

Constitutional Reform : Downsizing Legislature and Amendment Referendum

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Abstract

The most striking development of constitutional reform in Taiwan in 2004 was the Amendment Bill passed by the Legislative Yuan. The major goal of this Bill was about the reform of the Legislative Yuan and the abolition of the National Assembly.

This paper deals with this constitutional development in Taiwan. It gives the details about the Bill and describes and analyzes the results of the previous amendments to the Constitution. Two versions of constitutional reform, one by the Pan Blues and the other by the Pan Greens, are then compared. It is concluded that the decision by President Chen Shui-bian to write a new Constitution for a republic of Taiwan would provoke an invasion from China and destroy Taiwan's democracy.

The Legislative Yuan passed an Amendment to the Constitution on August 24, 2004. It aims at legislative reform, the abolition of the National Assembly and stipulates how the president and vice president shall be impeached. Although the National Assembly will hold a referendum on this bill in six months, it is believed that the Amendment – a negotiated settlement among the Kuomintang (KMT), the Democratic Progressive Party (DPP) and the People First Party (PFP) – will be adopted.

What are the provisions of this Amendment? Is it just another one following the previous Constitutional Amendments? What impact will it have on the future of the country? Do the major points of this new Amendment reflect the constitutional reform of the DPP, especially President Chen Shui-bian's idea of constitutional reengineering?

This paper tries to give answers to the above questions.

Major Provisions

The Amendment Bill was proposed at the extraordinary session of the Legislative Yuan which started on August 18, 2004. Deliberations began late in the morning on August 23 as soon as a quorum of 163 of the 217 incumbent lawmakers was reached. Following two rounds of inter-party consultations, the voting on six articles – including the existing five articles revised and adding a new one new – began late in the afternoon. Finally at around 6 p.m., all six articles were passed with few changes in the version offered by the KMT.

Article Four of the Amendment Bill is about legislative reform. It includes:

1. Downsized Legislature and New Electoral System

From 2008, the nation will adopt the “single district and two-vote” system for parliamentary elections, and the Legislative Yuan will have only 113

seats. The change will take effect during the Seventh Legislative Yuan – which shall be elected in 2008 – where the lawmakers will have a term of four years rather than three. Of the 113 seats 73 will be occupied by regional lawmakers, with each city and county electing at least one. Plains aborigines will have three seats and so will their highland counterparts. Legislators at large and from overseas will have 34 seats, their election being on a proportional representation basis. Each qualified voter would have two ballots, one for a candidate of the single district and the other for the party he chooses. Only those parties with more than five percent of the total votes cast will be given seats for legislators at large and from overseas, and at least 50 percent of these seats will be reserved for women.

2. Abolition of National Assembly and Amendment Referendum

Despite the six Amendments during the past decade, the National Assembly retains the power of referendum on any constitutional amendments passed by the Legislative Yuan and on any change in the nation's territory initiated by the legislature.

Article One of the August 23 Amendment Bill stipulates the transfer of the power of referendum and that of initiative to the public. The National Assembly will be abolished if the Bill passes the upcoming National Assembly meeting, which shall take place six months after the Legislative Yuan formally announced the adoption of the Bill.

Any constitutional amendment bill must be proposed by one fourth of the legislators and passed by a two thirds majority. The bill will be made public for six months and then voted on in referendum three months later. It will be adopted with a simple majority.

Any change in the nation's territory must be initiated by lawmakers in the following process. The proposal must be endorsed by one fourth of the

lawmakers and ratified by three fourths of the total. The bill will be made public for six months after the ratification, and then will be voted on in referendum three months later. It will be adopted with a simple majority.

3.Impeachment of President and Vice President

The August 23 Bill stipulates that the Legislative Yuan needs a simple majority to propose to impeach the president and/or the vice president and that a proposed resolution must be endorsed by a two thirds majority. After the resolution is passed, the Legislative Yuan shall ask the Council of Grand Justices to hold a Constitutional Court to review that resolution. If and when the Court agrees with the impeachment, the official to be impeached will be relieved of his or her office immediately.

4. Changes in Council of Grand Justices

According to the Amendment of 1997, grand justices have no fixed term of service. Article Five of the August 23 Bill 5 makes a structural change for the Council of Grand Justices. There shall be fifteen grand justices, all nominated by the president of the republic and confirmed by the Legislative Yuan. One of them shall be the president of the Judicial Yuan, and another shall serve as its vice president. Eight grand justices including the president and vice president of the Judicial Yuan will serve a four-year term. For the other seven grand justices, the term is eight years.

