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**ABSTRACT**

The Taiwanese legislature enacted the Political Donation Act 2004 (PDA), adopting U.S. and Japanese campaign finance law models. Nonetheless, the legislative efforts seemed slight.

This paper argues it is because the Taiwanese legislature of 2004 underestimated two main factors of the campaign finance market: the value of transparency and the pre-existing electoral clientelism. This paper adopts a historical institutionalism approach to analyze the evolution of electoral clientelism and its interaction with campaign finance law before the enactment of PDA in four eras: the Japanese colonial rule era (1935-1945), the transition from the Japanese colonial rule era to the ROC era (1945-1949), the authoritarian era (1949-1991), and the democratic era (1991-2004).

From 1895, Japan established a colonial regime in Taiwan. The Government-General of Taiwan (GGT) held elections in 1935. In order to control the electoral outcome, the GGT enacted strict election laws and lenient campaign finance rules, and enforced them arbitrarily to form a coalition leaning to the GGT via exchange of interests. As a result, the GGT controlled

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the majority. The election of 1935 marks the beginning of elections in Taiwan, as well as the beginnings of electoral clientelism.

After WWII, the Republic of China (ROC) began to rule Taiwan. In order to enhance its legitimacy, the ROC and its ruling party, KMT, suspended elections at the central government level but opened the local assembly elections under the SNTV. In the absence of effective campaign finance laws, the partisan enforcement granted the KMT an advantage over the opposition. As a result, the KMT established a mutual reliance alliance with local factions and 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, the electoral clientelism rose. In response to the people’s outrage, the PDA, a milestone in campaign finance law, was ultimately enacted in 2004. Nonetheless, under the shadow of authoritarian rule and electoral clientelism, the scope of public disclosure was limited; and the effects of PDA have been slight. This study argues that openly recognizing the value of transparency and expanding the scope of financial disclosure could suppress electoral clientelism and lay the bedrock of a clean government.

**Keywords:** Campaign Finance Law, Electoral Clientelism, Taiwan Legal History, Historical Institutionalism, Legal Transplant, Political Corruption, Money Politics, Transparency
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I. INTRODUCTION

The desire for political power is human nature for politicians and cannot be suppressed by any regulation. But, power can be guided by rules into different forms and means. 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. Under the shadow of authoritarian rule and electoral clientelism, 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 political corruption and establishing a clean government, is significantly lower than the public’s expectation. This study reexamines the previous Taiwanese campaign finance laws, which (re-) shaped the exchange mechanism between political power and economic interests. This article poses the following questions: First, what role has money played in Taiwanese elections? Second, how have campaign finance laws shaped monetary influences? Third, did the evolution of campaign finance laws provide any guidance for the upcoming campaign finance law reform?

This paper adopts a historical institutionalism approach to analyze the evolution of electoral clientelism and its interaction with campaign finance law before the enactment of PDA in four eras to explain the mechanism of five legal transplant and reception of campaign finance law in Taiwan: the Japanese colonial rule era (1935-1945), the transition from the Japanese colonial rule era to the ROC era (1945-1949), the authoritarian era (1949-1991), and the democratic era (1991-2004).

The first legal transplant of election law and campaign finance rules into Taiwan started in 1935. Given that Taiwan stood at the periphery of the Japanese Empire, the GGT’s implementation of elections and campaign finance rules was designed to meet Japanese imperial needs for assimilation and war mobilization.

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

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2. Id. at 1708.
(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. 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 distinct electoral rules to meet the political reality and local needs.

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. 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 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 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 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.

II. RESEARCH METHODOLOGY

This article adopts the method of historical institutionalism\(^3\) to examine the historical process of the development of the mandatory report/public disclosure rules and their interaction with distinct electoral norms in Taiwan – electoral clientelism and its large-scale political dynamics and implications. As James March and Johan Olsen argue, “laws, contracts, and customary rules of

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Follow the Money: The Buck Stops Where?

This article explains who designed and constructed these institutions and for what purposes, the gap between the preferences of the designers and the functioning of the institutions, and how constraints and opportunities for these institutions evolved, operated and adapted.

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. 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. Two concepts are used to explain why and how the mandatory report/disclosure campaign finance rules were adopted, persisted, and adapted: path dependence and sequencing.

The most crucial concept is path dependence. 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.” Path dependence is a “dynamic process involving positive or negative feedbacks generating multiple possible outcomes depending on the particular sequence in which events unfold.” The crucial feature of the historical process which generates path dependence is the concept, in economics, of positive or negative feedback (self-enforcement). Some decisions generate positive or negative feedback 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.

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5. Id. at 739.
6. Id. at 740.
The second concept is sequencing, meaning “the temporal ordering of events or processes has a significant impact on outcomes.” 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.

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, 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 generating positive feedback could be viewed as a critical juncture. The initial mobilization generated positive feedback, and “once entrenched, the dominant basis of political mobilization became difficult to dislodge.” 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.

III. TERMINOLOGY OF CLIENTELISM

Before further analyzing Taiwanese campaign finance laws and their interaction with electoral clientelism, the vague concept of clientelism should be clarified. This article follows Stokes’ model and adopts a two-dichotomy approach to clarify the
definition used herein. The first dichotomy is between programmatic and non-programmatic distribution, and the second is between unconditional benefits and conditional exchanges.
As for the first category, programmatic distribution requires two criteria. 1. The allocation of resources should be public and formalized. 2. The public and formalized criteria shape the process of the distribution. As the U.S. Supreme Court ruled in Brown v. Hartlage, if the distribution was “made openly, subject to the comment and criticism of his or her political opponents and the scrutiny of the voters,” it is the “normal process of government.” And in that situation, the spending 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 on matters.

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17. Id. at 13.
18. Id. at 7-8.
19. The US Supreme Court viewed the promises of maternal 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).
20. Id.
22. Id. at 10-11.
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. Partisan bias is that in which benefits are not contingent on individual support, and defectors suffer no individual or particular punishment. The category of partisan bias is further sub-divided based on the distribution of benefits. The distribution of benefits targeted at the individual level is defined as “non-conditional benefits to the individual,” distribution aimed at the collective level, such as geographic constituencies, is defined as “pork barrel politics.” The pork barrel and non-conditional individual benefits departing from publicity or formalized rule cause inefficiency in appropriately allocating resources.

This then brings us to clientelism. In clientelism, the 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. If the political machine bribes people to vote or to mobilize for an individual candidate, it is termed as vote buying. If the political machine bribes voters to head to the polls, it is called turnout buying.

As electoral clientelism is not equivalent to political corruption, the reader may ask why this article pays such attention to this distinct electoral practice in analyzing transparency and campaign finance law in Taiwan. Given the hydraulic effect, electoral clientelism which is embedded in Taiwan’s local social and political norms, enhances the demand for campaign finance. As the demand curve shifts and the equilibrium becomes distorted, political actors have more financial pressure to raise and collect material interests or privileges for distribution and mobilization, which provides the structural causes for money politics and political corruption.

IV. THE JAPANESE COLONIAL RULE ERA (1895-1945)

23. Id. at 13.
24. Id. at 10-11.
25. Id. at 249.
26. Id. at 13-14.
27. Issacharoff & Karlan, supra note 1, at 1705, 1708.
Japan ruled over Taiwan from the end of the Sino-Japanese War in 1895 until 1945. Faced with resistance from the residents of Taiwan, Japan initially adopted a non-assimilation colonial policy and established an authoritarian/colonial regime, the Government-General of Taiwan (GGT). The GGT was empowered to issue ordinances which had the same effect as statutes in Taiwan. After World War I (WWI), the GGT shifted its colonial policy from non-assimilation to gradual assimilation to address the rise of Taiwanese nationalism.

