THE HUMAN SCIENCES* 262, 263 (Terrance McDonald ed., 1996).

⁸Daniel R. Ortiz, *Water, Water Everywhere*, 77 *TEX. L. REV.* 1739, 1745 (1999).

In democratic nations, the requirements of political participation and political responsiveness have further blurred the regulatory lines in the interaction and exchange between the public and private. In those nations, the rational legislatures typically choose to address quid-pro-quo transactions as the core of political corruption and codify such behavior as constituting the offense of bribery. Public trust in the political and electoral system may be undermined on the peripheries of political corruption, leaving legislators in democratic nations with a two-pronged difficulty of how to draw a clear-cut line between the public and private, and how to enforce the line without infringing freedom of speech and the right to privacy. Hence, choosing the optimal model for regulating campaign finance law has become one of the most controversial issues in all democratic nations. Taiwan is no exception and has also faced the same difficulties.

As in the United States and Japan, two different threads of reform have emerged to structure the Taiwanese campaign finance regime. The first strand is an effort to limit the overall supply of private money in the political system.⁹ On the supply side of campaign finance, there are two camps of political spenders who instill money into the market based on different motives. The first camp of spenders seeks to express their views to influence the market place of ideas.¹⁰ The second camp of spenders, no matter whether they agree with political parties or candidates' ideologies or not, seek to influence politicians or the electoral outcomes.¹¹

⁹ Justin A. Nelson, Note, *The Supply and Demand of Campaign Finance Reform*, 100 COLUM. L. REV. 524, 527-32 (2000).

¹⁰ Daniel R. Ortiz, *Water, Water Everywhere*, 77 TEX. L. REV. 1739, 1744 (1999); Stephen Ansolabehere & James M. Snyder, Jr., *Money and Institutional Power*, 77 TEXAS L. REV. 1673, 1676 (1999).

¹¹ Stephen Ansolabehere & James M. Snyder, Jr., *Money and Institutional Power*, 77 TEXAS L. REV. 1673 (1999) (campaign finance comprises two hydraulic systems: the hydraulics of expression and the hydraulics of influence).

The second strand of reform efforts, coming from the demand side, proposes to decrease politicians' demand for private money.¹² Unless the objective is met, money will always find a way to flow through the regulatory loopholes to the politicians.¹³ As Kathleen Sullivan warns, "a jurisprudence allowing the supply of money to be restricted but leaving the demand for that money unaffected is unstable."¹⁴

This dissertation argues that campaign finance reformers and the legislature in Taiwan, like those in the United States, have over-emphasized the former strand of reform; efforts to regulate the supply side. As noted before, money will always find a way to influence politicians and unless the demand for money is decreased in the practices of campaign finance, any reform will be fruitless or will lead to unintended consequences, or both.¹⁵

Some argue for imposing spending limits as an approach of demand-side reform. In this dissertation, however, spending limits are categorized as a supply-side reform, based on the following reasons: 1. Spending limits work by "constricting the pool of money available"; meaning the total supply of money is capped by law."¹⁶ 2. "Spending limits are artificial constraints."¹⁷ The rules do nothing to address the incentives and demands of politicians for money. As a result, efforts to institute a hard cap on spending will eventually push politicians to bypass those rules. Thus, a system that leaves any avenue of unlimited spending encourages money to flow through unregulated channels, leading to substitution effects to circumvent the restrictions.

¹² Justin A. Nelson, *Note: The Supply and Demand of Campaign Finance Reform*, 100 COLUM. L. REV. 524.

¹³ *Id.*, at 525.

¹⁴ Kathleen M. Sullivan, *Against Campaign Finance Reform*, 1998 UTAH L. REV. 311.

¹⁵ Justin A. Nelson, *Note: The Supply and Demand of Campaign Finance Reform*, 100 COLUM. L. REV. 524.

¹⁶ *Id.*, at 529.

¹⁷ *Id.*, at 529.

While money, like water, may find its level, not all forms of money are equally efficient in influencing politicians. To build up an optimal campaign finance regime, conducting further analysis of politicians' preferences is an essential task. As Ortiz has noted, those preferences reveal "the features of hydraulic efficiency" and the structure of the demand curve.¹⁸ As a rational actor, the politician prefers personal funds (quid-pro-quo corruption) over campaign contributions and prefers campaign contributions over independent expenditure by the donor. Thus, to a donor (or a potential supplier) seeking to influence public policies or electoral outcomes, a campaign contribution is less efficient than a bribe, while the return from an independent expenditure on issue advocacy is even lower. Although the transactions or trades between money and power will not cease, regulation can decrease the influences on politicians which undercut the pursuit of the public good, by forcing it into less efficient means. The loss of efficiency increases the cost of transactions, which indirectly drives down demand and decreases the total amount of transactions.¹⁹

Under this rationale, quid pro quo bribery should be prohibited to avoid monetary power exercising overly significant influence in the process of policy decisions or ruining social welfare. The remaining questions for rational legislators are how to establish an optimal model to direct political money into the preferred channels, and how to enforce that model. Given the important considerations of the values of democracy, freedom of speech, countering political corruption and efficient enforcement of electoral or campaign finance rules, this dissertation mainly focuses on the public disclosure regime. The public disclosure regime has been regarded as a more effective and less disputed means of regulation, rather

¹⁸Daniel R. Ortiz, *Water, Water Everywhere*, 77 TEX. L. REV. 1739, 1745 (1999).

¹⁹*Id.* at 1744.

than embarking on a normative debate of the optimal model for campaign finance or regulation of independent expenditures on issue advocacy.

The hydraulic metaphor for the campaign finance market not only provides a normative perspective but could serve as a useful instrument to optimally drive campaign finance reform in the distinct case of Taiwan. To establish an efficient hydraulic system, the legislature has to consider the factors of the previous and existing landscape in the applicable jurisdiction. As Levi observed, history matters and “once the initial steps are taken, the actors have strong incentives to focus on a single alternative and to continue down a specific path, thus the costs of reversal are very high.”²⁰ Those factors include the previous and current election laws and the manner in which they have been enforced, the social norms toward the transactions between money and power, the previous and present campaign finance practices and the path-dependent type of legacies they have for the behaviors of previous, current, and future actors. The campaign finance regime in Taiwan, after experiencing, at least, three critical junctures in the Japanese colonial era, the ROC-KMT authoritarian rule era, and democratic era, has evolved into an intact but complex legal system, corresponding to previous and current political demands and social norms, and has become a distinct and noteworthy case study of comparative campaign finance law.

The mandatory report/disclosure campaign finance rules, which have shaped the exchange mechanism of power and interests, have played a unique role in Taiwanese politics and legal history. Under the distinct historical backgrounds of colonial and authoritarian rule and the unique electoral institution (the mandatory report rule and its partisan enforcement), electoral clientelism²¹ has been deliberately established or tolerated by the colonial/

²⁰Levi, Margaret, *A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis*, in *COMPARATIVE POLITICS: RATIONALITY, CULTURE, AND STRUCTURE* 19 (Mark I. Lichbach & Alan S. Zuckerman eds., 1997).

²¹The concept of clientelism and its development in Taiwan will be elaborated on in detail in Chapter 2.

authoritarian regime, and has also taken root in Taiwanese society. Once the robust electoral clientelism was institutionalized, it not only removed certain options for previous political actors, but also created different outcomes at a later choice point for present and future actors. At the same time, the elected politicians' feedback on the designated campaign finance rules further reinforced the preexisting rules and produced a strong legacy of restricting new politicians seeking to survive (by being elected or reelected). Thus, in this dissertation, the primary focus is on the arrangement of mandatory reporting/public disclosure rules at the critical junctures and their developing enforcement, which have generated persistent paths of political development²² in prior, existing, and future campaign practices.

II. Fundamental Questions and Hypothesis of the Dissertation

The first campaign finance law, the *Political Donation Act* (PDA) was enacted in 2004 and regarded as a milestone in Taiwanese political and legal history. But more than a decade after the enactment of PDA, the achievement of the primary legislative purposes, combatting corruption and establishing a clean government, is significantly lower than the public's expectation. After evaluating the efficacy of disclosure rules within the Taiwanese PDA, this study examines a set of questions: Why have the public disclosure provisions in the *PDA* failed to achieve their legislative goals; namely, anti-corruption? And how should the system be reformed?

In answering these questions, the following related questions are addressed: What were the legislative ends of the public disclosure provisions? What were the legislative means to achieve the goal? Why did Taiwanese legislators resist completely self-receiving the public disclosure requirements of the US/Japanese model?

²² PAUL PIERSON, *POLITICS IN TIME: HISTORY, INSTITUTIONS, AND SOCIAL ANALYSIS* 51 (2011).

The tentative hypothesis of this study is that the current public disclosure provisions within the Taiwanese Political Donation Act (hereinafter disclosure provisions) do not efficiently restrain political corruption because the Taiwanese legislators underemphasized two main forces on the demand side of campaign finance: the public disclosure provisions and the existing electoral clientelism.

III. Why Taiwan?

A. The World's Richest Political Party— KMT

As previously mentioned, unless the demand for campaign money is decreased, any reform will be fruitless. The equilibrium of the campaign finance market in Taiwan, however, has been distorted. The long-term ruling party, the KMT, which established the party-state regime and the system of party-state capitalism²³ in the 1950s. As a result, the KMT became, at one point, one of the richest political parties in any democratic nation and used its properties in elections to support obedient local factions or candidates. These obedient supporters then used the KMT's considerable resources to mobilize their vote-brokers and voters. This section will briefly review the sources and the uses of the KMT's properties, and their implications in Taiwan.

²³Chang Tieh-chih (張鐵志), *The Political Logic of Economic Liberalization in Taiwan: The Transformation of Party-state Capitalism and the Reconstruction of State-business Relations*, 12.1 TAIWAN POL. SC. REV. 101, 101–145 (2008); Li fuzhong (李福鐘), *Wei quan tizhi xia de guomin min dang ying shiye* (威權體制下的國民黨黨營企業) [*The KMT owned enterprises in the authoritarian rule era*], 18 ACADEMIA HISTORICA 189 (2008); SHIMENG CHEN(陳師孟) ET. AL., *Jiègòu dǎngguó zīběn zhǔyì: lùn táiwān guān yíng shìyè de mínyíng huà* (解構黨國資本主義：論台灣官營事業的民營化) [DECONSTRUCTING THE PARTY AND STATE CAPITALISM: ON THE PRIVATIZATION OF TAIWAN 'S GOVERNMENTAL BUSINESS] (1991); HUANG HUANGSHUNG (黃煌雄) ET. AL, *Hái cái yú mín: guómíndǎng dǎng chǎn héqùhé cóng* (還財於民：國民黨黨產何去何從) [RETURNING TO PEOPLE: THE FUTURE OF THE KMT'S ASSETS] (2000); *Chen Chunkai* (陳君愷), *Cóng zhuǎnxíng zhèngyì guāndiǎn kàn guómíndǎng dǎng chǎn wèntí* (從轉型正義觀點看國民黨黨產問題) [*The KMT's properties and its problems from the perspectives of transitional justice*], in *ZHUǎNXÍNG YÀO BÙYÀO ZHÈNGYÌ? XÍNXÍNG MÍNZHǔ GUÓJIĀ Yǔ TÁIWĀN DE JīNGYĀN DUìHUÀ* (轉型要不要正義？新興民主國家與台灣的經驗對話)[JUSTICE OR NOT?THE DIALOGUE BETWEEN THE NEW DEMOCRATIC NATIONS AND THE EXPERIENCE IN TAIWAN] 74 (Yungming Shu ed. 2008).

At the end of WWII, the ROC government, based on the order²⁴ of the Supreme National Defense Council²⁵ and the administrative order issued by the Executive Yuan, “*The measures to deal with the industries in recovery areas*,”²⁶ assumed control of the Japanese colonial regime’s properties.²⁷ Based on this order, the cultural industries or mass media should have been controlled by the city or provincial government. However, as the dominant party in the ROC government, the KMT issued “*The outline of the central department of the KMT to take over the cultural and mass media industries*.”²⁸ Under the outline, the KMT was authorized to occupy, manage, and gain profits from those properties.²⁹ Most of these cultural or mass media-related properties were then sold to the KMT over the following decades, at prices well below market value.³⁰

In addition to taking over or occupying the properties from the Japanese, the KMT used its dominance to request the ROC government to subsidize the public properties or to transfer the assets to the party. During the 1950s, the KMT, as the dominant ruling party in the party-state system, requested that the Taiwanese provincial government transfer its properties or

²⁴ The conclusion of No. 227th standing committee of the Supreme National Defense Council (1946).

²⁵ Under article 30 of the Provisional Constitution for the Political Tutelage of the Republic of China:

During the period of political tutelage, the National Congress of Kuomintang delegates (Kuo-Min-Tang-Tsuan-Kuo-Tai-Piao Ta-Hui) shall exercise the governing powers on behalf of the National People’s Congress (Kuo-Min-Ta-Hui). During the recess of the National Congress of Kuomintang delegates, the Central Executive Committee of the Kuomintang shall exercise the said powers.

Under the authorization of the Fifth Central Executive Committee in 1939, the Supreme National Defense Council was established in 1939 and responsible to the Central Executive committee of KMT. It was the highest decision-making organ in the Republic of China during the period 1939-1947. See WILLIAM L. TUNG, *THE POLITICAL INSTITUTIONS OF MODERN CHINA* 180 (1964).

²⁶ Shōufù qū díwēi chǎnyè chūlǐ bànfǎ (收復區敵偽產業處理辦法) [Measures to deal with industries in recovery areas], Article 4, section 3, provides “The properties which belonged to the Japanese should be taken over by the ROC central government.”

²⁷ Control Yuan, *Investigation Report* (March 2003).

http://old.cipas.gov.tw/igpa_nat.gov.tw/ct7855.html?ctNode=74

²⁸ Zhōngyāng xuānchuán bù jiēguǎn táiwān wénhuà xuānchuán shìyè jì huà gāngyào (中央宣傳部接管台灣文化宣傳事業計畫綱要) [The outline of taking over the cultural and mass media industries by the central department of the KMT]

²⁹ Taysheng Wang, *Zhōngguó guómíndǎng de jiēshōu rìchǎn wèi dǎng chǎn* (中國國民黨的接收日產為黨產) [The KMT’s reception: from Japanese colonial government’s properties to KMT’s properties] 245 *TAIPEI BAR J.* 105 (2000).

³⁰ *Id.*

real estate for KMT's uses.³¹ The KMT also requested subsidies in regard to its related entities or organizations. For example, the KMT's mass media, Central Daily News and Broadcasting Corporation of China, received tremendous subsidies from the ROC government.³²

The party-owned enterprises and their profits were more complicated and controversial. The former chairman of the KMT's central financial committee, Liteh Hsu, indicated, "the best way to collect political funding was managing the party-owned enterprises."³³ In the late 20th century, the KMT managed at least 66 enterprises.³⁴ The enterprises generally took advantage of their monopolies to make profits.³⁵ Moreover, the KMT also invested in financial groups and the stock market, setting up Central Investment Holding to invest in various fields of industries. While the KMT's enterprises and their monopolies raise concerns about conflicts of interest and rent-seeking in economics,³⁶ the uses of those properties in elections endangers electoral fairness and equality in politics.

The timing of aggregating the party properties mattered. Before the 1969 by-and-supplement elections at the central movement level and the founding elections of the

³¹WU GUOZHEN, HUANG ZHUOQUN, LIU YONGCHANG, WU GUOZHEN ZHUAN: SHANG YI JI, 502, 509 (1995); LIANG YUNGHUANG (梁永煌) ET AL, PĀIMÀI GUÓMÍNDǎNG- DǎNG CHǎN Dǎ QĪNGSUÀN (拍賣國民黨- 黨產大清算)[THE AUCTION OF THE KMT: LIQUIDATING THE KMT'S PROPERTIES] 40, 49, 50 (2000).

³²Fu Cheng, *Guókù bùshì guómíndǎng de sīnáng*(國庫不是國民黨的私囊) [*Treasury is not the KMT's pouch*], 22 LIBERAL CHINA vol. 11, 3 (June 1, 1960); HUANG HUANGSHUNG (黃煌雄) ET. AL, HÁI CÁI YÚ MÍN: GUÓMÍNDǎNG DǎNG CHǎN HÉQÙHÉCÓNG(還財於民：國民黨黨產何去何從) [RETURNING TO PEOPLE: THE FUTURE OF THE KMT'S ASSETS] 102, 105, 115 (2000); Li fuzhong (李福鐘), *Weiquan tizhi xia de guomin min dang ying shiye* (威權體制下的國民黨黨營企業) [*The KMT owned enterprises in the authoritarian rule era*], 18 *Academia Historica* 189, 207 (2008).

³³KMT'S PARTY-OWNED ENTERPRISE JOURNAL COMMITTEE, DǎNG YÍNG JĪNGJÌ SHĪYÈ DE HUÍGÙ Yǔ QIÁNZHǎN (黨營經濟事業的回顧與前瞻) [THE PAST AND THE PROSPECT OF THE KMT'S ENTERPRISE] 23 (1994); Li fuzhong (李福鐘), *Weiquan tizhi xia de guomin min dang ying shiye* (威權體制下的國民黨黨營企業) [*The KMT owned enterprises in the authoritarian rule era*], 18 *Academia Historica* 189, 191 (2008).

³⁴ LIANG YUNGHUANG (梁永煌) ET AL, PĀIMÀI GUÓMÍNDǎNG- DǎNG CHǎN Dǎ QĪNGSUÀN (拍賣國民黨- 黨產大清算) [THE AUCTION OF THE KMT: LIQUIDATING THE KMT'S PROPERTIES] 139, 149 (2000).

³⁵SHIMENG CHEN(陳師孟) ET. AL., Jiěgòu Dǎngguó Zībēn Zhǔyì: Lùn Táiwān Guān Yíng Shìyè de Mínyíng Huà (解構黨國資本主義：論台灣官營事業的民營化) [DECONSTRUCTING THE PARTY AND STATE CAPITALISM: ON THE PRIVATIZATION OF TAIWAN 'S GOVERNMENTAL BUSINESS] 70 (1991).

³⁶*Id.*

democratic era in 1991 and 1992, the KMT had already used its resources to invest in the private sector to create a form of party-state capitalism which reshaped the landscape of Taiwanese politics.

The KMT used its properties to institute a system of electoral clientelism, transforming its economic resources into a distinct advantage in elections. First, the ROC-KMT regime manipulated financial and tax regulations to monopolize certain industrial areas for party-owned or state-owned enterprises. The regime then distributed those economic interests or privileges to integrate local factions and local political elites into its mobilizing networks.

Second, the local factions or local political elites used those resources for vote-buying or mobilizing their vote-brokers. According to a former member of KMT's staff, the KMT routinely used its properties for vote-buying in all levels of elections.³⁷ The cumulative effect was to form and maintain electoral clientelism networks for electoral mobilization from the early 1950s onwards, incrementally changing the public perception of politics as a give and take transaction. Since then, the KMT's tremendous properties and its system of electoral clientelism have paved the path for money politics and reshaped the campaign finance hydraulics in Taiwan.

Given the unique history of electoral politics and the development of party-state capitalism during the era of authoritarian rule, the current landscape of campaign finance in Taiwan is distinct from that in most democratic jurisdictions. According to estimates, the KMT owned assets worth over 900 billion NTD, approximately 30 billion USD in 1993.³⁸ Conversely, according to a 1993 party self-report, the KMT's assets were stated as 38.5 billion NTD, approximately 1.3 billion USD.³⁹ As the real estate and stock market boomed in

³⁷BIXIA ZHAN (詹碧霞), Mǎi piào chàn huǐ lù (買票懺悔錄)[CONFESSIONS OF VOTE-BUYING] (1999).

³⁸ Shùndé Lǐ (李順德), *Guómíndǎng dǎng yíng shì yè zī chǎn yú 9 qiān yì yuán* (國民黨黨營事業資產逾9千億元) [*The KMT's business assets are more than 900 billion NTD*], ECONOMIC DAILY NEWS, Sep 19, 1993.

³⁹Shetuan faren zhongguo guomindang dang chan baogao

the late-1990s, the value of KMT's assets reached its peak in 1998. According to the KMT's self-report, its properties were worth 91.8 billion NTD, approximately 3 billion USD.⁴⁰ After the three political transitions, the KMT's assets have dramatically declined. In December 2016, the KMT claimed it possessed around 16.6 billion NTD, approximately 0.5 billion USD.⁴¹ Without any rules requiring political parties to disclose their properties and their uses before 2016, the total value and uses of the KMT's assets was a myth in Taiwanese politics.

The reader may ask how the KMT could maintain its assets and confidentially use them without disclosure. After the enactment of PDA, while Taiwan had begun its transition to democracy in 1991 and enacted the PDA in 2004, the KMT and its allies did not lose their majority in the Legislature until 2016. Thus, there was no independent agency to investigate and monitor the source and use of parties' assets in campaigns. In July 2016, the Legislature passed *The Act Governing the Handling of Ill-gotten Properties by Political Parties and Their Affiliate Organizations*, and in August 2016, the *Ill-gotten party assets settlement committee* was established. The sources and the use of KMT's properties could now be investigated and revealed to the public.

Before that, the KMT's properties had been one of the party's main supply sources of campaign finance. A KMT legislator, L1, has conceded that the KMT has offered financial support to its nominated candidates until today. The use of party properties during elections provided a fertile ground for the party to mobilize its electoral clientelism system. The supply of money from the KMT's tremendous property holdings distorted the equilibrium, and skewed the demand curve of the campaign finance market. This distorted equilibrium

(社團法人中國國民黨黨產報告) [The report on the party properties of the Kuomintang] see: <http://www.kmt.org.tw/2016/03/1050310.html>

⁴⁰*Id.*

⁴¹Yíngyú Céng (曾盈瑜), *Xíng guǎn kuài: Guómíndǎng chǎn mùqián 166 yì yuán* (行管會：國民黨產目前166億元) [The Administrative and management Dept of the KMT: The KMT possesses 16.6 billion NTD], CEN. N. AGENCY, March 10, 2016. See <http://www.cna.com.tw/news/aip/201603100217-1.aspx>

resulted in a high monetary barrier for newcomers or independent candidates, erecting further barriers for any newcomers to shift the existing campaign finance rules. Limited by dissertational space and accessible information, this dissertation cannot closely review the issue of KMT's properties, but their use in elections and their implications in electoral clientelism and the distorted demand curve of campaign finance market will be further elaborated on chapters 2, 4, 5, and 6.

B. The Unique Form of Legal Transplant and Reception: from Extension of Japanese and Chinese Law to Independent Reception

As Watson argues, legal development throughout history has primarily been the product of transplantation from one legal system to another,⁴² causing “the transnational character of legal change.”⁴³ The history of legal development in Taiwan's campaign finance regulations is short but complicated because of the different influences from Japan, China, and the U.S. Taiwan is an excellent example for observing the significance of transplanting and receiving foreign campaign finance laws and how social circumstances influence the interpretation and function of the rules⁴⁴ in the (post-) colonial rule and (post-) authoritarian rule era in East Asian/Pacific countries.

The first legal transplant of election law and campaign finance rules into Taiwan started in 1935. As von Benda-Beckmann stated, “colonial law was designed to structure and to legitimate the relations of political domination and economic exploitation of the natural and human resources in the colonies.”⁴⁵ Given that Taiwan stood at the periphery of the Japanese Empire, the GGT's implementation of elections and campaign finance rules was designed to

⁴²ALAN WATSON, *THE EVOLUTION OF LAW* 119 (1985).

⁴³ Alan Watson, *legal change: sources of law and legal culture*, 131 U. PENN L. REV. 1121, 1157 (1983).

⁴⁴ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* 116 (1993).

⁴⁵F. von Benda-Beckmann, *Symbiosis of indigenous and western law in Africa and Asia: an essay, in Pluralism in EUROPEAN EXPANSION AND LAW* 318 (W.L. Mommsen & J.A. de Morr eds., 1992).

meet Japanese imperial needs for assimilation and war mobilization. The primary legislative ends were to maintain the social order and integrate the local elites, rather than promoting democracy or civil rights.

Learning from the electoral experiences in Japan, the GGT enacted the electoral regulatory rules in Taiwan to prevent challenges to its authority from local Taiwanese elites and to ensure the minority racial group, the Japanese, won the majority of seats. The rules restricted and closely regulated campaign activities, including time, place and electoral conduct. Independent advocacy was also prohibited. Hence, campaign expenditures were limited to the assigned channels and monitored by the police. Furthermore, the requirement of the campaign finance report was arbitrarily enforced, providing an advantage to candidates supportive of the GGT over the opposition. Accompanying the single non-transferable vote in multi-member district electoral system (SNTV system), the strict regulation of campaign activities and arbitrary enforcement of the campaign finance rules cost the opposition and led to a pattern of personal and localized campaigns. As a result, the GGT could coordinate with obedient candidates by distributing economic interests or privileges to form a united front, and controlled the majority of the seats. These strategies as well as SNTV electoral systems led to the rise of local factions and electoral clientelism, and inspired successive regimes in Taiwan for decades.

The second legal transplant of election laws and campaign finance rules was from 1946 to 1950. After WWII ended, Republican China, led by the Chinese Nationalist Party (hereinafter Kuomintang (KMT)), took over Taiwan on October 25, 1945. In 1946, the ROC-KMT regime implemented the general election and election laws, to reintegrate Taiwan into China and form the National People's Congress in Nanjing to promulgate the ROC Constitution. Although Taiwan was subject to Chinese election laws, based on the

distinctness of Taiwan from Mainland China, the ROC central government authorized the Taiwan Provincial Government to issue electoral rules to meet the political reality and local needs. The native Taiwanese had little difficulty in accepting the ROC's election laws due to their prior exposure to elections.

The third legal transplant and reception of election laws into Taiwan began in 1950. Due to the defeat in the Chinese Civil War, the KMT-led ROC central government moved to Taiwan in 1949. The ROC Constitution and election laws were no longer valid in mainland China but still applied to Taiwan. In the aftermath of their defeat, the ROC in Taiwan (1949-present) was markedly different from the ROC government in China (1912-1949), which had been succeeded by the People's Republic of China government (hereinafter PRC) (1949-present).

After retreating to Taiwan, the ROC-KMT regime froze its Constitution to suspend the elections at the central government level. Nevertheless, the ROC-KMT regime authorized the Taiwan Provincial Government to hold periodic elections at the local level in order to integrate and coordinate with the native Taiwanese and to strengthen its legitimacy. Given the previous electoral experience in the 1930s, the Taiwan Provincial Government in the 1950s initially issued electoral rules and campaign finance regulations, self-receiving pre- and post-war Japanese electoral rules to regulate campaign activities in Taiwan to restrain the monetary influences. The self-receiving of the Japanese rules closely followed Horowitz's argument that, "most states, most of the time, have adhered to institutions associated with their former colonial power or to the institution that was otherwise familiar to them."⁴⁶

⁴⁶Donald L Horowitz, *Constitutional Design: An Oxymoron?*, 42 NOMOS 253, 261 (2000).

Accompanying the regular local elections in Taiwan since 1950, the Taiwan Provincial government frequently revised the election and campaign finance rules to liberalize campaign activities and campaign finance rules to fill the gap between the law and the existing electoral practices, electoral clientelism. Those revisions towards political liberalization indicated the campaign finance rules in Taiwan had gradually stepped out of the shadow of Japanese law. It also reflected there were other norms operative in Taiwanese society, of which the state law is just one, and not always the most powerful.⁴⁷ First, as a self-receiving law from Japan, the state law initially reflected the elites' intentions but did not closely mirror the social customs or norms in Taiwan. Second, the subsequent revisions meant that the ROC-KMT regime tolerated existing electoral practices and electoral clientelism to maintain its advantage against the opposition or independent candidates.

Since 1969 the ROC-KMT regime had started to hold by-and-supplement elections to fill the vacancies of the national democratic bodies and consolidate its legitimacy. The Legislative Yuan then enacted the *Public Servants Election and Repeal Act* of 1980 (hereinafter PSERA) to unify election and campaign finance rules. Since then, electoral rules have no longer been provincial administrative orders, and representatives elected in Taiwan gradually gained the power to amend the election laws to reflect the voice of the people, or, the elected politicians' own needs. As the representatives increased their influence on the amendment of election law and campaign finance rules, existing campaign practices and electoral clientelism were institutionalized, diminishing the odds of new reformers and their advocacy.

The fourth legal transplant and reception began in 1991. After the era of authoritarian rule ended in 1991, the ROC-KMT regime agreed to reopen general elections for national

⁴⁷BRIAN Z. TAMANAHA, A GENERAL JURISPRUDENCE OF LAW AND SOCIETY 116 (2001).

democratic bodies and Taiwan became a democratic country. Taiwan chose to transition to democracy but was still under the leadership of the previous authoritarian regime. Hence, the transition process to democracy in Taiwan was not linear and the existing election laws, campaign finance rules, party-state capitalism, and electoral clientelism mostly remained.

The fifth legal transplant and reception began in 2004. After a peaceful political transition in 2000, the Legislature selectively referred to the U.S. and Japanese campaign finance laws and then passed the PDA in 2004. The PDA was a milestone of campaign finance law in Taiwan, whose symbolic significance in politics was greater than its actual importance. This dissertation analyzes and elaborates the deliberation process in detail in Chapters 4, 5 and 6. After a colonial and authoritarian regime and its successor have incorporated customary norms into the state legal system, different kinds of legal norms and institutions are encompassed within a single state legal system.⁴⁸ The unique experience of transplanting and receiving campaign finance law in Taiwan could encourage all comparative law and legal history scholars to debate the significance of the transplanting and self-receiving process of campaign finance law in East Asian countries. Therefore, the interaction between mandatory report/public disclosure rules and the pre-existing electoral clientelism is worthy of more attention.

IV. Research Methodology: Historical Institutionalism

In addition to the pragmatic perspective of hydraulics effects, this dissertation adopts the method of historical institutionalism⁴⁹ to examine the historical process of the development of the mandatory report/public disclosure rules, and its interaction with distinct electoral norms in Taiwan – electoral clientelism and its large-scale political dynamics and

⁴⁸M. B. HOOKER, *LEGAL PLURALISM: AN INTRODUCTION OF COLONIAL AND NEO-COLONIAL LAWS* (1975); J. Griffiths, *What is legal pluralism*, 24 *J. LEG. PLUR.* 1 (1986).

⁴⁹ Elizabeth Sanders, *Historical Institutionalism*, in *THE OXFORD HANDBOOK OF POLITICAL INSTITUTIONS* (R. A. W. Rhodes, Sarah A. Binder & Bert Rockman eds., 2008).

implications. As James March and Johan Olsen argue, “laws, contracts, and customary rules of politics...develop within the context of political institutions.”⁵⁰ This dissertation explains who designed and constructed these institutions and for what purposes, the gap between the preference of designers and the functioning of institutions, and how constraints and opportunities for these institutions evolved, operated and adapted. Compared to the rational choice of institutionalism, this dissertation views the role of institutions in constructing the bounded rationality of satisficing actors, and providing preferences and interests for all actors to embrace, rather than merely providing a context for rationally maximizing actors.

This approach insists on an independent role for the legal institution, which is not a simple mirror of social force or the aggregate consequences of individual behaviors.⁵¹ The rules of the game are not exogenous, and constraints may be imposed from the external social system or within the context of legal and political institutions.⁵² This approach aims to avoid the traps of utilitarianism, functionalism, instrumentalism,⁵³ retrospective determinism and actor-centered functionalism.⁵⁴ Three concepts are used to explain why and how the mandatory report/disclosure campaign finance rules were adopted, persisted, and adapted: path dependence, sequencing, and institutional complementarity and clustering.

The firsthand most crucial concept is **path dependence**.⁵⁵ Path dependence means “what happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time.”⁵⁶ Path dependence is a “dynamic process involving

⁵⁰James G. March & Johan P. Olsen, *The New Institutionalism: Organizational Factors in Political Life*, 78 AME. POL. SCI. REV. (3) 740 (1984).

⁵¹Id., at 739.

⁵²Id., at 740.

⁵³Id., at 736, 737.

⁵⁴ELLIS S. KRAUSS & ROBERT J. PEKKANEN, THE RISE AND FALL OF JAPAN'S LDP: POLITICAL PARTY ORGANIZATIONS AS HISTORICAL INSTITUTIONS 26 (2011).

⁵⁵Paul Pierson, *Increasing Returns, Path Dependence, and the Study of Politics*, 94.2 AM. POL. SCI. REV. 251-267 (2000).

⁵⁶William Sewell, *Three Temporalities: Toward an Eventful Sociology*, in THE HISTORIC TURN IN THE HUMAN SCIENCES 262 (Terrance McDonald ed., 1996). Mahoney argues, “the path dependence characterizes

positive or negative feedbacks generating multiple possible outcomes depending on the particular sequence in which events unfold.”⁵⁷ The crucial feature of the historical process generating path dependence is the economics conception of positive or negative feedback (self-enforcement). Some decisions generate positive or negative feedback⁵⁸ for those actors taking a particular path, which creates difficulties for institutional changes later when the cost or the risk of switching is too high.

Although politics differ from economics,⁵⁹ six features make positive and negative feedbacks prevalent in politics: “the role and difficulty of collective action”; “the possibilities for using political authority to enhance asymmetries of power”; “asset specificity effects”; “the intrinsic complexity and opacity”; “shorter time horizons of political actors”; and “strong status quo bias of institutions.”⁶⁰

Given that joint supply and non-excludability are in the public interest, collective action has become the main issue in politics. Politics is generally based more on authority than exchange, and political systems are generally compulsory, not voluntary. Once formal institutions are established, the institutional constraints are applied to all and backed up by force and authority. Thus, compared to economic markets, political markets are far from flexible and fluid when creating the conditions for overcoming the individual tendency to “free-ride” and, as such, the problem of collective action has become the primary issue.⁶¹ The

specifically those historical sequences in which contingent events set into motion institutional patterns or event chains that have determined properties.” See James Mahoney, *Path Dependence in Historical Sociology*, 29 THEO. & SOC. 507 (2000).

⁵⁷ See: W. Brian Arthur, *INCREASING RETURNS AND PATH DEPENDENCE IN THE ECONOMY* (1994); Paul David, *Path Dependence, Its Critics, and the Quest for Historical Economics*, in *EVOLUTION AND PATH DEPENDENCE IN ECONOMIC IDEAS: PAST AND PRESENT* 8 (P. Garrouste and S. Ioannides, eds., 2000).

⁵⁸ Scott E. Page, *Path Dependence*, 1.1 Q. J. POL. SCI. 87, 87-115 (2006).

⁵⁹ See: Charles E. Lindblom, *Politics and Markets* (1977); Terry Moe, *The New Economics of Organization*, 28 Am. J. Pol. Sci. 739 (1984); Douglass C. North, *A Transaction Cost Theory of Politics*, 2 J. THEO. POL. (4) 355 (1990).

⁶⁰ PAUL PIERSON, *POLITICS IN TIME* 30, 31 (2011).

⁶¹ MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1965).

high start-up cost of collective action could explain the stability in patterns of political mobilization over time. As North's analysis suggests, institutions' self-enforcing features make reversal unattractive over time. And as Lipset and Rokkan have suggested, "key historical junctures produced major political cleavages."⁶² This dissertation discusses self-enforcement and critical junctures in chapters 3, 4, 5, and 6.

The allocation of political authority to particular actors is also a crucial source of path dependence. In politics, actors may use their political authority to change the rules to enhance their power, increasing their capabilities or diminishing their rivals'. Social and political power has usually been used to reinforce and consolidate political advantage and the positive feedback could incrementally transform relatively balanced conflicts into a long-run inequality. As Pierson has stated, political actors may impose their preference on others from open conflict to agenda control or ideological manipulation setting.⁶³ As a result, positive feedback may increase asymmetries of power and render power relations less visible. These asymmetries may cause the adaptation of new vulnerable actors, forcing them to commit to and join the advantaged side or to desert the disadvantaged side.⁶⁴ This concept could explain the rise and fall of electoral clientelism and local factions in Taiwanese politics, which this dissertation will elaborate on in chapters 2, 3, 4, and 5.

The "asset specificity effects" could complement the concept of path dependence in the development of campaign finance laws in Taiwan. The individual and organizational adaptations to existing arrangements make reversal more difficult. As such, actors may choose to adapt to new rules by making extensive commitments based on their expectation of the continuity of the rules. If the value of assets is specific to a particular setting or use, those

⁶²Seymour Martin Lipset & Stein Rokkan, *Cleavage Structures, Party Systems and Voter Alignments: An Introduction*, in PARTY SYSTEMS AND VOTER ALIGNMENTS 1 (Lipset and Rokkan eds., 1967).

⁶³PAUL PIERSON, POLITICS IN TIME 36 (2011).

⁶⁴PAUL PIERSON, POLITICS IN TIME 36, 37 (2011).

assets are not easily reallocated to some other activity.⁶⁵ As Gourevitch indicated, political actors develop investments and specific assets in the arrangements tied to institutions, including relationships, expectations, privileges, and knowledge of procedures. Therefore, if actors find the cost of institutional change endangers their assets, they would be reluctant to run the risk of any change, which may explain institutional persistence.⁶⁶ Those investments, including policy preferences and mobilization strategies, could alter actors' assessment of the cost-and-benefit of institutional change.

Also, not only politicians or political organizations but even ordinary citizens would adapt themselves to develop assets over time. Thus, the institutions themselves shape future institutional development. If actors adopt new strategies or mobilizing techniques, they, in turn, will be shaped by the institutional arrangement; if not, the actors would be less likely to survive.⁶⁷ As Pierson has stated, despite social, economic, and political changes over time, institutions have possessed strong tendency to persist.⁶⁸ This explains why the main opposition partying Taiwan strategically chose to recruit the KMT's defecting local factions in the 1990s, and why the legislators declined to add public disclosure provisions to the PDA of 2004. This dissertation elaborates on the assets specificity effects and the adaptation of local factions, vote-brokers, voters, and even the opposition, causing institutional persistence in chapters 4, 5 and 6.

The fact that the complexity and ambiguity of politics creates obstacles for learning could explain the mechanism of self-enforcement.⁶⁹ As North has argued, "political markets

⁶⁵See James E. Alt et al., *The Political Economy of International Trade: Enduring Puzzles and an Agenda for Inquiry*, 29 COM. POL. STU. (6) 689 (1996); DAVID A. LAKE, *ENTANGLING RELATIONS: AMERICAN FOREIGN POLICY IN ITS CENTURY* (1999).

⁶⁶ Peter Alexis Gourevitch, *The Governance Problem in International Relations*, in STRATEGIC CHOICE AND INTERNATIONAL RELATIONS 144 (David Lake & Robert Powell, eds., 2000).

⁶⁷PAUL PIERSON, *POLITICS IN TIME* 150 (2011).

⁶⁸PAUL PIERSON, *POLITICS IN TIME* 34 (2011).

⁶⁹See: Charles E. Lindblom, *Politics and Markets* (1977).

are far more prone to inefficiency.”⁷⁰ The complexity of goals and the loose link between the action and outcomes has made politics ambiguous and increased the transaction costs.⁷¹ Thus, learning for both politicians and voters is very difficult. Actors in the complex political and social context are biased to filter information into their existing “mental maps.”⁷² This dissertation analyzes the complexity features of politics and difficulty of learning in chapters 5 and 6.

The logic of electoral politics and the shorter time horizons involved have caused the pursuit of political changes to become more difficult. As Keynes said, “in the long run, we’re all dead.” Because the voters’ considerations and decisions are taken in the short run, elected officials pay attention to long-term consequences only if the issues became salient or they have little fear of short-term retribution. The short time horizons explain not only the calculations of Taiwanese elected politicians, but also the considerations of voters and the authoritarian leaders. This dissertation elaborates on those insights in chapters 4, 5, and 6.

In contrast to the economic realm, the legal or political institutions themselves are change resistant. The institutions are designed to be hard to reverse due to political uncertainty⁷³ and credible commitments. People who design institutions may create rules to bind their successors and make original arrangements hard to reverse. Besides, political actors may restrict themselves in order to remove certain alternatives from the future menu. The designers or political actors may constrain themselves and others in the institutional bind to reduce uncertainty, enhance stability, and facilitate cooperation and exchange.⁷⁴ This

⁷⁰Douglass C. North, *A Transaction Cost Theory of Politics*, 2 J. THEO. POL. (4) 361 (1990).

⁷¹ See: RICHARD CORNES & TODD SANDLER, *THE THEORY OF EXTERNALITIES, PUBLIC GOODS AND CLUB GOODS* (1996).

⁷²Douglass C. North, *A Transaction Cost Theory of Politics*, 2 J. THEO. POL. (4) 361 (1990); BRIAN ARTHUR, W., *INCREASING RETURNS AND PATH DEPENDENCE IN THE ECONOMY* (1994).

⁷³Terry Moe, *The Politics of Structural Choice: Toward a Theory of Public Bureaucracy*, in *ORGANIZATION THEORY: FROM CHESTER BARNARD TO THE PRESENT AND BEYOND* 116 (O. E. Williamson ed., 1990).

⁷⁴Douglass C. North & Barry R. Weingast, *Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, 49 J. ECO. HIS. 803 (1989).

dissertation analyzes the mentality of institutional designers and elected politicians who potentially resisted the campaign finance reforms and public disclosure in chapters 4, 5, and 6.

The second concept is **sequencing**,⁷⁵ meaning “the temporal ordering of events or processes has a significant impact on outcomes.”⁷⁶ As Orren and Skowronek discuss, “different social realms interact with one another, the different historical roots of these realms and differences in the timing of their development can shape the character of these interactions and an inherent dynamism;” and “intercurrence” is central to political development.⁷⁷ To some extent, the rational choice theorists provided convincing arguments about how and why sequencing matters, but it needs to connect to other modules of the social investigation because of the inherent limits: rational choice theory cannot identify the payoffs and preferences to the actors.⁷⁸ Temporal sequences cannot be reduced to a sequence of moves, because the temporal sequence was given by social interactions unfolding over time, instead of being selected as something by someone.⁷⁹

The sequence matters as a result of irreversibility. The positive feedbacks consolidate particular arrangements established at a critical juncture, which are often attributed to exogenous shocks. Certain decisions and paths, once made, may generate positive returns or negative externalities, making it hard to reverse the course later on. The forsaken alternatives become increasingly unreachable as time passes. These previous steps or decisions may determine future options and the subsequent viability of decisions. The initial arrangement

⁷⁵*Id.* at 54-78.

⁷⁶PAUL PIERSON, *POLITICS IN TIME* 54 (2011).

⁷⁷ Karen Orren & Stephen Skowronek, *Beyond the Iconography of Order: Notes for a New Institutionalism*, in *THE DYNAMICS OF AMERICAN POLITICS*, 311 (Lawrence Dodd and Calvin Jillson eds., 1994).

⁷⁸ Fritz W. Scharpf, *GAMES REAL ACTORS PLAY: ACTOR-CENTERED INSTITUTIONALISM IN POLICY RESEARCH* 73 (1997).

⁷⁹PAUL PIERSON, *POLITICS IN TIME* 62 (2011).

generating positive feedback could be viewed as a critical juncture. As Shefter argued with respect to party patronage, first, “the party had to be in a position to offer patronage,” and second, there was no existing coalition within the party pressing for bureaucratic autonomy.⁸⁰ The initial mobilization generated positive feedback, and “once entrenched, the dominant basis of political mobilization became difficult to dislodge.”⁸¹ Shefter’s argument also applies to the case of Taiwan. When the KMT established its electoral clientelism networks in the mid-1950s, it was the dominant ruling party and was forming the party-state regime. Meanwhile, the KMT also incorporated the military, the executives, and civil associations. Once electoral clientelism was established as an instrument for electoral mobilization at the local government level, even the leaders of the KMT could not dislodge it. This dissertation analyzes the growth and the evolution of electoral clientelism, and the attempts of the KMT to dislodge it, in chapters 4 and 5.

The concept of “political space” could complement the analysis of sequencing and partially explain the case of Taiwan in which the early competitive advantages of political actors may have become self-enforcing, and relative timing would have strong implications. Once the actors achieved influential positions, they used party resources to consolidate their power within a particular political space to achieve enduring superiority, meaning that challengers or later actors within that political space would be severely disadvantaged.⁸² As will be shown in this dissertation’s chapters 4, 5 and 6, these early steps include but are not limited to the suspension of elections at the central governmental level between 1949 and 1969, a lack of effective campaign finance disclosure regime, the adoption of martial law, the establishment of party-state capitalism, the KMT’s aggregation of properties to build up its

⁸⁰Martin Shefter, *Party and Patronage: Germany, England, and Italy*, 7 POL. & SOC. 414 (1977).

⁸¹Martin Shefter, *Party and Patronage: Germany, England, and Italy*, 7 POL. & SOC. 414, 415 (1977).

⁸²JARED DIAMOND, *GUNS, GERMS AND STEEL: THE FATES OF HUMAN SOCIETIES* (1997); Kathleen Thelen, *Timing and Temporality in the Analysis of Institutional Evolution and Change*, 14 STU. AM. POL. DEV., 103 (2000).

patronage networks and the SNTV electoral system. These steps have already shaped the formation, evolution and development of local factions and electoral clientelism, embedded in Taiwanese social norms and its economic distributive system. This historical backdrop may partially explain why despite transplanting/self-receiving foreign campaign finance law and peacefully shifting the regime, electoral clientelism and the practices of exchanged interests between the patrons and clients declined gradually, instead of being rooted out.

The third concept is **institutional complementarity and clustering**.⁸³ Institutional complementarity exists when other institutions have mutually reinforced the other's effects. As North stated, "institutional arrangements induce complementary organizational forms and encourage the development of new complementary institutions," and produce the "interdependence web of an institutional matrix and a massive increase on returns."⁸⁴ The historical process of institutional development involves the interaction among multiple institutions and their implications;⁸⁵ thus, multiple institutions are mutually reinforcing and clustering, and the relationships with other institutions can increase the likelihood of one institution, of a particular type, originating, persisting and thriving.⁸⁶ This study assesses whether the mandatory report/public disclosure rules have either reshaped or reinforced the pre-existing electoral clientelism. Given the lack of adequate public disclosure rules at critical junctures, the elections of 1935, 1946, 1950, and 1991 played a role in causing or reinforcing the pre-existing electoral clientelism. Once Taiwanese provincial councilors or legislators were produced by electoral clientelism, the incumbents lacked incentives to undertake any campaign finance reform in case they endangered their own political careers.

⁸³PAUL PIERSON, *POLITICS IN TIME: HISTORY, INSTITUTIONS AND SOCIAL ANALYSIS* 149, 150 (2004).

⁸⁴Douglass C. North, *Institutions, Institutional Change and Economic Performance* 95 (1990).

⁸⁵ Paul Pierson & Theda Skocpol, *Historical Institutionalism and Contemporary Political Science*, in *THE STATE OF THE DISCIPLINE* (Helen Milner and Ira Katznelson eds., 2002).

⁸⁶KATHLEEN THELEN, *HOW INSTITUTIONS EVOLVE: THE POLITICAL ECONOMY OF SKILLS IN GERMANY, BRITAIN, JAPAN AND THE UNITED STATES* (2004).

As well as examining the initial institutional arrangement and its path-dependent effects which drive political and policy outcomes, this dissertation also considers the exogenous events that have brought about institutional breakdown or decay in Taiwan. As Knight argued, “institutional development is a contest among actors to establish rules which structure outcomes to those equilibria most favorable for them;” and the institutions should change to respond to the balance of power among political and social actors or for the preference of most powerful actors.⁸⁷ As Weir argued, most institutional changes or development is “bounded innovation,” when “developmental pathways are characterized by elements of continuity that channel but do not preclude change.”⁸⁸ Two concepts might help to explain the institutional development: institutional layering and institutional conversion.⁸⁹

Institutional layering⁹⁰ means that partial elements of a given set of institutions remain following renegotiation while others are abandoned. As Schickler argued, the institutions have evolved through a “tense layering of new arrangements on top of preexisting structures;” and “the new coalition may design novel institutional arrangements but lack the support, or perhaps the inclination, to replace preexisting institutions established to pursue other ends.”⁹¹ The elections law and campaign finance rules in Taiwan have evolved over eighty years through a learning process adapting inherited institutions and practices to respond to new circumstances. This dissertation elaborates on this institutional development and its implications in chapters 3, 4, 5, and 6.

⁸⁷ Jack Knight, *Explaining the rise of neo-liberalism: the mechanism of institutional changes*, in THE RISE OF NEOLIBERALISM AND INSTITUTIONAL ANALYSIS 27 (John L. Campbell and Ove K. Pedersen eds., 2001).

⁸⁸ Margaret Weir, *Ideas and politics of bounded innovation*, in STRUCTURING POLITICS: HISTORICAL INSTITUTIONALISM IN COMPARATIVE ANALYSIS 188 (S. Steinmo, K. Thelen & F. Longstrth eds., 1992).

⁸⁹ Kathleen Thelen, *How Institutions Evolve: Insights from Comparative-Historical Analysis*. in COMPARATIVE HISTORICAL ANALYSIS IN THE SOCIAL SCIENCES 225 (James Mahoney and Dietrich Rueschemeyer, eds., 2003).

⁹⁰ Eric Schickler, DISJOINTED PLURALISM: INSTITUTIONAL INNOVATION AND THE DEVELOPMENT OF THE U.S. CONGRESS (2001).

⁹¹ Eric Schickler, DISJOINTED PLURALISM: INSTITUTIONAL INNOVATION AND THE DEVELOPMENT OF THE U.S. CONGRESS 13 (2001).

“Institutional conversion” means that existing institutions with one set of goals are redirected to other ends.⁹² As Thelen stated, the actors may address new problems by using existing or inherited institutions in new ways or for new goals.⁹³ The elections and elected congresses in Taiwan have both converted their functions. In the beginning, both institutions served as instruments for the government to integrate local elites and consolidate its colonial or authoritarian legitimacy. Nevertheless, as time went by, the elections and congresses played a role in the transition to democracy and in channeling the voice of the people. This dissertation elaborates on these developments and the conversion process in chapters 3, 4, 5, and 6.

In sum, historical institutionalism provides powerful tools for understanding why other rational and alternative paths have not been followed. Historical institutionalism also explains how and why electoral practices existed the way they did, both before and after the campaign finance reform in 2004. The sequences and path dependence do not imply that destiny is already determined by the predecessors as unanticipated consequences may arise contingently, and many paths of development are open at certain critical junctures in certain historical processes.⁹⁴ Contingent circumstances,⁹⁵ such as social movements or the change of political and economic conditions, may dramatically change the bounded context of the rational political calculation or the formula of the cost and benefit analysis.

This dissertation maintains that, while long-term patterns of economic, social and technological developments matter, the short-term legal institutional choices made by

⁹²K. Thelen & S. Steinmo, *Historical institutionalism in comparative politics*, in STRUCTURING POLITICS: HISTORICAL INSTITUTIONALISM IN COMPARATIVE ANALYSIS 1 (S. Steinmo, K. Thelen, & F. Longstreth eds., 1992).

⁹³Kathleen Thelen, *How Institutions Evolve: Insights from Comparative-Historical Analysis*, in COMPARATIVE HISTORICAL ANALYSIS IN THE SOCIAL SCIENCES 225, 226 (James Mahoney & Dietrich Rueschemeyer eds., 2003).

⁹⁴PAUL PIERSON, *POLITICS IN TIME: HISTORY, INSTITUTIONS, AND SOCIAL ANALYSIS* (2004).

⁹⁵ Rogers M. Smith, *Historical Institutionalism and the Study of Law*, in THE OXFORD HANDBOOK OF LAW AND POLITICS (Gregory A. Caldeira, R. Daniel Kelemen & Keith E. Whittington eds. 2008).

political agents matter as well. In the long-term, as technology improves, the costs and difficulties of collecting, producing, aggregating, and disseminating campaign finance information are lowering at a quicker rate than previously expected. In the short-term, institutional choices may change to respond to the Sunflower social movement of 2014 and the development of technology to process and disseminate personal information. After the Sunflower social movement, the value of transparency and information privacy rights both became salient issues in the public forum. If these exogenous shocks are informed by structures and cleavages, it is worth analyzing which occurrences reinforce the patterns of governance and which redirect them.⁹⁶ The case study of the history of campaign finance law in Taiwan makes a good starting point from which to analyze these issues. This dissertation elaborates on this development in chapters 6 and 7.

⁹⁶K. ORREN, K. & S. SKOWRONEK, *THE SEARCH FOR AMERICAN POLITICAL DEVELOPMENT* (2004).

Chapter 2. The Landscape in Taiwan: The Prevalent Electoral Clientelism and its Implications to Campaign Finance

As in all other democratic nations, in Taiwan, the “trade of voters and other types of partisan supports in exchange for public decisions with divisible benefit” is unavoidable.⁹⁷ Terms such as “constituent service,” “brokerage politics,” and “pork-barrel politics” are the expression of the promotion of particularistic interests with few regards for general interests. Given the different values within a democracy and distinct social or cultural norms, the legislature has to strike a compromise, fit for its jurisdiction, between the general and particular interests.

As an advocate for the demand side of campaign finance reform, this dissertation comes back to the crucial questions, where was and is the money going, and why do politicians demand huge sums of money to run their campaigns? This dissertation argues that two main forces of the demand curve for political money deserve attention: prevalent electoral clientelism and a lack of adequate public disclosure rules and enforcement. In this chapter, this dissertation clarifies the terminology of electoral clientelism and illustrates its prevalence in Taiwan, as well as the previous and current legislative efforts to address such issues with transparency. This dissertation then analyzes the path-dependent evolution of clientelism in Taiwan and its interaction with, and mutual reinforcing of, the public disclosure rules in chapters 3, 4, 5, and 6.

I. Clientelism in Taiwan

⁹⁷ Simona Piattoni, *Clientelism in historical and comparative perspective*, in *CLIENTELISM, INTERESTS, AND DEMOCRATIC REPRESENTATION. THE EUROPEAN EXPERIENCE IN HISTORICAL AND COMPARATIVE PERSPECTIVE* 4 (Simona Piattoni eds., 2001); FRANCIS FUKUYAMA, *POLITICAL ORDER AND POLITICAL DECAY* 88, 90 (2015).

A. The Essential Elements of Clientelism

Most comparative political scientists frequently refer to electoral clientelism or party patronage in analyzing the distinct electoral culture and political landscapes in the (post-) colonial and (post-) authoritarian eras of Taiwan.⁹⁸ The term “clientelism” is derived from anthropological literature, where it refers to the continuation of traditional gift-giving practices or a “reciprocal exchange of favors” between two individuals of different status.⁹⁹ In the traditional context, the giving of a gift was regarded as an obligation, embedded in a network of social alliances and status. The elites usually made gifts to their clients to accomplish symbolic or material redistribution, and the recipients also undertook token giving to express their allegiances.¹⁰⁰

In the field of comparative political science, patron-client relations are exchange relationships depending on the relative power of the parties and contextual circumstances. One of the most authoritative definitions in political science was proposed by scholars Eisenstadt & Roniger.¹⁰¹ According to their definition, the first four elements of patron-client relationships are: 1. The dyadic and personal natures of the relationship. 2. Simultaneous

⁹⁸WU NAI-TEH, THE POLITICS OF A REGIME PATRONAGE SYSTEM: MOBILIZATION AND CONTROL WITHIN AN AUTHORITARIAN REGIME. PHD THESIS UNIVERSITY OF CHICAGO (1987); CHEN MING-TONG (陳明通), PAIXI ZHENGZHI YU TAIWAN ZHENGZHI BIANQIAN (派系政治與台灣政治變遷) [THE FACTION POLITICS AND POLITICAL TRANSITIONS IN TAIWAN] (1995); Cheng Tun-jen, *Embracing Defeat: The KMT and the PRI after 2000*, in POLITICAL TRANSITIONS IN DOMINANT PARTY SYSTEMS: LEARNING TO LOSE (Edward Friedman & Joseph Wong eds., 2008); Chu Yun-han, Melvin J. Hinich & Lin Tse-min., *Conflict Displacement and Regime Transition in Taiwan: A Spatial Analysis*, 48.4 WORLD POL. 453, 453–481 (1996); WAKABAYASHI MASAHIRO (若林正文), ZHAN HOU TAIWAN ZHENGZHI SHI: ZHONGHUA MINGUO TAIWAN HUA DE LICHENG (戰後臺灣政治史：中華民國臺灣化的歷程) [TAIWAN'S POSTWAR POLITICAL HISTORY: A HISTORY OF THE REPUBLIC OF CHINA IN TAIWAN] 130, 131 (2008); SHELLEY RIGGER, POLITICS IN TAIWAN: VOTING FOR DEMOCRACY 44, 46(1994).

⁹⁹MARCEL MAUSS, THE GIFT. FORMS AND FUNCTIONS OF EXCHANGE IN ARCHAIC SOCIETIES (1954).

¹⁰⁰*Id.*

¹⁰¹S. N. EISENSTADT & LUIS RONIGER, PATRONS, CLIENTS AND FRIENDS: INTERPERSONAL RELATIONS AND THE STRUCTURE OF TRUST IN SOCIETY 48, 49 (1984).

exchange of unspecified resources. 3. The sense of obligation inherent in the relationship. 4. The informal and semi-legal character of the relationship.

These four elements create the first puzzle, how to extend the personal and dyadic nature of relationships found in traditional societies to the realm of impersonal and categorical political clientelism in contemporary societies. Boissevain has invoked the idea of long and obscure chains of friends of friends¹⁰² with the view that personal and dyadic elements remain in each link of the chain.¹⁰³ Eisenstadt & Roniger have, however, focused on “networks,” or entire corporate groups, such as trade unions or political parties, as a fifth element. Eisenstadt & Roniger contend the relations are undertaken between the individuals or “networks of individuals” in a vertical fashion.¹⁰⁴ This additional element and its related debates are applicable to the case of Taiwan, and elaborated on by this dissertation in chapters 3, 4 and 5.¹⁰⁵

Eisenstadt and Roniger have also proposed two supplemental elements of patron-client relations. The inequality and difference in power or resources between patrons and clients can be taken as the sixth element of these relations. Finally, the observation that relationships between patrons and clients are principally entered into voluntarily and can be abandoned voluntarily forms the seventh element of patron-client relations.

The combination of potential coercion and exploitation within voluntary relationships then gives rise to a second puzzle, largely as a result of the apparent contradiction between the inequality of the parties and the voluntary nature of the relationship. As Luigi Graziano

¹⁰²JEREMY BOISSEVAIN, FRIENDS OF FRIENDS: NETWORKS, MANIPULATORS AND COALITIONS 285 (1974).

¹⁰³*Id.*

¹⁰⁴S. N. EISENSTADT & LUIS RONIGER, PATRONS, CLIENTS AND FRIENDS: INTERPERSONAL RELATIONS AND THE STRUCTURE OF TRUST IN SOCIETY 48, 49 (1984).

¹⁰⁵CHEN MING-TONG (陳明通), PAIXI ZHENGZHI YU TAIWAN ZHENGZHI BIANQIAN (派系政治與台灣政治變遷) [THE FACTION POLITICS AND POLITICAL TRANSITIONS IN TAIWAN] 16 (1995).

argues, the relation is an exchange and the quid-pro-quo relationship, ruled by the utility goal of maximizing benefit, makes it possible to apply the concept of clientelism to both personal and group relations.¹⁰⁶ After all, the imbalance of power between two parties does not per se indicate the existence of exploitation. In traditional societies, choices for clients to enter the relationship with their patrons were restrained because of the virtual monopoly over the means of livelihood. But the customary norms of duties imposed on patrons has tempered the de facto coercion or exploitation. In modern societies, economic development and the extension of suffrage rights have provided clients more bargaining power vis-a-vis their patrons. Thus, the freedom to enter and exit the patron-client relation is one of the definitional traits; therefore, clientelism can be seen as a free exchange of relations. It was, in effect, the balance between inequality, voluntariness and the utility goal that was used for interactions between the ROC-KMT regime and local factions, as well as those factions and their vote-brokers in Taiwan before the 1970s. As political liberalization began in the late-1980s, the balance between inequality and voluntariness could also explain the volatile relationship between the political parties and local factions, local factions and vote-brokers, and vote-brokers and voters in Taiwan, which caused the rise and decline of electoral clientelism.¹⁰⁷

However, the utility analysis of patron-client relations raises a new puzzle: Can this kind of exchange relationship be standardized and impersonalized as transactions in the economic market so as to avoid inefficient transfers through chains of friends of friends? Lande has argued that personalism is an unavoidable addendum in the political field for two reasons, the

¹⁰⁶ Luigi Graziano, A Conceptual Framework for the Study of Clientelistic Behavior, 4 EU. J. POL. RE. 149 (1976). Simona Piattoni, *Clientelism in historical and comparative perspective*, in CLIENTELISM, INTERESTS, AND DEMOCRATIC REPRESENTATION. THE EUROPEAN EXPERIENCE IN HISTORICAL AND COMPARATIVE PERSPECTIVE 11 (Simona Piattoni ed., 2001).

¹⁰⁷ YUNG-MAO CHAO (趙永茂), TÁIWĀN DÌFĀNG ZHÈNGZHÌ DE BIÀNQIĀN YŪ TÈZHÌ (台灣地方政治的變遷與特質) [THE CHANGES AND CHARACTERISTICS OF LOCAL POLITICS IN TAIWAN] 270 (2002).

sense of being represented among most voters and the difficulties of enforcement without sufficient oversight of private deals.¹⁰⁸

Verdier partially concurred but argued that depersonalized clientelism is possible. In Verdier's opinion, such an exchange, like public subsidies for private industries, could be extended to the level of sector and territory through lobby activities, which offer electoral support or campaign funds to secure the advantage for incumbent politicians.¹⁰⁹ These subsidies could deepen mobility and reshape or transform clientelism. Verdier tried to extend the scope of clientelism to explain larger scale exchanges of interests. However, if the element of personalism is completely removed, it might blur the concept of clientelism with programmatic or pork-barrel politics.¹¹⁰ This dissertation elaborates upon this in the following section.

After closely reviewing the normative elements of the concept of clientelism and the patron-client relation, the next puzzle arises in responding to the demand side of campaign finance reformers: What induces politicians to distort rule-making decisions to gain the votes of their clients, and why is it effective in electoral mobilization in Taiwan? As Fox has mentioned, authoritarian clientelism does not erode in a linear process toward citizenship.¹¹¹ This dissertation partially concurs with Shefter's argument that the relative timing of democratization matters and restricts subsequent party leaders' and political actors' strategic options.¹¹² Yet the timing is not always binding on politicians' strategies. Changes in political

¹⁰⁸ Carl H. Lande, *Introduction: The Dyadic Basis of Clientelism*, in *FRIENDS, FOLLOWERS, AND FACTIONS* (Schmidt, Steffen, Laura Guasti, Carl H. Lande & James Scott eds., 1977).

¹⁰⁹ Daniel Verdier, *The Politics of Public Aid to Private Industry*, 28 *COM.POL. STU.* (1) 3 (1995).

¹¹⁰ SUSAN C. STOKES, THAD DUNNING, MARCELO NAZARENO & VALERIA BRUSCO, *BROKERS, VOTERS, AND CLIENTELISM* 7-18 (2013).

¹¹¹ Jonathan Fox, *The Difficult Transition from Clientelism to Citizenship: Lessons from Mexico*, 46 *W. POL.* (2) 183 (1994).

¹¹² MARTIN SHEFTER, *POLITICAL PARTIES AND THE STATE: THE AMERICAN HISTORICAL EXPERIENCE* (1994). (In the case of parties founded by elites occupying positions or privileges within the ruling regime, they tend to be patronage-oriented because of structural opportunities.) Under Shefter's framework, the supply side of patronage or clientelism is more critical to the demand side. Patronage and clientelism could exist only when political

or economic costs and benefits, or the internal logic of clientelism itself, may drive the transformation or redirection at certain critical junctures or contingencies. This dissertation elaborates on these points in Chapters 4, 5, and 6.

B. Terminology of Clientelism

Before further analyzing one of the primary legislative goals of campaign finance law, the vague concept of political corruption and the terminology of clientelism should be clarified. Rather than following the disputed and potentially contradictory definitions common among anthropologists or political scientists, this dissertation adopts a two-dichotomy approach to clarify the definition used herein.¹¹³ The first dichotomy is between programmatic and non-programmatic distribution, and the second is between unconditional benefits and conditional exchanges.¹¹⁴

Programmatic distribution requires two criteria:¹¹⁵ that the allocation of resources should be public and formalized¹¹⁶ and the public and formalized criteria shape the process of the distribution. As the U.S., Supreme Court ruled in *Brown v. Hartlage*,¹¹⁷ if distribution is “made openly, subject to the comment and criticism of ... political opponents and the scrutiny of the voters,”¹¹⁸ it is the “normal process of government.”¹¹⁹ In that situation, the spending

actors have access to state resources to distribute. As for the starting point of the patronage or electoral clientelism and the sequencing, this dissertation partially concurs with Shefter. But as for the issue of addressing electoral clientelism, this thesis does not deny the function of supply-side reform, such as *The Act Governing the Handling of Ill-gotten Properties by Political Parties and Their Affiliate Organizations*, but argues that transparency is the primary dynamic to remove clientelism parties from ruling power and deter future clientelist kind of transactions for particular interests.

¹¹³SUSAN C. STOKES, THAD DUNNING, MARCELO NAZARENO & VALERIA BRUSCO, *BROKERS, VOTERS, AND CLIENTELISM* 7-18 (2013).