If the Amendment Bill is finally adopted, the president of the republic to be elected in 2008 can only nominate eight new eight grand justices. Since the Constitutional Court has to reach every decision by a two thirds majority, the president will have no dominant influence over the arrival at that decision.

Six Previous Amendments

Much has been said about the revision of the Constitution of the Republic of China written in Nanjing in 1946. Constitutional reform is a

never-ending issue in every parliamentary election since martial law was lifted in 1989. Politicians are proposing constitutional amendments to widen their voter support.

The Constitution was amended six times, while President Lee Teng-hui was in office for 12 years. One of them, adopted in 1997, is widely believed to have greatly increased his presidential power. However, the four previous amendments had a cumulative effect of tilting the form of government toward the presidential system, enabling him to acquire more power than he should have under the 1947 Constitution.

A review of the six amendments clearly shows that tilt.

1. Amendment of 1991

Although it forced all senior members of the Legislature Yuan and the National Assembly to retire, the amendment enables the president of the republic to acquire the power to make policies in respect of national security. The late Presidents Chiang Kai-shek and Chiang Ching-Kuo were given that power under the Temporary Provisions Effective during the Period of General Mobilization and Suppression of Communist Rebellion, which were abolished on May 1, 1991.

2. Amendment of 1992

The major purpose was to let the president of the republic have the power to appoint members of the Control Yuan. Before this amendment, they were elected by county and city councils. The amendment also stipulated that the National Assembly should hold at least one regular meeting a year and confirm the nomination by the president of members of the Judicial Yuan, the Examination Yuan, and the Control Yuan.

The amendment made the government appear as one under the president with a congress composed of two houses, the Legislative Yuan and the National

Assembly. Both the president and the National Assembly expanded their powers.

3. Amendment of 1994

The president was given the complete power to appoint and dismiss, without the countersignature of the premier, those officials whose appointment was confirmed by the National Assembly or the Legislative Yuan. The National Assembly enlarged its power and rights again. It would have a speaker and a deputy speaker and was empowered to elect the vice president of the republic. It would hear a report on the state of the nation from the president.

4. Amendment of 1994

The amendment enshrines universal suffrage for the election of the president and the vice president. The first popular election of the president and the vice president took place in 1996. The National Assembly lost the right to elect the president and vice president. The president, however, had to have his nomination of the premier or the president of the Executive Yuan confirmed by the Legislative Yuan.

5. Amendment of 1997

Another step was taken to tilt Taiwan toward the presidential system of government in 1997. The amendment gives the president the power to directly appoint the premier without the Legislative Yuan's consent.

The president could dissolve the Legislative Yuan if a no-confidence vote were taken against the premier. That bears a semblance of the parliamentary system of government. On the other hand, like the U.S. Congress, the Legislative Yuan is empowered to initiate the impeachment of the president and/or the vice president of the republic.

The tilt seems to have become inconsistent. First, through the continuing constitutional amendments, President Lee became more powerful. More elder KMT leaders were excluded from the decision-making.

Lee looked like another strongman. That ran counter to the spirit of the 1947 Constitution, which mandates fundamentally a parliamentary system of government. Expelled from the KMT, a few young lawmakers formed the New Party (NP). They were all reelected in 1995. The NP also won many seats in the National Assembly in that year. It seems, therefore, that these National Assembly members, together with some of their colleagues, consciously or unconsciously attempted in 1997 to stop Lee from making Taiwan a new country. They wanted to reduce the power of the president. The NP failed, but the Legislative Yuan was empowered instead to take a no-confidence vote against the Executive Yuan. The no-confidence vote and the dissolution of the Legislative Yuan are an indispensable mechanism of the parliamentary system of government. With the 1997 Amendment, the issue of the system of government, presidential or parliamentary, came back again.

The first question is: Since the Legislative Yuan does not have the power to approve the appointment of the premier, is he responsible only to the president, though the Legislative Yuan has the power to take a no-confidence vote against him?

Secondly, the 1997 amendment is said to be a tradeoff between President Lee and the DPP. The president is enabled to appoint the premier without the consent of the Legislative Yuan, while no governor of Taiwan and members of its provincial assembly would be elected. Lee fell out with James Soong after the latter was elected governor of Taiwan in 1994. The DPP at that time did not like Soong, for he would possibly be a successful candidate for president in 2000. As a result, the DPP wanted to deprive Soong of his power base in Taiwan Province. With Lee agreeing to phase out the provincial government, the DPP consented to his power of appointing the premier without the approval of the Legislative Yuan.

