

Chapter II: Democratization of the Government Structure

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Chapter II

Democratization of the Government Structure

In this Chapter, we will first analyze Taiwan's government structure under the 1947 Constitution. Then we will proceed to review the different stages of constitutional changes, focusing on the six sets of constitutional amendments from 1991 to 2000.

2.1. Introduction: Institutional Tests of Democratization

Political scientists have used the "selection of a government through an open, competitive, fully participatory, fairly administered election" as the principal institutional criterion of democratization.²² This test entails opening up of government posts, executive or legislative, for elections. However, even if we accept the test of "electoral competition" as the appropriate test of democratization, a democracy of this nature is still far from secured or consolidated. To consolidate a democracy, a state needs further institutional stability. Along with this line, we may predict that, once an authoritarian regime passes the primary test of democratization, inevitably will it face at least two major institutional issues in crafting a new democracy: (1) choice of an electoral system and (2) design of the executive-legislative relations.²³

²² Samuel Huntington, *How Countries Democratize*, 106 *Political Science Quarterly* 579, 582 (1991-92).

²³ *See, e.g.*, Arend Lijphart, *Parliamentary versus Presidential Government* (1992); Matthew Soberg Shugart & John M. Carey, *Presidents and Assemblies* (1992). Here I avoid the use of the term, *separation of powers*, for two main reasons: (1) In a parliamentary system, the executive and legislative powers are fused rather than separated; and (2) An independent judiciary power seems to have become a common institution in modern constitutions. The issue regarding judicial power is rather on how to protect its

The former issue involves design of the electoral system in a given state, such as districting, choice between the proportional representation and plurality vote (*i.e.* one-seat district-based plurality vote). The second issue is a choice of regime type (*i.e.* parliamentary, presidential or semi-presidential). It concerns the division of powers within the government itself for the purposes of protecting the liberties of the people and ensuring an efficient government. On the vertical dimension, there is another important issue regarding the division of powers: central-local relations--a choice between the federal and unitary system.²⁴

In the following sections, we will use the first test of “selecting government through an election” as the institutional test of *ignition* of democratization, and the last three criteria (electoral system, executive-legislative relations and central-local relations) as the institutional tests of *consolidation* of democratization.²⁵

2.2. Taiwan’s Government Structure under the 1947 Constitution

2.2.1. Sun Yat-sen's Theory and the National Assembly

The ROC government has a peculiar framework as provided under the 1947 Constitution. In fact, the 1947 Constitution adopted the theory of Dr. Sun Yat-sen, founding father of the ROC in 1912, which separated the central government into five branches plus a National Assembly and the Presidency. Dr. Sun called the citizen's

independence and autonomy.

²⁴ The issue of central-local relations involves the *vertical* division of powers, and the choice of regime type involves the *horizontal* division of powers. For this reason, we may rephrase this institutional choice as one of *division of powers within the government*.

²⁵ We may recall a famous claim by the French in 1791: "Any society in which the guarantee of the rights is not secured, or the separation of powers not determined, has no constitution at all. "Declaration of The Rights of Man and Citizen of 1791, art. 16, reprinted in Albert P. Blaustein & Jay A. Sigler, *Constitutions That Made History* 85 (1988).

right to vote, to recall, to initiative and to referendum altogether as "political powers," as distinguished from the powers exercised by the government, which he called "administrative powers." Under Sun's theory, the so-called "political powers" of the people shall be entrusted to a National Assembly, whose members are to be elected by the people. The National Assembly is considered the highest political organ of the state, similar to the Supreme Soviet in the former U.S.S.R. All the government branches are to be supervised by the National Assembly.

Apparently, Sun misunderstood the nature of the citizens' right to vote and others. Such rights have to be directly exercised by the people themselves so that they could be called as the "rights of the people." Once they are entrusted to and exercised by a representative institution, these functions could no longer be deemed as individual rights and would have no difference with the governmental powers. In this sense, the National Assembly is exactly part of the government, no more and no less than any other government branches. We found the distinction made by Sun between so-called "political powers" and "administrative powers" ill grounded and not convincing at all. In fact, the National Assembly was indeed a replica of the Supreme Soviet of the former U.S.S.R. Dr. Sun obviously mixed up the ideas of the western representative democracy and the Soviet "Democratic Centralism" to create his own idea of "National Assembly."

Owing to insistence by the KMT, the 1947 Constitution established the National Assembly but reduced its importance. Under the 1947 Constitution, the National Assembly was empowered to amend the Constitution, to elect and recall both the President and Vice President, and to vote on the bills of initiative and referendum. However, since 1947, the National Assembly has never exercised the powers of initiative and referendum. In practice, the actual functions of the National Assembly had been limited to electing the President and amending the Constitution. Taking all

things considered, we should agree with the Interpretation No. 76 issued by the Council of Grand Justices in the sense that the National Assembly was merely one of the three national representative bodies and not a so-called "organ of political powers" under Sun's theory.

The functions and status of the National Assembly did not change very much during the period of 1947-1990. However, the 1991-94 constitutional revisions has transformed the National Assembly into something even farther away from Sun's original idea. In 1994, the National Assembly amended the Additional Articles to allow the direct presidential election. In exchange for its loss of the most important power to elect the President, the National Assembly gave itself the power to confirm the nominees for heads and members of the Judicial, Control and Examination Yuans, as well as all the Grand Justices. This amendment pushed the National Assembly further towards becoming the second house of parliament or even the second parliament. The 1994 constitutional revision also gave rise to another debate over whether to convert the National Assembly into an upper house of the legislative branch, or, as many more strongly argued, whether to abolish the National Assembly. Finally, in 2000, the National Assembly was reduced to be an *ad hoc* institution of symbolic significance. We will discuss this later in the Chapter.

2.2.2. Head of State and the President

The 1947 Constitution provides that the head of state shall be a President. Before 1996, the President was elected by the National Assembly. As a result of the 1994 revision, Taiwan held its first ever popular, direct presidential election in March 1996.

The powers and status of the President under the Constitution has long been a subject of debate. Some argues that the 1947 Constitution itself places the President in a position similar to the head of state under a parliamentary system. However, the 1947 Constitution also gives the President substantial powers that are not merely

symbolic. For example, the Constitution provides that the President could issue emergency decrees, subject to resolutions by the Executive Yuan and legislative approval or affirmation. The President is also entrusted to mediate the disputes among different government branches (Yuans). Above all, the President has to decide whether to approve the Executive Yuan's proposal to veto a bill of legislation or budget passed by the Legislative Yuan. In short, the Constitution itself does not give a clear picture about the exact status of the President.

In practice, the debate over the presidential powers was further complicated by the Temporary Provisions and the ruling KMT's being a quasi-Leninist party. The Temporary Provisions expanded the presidential powers at the expense of the Executive Yuan. In addition, the chairman of the KMT has always been the President, wielding almost unlimited powers in real politics, with only one exception lasting for about two years.²⁶ All of these added up to make the ROC President wield even more real powers in practice than the U.S. Presidents. During the 1991-97 constitutional revisions, the dictatorial powers of the President under the Temporary Provisions were significantly reduced. However, the new revisions still gave the President certain powers to decide those policies involving national security, to nominate many high-ranking government officials (including the Premier) without counter-signatures by the Premier and to issue emergency decrees. In particular, after the direct presidential election in 1996 and the 1997 constitutional revision, it is quite obvious that the current ROC government has been a "dual-executive" or semi-presidential system, rather than any type of parliamentary system.

²⁶ When Chiang Kai-shek died in 1975, his son, Chiang Chin-Up succeeded to become the new Chairman of the KMT, while Mr. Yen China-Kan, then Vice President, succeeded to the presidency. Chiang Ching-Kuo did not become President until 1978.

2.2.3. Five Powers (Yuans) System

Another peculiar design of the 1947 Constitution is the separation of the central government into five branches or five powers. It is again the theory of Dr. Sun. Sun believed that the Western concept of separation of powers was not efficient enough. He distinguished the so-called examination power from the executive power, and the control power from the legislative power. By adding the examination and control powers to the traditional three powers, he created five different and equal branches to exercise these five powers. In the 1947 Constitution, each of the five branches is called Yuan in Chinese.

2.2.3.1. Executive Yuan

Under the 1947 Constitution, the Executive Yuan is the highest executive organ of the state (Article 53), headed by a Premier. The Premier is appointed by the President with the consent of the Legislative Yuan (Article 55). All of the cabinet members are to be appointed by the President, upon the recommendation of the Premier (Article 56). The executive powers, excluding the examination power, are vested in the Executive Yuan. In particular, each law and ordinance promulgated by the President has to be counter-signed by the Premier (Article 37). However, the Executive Yuan is held responsible to the Legislative Yuan for all its policies and proposed bills under the 1947 Constitution (Article 57). To this extent, the Executive Yuan looks somewhat like a cabinet in a parliamentary system.

Nevertheless, the 1947 Constitution does not give the Premier the power to dissolve the Legislative Yuan, nor does it allow the Legislative Yuan to cast a vote of no confidence. Instead, the 1947 Constitution adopts a quasi-veto mechanism similar to the veto system in the U.S. With the approval by the President, the Executive Yuan may ask the Legislative Yuan to reconsider (veto) its resolutions on important policies and statutory, budgetary or treaty bills, while the Legislative Yuan may override the

veto by a two-thirds majority (Article 57). In this case, the Premier has to either accept the new resolution or resign. Under this quasi-veto mechanism, the Executive Yuan may check and balance the decisions made by the majority of the Legislative Yuan with the support of one plus one-third of the Legislators. This mechanism apparently runs squarely against the first principle in any parliamentary system, which mandates “majority rules.”

Given the complicated and ambiguous relations between the President, Executive and Legislative Yuans, there have been fierce debates about the type of regime dated back to the birth of the 1947 Constitution. After the 1991-97 constitutional revisions, this issue has become even more complicated. The 1994 Additional Articles exempted from the requirement of counter-signature by the Premier the President's decrees to nominate the heads and members of the Judicial, Control and Examination Yuans as well as all the Grand Justices. The current Additional Articles also gave the President a vague but extensive decision-making power on matters regarding national security. In addition, the President was allowed to appoint the Premier without the consent of the Legislative Yuan after the 1997 constitutional revision. Plus the emergency power, it is clear that the President of Taiwan does share certain executive powers with the Premier under the Additional Articles. All of these reinforce many people's doubt about whether the Executive Yuan is still the sole, highest executive organ of the state.

2.2.3.4. Legislative Yuan

The Legislative Yuan is the highest legislative organ of the state. Its members are directly elected by the people. The Legislators are to be elected from various multiple-seats districts every three years (Articles 64 & 65) or chosen from the party-lists based on the proportional representation system (Additional Article 3). The powers of the Legislative Yuan are to decide on bills of laws, budget, treaty, declaring

war and other important matters (Article 63). Under the 1947 Constitution, the legislative powers are shared by three organs, the Legislative and Control Yuans, and the National Assembly. In principle, most of the legislative powers, except for the power to amend the Constitution, impeachment, censure and auditing, are vested in the Legislative Yuan. Above all, before 1997 the Legislative Yuan had the power to confirm the nomination of the Premier. As the Executive Yuan is held responsible to the Legislative Yuan, the Premier is obligated to attend the floor meetings of the Legislative Yuan and answer questions asked by the Legislators. In this sense, the Legislative Yuan is more like a parliament in the parliamentary system than a congress in the presidential system.

From the very beginning, the Legislative Yuan has been not the only organ wielding legislative powers. As will be further discussed below, the 1992-4 constitutional revisions once transferred many powers originally belonging to the Control Yuan to the National Assembly, while the powers of the Legislative Yuan remain about the same. Before 2000, many delegates to the National Assembly were eager to promote the idea of bicameralism and proposed to convert the National Assembly into the second house of a new parliament. On the other hand, some proposed a compromise to merge these two representative bodies into a one-house congress. Finally in April 2000, the National Assembly was reduced to be an institution of symbol, due to many complex factors. And the Legislative Yuan has become the only national representative body with real and comprehensive legislative powers. We will discuss this later in the Chapter.

2.2.3.5. Judicial Yuan

The Judicial Yuan is another strange organ in the 1947 Constitution. The Constitution provides that the Judicial Yuan shall be the highest judicial organ of the state (Article 77). However, in practice, the Judicial Yuan itself does not perform any

ad judicatory function on any case, except for constitutional interpretations done by the Grand Justices. The head of the Judicial Yuan has always been a political appointment and very often a non-lawyer. The Judicial Yuan itself is more an administrative organ in charge of court administration and appointment of judicial personnel than a full-fledged court. There has been a debate on the status and functions of the Judicial Yuan, focusing on whether to transform it into a real court, responsible for adjudication of actual cases, including civil, criminal, administrative or even constitutional cases.