In order to further stabilize its regime for war mobilization, cooperate with local Taiwanese elites via exchanging interests, and split the opposition camp, the GGT held elections for the Consultative Councils under the SNTV system at the local government levels: city (市), and town (街) – village (庄) in 1935 and 39. The election of 1935 was viewed as the beginning of Taiwanese elections and the origin of electoral clientelism and local factions in Taiwan, which had path-dependent implications for the future of Taiwan’s politics.

A. Shift of Colonial Policy and Reform of the Local Government System in the 1920s

After the Meiji constitution was determined to apply to Taiwan nominally, aligned with the non-assimilation policy,\(^28\) the Japanese Diet agreed with the GGT’s proposal and enacted Law No. 63 of 1896, the “Law concerning the ordinances to be enforced in Taiwan” (Law No. 63; Rokusan Ho).\(^29\) Law No. 63 granted the GGT quasi-law-making power to issue ordinances in Taiwan with the same effect as Japanese statutes\(^30\) 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).\(^31\) Any statute enacted by the Imperial Diet became

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

30. 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.

effective in Taiwan only if their application to Taiwan was approved by the Japanese Cabinet.\(^{32}\) Thereafter, the special legislative delegation to the GGT was prolonged and renewed until 1906.

Although \textit{Law No. 63} was a temporary compromise, concerns about the Diet’s supremacy and the separation of powers remained.\(^{33}\) To address these issues, in 1906 the Diet enacted \textit{Law No. 31} to restrict the GTT’s ordinances so they would be subject to Japanese statutes.\(^{34}\) In practice, however, the difference between \textit{Law No. 63} and \textit{Law No. 31} was nominal, and the GTT’s quasi-law-making power was viewed as a continuation of \textit{Law No. 63} (the Law No. 63 regime). As the Law No. 63 regime became institutionalized, the GTT simultaneously wielded military, executive, and legislative powers.

The turning point of the \textit{Law No. 63 regime} emerged in the aftermath of WWI. Japan started an innovative reform of the local system of government and established administrative levels under the GTT: prefecture (州), city (市) and district (郡), and town (街) and village (庄).\(^{35}\) In addition, the GTT established consultative councils parallel to the local government level. Although some Taiwanese elites filling those positions were rent-seekers,\(^{36}\) the GTT’s appointment of the members of consultative councils opened a narrow window for residents in Taiwan to participate in politics.\(^{37}\)

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\(^{32}\) See \textsc{Wang}, id. at 38-39.

\(^{33}\) Article 5 of Meiji Constitution provides, “The Emperor exercises the legislative power with the consent of the Imperial Diet.”

\(^{34}\) Taiwan ni shiko suheki horei niseki suru horitsu (臺灣ニ施行スヘキ法令ニ関スル法律) [Laws related to Laws and Ordinances to Be Enforced in Taiwan], Law No. 31 of 1906, was known as Law No. 31 and became effective on Apr. 11, 1906 (Taiwan).

\(^{35}\) \textsc{Wang Tai-Sheng} (王泰升), \textsc{Taiwan Falushi Gailun} (台灣法律史概論) [\textsc{The Introduction Of Taiwan Legal History}] 156 (3rd ed. 2009).

\(^{36}\) Yun-Han Chu & Jih-Wen Lin, \textsc{Political Development in Twentieth-Century Taiwan: State-Building, Regime Transformation and the Construction of National Identity}, in \textsc{Taiwan in the Twentieth Century} 102, 109 (Richard Louis Edmonds & Steven M. Goldstein Eds., 2001).

\(^{37}\) \textsc{Wu Wen-Hsing} (吳文星), \textsc{Rijiu Shiqi Taiwan Lingdao Jiecheng Zhi Yanjiu} (日據時期臺灣領導階層之研究) [\textsc{The Leadership in Taiwan During the Japanese Colonial Era}] 196 (1992).
Table 2: The local administrative structure of Taiwan (1920 to 1945)\textsuperscript{38}

<table>
<thead>
<tr>
<th>The First Level</th>
<th>The Second Level</th>
<th>The Third Level</th>
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<tbody>
<tr>
<td>州 (しゅう) (Prefecture)</td>
<td>市 (し) (City)</td>
<td>街 (かい) (Town)</td>
</tr>
<tr>
<td>頭 (ちょう) (Prefecture)</td>
<td>郡 (ぐん) (District)</td>
<td>庄 (しょう) (Village)</td>
</tr>
<tr>
<td></td>
<td>支頭 (しちょう) (Sub-prefecture)</td>
<td>蕃地 (ばんち) (Aboriginal Areas)</td>
</tr>
</tbody>
</table>

B. *The Election of 1935 and the GGT’s Strategy*

In the mid-1930s, Japan was on the brink of war with China and again adjusted its colonial policy. In light of the rise of Taiwanese nationalism and the increasing strategic value of Taiwan, Japan adjusted its colonial policy to facilitate assimilation and strengthen the GGT’s capability of war mobilization. In order to integrate the local elites, enhance the legitimacy of the GGT, and split the TPPM camp, the GGT decided to hold elections for the Consultative Councils in the lowest local government level: city and town–village in 1935 and 1939 respectively.

In order to ensure that the racial minority group, the Japanese, won the majority, the GGT employed two strategies: (1) The GGT adopted the single non-transferable vote in the multi-member district electoral system (SNTV). (2) The GGT enacted strict election laws and lenient campaign finance rules, and enforced them arbitrarily to form a coalition leaning to the GGT via exchange of interests.

Under the SNTV system, each voter cast one ballot for candidates, and the vote could not be transferred among candidates. The electoral district 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.\textsuperscript{39} According to Articles 7 and 8 of the *Taiwan Prefecture Organization Act*,\textsuperscript{40} the...
GGT adopted the SNTV system. The GGT adopted the SNTV system to ensure that Japanese candidates would be elected, prevent radical Taiwan nationalists or communists from passing the low bar, and stimulate Taiwanese candidates to compete with one another in the same electoral district without coordinating a united front.

Besides, the GGT enacted lenient campaign finance rules and enforced them arbitrarily. The GGT issued “Taiwan Local Election Regulatory Rules” (TLERR) as Administrative Ordinance (furei) No. 13. TLERR modeled these rules on “the Regulatory Rules on Election of the House of the Representatives” from Metropolitan Japan, authorizing the police to limit campaign activities and suppress dissenters, thereby enabling arbitrary enforcement of the ordinance. According to the TLERR, campaign activities were prohibited beyond the allowable time before the election. The number of campaign offices and the personal information of the electioneering members 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,

41. Japan adopted medium-size districts with 2-5 elected members in each district in the 1925 House of Representatives’ general election to balance the interests of minor parties’ elected opportunity and the flaws of radical voices.

42. Japanese candidates, most of whom were nominated or recommended by the GGT or the executive chiefs, formed a united platform to campaign and divide the votes coordinately. In contrast, Taiwanese candidates barely formed a united platform to campaign and divide the votes coordinately because of conflicts of interests or ideology. Besides, 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 made it more difficult for the residents of Taiwan to form political groups or associations and to unite Taiwanese candidates in 1935 and 1939.

