Constitutional Reform and Democratization in Taiwan, 1945–2000

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On March 18, 2000, Taiwan’s people elected Democratic Progressive Party (DPP) nominee Chen Shui-Bian as their new president, marking the end of Chinese Nationalist Party (KMT) rule on the island for 55 years. Unlike most third-wave democratizing states where the authoritarian regimes were replaced at or soon after the transition, Taiwan’s Nationalists remained in power over the transition in the late 1980s and continued to set the agenda for political reform until election 2000. Behind the flux of political transition, however, showed an enterprise of constitutional change that has gone in tandem with democratic reform. To what extent constitutional reform in Taiwan has contributed to the course of national development and political transition remains an interesting issue.

The Chinese Nationalists took over Taiwan from Japan in 1945 and settled in Taiwan in 1949 when they lost the civil war to Chinese communists. The constitution promulgated in China was thus imposed on Taiwan without modification. For more than 35 years, national representatives elected in the mainland had not been subjected to reelection and the imposed constitution was frozen from meaningful revision except that Temporary Provisions Effective During the Period of Communist Rebellion (Temporary Provisions) were attached to the constitution in support of Chiang Kai-Shek’s consolidation of power in
the name of national emergency. Starting from 1987, when the long suppressed political crisis burst into flame uncontrollable to the ruling authorities, Taiwan began to enter into a period of political transformation from what was called a soft-authoritarian state to a liberal democracy. When DPP was formally formed in 1986 in spite of government suppression, Taiwan began a process of political reform, resulting in better citizen representation and political liberalization. These changes, however, took place within the constitutional processes and institutional framework, which have shown how a constitution could function in a transitional moment.

This chapter seeks to analyze Taiwan’s dynamics of constitutional change over the last 55 years along the line of the national drive for modernization and political democratization. After presenting five stages of national development, this chapter presents a corresponding analysis of constitutional change followed by a critical assessment. In view of the recent regime change (after Election 2000), this paper identifies prospective issues confronting the new government in constitutional reform.

Taiwan’s development after the war could be generally summarized as a process of national modernization from an agricultural to an industrial economy, from a rural to an urban society, and from an authoritarian to a liberal regime. But, the transition started in the mid-1980s has moved the national development toward economic liberalization, political democratization, rule of law, and internationalization. A detailed inquiry into the dynamics of these changes, however, reveals strong constitutional implications. In fact, national development in Taiwan over the last half-century has had strong correlation with the development of constitutionalism. Often, political changes were codified into the constitution and constitutional mandates further dictated the course of reform. This part first identifies five stages of national development in Taiwan after the war and then analyzes corresponding constitutional change.

THE PARADIGM OF POSTWAR NATIONAL DEVELOPMENT

There have been five historical moments critical to Taiwan’s development over the past 55 years: (1) the end of Japanese colonization and the beginning of nationalist Chinese rule in 1945, (2) the retreat of the nationalist government from mainland China to Taiwan in 1949, (3) the termination of the Republic of China’s membership in the United Nations in 1971, (4) the formation of the Democratic Progress Party in 1986, and (5) the official initiative for regaining U.N. membership in 1992.
These events mark five distinct periods of unique interaction between political change and economic activity and between international dependency and domestic determinants.

**Decolonization and Rehabilitation (1945–1948)**

As part of Japan’s surrender to the allied command in the Pacific at the conclusion of World War II, Japan abdicated Formosa to the allied powers. Thereafter, China undertook military occupation of Taiwan as a trustee on behalf of the allied powers.\(^5\) Taiwan then underwent a transformation from a Japanese colony to a Chinese territory. Despite their shared ethnic identity, the Taiwanese received the new external regime with a level of caution and distrust after a half-century of Japanese rule. This cultural clash led to the tragic political massacre of February 28, 1947, the “228 Incident,”\(^6\) during which the Chinese police arrested, tortured, and murdered Taiwanese elite. Such unrest and mutual distrust characterized the early years of nationalist control.

During this same period, there were few significant institutions established by the nationalist authorities governing Taiwan. Institution-building was limited to the nationalists taking over the infrastructure and resources left by the Japanese colonial regime.\(^7\) It was not until later that the nationalist authorities recognized the need to develop Taiwan’s infrastructure.

During this stage, both national and international attention was focused on postwar reconstruction in China and the subsequent civil war between the Chinese nationalists and communists. Taiwan, considered by the nationalist government as a province of China, retained its auxiliary status even after the termination of its colonial status and the so-called “homecoming to the Mother Nation.”\(^8\)

**Mobilization and Political Consolidation (1949–1970)**

During the four years following World War II, economic development in Taiwan was very limited, and there was no identifiable political agenda for the island’s development. In 1949, the Nationalists, who had recently been defeated in the Chinese Civil War, fled mainland China to Taiwan and “upgraded” Taipei to the temporary national capital. The nationalists claimed sovereignty over the whole of China even though they only effectively controlled Taiwan, Penhu, Kinmen, and Machu.

Initially, the exiled nationalist regime was somewhat ignored by the international community.\(^9\) However, the eruption of the Korean War in 1950 forced an ambivalent U.S. government to develop relations with Taiwan in its effort to block the expansion of communism. This policy
was accompanied by the resumption of U.S. aid and a stronger official endorsement of the legitimacy of the nationalist authorities.

The nationalist authorities bolstered their legitimacy in both the domestic and international arenas by pledging to adhere to a mission of national recovery and to stay loyal to the Constitution of 1946. They sought to further this goal by establishing an authoritarian state machine that imposed tight control and intense consolidation of political power.

Often, the national mission and development policies mentioned previously were carried out by KMT, whose philosophy was that “the state is in full control of society and the party is in full control of the state.” Accordingly, the market and society had to bow to political needs.10

National development in Taiwan was directed toward the goal of “recovering” mainland China. Every policy contemplated by the national government was evaluated in terms of achieving that goal. Accordingly, capital and strategic resources were saved for the ultimate mission, resulting in a general neglect of the infrastructure development in Taiwan.11 This institutional distortion in resource allocation reflected the distorted representative structure in the Legislature. Indeed, Taiwan served only as a base for national recovery, a tool for the recovery of the Mainland. This instrumentalism, which dominated the spirit of national development during this period, proved as time elapsed to be infeasible.

**Diplomatic Isolation and Industrialization (1971–1986)**

During the two decades after they retreated from China, nationalist authorities were able to use Taiwan as a base and successfully claim international status as the legitimate government of China. International recognition soured, however, as the People’s Republic of China (PRC) gradually gained international leverage during the cold war. In 1971, the nationalist government suffered a serious diplomatic blow when the United Nations voted for PRC membership. This setback not only triggered a new period of diplomatic isolation for Taiwan, but also domestically frustrated the integrity of the goal of national recovery.12 The external legitimacy crisis greatly impacted domestic politics and policies by reorienting the government toward economic development and political localization.