6. Amendments of 1999 and 2000

The amendment was made while Soong was

planning to run for president. Rumor was rife that President Lee would anoint Chen Shui-bian as his successor, just as Moses chose Joshua. The National Assembly took the chance to extend its current term by two years and revise the tenure of the Legislative Yuan from three to four years. There was a public outcry. Both the KMT and the DPP were condemned for letting their members abuse the power of amending the Constitution. Upon the demand from members of the Legislative Yuan, the Council of Grand Justices invalidated that 1999 Amendment.

The National Assembly convened to adopt a new amendment in April 2000. The 2000 Amendment strips the National Assembly of the power to unilaterally amend the Constitution and stipulates that the National Assembly can meet only to approve by referendum the constitutional amendments, the impeachment of the president and vice president and changes in the national territory – all of which have to be proposed by the Legislative Yuan. In other words, the National Assembly becomes a “task-only” or ad hoc organization. If there is no proposal from the Legislative Yuan, the National Assembly will not meet. As a consequence, the term of the National Assembly lasts just as long as it takes to accomplish the “task.” When the task is done, the National Assembly is dissolved. The Legislative Yuan alone confirms the nomination by the president of the republic of all members of the Control Yuan, the Examination Yuan and the Judicial Yuan.

The enfeeblement of the National Assembly tips the tilt to the presidential system of government again in 2000. The National Assembly lost the initiative to amend the Constitution. The initiative is in the hands of the Legislative Yuan. Consequently, the Legislative Yuan is now the nation’s only highest organ of legislation.

Amendment Bill of 2004

Is the new Amendment Bill of 2004 a continuation of the tilt towards the presidential system of

government? This question can be discussed from three aspects:

1. The restructuring of the Council of Grand Justices was the question the Legislative Yuan had to address in deliberating on the 2004 Amendment Bill. The National Assembly was angered by the invalidation by the Council of Grand Justices of the Amendment of 1999. In the end, grand justices are now not appointed for life. The 2004 Amendment Bill requires a two thirds majority of the Council of Grand Justices to reach a decision. The reason for this provision is partly due to the election of President Chen in 2000. Most of the Constitutional interpretations by grand justices have since been either controversial or in favor of his ruling party.
2. The 2000 Amendment made the National Assembly a “task-only” or ad hoc organization. However, the National Assembly fiasco of 1999 led the Legislative Yuan to deactivate that ad hoc organization altogether.
3. The restructuring of the Legislative Yuan was an innovation. The new suffrage – a single district and two-vote system – had been much debated in 2000. The KMT favored the Japanese suffrage system, but the DPP inclined to adopt the German model. There was no agreement between them, and the single district and two-vote system provision failed to be included in the Amendment of 2000. The KMT and the DPP agreed to adopt the Japanese model in the Amendment Bill of 2004. It seems that the legislative reform goes along the KMT line as pronounced by its chairman Lien Chan.

On the other hand, however, downsizing the Legislative Yuan is a scapegoat for the poor DPP governance in the past four years. Taiwan’s economy shrunk during the first two years of Chen’s first presidency. Unemployment soared. So did crime and suicide. President Chen and his administration attributed the poor performance to the idle Legislative Yuan, where the opposition boycotted government

proposals. The ruling party, therefore, wanted to downsize the Legislative Yuan to make governance efficient. The opposition agreed, convinced that after the downsizing, President Chen would never have any excuse for poor governance.

The KMT attempted to decrease the Legislative Yuan to 100 seats from its present 225. The DPP intended to downsize it to 150. The compromise was struck. There shall be 113 seats in the new Legislative Yuan after the National Assembly finally adopts the Amendment Bill.

This minor reparation could not solve the long-term problem of the nation's system of government. But it can be said that the Amendment Bill follows the way of reconstructing the Constitution. Interestingly, the Bill is consistent with the KMT line of overhauling the Constitution.

Why did the DPP cooperate with the KMT? The answer could be very simple: the downsizing symbolizes its effort to make the Legislative Yuan work efficiently again.

Repair, Rewriting or Reengineering of Constitution

Further constitutional amendments seem impossible after 2000, for there is no majority party or coalition in the Legislative Yuan to meet the requirements for amending the Constitution. That is why no amendment proposals were made for the three years after 2000.

Things began to change after February 2003 when Lien Chan and James Soong agreed to run together for the 2004 presidential election. President Chen's popularity had lagged far behind that of Lien's. The president needed to adopt a different campaign strategy for reelection. He decided to enact a Referendum Law. He promised to give the people of Taiwan a new Constitution, which he said he would "rewrite" or "reengineer" or which would be a "new version of the (existing) Constitution."

