

TABLE OF CONTENTS

## Constitutional Reforms in Taiwan in the 1990s

**Dennis Te-chung Tang**

Professor of Law, National Taiwan University

Senior Fellow, Academia Sinica

128 Yen Jiou Yuan Rd. Sec. 2, Taipei. 11529. Taiwan

[dennis@sinica.edu.tw](mailto:dennis@sinica.edu.tw)

### ROC Constitution

- III. CONSTITUTIONAL TRANSFORMATION SINCE 1990
- III.1 ADDITIONAL ARTICLES OF 1992
- III.2 ADDITIONAL ARTICLES OF 1994
- III.3 ADDITIONAL ARTICLES OF 1997

Under the heading "to amend the Constitution," several amendments have been made to the ROC Constitution since 1990. These amendments have been made in response to the demands of the people for a more democratic and transparent government. The amendments have been made in three stages: 1992, 1994, and 1997. The 1992 amendments were made in response to the demands of the people for a more democratic and transparent government. The 1994 amendments were made in response to the demands of the people for a more democratic and transparent government. The 1997 amendments were made in response to the demands of the people for a more democratic and transparent government.

1. See, e.g., Dennis Te-chung Tang, "The Evolution of the ROC Constitution," in *Journal of Democracy*, Vol. 12, No. 4, (Winter 1991), pp. 57-68.

## TABLE OF CONTENTS

### INTRODUCTION

- I. ROC CONSTITUTION IN COMPARATIVE PERSPECTIVE
  - I.1 TRACES OF DEMARCATION BETWEEN POLITICAL RIGHTS AND GOVERNING POWERS: MONOPOLY OF CONSTITUTIONAL REVISION
  - I.2 HORIZONTAL SEPARATION OF POWERS AMONG FIVE BRANCHES: A MODIFIED PARLIAMENTARY SYSTEM
  - I.3 VERTICAL SEPARATION OF POWERS: ELASTIC LOCAL SELF-GOVERNANCE
  - I.4 CENTRALIZED AND ABSTRACT JUDICIAL REVIEW
- II. CONSTITUTIONAL TUTELAGE UNDER AUTHORITARIANISM
  - II.1 INITIAL CRISIS AND JUDICIAL SOLUTION
  - II.2 CONSTITUTIONAL STRUCTURE UNDER "TEMPORARY PROVISIONS": SEMI-PRESIDENTIALISM
  - II.3 TURNING CRISIS INTO ASPIRATION
- III. CONSTITUTIONAL TRANSFORMATION SINCE 1990
  - III.1 ADDITIONAL ARTICLES OF 1991
  - III.2 ADDITIONAL ARTICLES OF 1992
  - III.3 ADDITIONAL ARTICLES OF 1994
  - III.4 ADDITIONAL ARTICLES OF 1997
- IV. REVIEW AND PROSPECT
  - IV.1 DIRECT ELECTION OF THE PRESIDENT HAS ENORMOUS IMPACT ON CONSTITUTIONAL FRAMEWORK
  - IV.2 ABROGATION OF TAIWAN PROVINCE IN THE WAKE OF POPULAR ELECTION OF THE GOVERNOR HAS PERPLEXED GOVERNMENT REORGANIZATION
  - IV.3 DIRECT DEMOCRACY AS SOLUTION TO CONSTITUTIONAL MONOPOLY IS WORTH A TRY

\* See Center, *supra* note 47, at 287-98.

## Introduction

This decade has seen the rise of a worldwide trend towards constitutional reform or reconstruction as countries struggle to cope with rapid social and political change.<sup>1</sup> This article examines the Taiwanese experience of amending their constitution to consolidate democracy.

Section I introduces the constitution of the Republic of China (ROC) of 1947 from a comparative perspective in order to provide a general background. The roots of reforms conducted in the nineties lie in the unique features of the Constitution. Section II traces the rise and fall of the authoritarianism and its impact on constitutionalism. Section III analyzes in detail the evolution of the constitutional structure embodied in a series of constitutional amendments in the '90s, namely the Additional Articles of 1991, 1992, 1994 and 1997 respectively. Section IV synthesizes lessons from the recent experiences by commenting on three critical moves, including the popular election of the President, the popular election of the governor of Taiwan Province, and the prospective constitutionalization of plebiscite.

## I. ROC Constitution in Comparison

Under the heading of "Constitutional Reform", Taiwan has initiated a series of constitutional amendments since 1990. Before exploring these Amendments, an introduction to the Constitution is necessary.

The Constitution of the Republic of China (*hereinafter* referred to as "the Constitution") was enacted on December 25, 1946 and came into force one year after its enactment. The Constitution contains 14 Chapters and a total of 175 articles. Its distinctive features are as follows:

---

<sup>1</sup> See, e.g., ALBERT P. BLAUSTEIN, FRAMING THE MODERN CONSTITUTION: A CHECKLIST V (1993); PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT 1 (Arend Lijphart ed. 1995).

## I.1 TRACES OF DEMARCATION BETWEEN POLITICAL RIGHTS AND GOVERNING POWERS: MONOPOLY OF CONSTITUTION REVISION

On the surface, the Constitution is based on the teachings of Dr. Sun Yat-sen (1866-1925)<sup>2</sup>, the founding father of both the Republic and the Kuomintang (KMT, or Nationalist Party).<sup>3</sup> The Constitution, in fact, as it appears in its current version, is the result of a political compromise reached between the KMT and the Chinese Communist Party in 1946.<sup>4</sup>

One of the essential theories of Sun is the demarcation between "political rights" (Cheng Chuan) and "governing powers" (Chi Chuan). Political rights, which include election, recall, initiative, and referendum, should be given into the hands of people; "this political right is popular sovereignty."<sup>5</sup> Governing power is the power of government and should be exercised by the five separate branches (Yuans). At the central level,

---

<sup>2</sup> Born near Canton to a peasant family, Sun received secondary and advanced education in western medicine in Hawaii and Hong Kong. Before the Wuchang Revolution on October 10, 1911, he had already led the Nationalist Party in ten unsuccessful armed uprisings.

<sup>3</sup> The Preamble of the Constitution says:

"The National Constituent Assembly of the Republic of China, by virtue of the mandate received from the people, in accordance with the teaching bequeathed by Dr. Sun Yat-sen in founding the Republic of China, and in order to consolidate the authority of the State, safeguard the rights of the people, ensure social tranquility, and promote the welfare of the people, do hereby adopt this Constitution to be promulgated throughout the land for faithful and perpetual observance by one and all."

<sup>4</sup> For the history of the Constitution, see, J. FA, A COMPARATIVE STUDY OF JUDICIAL REVIEW UNDER NATIONALIST CHINESE AND AMERICAN CONSTITUTIONAL LAW 45-66 (1980) (Occasional Paper/Reprints Series in Contemporary Asian Studies, Sch. of Law, Univ. of Maryland); C. LIN, AN ANALYTICAL STUDY ON THE CONSTITUTION OF THE REPUBLIC OF CHINA (CHUNG HWA MIN KUO HSIEN FA SHIH LUN) 108-121 (1979).

<sup>5</sup> Y. SUN, SAN MIN CHU I 140-141 (F. PRICE trans. 10<sup>th</sup> ed. 1985).

Sun<sup>6</sup> would entrust the exercise of these four political rights to the National Assembly, to which the central government would be responsible. At the local level, people would directly exercise these four political rights in organizing their own government; hence, the so-called "local self-governance".

The elite framers of the Constitution, however, rejected the demarcation doctrine in 1946, as they felt they could not assure that the delegates of the National Assembly would, in Sun's words<sup>7</sup>, "only perform their duties without usurping the powers of the people." They thus created a "nominal" or "amorphous" National Assembly whose functions were first substantially curtailed. The Assembly is only entitled<sup>8</sup> to elect and recall the President and the Vice President of the Republic,<sup>9</sup> and to exercise initiative and referendum when these two political rights have been exercised in more than one half of the counties and cities of the whole nation.<sup>10</sup> Yet the Constitution exclusively entrusts the National Assembly with the power to revise the Constitution<sup>11</sup> as well as to

---

<sup>6</sup> See, Y. SUN, CHIEN KUO TA KANG (FUNDAMENTALS OF NATIONAL RECONSTRUCTION), Art. 24.

<sup>7</sup> ? of Dr. Sun Yat-Sen, Vol. II, 179 (KMT Commission of Party History, August 1981).

<sup>8</sup> Art. 27 of the Constitution.

<sup>9</sup> The National Assembly was empowered to elect most of, and to recall all, government officials, under Article 32 of the "Draft Constitution of Double Five" issued by the Nationalist Government on May 5, 1936.

<sup>10</sup> Ever since 1949 when the Chinese Mainland was lost, this condition has been impossible to meet.

<sup>11</sup> Art. 174 of the Constitution prescribes:

Amendments to the Constitution shall be made in accordance with one of the following procedures:

1. Upon the proposal of one-fifth of the total number of the delegates to the National Assembly and by a resolution of *three-fourths* of the delegates present at a meeting having a quorum of *two-thirds* of the entire Assembly, the Constitution may be amended.

2. Upon the proposal of one-fourth of the members of the Legislative Yuan and by a resolution of the *three-fourths* of the members present at a meeting

approve<sup>12</sup> the alteration of national territory. As the Assembly is supposed to meet once every six years, normally in order to elect the president, and can only be convened by the President (of the Republic) or the president of the Legislative Yuan, such a monopoly of constitution revision does not appear to be a serious threat to constitutional democracy.<sup>13</sup> Nevertheless, over time, the monopoly has become a thorny problem.

## I.2 Horizontal Separation of Powers among Five Branches: A Modified Parliamentary System

Leaving the controversial demarcation doctrine aside, the Constitution also embraces the doctrine of separation of powers. It is, however, a separation among five branches, instead of three, at the central government level.<sup>14</sup>

1. *Executive Yuan*. The Executive Yuan is "the highest administrative organ of the state."<sup>15</sup> There is an Executive Yuan Council (commonly viewed as the counterpart of the Cabinet) composed of the President and Vice President of the Executive Yuan (Premier and Vice Premier), Ministers, Chairmen of Commissions, and Ministers without Portfolio.