Taiwan's court system is divided into two major tracks: Ordinary (Civil and Criminal) Court and Administrative Court. In addition, there are two special judicial institutions: the Commission on Discipline of Public Functionaries and the Council of Grand Justices. The Ordinary Court has three instances: District Court, Appellate Court and Supreme Court. Despite a contrary judicial interpretation made by the Council of Grand Justices in 1960 (Interpretation No. 86), both the district courts and appellate courts were placed under the administrative supervision of the Ministry of Justice, which in terms was under the Executive Yuan, until 1979. Only after 1979 had all of the three instances of Ordinary Courts been placed under the supervision of the Judicial Yuan. The Supreme Administrative Court is a recent product, established in 2000 and acting as the final instance of administrative law cases. Under it, there are four High Administrative Courts around Taiwan. The Commission on Discipline of Public Functionaries is the only legal institution that has jurisdiction in this regard. In early 1996, the Council of Grand Justices handed down the Interpretation No. 396, mandating this Commission should be transformed into a court.²⁷

The Council of Grand Justices is Taiwan's equivalent of constitutional court. It

²⁷ Judicial Yuan Interpretation No. 396 of February 2, 1996.

consists of seventeen Grand Justices, appointed by the President with the consent of the Legislative Yuan now.²⁸ This Council is responsible for deciding constitutional cases and unifying interpretation of laws and regulations in case of any dispute or inconsistency between two government branches. Its function as guardian of the Constitution will be further discussed below.

2.2.3.6. Examination Yuan

Both the Examination and Control Yuans have been part of the unique story about the 1947 Constitution. Dr. Sun promoted these two institutions to demonstrate his creativity. However, the past practice clearly proved he was wrong, not to mention his theoretical defects. Under the 1947 Constitution, the Examination Yuan is the highest examination organ of the state, in charge of examination, employment, service rating, salaries, promotion, transfer, retirement, etc. (Article 83). Therefore the Examination Yuan is not only responsible for holding civil service examinations but all the personnel administration. Originally, the members of the Examination were to be appointed by the President with the consent of the Control Yuan (Article 84). After the 1992 Additional Articles, these members were to be confirmed by the National Assembly. In 2000, the new Additional Articles transferred the confirmation power from the National Assembly to the Legislative Yuan.

Though many agree the civil service examinations shall be held independently from political intervention, very few would further agree that the powers of examination policy and personnel administration should or could be separated from the executive power in general, and attributed to another government branch, equal to

²⁸ Before the 1994 Additional Articles, appointments of the Grand Justices were to be approved by the Control Yuan. From 1994 to 2000, it was the National Assembly that has the power to confirm the nomination of the Grand Justices.

the executive branch. In fact, an independent committee under the Executive branch would be sufficient for carrying out all the functions envisioned by Dr. Sun. That was exactly what happened in practice after the 1947 Constitution took effect. In 1967, the Temporary Provisions authorized the President to establish the Central Personnel Administration under the Executive Yuan. Since then, a lion share of the powers regarding personnel administration was transferred to this Administration. As a result, the Examination Yuan was limited to taking charge of national examinations mainly. Though the Temporary Provisions were abolished in 1991, the ROC government still maintained the Central Personnel Administration up to now. In 1994, the Additional Articles went further to limit the powers of the Examination Yuan to matters concerning examinations, registration, tenure, death pecuniary and retirement of civil service. As to the matters regarding appointment, discharge, service rating, salaries, promotion and transfer, and commendation, the Examination Yuan is only responsible for drafting legislation and issuing regulations concerned. Implementation and enforcement of such polices are now vested in the Central Personnel Administration.

2.2.3.7. Control Yuan

Like the Examination Yuan, the Control Yuan is one of the twin tumors appended to the central government of Taiwan. In the 1947 Constitution, the Control Yuan was designed to exercise the powers of consent, impeachment, censure and auditing (Article 90). In order to carry out its various functions, the Control Yuan could also exercise the power of investigation, too. Accordingly, the Control Yuan used to be a representative body, whose members were to be elected by the provincial assemblies (Article 91). As far as the powers of the Control Yuan are concerned, it is really unlikely to expect an impeachment power, separated from the legislative and budgetary powers, could effectively check and balance the executive or judicial branches. Above all, the Control Yuan alone cannot deliberate and decide on its

impeachment charges. If the President or Vice President is impeached, it is up to the National Assembly to recall him or her. If any other government official, such as the Premier, is impeached, the Control Yuan has to ask the Commission on Discipline of Public Functionaries to decide on such impeachment charges (Article 98-100).

In 1992, the Additional Articles made a dramatic change in the status and powers of the Control Yuan. Under the new constitutional revisions, the members of the Control Yuan are no longer elected by the people. Instead, they are to be appointed by the President with the consent of the National Assembly.²⁹ Consequently, the Control Yuan is no longer a national representative body. Its confirmation power was first transferred to the National Assembly in 1992, and then to the Legislative Yuan after the 2000 constitutional revision. However, the Control Yuan still wields the powers of impeachment, auditing and investigation (Interpretation No. 325). As a result, the Control Yuan is now regarded as a "quasi-judicial" organ, emphasizing its impeachment (quasi-prosecutorial) function.³⁰ Constitutionally, it is really strange to allow a non-legislative organ to exercise the impeachment and investigative power, which in any case should be part of the legislative power.

As a result of the 1991-2000 constitutional revisions, the original five-power government of Taiwan has obviously been transformed into a system of three-big-plus-two-small powers (Yuans).

²⁹ After the 2000 constitutional revision, the members of the Control Yuan are to be confirmed by the Legislative Yuan.

³⁰ It should be a mistake to call the present Control Yuan a "quasi-judicial" organ. Since the impeachment made by the Control Yuan is more like the criminal charge initiated by the prosecutors, it would be more appropriate to call the Control Yuan a "quasi-prosecutorial" organ.

2.2.4. Judicial Review

Judicial review does exist under the 1947 Constitution, but in a peculiar form. The 1947 Constitution vested the power to review unconstitutional laws and regulations in the Judicial Yuan. In practice, it has been the Council of Grand Justices that exercises the judicial review power. However, the Council of Grand Justices is not a court itself, nor is it obligated to hold any public hearings before deciding. The Council proceeds like a committee, usually conducting closed-door secret meetings. It only issues opinions (called "Interpretations") on abstract legal questions ("abstract review"). Its jurisdiction extends to all issues involving interpretation of the Constitution, conflicts in constitutional interpretation among different government branches, and review of constitutionality of laws, regulations or court precedents applicable to a case. However, it cannot adjudicate any real case. All the cases must be presented to the Council in a format of abstract legal issues. In this sense, the Council functions much like a constitutional lawyer for the government.

Petitions to the Council of Grand Justices could be filed either by the government or the private. Only the highest organ of the state, such as the five Yuans or the local governments could file the petition. The private may file petitions only after they have exhausted all the legal remedies. In recent years, cases filed via the latter process have amounted to nearly 90% of the total cases received by the Council yearly. This phenomenon, on one hand, demonstrates the increasing judicial activism in protecting individual rights. On the other hand, it also arouses suspicion by ordinary courts that the Council is acting like the fourth instance of court, a Super-Supreme Court above the Supreme Court and Supreme Administrative Court.

In addition to judicial review, the Council of Grand Justices has another important function: to unify conflicting opinions on laws and regulations among different government branches. In this regard, the Council is indeed on the slipping

slope of becoming a court of the fourth instance above the ordinary courts, as many criticized. For this reason, the Council in recent years has intentionally refrained from issuing the said “unifying interpretations” and focused on its judicial review function.

2.2.5. Local Government

The local government as provided in the 1947 Constitution is basically a unitary system with some colors of federalism. As the 1947 Constitution was written for a huge continental state, China, and not for a small island state, Taiwan, many of its original designs seem unfit for the present and future Taiwan.

First of all, the 1947 Constitution provides for three-tier governments: national, provincial and county (Hsien) governments. Plus one more tier of township under the Hsien in practice, there are altogether four tiers of administration in Taiwan. In terms of efficiency, such a complicated, tier-upon-tier structure has been in many ways a waste of time, manpower and resources. Above all, since the territorial jurisdiction of Taiwan Province and that of the central government highly overlaps with each other (over 90%), many have cast serious doubts on the legitimacy of Taiwan Provincial Government's continuous existence.

Given its unitary fundamentals, the 1947 Constitution does contain many federal elements in terms of division of powers between the central and local governments. Like many federal constitutions, the 1947 Constitution guarantees the local self-government. Both provinces and Hsiens are allowed to adopt their own "Self-Government Charter," an equivalent of local constitution, through a convention process. Besides, the 1947 Constitution provides certain legislative and executive functions be exercised mainly by either provincial or Hsien governments, respectively. Nevertheless, the local governments could exercise no judicial powers. All the judicial powers belong to the central government. Further, none of the local laws or regulations may violate the Constitution, national laws or regulations, unless they are

within the jurisdiction reserved for the local governments by the Constitution.

Although the 1947 Constitution expressly guarantees the local self-government, it was not fully implemented until 1994. From 1949 to early 1990s, the ROC government not only suspended the national legislative elections but also the local elections, particularly that of provincial governor. In practice, Taiwan began holding limited local elections since early 1950s. As far as city and county executives and councilmen were concerned, their elections were held pursuant to an administrative order, which could have been canceled or changed at any time by the Executive Yuan. At the provincial level, only the Provincial Assembly was subject to regular elections since the 1950s. It was in fact part of the strategy of the ROC/KMT government to foster its alien and minority rule on Taiwan. While the ROC government did open up the local governments for electoral competition, it nevertheless excluded the Taiwanese elite from participating in the national politics. It was only until 1992 that did the National Assembly amend the Additional Articles to mandate direct, popular elections of both executive heads and councilmen at the provincial and Hsien governments. Then the Legislative Yuan passed the enabling laws to implement such elections. Accordingly, the first direct election of Taiwan Provincial Governor as well as mayor elections of Taipei and Kaoshiung Municipalities were held in December 1994. Thereafter, local self-government in Taiwan was finally constitutionalized in practice.

2.3. Major Democratization Issues and Proposals

2.3.1. Major Issues

From the late 1980s to 2000, Taiwan's democratization has involved the following major institutional issues: (1) re-election of the national legislature, *i.e.*, the National Assembly, Legislative Yuan and Control Yuan, (2) the method of presidential

elections: from indirect to direct popular election, (3) the executive-legislative relations: choice among the presidential, parliamentary and semi-presidential systems, (4) re-organization of the legislative branch: status of the National Assembly and its relations with the Legislative Yuan, (5) judicial review: choice between a centralized and decentralized systems, (6) choice between five-power or three-power government, *i.e.*, the status of the Examination Yuan and Control Yuan, and (7) the central-local relations: implementation of local self-government. Clearly, the first two issues belong to the first institutional test for ignition of democratization.³¹ The remaining issues involve the choice of regime type and division of powers, vertically and horizontally. Among the above issues, the first two election issues actually dominated the reform process throughout 1994. Before June 1990, the focus of debate was on the re-election of the national legislature. After this issue was settled, the fire of debate soon spread to the issue concerning the method of presidential elections.

Since 1986, debate on the issue of re-election of the national legislature has centered on the pace of reform. As will be discussed below, this issue was resolved by an Interpretation of the Council of Grand Justices in June 1990 and the enactment of new constitutional amendments in 1991. In December 1991, the government held the first general election for the National Assembly and then in December 1992 for the Legislative Yuan. Thereafter the ROC government established its democratic legitimacy on Taiwan for the first time since its takeover in 1945.

³¹ In Taiwan, change in the method of presidential elections is also an issue of ignition of democratization, because the President has possessed real powers either under the TP or Additional Articles. For example, the former President Lee Teng-hui was first elected by the pre-reform National Assembly in March 1990. He was once attacked for lacking political legitimacy as compared to the post-reform national legislature after 1992. It was only until President Lee won a landslide victory in the March 1996 presidential election, did Lee's legitimacy and mandates become consolidated.

Soon after the issue of re-election of the national legislature was settled, the DPP moved on to raise the issue of direct presidential elections³² in an attempt to create political momentum before the National Affairs Conference (NAC) in June-July 1990. Considering its implications for direct democracy and Taiwanization,³³ direct presidential elections has triggered the following institutional impact on the constitution: (1) If the President is elected by a popular vote, the National Assembly would lose its most important power under the constitution.³⁴ In this case, the argument that the institution of the National Assembly should be abolished would become more pervasive.³⁵ (2) A directly elected President would trigger an institutional change in executive-legislative relations that in turn would lead to massive changes in government structure.³⁶ Politically, what the DPP had in mind was the inspiring precedent of the Philippines in 1986. For an opposition party, a direct presidential election is very often the shortest path to the throne of power. Since the DPP first raised this issue at the National Affairs Conference in June 1990, it has

³² Under Article 27, Section 1, Item 1 of 1947 ROC Constitution, the ROC President is to be elected by the National Assembly.