¹¹⁴*Id.*

¹¹⁵*Id.* at 7 8.

¹¹⁶ The US Supreme Court viewed the promises of material benefits made openly in the campaign and aimed at broad categories of citizens as a normal process of government and not as vote buying. *See Brown v. Hartlage*, 456 U.S. 45, 57 (1982).

¹¹⁷*Brown v. Hartlage*, 456 U.S. 57 (1982).

¹¹⁸*Id.*

¹¹⁹*Id.*

priorities reflect the ideological differences between the parties and the conflicting interests of their constituencies, ultimately determined by all voters after carefully scrutinizing and deliberating matters.

Turning to the category of non-programmatic distribution, two sub-categories, partisan bias and clientelism, may then be distinguished along the line of whether the distribution is contingent on an individual's political support.¹²⁰ Partisan bias is that in which benefits are not contingent on individual support, and the betrayal suffers no individual or particular punishment. Within the categories of partisan bias, the distribution of benefits targeted at the individual level is defined as "non-conditional benefits to the individual," while distribution aimed at the collective level, such as geographic constituencies, is defined as "pork barrel politics."¹²¹ Pork barrel and non-conditional individual benefits which are distributed without publicity or regard to formalized rules cause inefficiency in appropriately allocating resources.¹²²

Having addressed partisan bias, it is now necessary to distinguish it from clientelism. In clientelism, a party offers material benefits on the condition that the recipients offer their political support in return. A further distinction among types of clientelism develops between patronage, on the one hand, and turnout or vote buying, on the other. Patronage is referred to as the intra-party flow of benefits.¹²³ If the political machine bribes people to vote or to mobilize for an individual candidate, it is termed as vote buying; however, if the political machine bribes voters simply to head to the polls, it is referred to as turnout buying.¹²⁴ The

¹²⁰ Susan C. Stokes, *supra* note 113, at 13.

¹²¹ *Id.* at 10,11.

¹²² *Id.* at 249.

¹²³ *Id.* at 13, 14.

¹²⁴ *Id.* at 13, 14.

issue is compounded in Taiwan because of the large range and value of KMT-assets and their use in elections.

This dissertation concedes that constituency service, a common electoral strategy in the US, Japan, and Taiwan, is hard to define and categorize between partisan bias and clear-cut clientelism. Constituency service cannot be considered programmatic distribution when it is not distributed publicly along the lines of ideology or campaign pronouncements. However, the service offerings are not always dependent on the recipients' responses. The binding effects of constituency services on previous and current Taiwanese voters are unstable and vary case by case. According to electoral mobilization studies, there are at least three vertical, intermediate layers of networks that may influence political parties to respond to the inherent diversity of societal interests. From top to bottom, the layers of networks are local factions, vote-brokers, and the people.¹²⁵ The effects of constituency services depend on the particular transactions and in which layer of networks the transactions take place. As the transactions typically deal with the lower layer, the monitoring and enforcing of power has decreased due to the low threat of coercion and budget restraints. This dissertation elaborates the beginning, the evolution, and the costs of constituency services in chapters 4, 5 and 6.

¹²⁵Jiexuan Chen (陳介玄), *Pàixì wǎngluò, zhuāng jiǎo wǎngluò jí sù mǐn wǎngluò: Lùn táiwān dìfāng pàixì xíngchéng zhī shèhuì yìyì* (派系網絡、樁腳網絡及俗民網絡：論台灣地方派系形成之社會意義) [*The networks of local factions, vote-brokers and folks: The social meaning for the formation of the local factions in Taiwan*], in *DIFĀNG SHEHUI* (地方社會) [THE LOCAL SOCIETY] 31-68 (Dong-hai Uni. ed., 1997).

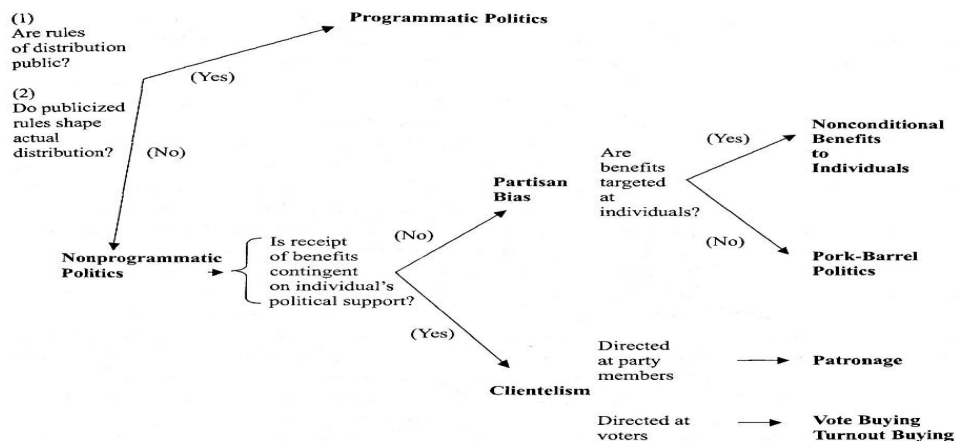


Table 1: Conceptual Scheme of Distributive Politics¹²⁶

While patronage or electoral clientelism constitute normative deviation from democratic practices, electoral clientelism is not equivalent to political corruption. As Fukuyama argues, “clientelism should be considered an early form of democratic accountability and be distinguished from other types of corruption.”¹²⁷ First, clientelism is founded on a relationship of reciprocity, which creates political accountability between elected officials and voters.¹²⁸ Second, clientelism is designed to generate mass political participation at election time.¹²⁹

Readers may ask, if electoral clientelism is not equivalent to political corruption, why does this dissertation pay attention to this distinct electoral practice in Taiwan? First, given the hydraulic effects, the electoral clientelism embedded in the local social and political norms enhances the demand for campaign finance in Taiwan. As the demand curve shifts and the equilibrium becomes distorted, political actors face greater financial pressure to raise and

¹²⁶ Susan C. Stokes, *supra* note 113, at 13.

¹²⁷ FRANCIS FUKUYAMA, *POLITICAL ORDER AND POLITICAL DECAY* 90 (2015).

¹²⁸ *Id.* at 88, 90 (Fukuyama argues there are two primary biological principles shared by all human societies: kin selection or inclusive fitness, and reciprocal altruism. In kin selection, individuals favor genetic relatives, which is the basis of nepotism. And reciprocal altruism involves exchanges of favors between unrelated individuals.)

¹²⁹ *Id.* at 91.

collect material interests or privileges for distribution and mobilization. It is this pressure which provides the structural causes for money politics and political corruption.

Second, as Fukuyama and Scott observe, political corruption could be viewed as a continuation of traditional gift-giving practices based on existing ties of kinship or other parochial loyalties, and these existing loyalties contradict the tie of loyalty to the nation. Especially when formal standards of public behavior in the host jurisdiction have not been widely internalized, and in the absence of enforcement, political actors tend to be motivated by the pressures in their local societies. The gap between formal political norms and popular values is especially significant in post-colonial nations.¹³⁰ As a post-colonial and post-authoritarian nation, Taiwan is an excellent case to observe whether the gap between the formal political norms and local values, and the absence of adequate and fair enforcement of formal norms, contribute to political corruption.

C. Prevalent Electoral Clientelism and Vote-Buying in Taiwan

After analyzing the normative concept of partisan biases and clientelism, a review of clientelism in Taiwan is necessary. As Shefter argues, timing matters.¹³¹ This is especially true in regard to the KMT's dominance of Taiwan's political landscape. Given the party's distinct historical background, the KMT had aggregated and retained tremendous properties.¹³² The use of aggregated party properties to build electoral clientelism networks and to invest in the private and cultural sectors before the founding elections of 1991 and 1992 facilitated the KMT in maintaining its electoral clientelism system for mobilization in the post-authoritarian period. The party assets not only interfered with electoral fairness and

¹³⁰JAMES C. SCOTT, *COMPARATIVE POLITICAL CORRUPTION* 12 (1972).

¹³¹ See MARTIN SHEFTER, *POLITICAL PARTIES AND THE STATE: THE AMERICAN HISTORICAL EXPERIENCE* (1994).

¹³² Fu-chung Li, *The Party-owned Enterprises Under the Authoritarianism of Kuomintang*, 18 *Bul. Aca. His.* 189-220 (2008).

political accountability but also distorted the balance of the campaign finance market, which provided structural causes for money politics. This thesis elaborates the mechanism of KMT-properties and its clientelism network respectively in Chapters 4 and 5.

It is commonly believed vote-or-turnout buying has occurred, and is still occurring, in Taiwan. This belief was also supported by an in-depth academic interview,¹³³ the confession of a former KMT staff member,¹³⁴ official perception data,¹³⁵ and judicial records. According to judicial records released by the Department of Justice in June 2017¹³⁶ and data from the Global Corruption Barometer, all research indicates that after the enactment of the Political Donation Act in 2004, clientelism has gradually declined, but has not been eliminated, in Taiwan.

According to the Global Corruption Barometer data, held by Transparency International, most Taiwanese citizens view parliament/legislators and political parties as extremely corrupt. In a 2013 survey, 36% of respondents in Taiwan reported paying a bribe in public services. Moreover, 74% of respondents in Taiwan felt that political parties were corrupt/extremely corrupt, and 75% felt parliament/legislators were corrupt.¹³⁷ In 2016, the Taiwanese people believed the legislature was still the most corrupt institution in the country and 6 % of respondents claimed to have paid a bribe in the past 12 months. Furthermore, between 48% and 49% of respondents perceived the legislature and local congressmen as

¹³³ Chin-shou Wang & Charles Kurzman, *The logistics: how to buy votes*, in ELECTIONS FOR SALE: THE CAUSES AND CONSEQUENCES OF VOTE BUYING (Frederic Schaffer, ed., 2007).

¹³⁴ BIXIA ZHAN (詹碧霞), MÀI PIÀO CHÀNHUÍ LÙ (買票懺悔錄)[CONFESSIONS OF VOTE-BUYING] 118, 129 (1999).

¹³⁵ AGENCY AGAINST CORRUPTION, DEPARTMENT OF JUSTICE (法務部調查局), 2016 ANNUAL REPORT (2016 年度工作報告) 24 (2017).

¹³⁶ Department of Justice, *Fawu tongji zhongyao zhibiao fenxi (An Analysis of Important Indicators of Forensic Statistics)* [2016 年法務統計重要指標分析] 14, see:

http://ebooks.lib.ntu.edu.tw/1_file/MOJ/1/7531624675.pdf; Department of Justice, Xuanju cha anjian tongji fenxi (Statistical analysis of election cases) [選舉查察案件統計分析], see:

http://www.rjsd.moj.gov.tw/rjsdweb/common/WebListFile.ashx?list_id=918

¹³⁷ Transparency International, Global Corruption Barometer 2013, Taiwan. See: <https://www.transparency.org/gcb2013/country/?country=taiwan>

corrupt, which is a significantly higher figure than for the president (27%), judges (24%), religious leaders (23%), the police (18%), bureaucrats (16%), and tax collectors (13%).¹³⁸ According to the same data, 19% of the richest Taiwanese had paid a bribe, which reverses the general phenomenon in the Asian Pacific region that the poorest are the most likely to pay bribes, possibly because of their lack of available options to influence or avoid payment.¹³⁹

In addition, judicial data reflects the diminishing but still existent vote-buying rate. Five legislative members among the 113 seats in the 7th term (serving from Feb. 2008 to Jan. 2012) were ousted as a result of vote-buying. According to the indictment data regarding vote-buying offenses from the election of the legislative members in the 5th term (Feb. 2002-Jan. 2005), 92 cases were brought. During the 6th term (Feb. 2005-Jan. 2008), indictments were issued in 141 cases, involving 675 persons. In the 7th term (Feb. 2008- Jan. 2012), indictments were issued in 199 cases, involving 1305 persons,¹⁴⁰ and in the 9th term (Feb. 2016-Jan. 2020), indictments were issued in 182 cases, involving 760 persons.¹⁴¹ Interestingly, during the same period, the number of cases charged and the number of individuals prosecuted both rose from 2002 to 2008 and then slowly declined in 2016.

II. The Legislative Goals of Campaign Finance Law in Taiwan: Addressing Political Corruption

¹³⁸ Transparency International, Global Corruption Barometer 2015/16, Taiwan. See:

¹³⁹ TRANSPARENCY INTERNATIONAL, PEOPLE AND CORRUPTION: ASIA PACIFIC. GLOBAL CORRUPTION BAROMETER.

¹⁴⁰ Department of Justice of the R.O.C., *Xuǎnjǔ chá chá ànjàn tǒngjì fēnxī* (選舉查察案件統計分析) [Statistical analysis of election cases in 2017], see:

http://www.rjtd.moj.gov.tw/rjtdweb/common/WebListFile.ashx?list_id=1501

¹⁴¹ *Id.* (Based on the limited data from the Department of Justice, the number of the indictment regarding vote-buying offenses from the election of the legislative members in 2012 was not precise. One of the reason is that, in 2012, the elections of legislature and president were held on the same date. It caused the difficulties to distinguish the vote-buying between the president and legislative members.)

Among the primary goals of campaign finance law in Taiwan, as in its legal transplant donors, the U.S.¹⁴² and Japan, is to address the problems of political corruption or the appearance of corruption, on the one hand, and to strengthen the development of democracy, on the other.¹⁴³ To address these problems, what is meant by corruption and how it differs from the appearance of corruption should be clarified. While most definitions of corruption center on the appropriation of public resources for private gain,¹⁴⁴ Scott argues that corruption is a “special case of political influence,” which must be observed in “the context of the distribution of power in societies” and “the character of regime institutions.”¹⁴⁵

Political corruption is an essentially contested concept intertwined with controversial normative ideals.¹⁴⁶ As such it has been impossible for scholars from different disciplines to arrive at a general agreement on the criterion of determining what corruption is without implicitly referring to some ideals. The three of the most convincing approaches that have been proposed focus on: legal norms, public opinion, and the public interest.¹⁴⁷

The legal norms approach focuses on the formal rules of a given society to determine what political corruption is. This method, however, might raise problems for conducting

¹⁴² In *Buckley*, the U.S. Supreme Court said that the interest in “preventing corruption or the appearance of corruption” is “the only legitimate and compelling government interest... thus far identified for restricting campaign finances.”

¹⁴³ Political Donation Act, Art. 1 provides, “This Act is enacted to normalize and manage political donations, promote the political participation of the citizens, ensure the fairness and justness of political activities, and strengthen the development of democracy.” The legislative deliberation and the interview results about addressing political corruption will be elaborated on in chapter 6.

¹⁴⁴ MICHAEL JOHNSTON, *SYNDROMES OF CORRUPTION: WEALTH, POWER, AND DEMOCRACY* 11 (2005); FRANCIS FUKUYAMA, *POLITICAL ORDER AND POLITICAL DECAY* 81 (2015). J.S. Nye, *Corruption and political development: a cost-benefit analysis*, 61 *AM. POL. SCI. REV.* (2) 417, 419 (1967). Nye defines corruption as: behavior which deviates from the formal duties of a public role (elective or appointive) because of private regarding (personal, close family, private clique) wealth or status gains: or violates rules against the exercise of certain types of private-regarding influence.

¹⁴⁵ JAMES C. SCOTT, *COMPARATIVE POLITICAL CORRUPTION* 6, 12, 94 (1972) (Scott indicates the analysis of corruption in Asia should emphasize the “local values,” like gift-giving practices and the kinship or parochial loyalties, and “political and social structure,” like the relative importance of public sector and the identities of decision-makers).

¹⁴⁶ Daniel Hays Lowenstein, *Campaign Contributions and Corruption: Comments on Strauss and Cain*, 1995 *U. CHI. LEGAL. F.* 163.

¹⁴⁷ JAMES C. SCOTT, *COMPARATIVE POLITICAL CORRUPTION* 3-5 (1972).

comparisons between different nations and drawing a normative line or undertaking historical comparison.¹⁴⁸ The public opinion approach faces difficulties of vagueness and ambiguity of measurement.¹⁴⁹ First, it is difficult to assert which time provides the best, or most accurate, measure of the public's opinion. Second, determining who constitutes "the public" is not a simple task. This vagueness of scope creates ambiguity.¹⁵⁰ Finally, the public interest approach tends to focus on the effects of an act rather than on its legal text, which causes severe challenges in defining the subjective and imprecise notion of public interest when inherently normative or ideological questions are involved.¹⁵¹

To clarify the concept of political corruption for my historical and comparative studies on the campaign finance laws of Taiwan, I have adopted both the legal norms approach as the comparative basis, and the public interest approach to debate whether the previous and current regulating regimes are optimal or not.

This dissertation then articulates two distinct conceptions of political corruption, governmental corruption and electoral corruption. Governmental corruption occurs when an official provides a governmental benefit or service in return for payment or favor from private citizens.¹⁵² Such kinds of exchange occur in every jurisdiction, regardless of whether it is a democracy or not.

¹⁴⁸J.S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, in POLITICAL CORRUPTION: CONCEPT & CONTEXTS 281 (Arnold J. Heidenheimer & Michael Johnston eds., 2011).

¹⁴⁹*Id.*, at 3-28.

¹⁵⁰John Gardiner, *Defining corruption*, in POLITICAL CORRUPTION: CONCEPT & CONTEXTS 33 (Arnold J. Heidenheimer & Michael Johnston eds., 2011); MICHAEL JOHNSTON, POLITICAL CORRUPTION AND PUBLIC POLICY IN AMERICA 7 (1982).

¹⁵¹Frank J. Sorauf, *The Public Interest Reconsidered*, 19 *J. Pol.* 616 (1957) (Sorauf criticized the terms as subjective and imprecise.) John Gardiner, *Defining corruption*, in POLITICAL CORRUPTION: CONCEPT & CONTEXTS 31 (Arnold J. Heidenheimer & Michael Johnston eds., 2011);

¹⁵²Dennis F. Thompson, *Two Concepts of Corruption: Making Campaigns Safe for Democracy*, 73 *GEO. WASH. L. REV.* 1036, 1037 (2005). (Thompson contends the category of a quid pro quo is not required, and gaining access to the officials and series of government is sufficient, *id.*, at 1037)

Electoral corruption¹⁵³ involves the integrity of the elections, including the risk of distortion of the democratic process by the corrosive and distorting effects of immense aggregations of wealth.¹⁵⁴ Electoral corruption undermines the ability of individual citizens to run the process¹⁵⁵ and prevents the electorate from exercising its rights as a result of the distorting effect of unrelated information.¹⁵⁶ The legislative goals of the PDA include maintaining electoral integrity and facilitating the value of democracy.¹⁵⁷ Thus, when determining how to draw the contours of campaign finance laws to correspond with their primary legislative goal, curbing political corruption, emphasis should not only be given to governmental corruption but also electoral corruption.

After extending the concept of political corruption to electoral corruption, the issue of applying standards of political corruption in the field of campaign finance regime is raised. Three standards of political corruption have been cautiously deliberated by the U.S. Supreme Court, quid pro quo, monetary influence, and distortion.¹⁵⁸ Undoubtedly, the core of corruption is the quid pro quo standard,¹⁵⁹ in which officeholders accept money, either for personal use or as a campaign contribution, in exchange for something of value.¹⁶⁰ The

¹⁵³*Id.* The concept of electoral corruption that Thompson develops is a mixture of Burke's standard of monetary influence and distortion. For the evolution of the concepts of corruption in the US, see also Richard L. Hasen, *Buckley is Dead, Long Live Buckley: The New Campaign Finance Incoherence of McConnell v. Federal Election Commission*, 153 U. PA. L. REV. 31(2004).

¹⁵⁴*McConnell v. FEC*, 540 U.S. at 273-74 (2003).

¹⁵⁵*Id.* at 136, 137.

¹⁵⁶*Id.* at 121.

¹⁵⁷ Political Donation Act, Art. 1 provides, "This Act is enacted to normalize and manage political donations, promote the political participation of the citizens, ensure the fairness and justness of political activities, and strengthen the development of democracy."

¹⁵⁸ Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COM. 127 (1997).

Similar classification of the corruption of a legislator, see Deborah Hellman, *Defining corruption and constitutionalizing democracy*, 111 MICH. L. REV. 1385, 1397 (Hellman argues three variations are presented in the court's campaign finance cases: the deformation of judgment, distortion of influence, and the sale of favors).

¹⁵⁹*Id.* at 138.

¹⁶⁰ In US bribery law, it is not clear whether public officials are convicted of receiving bribery by an agreement of quid pro quo. In *McCormick v. United States*, 500 U.S. 257, 271-74 (1991), the Supreme Court concluded allowing a conviction without evidence of explicit trades would make all legislators vulnerable to prosecution. In *Evans v. United States*, 504 U.S. 255 (1992), the holding made the line more obscure. Some courts have interpreted to prohibit gifts without involving explicit quid pro quo. See *United States v. Coyne*, 4 F.3d 100 (2d Cir. 1993). The critics: Daniel H. Lowenstein, *When Is a Campaign Contribution a Bribe?*, Midwest Pol. Sci. Ass'n, Chicago, Illinois, April 1996; Daniel H. Lowenstein, *Political Bribery and the Intermediate Theory of*

monetary influence standard¹⁶¹ is more broad in that officeholders perform their public duties specifically with monetary considerations in mind. The broadest and most disputed standard, the distortion standard,¹⁶² regards decisions of officeholders which fail to closely reflect the public's, or at least their constituencies', views.¹⁶³

Governmental corruption deals with the issue of whether it is permitted for private interests to seek to influence politicians in office. This form of corruption is mostly regulated by the bribery laws in the penal codes. On the other hand, the concept of electoral corruption addresses the issue of whether it is permitted for private interests to seek to influence who will win an election or take office.¹⁶⁴ The large campaign contributions used to motivate particular kinds of legislative behavior have for a long time been regarded as institutional corruption¹⁶⁵ or at least as having the appearance of corruption.¹⁶⁶ Electoral corruption implicates not only the judgment of politicians but also voters and therefore involves at least four democratic values: democratic deliberation, widespread participation, individual autonomy, and electoral competition.¹⁶⁷ Thus, the difficulty and the potential challenge of addressing electoral corruption demonstrates the deep-seated controversy surrounding the concept of representative democracy over which two major theoretical camps, pluralism and deliberative democracy, compete to this day.

Politics, 32 UCLA L. REV. 784, 786 (1985) (corruption as a black core of bribery with gray circles surrounding the bribery core).

¹⁶¹*Id.*, at 141.

¹⁶²*Id.*, at 135, 136.

¹⁶³*Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

¹⁶⁴Dennis F. Thompson, *Two Concepts of Corruption: Making Campaigns Safe for Democracy*, 73 GEO. WASH. L. REV. 1036, 1039 (2005).

¹⁶⁵DENNIS F. THOMPSON, *ETHICS IN CONGRESS: FROM INDIVIDUAL TO INSTITUTIONAL CORRUPTION* 7 (1995).

¹⁶⁶*Buckley v. Valeo*, 424 U.S. 1, 27 (1976) ("public awareness of the opportunities for the abuse inherent in a regime of large individual financial contributions or lobby activities").

¹⁶⁷Spencer Overton, *Restraint and Responsibility: Judicial Review of Campaign Reform*, 61 WASH. & LEE L. REV. 663, 707 (2004).

Pluralists¹⁶⁸ presume a market-like political setting, populated by self-interest and adversarial actors focusing on their own political or economic goals. The purpose of politics, under pluralism, is the aggregation of individual or group preferences to enable voters either to obtain benefits or to prevent the government from depriving them of their rights or entitlements.¹⁶⁹ In pluralism, representatives should act as delegates for being elected.¹⁷⁰ As politics is a matter of counting preferences, campaign contributions can be seen as a kind of vote. The only real issue in campaign finance is how to count and penalize undesirable behavior fairly through narrowly delineated rules.¹⁷¹

From the perspective of deliberative democracy theorists,¹⁷² representatives must deliberate for public good and promote civic-minded public conduct. Politics, for deliberative democracy theorists, is to debate and decide collectively what the public good requires.¹⁷³ As a result, private interests only have a legitimate place in a democracy when they are subject to the rigors of the democratic process and articulate public purposes.¹⁷⁴ As Lessig argues, “representative democracy is to be dependent on people alone, and a competing dependency, conflicting with the people, is corrupt.”¹⁷⁵ Politics is a process of deliberating. Therefore, private interests attempting to bypass the deliberative process, or to deviate away from

¹⁶⁸RICHARD A. POSNER, *LAW, PRAGMATISM, AND DEMOCRACY* 130-212 (2003).

¹⁶⁹See James A. Gardener, *Liberty, Community and the Constitutional Structure of Political Influence: A Reconsideration of the Right to Vote*, 145 U. PA. L. REV. 893, 902-03 (1997); Bruce Cain, *Moralism and Realism in Campaign Finance Reform*, 1995 U. CHI LEGAL F. 111, 122 (1995).

¹⁷⁰Bruce E. Cain, *Moralism and Realism in Campaign Finance Reform*, 1995 U. of Chi. Legal F. 111, 120 (1995).

¹⁷¹*Id.* at 112.

¹⁷²DENNIS F. THOMPSON, *ETHICS IN CONGRESS: FROM INDIVIDUAL TO INSTITUTIONAL CORRUPTION* 125-26 (1995); CASS R. SUNSTEIN, *THE PARTIAL CONSTITUTION* (1993); Frank Michelman, *Law's Republic*, 97 YALE L.J. 1493 (1988).

¹⁷³See JOHN RAWLS, *A THEORY OF JUSTICE* 361 (1971); DENNIS F. THOMPSON, *ETHICS IN CONGRESS: FROM INDIVIDUAL TO INSTITUTIONAL CORRUPTION* 18 (1995); Owen M. Fiss, *Money and Politics*, 97 COLUM. L. REV. 2470, 2479 (1997); Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1547-48 (1988).

¹⁷⁴Dennis F. Thompson, *id.* at 125-26; JOSEPH M. BESSETTE, *THE MILD VOICE OF REASON: DELIBERATIVE DEMOCRACY AND AMERICAN NATIONAL GOVERNMENT* 67-99 (1994).

¹⁷⁵LAWRENCE LESSIG, *REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT* 128 (2011) (Lessig argues, money might distract, distort, or reduce the public trust).

constituents or public good,¹⁷⁶ are regarded as agents of corruption.¹⁷⁷ The deliberative anti-corruption laws address whether the mental state of public officials is sufficiently public. Therefore, any action failing to satisfy the public-regarding test is viewed as corrupt.

Although this dissertation uses the metaphor of hydraulics, it does not argue for deregulation. This thesis mainly agrees that, compared to governmental corruption and related bribery laws, campaign finance law is essentially a prophylactic measure to be used against political corruption and to maintain electoral integrity, or, at least, to reduce the appearance of corruption to strengthen the development of democracy. From the perspective of pluralism or deliberative democracy, it is commonly accepted that adopting a broader standard than the quid-pro-quo standard is required to catch electoral corruption. The extension of the concept of corruption will ensure public reliance on the government, specifically the republican form of government. Regardless of ideological differences, to enforce campaign finance rules and restore public faith in democracy, the value of transparency and building an effective regime of disclosure is the consensus view and a critical step for future campaign finance systems.

III. The Value of Transparency and its Development in Taiwanese Campaign Finance

In the US, Japan, and Taiwan, mandating the public disclosure of campaign spending and the sources of funding in elections has been regarded as an essential cornerstone and the most efficient way to institute campaign finance law.¹⁷⁸ Disclosure shines a light on the interactions between the public and private sectors and restrains corruption by serving as an

¹⁷⁶ Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COMMENTARY 127, 131 (1997).

¹⁷⁷ Dennis F. Thompson, *Mediated Corruption: The Case of the Keating Five*, 87 AM. POL. SCI. REV. 369 (1993).

¹⁷⁸ HERBERT E. ALEXANDER, *FINANCING POLITICS: MONEY, ELECTIONS AND POLITICAL REFORM* 194 (4th ed. 1992).

automatic regulator, forcing politicians to practice self-discipline and empowering the electorate with information.¹⁷⁹ To restrain the monetary influence of political contributions and expenditures, the mandatory disclosure rule has been a central focus of reformers.¹⁸⁰

While a ban or a cap on contributions or expenditure is likely to face the criticism of being either over- or under- inclusive, mandatory disclosure can allow voters or challengers to tailor incumbents' behaviors accordingly.¹⁸¹ As mentioned above, simply limiting the supply of money is not enough. As such, public disclosure requirements are central to demand side campaign finance reform.¹⁸² Mandatory disclosure is classified as a demand side requirement as it holds politicians accountable to their constituents and donors, separating them from controversial funding sources. Indeed, disclosure has been regarded as the least controversial measure of campaign finance regime.¹⁸³

To justify public disclosure, two rationales have been circulated, the accountability justification and the democracy justification.¹⁸⁴ The accountability justification calls for public access to government-controlled information to keep civil servants accountable¹⁸⁵ by empowering people to judge conflicts of interest and hold elected officials accountable in elections. Furthermore, the accountability justification serves a two-fold function against political corruption: unjust and unacceptable corruptive activities will wither in the light and

¹⁷⁹ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 223 (1999) (O'Connor, J., dissenting).

¹⁸⁰ Richard L. McCormick, *The Discovery That Business Corrupts Politics: A Reappraisal of the Origins of Progressivism*, 86 AMER. HIST. REV. 247, 270-74 (1981).

¹⁸¹ Elizabeth Garrett, *The William J. Brennan Lecture in Constitutional Law: The Future of Campaign Finance Reform Laws in the Courts and in Congress*, 27 OKLA. CITY U. L. REV. 665, 674-76 (2002).

¹⁸² Justin A. Nelson, *Note: The Supply and Demand of Campaign Finance reform*, 100 COLUM. L. REV. 524, 535 (2000).

¹⁸³ R. Sam Garrett, *Cong. Research Serv., The State of Campaign Finance Policy: Recent Developments and Issues for Congress 15 (2010)*, available at <http://fpc.state.gov/documents/organization/154166.pdf>

¹⁸⁴ Lloyd Hitoshi Mayer, *Politics and the Public's right to know*, 13 ELE. L. J. (1) 17 (2014); Mark Fenster, *The opacity of Transparency*, 91 IOWA L. REV. 885, 888 (2006).

¹⁸⁵ CHERYL ANN BISHOP, ACCESS TO INFORMATION AS A HUMAN RIGHT 52 (2012); Alfred C. Aman, Jr., *Information, Privacy, and Technology: Citizens, Clients, or Consumers?*, in FREEDOM OF EXPRESSION AND FREEDOM OF INFORMATION, at 325, 326 (Jack Beaton, QC, Yvonne Cripps eds., 2000); Alasdair Roberts, *Structural Pluralism and the Right to Information*, 51 U. TORONTO L.J. 243, 263-64 (2001).

disclosure acts as an effective means to counter institutional corruption, which is hard to define in a clear-cut manner. Regardless, the courts and scholars still face difficulties in drawing the line between corrupt activities and everyday politics. Therefore, enhanced oversight can provide deterrence to bad-faith and abusive decision-making while enhancing those decisions made in good faith.

As Justice Brandeis said, “publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”¹⁸⁶ Most literature agrees that more public disclosure of government actions will lead to less actual corruption and reduce the public’s perception of corruption.¹⁸⁷ Although the association between disclosure and good-faith actions of governments is still disputed,¹⁸⁸ the rationale of accountability provides a strong normative and empirical linkage between disclosure and restraining political corruption or at least the appearance of corruption. The central lesson of most political corruption scandals is that “political money is a moving target.”¹⁸⁹ The efforts of corrupt actors to evade the disclosure requirements further validate the common belief that disclosure acts as a significant deterrent to corrupting behaviors.

The democracy rationale focuses on effective public participation. This rationale holds that democracy requires not only collective self-governance but also adequate information for citizens in selecting representatives and rulers.¹⁹⁰ The argument is that access to information

¹⁸⁶ Louis D. Brandeis, *What Publicity Can Do*, HARPER’S WEEKLY, Dec. 20, 1913.

¹⁸⁷ Elisabeth Bassett, *Reform Through Exposure*, 57 EMORY L.J. 1049, 1075 (2008); Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections and How 2012 Became the “Dark Money” Election*, NOTRE DAME J.L. ETHICS & PUB. POL’Y 383, 389 (2013).

¹⁸⁸ Mark Fenster, *supra* note 184, at 908.

¹⁸⁹ Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1707 (1999).

¹⁹⁰ *SEE* IMMANUEL KANT, PERPETUAL PIECE 47-53 (Lewis White Beck ed., The Liberal Arts Press, Inc. 1957) (1795); JOHN LOCKE, TWO TREATISES OF GOVERNMENT 196-97 (Thomas I. Cook ed., 1947) (1690); JOHN STUART MILL, ON LIBERTY; REPRESENTATIVE GOVERNMENT; THE SUBJECTION OF WOMEN 230 (Oxf. U. Press

regarding officials and government activities informs public opinion and stimulates more effective public participation, a necessary prerequisite for a genuinely democratic government,¹⁹¹ ultimately furthering the legitimacy of democracy.¹⁹² However, the link between disclosure and the volume and effectiveness of political participation is empirically disputed.¹⁹³ Furthermore, an overly broad system of disclosure might have the adverse effect of deterring small donors from making contributions and discourage political participation.¹⁹⁴ The debate about the balance between the costs and benefits of disclosure will be elaborated in Chapters 6 and 7.

In the U.S., both rationales have been recognized by the legislature and the courts. As early as 1934, the U.S. Supreme Court in *Burroughs* first acknowledged the role of mandatory disclosure in preventing the corruptive use of money to affect elections.¹⁹⁵ Forty years later, the U.S. Supreme Court issued a landmark ruling on the constitutionality of the disclosure provisions within the Federal Election Campaign Act (FECA) in *Buckley*.¹⁹⁶ The court identified three important public interests served by the disclosure requirements. First, the anti-corruption interest of deterring actual corruption or the appearance of corruption in the democratic processes by exposing campaign finance to public scrutiny. Second, the

1960) (1861); ROBERT A. DAHL, *DILEMMAS OF PLURALIST DEMOCRACY: AUTONOMY VS. CONTROL* 4 (1982); ROBERT POST, *CONSTITUTIONAL DOMAINS* 184-87 (1995).

¹⁹¹ See Jim Rossi, *Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decision-making*, 92 NW. U. L. REV. 173, 196-206 (1997); Chantal Thomas, *Constitutional Change and International Government*, 52 HASTINGS L.J. 1, 35 (2000).

¹⁹² J. Skelly Wright, *Defamation, Privacy, and the Public's Right to Know: A National Problem and a New Approach*, 46 TEX. L. REV. 630, 632 (1968).

¹⁹³ Lloyd Hitoshi Mayer, *supra* note 184, at 29.

¹⁹⁴ See Rebecca Green, *Petitions, Privacy, and Political Obscurity*, 85 TEMP. L. REV. 367, 388 (2013); William McGeeveran, *Mrs. McIntyre's Persona: Bringing Privacy Theory to Election Law*, 19 WM. & MARY BILL RTS. J. 859, 874-75 (2011); Raymond J. La Raja, *Political Participation and Civic Courage: The Negative Effect of Transparency on Making Campaign Contributions*, 36 *Political Behavior* (4) 753, 753-776 (2014); James L. Huffman, *How Donor Disclosure Hurts Democracy*, WALL ST. J., Apr. 11, 2011, at A13.

¹⁹⁵ *Burroughs v. United States*, 290 U.S. 534, 548 (1934).

¹⁹⁶ 424 U.S. 1 (1976). See also: SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 334 (3d ed., 2007); Richard L. Hasen, *The Untold Drafting History of Buckley v. Valeo*, 2 ELEC. L.J. 241 (2003).

information interests of providing valuable information to alert voters. Third, the interest of aiding the enforcement of other campaign finance laws. The Court reiterated the value of transparency in 2010 in the *Citizens United* case and embraced the view that “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”¹⁹⁷ This rationale gained the support of eight justices, with only Justice Thomas dissenting.¹⁹⁸ Justice Kennedy indicated prompt disclosure of expenditures could provide shareholders and citizens with the needed information to hold corporations and elected officials accountable.¹⁹⁹

Public disclosure has been viewed as the cornerstone of, and a practical means of enforcing, the campaign finance regime. The political reality, however, is different. The Taiwanese legislature has never passed any campaign finance law generating an adequate disclosure system; and very few people in Taiwan would disagree with the proposition that the current campaign finance system provides an example of resistance to institutional change. Although the legislators have expertise in campaigns and the ability to recognize the problems of electoral corruption posed by the demand for campaign finance, the incumbent legislators suffer from the effects of path dependency and asset specificity. These effects have deterred the legislators from enacting any effective reform of campaign finance law that might threaten their incumbency. It is not surprising, then, that lawmakers have been slow to act and merely pass symbolic laws about disclosure rules in the campaign finance regime. The public disclosure rules in Taiwan are also an excellent example of institutional layering; when partial elements remain via negotiation, others are abandoned.

¹⁹⁷ *Citizens United v. FEC*, 130 S.Ct. 876, 916 (2010).

¹⁹⁸ *Id.*

¹⁹⁹ 130 S. Ct 876, 916 (2010).

The remainder of this dissertation focuses on the question of whether, and to what degree, accountability and democracy justifications support public disclosure and its development and application in Taiwan. Hence, this thesis focuses its analysis on the scope and extent of campaign finance disclosure. This dissertation concedes that there is no perfect system and that public disclosure must contend with the costs of the right to privacy,²⁰⁰ including the damage caused by anonymous speech and potential harassment or retaliation.²⁰¹ The optimal scope and manner of public disclosure will be jointly deliberated in Chapters 6 and 7.

²⁰⁰ Deborah G. Johnson et al., *Campaign Disclosure, Privacy and Transparency*, 19 WM. & MARY BILL RTS. J. 959, 982 (2011); William McGeeveran, *Mrs. McIntyre's Persona: Bringing Privacy Theory to Election Law*, 19 WM. & MARY BILL RTS. J. 859, 860 (2011); James A. Gardner, *Anonymity and Democratic Citizenship*, 19 WM. & MARY BILL RTS. J. 927, 956 (2011); Sarah Harding, *Balancing disclosure and privacy interests in campaign finance*, 48 LOY. L.A. L. REV. 651 (2015).

²⁰¹ Bradley A. Smith, *In Defense of Political Anonymity*, CITY J., Winter 2010, at 74, 75, 78.

Chapter 3. The Historical Institutional Roots of Electoral Clientelism: the Japanese Colonial Ruling Era (1935- 1945)

As Pierson has stated, sequence matters and “the temporal ordering of events or processes has a significant impact on outcomes.”²⁰² Initial electoral mobilization, once entrenched, is difficult to dislodge due to path dependent effects. The laws and practices of the first election of 1935 represented a critical juncture in Taiwanese legal and political history, leading to an irreversible sequence.

The Empire of Japan (Japan) ruled over Taiwan from the end of the Sino-Japanese War in 1895 until 1945. Before 1935 there were no elections in Taiwan’s history. Readers may ask, what were the motives of the colonial government to hold elections? And, as a racial minority regime, how did the colonial government maintain its ruling power during and after the election? In order to address these two questions and assess the whole picture, this dissertation reviews the background of the Japanese Meiji Constitution, Japanese pre-war election laws and practices in the Japanese islands (hereinafter metropolitan Japan), the evolution of Japanese colonial policies toward Taiwan, and the civil rights movement in Taiwan. Then, this dissertation reviews official documents and newspapers from the 1930s to analyze the motives and strategies employed by the colonial government to manipulate elections by enacting and enforcing election laws and campaign finance rules. These strategies have had profound implications for the development of the Taiwanese electoral culture, electoral clientelism, and campaign finance laws, which are noticeable to this day.

²⁰²PAUL PIERSON, POLITICS IN TIME 54 (2011).

Japan initially adopted a non-assimilation colonial policy toward Taiwan and established an authoritarian regime. The Government-General of Taiwan (GGT) was empowered to issue ordinances, which were effective as statutes in Taiwan. After World War I (WWI), the GGT shifted its colonial policy from non-assimilation to gradual assimilation in order to address the rise of Taiwanese nationalism and the Petition Movement for the Establishment of a Taiwanese Parliament. To further stabilize its political regime for war mobilization,²⁰³ cooperate with the local Taiwanese local elites via exchanging interests, and split the opposition camp, the GGT held elections for the Consultative Councils under the single non-transferable vote in the multi-member district electoral system (SNTV) at the two lowest local government levels: city and town/village in 1935 and 1939.

In order to gain political control of the majority of the councils and suppress radicals and disobedient local elites, the GGT learned from the electoral experience in metropolitan Japan and adopted SNTV to suppress issue campaigning and implemented strict election laws to police campaign activities. However, in order to mobilize voters and enhance participation, the GGT enacted campaign finance rules in Taiwan which were more lenient than those applied in metropolitan Japan and tolerated door-to-door canvassing and transactions behind the scenes. The lenient campaign finance rules and the SNTV electoral system both contributed to the rise of local factions and electoral clientelism, which had profound implications for the subsequent ruling authorities, local political elites, and voters.

I. Background on Extending Japanese Law into Taiwan

²⁰³ Chu Yun-han & Lin Jih-wen, *Political Development in the 20th Century Taiwan: State-Building, Regime Transformation and the Construction of National Identity*, CHI. QUA. 109 (March 2001).

During the Dutch East India Company rule of Taiwan (1624–1662),²⁰⁴ the Kingdom of Tungning (1661–1683), and the Ch'ing Empire (1683–1895), there were no democratic elections for residents of Taiwan.²⁰⁵ When the Ch'ing Empire signed the Treaty of Shimonoseki, ceding Taiwan to Japan in 1895, Japan aimed to establish a model colony in Taiwan to fulfill its dreams of Pan-Asianism.²⁰⁶

In order to reveal the dynamics behind the legal text and the whole picture of the election law, campaign finance rules and electoral practices in the 1930s, this section analyzes the debate over colonial policies, the dispute over the Meiji Constitution, the civil rights movement and its impact on public consciousness, as well as the GGT's political calculations and Japan's imperial strategies before WWII.

A. A Debate over Colonial Policy: Non-assimilation vs. Assimilation

Until Japan became an empire in the late 19th century, Japanese intellectuals and politicians had not reached a clear consensus concerning the purpose, effects, and function of colonial rule with regard to the residents in colonial and homeland territories. Under the Treaty of Shimonoseki, the Empire of Japan acquired its first colonial territory and joined the ranks of colonial powers in 1895. The Japanese government then faced a debate as to its colonial ideology, with a choice between the French assimilation model on the one hand and the British non-assimilation model on the other.

²⁰⁴ TAY-SHENG WANG (王泰升), TAIWAN FALU SHI GAILUN (台灣法律史概論) [THE INTRODUCTION OF TAIWAN LEGAL HISTORY] 23, 23-31 (3d ed., 2009).

²⁰⁵ Shelley Rigger, *Politics in Taiwan: Voting for Democracy* 5 (1999); WAKABAYASHI MASAHIRO (若林正文), ZHAN HOU TAIWAN ZHENGZHI SHI: ZHONGHUA MINGUO TAIWAN HUA DE LICHENG (戰後臺灣政治史：中華民國臺灣化的歷程) [TAIWAN'S POSTWAR POLITICAL HISTORY: A HISTORY OF THE REPUBLIC OF CHINA IN TAIWAN] 33 (2008).

²⁰⁶ TAKEUCHI YOSHIMI (竹内好), NIHON NO AJIASHUGI (日本のアジア主義) [JAPANESE PAN-ASIANISM] 12 (1963).

The French assimilation model involves the complete political and cultural absorption of a colony into the imperial framework²⁰⁷ and views colonies as an extension of the mother country.²⁰⁸ For example, France regarded Algeria as an integral part of France itself and granted it equal legal status by applying the French Constitution within the territory. Also, France allowed Algerians to elect representatives to the senate and chamber of deputies in Paris. In contrast, the British non-assimilation model allowed indigenous political and cultural structures to continue their existence. The distinctiveness and uniqueness of indigenous structures were permitted to remain intact by granting the colonial governor broad powers or discretion to adapt colonial rule to meet local needs.²⁰⁹

To analyze the political implications inherent in the choice between assimilation and non-assimilation, the Bureau of Taiwan Affairs was organized on June 14, 1895, under the supervision of Premier Ito Hirobumi. In the internal meetings of the Bureau, the British counselor, William Kirkwood, suggested that the Japanese imperial government preclude the application of its constitution to Taiwan and grant the colonial governor considerable power and flexibility.²¹⁰ In contrast, the French counselor, Michel Joseph Roven, advised that Taiwan should be assimilated and ruled by Japanese laws and the Meiji Constitution as a prefecture of Japan. From Roven's perspective, the authority of the Japanese colonial government in Taiwan should be reduced to that of a local government, and the legal status and civil rights of colonial peoples should be equal to those of Japanese citizens.²¹¹

²⁰⁷STEPHEN H. ROBERTS, *HISTORY OF FRENCH COLONIAL PRACTICES 1870-1925* 64-75 (1929).

²⁰⁸ *Id.*, at 67; Mark R. Peattie, *Japanese Attitudes toward Colonialism, 1895-1945*, in *THE JAPANESE COLONIAL EMPIRE, 1895-1945*, at 96 (Ramon H. Myers & Mark R. Peattie eds., 1984).

²⁰⁹STEPHEN H. ROBERTS, *HISTORY OF FRENCH COLONIAL PRACTICES 1870-1925* 67 (1929); WONMO DONG, *JAPANESE COLONIAL POLICY, AND PRACTICE IN KOREA*, GEORGETOWN UNIVERSITY DISSERTATION 7 (1965).

²¹⁰ Tay-sheng Wang & I- Hsun Sandy Chou, *The Emergence of Modern Constitutional Culture in Taiwan*, 5 *NTU L. REV.* 1, 23 (2010).

²¹¹ Mark R. Peattie, *Japanese Attitudes toward Colonialism, 1895-1945*, in *THE JAPANESE COLONIAL EMPIRE, 1895-1945*, at 101 (Ramon H. Myers & Mark R. Peattie eds., 1984).

Initially the French assimilation policy gained wide support from most members of the Bureau, including Premier Ito and the Vice Minister of Foreign Affairs, Hara Takashi, marginalizing the British policy of non-assimilation.²¹² However, after facing continual armed resistance from Taiwanese residents, the assimilation policy soon became unrealistic. Japan then adjusted its colonial policy to the non-assimilation model and to separate the colonial sphere from the Japanese Islands. The Taiwan Bureau was then abated and disbanded, and an authoritarian colonial regime was established in Taiwan, headed by the GGT.²¹³

B. Debate over the Extension of the Meiji Constitution and Law No. 63 Regime

Debate concerning the colonial policy toward Taiwan was critical to Japanese political elites as it touched upon three political and constitutional issues: sovereignty, the separation of power between the central and the colonial government, and the application of the Meiji Constitution to the residents of the newly acquired territories.

Article 4 of the Meiji Constitution provided that the Emperor exercised “the rights of sovereignty” according to the provisions of the Constitution.²¹⁴ Under article 5 of the Constitution, the Imperial Diet (hereafter Diet) was the only institution capable of exercising legislative power and had the exclusive power to legislate laws applicable to the colonial territories.²¹⁵ But the GGT, backed by the military branch, could not accept those ideas on

²¹²TAY-SHENG WANG, *LEGAL REFORM IN TAIWAN UNDER JAPANESE COLONIAL RULE (1895-1945): THE RECEPTION OF WESTERN LAW* (2015).

²¹³TAY-SHENG WANG (王泰升), *Cong riben guoli gongwen shuguan suo cang shiliao shitan ri zhi shiqi taiwan lifa quan zhi caozuo* (從日本國立公文書館所藏史料試探日治時期台灣立法權之操作) [*The legislative power in Taiwanese practice during the Japanese colonial rule era – an analysis of Japanese National Archives*], 6 *TAIWAN HISTORICAL RESEARCH* (1) 35 (Sep 2000).

²¹⁴Meiji Constitution, article 5, “The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution.”

²¹⁵Meiji Constitution, article 4, “the Emperor exercises the legislative power with the consent of the Imperial Diet.”

legal and practical grounds. The GGT maintained that the Meiji Constitution included no provisions concerning its extension to newly acquired territory at the time of its promulgation in 1889. The GGT sincerely believed broad legislative power was necessary to govern the three million residents on the alienated island, as Taiwanese loyalty to the Emperor was uncertain.

After challenging negotiations among bureaucrats, the military, and politicians in the Diet, Japan determined to apply its constitution to Taiwan and exercise the right of sovereignty. However, a temporary compromise between the policies of assimilation and non-assimilation was made in two aspects of the constitution's applicability: distinguishing legal status between "metropolitan Japan" and the colonies, and delegated legislation.

First, Japan distinguished the legal status of residents in the metropole and overseas territories. Metropolitan Japan consisted of the territories under the control of Japan in 1889 upon promulgation of the Meiji Constitution. All other territories annexed to Japan afterward were regarded as colonies governed by special ordinances issued by the colonial government rather than by the Diet.

Second, the Diet delegated its legislative power to the GGT for three years, with certain restrictions. On March 17, 1896, the Imperial Diet received a bill from the GGT seeking authorization to issue executive ordinances possessing the same effect as the law of Japan on the basis of the state of rebellion, the remoteness from Japan, and the distinct customs and culture of the Taiwanese people. After the Meiji constitution was determined to apply to Taiwan nominally, aligned with the non-assimilation policy,²¹⁶ the Japanese Diet agreed with the GGT's proposal and enacted *Law No. 63 of 1896*, the "*Law concerning the ordinances to*

²¹⁶ Mark R. Peattie, *Japanese Attitudes Toward Colonialism, 1895-1945*, in *THE JAPANESE COLONIAL EMPIRE, 1895- 1945* 82, 82-87 (Ramon H. Myers & Mark R. Peattie eds, 1984).

be enforced in Taiwan” (Law No. 63; Rokusan Ho).²¹⁷ Law No. 63 granted the GGT quasi-law-makingpower to issue ordinances in Taiwan with the same effect as Japanese statutes²¹⁸ for three years after the law took effect on March 30, 1896. Accordingly, the GGT gained a general authorization to issue Special Ordinances (*Ritsu-rei*).²¹⁹ Any statute enacted by the Imperial Diet became effective in Taiwan only if their application to Taiwan was approved by the Japanese Cabinet.²²⁰ Thereafter, the special legislative delegation to the GGT was prolonged and renewed until 1906.

Although *Law No. 63* was a temporary compromise, concerns about the Diet’s supremacy and the separation of powers remained.²²¹ To address these issues, in 1906 the Diet enacted *Law No. 31* to restrict the GGT’s ordinances so they would be subject to Japanese statutes.²²² In practice, however, the difference between *Law No. 63* and *Law No. 31* was nominal, and the GGT’s quasi-law-makingpower was viewed as a continuation of *Law No. 63* (the Law No. 63 regime).

As the Law No. 63 regime became institutionalized, the GGT simultaneously wielded military, executive, and legislative powers. The Meiji Constitution only applied to the sovereign colony nominally, and the residents of Taiwan were deprived of the civil right to

²¹⁷ Taiwan ni shiko suheki horei niseki suru horitsu (臺灣ニ施行スヘキ法令ニ關スル法律) [Laws related to Laws and Ordinances to Be Enforced in Taiwan], Title No. 63, was known as Law No. 63 and became effective on March 31, 1896.

²¹⁸ The GGT decrees were to be approved by an advisory council before taking effect. In practice, the issued decrees were never denied, which is not surprising since the GGT appointed all advisory council members.

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

²²⁰ See Wang, *supra* note 219, at 38, 39.

²²¹ Article 5 of Meiji Constitution provides, “The Emperor exercises the legislative power with the consent of the Imperial Diet.”

²²² Taiwan ni shiko suheki horei niseki suru horitsu (臺灣ニ施行スヘキ法令ニ關スル法律) [Laws related to Laws and Ordinances to Be Enforced in Taiwan], Title No. 31, was known as Law No. 31 and became effective in 1906.

participate in politics.²²³ Very few Taiwanese were aware of the crucial benefit that political participation could have in limiting colonial governmental power. Nevertheless, the liberal academic intellectuals and politicians in the Diet, concerned with the establishment of arbitrary bureaucratic power in Japanese territories overseas, advocated for the repeal of the regime of Law No. 63 and planted the seeds for the coming reform and civil rights movements in Taiwan.

C. Shift of Colonial Policy and Reform of the Local Government System in 1921

The turning point in the Japanese non-assimilation policy and the *Law No. 63* regime came in the aftermath of WWI when the spirit of Wilsonian self-determination and Taisho democracy²²⁴ inspired Taiwanese intellectuals.²²⁵ During the Taisho period, metropolitan Japan underwent a transition from authoritarian rule to parliamentary politics. The March 1 Movement in Korea in 1919 also motivated Japan to reconsider its colonial policies.²²⁶ After the inauguration of Hara Takashi²²⁷ as Prime Minister in 1918, the first civilian to hold the post in Japanese history, Japan adjusted its colonial policy from non-assimilation to gradual assimilation.

²²³ Edward I-te Chen, *The Attempt to Integrate the Empire: Legal Perspectives, in THE JAPANESE COLONIAL EMPIRE, 1895-1945*, at 241 (Ramon H. Myers & Mark R. Peattie eds., 1984).

²²⁴ The Taisho period was from 1912 to 1926. During the Taisho period, political power shifted from the old oligarchy to the Diet and political parties. Japan had an unprecedented climate of political liberalism during this period. WM. THEODORE DE BARY, CAROL GLUCK, AND ARTHUR E. TIEDEMANN, EDs., *SOURCES OF JAPANESE TRADITION*, 2nd edition, vol. 2, (New York: Columbia University Press, 2005), 838.

²²⁵ CHEN TSUI-LIEN (陳翠蓮), *BAINIAN ZHUIQIU: TAIWAN MINZHU YUNDONG DE GUSHI, VOL. 1. ZIZHI DE MENGXIANG (百年追求-台灣民主運動的故事，第一卷：自治的夢想)* [HUNDRED YEARS OF PURSUIT-DEMOCRATIC MOVEMENT IN TAIWAN, VOL. 1: A DREAM OF AUTONOMY] 32 (2013).

²²⁶ Gunnar Abramson, *Comparative Colonialism: Variations in Japanese. Colonial Policy in Taiwan and Korea, 1895-1945*, 1 PSU MCNAIR SCHOLARS ONLINE J. 16 (2004).

²²⁷ Hara Takashi (原敬), an under-secretary of the Foreign Ministry, reported to the Bureau of Taiwan Affairs and outlined two alternatives for colonial policy: assimilation or non-assimilation. Hara advocated for the gradual assimilation policy, known as the principle of “treating Taiwan as an extension of Japan proper.” (Naichi Encho Shugi, 內地延長主義). Hara’s opinion was formally adopted after WWI when Hara served as the prime minister in Japan.

In coordination with this shift in colonial policy, Japan implemented innovative institutional reforms. Japan dispatched the first civilian GGT, Den Kenjiro, to Taiwan in 1919;²²⁸ and in 1921, the Diet repealed *Law No. 31* to follow the gradual assimilation policy. Japan enacted *Law No. 3* to replace *Law No. 31* after the GGT's authoritarian and discriminatory policies caused widespread dissatisfaction and criticism from Taiwanese residents and Japanese liberals.²²⁹

Under *Law No. 3*, the GGT's delegated legislative power was limited to circumstances in which no appropriate Japanese law was available, or where the enforcement of Japanese law would be difficult in light of the prevailing conditions in Taiwan. Thereafter, the laws of Metropolitan Japan would be enforced to Taiwan, in principle. The GGT's power to issue Special Ordinances was restricted to exceptional cases. Meanwhile, the modernized Japanese laws were introduced to Taiwan, except those laws concerning civil rights. More importantly, the GGT was no longer dispatched from the military and was supervised by the Diet. This shift provided Taiwanese civil rights activists more leverage within Japanese political forums.

In the same year as Governor Den's inauguration, the GGT also modeled the Taiwanese administrative law upon Japan's. The GGT established three administrative levels subordinate to itself: prefecture, city and district, town and village.²³⁰ In addition, the GGT established consultative councils parallel to the local government level. The members of the local consultative councils, mostly Japanese, were assigned by the executive chief of that

²²⁸ Den Kenjiro (田健治郎) served as the first civilian GGT. Until 1919, all GGTs were military officers who sought to govern and suppress resistance. The dispatch of GGT Den was viewed as a change in Japan's attitudes and colonial policy on Taiwan.

²²⁹ Taiwan ni shiko suheki horei niseki suru horitsu (臺灣ニ施行スヘキ法令ニ關スル法律) [Laws related to Laws and Ordinances to Be Enforced in Taiwan], Title No. 3, known as Law No. 3, was enacted in 1921 and came into effect on Jan 1, 1922.

²³⁰ TAY-SHENG WANG (王泰升), TAIWAN FALU SHI GAILUN (台灣法律史概論) [THE INTRODUCTION OF TAIWAN LEGAL HISTORY] 156 (3rd ed., 2009); KIWATA IDE (井出季和太), TAIWAN CHISEKISHI (臺灣治績志) (1937).

government level. They took charge of advising the local government and were not empowered to supervise or veto. Although none of the official powers of checks and balances were available to residents of Taiwan, the GGT's appointment of consultative councilors opened a window for residents in Taiwan to participate in politics and learn the local governing practices.²³¹ Although some bourgeois councilors filling those positions were rent-seekers,²³² the reforms of local government and the establishment of the consultative councils institutionally laid the foundation for the coming civil rights movement.

D. The Petition Movement for the Establishment of the Taiwanese Parliament (TPPM)

The Petition Movement for the Establishment of a Taiwanese Parliament (TPPM) was the first civil rights movement in Taiwan and had profound implications for Taiwanese politics for almost a century. From 1921 to 1934, Taiwanese activists started a series of petition movements seeking to establish a colonial parliament, the Taiwanese Parliament, to revoke *Law No. 3*, and to establish checks and balances for the GGT. The TPPM raised constitutional concerns to challenge not only the GGT's legitimacy and the delegated legislation itself, but also the political discrimination against the residents of Taiwan.

In the 1920s, with the growth of Taisho democracy in Japan and nationalism on the global scale, Taiwanese intellectuals became aware of and began to pursue civil and political rights as guaranteed by the Meiji Constitution and started a petition to establish a Taiwanese Parliament. Unsatisfied with the GGT's administrative reforms, which did not include equal voting rights, Taiwanese intellectuals and Taiwanese students studying in Tokyo started a civil rights movement advocating for the principles of self-determination, racial equality, and

²³¹ In the first term (1921-23), 9 out of 25 Consultative Councilors were Taiwanese. From 1921 to 1945, 163 out of 405 consultative councilors were Taiwanese.

²³² TAIWAN IN THE TWENTIETH CENTURY 109 (Richard Louis Edmonds & Steven M. Goldstein eds., 2001).

²³² WU WEN-HSING (吳文星), RIJU SHIQI TAIWAN LINGDAO JIECENG ZHI YANJIU (日據時期臺灣領導階層之研究) [THE LEADERSHIP IN TAIWAN DURING THE JAPANESE COLONIAL ERA] 196 (1992).

greater autonomy. Then, in 1921, Taiwanese students founded the Taiwan Culture Association to protest against the GGT's "*Law No. 63* regime."²³³

At that time, Taiwanese intellectuals struggled with an ideological debate similar to that of the Japanese political elites in 1895 and 1896, between the models of assimilation and non-assimilation. Although some activists pursued the right to be considered equal to the Japanese, compatible with the assimilationist colonial strategies, others advocated for self-determination. After balancing the potential contradictory strategies of equal citizenship and self-determination, the Taiwanese civil rights movement leaders founded the TPPM to fight for autonomy and illicitly emphasize the racial distinctiveness of the residents of Taiwan. The innovative petition for greater autonomy united the ideological camps among Taiwanese intellectuals, but it faced continual persecutions from the GGT due to its challenge to the gradual assimilation policy and the GGT's delegated legislative power.²³⁴

The TPPM was initially started by the Taiwan Culture Association and subsequently supported by the Taiwanese People's Party. Although the GGT monitored and persecuted the activists of the TPPM,²³⁵ more than 17,000 Taiwanese signed the petitions and submitted them to the Imperial Diet between 1921 and 1934. The TPPM faced an uphill battle in the

²³³ The Taiwan Culture Association split in 1927 because of ideological conflicts between local autonomy and communism. The moderate faction founded the People's Party (台灣民眾黨) and lowered its aim to local assemblies and councils at the prefectural level. In 1930, the People's Party split under the shadow of ideology; one of the offshoots formed by local bourgeoisie was the League for Local Self-Government(台灣地方議會期成同盟會).

²³⁴ The Taiwan Parliament Petition Movement began in 1921 and ended in 1934; it is viewed as having been motivated by Taiwanese nationalism and the quest for liberty. See CHOU WAN-YAO (周婉筠), RIJU SHIDAI TAIWAN YIHUI SHEZHI QINGYUAN YUNDONG (日據時代的臺灣議會設置請願運動) [TAIWAN PARLIAMENT PETITION LEAGUE MOVEMENT DURING THE JAPANESE COLONIAL ERA] (1989); CHOU WAN-YAO, THE KOMINKA MOVEMENT: TAIWAN UNDER WARTIME JAPAN IN TAIWAN AND KOREA: COMPARISONS AND INTERPRETATIONS, DOCTORAL DISSERTATION, YALE UNIVERSITY (1991).

²³⁵ For example, the Peace Act Incident (治警事件). Under the Peace Order and Police Act, the GGT ordered the arrest of TPPM activists on Dec. 16, 1923. As a result, 99 leaders of the TPPM, including but not limited to Chiang Wei-shui (蔣渭水), Tsai Pei-huo (蔡培火) and Wang Min-chuan (王敏川), were arrested, interrogated, detained or sentenced to jail. CHOU WAN-YAO (周婉筠), RIJU SHIDAI TAIWAN YIHUI SHEZHI QINGYUAN YUNDONG (日據時代的臺灣議會設置請願運動) [TAIWAN PARLIAMENT PETITION LEAGUE MOVEMENT DURING THE JAPANESE COLONIAL ERA] 81 (1989).

late 1920s. It was finally disbanded in 1934 due to internal ideological conflicts between Taiwanese nationalists and communists, as well as a series of persecutions by the GGT. Although the petition movement failed to achieve its main goal, to establish a Taiwanese Parliament, it pushed the Japanese imperial government and the GGT to consider adopting a more active policy of integrating the residents of Taiwan into the imperial mobilizing system by holding elections for certain positions in local government and granting voting rights to the bourgeoisie.

After a series of GGT persecutions against the TPPM and a decade of frustration in the Diet, the moderate members of the TPPM established the League for Taiwanese Local Self-Government (TLSG) in 1931.²³⁶ Compared to the Taiwan Culture Association and Taiwanese People's Party, the TLSG was mainly composed of moderate and bourgeois activists. The TLSG held its first gathering in 1931 and downgraded its call for a Taiwanese Parliament to a petition for the establishment of local self-government, in line with the GGT's gradual assimilation policy. The TLSG's demands for limited self-governance included elections and the autonomy of local prefecture, city, and town-village governments.²³⁷ Nonetheless, after observing the local government system and local consultative councils in Korea,²³⁸ the TSLG also argued for equal rights among colonies.

²³⁶Taiwan Sotoku fukei Tsutomu-kyoku (台灣總督府警務局), 3 TAIWAN SOTOKU-FU KEISATSU ENKAKUSHI (台灣總督府警察沿革誌) [Taiwan Governor General Government Police History magazine] 523-582 (1939); KYO SEIKAI (許世楷), NIHON TOCHI-KA NO TAIWAN: TEIKO TO DANATSU(日本統治下の台湾:抵抗と弾圧) [TAIWAN UNDER JAPANESE RULE: RESISTANCE AND REPRESSION] 375-399 (1972).

²³⁷ZHAOJIA YANG, YANG ZHAOJIA HUI YI LU (楊肇嘉回憶錄) [THE MEMOIRS OF YANG ZHAOJIA], VOL. 2, 243 (1970).

²³⁸TANSHO YAMAZAKI(山崎丹照), GAICHI TOCHI KIKO NO KENKYU(外地統治機構の研究) [RESEARCH ON THE FOREIGN LAND INSTITUTION] 150-176; 264-267 (1943); MASAHIRO WAKABAYASHI, TAIWAN KONICHI UNDO-SHI KENKYŪ (台灣抗日運動史研究) [THE STUDY ON TAIWAN'S ANTI-JAPANESE HISTORY] 155-157 (1983); ZHAOJIA YANG, YANG ZHAOJIA HUI YI LU (楊肇嘉回憶錄) [THE MEMOIRS OF YANG ZHAOJIA], VOL. 2, 275 (1970).

The TLSG's new strategy of speaking with a soft voice and advocating equal rights led to two criticisms, regarding assimilation and institutionalization of GGT authority.²³⁹ With respect to the concerns over assimilation, some argued that the TLSG's petition corresponded too closely with the GGT's gradual assimilation policy, not only contradicting the goal of the TPPM but also sacrificing the autonomy and distinctness of Taiwanese identity. As for the concerns over institutionalization of GGT authority, some predicted the GGT would use power and economic interests to combine the local bourgeoisie and the Japanese citizens in Taiwan into a united coalition which could be mobilized during local elections. The elections and related mobilization could serve to strengthen the GGT's authority, allowing their influence to penetrate into the lower levels of Taiwanese society.