Much of this transition happened when Chiang Ching-Kuo, son of Chiang Kai-Shek, succeeded his father as national leader. Chiang Ching-Kuo, a relatively pragmatic leader, assisted by a group of technicians, launched what has become known as “Ten Major Constructions.” These included development of an island-wide highway,
hydraulic and nuclear power plants, heavy industrial complexes, new or expanded harbors, tax-free industrial parks, and other projects related to the development of infrastructures necessary for an economic takeoff. Upon completion of these infrastructure projects, fourteen additional projects were proposed. Though the wisdom of these ambitious projects has been doubted, the construction, aimed at developing Taiwan, marked a fundamental change in the perception of national development.

In addition to an export promotion policy that built a foundation for Taiwan's economy, the second change in strategy sparked by the legitimacy crisis dealt with localization. The nationalists sought to localize the state machine by recruiting more native Taiwanese elite into a government that, up until then, was largely occupied by so-called mainlanders. The process of localization further softened the authoritarian regime and, inevitably, strengthened Taiwan's self-identity. This localization effort was, however, minimal in contrast to the political liberalization, which occurred during the next stage.

**Political Liberalization and Pragmatism (1987–1991)**

The impact of continuous economic growth was not limited to economic prosperity; it created further pressure for political liberalization. The Taiwanese people had been active in international trade despite diplomatic isolation. International enlightenment, economic prosperity, and gradual sophistication of the society created increasing pressure for reform. By the end of Chiang Ching-Kuo's presidency, political reform was in action. In 1986, DPP was formally formed in defiance of an official ban. This was followed by the lifting of the forty-year long marshal law decree. Lifting of marshal law gave new freedom to the press, sparked the formation of political parties and associations of voluntary groups, and encouraged the Taiwanese to gather and demonstrate.

In the wake of political liberalization, social potency was released to raise major issues that had been depressed due to tight political control. An avalanche of social movements has since spread throughout the island. Farmers, veterans, students, indigent people, workers, and environmentalists took their cases to the streets, demanding regulatory reforms in their respective areas. More and more voluntary groups were formed to represent competing interests. In the climate of pragmatism, the authorities were forced to focus less on adherence to ideological doctrine and more on substantive issues. To a large extent, this line of development echoed the international dismantling of the ideological barrier between the East and West, that is, the fall of the Soviet Union and the deconstruction of Eastern Europe. These changes moved Taiwan toward
addressing substantive issues such as global environmental concerns and development of free trade. Taiwan thus stood as one of the successful examples of democratization in the third world wave of democracy.\textsuperscript{20}

Despite these social movements and regulatory reform, however, a majority of seats in the legislature still were reserved for mainland delegates elected in 1947. Consequently, the legitimacy of the legislature was continuously challenged. This problem was gradually dealt with by a voluntary retirement program\textsuperscript{21} and finally by a wholesale mandatory retirement scheme.\textsuperscript{22}

In 1991, President Lee Teng-hui declared the termination of the Period for Mobilization Against Communist Rebellion and repealed the \textit{Temporary Provisions}. This declaration was followed by a constitutional revision.\textsuperscript{23} Further, the government declared that the PRC would no longer be considered a rebel faction, but recognized as a political entity in a period of national separation. This political development paved the way for Taiwan’s initiative in internationalization and allowed Taiwan to pursue a plan of flexible diplomacy directed toward the expansion of international recognition.

During this period of political reform, however, the conservatives voiced opposition to political factionalism, which had begun to take place. While interest groups had gained more access to governmental decision-making processes, the absence of legal procedural structures\textsuperscript{24} allowed the bureaucracy to be corrupted by money politics, particularly in the area of land use policy.\textsuperscript{25} By 1994, the price of land raised more than five times its 1987 prices, resulting in a crisis of social justice and a barrier to industrial investment.\textsuperscript{26} The blind expansion of golf courses at the sacrifice of soil and water conservation was also frequently cited as a product of money politics.\textsuperscript{27}

\textbf{Regional Identification and Internationalization (1992–)}

Taiwan has proved to the world that economic growth and political reform can come at the same time. Since 1992, Taiwan has continued its economic development and political reform, with internationalization becoming the main focus of Taiwan’s policies. Since 1992, the likelihood of Taiwan’s acceptance into international organizations such as the General Agreement on Tariffs and Trade (GATT) (now the World Trade Organization [WTO]) has increased dramatically. Taiwanese authorities finally have taken up a civil campaign for membership in the United Nations, though greater obstacles blocked its way.

As the issue of entering into GATT/WTO solidified, Taiwan faced the pressure of opening its markets and adopting international standards. The state faced greater pressure to privatize state monopolies and to
deregulate industry. At the same time, international pressure for wildlife conservation began to build up as exemplified by the U.S. trade sanction according to the Pelly Amendments.

Due to labor shortages, Taiwan became a major labor importer in Asia. Labor forces were introduced from Thailand, the Philippines, and mainland China for major construction projects and expanded categories.28

The other dimension of internationalization is Taiwan's increasing investment in Asia. Taiwan has become an active capital supplier in Asia. Its investment volume in Indonesia, Malaysia, Thailand, Vietnam, China, and the Philippines ranked among the highest in the world.29

Recent international efforts have helped identify Taiwan as an Asian nation, and not merely a dependent of U.S. and European markets. In reacting to the issue of Hong Kong 1997, the government generated a plan to develop Taiwan into an Asia-Pacific regional operation center. The plan tried to take advantage of Taiwan's ideal geographic location in Southeast Asia, well developed industrial base, integrated manufacturing sector, skilled labor force, managerial expertise, expanding domestic market, and increasing integration with the regional economy. The aim of the plan was to develop Taiwan into a regional center for high value-added manufacturing, sea and air transportation, and telecommunications, finance, media, and other services.30

These all point to a national development toward the identification of regional role and opening up to the international community.

In tandem with the pressure of increasing international connectedness was the development of a political environment in favor of peaceful transfer of governmental power from KMT to other political parties. As Taiwan links more deeply to international order and regional networks, the longlasting problem of the black gold politics, a term used to indicate the corruptive interconnectedness of ruling KMT with gangsters and business groups, came to the surface of the political arena. The annual national competitiveness report by IMD, International indicated repeatedly the relatively poor performance in government efficiency and the credibility of the judiciary was generally perceived as reflecting the built-in problems of an aging regime that has become corrupt and archaic. Against this background, a peaceful transfer of governmental power from KMT to DPP finally took place in the 2000 presidential election.

CORRESPONDING CONSTITUTIONAL CHANGES

Major changes in the course of national development as set forth previously encountered constitutional issues, either a constitutional barrier needing to be removed before policy change or a policy change
required by constitutional mandate. As a result, there are constitutional changes corresponding to changes in the dynamics of national development.

Constitutional change, however, could take different forms, including constitutional revision, constitutional interpretation, and political actions. While there has been strong implications of constitutional change from judicial review and political realities as happened in Taiwan, this paper would focus on constitutional revisions as a primary vehicle to constitutional change.