³³ As the population of native Taiwanese accounts for about 85% of total population in Taiwan, direct presidential elections would probably ensure the native Taiwanese's hold to this position.

³⁴ The remaining powers of the National Assembly included those (1) to recall the President and Vice President, (2) to revise the constitution, (3) to vote by referendum on bills of constitutional amendments proposed by the Legislative Yuan, and (4) to change the state territory by resolutions. 1947 ROC Const. Art. 4 & Art. 27, Section 1. All the powers above were rarely exercised. Politically and constitutionally, electing the President and Vice President was the most significant power of the National Assembly.

³⁵ The DPP has long advocating abolition of the National Assembly as such.

³⁶ The DPP and many constitutional scholars have long advocating adoption of three-power system to replace the five-power one under the 1947 ROC Constitution. Also, the DPP has been promoting a massive reform of the entire government structure.

become the DPP's leading campaign platform regarding constitutional reform in early 1990s. All the DPP's other reform proposals were related to this issue.

Both the re-election of the national legislature and change in the method of electing the President required changes in the constitutional text. Consequently, the debate on reform agenda went further to include the choice between revisions and re-writing of the ROC Constitution.

2.3.2. Proposals on Major Democratization Issues

In early 1990s, there have been quite a number of reform proposals made by the opposition, academics³⁷ and social organizations, besides the government's package. The DPP alone has proposed two different draft constitutions before 1994. The first one, *Min-chu-ta-hsien-chang (Democratic Magna Carta)*,³⁸ was published on June 20, 1990, several days before the National Affairs Conference. Obviously, it was released in time as a whole package of party proposals for the purpose of the National Affairs Conference. The major differences between the DMC and the 1947 ROC Constitution³⁹ can be summarized as follows:

(1) The DMC was written as a new Constitution to replace the 1947 ROC Constitution completely,⁴⁰ though it did not bear the title of *Constitution*. It

³⁷ Many proposals made by the academics were valuable in terms of their insights or creativity. See, e.g., Tzu-yi Lin, Tzung-li Hsu & Jiunn-rong Yeh, Proposal for Constitutional Reform (1992); National Policy Research Center, Reform Bill for the ROC Constitution (June 23, 1990). For other proposals, see, e.g., 151 Newsletter of the Taipei Bar Association 1-18, 29-41 (Apr. 5, 1992); 152 Newsletter of the Taipei Bar Association 18-26 (May 5, 1992).

³⁸ For the Chinese text of *Min-chu-ta-hsien-chang (Democratic Magna Carta)* (hereinafter "DMC"), see YUNG-KUANG KAO, HSIU-HSIEN SHOU-TS'E (CONSTITUTIONAL REVISION HANDBOOK) 3-4 (1991), at 93-106.

³⁹ When this draft was released, the KMT has not yet a comprehensive proposal for constitutional revision. I, therefore, use the 1947 ROC Constitution for comparison.

⁴⁰ The Premise of DMC said its purpose was to abolish the TP and freeze the 1947 ROC

consciously avoided use of the term *Constitution* in the hope of minimizing the sentimental opposition against any attempt to write a new constitution.⁴¹

(2) On government structure, the DMC proposed a framework of three-power government, divided into the executive, legislative and judicial branches. The executive power was shared by the President, directly elected by a popular vote,⁴² and the Premier of the Executive Yuan, appointed by the President. (DMC art. 60) Congress shall exercise the legislative powers, and the courts the judicial power. The executive-legislative relations under DMC were quite vague, somehow similar to the actual operation of the ROC government after the 1991 constitution revision. Under the DMC, the President shall chair the cabinet meeting of the Executive Yuan (art. 39), but many of his orders on domestic affairs were to be counter-signed by the Premier and ministers concerned (art. 50). The President possessed emergency powers (art. 47), power to dissolve the Congress (art. 40), power on defense affairs as commander-in-chief (art. 42), power to submit certain congressional bills for national referendum (art. 48) and power to appoint the Premier and ministers (art. 60). However, the President was not held responsible to the Congress. The Executive Yuan was responsible to Congress for daily operation of government policies including examination and personnel affairs. Congress may veto the bills or policies introduced by the Executive Yuan and cast a vote of no confidence. The judicial branch consisted of a Constitutional Court, Administrative Court, and ordinary courts. The details were

Constitution.

⁴¹ On Taiwan-China relations, the DMC implicitly regarded the PRC/China as a separate state by calling for reciprocal respect for each other's sovereignty. The DMC regarded Taiwan as an existing *de jure* state and did not call for self-determination. It did so without touching the sensitive issue of changing state title.

⁴² DMC art. 53.

left for statutory specification. The overall government structure looked somewhat similar to the French semi-presidential system after 1962.⁴³

Nevertheless, the DMC was a short-lived political document. Strategically, the DPP participants and its friends at the National Affairs Conference chose the issue of direct presidential elections as their prime target. After reaching a vague compromise with its KMT counterparts, the DPP soon advanced to campaign for earlier implementation of the direct presidential election. Not long after the National Affairs Conference, the DMC was even forgotten by the DPP itself. Just one year later, the DPP proposed another draft constitution, *T'ai-wan hsien-fa ts'ao-an* (*Draft Constitution of Taiwan*), as its new proposal.⁴⁴

2.4. Six Constitutional Revisions From 1991 to 2000

Taiwan's democratic reform began in the year of 1990, when the Council of Grand Justices ruled that the three national legislative bodies be re-elected by the end of 1991. At the heart of the reform process were a series of constitutional revisions. From April 1991 to April 2000, the ROC Constitution has gone through six times of revisions. All of the six constitutional revisions were conducted by the National

⁴³ On the French semi-presidential system, *see* generally Maurice Duverger, *A New political System Model: Semi-Presidential Government*, 8 *European Journal of Political Research* 165 (1980). Duverger defined a semi-presidential system as a government that has the following three characteristics: (1) Its president is elected by a popular vote, (2) The president possesses quite considerable powers and (3) The prime minister and its cabinet possess executive powers, and they can be removed only if the parliament so wants.

⁴⁴ This draft was first proposed and adopted by an unofficial "People's Constitutional Convention," consisting of 130 delegates, on August 25-26, 1991. On August 28, 1991, the Central Standing Committee of the DPP formally adopted this draft as the party platform for the upcoming December 1991 National Assembly election. Thereafter, the DPP's position on constitutional reform has been based on this draft, with some modifications.

Assembly alone, which had been overwhelmingly dominated by KMT representatives, particularly before 1997.

In April 1991, the National Assembly first abolished the Temporary Provisions (TP) and added ten new amendments, called Additional Articles 1-10, to the 1947 ROC Constitution. In May 1992, the National Assembly passed another eight Additional Articles 11-18. In July 1994, it adopted a new set of ten Additional Articles, which replaced the said 18 Additional Articles altogether.⁴⁵ In 1997, the National Assembly revised the Constitution again and reduced the whole set of Additional Articles to 11 articles. In 1999 and 2000, the National Assembly amended the Constitution based on the 1997 Additional Articles.

2.4.1. 1991 Constitutional Revision

As regards to the government structure, the 1991 constitutional revision made the following changes:

2.4.1.1. Abolition of Temporary Provisions and Termination of the Period of MSCR

After the student demonstration in March 1990 and the NAC in June-July, the government (KMT) and the opposition (DPP) finally reached two tacit agreements on constitutional reform: the TP should be abolished as soon as possible, and the Period of Mobilization and Suppression of Communist Rebellion (Period of MSCR) be terminated accordingly. On May 1, 1991, the then President Lee Teng-Hui promulgated the 1991 Additional Articles 1-10, which replaced the TP. At the same

⁴⁵ Many of the ten Additional Articles passed in 1994 were copied from the amendments passed in 1991 or 1992. They were simply renumbered and consolidated. In order to avoid any possible confusion, I will use the following citation format to refer to each Additional Article from 1991 to 1994: "1991 ROC Const. Additional Art. xx," "1992 ROC Const. Additional Art. xx" and "1994 ROC Const. Additional Art. xx."

time he announced the Period of MSCR would be terminated within one year. Such a move had multi-fold consequences. Internationally, it signaled Taiwan's unilateral ending of the state of war with the PRC/China. By so doing, the ROC/KMT government formally renounced the use of force to achieve the goal of unification with China. Domestically, it ended the state of emergency and brought the state back to a normal situation. All the laws and regulations enacted during the Period of MSCR, unless revised, were due to expire on July 31, 1992,⁴⁶ about fifteen months later. As to democratic reform, its direct consequence was the reduction of emergency power possessed by the President under the TP.

2.4.1.2. Re-Election of the Three National Legislative Bodies

The largest constitutional change mandated in the 1991 constitutional revision was the electoral reform of the three national legislative bodies. After Interpretation No. 261 of the Council of Grand Justices paved the way for compulsory retirement of all life members by the end of 1991, the next step was to provide a new constitutional arrangement for holding general elections. The 1991 Additional Articles 1-5 provided for re-election of all the members of the Second National Assembly, Legislative Yuan and Control Yuan.⁴⁷ The core of reform was as follows:

⁴⁶ 1991 ROC Const. Additional Art. 8.

⁴⁷ In fact, re-election of the members of the Second Control Yuan never took place. Before such an election was due to be held by the end of January 1993, in May 1992, the National Assembly passed the 1992 ROC Constitutional Additional Articles 11-18, which altered the status of the Control Yuan from being a representative body to a "quasi-judicial" organ. Consequently, the members of the Control Yuan were no longer subject to (indirect) elections as provided in the ROC Constitution article 91 and 1991 ROC Constitutional Additional Arts. 3 & 4. Instead, they became government officials, nominated by the President and subject to approval by the National Assembly. 1992 ROC Const. Additional Art. 15 (=1994 ROC Const. Additional Art. 6). After 2000, the nominations of the Member of the Control Yuan are to be confirmed by the Legislative

(1) The members of these legislative bodies are divided into three different categories: district-based representatives, representatives of overseas nationals and representatives-at-large representing the entire country.⁴⁸

(2) The first category of representatives is elected directly by a popular vote. Only the residing citizens of the ROC/Taiwan are entitled to vote and elect such representatives.⁴⁹

(3) Both the representatives of overseas nationals and representatives-at-large are to be elected by way of party-list proportional representation (PR).⁵⁰ The party-list proportional electoral system was introduced into Taiwan for the first time in history.⁵¹

Yuan. 2000 ROC Const. Additional Art. 7, Section 2.

⁴⁸ The third category of representatives-at-large was a requirement by Interpretation No. 261 of the Council of Grand Justices. Its original intent as planned by the KMT government was to dilute the Taiwanization effect as a result of re-election of the national legislature. At first, some hardliners within the KMT once proposed to call the representatives-at-large as “Mainland Representatives.” However, such an idea was defeated for lack of legitimacy.

⁴⁹ There is no “absentee vote” system in Taiwan. Each eligible voter had to reside in his or her household district for at least six months. In July 1994, the minimal residency requirement was reduced to four months. Law Governing Election and Recall of the Public Offices (hereinafter “Election Law”) §15, Paragraph 1.

⁵⁰ Allocation of these seats is based on the ratio of total votes received by each political party. For the formula of allocating these seats, *see* Election Law § 65 Paragraph 3. For a comparative study of the proportional representation system, *see, e.g.*, Larry Diamond & Marc F. Plattner *The Global Resurgence of Democracy* 146-190 (1993); Bernard Grofman & Arend Lijphart, *Electoral Laws and Their Political Consequences* 113-179 (1986); Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* 150-168 (1984).

⁵¹ It was also an enhancement of the status of political parties under the ROC Constitution, because they are the only political associations allowed to nominate candidates for both categories of members-at-large and overseas representatives. Under the one-vote system,

(4) Election of both representatives of overseas nationals and representatives-at-large is based on the election outcome of the first category--district-based members.⁵²

The immediate effects of the above changes were twofold: democratization and Taiwanization of the national legislature. Under this constitutional amendment, all three categories of representatives are to be elected by the Taiwanese constituencies only. Legally and politically, they are completely Taiwan-elected and Taiwan-based representatives. They do represent, and only represent, the constituencies of the ROC/Taiwan, and no longer represent (even claim to represent) China in any sense. This change marked a milestone for Taiwanization of the national legislative bodies in the ROC/Taiwan. It was a watershed for democratic reform, too.

2.4.1.3. Reform of the Presidency

(1) Term Limit on Office of the President and Vice President

One of the major effects of abolishing the TP was that both offices of President and Vice President were again subject to the two-term limit as provided in Article 47 of the ROC Constitution. This removed the possibility of a life president like Chiang Kai-shek.

(2) Emergency Powers of the President

votes cast for independent candidates would be ignored in deciding the seats of representatives-at-large and overseas representatives.