While the narrow demands of the TLSG's petition caused concerns, the TLSG's non-aggressive argument convinced the GGT and the Ministry of Colonial Affairs of the imperial government²⁴⁰ to reform the Taiwanese local government system in 1934 and to subsidize the limited suffrage and limited seat election of 1935.²⁴¹

E. Shift of Colonial Policy for War Mobilization and the Election in 1935

As the rise of Taiwanese nationalism continued, the GGT reconsidered its colonial policy to meet the imperial needs of gradual assimilation,²⁴² social order, and war

²³⁹ Makiko Okamoto, *Taiwan Naichi hito no minken-ron* (在台湾内地人の民権論) [The civil rights of Japanese Citizens in Taiwan] 25 J. JP. HIS. (1999); Makiko Okamoto, *Seito seiji-ki ni okeru bunkan sotoku-sei-rikken seiji to shokuminchitochi no sokoku* (政党政治期における文官総督制—立憲政治と植民地統治の相剋) [Civil servant governor system in political party politics - a conflict between constitutional politics and colonial rule], 10 J. JP COL. STU. 1-18 (1998).

²⁴⁰ *Dai roku ju ni-kai teikoku gikai Shugiin seigan iin kaigi-roku* (第六十二回帝国議会衆議院請願委員會議録第二号) (June 6, 1932).

²⁴¹ *TAIWAN NICHINICHI SHINPO* (台湾日日新報), Sep. 23; Sep. 25; Oct. 20, Oct. 23. Oct 30; Dec 12, Dec 25, 1934.

²⁴² Makiko Okamoto, *1930-Nendai ni okeru Taiwan chiho senkyo seidomondai* (1930年代における台湾地方選挙制度問題) [Taiwan Local Election System in the 1930s], 452 J. JP. HIS. 165 (2000).

mobilization.²⁴³ However, as the Second Sino-Japanese War erupted in 1932 and World War II approached, the imperial government and the GGT changed the colonial policy from gradual assimilation to assimilation.

In order to maintain social order and strengthen its power for war mobilization, the GGT adopted a carrot-and-stick strategy. First, the GGT suppressed the hardline activists of the TPPM. Second, in order to integrate the soft line activists of TLSSG, the GGT actively bargained with the Japanese cabinet and Imperial Diet²⁴⁴ and proposed a bill²⁴⁵ to open elections for a limited number of seats in the local city and town-village consultative councils in certain limited areas. The GGT maintained the reform of local government and local assembly; and the election aimed to maintain the assimilation policy of “Japanizing” the Taiwanese²⁴⁶ by integrating Taiwanese intellectuals, bourgeoisie, and landowners into a coalition obedient to the GGT.²⁴⁷ Additionally, the GGT stated that the purpose of elections in Taiwan was to facilitate the Greater East-Asia Co-prosperity circle policy.²⁴⁸

²⁴³ Makiko Okamoto, *supra* note 242; Chu Yun-han & Lin Jih-wen, *Political Development in the 20th Century Taiwan: State- Building, Regime Transformation and the Construction of National Identity*, CHI. QUA. 109 (March 2001).

²⁴⁴ Dai roku ju nana-kai teikoku gikai Kizoku-in iinkai Yosan iinkaigiji-soku kiroku (第六十七回帝國議會貴族院予算委員會議事速記録第三回) (Feb. 7, 1935); Chen Rou-lan (陳若蘭), *Taiwan chic difang xuanju: Riben zhimin zhengfu de zhidd xìng caozuo* (臺灣初次地方選舉：日本殖民政府的制度性操作) [*First Local Election of Taiwan: An Analysis of Institutional Manipulation of Japanese Colonial Government*], 22 TAIWAN HISTORICAL RESEARCH (3) 142 (2015); Hsu Shūzhen, Rì jū shì qì tǎi wǎn dì dì fāng xuǎn jǔ yǔ zhèng zhì cǎn yǔ: yǐ liǎng cì mǐn xuǎn shì huì yì yuán jí zhōu huì yì yuán wéi lì (日據時期台灣的地方選舉與政治參與:以兩次民選市會議員及州會議員為例) [LOCAL ELECTIONS AND POLITICAL PARTICIPATION IN TAIWAN DURING THE JAPANESE COLONIAL RULE: TAKING TWO ELECTIONS OF PREFECTURE AND CITY COUNCILORS AS EXAMPLES] 145 MAS. DIS., HIS., U. OF CHUNGHAI (1996).

²⁴⁵ TAIWAN SOTOKU, CHIHO SEIDO KAISEI SETSUMEISHO (地方制度改正說明書) [THE MANUAL OF THE REVISION OF THE TAIWAN LOCAL GOVERNMENT SYSTEM] (1935).

²⁴⁶ Sotoku-fu kobun ruisan (總督府公文類纂) [The Governor-general of Taiwan's document], v. 10345-4, 36 (1935).

²⁴⁷ Chen Ming-tong & Lin Jih-wen (陳明通、林繼文), *Taiwan difang xuanju de qi yuan yu guojia shehui guanxi zhuanbian* (台灣地方選舉的起源與國家社會關係轉變) [*The origin of Taiwan's local election and the transformation of state-society relations*], in LIANGAN JICENG XUANJI YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT) 30 (Chen Ming-tong & Zheng Yong-nian eds. 1994).

²⁴⁸ *Supra* note 246.

II. The First Election of 1935 and the Beginnings of Electoral Clientelism

After long negotiations, the budget to implement the revision of the *Taiwan Local Government Act* so as to hold elections was ultimately approved by the Diet in March 1935.²⁴⁹ On April 1, 1935, the GGT declared the revision of *Taiwan Local Self-government Act* in Special Ordinance (Ritsurei) No. 1,²⁵⁰ 2,²⁵¹ and 3.²⁵² To maintain social order and control the electoral outcomes, the GGT adopted a three-fold tactic. First, learning from the example of the Japanese elections, the GGT adopted the SNTV electoral system to institutionally split the Taiwanese local elites and encourage personal and localized campaigns by restraining the effectiveness of campaigning on policy or ideology. Second, the GGT issued “*Taiwan Local Election Regulatory Rules*”²⁵³ (TLERR) as Administrative Ordinance (furei) No. 13. TLERR modeled these rules on “*the Regulatory Rules on Election of the House of the Representatives*”²⁵⁴ from Japan, authorizing the police to limit campaign activities and suppress dissenters, thereby enabling arbitrary enforcement of the ordinance.²⁵⁵ Third, the GGT actively cooperated with the local Taiwanese bourgeoisie by exchanging interests.²⁵⁶ As a result, the GGT controlled the majority of the consultative councilors. While

²⁴⁹Dai roku ju nana-kai teikoku gikai kizoku-in iinkai seigan iin Dai san bunkakaigi-rokusoku kiroku (第六十七回帝国議會貴族院請願委員第三分科會議速記錄第六回) (March 11, 1935).

²⁵⁰Ritsurei No. 1, Taiwan Shū-sei kaisei (台灣州制改正) [The reform of Taiwan Prefecture system] in TAIWAN SOTOKU FU-HO 1-4 (April 1, 1935).

²⁵¹Ritsurei No. 2, Taiwan Shisei kaisei (台灣市制改正) [The reform of Taiwan City system] in TAIWAN SOTOKU FU-HO 4-8 (April 1, 1935).

²⁵²Ritsurei No. 3, Taiwan Machi Sho-sei kaisei (台灣街庄制改正) [The reform of Taiwan Town-village system] in TAIWAN SOTOKU FU-HO 8-12 (April 1, 1935).

²⁵³Taiwan Chiho senkyo torishimari kisoku (台灣地方選舉取締規則) [Taiwan local election Regulatory rules] in TAIWAN SOTOKU FU-HO 21, 22 (April 1, 1935).

²⁵⁴Shūgiingiinsenkyo undo-to torishimari kisoku (衆議院議員選舉運動等取締規則) [*the Regulatory Rules on Election of the House of the Representatives*], *The administrative order of the ministry of Interior Affairs No. 36* (Dec 12, 1935).

²⁵⁵Sotoku-fu kobun ruisan (總督府公文類纂) [The Governor-general of Taiwan's document], v. 10345-4, 55, 56 (1935).

²⁵⁶Chen Ming-tong & Lin Jih-wen (陳明通、林繼文), *Taiwan difang xuanju de qi yuan yu guojia shehui guanxi zhuanbian* (台灣地方選舉的起源與國家社會關係轉變) [*The origin of Taiwan's local election and the transformation of state-society relations*], in LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (*LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT*) 30,31 (Chen Ming-tong & Zheng Yong-nian eds. 1994).

1935 was the beginning of elections in Taiwan, under the shadow of the GGT's tactics it was also the beginning of local factions and electoral clientelism in Taiwan.

A. GGT's Four-pronged Strategy and the Implications of the SNTV Electoral System

In the mid-1930s, Japan was on the brink of war with China and again adjusted its colonial policy. In light of the increasing strategic value of Taiwan, Japan adjusted its colonial policy to facilitate assimilation and strengthen the GGT's capability for war mobilization. In order to enhance the legitimacy of the GGT and split the TPPM camp, the GGT held elections for Consultative Councils in the two lowest local government levels—city and town/village—in 1935 and 1939 respectively. The consultative councilors at the highest level, the prefecture, were chosen by consultative councilors at the city and town/village level. The elections not only strengthened the GGT but also brought a partial victory for the TLSG, despite the limited number of seats and minimal suffrage. After depriving other available alternatives of political participation and institutionally diminishing the likelihood of radicals being elected, the elections integrated the members of the TLSG into election-driven politics, providing the next generation of opposition with a valuable lesson.

In order to ensure that the minority racial group, the Japanese, won the majority of seats in local councils, the GGT adopted a four-pronged strategy: (1) The GGT assigned half of the Consultative Councils' members at the city and town/village levels. (2) The GGT limited suffrage to males paying tax of over five yen annually.²⁵⁷ (3) The GGT adopted the single non-transferable vote in the multi-member district electoral system (SNTV). (4) The GGT

²⁵⁷ The requirement of limited suffrage was to pay tax annually to the city or town/village government, rather than the tax paid to the GGT or the district government. The tax requirement further limited the suffrage of Taiwanese residents to the bourgeois class. See Chen Rou-lan (陳若蘭), *supra* note 244, at 147.

enacted lenient campaign finance rules and enforced them arbitrarily to form, via the exchange of interests, a coalition favoring the GGT. As a result, the majority of seats were occupied by Japanese and local Taiwanese bourgeoisie obedient to the GGT.²⁵⁸ The election results at the city level showed that the Japanese comprised only 25.8% of voters but gained 51.2% of the seats. In contrast, Taiwanese voters comprised 74.2 % of voters but won only 48.8% of the seats.²⁵⁹

The GGT's first strategy to manipulate the city and town/village Consultative Councils was to have the executive chiefs of the city and town-village assign half the Consultative Councils' members. Under the Amendment of *Taiwan's Local Self-government Act*,²⁶⁰ while voters elected half of the members of consultative councils, the executive chiefs at these two levels appointed the second half.²⁶¹ The appointment ultimately became an exchangeable privilege used by the GGT to coordinate with the local Taiwanese bourgeoisie.²⁶²

At the prefectural consultative council level, although members were chosen by city and town/village councilors, the Japanese were over-represented. Only 20.6% of the voters were Japanese but Japanese councilors gained 47.4% of the seats. The Taiwanese city and town/village councilors assigned by the executive chiefs, then, had a higher likelihood of

²⁵⁸WU WEN-HSING (吳文星), RIJU SHIQI TAIWAN LINGDAO JIECENG ZHI YANJIU (日據時期臺灣領導階層之研究) [THE LEADERSHIP IN TAIWAN DURING THE JAPANESE COLONIAL ERA] (1992).

²⁵⁹Chen Rou-lan (陳若蘭), *supra* note 244, at 139; HAUNG CHAOTANG(黃昭堂), TÁIWĀN ZǒNGDŪ FŪ (台灣總督府) [TAIWAN GENERAL GOVERNOR OFFICE] 162 (2013).

²⁶⁰*Taiwan's Local Self-government Act* (台灣地方制度改正案) was enacted on March 29, 1935, and took effect on April 1. The GGT respectively issued the *Ordinance No. 1* (律令第一號): *Taiwan Prefecture Organization* (台灣州制); the *Ordinance No. 2* (律令第二號): *Taiwan City Organization* (台灣市制); the *Ordinance No. 3* (律令第三號): *Taiwan village and town organization* (台灣街庄制) on April 1, 1935. The Act was modeled on the *Korean Provincial Government Rules* (朝鮮道制規則), which set up provincial consultative councils in Korea and was enacted on Feb 1, 1933. See: KINYA SUEMITSU (末光欣也), TAIWAN NO REKISHI: NIHON TOCHI JIDAI NO TAIWAN: 1895-NEN - 1945/ 46-NEN: GOJUNEN NO KISEKI (台灣の歴史日本統治時代の台湾: 1895年--1945/46年: 五十年の軌跡) [TAIWAN HISTORY: TAIWAN OF JAPANESE OCCUPATION: 1895 --1945 / 46 YEARS: FIFTY YEARS OF TRAJECTORY] (2007).

²⁶¹TAIWAN IN THE TWENTIETH CENTURY 109 (Richard Louis Edmonds & Steven M. Goldstein eds., 2001).

²⁶²WU WEN-HSING (吳文星), RIJU SHIQI TAIWAN LINGDAO JIECENG ZHI YANJIU (日據時期臺灣領導階層之研究) [THE LEADERSHIP IN TAIWAN DURING THE JAPANESE COLONIAL ERA] 192 (1992).

voting across racial lines.²⁶³ After close review, monetary influence and the arbitrary enforcement of electoral rules were considered to be the main reasons for the overrepresentation of the Japanese.²⁶⁴

Regardless, the power of consultative councilors to enforce checks and balances was limited to prevent intervention from the local consultative councils. While the councils of cities and prefectures were empowered to make decisions about the local budget and certain local taxes, the executive chiefs and the GGT retained veto powers over these issues.²⁶⁵ The town/village consultative councils were further restricted, serving only as advisory institutions without being empowered to make decisions on the budget or taxes.

Second, the GGT manipulated the election through disenfranchisement in order to ensure that the Japanese, the racial minority group, controlled the consultative council. The elections enfranchised men over the age of twenty-five, who paid more than five yen in taxes to the city or town/village government annually. In 1935, while the number of Japanese and Taiwanese male residents was 68,018 and 950,427 respectively, under the restrictions the number of Japanese and Taiwanese voters was 39,627 and 186,627 respectively. In sum, 58.3% of Japanese, but only 16.9% of Taiwanese male residents, were enfranchised.

Third, the electoral system instituted in Taiwan was modeled after that of Metropolitan Japan,²⁶⁶ which was the system of single non-transferable voting in a multi-member district (SNTV).²⁶⁷ Under SNTV, each voter cast one ballot for candidates, and the vote could not be

²⁶³Chen Rou-lan (陳若蘭), *supra* note 244, at 162.

²⁶⁴*Id.* at 162.

²⁶⁵TAY-SHENG WANG (王泰升), *TAIWAN FALU SHI GAILUN* (台灣法律史概論) [THE INTRODUCTION OF TAIWAN LEGAL HISTORY] 156 (3rd ed., 2009).

²⁶⁶ From 1925 to 1994, except in 1945 and 46, Japan adopted the SNTV in the congressional elections at each level.

²⁶⁷ The electoral districts followed administrative boundaries, and the number of members elected varied by district population. The winners in the multi-member districts were those who gained the most ballots until the seats in districts were filled.

transferred among candidates. The electoral districts aligned with the boundaries of administrative zones. The candidate with the highest number of votes took the seat, and the number of winners was determined by the population and allocation of the district.²⁶⁸ Under Articles 7 and 8 of the *Taiwan Prefecture Organization Act*²⁶⁹ and the GGT's Ordinance No. 58,²⁷⁰ the GGT adopted SNTV.²⁷¹ The GGT adopted SNTV to secure the likelihood that Japanese candidates would be elected, prevent radical Taiwan nationalists or communists from passing the low threshold of being elected, and stimulate Taiwanese candidates to compete with one another in the same electoral district without coordinating a united front.²⁷² This dissertation analyzes this mechanism and its implications in subsection B and section III.

Fourth, the GGT enacted lenient campaign finance rules and enforced them arbitrarily. For example, the GGT allowed door-to-door canvassing during the campaign period,²⁷³ a practice that was no longer permitted in Metropolitan Japan. This not only increased the competition between Taiwanese candidates for personal votes but also offered structural opportunities for candidates sympathetic to the GGT to engage in vote-buying.²⁷⁴ This mechanism is analyzed further in Section III.

²⁶⁸ ELLIS S. KRAUSS & ROBERT J. PEKKANEN, *THE RISE AND FALL OF JAPAN'S LDP: POLITICAL PARTY ORGANIZATIONS AS HISTORICAL INSTITUTIONS* 16 (2011).

²⁶⁹ Art 7 & 8, Taiwan Chou Sei (台灣州制) [Taiwan Prefecture Organization Act].

²⁷⁰ Sotoku Furei No. 58 (總督府令第 58 號) [The GGT's Ordinance No. 58]. According to the Art 1 of the *Law No.31*, effective in 1922, the GGT's ordinance was effective under the condition of exceptional circumstances.

²⁷¹ Japan adopted the electoral system of medium-size districts with 2-5 elected members in each district, in 1925, the first general election House of Representatives. The medium-size electoral district system aimed to enhance the elected rate of minor parties, but simultaneously, to address the radical dissenters.

²⁷² Japanese candidates, most of whom were nominated or recommended by the GGT or the executive chiefs, formed a united platform to coordinate their campaigns and divide the votes. In contrast, Taiwanese candidates were barely able to form a united platform to campaign and divide the votes because of conflicts of interests or ideology. Under the GGT's persecution, some Taiwanese associations, like the Taiwan Communist Party, the Taiwan People Party, and the Taiwan Culture Association, were suppressed or dismissed in 1931. Given this political background, it was more difficult for the residents of Taiwan to form political groups or associations to unite Taiwanese candidates in 1935 and 1939.

²⁷³ Chen Rou-lan (陳若蘭), *supra* note 244, at 162.

²⁷⁴ *Id.*, at 163.

Readers might ask: why wouldn't door-to-door campaigning offer the same opportunity for Taiwanese candidates to coordinate? A possible answer to this is, as vote-buying was tolerable to some degree, those with greater access to money such as the Japanese and local bourgeoisie whose livelihoods depended heavily on Japanese business, were in a better position to buy votes and, as such, more likely to benefit from the relaxed rules.²⁷⁵ The electoral outcome also reflected this tendency.

B. The Implications of SNTV: Personal Votes and Localized Campaigning

The TLSG recognized the election as the sole option for peaceful political participation for the Taiwanese and therefore switched its strategy to pursue political participation through the election, rather than pursuing the civil rights movement.²⁷⁶ As the GGT expected, the TLSG was soon trapped by the SNTV system. The TLSG initially expected to maximize its seats by dividing supporters among candidates in each district and adopting a unified electoral strategy.²⁷⁷ All candidates of the TLSG campaigned on issues, rather than undertaking door-to-door canvassing or running for personal votes (meaning voters casting their ballots based on personal relationships or personal interests shared with the candidates).

Once the electoral campaign commenced, candidates began to disobey the gentlemen's agreement and started running for personal votes, shattering the unified strategy. The collapse of the united front and issues in their campaign strategy led to the dramatic failure of the TLSG to win their expected number of seats, causing the overrepresentation of pro-GGT

²⁷⁵ DÀIGUÓHUÍ (戴國輝), *TÁIWĀN ZǒNGTǐ XIĀNG: RÉNJIĀN, LÌSHǐ, XĪNXìNG* (台灣總體相：人間、歷史、心性) [TAIWAN IN GENERAL: HUMAN, HISTORY, AND MENTALITY] 78 (WEI TINGCHAO TRANS. 1989).

²⁷⁶ ZHAOJIA YANG (楊肇嘉), *YANG ZHAOJIA HUI YI LU* (楊肇嘉回憶錄) [THE MEMOIRS OF YANG ZHAOJIA], VOL. 2, 291 (1970).

²⁷⁷ Chen Ming-tong & Lin Jih-wen (陳明通、林繼文), *Taiwan difang xuanju de qi yuan yu guojia shehui guanxi zhuanbian* (台灣地方選舉的起源與國家社會關係轉變) [The origin of Taiwan's local election and the transformation of state-society relations], in LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT) 23 (Chen Ming-tong & Zheng Yong-nian eds., 1994).

candidates.²⁷⁸ This result taught subsequent political actors an important lesson: campaigns run on ideology or policy were not a practical choice for dividing the voters and maximizing the total seats of any single party or united front. Thus, the policy debate was diminished in the public forum, and the campaign for personal votes played a major role in the election. As the vicious circle began to take shape, electoral clientelism and campaign expenditures increased election by election.

III. The Campaign Finance rules in Taiwan and their Implications

A. The Campaign Finance Law in Japan: *The Election Law on House of Representatives* and its Regulatory Rules

In addition to the strategy of disenfranchisement and the SNTV system, campaign finance rules and their enforcement also strengthened the GGT's power against the opposition.

In Metropolitan Japan, after decades of social movements calling for universal suffrage and intense competition between political parties, a bill concerning the first election of the lower house of the Imperial Diet with universal suffrage was ultimately passed in 1925. The resulting election was held in 1928. However, before universal suffrage was applied in elections, the bureaucrats and the privy council sought to address concerns regarding the rise of socialism and communism on the one hand, and the prevalence of money politics on the other. Thus, those forces pushed the Diet to pass the "*Public Security Preservation Law*"²⁷⁹

²⁷⁸ Chen Rou-lan (陳若蘭), *supra* note 224, at 165.

²⁷⁹ Chian iji-ho (治安維持法) [*Public Security Preservation Law*] (promulgated on April 22, 1925, and effective on May 12, 1925). Under the regime of Law No. 3, the *Public Security Preservation Law* also extended to Taiwan.

(PSPL) to suppress the radicals. The PSPL was closely and completely enforced by the police, and extended to the colonial territories, including Taiwan and Korea.

To address money politics and political corruption, the bureaucrats and the privy council also nudged the Diet to revise the *House of Representative Election Law* to regulate campaign finance and restrain monetary influences in politics. However, the revision was enforced arbitrarily due to political pressure from the Cabinet and the local governors. Consequently, the role of money in the political field became a critical issue for Japan's new but vulnerable democracy. To further combat money politics, the Japanese government adopted a two-fold strategy: the election purifying movement and strict election law.

The Japanese Imperial Government referred to the British "*Corrupt and Illegal Practices Prevention Act of 1883*"²⁸⁰ to set a cap on campaign expenditures. However, the Japanese Imperial government not only set a cap on the total amount of expenditures,²⁸¹ but also restricted the time, manner and place of electioneering activities. The most distinctive rule was to prohibit door-to-door canvassing during the campaign period by candidates, their assistants, and voters. According to the amendment of "*the Election Law on House of Representative*" of 1925,²⁸² door-to-door canvassing during the campaign period was prohibited. This prohibition was first proposed in 1915 by Representative Morida, and gained support from the Ministry of Internal Affairs as means for countering money politics and

²⁸⁰The Corrupt and Illegal Practices Prevention Act 1883, 46 & 47 Vict., c. 51; Library Congress, *Campaign Finance: The United Kingdom*, please see: https://www.loc.gov/law/help/campaign-finance/uk.php#_ftn1

²⁸¹Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 102. If the campaign expenditure exceeded the cap, the election could be invalidated. See Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 110. MINOBE TATSUKISHI, SENKYO BASSOKU NO KENKYU (選挙罰則の研究) [THE STUDIES ON THE ELECTION AND ITS PENALTIES] 117 (1937).

²⁸²Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 98, Section 1.

reducing campaign expenditures.²⁸³ This represents the first legislative effort at regulating campaign finance from the demand side in Japan.

In its legislative reasoning, the Ministry of Internal Affairs emphasized the rationale of electoral integrity and noted that door-to-door canvassing during the campaign period empirically offered opportunities for vote-buying and cheating in private or hidden areas. As a result, based on this reasoning, such canvassing not only raised campaign expenditures but also lowered the reliability of politicians and democracy. Under the same rationale, campaign telephone calls and individual meetings were also prohibited.²⁸⁴

In addition to the rules prohibiting door-to-door canvassing which cut off the direct connection between the candidates and voters, the revision also established a cap on expenditures²⁸⁵ and required candidates to keep accurate accounts²⁸⁶ and report campaign finances to the local executive governor via the police.²⁸⁷ The law further required local executive governors to disclose these records.²⁸⁸

Moreover, the law limited campaign activities to mailings or public speeches which were required to focus on issues or policy advocacy, the mailings and the speeches also had to gain prior approval from the police. In addition, the rules not only limited the number of

²⁸³SHŪGIINGIINSENKYO-HO CHOSA-KAI, SENKYO UNDO HOHO NO TORISHIMARI NI-SEKI SURU CHOSA SHIRYO (選挙運動方法ノ取締ニ関スル調査資料) [THE SURVEY MATERIALS OF POLICING THE ELECTORAL CAMPAIGN] 34,35; 105-108 (1924).

²⁸⁴Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives of 1925], Article 98, Section 2.

²⁸⁵Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives of 1925], Article 102.

²⁸⁶Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives of 1925], Article 105.

²⁸⁷Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives of 1925], Article 106, Section 1.

²⁸⁸Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives of 1925], Article 106, Section 2.

members in the electioneering team²⁸⁹ and campaign office,²⁹⁰ but also restricted anyone other than the members of the electioneering team from being involved in campaign activities.²⁹¹ Although the rules faced criticism during the deliberation process in the Diet, they were ultimately passed to pursue the political motives of hindering challengers and maintaining the incumbency advantage.

The revision of the “*Election Law on House of Representative*” of 1925 met widespread criticism because of its undue intrusion on the freedom of speech and for granting too much discretion to the police.²⁹² Some criticized the prohibition on door-to-door canvassing during the campaign period as a failed means to a reasonable end, as most vote-buying transactions occurred via brokers, not through transactions between candidates and voters. As critics predicted, the revision neither restrained campaign expenditures²⁹³ nor enhanced electoral integrity, especially given police’s abuse of their power to interfere with the opposition under the direction of the Ministry of Internal Affairs.²⁹⁴

Based on the scandals of abuse of power and vote-buying in the general election of 1928, the Imperial Diet amended the “*Election Law on the House of Representatives*” and the Ministry of Internal Affairs issued the “*Regulatory Rules on Election of the House of the Representatives*”²⁹⁵ in 1934. On one hand, the spirit of the new law promoted a public

²⁸⁹Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 93.

²⁹⁰Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 90.

²⁹¹Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 96.

²⁹²NOBUO SAKAGAMI (阪上順夫), NIHON SENKYO SEIDO-RON (日本選挙制度論) [THE THEORY OF JAPANESE ELECTORAL INSTITUTION] 83; MASAO SOMA (杉正夫), NIHON SENKYO SEIDO-SHI: FUTSU SENKYO-HO KARA KOSHOKU SENKYO-HO(日本選挙制度史: 普通選挙法から公職選挙法) [HISTORY OF THE JAPANESE ELECTORAL SYSTEM: FROM GENERAL ELECTION LAW TO THE Public Offices Election Act] 46 (1986).

²⁹³ The testimony Tsuyoshi Inukai,8NIHON KOKUSEI JITEN (日本国政事典) [JAPANESE NATIONAL DICTOINARY]567 (1998).

²⁹⁴ The Minister of Internal Affairs, Susuki, was impeached and resigned because a scandal surrounding undue intervention in the oppositions’ campaign.

²⁹⁵Shūgiingiinsenkyo undo-to torishimari kisoku (衆議院議員選挙運動等取締規則) [The Regulatory Rules on Election of the House of the Representatives], *The administrative order of the ministry of Interior Affairs No. 36 (Dec 12, 1935).*

campaign finance system, such as by issuing an election bulletin by the government,²⁹⁶ and offering public space for campaign speeches and public mail services for campaign literature.²⁹⁷ On the other hand, the new law set more rules to limit private campaigns, including lowering the cap on expenditure to 9000 yen, and limiting the number of campaign offices²⁹⁸ and electioneering team members.²⁹⁹ The new law also prohibited initiating any campaign activities before campaign periods³⁰⁰ or spreading campaign promotion or posters without prior approval from the police.³⁰¹ More importantly, the rule retained the requirement for candidates to keep proper accounts³⁰² and report their accounting of campaign finance to the government³⁰³ for public disclosure.³⁰⁴ The new rules corresponded with “the purifying election movement” (*Senkyo Shukusei Undo*),³⁰⁵ and enhanced the power of the police and the bureaucrats.³⁰⁶

²⁹⁶Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 140, Section 4.

²⁹⁷Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 140, section 1, 2.

²⁹⁸Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 90.

²⁹⁹Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 89, 93.

³⁰⁰Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 95-2.

³⁰¹Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 98-2.

³⁰²Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 105; Senkyo undo torishimari kisoku (選挙運動取締規則)[Election Campaign Regulatory Rules], Article 14.

³⁰³Shūgiingiinsenkyo-ho (衆議院議員選挙法) [The election law on house of representatives], Article 106; Senkyo undo torishimari kisoku (選挙運動取締規則)[Election Campaign Regulatory Rules], Article 16.

³⁰⁴Senkyo undo torishimari kisoku (選挙運動取締規則)[Election Campaign Regulatory Rules], Article 16.

³⁰⁵ Senkyo Shukusei Undo (選挙肃正運動) [the purifying election movement]. A political movement from the 1920s to the 1930s, advocating for purifying elections by reestablishing political ethics and morals, carried out by Japanese imperial government bureaucrats to strengthen the power of the bureaucrats and weaken political parties. See MASAO SOMA (杉正夫), NIHON SENKYO SEIDO-SHI: FUTSU SENKYO-HO KARA KOSHOKU SENKYO-HO (日本選挙制度史: 普通選挙法から公職選挙法) [HISTORY OF THE JAPANESE ELECTORAL SYSTEM: FROM GENERAL ELECTION LAW TO THE Public Offices Election Act] 179-200 (1986).

³⁰⁶MASAO SOMA (杉正夫), NIHON SENKYO SEIDO-SHI: FUTSU SENKYO-HO KARA KOSHOKU SENKYO-HO (日本選挙制度史: 普通選挙法から公職選挙法) [HISTORY OF THE JAPANESE ELECTORAL SYSTEM: FROM GENERAL ELECTION LAW TO THE Public Offices Election Act] 177 (1986).

B. The First Campaign Finance Rules in Taiwan: *Taiwan Local Election Regulatory Rules*

Against the background of “the purifying election movement,” the revision of the election law for the house of representatives, and the *Regulatory Rules on Election of the House of the Representatives* in Metropolitan Japan, the GGT issued the “*Taiwan Local Election Regulatory Rules (TLERR)*” to regulate campaign activities in Taiwan.³⁰⁷ The GGT partially modeled the TLERR on Japanese election law by restricting the campaign’s time, place, and manner, yet did not adopt rules regulating limits on expenditure or providing for mandatory reporting.

As far as imposing limits on campaign activities, the TLERR was mainly modeled on Japanese laws. According to the TLERR, campaign activities were prohibited beyond the allowable time before the election.³⁰⁸ The number of campaign offices³⁰⁹ and the personal information of the electioneering members³¹⁰ were also restricted, and reports to the police were required. The time, place, and manner of public speeches and the distribution of posters, as under Japanese law, had to gain prior approval from the police. Additionally, campaign activities were limited to use of the official language, Japanese.³¹¹

However, compared to the Japanese laws, the TLERR’s campaign finance rules were lenient. First, for the 1935 election, door-to-door canvassing during the campaign period was

³⁰⁷Taiwan Chiho senkyo torishimari kisoku (台灣地方選舉取締規則) [*Taiwan Local Election Regulatory Rules*], Sotoku Furei No. 13 of 1935 (昭和十年總督府令第 13 號) [The GGT’s Ordinance No. 13 of 1935].

³⁰⁸Taiwan Chiho senkyo torishimari kisoku (台灣地方選舉取締規則) [*Taiwan Local Election Regulatory Rules*], article 2.

³⁰⁹Taiwan Chiho senkyo torishimari kisoku (台灣地方選舉取締規則) [*Taiwan Local Election Regulatory Rules*], article 11.

³¹⁰Taiwan Chiho senkyo torishimari kisoku (台灣地方選舉取締規則) [*Taiwan Local Election Regulatory Rules*], article 5.

³¹¹Taiwan Chiho senkyo torishimari kisoku (台灣地方選舉取締規則) [*Taiwan Local Election Regulatory Rules*], article 14.

not prohibited in order to promote voteturnout and encourage more residents in Taiwan to participate in the electoral process, thus facilitating the assimilation policy.³¹² Through applying different standards in Taiwan than in Japan, the GGT opened the backdoor not only for the bourgeoisie to run campaigns on personal votes, but also for prefecture councilor candidates to exchange interests with city or town/village councilors. Second, there were no rules about the limits on campaign expenditures. Third, in Taiwan there were no rules that required candidates to report and disclose their campaign finances. While Japan had introduced a cap on expenditures and mandatory reporting rules in 1925, the same rules were intentionally ignored by the GGT and not extended to Taiwan.

Although the TLERR imposed criminal liability on candidates engaging in vote-buying or using violence,³¹³ the neutrality of the police, as in Metropolitan Japan, was in doubt. As such, Japanese candidates and GGT friendly local bourgeoisie had more opportunities to exchange interests for votes during the campaign period, allowing the GGT's influence to penetrate the lower levels of Taiwanese society.³¹⁴ The lack of neutrality in campaign rule

³¹²Hsu Shuchen (許淑貞), *Rìjù Shíqí Táiwan Dìfāng Xuǎnjǔ yǔ Zhèngzhì Cānyù-yǐ Liǎng Cì Shì, Zhōu Huì Yìyuán Xuǎnjǔ Wèilì (1935-1940)* (日劇時期台灣地方選舉與政治參與-以兩次市、州會議員選舉為例 (1935-1940)) [TAIWAN LOCAL ELECTIONS AND POLITICAL PARTICIPATION IN THE JAPANESE COLONIAL ERA - TAKING TWO ELECTIONS FOR CITY AND TOWN-VILLAGE COUNCILORS AS EXAMPLES (1935-1940)], MASTER THESIS OF HISTORY, CHUNG-SHIN U.187(1996). A prohibition on door-to-door canvassing was not legislated on for the 1939 election in Taiwan either, however, in practice, a prohibition took effect through gentleman's agreement among the candidates.

³¹³Taiwan Chiho senkyo torishimari kisoku (台灣地方選舉取締規則) [*Taiwan Local Election Regulatory Rules*], article 20.

³¹⁴Wu Hsin-jung, *Wu Hsin-jung Diary on Nov. 12, 1935*, in *WU HSIN-JUNG DIARY COLLECTION*, vol. 1, 158 (2007); Wang wu qia, *Daiichikai no shū kaigi-in senkyo ni saishi tokuni kaikaku shita kata ga i to tsūkan shita ten* (第一回の州會議員選挙に際し特に改革した方がいゝと痛感した点) [*The first election for the prefecture consultative councilors and its problems*], 2 *TAI. LOC. ADMIN.* vol. 12, 54 (Dec 1936). According to Yang Zhao Jia's memoir, the campaign was wellrun and vote-buying was almost impossible because of intensive police scrutiny. Comparing both sides, it seems the election for the city and town/village councilors was fair but, in the election for the prefecture consultative councilors, vote-buying was prevalent. Under the official records, only 33 cases involving 106 persons, were raised concerning vote-buying. This record indicates that vote-buying at the level of the city and town consultative councilors was not prevalent. Kiwata Ide (井出季和太), *Rì jù xià zhī tái zhèng* (日據下之台政) [THE POLITICAL AFFAIRS UNDER THE JAPANESE COLONIAL RULE] vol. 3, 937 (1956).

enforcement also facilitated the rise of local factions and electoral clientelism under the SNTV system.

C. Implications for Following Elections: The Rise of Electoral Clientelism and Local Factions

As Scott observes, community values which emphasize obligations to kin, tribe, village, or religious sect could contribute to a certain amount of corruption or illegal transactions. Political actors and voters, then, face a conflict of values between the formal legal standards and community values. In the absence of rigorous enforcement, actors may tend to be persuaded more by community values than formal legal standards. The gap between the formal norms and local values in colonies was usually significant because the formal norms tended not to be widely accepted and internalized,³¹⁵ as demonstrated in Taiwan. Accompanying the implications of the SNTV, the absence of rigorous campaign finance law also planted the seeds for electoral clientelism and the rise of local factions.

The result of the first local election in 1935 provided a bitter lesson for generations of anti-government elites: under the SNTV system, the strategy of issue-based campaigning produced the problem of dividing votes.³¹⁶ Further, if even one candidate within a coalition adopted a localized or personal campaign, it would be very difficult to maintain a united front. Thus, the SNTV system not only factionalized Taiwanese local elites against one another but also diminished their incentives to form a united opposition to carry out issue-based campaigning, which could potentially challenge the legitimacy of the government.³¹⁷

³¹⁵James C. Scott, *Comparative Political Corruption* 11 (1972).

³¹⁶Under the SNTV system, votes for a certain candidate were not allowed to be transferred to other candidates in the same camp, leading to votes superseding the minimum requirement being worthless. In addition, the candidates adopting the strategy of issue-based campaigning faced difficulty predicting the exact number of votes, which offered those candidates sharing the same ideology negative incentives to divide their secured votes with others.

³¹⁷*Id.*, at 38.

On the other hand, the SNTV system made the authorities more likely to cooperate with the local bourgeoisie via exchanges of interests.

Moreover, the strict laws on campaign activities coupled with the loose campaign finance rules had three implications. First, the strict laws empowered the police to interfere with or check disobedient candidates.³¹⁸ Second, the limits on campaign activities led to low recognition of the candidates among voters, pushing voters toward the more recognizable GGT or local bourgeoisie. Third, the loose campaign finance laws offered opportunities not only for the GGT to exchange interests with the local bourgeoisie, but also for the local bourgeoisie to run localized and personal campaigns. As a result, the majority of elected members were either Japanese or local bourgeoisie aligned with the GGT,³¹⁹ which formed a solid coalition for war mobilization.³²⁰ Without effective campaign finance law, neutral enforcement, or a prohibition on door-to-door canvassing, vote-buying and voting across racial lines were prevalent in the limited circle of voters.³²¹

Therefore, the electoral results reflected not only the rise of the local bourgeoisie, who sought political participation or affiliation with the GGT,³²² but also the birth of local

³¹⁸Sotoku-fu kobun ruisan (總督府公文類纂) [The Governor-general of Taiwan's document], v. 10345-4, 55, 56 (1935); Sotoku-fu kobun ruisan (總督府公文類纂) [The Governor-general of Taiwan's document], v. 10345-5, 145 (1935).

³¹⁹TAIWAN IN THE TWENTIETH CENTURY 109 (Richard Louis Edmonds & Steven M. Goldstein eds., 2001).

³¹⁹WU WEN-HSING (吳文星), RIJU SHIQI TAIWAN LINGDAO JIECENG ZHI YANJIU (日據時期臺灣領導階層之研究) [THE LEADERSHIP IN TAIWAN DURING THE JAPANESE COLONIAL ERA] 199 (1992).

³²⁰DÀIGUÓHUĪ (戴國輝), TÁIWĀN ZǒNGTǐ XIĀNG: RÉNJIĀN, LÌSHĪ, XĪNXÌNG (台灣總體相：人間、歷史、心性) [TAIWAN IN GENERAL: HUMAN, HISTORY, AND MENTALITY] 78 (WEI TINGCHAO TRANS. 1989) (Dai indicated, the Taiwanese local elites and bourgeois' coordination with the GGT form "the structure of accomplice").

³²¹Chen Rou-lan (陳若蘭), *supra* note 244, at 162; Wáng wū qià, *Daiichikai no shū kaigi-in senkyo ni saishi tokuni kaikaku shita kata ga i to tsukan shita ten* (第一回の州會議員選挙に際し特に改革した方がいゝと痛感した点) [The first election for the prefecture consultative councilors and its problems], 2 TAI. LOC. ADMIN. vol. 12, 54 (Dec 1936).

³²²Chen Ming-tong & Lin Jih-wen (陳明通、林繼文), *Taiwan difang xuanju de qiyuan yu guojia shehui guanxi zhuanbian* (台灣地方選舉的起源與國家社會關係轉變) [The origin of Taiwan's local election and the transformation of state-society relations], in LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT) 30, 30-32 (Chen Ming-tong & Zheng Yong-nian eds. 1994).

political factions and electoral clientelism.³²³ Although the election of 1935 was not a universal ballot, the election itself made the Taiwanese people aware of participatory politics and constituted a crucial step towards democracy. Nevertheless, due to the SNTV, lenient campaign finance laws, arbitrary enforcement of these laws, and the rise of personal and localized campaigns, the election was also foundational in paving the path to electoral clientelism in Taiwan.

³²³ WANG YUFENG (王御風), GAOXIONG SHE HUI LING DAO JIE CENG DE BIAN QIAN (1920-1960) (高雄社會領導階層的變遷 (1920-1960)) [A HISTORY OF KAOHSIUNG CITY COUNCIL] (2013); CHENG CHI (鄭梓), BENTU JING YING YU I HUI ZHENG ZHI : TAIWAN SHENG CANYIHUI SHI YANJIU (1946-1951) (本土精英與議會政治: 台灣省參議會史研究: (1946-1951)) [THE LOCAL ELITES AND CONGRESS POLITICS: A HISTORY OF TAIWAN COUNCIL FROM 1946 TO 1951] (1987).

Chapter 4. Campaign Finance Laws under the Shadow of Institutionalizing Electoral Clientelism: The ROC-KMT Rule Era (1945- 1991)

Pierson argues, “the temporal ordering of events or processes has a significant impact on outcomes.”³²⁴ As Orren & Skowronek discuss, “different social realms interact with one another, the different historical roots of these realms and differences in the timing of their development can shape the character of these interactions and an inherent dynamism.”³²⁵ This “intercurrence” is central to political development.³²⁶ As shown by the analysis in chapter 3, the SNTV electoral system during the first election in 1935, together with the biased policing of election law and campaign finance rules, contributed to the beginning of electoral clientelism and local factions.

After WWII, the ROC government started to rule Taiwan in 1946, and held elections with universal suffrage using the SNTV system. The election of 1946 created an irreversible sequence and critical junctures in Taiwan, which had three implications. First, based on the previous experience of elections, residents in Taiwan smoothly accepted the electoral practices and campaign activities. Second, after transplanting Chinese law, in the absence of campaign finance laws, the existing local factions continued to developed their networks to mobilize personal votes, which induced “an institutionally driven corruption.”³²⁷ Third, unlike the Japanese colonial regime, the ROC government broadened the scope of the

³²⁴PAUL PIERSON, *POLITICS IN TIME* 54 (2011).

³²⁵ Karen Orren & Stephen Skowronek, *Beyond the Iconography of Order: Notes for a New Institutionalism*, in *THE DYNAMICS OF AMERICAN POLITICS*, 311 (Lawrence Dodd & Calvin Jillson eds., 1994).

³²⁶*Id.*

³²⁷MARK RAMSEYER & FRANCES MCCALL ROSENBLUTH, *JAPAN’S POLITICAL MARKETPLACE* 9, 189 (1993); JENG-LIANG JULIAN KUO, *THE REACH OF THE PARTY -STATE ORGANIZING LOCAL POLITICS IN TAIWAN* 22, PH.D. THESIS, YALE (1995); James Scott, *Corruption, Machine politics, and political change*, 63 *AME. POL. SCI. REV.* (4) 1142 (1969); PAUL D. Hutchcroft, *The politics of privilege: assessing the impact of rents, corruption, and clientelism on third world development*, 45 *POL. STU.* 639.

elections for representatives at all levels. Thus, electoral clientelism and local factions exerted their considerable influence on a higher level of government.

The ROC government retreated to Taiwan in 1949 and reopened local elections in 1950. However, elections at the central level were suspended until 1991. The local elections in areas below the level of province during the 1950s initiated another irreversible sequence in Taiwan. Although the bureaucrats in the Taiwan Provincial Government attempted to restrain the financial demands of campaign activities and to suppress electoral clientelism by enacting the *Taiwan Provincial Election Regulatory Rules of 1950*, the ROC government chose partisan enforcement of the election and campaign finance rules so as to integrate existing local factions into its coalition. In the same manner that Shefter pointed out in the European context, the initial mobilization generated positive feedback, and “once entrenched, the dominant basis of political mobilization became difficult to dislodge.”³²⁸ In the case of Taiwan, the gap between campaign finance rules and electoral practices caused “asset specificity effects.” The KMT’s elites, local factions, candidates, vote brokers, and voters all adapted themselves and developed specific investment in the arrangements tied to existing electoral institutions and practices, which made alteration of the practices more difficult. Hence, electoral clientelism took root and adversely reshaped the revision and enforcement of campaign finance laws in Taiwan.

This chapter is divided into two periods. First, this chapter discusses the transitional period from Japanese colonial rule to the ROC regime (1945-1949), including the election in 1946 and the 228 Massacre, and their implications for electoral clientelism and campaign finance laws. This chapter then analyzes the mechanisms and the development of electoral

³²⁸ Martin Shefter, *Party and Patronage: Germany, England, and Italy*, 7 POL. & SOC. 414, 415 (1977).

clientelism, the evolution of campaign finance rules, and their interactions in the period of authoritarian rule and party-state regime (1949-1991).

I. The Establishment of the Electoral Institution and the Extension of the Republic of China's Election Laws into Taiwan (1945-1949)

After WWII, the Republic of China (ROC) began to rule Taiwan. As the regime shifted, Taiwan turned a new page away from the colonial rule era. The ROC government implemented the first general election under the SNTV election system in 1946. This election employed universal suffrage (both in mainland China and Taiwan) and was held to gather the National Assembly and frame the Constitution. The local elites actively participated in the political process and the existing local factions thrived, extending their power to the level of provincial government. However, the democratic process failed to establish a corruption-free government. The collapse of the command economy and prevalent corruption disappointed the Taiwanese and caused a local uprising in February 1947. The uprising, known as the 228 Massacre, was quickly suppressed by the ROC. Despite its quick suppression, the massacre planted seeds of ethnic animosity in Taiwanese society that have lasted for more than a half-century and have reshaped the landscape of local politics and local factions.

After the outbreak of the Chinese Civil War, the *Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion* (hereinafter Temporary Provisions) were enacted in 1948 to counter threats from the Communist Party (CCP). The ROC then suspended all elections and civil rights provisions in the ROC constitution. Taiwan thus endured a series of shifts between political regimes: from Japan to the ROC, and from constitutionalism to authoritarian rule.³²⁹

³²⁹ Wang Tay-Sheng (王泰升), *Taiwan zhan hou chuqi de zhengquan zhuan ti yu falu tixi de chengjie* (台灣戰後初期的政權轉替與法律體系的承接) [*The Transition of Legal Systems in the Early Period of Postwar Taiwan, 1945–1949*], 29 NTU L. REV. vol.1, 1, 1–90 (1999).

A. The Regime Shift from Japanese Colonial Rule to the ROC-KMT Regime

After WWII, on the mainland, the ROC faced internal difficulties in recovering from WWII as well as external challenges from the CCP. To strengthen its legitimacy in China, the ROC held national elections in 1946 and implemented the ROC Constitution in 1947, incorporating those electoral politics and laws into its new territory, Taiwan.

After assuming authority over Taiwan in 1945, the ROC regime adopted a two-fold strategy to restore social order and strengthen its legitimacy: the command economy first sought to control the production and distribution of all goods and services and then establish universal suffrage at local assembly elections.³³⁰ ROC's President Chiang Kai-Shek dispatched General Chen Yi to serve as the first Governor of the Taiwan provincial administrative executive office.³³¹ In furtherance of the command economy, Governor Chen confiscated property owned by the Japanese.³³² As seen in the previous analysis in chapter 1, section III A, the major enterprises were primarily transformed into state- or party-owned enterprises.³³³ Such policies led to dissatisfaction among the Taiwanese because of the accompanying corruption and inefficiency, presaging the uprising. The strategy also laid the

³³⁰ Taiwan sheng geji minyi jiguan chengli fangan (台灣省各級民意機關成立方案) [The guideline of the establishment of the democratic bodies in Taiwan Province]. See *id.* at 53; LI SHIAO-FENG (李筱峰), TAIWAN ZHAN HOU CHUQI DE MINYI DAIBIAO (台灣戰後初期的民意代表) [THE REPRESENTATIVES IN TAIWAN AFTER THE WWII] 26 (1993).

³³¹ Based on Taiwan's unique colonization history, the ROC granted the power of issuing the ordinance to the Governor of the Taiwan provincial administrative executive office. See: TÁIWĀN SHÈNG XÍNGZHÈNG ZHǎNGGUĀN GŌNGSHŭ TIÁOLI (台灣省行政長官公署條例) [Taiwan Province Chief Executive's Office Ordinance], enacted on Sept. 20, 1945.

³³² Taiwan jieguan jihua gangyao (台灣接管計畫綱要) [The acquisition outline of Taiwan], issued by the Investigative Committee on Taiwan (台灣調查委員會), under the Central Design Bureau in the KMT Supreme National Defense Council in March 1945. See Wang Tay-Sheng (王泰升), *Taiwan zhan hou chuqi de zhengquan zhuan ti yu falu tixi de chengjie* (台灣戰後初期的政權轉替與法律體系的承接) [The Transition of Legal Systems in the Early Period of Postwar Taiwan, 1945-1949], 29 NTU L. REV. vol. 1, 14 (1999).

³³³ Cheng Tun-jen, *Transforming Taiwan's Economic Structure in the 20th Century*, 165 CHINA QUARTERLY 19 (2001).

foundation for the KMT's property empire, which had profound implications for Taiwanese politics and campaign finance rules later on.

B. The First Universal Suffrage Election in Taiwan in 1946 and the Perpetuation of Local Factions

In stark contrast to its failed economic policies, the ROC successfully held the first election with universal suffrage³³⁴ in 1946 for representatives of township consultative councils.³³⁵ The election aimed to solidify the ROC regime by gaining the support of the local bourgeoisie and local factions that had existed prior to the era of Japanese colonial rule,³³⁶ and to precede the commencement of the National Constituent Assembly, which was expected to take place on May 5, 1946.³³⁷ Before the end of WWII, the ROC issued the “*Outline of Taking over Taiwan Province*”³³⁸ (the Outline). Pursuant to article 2, section 4 of the Outline, the ROC had to facilitate local self-government soon after its acquisition of Taiwan. Article 5 of the Outline further provides that “all statutes and laws automatically are applied to Taiwan.”³³⁹

³³⁴ Taiwan sheng geji minyi jiguan chengli fangan (台灣省各級民意機關成立方案) [The guideline of the establishment of local democratic bodies in Taiwan province], effective on Dec 26, 1945.

³³⁵ As the political regime shifted in 1945, local governments in Taiwan also transitioned to the ROC legal system. The level of the GGT was equivalent to the province in Taiwan, the level of the prefecture was equivalent to a county, the level of a city was equivalent to the county-controlled city, and the level of town and village was equivalent to an urban or rural township.

³³⁶ CHAOQIN HUANG, WO DE HUI YI (我的回憶) [MY MEMORY] 135 (1989); Chen Ming-tong & Lin Jih-wen (陳明通、林繼文), *Taiwan difang xuanju de qi yuan yu guojia shehui guanxi zhuanbian* (台灣地方選舉的起源與國家社會關係轉變) [*The origin of Taiwan's local election and the transformation of state-society relations*], in LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (*LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT*) 23 (Chen Ming-tong & Zheng Yong-nian eds. 1994).

³³⁷ The opening of the National Constituent Assembly was delayed to Nov. 15, 1946, because of the bargain between the KMT and CCP.

³³⁸ Taiwan jieguan jihua gangyao (台灣接管計畫綱要) [The outline of the taking-over plan on Taiwan]. See also TAIWAN HISTORICA, TAIWAN SHENG TONG ZHI (台灣省通志稿) [TAIWAN'S HISTORY], VOL. 10, (1952).

³³⁹ *Id.*

As the war drew to a close and the regime change process began in 1945, the Outline became unrealistic. The ROC, similar to the Japanese imperial government in 1895, faced a tumultuous relationship between the central government and the Taiwan provincial administrative executive office. To address the practical and legal difficulties of the Outline, the ROC government enacted a new outline, entitled “*Taiwan Provincial Administrative Executive Office Organizational Outline*”³⁴⁰ (hereinafter New Outline), temporarily authorizing the chief executive of the Taiwan Provincial Administrative Office to issue ordinances, which would be substitutes for the statutes passed by the legislators.

Pursuant to the New Outline, the Taiwan Provincial Administrative Executive Office issued the “plan for establishing the assembly at all levels of Taiwan Province.”³⁴¹ All villages, towns, and counties were required to establish consultative councils by February 28,³⁴² March 15,³⁴³ and April 15 of 1946, respectively.³⁴⁴ The Taiwan Provincial Consultative Council would be opened on May 1, 1946.³⁴⁵

The elections for the village assemblies were held between February 16 and 28. These elections were notable because they were the first with universal suffrage and without any restrictions on the basis of property or gender in Taiwan. As a result of the elections’ universal suffrage, Taiwanese residents were enthused. Official records confirmed 2,393,142 Taiwanese residents registered to vote—equivalent to 91.8 % of all residents above the age of

³⁴⁰ *Táiwān-shěng Xíngzhèng Zhǎngguān Gōngshù Zūzhī Tiáolì* (臺灣省行政長官公署組織條例) [*Taiwan Provincial Administrative Executive Office Organizational Outline*], Article 1 and 2, enacted on Sept. 20, 1945.

³⁴¹ Taiwan Shěng Gèjí Mínyì Jīguān Chénglì Fāng’àn (台灣省各級民意機關成立方案) [plan of establishing an assembly at all levels of Taiwan Province], Dec. 26, 1945.

³⁴² Taiwan Shěng Gèjí Mínyì Jīguān Chénglì Fāng’àn (台灣省各級民意機關成立方案) [plan of establishing an assembly at all levels of Taiwan Province], article 3.

³⁴³ Taiwan Shěng Gèjí Mínyì Jīguān Chénglì Fāng’àn (台灣省各級民意機關成立方案) [plan of establishing an assembly at all levels of Taiwan Province], article 5.

³⁴⁴ Taiwan Shěng Gèjí Mínyì Jīguān Chénglì Fāng’àn (台灣省各級民意機關成立方案) [plan of establishing an assembly at all levels of Taiwan Province], article 6.

³⁴⁵ Taiwan Shěng Gèjí Mínyì Jīguān Chénglì Fāng’àn (台灣省各級民意機關成立方案) [plan of establishing an assembly at all levels of Taiwan Province], article 7.

twenty—and more than 30,000 residents passed the examination to be candidates.³⁴⁶ Thus, 7,078 village-ship representatives were elected in February 1946; and those village-ship representatives elected 523 county consultative councilors in March. Those county councilors ultimately elected thirty Taiwan Consultative Provincial Councilors, from among 1,180 candidates.³⁴⁷

The highest local legislative body, the Taiwan Provincial Consultative Council, was composed of thirty members, elected on April 15 by all county consultative councilors. Looking at the checks and balances, the Taiwan Provincial Consultative Assembly was only an advising institution; it did not possess veto power. Despite this institutional limit, the opening of the Provincial Consultative Assembly on May 1 was viewed as the fruition of the self-government movement that had started with the Petition Movement for a Taiwanese Parliament (1921–1934). Many viewed this accomplishment as the turning of a new page in Taiwanese democracy.³⁴⁸

Although the regime had shifted and the number of voters had dramatically increased, from the perspective of Taiwanese local elites, the election of 1946 was an extension of the election for the town-village representatives of 1935 and 1939. First, the electoral institution remained as the SNTV system that was adopted by the Japanese colonial government in

³⁴⁶CHENG TZE (鄭梓), *TAIWAN YIHUI ZHENGZHÌ SISHI NIAN* (台灣議會政治四十年) [THE PARLIAMENTARY POLITICS IN TAIWAN FOR FORTY YEARS] 56 (1987).

³⁴⁷ Under Art 1 of the Taiwan sheng yihui zuzhi tiaoli (台灣省參議會組織條例) [Taiwan Provincial Consultative Council Organization Act], 17 provincial consultative councilors should be elected. But according to the Order of the Executive Yuan, the number of Taiwan Provincial Consultative member should be extended to 30. (節一字 8458 號指令), issued on March 30, 1946.

³⁴⁸ Cheng Tze (鄭梓), *Bianqian shidai li de yige guodu xing daiyi jigou-taiwan sheng cun yihui jueyi an zhi lishi fenxi (1946-1951)* (變遷時代裡的一個過渡型代議機構—台灣省參議會決議案之歷史分析(1946-1951)) [A representative institution - in a transitional era, a historical analysis of the resolutions of the Taiwan Provincial Consultative Assembly from 1946 to 1951], 6 TUNGHAI UNIVERSITY HISTORY JOURNAL 147, 147-224 (1984); CHENG TZE (鄭梓), *TAIWAN SHENG CAN YIHUI SHI YANJIU* (台灣省參議會史研究) [A HISTORICAL ANALYSIS OF TAIWAN PROVINCIAL CONSULTATIVE ASSEMBLY] (1984); CHENG TZE (鄭梓), *TAIWAN YIHUI ZHENGZHÌ SISHI NIAN* (台灣議會政治四十年) [THE PARLIAMENTARY POLITICS IN TAIWAN FOR FORTY YEARS] (1987).

Taiwan between 1935 and 1939. The ROC government in both mainland China and Taiwan also adopted that system in 1946.³⁴⁹

Second, the electoral results and the composition of the first county and provincial consultative members also indicated the continuity of the Taiwanese local elites' power. A close review of the members' backgrounds shows that 442 of the 1,180 candidates nominated by the provincial consultative members (37.6%) possessed the experience of having served as consultative councilors in the Japanese colonial era. Furthermore, 243 of the 523 county consultative councilors (46.5%) had been public servants for the Japanese colonial government. The reelection rates of prefecture consultative council, city consultative council, and the town-village consultative council were respectively 52.3%, 34.2%, and 47.15% between 1921 to 1945. With regard to their educational and familial backgrounds, more than 46% of the Taiwan Provincial Consultative councilors possessed a bachelor's degree, and 80% were from landowning or intellectual families. Thus, based on those quantitative data, it is safe to conclude that the regime shift did not significantly impact the continuation of the power of Taiwanese local elites and local factions.³⁵⁰

³⁴⁹ *Id.*

³⁵⁰ Chen Ming-tong & Lin Jih-wen (陳明通、林繼文), *Taiwan difang xuanju de qi yuan yu guojia shehui guanxi zhuanbian* (台灣地方選舉的起源與國家社會關係轉變) [*The origin of Taiwan's local election and the transformation of state-society relations*], in LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (*LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT*) 42-44 (Chen Ming-tong & Zheng Yong-nian eds. 1994); Chen Ming-tong & Nai-teh Wu (陳明通、吳乃德), *Zhèngquán zhuànyí hé jīng yīng liúdòng: Taiwan difāng zhèngzhì jīng yīng de lìshǐ xíngchéng* (政權轉移和菁英流動：台灣地方政治菁英的歷史形成) [*The Regime Shift and the Flow of the Elites: the Formation of the Local Political Elites in Taiwanese History*], in TAIWAN GUANGFU CHUQI LISHI (台灣光復初期歷史) [THE TAIWAN'S HISTORY IN THE EARLY PERIOD OF POSTWAR] 223 (Lai Jeh-hang (賴澤涵) ed., 1993); LI XIAOFENG (李筱峰), *TAIWAN ZHANHOU CHUQI MINYIDAIBIAO* (台灣戰後初期的民意代表) [*MEMBERS OF THE REPRESENTATIVE ORGANS IN THE EARLY PERIOD AFTER THE WWII*] 132, 134 (1986); BRUCE JACOBS, *LOCAL POLITICS IN A RURAL CHINESE CULTURAL SETTING: A FIELD STUDY OF MAZU TOWNSHIP, TAIWAN* 115 (1980).

Third, more Taiwanese local elites were promoted than had been in the Japanese colonial government.³⁵¹ The outcome of 1946 election could be viewed as the honeymoon period between the ROC government and the Taiwanese local elites and factions.³⁵²

C. The 228 Massacre and its Implications in the Development of Local Factions

Unfortunately, a fair election and representative democracy failed to bring about corruption-free government in Taiwan. Unsatisfied with the ROC government's prevailing corruption and ethnic discrimination,³⁵³ the Taiwanese people, accustomed to the Japanese colonial government's honest services, began an uprising on February 28, 1947. The uprising was violently suppressed by the ROC government, leading to the deaths of thousands of civilians and solidifying a long-lasting ethnicity-based schism in Taiwanese society.³⁵⁴ After the 228 Massacre, arrests and detentions of the innocent were still common, and those steps were afforded legal justification by Martial Law of 1947, which was initially *declared* by the chief executive of Taiwan Provincial Administrative Office on February 28, 1947, the same

³⁵¹ *Id.*

³⁵² Chen Ming-tong & Lin Jih-wen (陳明通、林繼文), *Taiwan difang xuanju de qi yuan yu guojia shehui guanxi zhuanbian* (台灣地方選舉的起源與國家社會關係轉變) [*The origin of Taiwan's local election and the transformation of state-society relations*], in LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (*LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT*) 45 (Chen Ming-tong & Zheng Yong-nian eds. 1994).

³⁵³ At the department level within the provincial government, Mainlanders outnumbered Taiwanese 19 to 1. Around 36,000 Taiwanese employees of the Japanese colonial government were not retained, their positions being replaced by Mainlanders with lower qualification.

³⁵⁴ The 228 Massacre initially began as a protest in Taipei against the police's abuse of its power, starting on February 27, 1947. The protest spread across the whole island and became a popular uprising against the public corruption and economic mismanagement. However, the uprising was violently suppressed by the ROC government in March. The number of deaths was estimated from 18,000 to 28,000. After the incident, the ROC government declared martial law. In the next 40 years, thousands of people vanished, died, or were imprisoned without a fair trial. See WAKABAYASHI MASAHIRO (若林正文), ZHAN HOU TAIWAN ZHENGZHI SHI: ZHONGHUA MINGUO TAIWAN HUA DE LICHENG (戰後臺灣政治史：中華民國臺灣化的歷程) [*TAIWAN'S POSTWAR POLITICAL HISTORY: A HISTORY OF THE REPUBLIC OF CHINA IN TAIWAN*], at 11, 57 (2008); Tillman Durdin, *Formosa killings are put at 10,000*, N.Y. TIMES, Mar. 29, 1947, available at <http://www.taiwandc.org/hst-1947.htm>; THE MEMORIAL FOUNDATION OF 228 (二二八事件紀念基金會), ERERBA SHIJIAN ZEREN GUIISHU YANJIU BAOGAO (二二八事件責任歸屬研究報告) [*RESEARCH REPORT ON RESPONSIBILITY OF 228 MASSACRES*] (2006). See <http://issuu.com/naiweicheng/docs/228-01?e=5196527/2643089>

day when the uprising started.³⁵⁵ Although the chief executive of Taiwan Provincial Administrative Office ended that initial martial law about two and a half months later, it was soon followed by a second Martial law, issued in 1949,³⁵⁶ which remained in effect all the way until 1987. These human rights violations perpetrated by the ROC government were known colloquially as the “white terror.”

The 228 Massacre and the onset of the “white terror” brought the honeymoon period between the Taiwanese elites and the KMT-ROC government to an end.³⁵⁷ In the 228 Massacre, four out of the thirty Taiwan Provincial Consultative Assembly members were killed or detained by the ROC government, and another seven died or resigned. These losses constituted 47% of the total assembly members. Furthermore, eleven out of the twenty-six Taipei City Councilmen were killed or imprisoned by the ROC government, resulting in a loss of 42.6% of the councilmen. After the massacre there was great discontinuity in the Taiwanese political elite due to voluntary withdrawals or forced purges. The repression caused the existing Taiwanese local elites to coordinate, albeit reluctantly, with the KMT-led ROC government.³⁵⁸

The composition of the Taiwan Provincial Consultative Assemblers was vastly different between the first and second terms. In the first term, approximately 80% of the members

³⁵⁵ The first martial rule in Taiwan was adopted on Feb. 28, 1947, soon after the uprising. The new Taiwan provincial governor, Wei Tao-ming, ended martial rule on May 16. On the same date, the Taiwan administrative executive office was adjusted to the Taiwan Provincial Government.

³⁵⁶ Taiwan's Provincial Governor Chen Cheng issued Martial Law, effective on May 20, 1949, and lifted on July 15, 1987. It remained for 38 years in Taiwan and justified the ROC government to curtail civil and political liberties under the rationale of national security.

³⁵⁷ STEVEN E. PHILLIPS, *BETWEEN ASSIMILATION AND INDEPENDENCE: THE TAIWANESE ENCOUNTER NATIONALIST CHINA, 1945-1950* (2003).