---

having a quorum of *three-fourths* of the members of the Yuan, an amendment may be drawn up and submitted to the National Assembly by way of referendum. Such a proposed amendment to the Constitution shall be publicly published half a year before the National Assembly convenes. (*Emphasis added*)

<sup>12</sup> Art. 4 of the Constitution prescribes that "[t]he territory of the Republic of China according to its original boundaries shall not be altered except by resolution of the National assembly."

<sup>13</sup> Article 2 of the Constitution reads: "[t]he sovereignty of the Republic of China shall reside in the whole body of citizens."

<sup>14</sup> At the local government level, it's a separation of powers between two branches only, namely the executive and the legislative. Unlike federal countries, a local government does not have its own courts. In addition, the Supervisory Yuan and Examination Yuan exercise their duties throughout the whole nation with no separation of powers between central and local government.

<sup>15</sup> Art. 53, ROC Constitution.

Bills on important matters, such as proposed laws, budgets, declarations of *état de siège*, amnesty, declarations of war, conclusions of peace and treaties, as well as matters of common concern to all the ministries and commissions, are considered in the Council before they are sent to the Legislative Yuan.<sup>16</sup>

The Premier is nominated and, upon approval by the Legislative Yuan, appointed by the President of the Republic.<sup>17</sup> Other members of the Executive Yuan Council are appointed by the President of the Republic upon the recommendation of the Premier.<sup>18</sup> None of the members of the Executive Yuan can simultaneously hold a membership in the Legislative Yuan. The Premier does not have the power to dissolve the Legislative Yuan, nor can the Legislative Yuan remove the cabinet by a vote of non-confidence. I will elaborate on the relationship between the Executive Yuan and the Legislative Yuan later.

2. *Legislative Yuan.* The Legislative Yuan is "the highest legislative organ of the state exercising the legislative power on behalf of the people."<sup>19</sup> It is composed of members directly elected from provinces, Mongolian Leagues, Tibet, and ethnic groups in frontier regions, as well as by Chinese citizens residing abroad (known as "overseas Chinese") and various occupational groups.<sup>20</sup> Members serve a term of three years

---

<sup>16</sup> Art. 58, ROC Constitution. The President of the Executive Yuan has the right to veto the majority vote of the Council, and the right to make final decisions. See §5, Rules for the Meeting of the Executive Yuan Council (Shing Cheng Yuan Hway Yi Guay Ther).

<sup>17</sup> There is no explicit provision governing the dismissal of the Premier. In practice, the premier and his cabinet members usually resign when the President of the Republic is re-elected or changed. On October 13, 1995 the Council of Grand Justices rendered Interpretation No. 387 which held that the Premier with all cabinet members should resign before the first meeting of every re-elected Legislative Yuan.

<sup>18</sup> Art. 56, ROC Const.

<sup>19</sup> Art. 62, ROC Const.

<sup>20</sup> Art. 64(1), ROC Const. "The minimum quota for women to be elected under all the items of the preceding paragraph shall be prescribed by law." *Id.* at Art. 64(2).

and may be re-elected.<sup>21</sup> No member may concurrently hold a government post.<sup>22</sup> Two sessions are held each year: February to May, and September to December.<sup>23</sup> The Presidents of the various Yuan concerned may be present at the meetings of the Legislative Yuan to present their views.<sup>24</sup>

3. *Judicial Yuan*. The Judicial Yuan is "the highest judicial organ of the state" responsible for the trying of civil, criminal, and administrative cases and disciplinary punishment of public employees.<sup>25</sup> Yet the Judicial Yuan has never been a court as in fact various statutes<sup>26</sup> have assigned these jurisdictions to variant subordinate courts.<sup>27</sup> Moreover, the Judicial Yuan shall set up a certain number of Grand Justices to interpret the Constitution and to unify the interpretations of statutes and administrative regulations.<sup>28</sup> The President, Vice President and Grand Justices of the Judicial Yuan are nominated and, upon confirmation by the Control Yuan, appointed by the President of the Republic.<sup>29</sup> Judges are nonpartisan, and

<sup>21</sup> Art. 65, ROC Const.

<sup>22</sup> Art. 75, ROC Const. A Member of the Legislative Yuan is deemed resigned when he takes a governmental post. Council of Grand Justices, Interpretation [*hereinafter* "Interpretation"] No. 1. (Jan. 6, 1939).

A "government post" includes any position, civil or military, which receives compensation from the nation, as well as a Member of National Assembly. *See*, Interpretation Nos. 24 (Sept. 3, 1953) & 30 (Jan. 15, 1954).

<sup>23</sup> Art. 68, ROC Const. A session may be prolonged, if necessary. *Id.*

<sup>24</sup> Art. 71, ROC Const. In practice, except for the Premier and his cabinet members, the Presidents of other Yuans only send their chief of staff (secretary general) to present their views.

<sup>25</sup> Art. 77, ROC Const.

<sup>26</sup> I.e., the Organic Act of Courts, the Organic Act of Administrative Court, and the Organic Act of Committee on the Discipline of Civil Service.

<sup>27</sup> Whether the Judicial Yuan should be transformed into a *real supreme court* has been ardently debated in the Judicial Reform Committee. *See e.g.*, JUDICIAL YUAN, PROCEEDINGS OF JUDICIAL REFORM COMMITTEE, VOL. II, 652-662 (1996).

<sup>28</sup> Art. 78, ROC Const.

<sup>29</sup> Art. 79(1), ROC Const.

The relationship between the Council of Grand Justices and the Judicial Yuan is also ambiguous, as the President of the Judicial Yuan has never served as



hold office for life unless found guilty of a criminal offense, subjected to disciplinary action by the Control Yuan, or declared to be under interdiction.<sup>30</sup>

4. *Examination Yuan.* The Examination Yuan is "the highest examination organ of the state" and is responsible for "matters relating to examination, appointment, official grading, service rating, salary scales, promotion and transfer, security of tenure, commendation, pension for the deceased's family, retirement, and old-age pension (of public employees)."<sup>31</sup> The President, Vice President, and Members of the Examination Yuan are nominated and, upon confirmation by the Control Yuan, appointed by the President of the Republic. The Members are nonpartisan and exercise their function independently, in accordance with law.

5. *Control Yuan.* The Control Yuan is "the highest supervisory organ of the state" possessing the power of consent, impeachment, censure, and auditing.<sup>32</sup> Members of the Control Yuan are elected by Provincial and Municipal Assemblies, the local councils of Mongolia and Tibet, and Chinese citizens residing abroad. The President and Vice President are elected from among the members.<sup>33</sup> Members serve a term of six years and may be re-elected.<sup>34</sup> The impeachment and censure powers cover the President and Vice-President of the Republic, officials under the jurisdiction of the Executive Yuan and various local governments, and officials under the jurisdictions of the Examination Yuan and the Judicial Yuan (including judges).<sup>35</sup> The Control Yuan may also pass a resolution

---

Grand Justice at the same time.

<sup>30</sup> Art. 80, 81, ROC Const.

<sup>31</sup> Art. 83, ROC Const.

<sup>32</sup> Art. 90, ROC Const.

<sup>33</sup> Art. 91, ROC Const.

<sup>34</sup> *Id.* Art. 93.

<sup>35</sup> *See*, Art. 98, 99, 100, ROC Const. The Members of the National Assembly, Legislative Yuan, and Provincial Assembly are not subject to the supervision of the Control Yuan. *See*, Interpretations Nos. 14 (March 21, 1953) & 33 (April 2, 1954).

proposed by a relevant commission and transmitted to the Executive Yuan for correcting a particular measure or a general policy. This may put the Executive Yuan in a difficult position, as in practice it is unclear what the distinction between the supervisory powers of the Control Yuan and the Legislative Yuan is when it concerns a policy of the Executive Yuan.

*President of the Republic.* The President is the "Chief of the State", representing the Republic of China in foreign relations.<sup>36</sup> The President is the supreme commander of the army, navy, and air force of the country.<sup>37</sup> The President must promulgate laws and issue mandates with the countersignature of the Premier or with the countersignatures of both the Premier and the ministers or chairmen of the commissions concerned.<sup>38</sup> The President may, in accordance with law, declare *état de siège* with the approval of, or subject to confirmation by, the Legislative Yuan.<sup>39</sup> In case of disputes involving two or more Yuans, the President may call a meeting of the Presidents of the involved Yuans to work out a solution, except as otherwise provided in the Constitution.<sup>40</sup>

Despite these honorary powers, the President does have a crucial role to play when the Premier and the Legislative Yuan are in dispute. The President may, by approving (or disapproving) the reconsideration initiative proposed by the Premier, change the symmetry of these two rivals. Article 57 of the Constitution fully lays out the distinguishing characteristics of a "modified parliamentary system." It reads as follow:

---

<sup>36</sup> Art. 35, ROC Const.

<sup>37</sup> Art. 36, ROC Const. In practice, the President exercises this commanding power through the joint chiefs of staff.

<sup>38</sup> Art. 37, ROC Const.

<sup>39</sup> Art. 39, ROC Const. According to § 1 of the Martial Law, there are only two reasons for declaring an *état de siège*: war or rebellion.

In addition, the Constitution (Art. 43) confers upon the President another emergency power -- issuance of "emergency orders." However, this power only exists in theory as the Law on Emergency Orders has not been enacted.

<sup>40</sup> Art. 44, ROC Const. It is commonly thought that this dispute-solving mechanism is limited to political issues. If the disputed issue is a legal one, judicial review should be employed. See G. LIN, *supra* note ?, at 205.

The Executive Yuan shall be responsible to the Legislative Yuan in accordance with the following provisions:

1. The Executive Yuan has the duty to present to the Legislative Yuan a statement of its administrative policies and a report on its administration. While the Legislative Yuan is in session, Members of the Legislative Yuan shall have the right to question the Premier and the Ministers and Chairmen of Commissions of the Executive Yuan.

2. If the Legislative Yuan does not concur with any particular major policy of the Executive Yuan, it may by resolution request the Executive Yuan to alter such a policy. With respect to such a resolution, the Executive Yuan may, with the approval of the President of the Republic, ask 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 Premier shall either abide by the same or resign.