⁵² In most countries where the PR system is adopted, they usually allow the voters to cast two separate ballots: one for the district candidates and the other for the political party. This is the so-called "two-votes" system. In Taiwan, the ROC/KMT government adopted a strange "one-vote" system to prevent the voters from casting their votes for one KMT candidate and the DPP at the same time. For criticism of this one-vote system, *see, e.g.*, Chung Y. Hsu & Parris Chang, *The 1991 National Assembly Election in Taiwan* 37-38 (1992); Shelley Rigger, *The Impact of Institutional Reform on Electoral Behavior in Taiwan* 18-19 (unpublished manuscript, 1994).

Article 1 of the TP allowed the President to initiate emergency decrees without being subject to the procedural restrictions prescribed in Articles 39 or 43 of the ROC Constitution.⁵³ The 1991 Additional Article 7 still reserved such emergency powers for the President while imposing certain procedural restrictions. Likewise, the President still needs a resolution by the Executive Yuan Council in order to take necessary emergency measures. However, such measures are to be presented to the Legislative Yuan for approval. If the Legislative Yuan withholds its approval, such measures are deemed to become invalid immediately. Under this new constitutional arrangement, the President possesses the power to initiate emergency measures, when he deems necessary. The Executive Yuan is to formulate the President's decision and turn it into a concrete policy or enforceable program. The Legislative Yuan is to confirm or revoke the President's initiative. This emergency power is shared among these three offices.

(3) Constitutionalization of Three Extra-Constitutional Institutions

The TP granted the President tremendous powers on policy-making beyond any institutional checks. Under the TP, the President established the National Security Council (NSC) and National Security Bureau. Through the NSC, the President acquired a significant portion of decision-making power institutionally. The Premier was placed under the President as his subordinate, rather than the highest executive post of the state as prescribed in the Article 53 of the ROC Constitution. In addition, the President was also authorized to "make adjustments in the administrative and personal organs of the central government, as well as their organizations" (Article 5 of the TP). On the basis of this provision, the President ordered establishment of the

⁵³ Article 39 of the ROC Constitution provides for the power to declare martial law decrees and Article 43 the power to issue emergency orders.

Personnel Affairs Bureau (PAB) under the Executive Yuan.⁵⁴ This PAB has been responsible for all the civil service at both national and local government levels. It really took away a lion's share of the authorities delegated to the Examination Yuan by the Constitution.

The 1991 constitutional revision did not abolish these three extra-constitutional institutions created by the TP. Instead, it formally constitutionalized them provided that their organic regulations were to be replaced by laws before December 31, 1993.⁵⁵ The 1991 Additional Article 9, § 1 expressly reaffirmed the President's power to "decide major policy guidelines concerning national security" by "establishing the National Security Council and its subsidiary organ, National Security Bureau." With a slight change, the power to set up the PAB was switched from the President to the Executive Yuan.⁵⁶

2.4.1.4. Transitional Arrangements

The 1991 constitutional revision made the following two transitional arrangements:

⁵⁴ Hsin-cheng-yuan jen-shih hsin-cheng-chu chu-chih chang-ch'eng (Organization Rules of the Personnel Affairs Bureau of the Executive Yuan), Jul. 27, 1967.

⁵⁵ 1991 ROC Const. Additional Art. 9. Before 1991, all these three institutions were created by the Presidential decrees under the TP, rather than by the laws passed by the Legislative Yuan.

⁵⁶ 1991 ROC Const. Additional Art. 9, § 2. As the 1991 constitutional revision was carried out by the pre-reform National Assembly, the KMT was able to pass the whole package of its proposal without encountering much difficulty. The only compromise made by the KMT was the legislation deadline for these three institutions. The KMT made this compromise as a perfunctory gesture to the demands of the DPP, which walked out of assembly and waged a massive street demonstration during the session of the National Assembly on April 19, 1991. *See, e.g.*, Christian Science Monitor, April 22, 1991, at 4; Economist, April 20, 1991, at 34; Financial Times, April 19, 1991, § 1, p. 4.

(1) Special Term of and Mandate for the Second National Assembly

The term of the National Assemblymen was six years under the ROC Constitution (Article 28, Paragraph 1). The 1991 Additional Article 5, Paragraph 1 provided a special term for the second National Assembly: a little more than four years.⁵⁷ This special office term was created for the second National Assembly along with a special constitutional mandate: further constitutional revisions. Constitutionally, the National Assembly is the only institution that wields the ultimate authority to revise the constitution.⁵⁸ The 1991 Additional Article 6 expressly prescribed that the President shall convoke an extraordinary session of the Second National Assembly within three months after the election of the Second National Assembly, *i.e.*, by March 18, 1992, to amend the constitution. Under this Article, further constitutional revisions became a constitutional mandate and obligation for the National Assembly to fulfill.⁵⁹

(2) Mandate for Legislative Reform

Article 8 of the 1991 Additional Articles required that all the laws applicable only during the Period of MSCR should be revised before July 31, 1992. After that

⁵⁷ 1991 ROC Const. Additional Art. 5, Section 1 provided that the term of the Second National Assembly shall begin from January 1, 1992, and end as soon as the third National Assembly is convened in 1996 by the President according to Article 29 of the ROC Constitution. The Third National Assembly election was held in March 1996, at the same as the first direct presidential election.

⁵⁸ Under the ROC Constitution Article 27, Section 1, Item 3 and Article 174, all the constitutional amendments are to be passed and adopted by the National Assembly. The Legislative Yuan only has the power to initiate a constitutional amendment proposal subject to approval by the National Assembly (Art. 174, Section 2).

⁵⁹ As the 1991 constitutional revision was done by the pre-reform National Assembly, the ROC/KMT government intentionally scaled down the scope of 1991 constitutional revision to avoid any public antagonists.

time, all such unrevised laws would become invalid.

2.4.1.5. Comments on the 1991 Constitutional Revision

As to democratization, the 1991 constitutional revision ended the state of emergency and brought the state back to a normal civilian rule.⁶⁰ It also initiated the democratization process by opening up the government for electoral participation. As to other institutional designs for a new democracy, the 1991 constitutional revision did not go very far. It reduced the once all-powerful presidency to a less powerful status. However, the institutional relations between the President and the Premier remained obscure and floating, highly contingent on their personal friendship, ideological convergence, etc. The major effect of the above changes on the executive-legislative relations was that Taiwan was finally pulled back from a dictatorial presidential system but stayed at a mixed and confusing juncture, which was somewhere between a presidential and parliamentary system.

2.4.2. 1992 Constitutional Revision

The 1992 constitutional revision was proclaimed by the KMT government as "the second-stage and substantive" constitutional revision. It triggered many significant changes in government institutions, surrounding the issue of direct presidential elections.

2.4.2.1. Election Reform: Method of the Presidential Election and other Changes

(1) Change in the Method of Presidential Elections

Since 1947, the ROC President has been elected by the National Assembly. At the National Affairs Conference of 1990, both the KMT and DPP had already come

⁶⁰ Another important aspect of the 1991 constitutional revision was that it initiated a new "two-Chinas" policy on Taiwan-China relations.

close to agreeing that the President shall be elected by the entire constituencies, while stopping short of stating that it shall be a "direct, popular election." Later, the fire of debate spread into the internal power circle of the KMT as the KMT itself became divided into two camps on the issue: one for direct elections and the other for "delegated direct election." The second camp supported transformation of the National Assembly into an Electoral College.⁶¹ The KMT remained divided on this issue even after the 1992 constitutional revision was finished, though the camp for direct elections had gradually gained the upper hand.⁶² Therefore the 1992 Additional Article 12 only provided:

"Effective from the 1996 election for the ninth-term President and Vice President, both the President and Vice President shall be elected by the entire electorate in the free area of the ROC.

The electoral method for the aforementioned election shall be formulated in the Additional Articles to the Constitution at an extraordinary session of the National Assembly to be convoked by the President before May 20, 1995."...

A final solution to this issue then had to wait for two years until the third-phase constitutional revision in 1994. Nevertheless, the 1992 Additional Article 12 already mandated a change in the method of the presidential elections by May 20, 1995. That meant that the the-existing indirect presidential election by the National Assembly had

⁶¹ In fact, the comparison between the transformed National Assembly under the model of "delegated direct election" and the US Electoral College is indeed misleading. The U.S. Electoral College is an *ad hoc* assembly, which meets only to cast the votes. After voting, it is dismissed. The National Assembly still has other powers, *e.g.*, amending the constitution, and is an instituted constitutional organ.

⁶² For a brief analysis of the debate within the KMT on this issue, *see* BING-NAN LEE, HSIEN-CHENG KAI-KE YU KUO-MIN TA-HUI (CONSTITUTIONAL REFORM AND NATIONAL ASSEMBLY) 58-61 (1994).

to be changed. This was an obligation.⁶³ This obligation started the train of presidential election system towards the direction of direct, popular elections, while it did not announce where to stop.⁶⁴

(2) Term of Office

A related change regarding the presidency was its term of office. The term of President was set for six years in the ROC Constitution (Article 47). The 1992 Additional Article 12 Paragraph 3 shortened that to four years. This change was initiated as part of a reform package regarding the terms of all the elected offices at the national level: President, Vice President, Legislators, and National Assembly Delegates. Its purpose was to reduce the frequency of national elections.⁶⁵ The term of President, Vice President, and National Assemblypersons was shortened from six to four years (1992 Additional Articles 11 § 4 & 12 § 3). However, the National Assembly refused to extend the term of the Legislators from three to four years due to a personal fight and institutional tension between these two national representative

⁶³ See accord Yung-Chi'n Su, Tsou-hsiang hsien-cheng shih-tai (Moving Towards Constitutionalism) 390-393 (1994). But see Nigel Nien-chu Lee, Hsien-fa tseng-hsiu t'iao-wen ti-12-t'iao ti-1-hsiang, ti-2-hsiang chih hsing-chih yu chieh-shih (Nature and Interpretation of the Constitutional Additional Article 12 Sections 1 and 2), 7 Chung-shan she-hui k'e-hsueh chi-t'an (Journal of Sunology) 25-34 (Jun. 1992) (arguing that Art. 12 Section 1 was only a policy guideline and not a constitutional mandate for changing the method of presidential elections).

⁶⁴ In comparative constitutional law, this article seemed quite unusual in that it was a "sunrise clause." It required a change in the future and set a deadline for making that change, while leaving vacuum an important constitutional institution--method of presidential elections.

⁶⁵ The new terms for the President, National Assembly and Legislative Yuan were planned as four years. Had this reform package been passed, the elections for the President, Vice President, National Assemblypersons and Legislators would be held at the same time every four years.

bodies.⁶⁶ This was the only "No" position taken by the National Assembly in response to the KMT in the 1992 constitutional revision.⁶⁷

2.4.2.2. Changes in Government Institutions--Separation of Powers

(1) National Assembly: Expansion of Powers

The real power winner of the 1992 constitutional revision was the National Assembly. Under the 1947 ROC Constitution, the National Assembly had only limited powers. Originally, the framers intended it mainly as a machine for presidential elections, similar to but more than the U.S. Electoral College. Two of its most distinguished powers were to elect the President (every six years) and to amend the constitution (supposedly not often at all). It had no say on the operation of the government, nor did it have any legislative or budgetary powers. Its *raison d'etre* was to serve the needs, both symbolic and practical, of the representative democracy for China, given China's size, population and political culture.⁶⁸

⁶⁶ The personal fight originated from a KMT legislator's commenting on the whole National Assembly and condemning one KMT representative as "trash." In return, the cursed KMT representative denounced his opponent as "cockroach." This quarrel led to more verbal fights. Institutionally, many in the Legislative Yuan have been blaming the National Assembly for abusing its powers and feared that the National Assembly might emerge to be a powerful national legislative body at its expense. *See generally* Lee, *supra* note 41, at 21-22.

⁶⁷ The KMT proposed nine amendments to be added to the ten Additional Articles of 1991. Only this article involving the Legislative Yuan was rejected. That was why the 1992 ROC Const. Additional Articles contained 18 articles altogether.

⁶⁸ National Assembly was also an ideological legacy of Dr. Sun Yet-San. As influenced by the idea and institution of the Supreme Soviet practiced in the former U.S.S.R. in the 1920s, Sun believed that the institution of National Assembly as such was a better choice than either the British Parliament or the U.S. Congress. His fantasy went further to imagine National Assembly as a perfect agent of direct democracy and advocated that the National Assembly should have the *rights* to vote, recall, initiative and referendum. The flaws in Sun's theories have been so obvious: if the people's rights to political participation are to be

In the 1992 Additional Articles, the booty captured by the National Assembly included:

a. Confirmation Power

The 1992 Additional Article 11, Paragraph 1 provided that the following personnel were to be nominated by the President, subject to confirmation by the National Assembly:

(a) The president and vice president of the Judicial Yuan,⁶⁹ as well as all the Grand Justices,

(b) The president and vice president of the Examination Yuan and all its members, and

(c) The total 29 members of the Control Yuan, including its president and vice president.