Constitutional Revisions in the Context of National Development

The existing constitution was promulgated in China in 1946 as a result of partisan negotiation. The nationalist authorities maintained that the constitution would not be revised for any reason in order to appeal to Chinese people in the mainland. This no-revision policy was in fact a refusal to establish a constitutional democracy tailored to Taiwan. As it became apparent that constitutional changes were necessary to facilitate power consolidation, the authorities added Temporary Provisions to the constitution without altering the main body of the text.

In stages one to three of national development mentioned previously, constitutionalism was distorted to an extent to support an authoritarian regime. Various constitutional requirements were functionally disabled by the Temporary Provisions set up in wartime for power consolidation to President Chiang Kai-shek. Before the beginning of the political liberalization, these Temporary Provisions not only legitimized the authoritarian measures but also deterred necessary constitutional revisions to cope with social change. Within this framework, martial law was declared, and other restrictive legislation in the name of National Mobilization Against Communist Rebellion was promulgated. In the shadow of political mobilization and power consolidation, economic policies were at best the servant of political inspirations. The state machine intervened extensively in the market by tightly controlling foreign exchange, imports and exports, entry into industry, and instituting state ownership of major industries, including transportation, steel, electricity, oil, and sugar. Through such intrusive regulatory intervention, the state machine was able to penetrate into every sector of the society, including farmers' associations, fishermen's associations, trade unions, and local financial associations.

As the political reform got started in the fourth stage, however, these provisions became the target of reform, resulting in total abolishment. Once constitutional revision got started, it went more rapidly than
anyone expected. Since the beginning of democratic reform, Taiwan has undertaken six rounds of constitutional revisions.

**Phases of Constitutional Change**

Observing how chaotic the process of these revisions was, people questioned the wisdom of these piecemeal constitutional amendments. Are they incidental and random events? Is there a rational working paradigm under the constitutional change?

To answer this question, this part analyzes three phases of constitutional change. This chapter argues that the regime’s need to respond to crises has driven consecutive constitutional revisions. These crises came both from the regime’s legitimacy in democracy (inward) and the regime’s legitimacy in the international community (outward). Together, they drove the regime to reinforce its representation both inward and outward.37

The first phase of constitutional change comprised three rounds of constitutional revisions, as undertaken to form legitimacy for the reinforcement of representation inward. The second phase of constitutional change, the fourth round of constitutional revision, was composed of constitutional revisions aimed at reinforcing Taiwan’s representation outward. The third phase of constitutional change, the fifth and the sixth rounds of constitutional revision, made up an attempt to solve the lasting issue of the National Assembly.

*The First Phase: Constitutional Crisis and the Reinforcement of Representation Inward.* Constitutional revisions in 1991, 1992, and 1994 all responded to the KMT regime’s representational crisis arising from aging national representatives. When KMT government retreated to Taiwan, it faced both an identity and a legitimacy crisis. On the one hand, it needed a basis to legitimize its claim over mainland China’s sovereignty after its retreat. On the other hand, it needed a basis to legitimize its rule as a non-native regime over the Taiwanese people.

The representatives of the National Assembly and Legislature as elected in the mainland provided a ready solution to these crises. They were elected by people in mainland China. Therefore, as long as they remain representatives in the legislature, now located in Taiwan, the KMT regime can continue to claim its representation over mainland China.38 Technically, this was made possible by Interpretation No. 31 of the Council of the Grand Justices, a functional constitutional court, which extended the representatives’ term indefinitely, as long as “the country is under crisis and cannot hold a second national election.”39

However, as the representatives aged and died over the years and the people’s outcry against a legislature never elected increased, the legislature
as a basis for KMT's ruling legitimacy gradually deteriorated. This led to a new constitutional crisis for the KMT regime. Taiwan's various constitutional revisions in recent years became the major means to address these crises. To respond successfully, these revisions made reinforcement of representation their core issue.

The KMT regime's preoccupation with the Fa-tung (orthodoxy) to rule China is just a legitimization of its desire rather than a fact. Even if the KMT regime successfully ruled Taiwan, it still insisted that the legitimacy of its ruling in Taiwan depended on its being the sole legitimate government of the whole China. This myth of orthodoxy and legitimacy has influenced the culture of Taiwan's constitutionalism and how the government amends Taiwan's constitution, if at all. Ironically, although this myth provided the legitimacy for KMT's ruling over Taiwan when it first came, it also became the major liability for KMT's lack of representation in Taiwan's democratic transformation.

The KMT regime officially lost hope to take back mainland China in the late 1980s, as the Chiang Dynasty withered and the people persistently called for full democracy. In response, the government loosened its iron fist over freedom of expression by abandoning various seditious penalties. With the political freedom they had long fought for, the people strongly questioned the government's legitimacy with legislative bodies not subject to elections for forty years.

The first round of constitutional revision, in 1991, was a response to this quest for democratic representation. It sought to facilitate the reelection of the representatives by people in Taiwan, the only area where the ROC government rules de facto, by ending the term of the old representatives. Though there were strong calls for a new constitution, constitutional reform through amendments was the format that the ruling authorities could accept. By so doing, ironically, the amendments would have to be implemented by the then existing National Assembly members whose indefinite terms were to be terminated by just these constitutional means.

This first round of constitutional revisions not only terminated the indefinite terms of the national representatives, but also allowed the constitution to be amended by new representatives that had a stronger basis of legitimacy. Other than these necessary amendments, the text of the constitution remained intact.

The following year, 1992, the ruling authorities launched the second round of constitutional revisions designed to allow a new president to be elected with better democratic legitimacy. Some regarded this as a means to reinforce the authority of the KMT party's leader Lee Teng-Hui. But from a perspective of comparative constitutionalism, this amendment can also be regarded as another reinforcement of representation for KMT's ruling in Taiwan.
Two years later, the third round of revisions proceeded under the shadow of power struggles within the KMT. The previous amendment did not determine whether the president should be elected by an electoral college or by the people directly. This reflected the viewpoint of two factions within the KMT party that differs in their identity with China as the orthodox. The orthodox camp feared the Republic of China would become the Republic of Taiwan once a native Taiwanese was elected directly by Taiwan residents. The resulting amendment, at the cost of formal split within the KMT, eventually allows the people to elect the president directly. Splitting from KMT, New Party consolidated the pro-China force and became the third largest political party representing the right wing. Unlike the elections of the legislature, direct presidential election allows nationwide political mobilization that is unprecedented in Taiwan. It also formed a strong sense of identity among the Taiwanese people that not only strengthened Taiwan’s political leadership, but also projected an image of Taiwan sovereignty outward in the international community. This explains partially why China launched missile exercises on the eve of the presidential election in 1996.