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 resolution. If after reconsideration, two-thirds of the Members of the Legislative Yuan present at the meeting uphold the original resolution, the Premier shall either abide by the same or resign.

Such a system is indeed *a subtle compromise of political accountability and executive stability*. In particular, there are two rounds of rivalry. The first round emphasizes accountability, while the second round emphasizes stability. The whole process of contest can be illustrated by the following schematic:

*1.1. Rivalry Begins*

More than one-half  
of the Members of  
the LY.

*Vs.*

Premier &  
Less than one-half of  
the Members of the  
LY



1<sup>st</sup> Round: Accountability as Priority

More than one-half  
of the Members of  
the LY &  
President of the  
Republic  
(disapproving the  
reconsideration  
initiative by the  
Premier)

*Defeats*

Premier &  
Less than one-half of  
the Members of the  
LY

Or

More than one-half  
of the Members of  
the LY.

*Is  
Defeated  
By*

President of the  
Republic (approving  
the reconsideration  
initiative by the  
Premier) &  
Premier &  
Less than one-half of  
the Members of the  
LY.



2<sup>nd</sup> Round: Stability as Priority

Two-thirds of the  
Members of the LY.

*Defeats*

Premier &  
Less than one-third of  
the Members of the  
LY.

It seems fair to say that the checks and balances among the five branches (five Yuans), not including the President and the National Assembly, is much more complicated than those that would be found under a system of separation of power among just three branches.<sup>41</sup> Such a complicated constitutional framework is, obviously, hard to operate without the leadership of a stable ruling party. This might explain why the framers insisted *a modified parliamentary system, a weak form of parliamentarism with high stability at the cost of low efficiency.*<sup>42</sup>

### I.3 VERTICAL SEPARATION OF POWERS AND LOCAL SELF-GOVERNANCE

Generally speaking, China has been a unitary country since the Ching Dynasty (B.C. 246-B.C. 207). Yet, for such a huge country the relationship between central and local governments<sup>43</sup> has been a recurrent issue in politics. The Constitution attempts to offer some guidance by distinguishing subject matters into four categories.

- 1) The subject-matters which shall be legislated and executed by the central government, such as foreign affairs, national defense, the judiciary, demarcation of national, provincial, and county taxes, foreign trade policy, etc.<sup>44</sup>
- 2) The subject-matters which shall be legislated by the central government, yet may be delegated to the provincial or county governments for execution, such as The General Principles of Provincial and County Self-Governance, the educational system, eminent domain,

---

<sup>41</sup> See Dennis Tang, *A Critical Review of the Council of Grand Justices' Interpretations of the Separation-of-Powers Doctrine*, in DENNIS T. TANG, SEPARATION OF POWERS REVISITED 127, 266 (Figure 2) (1998) for illustration.

<sup>42</sup> It is so because a Premier who obtains no majority yet more than one-third of the legislators' support can hold his post without passing laws or budgets.

<sup>43</sup> By "local governments", as commonly denoted in Chinese, I mean the government of provinces and the lower levels of government, such as county governments.

<sup>44</sup> Art. 107, ROC Const.

the police system, public health, etc.<sup>45</sup>

3) The subject matters which shall be legislated by the provincial government, yet may be delegated to county governments for execution, such as provincial education, public health, industry, and communications, etc.<sup>46</sup>

4) The subject matters which shall be legislated and executed by county governments, such as county education, public health, industry and communications, etc.<sup>47</sup>

Any matter not enumerated in these categories falls within the jurisdiction of the Central government if it is national in nature, falls within that of the Province if it is provincial in nature, or falls within that of the County if it is local in nature. In case of dispute, the matter should be settled by the Legislative Yuan, rather than through the judicial review process of the Judicial Yuan.<sup>48</sup>

The local self-governance envisioned by the Constitution was not realized because the Chinese Mainland fell into the hands of Communists before the "Act Containing General Principles for Province and County Self-Governance" could make it through the legislative process.

## I.4 Centralized and Abstract Judicial Review

The Constitution embraces a full-fledge judicial review. Article 171, Section 1 of the Constitution prescribes: "[l]aws<sup>49</sup> that [are] in conflict

---

<sup>45</sup> *Id.* Art. 108.

<sup>46</sup> *Id.* Art. 109.

<sup>47</sup> *Id.* Art. 110. These provisions were criticized as being blindly modeled after the federal system (especially that of Germany) and ignoring the Chinese political tradition completely. See G. LIN, *supra* note , at 310-314.

<sup>48</sup> *Id.* Art. 111.

<sup>49</sup> The term "laws" used in the Constitution, according to Article 170 of the Constitution, means a legislative bill that has been passed by the Legislative Yuan (the ROC legislature) and promulgated by the President of the Republic.

with the Constitution shall be null and void.”<sup>50</sup> Section 2 of the same Article goes further: “[w]hen doubt arises as to whether or not a law is in conflict with the Constitution, interpretation thereon shall be made by the Judicial Yuan.” Article 78 of the Constitution reiterates that “[t]he Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretation of laws and regulations.” Section 2, Article 79 of the Constitution mandates that: “[t]he Judicial Yuan shall have a certain number of Grand Justices to take charge of the matters specified in Article 78 of this Constitution, who shall be nominated and, with the consent of the Control Yuan, appointed by the President of the Republic.”

The Organic Act of Judiciary Yuan of 1947 set up within the Judicial Yuan a Council of Grand Justices (*hereinafter* the Council) consisting of 17 Grand Justices to interpret the Constitution and to unify the interpretations of laws and regulations.<sup>51</sup> Section 4 of the same Act fixed the tenure for the Grand Justices at nine years. In practice, the Grand Justices have been customarily re-appointed, except those who are 65 years or older, when their term of service ends.<sup>52</sup>

The tenure of the 1st Council of Grand Justices began in August 1948 and the first meeting of the Council convened on September 15, 1948 in Nanjing, Mainland China. The Council resumed meeting in Taipei, Taiwan on April 14, 1952. The Council is now in its 6<sup>th</sup> term.

Partly because of the phrasing of relevant provisions in the Constitution<sup>53</sup>, and partly because of the influence of Civil (Continental)

---

<sup>50</sup> Article 172 further prescribes: “[Administrative] Regulations that are in conflict with the Constitution or with laws shall be null and void.”

<sup>51</sup> § 3, the Organic Act of Judiciary Yuan of 1947.

<sup>52</sup> After the latest revision in 1992, Section 2, Article 5 of the Organic Act of the Judicial Yuan reads: “The tenure of a Grand Justice is nine years *per term*” (emphasis added). It strongly suggests that a Grand Justice is entitled to be re-appointed. Since 2003, however, the tenure of a Grand Justice will be fixed at 8 years and no reappointment will be allowed. See Section 2, Article 5 of the Additional Articles of the Constitution enacted in 1997.

<sup>53</sup> Besides Article 77, Article 78 of the Constitution precisely prescribes that within the Judicial Yuan there shall be a certain number of Grand Justices to

Law countries (such as Austria<sup>54</sup>), the power of judicial review has been monopolized by the Council of Grand Justices.<sup>55</sup> Such a *centralized judicial review* means that ordinary courts need not, in practice, pay attention to constitutionality issues.<sup>56</sup>

A much more far-reaching characteristic of judicial review in Taiwan lies in the fact that the Council of Grand Justices may interpret the Constitution in the abstract, without subject to the "*case or controversy*" requirement. The *abstract judicial review* stands in sharp contrast to the ordinary courts of both Case law and Civil law countries. Specifically, if any agency of the central government or a local government, when performing its duties has *doubts* regarding the application of the Constitution, including doubts regarding whether or not the applicable statute or regulation is in conflict with the Constitution, is entitled to apply for a "constitution interpretation" by the Council.<sup>57</sup>

Since 1957 the legislators have tried to restrict the Council's "constitution interpretation" by imposing a special majority threshold. While a "uniform interpretation" requires only a quorum of one half of

---

within the Judicial Yuan there shall be a certain number of Grand Justices to interpret the Constitution and to unify the interpretations of statutes and regulations.

<sup>54</sup> See, e.g., the Austrian Constitution of October 1, 1920 (known as *Oktoberverfassung*).

<sup>55</sup> In contrast, in a decentralized judicial review system every court has the power and duty to determine the constitutionality of statutes when it comes before it.

The monopoly has been weakened since 1995 when the Council in Interpretation No. 371 announced that judges of various grades of courts, when in doubt concerning the constitutionality of an applicable statute, may suspend proceedings and apply for an interpretation by the Council of Grand Justices.

<sup>56</sup> The worst situation happened during the 1<sup>st</sup> session of the Council of Grand Justices (August 1948~August 1958) when only state organs, no individuals, were allowed to apply for judicial review (constitution interpretations).

<sup>57</sup> § 4, the Act Governing the Council of Grand Justices of the Judicial Yuan of 1958; see also Grand Justices' Interpretation No. 2 (Jan. 6, 1949).



the totals of Grand Justices and an accord of one half of those present, a "constitution interpretation" requires a quorum of three-fourths of the totals of Grand Justices and an accord of three-fourths of those present.<sup>58</sup> The threshold for passing a "constitution interpretation" was lowered in 1993 to a quorum of two-thirds of the totals of Grand Justices currently in position, and an accord of two-thirds of those present.<sup>59</sup>

In Interpretation No. 185 the Council unequivocally announced that "the interpretations rendered by the Judicial Yuan shall have a binding effect on all agencies and people."<sup>60</sup> With such general binding effect, a "constitution interpretation" made by the Council can in fact only be repealed by either constitutional amendment, which requires a special majority<sup>61</sup> of the National Assembly, or re-interpretation by the Council itself.

As of April 1, 1999 the Council has rendered 479 decisions (officially known as "interpretations"). Among them, about 70% are "constitution interpretations", 30% are "uniform interpretations"; around 48% are "abstract interpretations", 52% are "concrete adjudication".

【Table 1】shows the detailed breakdowns. Furthermore, the "constitution interpretations" can be roughly divided into two categories: "separation-of-powers interpretations" and "human rights interpretations". The first is

---

<sup>58</sup> Section 6, Organic Act of the Judicial Yuan of 1957; Section 13, the Act Governing Council of Grand Justices of 1958.