Before the 1992 constitutional revision, those personnel from both the Judicial Yuan and Examination Yuan were nominated by the President subject to confirmation by the Control Yuan, which acted as one of the three national legislative bodies (ROC Constitution Articles 79 & 84).⁷⁰ The members of the Control Yuan were to be elected by provincial assemblies and municipal councils. Obviously, expansion of the National Assembly's power was done at the expense of the Control Yuan. This change

exercised by an elected body, how could it be a "direct democracy"? In fact, the National Assembly has been a duplicate of the Supreme Soviet under the theory of "Democratic Centralism."

⁶⁹ Both offices of the president and vice president of the Judicial Yuan are political appointments that have been held by politicians rather than lawyers. They are not Grand Justices, but the president sits as chairman, with no vote on constitutional interpretations, at the meetings of the Grand Justices.

⁷⁰ For change in organization and composition of the Control Yuan, see below.

gave the National Assembly a real power with teeth.⁷¹

b. Annual Meetings

Before 1992, the National Assembly was supposed to meet regularly only once every six years in order to elect the President and Vice President, except when convened to amend the constitution at an extraordinary meeting. The 1992 Additional Article 11, Paragraph 3, Item 2 enabled and required the National Assembly to be convened by the President at least once annually, if the National Assembly had not convened for over a year. This new provision paved the way for the National Assembly to transform itself from an "*ad hoc*" institution to a regular governmental institution.

c. Advisory Power to the President

Before 1992, the National Assembly had no say at all in the government decision-making process. It could not even raise any questions about policy or legislation.⁷² The 1992 Additional Article 11, § 3, Item 1 further expanded the powers

⁷¹ Though, confirmation power is a passive power in that the National Assembly can only either reject or approve the nominations by the President and cannot put its own candidates onto those posts.

⁷² The National Assembly' powers to vote on the bills of initiative and referendum were handicapped by the ROC Constitution article 27, Section 2, which provided that: "With regard to the rights of initiative and referendum, except as provided in Items 3 and 4 of the preceding section, the National Assembly shall make regulations pertaining thereto and put into effect, after the above-mentioned two political rights shall have been exercised in more than one half of the *hsiens* (counties) and municipalities of the whole country." This procedural restriction was later relaxed in Article 8 of the Temporary Provisions in 1966: "During the Period of Mobilization and Suppression of Communist Rebellion, the President may, when he deems necessary, convoke an extraordinary session of the National Assembly to discuss initiative or referendum measures." Later, the National Assembly passed a special regulation on the procedures of exercising these two *rights*. Kuo-min ta-hui chuang-chih fu-chueh liang-ch'uan hsin-shih pan-fa (Act on

of the National Assembly by giving it an advisory power to the President. The said clause provided that "*when the National Assembly convenes, it may hear a report on the state of the nation by the President, discuss national affairs and offer its advice to the President.*" Under this clause, the President may be invited to deliver a speech before the National Assembly annually. Furthermore, the National Assembly representatives may discuss and exchange their opinions on national affairs in a general and free style, question the President if they like and offer their suggestions, advice or criticism to the President. The President, however, is not obligated to answer any questions raised by these deputies, nor is he constitutionally or legally obligated to follow any advice he receives.

(2) Adjustment of the Five-Power Government Structure

Whether to change the five-power government structure has been one of the focuses of constitutional revision. Throughout the reform process, the ROC/KMT government has been insisting on maintaining the existing five-power and five-branch government structure in order to minimize the scope of change. However, the 1992 constitutional revision effectively transformed the five-equal-powers into a system of three-big-and-two-small-powers government. Both the Control Yuan and Examination Yuan were transformed into a less powerful status.

a. Re-Characterization of the Control Yuan

Before the 1992 constitutional revision, the Control Yuan had been one of the

Exercise of the Two Rights of Initiative and Referendum by the National Assembly), Aug. 8, 1966. In practice, the National Assembly never exercised its powers of either initiative or referendum. In 1991, Article 8 of the Temporary Provisions was abolished together with other articles. It was not re-adopted into the Additional Articles later. The original restriction as set in Article 27, § 2 of the ROC Constitution was therefore re-enforced until 2000.

three legislative bodies. It had four major powers: consent, impeachment, censure and auditing.⁷³ Its members were elected indirectly by the provincial assemblies and municipal councils.⁷⁴ In 1992, the Control Yuan was re-defined as a quasi-judicial organ and no longer a representative body. Its consent power was transferred to the National Assembly.⁷⁵ The idea was to transform the Control Yuan into an Ombudsman-like constitutional institution in charge of investigating the dereliction of duties or violation of laws by government officials. As a result, the number of its members was fixed at 29. All its members were no longer subject to indirect elections by the local congresses. Instead, they were to be nominated by the President and confirmed by the National Assembly.⁷⁶ Since then, the Control Yuan has no longer been a national legislative body.⁷⁷ The procedural requirements for initiating an impeachment also became more complicated and harder.⁷⁸ This was part of a package

⁷³ 1947 ROC Const. Art. 90.

⁷⁴ The 1991 ROC Const. Additional Art. 3 & Art. 5, § 3 provided for re-election of the Second Control Yuan by January 31, 1993. As a result of the 1992 constitutional revision, the election for the Second Control Yuan never took place.

⁷⁵ 1992 ROC Const. Additional Art. 11, § 1 & Art. 15 § 1.

⁷⁶ 1992 ROC Const. Additional Art. 15, § 2.

⁷⁷ See Judicial Yuan Interpretation No. 325 of Jul. 23, 1993 (holding that the Control Yuan is no longer a national representative body). Therefore the members of the Control Yuan also lost their immunity privileges under the speech or debate clause (1947 ROC Const. art. 101) and privileges against arrests or detainment without permission of the Control Yuan except in case of *flagrante delicto* (1947 ROC Const. art. 102). 1992 ROC Const. Additional Art. 15, § 7. However, the said Interpretation held that the Control Yuan still possessed the same powers of auditing, impeachment, censure and investigation as it did before 1992, despite change in its status.

⁷⁸ To impeach either the President or Vice President, the Control Yuan now needs a proposal by more than one half of all its members, which is to be passed by more than two-thirds of all such members. Then its impeachment motion will be submitted to the National Assembly for approval. 1992 ROC Const. Additional Art. 15, § 5. Under Article 100 of the

reform, which expanded the powers of the President and the National Assembly at the expense of the Control Yuan.

b. Diminishment of the Examination Yuan

The institution of the Examination Yuan was another legacy of Dr. Sun Yet-san, adopted and modified from the Chinese tradition. His original idea was to institute an effective and independent civil service, free from political spoilage or patronage. The KMT wrote his idea into the 1947 ROC Constitution by establishing a separate Examination Yuan. Before soon even the believers of Dr. Sun found out the practical difficulty of implementing his ideas: How could an executive branch function well without any control over the employment, supervision, promotion, or transfer of its employees? As early as 1966, the ROC government had to set up an extra-constitutional institution of Personnel Affairs Bureau (PAB) under the Executive Yuan, which took away much of the powers of the Examination Yuan.⁷⁹ After the 1991 Additional Articles further constitutionalized the PAB, a change in the status and powers of the Examination Yuan seemed inevitable. The 1992 constitutional revision continued this trend and deprived the Examination Yuan of the following powers: *enforcement* of the laws governing employment, discharge, performance evaluation (merits), scale of salaries, promotion, transfer, commendation and award for civil

1947 ROC Constitution, the number for proposing such an impeachment motion used to be just one-fourth of the whole body of the Control Yuan, to be passed by a simple majority. As to impeachment of other public functionaries, the Control Yuan now needs at least two member's proposal, to be passed by a committee of no less than nine members. 1992 ROC Const. Additional Art. 15, § 3 & 4. Before 1992, any member could initiate such an impeachment. 1947 ROC Const. arts. 98 & 99.

⁷⁹ Temporary Provisions art. 5 of Mar. 19, 1966, as amended Mar. 23, 1972. The PAB was formally established by a presidential decree according to the said article on September 16, 1967.

servants. As a result, the Examination Yuan only retained powers on (1) all examination-related matters, (2) all matters related to qualification screening, security of tenure, pecuniary aid in case of death and retirement of civil servants, and (3) *drafting* of the laws governing the said powers already transferred to the PAB.⁸⁰ Such a change practically eliminated the Examination Yuan's control over the civil servants in service, and reduced it to an institution similar to an independent "Civil Service Exams Commission."⁸¹

As both the Control Yuan and Examination Yuan were reduced to two institutions whose powers were politically and constitutionally weaker than the other three branches, the old five-power government has therefore been transformed to a three-big-and-two-small-powers government.⁸² The ROC government now only keeps

⁸⁰ 1992 ROC Const. Additional Art. 14 § 1. It is quite confusing that how drafting and enforcement of the laws governing the said powers transferred to the PAB could be separated this way and still function well.

⁸¹ Other changes regarding the Examination Yuan included: (1) the president, vice president and members of the Examination Yuan are no longer approved by the Control Yuan. They were to be confirmed by the National Assembly, like all the Grand Justices. 1992 ROC Const. Additional Art. 14, § 2 and (2) Abolition of the Provincial Quota System in civil service exams as provided in 1947 ROC Const. Art. 85. 1992 ROC Const. Additional Art. 14, § 3. Under the ROC Constitution, the civil service exams were to be held at each province with different quota for each province. This system has been impractical since the ROC government has only ruled one Taiwan Province and two offshore islands under the old Fukien Province according to the 1947 ROC Const. However, the quota system produced a huge disproportionate impact on the civil service exams, in favor of the mainlanders and their descendants. The pass rate of the mainlander examinees could be as high as 186 times that of the native Taiwanese examinees. *See* Cheng-huan Wang, *T'ai-wan te cheng-chih chuan-hsing yu fan-tui yun-tung (Taiwan's Political Transition and Opposition Movement)* 2(1) T'AI-WAN HSE-HUI YEN-CHIU CHI-K'AN (TAIWAN: A RADICAL QUARTERLY IN SOCIAL STUDIES) 71, 87.

⁸² In Interpretation No. 325, the Council of Grand Justices maintained that the ROC government was still a government of five-powers and five-branches, formally. This

a symbolic form of having "five" branches that has lost its substance in terms of separation of powers.

(3) Changes in the Judicial Branch

There has been no significant change in the judicial branch. The debate on desirability of a decentralized judicial review system like the U.S. one remained intellectually inspiring but not politically significant.⁸³ Within the judicial system, the influence of the traditional civil law system is still prevalent, which favors a centralized judicial review system exercised by a constitutional court. Throughout the reform process, the judicial branch has never been a hot topic of debate.⁸⁴ The only changes in the judicial branch were:⁸⁵ (1) The president, vice president and all the

Interpretation also held that the Legislative Yuan exercise a limited power of investigation to demand original documents from other government branches, subject to the same restrictions as applied to its exercise of the legislative power.

⁸³ Many U.S. trained lawyers advocated a U.S. style judicial review system, but they were not able to create or seize political momentum. *See, e.g.*, TZU-YI LIN, TZUNG-LI HSU & JUANN-RONG YEH, HSIEN-KAI CHIEN-YEN (PROPOSAL FOR CONSTITUTIONAL REFORM) (1992). This issue will be further discussed in next Chapter.

⁸⁴ *See generally* Lee, *supra* note 41, at 197-212. About one half (572) of the sitting judges in Taiwan once petitioned to the National Assembly to write the following three matters into the amendments: (1) Judicial autonomy: Administration of the courts shall be decided and managed by the entire body of judges at each court; (2) Independent judicial budget: The annual budgetary bill for the judicial branch shall be prepared by the Judicial Yuan itself, instead of the Executive Yuan; and (3) The president and vice president of the Judicial Yuan shall not be political appointments but elected from among the Grand Justices. Lien-he wan-pao (United Evening News), May 25, 1994, at 1 & 3. All these proposals failed.

⁸⁵ The reasons that there were so few reforms done regarding the judicial branch included: (1) The KMT government has always been trying to minimize the scope of reform; (2) In its opinions, many judicial reforms could be achieved through legislative reform; and (3) Even the opposition has not been serious about judicial reform. *See* Lee, *supra* note 41, at 210.

Grand Justices were to be nominated by the President and confirmed by the National Assembly, instead of by the Control Yuan (1992 Additional Article 13, § 1); and (2) A special Constitutional Tribunal, composed of all the Grand Justices, was established to adjudicate cases involving dissolution of unconstitutional political parties.⁸⁶

The real, positive change was brought about by the legislative reform and the decisions of the judicial branch itself. In 1993, the Legislative Yuan revised the "*Law of the Council of Grand Justices of the Judicial Yuan*"⁸⁷ and made the following changes:

a. *Who can apply for interpretations?*

Before 1993, both the national and local governments, including each branch of the national government, may petition to the Grand Justices if they have doubts or disputes with other government institutions about exercise of their constitutional authorities, or suspect a law or regulation is unconstitutional.⁸⁸ After 1993, the new

⁸⁶ This is the only adjudicative function and jurisdiction of the Grand Justices. 1992 ROC Const. Additional Art. 13, § 2. Under the 1992 ROC Const. Additional Art. 13, § 3, "a political party shall be unconstitutional if its goals or activities jeopardize the existence of the Republic of China or free, democratic constitutional order." This provision was modeled after article 21, § 2 of German Basic Law (*Grundgesetz*), which reads "Parties which, by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall decide on the question of unconstitutionality." Taiwanese version of such a system originally was aimed at the independence speech or activities of the DPP. It was the *constitutionalization* of the three conditions as set first by CCK and then incorporated into the National Security Law and other laws.