With these three rounds of revisions passed, the ROC government had undergone a “quiet” reinforcement of representation necessary in modern democratic governance. Hence, although some still regard the KMT as a non-native regime, through incremental indigenization, the KMT has generally been accepted as a legitimate regime in Taiwan through relatively fair elections. This is evident in the fact that DPP ceased to advocate for fundamental revolutions such as writing a new constitution or establishing a new government in the course of the fourth round of constitutional revisions, but engaged in institutional reforms under the current political structure instead.

The Second Phase: Constitutional Crisis and the Reinforcement of Representation Outward. The fourth round of constitutional revisions was passed in 1997 when Hong Kong was reverted to China. Apprehensive of its future with China, Taiwan needed to distinguish itself from Hong Kong so that it would not be perceived as a part of China and repeat the fate of Hong Kong. Taiwan became acutely aware of the importance of being a part of the international community, not only to protect its political and economic interests, but also to gain more bargaining power when the time comes to negotiate with China as an independent entity.

With this awareness, most proposals for constitutional amendments were aimed at increasing the president’s power to personify Taiwan sovereignty in the international community. One of the amendments revokes the congressional confirmation process when a new premier is nominated and appointed by the president, resulting in more presidential influence over the cabinet. More importantly (and controversially),
the revisions authorized a renunciation of Taiwan Provincial government in order to illuminate the provincial status of Taiwan, a position the PRC renounced and the formal Nationalist regime in Taiwan proclaimed—though its official purpose was given as governmental reorganization for better performance.47

The DPP also shared this awareness. Unsatisfied with the speed and comprehensiveness of constitutional reform, DPP did hold an opposite position against the KMT party in the last three amendments. Yet, as the KMT regime gradually reinforced its representation, by 1997 when the National Assembly was drafting the Fourth Additional Articles, DPP worked closely with KMT in a preparatory roundtable talk to address the representation crisis outward and to counter China's threat. A sense of integration in favor of constitutional change among major political parties was developed despite dissatisfaction expressed by some citizen groups and individuals.

**The Third Phase: Congressional Reform and the Embarrassing Status of the National Assembly.** The initiation of the fifth round of revisions further confirmed that constitutional revision in Taiwan is an endless enterprise. Reasons for this are many, but the vested interests of the membership of the National Assembly as the monopolistic organ for constitutional revision in each round seems to be a compelling explanation. Recognizing the possible fate of being abolished in a climate of public outcry against them, National Assembly members across party line demanded more power or becoming a chamber in a newly established bicameral congress.

In response of this demand, KMT and DPP took different positions. While KMT tried to answer the demand in exchange for full support in the coming presidential election, DPP pushed for a total abolishment of the assembly or formation of a brand new congress. The self-interest-driven assembly members across party lines, led by the majority enjoyed by KMT, pushed for a final deal based on incremental proportionality representation. To everybody's surprise, the National Assembly passed the fifth round of constitutional revisions, of which extension of its current term two years further became the target of criticism though other meaningful reforms were also on the list.

In view of the public outcry, then Vice President Lien Chen, the presidential candidate of the KMT, criticized the action as irresponsible, resulting in expelling National Assembly Speaker Su Nan-chen from KMT and consequently from the National Assembly. New Party took the initiative of appealing to the Council of Grand Justices for a constitutional interpretation; KMT followed suit. DPP was caught flatfooted.

Despite pressure from political actors, the Council of Grand Justices did not render its interpretation before the presidential election, to
avoid influencing the election. On March 24, 2000, one week after the presidential election, the Council of Grand Justices announced Interpretation No. 499, declaring the unconstitutionality of constitutional revisions including the term extension and proportional representation clauses. In keeping with the line of the interpretation, the National Election Commission would have to hold an election for National Assembly members before May 20, when the new President was to be inaugurated into office. Not surprisingly, National Assembly members of KMT and DPP denounced that ruling as "judicial activism."

Despite the constitutional interpretation, the issue of the National Assembly remained unresolved. Like it or not, another round of constitutional revision was called for. Denouncing the ruling of the Council, National Assembly members vowed to abolish the constitutional interpretation body in retaliation, in spite of public outcries. In the end, the KMT and DPP caucuses of the National Assembly cooperated to substantially downsize the National Assembly and at the same time remove the postretirement benefits for the Grand Justices as punishment in the follow-up constitutional revision.

After this very latest constitutional revision, the scheduled election for members of the National Assembly was canceled. The next term of the members would only be called on an ad hoc basis by proportional vote when the legislature came up with a proposal for constitutional revision or impeachment of the president. The changes to this so-called mission-oriented National Assembly have modified the nature of the government organization and the nature of constitutional revision as well. It is expected that frequent constitutional revisions as happened over last ten years would come to an end after this very latest constitutional revision.

Major issues and results in each of the four constitutional revisions are summarized in Table 3-1.

**ANALYZING THE REGIME OF CONSTITUTIONAL CHANGE IN TAIWAN**

Taiwan’s constitutional change could be analyzed from four angles: driving forces, processes, pattern, and orientation. *Driving forces* refers to the underlying energy buildup for constitutional reform. *Processes* refers to how the Constitution was revised. *Pattern* refers to the working format of constitutional change. Finally, *orientation* reflects the result of constitutional change in terms of directions and tendencies.

**Driving Forces**

Two possible forces pushed for Taiwan’s constitutional reform. One was the constitutional crisis of representation arising from KMT’s claim
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| First Phase| Representation—reinforcing inward | First Revision (1991)        | 1. Terminate tenured national representatives  
2. Popular election for national representatives                                   | Reelection of all seats of the national Legislature                              |
2. Amendment to allow the people to elect their president  
3. Amendment that allows local self-governance                                    | 1. The president is to be elected by the people, not by National Assembly  
2. Strengthen legal authority for local autonomy                                  |
|            |                             | Third Revision (1994)        | Forms of electing the President                                                        | The president is to be directly elected by the people                            |
| Second Phase| Representation—reinforcing outward | Fourth Revision (1997)       | Reorganization of the government structure                                            | 1. A system of president-parliamentarism established  
2. Downsizing Taiwan provincial government                                         |
| Third Phase| Congressional Reform        | Fifth Revision (1999)        | The future of the National Assembly                                                   | 1. Proportional representation for the National Assembly  
2. Term extension for existing National Assembly members                           |
|            |                             | Sixth Revision (2000)        | The future of the National Assembly                                                   | 1. Substantially downsize the National Assembly to a mission-oriented conference  
2. Remove the postretirement benefits for Grand Justices                           |
over the sovereignty of the whole China. The other was a short-term gain as perceived by political factions.

_Crisis of Representation_. Public outcry for constitutional reform in Taiwan in the mid-1980s was ignited by the intellectual bankruptcy of the various manipulations of the very concept of representation, which posed a serious legitimacy crisis. It demonstrated a clear example of the crisis theory under which the rulers would only undertake substantial change when confronting crisis.