The author believes that these restrictions are unconstitutional as they violate the Doctrine of Separation of Powers by infringing on the core of judicial power. See Dennis Tang, *A Critical Review of the Grand Justices' Interpretations of the Separation-of-Powers Doctrine*, in DENNIS T. TANG, *SEPARATION OF POWERS REVISITED* 127, at 145 (1998).

<sup>59</sup> Sec. 14, subsec. 1, the Act Governing Hearing of Cases by the Grand Justices of the Judicial Yuan.

<sup>60</sup> JUDICIAL YUAN, *COMPILATION OF INTERPRETATIONS BY THE COUNCIL OF GRAND JUSTICES, SUPPLEMENTS* Vol. II, at 23 (2<sup>nd</sup> ed. August 1991).

<sup>61</sup> The Constitution (Art. 174) requires a resolution of three-fourths of the delegates present at a meeting, having a quorum of two-thirds of the entire National Assembly to pass amendments to the Constitution. See also *supra* note 11.

primarily abstract; the second consists almost always of concrete adjudication. Though the percentage of "separation-of-powers interpretations" of the total interpretations rendered has decreased over years, "human rights interpretations" have been steadily increasing. [Table 2] shows the detailed breakdowns.

## II. Constitutional Tutelage under Authoritarianism

Soon after the enactment of the Constitution, a civil war broke up. When the first session of the first term of the National Assembly was convened in Nanjing in 1948, the "Temporary Provisions for the Duration of Mobilization to Crush the Communist Rebellion" (*hereinafter* referred to as "Temporary Provisions") were adopted.<sup>62</sup> Though the Temporary Provisions were not supposed to be "formal" amendments to the Constitution, they have "frozen" the effects of some key provisions of the Constitution,<sup>63</sup> and, furthermore, their adoption followed the procedures prescribed for amendments to the Constitution.<sup>64</sup> Since 1949, when the Communists overran the Chinese Mainland and the central government of the Republic of China withdrew to Taiwan, the Constitution has been in

---

<sup>62</sup> The National Constituent Assembly, which enacted the Constitution in 1947, was dissolved immediately after the enactment. Some three-fourths of the delegates were re-elected as the delegates to this new National Assembly. Their reluctance to formally amend the Constitution, which they had just produced sixteen months ago, is understandable. Several amendments to the Temporary Provisions have been made in Taiwan since 1949.

<sup>63</sup> Art. 10, Temporary Provisions, ROC Constitution: "The termination of the period of Mobilization to suppress the Rebellion shall be declared by the President."

Art. 11, Temporary Provisions, ROC Constitution: "Amendments to, or abrogation of, the Temporary Provisions shall be decided by resolutions of the National Assembly."

<sup>64</sup> I.e., Art. 174, ROC Const. See *supra* note 11.

force only in the Taiwan area.<sup>65</sup>

As the situation worsened, the Garrison Headquarters of Taiwan declared an *état de siège* on May 20, 1949.<sup>66</sup> From then until July 15, 1987, martial law was in force in Taiwan for over 38 years.<sup>67</sup> Chiang Kai-shek resumed the presidency on March 1, 1950 in Taipei,<sup>68</sup> and established a stable and strong leadership which lasted until the death of President Chiang Ching-kuo in January 1988. To sharpen our understanding of the operations of this authoritarian government, I call

---

<sup>65</sup> In terms of administrative districts, it includes two Provinces, Taiwan and Fuchien which includes only three groups of strategic off-shore islands, and two Metropolitan Municipalities, Taipei and Kaohsiung. Hierarchically, there are 16 counties (Hsien) and 5 provincial municipalities under the jurisdiction of Taiwan Province; and a total number of 309 villages, towns, county municipalities, and boroughs subordinate to the county and provincial municipality governments.

<sup>66</sup> The proclamation was made by the top military official then in Taiwan according to § 3, Martial Law (1948). The proclamation was confirmed by the Legislative Yuan on March 14, 1950. See *id.* §§ 1 & 3.

<sup>67</sup> Behind the concepts of "*état de siège*" and "martial law", there are different attitudes toward the origin of emergency powers. The *état de siège* in civil law countries is regarded as an emergency measure to be employed against any threat to public safety and order; martial law in common law countries emphasizes the suspension of the rule of law (especially the writ of *habeas corpus*). Consequently, a prerequisite for imposing martial law in the United States would be either that the civilian courts were closed or that they could no longer function properly. See Warren, *Spies, and the Power of Congress to Subject Certain Classes of Civilians to Trial by Military Tribunal*, 53 AM. L. REV. 195, 201 (1919); R. RANKIN, *WHEN CIVIL LAW FAILS* 181-184 (1939). This condition does not apply to a state of siege, under which the civilian courts may still function while the jurisdiction of military courts would be expanded. Another major difference is that the executive and/or the legislative branch in civil law countries would have the final say as to whether an emergency exists or has ended, while the courts assume this function under the common law.

<sup>68</sup> Chiang Kai-shek was the president of the Republic of China by the 1st National Assembly in April, 1948. When the KMT was thwarted in the civil war by the Communists on the Mainland, Chiang suffered severe criticism and stepped down from the Presidency on Jan. 21, 1949. Vice President Li Tsung-jen, who was the acting-President during Chiang's resignation, fled to the U.S. when the Chinese Mainland fell into the hands of Communists in December 1949.

this the era of "constitutional tutelage."

"Tutelage" because during this time the government actively fostered the people's ability to make their own judgments/decisions in local politics while remaining reluctant to confer upon them full constitutional rights in central politics. Therefore, the declaration of a state of siege did not interfere with the local elections. With the exception of the governor of Taiwan Province and the mayors of Taipei and Kaohsiung Metropolitan Municipalities, who were appointed by the Executive Yuan, all county magistrates and mayors and members of local legislative assemblies have been elected by direct vote of the people every four years since 1951.<sup>69</sup> On the other hand, there existed subtle controls, primarily via administrative orders based on martial law, in every politically sensitive area, such as a ban on organizing new political parties.<sup>70</sup> It is a "constitutional" tutelage as the *état de siège* was announced in conformance with constitutional procedure. In addition, as the Constitution was regarded as the country's most precious political asset in the continuing struggle against the Communist regime, the KMT government was reluctant to revoke the Constitution of 1947 and chose to enact and revise the "Temporary Provisions." Based on political and economic development concerns, the ROC has maintained a civilian government in Taiwan since 1949.

## II.1 Initial Crisis and Origin of "Millenium Congress"

---

<sup>69</sup> The local self-governance was based upon a series of administrative orders promulgated by the Executive Yuan, such as the "Fundamentals for Implementing Local Self-Governance in the Counties of Taiwan Province." The "Fundamentals" differ from the previously proposed "General Principles" mainly in that, under the former, a governor of a province would be appointed by the Executive Yuan, rather than being elected by popular vote.

<sup>70</sup> See DENNIS T. TANG, ON THE FEASIBILITY OF ECONOMIC INCENTIVES IN TAIWAN'S ENVIRONMENTAL REGULATIONS: LESSONS FROM THE AMERICAN EXPERIENCE 301-310 (Academia Sinica: 1990) for details.

By the time the tenure (of three years) for members of the 1<sup>st</sup> Legislative Yuan expired on May 7, 1951, the Nationalist government led by President Chiang Kai-shek had not succeeded in recovering the Mainland. Yet the government was reluctant<sup>71</sup> to hold a general election that could take place only in the Taiwan area. As a solution, the Executive Yuan (Cabinet Meeting) passed a resolution requesting, with the approval of the President, that the President acquire the consent of the Legislative Yuan for extending the service of its members by 1 year. The service for members of the Legislative Yuan was so extended in 1952 and again in 1953.<sup>72</sup> In light of the fact that the 2<sup>nd</sup> tenure of the LY members, as well as the 1<sup>st</sup> tenure of both the National Assembly members and the Control Yuan members were all expiring, the Executive Yuan applied to the then newly resumed Council of Grand Justices for a "constitution interpretation" in January 1954. On Jan. 29, 1954 the Council of Grand Justices rendered Interpretation No. 31 which held the following:

Article 65 of the Constitution stipulates that members of the Legislative Yuan shall serve a term of three years; Article 93 of the Constitution stipulates that members of the Control Yuan shall serve a term of six years. These terms originally should last for a period starting from the inauguration day until the end of the period prescribed in the Constitution. However, presently, the country is facing a vital disaster, and it is impossible, lawfully, to hold an election for the members of the next term. Were the Legislative Yuan and Control Yuan left non-functioning, the constitutional purpose for establishing five Yuans (branches) would be violated. Therefore, *before the members of a second term can be lawfully elected and convened, the first-term members of the Legislative Yuan*

---

<sup>71</sup> Most members of these three representative bodies had followed Chiang Kai-shek to Taiwan. It was believed that these representatives had a strong political appeal to the people of Mainland. More importantly, as the government lost control of the Chinese mainland, a general election in accordance with the apportionment provisions (Art. 26, 64 & 91) of the Constitution has been impossible.

<sup>72</sup> Attachment to Interpretation No. 31 (Application Message submitted by the Executive Yuan). See JUDICIAL YUAN, COMPILATION OF INTERPRETATIONS BY THE COUNCIL OF GRAND JUSTICES 55-56 (August 1991).

*and Control Yuan should continue to exercise their duties (Emphasis added).*

As a result of this Interpretation, the *de facto* terms of the members of the Legislative Yuan and the Control Yuan elected in 1947 were indefinitely extended. This is the origin of the so-called "Millennium Congress."

## II.2 Constitutional Structure under "Temporary Provisions": Semi-Presidentialism

In order to "crush the rebel while maintaining the constitutional framework", the Temporary Provisions chose to leave the text of the Constitution of 1947 untouched while supplementing amendments to "freeze" some of the original provisions. The high points of the Temporary Provisions, as latest revised in 1972, can be summarized as follows.

1. *Emergency Measures.* The Temporal Provisions authorized the President to take, during the period of Communist Rebellion, "by a resolution of the Executive Yuan, emergency measures to avert imminent danger to the security of the nation or the people, or to cope with a serious financial or economic crisis, without being subject to the restrictions prescribed in Articles 39 and 43 of the Constitution".<sup>73</sup> The emergency measures may be modified or abrogated by the Legislative Yuan in accordance with the provisions of Article 57, Item 2 of the Constitution.