⁸⁷ The title of this law was changed to "Law on Adjudication of Cases by the Council of Grand Justices of the Judicial Yuan."

⁸⁸ In this capacity, the Council of Grand Justices acts like a legal counsel to the government. No real case or controversy is required and no adversaries, either. Such a function is similar to the "abstract judicial review" function as exercised by the Federal Constitutional Court

law now further allows (a) more than one-third of the total members of the Legislative Yuan,⁸⁹ and (b) the Supreme Court and Administrative Court⁹⁰ to file a petition. Besides, under the old law, any citizens may petition for interpretations if they have exhausted all judicial remedies and still suspect the laws or regulations applied by the courts unconstitutional.⁹¹ The 1993 new law further allowed legal entities (*e.g.*, corporations) and political parties to apply in the same capacity as the said citizens.⁹²

b. *How* are Interpretations made?

In the past, the Council of Grand Justices needed a super-majority of more than three-fourths of Grand Justices present and concurrent in order to pass any Interpretation on a constitutional case.⁹³ This procedural restriction posed a severe

of Germany. *See* Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany* 15 (1989).

⁸⁹ Law on Adjudication of Cases by the Council of Grand Justices of the Judicial Yuan, Feb. 3, 1993, § 5, cl. 1 (3) (hereinafter "Council Law of 1993"). This new provision was modeled after German Basic Law article 93, § 1, clause 2. (allowing one-third of the *Bundestag* members to bring a case or controversy before the Federal Constitutional Court). This provision may have the effect of *constitutionalizing* many potential political issues. Also, it may induce the opposition party to pursue justice through the judicial means by bringing a test case before the Council of Grand Justices.

⁹⁰ Council Law of 1993, § 5, cl. 2. This is another example of German law's legacy. Federal Constitutional Court Act § 63-67 (Germany). It is called "Concrete judicial review" in Germany. *See* Kommers, *supra* note 74, at 14-15. On January 20, 1995, the Council of Grand Justices made its Interpretation No. 371, which allowed each judge at each level of courts to apply for an interpretation if he or she suspected the laws or regulations in dispute inconsistent with the Constitution. This Interpretation made the Taiwan's judicial review system look more like a German baby.

⁹¹ Law of the Council of Grand Justices of the Judicial Yuan, Jul. 21, 1958, § 4, cl. 1 (hereinafter "Council Law of 1958").

⁹² Council Law of 1993, § 5, cl. 1 (2).

⁹³ *Ssu-fa-yuan chu-chih-fa* (Organic Law of the Judicial Yuan), Mar. 31, 1947, as amended Jun. 24, 1948, Dec. 13, 1957, Jun. 29, 1980, § 6; Council Law of 1958, § 13, para. 1.

constraint on the Council of Grand Justices to function normally, not to mention its political impotence.⁹⁴ Under the 1993 new law, the super-majority requirement was relaxed to two-thirds.⁹⁵ Since then, the Council of Grand Justices has produced more constitutional interpretations than ever.⁹⁶

The legislative reform in 1993 has given the Council of Grand Justices a freer hand in performing its constitutional duty as guardian of the constitution.

2.4.2.3. Changes in Government Institutions--Central-Local Relations

Before reform, the problems with the central-local relations included: (1) implementation of local self-government according to the Constitution,⁹⁷ (2)

⁹⁴ See, e.g., Lawrence Liu, *Judicial Review and Emerging Constitutionalism: The Uneasy Case for the Republic of China on Taiwan*, 39 AM. J. COMP. L. 509, 522 (1991); Mendel, *Judicial Power & Illusion: The Republic of China's Council of Grand Justices and Constitutional Interpretation*, 2(1) PACIFIC RIM L. & POL'Y J. 157, 174-75 (Win. 1993).

⁹⁵ The said third-fourths requirement was deleted from the *Organic Law of the Judicial Yuan*. The new quorum of two-thirds is now provided in Council Law of 1993, § 14.

⁹⁶ From 1948 to September 1985, the Council of Grand Justices had made only 199 Interpretations. Of them, only 67 were constitutional interpretations (less than two constitutional interpretations per year). The other 132 were unity interpretations, which required only a simple majority of the Grand Justices to pass an Interpretation. Council Law of 1958, § 13, para. 2. From October 1985 to February 1993, before the said restriction was relaxed, there were 113 Interpretations. Of them, there were 99 constitutional interpretations made during 88 months (about one constitutional Interpretation per month). From February 1993 to October 1994, under the new law, the Council made 54 Interpretations, of which 50 were constitutional interpretations (about 2.5 Interpretations per month). The negative impact of such procedural restrictions was apparent. Please see the next Chapter for more detailed discussion on the Council of Grand Justices.

⁹⁷ It included two issues: (1) direct elections of Taiwan Governor and (2) legislation of local elections and local self-government. Under article 113, § 1, clause 2 of the 1947 ROC Constitution, the Governor shall be elected by a popular vote. Since 1947, such elections were never held. In addition, all the local elections held since 1950 were done under

simplification of the government levels and (3) redistribution of powers between the national and local governments.⁹⁸ The first problem was a result of non-enforcement

authorization of the national government--Executive Yuan. In theory, the national government may have cancelled the local elections whenever it wanted. Such a practice and all such administrative regulations were even declared constitutional by the Council of Grand Justices in 1990. Interpretation No. 259 of the Council of Grand Justices, Apr. 13, 1990 (holding that the administrative regulations governing local self-government in the special municipalities were valid but urging the Legislative Yuan to pass a new law to regulate it). As to the distribution of powers between the national and local governments, the national government has controlled tightly the personnel, finance, police, education and practically all other matters. Constitutionally, there was no local self-government at all. For example, article 109, § 7 and article 110, § 6 of the 1947 ROC Constitution provide that both province and county may adopt their own tax regulations to collect local taxes. A national law provided that such local laws on local taxes must be authorized by a *General Act of Local Taxes*, passed by the Legislative Yuan. Until 1991, there had been no such enabling law enacted by the Legislative Yuan. Therefore all the taxes have been decided, imposed, and distributed by the national government alone. The Council of Grand Justices held the entire practice constitutional. Interpretation No. 277 of the Council of Grand Justices, Mar. 22, 1991 (holding the above practice constitutional but urging the Legislative Yuan to pass the law and make a fair distribution of tax revenues between the national and local governments).

⁹⁸ There are four levels of administration in Taiwan: national, provincial, city/county and town. The desirability of both province and town as autonomous local government under the constitution, if implemented, has long been doubted. Given the size of Taiwan and the socioeconomic changes during the past fifty years, division of powers between the national and local governments deserves a re-evaluation today. For example, all the national, provincial and county governments share the powers on education, public health, police, and etc. 1947 ROC Const. art. 108, § 1, cls. 4, 17 & 18, art. 109, § 1, cls. 1 & 10 and art. 110, § 1, cls. 1 & 9. How these powers should be divided in practice would pose a thorny question for the Legislative Yuan (1947 ROC Const. art. 111). In addition, should the local governments be granted certain exclusive powers to reinforce their self-government? Or, should the constitution give the national government more powers to make it stronger and more efficient, given the size and needs of Taiwan, as compared to a large country like the U.S. or China?

of the constitution, while the latter two were caused by the developmental gap between the constitution and the society--transplant of the ROC Constitution from China to Taiwan and the later development. In 1992, the Constitution was amended to the following effects:

(1) On implementation of local self-government, the 1992 Additional Articles provided for a *legalized* local self-government, which was to be regulated by a special statute passed by the Legislative Yuan.⁹⁹ This law shall provide that (a) governor and county executives should be elected directly by a popular vote; (b) Provincial Assembly and county councils should be elected by a popular vote. Both institutions are to exercise the local legislative powers, respectively; (c) the relations between the province and counties shall be regulated by this special statute; and (d) self-government of province shall be supervised by the Executive Yuan and the counties by the provincial government. Based on this amendment, the Legislative

⁹⁹ Under the 1947 ROC Constitution, the Legislative Yuan shall and can only adopt a law that provides for a general guideline for local self-government, *Sheng-hsien tzu-chih t'ung-tse (General Act for Self-Government of Provinces and Counties)*. 1947 ROC Const. art. 108, § 1, cl. 1. Then each province and county have to convene their Constitutional Convention, respectively, to draft a Provincial or County Self-Government Act as their fundamental law--constitution. The details of local self-government are reserved for local legislation and may vary from province to province. The 1992 ROC Constitution Additional Articles by-passed such constitutional requirements and place the local self-government in Taiwan under the legislative control of the national government. By so doing, it avoided the constitution-making process at each province or county as mandated by the 1947 ROC Constitution. A constitution-making process, even if it were carried out at the level of Taiwan province or county only, could have produced a snowballing effect on the national constitutional institutions. Before 1992, the ROC government once attempted to adopt a special law applicable to Taiwan only for the purpose of local self-government. The Council of Grand Justices declared this attempt as lacking constitutional authority. Judicial Yuan Interpretation No. 260 of April. 19, 1990.

Yuan in July 1994 passed *Sheng-hsien tzu-chih fa (Act for Self-Government of Province and Counties)*.¹⁰⁰ Based on the new laws, in December 1994 the ROC government held the first direct elections for Taiwan Governor and for both mayors of Taipei and Kaohsiung cities, respectively.¹⁰¹

(2) On simplification of government levels and redistribution of powers between the national and local governments, the 1992 Additional Articles delegated both matters to the Legislative Yuan. In turn, the Legislative Yuan simply maintained the existing institutions as provided in the 1947 ROC Constitution or practiced in Taiwan during the past forty years.¹⁰²

Briefly, the 1992 Additional Articles maintained and strengthened the unitary nature of local self-government by placing it under a special national legislation. Reform did introduce direct, popular elections for Governor and two municipality mayors. Beyond this, it simply *legalized* the past practice by passing a new law to replace the old administrative regulations.

¹⁰⁰ The Legislative Yuan also passed another special statute for two special municipalities, Taipei and Kaohsiung Cities. *Chih-hsia-shih tzu-chih fa (Act for Self-Government of Special Municipalities)*, July 29, 1994. These two acts are basically the same in terms of the institutional framework for local self-government.

¹⁰¹ In the 1997 Additional Articles, the elections of Taiwan Governor and Provincial Assemblymen were suspended for good. The Legislative Yuan therefore passed a new law, “Local Autonomy Act,” to replace both “Act for Self-Government of Province and Counties” and the “Act for Self-Government of Special Municipalities.”

¹⁰² In fact, the Legislative Yuan even set forth restrictions not provided in the 1947 ROC Constitution. For example, one deputy Governor or mayor and four chief officers in charge of auditing, personnel, police and government ethics are to be appointed according to proper national laws, which provide for specific qualifications. These requirements are written to restrict the power of the directly elected Governor and Mayors. *Act for Self-Government of Province and Counties* § 35, cl. 3. *Act for Self-Government of Special Municipalities* § 30, cl. 3.

2.4.4. 1994 Constitutional Revision: Direct Presidential Election

The 1992 constitutional revision left unresolved the question of presidential elections. Two years later, another extraordinary session of the National Assembly was convened to revise the constitution again, mainly to settle this issue. In addition, the 1994 constitutional revision also revised the last two amendments of 1991 (articles 1-10) and 1992 (articles 11-18). All transitional arrangements (*e.g.*, mandatory expiration of emergency laws by July 1992) were deleted and all the amendments, new or old, were reorganized and renumbered. As a result, the 1994 constitutional revision produced ten amendments to replace the 18 amendments as adopted in 1991 and 1992. On substantive matters, the 1994 constitutional revision made the following changes:

2.4.4.1. Change in Election System: Direct Presidential Elections

As stipulated in the 1992 Additional Article 12, § 1, beginning from the ninth-term presidential election in 1996, both the President and Vice President shall be elected by the entire electorate in Taiwan. It mandated a change in the method of presidential elections. As this amendment's legislative history revealed, the controversy centered on whether the President should be elected by the Taiwanese themselves through a popular vote or by the National Assembly acting as an electoral college. The final solution became clear after the 1992 Legislators elections, where most candidates (KMT or DPP) and voters overwhelmingly advocated or supported a direct, popular presidential election.¹⁰³ As a result, the National Assembly

¹⁰³ Another factor was that a large portion of the main opponents of direct presidential elections within the KMT was swept out after 1993. The non-mainstream faction (mainlanders-conservatives coalition) of the KMT was forced out of power within the KMT after their chief leader, and then the first native Taiwanese Premier, Lien Chan, replaced Premier Hau Pei-Tsun in early 1993. *New York Times*, Feb. 11, 1993, at A11.

encountered fewer troubles in changing the method of presidential elections. The 1994 Additional Article 2, § 1 provides for a new presidential election method as follows:¹⁰⁴

(1) Election Method: Direct, Popular Election

Beginning from the ninth-term presidential election in 1996, both the President and Vice President shall be elected "*directly*" (*emphasis added*) by the entire electorate in the free area of the ROC.¹⁰⁵

Before the convention of the 1994 constitutional amendment, the camp in favor of direct presidential elections had already dominated the National Assembly.