The crisis began as the embarrassing position of claiming the sovereignty over the whole China, while the mission of recovering China inexorably became a mission impossible. As time went by, the representatives elected in the mainland took on the status of a tenured position that ran against the very essence of accountability—in spite of the fact that the Council of Grand Justices once ruled its constitutionality.\(^{48}\)

Throughout the process of constitutional change, there appeared to be no foreign pressure, though China has been an influential factor in the course of constitutional revision.

*Short-term Political Interests*. In the flux of Taiwan’s constitutional politics, the rationality of constitutional engineering was often tempered by the will of strong men or “horse trading” among political factions. As the enterprise of constitutional reform became incremental in nature, short-term strategic transactions between KMT and DPP increased. For example, the decision to adopt a direct presidential election reflected Lee Ten-huei’s will and DPP motivation in winning the coming presidential election. By the same token, the decision to adopt a relative majority rule in presidential elections was triggered by a power struggle within KMT that could not produce a single ticket for the presidential election, coupled with DPP’s expectation of a less-than-majority vote. Furthermore, National Assembly members’ pursuit of agency expansion on various occasions was a further example of short-term political interest in constitutional change.

**Processes**

Article 174 of the constitution regulated the processes of constitutional reform in Taiwan. But what actually happened could be summarized as the following three steps.

_Public Outcry and Reform from Within_. As in other transitional democracies, constitutional reform in Taiwan began not by initiation of the ruling authorities but by public outcry and mass demonstration. In responding to a series of public demonstrations chanting for adhering
to civil constitutionalism and reorganization of the Congress, the reformers within the KMT regime pushed for a National Affairs Conference and subsequent constitutional revisions. Though not completely satisfied, demands by DPP and reformers were partially met in the cause of constitutional reform.

Roundtable Talks. As in some East European transitional states, constitutional revisions that tackled more issues usually were preceded by roundtable talks to reach public consensus. For instance, in responding to student movements' outcry about the tenured national representatives, President Lee Teng-hui held a National Affairs Conference to discuss directions and procedures for the first constitutional amendment. The fourth round of revisions was also preceded by a National Development Conference, convened again by President Lee to create consensus among major political parties and social elites. The roundtable talks not only helped create consensus, but also provided legitimacy for constitutional change.

National Assembly Deliberations. Constitutional proposals could be introduced into the National Assembly with or without bipartisan consensus as long as sufficient members endorsed them. Normally, partisan negotiations would precede the formal readings on the floor, but on divided issues, the majority may resort to speedy vote to shorten deliberation under threat of violent protests or walkouts by the minority. Citizen participation in the floor deliberations has been rare, while intervention from high-ranking officials of the parties has been the rule of the thumb.

The constitution does require some degree of transparency and deliberation in the National Assembly readings. In actual practice, the National Assembly manipulates the process of constitutional amendments that were to allow more public participation and accountability. As a check for the National Assembly, Article 34 of the Constitution required the assembly to conduct meetings according to laws passed by the Legislative Yuan. Article 1 of the Additional Articles to the Constitution, however, suspends this stipulation. Second, the Grand Justices' constitutional interpretation No. 314 distinguished between assembly meetings that aim to amend the constitution and those that do not. The National Assembly must allow the public enough opportunities to express their opinion before it meets to amend to the constitution. However, Article 11 of the Additional Articles blurs the distinction between assemblies with or without mission to amend the constitution. Moreover, in responding to public outcry against their expansion, the National Assembly adopted secret ballot in voting the fifth round of constitutional revisions. The Council of Grand Justices declared that unconstitutional on the grounds that constitutional revisions should be
transparent to the general public and a level of public deliberation should be guaranteed.\textsuperscript{51}

Pattern

Although major issues of constitutional revisions differed in each attempt, the formality remained virtually the same. The formalities can be summarized into two characteristics that seem to have become the routine for Taiwan’s constitutional changes.

\textit{Incrementalism.} Taiwan’s constitutional change is unique in that it took the form of incremental reform with announcements that indicate issues to be dealt with in the next round of revisions. Although few would have predicted that Taiwan would have had six rounds of constitutional revisions in ten years, people did gain confidence that there would be further rounds of constitutional revisions in the future.

At the beginning of the constitutional reform, some argued that all Taiwan needed was a new constitution. This constitution-making proposal, however, was completely rejected by the then ruling authorities. Due to persistent constraints, including ideological complexities, constitutional revisions have been fragmented and incremental. No wonder constitutional revision becomes a never-ending enterprise in Taiwan.

\textit{Additional Articles to the Original Text.} A second characteristic of Taiwan’s constitutional revisions is that it has kept the main text of the original Constitution intact, a technical device aimed to compromise political outcry for a new Constitution and a diehard protection of the Constitution by orthodox political cadres. This was one of the major debates during the first round of constitutional revisions. As a compromise, the first round ended with ten additional constitutional articles appended to the original text. The second round further added eight articles at the end. However, when it amended the constitution the third time, unlike the U.S. Constitution’s amendments that continuously add new articles at the end, the National Assembly reorganized all additional articles as added to the constitution in all previous rounds of constitutional revisions. This became a routine when the constitution was amended the fourth time. The net result is chaos in citing article numbers of the constitution.

Orientation

All constitutional revisions over the last ten years focused on the government’s structure instead of basic rights. Even if the revisions
addressed issues such as environmental protection and gender equality, they appeared in the constitution as constitutional policy statements rather than enforceable basic rights. A possible explanation for that is that the original constitution is relatively comprehensive in basic rights formulation. The minimum binding force of constitutional policy statements also allows the constitutional revisions to address more public concerns with fewer controversies.  

**Government Structure.** Constitutional revisions have altered the nature of government structure specified by the original constitution. These changes are both disorganized and incomplete, but the general orientation can nevertheless be summarized. First, the revisions gradually moved the government structure away from a quasi-cabinet system to a quasi-presidential system. Second, the revisions made national elections based on Taiwan possible and hence the legislature representative (but the change to direct presidential election remained the most critical change). Third, of all the branches of powers, the president consolidated most power after the revisions while Control Yuan became the biggest loser. Fourth, the National Assembly consolidated most power throughout the process, while the Legislative Yuan took over the National Assembly's legacy after the sixth round of constitutional revision; this has turned the National Assembly into a mission-oriented conference.

**Policy Declaration.** While divided about government structure, political parties showed little dispute in policy declarations in the constitution that enhance social justice and integration. These policy declarations include: (1) The state should promote political participation, educational and social welfare, and heritage and culture of the aboriginals and people of offshore small islands; (2) While the state has to promote scientific innovation and economic development, it has to seek proper balance with ecological conservation; (3) The state should protect women's safety and dignity, eliminate sexual discrimination, and promote substantial gender equality; (4) The state should provide medical care and educational opportunity to the handicapped; (5) The state should protect political participation of overseas Chinese; and (6) The state should implement a national health insurance plan and should promote both modern and traditional medicine.

