

## **The Realization of Liberal and Democratic Constitutional Order in Taiwan: A Coincidence in History**

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### **ABSTRACT**

The development of Constitutionalism in the modern West is rooted in its historical social culture. For the first time, people of Taiwan were faced with the legal norms of western constitutionalism when the Qing Dynasty of China ceded the island to Japan in the late 19<sup>th</sup> century. Adhered to the traditional values of East Asia and colonialism, the Japanese rulers merely paid lip service to the establishment of a liberal and democratic government. However, intellectuals of the local Taiwanese population had begun their struggle for liberal and democratic constitutional order.

Japanese occupation ended in 1945 when the Republic of China resumed sovereignty over Taiwan. Nevertheless, the ruling class and constitutional laws bore great resemblance to those under Japanese rule. At the end of 1949, a government state emerged in Taiwan composed of political elite from Mainland China. Despite the implementation of constitutionalism, martial law was imposed. During the early rule under the Kuomintang (KMT), most government posts were taken up by Mainland Chinese. They supported the authoritarian rule under General Chiang Kai Shek and his successors and harbored the hope of recovering China from the communists. On the other hand, native Taiwanese of different ethnic origins and the aborigines were excluded from the central government and suffered political disadvantage, making it hard for them to exercise their constitutional rights.

The 1960s saw an increasing number of liberal scholars who advocated for modern constitutionalism. The opposition party composed mainly of native Taiwanese was able to spread ideas of constitutional order in the election campaign of legislators in the 1970s. With access to administration resources and aided by local factions, the KMT could always win the majority of votes and hence accepted the proposal that all members of the Legislative Yuan should be elected. With the lifting of the martial law in the 1990s, the Mainland Chinese could no longer monopolize political power but

had to compete with native Taiwanese in elections. The political balance shifted in favor of native Taiwanese who gained greater influence in the government through popular elections. At the same time, the Grand Justices began playing the role as supporters of human rights. Following their defeat in the presidential election of 2000, the KMT finally became the opposition party and saw constitutionalism as a ploy against the new government.

The realization of liberal and democratic constitutional order in Taiwan can be seen as a coincidence in history. To enable constitutionalism to take root in Taiwan require deeper reflections and further efforts. In view of the multi-ethnic society and the ambiguous national identity, the Constitution of Taiwan should allow different voices to be heard while fostering greater recognition of the constitutional order and Taiwan as a nation-state.

**Keywords:** constitutionalism, democracy, aborigines, Meiji Constitution, Government-General of Taiwan, national identity, minority rule, the Constitution of the Republic of China, ethnic groups, fundamental rights, the Grand Justices, election