³⁵⁸ Chen Ming-tong (陳明通), *Riju Beijing yu dalu jingyan -- lun yingxiang sheng yihui jingying xingcheng yu bianqian de liang xiang lishu yinsu* (日據背景與大陸經驗—論影響省議會菁英形成與變遷的兩項歷史因素) [*The experiences of Japanese colonial rule and the Mainland China: the two historical factors about the formation and transformation of elites in the Taiwan Provincial Assembly*], TAIWAN SHENG YIHUI CHENGLI WUSHI ZHOUNIAN JINIAN ZHUANKAN (台灣省議會成立五十週年紀念專刊) [THE SPECIAL ISSUE FOR THE FIFTIETH ANNIVERSARY OF TAIWAN PROVINCIAL ASSEMBLY] 311, at 346 (1996).

were from the landlord class or bourgeoisie with higher education. Around one-fourth of the members had served the GGT, and one-third had actively joined the TPPM.³⁵⁹ After the 228 Massacre, due to a series of persecutions, the composition of the Taiwan Provincial Consultative Assembly changed significantly with regards to education level and ethnic background. In the aftermath of the massacre, the ROC government selected mainlanders or Taiwanese citizens who were obedient to the ROC regime to fill the vacant seats, causing the average education level of members to drop.³⁶⁰

After the KMT's regime's loss in the Chinese Civil War of 1949, the ROC moved its central government to Taiwan. Taiwan's status as a peripheral territory of the ROC lasted only four years. The 228 Massacre and the loss of the Civil War led to long-lasting consequences and the window for smoothly transferring the ROC's legitimacy to the island of Taiwan was closed. The 228 Massacre sowed the seeds of animosity between the two ethnic groups: the Taiwanese and the Mainlanders.³⁶¹ Before the Massacre, most Taiwanese expected to return to the motherland, China, and viewed themselves as no different than mainland Chinese.³⁶² After the Massacre, the KMT viewed ethnic Taiwanese with distrust. This ethnic cleavage created a long-term dilemma for the KMT's elites who now had to choose between calling elections or relinquishing power.

³⁵⁹ Wang Tay-Sheng (王泰升), *Taiwan zhan hou chuqi de zhengquan zhuan ti yu falu tixi de chengjie* (台灣戰後初期的政權轉替與法律體系的承接) [*The Transition of Legal Systems in the Early Period of Postwar Taiwan, 1945-1949*], 29 NTU LAW REV. vol.1, 1, 61 (1999).

³⁶⁰ CHENG TZE (鄭梓), TAIWAN YIHUI ZHENGZHì SISHI NIAN (台灣議會政治四十年) [THE PARLIAMENTARY POLITICS IN TAIWAN FOR FORTY YEARS] 99 (1987).

³⁶¹ Taiwanese, pronounced in Mandarin Chinese as *benshengren*, refers to descendants of people native to Taiwan before 1945. Mainlanders, pronounced in Mandarin Chinese as *waishengren*, refers to descendants of the people that moved from China to Taiwan after 1945. The National ID card set the column of the native province and kept such official ethnic classification until 1996.

³⁶² PENG MING-MIN (彭明敏), *ZIYOU DE ZIWEI: PENG MINGMIN HUIYILU* (自由的滋味：彭明敏回憶錄) [A TASTE OF FREEDOM—MEMOIRS OF A FORMOSAN INDEPENDENCE LEADER PENG MING-MIN] 60, 60-64 (2009); LUNG YINGTAI (龍應台), *DAJIANG DAHAI* (大江大海) [BIG RIVER, BIG SEA] 254, 272, 283 (2009).

D. The Promulgation of the ROC Constitution and the Short era of Constitutionalism

The 228 Massacre in Taiwan revealed the difficulties that the ROC was facing, from post-war recovery to challenges from the CCP in Mainland China. The ROC decided to move toward a system of constitutionalism to gain the legitimacy needed to rule all of China. The ROC government held an election for members of the Constituent National Assembly in Taiwan on October 31, 1946.³⁶³ The members of the Constituent National Assembly, who represented the residents of Taiwan, were elected by the Taiwan Provincial Consultative Assemblers. The Constituent National Assembly ratified the ROC Constitution³⁶⁴ on December 25, 1946, which came into effect one year later. Thus, the ROC government held elections to the National Assembly in November 1947³⁶⁵ and the Legislative Yuan in January 1948.³⁶⁶ The elections were carried out under SNTV system and open to all of China. In the election, 27 out of 3045 National Assembly members, and 8 out of 773 legislators were elected in Taiwan.³⁶⁷

The ROC Constitution was effective in China for less than one year. After the eruption of the Chinese Civil War on the Mainland, the ROC enacted *the Temporary Provisions* in May 1948 to counter the CCP. The *Temporary Provisions* expanded the presidential

³⁶³ Guomn Dahui Xuanju Fa (國民大會選舉法) [The Election and Recall Act on National Assembly Members] was enacted in 1936, there were no seats for Taiwanese politicians when Taiwan was not the territory of the ROC. Thus, the members of National Constituent Assembly in Taiwan were elected in 1946. The total number of representatives from Taiwan was 18.

³⁶⁴ The Constituent National Assembly was to ratify the Bill of Constitution, the election of which was held in 1936 in the areas the ROC controlled. Taiwan and the North East of China were controlled by Japan. As WWII erupted in 1937, the Constituent National Assembly was delayed to 1946. To correspond to the new political landscape and controlled areas, the ROC government held elections in Taiwan to produce the Assembly members representing Taiwanese residents. Simultaneously, the KMT and CCP had a long negotiation about the effectiveness of the election in 1925 and the quota of CCP's representatives. Ultimately, the negotiations caused a gridlock and then the China Civil War erupted in March 1947.

³⁶⁵ The Amendment of Guomn Dahui Xuanju Fa (國民大會選舉法) [The Election and Recall Act on National Assembly Members], enacted on March 31, 1947.

³⁶⁶ Lifa Weiyuan Xuanju Bamian Fa (立法委員選舉罷免法) [The Election and Recall Act on Legislators], enacted on March 31, 1947.

³⁶⁷ Wang Tay-Sheng (王泰升), *Taiwan zhan hou chuqi de zhengquan zhuan ti yu falu tixi de chengjie* (台灣戰後初期的政權轉替與法律體系的承接) [The Transition of Legal Systems in the Early Period of Postwar Taiwan, 1945-1949], 29 NTU LAW REV. vol.1, 51 (1999).

emergency power and suspended provisions relating to civil rights within the ROC Constitution and elections. Under the authorization of the *Temporary Provisions*, martial law was applied to Taiwan in May 1949, signaling the end of Constitutionalism and the start of authoritarian rule.³⁶⁸ Despite enacting the *Temporary Provisions* to respond to the emergency, the promulgation of the ROC Constitution and its requirement of democracy provided an ideological bedrock for the subsequent local elections and the opposition parties in Taiwan.

II. The Authoritarian Rule and Party-state Regime at Central Government (1949-1991)

As Lipset and Rokkan have suggested, “key historical junctures produce major political cleavages.”³⁶⁹ In December 1949, the ROC government retreated to Taiwan after its complete defeat in the Chinese Civil War. Following that defeat, Taiwan was no longer a periphery or a colony of an empire or a big nation. The legal system was self-received, rather than being transplanted from a remote center, and electoral institutions and campaign finance rules were no exception.

The ROC and its ruling party, the Kuomintang (KMT),³⁷⁰ created a party-state authoritarian regime. As Pierson has observed, “political actors could impose their preference on others by agenda control or ideological manipulation setting.”³⁷¹ Positive feedback may

³⁶⁸ Martial Law was enacted on Dec 10, 1948, and applied to most parts of China, but Taiwan was not included in. On May 19, Taiwan Sheng Jieyan Ling (台灣省戒嚴令) [Order of Martial Law], issued by Taiwan Garrison Commander (台灣省警備總司令) on May 19, 1949, and effective on May 20. See Wang Tay-Sheng (王泰升), *Taiwan zhan hou chuqi de zhengquan zhuan ti yu falu tixi de chengjie* (台灣戰後初期的政權轉替與法律體系的承接) [*The Transition of Legal Systems in the Early Period of Postwar Taiwan, 1945-1949*], 29 NTU LAW REV. vol.1, 68 (1999).

³⁶⁹ Seymour Martin Lipset & Stein Rokkan, *Cleavage Structures, Party Systems and Voter Alignments: An Introduction*, in PARTY SYSTEMS AND VOTER ALIGNMENTS 1 (Lipset and Rokkan, eds., 1967).

³⁷⁰ The KMT established the ROC in 1912. The KMT gained recognition as China’s legitimate government after fighting against warlords from 1925 to 1928. Then the KMT joined the Allied forces in WWII against Japan.

³⁷¹ PAUL PIERSON, POLITICS IN TIME 36 (2011).

also serve to increase asymmetries of power and render power relations less visible.³⁷² The ROC-KMT regime reformed its administrative structures to address not only the external risks of being invaded by the CCP but also the internal risks of being overthrown by the alienated local Taiwanese. Those reforms included creating a party-state system, suspending elections for national democratic bodies³⁷³ to insulate the emigrant regime and national elites, and dominating local elections by mobilizing existing local factions via electoral clientelism and threats. Given such reforms, the KMT successfully founded the bedrock of its authoritarian regime by dominating the ROC government, incorporating social associations, and manipulating local factions through threats and distributing interests and privilege.

A. The ROC's Administrative Structures in Taiwan

After 1949 the ROC government lost most of its territory in mainland China. The claimed territory under the ROC Constitution was 11,420,000 square kilometers, a sharp contrast to the 36,193 square kilometers actually in its control.³⁷⁴ The territory issue posed two problems to the legitimacy of the ROC government. First, the ROC, which moved to Taiwan in 1949, was in an incomplete state. As a result, recovering the territories of mainland China and suppressing communist rebellions were imperatives to the ROC government. This rationale justified prolonging the *Temporary Provisions* and martial law, and suspending elections of the national democratic bodies. Second, the Taiwanese provincial government's controlled territory nearly overlapped with that of the ROC government. Although, in theory, Taiwan is one of the provinces of the ROC, since 1949 the jurisdiction of Taiwan provincial government has made up nearly all of the ROC's de facto territory. Given such controversy, a

³⁷²*Id.*

³⁷³National Assembly, and the Control Yuan. The Legislative Yuan and National Assembly are open to an election with universal suffrage. But the Control Yuan's members re-elected by local assembly members.

³⁷⁴ Art. 4 of the ROC Constitution: "The territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly."

two-level government—provincial and central government—effectively governed Taiwan from 1949 to 1998.³⁷⁵

To address such disputes, the ROC government blocked the bill of the “*General Law for the Provincial and County Self-government*” in the Legislative Yuan.³⁷⁶ As an alternative, the Taiwan Provincial government issued “*the Ordinance of Local Self-government in Counties and Cities of Taiwan Province*”³⁷⁷ to block the election of the Taiwan Provincial Governor, and assigned the chair of the Taiwan Provincial Government to avoid potential jurisdictional and political conflicts between the central and provincial governments.³⁷⁸ Under the ordinance, the ROC government called the direct elections of the (temporary) Taiwan Provincial Assembly, county assemblies, and township councils under the SNTV system, to balance its territorial claim, the constitutional requirement of democracy, and the international pressures.

³⁷⁵ Sec 1, Art 9 of the Amendment of the Constitution (1997):

The system of self-government in the provinces and counties shall include the following provisions, which shall be established by the enactment of appropriate laws, the restrictions in Article 108, Paragraph 1, Subparagraph 1; Article 109; Article 112 through Article 115; and Article 122 of the Constitution notwithstanding: (1) A province shall have a provincial government of nine members, one of whom shall be the provincial governor. All members shall be nominated by the president of the Executive Yuan and appointed by the president of the Republic.

³⁷⁶ The bill of the Shěng xiàn zìzhì tōngzé (省縣自治通則) [*General Law for the Provincial and County Self-government*] went through the first and second reading before the general body of the legislature in March 1950. See: HUA-YUAN HSUEH, ZHÀN HÒU TÁIWĀN LÌSHǐ YUÈLĀN (戰後台灣歷史閱覽) [POST-WAR HISTORY OF TAIWAN] 84, 85 (2010); TAY-SHENG WANG, Táiwān fǎlù xiàndàihuà lìchéng: Cóng `nèidì yáncháng'dào `zìzhǔ jì shòu' (臺灣法律現代化歷程：從內地延長到自主繼受) [THE PROCESS OF LEGAL MODERNIZATION IN TAIWAN: FROM “THE EXTENSION OF MAINLAND” TO INDEPENDENT RECEPTION] 92 (2015).

³⁷⁷ Táiwān shěng gè xiàn shì shíshǐ dìfāng zìzhì gāngyào (台灣省各縣市實施地方自治綱要) [The Ordinance of the Local Self-government in Counties and Cities of Taiwan Province] of April 24, 1950. (臺灣省政府三十九府綜法字第 27506 號). In order to establish local self-government and the holding of election, the Taiwan provincial government issued such an administrative order.

³⁷⁸ The position of Taiwan Provincial Governor was open to the election in 1994, causing political problems in regard to the separation of power between two levels of the governments. Then, the Taiwan Provincial Government was deprived of autonomous power under the Art 9 of the Amendment of the Constitution.

B. Political Controls under Martial Law

After the promulgation of the Constitution in December 1947, the ROC was, at least in theory, a democracy. However, the *Temporary Provisions* of May 1948, which superseded the main provisions of the ROC Constitution, including separation of power and civil rights, proved otherwise. Following the *Temporary Provisions*, Taiwan was nominally governed by the ROC Constitution; however, in reality, Taiwan was under authoritarian rule.

The *Temporary Provisions* granted President Chiang Kai-Shek dictatorial authority to supplant the constitutional system of checks and balances. The *Temporary Provisions* skewed the balance of power toward the presidency by suspending the limits on the president's term, freezing the elections of national democratic bodies, and empowering the president to intervene in judicial procedures.

Furthermore, under the authority of the *Temporary Provisions*, *martial law*, effective in Taiwan since May 1949, directly applied to citizens. To enforce *martial law*, the Taiwan Garrison Command (TGC), a branch of the military, was empowered to detain dissidents, censor publications, surveil citizens, and oversee the local government's enforcement and other activities. Moreover, martial law restricted the public's rights to assembly³⁷⁹ and association, while also limiting the number of licenses issued for newspapers, radio stations, and television channels.³⁸⁰ Most notoriously, martial law established military trials for citizens accused of certain crimes, depriving them of due process of law.³⁸¹ From 1949 to

³⁷⁹ Article 3, Section 5 of Martial Law Ordinance (台灣省警備總司令部佈告戒字第壹號); Article 11, Martial Law (戒嚴法) (1949).

³⁸⁰ *Táiwān shěng jièyán qíjiān xīnwénzhǐ zázhi túshū guǎnzhi bànfǎ* (臺灣省戒嚴期間新聞紙雜誌圖書管制辦法) [*The Regulations on Publishing during the Period in which the Martial Law*] (1953).

³⁸¹ Article 8, Martial Law (戒嚴法) (1949). TIEN HUNG-MAO, *THE GREAT TRANSITION: POLITICAL AND SOCIAL CHANGE IN THE REPUBLIC OF CHINA*, 71 (1989). ("An estimated ten thousand cases involving civilians were decided in military trials from 1950 to 1986.")

1960, an estimated 2,000 people were sentenced to death, and 8,000 were jailed.³⁸² Up through the late 1980s, an additional 29,407 people were arrested, around 4,500 of whom were executed until the late 1980s.³⁸³ The *Temporary Provisions* and martial law created a climate of terror, leaving limited room for unapproved political activities and spurring the reluctance of local elites to participate in politics.

Moreover, martial law authorized the government to censor mass media. Thus, the ROC government could exclude any dissent from the mainstream media. Under authoritarian rule, all television stations were owned or operated by the ROC government or the KMT. The government curbed the establishment of any new newspapers. Moreover, the number of newspapers in circulation and the pages in each newspaper were limited. As the dissemination of information was absent, the harmful effects of electoral clientelism and local elites' corruption were not exposed to the public. The KMT paid a slight cost for implementing electoral clientelism as a mobilizing strategy to attract personal voters without concern over the loss of support.

In addition, *martial law* also banned the creation of new political parties. Up through the late 1970s, the formation of the Chinese Democratic Party (CDP) in 1960 was the only attempt made to form a new party and challenge the KMT regime. With the support of the ROC's leading intellectual, a liberal mainlander named Chen Lei, the magazine *Free China Fortnightly* was founded in ----- to promote democracy and fight communism. After a long period of observation and deliberation, Lei realized the local elections could be a chance to advance democratic goals. Lei began to actively coordinate with the local elites to form an

³⁸²LI HSIAO-FENG(李筱峰), TAIWAN SHI 100 JIAN DASHI XIA ZHAN HOU PIAN (台灣史 100 件大事下-戰後篇) [100 EVENTS IN TAIWANESE HISTORY, THE POST-WAR PART] 40 (1999).

³⁸³JAY TAYLOR (陶涵), JIANG JINGGUO CHUAN (蔣經國傳) [THE GENERALISSIMO'S SON: CHIANG CHING-KUO AND THE REVOLUTIONS IN CHINA AND TAIWAN] 231 (2000).

opposition party.³⁸⁴ The ROC-KMT regime could not allow any united front to challenge its legitimacy and quickly suppressed their gatherings.³⁸⁵ On September 4, 1960, the leader of the CDP, Lei, was arrested and indicted on the charge of promoting communist propaganda and harboring communists. Lei was subsequently sentenced to 10 years in prison under the instruction of General Chiang Kai-Shek.³⁸⁶ Although the CDP did not achieve its goal of promoting democracy, the idea of using local elections to challenge the KMT's authoritarian regime proved to be inspirational for future democratic activists.

C. The Establishment of Party-State System

As discussed in chapter 2, under Stokes' studies clientelism means that a party offers material benefits on the condition that the recipients offer their political support in return.³⁸⁷ One of the types of clientelism is patronage, referred to as the intra-party flow of benefits.³⁸⁸ As a result of classical research in political science, carried out by Nai-Teh Wu, the KMT in Taiwan established a "regime patronage system," which served as a "patron to distribute on an extensive scale material goods on a particularistic basis to the individuals in exchange for their political support."³⁸⁹ Before analyzing electoral clientelism and its interaction with campaign finance rules in Taiwan, this section carefully reviews the state and

³⁸⁴ LI SHIAO-FENG (李筱峰), *TÁIWĀN MÍNZHŭ YÙNDÒNG SÌSHÍ NIÁN* (台灣民主運動四十年) [FORTY YEARS OF TAIWAN'S DEMOCRACY MOVEMENT] 71 (1987); REN YUTE (任育德), *XIÀNG XIÀ ZHĀGĒN: ZHŌNGGUÓ GUÓMÍNDǍNG YŪ TÁIWĀN DÌFĀNG ZHÈNGZHÌ DE FĀZHĀN* (向下紮根：中國國民黨與台灣地方政治的發展 (1949-1960)) [TAKING ROOTS: THE DEVELOPMENT OF THE KMT AND LOCAL POLITICS IN TAIWAN] 413 (2008).

³⁸⁵ Chen Ming-tong, *infra* note 438, at 169.

³⁸⁶ FAN HONG (范泓), *LÉIZHÈN CHUÁN: MÍNZHŭ DE TÓNGXIÀNG* (雷震傳：民主的銅像) [LEI ZHEN BIOGRAPHY: A BRONZE STATUE OF DEMOCRACY] 340 (2013); WU NAI-TEH, *BAINIAN ZHUIQIU: TAIWAN MINZHU YUNDONG DE GUSHI*, VOL. 2. *Ziyóu de cuòbài* (百年追求-台灣民主運動的故事，第二卷：自由的挫敗) [HUNDRED YEARS OF PURSUIT- DEMOCRATIC MOVEMENT IN TAIWAN, VOL. 1: A FRUSTRATION OF LIBERTY] 181 (2013).

³⁸⁷ Susan C. Stokes, *supra* note 113, at 13.

³⁸⁸ *Id.* at 13, 14.

³⁸⁹ WU NAI-TEH, *infra* note 404, at 315.

party's apparatus at the central government level. The mechanism of electoral clientelism and its implications will be examined in the following sections.

According to the ROC Constitution, the positions of President,³⁹⁰ the national democratic bodies,³⁹¹ and the executive chiefs in three local government levels—provincial,³⁹² county,³⁹³ and town—are open for electoral competition. However, under the *Temporary Provisions* and the Council of Grand Justices' Interpretation of the ROC Constitution, the elections for democratic bodies of the central government were suspended.³⁹⁴ As a result, the KMT dominated all branches of the ROC government. In order to efficiently enforce its policy, the KMT reformed itself to centralize the power to its chair

³⁹⁰ Art 27 of the ROC Constitution: "The function of the National Assembly shall be as follows: 1. To elect the President and the Vice President."

³⁹¹ Art 26 of the Constitution:

The National Assembly shall be composed of the following delegates: 1. One delegate shall be elected from each hsien, municipality, or area of equivalent status. In case its population exceeds 500,000, one additional delegate shall be elected for each additional 500,000. Areas equivalent to hsien or municipalities shall be prescribed by law.

Art 64 of the ROC Constitution:

Members of the Legislative Yuan shall be elected in accordance with the following provisions: 1. Those to be elected from the provinces and by the municipalities under the direct jurisdiction of the Executive Yuan shall be five for each province or municipality with a population of not more than 3,000,000, one additional member shall be elected for each additional 1,000,000 in a province or municipality whose population is over 3,000,000.

³⁹² Art 113 of the ROC Constitution:

The Provincial Self-Government Regulations shall include the following provisions: 1. In the province, there shall be a provincial council. Members of the provincial council shall be elected by the people of the province. 2. In the province, there shall be a provincial government with a provincial governor who shall be elected by the people of the province. 3. The relationship between the province and the hsien. The legislative power of the province shall be exercised by the Provincial Council.

³⁹³ Art 123 of the ROC Constitution:

The people of the hsien shall, in accordance with law, exercise the rights of initiative and referendum in matters within the sphere of hsien self-government, and shall, in accordance with law, exercise the rights of election and recall of the magistrate and other hsien self-government officials.

³⁹⁴ See Sifayuan Dafaguan Huiyi (司法院大法官會議) [Council of Grand Justices: Constitutional Court], in 1954, Sifayuan Dafaguan Huiyi Jieshi Di 31 Hao (司法院大法官會議解釋第 31 號) [the Judicial Yuan No. 31 Interpretation] (hereinafter "SHIZI No. 31") (1954) (Taiwan). "[O]ur state has been undergoing a severe calamity, which makes re-election of the second term of both Yuans de facto impossible.... [B]efore the second-term Members are elected, convene and are convoked in accordance with the laws, all of the first-term Members of both the Legislative and Control Yuans shall continue to exercise their respective powers." Compared to the Legislative Yuan, the members of National Assembly did not face the difficulties of the term limits when Sec. 2 of Art. 28 of the ROC Constitution provides: "The term of office of the delegates to each National Assembly shall terminate on the day on which the next National Assembly convenes."

and the Central Standing Committee (CSC), and instructed its members to infiltrate and control the government, the military, and civic groups.

Under the leadership of General Ching Kai-shek, the KMT reformed its structure in 1950 to 1952³⁹⁵ and adopted a system of democratic centralism³⁹⁶ in order to counter the challenges from the CCP and suppress chronic internal conflicts among factions.³⁹⁷ After the reform, the highest body within the KMT was the CSC, whose members were primarily assigned or approved by the KMT's chair.³⁹⁸ Under such an arrangement, the party chair dominated the CSC. Below the CSC was the KMT's Central Committee (CC), below which were the local geographic or functional branches, which were embedded into the military and each level of the executive branch. The local geographic and functional branches were tasked with recruiting members and ensuring the obedient implementation of government policies. The lowest group within the KMT was the cell, whose activities were supervised by the CSC.³⁹⁹

After centralizing the party's powers, the KMT's chair dominated the KMT as a political machine which controlled the government, military, judicial branch, and Legislative Yuan. From 1949 to 2000, the ROC's President generally served as chair of the KMT. KMT members occupied the most crucial governmental positions and the government only carried

³⁹⁵Hsu Fu-ming (許福明), *ZHONGGUO GUOMINDANG DE GAIZAO (1950-1952): JIAN LUN QI DUI ZHONGHUA MINGUO ZHENGZHI FAZHAN DE YINGXIANG (中國國民黨的改造 1950-1952: 兼論其對中華民國政治發展的影響)* [The Reform of the KMT from 1946 to 1952, and Its Implication to the ROC's Political Development] (1986).

³⁹⁶Bruce Dickson, *Democratization in China and Taiwan: The Adaptability of Leninist Parties* (1997).

³⁹⁷Chen Ming-tong (陳明通), *Paixi zhengzhi yu chen yi zhitai lun (派系政治與陳儀治台論)* [*The factional politics and the Chen Yi's governing on Taiwan*], in *TAIWAN GUANGFU CHUQILISHI (台灣光復初期歷史)* [The Taiwan's History in the Early Period of Postwar] 223 (Lai Jeh-hang (賴澤涵) ed., 1993).

³⁹⁸Wakabayashi Masahiro (若林正文), *Zhan Hou Taiwan Zhengzhi Shi: Zhonghua Minguo Taiwan Hua de Licheng (戰後臺灣政治史：中華民國臺灣化的歷程)* [Taiwan's Postwar Political History: A History of the Republic of China in Taiwan] 104 (2008).

³⁹⁹Wakabayashi Masahiro (若林正文), *Taiwan: Fenlie Guojia yu Minzhu Hua (台灣：分裂國家與民主化)* [Taiwan: A Divided Nation and Democratization] 76 (1992).

out policies developed by the KMT's chair or the CSC.⁴⁰⁰ The KMT set up functional branches to supervise the executive and judicial branch officials, and monitored their implementation of the party's instructions and obedience.⁴⁰¹ All KMT legislators were required to join the caucus, which functioned as a rubber stamp for the CSC. As the party-state system functioned well, the line between the government and the KMT was blurred, and the governmental power of making independent public policy was almost nonexistent.

The KMT also controlled the judicial system in Taiwan. This control was brought about in several ways. Important positions, including the deans of the court and general attorney office, were occupied primarily by KMT members, and certain high-profile cases had to be reviewed and approved by the president. Consequently, the partisan judiciary became an instrument used to suppress dissent and discipline disobedient members, playing an essential role in allowing the KMT to maintain its electoral clientelism.

In addition to its substantial domination of the government, the KMT also controlled state- and party-owned enterprises and civil organizations through subtle means. This policy was compatible with the KMT's core ideology, *the Three People Principle*, which the ROC government applied in several aspects of society. First, as the analysis in chapter 1, section III A shows, it was either the government or the KMT who managed the public sector and state-owned businesses, which were mainly taken from the Japanese colonial government or imported from the mainland when the ROC retreated in 1949. Second, in some sectors, distribution of resources and services followed government policy, rather than free market principles. Thus, as the market did not function optimally, the clientelism network emerged

⁴⁰⁰ WAKABAYASHI MASAHIRO (若林正文), ZHAN HOU TAIWAN ZHENGZHI SHI: ZHONGHUA MINGUO TAIWAN HUA DE LICHENG (戰後臺灣政治史：中華民國臺灣化的歷程) [TAIWAN'S POSTWAR POLITICAL HISTORY: A HISTORY OF THE REPUBLIC OF CHINA IN TAIWAN] 104, 104-108 (2008).

⁴⁰¹ Hu Fu (胡佛), *Weiquan tizhi de san zhuang jiegou* (威權體制的傘狀結構) [*The ROC's authoritarian regime and its umbrella structure*], 8 21ST CENTURY 36 (Dec. 1991).

to distribute state resources and privileges by informal interaction and exchanges, which institutionalized the holders' hierarchy and power. This institutionalized distribution system smoothly integrated the pre-existing Taiwanese local factions, who served as the KMT's political mobilization machines in the local elections. The mechanism of such distribution will be analyzed in the following sections.

Apart from manipulating the economic field through economic regulations and its distribution policy, the KMT also focused on incorporating social organizations. Until the late-1970s, nearly all civil societies and social organizations, including labor unions, farmers' associations, irrigation associations, and women's associations, were paralyzed or were controlled by the party-state regime to meet social needs and facilitate political mobilization.⁴⁰² The party-state regime subsidized those groups and monitored their internal governance. The cadre of those groups, mostly from the KMT, scrutinized personnel decisions, budgets, and policy. Their function was to more effectively convey the KMT's messages to their members, rather than to serve their members' interests. Those corporatist organizations played an effective role in the KMT's electoral mobilization and legitimacy. Therefore, under those innovative arrangements, the KMT paralyzed the opposition parties and civil associations and became the only dominant political force in Taiwan.

III. Elections at the Local Government Level and the Development of Electoral Clientelism (1950-1969)

Following the completion of its internal reform in 1952, the KMT transformed itself into an efficient political machine that centralized power in the hands of its Chair, who controlled

⁴⁰²LIN CHIA-LUNG, *PATHS TO DEMOCRACY: TAIWAN IN COMPARATIVE PERSPECTIVE*, PH.D. DISSERTATION, YALE U. 113 (1998); REN YUTE (任育德), *supra* note 384, at 181, 308 (2008).

the government from the central to the local levels.⁴⁰³ This raises the following question: why did the ROC even hold elections? Given the backdrop of Taiwanese history, the Cold War, and political calculations, holding elections was a strategic move. The elections established the ROC's legitimacy in Taiwan to a certain extent.⁴⁰⁴ Internationally, the elections allowed the ROC to maintain the label of "free China" to retain diplomatic recognition and foreign aid,⁴⁰⁵ mainly from the United States, during the Cold War.⁴⁰⁶ Domestically, elections strengthened the KMT's control over the alienated island.⁴⁰⁷ The KMT-led ROC government adopted an innovative strategy to secure its authoritarian and emigrant regime without relinquishing power: establishing a dualist structure of political elites.

A. The Dualist structure of Political Elites

According to Nai-Teh Wu's studies, in the authoritarian rule era, the political elites in Taiwan were segregated into two clear-cut groups: the national elite group and the local elite group.⁴⁰⁸ Each group had its own hierarchy and distinct norms as to the distribution of interests. These groups were highly segregated; their members were rarely part of both groups.⁴⁰⁹

⁴⁰³ WAKABAYASHI MASAHIRO (若林正文), ZHAN HOU TAIWAN ZHENGZHI SHI: ZHONGHUA MINGUO TAIWAN HUA DE LICHENG (戰後臺灣政治史：中華民國臺灣化的歷程) [TAIWAN'S POSTWAR POLITICAL HISTORY: A HISTORY OF THE REPUBLIC OF CHINA IN TAIWAN] 104, 104-108 (2008).

⁴⁰⁴ WU NAI-TE (吳乃德), THE POLITICS OF A REGIME PATRONAGE SYSTEM: MOBILIZATION AND CONTROL WITHIN AN AUTHORITARIAN REGIME, PH.D. DIS., POL. SCI., U. OF CHI. (1987).

⁴⁰⁵ CHANG YUFA (張玉法), ZHONGHUÁ MINGUÓ SHǐ GǎO (中華民國史稿) [THE HISTORY OF THE ROC] 522 (1998).

⁴⁰⁶ See WU GUÓZHĒN, CÓNG SHÀNGHǎI SHǐZHǎNG DÀO TÁIWĀN SHĒNG ZHǔXÍ: WÚGUÓZHĒN KǒUSHÙ HUÍYǐLÙ (從上海市長到台灣省主席：吳國楨口述回憶錄) [FROM SHANGHAI MAYOR TO TAIWAN PROVINCE CHAIRMAN: WU GUOZHEN'S MEMOIR] 121, 122 (1999).

⁴⁰⁷ *Id.*

⁴⁰⁸ WU NAI-TE, *supra* note 404, at 176; WAKABAYASHI MASAHIRO (若林正文), ZHAN HOU TAIWAN ZHENGZHI SHI: ZHONGHUA MINGUO TAIWAN HUA DE LICHENG (戰後臺灣政治史：中華民國臺灣化的歷程) [TAIWAN'S POSTWAR POLITICAL HISTORY: A HISTORY OF THE REPUBLIC OF CHINA IN TAIWAN] 109 (2008).

⁴⁰⁹ Arthur Lerman, *National Elite and Local Politicians in Taiwan*, 71 AME. POL. SCI. REV. (4) 1406, 1422 (1977).

National elites were those “who occupied prominent and/or important positions in the national representative or administrative organs, the top echelons of the ruling party, the military and the security forces.”⁴¹⁰ They had important power over national policies and choosing national leaders. Before the KMT carried out its Taiwanization policy in the 1970s, very few local politicians were brought into the circle of the national elites.

The local elites were “those who actively participated in the local level politics”⁴¹¹ from the era of Japanese colonial rule.⁴¹² Their constituency was usually within the boundary of a county or a city, while their powers were restricted by national elites who controlled the KMT’s local branches and civil associations. The Taiwan Provincial Assembly was the highest representative group for the local elites. Before 1969, no local elites could be elected into the national representative groups. Under the authoritarian rule and the SNTV electoral system, and after learning the lessons from the CDP and routine elections, organizing campaigns based on ideology or policy was not a rational choice. Thus, most of those local elites tried to obtain political power through the pattern of distributing interests to mobilize personal votes, known as “electoral clientelism.”⁴¹³

The primary political machine for the KMT’s mobilization of the clientelist networks were local factions. In the absence of a local basis in the early 1950s, the KMT chose to coordinate the existing local factions to integrate more local political and social elites into the regime to strengthen its legitimacy. Compared to the Japanese colonial era, the local factions in the ROC-KMT authoritarian era were more organized and institutionalized because the sequence and constitutional structures mattered.

⁴¹⁰WU NAI-TE, *supra* note 404, at 177.

⁴¹¹WU NAI-TE, *supra* note 404, at 193.

⁴¹²WU WEN-HSING (吳文星), RIJU SHIQI TAIWAN LINGDAO JIECENG ZHI YANJIU (日據時期臺灣領導階層之研究) [THE LEADERSHIP IN TAIWAN DURING THE JAPANESE COLONIAL ERA] 158, 159 (1992).

⁴¹³WU NAI-TE, *supra* note 404, at 192.

The first election of the Japanese colonial regime was in 1935. After ruling Taiwan for four decades, the GGT had already established its local basis by raising certain Taiwanese local elite families as its agents.⁴¹⁴ In contrast, in the first election of 1950-51, the ROC-KMT regime had just retreated from the mainland and had to coordinate those local elites before and after the election to set up its regional basis. Thus, compared to the Japanese colonial government, the ROC-KMT regime routinely distributed stronger political power and greater economic resources during and after the election.⁴¹⁵

Between 1954 to 1994, an estimated 61.9 % of the KMT's nominees for the Taiwan Provincial Assembly had a local faction background, and 92.6% of them were elected.⁴¹⁶ The main question raised by this structure is, how did the national elite group maintain control over the local elite groups and secure their political support? In other words, why did the local elite group not exert its power over the central government or the KMT's headquarters? To address these issues, outside the context of the party-state system and martial law, it is necessary to review the dynamics between the executive and legislative branches, and between the central and local government, under the *Temporary Provisions*.

After retreating to Taiwan, the ROC government faced a constitutional crisis and difficulty in holding elections for its democratic bodies⁴¹⁷ in territories effectively controlled by the People's Republic of China. In response to this crisis, the ROC's Constitutional Court

⁴¹⁴WU WEN-HSING (吳文星), RIJU SHIQI TAIWAN LINGDAO JIECENG ZHI YANJIU (日據時期臺灣領導階層之研究) [THE LEADERSHIP IN TAIWAN DURING THE JAPANESE COLONIAL ERA] 159 (1992).

⁴¹⁵WU NAI-TE, *supra* note 404, at 194.

⁴¹⁶ Chia-lung Lin, *Táiwān dìfāng xuǎnjǔ yǔ guómíndǎng zhèngquán de shìchǎng huà: Cóng wēiquán gǒnggù dào mǐnzhǔ zhuǎnxíng 1946-1994* (台灣地方選舉與國民黨政權的市場化：從威權鞏固到民主轉型 1946-1994) [*Taiwan's local elections and the marketization of the KMT Regime: From authoritarian consolidation to Democratic Transformation, 1946-1994*], in LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (*LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT*) 164 (Chen Ming-tong & Zheng Yong-nian eds. 1998).

⁴¹⁷ Article 65 of the Constitution states, "The term for members of the Legislative Yuan shall be three years;" and Article 93 of the Constitution provides, "Members of the Control Yuan shall serve a term of six years and shall be re-eligible."

interpreted the Constitution to allow the first-term legislators to continue exercising their power until the election of the second-term members.⁴¹⁸ Thus, the representatives of the democratic bodies, who were elected in Mainland China in 1947 and 1948, were permitted to exercise their power over Taiwan until mainland China was recovered. In reality, there were no limits on the term of their service, so much so that some were known as “tenure representatives” (ten-thousand-year representatives). The ROC maintained its senior representatives in office to insulate the national elite group from the opposition or local elite groups.

Although elections for the national democratic bodies at the central governmental level were suspended, as previously mentioned, the ROC government opened local elections to maintain its legitimacy and integrate local elites into the regime.⁴¹⁹ To secure the KMT’s electoral victory in the absence of a local basis, the ROC government; banned new political parties to prevent any challenges from a united front, coordinated with transforming local factions, adopted the strategy of electoral clientelism and the SNTV system, and arbitrarily enforced the election laws to manipulate local factions⁴²⁰ and suppress independent or opposition candidates by security forces or judicial persecution.⁴²¹

B. The Interaction between Local Factions and the KMT and the Rise of Electoral Clientelism

a. The birth of modern local factions in the early 1950s

⁴¹⁸See *supra* note 394.

⁴¹⁹WÚ GUÓZHĒN, WÚ GUÓZHĒN KǒUSHÙ HUÍYÌLÙ(從上海市長到台灣省主席：吳國楨口述回憶錄) [FROM SHANGHAI MAYOR TO TAIWAN PROVINCE CHAIRMAN: WU GUOZHEN’S MEMOIR] 121, 122 (1999).

⁴²⁰REN YUTE(任育德), *supra* note 384, at 338 (2008).

⁴²¹WÚ GUÓZHĒNM, WÚ GUÓZHĒN KǒUSHÙ HUÍYÌLÙ(從上海市長到台灣省主席：吳國楨口述回憶錄) [FROM SHANGHAI MAYOR TO TAIWAN PROVINCE CHAIRMAN: WU GUOZHEN’S MEMOIR] 162 (1999).

According to the studies of both Ralph Nicolas and Bruce Jacobs, there are four elements of modern local factions in Taiwan. 1. “Factions are conflict groups.”⁴²² 2. “Factions are political groups.”⁴²³ 3. “Factions are not corporate groups.”⁴²⁴ 4. “Factions are recruited on diverse principles.”⁴²⁵ Before analyzing the mechanisms and implications of modern local factions in Taiwan, this dissertation reviews the transitional process from traditional local factions to modern ones and examines their interaction with the new, isolated rulers, the ROC-KMT regime.

After relocating its central government from mainland China to Taiwan, the ROC government initiated electoral reform in 1950/51, allowing all county executive governors, city mayors, and county councilors to be elected by popular vote, as well as incorporating campaign finance rules.⁴²⁶ The direct election extended to the (temporary) Taiwan Provincial Assembly in 1954. As mentioned above, local elites had largely been detained, killed, or had withdrawn after the 228 Massacre of 1947. In the local elections of 1950 and 1951, a new group of local political elites emerged to fill the political vacuum and cooperate with the KMT.

According to data from the election of 1950/51, only 177 out of 523 (33.8%) city/county councilors sought reelection, of which 107 (20.5%) were elected. 346 councilors withdrew from local politics.⁴²⁷ But 80 out of the 346 councilors who withdrew (15.3%) ran campaigns

⁴²²BRUCE JACOBS, *LOCAL POLITICS IN A RURAL TAIWAN UNDER DICTATORSHIP AND DEMOCRACY* 89, 90 (2008); Ralph W. Nicholas, *Factions: A Comparative Analysis*, in *POLITICAL SYSTEMS AND THE DISTRIBUTION OF POWER* 44, 45, 46 (Michael Banton ed., 1965).

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶CHANG YANXIAN (張炎憲), *CHENCHENG XIANSHENG HUIYILU: JIANSHE TAIWAN I* (陳誠先生回憶錄：建設台灣上) [MR. CHEN CHENG MEMOIRS: BUILDING TAIWAN] 69, 187 (2005).

⁴²⁷REN YUTE (任育德), *supra* note 384, at 247 (2008); Chen Ming-tong & Nai-teh Wu (陳明通、吳乃德), *Zhèngquán zhuǎnyí hé jīng yīng liúdòng: Taiwan dìfāng zhèngzhì jīng yīng de lìshǐ xíngchéng* (政權轉移和菁英流動：台灣地方政治菁英的歷史形成) [*The Regime Shift and the Flow of the Elites: the Formation of the*

in the subsequent election.⁴²⁸ The results of the election showed that the traditional local elites from the Japanese colonial era did not totally disappear or get squeezed out. The traditional local elites and their offspring “transformed themselves into, or were replaced by, the modern local politicians.”⁴²⁹ The new local politicians mostly belonged to the traditional landlord class or the bourgeoisie.⁴³⁰ In short, the discontinuity of political elites under the KMT regime was reflected in the composition of personnel, rather than class. The preexisting local political elites and factions simply transformed themselves into clientelism networks via regular elections.⁴³¹

As mentioned above, the KMT faced a legitimacy crisis in ruling the alienated residents in Taiwan and decided to hold elections to integrate local elites into its regime. Therefore, in the election in 1950/51, the KMT adopted the non-intervention policy as a result of the KMT’s lack of a strong local basis and lack of knowledge of how best to nominate candidates and mobilize voters.⁴³² Thus, the KMT could not initiate its nominating rules and encourage its members to run campaigns by themselves. Based on the KMT’s internal reports, in the 1950/51 election, while 544 out of 814 (67%) city/county councilors were KMT members, only 969 out of 9616 (10%) town/village councilors were KMT members. The chairman of the Taiwan Provincial government, Wu, conceded, in the absence of material and ideological support, the KMT’s nominating candidates mostly ran campaigns by gift-giving or meal-treating, sponsored by pre-existing local factions, which caused the high expense of running

Local Political Elites in Taiwanese History], in TAIWAN GUANGFU CHUQÍ LISHI (台灣光復初期歷史) [THE TAIWAN’S HISTORY IN THE EARLY PERIOD OF POSTWAR] 325 (Lai Jeh-hang (賴澤涵) ed., 1993).

⁴²⁸ *Id.*

⁴²⁹ WU NAI-TE, *supra* note 404, at 222.

⁴³⁰ WU NAI-TE, *supra* note 404, at 222, 224.

⁴³¹ Jiexuan Chen (陳介玄), *supra* note 125, at 34.

⁴³² REN YUTE(任育德), *supra* note 384, at 308.

campaigns.⁴³³ The campaign practices in 1950/51 election had profound implications for local politics and campaign finance rules for decades. This will be analyzed in the next section.

After the election of 1950/51, the KMT adopted the “recruitment policy.” The KMT actively absorbed those elected local elites and their factions to extend the KMT’s local basis. After establishing its local foundation by integrating preexisting local factions, following the 1952/53 election, the KMT initiated its nominating rules and disciplinary system. The KMT headquarters required each local branch to gain at least 60% of seats in the local assembly. The KMT’s local offices played the role of dividing the votes to maximize its elected seats in the SNTV system to meet that requirement. The election of 1952/53 is noteworthy. Before thoroughly incorporating the civic associations into its political machine, which was completed in 1954, the KMT not only continually coordinated with local factions but also abused its policing power to enforce the election rules and discipline disobedient members. As a result, 642 out of 860 (74%) city/county councilors were KMT members in the 1952/53 election.⁴³⁴

After 1954, the KMT established its mobilizing power in the local societies via setting up state-or-KMT owned enterprises, functional military branches, and the service station.⁴³⁵ This created voters who were loyal to the KMT, known as iron voters. Although the KMT’s headquarters was fed up with the local factions,⁴³⁶ in the absence of the power to replace them, the KMT chose to coordinate with local factions for their electoral mobilization before

⁴³³Wú guózhēn(吳國楨), *Jiǔ yuè sān rì kuòdà zǒnglǐ jìniàn zhōu wúguózhēn tóngzhì bàogào táiwān shěng zhèng* (九月三日擴大總理紀念週吳國楨同志報告台灣省政) [*Wu Guozhen reports on Taiwan's provincial government*] 26 RECONSTRUCTION 39 (SEP. 16, 1951).

⁴³⁴REN YUTE(任育德), *supra* note 384, at 313, 317.

⁴³⁵The service stations were set up by the KMT in most towns and villages in the 1950s to provide particular services or interests for the voters during the usual days to exchange their loyalties on the election date. See WU NAI-TEH, *supra* note 404.

⁴³⁶REN YUTE(任育德), *supra* note 384, at 41, 346.

the early 1970s. Just as Shefter's argument demonstrates, once the clientelism networks were entrenched, "the dominant basis of political mobilization became difficult to dislodge."⁴³⁷ To achieve victories in the subsequent elections, the KMT offered economic and political privileges for existing or newly created local groups in exchange for loyalty and mobilization.⁴³⁸ The KMT granted them four types of economic privileges: regionally chartered economic activities, such as banking or transportation; the privilege to obtain loans from the publicly held or government-owned banks; provincial or county contracts; and the tolerance of illegal business.⁴³⁹

According to Chen and Wu's studies, the local factions already existed in the Japanese colonial era.⁴⁴⁰ However, the local factions transformed themselves into mobilizing, clientelism networks under the ROC-KMT regime. This raises the question: why did the regime keep the local factions intact? Before the regime was consolidated, local factions served the same function as the electoral institution, allowing the KMT to integrate Taiwanese local elites and penetrate its power into local societies. Local factions accounted for 50.9% of the seats the KMT occupied in the Taiwan Provincial Assembly, and 74.4% of the KMT's seats in the county executive governor offices between 1954 and 1994.⁴⁴¹

After a close review of the KMT's nominees' backgrounds, their mutually dependent relationship has been made even more clear. According to the data, during those four decades

⁴³⁷ Martin Shefter, *Party and Patronage: Germany, England, and Italy*, 7 POL. & SOC. 414, 415 (1977).

⁴³⁸ Joseph Bosco, *Faction Versus Ideology: Mobilization Strategies in Taiwan's Elections*, 137.1 THE CHINA QUARTERLY 28, 28–62 (1994); CHEN MING-TONG (陳明通), PAIXI ZHENGZHI YU TAIWAN ZHENGZHI BIANQIAN (派系政治與台灣政治變遷) [THE FACTION POLITICS AND POLITICAL TRANSITIONS IN TAIWAN] (1995).

⁴³⁹ JENG-LIANG JULIAN KUO, THE REACH OF THE PARTY—STATE ORGANIZING LOCAL POLITICS IN TAIWAN 101, PH.D. THESIS, YALE (1995); CHIN-SHOU WANG, DEMOCRATIZATION AND THE BREAKDOWN OF CLIENTELISM IN TAIWAN, 1987–2001, 30, PH.D. THESIS, UNC (2004).

⁴⁴⁰ Jiexuan Chen (陳介玄), *supra* note 125 at 34; WU WEN-HSING (吳文星), RIJU SHIQI TAIWAN LINGDAO JIECENG ZHI YANJIU (日據時期臺灣領導階層之研究) [THE LEADERSHIP IN TAIWAN DURING THE JAPANESE COLONIAL ERA] 196 (1992).

⁴⁴¹ CHIA-LUNG LIN, *supra* note 402, at 164.

61.9% of the KMT's nominees for the Taiwan Provincial Assemblers and 63.5% of the nominees for the County executive governor office had a background in the local factions. Among the KMT nominees for the Taiwan Provincial Assembly with a background in the local factions, 92.6% were elected. This was much higher than the 73.1% rate of election for non-faction KMT nominees.⁴⁴²

This data indicates that the sequence of events matters. While the KMT could not penetrate its ruling power into the local society and call universal suffrage elections in the early 1950s, the preexisting local factions could. On the one hand, the local factions institutionalized their clientelism networks from personal to vertical three level networks: local factions, votebrokers, and voters. On the other hand, the local factions enjoyed relatively greater political power and economic privilege to maintain their autonomy from the KMT's headquarters. Routine elections and the institutional distribution of political and economic interests made these local elites rally for group interests, and develop complex vertical clientelism networks. These networks, from the top to bottom were factions', vote brokers,' and voters' networks.⁴⁴³

As Taiwanese society became more modernized, local factions also changed how they mobilized. In the previous era, local factions mobilized their vote brokers and voters by leveraging the traditional esteem or social prestige of the leaders or landowners, rather than the clientelist mechanism. However, the residual influence of landlords gradually faded in the modern era. Political elites had to be more dependent on offering material interests to exact political support. Employment, or financial credits and loans, were the most important interests which local politicians provided for their constituents. The control of capital became

⁴⁴²*Id.*, at 164.

⁴⁴³Jiexuan Chen (陳介玄), *supra* note 125, at 37.

an important political and economic tool. With the KMT's incorporating and allowing the election of those financial institutions in the farmer or fisherman associations, the loans and the personnel of those institutions were subject to the local politicians and became the victims of the local factions.⁴⁴⁴

As Bosco observes, "money is the meat on the faction skeleton; without money, factions are worthless bones."⁴⁴⁵ After gaining the meat from the ROC-KMT regime or the local financial institutions, the local factions redistributed those political or economic interests to particular voters to expand or consolidate their mobilizing capability of factional and vote brokers' networks. In addition to political or economic interests, the offering of social prestige also played a role. In Taiwan, the distribution of economic interests or social prestige to voters was called "constituent service." "Service" in Taiwan signified the use of personal political powers or access to provide constituents with material goods, privileges, or prestige not universally available. It included attending and providing gifts at wedding and funeral ceremonies, access to the courts, hospitals, or job references. Ordinary people felt a sense of being integrated into the state or the community. The purpose of those services was to establish or maintain the vote brokers' networks between the politicians and voters, and to consolidate the clientelist networks to be used in the elections.⁴⁴⁶ However, the binding effects of constituent services are not stable.

Under those arrangements and distribution networks, the modern electoral clientelism organizations or local factions were mostly founded or transformed in the 1950s. But compared to the factional politics in Japan, there were two distinct characteristics of local

⁴⁴⁴REN YUTE(任育德), *supra* note 384, at 230, 232.

⁴⁴⁵Joseph Bosco, *Faction versus ideology: Mobilization strategies in Taiwan's Elections*, 138CH. QUA.40 (1994).

⁴⁴⁶Jiexuan Chen (陳介玄), *supra* note 125, at 37.

factions in the authoritarian rule era in Taiwan. First, factions in Taiwan were more group-like and permanent. The local factions had permanent names, a sense of identity, and a stable leadership.⁴⁴⁷ Second, the highest level of faction was at the county level, rather than a vertical system from the central to local governmental level.⁴⁴⁸

Why, then, did the local factions not use their power over the KMT's local branches to control its nominations? The most important structural factor was the structure of the KMT and its local branches. Although the local elites were the main forces of the KMT in elections, the national elites, or more precisely, the chairman of the KMT, firmly controlled the local political apparatus. According to the party constitution,⁴⁴⁹ the party committee of each level directed the party affairs of that level. Half of the committee members were appointed by the higher level. The chairman of the committee member was also appointed by the higher level. Through this process, the party local branch was an autonomous apparatus, independent from local factions in local politics.⁴⁵⁰

b. The three-layered vertical networks for electoral mobilization

As Fukuyama argues, the political patronage or clientelism relationship is “one of the most basic forms of human social organizations in existence. It is universal because it is natural to human being.”⁴⁵¹ The development of electoral clientelism in Taiwan is not an exception; its development greatly depended on existing social networks and social norms to initiate or stabilize the clientelist organization, the local factions. As Jacobs has suggested,

⁴⁴⁷ Joseph Bosco, *Taiwan Factions: Guanxi, Patronage, and the State in Local Politics*, 31 *ETHNOLOGY* (2) 157 (1992).

⁴⁴⁸ HONG-MAO TIEN, *THE GREAT TRANSITION* 165 (1989).

⁴⁴⁹ ZHONGGUO GUO MIN DANG ZHONGYANG WEIYUANHUI (中國國民黨中央委員會), SHENGJI WEKYUANHUI ZUZHIGUECHENG (政治組織規程) [STRUCTURING RULES OF THE PROVINCIAL PARTY COMMITTEE], ARTICLE 2.

⁴⁵⁰ WU NAI-TE, *supra* note 404, at 284.

⁴⁵¹ FRANCIS FUKUYAMA, *supra* note 127, at 88.

local factions were informal organizations with explicit political purposes.⁴⁵² In a larger electoral district, the clientelist mode of mobilizing usually had to face the difficulty of mobilizing sufficient voters to cross the election threshold. To overcome this barrier, the local factions had to rely not only on their factional networks, but also two layers of networks under themselves: vote brokers and voters. This section analyzes the factional networks, and examines the lower two levels in the following section.

As Chen observes, in Taiwan, while the members within factional networks aim for “political action,” and desire political power or interests; the members in the vote brokers networks aim for “politically oriented action,” which is not primarily political in focus, economic or symbolic interests are included.⁴⁵³ The voters’ networks are the number of voters who could be reached out to and mobilized by local factions and vote brokers.⁴⁵⁴ The factional networks are relatively more stable than vote brokers’. As shown in the previous analysis, while personal vote strategies were commonly adopted by most rational candidates, the local factions had to employ economic interests and traditional values, like friendship, kinship, and localism to consolidate the voters via vote brokers networks.⁴⁵⁵

Under the SNTV system, to win the election, candidates and local factions had to mobilize as many vote brokers and voters’ networks as possible to gain personal votes. The distribution of economic interest was used to integrate and consolidate vote brokers’ networks. Local factions, however, could also use symbolic interests to mobilize vote brokers and overcome the difficulties of resource scarcity. Friendship included but was not limited to the relations of neighbor, classmates, or economic partners.⁴⁵⁶ Local factions were formed on

⁴⁵²BRUCE JACOBS, *LOCAL POLITICS IN A RURAL TAIWAN UNDER DICTATORSHIP AND DEMOCRACY* 89, 90 (2008).

⁴⁵³Jiexuan Chen (陳介玄), *supra* note 125, at 35, 36.

⁴⁵⁴*Id.* at 38.

⁴⁵⁵*Id.* at 36.

⁴⁵⁶Jacobs distinguishes friendship from other relations. However, it is hard to see a clear-cut distinction between the concepts. Those distinctions that are visible do not assist in the analysis of electoral clientelism in Taiwan.

the basis of personal social connections, rather than ideology. The kinship group was also the networks local elites usually utilized. The solidarity of kinship groups and voters' loyalty towards their kin was used as a political vehicle.⁴⁵⁷ Compared to friendship, kinship relations carried more blind loyalty. Localism also served as a symbolic guarantee of reliability.

In short, local factions were not equivalent to social networks. Traditional networks and social networks were formed based on transactions in daily life and existed before the Japanese colonial or ROC-KMT authoritarian government. The creation and development of local factions in Taiwan was a process of transforming and regrouping the preexisting personal networks into three vertical layers of networks for the pursuit of political interests.

As mentioned above, the members in factional networks were pursuing political interests, but the vote brokers and voters had multiple desires causing complex calculations. Thus, except in regard to political and economic interests, social norms played a supplementary role for local factions to further strengthen their vote broker networks during the campaign period. Under electoral clientelism, the local factions utilized social norms and vote broker networks to select political elites, appeal to voters, and ensure their clients performed their duty.

c. The basic cell of the local factions: Tiau-a-ka (vote broker)

According to Chen's research, there were three vertical levels of clientelism networks in Taiwan, the first was local factions, and the second was vote brokers, and the third was voters.⁴⁵⁸ Under martial law, the party-state system, the semi-market economy, and the

See BRUCE JACOBS, *LOCAL POLITICS IN A RURAL CHINESE CULTURAL SETTING: A FIELD STUDY OF MAZU TOWNSHIP, TAIWAN* 115 (1980). The details critics, please see WU NAI-TE, *supra* note 404, at 264.

⁴⁵⁷YUNG-MAO CHAO (趙永茂), *TÁIWĀN DÌFĀNG ZHÈNGZHÌ DE BIÀNQIĀN YŪ TÈZHÌ* (台灣地方政治的變遷與特質) [THE CHANGES AND CHARACTERISTICS OF LOCAL POLITICS IN TAIWAN] 243 (2002); Jiexuan Chen (陳介玄), *supra* note 125, at 36, 42.

⁴⁵⁸Jiexuan Chen (陳介玄), *supra* note 125, at 36, 42.

SNTV system, the ROC-KMT regime firmly controlled and utilized local factions to mobilize and divide the ballots through its overwhelming resources and disciplinary mechanisms. Why voters in Taiwan, especially in the rural areas, followed the instruction of local factions is a question that needs to be addressed. The tiau-a-ka (vote broker) played a crucial role in the facilitation of local factions' mobilization of voters to turn out and vote for specific candidates by distributing goods, services, and symbolic interests.

The mobilization of personal votes in Taiwan depended on the candidates' competence in providing material interests and the constituent services. Generally, such a mobilizing system was informal, and parallel to the levels of local government. Township executives or representatives were generally clients of the elected officials at the county level, and the county-elected officials were clients of provincial congressional members. A tiau-a-ka (vote broker) was at the bottom of the mobilizing system and was hired by township executives or representatives to deal with local affairs and reach out to voters. To recruit a tiau-a-ka, local factions and political elites sought out people who were respected in their own communities and loyal to the politicians. The tiau-a-ka had no formal or institutional power; instead, their power came from their ability to access officials and patrons.

The tiau-a-ka played a role of building coherence between local factions and their voters and enjoyed a sort of autonomy. The tiau-a-ka was generally motivated by various interests, including emotions and symbolic or material rewards. One major motive driving the tiau-a-ka to offer services to the constituents was prestige or the opportunity for promotion to town executive or representative. Another motive was gaining rewards from patrons with economic privileges, or access to local government coffers. In order to strengthen vote

mobilization and gain the confidence and interest of patrons, a tiau-a-ka also played a role in buying votes through door-to-door visits during the campaign.⁴⁵⁹

It is worth noting that the tiau-a-ka usually enjoyed some sort of autonomy from the local factions because of electoral mobility. A tiau-a-ka could be anyone who had reliable personal networks and sought to transform those networks into electoral mobility, which could be exchanged with local factions. During the campaign, the tiau-a-ka could reach out to voters via his/her networks, which were unknown to local factions. Compared to members of local factions' networks, whose aim was to gain political power or other interests, the tiau-a-ka had various needs and would have liked to keep a level of volatility among local factions to balance the material and symbolic interests or social norms.⁴⁶⁰

Why, then, did voters follow the tiau-a-ka, especially given Taiwan's secret-ballot system? First, under martial law, the ban on the creation of new political parties and censorship led voters to consider party identification as valueless. Second, the SNTV electoral system and the allocation of the KMT⁴⁶¹ encouraged candidates to divide their votes along the lines of geographical responsibility zones. This meant that residents had to contact the tiau-a-ka in their resident zone to gain "service" from the local political elites. Third, the "*Taiwan Provincial Election and Recall Regulatory Rules*" and "*Civil Servants Election and Recall Act of 1980*" restricted the candidates' dissemination of information to the public before and during the campaign period, which institutionalized the tiau-a-ka's monopoly over the transfer of information from candidates to voters. Based on the economic incentives offered by the tiau-a-ka and the voters' indifference to all candidates on the ballot list, vote buying has been an effective mobilizing technique since the 1950s. Therefore, the tiau-a-ka

⁴⁵⁹CHIN-SHOU WANG, *supra* note 439, at 35 (2004).

⁴⁶⁰Jiexuan Chen (陳介玄), *supra* note 125, at 46.

⁴⁶¹REN YUTE(任育德), *supra* note 384, at 318.

system was vital to allow the KMT and local factions to stabilize and mobilize the local community through monopolizing information and distributing goods and privilege. Because of these systems, electoral clientelism took root in Taiwanese society and political culture.

d. The KMT's strategies to restrain local factions before the 1970s

After reshaping the island-wide local factions, the local factions began to constitute a threat to the central government and the national elite group, although the local factions still served many functions for the KMT. The national elite group faced a dilemma: on the one hand, it had to rely on the local factions to mobilize local people to maintain its majority in the election; on the other hand, the better the local faction functioned, the greater the threat of defiance to the national ruling group.⁴⁶² From the mid-1950s the KMT's headquarters deliberately adopted strategies of divide-and-rule, checks-and-balances, acceleration of elite turn-over, parachute tactics, and discipline by legal means to control the local factions.⁴⁶³ However, these strategies were limited because of the path dependence and time sequences. The local election in 1950/51 had transformed the traditional local factions into the modern ones which played a distinct role in local politics before the KMT's reform plan was implemented. The local elites had already reorganized and developed their networks to meet the demand of routine elections and had autonomy from the KMT's headquarters in influencing local politics.⁴⁶⁴

The first strategy to control the local factions was to limit them to the size of the electoral districts. Before the Taiwan provincial governor election in 1994, the county was the largest electoral district.⁴⁶⁵ Being constrained within the boundary of the electoral district

⁴⁶²WU NAI-TE, *supra* note 404, at 301.

⁴⁶³WU NAI-TE, *supra* note 404, at 303.

⁴⁶⁴CHIA-LUNG LIN, *PATHS TO DEMOCRACY: TAIWAN IN COMPARATIVE PERSPECTIVE*, PH.D. DIS., POL. SCI., U. OF YALE 147 (1998).

⁴⁶⁵SHELLEY RIGGER, *POLITICS IN TAIWAN: VOTING FOR DEMOCRACY* 84 (1994).

and the limit that placed on resources, the local factions had no material incentives to coordinate with other local factions outside of their electoral district. Furthermore, under the shadow of white terror, local factions underwent serious risks by working outside their districts or integrating with politicians at the central government level, which could have been viewed as a potential challenge to the authority of the KMT.⁴⁶⁶

Second, the KMT's headquarters restrained the power of local factions below the county level by adopting the "divide-and-rule" strategy⁴⁶⁷ and cultivating at least two local factions in each electoral district to balance the power of local factions against one another.⁴⁶⁸ The KMT issued the "Guidelines for KMT members participating in Local Election of the Taiwan Province."⁴⁶⁹ Under the guidelines, the KMT dominated the local factions and balanced their power against the other local factions by controlling the nomination process and reconstructing the local party branch as a local power center.⁴⁷⁰ Competition at the local level was a zero-sum game. When the number of the seats and resources were limited, one faction's gain was another's loss. As a result, the probability of alliance across factions was highly unlikely. Such bi-factionalism existed in nearly every electoral district,⁴⁷¹ offering the KMT leverage to manipulate both.

In most counties, the KMT arranged different local factions to occupy different political positions. At the county level, the most crucial positions were county executive governor and the chairman of the county assembly. The KMT usually nominated a local politician from

⁴⁶⁶CHIA-LUNG LIN, *supra* note 464, at 186.

⁴⁶⁷*Id.* at 304.

⁴⁶⁸ Joseph Bosco, *Taiwan Factions: Guanxi, Patronage, and the State in Local Politics*, 31 *Ethnology* (2) 157, 157-183 (1992).

⁴⁶⁹*Guidelines for KMT members participating in Local Election of the Taiwan Province* (Aug 27, 1950) in COLLECTION OF THE CONFERENCE RESOLUTION OF THE KMT CRC (SECRETARY OFFICE OF THE KMT CENTRAL COMMITTEE EDS, 1952: 12-3).

⁴⁷⁰ZHONG XING SHAN ZHUANG, ZHONGGUO GUO MIN DANG JICENG DANG WU GONGZUO FANGFA (中國國民黨基層黨務工作方法) [THE GUIDELINE FOR KMT'S PARTY WORKER AT THE GRASS-ROOT LEVEL] 19 (1964).

⁴⁷¹WU NAI-TE, *supra* note 404, at 304.

one faction for the county executive governor, and let the other local faction occupy the position of the chairman of the assembly. If one faction grew too strong, the KMT either created a countervailing faction and nominated its members, or parachuted in a candidate from the party bureaucracy to occupy the crucial position to redistribute interests and privilege.⁴⁷² In short, the authority and discretion of the nominations were the crucial weapons.

Third, the acceleration of the turn-over rate of local elites was a systematic device of control.⁴⁷³ Since mobilization was brought about through personal networks, the longer the politicians stayed in office, the larger his political base grew. To balance the potentially contradictory goals of effectively mobilizing voters for the national ruling elites and hindering the irreplaceable local elites, the KMT created a moderate turn-over rate of the local elites. The KMT, on the one hand, arbitrarily decreased or increased the turnover rate of local elites with its discretionary nomination power, on the other hand, revised the rules to limit the terms of the county and village governor to two terms (8 years). Another example of accelerating the turnover rate was seen in the Taiwan Provincial Assembly. Among the assembly members between 1951 to 1981, only 48.7% served two terms, 22.8% served three terms, and only 11.9% served more than 4 terms.⁴⁷⁴ The high turn-over rate of the local elites reflected the KMT's distrust of the local factions and their attempt to control them.

Fourth, parachute tactics were also used by the KMT to decrease its dependence on the local factions.⁴⁷⁵ The KMT used local factions as agents to penetrate Taiwan beginning in the early 1950s. Since then, the KMT headquarters had been notified that factionalism politics brought about political corruption. Local factions had their own interests differentiated from

⁴⁷²WU NAI-TE, *supra* note 404, at 315.

⁴⁷³ *Id.* at 328, 329.

⁴⁷⁴CHIN-SHOU WANG, *supra* note 439, at 33.