**A CRITICAL ASSESSMENT OF TAIWAN'S CONSTITUTIONAL CHANGE**

There are merits in Taiwan's constitutional change over the last decade, but many problems remain unresolved. A critical assessment of
Taiwan's constitutional change would have to identify the function of constitutional change in a transitional moment and beyond.

National Identity and Function of Constitutional Change

Traditionally, the functions of a constitution have been perceived as protection of basic rights against unauthorized government intrusion and proper allocation of powers among political branches. This perception has been challenged in the wake of the third-wave democracy movement in which profound political, social, and economic transformation took place all at once. Constitutions in these transitional states have played a role beyond limiting or allocating the government power. In a transitional moment when social order was on the brink of breakdown, political analysts and constitutional scholars began to address the issue of transitional constitutionalism. These academic efforts, however, failed to account for some salient elements in the third-wave democratization transition beyond Europe.

In Taiwan, for example, the transition began with an externally imposed constitution and a relatively healthy economy and ended with a regime change more than a decade later. Uniquely enough, all the constitutional politics in the transitional period has taken place in a territory recognized diplomatically by only 27 countries of the international community, and hence statehood, political identity, and international representation become core issues in the development of transitional constitutionalism. The celebrated "quiet revolution" in Taiwan was carried out and codified into the existing constitution that used to be considered as externally imposed. Besides, along the line of struggling for international recognition in Taiwan, active constitutional practice, including frequent constitutional revisions and routine constitutional interpretations by the Council of Grand Justices, has distinguished Taiwan from other territories, such as Hong Kong, not recognized by the international community as states. On the completion of political reform toward better representation, the vehicle of constitutional change has functioned in the direction of reinforcing international representation.

National Assembly's Monopolization and Self-Expansion

The National Assembly's power to monopolize constitutional revisions, resulting in the self-expansion of its organization and authority, marked a salient feature of constitutional change in Taiwan. Article 174 of the Constitution provides two ways to amend the constitution: one allows the representatives of the National Assembly to propose and adopt amendments and the other allows the representatives of
the Legislative Yuan to propose amendments to the National Assembly for adoption. In both ways, however, National Assembly members enjoyed the power to vote for or against the amendments. Eventually, in all of the six rounds of revisions that took place in Taiwan, the National Assembly members monopolized the process of constitutional revisions. This reality not only turned them into the sole initiators of constitutional changes, but also the ultimate decision-maker for constitutional amendments. Consequently, although there had been profound public outcries demanding the abolishment of the National Assembly, its institutional power continued to increase, as constitutional revision seemed to become an endless enterprise. The National Assembly did indeed lose their power to elect the President and Vice President, but in return, they gained more powers in making the Assembly a standing body and acquired authority to approve the appointment of the Grand Justices, members of the Examination Yuan, and members of the Control Yuan.

As mentioned previously, the National Assembly carried out each of six rounds of constitutional revisions. Ironically, the National Assembly itself should have been the first target for constitutional reform. In a dramatic political development after the 2000 Presidential election, the National Assembly was reorganized as a mission-oriented conference that would not define and seek its own agency interest any more.

Political Parties, Civil Society, and Constitutional Culture

Because the ruling KMT has maintained its majority in the National Assembly, constitutional change has been primarily undertaken by KMT. In the early stage of constitutional reform, DPP shared little consensus with KMT on how to revise the constitution. In fact, rewriting a new constitution was DPP’s original proposal. As KMT began to Taiwanize itself, many constitutional revisions were undertaken with or without DPP’s cooperation.

In the latter stages of constitutional revisions, a party coalition between KMT and DPP took shape that made various revisions possible. Though roundtable talks, including partisan and nonpartisan participants, were held to resolve major issues before National Assembly sessions, the secrecy of the deal between these two major political parties has provoked dissatisfaction from the civil society that demanded more participation and deliberation.

In the flux of constitutional politics, the constitution was revised again and again without sufficient deliberation. Often, constructive deliberation was clouded by secret deals between KMT authorities and the National Assembly or by partisan transaction, resulting in dissatisfaction or alienation of the general public.
The elitist nature of constitutional revision and party dominance has paved the way for President Chen Sui-bian’s proclamation of People’s Government, a form of governance beyond party ideological advocacy and narrowly defined political interests.

CONSTITUTIONAL REFORM AGENDA AFTER ELECTION 2000

Soon after the Election 2000, the constitution was revised for the sixth time since 1991, mainly to solve the lasting problem of the ever-expanding National Assembly. This revision, however, also rendered further constitutional revisions more difficult as the National Assembly no longer stood by to approve any constitutional proposal. In an operational deadlock, then, the New Government would not be able to resort to constitutional revision for speedy resolution. Unfortunately, the new government did experience such a deadlock shortly after the passing of the honeymoon period. Ironically, constitutional reform has again been proposed, less than one year since the last one.

CONSTITUTIONAL DEADLOCK AND DIVIDED SOCIETY

Between New Beginning and Continuance

The recent regime change has clearly created institutional opportunity for the newly elected president to take up many issues that would never have been properly dealt with by the old regime, such as black-and-gold politics or transitional justice. Indeed, many DPP supporters had hoped that measures would be taken in the new era to make a clear departure from the past and move forward as an island state with dignity. This hope soon turned sour, as reconciliation and compromise became the dominant tone of the New Government. When President Chen paid a friendly visit to aging generals who were frequently accused of human rights abuses in the past, many were frustrated.

The difficult truth, however, lies in the minority status of the ruling DPP party in the Legislature and President Chen’s 39% ballot vote in the election. Despite the 1997 constitutional revision that empowered the minority president to appoint a premier without confirmation by the legislature, President Chen had to appoint General Tang Fei, a KMT minister of defense, as premier. This move was not considered as a formal coalition between DPP and KMT, as General Tang was named as premier on a personal basis, that is, not a representative of KMT.
Opinions divided as to the decision to appoint General Tang as Premier, but soon the coalition of opposition parties in the Legislature began to boycott many issues, resulting in deadlocks of government operations on many occasions. Not surprisingly, the New Government lost its momentum in creating a new beginning because of the hostile political environment and paralysis on some occasions.

From People’s Government to Minority Government

One way to interpret the very concept of people’s government as proclaimed by President Chen, before and after his inauguration, was the need to define issues beyond partisan interests, legislative majority, and ideology, in order to face issues of transitional nature, including money politics and transitional justice. Reform in the past has consisted of cooperation between KMT and DPP and constitutional revisions carried out by political elites, resulting in citizen apathy toward the agenda of political reform. To make an era of new beginning with a fresh vision and new agenda, the newly elected president had to define issues beyond partisan interest and ideology. This move, however, was considered hostile by the opposition parties, who together enjoy a majority in the legislature. As the call for a coalition was rejected by President Chen under the rubric of People’s Government, the opposition became more and more adversarial.