43. Taiwan chihō senkyo torishimari kisoku (台灣地方選舉取締規則) [Taiwan Local Election Regulatory Rules], in TAIWAN SOTOKU FU-HO (台灣總督府府報) [SPECIAL ISSUE OF THE OFFICIAL PAPER OF GOVERNMENT-GENERAL OF TAIWAN] 21, 22 (Apr. 1, 1935) (Taiwan).

44. Shūgiin senkyo 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, 1934) (Japan).

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

46. Taiwan chihō senkyo torishimari kisoku (台灣地方選舉取締規則) [Taiwan Local Election Regulatory Rules], art. 2.

47. Id. art. 11.

48. Id. art. 5.

49. Id. art. 8, 9.
campaign activities were limited to use of the official language, Japanese.\footnote{16}

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 not prohibited in order to promote voter turnout and encourage more residents in Taiwan to participate in the electoral process, thus facilitating the assimilation policy.\footnote{50} Through applying different standards in Taiwan than in Japan, the GGT opened the backdoor not only for the local political elites 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 placing limits on campaign expenditure. Third, in Taiwan there were no rules that required candidates to report and disclose their campaign finances. While Japan had set up the requirement for candidates to keep proper accounts\footnote{51} and report their accounting of campaign finance to the government\footnote{52} for public disclosure,\footnote{53} the same rules were intentionally ignored by the GGT and not extended to Taiwan.

\footnote{50. \textit{Ibid.} art. 14.}

\footnote{51. Hsu Shu-chêng (許淑貞), \textit{Riju Shiqi Taiwan Difang Xuanju yu Zhengzhi Canyu-Yi Liangci Shi, Zhou Hui Yiyan Xuanju Weili} (1935-1940) (日據時期台灣的地方選舉與政治參與 - 以兩次市、州議員選舉為例 (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)] 187 (1996) (Master thesis, Chung-Shing University) 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 a gentleman’s agreement among the candidates.}

\footnote{52. \textit{Shūgiingiinsenkyo-ho} (眾議院議員選挙法) [The Election Law on House of Representatives], art. 105, May, 2, 1925 (Japan); \textit{Shūgiingiinsenkyo undo-to torishimari kisoku (眾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, art 14 (Japan).

\footnote{53. \textit{Shūgiingiinsenkyo-ho} (眾議院議員選挙法) [The Election Law on House of Representatives], art. 106 (Japan); \textit{Shūgiingiinsenkyo undo-to torishimari kisoku (眾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, art 14 (Japan).

\footnote{54. \textit{Shūgiingiinsenkyo undo-to torishimari kisoku (眾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, art. 16.}
Although the TLERR imposed criminal liability on candidates engaging in vote-buying or using violence,\(^{55}\) the neutrality of the police was in doubt. As such, Japanese candidates and GGT friendly local elites 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.\(^{56}\) As a result, the majority was composed of Japanese and local Taiwanese elites obedient to the GGT.\(^{57}\) The election result at the city level showed that Japanese comprised only 25.8% of the voters, but gained 51.2% of the seats. In contrast, Taiwanese voters comprised 74.2% of the voters, but won only 48.8% of the seats.\(^{58}\)

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.\(^{59}\) 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

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55. Taiwan chiho senkyo torishimari kisoku (台灣地方選舉取締規則) [Taiwan Local Election Regulatory Rules], art. 20.
56. WU Hsin-Jung (吳新榮), Wu Hsin-Jung Diary on Nov. 12, 1935, in 1 WU Hsin-Jung Diary Collection (吴新荣日记全集一) 158 (2007), [http://taco.ith.sinica.edu.tw/hdk/吴新荣日记](http://taco.ith.sinica.edu.tw/hdk/吴新荣日记) (last visited Aug. 29, 2019); Wang Wu Qia (王烏詰), Daiichikai no shū kaigi-in senkyo ni saishii tokani kaikaku shita kata ga i to isikan shita ten (第一回の州議員選挙に際し特に改革した方がいたと痛感した点) [The first election for the prefecture consultative councilors and its problems], 2 TAIWAN DIFANG XINGZHENG (台灣地方行政) [TAIWAN LOCAL ADMINISTRATION] (12) 64 (1936). According to Yang Zhao Jia’s memoir, the campaign was well run, 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), 3 RÌJÚ XÌÀ ZÌHÌ TÁÌZHÈNG (日據下之台政) [THE POLITICAL AFFAIRS UNDER THE JAPANESE COLONIAL RULE] 937 (1956).
57. WU, supra note 37, at 199.
59. JAMES C. SCOTT, COMPARATIVE POLITICAL CORRUPTION 12 (1972).
accepted and internalized, \(^{60}\) 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 lesson for generations of local elites in Taiwan: under the SNTV system, the strategy of issue-based campaigning produced the problem of dividing votes. \(^{61}\) 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. And the SNTV system made the authorities more likely to cooperate with the local elites 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. \(^{62}\) Second, the limits on campaign activities led to low recognition of the candidates among voters, pushing voters toward the more recognizable GGT or local elites. Third, the loose campaign finance laws offered opportunities not only for the GGT to exchange interests with the local elites, but also for the local elites to run localized and personal campaigns. As a result, the majority of elected members were either Japanese or local elites aligned with the GGT, \(^{63}\) which formed a solid coalition for war mobilization. \(^{64}\)

The electoral results reflected not only the rise of the local elites, who sought political participation or affiliation with the

\(^{60}\) Id. at 11.

\(^{61}\) Under 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.

\(^{62}\) Sotoku-fu kobun ruisan (總督府公文類纂) [The Governor-general of Taiwan’s document], v. 10345-4, 55, 56; Id. v. 10345-5, 145.

\(^{63}\) Chu & Lin, supra note 36, at 109. Wu, supra note 37, at 199.

\(^{64}\) Dài Guó-Huī (戴國煇), TĀI WĀN ZONGTĪ XIĀNG: RÉNJIĀN, LÍSHĪ, XÍN XĪNG (台灣總體相:人間、歷史、心性) [TAIWAN IN GENERAL: HUMAN, HISTORY, AND MENTALITY] 78 (Wei Ting-Chao trans. 1989) (indicated, the Taiwanese local elites coordination with the GGT form “the structure of accomplice”).
GGT, but also the birth of local political factions and electoral clientelism. 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.

V. THE CHINESE CIVIL WAR ERA (1945-1949)

In 1946, the ROC government started to rule Taiwan 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 two implications. First, 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.” Second, unlike the Japanese colonial regime, the ROC government broadened the scope of the elections for representatives at all levels. Thus, electoral

65. Chen Ming-Tong (陳明通) & Lin Jih-Wen (林繼文), Taiwan Difang Xuanju de Qiyuan yu Guojia Shehui Guanshi Zhuonian (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 SHENHUI BIANQIAN (兩岸基礎選舉與政治社會變遷) [LOCAL ELECTIONS AND POLITICAL-SOCIAL CHANGES ACROSS THE STRAIT] 30, 30-32 (Chen Ming-Tong (陳明通) & Zheng Yong-Nian (鄭永年) eds., 1994).


clientelism and local factions exerted their considerable influence on a higher level of government.

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

The ROC successfully held the first election with universal suffrage in 1946 for representatives of township consultative councils. The election aimed to solidify the ROC regime by gaining the support of the local elites and local factions that had existed prior to the era of Japanese colonial rule, and to precede the commencement of the National Constituent Assembly, which was expected to take place on May 5, 1946.