⁴⁷⁵CHIN-SHOU WANG, *supra* note 439, at 33.

those of the KMT. To balance or replace the local factions, the KMT headquarter may nominate candidates from its bureaucrats without factional backgrounds. However, the KMT was not able to replace local factions with its own bureaucrats on a large scale before the 1970s.

The fifth strategy employed by the KMT was to discipline the disobedient local factions through the manipulation of election results, administrative harassment, or judicial persecution. As local factions grew too strong or openly resisted the KMT, the judiciary was used as a political means to coerce the defecting factions. Under the party-state system and martial law, the KMT controlled the prosecutorial and judicial system to coopt local factions by tolerating, or coerce them by prosecuting or threatening to prosecute their political corruption, vote-buying, or illegal business.⁴⁷⁶ As the KMT's clientelist elites and local factions frequently mobilized the voters by vote buying, to meet the financial demands those elites often exploited public resources and power for private purposes. Thus, it was easy for the KMT to find a way to purge dissidents by legal means.⁴⁷⁷

These institutional manipulations and arrangements, martial law, the SNTV system, and local factionalism provided a forum of limited competition within a single-party system from the 1950s onwards. Such institutional arrangements funneled the energy of local factions to support the KMT's authoritarian and emigrant regime⁴⁷⁸ until 1991.⁴⁷⁹

⁴⁷⁶ Chin-Shou Wang, *Chóng fǎn fēng máng xiàn: Guómíndǎng xuǎnjǔ jīqì de chénggōng yǔ shībài* (重返風芒縣：國民黨選舉機器的成功與失敗) [*Return to Feng-Mang County: The Success and Failure of the Kuomintang's Political Machine*], 8 *Tw. Pol. Sci. Rev.* (1), 99-146 (2004).

⁴⁷⁷ CHIN-SHOU WANG, *supra* note 439, at 35.

⁴⁷⁸ WAKABAYASHI MASAHIRO (若林正丈), ZHAN HOU TAIWAN ZHENGZHI SHI: ZHONGHUA MINGUO TAIWAN HUA DE LICHENG (戰後臺灣政治史：中華民國臺灣化的歷程) [TAIWAN'S POSTWAR POLITICAL HISTORY: A HISTORY OF THE REPUBLIC OF CHINA IN TAIWAN] 104 (2008).

⁴⁷⁹ Cheng Tun-jen, *Embracing Defeat: The KMT and the PRI after 2000*, in *POLITICAL TRANSITIONS IN DOMINANT PARTY SYSTEMS: LEARNING TO LOSE* (Edward Friedman & Joseph Wong eds., 2008); Chu Yun-han, Melvin J. Hinich & Lin Tse-min., *Conflict Displacement and Regime Transition in Taiwan: A Spatial Analysis*, 48.4 *WORLD POL.* 453, 453-481 (1996).

IV. The Taiwan Provincial Election Regulatory Rules (1950-1979)

When the general election of village assemblers and the indirect election of city/county consultative councilors and provincial assembly members were held in 1946 there were no rules to address campaign expenditures and monetary influences from the private into the public sphere. After the ROC regime retreated to Taiwan, elections for national democratic bodies were suspended; however, the ROC government authorized the Taiwan provincial government to initiate reforms of local self-government and opened elections for representatives at the provincial, county, and village levels.

As the local elections became the major and routine means to consolidate the regime, the issues of controlling campaign activities and expenditures and addressing money politics became more important. In an effort to deal with these and other issues relating to the electoral process, the Taiwan Provincial Government issued the *Taiwan Provincial Electoral Regulatory Rules* (“TPERR”) in 1950. The TPERR initially referred to the election laws in pre-and-post war Japan but was revised soon after its introduction because it was deemed too unrealistic. On one hand, from the perspective of legal history and comparative law, the revisions of TPERR between 1950 to 1980 were no longer an extension of law from the center (Nanjing or Tokyo). Rather, the TPERR was issued and adjusted within Taiwan, to meet local needs. On the other hand, under the authoritarian rule, the TPERR empowered the government, more specifically, the police, to closely control campaign activities so as to limit dissenters’ or independent candidates’ room to maneuver by enforcing the rules arbitrarily.

The TPERR’s regulation of campaign activities and finances offered the legislators and political elites two valuable lessons: First, money is like water. If the campaign finance law sought to block the flow of money, the politicians would bypass the regulation. Second, under authoritarian rule, mandatory disclosure/reporting rules were not the best way to

promote democracy and restrain electoral clientelism. On the contrary, without a neutral and professional bureaucratic system, the ruling party could use information acquired through such rules to suppress dissent, isolate the opposition, and provide disincentives to prevent their sympathizers from donating.

A. Taiwan Provincial Election Regulatory Rules of 1950

The Taiwan Provincial Government initially issued the TPERR in 1950.⁴⁸⁰ Although Taiwan had been decolonized from Japan in 1945, the TPERR as established was highly influenced by the Japanese Electoral Regulatory Rules. When TPERR was promulgated, the department of civil affairs of the Taiwan Provincial Government was headed by Zhaojia Yang. Yang had been one of the heads of the Taiwan Parliament Establishment Movement (TPPM),⁴⁸¹ and had closely reviewed the electoral rules in Japan and the variant of those rules in Korea.⁴⁸² Thus, it was no surprise that the TPERR of 1950 reflected the influence of the Japanese Electoral Regulatory Rules, which aimed to restrain the demand for campaign finance by empowering the police to closely restrict the time, place, and electoral conduct of all campaign activities. However, the rules in Taiwan faced the same criticisms as in Japan, that is, empowering the police with too much discretion endangered the integrity of elections and the freedom of speech.

a. The prohibition on door-to-door canvassing

As discussed in Chapter 3, the prohibition on door to door canvassing originated in Japanese election law and was extended to Taiwan in 1939. Although the prohibition raised

⁴⁸⁰Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], 39 OFFICIAL GAZETTE OF *TAIWAN PROVINCIAL GOVERNMENT NO. XIA VOL. 68, 1003 (1950)*.

⁴⁸¹ZHAOJIA YANG, *YANG ZHAOJIA HUI YI LU* (楊肇嘉回憶錄) [THE MEMOIRS OF YANG ZHAOJIA], VOL. 1, 195 (1970).

⁴⁸²ZHAOJIA YANG, *YANG ZHAOJIA HUI YI LU* (楊肇嘉回憶錄) [THE MEMOIRS OF YANG ZHAOJIA], VOL. 2, 275, 380 (1970).

concerns about freedom of speech and due process of law, in order to address vote-buying and to purify money politics, it was still effective in Japan in 1925 and then was extended to Taiwan. After the regime shift to the ROC government, those rules were revived and readopted to address vote-buying behavior.

The purpose of TPERR, closely following the electoral regulatory rules in Japan, was to purify the political culture and lower the cost of campaigns by restricting the campaign activities to policy or ideological appeals, rather than personal or material appeals.⁴⁸³ According to Article 4, campaign activities were restricted to four types of activity: public speeches, broadcasts, campaign promotions, and advertising.⁴⁸⁴ Campaign activities were also restricted to public spaces or public forums, so as to prevent opportunities for under the table transactions. Any private visits between the candidates and voters during the campaign period were prohibited.

In addition, the TPERR also prohibited the exchange or distribution of interests between the voters and candidates. Under Article 5, it was prohibited to offer any material or benefits to voters, to treat voters to meals, to provide accommodation, or to provide transportation or travel subsidies.⁴⁸⁵

b. Expenditure Cap

One of the most impressive and progressive campaign finance rules in the TPERR of 1950 was the setting of the expenditure cap. As discussed in Chapter 1, the expenditure cap

⁴⁸³ZHAOJIA YANG, *YANG ZHAOJIA HUI YI LU* (楊肇嘉回憶錄) [THE MEMOIRS OF YANG ZHAOJIA], VOL. 2, 383 (1970).

⁴⁸⁴Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 4, 39 OFFICIAL GAZETTE OF *TAIWAN PROVINCIAL GOVERNMENT NO. XIA VOL. 68, 1003* (1950).

⁴⁸⁵Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 5, 39 OFFICIAL GAZETTE OF *TAIWAN PROVINCIAL GOVERNMENT NO. XIA VOL. 68, 1003* (1950).

was classified as a restriction from the supply side rather than the demand side. From Yang's perspective, setting up the caps was aiming to lower campaign costs and thereby eliminate institutional motives for political corruption after those elected took office.

Article 9 of TPERR placed limits on campaign expenditures, and the expenditure cap itself was set in accordance with the demographic size of each electoral district. In an electoral district where the number of voters fell below 250,000 voters, the maximum permitted expenditure was achieved by multiplying the number of voters by ten NTD cents (New Taiwan Dollar). In electoral districts with over 250,000 voters, five more NTD cents were added to the expenditure limit for each voter over 250,000.

Moreover, campaign expenses were also restricted to a certain extent. Under Article 8 of TPERR, campaign expenses were limited to expenses for the four kinds of campaign activities authorized by Article 4, or for establishing a campaign office.⁴⁸⁶

c. The Mandatory Reporting Rules

The mandatory reporting rules concerning campaign finances were viewed as a corollary means of enforcing limits on campaign expenditures. The mandatory reporting rules contained separate rules, pre-and post-election.

The mandatory report prior to the election was mainly regulated at the time of a candidate's registration. Under Article 7, when he/she registered for an election, each candidate was required to report the address of his/her campaign office, personal information

⁴⁸⁶Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 8, 39 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. XIA VOL. 68, 1003 (1950).

of the members of the electioneering groups, and their campaign finance sources.⁴⁸⁷ In turn, that report was to be disclosed to the public by the government within three working days of its receipt.⁴⁸⁸

After the election, the candidate was required to report on campaign finances, but that report was not subject to public disclosure. Under Article 10, the candidate was required to keep account books and report to the government within five days of the date of the election.⁴⁸⁹

d. Penalties for Violation

The penalties for violating TPERR were severe. Under Article 11 of TPERR, surpassing the campaign expenditure limit (Articles 8 and 9), engaging in unauthorized campaign activities (Articles 4 and 5), and inaccurately reporting campaign finances (Article 10), would all cause the revocation of the candidacy. If a violation was discovered after the election had taken place, the result of the election could be invalidated, and the elected person removed from office by judicial trial.⁴⁹⁰

e. The Enforcement and Implications of TPERR of 1950

As seen in previous analysis, the enforcement of the TPERR was not strict for the local election of 1950/51, which took place soon after the ROC's retreat from mainland China. The

⁴⁸⁷Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 7, section 1, 39 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. XIA VOL. 68, 1003 (1950).

⁴⁸⁸Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 7, section 2, 39 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. XIA VOL. 68, 1003 (1950).

⁴⁸⁹Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 10, 39 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. XIA VOL. 68, 1004 (1950).

⁴⁹⁰Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 11, 39 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. XIA VOL. 68, 1004 (1950).

ROC government was trying to increase the turnout rate so as to integrate the native Taiwanese residents into its regime.⁴⁹¹ Based on previous campaign experience, the personal vote strategy was commonly adopted by local factions or candidates and gift-giving and meal treating were prevalent. As Scott argues, the gap between the formal rules and local values is especially significant in colonies or newly-built states. In the absence of rigorous enforcement, the behaviors tend to be motivated by local values.⁴⁹² Lax enforcement and the private campaign system both contributed to the high costs of the campaign and helped in transforming traditional local factions into modern ones.⁴⁹³ This led the Taiwan Provincial Government to introduce public campaign finance regulations into Taiwan, thus narrowing the room for campaign activities in TPERR.

B. TPERR of 1952 and 1953

After the local elections of 1952, the TPERR was revised so as to decrease the financial demands of campaigns. According to its first Article, the aim of the 1952 revision of the TPERR was to promote democracy and the integrity of the election.⁴⁹⁴ The main reform introduced public campaign finance regulations into Taiwan in order to reduce the demand

⁴⁹¹ Zhaojia Yang replied to the inquiry about the outcome of the local election of 1950 in the first Taiwan Provincial Temporary Assembly. *See* Taiwan shěng línshí shěng yìhuì dì yī jiè dì sān cì dìngqí dàhuì (台灣省臨時省議會第一屆第三次定期大會) [The first Taiwan Provincial Temporary Assembly, the third section], 413-415 (1953).

⁴⁹² James C. Scott, *Comparative Political Corruption* 11, 12 (1972),

⁴⁹³ REN YUTE(任育德), *supra* note 384, at 271.

⁴⁹⁴ Zhaojia Yang replied to the inquiry about the outcome of the local election of 1950 in the first Taiwan Provincial Temporary Assembly. *See* Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 1, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 747 (1952).

for campaign finance and social misspending.⁴⁹⁵ The prohibition on door to door canvassing was retained.⁴⁹⁶

As mentioned above, the ROC-KMT regime had been absorbing the existing local factions since 1951. The KMT's headquarters required local branches to have at least 60% of the local assembly members in their constituency as KMT's members.⁴⁹⁷ Thus, this policy pushed the KMT's local branches to coordinate with local factions more closely to mobilize the personal votes. At this point, the cap on campaign expenditure had proved greatly unrealistic both for candidates and the KMT's staff.⁴⁹⁸ While the TPERR of 1952 authorized the government to adjust the cap so that it was more practical and to take into account the population and geographic size of each electoral district, it was still far from realistic.⁴⁹⁹

On the demand side of campaign finance reform, the TPERR revised the rules relating to mandatory reporting and the restrictions on campaign activities. A new mandatory rule continued to require the candidates to undertake pre- and-post-election reports.⁵⁰⁰ It also

⁴⁹⁵ Zhaojia Yang replied to the inquiry about the outcome of the local election of 1950 in the first Taiwan Provincial Temporary Assembly. *See* Taiwan shěng línshí shěng yìhuì dì yī jiè dì sān cì dìngqí dàhuì (台灣省臨時省議會第一屆第三次定期大會) [The first Taiwan Provincial Temporary Assembly, the third section], 414 (1953).

⁴⁹⁶ *Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ* (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 5, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 746 (1952); Zhaojia Yang maintained that door to door canvassing should be prohibited due to its deficiencies of promoting democracy and social moral in the first Taiwan Provincial Temporary Assembly. *See* Taiwan shěng línshí shěng yìhuì dì yī jiè dì sān cì dìngqí dàhuì (台灣省臨時省議會第一屆第三次定期大會) [The first Taiwan Provincial Temporary Assembly, the third section], 415 (1953).

⁴⁹⁷ REN YUTE(任育德), *supra* note 384, at 413.

⁴⁹⁸ The Taiwan Provincial Temporary Assembler, Liáng xǔ chūnjú, indicated the expenditure of Taiwan Provincial Temporary Assemblers and the county executive governor, in reality, was around 10 times than the maximum of the regulated expenditure. *See* Taiwan shěng línshí shěng yìhuì dì yī jiè dì sān cì dìngqí dàhuì (台灣省臨時省議會第二屆第一次定期大會) [The second Taiwan Provincial Temporary Assembly, the first section], 1054 (1954).

⁴⁹⁹ *Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ* (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 8, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 746 (1952).

⁵⁰⁰ *Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ* (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 7, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 747 (1952).

required the candidates to keep their account books so they could be checked by the officials at any time.⁵⁰¹

In addition, as public finance regulations were introduced, the limits on campaign activities became more severe. First of all, campaign activities were restricted into four types:

1. Public Speech: it was acceptable to conduct public speeches in public schools, social groups, or through radio stations, but the time and place should follow the rules issued by the government.
2. Election Bulletin: the government would issue an official election bulletin to every household in which the personal statement of each candidate was limited to 300 words.
3. Newspaper Announcement: personal information regarding the candidates would be released by the government and published in the newspaper, the information was to be limited to 100 words for each candidate.
4. Automobile Use: Each candidate was allowed to use only one automobile.⁵⁰²

Apart from these activities, campaign expenses were also limited regarding the setting up of campaign offices.⁵⁰³ The number of electioneering team members was limited to three or five persons.⁵⁰⁴ The penalty for violating the rules of campaign expenditure limits, campaign activities, and mandatory reporting would cost the offender

⁵⁰¹Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 7, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 747 (1952).

⁵⁰²Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 5, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 746 (1952).

⁵⁰³Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 7, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 747 (1952).

⁵⁰⁴Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 2, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 747 (1952).

her/his candidacy or elected title.⁵⁰⁵ The rules regarding the mandatory reports⁵⁰⁶ and the limits on expenditure⁵⁰⁷ remained.

C. TPERRR of 1959 and 1963

After the experience of a decade of local elections, the TPERR had a structural revision in 1959. First, the name of TPERR was changed to Taiwan Provincial Election and Recall Regulatory Rules (“TPERRR”).⁵⁰⁸ Second, the limits on campaign activities were liberalized to promote the turn-out rate and prevent hidden campaigns.⁵⁰⁹ From that point forward, the prohibition on door-to-door canvassing was lifted. Under Article 7 of TPERRR, campaign activities were not limited to the categories listed in the rules.⁵¹⁰ Third, the requirements relating to the mandatory report and the campaign expenditure rules were removed, since the Taiwan Provincial Government openly conceded those regulations were unrealistic.⁵¹¹

In contrast to the liberalization of campaign activities, the restriction on freedom of speech to suppress the dissenters remained. Under Article 16, candidates were prohibited from releasing any statement against the national policies or criticizing the government

⁵⁰⁵Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 9, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO VOL. 57, 747 (1952).

⁵⁰⁶Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 7, 42 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG VOL. 75, 846 (1953).

⁵⁰⁷Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 8, 42 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG VOL. 75, 847 (1953).

⁵⁰⁸Táiwān shěng fánghài xuǎnjǔ bàmiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], 48 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG VOL. 7, 95 (1959).

⁵⁰⁹Táiwān shěng fánghài xuǎnjǔ bàmiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], article 7, 48 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG VOL. 7, 95 (1959); 13 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL TEMPORARY ASSEMBLY VOL. 17, 630 (1958).

⁵¹⁰Táiwān Shěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], article 7, 48 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG VOL. 7, 95 (1959).

⁵¹¹13 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL TEMPORARY ASSEMBLY VOL. 17, 630 (1958).

without a factual basis.⁵¹² Again, the penalties were severe and any violation of this Article would cost the perpetrator his candidacy or elected title.⁵¹³

The above restrictions remained in the 1963 version of the Rules.⁵¹⁴ However, the 1963 TPERRR further prohibited members of the general public, except candidates and their electioneering team, from holding public speeches to promote a certain candidate. Nor were members of the general public allowed to release or post any campaign promotion or advertisement endorsing candidates.⁵¹⁵

D. TPERRR of 1971

As the competition for local elections became fierce, campaign expenditures boomed. This led to the Taiwan Provincial Government's decision to once again revise TPERRR in 1971. The most prominent changes were the reintroduction of the mandatory reporting rules and the cap on expenditures.

In 1971, in order to reduce the cost of the campaign,⁵¹⁶ the TPERRR re-imposed the cap on expenditures⁵¹⁷ and the obligation on candidates to report their campaign finances at the

⁵¹²Táiwān shěng fānghài xuǎnjǔ bàimiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], article 16, section 12, 48 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG VOL. 7, 96 (1959).

⁵¹³Táiwān shěng fānghài xuǎnjǔ bàimiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], article 20, 48 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG VOL. 7, 96 (1959).

⁵¹⁴Táiwān shěng fānghài xuǎnjǔ bàimiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], article 18 & 19, 52 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG, VOL. 42, 28 (1963).

⁵¹⁵Táiwān shěng fānghài xuǎnjǔ bàimiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], article 15, 52 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. DONG, VOL. 42, 28 (1963).

⁵¹⁶Táiwān shěng línshí shěng yìhuì dì sì jiè dì qī cì línshí dàhuì (台灣省臨時省議會第四屆第七次臨時大會) [The Fourth Taiwan Provincial Assembly, the Seventh temporary section], 311, 312, 327 (1971).

⁵¹⁷Táiwān shěng fānghài xuǎnjǔ bàimiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], article 14, 60 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO, VOL. 9, 28 (1971).

time of registration.⁵¹⁸ Under the revised TPERRR, the government could now inspect and check the accuracy of the receipts and the expenses of the campaign.⁵¹⁹ If the report was not correct, the government could require the candidates to self-correct or could revoke their candidacy.⁵²⁰

V. The By-and-Supplementary Election at Central Government Level, the Rise of Electoral Clientelism, and the End of Martial Law (1969-1991)

A. The By-and-Supplementary Elections from 1969 to 1989

In the 1950s and 1960s, the ROC-KMT regime firmly controlled Taiwan domestically by mobilizing and manipulating local factions and internationally through diplomatic recognition measures. Yet the relative stability was threatened when the ROC's legitimacy was seriously challenged by the PRC. In the 1970s, after the ROC withdrew from the United Nations⁵²¹ and the United States terminated formal diplomatic relation with the ROC, the ROC faced new challenges to its legitimacy. Instead of authoritarian entrenchment, the ROC led by President Chiang Ching-Kuo undertook political reforms and opened the window for a broader and more open election with the aim of strengthening the legitimacy of the ROC regime. These reforms accelerated with the establishment of a new opposition party, the Democratic Progressive Party (DPP), in September 1986. Since then, the momentum for democracy has never slowed.

⁵¹⁸Táiwān shěng fānghài xuǎnjǔ bàmiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], article 15, 60 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO, VOL. 9, 28 (1971).

⁵¹⁹Táiwān shěng fānghài xuǎnjǔ bàmiǎn qǔdì bànfǎ (台灣省妨害選舉罷免取締辦法) [Taiwan Provincial Election Regulatory Rules], article 16, 60 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT NO. CHO, VOL. 9, 28 (1971).

⁵²⁰*Id.*

⁵²¹The United Nations General Assembly Resolution 2758 was passed on Oct 25, 1971, recognized the PRC as "the only legitimate representative of China to the United Nations," and expelled "the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations."

In the 1970s, the legitimacy of the ROC authoritarian rule was undermined internationally, when it was unable to gain international recognition of its claim for sovereignty over all Chinese territory. As a result, the ROC withdrew from the United Nations in 1971. Moreover, after the Sino-Soviet split, the US government, motivated by realpolitik considerations, reconsidered its position and began the process of normalizing relations with the PRC. On January 1, 1979, the United States switched diplomatic recognition from the ROC to the PRC, a move which further undermined the legitimacy of the ROC regime.

International frustration compounded Taiwan's domestic political problems. First, the ROC political system was in need of repair as the representatives elected in the 1940s were now aged or dying. As a result of the suspension of elections for national democratic bodies, by 1965 the number of representatives had declined dramatically, and those who remained were too aged to serve effectively and meet the quorum requirement. Second, by the 1970s the ROC government faced difficulties when attempting to suppress opposition movements led by local Taiwanese politicians.

To respond to the issues of meeting the quorum requirements and to meet the domestic challenges posed by the opposition movement, the reforms increased the number of representatives in national democratic bodies. The by-and-supplementary election for national democratic bodies was called "democratization by installment."⁵²² By-elections were held to fill elected offices that had been vacant after the election of 1947 or 1948. The supplementary election was held to create new seats in response to demographic changes.

⁵²²MASAHIRO WAKABAYASHI, *TÁIWĀN: FĒNLĪÈ GUÓJIĀ YŪ MÍNZHŪ HUÀ* (台灣：分裂國家與民主化) [TAIWAN: SPLIT COUNTY AND DEMOCRATIZATION] (1994).

The National Assembly revised the *Temporary Provisions* in 1966⁵²³ and the ROC government issued an executive ordinance to hold the first by-and-supplementary election in the ROC's effectively controlled territory.⁵²⁴ The first by-and-supplementary election took place in 1969, adding 15 KMT members in the National Assembly, and 11 members of the Legislative Yuan, including 8 KMT members and 3 independents. These representatives, like the tenure representatives elected in mainland China in the 1940s, were elected to indefinite terms.⁵²⁵

The ROC then revised the *Temporary Provisions* again in 1972,⁵²⁶ and respectively opened fifty-one and fifty-two seats for the second and third supplementary elections in 1972 and 1975.⁵²⁷ The revision of *Temporary Provisions* in 1972 distinguished the district of the mainland and free areas, referring to the regions of Taiwan, Penghu, Kinmen, and Matsu. The *Temporary Provisions* then allocated the number of seats for national democratic bodies in the free area in accordance with the number of registered voters in the household registrations. As a second significant change, from 1972, the elected representatives were no

⁵²³ The National Assembly revised the *Temporary Provisions* on March 19, 1966, which was effective on March 22. Art. 5 of the *Temporary Provisions* ruled the president of the ROC was authorized to hold elections in the "free areas" to meet the change of population or the absence of the representatives.

⁵²⁴ The territory effectively controlled by the ROC is called the free area of the ROC in the *Temporary Provisions* and the subsequent Amendment of the ROC Constitution in the 1990s.

⁵²⁵ Dongyuan kanluan shiqi ziyou diqu zhongyang gongzhi ren yuan zeng xuan buxuan banfa (動員戡亂時期自由地區中央公職人員增選補選辦法) [Measures on Supplementary Election for the democratic bodies at the central government in the period of national mobilization in the suppression of communist rebellion], effective on March 28, 1969.

⁵²⁶ The National Assembly revised the *Temporary Provisions* on March 17, 1972, effective on March 23. Art. 6 provided, the ROC President was authorized to hold elections to fill the supplement seats of the democratic bodies in the central government. The supplementary seats elected in the "free areas" had term limits. But the first-term representatives elected in Mainland kept the seats until the date of the ROC's recovering the mainland.

⁵²⁷ Paragraph 6, Subparagraph 2, of the *Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion*, promulgated on March 23, 1972, provides that the terms of elected central Representatives under the Constitution were to extend across the board until such time that "the recaptured areas in Mainland China conduct the election of central representatives." Dongyuan kanluan shiqi ziyou diqu zengjia zhongyang minyi daibiao mingde xuanju banfa (動員戡亂時期自由地區增加中央民意代表名額選舉辦法) [The measures on the supplementary election for the members of the democratic bodies in the period of national mobilization in the suppression of communist rebellion]. 36 seats were elected, and 15 seats were assigned by the president. However, those 51 seats elected in the free area had term limits for three years, as provided by the Art. 65 of the Constitution.

longer tenured. The supplementary legislators were elected for 3-year terms, and the supplementary National Assemblers for 6-year terms. The 1972 election added 53 National Assembly members and 51 legislators. The 1975 election brought 29 new legislators, including 23 KMT and 6 independent members.

This change symbolically indicated that the electoral institution in Taiwan was no longer an extension of the Chinese election system. However, due to the limited number of elected seats within the national democratic bodies, they still acted as a rubber stamp. The local electoral clientelism elites still competed the seats in the Taiwan Provincial Assembly and county executive governor positions. As the elected seats of the national democratic bodies increased in the following supplementary elections, the local clientelist elites gradually expanded their influence into national policy, which presaged the widespread clientelism of later years.

After taking advantage of the electoral system and the political mobilization machine, the KMT dominated the seat shares and vote shares in those elections. The KMT gained respectively 74% of eligible votes in 1972 and 79% in 1975. However, some non-KMT politicians, campaigning against the KMT, were elected under the shadow of white terror. Their struggles opened a narrow window of participation in the Legislative Yuan and National Assembly and gave hope to the coming democratic activists.

B. The Defection of Local Factions and the Rise of the Opposition in 1977

As previously analyzed, the KMT and local factions had contradictory goals. Before the KMT consolidated its regime, it was not capable of weakening or marginalizing local factions on a large scale. As the KMT started carrying out the Taiwanization policy, the honeymoon between the KMT and local factions ended. However, the KMT overlooked the

factor of the opposition force, which not only offered voters alternatives but also made local factions volatile. Thus, in the aftermath of the failed experience of the faction-replacement policy in 1977, the KMT compromised with local factions to suppress the opposition.

In 1972, Chiang Ching-Kuo, the eldest son of Chiang Kai-shek, became the chief of the Executive Yuan and carried out the Taiwanization policy. Chiang adopted a two-pronged strategy. First, Chiang promoted young and eloquent Taiwanese to the national elite groups, rather than elected local politicians. Second, Chiang adopted parachute tactics and nominated party bureaucrats to be candidates for county executive governor, the most crucial position for distributing interests and privilege in local politics. The aim of the Taiwanization policy was not only to improve the image of the KMT but also to replace the local factions.⁵²⁸

Under Chiang's leadership, the KMT adopted faction-replacement nominating strategies. In the 1968 county executive governor election, the KMT nominated three non-factional candidates. All of them won their seats. In the 1972 county executive governor election, the KMT nominated 12 candidates without factional backgrounds in 21 counties. As a result, the KMT swept all seats. After those experiments, the KMT gained incredible victories and was confident to take the further step to suppress the local factions on a large scale in the following elections. In the 1977 election, the KMT headquarters tried to marginalize the local factions and nominated non-faction candidates for seventeen out of twenty-one county governor posts. The local factions resisted cooperating with the KMT's non-faction candidates and helped the united front of the opposition, Dangwai, secure their chips for the post-election bargain with the KMT's headquarters. As a result, the KMT faced frustration and never recovered its electoral monopoly and pre-1977 seat shares.

⁵²⁸CHEN MING-TONG (陳明通), *supra note* 438, at 184.

Those developments changed the structure of mutual dependence between local factions and the KMT's headquarters. Before 1977, the KMT dominated local factions by offering incentives--the exclusive option to be elected--and showing threats--judicial persecution or deprivation of privileges. Thereafter, the KMT label no longer carried the guarantee of being elected, and KMT headquarters had to release greater incentives in order to recruit volatile factions to mobilize voters. As the local factions became more autonomous, money politics became increasingly institutionalized and would eventually outlast the KMT regime.

Since then, the KMT has figured out the limits to which it can penetrate into local society. Under the realism consideration, it ceased its plans to root out local factions and instead, took steps to reconnect with local factions due to its fear of the Dangwai. As opposed to the rebellious local factions, who were rent-seekers and had no intention of taking over the regime; the Dangwai subsequently transformed into the opposition parties that aimed to replace the KMT's ruling power. First, after the 1977 election, the KMT re-increased the number of nominating local factions' candidates. In 1981 and 1985 county executive governor elections, the KMT respectively nominated 10 and 11 candidates with a local factional background.⁵²⁹ Second, the KMT recruited certain local elites with factional background into the CSC.⁵³⁰

C. The Rise of the Opposition and Electoral Clientelism

The election of 1977 showed that the KMT, for the first time, had lost its firm control over the local factions. The election also offered a lesson for non-KMT candidates about the benefits of forming a united front of opposition. The first island-wide coalition of non-KMT

⁵²⁹ Chen Ming-tong & Lin Jih-wen, *supra note* 336, at 57.

⁵³⁰ Chen Ming-tong & Lin Jih-wen, *supra note* 336, at 52.

candidates was formed and named itself Dangwai (黨外).⁵³¹ The emergence of this coalition is considered a major turning point in Taiwan's political development.⁵³²

The appearance of opposition parties offered two ways to reshape the influence of electoral clientelism. First, the appearance of the opposition parties offered alternatives for clientelist elites, including the option for local factions or vote brokers, to defect from the KMT. Before the emergence of Dangwai, the local elites who could not align with the KMT's ideology either withdrew from politics or joined the local factions. In the aftermath of the 1977 election, the KMT was no longer the only choice for the clientelist elites to enter an alliance. Second, the elected politicians from the opposition hindered the exchange mechanism between the KMT and their clients. In particular, opposition victories in races for the position of county executive governor broke down the KMT's monopoly on resource distribution. As a result, the KMT's five strategies of retraining the local factions eroded in those areas.

The election in 1977 inspired the Dangwai in the following ways: (1) Gaining county governor or local assembly seats was a more effective way to express their dissent and carry out their political ideas than rallies on the streets. (2) A united opposition had been shown to enhance the chances of being elected. (3) Local factions became potential electoral partners when they showed their muscle and operated independently from the KMT. Thus, collaborating with the local factions became a viable option for the opposition, which eroded the KMT's electoral mobilizing system in rural areas and facilitated the opposition in gaining

⁵³¹ "Dangwai" literally meant no link with any political party. Hsueh Hua-yuan (薛化元), *Xuanju yu Taiwan zhengzhi fazhan (1950-1996)—cong difang zizhi xuanju dao zongtong zhixuan (選舉與臺灣政治發展(1950-1996)—從地方自治選舉到總統直選)* [The election and the political development in Taiwan (1950 to 1996): from the local election to the presidential election], 135 MODERN CHINA (近代中國) 34 (2000).

⁵³² Chen Ming-tong, *supra note* 438, at 190. The KMT gained a mere 64% of the popular vote and Dangwai won around 30% of the vote.

seats. Nevertheless, the opposition's strategy expanded the autonomy of the local factions, allowing them to be rent-seekers between the KMT and the Dangwai, especially in competitive districts.

Considering the experiences of elections and the essential need to survive under the SNTV, the Dangwai leaders founded an opposition party in 1986 and turned a new page for democracy in Taiwan. Under martial law, freedom of association was restricted; as such, creating an opposition party carried the risks of arrest and detention. In September 1986, Dangwai leaders decided to create the Democratic Progressive Party ("DPP").⁵³³ Instead of disbanding the DPP and arresting its leaders, President Chiang agreed to allow a new political party under three conditions: the DPP must respect the ROC Constitution, fight communism, and abandon the struggle for Taiwan's independence.

The emergence of the Dangwai and DPP accelerated the removal of martial law. President Chiang Ching-Kuo lifted martial law on July 15, 1987. By that point, Taiwan had been under martial law for thirty-eight years, one of the longest impositions of martial law in modern history. After martial law ended, the political marketplace was gradually opened, not only reshaping the landscape of local and national politics in the following elections but also bringing unexpected consequences for the local factions and election laws.

VI. The Civil Servant Election and Recall Act of 1980 and its Revision in 1983

A. The Civil Servant Election and Recall Act of 1980

Between 1950 to 1980, there was no special statute governing all elections in Taiwan. At the level of the national democratic body, the *Temporary Provisions* had authorized the

⁵³³ The DPP was formed by Taiwanese local politicians and liberal mainlanders.

president to issue “*During the period of mobilization for the suppression of Communist rebellion, the Measures of the Supplementary and By-election Election in the free area of the Republic of China*”⁵³⁴ and “*During the period of mobilization for the suppression of the Communist rebellion, the Measures of the election for adding members of national democratic bodies in the free area of the Republic of China.*”⁵³⁵ As for elections at the province level, the Taiwan provincial government was authorized by “*The Ordinance of the Local Self-government in Counties and Cities of Taiwan Province*”⁵³⁶ to issue rules such as the *Taiwan Provincial Government Election and Recall Regulatory Rules*.

As noted previously, in 1979, the legitimacy of the ROC faced both international and domestic challenges, from an international perspective, as the United States switched diplomatic recognition from the ROC to the PRC; and, from a domestic perspective, as the opposition movement rose to request the lifting of martial law. To respond to these challenges, the ROC government reconsidered their positions and attempted to use elections to strengthen its domestic legitimacy. Besides, the election rules between the local and central levels had some contradictions, causing administrative inefficiency. Thus, the Executive Yuan instructed the Department of Internal Affairs to draft the bill of “*The Civil Servant Election and Recall Act*” (“CSERA”).

⁵³⁴Dòngyuán Kānlùn Shíqí Zìyóu Dìqū Zhōngyāng Gōngzhí Rényuán Zēng Xuǎn Bǔxuǎn Bànfǎ (動員戡亂時期自由地區中央公職人員增選補選辦法) [During the period of mobilization for the suppression of Communist rebellion, the Measures of the Supplementary and By-election Election in the free area of the Republic of China]. 2048 *The Presidential Gazette* 1 (March 28, 1969).

⁵³⁵Dòngyuán Kānlùn Shíqí Zìyóu Dìqū Zēngjiā Zhōngyāng Mínyì Dàibiǎo Míng'é Xuǎnjǔ Bànfǎ (動員戡亂時期自由地區增加中央民意代表名額選舉辦法) [During the period of mobilization for the suppression of the Communist rebellion, the Measures of the election for adding members of national democratic bodies in the free area of the Republic of China]. 2436 *The Presidential Gazette* 1 (June 30, 1972).

⁵³⁶*Supra* note 377.

After considering the goals of democracy, martial law, and the existing electoral practices in Taiwan, the ROC government mainly referred to the Japanese “*Public Office Election Act*”⁵³⁷ to draft a unified and special act to cover all electoral affairs.

Unlike the TPERRR, the CSERA was passed by the Legislative Yuan⁵³⁸ as a statute, rather than an administrative ordinance. CSERA further liberalized the restrictions on campaign activities, however, the CSERA did still set a time frame for campaign activities. According to Article 45, “The period of election and recall activities of civil servants is prescribed below: 1. For the election of members of the Legislative Yuan, and National Assembly, 15 days. 2. For the election of the members of the Taiwan Provincial Assembly, municipal councilors, county (city) councilors, the governor of a county (city), 10 days. 3. For the election of the chief of a township(city) and the chief of an Indigenous district, and representatives of a township (city) Congress, 5 days.” Under article 55, it was prohibited to run a campaign or hold any campaign activities prior to the campaign period, subject to a fine not to exceed 10,000 NTD.

The CSERA also established an independent and permanent agency, the Central Election Commission (CEC), to execute and supervise electoral affairs so as to maintain electoral integrity. As for the rules on campaign finance, the CSERA contained no rules regulating mandatory disclosure or the limits on campaign expenditures or political donations.

⁵³⁷See WÚ YĀN CŪN (吳烟村), DÒNGYUÁN KĀNLUÀN SHÍQÍ GŌNGZHÍ XUÁN YUÁN Jǔ BÀMIǎN Fǎ Zhòng Xuǎnjǔ Jiǎnchá Zhī Yánjiū (動員戡亂時期公職懸遠舉罷免法中選舉監察之研究) [A STUDY ON THE ELECTORAL SUPERVISION UNDER THE CIVIL SERVANT ELECTION AND RECALL ACT DURING THE PERIOD OF MOBILIZATION TO SUPPRESS THE COMMUNIST REBELLIONS]11(1983).

⁵³⁸The Legislative Yuan finished its legislative on May 6, 1980. See 69 *Leg. Y. Gaz.* vol. 37, 4-34 (May 6, 1980).

B. The Revision of The Civil Servant Election and Recall Act of 1983

One goal of CSERA was to restrain the influence of money in elections, but its effect was slight. As the vote-buying scandals in the election of Control Yuan members leaked in 1980,⁵³⁹ the ROC government decided to take a more active role to restrain monetary influences in elections from both sides of demand and supply.⁵⁴⁰

a. The Prohibition on Receiving Donations from Foreign Entities

The first reform proposal designed to hinder the flow of money aimed to prohibit financial sources from foreign groups or other candidates. Under Article 45-2, "no political party and no candidate were allowed to receive a donation from the following sources: 1. Foreign groups, entities, or groups, whose main membership were composed of aliens. 2. Other candidates in the same election." During the deliberations in the Legislative Yuan, the legislative goal of preventing foreign influence into Taiwanese politics gained widespread support.

b. The Expenditure Cap

The legislative goal of restraining the cost of the election to reduce the dependence on donors or corporations was supported from both sides. But, the limits on expenditures were also challenged by legislators because of their vague and inconclusive scope.⁵⁴¹ First of all, the expenditure cap was unrealistic.⁵⁴² According to article 45-2, section 2, the expenditure limit was based on a formula, considering the factors of the number of registered voters, the number of the elected in the district, and consumer price index. One legislator indicated that

⁵³⁹YÜXIÀN LÁNG, XUǎNJǔ LÙNWÉN JÍ (選舉論文集) [THE COLLECTED BOOK OF THE STUDIES ON THE ELECTION], 175 (1990).

⁵⁴⁰3146 LEG. Y. GAZ. 7 (March 14, 1983).

⁵⁴¹The legislator Huang-hsiung Huang dissented, see 3216 LEG. Y. GAZ. 10 (June 6, 1983).

⁵⁴²The legislator Cheng-an Huang dissented, see 3146 LEG. Y. GAZ. 10 (March 14, 1983).

the actual cost of a campaign for a legislative member in the early 1980s was around 35 million NTD and argued the limits, as provided by the article, were too far from the political reality.⁵⁴³ Second, party donations to candidates and independent expenditures were not calculated as expenditures.⁵⁴⁴ The rules thus failed to regulate expenditures from political parties, causing concern over unfair competition between candidates supported by the KMT, which had ample resources, and independent candidates.⁵⁴⁵

Third, expenses for campaign activities prior to the campaign period were not viewed as expenditures.⁵⁴⁶ Against the background of electoral clientelism, the main expenditure was constituent service. Most constituent-service type activities, especially treating voters to costly meals and travel expense to festivals, or joining and giving gifts at wedding or funeral ceremonies, took place prior to the campaign period. Without covering activities such as these that occurred prior to the campaign period, the expenditure limits were never going to achieve the legislative goal but also deprived the opposition candidates of a fair opportunity to compete with the KMT's local factions. Fourth, worries about the independence and neutrality of the enforcing agency raised concerns over due process of law.⁵⁴⁷ Fifth, the dissemination of political information without censor was seen as the best way to restrain the monetary influences on voters. From the perspective of the opposition, the best way to restrain monetary influence was to liberalize the rules on campaign activities so as to improve the information flow and enhance name recognition for all candidates, rather than set up an expenditure cap, which would block the information flow and push voters into the grasp of vote brokers.⁵⁴⁸ Based on these concerns, from the perspective of opposition legislators, the

⁵⁴³ The legislator Shi Yuan Wen dissented, *see* 3146 *LEG. Y. GAZ.* 13 (March 14, 1983).

⁵⁴⁴ The legislators Huang-hsiung Huang and Deh-Ming Chang dissented, 3216 *LEG. Y. GAZ.* 10 (June 6, 1983).

⁵⁴⁵ *Id.*

⁵⁴⁶ 3216 *LEG. Y. GAZ.* 10 (June 6, 1983).

⁵⁴⁷ The legislator Ningxiang Kang dissented 3216 *LEG. Y. GAZ.* 12 (June 6, 1983).

⁵⁴⁸ The legislators Huang-hsiung Huang and Deh-Ming Chang dissented, *see* 3201 *LEG. Y. GAZ.* 20 (May 18, 1983).

requirement had a symbolic significance greater than its actual significance.⁵⁴⁹ Therefore, ultimately, Article 45-1 was passed and provided, "the maximum amounts of campaign expenditures of various public officials shall be calculated according to provisions by the election commission and be announced simultaneously together with the election proclamation."

c. The Debate over Mandatory Reporting and Public Disclosure Rules

Aligned with the rationale of expenditure caps, mandatory reporting requirements were regarded as auxiliary rules to enforce such restrictions. Under the bill from the Department of Internal Affairs, the candidates were required to report their campaign finances to the Central Election Commission.

However, the opposition legislators opposed such provisions due to the previous partisan enforcement.⁵⁵⁰ The legislative members of the opposition, on the other hand, proposed public disclosure, instead of mandatory reports, to prevent manipulation from the government. The opposition members asserted that public disclosure could achieve political accountability and restrain monetary influences. At the same time, the opposition also expressed concern that the mandatory reporting rules would cause chilling effects on independent expenditures or potential donors sympathetic to the opposition.⁵⁵¹ Moreover, the opposition raised concerns regarding the capability and neutrality of the CEC to enforce those rules. Thus, they argued, the mandatory report rules had a purely symbolic meaning.⁵⁵²

⁵⁴⁹The legislators *Huang-hsiung Huang* and *Deh-Ming Chang* dissented that the campaign finance law should be a milestone for politics, but not for the law. And the problems of the election should be recovered by the election, rather than the law, 3216 *LEG. Y. GAZ. 10 (June 6, 1983)*; 3201 *LEG. Y. GAZ. 19 (May 18, 1983)*.

⁵⁵⁰The legislators of Ningxiang Kang, *Chiu-chen Su*, *Huang-hsiung Huang* and *Deh-Ming Chang* dissented, *id.*, at 10, 11, 12.

⁵⁵¹*Tiang-fu Huang* dissented, 3146 *LEG. Y. GAZ. 8 (March 14, 1983)*; the legislator *Xiping Fei* dissented, 3201 *LEG. Y. GAZ. 20 (May 18, 1983)*.

⁵⁵²The legislators of *Jung-Shu Hsu*, *Huang-hsiung Huang* dissented, *id.*, at 11, 12.

After deliberations and negotiations took place between both sides, Article 45-3 ultimately provided, "candidates who receive contribution should keep the records in their accountant books. Candidates should sign and send those records to the election commission within 30 days after the balloting day. The Central Election Commission is authorized to subpoena candidates whose reports were incomplete with a factual basis. The candidates should keep receipts and accountant books at least six months."

d. Criminal Liability or Political Accountability?

Under the bill from the Department of Internal Affairs, Article 95-1 would have imposed a criminal liability of two-year imprisonment on those candidates whose expenditures were found to exceed the limits.⁵⁵³ This criminal liability was strongly opposed by both the opposition and KMT members.⁵⁵⁴ The main concern was based on the principle of proportionality. The consequences of receiving donations from other candidates or failing to report accountant records of campaign finances resulted only in a fine, whereas the criminal liability on those candidates who violated the limits on expenditures were viewed as overly severe.⁵⁵⁵

After negotiations, the CSERA only imposed a fine on those candidates who surpassed the campaign expenditure limits. Article 97 provided "a candidate violating the provisions governing contribution acceptance set forth in Subparagraph 2 of Article 45-2, or Section 1, 2, 4 of Article 45-3.... shall be punished by a fine of at least 1,000 NTD, and not more than 10,000 NTD." Criminal liability was imposed only on those candidates who received donations from foreign entities. Article 88 provided, "a candidate violating the provisions

⁵⁵³3146 LEG. Y. GAZ. 7 (March 14, 1983).

⁵⁵⁴ The KMT's legislators of *Chih-peng Li*, and the opposition legislators, Ningxiang Kang, Chiu-chen Su, Huang-hsiung Huang and Deh-Ming Chang dissented, *id.*, at 15.

⁵⁵⁵ *Id.*

governing contribution acceptance set forth in Subparagraph 1 of Article 45-2 shall be punished with imprisonment of at least one year, but not more than seven years.”

VII. Conclusion: The Negative Effects of Electoral Clientelism during Authoritarian Rule

Electoral clientelism facilitated the KMT to coordinate with local factions and form a mutually beneficial political alliance, contributing to the stability of the ROC-KMT regime. But the clientelism brought about two negative consequences for Taiwanese politics, money politics and personalistic/materialistic tendencies.⁵⁵⁶

Based on empirical studies, a significant consequence of electoral clientelism affected the voting behaviors through the 1980s. According to an estimation, the rate of vote-buying in rural areas was about 20-30%.⁵⁵⁷ The candidates' networks and constituent services, rather than their views of policy or ideology, were continuously the factor that most influenced voters' decisions.⁵⁵⁸ In the same survey, around 20% of interviewees agreed that personal and material consideration was a determining factor, which roughly equaled the percentage of faction voters.⁵⁵⁹ After decades of clientelism, around a quarter of residents in Taiwan voted based on the material rewards or personal networks, rather than informed judgment. Consequently, policy debates and deliberation were diminished in the public forum.⁵⁶⁰ The campaign for personal votes became institutionalized and electoral clientelism took root. As shown in the previous analysis in chapter 1, given the path dependent and asset specificity effects, not only the candidates, local factions, and vote brokers, but also the voters

⁵⁵⁶CHIA-LUNG LIN, *supra* note 464, at 180.

⁵⁵⁷Joseph Bosco, *Faction Versus Ideology: Mobilization Strategies in Taiwan's Elections*, 137.1 *The CHI. QUA.* 40 (1994).

⁵⁵⁸CHIA-LUNG LIN, *supra* note 464, at 181.

⁵⁵⁹CHIA-LUNG LIN, *supra* note 464, at 182.

⁵⁶⁰CHIA-LUNG LIN, *supra* note 464, at 180.

developed investments in the arrangement tied to clientelism networks. This made reversal or the revision of campaign finance rules more difficult.

Chapter 5. Campaign Finance Law and the Transformation of Electoral Clientelism in the Democratic Era (1991-2004)

Taiwan's transition to democracy aligns with what Lipset and Rokkan have suggested, "key historical junctures produced major political cleavages."⁵⁶¹ The death of President Chiang Ching-Kuo, in January 1988, precipitated an end to authoritarian rule. President Chiang's death had profound implications for the political landscape in Taiwan, causing a shift in dynamics that would shape Taiwan's slow transition to democracy. The period following President Chiang's death resulted in the introduction of new political liberalization measures, internal conflicts and splits within the KMT, the rise of electoral clientelism, and a peaceful political transition towards democratic rule. The new political climate also resulted in two major revisions of the *Civil Servant Election and Recall Act* (CSERA), in 1989 and 1991.

However, the revisions of CSERA did not achieve the goals of restraining electoral clientelism and producing a clean government. As North and Weingast indicate, legal and political institutions are change resistant⁵⁶² and suffer from interdependence.⁵⁶³ The people who design institutions may create rules to bind their successors or restrict themselves from removing certain alternatives in the future to enhance stability and facilitate cooperation. In the case of the 1989 and 1991 revisions of CSERA, as electoral clientelism took root in political practices and caused path dependence and asset specificity effects, the mandatory report/public disclosure rules were merely symbolic legislative measures (law in books) rather than law in practice.

⁵⁶¹ Seymour Martin Lipset & Stein Rokkan, *Cleavage Structures, Party Systems and Voter Alignments: An Introduction*, in PARTY SYSTEMS AND VOTER ALIGNMENTS 1 (Lipset and Rokkan, eds., 1967).

⁵⁶² Douglass C. North & Barry R. Weingast, *Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, 49 J. ECO. HIS. 803 (1989).

⁵⁶³ Douglass C. North, *Institutions, Institutional Change and Economic Performance* 95 (1990).

Why, then, did the political opposition and the people in Taiwan tolerate electoral clientelism and the paralyzed mandatory report/public disclosure rules? The relative timing of democratization matters.⁵⁶⁴ As Orren and Skowronek observe, “different social realms interact with one another, the different historical roots of these realms and differences in the timing of their development can shape the character of these interactions and an inherent dynamism.”⁵⁶⁵ As Shefter has stated, the initial mobilization generated positive feedback, and “once entrenched, the dominant basis of political mobilization became difficult to dislodge.”⁵⁶⁶ The case of Taiwan follows Shefter’s model. As shown by the analysis in Chapters 3 and 4, the founding local assembly elections that were held in 1935, 1946 and 1950/51 caused the rise and the development of electoral clientelism due to the colonial or authoritarian regime’s tolerance. The beginning of by-and-supplement elections at central democratic bodies since 1969 further institutionalized the preexisting electoral clientelism networks and extended their reach from the local to the central government.

As demonstrated by Fukuyama and Scott’s analysis, discussed in Chapter 2, electoral clientelism could be viewed as a continuation of traditional gift-giving practices and existing ties of kinship or other parochial loyalties.⁵⁶⁷ In the absence of robust enforcement of TPERRR and CSERA, electoral clientelism had reshaped local politics and become embedded into people’s daily customs, turning into intact mobilizing networks. Chiang’s lifting of martial law, the resulting process of political liberalization in the late 1980s, and the coming democracy in the early 1990s opened a wider window for the development of local factions.

⁵⁶⁴MARTIN SHEFTER, *POLITICAL PARTIES AND THE STATE: THE AMERICAN HISTORICAL EXPERIENCE* (1994).

⁵⁶⁵ Karen Orren & Stephen Skowronek, *Beyond the Iconography of Order: Notes for a New Institutionalism*, in *THE DYNAMICS OF AMERICAN POLITICS*, 311 (Lawrence Dodd & Calvin Jillson, eds., 1994).

⁵⁶⁶ Martin Shefter, *Party and Patronage: Germany, England, and Italy*, 7 *POL. & SOC.* 414, 415 (1977).

⁵⁶⁷JAMES C. SCOTT, *COMPARATIVE POLITICAL CORRUPTION* 12 (1972).

Local factions grasped the chance to develop across the boundary of county borders and used their power to interfere with the nomination process of major political parties. As a result, the DPP, like the KMT in the early 1950s, chose to strategically cooperate with or absorb local factions. Meanwhile, due to internal conflict and fierce inter-party competition, the KMT had no choice but to depend more on local factions, which led to it losing its dominance over local factions. The relationship between the KMT and local factions gradually changed from a vertical patron-client alliance into a parallel and voluntary dyadic one.

Although the local factions expanded their bargaining power with major political parties during the democratic era, they also faced challenges. As a result of urbanization and the liberalization of the mass media in the 1990s, voters gained more bargaining power vis-a-vis their patrons and were more volatile and independent from local factions and their vote-brokers. Local factions and their vote-broker networks gradually lost their dominant power toward voters. Thus, after the election of 1995, the local factions and vote brokers did not function as efficiently as before. These developments in Taiwan correspond to the analysis by Eisenstadt & Roniger and Graziano, discussed in Chapter 2. The utility goal of maximizing benefits could explain the voluntary relationship between patrons and clients while the relationship changed from the traditional to that of a modern society.

Furthermore, the social changes caused an increase in the financial demands for local factions' mobilization and survival. Thus, local factions sought new patrons to ensure their survival, which in turn provided chances for commercial groups and the mafia to buyout or hijack the local factions in some areas; this became known as black gold politics. The involvement of the mafia and financial groups gradually paralyzed the local factions, transforming them into more personalized and localized political units by the early 2000s.

Given that the boom of electoral clientelism had reshaped the political landscape, elected legislators could not reach a consensus and could not address this issue until 2004.

I. The Revival of the ROC Constitution and the Reopening of National Elections in 1991

As mentioned before, critical historical junctures produced significant and irreversible political cleavages. The transition from authoritarian rule between 1988 to 1991, starting with the death of the president, the internal conflicts within the national elite group of the KMT, the social movement, and responses from the authoritarian regime, laid the foundation for democracy and stimulated the existing electoral clientelism in Taiwan. To analyze the mandatory report/public disclosure rules in CSERA and the gap between the law and its practices, this section reexamines the critical juncture between 1988 and 1991 and observes the political dynamics for the revisions of CSERA in 1989 and 1991.

The last strongman of the KMT, President Chiang Ching-Kuo, died in January 1988. But the changes that occurred in the wake of Chiang's death brought about a critical juncture in Taiwan. In the absence of a strong political basis in the KMT and popularity among people, President Chiang's successor, President Li Teng-hui, faced political upheavals. The people in Taiwan were already aware of the value of democracy, having experienced elections for more than four decades, and called for the removal of the senior parliamentarians who had been elected in the 1940s. However, the KMT's hardliners who controlled the CSC were concerned that they would lose their power after the general election of the national democratic bodies. Due to these conflicts, the future of Taiwan remained uncertain.

Amidst this climate of uncertainty, the KMT elites - led by President Li- and the Taiwanese people both found the island at a critical political juncture. In the end, Taiwan

ultimately chose to transition away from the authoritarian rule of the ROC-KMT regime and begin the process of becoming a democracy. Since the main opposition party, the Democratic Progressive Party, and the leaders of the student movement, accepted President Li's agenda for the transition to democracy, the KMT played a central role in the incumbent-led transition process. In other words, the incumbent government controlled the transition process.⁵⁶⁸ This meant the democratic reform process was conducted within the existing institutions and under the ROC Constitution. The KMT embraced minimalist democracy to avoid serious challenges to their grip on power. Given the pre-existing conditions, the transition to democracy did little to restrain electoral clientelism and money politics and it would take more time for the transition movement to gain full momentum.

A. The Revival and Revision of the ROC Constitution

a. The personal and ideological conflicts within the KMT in 1990

As President Chiang died without releasing his political last will and testament, or without setting up a clear agenda for the transition to democracy, internal conflicts within the KMT soon erupted. The conflicts were compounded by two political issues, leadership succession and the status of tenured representatives in national democratic bodies. The factors of national identity, the policy toward the PRC, and the cleavage between national and local elite group also resulted in internal chaos. After negotiating with the hardliners within the KMT, President Li eventually took the seat as president of the ROC and chair of the KMT.

President Li was put in place for the remainder of President Chiang's term on January 13, 1988. Under the *Temporary Provisions*, Chiang's term had been scheduled to run from

⁵⁶⁸YOSSI SHAIN & JUAN LINZ, *BETWEEN STATES: INTERIM GOVERNMENTS IN DEMOCRATIC TRANSITIONS* (1995).

May 20, 1984 to May 19, 1990. Thus, a new presidential election by the National Assembly was due to be held by May 19, 1990. Due to the long-standing presence of their tenured representatives, the KMT controlled a supermajority in the National Assembly. Thus, there was no doubt the candidate nominated by the KMT would be elected for the next term (1990-1996).

However, this process did not run smoothly and by February 1990 conflicts had erupted within the KMT. The KMT was divided into two factions, the mainstream faction and the non-mainstream faction. The mainstream faction, composed of President Li and his supporters, including the local elite groups and local factions, advocated democratic reforms and political liberalization. In contrast, the non-mainstream faction, which occupied the majority of the CSC, prioritized political stability and Chinese nationalism. In their minds, Li was too close to the corrupt local factions and was moving Taiwan toward independence.⁵⁶⁹ The internal conflicts were temporarily mediated in early 1990, and President Li took office as the ROC president and the chair of the KMT.

The internal conflict in 1990 had three implications for electoral clientelism and CSERA. First, the cleavage between mainstream and non-mainstream was never mended, which caused two major splits in the 1990s. Second, as the KMT was divided, the inter-party competition became fiercer. Third, the internal conflicts pushed President Li to depend more on local elite groups and local factions. After a series of intra- and inter-party conflicts, the local factions gained more autonomy and greater bargaining power, allowing them to participate in the KMT's nomination and policy-making process. As a result, the internal conflicts in 1990 stimulated electoral clientelism, making it less likely for elected legislators

⁵⁶⁹SHELLEY RIGGER, *POLITICS IN TAIWAN: VOTING FOR DEMOCRACY* 151 (1994).

to revise CSERA for increased transparency. The political dynamics and their interaction with electoral clientelism and CSERA will be analyzed in the following sections.

b. The Wild Lily Social Movement and National Affairs Conference (NAC)

As the internal conflicts within the KMT became apparent, the people in Taiwan began to call for democracy. Therefore, as the process of liberalization was initiated, the authoritarian regime's response was critical. President Li, after considering his stakes, chose to respond to the people's call for democracy and convened the National Affairs Conference (NAC). On one hand, the NAC set the political agenda and laid the foundation for the transition to democracy. On the other hand, the absence of debate regarding the legitimacy of party assets and the SNTV system meant that the resolution of the NAC institutionalized the existing system of electoral clientelism and substantially eviscerated the campaign finance rules.

In March 1990, a social movement, known as the Wild Lily Movement,⁵⁷⁰ began to voice their demands for general elections to be held for the democratic bodies of the central government. These protests successfully raised the Taiwanese people's awareness of wider political participation. When the KMT's internal conflicts and the political incapability of the tenured representatives became publicized by the mass media, the public became dissatisfied with the *Temporary Provisions* and the tenured representatives.

A few days before the presidential election, which was to be held by the National Assembly on March 21, 1990, the Wild Lily Movement erupted and began calling for democracy. On March 16, 1990, students from National Taiwan University held a sit-in at the

⁵⁷⁰ Ho Ming-sho, *Understanding the Trajectory of Social Movements in Taiwan*, 39 J. CUR. CHIN. AFF., 3, 3-22 (2010); Teresa Wright, *Student Mobilization in Taiwan: Civil Society and Its Discontents*, 39 ASIAN SURVEY, 986, 986-1008(1999).

Chiang Kai-shek Memorial Hall to protest the legitimacy of the tenured representatives, who had been elected in the Mainland and had held their seats since the 1940s. The protesters also questioned the legitimacy of the coming presidential election. One day later, thousands of students joined the protesters to express their support for democracy. The leaders of the student movement set forth the following four demands to President Li.:1. Dismantle the National Assembly. 2. Abolish the *Temporary Provisions*, which had frozen the major provisions concerning civil rights and the separation of powers within the ROC Constitution of 1947. 3. Hold a National Affairs Conference to form a new consensus. 4. Draft an agenda for political and economic reforms.⁵⁷¹

The Wild Lily Movement placed President Li in a dilemma between the people and the non-mainstream faction. After some behind the scenes bargaining with the leaders of the movement and the DPP, President Li and the mainstream faction viewed the movement's activists and DPP as potential partners, rather than opponents. The reason President Li tolerated the Wild Lily Movement's gatherings was to earn political credit through association with the movement and thus achieve a more advantageous position over the non-mainstream faction. On March 21, the presidential election was held by the National Assembly and President Li was elected as the 8th president of the ROC (for a six-year term, from May 20, 1990 to May 19, 1996).

Facing potential threats and the attendant pressure of being overthrown from power, the KMT elite took the lead,⁵⁷² or at least took joint action with the opposition party - DPP - in negotiations to bring about democracy. On the day of the presidential election, President Li invited the Wild Lily Movement's leaders to the presidential office and publicly accepted

⁵⁷¹*Id.*

⁵⁷²SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* 124-127 (1991).

their four demands in exchange for ending the protest gatherings. Under this new, publicly endorsed demand for democracy, the CSC passed a resolution to hold the National Affairs Conference and invited political and social elites, including the DPP, to forge a new consensus toward democracy.

The opening of the National Affairs Conference in June 1990 symbolized that Taiwan was on an irreversible course toward democracy. As leaders from both factions within the KMT and the DPP had been integrated into the Conference in an effort to forge consensus, President Li faced the risk of either being boycotted by the DPP or upsetting the non-mainstream faction, which controlled the CSC.

The first issue for President Li was how to convince the DPP to pursue its political goals under the framework of the ROC Constitution, rather than through revolution. After decades of experience in local elections, the DPP elites foresaw the possibility of replacing the KMT regime through fair, periodic, national elections. Thus, the DPP accepted the five issue areas proposed by the KMT's headquarters as the agenda for the NAC, being; parliamentary reform, a system of local government, a system of central government, procedures for constitutional reform, and Mainland policy. Furthermore, the DPP neither objected to the KMT's assets and the SNTV electoral system nor did they propose campaign finance reform during the NAC.

The second issue was how to persuade the tenured representatives in the National Assembly to end the *Temporary Provisions*, amend the ROC Constitution, and ultimately have the tenured representatives retire and call elections for the national democratic bodies. The headquarters of the KMT and the DPP reached an agreement on this issue before the opening of the NAC. On April 13, 1990, the CSC passed a resolution calling for the retirement of all tenured representatives by the end of 1991. In June 1990, the Constitutional

Court reinterpreted the Constitution, and ruled that the tenured representatives should step down by December 31, 1991.⁵⁷³ After overcoming the main legal hurdle, the general election for the National Assembly was held in December 1991.

As the NAC closed, the headquarters of the KMT and the DPP took joint action to move toward democracy. The abolition of the *Temporary Provisions* in 1991 and the following amendments to the ROC Constitution in 1992 and 1994 symbolized the transition to democracy. The steps toward the achievement of democracy included the election of the National Assembly in December 1991 (this being the second such election, following the election of November 1947, as mentioned in Chapter 4), and the election of the Legislative Yuan in December 1992 (the first having taken place in January 1948, as discussed in Chapter 4).⁵⁷⁴ Thus, the year 1991 was the start of the Democratic Era in Taiwan. From 1996 onward, all the top decision-making positions, including the presidency, were filled through an open and fair electoral process.

The NAC was one of the critical junctures for Taiwan to transition from authoritarian rule to democracy. The KMT led the process, or worked together with the DPP, to democratize the regime. However, the KMT was not willing to yield its control of the regime to the DPP and excluded certain critical issues from the conference agenda, including; the electoral system, the party's assets, and campaign finance reform. As a result, the KMT's

⁵⁷³ See Sifayuan Dafaguan Huiyi (司法院大法官會議) [Council of Grand Justices: Constitutional Court], in 1990, Sifayuan Dafaguan Huiyi Jieshi Di 261 Hao (司法院大法官會議解釋第 261 號) [the Judicial Yuan No. 261 Interpretation] (hereinafter "SHIZI No. 261") (1990) (Taiwan). ("Those first-term national representatives who have not been reelected on a periodical basis shall cease the exercise of their powers no later than December 31, 1991.")

⁵⁷⁴ Samuel Huntington categorized the way to democracy in Taiwan as "transformation," which means the political elites took the lead in bringing about democracy. See SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY*, 124-127 (1991). However, some have argued the opposition party also played a crucial role in transforming the governmental, constitutional, and KMT structure. See Cheng Tu-Jen & Stephan Haggard, *Regime Transformation in Taiwan: Theoretical and Comparative Perspectives*, in CHENG TU-JEN AND STEPHAN HAGGARD, *POLITICAL CHANGE IN TAIWAN* (Cheng Tun-jen & Stephan Haggard eds., 1992).

headquarters set the basic rules of democracy in Taiwan. The KMT adopted a minimalist definition of democracy, a procedural definition for free, fair, and competitive elections of governing officials.⁵⁷⁵ Also, the KMT maintained the assets it had accumulated since 1945 (as examined in Chapter 1) and insisted on adopting the SNTV system to enable the manipulation of local factions through electoral clientelism.

B. The Founding Elections in 1991 and 1992

a. The Election for the National Assembly in 1991

Huntington has indicated that the first elections in most third wave democracies can be viewed as foundation elections⁵⁷⁶ or “stunning” elections,⁵⁷⁷ in which the election outcomes and implications are hard to predict. However, atypical consequence of foundation elections is that most ruling parties in authoritarian regimes lose power soon after democratization.⁵⁷⁸

In this respect, the case of Taiwan was distinct from the typical situation of founding elections in other third wave democracies.⁵⁷⁹ In the 1991 election, the KMT dominated the shares of both seats and votes. The KMT gained 71% of the popular vote and 80% of the seats in the geographical districts. Combined with the proportional seats, the KMT share of all seats reached 78%.