¹⁰⁴ Besides the change in method of electing the President, the 1994 Additional Articles also provided for a new recall system. Under the 1994 Additional Article 2, § 9, the President and Vice President may be recalled by a motion proposed by one-fourth of the total members of the National Assembly, approved by more than two-thirds of its members, and passed by a majority of votes cast by more than one half of all the eligible voters in Taiwan. It seems odd that the motion to recall the President can only be proposed by the National Assembly, given that the President is to be elected by a popular vote. In fact, such a system of recall sounds ideal but unrealistic in practice. For a detailed discussion of the recall device and its experiences in the U.S. (at the state level), see Thomas E. Cronin, *Direct Democracy* 125-156 (1989).

¹⁰⁵ This change triggered a two-fold consequence: democratization and Taiwanization. By opening up the office of the President for direct and popular elections, Taiwan crossed a significant threshold of democratization. The scheduled 1996 presidential election will open the last major government office of significance for electoral competition and give Taiwanese a new right to political participation. By subjecting the presidency to popular elections instead of indirect elections by the National Assembly, it will undoubtedly enhance the accountability of the President towards the general public and institutionalize a regular political check from the bottom up on the President. Particularly, after the 1991-94 constitutional revisions, the President now possesses substantial powers, which are not subject to effective checks and balances. Institution of popular presidential elections becomes the only democratic check on the ROC President now. As far as Taiwanization is concerned, on one hand, direct elections of the President will probably ensure the native Taiwanese' hold to this office, given that the population of native

(2) Plurality Vote

A second issue regarding the presidential election reform concerned the choice between a plurality vote and a majority vote with a possible run-off election. The 1994 Additional Article 2, § 1 adopts the system of a simply plurality vote.¹⁰⁶

2.4.4.2. Changes in Government Institutions

(1) Further Expansion of the Presidential Powers¹⁰⁷

The 1994 Additional Articles gave the President an independent nomination power on all the non-elected offices at the national government, and removes the counter-signature power by the Premier on such presidential nominations.

Under Article 37 of the ROC constitution, any laws promulgated or orders issued by the President required the counter-signatures of the Premier or the concerned ministers of the Executive Yuan. This article highlighted the status of the Executive Yuan as the highest administrative organ of the state, and the parliamentary character of the 1947 ROC Constitution.¹⁰⁸ The 1994 Additional Article 2, § 2 exempted from

Taiwanese accounts for about 85% of the total population of Taiwan. It will be the first time in Taiwan's history that Taiwanese have a chance to choose their own state leader. On the other hand, direct elections of the President will further diminish the ROC government's emotional attachment to China. For the ROC/KMT regime, a President elected directly by the Taiwanese electorate will conclude the last chapter of transformation of the ROC/KMT government from an emigrant to indigenous regime, at a formal sense.

¹⁰⁶ Among those countries whose president is elected by a popular vote, France adopts the majority vote system (with a run-off). South Korea, the Philippines and most of such countries adopt the plurality vote system.

¹⁰⁷ I am saying the presidential powers are expanded in the sense that the 1994 Additional Articles gave the President more powers than the 1947 ROC Constitution did.

¹⁰⁸ Though, the government system under the 1947 ROC Constitution did not fit all the elements of a parliamentary system. For example, the Legislative Yuan cannot cast a vote of no confidence to remove the Premier. The Premier cannot call for dissolution of the

the counter-signature of the Premier all the presidential orders that nominate or remove those personnel who should be confirmed by either the National Assembly or Legislative Yuan under the said article 37 of the Constitution. Such personnel include the Premier himself, Auditor General (both to be confirmed by the Legislative Yuan), president and vice president of the Judicial Yuan, Grand Justices, president, vice president and members of both the Control and Examination Yuans (to be confirmed by the National Assembly then). This change gives the President an independent power to choose any candidate as Premier. Furthermore, the President now can also remove the incumbent Premier at will whenever he considers necessary, even though the appointment of a new Premier is still subject to confirmation by the Legislative Yuan.¹⁰⁹ Though the President is not directly in charge of cabinet meetings and policy-making of the Executive Yuan institutionally, the stake of the office of Premier as well as of the entire cabinet is really in the hands of the President.¹¹⁰

Legislative Yuan. On the contrary, article 57 provides for a weak form of executive-veto and legislative-override similar to the U.S. system. Also, the President's role in nominating the Premier, the president and all Grand Justices of the Judicial Yuan, and the president of Examination Yuan and its members are somewhat dubious. The practice, in fact, indicated an opposite interpretation--presidential system, under the party domination of the KMT.

¹⁰⁹ The 1994 Additional Article 2, § 3 provided that the presidential decree to remove the Premier can only take effect when a new Premier is confirmed by the Legislative Yuan. This provision is modeled after the so-called "constructive vote of no confidence" as provided in article 67, § 1 of German Basic Law, which reads: "The Bundestag can express its lack of confidence in the Federal Chancellor only by electing a successor with the majority of its members and by requesting the Federal President to dismiss the Federal Chancellor"... The purpose is to avoid a possible government vacuum if the candidate nominated by the President is defeated by the Legislative Yuan. However, this provision was never used and soon repealed in 1997.

¹¹⁰ With this independent nomination power, Taiwan's current system would not fit all the three elements of the semi-presidential system as defined by Professor Duverger.

The 1994 Additional Article 2, § 2 also gave the President the power to nominate the heads of the Judicial, Control and Examination Yuans, as well as other members in these three government branches (including all the Grand Justices). All such nominations are also exempted from the requirement of counter-signature by the Premier. If the Presidential nomination power of the Premier indicates a lion's share of executive power for President, the nomination power of the other personnel further gives the President the power of checks-and-balances on those government branches (especially on the judicial branch).

(2) Transformation of the National Assembly

In the 1992 constitutional revision, the National Assembly acquired several material powers, including confirmation power over some government nominations. After the 1994 constitutional revision, the National Assembly lost its power to elect and recall the President and Vice President. In exchange, it acquired the following new status or powers: (1) an institutionalized speaker and (2) legislative power over procedural matters related to exercise of its own powers. Before 1994, the National Assembly had no instituted speaker at all. Each time it convened, it elected up to 85 members from among all its members to form an *ad hoc* "Chairmen Committee" to chair its meetings on a rotated basis. Its rules of procedure were to be regulated by a law passed the Legislative Yuan.¹¹¹ These two minor changes only confirmed transformation of the National Assembly towards a full-fledged legislative body.¹¹²

Duverger, *supra* note 22. According to Duverger's definition, the President shall have no independent power to remove the Premier. The office of the Premier is up to the parliament.

¹¹¹ 1947 ROC Const. art. 34. In fact, the Legislative Yuan delegated this power to the National Assembly itself via the *Organic Law of the National Assembly*, § 13, which was passed by the Legislative Yuan.

¹¹² A new article was added to restrain the increase of pay to the representatives of both the

2.4.5. The 1997 Constitutional Revision: Transition to a Semi-Presidential System

2.4.5.1. The 1996 Presidential and National Assembly Elections

In March 1996, Taiwan held its first ever direct, popular presidential election. Lee Teng-Hui, the KMT-nominated incumbent, won the presidency by a landslide 54% of popular votes.¹¹³ However, the KMT, for the first time in history, failed to secure the three-fourths supermajority of seat share at the National Assembly, which is needed for adopting any constitutional amendment. As a result, soon after Lee took office, he initiated a series of talks among the then three major political parties, leading to the National Development Conference in December 1996.

2.4.5.2. The National Development Conference in December 1996

From December 23rd to 28th 1996, all the three major political parties (KMT, DPP, and New Party) participated in the National Development Conference. During this Conference, both the KMT and DPP seemed to develop a friendly working relation. The two parties finally reached consensus on many critical issues, including transition to a semi-presidential system, transformation of the autonomous Taiwan Provincial Government into a cabinet-level department under the Central Government, and suspension of five different levels of elections.¹¹⁴ As a result, the New Party finally

National Assembly and Legislative Yuan. 1994 ROC Const. Additional Article 7 reads: "The pay and remuneration of the members of the National Assembly and Legislative Yuan shall be regulated by law. Except for the annual adjustment for all government offices, any such law as increasing the pay and remuneration of the said two institutions only shall not go into effect until their next term." This was the Taiwanese version of U.S. Constitutional Amendment XXVII.

¹¹³ There were four "teams" running for the 1996 presidential elections. The DPP-nominated Peng Ming-Min/Frank Hsieh received a second highest vote of 23.9%, followed by Lin Yang-Kang/Hau Pao-Tsun 15% and Chen Lu-An/Wang Ching-Fung 11%.

¹¹⁴ These five elections are elections of the Taiwan Governor, members of the Taiwan Provincial Assembly, Town Executives, Town Councilpersons and Village Executives.

boycotted the Conference. However, the KMT and DPP were still able to iron out the difficulties and reach significant agreements. To many's surprise, James Soong, the then incumbent Governor of Taiwan Province and a close affiliate to the President Lee, initiated a high profile attack at the consensus regarding the suspension of the Taiwan Provincial Government. Soong's resentment continued to accumulate and finally led to his breakaway from the KMT before the 1996 presidential election.

2.4.5.3. The 1997 Constitutional Amendments and Semi-Presidential System

In July 1997, the National Assembly adopted a new set of Additional Articles, mainly based upon the agreements reached between the KMT and DPP at the National Development Conference. Either on the face or in effect, the 1997 Additional Articles brought about the largest ever changes in the government framework, vertically and horizontally. The 1997 constitutional revision formally established a semi-presidential system in Taiwan.

Article 3 of the 1997 Additional Articles allowed the President to appoint the Premier without being subject to the confirmation by the Legislative Yuan. In balance, Article 4, Paragraph 2, Item 3 gave the Legislative Yuan the power to vote on a bill of no confidence on the Premiership and its entire cabinet. If such a bill of no confidence I supported by a majority of the total members, then the President may either choose to dissolve the Legislative Yuan or appoint another Premier.¹¹⁵ Though such a change,

¹¹⁵ Article 4, Section 2, Item 3 of the 1997 Additional Articles provides "3. With the signatures of more than one-third of the total number of Legislative Yuan members, the Legislative Yuan may propose a no-confidence vote against the president of the Executive Yuan. Seventy-two hours after the no-confidence motion is made, an open-ballot vote shall be taken within 48 hours. Should more than one-half of the total number of Legislative Yuan members approve the motion, the president of the Executive Yuan shall tender his resignation within ten days, and at the same time may request that the president dissolve the Legislative Yuan. Should the no-confidence motion fail, the Legislative Yuan may not

arguably, has given the President a full power and discretion to appoint a Premier, the latter is subject to *post hoc* removal at will by the Legislative Yuan.¹¹⁶

Article 4 further reduced, from two-thirds of the present members to a simple majority of the total members, the threshold for the Legislative Yuan to override the veto by the Executive Yuan, as approved by President.¹¹⁷ At the same time, the 1997 Additional Articles deleted the Article 57 Item 2 of the 1947 Constitution¹¹⁸ and

initiate another no-confidence motion against the same president of the Executive Yuan within one year.”

¹¹⁶ The opinions of the politicians and scholars are divided on the issue of whether the President wields the full power and discretion to appoint any Premier he or she prefers. *See, e.g.,* Jau-Yuan Hwang, *Comments on the Executive-Legislative Relations of Taiwan's Central Government After the 1997 Constitutional Revision*, 27 NTU LAW JOURNAL 183-216 (1998) (in Chinese).

