

What is the significance of a constitution in a democracy? Last month the first openly lesbian judge on Germany's Federal Constitutional Court, Susanne Baer, visited Taiwan. She always carried a pocket-sized copy of the German constitution — the Basic Law for the Federal Republic of Germany — and wherever she went, whether she was giving a lecture or participating in a seminar, and whether she talked about human rights, equality or dignity, she took this little book out of her pocket and brought it to life by quoting and reading from it.

She is passionately proud of her country's constitution, but it is not a matter of blind worship. Germany's Basic Law, which was approved in 1949, has become a vital, living, moving thing thanks to constant amendments and practical implementation. This is a living constitution.

Would it even be imaginable that a citizen of the Republic of China (ROC) would carry the ROC Constitution at all times, holding it and confidently discussing it? Very unlikely. Taiwanese are unable to feel affection for this old, worthless, unchanging and dying Constitution. It is not dying because it is old, but because it is unsound and beyond help.

The ROC Constitution went into effect not long before the German Basic Law. When it was adopted, in 1946, only 18 of the 1,701 representatives came from Taiwan, which explains why the Constitution is not much loved here. The latest amendment, which took effect in 2005, in effect froze the Constitution since it set an extremely high threshold for future amendments. An amendment now requires that the initial proposal is made by one-quarter of all legislators. A quorum of three-quarters of all legislators is then required to vote on an amendment, and at least three-quarters of those legislators must approve the amendment for it to be adopted.

An alternative term for “constitutional amendment” could be “mission impossible.” The Constitution has not served its purpose. It has placed Taiwan in a difficult situation and led to frequent constitutional impasses: the legislative electoral system has resulted in a division of the country into a pan-blue north and a pan-green south, inequality between regions, a chaotic legislature monopolized by two parties and a powerful president who is never held accountable for his actions.

It also led to the “September strife” last year because the constitutional system was ignored in a power struggle within the Chinese Nationalist Party (KMT) between President Ma Ying-jeou (馬英九) and Legislative Speaker Wang Jin-pyng (王金平), as well as the controversy over the

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Written by Chen Chao-ju 陳朝樞

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cross-strait service trade agreement which set off the occupation of the Legislative Yuan by the Sunflower movement.

Furthermore, the government's only response to the KMT's rout in the Nov. 29 nine-in-one elections was a minor Cabinet reshuffle that offered nothing more than old wine in new bottles.

Many were overcome with joy at the outcome of the elections, which might give people hope that voters once again will display their resolve and create a new situation in the 2016 presidential and legislative elections.

However, the next legislative elections will still be held in accordance with the rules laid down in the current Constitution. Because of the single-member district, two-vote system and the requirement that a party receive 5 percent of the vote to get into the legislature, it is very likely that the legislature is set to continue to be dominated by two major parties enjoying the benefits of the electoral system.

This would make it all but impossible for a third force to gain ground.

Because of the presidential system, which creates a powerful president who is not held accountable for his actions, there is a strong systemic incentive for anyone who is elected president in 2016 to abuse the power given to them.

There is a strong system in place to protect presidents: They have the Constitution, which gives them the right to appoint the premier to shield them from trouble; and they hold a get out of jail card called the Presidential and Vice Presidential Election and Recall Act (總統、副總統選舉及罷免法), which has a high threshold for recalls.

The impossible must be made possible, because this dying Constitution is a restraint on the future of Taiwan. Should today's younger generations still be living under this dying Constitution when they enter middle age and perhaps even old age? Why shouldn't Taiwan's young people, or Taiwanese of any generation, be allowed to dream about planning their own constitutional future and realize that dream?

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For the future of all Taiwanese, the Constitution must be unfrozen. The 2016 presidential and legislative elections offer the best opportunity for a referendum on constitutional amendments.

According to the Constitution, a constitutional amendment passed by the legislature must be followed by a six month-period announcing the amendment to the public before a referendum can be held to complete the constitutional amendment procedure. In other words, the legislature must pass a constitutional amendment at least six months before the presidential election to be able to open the window of a constitutional future.

One day, Taiwan will be proud of its living constitution. When that day will come depends on what is done now. This is a matter of the greatest urgency.

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