One may offer a number of reasons for this distinctive pattern. Most importantly, he KMT’s strategy of mobilizing local factions worked efficiently.⁵⁸⁰ As the analysis in Chapter

⁵⁷⁵JOSEPH SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 242 (1942).

⁵⁷⁶GUILLERMO O'DONNELL & PHILLIPPE SCHMITTER, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES 61 (1986).

⁵⁷⁷SAMUEL HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATER TWENTIETH CENTURY 175 (1991).

⁵⁷⁸SAMUEL HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATER TWENTIETH CENTURY 175 (1991); GUILLERMO O'DONNELL & PHILLIPPE SCHMITTER, *supra* note 576, at 61.

⁵⁷⁹LIN CHIA-LUNG, *supra* note 402, at 361; CHIN-SHOU WANG, *supra* note 439, at 85. (Lin and Wang argued, the five elections from 1991 to 1996 are a “cluster of founding elections” in Taiwan).

⁵⁸⁰SHELLEY RIGGER, POLITICS IN TAIWAN: VOTING FOR DEMOCRACY, 159 (1994); LIN CHIA-LUNG, *id.* at 361 (1998).

4 showed, before opening the general election in 1991, the KMT had firmly controlled political power and economic privilege at the national level, and had distributed those resources and privileges to existing local factions that were closely aligned with the KMT, in keeping with the pattern in previous routine elections. The vertical electoral clientelism and a mobilizing system had been established and consolidated since the late mid-1950s. As the general election began, the KMT headquarters' nominating strategy was closely coordinated with local factions in order to prevail over the DPP and marginalize the non-mainstream faction. According to data, 79 out of the 183 (43.2%) KMT nominees had a local factional background and, as compared to the average elected rate of 88%, 97.5% of candidates with local faction background were elected.⁵⁸¹

Also, Rigger's analysis shows that, under the institutional arrangements of SNTV, and given the high magnitude of seats in each electoral geographic zone, the KMT was able to maximize its advantage by manipulating the mobilization of KMT supporters between each nomination to let as many nominees as possible pass the electoral threshold. Only a few of the KMT's nominees gained an "excessively large share of voters" in their constituency.⁵⁸² The increase in seats and the distribution of votes also showed that it was the KMT's electoral mobilization, rather than issue campaigning, that had the greatest effect in the election.

b. The Election for the Legislative Yuan in 1992

The KMT's significant victories in 1991 stabilized President Li's leadership and tipped the balance of power within the KMT toward the mainstream faction.⁵⁸³ After 1991, the major battlefield within the KMT shifted to the issue of restraining money politics and corrupt local

⁵⁸¹LIN CHIA-LUNG, *id.* at 363 (1998).

⁵⁸²SHELLEY RIGGER, *POLITICS IN TAIWAN: VOTING FOR DEMOCRACY*, 159 (1994).

⁵⁸³SHELLEY RIGGER, *id.* at 159.

factions. On the one hand, the KMT headquarters led by President Li depended on local factions and nominated the most candidates linked with local factions in the election for the Legislative Yuan in 1992. On the other hand, the non-mainstream faction was displeased with President Li's refusal to undertake land tax reform to suppress the price of real estate and the power of local factions.⁵⁸⁴ Some non-mainstream faction members with high name recognition decided to run an independent campaign, which planted the seeds of the subsequent split of the KMT in 1993.

The general election for the Legislative Yuan in 1992 was held against the backdrop of internal conflicts in the KMT. A total of 161 seats were at stake under the SNTV electoral system and, after the defection of the non-mainstream faction, to keep a majority against the DPP, the KMT headquarters decided to coordinate closely with local factions. According to Lin's review of the backgrounds of KMT nominees in all categories: geographic, indigenous, and proportional vote, it can be seen that 58 out of 98 (59.2%) of the KMT nominees had a local faction background, and the factional candidates were elected at a rate of 65.5%.⁵⁸⁵ Huang's studies show that, by narrowing the scope to the KMT's nominees in geographic districts, 65 out of 83 (78.3 %) of the KMT nominees had links with local factions, and they were elected at a rate of 82.0%. Although Lin and Huang have divergent definitions of what constitutes a local faction, both data sets indicate that the election in 1992 was the first time a majority of the KMT's candidates for a national level election had links with local factions.⁵⁸⁶

⁵⁸⁴CHIN-SHOU WANG, *supra* note 439, at 58. As the price of real estate boomed in the 1980s, the local business groups had gained tremendous benefits from the process of urbanization. The business groups then increased their monetary influences to coordinate with or buy out the local factions to extend their involvement in the process of public policy. Chenhuan Wang, *infra* note 597, 159.

⁵⁸⁵LIN CHIA-LUNG, *supra* note 402, at 363 (1998). Huang Te-Fu, *Elections and the Evolution of the Kuomintang*, 31 *ISSUE & STUDIES* (5), 119 (1995); Huang Te-Fu, *Xiàndàihuà, xuǎnjǔ jìngzhēng yǔ dìfāng pàixì: 1992 Nián lǐfǎ wěiyuán xuǎnjǔ de fēnxī* (現代化、選舉競爭與地方派系：1992年立法委員選舉的分析) [*Modernization, Election Competition and Local Factions: Analysis of Legislative Yuan Election in 1992*], 1 *J. ELEC. STU.* 75, 78 (1994) (According to Huang's data, 65 out of the 83 (78.3 %) KMT nominees had local faction backgrounds, and were elected at a rate of 82.0% (41 out of 50)).

⁵⁸⁶SHELLEY RIGGER, *POLITICS IN TAIWAN: VOTING FOR DEMOCRACY*, 165 (1994).

These data reflect that the KMT headquarters had to depend on the local factions' mobilization ability to compete with candidates from the non-mainstream faction and DPP.

Moreover, the internal conflict in the KMT led to deterioration in the KMT's mobilizing system. As mentioned in Chapter 4, the KMT's tactics to maximize its share of the seats in the SNTV system; the boundaries of responsibility zones and iron votes-- those who were sympathetic to the non-mainstream faction -- were no longer as effective as they had previously been. As a nomination by the KMT was no longer a guarantee of being elected, the candidates and local factions had to pay more attention to constituent services and vote-brokers to maintain their mobilizing function. As a result, an increasing number of vote-buying complaints emerged.⁵⁸⁷

Looking at the overall results of the 1992 election, the KMT won 96 out of 161 seats, thus constituting a substantial majority in the Legislative Yuan. However, in regard to the popular vote and the elected rate of its nominees, the KMT only gained 53% of the vote, a bare majority of the overall vote share, with a nominees' elected rate of 58%. It is estimated that 62% of the KMT's popular vote was from local factions.⁵⁸⁸ This electoral result indicated that the KMT faced a crisis and now had to rely on local factions to maintain its majority. This crisis let local factions gain greater autonomy and more bargaining power, allowing them to leverage the public policy and the party's nomination. Thus, the opening of the seats of the national democratic bodies and the KMT's internal conflicts in the early 1990s both contributed to the growth of clientelism, which had now gained the chance to enter the central stage of national politics and access state resources. As the majority of elected

⁵⁸⁷ SHELLEY RIGGER, *POLITICS IN TAIWAN: VOTING FOR DEMOCRACY*, 162 (1994).

⁵⁸⁸ Shu Yǒngmíng & Chen Hóngzhāng, *Dìfāng pàixì yǔ guómíndǎng: Shuāitūi huán shì shēnhuà?* (地方派系與國民黨：衰退還是深化?) [*Local Factions and the Kuomintang: Decline or deepening Crisis?*], 8 *TAI. SOC.* 193, 213 (2004).

legislators were linked with local factions, electoral clientelism and campaign expenditures boomed; meanwhile, the likelihood of campaign finance reform was diminished.

To contrast with the KMT's struggles to strike a balance between the non-mainstream faction and the local factions, the DPP raised anti-corruption as a major campaign issue.⁵⁸⁹ In the 1992 election, the DPP advocated for three major issues: a tax cut, combating political corruption, and prohibiting military intervention in politics. As the clientelist elites used their power to infiltrate national policy making and the KMT headquarters, their scandals soon became common knowledge because of conflicts of interests and the internal conflicts within the KMT. As a result, the issue of countering money politics soon caught the public's attention.

As a result, the DPP won 31% of the popular vote and 50 seats, its best electoral performance ever. Following the election in 1992, the DPP continued to campaign on the issue of countering money politics as the primary political appeal in the election of county executive governors in 1997 and the presidential election in 2000. The DPP gained victories in both elections and achieved its goal of replacing the KMT regime in May 2000.

C. The Split of the KMT and Implications for Local Factions and Electoral Clientelism

After the election of 1992, the triumph of President Li precipitated the split of the KMT. In August 1993, in an effort to hold President Li's power in check, a few legislators belonging to the non-mainstream faction decided to create the New Party. The creation of the New Party had two implications, namely: The New Party deteriorated the KMT's mobilizing efficiency on iron votes, and, although President Li and the mainstream faction controlled the

⁵⁸⁹CHIN-SHOU WANG, *supra* note 439, at 187 (2004).

CSC, they had to deepen their reliance on local factions, which caused the boom in electoral clientelism.

First, the creation of the New Party paralyzed the KMT's mobilization efforts, shifting the relative bargaining power between the KMT's headquarters and county factions, causing the rise of local factions and prevalent electoral clientelism.

In the elections between 1950 and the early 1990s, as shown by the analysis in Chapter 4, the KMT designated military personnel under the military functional branch (Huang Fu-Hsin branch) or other strong KMT supporters as their "iron voters." Those loyal supporters followed the voting instruction of the KMT⁵⁹⁰ and gave votes to the KMT's nominees most in need.

The KMT's mobility of iron voters played a critical role in equalizing the votes and maximizing the elected seats under the SNTV system. In addition, the iron votes served as the KMT's bargaining chip with local factions. Based on the divide-and-rule strategy, each county had at least two local factions and the KMT's iron voters became pivotal in the competition between the rival local factions.⁵⁹¹ This was the crucial ingredient of the KMT's discipline system used to restrain and balance the power of local factions. After the conflicts between mainstream and non-mainstream factions had been brought into the open prior to the election of 1992, the iron votes were no longer loyal to the KMT's instructions as had

⁵⁹⁰ CEHN-TUEH HUANG, TÁIWĀN SHĒNG CĀN YÌHUÌ, LÍN SHÍ SHĒNG YÌHUÌ JÌ SHĒNG YÌHUÌ SHÍQÍ KǒUSHÙ LÌSHǐ FĀNGTÁN Jì HUÀ: HUÁNGZHÈNYUÈ XIĀNSHĒNG FĀNGTÁN LÙ (台灣省參議會、臨時省議會暨省議會時期口述歷史訪談計畫：黃鎮岳先生訪談錄) [HUANG CHEN-YUEH'S ORAL HISTORY] 27 (2001).

⁵⁹¹ CHIN-SHOU WANG, *supra* note 439, at 58 (2004).

previously been the case. The constituents of the New Party overlapped with the KMT's iron voters.⁵⁹² The KMT estimated that the New Party attracted around 30% of the iron voters.⁵⁹³

After losing its iron voters, concerns over losing power pushed the KMT into a vicious cycle. The KMT had to offer increasing material incentives in exchange for local factions' mobilization. This not only led to the prevalence of money politics, including vote buying, bribes, and kickbacks, but it also opened the back door for the mafia or business people to exert undue influence over policies and over enforcement.

Second, the defection of the non-mainstream faction and the creation of the New Party caused President Li to further consolidate his grip on power. In an attempt to eclipse the non-mainstream faction, President Li moved forward his agenda for Taiwanization and promoted more local elites into the central government or the CSC. This was done in order to balance the power of the military functional branch, which leaned toward the non-mainstream faction.

President Li chose to integrate the local factions and businesspeople into his coalition and promoted them as members of the central committee (CC) or central standing committee (CSC). According to data from this era, the Taiwanese comprised 53.3% of the KMT's CC (112/210), which was the first-time the Taiwanese had gained a majority. At the same time, members with backgrounds as elected politicians also occupied 32% of the seats (67/210). Moreover, the portion of Taiwanese within the KMT's CSC also increased to 57% (20/35), this also being the first time the Taiwanese comprised the majority of the CSC. In the CSC,

⁵⁹² The term "iron voters" refer to the extremely loyal supporters of the KMT. Given the historical background, most mainlanders and their decedents closely followed the KMT's voting instructions. Most iron voters lived in military dependent villages, which were built in the late-1940 and 1950s in many counties. The original purpose was to provide provisional housing for the ROC's military forces and their dependents who retreated to Taiwan in 1949. As the ROC failed to reunify with China, those villages became permanent settlements and formed distinct cultures and enclaves of mainlanders surrounded by native Taiwanese. Based on national security reasons, the KMT set up a functional branch, Huang Fu-hsin, and provided distinct services to ensure the loyalties of the residents in military dependent villages. Hence, before the elections, those residents were loyal to the KMT headquarters and followed its voting instructions to assist candidates who were in need.

⁵⁹³ CHIN-SHOU WANG, *supra* note 439, at 59 (2004).

the number of members with a background as representatives also increased to 25.7% of seats (9/35).⁵⁹⁴ The newly promoted electoral clientelist elites brought their campaign and mobilizing tactics into the primary and party post elections.⁵⁹⁵

Thereafter, the local factions and their relations with the KMT changed. The internal conflicts and splits of the KMT weakened its controlling and bargaining power vis-a-vis local factions.⁵⁹⁶ As the KMT gradually lost its domination over the intelligence apparatus and judicial system, the local factions gained more autonomy to seek out new partners to consolidate or expand their political or economic interests. Thus, the local factions were no longer restricted within the county boundaries.⁵⁹⁷ The local factions also gained the chance to coordinate with business groups or organized crime networks to form new coalitions as the price of the real estate boomed in metropolitan areas; and they also gained the chance to participate in the KMT's decision making process.⁵⁹⁸

However, as the level of electoral clientelism rose dramatically, the campaign expenditures for the party's posts and primaries skyrocketed. In this political climate, campaign finance laws fell short of covering primaries and compounded the problems. This gave an advantage to wealthy candidates and forced honest politicians to withdraw or to raise

⁵⁹⁴ Huang Te-fu, *Elections and the evolution of the Kuomintang, in TAIWAN'S ELECTORAL POLITICS AND DEMOCRATIC TRANSITION: RIDING THE THIRD WAVE*, 119 (Hung-mao Tien eds., 1996).

⁵⁹⁵ Huang Te-fu, *Xiàndàihuà, xuǎnjǔ jìngzhēng yǔ dìfāng pàixì: Yījiǔjiǔ'èr nián lìfǎ wěiyuán xuǎnjǔ de fēnxī* (現代化、選舉競爭與地方派系: 一九九二年立法委員選舉的分析) [*Modernization, Election Competition, and Local Factions: An Analysis of the 1992 Election of Legislative Yuan*], 5 CHUNG-SHAN SOC. SCI. QUA. J. (1) 84 (1994).

⁵⁹⁶ Yun-han Chu (朱雲漢), *Chéng yě cáituán hēidào, bài yě cáituán hēidào* (成也財團黑道, 敗也財團黑道) [*The costs and benefits of business groups and mafia*], CHINA TIMES (Dec 30, 1994).

⁵⁹⁷ CHEN MING-TONG (陳明通), *PAIXI ZHENGZHI YU TAIWAN ZHENGZHI BIANQIAN* (派系政治與台灣政治變遷) [THE FACTION POLITICS AND POLITICAL TRANSITIONS IN TAIWAN] 228 (1995); CHENHUAN WANG (王振寰), *SHUI TONGZHÌ TÁIWĀN? ZHUÀNXÍNG ZHŌNG DE GUÓJIĀ JÍQÌ Yǔ QUÁNLÌ JIÉGÒU* (誰統治台灣? 轉型中的國家機器與權力結構) [WHO GOVERNS TAIWAN? THE TRANSFORMING STATE MACHINE AND ITS RELATED STRUCTURE OF POWER] 142 (1996).

⁵⁹⁸ Chen Ming-tong, *supra* note 597, at 236, 242; Chenhuan Wang, *supra* note 597, 140; DUNG-SHENG CHEN (陳東升), *JĪN QUÁN CHÉNGSHÌ: DÌFĀNG PÀIXÌ, CÁITUÁN Yǔ TÁIBĒI DŪHUÌ FĀZHĀN DE SHÈHUÌ XUÉ FĒNXÌ* (金權城市: 地方派系, 財團與台北都會發展的社會學分析) [GOLDEN CITY: A SOCIOLOGICAL ANALYSIS OF LOCAL FACTIONS, BUSINESS GROUPS AND THE DEVELOPMENT IN THE AREAS OF TAIPEI METROPOLITAN] (1995).

money while in office or during the campaign to defray their financial burdens. Also, the revision of CSERA from the late-1980s, without considering the historical roots of clientelism, caused campaign finance law to be a matter confined only to legislation and not effective in actual practice.

D. The DPP's Strategy: Summoning the Defecting Local Factions from the KMT

In contrast to the series of internal conflicts of the KMT and the subsequent defections, the DPP adopted a two-pronged strategy to capture votes, focusing on the recruitment of and coordination with the KMT's defecting local factions to gain personal votes, and advocating for a clean government to erode the KMT's image (as shown by analysis in the previous section).⁵⁹⁹

The alliance between the DPP and local factions could be traced back to 1977. As mentioned in Chapter 4, since 1977, the Dangwai and DPP reshaped the KMT's electoral clientelism in local politics. First, the existence of opposition parties offered the local factions and vote brokers opportunities to defect from the KMT, as the growth of opposition parties meant that loyalty to a certain party or to the local factions was no longer the only alternative for vote-brokers and voters. After the emergence of opposition parties, the KMT's divide and rule and parachute tactics were also less successful. The local factions now had alternative choices to set back the KMT's parachute candidates. As the competition transformed from inter-faction to inter-party competition, local factions or vote brokers had choices to support opposition candidates rather than candidates from hostile factions under the KMT's label.

⁵⁹⁹ Hsu Yung-ming & Chen Houng-chang, *Local Factions and the Kuomintang: Decline or Deepening Crisis?*, 8 TAIWANESE SOCIOLOGY 193, 193–228 (2004); CHEN TAI-YIN, TAIWAN'S LOCAL FACTIONS AFTER DEMOCRATIZATION: A CASE STUDY OF THE LIN FACTION IN CHIA-YI COUNTY, MASTER'S THESIS, TSING HUA U. (2009).

After the authoritarian rule ended, the DPP had a more permanent relationship with local factions than Dangwai. Before the establishment of the DPP, the members of local factions might offer support to Dangwai, rather than join it, due to the risks of being arrested. With the beginning of the democratic era, however, the risks and costs of defection from the KMT decreased, and the local factions or their vote-brokers started joining or supporting the DPP because of ideological or personal interests. The benefits included but were not limited to party nomination, party reputation, and economic resources.

Second, the victories of the opposition further blocked the resource exchange chain between the KMT and their clients, and thus reduced the KMT's mobilizing power. In the case of Taiwan, after coordinating with or recruiting defecting local factions, Dangwai and the DPP gradually weakened the KMT's electoral clientelism. The KMT, however, maintained its majority in the national democratic bodies due to its ability to exchange resources with local factions. Therefore, cutting off the tunnel of resources and breaking down the exchange mechanism would shut down the KMT's electoral clientelism system. The position of the county executive governor was crucial in connecting the KMT's headquarters with the local factions. Accordingly, gaining the county executive governorship facilitated the DPP's efforts to establish its own clientelist networks by "summoning" factions defecting from the KMT by offering political and economic resources.

Third, after the NAC, the basic rules of democracy and elections were decided. Considering the irreversible course of electoral clientelism, the DPP formally adopted the "summoning defectors strategy" in 1993 to replace the KMT regime. The DPP learned that in most electoral geographic districts, especially the rural areas, the KMT and its local branches depended on volatile local factions and their vote-brokers, rather than an established and consolidated mobilizing system which could reach out to voters directly. This political reality

offered room for the DPP to apply leverage.⁶⁰⁰ In the absence of a regular basis for recruiting local elites into the KMT's local branches, once the local factions or vote-brokers switched their loyalties, the KMT's mobilizing system in such areas could be destroyed. Thus, the DPP's chairperson, Hsu Hsin-Liang, pushed the "summoning strategies" on a large scale in 1993. This meant the DPP made the same realistic choice toward local factions as the KMT had in the mid-1950s.

Yet the summoning strategies were a double-edged sword for the DPP. From the realist perspective, the summoning strategies led the DPP to increase its political basis at the local level and helped it gain over 40% of the popular vote after 1993. From the viewpoint of ideology and party image, however, as the DPP changed its attitudes toward local elites defecting from the KMT and began accepting their vote-brokers, the DPP also engaged in, or at least tolerated, electoral clientelism. As the DPP rose in prominence in the 1990s to become a catch-all party, the programmatic policy was marginalized in campaigns. As a result, the roots of electoral clientelism became even more deeply embedded into Taiwanese political customs. The value of transparency and a clean government, which the DPP publicly endorsed, faced difficulties when put into practice. This could partially explain the development of CSERA in the 1990s, which will be elaborated in the following sections.

Moreover, the DPP's summoning strategies also reshaped the internal structures of local factions. With the emergence of Dangwai and DPP, the vote broker networks, which were necessary and essential for the local factions to mobilize voters in the elections, became realigned or divided along party or ideological lines. As some vote brokers left the KMT to

⁶⁰⁰ CHUN-HUNG CHANG, *DÀO ZHÍZHÈNG ZHĪ LÙ: DÌFĀNG BĀOWÉI ZHŌNGYĀNG DE LĪLÙN YŪ SHÍJĪ* (到執政之路: 地方包圍中央的理論與實際)[ON THE ROAD TO POWER: THE THEORY AND REALITY OF ENVELOPING CENTRALITY FROM LOCALITY] 61 (1989).

support or join the DPP, the local factions became less stable than they had previously been, becoming more personalized and fragile after 1995.⁶⁰¹

E. The Fall of Local Factions, but the Continuation of Electoral Clientelism

As analysis in Chapter 2 showed, clientelism could be seen as a free exchange of relations. However, with the development of urbanization and modernization,⁶⁰² the question was raised as to whether such an exchange of relations could be standardized and impersonalized, rather than conducted face to face. Or more exactly, could electoral clientelism be transformed into programmatic politics? In the case of Taiwan, according to recent political science studies, three developments are noteworthy: the decline of local factions, the transformation of electoral clientelism, and the deepening crisis of major parties relying on local factions. These changes reshaped the Taiwanese political dynamics, and provided new chances for campaign finance reform, which will be analyzed in Chapter 6.

With the development of democracy and modernization in Taiwan, the fate of the local factions was uncertain. Would democratization and modernization cause the local factions' mobility and efficiency to rise or decline? Some argued that the power of the local factions would be diminished or collapse due to democratization and modernization. According to Huang, the modernization of Taiwan would result in the local factions and their capacities of mobilization being diminished.⁶⁰³ Wang's studies suggested that as democratization

⁶⁰¹Yeh-li Wang, *xuǎnjǔ, mǐnzhǔ huà yǔ dìfāng pàixì* (選舉、民主化與地方派系) [*Election, democratized, and local factions*], 5 J. ELEC. STU. (1) 77 (1998).

⁶⁰²Huang Te-Fu, *Xiàndàihuà, xuǎnjǔ jìngzhēng yǔ dìfāng pàixì: 1992 Nián lǐfǎ wěiyuán xuǎnjǔ de fēnxī* (現代化、選舉競爭與地方派系：1992年立法委員選舉的分析) [*Modernization, Election Competition and Local Factions: Analysis of Legislative Yuan Election in 1992*], 1 J. ELEC. STU. 75, 78 (1994). (In Huang's study, he chose four indicators for modernization, the proportion of the population with higher-education, the population of non-agricultural workers, the young generation population, and the rate of floating population.)

⁶⁰³Huang Te-Fu, *Xiàndàihuà, xuǎnjǔ jìngzhēng yǔ dìfāng pàixì: 1992 Nián lǐfǎ wěiyuán xuǎnjǔ de fēnxī* (現代化、選舉競爭與地方派系：1992年立法委員選舉的分析) [*Modernization, Election Competition and Local Factions: Analysis of Legislative Yuan Election in 1992*], 1 J. ELEC. STU. 75, 78 (1994).

continued, the intense competition among the parties and the end of coercion by means of judicial persecution would undermine the local factions' mobilizing power over vote-brokers and voters.⁶⁰⁴

However, the case of Taiwan seemed not to respond to Wang and Huang's linear and optimistic predictions. As Kitschelt & Kselman argue, the relation between modernization and clientelism is hump-like, rather than linear.⁶⁰⁵ In Taiwan, the power of the local factions rose between the mid-1980s and the mid-1990s, but then gradually declined election by election.⁶⁰⁶ The local factions at the county level were realigned or became personalized. Based on Kao's studies, the beginning of modernization provided more monopolized rents for local factions and stimulated their development, similar to the experience in Japan.⁶⁰⁷ Modernization did not restrain the local factions but instead made them volatile. Kao's observation partially explains why local factions declined faster in the impoverished southern area of Taiwan than in the developed central area.⁶⁰⁸

Political liberalization also reshaped the landscape of local factions. After a series of splits amongst the political parties and local factions, Wang & Tsai's studies show that local politics became more localized, personalized, and more complex.⁶⁰⁹ The county factions, on the one hand, increased their utility by becoming more volatile, allowing them to swing between the political parties to avoid revenge. On the other hand, the political parties started

⁶⁰⁴ CHIN-SHOU WANG, *supra* note 439, at 81.

⁶⁰⁵ Herbert Kitschelt & Daniel M. Kselman, *Economic Development, Democratic Experience, and Political Parties' Linkage Strategies*, 46 COM.POL. STU. (11), 1453 (2013).

⁶⁰⁶ YUNG-MAO CHAO (趙永茂), TÁIWĀN DÌFĀNG ZHÈNGZHÌ DE BIÀNQIĀN YŪ TÈZHÌ (台灣地方政治的變遷與特質) [THE CHANGES AND CHARACTERISTICS OF LOCAL POLITICS IN TAIWAN] 243 (2002).

⁶⁰⁷ Kao Yuang-kuang, *Disparities of Urban, Suburbs development and political factions, a case study of local election of Taipei county in 1998*, 7 J. ELE. STU. (1) 53 (2000).

⁶⁰⁸ *Id.* Yeh-li Wang & Chun-mu Tsai, 從對立到共治：台中縣地方派系之轉變 [From confrontation to cooperation: The changes of local factions in Taichung County], 21 Tw. J. POL. SCIE. 191 (2004).

⁶⁰⁹ Yeh-li Wang & Chun-mu Tsai, 從對立到共治：台中縣地方派系之轉變 [From confrontation to cooperation: The changes of local factions in Taichung County], 21 Tw. J. POL. SCIE. 191 (2004).; Li-hong Weng, *Uncertainties of Democratization and Adaption of Local Factions: A review of Taiwan's Researches of Local Factions*, 2 J. DEC. GOV. (2) 67 (2015).

to directly contact and bargain with vote brokers or factions at the township level, which loosened the county factions' local mobility bases. Thus, since the late 1990s, many county factions realigned and became more personalized, localized, and complex.

Hsu & Chen's data corresponded to Kao and Wang & Tsai's observations; the local factions' mobilizing ability in regard to votes and seats in the Legislature rose the between 1983 to 1992, but slightly decreased after 1995.⁶¹⁰ Before the legislative election of 2001, legislators linked with local factions occupied the majority of the KMT's Legislature caucus and its popular votes in the 1980s and 1990s. The rise and decline of local factions reflected the legislators' reluctance to sincerely deliberate the campaign finance bill in the 1990s, although the *Political Donation Act* was passed in 2004.

Second, electoral clientelism is still transforming and thriving, instead of fading.⁶¹¹ Due to the distinct political and social backgrounds in Taiwan,⁶¹² the intense inter-party competition stimulated, or, more precisely, transformed the electoral clientelism from a vertical dyadic alliance into a voluntary one. As mentioned in Chapter 4, the ethnic cleavage in Taiwan emerged in 1947 and, as political liberalization was initiated, the DPP strategically chose the identity issue, or more pragmatically, the PRC policy and combatting corruption as

⁶¹⁰Yung-ming Hsu & Houng-chang Chen, *Local Factions and the Kuomintang, decline or deepening crisis?*, 8 Tw. SOC. 214, 215 (2004).

⁶¹¹ Yu-tzung Chang & Hsin-hung Lu, *Zǒngtǒng xuǎnjǔ, guójiā rèntóng yǔ shìcóng zhǔyì de xiāoshī? 2000 Nián hòu yún lín xiàn de gè'àn yánjiū* (總統選舉、國家認同與侍從主義的消失? 2000年後雲林縣的個案研究) [*The presidential election, national identity and the decline of clientelism in Yunlin County after 2000*], 61 TW J. POL. SCI. 1 (2014);

⁶¹² Yu-tzung Chang & Hsin-hung Lu, *Zǒngtǒng xuǎnjǔ, guójiā rèntóng yǔ shìcóng zhǔyì de xiāoshī? 2000 Nián hòu yún lín xiàn de gè'àn yánjiū* (總統選舉、國家認同與侍從主義的消失? 2000年後雲林縣的個案研究) [*The presidential election, national identity and the decline of clientelism in Yunlin County after 2000*], 61 TW J. POL. SCI. 1 (2014). In contrast, Huang argued, as urbanization and modernization increase, the programmatic policy will replace electoral clientelism. See Huang Te-Fu, *Xiàndàihuà, xuǎnjǔ jìngzhēng yǔ dìfāng pàixì: 1992 Nián lǐfǎ wěiyuán xuǎnjǔ de fēnxī* (現代化、選舉競爭與地方派系: 1992年立法委員選舉的分析) [*Modernization, Election Competition and Local Factions: Analysis of Legislative Yuan Election in 1992*], 1 J. ELEC. STU. 75, 78 (1994).

major campaign issues, rather than a programmatic policy or class issue.⁶¹³ The DPP's summoning strategy of 1993 can be viewed as the result of this political background.

In the absence of a national programmatic or redistribution policy issue, inter-party competition stimulated electoral clientelism, rather than restrain it.⁶¹⁴ The KMT relied on existing local factions to mobilize their vote-brokers and voters via clientelist exchanges,⁶¹⁵ while the DPP, based on its social foundation,⁶¹⁶ chose the national identity or PRC policy as its major issue to appeal to voters and establish its party label, rather than class or redistribution issues. Thus, the DPP transformed itself into a catch-all party,⁶¹⁷ and adopted electoral clientelism and distributed interests to particular groups to attract the vote-brokers or voters who were ignorant of political ideology or party labels. Compared with the KMT's vertical dyadic alliance, the relationship between the DPP and its vote-brokers or voters is more like a voluntary exchange alliance.⁶¹⁸

Third, with the transformation and decline of the local factions' mobility since the mid-1990s, the KMT chose to rely on local factions more, rather than less. As inter-party competition intensified, the local factions began to play more crucial roles for the KMT. According to Hsu & Chen's data, although the local factions' efficiency declined after 1995, the KMT nominated more candidates with backgrounds in the local factions in the 1990s than

⁶¹³ Yu-tzung Chang & Hsin-hung Lu, *The presidential election, the national identity, and the decline of electoral clientelism in Yun-lin county after 2000*, 61 TW J. POL. SCI. 5 (2014).

⁶¹⁴ Herbert Kitschelt & Daniel M. Kselman, *Economic Development, Democratic Experience, and Political Parties' Linkage Strategies*, 46 COM.POL. STU.(11), 1453 (2013).

⁶¹⁵ *Id.* at 23, 24.

⁶¹⁶ Chia-lung Lin, *Wēiquán shìcóng zhèngtǐ xià de táiwān fǎnduì yùndòng-mín jìn dǎng shèhuì jīchǔ de zhèngzhì jiěshì* (威權侍從政體下的台灣反對運動—民進黨社會基礎的政治解釋)[*The Taiwan Opposition Movement under the Authoritarian Regime - The Political Explanation of the Social Foundation of the Democratic Progressive Party*], 2 TW. RADICAL QUA. SOC. STU. (1)117, 139 (1989).

⁶¹⁷ TEH-FU HUANG, MÍNZHǔ JÌNBÙ DǎNG Yǔ TÁIWĀN DÌQŪ ZHÈNGZHÌ MÍNZHǔ HUÀ (民主進步黨與台灣地區政治民主化) [THE DEMOCRATIC PROGRESSIVE PARTY AND TAIWAN'S POLITICAL DEMOCRATIZATION](1992); SHELLEY RIGGER, TAIWAN'S DEMOCRATIC PROGRESSIVE PARTY: FROM OPPOSITION TO POWER (2001).

⁶¹⁸ Yu-tzung Chang & Hsin-hung Lu, *supra* note 611, at 5.

the 1980s. This reflects that, after the KMT lost its iron votes, the KMT were forced to depend even more on local factions, rather than less.⁶¹⁹

II. The Revisions of the Civil Servant Election and Recall Act (CSERA)

As mentioned above, after the lifting of martial law and Chiang's death, the dynamics and landscape of politics in Taiwan changed. To respond to these new dynamics and the coming general election for the national democratic bodies, the Ministry of Internal Affairs (hereafter MIA) proposed to revise the CSERA in 1989 and 1991 to liberalize the regulations on political parties and candidates' campaign activities. Nevertheless, while electoral clientelism and campaign expenditures had already risen in the 1980s, the MIA and legislators from both parties had no clear picture of the value of transparency in securing political accountability and restraining the prevalent clientelism.

Although the tenured representatives elected in the 1940s were still the majority, the deliberations over the CSERA in the Legislative Yuan in 1989 and 1991 are noteworthy for two reasons. First, before the enactment of the *Political Donation Act* of 2004, the campaign finance rules within the CSERA were the primary rules regulating the money flow in the political field. Although the *Presidential and Vice-Presidential Election and Recall Act* was enacted in 1995, the regulations for the caps on donations and expenditures and the disclosure requirement were all modeled on the regulations in CSERA. Second, many legislators and MIA staff involved in these legislative deliberations occupied the central government or parties' posts over the following two decades. Their statements and thoughts in the legislative deliberation, under the shadow of prevalent electoral clientelism, reflected that there was no

⁶¹⁹ Yung-ming Hsu & Houng-chang Chen, *Local Factions and the Kuomintang, decline or deepening crisis?*, 8 Tw. Soc. 193 3(2004).

clear strategy regarding campaign finance law and the value of transparency among two generations of political elites in Taiwan.

A. The Revision of CSERA in 1989

As mentioned previously, the ban on creating political parties and martial law were both lifted in 1987. This meant that many of the restrictions on campaign activities were no longer legitimate and the CSERA had to be revised to respond to these political changes. In 1989, the MIA proposed the bill to liberalize the regulations on campaign activities, setting forth the following four main principles: 1. The CSERA allowed political parties to nominate and endorse candidates. 2. The CSERA allowed candidates and political parties to purchase and post campaign advertisements in the newspapers or magazines. 3. The CSERA allowed and regulated donations to candidates and political parties, and to encourage political actors to follow the rules, a tax reduction was set up. 4. The ban on campaign activities before the campaign period was lifted.

First, the CSERA set the cap on donations to political parties and candidates. Although a cap on donations, as mentioned in Chapter 1, is categorized as a supply side reform, the deliberation of the cap in the Legislative Yuan and its enforcement showed the costs and the benefits of campaign finance transparency. Article 45-4, section 2, provided, “an individual could not donate to a candidate more than NTD 20,000, and a corporation could not donate to a candidate more than NTD 300,000.” Section 3 provided, “an individual could not donate to a political party more than 20% of its total annual income or more than NTD 200,000. And a corporation could not donate to a political party more than 10% of its total annual income, or NTD 3,000,000.” To encourage accurate reporting, section 4 provided a tax deduction to corporations or individuals who honestly reported their records to the tax bureau. However, the positive incentives (tax deductions) to accurately report and the negative incentives

(fines) were too low to encourage political actors and campaign donors to comply with the rules. Further, the caps placed on donations were far from realistic.

In the deliberations, the legislators expressed differing views on the levels the caps on donations should take. For donations from individuals to candidates, the MIA bill proposed to set the cap at NTD 10,000. Some DPP legislative members argued that the cap should be raised to NTD 50,000 to encourage political participation by individuals and dilute the monetary influences from corporations or interest groups.⁶²⁰ In addition, one DPP member also argued for the disclosure of the names of donors and candidates who contributed or received donations from individuals which surpassed the cap.⁶²¹ Moreover, DPP members raised concerns over the neutrality of the tax bureau⁶²² and also over the neutrality of enforcement, the retribution, or chilling effects to donors. Ultimately, the cap on a donation from individuals was set at NTD 20,000.⁶²³

As for donations from corporations to candidates, the deliberation was split along party lines with the KMT's mainstream faction on one side and the KMT's non-mainstream faction and the DPP on the other. The members of the mainstream faction, especially those linked with local factions, advocated for liberalizing the cap. Otherwise, they argued, the regulations would only be of nominal value due to their unenforceability.⁶²⁴ A member from the mainstream faction also conceded that, without vote-buying, it was hard to run campaigns,

⁶²⁰ The legislator Ching You proposed this thought, *see* 78 LIFAYUAN GONGBAO NO. 42 (立法院公報 78 卷 42 期) [Legis. Yuan Official Gaz.], at 365 (1989).

⁶²¹ *Id.*

⁶²² The legislator, Huang-Hsung Huang, indicated the shadow of white terror and its chilling effect on donors to the DPP, *see* 78 LIFAYUAN GONGBAO NO. 8, (立法院公報 78 卷 8 期) [Legis. Yuan Official Gaz.], at 32 (1989).

⁶²³ *Id.*

⁶²⁴ The legislator Chu-wen Huang & Chao-nan Hong stated, *see* 78 LIFAYUAN GONGBAO NO. 31 (VOL. 3639), (立法院公報 78 卷 31 期) [Legis. Yuan Official Gaz.], at 181, 189 (1988). The legislator He-chin Huang, who belonged to the non-mainstream faction, also concurred. 78 LIFAYUAN GONGBAO NO. 34, (立法院公報 78 卷 34 期) [Legis. Yuan Official Gaz.], at 152 (1988); the legislator Lien-hui Lin concurred. 78 LIFAYUAN GONGBAO NO. 34, (立法院公報 78 卷 34 期) [Legis. Yuan Official Gaz.], at 157 (1988).

and that the vote-brokers played a crucial role.⁶²⁵ However, a legislator from the DPP and a member of the KMT's non-mainstream faction raised the rationale of equality and maintained the importance of lowering the cap to deter vote-buying behavior.⁶²⁶ The non-mainstream faction's members proposed to set a stringent limit on donations from corporations at NTD 1,000,000. The DPP further proposed prohibiting state-owned corporations or corporations with accumulative deficits from donating.⁶²⁷ To respond to the challenges and to defend the bill, the Minister of the Internal Affairs indicated that the cap on political donations was modeled on the Japanese election law and thus gained support from the majority.⁶²⁸

Second, the revision of the campaign expenditure limits faced challenges from many legislators. Lawmakers across the party spectrum insisted on removing the cap on campaign expenditures due to potentially contradictory concerns: unenforceability and the danger of arbitrary enforcement.⁶²⁹ The cap was ultimately maintained, however, because there was no penalty for false reports. Besides, the punishment for violation was nominal; it only imposed a fine for the candidates whose expenditures surpassed the cap.⁶³⁰ Under Article 95-1, "the

⁶²⁵ Chao-nan Hong stated, *see* 78 LIFAYUAN GONGBAO NO. 31 (VOL. 3639), (立法院公報 78 卷 31 期) [Legis. Yuan Official Gaz.], at 189 (1988).

⁶²⁶ The legislator Shao-kang *Chao*'s stated. *see* 78 LIFAYUAN GONGBAO NO. 31 (VOL. 3639), (立法院公報 78 卷 31 期) [Legis. Yuan Official Gaz.], at 186, 187 (1988).

⁶²⁷ The legislator Ning-hsiang Kan concurred. 78 LIFAYUAN GONGBAO NO. 34, (立法院公報 78 卷 34 期) [Legis. Yuan Official Gaz.], at 159 (1988).

⁶²⁸ *See* 78 LIFAYUAN GONGBAO NO. 31 (VOL. 3639), (立法院公報 78 卷 31 期) [Legis. Yuan Official Gaz.], at 182 (1988). The Minister of Internal Affairs admitted those regulations were modelled from Japanese law to justify its regulation of the campaign finance.

⁶²⁹ The legislator Shao-kang *Chao* suggested removing the impractical provisions. *See* 78 LIFAYUAN GONGBAO NO. 31 (VOL. 3639), (立法院公報 78 卷 31 期) [Legis. Yuan Official Gaz.], at 185 (1988). The legislator Sheng-feng Li stated. 78 LIFAYUAN GONGBAO NO. 34, (立法院公報 78 卷 34 期) [Legis. Yuan Official Gaz.], at 154 (1988); the legislator Lien-hui Lin concurred. 78 LIFAYUAN GONGBAO NO. 34, (立法院公報 78 卷 34 期) [Legis. Yuan Official Gaz.], at 157 (1988); the legislator Tsong-ren Li concurred. 78 LIFAYUAN GONGBAO NO. 35, (立法院公報 78 卷 35 期) [Legis. Yuan Official Gaz.], at 255 (1988); Legislator Shu-jen Wu concurred, 78 LIFAYUAN GONGBAO NO. 41, (立法院公報 78 卷 41 期) [Legis. Yuan Official Gaz.], at 229 (1989).

⁶³⁰ 78 LIFAYUAN GONGBAO NO. 41, (立法院公報 78 卷 41 期) [Legis. Yuan Official Gaz.], at 230 (1989).

candidates whose campaign expenditures exceed the limits regulated in Article 45-1 would be fined no more than NTD 50,000, and no less than NTD 10,000.”

In summary, as martial law and the ban on creating political parties were lifted, the liberalization of campaign activities was endorsed by a consensus across party lines and became the pillar of the revision of CSERA in 1989. However, as the rules on regulating campaign activities were liberalized, both KMT and DPP shifted back and forth in their strategies on campaign finance rules, alternating between calls for regulation and deregulation. Further, the value of transparency failed to gain sincere support from the DPP and the public because of the concerns over partisan enforcement, retribution, and chilling effects. Under the shadow of authoritarian rule, these concerns were pragmatic. However, with the advent of the digital era, these concerns are still meaningful for modern legislators, as analyzed in Chapters 4 and 7.

B. The Revision of CSERA in 1991

As the mobilization to suppress the communist rebellion period ended and the retirement of the tenured representatives took effect, Taiwan initiated its transition to democracy. As the general elections for national democratic bodies were approaching, the CSERA had to be revised to meet the political and social needs in the new era. To earn political credit and restrain the advantage of the KMT, the new political party, DPP, actively proposed its election and campaign finance bill.

Compared to the bill of the Executive Yuan, the DPP set forth five ends for its draft. 1. Remove the provisions which enabled authoritarian rule; 2. Ensure the fairness of elections;

3. Completely realize the spirit of democracy; 4. Re-shape the landscape of party politics; and
5. Produce the constituent National Assemblers.⁶³¹

More importantly, the DPP formally chose to deregulate election activities, rather than regulating on the supply or demand side, to address vote-buying behavior. The DPP argued to further liberalize the regulation of campaign activities so as to enhance the name recognition of candidates among the voters, and to deconstruct the KMT's information monopoly. From the DPP's perspective, vote buying was prevalent partially because of the electorate's ignorance; therefore, liberalizing campaign activities could stimulate public awareness and enhance the turnout rate, thereby restraining and diluting the impact of vote buying.⁶³²

Corresponding with its choice to deregulate campaign activities, the DPP maintained a lenient attitude towards campaign finance. The DPP proposed to remove the cap on campaign expenditure, or, at the very least, to enhance the cap to meet the political reality. Based on Article 45-1 of CSERA, the limit of the campaign expenditure was adjusted and released by the CEC before the election. In the early 1990s, the cap issued by the CEC was around 4 millionth. Legislators from both parties complained the cap was far from realistic; a KMT legislator, for example, indicated some candidates spent around 200 million NTD to run their campaigns.⁶³³ Facing criticism of its enforceability, the CEC also publicly conceded no candidate had been caught and fined since enactment of the cap in 1983.⁶³⁴ However, the DPP bill was not passed.

⁶³¹ Legislator Chun-hsiung Chang represented the DPP to propose the bill, 81 LIFAYUAN GONGBAO NO. 13, (立法院公報 81 卷 13 期) [Legis. Yuan Official Gaz.], at 50 (1991).

⁶³² Legislator Chang-ting Hsieh expressed his ideas to debate with the Minister of the Internal Affairs, Po-hsiung Wu, *see* 81 LIFAYUAN GONGBAO NO. 13, (立法院公報 81 卷 13 期) [Legis. Yuan Official Gaz.], at 58 (1991).

⁶³³ Legislator Chu-wen Huang expressed this view, *see* 81 LIFAYUAN GONGBAO NO. 17, (立法院公報 81 卷 17 期) [Legis. Yuan Official Gaz.], at 691 (1991).

⁶³⁴ *Id.*

To achieve fair electoral competition, the DPP also proposed to set a cap on donations from the political parties to candidates in order to restrain the misuse of party assets and electoral clientelism.⁶³⁵ In addition, the DPP proposed to impose the public disclosure rules on the expenditures of political parties' assets.⁶³⁶ However, as in the debates of the NAC, the KMT only adopted a minimal definition of democracy, and the KMT did not accept the progressive proposals. Thus, the DPP bill was killed in committee.

In short, both KMT and DPP agreed on liberalizing regulations on campaign activities to further fair competition. However, the DPP was not clear in its strategies on campaign finance laws, wavering between regulation and deregulation. Based on official congressional records, there were three key considerations among DPP members. First, the rationale of equality sought to restrain the KMT's asserted unfair advantage of possessing properties by setting a cap on candidates' and parties' campaign expenditures. Second, based on the rationale of equality and limiting costs, hindering the dissemination of political information could institutionalize the KMT's incumbency advantage, especially as the mass media was still mostly controlled by the KMT at that time. Third, under the shadow of the white terror, the DPP was concerned over the neutrality of the tax bureau and the Central Election Committee, the retribution from the government or judicial branch, and the possible chilling effects on their potential donors. Balancing those concerns, the DPP chose to pay more attention to liberalizing the election laws regulating campaign activities and campaign finance, rather than focusing on transparency or equality.

As analysis in Chapter 1 has shown, given path dependence, the asset specificity effect, and time sequencing, the KMT and DPP's value choices in 1989 and 1991 should not come

⁶³⁵ 81 LIFAYUAN GONGBAO NO. 13, (立法院公報 81 卷 13 期) [Legis. Yuan Official Gaz.], at 75 (1991).

⁶³⁶ Legislator Chu-wen Huang said, *see* 81 LIFAYUAN GONGBAO NO. 18, (立法院公報 81 卷 18 期) [Legis. Yuan Official Gaz.], at 512 (1991).

as a surprise. The case in Taiwan aligns with Shefter's model; once electoral clientelism has formed, the cost to shift or reverse the existing routes is very high. From 1935 to 1991, the residents in Taiwan had been exposed to elections. During that period, electoral clientelism had formed and become institutionalized, and in turn had become a part of the political norm for many voters and elected politicians. As Taiwan started its transition to democracy in 1991, led by the incumbent authoritarian regime, Taiwan missed a window for creating a critical juncture to supersede the pre-existing clientelism.

C. Other Legislative Efforts for the Sunshine Law in the 1990s

As mentioned above, widespread political corruption and money politics ultimately triggered public outrage, which provided the impetus for social movements advocating for a "clean government" in the mid-1990s. In response to these demands, legislators across party lines enacted the *Property Declaration by Public Servants Act* of 1993,⁶³⁷ which was transplanted mainly from the United States. The legislature also revised the *Anti-Corruption Act* of 1996 to increase the maximum punishment for receiving bribery to a life sentence. However, given that electoral clientelism was embedded into Taiwanese politics and institutionalized in the 1990s, these legislative efforts failed to remove the standing ground of electoral clientelism: the SNTV system, the KMT's properties, and opaque campaign finances laws.

The failure to meet the people's urge for a clean government cost the KMT their ruling power in 2000. With the peaceful political transition and the continued modernization of Taiwan, the landscape of national and local politics was reshaped. As mentioned before, the local factions lost their efficiency in the 1990s, forming a new hydraulic system which

⁶³⁷ The Property-Declaration by Public Servants Act of 1993.

provided new incentives for legislators to propose or support a more practical and enforceable campaign finance law to regulate money flows in the political field. The *Political Donation Act* (hereinafter PDA) was ultimately enacted on March 18, 2004, two days before a presidential election. The PDA was a milestone of campaign finance law in Taiwan. Yet, as we will see in the next chapter, the PDA itself could not change the pre-existing political landscape and electoral clientelism as the hydraulic effect meant that politicians either bypassed the regulation or revised the rules to meet the political reality.

Chapter 6. A New Perspective on Taiwanese Campaign Finance law (2004-2017): Public Disclosure Rule and its Challenges

I. The Deliberation of Political Donation Act (PDA) of 2004

As Shefter has argued, once clientelism networks are entrenched, “the dominant basis of political mobilization [becomes] difficult to dislodge.”⁶³⁸ As analysis in Chapters 3, 4 and 5 shows, electoral clientelism was tolerated by the colonial and authoritarian regimes and has become embedded into Taiwanese political and social norms, both of which have reshaped the hydraulic of money in politics. The institutionalized electoral clientelism has induced complementary organizational forms, for example the mandatory report/disclosure rules within the Civil Servant Election and Recall Act (CSERA).

The drafting and deliberation of the Political Donation Act (PDA) was a long process. As Knight argued, “institutional development is a contest among actors to establish rules which structure outcomes to those equilibria most favorable for them.”⁶³⁹ The institutional changes respond to the balance of power among political and social actors or to the preferences of the most powerful actors. As seen in Chapter 5, since the 1990s, the two major parties in Taiwan have adopted or tolerated electoral clientelism to run campaigns. As a consequence, campaign finance reform in Taiwan is a “bounded innovation,”⁶⁴⁰ which means the developmental pathways are characterized by elements of continuity.

As a result of public demand for a clean government, the embryo of the PDA was produced by the Ministry of Internal Affairs (“MIA”) in 1996 (“1996 draft”). But the MIA’s 1996 draft would not gain widespread support across the executive agencies until 2000. After

⁶³⁸ Martin Shefter, *Party and Patronage: Germany, England, and Italy*, 7 *POL. & SOC.* 414, 415 (1977).

⁶³⁹ Jack Knight, *Explaining the rise of neo-liberalism: the mechanism of institutional changes*, in *THE RISE OF NEOLIBERALISM AND INSTITUTIONAL ANALYSIS* 27 (John L. Campbell and Ove K. Pedersen eds., 2001).

⁶⁴⁰ Margaret Weir, *Ideas and politics of bounded innovation*, in *STRUCTURING POLITICS: HISTORICAL INSTITUTIONALISM IN COMPARATIVE ANALYSIS* 188 (S. Steinmo, K. Thelen & F. Longstreth eds., 1992).

a long negotiation among bureaucrats from different agencies, the Executive Yuan proposed the PDA bill in February 2000 (“bill of 2000”). But the bill of 2000 was soon killed by legislators across party lines because it was deemed to be unrealistic. After the first political transition, the DPP regime proposed a PDA bill in 2002 (“bill of 2002”). To respond to the public’s expectation of a clean government, the PDA was ultimately passed by the Legislature in March 2004.

After analyzing the political background of the PDA bill and the existing hydraulics in previous chapters, this dissertation turns back to examine the deliberations over and the subsequent revisions of three key issues: the mandatory report provision; the public disclosure provision; and the standard governing residual political donations.

A. The Background of the PDA Bills

As shown in Chapter 5, the lifting of martial law and the transition to democracy between 1987 to 1991 were the critical junctures which set Taiwan on a trajectory that would be difficult to reverse. The subsequent splits of the KMT and the DPP’s summoning strategies in the early 1990s were irreversible sequences which consolidated the existing electoral clientelism. Those sequences, on one hand, restrained institutional changes and, on the other hand, the rise of electoral clientelism and the excessive monetary influence on politicians became salient issues in the public forum and provided a new dynamic for campaign finance reform.

In this political climate, the Sunshine Law and general recognition of the value of transparency gained wide support from voters across the ideological spectrum. The Sunshine Law included the *Act on Property Declaration by Public Servants* (hereafter *APD*), *Political Donation Act* (hereafter *PDA*), *Act on Recusal of Public Servants Due to Conflict of Interest*,

Administrative Procedure Act, the ethics rules within *the Civil Servant Work Act*, and the *Lobbying Act*.

However, despite legislative efforts concerning campaign finance reform in the PDA, the Executive Yuan initially preferred to revise the existing *Civil Servant Election and Recall Act (CSERA) of 1991*, rather than enact the PDA. This section will discuss the broad outlines of the PDA bill and the internal ideological conflicts within the Executive Yuan. Disputes about the mandatory report and public disclosures provisions will be introduced in following sections.

The first bill for the PDA was proposed by Legislator Cheng-chieh Lin in 1991. Lin's proposal caught the public's attention and pushed the Executive Yuan to consider drafting a specific and united act to regulate campaign finance. In February 1993, the Executive Yuan declared that it was necessary to evaluate the effects and the limits of current regulations, and then revise the existing *CSERA* rather than enact the PDA.⁶⁴¹

The Executive Yuan's view was echoed by the Ministry of Internal Affairs (hereafter MIA). According to the internal report of the MIA in 1993, the MIA compared U.S., Japanese, and British campaign finance laws with the *CSERA of 1991*. The MIA concluded that, before drafting and enacting the PDA, three pre-conditions had to be met. First, before enacting the PDA, it was necessary to form a cross-party consensus to enact the Political Party Act, which would clarify the founding issues, such as how to regulate political parties, political groups, their related organizations or corporations, and the interaction among those institutions. Second, it was essential to revise the existing *Civil Servant Election and Recall Act of 1991* to avoid potential contradictions. Third, to address the competence of an

⁶⁴¹Xíngzhèng yuàn tái bāshí'èr fǎ zì (行政院台八十二法字第零三一九六號函示) [The Executive Yuan's instructing letter, No. 03196] (Feb 9, 1993).

enforcement agency, it was necessary to establish a new personnel system to audit and examine the campaign finance reports.

However, as mentioned in Chapter 5, during the boom in electoral clientelism, the mafia and financial groups found ways to buy out local factions and gain involvement in public policy making. As these black-gold politics infuriated the public, both during and after the election of 1992, combatting political corruption and securing a peaceful political transition became the DPP's most appealing issues to set back the KMT, which provided the dynamics for campaign finance reform. In this political climate, the elected legislators, no matter which political party they belonged to and no matter whether out of sincerity or not, had to respond to the people's calls to earn the political credit needed to secure their seats. The endorsement of enacting the PDA was viewed as a critical symbol for combatting political corruption. Soon after the election of 1992, the Legislative Yuan in 1993 adopted a resolution demanding the Executive Yuan to draft the PDA.⁶⁴² With this background, the Executive Yuan changed its attitude and formally instructed the MIA to redeliberate the costs and benefits of enacting the PDA in November 1994.⁶⁴³ Thereafter, the MIA routinely gathered scholars, bureaucrats from other ministries and agencies, and legislators to debate the necessity of enacting the PDA and its detailed contents.

As a result of the advantage the DPP had gained through campaigning on the issue of combatting corruption, on Feb. 3, 2000, one month before the presidential election, the Executive Yuan led by the KMT passed the PDA bill and sent it to the Legislative Yuan for

⁶⁴² On June 25, 1993, the Legislative Yuan passed a resolution which required the Executive Yuan to draft the Political Donation Act within 6 months. MINISTRY OF INTERNAL AFFAIRS, ZHÈNGZHÌ XIÀN JĪN FĀYÁN DÌNG SHÍLÙ (政治獻金法研訂實錄) [THE DELIBERATING PROCESS OF POLITICAL DONATION ACT] 82 (2004).

⁶⁴³ *Id.*, at 2.

deliberation (hereinafter “bill of 2000”).⁶⁴⁴ However, the bill failed because the legislators could not achieve agreement on three main issues.

First, the legislators had different views on the enforcement agency, with views divided among the Ministry of Internal Affairs, the Control Yuan, and the Central Election Commission (hereafter CEC). Second, regarding the period for receiving political donations, the bill would have allowed the candidates to accept contributions and spend them only after their official registration as candidates -the costs of primaries and constituent services before their registration were not covered. The legislators argued this limitation was too far from the political reality, since no one ran a campaign only after the time of registration. Third, elected civil servants, under the bill, were not allowed to accept donations to avoid the appearance of corruption. The legislators also complained this was too far from reality. As shown in Chapter 1, the gaps between the law and political reality and hydraulic effects may cause dual unintended consequences: dark money and false reports.⁶⁴⁵

Shortly after the bill of 2000 failed, Taiwan experienced its first peaceful political transition. Under the DPP regime, the MIA gathered scholars and officials from other ministries to redraft the bill to regulate political donations, political expenditures, and the mandatory reporting system.⁶⁴⁶ Based on the contest among political and social actors and internal conflicts among the executive agencies, the bill was given close review within the MIA and Executive Yuan. Three main disputes were debated: the period for receiving political donations, independent expenditures, and the regulation of intermediary groups

⁶⁴⁴*Supra* note 642, at 145; Xíngzhèng yuàn yuàn huì 2667 cì huìyì juéyì (行政院院會 2667 次會議決議) [the Executive Yuan The 2667 Resolutions] (Feb 3, 2000).

⁶⁴⁵*Supra* note 642, at 160.

⁶⁴⁶Bāshí'èr nián sì yuè shí sì rì tái nèi mǐn zì dì líng jiǔyī líng líng liùbāyījiǔliù hào hán (八十二年四月十四日台內民字第零九一零零六八一九六號函) [The Ministry of Internal Affairs' letter, No. 0910068196] (April 14, 1993).

between voters and candidates, such as super PACs, personal support groups, and political parties.⁶⁴⁷

The dispute over the receiving period was resolved by a pragmatic resolution. After the Executive Yuan provided instructions to balance the ideals against the political reality, all ministries and executive agencies gained consensus. Under the new consensus, while elected civil servants were prohibited from receiving political donations to avoid the appearance of corruption, candidates were allowed to receive political donations a few months prior to formal registration to close the gaps between the law and political reality and to meet political needs, such as for primaries and constituent services.⁶⁴⁸

As for the dispute over independent expenditures, the same dilemma was faced in Taiwan as had been faced in the U.S. Although both the CEC and Executive Yuan had hydraulic effects in mind, they held contradictory views with regard to regulation and deregulation. The CEC maintained that only electoral communications approved in advance by the candidate could be made.⁶⁴⁹ After such approval was given, all expenses were deemed to be the candidates' expenditures. In the CEC's view, if it did not require politicians to report independent expenditures, politicians would bypass the regulations by establishing NGO organizations or foundations.⁶⁵⁰ However, the MIA leaned toward the deregulation side due to the difficulties of enforcement and the concerns over freedom of speech. After referring to the U.S.'s century-long experience, the Executive Yuan rejected CEC's proposal

⁶⁴⁷ The first gathering in the Executive Yuan to examine the bill of PDA was held on May 16, 2002, *see supra* note 642, at 214.

⁶⁴⁸ The second gathering in the Ministry of Internal Affairs to examine the bill of PDA was held on Oct 29, 2002, *see supra* note 642, at 332.

⁶⁴⁹ *Supra* note 642, at 213, 381.

⁶⁵⁰ The third gathering of examining the bill of PDA in the Executive Yuan was held on December 9, 2002. *See supra* note 642, at 437.

and leaned toward deregulation, because of the difficulties of enforcement and the concern of an infringement on freedom of speech.⁶⁵¹

As for intermediary groups, after deliberation of the U.S. and Japanese models, the Executive Yuan and its agencies chose the Japanese model, which only allowed the political parties, political groups, and candidates to set dedicated accounts to accept donations, and excluded the option of the PAC system. After resolving these three main disputes, the PDA bill was ultimately passed by the Executive Yuan on December 18, 2002 and sent to the legislative Yuan (hereinafter “bill of 2002”).⁶⁵²

B. The Mandatory Reporting Requirement and Challenges to It

After reviewing the values involved in the three main disputes, this dissertation looks back to the value of transparency and its connection with the PDA: the requirement for mandatory reporting and public disclosure. As Briffault mentioned, transparency is a two-step process: “report by electoral actors to a government agency concerning campaign contributions and expenditure, and dissemination of that information to the public.”⁶⁵³ The mandatory report itself would accomplish the regulatory goals of detecting violation and governing campaign money. The legislators in Taiwan agreed and viewed the relevant provisions as contingencies to the limits on donations and expenditures. Thus, there was no substantial debate or revision during the deliberation procedure within the Legislative Yuan regarding the report or its scope. The policy debate and technical revisions for the campaign

⁶⁵¹The third gathering in the Ministry of Internal Affairs was held on November 14, 2002, see *supra* note 642, at 381, 386.

⁶⁵²Xíngzhèng yuàn yuàn huì 2817 cì huìyì juéyì (行政院院會 2817 次會議決議) [the Executive Yuan The 2817 Resolutions] (December 18, 2002), see *supra* note 642, at 551.

⁶⁵³Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 276 (2010).

finance report rules all emerged during the gatherings examining the PDA held by the MIA and the Executive Yuan.

At the first gathering held by the MIA in 1996, the legislators and scholars had potentially contradictory goals and concerns towards transparency. The legislator Peng-chien Chiang, the first chairman of the DPP, raised a concern about due process of law and freedom of speech. In Chiang's opinion, the inspection and examination of campaign finance reports should be treated cautiously to prevent partisan enforcement, political persecution of candidates or small parties, and chilling effects on donors.⁶⁵⁴ As analysis in Chapters 4 and 5 shows, Chiang's opinion could be viewed as a continuation of Dangwai and the DPP's concerns over transparency. Also, the issues of capability and the neutrality of the enforcement agency emerged again at the second gathering of the MIA. Some scholars suggested that, rather than inspection or examination, public disclosure should be the preferred method of enforcement.⁶⁵⁵ At the same time, some scholars became concerned about the right to privacy of donors.⁶⁵⁶

After hearing those concerns, the MIA started its draft of the PDA on May 22, 1996 and released it to the Executive Yuan over three and a half years later, on January 26, 2000.⁶⁵⁷ The bill of 2000 constitutes the basis for the current rules on reporting within the PDA, with the current PDA's main provisions emerging from that bill. Before reviewing the detailed provisions, it is necessary to consider the whole picture of governing and enforcing campaign finance laws. Under the MIA's strategy, there were five steps to enforce campaign finance rules:

⁶⁵⁴ The first gathering was held by Ministry of Internal Affairs on January 30, 1996, *see supra* note 642, at 22.

⁶⁵⁵ The second gathering was held by Ministry of Internal Affairs on January 31, 1996. *See id.*, at 29, 31.

⁶⁵⁶ *Id.* at 33.

⁶⁵⁷ Bāshíjiǔ nián yī yuè èrshíliù rì nèi mín zì dì bājiǔliùbā'èrqīwǔ hào hán (八十九年一月二十六日內民字第八九六八二七五號函) [The Ministry of Internal Affairs' letter, No. 8968275] (January 26, 2000). *Id.* at 116.

(1) Requiring political parties, political groups, and candidates to open a dedicated account with a financial institution and report that account to the authority. Under article 7 of the bill, “prior to accepting political donations, a political party, political group or person planning to participate in the campaign shall open a dedicated account and report to the authority hearing declaration for approval.”⁶⁵⁸

(2) Setting up an account book of income and expenditures for reference purposes. Article 10 of the bill required “political parties, political groups, and candidates to set up an account book of incomes and expenditures, and note the times of receipt and disbursement, its object and its address, and the purpose, amount, or the price of economic benefits other than money of each piece of donations recorded every day by themselves for reference.”

(3) Routine reports to the authority. Under Article 4, the political party and political groups have to make reports to the MIA, and the candidates have to make reports to electoral commissions responsible for the level of elections for which they are running.⁶⁵⁹ According to article 10, section 1, paragraph 1 of the bill, the political party or political groups have to submit their campaign financial statement to the CEC annually, after being audited and certified by a certified public accountant, within three months of the close of the calendar year. Under article 10, section 1, paragraph 2 of the bill, candidates were required to report their campaign financial statements, after being certified by a certified public accountant, to the relevant election commission within 60 days of the election.

⁶⁵⁸ *Id.* at 119.

⁶⁵⁹ *Id.* at 118.