The Taiwan Provincial Administrative Executive Office in 1945 issued the “plan for establishing the assembly at all levels of Taiwan Province.” All townships, counties/cities, and the Taiwan Province were required to establish consultative councils by February 28, March 15, and April 15 of 1946, respectively. The Taiwan Provincial Consultative Council would be opened on May 1, 1946.

The elections for the township 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

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69. Taiwansheng 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], effective on Dec. 26 (Japan).

70. 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.

71. Huang Chao-Quin (黃朝琴), Wo De Huiyi (我的回憶) [MY MEMORY] 135 (1989); Chen & Lin, supra note 65, at 23.

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

73. Taiwansheng 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], effective on Dec. 26 (Japan).

74. Id. art. 3.

75. Id. art. 5.

76. Id. art. 6.

77. Id. art. 7.
registered to vote—equivalent to 91.8% of all residents above the age of twenty—and more than 30,000 residents passed the examination to be candidates. Thus, 7,078 township representatives were elected in February 1946; and those township representatives elected 523 county/city consultative councilors in March. Those county/city councilors ultimately elected thirty Taiwan Consultative Provincial Councilors, from among 1,180 candidates.

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 new regime retained the SNTV electoral system that had been adopted by the Japanese colonial government in Taiwan between 1935 and 1939. The ROC government used the SNTV system for the elections, both in Taiwan and mainland China, in 1946.

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%) had served as consultative councilors in the Japanese colonial era. Furthermore, 243 of the 523 county/city 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

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78. CHENG TZE (鄭梓), TAIWAN YIHUI ZHENGZHI SISHI NIAN (台灣議會政治四十年) [The Parliamentary Politics in Taiwan for Forty Years] 56 (1987).

79. Under Art 1 of the Taiwansheng Canyihui 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. Jieyi No. 8458 Hao Zhiling (節一字8458號指令) [The Administrative Order Jieyi No. 8458], issued on Mar. 30, 1946.

80. See Taiwansheng Canyihui Zuzhi Tiaoli (台灣省參議會組織條例) [Taiwan Provincial Consultative Council Organization Act] (Taiwan).

consultative council were respectively 52.3%, 34.2%, and 47.15% between 1921 to 1945. Based on those quantitative data, it appears the regime shift did not significantly impact the continuation of the power of Taiwanese local elites and local factions.

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

Following WWII, post-war recovery and challenges from the CCP in mainland China created difficulties for the ROC government. The ROC, in order to enhance their legitimacy, decided to move toward a system of constitutionalism. 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 Constitution on December 25, 1946, which came into effect one year later. Thus, the ROC government held elections to the National Assembly in November 1947 and the Legislative Yuan in January 1948. In the election, 27 out of

82. Id.
84. 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.
85. Guomin Dahui Xuanju Fa (國民大會選舉法) [The Election and Recall Act on National Assembly Members], enacted on Mar. 31, 1947 (Taiwan).
86. 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 (Taiwan).
3,045 National Assembly members, and 8 out of 773 legislators were elected in Taiwan.\textsuperscript{87}

After the promulgation of the Constitution in December 1947, the ROC was, at least in theory, a democracy. However, during the civil war, the ROC government expanded its power for war mobilization and restricted the civil rights of its citizens.

As early as July 1947, the ROC government declared “the outline of war mobilization to implement the Constitution”\textsuperscript{88} to initiate its war mobilization regime. Meanwhile, according to the National General Mobilization Law,\textsuperscript{89} the ROC government employed the command economic regime to determine what goods and how much of them should be produced, and collected strategic materials. The ROC Constitution came into effect in December 1947, but its effectiveness was undermined as the ROC government lost its military advantage against the CCP. The National Assembly passed the \textit{Temporary Provisions} in April 1948, which granted the president emergency military powers.

In addition, the ROC government imposed \textit{martial law} in May 1948 which was put it into effect in Taiwan in 1949. In December 1948, the ROC government faced defeat. President Chiang Kai Shek imposed martial law throughout the nation, but remote areas like Taiwan Province were not included. On 19 May 1949, the Governor of Taiwan Province, Chen Cheng, promulgated the “Order of Martial Law” and imposed martial law on the area of Taiwan Province.\textsuperscript{90} Martial law created a climate of terror, leaving limited room for unapproved political activities.\textsuperscript{91}

\textsuperscript{87} Wang Tay-Sheng (王泰升), Taiwan Zhanhou Chuqí de Zhengquan Zhuanti yu Falü Tixi de Chengjie (1945-1949) ([台灣戰後初期的政治轉型與法律體系的承接 (一九四五至一九四九)] \textit{The Transition of Legal Systems in the Early Period of Postwar Taiwan, 1945-1949}), \textit{Taida Faxue Luncong (臺大法學論叢) [National Taiwan University Law Journal]} 51, 51 (1999).

\textsuperscript{88} Dongyuan Kanhujan Wancheng Xianzheng Shixi Ganguyao (動員戡亂完成憲政實施綱要) [the outline of war mobilization to implement the Constitution], effective on July 19, 1947 (Taiwan).

\textsuperscript{89} Guojia Zongdongyuan Fa (國家總動員法) [the National General Mobilization Law], effective on March 14 1942 (Taiwan).

\textsuperscript{90} Hsuieh Hua-Yuan (薛化元), Zhanhou Taiwanshi Yuelu (戰後台灣歷史閱覽) [Post-War History of Taiwan] 57 (2010).

\textsuperscript{91} Martial Law was enacted on Dec 10, 1948, and applied to most parts of China, but Taiwan was not included in. On May 19, Taiwansheng 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,
VI. AUTHORITARIAN RULE ERA (1949-1991)

In December 1949, the ROC government and its ruling party, the Kuomintang (KMT),92 retreated to Taiwan after its complete defeat in the Chinese Civil War. The ROC-KMT regime reformed its administrative structures. Those reforms included creating a party-state system and dominating local elections by mobilizing existing local factions via electoral clientelism and threats.

A. The ROC’s Administrative Structures in Taiwan

After 1949, the ROC government lost most of its territory in mainland China, which posed a major problem to the ROC government. The Taiwanese provincial government’s controlled territory nearly overlapped with that of the ROC government. Given such controversy, a two-level government--provincial and central government--effectively governed Taiwan from 1949 to 1998.93

To address this dispute, the ROC government blocked the bill of the “General Law for the Provincial and County Self-government” in the Legislative Yuan.94 As an alternative, the Taiwan Provincial government issued “the Ordinance of Local

1949, and effective on May 20. Táiwānshěng jǐngbèi zǒng sīlìng bù bùgào jièzì dìyīhào (台灣省警備總司令部佈告誡字第一號) [Taiwan Garrison Commander Order No. 1]. See Wang, supra note 87, at 68.

92. 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.

93. 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; 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...  

94. 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 HSUEH, supra note 90, at 84-85; WANG TAY-SHENG (王泰升), TAIWAN FALU XIANDAHUA LICHENG: CONG NEIDI YANCHANGDAO ZIZHU JI SHOU (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).
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Self-government in Counties and Cities of Taiwan Province” 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. 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 international pressures.