Chen's doubletalk belied the "five-no's" pledge he made in his inaugural address in 2000. The Pan Blues (the KMT, the PFP and the (NP) suspected that Chen's real goal was to change Taiwan's status quo and create a republic of Taiwan. To debunk Chen, the Pan Blues made an about-face and did not oppose the Referendum Law but suggested a provision allowing a nationwide popular vote to choose either independence for Taiwan or reunification with China. The DPP members in the Legislative Yuan voted against the Pan Blue suggestion, and the enactment of the Referendum Law was delayed until the middle of November 2003. It was finally passed on November 27 and took effect on December 31, 2003.

The Referendum Law does not clearly exclude the initiative to decide Taiwan's independence or reunification. However, its Article 17 empowers the president to call a "defensive referendum," when the country faces a critical threat to its national security.

As soon as the Referendum Law had gone into effect, President Chen announced that he was going to seek a popular approval according to Article 17. But he did not make clear the agenda of his "defensive referendum." His intended ambiguity was to attract attention to his reelection campaign. He thought if the referendum and the presidential election were held on the same day, those who supported the former would vote for him in the latter.

President Chen's move to call the referendum caused U.S. concern. The United States reiterated its "one-China" policy, warning against any unilateral change in the status quo between the two sides of the Taiwan Strait. Washington voiced opposition to any referendum that might change Taiwan's status.

Because of the U.S. warnings, President Chen finally decided on two issues to be voted on in the referendum. One issue was whether Taiwan should upgrade its defense capability if China did not withdraw missiles and renounce the use of force. The other was whether a mechanism for cross-Strait peace

and stability should be established.

They were unnecessary questions. Everyone knew the answers. His campaign did not gain any momentum, while his challenger Lien Chan continued to widen his lead over him. One week before Election Day, Chen and his wife were dogged in the political donation scandal, which occurred many years before. On the eve of the election, March 19, the people were shocked by what has come to be known as an assassination attempt on President Chen. He was shot at, and a homemade bullet grazed his abdomen. Rumor was rife in southern Taiwan that the KMT and China stage-managed the abortive assassination. The shooting swung the election on the following day to President Chen's favor. He won reelection with a razor-thin margin of fewer than 30,000 votes on March 20, 2004. However, the referendum, which took place along with the election, was invalidated, for less than 50 percent of the electorate voted.

On his second inauguration on May 20, President Chen reiterated his promise to hand the people of Taiwan a new version of the Constitution. His constitutional reform includes:

1. Separation of power: three or five branches of government;
2. System of government: presidential or parliamentary;
3. Election of the president: by a plurality or an absolute majority;
4. Reform of the Legislative Yuan;
5. Role of the National Assembly: to be retained or abolished;
6. Provincial governments: to be suspended or abolished;
7. Lower voting age;
8. Modified compulsory military service;
9. Protection of basic human rights and rights of the

disadvantaged; and

10. Principles underlying the management of the national economy.

None of the ten features had anything to do with building a new state, a republic of Taiwan. Moreover, toward the end of his inaugural address, he gave a very clear statement about the very sensitive issue of unification and independence for Taiwan. He said: "... I am fully aware that consensus has yet to be reached on issues related to national sovereignty, territory and the subject of unification/independence; therefore, let me explicitly propose that these particular issues be excluded from the present constitutional reengineering project."

It is evident that President Chen's reengineering or rewriting the constitution for a new country does not mean to make a new state even under the name of the Republic of China. Nor did he cut off completely the linkage between the Republic of China and the People's Republic of China. But he is not trusted by the opposition, the United States and China. Both the Pan Blues and China believe Chen's strategy is to achieve independence by stealth. Beijing criticizes Chen for proposing a referendum on a new constitution in 2006, which shall go into force in 2008. China considers it a timetable for Taiwan's independence. There is cause for suspecting Chen's ulterior motive.

President Chen said in his inaugural address he would appoint a "Constitutional Reform Committee" directly under his supervision. He added members of the DPP and the opposition parties, legal experts, academics and representatives from all walks of life shall be asked to join to reach consensus on the scope and procedure of the constitutional reform.

The problem, however, is that it is abnormal to form a "Constitutional Reform Committee" under the Office of the President. It is likely that President Chen would dominate the committee, and the Legislative Yuan, the organ charged with initiating constitutional

amendments, is sidelined. Chen's plan is to make a special committee to supersede the Legislative Yuan in matters concerning constitutional reform. What he wants is to take what is decided at the special committee directly to the public for a referendum.