(4) The auditing of the accounting report by an accountant. According to article 10, section 1, the "financial reports should be audited and attested by the accountant entrusted." However, during the cross-party negotiation process in 2004, the provisions requiring the accountant's audit were limited to the candidates who receive "an amount reaching NT\$8,000,000 or more."⁶⁶⁰

(5) Official examination and public disclosure.⁶⁶¹ According to article 11, sections 1 and 2 of the bill, "the authority hearing the declaration may request the declarer to submit relevant vouchers or evidential documents. Where necessary, the authority hearing the declaration may dispatch personnel or employ professionals to audit the declaration of political donations." If political parties, political groups, or candidates failed to meet the reporting requirement or refused to be examined, under article 19, they could be imprisoned for no more than 3 years, and be fined together no more than NT\$100,000.⁶⁶²

As mentioned before, the bill of 2000 was defeated in the Legislative Yuan when it failed to gain consensus about three founding issues among legislators. After the DPP established its ruling regime in May 2000, the new regime paid more attention on the reporting rule. As for the detailed data of the mandatory report, article 18 of the bill of 2002 provides,⁶⁶³

⁶⁶⁰ *Id.* at 572.

⁶⁶¹ *Id.* at 637.

⁶⁶² *Id.* at 44.

⁶⁶³ *Id.* 367. Article 18, the bill of Political Donation Act of 2002, provided:Section1. Political parties, political associations and persons planning to participate in campaign shall set up an account book of incomes and expenditures, and have the time of receipt and disbursement, object and its address, and the purpose, amount, or the price of economic benefits other than money of each piece of donations recorded every day by themselves for reference, and compile an accounting report based on the aforesaid data. Political donations given by articles less than total NT\$2000 may be free of recording.

Section 2. The accounting report of a political party or political association shall state the following matters:

1. Incomes:(1) Incomes of donations from individuals.(2) Incomes of donations from profit-seeking businesses.(3) Incomes of donations from civil associations.(4) income from the collecting donation activities (5) Balance of the last year.(6) Other incomes.

2. Expenditures:(1) Expenditures for personnel expenses.(2) Expenditures of functional expenses.(3) Expenditures of PR expenses.(4) Expenditures of election expenses.(5) Expenditures contributed to party

The detailed data referred to in Subparagraph 4 of Paragraph 2 and Subparagraph 4 of the preceding Paragraph shall include the name, *ID card number, and address* of the object of income or expenditure and the amount and purpose; if the object is a juridical person or association other than juridical person, the name of the juridical person or association, and *the name, ID card number and address of the principal* shall be included.

The required mandatory reporting of the donors' personal ID card number, address, or the personal information of the principal of the donating association was first proposed in the gathering examining the bill of PDA in the MIA.⁶⁶⁴ Although there was no objection or further debate at that time about the scope of this provision and concerns over the right to privacy, as mentioned in the previous section, a debate with the same rationale emerged over the issue of independent expenditures. On the one hand, the CEC was concerned about the hydraulic effects and held that the scope of requirement to report should be broader to cover independent expenditures. In the CEC's view, if it did not require politicians to report independent expenditures, politicians would bypass the regulations by establishing NGOs or foundations, which would collapse the whole governing regime of campaign finance and the efforts of establishing a report rule would be in vain.⁶⁶⁵ Certain legislators expressed the same concern.⁶⁶⁶ Experienced politicians identified loopholes such as assistant fees, gifts, and public speech fees, which were not covered by the PDA and would allow them to circumvent

members as campaign funds.(6) Other expenditures.

3. Surplus or deficit. 4. Detailed data about the object of income or expenditure of more than NT\$30,000.5. Other matters specified by the authority hearing declaration.

Section 3. The accounting report of a person planning to participate in a campaign shall state the following matters:

1. Incomes:(1) Incomes of donations from individuals.(2) Incomes of donations from profit-seeking businesses.(3) Incomes of donations from political parties and civic associations.(4) the income from the collecting donation activities (5) Other incomes.

2. Expenditures:(1) Expenditures on propaganda.(2) Expenditures on leasing propaganda vehicles. (3) Expenditures on leasing campaign offices. (4) Expenditures on gathering.(5) Expenditures on transportation and trip. (6) Other expenditures.3. Surplus or deficit.4. Detailed data about the object of income or expenditure of more than NT\$ 20,000.5. Other matters specified by the authority hearing declaration.

⁶⁶⁴*Supra* note 642, at 367, 369.

⁶⁶⁵ The third gathering of examining the bill of PDA in the Executive Yuan was held on December 9, 2002. *See supra* note 642, at 437.

⁶⁶⁶ The legislator, Chuang-chin Chiu argued, the limits on expenditure or donation would cause the politicians to bypass the law by setting up foundations or NGOs. The Minister of Internal Affairs, Yu, also conceded, he also accepted the contribution to hire "the constituent assistant," when he served as the legislator. *See supra* note 642, at 651, 652.

the mandatory report requirement.⁶⁶⁷ On the other hand, the MIA supported the deregulation of independent expenditures and called for a limited scope of mandatory report requirement.

The different opinions between the CEC and MIA reflected the different perspectives on hydraulic effects in campaign finance law. From the perspective of the CEC, donations, expenditures, and independent expenditures should all be subject to mandatory report regulations to prevent loopholes or backdoors for political actors. The CEC upheld the caps on expenditures and determined that the requirement on independent expenditures should remain in order to lower total election expenses.⁶⁶⁸ In contrast, the MIA maintained its position for liberalizing and deregulating independent expenditures. The MIA held the view that, after the experience of two decades of report rules within CSERA, mandatory reporting and governmental examination were nominal because the caps on donations and expenditures were both unrealistic. Thus, the MIA advocated for liberalizing independent expenditures to meet political realities and to avoid controversies surrounding the freedom of speech, but also insisted on the provisions of mandatory reporting and public disclosures of detailed data regarding individuals or associations to hold the politicians accountable in electoral competitions.⁶⁶⁹ The Executive Yuan supported the MIA, and concluded that, under the previous experience of mandatory reporting in the U.S. and Taiwan, the regulation on independent expenditures had proved to be unenforceable.⁶⁷⁰

A further noteworthy aspect of the PDA is that secret donations under NT\$10,000 were allowed. Under the bill of 2002, secret donations under NT\$2,000 would have been allowable,⁶⁷¹ yet the allowable scope was extended to NT\$10,000 in the Legislative Yuan.

⁶⁶⁷ The legislator, Trong-rong Tsai, raised these examples.

⁶⁶⁸ *Supra* note 642, at 478.

⁶⁶⁹ *Supra* note 642, 479.

⁶⁷⁰ *Supra* note 642, 386.

⁶⁷¹ *Supra* note 642, 561.

Article 13 provides, “no one may contribute donations in the name of others or contribute a secret donation of more than NT\$10,000.”

C. Public Disclosure and its Limits

Having reviewed the debate of the first step of transparency, the mandatory report, this section will focus on the second step: public disclosure. As shown by the analysis in the previous section, the legislators viewed the mandatory report/public disclosure rules as a contingency of the caps on donations and expenditures and raised no objections to the proposed time, scope, and manner of public disclosure. Concerns about the right to privacy and chilling effects were raised in the MIA’s internal meeting. Distinct from previous thought and practice of governing campaign finance by requiring candidates to report, the public disclosure clause was proposed on the agenda as early as 1996. According to article 14 of the MIA’s draft of 1996, the authority that receives campaign finance reports is required to examine their accuracy and publish those reports in the official Gazette.⁶⁷²

However, the public disclosure clause has faced criticism of creating chilling effects on the freedom of speech.⁶⁷³ The concern over the right to privacy was mentioned again in the internal meeting of MIA in 1998. To balance the demand for transparency and the concern over privacy, the MIA referred to the Japanese model and limited the scope of public disclosure to “the outline” of a financial report.⁶⁷⁴ It meant the public could only access the total number of donations and expenditures, but the public disclosure provision did not address access to detailed information about the donors’ personal information or the specific items of donations or expenditures.

⁶⁷² Id., at 40.

⁶⁷³ Id., at 81.

⁶⁷⁴ Id., at 81.

Under the bill of 2000, the public disclosure clause, article 12, section 3, required the government agency to disclose financial reports within 60 days of their receipt and to publish those reports in the official gazettes.⁶⁷⁵ The requirement of public disclosure on-line first appeared in the internal meeting of MIA in 2002 without any reasons or debate,⁶⁷⁶ and legislators raised no objections in the deliberation process. Thus, this provision remains in place to this day.

II. Revisions of the Requirements of Mandatory Reports & Public Disclosure

As seen in Chapter 1, some critical decisions made at an earlier point in time will affect the possible outcome at a later point in time. Decisions at critical junctures can generate positive or negative feedback for actors when taking a particular path, which can reshape the hydraulics system and create barriers for institutional change. Under the shadow of electoral clientelism, which was tolerated by both the colonial and authoritarian regimes and institutionalized in the democratic era, running the campaign for most candidates is a long-term interaction or transaction with their constituents. Or more exactly, iteratively distributing particular interests on an individual basis in exchange for political support has already reshaped and generated a new ecosystem of politics and a new hydraulic system of political money flow. Thus, the PDA and its following revisions were good examples of institutional layering, in that certain elements were removed via negotiation among all actors, while others remained.

The debate over the regulation on governing residual political donations, the mandatory report rules, and public disclosure rules in Taiwan was quite unique. The revision of the regulation on residual political donation provided a good example of the continuity of

⁶⁷⁵ Id, at 152.

⁶⁷⁶The second gathering in the Ministry of Internal Affairs was held on October 29, 2002, *see supra* note 642, at 369.

electoral clientelism, the effectiveness of constituent service, and their interactions or interference with the campaign finance laws.

In addition, the debates over mandatory reporting rules and public disclosure continue to be a very important topic for efforts to regulate campaign financing in Taiwan. Given the continuing importance of this topic, the following section introduces the views of legislators, legislative staff members, members of NGOs, etc., based on a series of interviews conducted by the author.

A. The Revision of Standards Governing Residual Political Donations

After the enactment of the PDA in 2004, the legislators soon complained about provisions governing the return of residual donations to the government. In the PDA of 2004, article 21, section 2 provides, “the residual political donations of the persons planning to participate in campaigns referred to in the preceding Paragraph shall be handed into the authority hearing a declaration for deposit into the national treasury if they are not used up within 2 *years* commencing on the day of making the declaration.” Legislators complained about the two-year time frame for returning residuals, which did not match their four-year terms in office. The complaints from the legislators reflected the importance of constituent service and their effects on the demand side of campaign finance. It also showed that, after the Executive Yuan’s critical resolutions in 2002 on limiting the period for collecting contributions, the civil servants in Taiwan had to collect political donations during the allowable period to pay for the long-term constituent services and their interactions with the voters.

Given the background of electoral clientelism, the revision to extend the period to four years soon gained unanimous approval among the legislators. As a consequence, the PDA of

2008, article 23, section 2, provides, “The residual political donations of the persons planning to participate in campaigns referred to in the preceding Paragraph shall be handed into the authority hearing declaration for depositing into the national treasury if they are not used up within 4 years commencing on the day of making the declaration.”

B. The Revision of Mandatory Reporting Rules

The major provisions of mandatory reporting rules have remained in effect ever since. Four years after the enactment of the PDA, in 2008, the legislators again complained about the gap between the reported expenditures and actual expenditures. The main reason for the gap was the cost of constituent services. Under the PDA of 2004, wedding and funeral ceremony gifts were not allowed to be reported as campaign expenditures.⁶⁷⁷ In the PDA of 2008, article 20, section 3, was revised to fill the gap, providing, “the accounting report of a person planning to participate in a campaign shall state the following matters.” In turn, paragraph 10 of that section stipulates, “expenditures for personal relation expenses.”

This revision reflected the importance of constituent services and their costs to candidates, which shifted the demand curve and distorted the equilibrium of the campaign finance field. According to a legislator, L1, constituent services were and are crucial for a legislator to be elected. L1 also indicated that the costs of attending funeral and wedding ceremonies are high. For a funeral ceremony, even if there was no previous connection between the deceased and the legislator, a legislator has to send a gift of around 30 USD to express their mourning. In his electoral district, he or his assistants had to join at least 20 funeral ceremonies each month. The price of gifts to those families who had a previous connection with the legislator would be even higher. As a related concern regarding the

⁶⁷⁷ The legislator Yi-jin Yeh dissented, *see* 97 *LEG. Y. GAZ.* (27) 127 (May 5, 2008).

mandatory reporting rules, legislative staff members L4 and L5, who work for small parties, generally endorsed the value of transparency. Both of them, however, complained about the administrative burdens and costs involved in reporting and checking donors' backgrounds, which were unaffordable for a new party or an independent candidate.

C. The Bill Revising Public Disclosure Rules

As discussed in Chapter 1, an institutional development may cause institutional conversion, which means that existing institutions are redirected to other ends. The enactment of public disclosure rules and its bill provide an example which allows the cost and the benefits of the campaign finance information dissemination to the public to be reconsidered. The public disclosure provisions of campaign finance reports were enacted in 2004, but public disclosure in Taiwan was not fully enforced due to technical inspection rules.⁶⁷⁸ There were two main barriers to disclosure. First, the scope of disclosure on-line was limited. The public inspection could only access the total number of donations and expenditures on-line, but the donors' personal information or the specific items of donation or expenditure were excluded.

Second, the enforcing agency imposed undue administrative burdens on the public to inspect the information about political donations and expenditures. Article 21, sections 4 and section 5 of the PDA provide, "the authority hearing a declaration shall, within 3 months after the deadline for declaration, collate the declarations in volume for inquiry, and collate accounting reports and publish them in the government bulletin or newspapers, and publicize

⁶⁷⁸Yangming Huang (黃揚明), Zhèngfǔ guǎn tài duō: Chá zhèngzhì xiàn jīn jìn xiàn xiànchǎng kàn (政府管太多：查政治獻金竟限現場看) [Too many regulations: the check on the political donations is limited to come to the Control Yuan], APPLE DAILY (Feb 20, 2014), <http://www.appledaily.com.tw/appledaily/article/headline/20140220/35652148/>

them through a computer network;” and” regulations governing the inquiry referred to in the preceding Paragraph shall be prescribed by the authority hearing declarations.”

Under the authorization of the PDA, the Control Yuan issued an administrative order, *the measures of inspecting the accountant reports of political donations*,⁶⁷⁹ to regulate public inspection. In article 3, the person planning to inspect the accountant reports has to apply by reporting his personal information and gain prior approval from the Control Yuan.

Furthermore, under article 5, section 1, the person who plans to inspect the accountant reports must come to the Control Yuan in person, without the ability to send a proxy. In addition, article 6 provides that the Control Yuan is authorized to reject the disclosure of personal information about ID card number, address, mail address, or other information concerning personal privacy rights or data security.

An active member of an NGO, N1, who had previously and routinely inspected accountant reports, reported, “the Control Yuan was very passive when asked to disclose or publish any campaign finance reports. While the Control Yuan in public raised the reasoning of the right to privacy and the budget restraint of publishing those records, the Control Yuan in private conceded that political pressure from the legislators was their real concern.” Additionally, he indicated, “the Control Yuan’s annual budget was in the grasp of legislators, which deprived it of power to defend its ground against the demands of the legislators.”

Based on the inconvenience of public inspection, in 2012 a legislator, Chi-Mai Chen, proposed a bill to expand the scope of public disclosure online.⁶⁸⁰ The bill sought to revise article 21, section 4 of the PDA to require the Control Yuan to disclose the balance sheets of

⁶⁷⁹Zhèngzhì xiàn jīn kuàijì bàogào shū chányuè bànfǎ (政治獻金會計報告書查閱辦法)[*The measures of inspecting the accountant reports of political donations*] (2009).

⁶⁸⁰Lìfǎyuàn yì'àn guānxì wénshū, yuàn zǒng zì 1044 hào, wěiyuán tí'àn 14449 hào (立法院議案關係文書, 院總字 1044 號, 委員提案 14449 號) [The Legislative Motion Document, General No. 1044, the Member No. 14449] (Dec 14, 2012).

campaign finance reports online. However, the proposed bill was defeated. Legislator Chen proposed it again in 2016,⁶⁸¹ and gained some other legislators' support, but the bill has been blocked in committee up to the present.

According to legislative staff members across the party and ideological spectrum, the bill is unlikely to pass in 2017 because there is no election. During interviews, legislator L1 expressed his concern over the hydraulic effects. L1 pessimistically indicated the bill on public disclosure rules would fail in this political climate because of its unrealistic aims. A legislative staff member, L2, who works for the KMT, indicated that public disclosure online might lead to unfair electoral competition given concerns over the neutrality of the investigative bureau and taxation bureau, leading to chilling effects on potential donors. Another legislative staff member, L3, who works for the DPP, expressed the opinion that the true motive of some legislators for supporting the bill and arguing for the broader scope of disclosure is to figure out the financial source of their political rivals' funding and then buy out their vote brokers or networks. Such responses reflect the cost of transparency in the current political ecosystems and hydraulic systems. The concerns over information privacy rights and its potential contradiction with transparency will be elaborated on in the next chapter.

⁶⁸¹Lifǎyuàn yì'àn guānxì wénshū, yuàn zǒng zì 1044 hào, wěiyuán tí'àn 19038 hào (立法院議案關係文書, 院總字 1044 號, 委員提案 19038 號) [The Legislative Motion Document, General No. 1044, the Member No. 19038] (May 4, 2016).

Chapter 7. A New Challenge to Transparency: Information & Political Privacy Rights

As North has stated, “institutional arrangements induce complementary organizational forms and encourage the development of new complementary institutions,” and produce the “interdependence web of an institutional matrix and massive increasing returns.”⁶⁸² Although institutional development involves interaction among multiple institutions, the sequence and path-dependent effects do not suggest the predecessors had already determined the outcome. Contingency circumstances may arise at certain critical junctures in institutional development and social and technological developments are also relevant.

As communication and information technology improves, the cost and difficulty of collecting, processing, aggregating, and disseminating campaign finance information is decreasing at a quicker rate than expected. The practical obscurity of public documents has been altered by the increased ease of disclosure, which poses greater threats to individual privacy than ever before. The development of the internet qualitatively brings campaign finance law, especially mandatory reporting/public disclosure rules, to a new critical juncture. As mentioned in Chapter 6, after experiencing the colonial and authoritarian rule, the Taiwanese people and legislators were, and now still are, facing the difficulty of balancing two potentially contradictory ideals; facilitating transparency and protecting information privacy rights.

In Chapters 3, 4, 5, and 6, this dissertation has analyzed the rise of electoral clientelism and its interaction with the regime of election and campaign finance laws to resolve the question, why the public disclosure provisions in the *PDA* have failed to achieve their legislative goals; namely, anti-corruption. After clarifying the historical roots of electoral

⁶⁸² Douglass C. North, *Institutions, Institutional Change and Economic Performance* 95 (1990).

clientelism and the new hydraulics of political money which has been reshaped by the interaction between clientelism and campaign finance laws, this chapter will deal with the second question; how should the system be reformed?

As discussed in Chapters 5 and 6, under the shadow of colonial and authoritarian rule, the analysis of the costs and benefits of transparency in Taiwan should be distinct from the situations in the U.S. and Japan. However, as Watson argues, legal development throughout history has primarily been the product of transplantation from one legal system to another.⁶⁸³ During the deliberations over campaign regulation, the legal professions, executive officials, and legislators in Taiwan all have referred to the U.S. and Japanese campaign finance and disclosure rules to justify their positions.

This chapter first overviews the jurisprudence of disclosure in one of the major legal transplanting donors, the U.S., and then analyze the distinct landscape of the right to privacy and its interaction with campaign finance law in Taiwan. In its final section, this dissertation addresses the second research question: how the system should be reformed. As we will see, the author proposes to redefine information privacy rights and revise the disclosure provisions of the Political Donation Act (PDA) so as to reach a new dynamic equilibrium between the goals of transparency and information privacy rights.

I. The Jurisprudence of Public Disclosure in the U.S.

A. Public Disclosure and its Application in U.S. Campaign Finance Law

As Briffault indicates, public disclosure has been central to deliberations over campaign finance laws and a hallmark of democratic elections.⁶⁸⁴ Belmont indicates, “the indirect

⁶⁸³ ALAN WATSON, *THE EVOLUTION OF LAW* 119 (1985).

⁶⁸⁴ Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 *ELECTION L.J.* 273, 292 (2010); Stephan Ansolabehere, *The Scope of Corruption: Lessons from Comparative Campaign Finance Disclosure*, 6 *ELEC. L.J.* 163, 172 (No. 2, 2007).

restraints of disclosure are more effectual than direct prohibitions and penalties.”⁶⁸⁵

Compared to other types of campaign finance regulation, public disclosure is the most accepted form of electoral regulation worldwide.⁶⁸⁶ Disclosure is popular as it avoids the First Amendment concern of imposing restrictions on campaign donation or expenditure or adopting the regime of public funding. Under the widely-held belief in the U.S., Japan, and Taiwan, publicity has a virtuous and policing power far greater than restrictions on donations and expenditures, and government transparency is essential to public accountability. Under this widely-held belief, full and effective disclosure is the best way to control excessive contributions and unlimited expenditures. Based on this viewpoint, the United States has established a strong disclosure regime.⁶⁸⁷ As demonstrated by the analysis in Chapter 6, Taiwanese administrative bureaucrats and legislators have been significantly influenced by the U.S. model during their deliberations.

In the U.S., disclosure is viewed as a two-step process: report and dissemination.⁶⁸⁸ The report process requires political actors to submit information about campaign contributions and expenditures to the relevant government agency. Dissemination requires the government agency to make that information available to the public. Under the U.S. regime, political actors include political parties, political action committees, candidates and other entities or individuals active in elections. The federal laws and most state laws require political actors to disclose the itemization of contributions and expenditure above a certain level.⁶⁸⁹ The most

⁶⁸⁵ Perry Belmont, *Publicity of Election Expenditures*, NORTH AMERICAN REV., Feb 1905, Vol. 180 at 166, 182.

⁶⁸⁶ Joel W. Johnson, *Democracy and Disclosure: Electoral Systems and the Regulation of Political Finance*, 7 ELEC. L. J. Vol. 4 325 (2008).

⁶⁸⁷ Stephan Ansolabehere, *The Scope of Corruption: Lessons from Comparative Campaign Finance Disclosure*, 6 ELEC. L. J. 163, 172 (No. 2, 2007).

⁶⁸⁸ Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 276 (2010)

⁶⁸⁹ 2 U.S.C. § 434 (b).

distinctive feature of the American disclosure regime is “pre-election disclosure,”⁶⁹⁰ which has been achieved by electronic filing over the internet since 1996.⁶⁹¹

Differentiating from the distinct case of Taiwan, both campaign finance reformers⁶⁹² and skeptics⁶⁹³ in the U.S. have endorsed disclosure, for various reasons. First, public disclosure could discourage some large donations. Second, disclosure could enable the voters to redefine and enforce anti-corruption laws. As Sullivan indicated, the disclosure generates “massive gains in democratic accountability.”⁶⁹⁴ Issacharoff & Karlan also argue that disclosure “shifts vigilance over campaign contributions away from regulatory bodies ... to the normal working of the political process by competing candidates or parties or the press.”⁶⁹⁵ As Briffault observes, the disclosure rules were provisions of “corrupt practices laws.”⁶⁹⁶ Early legislative measures in the U.S., including the *Publicity of Political Contributions Act* (hereafter PPCA) of 1910 and the *Federal Corrupt Practices Act* (hereafter FCPA) of 1925, were limited in scope and poorly enforced. Those legislative efforts, however, established the principle that political actors should disclose from where their contributions come and how they are spent.

Corresponding with these legislative measures, the U.S. Supreme Court (hereinafter USSC) has long held that the mandatory disclosure of contributions and expenditures is a constitutional form of campaign finance regulations. In *Burroughs v. United States*⁶⁹⁷ in 1934, the USSC treated the public disclosure as an issue of federalism, instead of a First

⁶⁹⁰ 2 U.S.C. § 434 (a)(2); 2 U.S.C. § 434 (a)(6)(A).

⁶⁹¹ Campaign Finance Institute, *Website Woes: The Federal Non-System for Campaign Finance Disclosure* (Oct. 2002).

⁶⁹² Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1737 (1999).

⁶⁹³ Kathleen Sullivan, *Against Campaign Finance Reform*, UTAH L. REV. 311, 326–27 (1998).

⁶⁹⁴ *Id.* at 326.

⁶⁹⁵ Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1737 (1999).

⁶⁹⁶ Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 281 (2010).

⁶⁹⁷ 290 U.S. 534 (1934).

Amendment question. The USSC upheld the constitutionality of FCPA provisions regarding mandatory disclosure of contributions and expenditures, including the names and addresses of donors. In the leading case concerning modern campaign finance law, *Buckley v. Valeo*,⁶⁹⁸ the USSC determined that, given the potential for substantially infringing the exercise of First Amendment free speech rights, compulsory disclosure of the name of a donor and amount of a donation or expenditure must be subject to exacting scrutiny. The USSC further indicated that disclosure of campaign finances was justified by promoting three important governmental interests: informing voters, deterring corruption and the appearance of corruption, and enforcing other campaign finance laws by collecting data to detect violations.⁶⁹⁹

Buckley shifted the crucial justification for mandatory disclosure to the rationale of voter information and the furtherance of democracy, advancing voter education and protecting voters from corrupt candidates as primary functions.⁷⁰⁰ Prior to *Buckley*, advocates of mandatory disclosure had focused on the rationale of disclosure's virtuous and cleansing power.⁷⁰¹ Since *Buckley*, the Court has consistently, and almost unanimously, supported disclosure requirements. In *Citizens United v. FEC.*,⁷⁰² Justice Kennedy optimistically pointed out that the opportunity for effective disclosure, as provided by the internet, to achieve the goals of anti-corruption and voter information has never existed before.⁷⁰³ Justice

⁶⁹⁸ 424 U.S. 1, 66 (1976).

⁶⁹⁹ *Id.* at 68.

⁷⁰⁰ For general support for this justification, see IMMANUEL KANT, PERPETUAL PIECE 47-53 (Lewis White Beck ed., The Liberal Arts Press, Inc. 1957) (1795) (1690); JOHN STUART MILL, ON LIBERTY; REPRESENTATIVE GOVERNMENT; THE SUBJECTION OF WOMEN 230 (Oxford University Press 1960) (1861). This view was also embraced by recent scholars, ROBERT POST, CONSTITUTIONAL DOMAINS 184-87 (1995); ROBERT A. DAHL, DILEMMAS OF PLURALIST DEMOCRACY: AUTONOMY VS. CONTROL 4 (1982).

⁷⁰¹ Daniel Hays Lowenstein, *Political Bribery and the Intermediate Theory of Politics*, 32 UCLA L. REV. 784, 830 (1985); Alfred C. Aman, Jr., *Information, Privacy, and Technology: Citizens, Clients, or Consumers?*, in FREEDOM OF EXPRESSION AND FREEDOM OF INFORMATION 325 (Jack Beatson & Yvonne Cripps eds., 2000); CHERYL ANN BISHOP, ACCESS TO INFORMATION AS A HUMAN RIGHT 3 (2012); Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 281 (2010).

⁷⁰² *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

⁷⁰³ *Id.*

Kennedy's opinion stands in contrast to prior court decisions pointing to the limits and potential harms of disclosure, such as concerns about restraining speech and associational activities.⁷⁰⁴

B. The Threats of Public Disclosure

In contrast with its attitude to campaign finance, the USSC has long been cautious in regard to the threats of mandatory disclosure, including the dangers it may pose to unpopular political organizations and concerns over the freedom of speech and the right to privacy. In *NAACP v. Alabama*,⁷⁰⁵ the USSC held that compelling the disclosure of the identity of members of groups may expose those members to economic reprisal, loss of employment, threats of physical coercion and public hostility—all emblematic of interference with political expression and association. In *Bates v. City of Little Rock*,⁷⁰⁶ the court unanimously rejected demands for employee and membership lists of NGOs or unpopular associations. The USSC further extended its concerns over political privacy in *Talley v. California*,⁷⁰⁷ where it struck down a Los Angeles ordinance that barred the distribution of handbills which did not indicate the names and addresses of the drafters.

In the 1990s, the court rebalanced informational gains against threats to political participation in *McIntyre v. Ohio Elections Commission*⁷⁰⁸ and *Buckley v. American Constitutional Law Foundation (ACLF)*.⁷⁰⁹ The court rejected the requirement for individuals and organizations to disclose the names of the spenders on leaflets or badges and viewed such

⁷⁰⁴ William McGeeveran, *Mrs. McIntyre's Checkbook: Privacy Costs of Political Contribution Disclosure*, 6 U.P.A. J. CONST. L. 1 (2003).

⁷⁰⁵ 357 U.S. 449 (1958).

⁷⁰⁶ 361 U.S. 516 (1960).

⁷⁰⁷ 362 U.S. 60 (1960).

⁷⁰⁸ 514 U.S. 334 (1995).

⁷⁰⁹ 525 U.S. 182 (1999).

requirements as imposing a significant burden on political activities without providing educational value.

Furthermore, in the 21st century, the USSC has paid close attention to developments in contemporary information and communication technology, which have made it easy to distribute the names and addresses of lay citizens identified as supporters of certain high-intensity political as well as social issues, thereby increasing the danger of threats, harassment, or reprisal.⁷¹⁰

Puzzlingly, in contrast to its highly cautious appraisal of the potential harms of mandatory disclosure, the USSC has consistently treated disclosure as the least burdensome and most effective form of campaign finance regulation.⁷¹¹ Before *Buckley*, the USSC was aware of the potentially chilling effects on political activity posed by disclosure requirements. Yet the USSC viewed the practical obscurity of public documents as muting the threat to privacy.⁷¹² However, since *Buckley*, the USSC has been regarded as ignoring “the transformational effect of digital technology and the internet on the nature of disclosure laws,”⁷¹³ resulting in the unexpected and non-consensual sharing of information and loss of political privacy.⁷¹⁴ As McGeveran argues, under contemporary technology, “political contributions label us, and disclosure displays that label to others without our consent.”⁷¹⁵

⁷¹⁰ *Hollingsworth v. Perry*, 130 S.Ct. 705 (2010); *Doe v. Reed*, 561 U.S. 186 (2010).

⁷¹¹ Perry Belmont, *Publicity of Election Expenditures*, NORTH AMERICAN REV., Feb 1905, Vol. 180 at 166, 182.

⁷¹² *U.S. Dep't of Justice v. Reporters' Comm. for Freedom of the Press*, 489 U.S. 749, 762, 780 (1989).

⁷¹³ William McGeveran, *Mrs. McIntyre's Checkbook: Privacy Costs of Political Contribution Disclosure*, 6 U.P.A. J. CONST. L. 1 (2003).

⁷¹⁴ Fred Bernstein, *An Online Peek at Your Politics*, N.Y. TIMES, Oct. 4, 2000, at A35.

⁷¹⁵ William McGeveran, *Mrs. McIntyre's Checkbook: Privacy Costs of Political Contribution Disclosure*, 6 U.P.A. J. CONST. L., at 19.

C. The New Challenge to Public Disclosure in the Digital Era

In the digital era, modern campaigns mainly rely on collecting and processing big data to gain useful insights and knowledge on voters and donors. However, campaign finance disclosure and privacy implications have drawn limited attention in the U.S.⁷¹⁶

According to Solove, four types of activities might be harmful to the individual right to information privacy: information collection, information processing, information dissemination, and invasion.⁷¹⁷ Given the distinctness of mandatory disclosure of campaign finance laws, this thesis mainly focuses on the phase of information dissemination and processing, and the potential harms produced by aggregation, identification, and secondary use.

Information processing involves the way information is stored, manipulated and used. Various aspects of that process are worthy of note. Aggregation signifies the gathering of information to form a portrait of a person. As Cohen has observed, “A comprehensive collection of data about an individual is vastly more than the sum of its parts.”⁷¹⁸ Aggregation can increase the power that others have over individuals; and the government and business are combining repositories of personal information into digital dossiers.⁷¹⁹ The decisions of public policies over individuals based on aggregated data are efficient, but the data is reductive and disconnected to the original context.

⁷¹⁶ Daniel Kreiss, & Philip N. Howard, *New Challenges to Political Privacy: Lessons from the First U.S. Presidential Race in the Web 2.0 Era*, 4 Int'l J. Comm. 1032, 1039 (2010); Daniel Kreiss, *Yes We Can (Profile You): A Brief Primer on Campaigns and Political Data*, 64 Stan. L. Rev. Online 70, 71-72 (2012).

⁷¹⁷ DANIEL J. SOLOVE, UNDERSTANDING PRIVACY 103 (2008).

⁷¹⁸ Julie E. Cohen, *Examined Lives: Informational Privacy and the Subject as Object*, 52 STAN. L. REV. 1373, 1398 (2000).

⁷¹⁹ DANIEL J. SOLOVE, THE DIGITAL PERSON: TECHNOLOGY AND PRIVACY IN THE INFORMATION AGE 1 (2004).

Identification is a special form of information, linking information to particular individuals.⁷²⁰ In the digital era, the unexpected identification may not only demean to dignity but also increase governmental power over individuals, affecting the social structure. Identification inhibits one's ability to be anonymous.

Secondary use is the use of collected data unrelated to the purposes for which the data was initially collected, without obtaining the subject's consent.⁷²¹ Secondary use disregards people's expectation about how the data they provide will be used.⁷²² The potential for secondary use generates fear and uncertainty over how one's information will be used in the future, leading to a sense of powerlessness and vulnerability.

Finally, exclusion means preventing a data subject from knowing about the data that others have concerning her and bars her from participating in its handling and use.⁷²³

The right to information privacy and to remain anonymous have played a crucial role in democracy by protecting people from bias and enabling people to vote, deliberate, speak and associate more freely without the danger of reprisal, whether from the government or others.⁷²⁴ Yet in modern campaigns, new technology is not only used to collect public reports, including lists of donors, but to process and link donors' personal information, including home addresses and employers via Google maps or commercial websites.⁷²⁵

II. A Distinct Evolution of Privacy Rights in Taiwan

⁷²⁰*Id.* at 121.

⁷²¹DANIEL J. SOLOVE, UNDERSTANDING PRIVACY 103, 104, 129 (2008).

⁷²²*Id.*

⁷²³*Id.*

⁷²⁴Michael Froomkin, *Flood Control on the Information Ocean: Living with Anonymity, Digital Cash, and Distributed Databases*, 15 J. LAW & COMM. 395, 408 (1996).

⁷²⁵Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 292 (2010).

As Watson suggested, legal development has primarily been the product of transplantation from one legal system to another,⁷²⁶ which caused “the transnational character of legal change.”⁷²⁷ The rise and evolution of the right to privacy in Taiwan meets Watson’s observation. Privacy rights were neither naturally developed by Taiwanese society nor enumerated in the ROC constitutional law of 1947 and statutes. Instead, the concept of privacy rights was one of the new species of human rights transplanted from the western world in the 1980s. The concept of privacy rights initially influenced Taiwanese judicial decisions in tort cases in the 1990s and pushed the revision of criminal law concerning intrusion upon individual privacy.⁷²⁸

The Constitutional Court initially recognized the right to privacy as a fundamental right in 1992⁷²⁹ to protect bank customers’ confidential information from being disclosed to the Taipei City Council (hereinafter the “*Bank Customers Case*”).⁷³⁰ The case illustrated the tension between democracy and information privacy rights. While the value of democracy favored transparency and the free flow of information,⁷³¹ the right to information privacy favored on-disclosure. In order to strike a balance, the court set several conditions on the disclosure of documents by banks to city councils, including a city council’s resolution, removing the names of customers from the materials, and review by the city council in a non-public session.

⁷²⁶ ALAN WATSON, *THE EVOLUTION OF LAW* 119 (1985). AI

⁷²⁷ Alan Watson, *legal change: sources of law and legal culture*, 131 U. PENN L. REV. 1121, 1157 (1983).

⁷²⁸ The right to privacy was initially introduced to Taiwanese society by legal scholars in the 1980s. Most of these scholars had taken their doctorate degrees in the US or the Federal Republic of Germany. See WONG YUE-SHENG (翁岳生) ET AL., *ZIXUN LIFA ZHI YANJIU (資訊立法之研究)* [A STUDY ON LEGISLATING INFORMATION] (Research Development and Evaluation Commission ed., 1985); LIU JIANG-BIN (劉江彬), *Zixunfalun (資訊法論)* [COMPUTER LAW], 1986.

⁷²⁹ Shizi No. 293 (1992) (Taiwan), available

at http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=293

⁷³⁰ In 1992, the Taipei city council attempted to enforce its power to investigate the non-performing loan in a state-owned bank. In order to protect the customers' privacy, the state-owned bank then declined the motion from the city council. Thereafter, the city council petitioned the Constitutional Court to interpret.

⁷³¹ Fred H. Cate, *Principles of Internet Privacy*, 32 CONN. L. REV. 877, 881-82 (2000).

Thereafter, the Constitutional Court recognized the right to privacy for three main purpose: limiting the government's power, providing citizens with certain procedural protection, and the freedom of speech.

For the purpose of limiting governmental power, the court recognized the right to privacy by limiting police authority to undertake search and seizure. The court struck down the provisions of the *Police Service Act*, which allowed the police to stop a person in a public space or inspect their private space without warrant.⁷³² Moreover, in a case regarding the limits of legislative investigative power, the Special Committee for the Investigation of the March 19 Shooting Event granted the Committee unlimited interrogatory authority. The court held that provision unconstitutional due to its infringement on individuals' right to privacy.⁷³³ In the case of warrantless monitoring and wiretapping, the court also struck down the provision within the *Communication Protection and Monitoring Act* which allowed the prosecutor to issue a writ to conduct communicative monitoring and wiretapping.⁷³⁴

To provide citizens with procedural protection, the courts have addressed the problem of databases twice. The first case was the *Bank Customers Case* discussed above. The second instance was a landmark case involving the issuance of National ID Cards and requiring citizens to be fingerprinted (hereafter the "*Fingerprint Case*"). In the latter case, the Constitutional Court not only reaffirmed the right to privacy as a fundamental right protected by ROC constitutional law but set forth clear aspects of that right, including "preserving human dignity, individuality and moral integrity, as well as preventing invasions of personal privacy and maintaining self-determination of personal information."⁷³⁵ Accordingly, the

⁷³² Shizi No. 535 (2001) (Taiwan).

⁷³³ Shizi No. 585 (2004) (Taiwan).

⁷³⁴ Shizi No. 631 (2007) (Taiwan).

⁷³⁵ Shizi No. 603 (2005) (Taiwan). *See*

http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=603

Court extended the protected zone of privacy rights by declaring a general principle; the self-determination of personal information.⁷³⁶ In Interpretation No. 603, the Court ruled,

Regard[ing] the self-control of personal information⁷³⁷, ... to guarantee the people have the right to decide whether or not to disclose their personal information, ...to what extent, at what time, in what manner and to what people such information will be disclosed⁷³⁸. It is also designed to guarantee that the people have the right to know and control how their personal information will be used, as well as the right to correct any inaccurate entries contained in their information.

After affirming the right to privacy and declaring a general principle of personal information protection, the Constitutional Court faced a debate over a paradigm shift in the information age. Traditionally, the concept of the right of privacy is analyzed according to the “secrecy paradigm,” meaning there is no claim to privacy when information appears in public.⁷³⁹ However, since justices from both sides could not form a majority,⁷⁴⁰ the Constitutional Court remained silent on the following issues: whether the secrecy paradigm should be abandoned and whether the right to privacy should be redefined beyond the characteristics of secrecy or sensitivity.⁷⁴¹

⁷³⁶ Shizi No. 603 (2005) (Yu-shiu Hsu, J., Concurrence) (許玉秀大法官協同意見書). For comments on this rationale, see: Hsiang-yang Hsieh, *Locating the value of information privacy in a democratic society: a study of the information privacy jurisprudence of Taiwan's constitutional court*, 7 NTU LAW REV. 7.1, 309.

⁷³⁷ LI CHEN-SHAN (李震山), RENXING ZUNYAN YU RENQUAN BAOZHANG (人性尊嚴與人權保障) [THE HUMAN DIGNITY AND THE PROTECTION OF HUMAN RIGHTS], 275-318 (2001).

⁷³⁸ See ALAN F. WESTIN, *PRIVACY AND FREEDOM* 7 (1967) (Westin indicated “privacy is. . . to determine for themselves when, how, and to what extent information about them is communicated to others.” Westin seemed to argue information as control); DONALD P. KOMMERS, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* 332-336 (1989) (In German, the principle of informational self-control is inferred from Article 1 (1) and Article 2 (1) of the Basis Law). Based on the delayed development of the concept of the right of privacy, the Taiwanese Constitutional Court referred to those two foreign concepts and attempted to form a new practical standard for the information privacy rights.

⁷³⁹ See Daniel J. Solove, *Access and Aggregation: Privacy, Public Records, and the Constitution* 86 MINN. L. REV. 1139, 1141 (2002).

⁷⁴⁰ SIFA YUAN DA FAGUAN SHENLI ANJIAN FA (司法院大法官審理案件法) [[CONSTITUTIONAL INTERPRETATION PROCEDURE ACT] art. 14 (1993) (Taiwan) (requiring that a majority of two-thirds of the Justices present at a session having a quorum of two-thirds of total number of the Justices for passing an interpretation of the Constitution. However, only more than half of Justices are required to be present at the same session to declare a regulation or ordinance unconstitutional).

⁷⁴¹ See SHIZI no. 603, *supra* note 59 (Tzu-Yi Lin, J., concurring) (林子儀大法官協同意見書); SIFAYUAN DA FAGUAN HUIYI JIESHI DI 689 HAO (司法院大法官會議解釋第 689 號) [The Judicial Yuan No. 689 Interpretation] 2011, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] (SHIZI 2011) (Taiwan) [hereinafter SHIZI No. 689]. Although the court in SHIZI no. 603

The Court ruled fingerprints did fall within the scope protected by privacy because fingerprints were “in a key position to open the complete file of a person by means of cross-checking the fingerprints stored in the database.” The Court also recognized that the right to privacy not only prevented invasion of private spaces but also “maintained self-determination of personal information.” In a concurring opinion, Justice Lin further asserted that as technology has advanced in the information age, the totality of aggregated information leads to the possibility of establishing a digital biography or digital personal profile via processing non-secret information.⁷⁴² Because of these social changes, Justice Lin averred, the traditional dichotomy between public and private information has blurred, and judicial thinking should move away from the secrecy paradigm.⁷⁴³ Thus, Justice Lin regarded fingerprints as highly sensitive information and argued for the application of strict scrutiny, rather than the majority’s intermediate scrutiny.⁷⁴⁴

In contrast to the majority rationale, Justice Yu referred to the U.S. cases of *Perkey v. Department of Motor Vehicles*⁷⁴⁵ as well as *Whalen v. Roe*,⁷⁴⁶ and insisted on the application of the conventional secrecy paradigm.⁷⁴⁷ She argued that fingerprints on tangible objects were public and neutral information, like facial appearance, photo, or name. Yu stated that

failed to completely move away from the secrecy paradigm, the court ultimately moved forward from the secrecy paradigm six years later in SHIZI no. 689.

⁷⁴²See Shizi No. 603(2005) (Tzu-Yi Lin, J., Concurrence) (林子儀大法官協同意見書).

⁷⁴³ *Id.*

⁷⁴⁴ In SHIZI No. 578, Justice Hsu introduced three levels of judicial review: rational basis, intermediate, and strict scrutiny. SIFAYUAN DA FAGUAN HUIYI JIESHI DI 689 HAO (司法院大法官會議解釋 578 號) [The Judicial Yuan No. 578 Interpretation] 2004, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] (SHIZI May 21, 2004) (Taiwan) (Tzong-Li Hsu, J., concurring) (許宗立大法官協同意見書). In order to pass the intermediate scrutiny, the law or administrative order should further important government interests by substantially related means. But the burden of proof is controversial among Taiwanese Justices. See Jou-juo Chu, *Global Constitutionalism and Judicial Activism in Taiwan*, 38 J. CONTEMP. ASIA 515, 516 (2008); Dennis T.C. Tang, *Judicial Review and Transition of Authoritarianism in Taiwan*, in *CHANGE OF AN AUTHORITARIAN REGIME: TAIWAN IN THE POST-MARITAL LAW ERA* 439-70 (Institute of Taiwan History, Academia Sinica ed., 2001).

⁷⁴⁵See *Perkey v. Department of Motor Vehicles*, 42 Cal.3d 185 (1986). The court holds "fingerprinting alone does not improperly infringe on an individual's right to privacy."

⁷⁴⁶See *Whalen v. Roe*, 429 U.S. 589, 605 (1977).

⁷⁴⁷See Shizi No. 603 (2005) (Syue-ming Yu, J., dissenting) (余雪明大法官不同意見書).

fingerprints do not reveal the personal prior history, political ideology, medical records, or financial situation of an individual. Therefore, based on the characteristics of fingerprints, Justice Yu viewed fingerprints as low-sensitivity information and argued for rational basis scrutiny.⁷⁴⁸

To reinforce freedom of speech, thought and other intellectual activities, and the shift from the secrecy paradigm, the Court took a further step six years after the Fingerprint Case. In a case concerned with punishing stalkers, the court upheld a provision within the *Social Order Maintenance Act*, authorizing the police to fine a person for his or her stalking another without legitimate cause.⁷⁴⁹ The case reflected a conflict between freedom of the press and the right to privacy and arose from private interference with the subject, rather than from the state. The court affirmed the right to privacy to protect human dignity, and held that such a right was not void due to the subject's appearance in a public space.

As demonstrated by this brief review of the evolution of the right to privacy and its jurisprudence in Taiwan over more than two decades, the Constitutional Court in Taiwan has ultimately moved away from the paradigm of control or secrecy.⁷⁵⁰ In the view of the Court, the traditional control model paid too much attention to the issue of consent and ignored the fact that people do not have a meaningful choice when they provide their information to a database.⁷⁵¹ Following the Fingerprint Case, the court in Taiwan has developed an informational self-determination principle to serve as the guideline for data protection.

⁷⁴⁸ *Id.*

⁷⁴⁹ Shizi No. 689 (2011) (Taiwan).

⁷⁵⁰ Yung-hua Kuo & Po-liang Chen, *Identity Law and Privacy Protection in a Modern State: The Legal History Concerning Personal Information in Taiwan (1895-2015)*, 25 WASH. INT'L L.J. 223 (2016).

⁷⁵¹ Fred H. Cate, *Protecting Privacy in Health Research: The Limits of Individual Choice*, 98 CAL. L. REV. 1765, 1776-77 (2010); Hsiang-yang Hsieh, *Locating the value of information privacy in a democratic society: a study of the information privacy jurisprudence of Taiwan's constitutional court*, 7 NTU LAW REV. 7.1, 308 (2012).

Even under traditional thinking about the values of transparency, democracy, and freedom of speech and press, numerous concerns have arisen over shortcomings in the system. The advent of information technology has brought to light concerns that had previously been obscured, such as those relating to evident assumption, aggregation and abuse, which had hitherto been relatively remote concerns except perhaps in the context of supporters of controversial political ideologies or small minorities. In light of technological advancement, there is a need to re-examine existing procedural rules and organizational design within the PDA and adjust the traditional mindset. That topic will be analyzed in the following sections.

III. The Concern over Information Privacy Rights

While the definitions and contours of privacy rights have been subject to dispute in the U.S.,⁷⁵² as shown by the previous analysis, the majority of Taiwanese justices generally have accepted the right to information privacy as “the right to self-control or self-determination of one’s personal information.”⁷⁵³ *The Act of 1995 Computer-Processed Personal Data Protection Law*, regulating the collection, processing and use of personal data by government and non-government agencies, was enacted to respond to social needs and academic advocacy. In 2010, new legislation to protect personal information, the *Personal Information Protection Act (PIPA)*,⁷⁵⁴ was enacted. That Act protects “the name, date of birth, I.D. Card number, passport number, characteristics, fingerprints, marital status, family, education, occupation, medical record, medical treatment, genetic information, sexual life, health examination, criminal record, contact information, financial conditions, social activities and

⁷⁵² Daniel J. Solove, *Conceptualizing Privacy*, 90 CAL. L. REV. 1087 (2002); Neil M. Richards, *Reconciling Data Privacy and the First Amendment*, 52 UCLA L. REV. 1149, 1181-82 (2005).

⁷⁵³ Shizi No. 603 (2005).

⁷⁵⁴ Geren Ziliao Baohufa (個人資料保護法) [Personal Information Protection Act] (2010).

other information which may be used to identify a natural person, both directly and indirectly.”⁷⁵⁵

At first glance, the PIPA ultimately corresponds to social needs in the information age and substantially broadens its coverage to all personal information, rather than just “computer processing information.”⁷⁵⁶ Additionally, the Act includes special provisions to prevent the government’s unnecessary collection or processing of sensitive personal information.⁷⁵⁷ However, upon close examination, the language of the Act is neither clear nor sufficiently limiting and may grant wide discretion to government agencies, leading to an over- or under-inclusive interpretation of the scope of a specific purpose or exception to collect, process,⁷⁵⁸ or use⁷⁵⁹ personal information.

In addition, in the context of campaign data practices and campaign finance law, donors lack individual control over their own data. After reporting their names, addresses and other related information to the government, donors are deprived of meaningful choices about how their personal data is collected, used, and disclosed by others, including political actors and commercial organizations.

⁷⁵⁵ Article 2, paragraph 1, Personal Information Protection Act (2010).

⁷⁵⁶ See 97 LIFAYUAN GONGBAO NO. 28 (VOL. 3639), (立法院公報 97 卷 28 期 3639 號) [Legis. Yuan Official Gaz.], at 212-52 (2008); 97 LIFAYUAN GONGBAO NO. 48 (NO. 3659-1), (立法院公報 97 卷 48 期 3659 號上) [Legis. Yuan Official Gaz.], at 114-218 (2008).

⁷⁵⁷ GEREN ZILIAO BAOHUFU (個人資料保護法) [PERSONAL INFORMATION PROTECTION ACT], art. 6 (personal information concerning medical treatment, genetic information, sexual activity, health examination, and the criminal record should not be collected, processed, or used).

⁷⁵⁸ *Id.* art. 15 (the government agency should not collect or process personal information unless there is a specific purpose and should satisfy one of the following conditions: 1) it is necessary to carry out the duties prescribed by laws and regulations; 2) the Party has consented, or 3) the rights and interests of the Party will not be harmed).

⁷⁵⁹ *Id.* art. 16 (the information may be used outside the scope upon the occurrence of one of the following conditions: 1) where prescribed by law; 2) where it is necessary for national security or the promotion of public interests; 3) where it is to prevent significant harm to the life, body, freedom, or property of the Party; 4) where it is to prevent harm to the rights and interests of other people; 5) it is necessary for the government agency or an academic research institution to conduct statistical or academic research based on public interest, respectively. The information may not lead to the identification of a certain person after the treatment of the provider or the disclosure of the collector; 6) where such use may benefit the Party; or 7) the Party has consented).

The current incomplete regulation of political data in PDA and PIPA, and the bill to revise PDA so as to expand the scope of public disclosure online, give rise to privacy harms from aggregation, exclusion, secondary use, and insecurity.⁷⁶⁰ Aggregation enables the revelation of personal information beyond what could reasonably be expected at the time it was given out.⁷⁶¹ That information allows public institutions or private corporations to establish a preconceived personal profile to make important determinations about people without their informed consent. Exclusion creates additional harms, such as leaving individuals feeling powerless and alienated when uncertain forces determine their chances in life.⁷⁶² Secondary uses have chilling effects, forcing individuals to withdraw from certain sensitive activities.⁷⁶³ Additionally, security breaches may cause harms, not only through financial loss or violent reprisal, but also by diminishing faith in publicly supervised political processes.

To address the risks pertaining to information privacy, a reliance on social norms to govern behavior within distinct social contexts might be advocated by some.⁷⁶⁴ Laissez-faire norms govern the marketplace, for example, where individuals are free to seek personal advantage through whatever means they deem best. However, as demonstrated by the previous analysis in Chapter 1 and 2, social and political norms are extremely relevant in the context of democratic elections and campaign finance and possess different ends, purposes, and goals than those governing the marketplace. To address the conflict between privacy and free speech in the digital era, two issues must be debated further: redrawing the dichotomy

⁷⁶⁰DANIEL J. SOLOVE, UNDERSTANDING PRIVACY 119 (2008); Tatsuhito Yamamoto, *The Big Data Society and Profiling (Biggudeta shakai to purofairingu)*, 18JURIST 34, 38, 43 (2016); Kudo Ikuko, *Campaign as the new form of democracy in the information society (Joho shakai ni okeru minshu shugi no atarashī katachi to shite no kyanpen)*, 708 HOGAKU SEMINAR 14, 17 (2014).

⁷⁶¹Tatsuhito Yamamoto, *id.*

⁷⁶²DANIEL J. SOLOVE, UNDERSTANDING PRIVACY 133, 134 (2008).

⁷⁶³*Id.* at 130 (2008).

⁷⁶⁴HELEN NISSENBAUM, PRIVACY IN CONTEXT: TECHNOLOGY, POLICY, AND THE INTEGRITY OF SOCIAL LIFE 176-77, 214-15 (2010).

between the public and private, and providing citizens with procedural protections to secure democracy.⁷⁶⁵

IV. A New Species of Privacy Rights: The Political Right to Privacy

As shown by the analysis in previous sections, in the U.S. and Taiwan, the jurisprudence over the right to privacy has been deliberated within the context of individual rights. But personal political data is distinct and plays a unique role in the integrity of election and democracy. When political actors collect, use, and disclose data, disregarding information privacy rights, they might cause harm to individuals. In addition, however, the integrity of democracy may also be diminished when political privacy rights are disregarded.⁷⁶⁶ This requires a shift from a focus on privacy as an individual value to a public value.⁷⁶⁷

Democracy assumes individuals independently participate in the process of making decisions about public policies. An individual is capable of fulfilling his public duty only if he separates himself from the pressures and conformities of collective life.⁷⁶⁸ Privacy rules are, therefore, needed to build “information preserves”⁷⁶⁹ and afford “breathing room,”⁷⁷⁰ ensuring areas or spaces that insulate the individual from surveillance, manipulation and coercion. Such preserves are crucial for democracy to flourish.⁷⁷¹ Political privacy, like transparency, is a public value that supports democratic political systems.⁷⁷² It is composed of

⁷⁶⁵ Hsiang-yang Hsieh, *Locating the value of information privacy in a democratic society: a study of the information privacy jurisprudence of Taiwan's constitutional court*, 7 NTU LAW REV. 7.1, 309, 312 (2012).

⁷⁶⁶ Ira S. Rubinstein, *Voter Privacy in the Age of Big Data*, 2014 WIS. L. REV. 861, 908-910 (2014).

⁷⁶⁷ *Id.*

⁷⁶⁸ THOMAS I. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 546 (1970).

⁷⁶⁹ Paul M. Schwartz, *Privacy and Democracy in Cyberspace*, 52 AND. L. REV. 1609 (1999).

⁷⁷⁰ Julie E. Cohen, *What Privacy Is For*, 126 HARV. L. REV. 1904, 1905 (2013).

⁷⁷¹ Neil M. Richards, *Intellectual Privacy*, 87 TEX. L. REV. 387, 389 (2008).

⁷⁷² PRISCILLA M. REGAN, *LEGISLATING PRIVACY: TECHNOLOGY, SOCIAL VALUES, AND PUBLIC POLICY* 225-27 (1995).

the rights of anonymous speech and freedom of association,⁷⁷³ the institution of the secret ballot,⁷⁷⁴ and the right to vote without undue burden.⁷⁷⁵

Modern campaign practices in the U.S. relying on political dossiers and voter micro-targeting not only undermine political privacy but already threaten democratic interests by producing two phenomena: political inequality and a democratic deficit.⁷⁷⁶ Political inequality can be caused by the aggregation and processing, through voter models, of voters or contributors' data in order to pay specific attention to a strategic set of voters or donors in select geographic districts or groups; this routinely ignores other voters. Moreover, the aggregation and use of political data are potent tools to segment the electorate. Public debate might be narrower when campaigns craft narrow political appeals to target a specific audience, meanwhile ignoring people ideologically opposed to or disengaged from the electoral process. As a result, political elites could be less likely to lead or reframe public opinions, but instead rely on reinforcing latent opinions.⁷⁷⁷

V. The Future of Taiwanese Campaign Finance Law

As previously analyzed, the electoral clientelism and its interaction with campaign finance laws in Taiwan have both reshaped a distinct landscape in Taiwan. Thus, the issue about, how the public disclosure and campaign finance system should be reformed, and more precisely, how to strike an optimal balance between the transparency and information privacy right, are both sufficiently complex and beyond the scope of this dissertation to offer a

⁷⁷³ *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995); *NAACP v. Alabama*, 357 U.S. 449 (1958).

⁷⁷⁴ *Burson v. Freeman*, 504 U.S. 191 (1992).

⁷⁷⁵ Paul M. Schwartz, *Privacy and Participation: Personal Information and Public Sector Regulation in the United States*, 80 IOWA L. REV. 533, 557-65 (1995).

⁷⁷⁶ Daniel Kreiss & Philip N. Howard, *New Challenges to Political Privacy: Lessons from the First U.S. Presidential Race in the Web 2.0 Era*, 4 INT'L J. COMM. 1032, 1039 (2010); Daniel Kreiss, *Yes We Can (Profile You): A Brief Primer on Campaigns and Political Data*, 64 STAN. L. REV. ONLINE 70, 71-72 (2012).

⁷⁷⁷ Daniel Kreiss, & Philip N. Howard, *New Challenges to Political Privacy: Lessons from the First U.S. Presidential Race in the Web 2.0 Era*, 4 INT'L J. COMM. 1032, 1044 (2010); W.L. Bennett & J. B. Manheim, *The one-step flow of communication*, 608 ANN AM ACAD POL SOC SCI (1) 213 (2006).

detailed reform proposal. In this section, I seek to sketch out a broad framework for reforms that address the value of disclosure and the need for transparency while also protecting information privacy and the integrity of the democratic process.

A. Procedural Model: The Disclosure of Mechanism

After analyzing the risks to voters' and donors' privacy interests by elaborating the misuse and abuse of their data, which may result in invasions of privacy and political harms, the Legislative Yuan might reconsider amending PDA. The PDA should be amended to require political actors to disclose their campaign data practices to the public.

Disclosure is a crucial part of campaign finance regulation in both the U.S.⁷⁷⁸ and Taiwan. Disclosure has been viewed as an essential element to guaranteeing an open and transparent democratic process.⁷⁷⁹ Aligned with the spirit of transparency and safeguarding the democratic process, disclosure provisions in the PDA should be revised and extended to campaign data practices, requiring political actors to provide notices online to illustrate their data processing practices. Robust privacy disclosure would give voters and donors all the information needed to understand the time, manner, scale, scope, accuracy, and sensitivity of their own personal data. Political actors may have harnessed personal data and used it to form personal profiles and for voter micro-targeting. To achieve the goal of individual control and self-determination principles, notification should also be required for online behavior which aims to specific target voters.⁷⁸⁰

⁷⁷⁸Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 Election L.J. 273 (2010).

⁷⁷⁹Trevor Potter, *Campaign Finance Disclosure Laws*, in *NEW CAMPAIGN FINANCE SOURCEBOOK* 123 (Anthony Corrado et al. eds., 2005).

⁷⁸⁰Ministry of Internal Affairs and Communications, *The Report on the economic benefit of online behavioral targeting and protection for users* (2010); Consumer Affairs Agency, *Measures for Consumer's Safety on Internet Transaction* (2011); Ministry of Internal Affairs and Communications, *Second Proposal by the Working Group on Issues regarding ICT services from Users Perspectives* (2010).

B. Less Disclosure Model

Public disclosure of the identities of campaign contributors or spenders should be limited to major actors. Given the administrative costs, an unexpected cost of information privacy and political privacy rights in the digital era, small donors should be exempted from public disclosure. Raising the disclosure threshold would protect the privacy of the most vulnerable political actors: small donors.⁷⁸¹ Small donors pose little or no threat to the public education or anti-corruption functions of campaign finance disclosure. A massive disclosure of small donors' information not only threatens to distract people from the big donors but also discourages the small donors' participation in the electoral process, which has long been viewed as an effective means by which to keep political actors away from corporate contributions, or at least to prevent excessive monetary influences from interest groups. However, this dissertation lacks the legislative investigating power to collect quantitative data and is unwilling to intrude on the legislature's discretion on an arbitrary disclosure threshold. The Taiwanese Legislature might consider adopting a new disclosure threshold which varies depending on the level of the office. A secondary benefit of raising the disclosure threshold could be a reduction in administrative costs and undue burdens on independent candidates and small political parties. In the case of Taiwan, the enhanced requirement of public disclosure is building a new barrier for political newcomers. As L4 and L5 stated in Chapter 6, the administrative cost of transparency is becoming unaffordable for the independent candidates or new parties.

In addition, based on the privacy concerns of large donors, only general information, not individually identifying information, should be disclosed to the public. In the digital era, the aggregation of personal information can lead to identification and the compilation of a personal

⁷⁸¹ Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 300 (2010).

profile. Political actors might use those personal profiles to initiate a micro-targeting campaign. With regard to the concern of future development of the technology of aggregation and identifying, individual or sensitive information might be required to merely be reported to state regulators or disclosed by official documents, rather than being disclosed online.

Chapter 8. Conclusion: Answering an Unanswered Question

As Huntington has argued, the source of political decay comes from the inability of political institutions to adapt to socioeconomic changes.⁷⁸² Fukuyama concurred and stated that one of the significant reasons for institutions failing to adapt is the role of incumbent political actors within the political system.⁷⁸³

I. The Big Picture of Campaign Finance Reform: Restraining Political Decay

As Fukuyama has suggested, political order is rooted in “human biology;” and natural human sociability is founded on two characteristics, “kin selection,” and “reciprocal altruism,”⁷⁸⁴ which means it is human nature to have special preferences for family members -those with shared genes - or friends who have exchanged interests before.

Modern states and official conduct rules require impersonality, which is contrary to human instinct. Thus, the civil servant faces conflicts of interest between loyalties to the nation, on one side, and the ties of kinship and friendship, on the other. The gap between formal public norms and local popular values is significant in post-colonial nations.⁷⁸⁵

In Taiwan as a post-colonial and post-authoritarian nation, the campaign finance law and its enforcement is an excellent vehicle to observe both the gap between the formal political norms and local values and how the absence of adequate and fair enforcement of formal norms can contribute to electoral clientelism and political corruption. As the discussion in Chapters 3, 4, and 5 shows, given the disincentives in campaign finance law and ineffective enforcement, the national and local elite groups with access to the political system were able to manipulate the rules to follow their basic human instinct and distribute special interests to

⁷⁸² Samuel P. Huntington, *Political Development and Political Decay*, 17 W. Pol. (3) 386 (1965).

⁷⁸³ FRANCIS FUKUYAMA, POLITICAL ORDER AND POLITICAL DECAY 463 (2015).

⁷⁸⁴ *Id.* at 8 (2015).

⁷⁸⁵ JAMES C. SCOTT, COMPARATIVE POLITICAL CORRUPTION 11, 12 (1972).

their family or friends. This process of insider capture causes political decay and the crisis of “re-patrimonialization.”⁷⁸⁶

Some optimistically argue that democracy or economic development will bring about a clean government.⁷⁸⁷ Democracy theoretically mitigates the process of re-patrimonialization by creating a separation of powers and allowing competition among different interest groups, which provides an institutional check on elites. Economic development could reshape the individuals’ cost and benefit calculus and enhance the public’s awareness about the value of a clean government. Nevertheless, as the discussion in Chapters 4, 5, and 6 has shown, the economic developments in the 1980s and the transition to democracy in the 1990s neither linearly restrained electoral clientelism nor brought about a clean government in Taiwan. The difficulties for the legislature in Taiwan should be analyzed in two dimensions.

First, the gap between economics and politics created a broad political ecosystem with a unique set of hydraulics. In the field of market economics, competition may produce economic inequality, which may be tolerated because of its ability to stimulate innovation and growth. However, in the field of politics, the legislators in Taiwan, like those in most democratic nations, face the difficulty that the economic winners could organize themselves and seek to use their economic resources in the political field for unequal political influence so as to consolidate their economic advantage. Thus, the debate about campaign finance

⁷⁸⁶ *Id.* at 464 (2015). (in the early states, the rulers view the state as their personal properties. The rulers may use his family or friends to staff his administration, it was so-called patrimonial system.)

⁷⁸⁷ The issue of democracy and corruption is controversial and far from conclusive even today. The democracy camp argues that democracy is a powerful tool which can reduce corruption. See Daniel Treisman, *The Causes of Corruption: A Cross-National Study*, 76 J. PUB. ECO., 399-457(2000). Available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.335.8783&rep=rep1&type=pdf>. (Accessed February 1 2016); Ivar Kolstad & Arne Wiig, *Does Democracy Reduce Corruption?*, 4 CMI Working Paper 1, 1-25 (2011). Available at: <http://www.cmi.no/publications/file/4315-does-democracy-reduce-corruption.pdf>. (Accessed February 2 2016); Mancur Olson, *Dictatorship, Democracy, and Development*, 87.3 AM. POL. SCI. REV. 567,567-76 (1993). The camp which has doubts about democracy argues that an empirical link between democracy and reduced corruption cannot be drawn. See CORRUPTION AND DEMOCRACY: POLITICAL INSTITUTIONS, PROCESSES, AND CORRUPTION IN TRANSITION STATES IN EAST-CENTRAL EUROPE AND IN THE FORMER SOVIET UNION (Duc v. Trang ed., 1994).

reform in Taiwan, as in the U.S. and Japan, is critical to democracy because it determines the pivot point which prevents the economic winners from unduly interfering in the political system. As discussed Chapter 1, the complexity of the debate regarding campaign finance reform and the fluidity of money is, as Issacharoff & Karlan have suggested, similar to hydraulics and water.