Table 3: The Local Administrative Structural Hierarchy of Taiwan

<table>
<thead>
<tr>
<th>The First Level</th>
<th>The Second Level</th>
<th>The Third Level</th>
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</thead>
<tbody>
<tr>
<td>直轄市 (Special Municipal)</td>
<td>区(District)</td>
<td>山地原住民区 (Indigenous District)</td>
</tr>
<tr>
<td>省(Province)</td>
<td>縣(County) 市(City)</td>
<td>鄉(Rural Township)</td>
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<td></td>
<td></td>
<td>鎮(Urban Township)</td>
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<td>縣轄市 (County-administered City)</td>
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<tr>
<td></td>
<td></td>
<td>山地原住民鄉 (Indigenous Township)</td>
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</table>


95. Tayiwânhêng Gê Xiánsí Shíshí Dîfhâng Zîzhí Gângyâo (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] (promulgated and effective Apr. 24, 1950 (Taiwan)). In order to establish local self-government and the holding of election, the Taiwan provincial government issued such an administrative order.

96. 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.

97. Table 3 shows local administrative structure in Taiwan between in the 1950s for readers to compare the changes of local administrative structures in each level with the Japanese Colonial rule era. This paper chose the term “local administrative structure” rather than “local self-government” because the autonomy of each local administration from ROC’s central government is debatable.
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 the government from the central to the local levels. The KMT-led ROC government adopted an innovative strategy to secure its authoritarian regime without relinquishing power.

1. 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

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.”
2. “Factions are political groups.”
3. “Factions are not corporate groups.”
4. “Factions are recruited on diverse principles.”

Before analyzing the mechanisms and implications of modern local factions in Taiwan, this paper reviews the transitional process from traditional local factions to modern ones and examines their interaction with 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.

After the election of 1950/51, the KMT adopted the “recruitment policy.” The KMT actively absorbed those elected local factions, initiating a process of incorporation and clientelism.

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100. JACOBS, id. at 89-90; NICHOLAS id. at 44-46.

101. JACOBS, id. at 89-90; NICHOLAS id.

102. JACOBS, id. at 89-90; NICHOLAS id.

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 continually coordinated with local factions. As a result, 642 out of 860 (74%) city/county councilors were KMT members in the 1952/53 election.

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. Although the KMT’s headquarters was fed up with the local factions, in the absence of the power to replace them, the KMT chose to coordinate with local factions for their electoral mobilization before 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.” 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. 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


105. The 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 NAI-TEH Wu, THE POLITICS OF A REGIME PATRONAGE SYSTEM: MOBILIZATION AND CONTROL WITHIN AN AUTHORITARIAN REGIME (1987) (Ph.D. dissertation, University of Chicago).

106. REN, supra note 104, at 41, 346.


government-owned banks; provincial or county contracts; and the tolerance of illegal business.\textsuperscript{109}

This following development 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, vote brokers, 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.\textsuperscript{110}

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 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.111 Under those arrangements and distribution networks, the modern electoral clientelism organizations or local factions were mostly founded or transformed in the 1950s.

111. REN, supra note 104, at 230, 232.
(b) The defection of local factions and the rise of opposition in the 1970s

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 faction-replacement 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 became the chief of the Executive Yuan. Under Chiang’s leadership, the KMT adopted faction-replacement nominating strategies. 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.

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’s 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.

2. *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 candidates was formed and named itself Dangwai (黨外).\(^{112}\)

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 strategies of retraining the local factions eroded in those areas.

The election in 1977 inspired the Dangwai that 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 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.

C. 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, 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.

1. Taiwan Provincial Election Regulatory Rules of 1950

The Taiwan Provincial Government initially issued the TPERR in 1950. Although Taiwan had been decolonized from Japan in 1945, the TPERR, as established, was highly influenced by 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.

(a) The prohibition on door-to-door canvassing

The prohibition of door to door canvassing originated in Japanese election law and was extended to Taiwan in 1939. Although the prohibition raised 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 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. Campaign activities were restricted to four types of activity: public speeches, broadcasts, campaign promotions, and advertising. 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.

(b) The Mandatory Reporting Rules

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 of the members of the electioneering groups, and their campaign finance sources. In turn, that report was to be disclosed to the public by the government within three working days of its receipt.

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.

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

114. YANG Zhao-Jia (楊肇嘉), 2 YANG ZHAOJIA HUIYILU (楊肇嘉回憶錄 2) [2 THE MEMOIRS OF YANG ZHAOJIA], 383 (1970).
115. Táiwānshěng Fánghài Xuǎnjǔ Qǔdì Bànfu (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules], supra note 113, § 4.
116. Id. § 7(1).
117. Id. § 7(2).
118. Id. § 10.
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.\(^{119}\)

(c) The Enforcement and Implications of TPERR of 1950

The enforcement of the TPERR was not strict for the local election of 1950, which took place soon after the ROC’s retreat from mainland China. The ROC government was trying to increase the turnout rate so as to integrate the native Taiwanese residents into its regime.\(^{120}\) 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.\(^{121}\) 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.\(^{122}\)

2.  **TPERR of 1952 and 1953**

After the local elections of 1952, the TPERR was revised to decrease the financial demands of campaigns. The main reform introduced public campaign finance regulations into Taiwan in order to reduce the demand for campaign finance and social misspending.\(^{123}\) The prohibition on door to door canvassing was retained.\(^{124}\)

\(^{119}\) Id. § 11.

\(^{120}\) Zhaojia Yang replied to the inquiry about the outcome of the local election of 1950 in the first Taiwan Provincial Temporary Assembly. See TAIWAN LINSHI SHENGYIHUI GONGBAO (台灣省臨時省議會公報) [OFFICIAL GAZETTE OF TAIWAN PROVINCIAL TEMPORARY ASSEMBLY] 24, 24-25 (Dec. 16, 1952), http://journal.th.gov.tw/display.php?code=74086Lnm4 - 36 (last visited Feb. 8, 2019).

\(^{121}\) SCOTT, supra note 59, at 11-12.

\(^{122}\) REN, supra note 104, at 271.

\(^{123}\) Zhaojia Yang replied to the inquiry about the outcome of the local election of 1950 in the first Taiwan Provincial Temporary Assembly. See TAIWAN LINSHI SHENGYIHUI GONGBAO (台灣省臨時省議會公報) [OFFICIAL GAZETTE OF TAIWAN PROVINCIAL TEMPORARY ASSEMBLY], supra note 120, at 24-25.

\(^{124}\) Táiwānshěng Fánghài Xuǎnjǔ Qǔdì Bànfü (台灣省妨害選舉取締辦法) [Taiwan Provincial Election Regulatory Rules] § 5, 41 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT (台灣省政府公報41年秋字57期) NO. CHO (57) 746 (1952); Zhaojia Yang
Besides revising the rules relating to mandatory reporting and the restrictions on campaign activities, the TPERR introduced a new mandatory rule which required the candidates to undertake pre- and post-election reports.\footnote{TPERRR of 1959 and 1963} It also required the candidates to keep their account books so they could be checked by the officials at any time.\footnote{Id.}

In contrast to the revision of TPERR, the ROC-KMT regime had been absorbing the existing local factions since 1952. The KMT’s headquarters required local branches to have at least 60% of the local assembly members in their constituency as KMT’s members.\footnote{Id. at 313.} 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 continually coordinated with local factions. As a result, 642 out of 860 (74%) city/county councilors were KMT members in the 1952/53 election.\footnote{Id. at 413.}

As Shefter has stated, the initial mobilization generated positive feedback, and “once entrenched, the dominant basis of political mobilization became difficult to dislodge.”\footnote{Shefter, supra note 14, at 414-15.} 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.\footnote{Id. at 41, 34.} Although the KMT’s headquarters was fed up with the local factions,\footnote{The 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, supra note 105.} in the absence of the power to replace them, the KMT chose to coordinate with local factions for their electoral mobilization before the early 1970s.