### 2. *Fundamental Policies and Guidelines on National Mobilization*

---

<sup>73</sup> Sec. 1, Temporary Provisions.

This power was exercised only four times during 43 years (1948-1991). For example, at the end of 1978, in order to postpone the then imminent election of members of the Legislative Yuan, when the U.S. government announced its decision to de-recognize the Republic of China in order to establish full diplomatic relations with Communist China. The postponed election was held one year later.

*and Rebellion Suppression.* The Temporary Provisions authorized the President, during the period of Communist Rebellion, to set up an *ad hoc* organization to decide fundamental policies and guidelines on national mobilization and rebellion suppression.<sup>74</sup> The National Security Council and a subsidiary agency, the National Security Bureau, were established thereof. Each president of the five Yuans may be requested to attend the meeting of the Council.<sup>75</sup>

3. *Adjustment of Administrative and Personnel Agencies.* The Temporary Provisions also authorized the President to "make readjustment in the administrative and personnel agencies of the central government and their organizations to meet the needs of national mobilization and Rebellion Suppression."<sup>76</sup> As a result, a substantial part of the Examination Yuan's power was transferred to the newly established Personnel Administration Bureau under the Executive Yuan.

4. *Electoral Measures for the Additional Representatives.* In order to ease the political stagnation resulting from the "millenium congress" and to meet the rising demand of political participation, the Temporary Provisions authorized the President to promulgate measures (regulations) governing the election of additional representatives to the central parliamentary bodies without being subject to the provisions of Articles 26, 64 and 91 of the Constitution.<sup>77</sup> Although the number of additional representatives has substantially expanded since 1972 and the number of "senior" representatives elected in 1947 has declined sharply, only after the election of 1989, did new members in the LY become a dominant force. 【Table 3】 shows the evolution.

Leaving the original "modified parliamentary system", embodied in article 57 of the Constitution unchanged, the authorization of "laying

---

<sup>74</sup> Sec. 4, Temporary Provisions.

<sup>75</sup> § 6, Organic Ordinance of the National Security Council.

<sup>76</sup> Sec. 5, Temporary Provisions.

<sup>77</sup> *Id.* Art. 6. Articles 26, 64 and 91 of the Constitution are provisions about the delegates appropriations in the National Assembly, Legislative Yuan, and Control Yuan.

down the fundamental policies/guidelines” enabled the President, the head of state, to share at least specific executive power with the Premier, the president of the Executive Yuan. A dual authority structure was thereby created. In addition, the authorization of “making readjustment of administrative and personnel agencies” and “promulgating regulations for the election of additional representatives” invented a room of “rule by decree”. It seems fair to conclude that the Temporary Provisions transformed the modified parliamentary system embodied in the Constitution into a semi-presidential system.<sup>78</sup>

### II.3 Turning Crisis to Aspiration

Despite the “supplementary” elections held since 1969, the legitimacy of government arising from the *not-re-elected* “millenium congress” has been questioned more and more seriously. After the enactment of the Voluntary Severance Act for the Senior Central Representatives in January 1989 failed to “bribe” (with affluent severance pay) the “millenium congressmen” to step down as scheduled,<sup>79</sup> an unprecedented large-scale student hunger strike was held at the Chiang Kai-shek Memorial in March 1990. On March 21, 1990 immediately after being elected by the National Assembly as the 8<sup>th</sup> President of the Republic, President Lee Teng-hui announced his intention to summon a National Affairs Conference to solicit views on constitutional reform. On April 3, 1990 the Legislative Yuan passed a resolution applying for interpretation by the Council of Grand Justices.

On June 21, 1990, a week before the scheduled opening of the National Affairs Conference, the Council of Grand Justices rendered its

---

<sup>78</sup> See GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING: AN INQUIRY INTO STRUCTURES, INCENTIVES AND OUTCOMES* 132-135 (1994) for properties or characteristics of semi-presidentialism.

<sup>79</sup> Many refused to step down as they asserted they represented the ROC’s legitimate claim of sovereignty over the Mainland.



Interpretation No. 261, which held the following:<sup>80</sup>

The terms of central representatives are clearly stipulated by the Constitution. The first-term central representatives could not be reelected due to the vital disaster faced by this country after their lawful inaugurations, and their continuing exercise of duties as a result was requisite for the maintenance of the constitutional system. However, *periodic reelections are a necessary means to reflect the people's will and to fully carry out a democratic constitutionalism. Neither Interpretation No. 31 rendered by this Council, nor the provisions of Article 28, Section 2 of the Constitution<sup>81</sup>, nor Articles 6 Sections 2 & 3 of the Temporary Provisions<sup>82</sup> was ever intended to have the first-term central representatives continue exercising duties indefinitely, or to alter their tenure, or to prohibit the government from holding an election for the second-term central representatives.* In fact, the central government has, since 1969, held general elections for central representatives in free China to supplement central representative agencies step by step. In order to deal with the present circumstances, the first-term

---

<sup>80</sup> See JUDICIAL YUAN, COMPILATION OF INTERPRETATIONS BY THE COUNCIL OF GRAND JUSTICES, SUPPLEMENT VOL. V., 96-100 (August 1991).

<sup>81</sup> Art. 28, Sec. 2 of the Constitution reads:

The term of office of the delegates to each National Assembly shall terminate on the day on which the next National Assembly convenes.

<sup>82</sup> Art. 6, Sec. 2 & 3 read:

2. The original representatives of the central parliamentary bodies have all been duly elected by the people in a nation-wide election and have exercised their functions and powers according to law. So do those representatives of the same bodies later elected in by-elections either through a subsequent increase in the number of representatives or to fill vacancies created by deaths.

In areas on the mainland, as they are recovered, there shall be held elections, in one area after another, of representatives of the central parliamentary bodies.

3. Representatives of the central parliamentary bodies to be added and elected shall exercise the same functions and powers as the original representatives.

central representatives who have not been re-elected periodically and are either in fact not able to exercise their duties or are often absent from duties should be verified and dismissed immediately. In addition, the rest of *such representatives should stop exercising their duties by December 31, 1991*. In addition, *the central government should, in accordance with the spirit of the Constitution, the intention of this Interpretation, and the relevant statutes and ordinances, hold timely national elections for the second-term central representatives, so that the function of this constitutional system can be insured. (Emphasis added)*

This Interpretation not only concluded the "millenium congress" at one stroke<sup>83</sup>, also led the way to constitutional reform by suggesting, in its "text of reasoning", that a certain number of seats in the forthcoming general elections shall be determined by *one nationwide constituency*. Since 1991 the amendments to the Constitution have adopted a formula for *proportional representation* to allocate the seats allotted for the nationwide constituency.<sup>84</sup>

### III. Constitutional Transformation since 1990

The constitutional framework, or the "structure of the central government", has been the focus of the series of "Constitutional Reforms" since 1990.

---

<sup>83</sup> There were 612 members of the National Assembly, 138 members of the Legislative Yuan, and 18 Control Yuan members when the ruling was announced. See FREE CHINA J., Vol. VII No. 47, p. 1 (June 25, 1990).

<sup>84</sup> See, e.g., Article 1, Section 2 of the Additional Articles of the Constitution of 1997.

### III.1 1<sup>st</sup> Constitutional Reform: Additional Articles of 1991

Under the guiding principle of "One Organ, Two Stages"<sup>85</sup>, the ROC launched its first effort in reforming the constitution. In April 1991 a total of 10 articles officially known as the Additional Articles of the Constitution of the Republic of China (*hereinafter* "Additional Articles") were passed by the National Assembly.

The most imperative mission for these first-batch amendments is to pave the way for a general election of the three representative bodies at the central government as the "millenium congress" would soon be dismissed. Articles 1 to 3 thus re-allocate the seats for the National Assembly, Legislative Yuan and Control Yuan to be elected in Taiwan area respectively, so that Articles 26, 64 and 91 of the Constitution will no longer be applicable. Article 4 of the Additional Articles expressly prescribes that the members representing Chinese citizens residing abroad (so-called "overseas Chinese") and those representing the nation-wide constituency shall be elected by way of party-list proportional representation.<sup>86</sup>

In addition, the Additional Articles following the precedent of the Temporary Provisions save the power for the President to "establish the

---

<sup>85</sup> It is a procedural, rather than substantive, principle. "One organ" means the forthcoming "Constitutional Reform" engineering shall be conducted by the National Assembly only. It is so decided because, as mentioned earlier, the Assembly monopolizes the power to amend the Constitution. "Two stages" means that the reform engineering shall be completed in two stages. It is so because the desperately needed general election of "congress" can only be realized by amending the Constitution to get rid of the binds of Articles 26, 64 and 91. Yet this initial reform can only be completed by the 1<sup>st</sup> National Assembly which was overwhelmingly composed of "senior" members (more than 90%). As to more dramatic and substantial changes, these shall be reserved for those elected to the 2<sup>nd</sup> Assembly.

<sup>86</sup> In addition, Article 5 of the Additional Articles deals with the technical issue of connecting the tenure of various representatives of these three representative bodies.

National Security Council and its subsidiary organ, the National Security Bureau, to decide on national security related fundamental policies and guidelines.”<sup>87</sup> As explained above, such an authorization enables the President to share at least some executive power with the Premier, and thus created a dual authority structure. Even the President is not so powerful as before under the Temporary Provisions because the power to adjust administrative and personnel agencies and to promulgate regulations for the election of additional representatives are no longer existent. In sum, one shall conclude that the constitutional framework is still a semi-presidential system under the Additional Articles of 1991.

### **III.2 2<sup>nd</sup> Constitutional Reform: Additional Articles of 1992**

The principle of “One Organ, Two Stages” presaged that there would be a second run of constitutional reform. Yet what should be readjusted further? Many contended that the “five-powers structure” (separation of powers among five branches) should be given up, yet no consensus among a requisite overwhelming majority was forged. Neither did the fervent debate of parliamentarism versus presidentialism. Some technical break-through, instead of substantial settlement, was then desired.

As the previous indirect election of the members of Control Yuan by the members of provincial and municipal councils, this has been widely criticized as corruption. The 2<sup>nd</sup> National Assembly chose to take changing the “method” by which members of Control Yuan were generated as the starting point of reform.