Second, due to Taiwan's unique history --having experienced both, colonial and authoritarian rule -- the political and economic elites, segregated into the central or local governmental level, have been able to establish clientelism networks to access resources and information, and have varying ability to organize interest groups and mobilize political machines by iteratively collecting and distributing political, economic, and symbolic interests. Although the legislature in Taiwan, like those in the U.S. and Japan, has debated the merits of both regulation and deregulation, the political and economic calculus which has been applied in Taiwan is distinct.

The debate regarding interest groups and clientelism factions, identical to the analysis of the concept and standard of political corruption in Chapter 2, also stands at a crossroads between the value of pluralism and deliberative democracy. On the one hand, the interest groups could be damaging to economic growth and democracy. As Olson has argued, these groups use the political system to extract rents.⁷⁸⁸ On the other hand, the voluntary associations bring benefits to civil society and democracy. As de Tocqueville argues, individuals are weak, they can resist government tyranny only by joining with others for common purposes.⁷⁸⁹ Further, it may be in the public interest for competition and interactions

⁷⁸⁸MANCUR OLSON, *THE RISE AND DECLINE OF NATIONS* (1982).

⁷⁸⁹ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Trans. Harvey C. Mansfield and Delba Winthrop, 2000).

to exist among interest groups.⁷⁹⁰ In summary, the difficulties of regulating interest groups are derived from the necessary conditions for democracy, but these same groups have a corrupting effect on democracy as well.

Although kin selection and reciprocal altruism are basic facets of human nature, after closely examining the unique history and political ecosystem of Taiwan, this dissertation positively responded to the arguments put forward by Issacharoff & Karlan and Scott, and chose demand side regulation, more exactly, the mandatory report/public disclosure rules, to provide positive or negative incentives to strengthen the loyalties between the elites and their nation, rather than ties to family and friends, and thus to avoid the political decay and the crisis of re-patrimonialization.

Politicians can easily be influenced by money or its related intellectual influence because, once a gift or political contribution is received, human beings feel a moral obligation to reciprocate. As discussed in Chapters 1 and 2, the anti-bribery law merely covers the specific quid-pro-quo exchange (market-like transactions), but not the exchange of favors. Therefore, interest groups may be able to influence politicians in legal ways by making donations or undertaking independent advocacy during the campaign period, and then wait for an unspecified return of favor. Thus, politicians could be captured by monetary or intellectual influences, even though they have only associated with interest groups in a one-sided manner.⁷⁹¹ Therefore, as mentioned in Chapter 2, this dissertation argues for extending the concept of corruption from governmental to electoral corruption so as to cover such transactions in order to avoid the political decay.

⁷⁹⁰THEODORE J. LOWI, *THE END OF LIBERALISM: IDEOLOGY, POLICY, AND CRISIS OF PUBLIC AUTHORITY* 51 (1969).

⁷⁹¹LAWRENCE LESSIG, *REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT* 24 (2011).

II. Electoral Clientelism and its Interaction with Campaign Finance Laws

To resolve the question of why the public disclosure provisions in the PDA of 2004 failed to restrain political corruption, this dissertation conceded that, in the case of Taiwan, transparency was not as effective as expected due to the unique historical and political background of the nation. As explained in Chapter 1, this dissertation adopted a historical institutional approach and undertook a comprehensive examination of the development of electoral politics in Taiwan over the past eighty years, with a special focus on the rulers' electoral strategies and their efforts to regulate electoral activities and campaign finance. Thus, this dissertation vertically analyzed the evolution of campaign regulation with a particular focus on mandatory reporting rules, and its interaction with electoral clientelism, in four eras: the Japanese colonial rule era (1935-1945), the ROC-KMT era (1945-1991), the democratic era (1991-2004), and the time of the PDA (2004-present).

As discussed in Chapter 3, Japan ruled over Taiwan from 1895 to 1945. Faced with resistance from the residents of Taiwan, Japan initially adopted a non-assimilation colonial policy and established an authoritarian regime. After WWI, the Government-General of Taiwan (GGT) shifted its colonial policy to gradual assimilation to address the rise of Taiwanese nationalism and The Petition Movement for the Establishment of a Taiwanese Parliament (TPPM). To further stabilize its political regime for war mobilization, cooperate with the local Taiwanese bourgeoisie via exchanging interests, and split the opposition camp, the GGT held elections for the local councils in 1935.

As a racial minority regime, the GGT faced a dilemma of how to hold local elections to integrate local Taiwanese into the regime but not vest the supreme power to the people. To gain political control over the majority of the councils and suppress the disobedient local elites, the GGT adopted the SNTV system to suppress issue campaigning, including strict

election laws to police campaign activities, as well as lenient campaign finance rules to tolerate door-to-door canvassing and behind the scenes transactions. The election of 1935 is viewed as the first Taiwanese election and the origin of electoral clientelism and local political factions in Taiwan. It had profound implications for the future of Taiwan's democracy, elections, and campaign finance laws.

After WWII, the ROC ruled Taiwan and implemented the first general election with universal suffrage under the SNTV electoral system in 1946. The existing local elites and local factions actively participated in the political process and consolidated their networks. However, the democratic process failed to establish a corruption-free government, which led to a local uprising in February 1947. The revolt, known as the 228 Massacre, was suppressed, but the Massacre planted the seeds of the ethnic animosity that has lasted in Taiwanese society for more than a half-century. After the outbreak of the Chinese Civil War, the *Temporary Provisions* were enacted in 1948. The ROC then suspended all elections and civil rights provisions in the ROC Constitution, shifting Taiwan from constitutionalism to authoritarian rule. In 1949, the ROC central government retreated to Taiwan and, with the KMT as its ruling party, created a party-state authoritarian regime. Then the ROC-KMT regime suspended all elections in the national democratic bodies but opened the local assembly elections in 1950.

The ROC-KMT regime, like the GGT, first, adopted the SNTV system to restrain issue campaigning and institutionally encourage running for personal votes. Second, like the GGT, the ROC-KMT regime issued strict election rules to police campaign activities but enforced campaign finance rules leniently to tolerate transactions either between the national and local elites, or between local elites and vote brokers or voters, to maintain its political advantage in local assemblies. In addition to the SNTV and lenient campaign finance rules, under the

authoritarian rule, the ROC-KMT regime used a carrot-and-stick strategy to absorb the local factions, and tolerated the development of electoral clientelism, to ensure its majority in local assemblies. Thus, the mobilization of electoral clientelism produced path dependence effects and positive feedback, and campaign expenditure was increased from election to election, which provided all political participants with institutional incentives for corruption. Also, mandatory report/public disclosure rules were never sincerely enforced by the ROC-KMT regime or respected by candidates, for a variety of motives.

As discussed in Chapter 4, on the one side, the ROC-KMT regime and its potential coalition partners, the local factions, had to rely on regularly collecting and distributing material or symbolic interests to develop or maintain the political loyalty of the networks of vote brokers and voters. On the other side, the independents or opposition were concerned about the partisan enforcement and the chilling effects for the potential donors who may be reattributed by the ROC-KMT regime or rival local factions. Thus, the electoral clientelism was institutionalized and the value of transparency was never realized.

With the end of the *Temporary Provisions* in 1991, Taiwan embarked on the transitional process to democracy but missed the critical juncture to restrain electoral clientelism and promote transparency. The transition to democracy in Taiwan was distinct because it was led by the previous authoritarian ruling party. The ROC-KMT regime, as shown in Chapter 5, agreed to open general elections in 1991 but refused to abandon its party's assets, electoral clientelism networks, and the SNTV system. Further, the main opposition party, the DPP, did not object to the KMT's agenda or promote campaign finance reform due to its own political calculus. As a result of the splits within the KMT and the DPP's adoption of summoning strategies in the early 1990s, the inter-party competition became fierce. In the absence of adequate public disclosure rules in election law and without effective enforcement, the local

factions became more prominent and transformed into interest groups. As such, electoral clientelism boomed.

The development of democracy, the liberalization of campaign activities and the opening seats in the national democratic bodies for electoral competition all stimulated electoral clientelism to infiltrate the central government. A series of revisions to the CSERA since the 1980s failed to achieve the expected goals due to the path dependent and hydraulic effects, whereby money rose through the cracks of the revisions and continued to exert an influence over Taiwanese politics. The politicians bypassed regulations to cover the costs of their constituent services and to build up or consolidate their clientelism networks with local factions, vote-buyers, or voters, to ensure their odds of being elected. As a result, the equilibrium of campaign finance was distorted, and campaign expenditures skyrocketed, which provided a fertile environment for money politics, causing widespread political corruption. As combatting corruption became salient focus in the public forum, public outrage at money politics provided new dynamics for the campaign finance reforms in the early 2000s.

The PDA of 2004 was a milestone of campaign finance law in Taiwan, yet its symbolic significance in politics was greater than its actual importance. As the discussion in Chapter 6 has shown, the central legislative goal of PDA is to combat corruption and to facilitate democracy, and a key feature of the approach adopted by that Act is its reliance on public disclosure. Yet, as discussed in Chapters 6 and 7, the PDA has succeeded neither in its aim of combating political corruption nor in furthering democracy. Why, then, have the mandatory report/public disclosure provisions in the PDA failed to achieve the goal of combating corruption? And how should the system be reformed?

III. Hydraulic Effects and the Value of Transparency

As explained in Chapters 1, 5, and 6, the existing inequality in the economic and political field, and the shadow of colonial and authoritarian rule, have both produced a broad and unique political ecosystem in Taiwan. The campaign finance regime is like a hydraulic system which aims to block, or direct, the flow of money from economics to politics. The desire for political power to gain or consolidate economic interests cannot be destroyed, at most it can be channeled into designated and transparent forms.⁷⁹² If money has outcome-determining effects on the election, the moneyed political interests will continue trying to use money to influence outcomes, whatever the rules may be. Money is only one symptom of a deeper problem, the solution of which requires addressing more fundamental aspects of our political history and institutions. The current flow of political money is a product of problems upstream rather than the cause of such problems.

After examining the development and interactions of electoral clientelism and campaign finance law in Taiwan, logic and past historical experience provide two lessons for campaign finance reformers. First, as Shefter has argued, the relative timing of democratization matters and restricts following party leaders' and political actors' strategic options.⁷⁹³ The initial mobilization generated positive feedback, and "once entrenched, the dominant basis of political mobilization became difficult to dislodge."⁷⁹⁴ The KMT's critical decisions to absorb local factions and tolerate electoral clientelism in the mid-1950s, and the DPP's

⁷⁹²Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705 (1999).

⁷⁹³MARTIN SHEFTER, *POLITICAL PARTIES AND THE STATE: THE AMERICAN HISTORICAL EXPERIENCE* (1994). (In the case of parties founded by elites occupying positions or privileges within the ruling regime, they tend to be patronage-oriented because of structural opportunities.) Under Shefter's framework, the supply side of patronage or clientelism is more critical to the demand side. The patronage and clientelism could exist only when political actors have access to state resources to distribute it. As for the starting point of the patronage or electoral clientelism and the sequencing, this dissertation partially concurs with Shefter. But, as for the issue of addressing electoral clientelism, this thesis does not deny the function of supply-side reform, like *The Act Governing the Handling of Ill-gotten Properties by Political Parties and Their Affiliate Organizations*, but argues that transparency is the primary dynamic to remove clientelism parties from ruling power and deter future clientelism kinds of transactions for particular interests.

⁷⁹⁴ Martin Shefter, *Party and Patronage: Germany, England, and Italy*, 7 POL. & SOC. 414, 415 (1977).

summoning strategies in 1993, both contributed to consolidate the existing electoral clientelism.

Second, as Issacharoff & Karlan suggested, imposing new regulations to block the flow of money flow from private individuals to politicians might increase, rather than dampen, the role of money in the political field. Under the shadow of authoritarian rule and electoral clientelism, supply side campaign finance reforms in Taiwan as early as in 1950 (the cap on political expenditures, for example), failed to decrease the flow of political money, instead forcing exchanges to take place in the dark because of displacement effects. As campaign money seeks the path of least resistance, the caps placed on donations or expenditure only exacerbated the existing trend in politics, forcing money to veer away from the dedicated accounts to hidden channels, so as to bypass the regulations. In such circumstances, independent expenditures such as those from NGOs and other entities become the primary means of supplying campaign finance.

Thus, this dissertation argues that, as elaborated in Chapter 1, in seeking to regulate campaign finance, the focus must be shifted from the supply side to factors on the demand side: namely, the value of transparency and the role of electoral clientelism. Disclosure has long been viewed as a safeguard against corruption. When considering the future of Taiwanese campaign finance law, focus must be placed not only on combatting corruption but also on rethinking the essential value of democracy, which is centered on the belief that people are sovereign and which seeks to enhance the ability of the citizenry to make informed choices among candidates.

This dissertation argues that disclosure of campaign finance promotes the quantity and quality of speech, by increasing the availability of information concerning candidates' supporters. Furthermore, public disclosure of campaign finance also encourages open

discussion and helps voters define the candidates' constituencies and their potential policy preferences, which facilitates self-government and helps ensure the integrity of the electoral process.

As discussed in Chapters 4, 5, and 6, current campaign practices and spending patterns in Taiwan both suggest that political actors still believe electoral clientelism is a useful technique for passing the election threshold. Given the existing mobilizing system, campaigns demand significant amounts of money. What, then, would the consequence be of limiting the availability of money? The history of U.S. campaign finance in the post-*Buckley* period and the history of Taiwan in the post-authoritarian era both reveal two lessons. First, the considerable gap between the law in books and law in action, as well as supply and demand, have brought about a mismatch and render reformers' efforts useless.⁷⁹⁵ The PDA in Taiwan followed the steps of TLERR of 1935, the TPERR of 1950, and CSERA of 1983, to establish stringent restrictions on political donations and spending, all of which fall into a similar trap. The upshot produced even worse situations: First, the concerns of partisan enforcement undermined the electoral integrity and the foundation of democracy. Second, the stringent restriction on supply side of campaign finance meant that candidates either had to rely on local factions to develop, maintain, and mobilize vote brokers or voters, or that candidates who had money were favored, even if they had no political experience. Both of these consequences opened the backdoor for the mafia or financial groups to interfere with public policies.

IV. The Future of the PDA in Taiwan: More and Less Transparency

⁷⁹⁵ Vincent Blasi, *Free Speech and the Widening Gyre of Fund-Raising: Why Campaign Spending Limits May Not Violate the First Amendment After All*, 94 COLUM. L. REV. 1281, 1283 (1994).

How can campaign finance reformers respond to the path dependence and hydraulic effects in a meaningful way? After examining the unique trajectories of the development of electoral clientelism and its interaction with campaign finance laws, which has already shaped the distinct political ecosystem and hydraulics in Taiwan, this dissertation contends that transparency could serve as the key to reshaping the existing electoral clientelism and lay the cornerstone of a clean government. As Justice Louis Brandeis commented over a century ago, “Sunlight is said to be the best of disinfectants, electric light the most efficient policeman.”⁷⁹⁶

As analysis in Chapters 1 and 7 has shown, campaign finance reform involves a balance of anti-corruption, political participation, freedom of speech and the right to political and information privacy. On the one hand, full and effective disclosure is the best way to control excessive contributions and expenditures. The publicity caused by full disclosure has a cleansing and policing power which promotes the value of transparency and political accountability to a level other measures cannot achieve. On the other hand, the internet and data mining technologies have transformed the nature of the public disclosure, undermining the practical obscurity of public documents. Full public disclosure, in light of current technology, could lead to a loss of political and information privacy.

Given the advent of information technology and big data, this dissertation concedes that transparency carries risks which must be taken into account as Taiwan reforms its campaign regulation system. Although transparency is the foundation of clean government, after analyzing the risks to voters and donors’ privacy interests, this dissertation recommends that

⁷⁹⁶ Louis D. Brandeis, *What Publicity Can Do*, HARPER'S WKLY., Dec. 20, 1913, at 10, 10.

the Legislative Yuan may consider two models for reform of the PDA, the procedural model and the “less disclosure” model.

For the procedural model, the legislature could consider amending the PDA to address the harms to the right to privacy by requiring political parties and candidates to disclose their campaign data practices to the public, such as the candidates’ or political parties’ collection of personal information to form personal profiles for micro-targeting campaigns.

The less disclosure model seeks to strike a dynamic equilibrium between transparency and the right to political information privacy in the digital era. Under the less disclosure model, public disclosure of the identities of campaign contributors or spenders should be limited to principal actors. Thus, the disclosure threshold should be raised to protect the privacy of the most vulnerable but valuable political actors: small donors. Furthermore, based on the privacy concerns of large donors, only general information, not individually identifying information, should be disclosed to the public.

In summary, revealing the data collecting practices and raising the disclosure threshold could sharpen the public focus on big donors and data collectors, reduce the administrative cost to small parties and independent candidates, and protect the privacy of small donors. Furthermore, for large donors, individual personal information should only be reported to the authorities, rather than being subject to public disclosure, due to the slight benefit of voter-education value and the tremendous costs of the chilling effect.

V. Conclusion

As Fukuyama argues, kin selection and reciprocal altruism are essential aspects of human nature. The political or economic elites are no exception, and are able to organize themselves into interest groups or factions to consolidate the ties with their family or friends

by iteratively distributing and exchanging interests. This may cause political decay. After tolerating the economic inequality of the existence of interest groups, the legislators in Taiwan, like those in other democratic nations, face the difficulty of preventing economic power from unduly interfering with the political process, or more exactly, from restraining interest groups from using the political system to seek rents.

After examining the history of Taiwan over an eighty-year period, the shadow of authoritarian rule caused an uneven transition to democracy. Furthermore, the interaction between the ineffective public disclosure rules and electoral clientelism have reshaped the distinct hydraulics and unique political calculus in Taiwan, which includes concerns over the right to privacy and freedom of speech. Thus, this thesis' argument is two-fold. First, full public disclosure within the PDA could achieve the goals of restraining electoral clientelism and suppressing political corruption. In the absence of public disclosure to reshape the demand curve in the political market, electoral clientelism, as discussed in Chapters 5 and 6, would continue to thrive because of basic human nature.

Second, looking to the future, as digital technology and the internet develop further, the nature and practices of campaign activities and disclosure laws may become transformed quantitatively and qualitatively. In light of modern digital and communicative technologies, the legislature in Taiwan should rebalance the goals of anti-corruption, political participation, freedom of speech and the right to political and information privacy. The public disclosure provisions in the PDA should be reformulated to impose more duties of disclosure on political actors collecting political data but limit exposure of the identities to principal actors.

Nevertheless, as the internet and data mining technologies develop and transcend our expectations, how the dynamic equilibrium between the value of transparency and right to political information privacy is struck becomes crucial. Among the unanswered questions

that will likely need to be addressed are whether a bright-line rule should be applied, or whether analysis should be done on a case by case basis? And whether the legislature or the courts could serve as an appropriate agency to draw the optimal line but not be captured by the political or economic elites?

BIBLIOGRAPHY

BOOKS

- Alexander, Herbert E., *Financing Politics: Money, Elections and Political Reform* (4th ed. 1992).
- Bessette, Joseph M., *The Mild Voice of Reason: Deliberative Democracy and American National Government* (1994).
- Bishop, Cheryl Ann, *Access to Information as a Human Right* (2012).
- Boissevain, Jeremy, *Friends of Friends: Networks, Manipulators and Coalitions* (1974).
- Chao, Yung-mao (趙永茂), *Taiwan difang zhèngzhì de biānqiān yu tèzhì*(台灣地方政治的變遷與特質) [The changes and characteristics of local politics in Taiwan] (2002).
- Chang, Chun-hung, *Dào zhízhèng zhī lù: Dìfāng bāowéi zhōngyāng de lǐlùn yǔ shíjì*(到執政之路: 地方包圍中央的理論與實際)[On the Road to Power: the Theory and Reality of enveloping Centrality from Locality] (1989).
- Chen, Dung-sheng (陳東升), *Jīn quán chéngshì: Dìfāng pàixì, cáituán yǔ táiběi dūhui fāzhǎn de shèhuì xué fēnxī* (金權城市: 地方派系, 財團與台北都會發展的社會學分析) [Golden City: A Sociological Analysis of Local Factions, Business Groups and the development in the areas of Taipei Metropolitan] (1995).
- Chen, Ming-tong (陳明通), *Paixi Zhengzhi yu Taiwan Zhengzhi Bianqian* (派系政治與台灣政治變遷)[The Faction Politics and Political Transitions in Taiwan] (1995).
- Chen, Tai-yin, *Taiwan's Local Factions after Democratization: a Case Study of the Lin Faction in Chia-yi County*, Master's thesis, National Tsing Hua University (2009).
- CHEN, Tsui-lien (陳翠蓮), *Bainian zhuiqiu: Taiwan minzhu yundong de gushi*, vol. 1. *Zizhi de mengxiang* (百年追求-台灣民主運動的故事, 第一卷: 自治的夢想) [Hundred Years of Pursuit- Democratic Movement in Taiwan, vol. 1: a dream of autonomy] (2013).
- Cheng, Tze (鄭梓), *Taiwan sheng can yihui shi yanjiu* (台灣省參議會史研究) [A historical analysis of Taiwan Provincial Consultative Assembly] (1984).
- Cheng, Tze (鄭梓), *Taiwan yihui zhengzhì sishi nian* (台灣議會政治四十年) [The parliamentary politics in Taiwan for forty years] (1987).
- Cheng, Tze (鄭梓), *Ben Tu Jingying Yu Yihui Zhengzhi : Taiwansheng Canyihuishi Yanjiu (1946-1951)* (本土精英與議會政治: 台灣省參議會史研究: 1946-1951) [The local elites and congress politics: a history of Taiwan council from 1946 to 1951] (1987).

- Chou, Wan-yao (周婉窈), Riju Shidai Taiwan Yihui Shezhi Qingyuan Yundong (日據時代的臺灣議會設置請願運動) [Taiwan Parliament Petition League Movement during the Japanese Colonial Era] (1989).
- Chou, Wan-yao, The Kominka Movement: Taiwan under Wartime Japan in Taiwan and Korea: Comparisons and Interpretations, doctoral dissertation, Yale University (1991).
- Dahl, Robert A., Dilemmas of Pluralist Democracy: Autonomy vs. Control (1982).
- Dahl, Robert A., Democracy and Its Critics (1989).
- Dahl, Robert A., How Democratic is the Constitution? (2003).
- Dickson, Bruce, Democratization in China and Taiwan: The Adaptability of Leninist Parties (1997).
- Dong, Wonmo, Japanese Colonial Policy, and Practice in Korea, Georgetown University Dissertation (1965).
- Edmonds, Richard Louis & Goldstein, Steven M. Ed., Taiwan in the Twentieth Century (2001).
- Eisenstadt, S. N. & Roniger, Luis, Patrons, Clients and Friends: Interpersonal relations and the structure of trust in society (1984).
- Emerson, Thomas I., The System of Freedom of Expression (1970).
- Fell, Dafydd, Party Politics in Taiwan (2005).
- Friedman, Milton, Capitalism and Freedom (1962).
- Fukuyama, Francis, Political Order and Political Decay (2015).
- Hsu Fu-ming (許福明), Zhōngguo guomindang de gaizao (1950-1952): Jian lun qi dui zhonghua minguo zhengzhi fazhan de yingxiang (中國國民黨的改造1950-1952: 兼論其對中華民國政治發展的影響) [The reform of the KMT from 1946 to 1952, and its implication to the ROC's political development] (1986).
- Hsu, Shuzhen, Ri ju shiqi taiwan di difang xuanju yu zhengzhi canyu: Yi liang ci minxuan shì hui yiyuan jí zhou huìyiyuan wei lì (日據時期台灣的地方選舉與政治參與: 以兩次民選市會議員及州會議員為例) [Local Elections and Political Participation in Taiwan during the Japanese Colonial rule: Taking Two elections of Prefecture and City Councilors as Examples] 145 Mas. dis., His., U. of chunchin (1996).
- Hsueh, Hua-yuan, Zhàn hòu táiwān lìshǐ yuèlǎn (戰後台灣歷史閱覽) [Post-War History of Taiwan] (2010)
- Huang, Chaoqin, Wo de hui yi (我的回憶) [My Memory] (1989)

- Huntington, Samuel P., *The Third Wave: Democratization in the Late 20th Century* (1993).
- Huntington, Samuel P., *Political Order in Changing Societies* (1968).
- Ide, Kiwata (井出季和太), *Taiwan chisekishi* (臺灣治績志) (1937).
- Ide, Kiwata (井出季和太), *Rijù xià zhī táizhèng* (日據下之台政) [The Political Affairs under the Japanese colonial rule] 937 (1956).
- Issacharoff, Samuel et al., *The Law of Democracy: Legal Structure of the Political Process* (3d ed. 2007)
- Jacobs, Bruce, *Local Politics in a rural Chinese Cultural Setting: A Field Study of Mazu Township, Taiwan* (1980).
- Kant, Immanuel, *Perpetual Piece* (Lewis White Beck Ed., The Liberal Arts Press, Inc. 1957) (1795).
- Kitschelt, Herbert & Wilkinson, Steven I. eds., *Patrons, Clients, and Policies: Patterns of Democratic Accountability and Political Competition* (2007).
- Kommers, Donald P., *The Constitutional Jurisprudence of the Federal Republic of Germany* (1989).
- Krauss, Ellis S. & Pekkanen, Robert J., *The Rise and Fall of Japan's LDP: Political Party Organizations as Historical Institutions* (2011).
- Kyo, seikai (許世楷), *Nihon tochi-ka no Taiwan: Teiko to danatsu*(日本統治下の台湾：抵抗と弾圧) [Taiwan under Japanese rule: resistance and repression] (1972).
- Lang, Yuxian, *Xuanju lunwen jí* (選舉論文集) [The collected book of the studies on the election] (1990).
- Lessig, Lawrence, *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It* (2011).
- Li, Chen-shan (李震山), *Renxing Zunyan yu Renquan Baozhang* (人性尊嚴與人權保障) [The human dignity and the protection of human rights] (2001).
- Li, Shiao-feng (李筱峰), *Táiwān mínzhǔ yùndòng sishí nián* (台灣民主運動四十年) [Forty Years of Taiwan's Democracy movement] (1987).
- Li, Shiao-feng (李筱峰), *Taiwan zhan hou chuqi de minyi daibiao* (台灣戰後初期的民意代表) [The Representatives in Taiwan after the WWII] (1993).
- Li, Hsiao-feng(李筱峰), *Taiwan shi 100 jian dashi xia zhan hou pian* (台灣史 100 件大事下-戰後篇) [100 events in Taiwanese History, the post-war part] (1999).

Lin, Chia-lung, Paths to Democracy: Taiwan in Comparative Perspective, Ph.D. dissertation, Yale U. (1998).

Lipset, Seymour Martin, Political Man: The Social Bases of Politics (1959).

Liu, Jiang-bin (劉江彬), Zixunfalun (資訊法論) [Computer Law] (1986).

Locke, John, Two Treatises of Government 196 (Thomas I. Cook Ed. 1947) (1690).

Lowi, Theodore J., The end of Liberalism (1969).

Lung, Yingtai (龍應台), Dajiang dahai (大江大海) [Big River, Big Sea] (2009).

Madison, James, Hamilton, Alexander, & Jay, John, Federalist No. 10 (1788)

Mauss, Marcel, The Gift. Forms and functions of exchange in archaic societies (1954).

Mill, John Stuart, On Liberty; Representative Government; The Subjection of Women 230 (Oxf. U. Press 1960) (1861).

Ministry of Internal Affairs, Zhèngzhì xiàn jīn fǎyán dìng shílù (政治獻金法研訂實錄) [The deliberating process of Political Donation Act] (2004).

Nissenbaum, Helen, Privacy in Context: Technology, Policy, and The Integrity of Social Life 176 (2010).

Niu, Tse-hsun, Jingxuǎn chuánbò cèlùè: Lǐlùn yǔ shíwù (選傳播策略：理論與實務) [Campaign Communication Strategy: Theory and Practice] (2002).

O'Donnell, Guillermo & Schmitter Phillippe, TRANSITIONS FROM AUTHORITARIAN RULE: TENTATIVE CONCLUSIONS ABOUT UNCERTAIN DEMOCRACIES (1986).

ORREN, K. & SKOWRONEK, S., The Search for American Political Development (2004)

PENG, MING-MIN (彭明敏), Ziyou de ziwèi: Peng mingmin huiyilu (自由的滋味：彭明敏回憶錄) [A TASTE OF FREEDOM—MEMOIRS OF A FORMOSAN INDEPENDENCE LEADER PENG MING-MIN] (2009)

Phillips, Steven E., Between Assimilation and Independence: The Taiwanese Encounter Nationalist China, 1945-1950 (2003).

Pierson, Paul, Politics in Time: History, Institutions and Social Analysis (2004).

Posner, Richard A., Law, Pragmatism, and Democracy (2003).

Post, Robert, Constitutional Domains (1995).

Rawls, John, A Theory of Justice (1971)

- Regan, Priscilla M., *Legislating Privacy: Technology, Social Values, and Public Policy* (1995).
- Rigger, Shelley, *Politics in Taiwan: Voting for Democracy* (1999)
- Roberts, Stephen H., *History of French Colonial practices 1870-1925* (1929).
- Sakagami, Nobuo (阪上順夫), *Nihon senkyo seido-ron* (日本選挙制度論) [The theory of Japanese electoral Institution] (1972).
- Scott, James C., *Comparative Political Corruption* (1972).
- Shefter, Martin, *Political Parties and the State: The American Historical Experience* (1994).
- Schultz, David A., Robert Maranto, *The Politics of Civil Service Reform* (1998).
- Schultz, David, *Election Law and Democratic Theory* (2014).
- Schumpeter, Joseph, *Capitalism, Socialism and Democracy* (1942).
- Scott, James C., *Comparative Political Corruption* (1972).
- Shapiro, Ian, *The State of Democratic Theory* (2003).
- Shain, Yossi & Linz, Juan, *Between States: Interim Governments in Democratic Transitions* (1995).
- Smith, Bradley A., *Unfree Speech: The Folly of Campaign Finance Reform* (2003).
- Solove, Daniel J., *The Digital Person: Technology and Privacy in the Information Age* (2004).
- Solove, Daniel J., *Understanding Privacy* (2008).
- Soma, Masao (杣正夫), *Nihon senkyo seido-shi: Futsu senkyo-ho kara koshoku senkyo-ho* (日本選挙制度史：普通選挙法から公職選挙法) [History of the Japanese Electoral System: From General Election Law to the Public Offices Election Act] (1986).
- Stokes, Susan C., Dunning, Thad, Nazareno, Marcelo & Brusco, Valeria, *Brokers, Voters, and Clientelism* (2013).
- Stone, Deborah, *Policy Paradox: The Art of Political Decision Making* (2001).
- Suemitsu Kinya (末光欣也), *Taiwan no rekishi: Nihon tochi jidai no Taiwan: 1895-Nen - 1945/ 46-nen: gojunen no kiseki* (台湾の歴史日本統治時代の台湾：1895年--1945/46年：五十年の軌跡) [Taiwan History: Taiwan of Japanese occupation: 1895 --1945 / 46 years: fifty years of trajectory] (2007).
- Sun, Yat-sen, *The Primer of Democracy* (1917).

- Sun, Yat-sen, *The Philosophy of Sun Wen* (1919).
- Sun, Yat-sen, *The International Development of China* (1922).
- Sunstein, Cass R., *The Partial Constitution* (1993).
- Takeuchi, Yoshimi (竹内好), *Nihon No Ajiashugi* (日本のアジア主義) [Japanese Pan-Asianism] (1963).
- Taiwan Sotoku fukei Tsutomu-kyoku (台灣總督府警務局), *Taiwan Sotoku-fu keisatsu enkakushi* (3) (台灣總督府警察沿革誌) [Taiwan Governor General Government Police History magazine] (1939).
- Taylor, Jay (陶涵), *Jiangjingguo chuan* (蔣經國傳) [The Generalissimo's Son: Chiang Ching-kuo and the Revolutions in China and Taiwan] (2000).
- Thompson, Dennis F., *Ethics in Congress: From Individual to Institutional Corruption* (1995).
- Thompson, Dennis F., *Just Elections: Creating a Fair Electoral Process in the United States* (2002).
- The Memorial Foundation of 228 (二二八事件紀念基金會), *Ereba Shijian Zeren Guishu Yanjiu Baogao* (二二八事件責任歸屬研究報告) [Research Report on Responsibility of 228 Massacres] (2006).
- Tocqueville, Alexis de, *Democracy in America*, (Trans. Harvey C. Mansfield and Delba Winthrop, 2000).
- Trang, Duc v. ed., *Corruption and Democracy: Political Institutions, Processes, and Corruption in Transition States in East-Central Europe and in the Former Soviet Union* (1994).
- Truman, David, *The Governmental Process: Political Interests and Public Opinion* (1971).
- Wakabayashi, Masahiro (若林正文), *Taiwan konichi undo-shi kenkyū* (台灣抗日運動史研究) [The study on Taiwan's anti-Japanese history] (1983);
- Wakabayashi, Masahiro (若林正文), *Taiwan: Fenlie Guojia Yu Minzhu Hua* (台灣：分裂國家與民主化) [Taiwan: Secession and Democratization] (1994).
- Wakabayashi, Masahiro (若林正文), *Zhanhou Taiwan Zhengzhi Shi: Zhonghua Minguo Taiwan Hua de Licheng* (戰後臺灣政治史：中華民國臺灣化的歷程) [Taiwan's Postwar Political History: the History of the Republic of China in Taiwan] (2008).
- Wang, Chenhuan(王振寰), *Shui tongzhi taiwan? Zhuǎnxíng zhōng de guójiā jīqì yǔ quánlì jiégòu* (誰統治台灣? 轉型中的國家機器與權力結構) [Who Governs Taiwan? The transforming state machine and its related structure of power] (1996).

Wang, Chin-shou, *Democratization and the Breakdown of Clientelism in Taiwan, 1987–2001*, Ph.D. Thesis, UNC (2004).

Wang, Tay-sheng, *Legal Reform in Taiwan under Japanese Colonial Rule, 1895-1945: The Reception of Western Law* (2000)

Wang, Tay-sheng (王泰升), *Taiwan falu shi gailun* (台灣法律史概論) [The Introduction of Taiwan Legal History (3rd ed. 2009)].

Wang, Yufeng (王御風), *Gaoxiong Shehui Lingdao Jieceng De Bianqian (1920-1960)* (高雄社會領導階層的變遷 (1920-1960)) [A History of Kaohsiung City Council] (2013).

Watson, Alan, *Legal Transplants: An Approach to Comparative Law* (1974).

Wong, Yue-sheng (翁岳生) et al., *Zixun Lifa zhi Yanjiu* (資訊立法之研究) [a study on legislating information], (Research Development and Evaluation Commission ed., Nov. 1985)

Westin, Alan F., *Privacy and Freedom* (1967)

Wu, Nai-teh, *The politics of a regime patronage system: mobilization and control within an authoritarian regime*. PhD thesis, University of Chicago (1987).

Wu, Wen-hsing (吳文星), *Riju shiqi taiwan lingdao jieceng zhi yanjiu* (日據時期臺灣領導階層之研究) [The leadership in Taiwan during the Japanese colonial era] (1992).

Wu, Yan cun (吳烟村), *dòngyuán kānlùn shíqí gōngzhí xuán yuǎn jǔ bàmiǎn fǎ zhòng xuǎnjǔ jiānchá zhī yánjiū* (動員戡亂時期公職懸遠舉罷免法中選舉監察之研究)[A study on the electoral supervision under the Civil Servant Election and Recall Act during the period of mobilization to suppress the communist rebellions] (1983).

Yamazaki, Tansho (山崎丹照), *Gaichi tochi kiko no kenkyu*(外地統治機構の研究) [Research on the Foreign Land Institution] (1943).

Yang, Taishun, *Xuanju* (選舉) [Election] (1991).

Yang, Zhaojia, *Yang Zhaojia hui yi lu* (楊肇嘉回憶錄) [the Memoirs of Yang zhaojia] (1970).

Articles & Other secondary sources

Abramson, Gunnar, *Comparative Colonialism: Variations in Japanese. Colonial Policy in Taiwan and Korea, 1895-1945*, 1 PSU ONLINE J. 16 (2004).

Aman, Alfred C., Jr., *Information, Privacy, and Technology: Citizens, Clients, or Consumers? in FREEDOM OF EXPRESSION AND FREEDOM OF INFORMATION* (Jack Beatson & Yvonne Cripps Eds., 2000).

Ansolabehere, Stephen & Snyder, James M., Jr., *Money and Institutional Power*, 77 TEXAS L. REV. 1673 (1999).

Bassett, Elisabeth, *Reform Through Exposure*, 57 EMORY L.J. 1049 (2008)

Beale, Sara Sun, *Comparing the Scope of the Federal Government's Authority to Prosecute Federal Corruption and State and Local Corruption: Some Surprising Conclusions and a Proposal*, 51 HASTINGS L.J. 699 (2000).

Beale, Sara Sun, *An Honest Services Debate*, 8 OHIO ST. J. CRIM. L. 251(2010).

Bennett, W.L. & Manheim, J. B., *The one-step flow of communication*, 608 ANN AM ACAD POL SOC SCI (1) 213 (2006).

Bosco, Joseph, *Faction versus ideology: Mobilization strategies in Taiwan's Elections*, 137.1 THE CHINA QUARTERLY 28 (1994).

Bosco, Joseph, *Taiwan Factions: Guanxi, Patronage, and the State in Local Politics*, 31 ETHNOLOGY (2) 157 (1992).

Briffault, Richard, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 292 (2010).

Briffault, Richard, *Corporations, Corruption, and Complexity: Campaign Finance after Citizens United*, 20 CORNELL J.L. & PUB. POL'Y 643 (2011).

Buell, Samuel W., *The Court's Fraud Dud*, 6 DUKE J. CONST. L. & PUB. POL'Y 31(2010).

Buell, Samuel W., *The Upside of Over-breadth*, 83 N.Y.U. L. REV. 1491 (2008).

Burke, Thomas F., *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COMMENT 140 (1997).

Cain, Bruce E., *Moralism and Realism in Campaign Finance Reform*, 1995 U. CHI. LEGAL F. 120 (1995).

Cate, Fred H., *Principles of Internet Privacy*, 32 CONN. L. REV. 877 (2000).

Cate, Fred H., *Protecting Privacy in Health Research: The Limits of Individual Choice*, 98 CAL. L. REV. 1765 (2010).

Chen, Edward I-te, *The Attempt to Integrate the Empire: Legal Perspectives, in THE JAPANESE COLONIAL EMPIRE, 1895-1945* 240 (Ramon H. Myers & Mark R. Peattie eds., 1984).

Chen, Ming-tong & Nai-the Wu (陳明通、吳乃德), *Zhèngquán zhuǎnyí hé jīng yīng liúdòng: Taiwan dìfāng zhèngzhì jīng yīng de lìshǐ xíngchéng*(政權轉移和菁英流動：台灣地方政治菁英的歷史形成) [*The Regime Shift and the Flow of the Elites: the Formation of the Local Political Elites in Taiwanese History*], in TAIWAN GUANGFU CHUQÍ LISHI (台灣光

復初期歷史) [*The Taiwan's History in the Early Period of Postwar*] 223 (LAI JEH-HANG (賴澤涵) ed., 1993).

Chen, Ming-tong & Lin, Jih-wen (陳明通、林繼文), *Taiwan difang xuanju de qi yuan yu guojia shehui guanxi zhuanbian* (台灣地方選舉的起源與國家社會關係轉變) [*The origin of Taiwan's local election and the transformation of state-society relations*], in LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷) (LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT) 30 (Chen Ming-tong & Zheng Yong-nian eds. 1994).

Chen Ming-tong (陳明通), *Riju Beijing yu dalu jingyan -- lun yingxiang sheng yihui jingying xingcheng yu bianqian de liang xiang lishi yinsu* (日據背景與大陸經驗－論影響省議會菁英形成與變遷的兩項歷史因素) [*The experiences of Japanese colonial rule and the Mainland China: the two historical factors about the formation and transformation of elites in the Taiwan Provincial Assembly*] in TAIWAN SHENG YIHUI CHENGLI WUSHI ZHOUNIAN JINIAN ZHUANKAN (台灣省議會成立五十週年紀念專刊) [THE SPECIAL ISSUE FOR THE FIFTIETH ANNIVERSARY OF TAIWAN PROVINCIAL ASSEMBLY] 311 (1996).

Chen, Rou-lan (陳若蘭), *Taiwan chuci difang xuanju: Riben zhimin zhengfu de zhidd xing caozuo* (臺灣初次地方選舉：日本殖民政府的制度性操作) [*First Local Election of Taiwan: An Analysis of Institutional Manipulation of Japanese Colonial Government*], 22 TAIWAN HISTORICAL RESEARCH (3) 142 (2015).

Cheng, Tun-jen & Haggard, Stephan, *Regime Transformation in Taiwan: Theoretical and Comparative Perspectives*, in POLITICAL CHANGE IN TAIWAN (Cheng Tu-jen & Stephan Haggard eds., 1992).

Cheng Tun-jen, *Transforming Taiwan's Economic Structure in the 20th Century*, 165 CHINA QUARTERLY 19 (2001).

Cheng, Tun-jen, *Embracing Defeat: The KMT and the PRI after 2000*, in POLITICAL TRANSITIONS IN DOMINANT PARTY SYSTEMS: LEARNING TO LOSE (Edward Friedman & Joseph Wong eds., 2008).

Cheng, Tze (鄭梓), *Bianqian shidai li de yige guodu xing daiyi jigou-taiwan sheng ccn yihui jueyi an zhi lishi fenxi (1946-1951)* (變遷時代裡的一個過渡型代議機構－台灣省參議會決議案之歷史分析(1946-1951)) [*A representative institution - in a transitional era, a historical analysis of the resolutions of the Taiwan Provincial Consultative Assembly from 1946 to 1951*], 6 TUNGHAI UNIVERSITY HISTORY JOURNAL 147 (1984).

Chu, Yun-han, Hinich, Melvin J. & Lin, Tse-min., *Conflict Displacement and Regime Transition in Taiwan: A Spatial Analysis*, 48 WORLD POLITICS (4) 453 (1996).

Chang, Tieh-chih (張鐵志), *The Political Logic of Economic Liberalization in Taiwan: The Transformation of Party-state Capitalism and the Reconstruction of State-business Relations*, 12 TAIWAN POL. SC. REV. (1) 101 (2008).

Chen, Jiexuan (陳介玄), *Pàixì wǎngluò, zhuāng jiǎo wǎngluò jí sù mǐn wǎngluò: Lùn táiwān dìfāng pàixì xíngchéng zhī shèhuì yìyì* (派系網絡、樁腳網絡及俗民網絡：論台灣地方派系形成之社會意義) [*The networks of local factions, vote-brokers and folks: The social meaning for the formation of the local factions in Taiwan*], in *DIFANG SHEHUI* (地方社會) [THE LOCAL SOCIETY] (Dong-hai Uni. Ed., 1997).

Cheng, Tun-jen & Hsu Yung-ming, *Issue Structure, the DPP's Factionalism, and Party Realignment*, in *TAIWAN'S ELECTORAL POLITICS AND DEMOCRATIC TRANSITION: RIDING THE THIRD WAVE* 137 (Tien Hung-mao ed., 1996).

Cheng, Tun-jen, *Embracing Defeat: The KMT and the PRI after 2000*, in *POLITICAL TRANSITIONS IN DOMINANT PARTY SYSTEMS: LEARNING TO LOSE* (Edward Friedman & Joseph Wong ed., 2008)

Chu, Yun-han & Lin, Jih-wen, *Political Development in the 20th Century Taiwan: State-Building, Regime Transformation and the Construction of National Identity*, *CHI. QUA.* 109 (March 2001).

Coffee, John C., Jr., *Modern Mail Fraud: The Restoration of the Public/Private Distinction*, 35 *AM. CRIM. L. REV.* 427 (1998).

Cohen, Julie E., *Examined Lives: Informational Privacy and the Subject as Object*, 52 *STAN. L. REV.* 1373 (2000).

Julie E. Cohen, *What Privacy Is For*, 126 *HARV. L. REV.* 1904 (2013).

Eisler, Jacob, *The Unspoken Institutional Battle Over Anticorruption: Citizens United, Honest Services, and the Legislative-Judicial Divide*, 9 *FIRST AMEND. L. REV.* 363 (2011).

Fenster, Mark, *The opacity of Transparency*, 91 *IOWA L. REV.* 885 (2006).

Fox, Jonathan, *The Difficult Transition from Clientelism to Citizenship: Lessons from Mexico*, 46 *W. POL.* (2) 183 (1994).

Fiss, Owen M., *Money and Politics*, 97 *COLUM. L. REV.* 2470 (1997)

Froomkin, Michael, *Flood Control on the Information Ocean: Living with Anonymity, Digital Cash, and Distributed Databases*, 15 *J. LAW & COMM.* 395, 408 (1996).

Gardener, James A., *Liberty, Community and the Constitutional Structure of Political Influence: A Reconsideration of the Right to Vote*, 145 *U. PA. L. REV.* 893 (1997).

Gardner, James A., *Anonymity and Democratic Citizenship*, 19 *WM. & MARY BILL RTS. J.* 927 (2011).

Garrett, Elizabeth, *The William J. Brennan Lecture in Constitutional Law: The Future of Campaign Finance Reform Laws in the Courts and in Congress*, 27 *OKLA. CITY U. L. REV.* 665 (2002).

Golden, Miriam A., & Chang, Eric C., *Competitive corruption factional conflict and political malfeasance in postwar Italian Christian democracy*, 53 *WORLD POLITICS* (4) 588 (2001).

Graziadei, Michele, *Comparative Law as the Study of Transplants and Receptions*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 440 (M. Reimann & R. Zimmermann eds, 2008).

Graziano, Luigi, *A Conceptual Framework for the Study of Clientelistic Behavior*, *EU. J. POL. R.* (4) 149 (1976).

Graziano, Luigi, *Introduction*, 4 *INTE' POL. SCI. REV.* (4) 425 (1983).

Griffin, Lisa Kern, *The Federal Common Law Crime of Corruption*, 89 *N.C. L. REV.* 1815 (2011).

Green, Rebecca, *Petitions, Privacy, and Political Obscurity*, 85 *TEMP. L. REV.* 367 (2013).

Harding, Sarah, *Balancing disclosure and privacy interests in campaign finance*, 48 *LOY. L.A. L. REV.* 651 (2015).

Hasen, Richard L., *The Untold Drafting History of Buckley v. Valeo*, 2 *ELEC. L.J.* 241 (2003).

Hasen, Richard L., *Buckley is Dead, Long Live Buckley: The New Campaign Finance Incoherence of McConnell v. Federal Election Commission*, 153 *U. PA. L. REV.* 31(2004).

Henning, Peter J., *Federalism and the Federal Prosecution of State and Local Corruption*, 92 *KY. L.J.* 75(2003).

Hicken, Allen, *Clientelism*, 14 *ANN. REV. POL. SCI.* 289 (2011).

Ho, Ming-sho, *Understanding the Trajectory of Social Movements in Taiwan*, 39 *J. CURRENT CHINESE AFFAIRS* 3 (2010)

Hsiang-yang Hsieh, *Locating the value of information privacy in a democratic society: a study of the information privacy jurisprudence of Taiwan's constitutional court*, 7 *NTU LAW REV.* 7.1, 308 (2012).

Hsu, Yung-ming & Chen Houn-chang, *Local factions and the Kuomintang: decline or deepening crisis?*, 8 *TAIWANESE SOCIOLOGY* 193 (2004)

Hsueh Hua-yuan (薛化元), *Xuanju yu Taiwan zhengzhi fazhan (1950-1996)—cong difang zizhi xuanju dao zongtong zhixuan (選舉與臺灣政治發展(1950-1996)—從地方自治選舉到總統直選) [The election and the political development in Taiwan (1950 to 1996): from the local election to the presidential election]*, 135 *MODERN CHINA (近代中國)* 34 (2000).

Hu, Fu (胡佛), *Wei-quan tizhi de san zhuang jiegou (威權體制的傘狀結構) [The ROC's authoritarian regime and its umbrella structure]* 8 *21ST CENTURY* 36 (Dec. 1991).

Huang, Te-fu (黃德福), *Xiàndàihuà, xuǎnjǔ jìngzhēng yǔ dìfāng pàixì: Yījiǔjiǔ'èr nián lifǎ wěiyuán xuǎnjǔ de fēnxī*(現代化、選舉競爭與地方派系:一九九二年立法委員選舉的分析)[*Modernization, Election Competition, and Local Factions: An Analysis of the 1992 Election of Legislative Yuan*], 5 CHUNG-SHAN SOC. SCI. QUA. J. (1) 84 (1994).

Huang, Te-Fu (黃德福), *Elections and the Evolution of the Kuomintang*, 31 ISSUE & STUDIES (5), 119 (1995).

Huang, Te-fu (黃德福), *Elections and the evolution of the Kuomintang, in TAIWAN'S ELECTORAL POLITICS AND DEMOCRATIC TRANSITION: RIDING THE THIRD WAVE* 119 (Hung-mao Tien eds., 1996).

Ikuko, Kudo, *Campaign as the new form of democracy in the information society (Joho shakai ni okeru minshu shugi no atarashī katachi to shite no kyanpen)*, 708 HOGAKU SEMINAR 14 (2014).

Issacharoff, Samuel & Karlan, Pamela S., *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1708 (1999).

Johnstone, Anthony, *A Madisonian case for disclosure*, 19 GEO. MASON L. REV. 413 (2012).

Johnson, Deborah G. et al., *Campaign Disclosure, Privacy and Transparency*, 19 WM. & MARY BILL RTS. J. 959 (2011).

Johnson, Joel W., *Democracy and Disclosure: Electoral Systems and the Regulation of Political Finance*, 7 ELEC. L. J. (4) 325 (2008).

Kanda, Hideki & Milhaupt, Curtis J., *Reexamining Legal Transplants: The Director's Fiduciary Duty in Japanese Corporate Law*, in *LAW IN JAPAN: A TURNING POINT* 437 (Daniel H. Foote ed., 2007).

Keefer, Philip, *Clientelism, credibility, and the policy choices of young democracies*, 51 AM. J. POLIT. SCI. (4) 804 (2007)

Kitschelt, Herbert & Wang, Yi-ting, *Research and Dialogue on Programmatic Parties and Party Systems Case Study Reports*. Available at <http://www.idea.int/resources/analysis/loader.cfm?csModule=security/getfile&pageid=58555>

Kolstad, Ivar & Wiig, Arne, *Does democracy reduce corruption?*, 4 CMI WORKING PAPER 1 (2011).

Kreiss, Daniel, & Howard, Philip N., *New Challenges to Political Privacy: Lessons from the First U.S. Presidential Race in the Web 2.0 Era*, 4 INT'L J. COMM. 1032 (2010).

Kreiss, Daniel, *Yes We Can (Profile You): A Brief Primer on Campaigns and Political Data*, 64 STAN. L. REV. ONLINE 70 (2012).

Kuo, Yung-hua & Chen, Po-liang, *Identity Law and Privacy Protection in a Modern State: The Legal History Concerning Personal Information in Taiwan (1895-2015)*, 25 WASH. INT'L L.J. 223 (2016).

Lande, Carl H., *Introduction*, in *THE DYADIC BASIS OF CLIENTELISM* FRIENDS, FOLLOWERS, AND FACTIONS (Schmidt, Steffen, Laura Guasti, Carl H. Lande & James Scott eds., 1977).

Lerman, Arthur, *National Elite and Local Politicians in Taiwan*, 71 AME. POL. SCI. REV. (4) 1406 (1977).

Li, Fu-chung, *The Party-owned Enterprises Under the Authoritarianism of Kuomintang*, 18 BUL. ACA. HIS. 189 (2008).

Linz, Juan, *Non-competitive Election in Europe*, in *ELECTION WITHOUT CHOICE* 61 (Guy Hermet et al. eds, 1978).

Legrand, Pierre, *What Legal Transplant?*, in *ADAPTING LEGAL CULTURES* 55 (David Nelken and Johannes Feest eds., 2001).

Liao, Cheng-hao (廖正豪), *Wushi Nianlai Liangan Xingfa Zhi Fazhan (五十年來兩岸刑法之發展)* [The evolution of criminal law in the cross-strait], 51 L. MONTHLY (2) (法令月刊) 596 (2000).

Lin, Chia-lung, *Wēiquán shìcóng zhèngtǐ xià de táiwān fǎnduì yùndòng-mín jìn dǎng shèhuì jīchǔ de zhèngzhì jiěshì (威權侍從政體下的台灣反對運動－民進黨社會基礎的政治解釋)* [Taiwan opposition movement under Authoritarian Rule System - Political Interpretation of the DPP's Social Basis], 2 TAIWAN: A RADICAL QUARTERLY IN SOCIAL STUDIES (1) 117 (1989).

Lin, Chia-lung, *Táiwān dìfāng xuǎnjǔ yǔ guómíndǎng zhèngquán de shìchǎng huà: Cóng wēiquán gǒnggù dào mínzhǔ zhuǎnxíng 1946-1994 (台灣地方選舉與國民黨政權的市場化：從威權鞏固到民主轉型 1946-1994)* [Taiwan's local elections and the marketization of the KMT Regime: From authoritarian consolidation to Democratic Transformation, 1946-1994], in *LIANGAN JICENG XUANJU YU ZHENGZHI SHEHUI BIANQIAN (兩岸基層選舉與政治社會變遷)* (LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT) 164 (Chen Ming-tong & Zheng Yong-nian eds. 1998).

Lowenstein, Daniel Hays, *Political bribery and the intermediate theory of politics*, 32 UCLA L. REV. 784 (1985).

Luoh Ming-Ching (駱明慶), *Gao pu kaofen sheng qu dingde luqu yu tezhong kaoshi de sheng ji shaixuan xiaoguo (高普考分省區定額錄取與特種考試的省籍篩選效果)* [The screening effect of the provincial quota admission system in the civil service examinations], 31 TW. ECO. REV. (1) 87(2003)

Mayer, Lloyd Hitoshi, *Politics and the Public's right to know*, 13 ELE. L. J. (1) 17 (2014).

- McCormick, Richard L., *The Discovery That Business Corrupts Politics: A Reappraisal of the Origins of Progressivism*, 86 AMER. HIST. REV. 247 (1981).
- McGeveran, William, *Mrs. McIntyre's Checkbook: Privacy Costs of Political Contribution Disclosure*, 6 U.P.A. J. CONST. L. 1 (2003).
- McGeveran, William, *Mrs. McIntyre's Persona: Bringing Privacy Theory to Election Law*, 19 WM. & MARY BILL RTS. J. 859 (2011).
- March, James G. & Olsen, Johan P., *The New Institutionalism: Organizational Factors in Political Life*, 78 AME. POL. SCI. REV. (3) 740 (1984).
- Mattei, Ugo, *Efficiency in Legal Transplants: An Essay in Comparative Law and Economics*, 14 INTERNATIONAL REVIEW OF LAW AND ECONOMICS 3 (1994).
- Michelman, Frank, *Law's Republic*, 97 YALE L.J. 1493 (1988).
- Mills, David & Weisberg, Robert, *Corrupting the Harm Requirement in White Collar Crime*, 60 STAN. L. REV. 1371 (2008).
- Nelson, Justin A., *Note: The Supply and Demand of Campaign Finance Reform*, 100 COLUM. L. REV. 524 (2000).
- Nye, J.S., *Corruption and Political Development: A Cost-Benefit Analysis*, in POLITICAL CORRUPTION: CONCEPT & CONTEXTS 281 (Arnold J. Heidenheimer & Michael Johnston eds., 2011).
- Okamoto, Makiko, *Seito seiji-ki ni okeru bunkan sotoku-sei - rikken seiji to shokuminchitochi no sokoku* (政党政治期における文官総督制－立憲政治と植民地統治の相剋) [Civil servant governor system in political party politics - a conflict between constitutional politics and colonial rule], 10 J. JP COL. STU. 1-18 (1998).
- Okamoto, Makiko, *Taiwan Naichi hito no minken-ron* (在臺灣内地人の民権論) [The civil rights of Japanese Citizens in Taiwan] 25 J. JP. HIS. (1999).
- Okamoto, Makiko, *1930-Nendai ni okeru Taiwan chiho senkyo seidomondai* (1930年代における台湾地方選挙制度問題) [Taiwan Local Election System in the 1930s], 452 J. JP. HIS. 165 (2000).
- Mancur Olson, *Dictatorship, Democracy, and Development*, 87AM. POL. SCI. REV. (3) 567 (1993).
- Ortiz, Daniel R., *Water, Water Everywhere*, 77 TEX. L. REV. 1739 (1999).
- Overton, Spencer, *Restraint and Responsibility: Judicial Review of Campaign Reform*, 61 WASH. & LEE L. REV. 663 (2004).
- Page, Scott E., *Path Dependence*, 1.1 QUARTERLY JOURNAL OF POLITICAL SCIENCE 87 (2006).

Peattie, Mark R., *Japanese Attitudes toward Colonialism, 1895-1945*, in THE JAPANESE COLONIAL EMPIRE 1895-1945 96 (Ramon H. Myers & Mark R. Peattie eds., 1984).

Piattoni, Simona, *Clientelism in historical and comparative perspective* in Clientelism, in INTERESTS, AND DEMOCRATIC REPRESENTATION. THE EUROPEAN EXPERIENCE IN HISTORICAL AND COMPARATIVE PERSPECTIVE (Simona Piattoni ed., 2001).

Pierson, Paul, *Increasing Returns, Path Dependence, and the Study of Politics*, 94 AM. POL. SCI. REV. (2) 251 (2000).

Potter, Trevor, *Campaign Finance Disclosure Laws*, in NEW CAMPAIGN FINANCE SOURCEBOOK 123 (Anthony Corrado et al. eds., 2005).

Potter, Trevor & Morgan, Bryson B., *The History of Undisclosed Spending in U.S. Elections and How 2012 Became the "Dark Money" Election*, NOTRE DAME J.L. ETHICS & PUB. POL'Y 383 (2013).

La Raja, Raymond J., *Political Participation and Civic Courage: The Negative Effect of Transparency on Making Campaign Contributions*, 36 POLITICAL BEHAVIOR (4) 753 (2014).

Remmer, Karen, *The political economy of patronage: expenditure patterns in the Argentine provinces, 1983–2003*, 69(2) J. POLIT. 363 (2007).

Richards, Neil M., *Reconciling Data Privacy and the First Amendment*, 52 UCLA L. REV. 1149 (2005).

Richards, Neil M., *Intellectual Privacy*, 87 TEX. L. REV. 387 (2008).

Roberts, Alasdair, *Structural Pluralism and the Right to Information*, 51 U. TORONTO L.J. 243 (2001).

Robertson, Christopher, Winkelman, D. Alex, Bergstrand, Kelly, & Darren Modzelewski, *The Appearance and The Reality Of Quid Pro Quo Corruption: An Empirical Investigation*, 8 J. LEG. ANA. 375 (2016).

Rubinstein, Ira S., *Voter Privacy in the Age of Big Data*, 2014 WIS. L. REV. 861 (2014).

Rossi, Jim, *Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decision-making*, 92 NW. U. L. REV. 173 (1997).

Sacco, Rodolfo, *Legal Formants: A Dynamic Approach to Comparative Law (Installment II of II)*, 39.2 THE AMERICAN JOURNAL OF COMPARATIVE LAW 397 (1991).

Smith, Bradley A., *Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform*, 105 YALE L.J. 1049 (1996).

Sanders, Elizabeth, *Historical Institutionalism*, in THE OXFORD HANDBOOK OF POLITICAL INSTITUTIONS (R. A. W. Rhodes, Sarah A. Binder and Bert Rockman eds., 2008).

- Koji Sato, *The Constitutional Position on Privacy—A Comparative Study of Japan and the United States*’ (*Privacy no Kenri (Sono Kohotekisokumen) no Kenpotekikousatsu*), 86 HOGAKU RONSO NO 5, 12 (1970).
- Schwartz, Paul M., *Privacy and Democracy in Cyberspace*, 52 AM. L. REV. 1609 (1999).
- Sheyn, Elizabeth R., *Criminalizing the Denial of Honest Services After Skilling*, 2011 WISC. L. REV. 27(2011).
- Smith, Bradley A., *Money Talks: Speech, Corruption, Equality, and Campaign Finance*, 86 GEO. L.J. 45 (1997).
- Smith, Bradley A., *In Defense of Political Anonymity*, 20 CITY J. 74 (2010).
- Smith, R. M., *If politics matters: implications for a “new institutionalism,”* 6 STU. IN AME. POL. DEV. 1 (1992).
- Smith, Rogers M., *Historical Institutionalism and the Study of Law* in *The Oxford Handbook of Law and Politics* (Gregory A. Caldeira, R. Daniel Kelemen, & Keith E. Whittington eds. 2008).
- Solove, Daniel J., *Access and Aggregation: Privacy, Public Records, and the Constitution* 86 MINN. L. REV. 1139 (2002).
- Solove, Daniel J., *Conceptualizing Privacy*, 90 CAL. L. REV. 1087 (2002).
- Sorauf, Frank J., *The Public Interest Reconsidered*, 19 J. POL. 616 (1957).
- Sullivan, Kathleen M., *Against Campaign Finance Reform*, 1998 UTAH L. REV. 311 (1998).
- Sunstein, Cass R., *Beyond the Republican Revival*, 97 YALE L.J. 1539 (1988).
- Teachout, Zephyr, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341 (2009).
- Teresa Wright, *Student Mobilization in Taiwan: Civil Society and Its Discontents*, 39 ASIAN SURVEY 986 (1999).
- THELEN, K. & STEINMO, S., *Historical institutionalism, in* COMPARATIVE POLITICS IN STRUCTURING POLITICS: HISTORICAL INSTITUTIONALISM IN COMPARATIVE ANALYSIS (S. Steinmo, K. Thelen, & F. Longstreth eds., 1992).
- Thomas, Chantal, *Constitutional Change and International Government*, 52 HASTINGS L.J. 1 (2000).
- Thompson, Dennis F., *Mediated Corruption: The Case of the Keating Five*, 87 AM. POL. SCI. REV. 369 (1993).
- Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COMMENT, 127 (1997).

Thompson, Dennis F., *Two Concepts of Corruption: Making Campaigns Safe for Democracy*, 73 GEO. WASH. L. REV. 1036 (2005)

Treisman, Daniel, *The causes of corruption: a cross-national study*, 76 J. PUB. ECO. 399 (2000).

Verdier, Daniel, *The Politics of Public Aid to Private Industry*, 28 COMPARATIVE POLITICAL STUDIES (1) 3 (1995).

Wang, Chin-Shou, *Chóng fǎn fēng máng xiàn: Guómíndǎng xuǎnjǔ jīqì de chénggōng yǔ shībài* (重返風芒縣：國民黨選舉機器的成功與失敗) [*Return to Feng-Mang County: The Success and Failure of the Kuomintang's Political Machine*], 8 TW. POL. SCI. REV. (1), 99-146 (2004).

Wang, Tay-Sheng (王泰升), *Taiwan zhan hou chuqi de zhengquan zhuan ti yu falu tixi de chengjie* (台灣戰後初期的政權轉替與法律體系的承接) [*The Transition of Legal Systems in the Early Period of Postwar Taiwan, 1945–1949*], 29 NTU L. REV. (1) 1 (1999).

Wang, Tay-sheng (王泰升), *Cong riben guoli gongwen shuguan suo cang shiliao shitan ri zhi shiqi taiwan lifa quan zhi caozuo* (從日本國立公文書館所藏史料試探日治時期台灣立法權之操作) [*The legislative power in Taiwanese practice during the Japanese colonial rule era – an analysis on Japanese National Archives*], 6 TAIWAN HISTORICAL RESEARCH (1) 35 (Sep 2000).

Wang, Tay-sheng & Chou, I-Hsun Sandy, *The Emergence of Modern Constitutional Culture in Taiwan*, 5 NTU L. REV. 1 23 (2010).

Wang, wu qia, *Daiichikai no shū kaigi-in senkyo ni saishi tokuni kaikaku shita kata ga i to tsūkan shita ten* (第一回の州會議員選挙に際し特に改革した方がいゝと痛感した点) [*The first election for the prefecture consultative councilors and its problems*], 2 TAI. LOC. ADMIN. (12) 54 (Dec 1936).

Wantchekon, Leonard, *Clientelism and Voting Behavior: Evidence from a Field Experiment in Benin*, 55 WORLD POLITICS 399 (2003).

Weng, Li-hong, *Uncertainties of Democratization and Adaption of Local Factions: A review of Taiwan's Researches of Local Factions*, 2 J. DEC. GOV. (2) 67 (2015).

Wright, J. Skelly, *Defamation, Privacy, and the Public's Right to Know: A National Problem and a New Approach*, 46 TEX. L. REV. 630 (1968).

Wright, Teresa, *Student Mobilization in Taiwan: Civil Society and Its Discontents*, 39 ASIAN SURVEY 986 (1999).

Wu, Chin-en (吳親恩), *The Evolution of Money Politics in the Local Assembly: An Analysis of Verdicts*, 12.2 TAIWAN POL. SCI. REV. 165 (2008).

Yamamoto, Tatsuhiro, *The Big Data Society and Profiling (Biggudeta shakai to purofairingu)*, 18 JURIST 34 (2016).