\section*{3. \textit{TPERRR of 1959 and 1963}}
After a decade of local elections, the TPERR underwent a structural revision in 1959. The limits on campaign activities were liberalized to promote higher turn-out rates and prevent hidden campaigns. 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.

D. The Civil Servant Election and Recall Act

Between 1950 to 1980, there was no special statute governing all elections in Taiwan. 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” to issue rules such as the Taiwan Provincial Government Election and Recall Regulatory Rules.

1. The Enactment of CSERA of 1980

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” to draft a unified and special act, “The Civil Servant Election and Recall Act” (“CSERA”), to cover all electoral affairs.

The CSERA 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 report or disclosure.

132. Táiwānshěng Fánghài Xuǎnjǔ Bìmiǎn Qìdì Bānfǎ (台灣省妨害選舉罷免辦法) [Taiwan Provincial Election Regulatory Rules]. § 7, 48 OFFICIAL GAZETTE OF TAIWAN PROVINCIAL GOVERNMENT (台灣省政府公報48年冬字7期) NO. DONG (7) 95 (1959).

133. Id.

134. Táiwānshěng Gè Xiànshì Shíshī 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] (Taiwan). In order to establish local self-government and the holding of election, the Taiwan provincial government issued such an administrative order.

2. *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, the ROC government decided to take a more active role to restrain monetary influences in elections. Under the bill from the Ministry of Internal Affairs, the candidates were required to report their campaign finances to the Central Election Commission.

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. Moreover, the opposition raised concerns regarding the capability and neutrality of the CEC to enforce those rules.

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.

**VII. THE DEMOCRATIC ERA (1991-2004)**


139. The legislators of Kang Ningxiang, Su Chiuchen, Huang Huang hsiung and Chang Dehming dissented, *id.* at 10-12.
The lifting of martial law in 1987 caused a shift in dynamics that would shape Taiwan’s transition to democracy. In June 1990, the Constitutional Court reinterpreted the Constitution, and ruled that the tenured representatives should step down by December 31, 1991.\textsuperscript{140} The new political climate also resulted in a major revision of the \textit{Civil Servant Election and Recall Act} (CSERA) in 1991 for the coming general election of the National Assembly in December.

However, the revision of CSERA did not achieve the goals of restraining electoral clientelism and producing a clean government. As North indicates, legal and political institutions are change resistant.\textsuperscript{141} In the case of the 1991 revision of CSERA, as electoral clientelism took root in political practices and caused path dependence, the mandatory report and public disclosure rules were merely symbolic legislative measures rather than law in practice.

\textbf{A. The Revisions of the Civil Servant Election and Recall Act (CSERA)}

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 1991 to liberalize the regulations on candidates’ campaign activities. Nevertheless, the MIA and legislators from both parties had no clear picture of the regulating campaign finance in securing political accountability and restraining the prevalent clientelism.

Although the tenured representatives were still the majority, the deliberations over the CSERA in the Legislative Yuan in 1991 are noteworthy. First, before the enactment of the \textit{Political Donation Act} of 2004, the campaign finance rules within the CSERA were the primary rules regulating the money flow in the political field. Second, many legislators and MIA staff involved in these legislative deliberations occupied the central government or

\textsuperscript{140} See Sifa Yuan Dafaguan Jieshi No. 261 (司法院大法官解釋第261號解釋) [Judicial Yuan Interpretation No. 261] (June 21, 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.”)

parties’ posts over the following two decades. Their thoughts in the legislative deliberation, under the shadow of authoritarian rule and prevalent electoral clientelism, reflected that there was no clear strategy regarding campaign finance law among two generations of political elites in Taiwan.

The Democratic Progressive Party (DPP), the main opposition party, proposed their own draft bill as an alternative to the MIA’s revised CSERA. The DPP’s draft formally proposed to deregulate election activities 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.142

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. Under the shadow of the white terror, 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. The DPP was concerned about the neutrality of the CEC and the possible chilling effects on their potential donors. Thus, the DPP chose to pay more attention to liberalizing the election laws regulating campaign activities and campaign finance, rather than focusing on transparency.

Given path dependence and time sequencing, the KMT and DPP’s value choices in 1991 should not come 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.143 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

142. Legislator Hsieh Changting expressed his intention 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) [Legislative Yuan Official Gazette], at 58 (June 13, 1991).
in 1991, led by the incumbent authoritarian regime, Taiwan missed a window for creating a critical juncture to supersede the pre-existing clientelism.


The KMT dominated the 1991 National Assembly elections, winning the majority of both seats and votes. Combined with the proportional seats, the KMT’s share of all seats reached 78%. The dominance of the KMT in the 1991 election indicates that their strategy of mobilizing local factions worked efficiently.\(^{144}\)

The general election for the Legislative Yuan was held in 1992. Again, as in the 1991 National Assembly election, the KMT headquarters decided to coordinate closely with local factions. 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. It is estimated that 62% of the KMT’s popular vote was from local factions.\(^{145}\) This electoral result indicated that the KMT had to rely on local factions to maintain its majority. As the majority of elected legislators were linked with local factions, electoral clientelism and campaign expenditures boomed; meanwhile, the likelihood of campaign finance reform was diminished.

While the KMT struggled with the local factions, the DPP adopted at two-pronged strategy to gain power and therefore advocate for a cleaner government. First, the DPP sought to erode the KMT’s image to gain more votes. Second, the DPP began to focus on recruiting and coordinating with local factions defecting from the KMT camp.\(^{146}\) The alliance between the DPP and local factions could be traced back to 1977. The DPP formally adopted the “summoning defectors strategy” on a large scale in 1993 to replace the KMT regime.\(^{147}\) As the DPP changed its attitudes

\(^{144}\) Shelly Rigger, Politics in Taiwan: Voting for Democracy, 159 (1994); Chia-Lung Lin, Paths to Democracy: Taiwan in Comparative Perspective 361 (1998) (Ph.D. Dissertation, Yale University)

\(^{145}\) Shu Yong-Ming (徐永明) & Chen Hong-Zhang (陳鴻章), Difăng Pàixi yǔ Guómìndàng: Shuāituì Huánsì 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 TAIWAN SHEHUXUE (臺灣社會學) [TAIWANESE SOCIOLOGY] 193, 213 (2004).

\(^{146}\) Id.

\(^{147}\) See generally Chang Chun-Hung (張俊宏), Zhòngxù: Dào zhízhèng zhī lù (總序：到執政之路) [On the Road to Power], in DÀO ZHÍZHÈNG ZhīLÜ: DIFĀNG BÀOWÉI ZhĒNGYÀNGB

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toward local elites defecting from the KMT, the DPP also engaged in electoral clientelism. 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.

C. The Development of Local Factions and Electoral Clientelism in the 1990s

As previous analysis, clientelism could be seen as a free exchange of relations. However, with the development of urbanization and modernization, the question was raised as to whether such an exchange of relations could be standardized and impersonalized, rather than conducted face to face. In the case of Taiwan, according to recent political science studies, two developments are noteworthy: the decline of local factions, and the transformation of electoral clientelism. These changes reshaped the Taiwanese political dynamics, and provided new chances for the following campaign finance reform.