The Additional Articles passed in May 1992 contained a total of 8 articles, numbered Articles 11 to 18, after those of 1991. Article 15, Section 2 cut the size of Control Yuan (CY) to a total of 29 members (including the president and vice president) and prescribed that “all members shall serve a term of 6 years and shall be nominated and, with

---

<sup>87</sup> Art. 9, Sec. 1, Additional Articles of 1991. Section 2 of the same Article also saves the Personnel Administration Bureau for the Executive Yuan.

the consent of National Assembly, appointed by the President." In the wake of such a change, the members of CY were no longer representatives of the people.<sup>88</sup> The consent power was quite naturally transferred to National Assembly. The National Assembly not only acquired the power of consent originally possessed by the CY, namely consent for the nominees of president and vice president of Judicial Yuan, Grand Justices, as well as president, vice president and members of Examination Yuan, and also the newly formulated consent for the nominees of members of Control Yuan.<sup>89</sup> In order to exercise the consent power, an extraordinary session of the National Assembly shall be convened which is not subject to the restrictions imposed in Article 30 of the Constitution.<sup>90</sup> The slumbering Assembly<sup>91</sup> was jolted awoken.

In return, the most crucial yet controversial change of the Constitutional Reform was hammered out. Article 12, Sec. 1 of the Additional Articles prescribed that "[e]ffective from the 1996 election for the ninth-term President and Vice President, the President and Vice President shall be elected by *the entire electorate* in the free area of the Republic." As a tentative compromise<sup>92</sup>, the wording "*the entire electorate*" indeed involved, at least, two assertions: "direct vote via delegates" or "direct vote by the people". Section 2 of the same Article further provided that: "[t]he electoral method for the aforementioned election shall be formulated according to the additional articles to the Constitution at an extraordinary session of the National Assembly to be convoked by the President by May 20, 1995." Despite the change of electoral method for the President, the National Assembly retains the power to recall, and the Control Yuan retains the power to impeach, the

---

<sup>88</sup> Art. 15, Sec. 6 of the Additional Articles prescribed: "Members of the Control Yuan must be beyond party affiliation and independently exercise their powers and discharge their duties in accordance with the law."

<sup>89</sup> Art. 11, Sec. 1, Additional Article of 1992.

<sup>90</sup> Art. 11, Sec. 2, Additional Article of 1992.

<sup>91</sup> See *supra* p.

<sup>92</sup> See Chung-hai Sau, *The Background and Evolution of the Additional Articles concerning the "Electoral Method of the President"*, 23 (3) THE CONSTITUTIONAL REVIEW 50 (Jan. 1998) for details.

President.<sup>93</sup>

Another important move adopted in the Additional Articles was the "institutionalization" of local self-governance. As explained earlier, the local self-governance implemented until then had been experimental. Article 17 of the Additional Articles mandated that appropriate laws shall be enacted to ensure that the legislative power entrusted by the Constitution to the province and county shall be exercised by the provincial assembly and county assembly respectively, and that the provincial governor and county magistrate shall be elected by the people of each province and county respectively. Because, since 1949, the ROC's jurisdiction, in terms of population and area, has substantially overlapped with those of the Taiwan Province, a popularly elected Governor may result in "Yelsin effects". In December 1994, the first (and last) popularly elected Governor of Taiwan was elected.

Lastly, the Additional Articles further delineated the powers between the Executive Yuan and Examination Yuan.<sup>94</sup>

---

<sup>93</sup> Art. 12, Sec. 4, Additional Articles of 1992 reads as follow:

Recall of the President and the Vice President shall be executed in accordance with the following provisions:

1. By a motion to recall put forward by one-fourth of all delegates to the National Assembly, and passed with the concurrence of two-thirds of such delegates.

2. By a resolution to impeach adopted by the Control Yuan, and passed as a resolution to recall by two-thirds of all delegates to the National Assembly.

<sup>94</sup> Art. 14, Sec. 1, Additional Articles of 1992 reads as follow:

The Examination Yuan shall be the highest examination body of the State, and shall be responsible for the following matters; and the provisions in Article 83 of the Constitution shall not apply:

1. All examination-related matters;
2. All matters relating to the qualification screening, security of tenure, pecuniary aid in case of death, and retirement of civil servants; and
3. All legal matters relating to the employment, discharge, performance evaluation, scale of salaries, promotion, transfer, commendation and award for civil servants.

### III.3 3<sup>rd</sup> Constitutional Reform: Additional Articles of 1994

After two years of rivalry within the KMT party, the 2<sup>nd</sup> National Assembly launched the third wave of Constitutional Reform since 1990. The Additional Articles passed in late July 1994 contained a total of 10 articles, yet the Additional Articles of 1991 and 1992 were completely repealed.

The most decisive move was the finalization of the electoral method for the President. Article 2, Section 1, Sentence 1 of the Additional Articles unequivocally provided that “[t]he President and Vice President shall be *directly elected by the entire populace* of the free area of the Republic of China.” (*emphasis added*) The pair of the president and vice president candidates that receive the highest number of votes shall be the winner of the presidential election.<sup>95</sup>

The immediate impact of this “direct election” move fell on the countersignature by the Premier, the president of the Executive Yuan. Article 2, Section 2 of the additional Articles curtailed the applicability of countersignature:

Presidential orders to appoint or *remove* from office personnel appointed with the consent of the National Assembly or Legislative Yuan in accordance with the Constitution do not require the countersignature of the President of the Executive Yuan. Article 37 of the Constitution shall not apply. (*Emphasis added*)

The above-quoted Section is problematic when scrutinized. The personnel whose appointments must be consented to by the National Assembly, in accordance with the Constitution, include the president, vice president and Grand Justices of the Judicial Yuan, the president, vice president and members of the Examination Yuan, and the president, vice president and members of the Control Yuan. All of them shall “be beyond

---

<sup>95</sup> Art. 2, Sec. 1, Sentence 4, Additional Articles of 1994.

party affiliation and independently exercise their powers and discharge their duties in accordance with the law"<sup>96</sup> and all serve for definite tenure.<sup>97</sup> It is hardly imaginable that these personnel can be removed by the President at will. So the removal order in the above Section must mean either the Premier (the president of the Executive Yuan)<sup>98</sup> or the Auditor General.<sup>99</sup> However it cannot be the second, as the Grand Justices have, in Interpretation No. 357,<sup>100</sup> rejected such a possibility. Thus this was the first time that the ROC constitution implied that the President could remove the Premier. But then how can the Executive Yuan still be responsible to the Legislative Yuan, as Article 57 of the Constitution clearly mandated?

A subtle answer is buried in Article 2, Section 3 of the Additional Articles. It says that "[o]rders to remove the President of the Executive Yuan from office shall take effect after the new nominee to this office has been confirmed by the legislative Yuan." This is indeed a copy of German *konstruktives Mißtrauensvotum*<sup>101</sup>. Putting the question of the necessity of such a protective mechanism under the "modified parliamentary system" aside, the normal way to introduce *konstruktives Mißtrauensvotum* should

---

<sup>96</sup> See Art. 80 & 88 of the Constitution; Art. 6, Sec. 6 of the Additional Articles of 1994.

<sup>97</sup> See Sec. 5, Subsec. 2 of the Organic Act of the Judicial Yuan of 1992 (9 years per term for Grand Justices); Sec. 5, Subsec. 1 of the Organic Act of the Examination Yuan (6 years per term for members of Examination Yuan); Art. 6, Sec. 2 of the Additional Articles of 1994.

<sup>98</sup> Art. 55, Sec. 1 of the Constitution: "The President of the Executive Yuan shall be nominated, and with the consent of the Legislative Yuan, appointed by the President of the Republic."

<sup>99</sup> Art. 104 of the Const.: "In the Control Yuan, there shall be an Auditor General who shall be nominated and, with the consent of the Legislative Yuan, appointed by the President of the Republic."

<sup>100</sup> JUDICIAL YUAN, COMPILATION OF INTERPRETATIONS BY THE COUNCIL OF GRAND JUSTICES, SUPPLEMENT VOL. VIII, 212 (June 1995). See also Dennis Tang, *A Critical Review of the Council of Grand Justices' Interpretations of the Separation-of-Powers Doctrine*, in DENNIS T. TANG, SEPARATION OF POWERS REVISITED 127, 204-206 (1998) for comments.

<sup>101</sup> Art. 67, GG.



be a revision to, or restriction on, Article 57 of the Constitution. The smuggling of such a removal power of the President by the two cited Sections is just an indication of the fierce battle between presidentialism and parliamentarism.

Another immediate impact of the shift of electoral method for the President was the further "liberalization" of the National Assembly. Article 1, Section 7 of the Additional Articles authorized the Assembly to set up beginning with the 3<sup>rd</sup> Assembly a speaker and a deputy speaker to be elected by the members among themselves and to represent the Assembly and to preside over its meetings. Furthermore, Section 8 of the same article allowed the Assembly to govern itself by conferring it with the power to determine its own procedures.<sup>102</sup> An autonomous and active National Assembly has exposed the inherent danger in the monopoly of constitutional revision.

### III.4 4<sup>th</sup> Constitutional Reform: Additional Articles of 1997

While the KMT won in the first popular election for the Presidency in March 1996, it lost the overwhelming majority possessed before,<sup>103</sup> a requisite for dominating the constitutional amendment, in the National Assembly. Some coalition between KMT and DPP was therefore necessary to push forward the 4<sup>th</sup> run of Constitutional Reform. An *ad hoc* consultative meeting, the National Development Conference, was convened in late December 1996 to nurture consensus. The major focus therein were:

- (1) further adjustment of the triangle relationship among the President, the Premier and the LY; and
- (2) review of the necessity of the various levels of government in Taiwan

---

<sup>102</sup> This means that Article 34 of the Constitution shall no longer apply.

<sup>103</sup> The ruling KMT party retained a dominant majority (79% seats backed with 71% votes) in the National Assembly election of 1991. It won only 54% seats in the National Assembly in 1996, while DPP won 30% seats therein.

area.