Things turned worse with the controversial fourth nuclear power plant issue, over which Premier Tang resigned, as he inclined to continue the construction contrary to what President Chen promised during the campaign. President Chen replaced Tang Fei as premier with Chang Chun-sung, a longtime DPP legislator and then vice premier, marking the beginning of the so-called minority government. Not surprisingly, the opposition parties formed a coalition and vowed to impeach the newly elected premier and recall President Chen over Premier Chang’s decision to discontinue the fourth nuclear power plant project. As the latter developed, partisan boycotts in the legislature intensified in many budgetary and legislative processes. As before, some issues such as the fourth nuclear power plant were appealed to the Council of Grand Justices for constitutional resolution.

THE ROAD TO CONSTITUTIONAL REFORM, AGAIN?

Constitutional deadlock has led many to believe that the existing government structure after six rounds of constitutional revisions is still deficient and prone to deadlock. It is no surprise that many have proposed another major constitutional reform.
Should There Be a New Constitution?

From the beginning of the constitutional reform, there have been proposals for a new constitution to mark a departure from the past. This proposal has been routinely rejected by the KMT regime that favored an incremental revision while leaving the original constitution unchanged. Reluctantly, DPP has participated in the constitutional revisions due to minority status in the National Assembly. As KMT lost power in election 2000, people began to wonder whether the proposal of a new constitution would be reintroduced.

There are reasons to support a new constitution. Firstly, the existing constitution was promulgated for the whole China, very different from the island Taiwan. Secondly, the pattern of constitutional revisions based on additional articles to the original text has made the constitution very fragmented. Thirdly, a new constitution in conjunction with a new era would mark a new beginning psychologically, fostering a sense of national integration and consolidation.

However, these advantages have to be weighed against possible ideological confrontation. As conciliation becomes a top priority for the New Government, a bold reform like this may again provoke ideological confrontation. Also, if not properly managed, this move may be interpreted by the PRC authorities as a further move toward separation that is highly sensitive especially in a time of regime transition.

National Identity, Cross-Strait Relations, and Constitutional Proclamations

Should the national identity issue be codified into the constitution? For example, should the state-to-state relationship as proclaimed by former president Lee Teng-hui be written into the Constitution?

National identity has been one of the key issues in Taiwan’s constitutional politics. The existing constitution was enacted in a time when the ROC government ruled all of China. Despite piecemeal disagreements, there has been consensus that the ROC government in Taiwan is very different from what it was in Nanking. There have been many attempts to formalize these changes, but the KMT regime has chosen to deal with that in a cautious way. Today, the threat from the PRC has increased substantially. That explains why the state-to-state relationship was not codified into the constitution even though former President Lee proclaimed it openly.

But, in view of the pressure for direct negotiation that has built up recently, a provision requiring a national referendum when a merger or concession of national sovereignty is involved may be in order. This
referendum provision is substantially different from the referendum
provision for declaring Taiwan's independence.

In the post-KMT era, more room for constitutional engineering has
been created, but while internal restraint loosens, the threat from PRC
increases.

**Government Structure**

In view of the recent constitutional deadlock under the existing
constitutional power structure, many have expressed the need of fur-
ther constitutional reform in government structure. Should a presiden-
tial system based on separation of three powers be established to
replace the existing mixed system based on separation of seven powers,
including the president and National Assembly? President Chen Sui-
bian proclaimed before the election that a presidential system based on
separation of three powers should be an ideal one for Taiwan. In fact,
when KMT and DPP cooperated in making direct presidential election,
a cabinet system has become almost impossible in Taiwan. After a series
of constitutional revisions, the existing system has become a mixed
system unlike any other in the world. There is no doubt that a simplified
government would fit Taiwan better, and thus, the proposed presiden-
tial system based on separation of three powers should be a better
alternative to the existing one. But again, it is reasonable to doubt
whether the president with his minority government can accomplish a
reform this serious.

**Human Rights and Transitional Justice**

As a third-wave democratizing state, Taiwan has faced the issue of
transitional justice like other states of the same kind. In the past,
KMT's response to the transitional justice issue was "forget and for-
give." Major measures under this soft attitude have been limited to
compensation and restitution. There has been no criminal prosecution
for justice or for in-depth truth finding.

In addition to the satisfaction of justice, prosecution of wrongdoers
of past regimes could serve a truth-finding function that in the end
would heal the wound for a longer term. The recent regime change
provides an opportunity for a reorientation of transitional justice issues.
But, again, the embattled New Government took social conciliation
seriously, resulting in failure in making any noticeable move in transi-
tional justice.

**CONCLUSION**

Like postwar Japan and Germany, Taiwan accepted a constitution
without popular consensus but then revised it in coping with an evolv-
ing political environment. As in postapartheid South Africa, the constitution in Taiwan embodies the political agreement and shift from minority rule over a disenfranchised population to a representative democracy. Unlike most transitional states, however, Taiwan has undertaken her transition in the shadow of international isolation and military threat from China. In this rather unique and troubling environment, constitutional change became a never-ending enterprise under the philosophy of incrementalism.

With the recent regime change for the first time in the island, room for constitutional reform seems to be opening up. Ironically, however, the threat from the PRC is mounting with the regime change. Inevitably, the enterprise of constitutional reform would be greatly tempered by the Chinese factor.

Despite the erratic progress of its constitutional change, what Taiwan has undergone and will continue to undergo in constitutional reform for social transformation will be of great significance to other transitional states in various stages, as well as of great value for the academic development of constitutional models.

NOTES


3. See Jiunn-Rong Yeh, [“Institutional Capacity-building”], at 234, 245.

4. The following five-stage analysis is quoted substantially from Jiunn-Rong Yeh, [“Institutional Capacity-building”].

5. Some have argued that because Taiwan was designated as a trustee territory, the international status of Taiwan is subject to self-determination by Taiwan residents. See Lung-Chu Chen & Michael Reisman, “Who Owns Taiwan: A Search for International Title,” 81 Yale L.J. 599, 611 (1972).

6. The “228 Incident” (so named because it ended on February 28, 1947) began when the Chinese police killed a Taiwanese woman selling untaxed cigarettes, sparking islandwide unrest and an ensuing government crackdown. Precise death tolls were never made public and, for a while, investigation into the incident was suppressed. For an unofficial account of the 228 incident, see Lai Tse-han et al., A Tragic Beginning: The Taiwan Uprising of February 28, 1947 (Stanford, CA: Stanford U. Press, 1991). With the advent of political liberalization, however, the government formed a task force to investigate the incident. This task force was responsible for erecting a monument memorializing the incident and establishing a statutory compensation scheme for the victims and their relatives.

7. All sizable industrial establishments in Taiwan during the Japanese colonization were taken over in 1945 by the Nationalist government. By 1946, they

8. Before they retreated to Taiwan, the Nationalist authorities considered regaining Taiwan from Japan as a point of national pride, in that Taiwanese residents, having been ruled by a foreign regime, were returning to the mother nation. Maintaining the integrity of the national territory superseded the will or destiny of the Taiwanese people.