As Kitschelt & Kselman argue, the relation between modernization and clientelism is hump-like, rather than linear. In Taiwan, the power of the local factions rose between the mid-1980s and the mid-1990s, but then gradually declined election by election. 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


148. Huang Te-Fu (黃德福), Xiàndàihuà, Xuǎnjǔ Jìngzhēng yǔ Dìfāng Pàixì:1992 Nián Lifā 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 XUANJU YANJU (選舉研究) [JOURNAL OF ELECTORAL STUDIES] 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.)


local factions and stimulated their development. 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.

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. 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. But the political parties started to directly contact and bargain with vote brokers or factions at the township level, which loosened the county factions’ local mobility bases.

Second, electoral clientelism is still transforming and thriving, instead of fading. Due to the distinct political and social backgrounds in Taiwan, the intense inter-party competition gradually transformed the electoral clientelism from a vertical dyadic alliance into a voluntary one.


152. Id.; Wang Yeh-Li (王業立) & Tsai Chun-Mu (蔡春木), Cóng Duìlì dào Gòngzhì : Táizhōngxiàn Dìfāng Pàixì zhī Zhuǎnbiàn (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 ZHENGZHI KEXUE LUNCONG (政治科學論叢) [TAIWANESE JOURNAL OF POLITICAL SCIENCE] 189, 191 (2004).

153. Id.; Weng Li-Hong (翁立紘), Minzhuhua de Buqueding Xing yu Difang Paixi de Tiáoshì: Taiwan Difang Paixi Yanjiu de Fazhan yu Zhanwang (民主化的不確定性與地方派系的調適：臺灣地方派系研究的發展與展望) [Uncertainties of Democratization and Adaption of Local Factions: A Review of Taiwan’s Researches of Local Factions], 2 MINZHU YU ZHILI (民主與治理) [JOURNAL OF DEMOCRACY AND GOVERNANCE] 67, 67-82 (2015).


155. Id. In contrast, Huang argued, as urbanization and modernization increase, the programmatic policy will replace electoral clientelism. See Huang, supra note 148, at 78.
In the absence of a national programmatic or redistribution policy issue, inter-party competition stimulated electoral clientelism, rather than restrain it. The KMT relied on existing local factions to mobilize their vote-brokers and voters via clientelist exchanges. The DPP transformed itself into a catch-all party, 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.

D. The Deliberation and Birth of Political Donation Act (PDA) of 2004

Taiwan experienced its first peaceful political transition in May 2000. 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.

1. The Mandatory Reporting Requirement and Challenges to It

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.” The mandatory report itself would accomplish the regulatory goals of detecting violation and governing campaign money. 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 finance report rules all emerged during the

156. Kitschelt & Kselman, supra note 149, at 1453.
159. Chang & Lu, supra note 154, at 5.
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 concerns 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.  

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. At the same time, some scholars became concerned about the right to privacy of donors.  

Under the MIA’s strategy, there were five steps to enforce campaign finance rules: (1) Requiring political parties, political groups, and candidates to open a dedicated account with a financial institution and report that account to the authority. (2) Setting up an account book of income and expenditures for reference purposes. (3) Routine reports to the authority. (4) The auditing of the accounting report by an accountant. (5) Official examination and public disclosure.  

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. As for the detailed data of the mandatory report, article 18 of the bill of 2002 provides:

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161. The first gathering was held by Ministry of Internal Affairs on January 30, 1996, see ZHONGHUA MINGUO NEIZHENGBU (中華民國內政部) [MINISTRY OF INTERNAL AFFAIRS], ZHENGZHI XIANJIN FA YANDING SHILU (政治獻金法研訂實錄) [THE DELIBERATING PROCESS OF POLITICAL DONATION ACT] 22 (2004).

162. Id. at 33.

163. Id. at 637.

164. Id. at 367. Article 18, the bill of Political Donation Act of 2002, provided: Section 1. 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
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.

However, the CEC and MIA held different views on extension of the scope of requirement to report to cover independent expenditures. 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.166

On the other hand, the MIA supported the deregulation of independent expenditures and called for a limited scope of mandatory report requirement. 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.167

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166. The third gathering of examining the bill of PDA in the Executive Yuan was held on December 9, 2002. See id. at 437.
167. Id. at 386.
2. Public Disclosure and its Limits

The legislators viewed the public disclosure rules as a contingency measure to 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. 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.168

However, under the shadow of authoritarian rule, the public disclosure clause has faced the criticism of creating chilling effects on the freedom of speech.169 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.170 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.

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.171 The requirement of public disclosure on-line first appeared in the internal meeting of MIA in 2002 without any reasons or debate,172 and legislators raised no objections in the deliberation process. Thus, this provision was passed and came into effect.

As the analysis of historical institutionalism, 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

168. Id. at 40.
169. Id. at 81.
170. Id. at 81.
171. Id. at 152.
172. The second gathering in the Ministry of Internal Affairs was held on October 29, 2002, see id. at 369.
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.

VIII. CONCLUSION

People may believe that democracy is the best way to bring about a clean and accountable government, but fair elections did not produce a clean government in Taiwan. This article argues that under the shadow of authoritarian rule and electoral clientelism, the money flow in Taiwanese politics is unique. Throughout Taiwanese history, authoritarian governments, respectively led by the GGT of Japan and the KMT, monopolized economics and financial sectors. The authoritarian governments, then, opened elections under the SNTV system in order to create an institutional barrier against the possibility of a united opposition. In the absence of strict and fair campaign finance enforcement, the authoritarian government used its economic advantage to build up a system of electoral clientelism. This system allowed the government to manipulate local factions through the exchange of material interests or privileges in return for the mobilization of voters.

Disclosures have been viewed as a safeguard against corruption. This article argues that disclosure promotes the quantity and quality of speech by increasing the information concerning the candidates’ supporters, and helping voters define the candidates' constituencies and their potential policy preferences. Disclosures also encourage open discussion and public participation in the electoral process, which facilitates self-government and ensures the integrity of the electoral process. Thus, the crucial step to achieve transparency is to require candidates or political actors to disclose their campaign finance reports about contributions and expenditures online on a scheduled basis before and after the dates of elections.

Looking to the future, the passage and enforcement of more complete disclosure provisions within the PDA will be the next step to eradicate the historical roots of electoral clientelism and to consolidate the value of representative democracy. As Justice Louis Brandies said, “[s]unlight is said to be the best of disinfectants, electric light the most efficient policeman.”174 This article contends the spirits of transparency is the cornerstone of a clean government.

REFERENCES

72 Lifayuan Gongbao No. 38 (立法院公報72卷38期) [Legislative Yuan Official Gazette] (March 14, 1983).
81 Lifayuan Gongbao No. 13 (立法院公報81卷13期) [Legislative Yuan Official Gazette] (June 13, 1991).


Chao, Y.-M. (趙永茂) (2002). *Taiwan Difang Zhèngzhì de Bianqian yu Tezhi* (台灣地方政治的變遷與特質) [The Changes and Characteristics of Local Politics in Taiwan]. Taipei, Taiwan: Hanlu Publishing.


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]. (pp. 23-70). Taipei, Taiwan: Angel Publishing.


Dòngyuán Kānluàn Wánchéng Xiānzhèng Shíshī Gāngyào (動員戡亂完成憲政實施綱要) [the outline of war mobilization to implement the Constitution], July 19, 1947 (Taiwan).

Guójiā Zǒngdòngyuán Fǎ (國家總動員法) [the National General Mobilization Law], March 14 1942 (Taiwan).

Guomin Dahui Xuanju Fǎ (國民大會選舉法) [The Election and Recall Act on National Assembly Members], March 31, 1947 (Taiwan).