In July 1997 the 3<sup>rd</sup> National Assembly passed the Additional Articles of a total of 11 articles to replace the Additional Articles of 1994. The author believes that after the series of critical changes, the up to then semi-presidentialism was transformed into a "*presidentialism yet with a semi-presidentialism outlook.*"

Specifically, Article 3, Section 1 of the Additional Articles for the first time empowers, by ceasing the force of Article 55, Section 1 of the Constitution, the President to appoint the Premier without being subject to approval by the LY. Taking this with the equivocal removal power inherited from the Additional Articles of 1994, the President has firmly obtained absolute control over the Premier. Though the heading of Article 3, Section 2 still maintained that "the Executive Yuan shall be responsible to the Legislative Yuan in accordance with the following provisions", it really means "the Executive Yuan shall *be subject to the checks* of the Legislative Yuan in accordance with the following provisions".

The modified parliamentary system is further modified in two key aspects. First, Article 3, Section 2, Clause 2 replaces Article 57, Section 1, Clause 3 with the following:

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 resolution. The Legislative Yuan shall, within fifteen days upon the arrival of the request of reconsideration, make a resolution. If the Legislative Yuan is out of session upon the arrival of such request, the Legislative Yuan shall resume session voluntarily and make a resolution within fifteen days after the resumption of session. The original resolution of the Legislative Yuan shall be void if the Legislative Yuan fails to make a resolution on the request of the reconsideration within the time-period specified above. If after reconsideration, *one-half of the total* Members of the Legislative Yuan uphold the original resolution, the

Premier must *accept* the same. (*Emphasis added*)

In a parliamentary system, such a request of reconsideration is a request of "vote of confidence" proposed by the cabinet. If the cabinet fails in such a vote, the Premier shall either step down or dissolve the parliament for re-election to look into the will of the people. The above-cited Section of the Additional Articles mandates a defeated Premier *accept* the original resolution of the Legislative Yuan, instead of resign. It can only be understood from the viewpoint of a presidential system, that is, the Premier is being only responsible to the President, as the Premier was appointed, and may only be removed, by the President.

Second, Article 3, Section 2, Clause 3 replaces Article 57, Section 1, Clause 2 with the following:

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 initiate another no-confidence motion against the same president of the Executive Yuan within one year. (*Emphasis added*)

On the surface, the adoption of "no-confidence vote" replacing the "policy change request" and the lowering down of the voting threshold seems to improve the accountability and therefore the efficiency of the government. Yet there is no mechanism assuring that the President will appoint a new Premier who will be "responsible" to the will of the Legislative Yuan. Without such a guarantee, one can not help but doubt what will persuade the legislators to risk their seat by initiating a vote of no

confidence. Why not just block or boycott the important bills or budget proposed by the Premier? For these reasons, the vote of no confidence cannot constitute a real threat to the Premier.

In response to the power of the President to dissolve the LY upon the request by the Premier, the Additional Articles equip the Legislative Yuan for the first time with the power to impeach the President. Given the fact that the causes for impeachment are very limited,<sup>104</sup> and that even the Legislative Yuan passes the resolution of impeachment by a special majority,<sup>105</sup> it is the National Assembly that has the final say, after trial, on if the President shall be dismissed,<sup>106</sup> the impeachment is not an effective mechanism to prevent the possible deadlock between the President and the Legislative Yuan.

In sum, the absolute power to appoint and remove the Premier held by the President has "hollowed" the function of countersignature by the Premier, and transformed a semi-presidential system under which the President and the Premier horizontally share executive power, into a substantial presidential system under which the President vertically directs the Premier on executive matters.

Another explosive move taken by the Additional Articles is to

---

<sup>104</sup> Art. 4, Sec 5, Additional Articles of 1997 reads:

Impeachment of the president or the vice president by the Legislative Yuan for treason or rebellion shall be initiated upon the proposal of *more than one-half of total* members of the Legislative Yuan and passed by *more than two-thirds* of all such members, whereupon it shall be submitted to the National Assembly. The provisions of Article 90 and Article 100 of the Constitution and Article 7, Paragraph 1 of the Additional Articles of the Constitution shall not apply. (*Emphasis added*)

<sup>105</sup> Art. 4, Sec. 6 of the Additional Articles of 1997 requires more than three-fifths of the total members of the Legislative Yuan to propose and an accord of more than two-thirds of the total members of the LY to pass a resolution for impeachment.

<sup>106</sup> See Art. 2, Sec. 10, Additional Articles of 1997.

abolish the province as a level of government, popularly known as "minimization of the province." Starting December 1998, the governor of Taiwan Province will be appointed by the President, a return to the practice prior to December 1994. A series of reengineering of government re-organization has just begun. Facing these rapid changes, one is justified in believing that the shift of direct election of the Governor is just a transitory step towards the direct election of the President.

## IV. Review and Prospect

Sensitive readers might wonder what we should learn from the Taiwanese experience. As a witness and even an active participant in the Reforms, I have culled the following lessons.

### IV.1 Direct Election of the President Has an Enormous Impact on Constitutional Framework

Reviewing the whole process of the Constitutional Reform since 1990 *ex post*, I do not hesitate to point out that the shift of the electoral method for the President from indirect election by the members of the National Assembly to direct election by the people is the most crucial move, though, in theory, such a shift cannot alone determine the overall structure of a constitution. For example, Austria, Iceland and Ireland had recourse to a direct popular election of their presidents and yet are commonly regarded parliamentarisms, or at most facade presidentialisms.<sup>107</sup> However, in practice one should never underestimate the potential impact or implication of such a shift.<sup>108</sup> The shift of the ROC

---

<sup>107</sup> G. Sartori, *supra* note?, at 83.

<sup>108</sup> Many, including myself, who advocated the direct election simply rejected the dual character of the members of the National Assembly. While

Constitution from a modified parliamentarism to a substantial presidentialism due to the shift of the electoral method for the President is just an example.

The Taiwanese example, of course, does not mean that should another country decide to shift the electoral method for her president, it will witness the same shift in her constitutional framework. I tend to believe, however, that *should another country possess a tradition or reality of "leader worship", it is very likely that the shift of electoral method for the president will result in a shift to presidentialism.*

There are several reasons why such an interaction between these two "shifts" occurred in Taiwan. First, the tradition of Chinese emperor is so deeply imbedded in people's minds that anyone who serves the president or the head of state, will quite naturally enjoy the most prestige. Such an image/expectation did not decrease during the authoritarian rule of the two Presidents Chiang. Second, facing strong pressure from the Communists and a tough international situation, the people of Taiwan are searching for strong leadership. These might explain why the 1<sup>st</sup> Constitutional Reform allowed the president to maintain the power of laying down national security fundamentals, opting for a semi-presidential system, instead of completely repealing the Temporary Provisions, settling for a modified parliamentary system, instead of simply resuming the Constitution.

Thirdly, as Ian Budge remarked, "democracy has an irresistible allure for populations whose freedoms have been restricted and aspirations subordinated to some distant goal prescribed by regime ideology."<sup>109</sup> The Taiwanese citizens under authoritarianism have long demanded for more

---

serving as pure delegates of the people, like the Electoral College in the U.S., in electing the President (and Vice President), they are entitled to exercise other powers, including the monopolistic power of constitutional amendment, according to their own will. Many of these direct-election advocates did not, in the original debate, support a shift to presidentialism.

See, e.g., Dennis Tang, *The President Ought to be Directly Elected by the People*, SELF-INDEPENDENCE NIGHTLY NEWS, August 8 & 9, 1991.

<sup>109</sup> IAN BUDGE, *THE NEW CHALLENGE OF DIRECT DEMOCRACY* 6 (1996).

political participation. Popular election of the President can best meet such a demand.

Finally and sadly, the shift of constitutional framework may also be attributed to lack of deliberation! The lack of deliberation may in turn be attributed to the "strategy" of conducting Constitutional Reform, as well as the "unconsciousness" of the people. In terms of "strategy", the ruling KMT party has been focusing on various technical issues, such as "reform of the electoral method", "adjustment of countersignature", without exploring the "substantive meaning or substantial implication" of each of the constitutional amendments. Consequently few can elucidate why such a shift of constitutional structure is warranted. Moreover, the People on Taiwan, coming out of years of Japanese colonial rule followed by years of Nationalist authoritarian rule, were understandably not familiar with constitutional thinking. Therefore, we should not rush to the conclusion that such a shift was a conscious choice of the people.

After years of intensive revisions of the Constitution, the benefit of populist appeal appears to be declining. Many, or perhaps most, citizens have become indifferent, barely reacting to President Lee's recent announcement<sup>110</sup> that there will be a 5<sup>th</sup> Constitutional Reform.

## **IV.2 Abrogation of Taiwan Province in the Wake of Popular Election of the Governor Has Perplexed the Government Reorganization**

For years, constitutional scholars on Taiwan have criticized the "five-power structure" of the central government created by the Constitution as awkward and infeasible, and yet ignored the thorny problem of the institutional relationship between the central and local governments.

It seems fair to say that since the very beginning the "local self-governance" on Taiwan has been an experimental field of constitutional

---

<sup>110</sup> See THE FREE CHINA JOURNAL, Vol. XV, No. 50 (December 18, 1998).

tutelage. Leaving the Fuchien Province aside which includes only three groups of strategic off-shore islands, the ROC government since 1949 has effectively governed only Taiwan Province and two Metropolitan Municipalities, Taipei and Kaohsiung. The territorial jurisdiction of the Taiwan Province was divided into a total of 21 counties/provincial cities, a sharp increase compared to those under the previous Japanese rule. The territorial jurisdiction under the 16 counties (Hsien) was further divided into a total of 309 villages, towns, and county municipalities. With the exception of the Governor of Taiwan Province and the Mayors of Taipei and Kaohsiung Metropolitan Municipalities, all members of the Taiwan Provincial Assembly, Taipei City Council and Kaohsiung City Council, and all county magistrates and (provincial) city mayors and members of county/city Council, and all heads of villages/towns/(county) cities and members of village/town/city councils have been popularly elected by the people every four years. A three-layer structure of local government has thereby been shaped.

Such an intensive participation in local politics seems inevitable in order to compensate for the stagnation arising from the "millennium congress" at the central level. As late as 1991 when the "millennium congress" dissolved, however, the need for government reorganization has become apparent. Do we really need four overlapping levels of government on an island state?