On the other hand, the opposition does not trust President Chen, who is a man of all seasons. He is known as a man of many faces. Ten days after he had won reelection, he told the British Broadcasting Company in an interview that Taiwan is an independent, sovereign state where "we want to put the new constitution to a direct referendum of the people to decide whether they want to accept the new constitution or not, and this new constitution will have no bearing on the issue of unification or independence, nor will it change that status quo."

However, in the lead-up to the December 11 legislative elections, President Chen decreed that "Taiwan, Republic of China" alone be used as the official title of the Republic of China. The presidential order touched off a debate over whether his goal was to "revise" the Constitution or draft a "new" one. There is no need to change the official title if the 1947 Constitution is to be revised. To change the official name to Taiwan, however, calls for a new constitution. Lee Teng-hui supported Chen's plan to change the official name of the country. Lee said: "The Republic of China is an obstacle to the normalization of Taiwan as a country and an unsuitable title, one that our people cannot use in the international community. Taiwan is Taiwan—a name that matches the reality. A new Taiwanese constitution must keep on this course in order to have lasting relevance." Lee also added: "The fictitious title of the Republic of China must be abandoned so as not to infringe upon China's sovereignty. Likewise, Taiwan must insist upon and protect its own sovereignty." A few days later, shortly before the parliamentary elections, President Chen announced formally that all state-owned enterprises should drop mention of China in their titles and use Taiwan instead in two years' time. Chen

forgot his repeated guarantee of not changing the country's title, the Republic of China. Of course, the change in the titles of state enterprises is not the same as that of the name of the country, but one can legitimately suspect that his next step is to alter the official title of the Republic of China, which, however, requires a "new" constitution.

Top-ranking government officials often mention possibilities of building a new nation with a new constitution. One of them argues at least three kinds of identity may be formed by creating a new constitution: national identity, constitutional identity, and civic or cultural identity.

Mention has to be made about the December 11 parliamentary elections. The Pan Blue alliance has won 114 out of the total 225 seats in the Legislative Yuan at stake. It acquired a majority of two. The Pan Greens has lost the chance to revise the Referendum Law to pave the way for their version of constitutional reform. According to the Constitution as amended, any proposal for constitutional amendment has to be endorsed by three fourths of the membership of the Legislative Yuan, the requirement the Pan Greens can never hope to meet. Consequently, President Chen will not be able to give the people of Taiwan a new constitution in 2006. The voters in Taiwan chose the reparation of the Constitution by giving the opposition the majority in the Legislative Yuan. They did not opt for a constitutional revolution, the one President Chen calls the "reengineering" of the Constitution.

Conclusion

The Constitution of the Republic of China was passed in China in 1947. Not fitting in Taiwan, the 1947 Constitution has been amended time and again since martial law was lifted. It has established the legitimacy of the Republic of China in Taiwan as an independent, sovereign state. It provides the fundamental laws for the governments at all levels to function with efficiency. The Amendment Bill of 2004 is a follow-up in line with this constitutional

reform. The National Assembly will be abolished in the spring of 2005 and the people of Taiwan given the right of referendum on constitutional amendments. This constitutional development after Taiwan's democratization is going to improve the quality of democracy, which is the main goal of the Pan Blues.

The downsizing of the Legislative Yuan, together with the new single district and two-vote system, is expected to prevent election irregularities, vote-buying in particular. This reform is also expected to usher in a full democracy.

On the contrary, the DPP and President Chen have downgraded the past constitutional amendments. They believe the 1947 Constitution with its many amendments added over the years is so complicated that the average qualified voters do not understand. They are therefore appealing for referendum on a new constitution. On the other hand, however, they are believed to have a timetable for Taiwan independence.

Their ultimate objective of "a new state for the people of Taiwan" is enshrined in the 1986 "Political Platform of the Democratic Progressive Party" as well as their "Resolution Regarding Taiwan's Future" of May 1999. In the two documents, the DPP proclaims a determination to "establish a new constitution drawn up to make the legal system conform to the social reality in Taiwan" and "Taiwan is a sovereign and independent country. Any change in the independent status quo must be decided by all residents of Taiwan by means of plebiscite."

President Chen and his party are trying to take a shortcut to build a new state with a new constitution by supplanting the Legislative Yuan with his "Constitutional Reform Committee." However, their call for independence would endanger the people of Taiwan, for China has never renounced the use of force. A Chinese military invasion will completely ruin Taiwan's democracy.