10. Unlike most political parties in Western democracies, KMT was patterned after the Leninist-style revolutionary party. It exhibited a great degree of centralization and collective decision-making and owned and operated a wide range of enterprises from pulp mills to stock exchanges to commercial banks. See *Taipei Society, KMT Capitalism* (1993) (in Chinese).

11. For example, although never officially confirmed, it has been rumored that a proposal to construct a subway system in metropolitan Taipei was watered down largely because it would drain financial resources for a military buildup and national recovery. The establishment of a sewage system, a critical element in controlling water pollution, also was neglected.

12. When the world recognized the PRC as the sole legitimate government of China, the Chinese Nationalists' claim over Chinese sovereignty lost appeal both domestically and internationally.

13. For an assessment of Chiang Ching-Kuo's role in Taiwan's economic development, see John Fei, "The Taiwan Economy in the Seventies," in *Chiang Ching-Kuo's Leadership in the Development of the Republic of China on Taiwan*, 63 (Shao Chuan Leng, ed., 1993).

14. In addition, these projects helped Taiwan's export-oriented economy survive the oil crises of 1973 and 1978 by diverting otherwise troublesome economic vitality into domestic public establishments.

15. See E. Winkler, "Institutionalization and Participation on Taiwan: From Hard to Soft Authoritarianism?" 99 *China Quarterly* 481 (Sept. 1984). This phenomenon was seen by some as a betrayal of the traditional KMT spirit.

16. Some believed that giving up some political positions to the native elite was just a political buyoff designed to reinforce the legitimacy of the authoritarian regime.


21. Before the judicial intervention, the legislature passed The Voluntary Retirement of the National Representatives Act that provided incentives for early retirements. This effort was largely unsuccessful. The Voluntary Retirement of the National Representatives Act, Feb. 3, 1988.

22. No. 261, June 21, 1990, Interpretation of the Council of Grand Justices, Judicial Yuan (stating that the constitutional mandate of the existing representatives of central government should be revoked on December 31, 1991 and that a nationwide reelection is needed). For an assessment of this interpretation from the perspective of representation, see Jiunn-Rong Yeh, [The Cult of Fatung].

23. In essence, the result of the constitutional revision was the replacement of the Temporary Provisions for National Mobilization with ten additional articles to the Constitution. The additional articles were preceded with a preamble indicating recognition of the status of divided nation before national reunification. Accordingly, the political pragmatism in dealing with the Mainland found its constitutional basis. ROC Const. (Additional Articles). Reprinted in Complete Volume of Six Laws 18 (Liou Ching-Ching & She Mao-Ling, eds., 18th ed., 1994). For a discussion of the significance of these amendments on the issue of national identity, see Jau-Yuan Hwang, "Constitutional Change and Political Transition in Taiwan since 1986: The Role of Legal Institutions" 262-72 (1995) (unpublished JDS dissertation, Harvard Law School).

24. Freedom of Information Act and other open government legislation are still pending in the Legislative Yuan. The Administrative Procedural Act and Financial Disclosure of Governmental Officials Act, however, have been promulgated.


26. Id.

27. As of 1993, there were eighty-four golf courses in Taiwan; only four of these courses had the licenses they needed to operate due to soil erosion, water pollution, and illegal occupation of public land. Because a fair number of government officials maintain memberships in golf courses, the central authorities have been under political pressure to legalize existing golf courses. See generally Philip Liu, "Taiwan: Politics on the Golf Course," Business Taiwan, Nov. 8, 1993, available in LEXIS, ASIAPC Library, ALLASI File.


31. For the function of constitutional interpretations by the Council of Grand Justices in the dynamics of national development in Taiwan, see Jiunn-Rong Yeh, "Constitutional Changes, Constitutionalism and Rule of Law in Taiwan: The Role of Council of Grand Justices," paper presented for Transitional Societies in Comparison: East Central Europe vs. Taiwan, Prague, May 27-29, 1999.


33. Martial law was declared in China in 1947 and carried over to Taiwan until 1987. The lifting of martial law was driven by international pressure, opposition pressure, and the late President Chiang Ching-Kuo's efforts. For an in-depth analysis of Chiang Ching-Kuo's decision-making process, see Andrew
Nathan & Helen Ho, "Chiang Ching-Kuo’s Decision for Political Reform," in Chiang Ching-Kuo’s Leadership in the Development of the Republic of China on Taiwan 31 (Shao Chuan Leng ed., 1993).

34. During the Civil War, President Chiang Kai-Shek issued an order condemning the communist uprising and pledged the highest political solidarity against the rebellion. In a process of constitutional revision, it was suggested that special temporary provisions be added to the Constitution during the war against the communists. These provisions, entitled "Temporary Provisions in the Period of Mobilization against Communist Rebellion," were added to the Constitution and were to remain effective until the president declared otherwise. The provisions remained effective until 1991, when President Lee Teng-Hui terminated them. During this "Period of Mobilization against Communist Rebellion," legislation and executive regulations were passed in order to implement the special constitutional mandate, resulting in various restrictive measures in political control. For example, Voluntary Association Law in the Period of Mobilization against Communist Rebellion imposed ideological and political control on voluntary associations which otherwise would have infringed upon the freedom of association guaranteed by the Constitution.

35. Even now, electricity, oil, tobacco, and wine are monopolized by state enterprises; state enterprises still have a large market share in the steel, naphtha-cracking, cement, and sugar industries.

36. For a general discussion of political control of associations in terms of clientelism and state corporatism, see Cheng-Tian Kuo, Global Competitiveness and Industrial Growth in Taiwan and The Philippines 67-68 (1995).


38. See Jiunn-Rong Yeh, ["Institutional Capacity-building"], at 239-40; Jiunnrong Yeh, ["The Cult of Fatung"].

39. See id. at 240 & n. 33.

40. See Jiunn-Rong Yeh, ["The Cult of Fatung"], at 31.
41. See id.
42. See id.
43. See id.


45. See id. at 119.
46. But cf. id. at 119.

47. For this argument in details, see Jiunn-Rong Yeh, "Modeling Taiwan's Constitutional Change from 1997 Constitutional Revision," 27 National Taiwan University Law Journal, 7 (1998) (in Chinese).


50. See Article 34 of the ROC Constitution. See also Interpretation No. 314, Council of Grand Justices, February 25, 1993.


52. See Peter J. Cullen & Klaus H. Goetz, "Concluding Theses on Constitutional Policy in Unified Germany," in Constitutional Policy in Unified Germany 162, 168-69 (Klaus H. Goetz & Peter J. Cullen, eds., 1995). Cf. Walter F. Murphy, "Constitutions, Constitutionalism and Democracy," in Constitutionalism and De-


56. See e.g. A. James McAdams, ed., Transitional justice and the Rule of Law in New Democracies. (South Bend, IN: University of Notre Dame Press, 1997).


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