Unfortunately, the Additional Articles of 1992 failed to initiate timely government reorganization. Instead, Article 17 of those Additional Articles decided to "institutionalize" local self-governance by enabling the popular election of the Taiwan Governor. Before the expiration of the four-year term of the first popularly elected Governor, the Additional Articles of 1997 moved to "minimize" the Taiwan Province, substantially abrogating it as a level of government. People became confused. If the Province is to be abrogated, why should there first be a shift of the electoral method for the Governor to popular election? Though a power struggle within the ruling party might explain why the shift of electoral method of the Governor preceded that of the President, one has to confess that the abrogation of the Taiwan Province immediately after the popular election of the Governor has complicated move towards government reorganization.



In my opinion, the abrogation of village/town/(county) city as a level of government, as proposed in the National Development Conference held in December 1996, is probably the most urgent, yet troublesome, move to be taken in light of the endemic corruption and faction problems in politics. Another imperative reform is to clarify as detailed and innovative as possible the subject-matter of the separation of jurisdiction between the central government and (metropolitan) municipalities/counties. The current legislative mode<sup>111</sup> which prescribes that “[t]he term “Responsible Agency” as used in this Act refers to “A” at the central government level, “B” at the provincial/municipal government level, and “C” at the county/city government level”, yet without specifying which matter belongs to which government, simply does not work!

### **IV.3 Direct Democracy as A Solution to Constitutional Monopoly is Worth a Try**

On December 11, 1998 President Lee Teng-hui urged the National Assembly to gear up for the fifth round of constitutional revisions.<sup>112</sup> The issues to be addressed included whether to synchronize the elections of the President and the National Assembly members by extending both terms through 2001, adjust the relationship between the Legislative Yuan and the National Assembly, as well as institute plebiscite. The proposals under study by a nine-member task force within the Assembly included an extension of LY members' term to four years and the granting to the Assembly the power to review its own budget and pass its own Organic Act.

Sensitive readers might have ascertained that these proposals shared

---

<sup>111</sup> See, e.g., § 3, Water Pollution Control Act. The English translation made jointly by the author of this article and Richard J. Ferris can be found at <http://w3.epa.gov.tw/epalaw/index.htm>

<sup>112</sup> See, e.g., The Free China Journal, Vol. XV, No. 50 (Dec. 18, 1998).

the same trend of previous reforms—a steady expansion of powers of the National Assembly. Behind such an expansion, as indicated earlier, is the monopoly of constitutional revisions, an inherent defect of the Constitution which needs to be corrected. The more evident expansion of powers by the National Assembly, the more likely will it irritate the people and result in constitutional crisis. It would be better to tackle this problem before it explodes.

The author suggests that President Lee take advantage of the forthcoming and possibly last round of Constitutional Reform falling within his term to merge the Legislative Yuan with the National Assembly into a congress of two houses with equal power and the same length of term, four years. There are three requirements in this reform package. First, the synchronization proposal under study should enable the people to elect members of National Assembly and Legislative Yuan, in turn, every two years,<sup>113</sup> that is, the “congress” consisting of LY and NA shall have a staggered term. Second, in order to shape co-equal houses the “congress” shall exercise every power currently entrusted with the LY and NA in a united conference (plenary session) consisting of all members of the LY and NA. Thirdly, as part of government reorganization effort, the size of the future “congress” shall be limited to 350 seats in total. To achieve this goal of downsizing, the seats of NA and LY shall be reduced, from the current 325 and 225, to 175 each.

As soon as the congress is so reformed, people should be given the final say by plebiscite to any constitutional amendment proposed by “either house” of the “congress” and confirmed by “the other house” of the “congress”. Though the special majority vote requirement by either “house” for proposing/confirming a constitutional amendment may no

---

<sup>113</sup> The current (4<sup>th</sup>) term of LY members will expire in January 2002 and the election for the 5<sup>th</sup> LY will be held in December 2001. In addition, the current (3<sup>rd</sup>) term of NA members will expire in May 2000 and the election for the 4<sup>th</sup> NA will be held in March 2000. Specifically, the author suggests that the current term of the LY be extended by one year to January 2003 and the election for the 5<sup>th</sup> LY be rescheduled in December 2002; the current term of the NA be extended by 8 months to January 2001 and the election for the 4<sup>th</sup> NA be rescheduled in December 2000. The current term of the President shall also be extended by 8 months to January 2001.

longer be necessary, I do insist that a proposed/pending amendment to the Constitution shall be publicly published for a reasonable time period, say half a year, before the people exercise plebiscite.<sup>114</sup> The introduction of plebiscite for constitutional amendments (and for constitutional amendments *only*)<sup>115</sup> will ultimately correct the monopoly fault of the Constitution. The advantage of such a reform package is that it will attain multiple goals, at the same time, with a minimum cost.

<sup>114</sup> Cf. Article 174, Item 2 (A proposed amendment to the Constitution passed by the Legislative Yuan shall be publicly published half a year before the National Assembly convenes for referendum.)

<sup>115</sup> As to the possible declaration of independence, i.e., separation from China permanently, by way of plebiscite shall be avoided at this moment because of the potential for disaster.

Table 1: Composition of Judicial Review Decisions

Term Of Grand Justices	Total of Interpretations Rendered	Constitution Interpretation	Uniform Interpretation	Concrete Adjudication	Abstract Interpretation
1 <sup>st</sup> . (07/14/1948 ~09/24/1958)	79 (Intr. No. 1 ~Intr. No. 79) (100%)	25 (31.65%)	54 (68.35%)	0 (0%)	79 (100%)
2 <sup>nd</sup> . (09/25/1958 ~10/01/1967)	43 (Intr. No. 80 ~Intr. No. 122) (100%)	8 (18.6%)	35 (81.4%)	0 (0%)	43 (100%)
3 <sup>rd</sup> . (10/02/1967 ~10/01/1976)	24 (Intr. No. 123 ~Intr. No. 146) (100%)	2 (8.33%)	22 (91.67%)	0 (0%)	24 (100%)
4 <sup>th</sup> . (10/02/1976 ~10/01/1985)	53 (Intr. No. 147 ~Intr. No. 199) (100%)	32 (60.38%)	21 (39.62%)	26 (49.06%)	27 (50.94%)
5 <sup>th</sup> . (10/02/1985 ~10/01/1994)	167 (Intr. No. 200 ~Intr. No. 365) (100%)	149 (89.22%)	18 (10.78%)	135 (80.84%)	32 (19.16%)
6 <sup>th</sup> . (10/02/1994 ~ )	113* (Intr. No. 366 ~Intr. No. 478) (100%)	111 (98.23%)	2 (1.77%)	90 (79.65%)	23 (20.35%)
Grand Sum	479 (100%)	327 (68.27%)	152 (31.73%)	251 (52.40%)	228 (47.60%)

\*As of April 1, 1999.

Table 2: Composition of Constitution Interpretations

Term of Grand Justices	Total of Interpretations Rendered	Human Rights Interpretations		Separation-of-Powers Interpretations	
		Concrete Adjudication	Abstract Interpretation	Concrete Adjudication	Abstract Interpretation
1 <sup>st</sup> . (07/14/1948 ~09/24/1958)	79 (Intr. No. 1 ~Intr. No. 79)	0	3	0	23
2 <sup>nd</sup> . (09/25/1958 ~10/01/1967)	43 (Intr. No. 80 ~Intr. No. 122)	0	2	0	6
3 <sup>rd</sup> . (10/02/1967 ~10/01/1976)	24 (Intr. No. 123 ~Intr. No. 146)	0	1	0	1
4 <sup>th</sup> . (10/02/1976 ~10/01/1985)	53 (Intr. No. 147 ~Intr. No. 199)	22	4	4	3
	(100%)	(84.62%)	(15.38%)	(57.14%)	(42.86%)
5 <sup>th</sup> . (10/02/1985 ~10/01/1994)	167 (Intr. No. 200 ~Intr. No. 365)	122	5	4	20
	(100%)	(96.06%)	(3.94%)	(16.67%)	(83.33%)
6 <sup>th</sup> . (10/02/1994 ~ )	113* (Intr. No. 366 ~Intr. No. 478)	83	7	7	14
	(100%)	(92.22%)	(7.78%)	(33.33%)	(67.67%)
Grand Sum	479 (100%)	227 (90.44%)	24 (9.56%)	15 (18.29%)	67 (81.71%)

\*As of April 1, 1999.

Table 3: Composition of Central Representative Bodies of Taiwan around 1990

Organ	Members Elected in 1947 in Mainland	Changes of Members				
		Total	Members elected in 1947	Members elected in 1969	Members elected in 1986	Members elected in 1989
NATIONAL ASSEMBLY	2953	706 <sup>116</sup> (100 %)	671 (95.04%)	11 (1.56%)	84 (11.90%)	
		↓	612 <sup>d</sup> ↓	↓	↓	
		651 <sup>f</sup> (100 %)	580 (89.09%)	11 (1.67%)	80 (12.29%)	
LEGISLATIVE YUAN	760	294 <sup>b</sup> (100 %)	188 (63.95%)	6 (2.04%)	101 (34.35%)	
		↓	138 <sup>d</sup> ↓	↓		↓
		250 <sup>f</sup> (100 %)	115 (46.00%)	6 (2.4%)		129 <sup>e</sup> (51.6%)
CONTROL YUAN	180	67 <sup>c</sup> (100 %)	21 (31.34%)	2 (2.99%)	32 (47.76)	
		↓	18 <sup>d</sup> ↓	↓	↓	
		49 <sup>f</sup> (100 %)	16 (32.65%)	2 (89.09%)	31 (67.23)	

Source: Secretariat, National Assembly; Department of Accounting, Legislative Yuan; Office of Statistics, Control Yuan; FREE CHINA J., Vol. VII No. 47, p. 1 (June 25, 1990).

<sup>116</sup> As of February 10, 1990.

<sup>b</sup> As of February 11, 1989.

<sup>c</sup> As of March 17, 1988.

<sup>d</sup> As of June 25, 1990.

<sup>e</sup> Originally, there were 130 Members elected in 1989. <sup>f</sup> As of October 12, 1990.