¹¹⁷ Article 57, Item 3 of the 1947 Constitution provides that “3. If the Executive Yuan deems a resolution on a statutory, budgetary, or treaty bill passed by the Legislative Yuan difficult of execution, it may, with the approval of the President of the Republic and within ten days after its transmission to the Executive Yuan, request the Legislative Yuan to reconsider the said resolution. If after reconsideration, two-thirds of the Members of the Legislative Yuan present at the meeting uphold the original resolution, the President of the Executive Yuan shall either abide by the same or resign from office.” The said Article 57, Item 3 was replaced by Article 3, Section 2, Item 2 of the 1997 Additional Articles, which provides “2. Should the Executive Yuan deem a statutory, budgetary, or treaty bill passed by the Legislative Yuan difficult to execute, the Executive Yuan may, with the approval of the president of the Republic and within ten days of the bill's submission to the Executive Yuan, request the Legislative Yuan to reconsider the bill. The Legislative Yuan shall reach a resolution on the returned bill within 15 days Yuan be in recess, it shall convene of its own accord within seven days and reach a resolution within 15 days after the session begins. Should the Legislative Yuan not reach a resolution within the said period of time, the original bill shall become invalid. Should more than one-half of the total number of Legislative Yuan members uphold the original bill, the president of the Executive Yuan shall immediately accept the said bill.”

¹¹⁸ Article 57 Item 2 of the 1947 Constitution provides “2. If the Legislative Yuan does not concur in any important policy of the Executive Yuan, it may, by resolution, request the

therefore narrowed the application scope of the veto. The reason for such deletion should be aiming at limiting the power of the Legislative Yuan to intervene, in the form of “resolution” and without passing a formal bill/act, in the important policy decisions made by the Executive Yuan.

As a result, the 1997 Additional Articles formally established a semi-presidential system¹¹⁹ in Taiwan: There is a popularly elected President wielding certain and important powers, including the power to form the government (Executive Yuan), the power to dissolve the legislative branch and decision-making powers on matters involving national security. But the Premier is still responsible for the daily operation of executive branch. It is clearly a dual-executive system. While the Premier is to be appointed by the President at his/her political discretion, the Premier is responsible to the Legislative Yuan and could be removed at will by the latter. Upon any successful vote of no confidence, the President may choose to disband the Legislative Yuan.¹²⁰

Executive Yuan to alter such a policy. With respect to such resolution, the Executive Yuan may, with the approval of the President of the Republic, request the Legislative Yuan for reconsideration. If, after reconsideration, two-thirds of the Members of the Legislative Yuan present at the meeting uphold the original resolution, the President of the Executive Yuan shall either abide by the same or resign from office;”

¹¹⁹ For discussion and criteria of semi-presidential or other hybrid systems, *see* Duverger, *supra* note 22.

¹²⁰ This is a big difference between Taiwanese and French model of semi-presidential system. In France, the President may dissolve the National Assembly (Parliament) at will and at any time, after or before the vote of no confidence on the Premier. The Taiwanese President can, however, disband the Legislative Yuan only after the latter passes a vote of no confidence. Such rigid restriction thus prevents the Taiwanese President from actively breaking the deadlock between the executive and legislative branches, whenever occurring. The enduring deadlock facing President Chen Shui-bian and his Premiers after the 2000 presidential election is surely a phenomenon partially attributable to this institutional design.

Predictably, the Premier and its cabinet would easily fall victim of the power struggles between the President and the Legislative Yuan. It should be fair to conclude that the 1997 Additional Articles enhanced the powers of both the President and Legislative Yuan at the great expense of Premier and the Executive Yuan as a whole.

2.4.6. The 1999-2000 Constitutional Revisions: End of the National Assembly

Since the beginning, the National Assembly has been one of the most salient features of Taiwanese government. Over years, the National Assembly also evolved into the most notorious organ of the central government, mainly for its abusing the amending power. As stated above, the National Assembly has acquired a substantial number of powers at the expense of Control Yuan and even the Legislative Yuan during the 1991-94 constitutional amending process. Yet, the National Assembly has been trying to further expand its powers in the hope of transforming itself into a real house of power: the other house of a bicameral parliament in Taiwan. Nevertheless, the general public does not trust the National Assembly at all. The opposition DPP has long campaigned for abolishing this institution or merging it into the Legislative Yuan.

As the political climate gradually turned against the continuous existence of the National Assembly as such, the National Assembly finally responded to this public concern in the summer of 1999. In August-September 1999, the National Assembly convened to amend the constitution again. After several rounds of negotiations among the political parties, the National Assembly, in early September, passed another set of amendments. In this set of Amendments, the National Assembly aimed to terminate its own institutional life ten years later by changing the mode of its election into a PR-based election and reducing the total number of the National Assembly from 300 (the 4th term) to 150 (from the 5th term on). In balance, the National Assembly extended its own term (for the 3rd term) by two more years. This time, the National

Assembly finally agreed to extend the term of the Legislators from three to four years, partly, in order to match the four-year term of the President. In so doing, the National Assembly simultaneously extended the term of the incumbent (4th term) Legislators for five more months (from January 31 to June 30 of 2002). Consequently, the election of the next (4th) term National Assembly will be held together with the election of the 5th term Legislators in March 2002.¹²¹

Although the 1999 Additional Articles did not intend to abolish the National Assembly as such, they did try to “freeze” or “suspend” the actual operation of the National Assembly election. First of all, there will no longer be any member representing any electoral district and elected by the citizens directly. All of the Delegates will be elected via the “proportional representation” mechanism, to be decided entirely and exclusively based on the name lists proposed by the political parties (including the *ad hoc* coalition of independent candidates). Therefore, Article 1, Paragraphs 1 and 2 of the 1999 Additional Articles provided that, beginning from the 4th term, there will be no “independent” election of the National Assembly. Instead, the Delegates to the National Assembly will be “elected” entirely based upon the electoral outcome of the Legislators election. That is, all the political parties will simultaneously receive their “bonus” seat shares at the National Assembly, in accordance with their vote shares in the Legislators election. Under this formula, the voters will need only to vote for the Legislators, and the outcome of the Legislators election will automatically decide the seat shares of the National Assembly. Thus, there will be no more independent election for the National Assembly, whose existence will be wholly dependent on the Legislative Yuan election.

¹²¹ 1999 ROC Const. Additional Arts. 1 & 4 (declared unconstitutional and void by the Judicial Yuan in its Interpretation No. 499 of March 24, 2000).

The purpose of the 1999 Additional Articles was to reduce the political influence of the National Assembly by subjecting it to the Legislators election and depriving the member of National Assembly of their own constituencies and legitimacy. Such a design was evidently a compromise to the ultimate goal of abolishing the National Assembly as such. However, the extension of the terms of both the Delegates to the National Assembly and Legislators angered an overwhelming majority of the citizens, and seriously weaken the legitimacy of the 1999 Additional Articles.¹²²

Soon after the adoption of the 1999 Additional Articles, many Legislators from all major political parties, owing to political pressure from the general public, petitioned to the Judicial Yuan for constitutional interpretation, seeking to void the said Amendments. One week after the 2000 presidential election, the Council of Grand Justices rendered Interpretation No 499, declaring the 1999 Additional Articles unconstitutional and null and void immediately.¹²³ This Interpretation has been the first and only judicial decision that formally declared any constitutional amendment “unconstitutional.”

Interpretation No. 499 clearly marked the peak of the judicial power in Taiwan. It also indicated a new era was dawning. On March 18, 2000, Taiwanese people elected Mr. Chen Shui-Bian of the DPP to be the new President, and brought the then-ruling KMT to step down. Facing such a historic moment, the DPP and KMT chose to cooperate with each other again and adopted the 2000 Additional Articles.¹²⁴ Along

¹²² In addition, the National Assembly intentionally chose to adopt the 1999 Additional Articles by the method of “secret votes,” contrary to its own practice during the past the fifty years and violative of its own rules of procedure. This procedural flaw also aroused many’s suspicion of the legitimacy of the 1999 Additional Articles.

¹²³ Judicial Yuan Interpretation No 499 of March 24, 2000. For the English translation of this Interpretation, *see* <http://www.judicial.gov.tw/j4e/doc/499.doc>

¹²⁴ One of the political motivations behind the 2000 Amendments was to prevent James Soong

with the spirit of the 1999 Additional Articles, the 2000 Amendments eventually “freeze” the election of the National Assembly by transforming the latter into an *ad hoc* institution with limited powers.

Under the 2000 Additional Articles, the powers of the National Assembly are reduced and limited to three specific items: (1) To vote, in accordance with Article 27, Paragraph 1, Item 4 and Article 174, Item 2 of the Constitution, on Legislative Yuan proposals to amend the Constitution; (2) To vote, in accordance with Article 4, Paragraph 5 of the Additional Articles, on Legislative Yuan proposals to alter the national territory; and (3) To decide, in accordance with Article 2, Paragraph 10 of the Additional Articles, on a bill for the impeachment of the President or the Vice President initiated by the Legislative Yuan.

As a result, the National Assembly will no longer dominate the constitutional amending process in the future. Instead, any constitutional amendments must be proposed by the Legislative Yuan first, and then be presented to the National Assembly for referendum. In this case, we may predict that in the future any attempt to revise the Constitution would be highly difficult.

Furthermore, the election of National Assembly will be held only if there is any of the aforementioned amendment, proposal or bill initiated by the Legislative Yuan. And the delegates to National Assembly will be still chosen from the name-lists proposed by the political parties, based on a proportional representation system. However, the National Assembly will maintain its own election, though no longer a

and his then-newly formed Party, People First Party, from participating in the National Assembly election, and becoming the second largest party (next only to the DPP) in the National Assembly. So the then-fragile KMT soon agreed to adopt the 2000 Additional Articles in order to suspend the coming election of the 4th term National Assembly, which was mandated by the Interpretation No. 499.

regular and periodic one. Once elected, the Delegates to the National Assembly will convene and remain in session for no more than one month.¹²⁵ As a result, the National Assembly would look similar to the Electoral College in the presidential election of the U.S.

While the 1997 Additional Articles formally established the semi-presidential and dual-executive system in Taiwan, the 2000 Additional Articles successfully reduced the once-omnipotent National Assembly to become an institution of symbolic and ad hoc nature. And the Legislative Yuan has become the most dominant and powerful legislative house within the once-tripartite legislative branch.

2.5. The Presidential Elections of 1996 and 2000

Along with the abovementioned constitutional amending process, the political landscape of Taiwan has also undergone dramatic changes. As stated above, the first ever re-election of the National Assembly was held in December 1991. One year later, all the members of the Legislative Yuan were elected in Taiwan. Since then, the legislative branch has been completely Taiwanized. In 1996, Taiwan further held its first ever direct, popular presidential election, in spite of the military threat by China. In a formal sense, it is safe to conclude that the 1996 presidential election completed the final stage of Taiwan's democratization process, particularly for the government structure.

However, Taiwan's new democracy has yet to be consolidated. It was only until the year of 2000 then did the first-ever peaceful regime change or government alternation come to realize in Taiwan. In March 2000, the opposition candidate Chen Shui-Bian won the presidential election and formed a DPP-led government in May 2000. If the 1996 presidential election completed the democratization process of

¹²⁵ 2000 ROC Const. Additional Art. 1 (April 25, 2000).

Taiwan, then the 2000 presidential election will be remembered as the first major and positive step toward consolidation of democracy in Taiwan. Nevertheless, when the consolidation process will come to be secured remains to be watched.

2.6. Conclusion

Many factors will dictate the consolidation process of democracy in Taiwan. As many know well, Taiwan's democratization has been moving forward without first forming a solid consensus on its national identity. And the Chinese military threat remains the biggest force to destroy Taiwan's democracy.

Besides the external factors, Taiwan's democracy has its institutional deficits deeply rooted in its constitutional framework of government. As discussed above, the 1997 Additional Articles established a semi-presidential system in Taiwan. Although the framers of the 1997 Additional Articles did envision a form of co-habitation government as what occurred in France from 1986-88 and 1993-95, a "divided government" of this nature has not yet come into practice. Before the March 2000 presidential election, the KMT kept a secured hold of both the executive and legislative branches. Even after the 2000 presidential election, Chen insisted on forming his "minority governments" against the will of the super-majority in the Legislative Yuan, which was still under the firm control of the KMT and its allies. Given the fact that the ruling DPP has yet to secure a stable majority in the Legislative Yuan, the President's power to appoint the Premier and forming the government has been under constant challenges by the KMT-led opposition coalition. Consequently, Chen's governments have faced serious boycotts in the Legislative Yuan. The controversies arising from suspension of the fourth nuclear power plant from October 2000 to January 2001 was one of the most obvious examples.

In and of its nature, the semi-presidential system is considered a type of regime

that is much more unstable and more dependent on the will of politicians (particularly the President), than both the parliamentary and presidential systems. In Taiwan's case, though the president had the exclusive power to appoint the Premier, the latter is subject to the vote of no confidence by the Legislative Yuan. Therefore, if a Taiwanese President faces a hostile majority in the Legislative Yuan, he and his appointed Premier will very likely be boycotted. On the contrary, the President lacks the necessary powers to break the deadlock between the executive and legislative branches, as what occurred from May 2000 to December 2001. On the other hand, if there is no stable majority in the Legislative Yuan, then the chaotic Legislative Yuan will very likely paralyze the executive branch as well.

Taking all things considered, we may safely conclude that, though Taiwan's democratization has completed, it is yet to be consolidated.