Li, S.-F. (李筱峰) (1993). *Taiwan Zhan Hou Chuqí de Minyi Daibiao (台灣戰後初期的民意代表) [The Representatives in Taiwan after the WWII]*. Taipei, Taiwan: Independence Evening Post Publishing.

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


and Local Politics in Taiwan (1949-1960)]. Taipei, Taiwan: Daw Shiang Publishing.


Shūgiingiinsenkyo undo-to torishimari kisoku (眾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, December 12, 1934.

Shūgiingiinsenkyo-ho (眾議院議員選挙法) [The Election Law on House of Representatives], May, 2, 1925 (Japan).

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

Taiwan chihō senkyo torishimari kisoku (台灣地方選挙取締規則) [Taiwan Local Election Regulatory Rules], in Taiwan Sotoku Fu-ho (台灣總督府報號外) [Special Issue of The Official paper of Government-general of Taiwan, April 1, 1935 (Taiwan).

Taiwan chou sei [Taiwan Prefecture Organization Act], in Taiwan Sotoku Fu-ho (April 1, 1935) (Taiwan).

Taiwan ni shiko suheki horei niseki suru horitsu (臺灣ニ施行スヘ法令ニ關スル法律) [Laws related to Laws and Ordinances to Be Enforced in Taiwan], March 31, 1896 (Taiwan).

Taiwan ni shiko suheki horei niseki suru horitsu (臺灣ニ施行スヘ法令ニ關スル法律) [Laws related to Laws and Ordinances to Be Enforced in Taiwan], April 11, 1906 (Taiwan).

Taiwansheng Canyihui Zuzhi Tiaoli (台灣省參議會組織條例) [Taiwan Provincial Consultative Council Organization Act], March 30, 1946 (Taiwan).

Táiwānshěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選挙罷免取締辦法) [Taiwan Provincial Election Regulatory Rules] (1959), 48 Official Gazette of Taiwan Provincial Government (台灣省政府公報48年冬字7期) No. Dong (7) 74-96.

Táiwānshěng Fánghài Xuǎnjǔ Qǔdì Bànfǎ (台灣省妨害選挙取締辦法) [Taiwan Provincial Election Regulatory Rules], June 17, 1950 (Taiwan). 39 Official Gazette of Taiwan Provincial Government (台灣省政府公報39年夏字68期) No. Xia (68), 1002-1004 (1950)


Táiwānshěng Gè Xiànshi Shíshèng 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], April 24, 1950 (Taiwan).

Taiwansheng 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], December 26, 1945 (Japan).


Modernization in Taiwan: From “the Extension of Mainland” to Independent Reception]. Taipei, Taiwan: National Taiwan University Press.

Wang, W.-Q. (王萬琦) (1936). Daiichikai no shū kaigai in senkyo ni saishiki tokuni kaikaku shīta kata ga i to tsūkan shīta ten (第一回の州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]. Taiwan Difang Xingzheng (台灣地方行政) [Taiwan Local Administration], 2(12), 64.


in Taiwan during the Japanese Colonial Era]. Taipei, Taiwan: Academia Sinica.


殖民與(後)威權統治下,台灣法律的多源移植與繼受:

析論日治時期至民主化初期的政治資金管理制度(1935-2004)

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摘要


自1895年起，日本帝國在台灣設立台灣總督府，進行殖民統治。直至1935年，日本總督府始在台灣舉辦附有嚴格財產權限制之市街區議會選舉。台灣總督府為確保其少數民族政權在選後仍能對地方議會行有效控制。因而在選舉實踐上，對於台灣政治參與者祭出兩手策略：其一、總督府頒佈「台灣地方選舉取締規則」，賦予總督府及下轄警察機關，對於候
選人之競選活動及其競選資金強大的監督與查核裁量空間。另一方面，總督府積極聯絡台灣地方政治菁英。在經濟籠絡以及選擇性監督競選活動及相關資金流動等手段交互運用下，總督府在市街庄各級議會的選舉結果上，掌握優勢。1935 年的市街庄議會選舉，可視為台灣地方自治與選舉之先聲。但總督府的政治資金管理方式，也埋下台灣地方派系與政治侍從慣行之種子。

二次大戰後，由中國國民黨所領導之中華民國政府接收台灣。為順利產生制憲國民大會代表，中華民國政府於 1946 年，在台灣及中國大陸，舉辦台灣歷史上首次普選，並順利產生各級地方議會議員以及中央民代。在 1949 年，隨著國共戰爭失利，中國國民黨領導之中華民國政府將其中央政府撤退來台。此後，中華民國政府一方面為維繫法統，凍結中央層級之民意代表選舉。但在省、縣市以及鄉鎮市三級議會以及縣市層級以下之行政首長舉辦選舉。為規範地方選舉以及競選活動，台灣省政府民政廳於1950年，頒布「台灣省妨害選舉取締辦法」，嚴格限制競選活動之時間、地點及宣傳方式、戶別訪問禁止、競選經費支出上限以及強制申報競選經費等方式，以降低候選人競選活動所需經費，從而抑制金錢對於政治的影響力。然選舉經費之管制與透明化，於落實上，遠不如預期。

其後，台灣省政府雖然屢次修正取締規則，立法院亦於 1980 年制定公職人員選舉罷免法，試圖導入公費選舉補助、強化資金揭露等制度，以
降低選舉經費。然而，上開具高度理想色彩之立法，因中華民國政府在黨
國威權體制下，長期以「侍從主義」作為選舉動員方式，致使法律與實踐
兩者間產生落差(gap)。在缺乏公平、公正、公開之政治資金管理制度，以
及執法機關選擇性地對「政治資金捐獻者 - 候選人」以及「候選人 - 選民」
間之互惠交易予以管制下，順服於威權政府之地方派系，在各級選舉中長
期取得優勢。因此，各地方政治菁英長期與掌握政治、經濟資源之統治者
合作，於取得政經利益後，以此分配、籠絡並動員地方派系首領、樁腳與
基層選民，形成「中央 - 地方」「恩庇--侍從」二元垂直互惠結構。在
此政治背景及路徑依賴效應(path-dependence)下，不論是 1980 年所制定之
公職人員選舉罷免法，及其在 1983、1989 年之修正案，在政治資金之管
制與強制揭露，不論是立法或執法上，均無法克盡其功。終止動員戡亂時期之後，中華民國政府自 1991 年起，全面就中央層
級民意代表，舉行普通選舉。因競選激烈造成競選所需經費暴增，使財團
與黑道取得介入公共政策審議之空間，引起台灣人民普遍不滿下，立法院
終於在 2004 年初步回應人民對於陽光政治的期待，制定政治獻金法。

政治獻金法之制定，雖是台灣政治資金管理法制上的一個重要里程碑
碑，然該法實行數十年來，收效仍然不如預期。在詳細檢視台灣歷年來政
治資金管理制度，政治侍從主義及以資源分配為基礎之動員競選慣行後，
本文主張：陽光乃是最好的防腐劑。一個有效的政治資金揭露制度不僅能
促進政治問責性，抑制政治侍從主義等政治慣行，更能奠定透明政府與廉潔政府之基石。隨著透明政治價值，逐漸取得當代台灣主流民意認同，一個更加廣泛而且有效率的政治資金揭露制度，將成為政治改革的最終目的！

關鍵詞：法律移植論、歷史制度主義、政治侍從主義、政治資金管理法、政治貪腐、政治透明化