

## Chapter 2

### A New Constitutional Balance and the Prospect for Constitutional Change in Taiwan

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After the March 2000 presidential election, the independence-leaning Democratic Progressive Party (DPP) controlled Taiwan's presidency while the "pan-blue" opposition — Lien Chan's Kuomintang (KMT) and James Soong Chu-yu's People's First Party (PFP) — enjoyed a majority in the parliament, the Legislative Yuan. Moreover, despite Chen Shui-bian's re-election in March 2004, the pan-green camp — the DPP and ex-president Lee Teng-hui's Taiwan Solidarity Union (TSU) — was unable to change the balance of power in the Legislative Yuan in the subsequent December 2004 elections. During most of his second term, therefore, Chen would have to continue "cohabiting" or sharing power with an opposition-dominated parliament in a polity that belongs to the large and ill-defined family of political systems known as "semi-presidential."

To better understand how Chen has dealt this unprecedented situation of minority government in Taiwan, we must first assess the constraints imposed by the Republic of China (ROC) constitution as amended since the beginning of the island's democratization. Faced with an unfriendly and non-cooperative parliament, Chen has tried several methods to carry out his policy platform. However, he has had trouble solving the important issues of governance raised by this "*cohabitation à la taiwanaise*." And the resulting constraints have prevented the most pro-independence elements of the pan-green coalition from promoting the adoption of a new constitution and a more presidential system. Still, the adaptation of the ROC constitution to the reality of Taiwan is proceeding, allowing constitutional changes supported by both camps to be introduced. However, Taiwan's political elite has remained too

deeply divided, and even polarized, to permit a more stable and better accepted institutional arrangement to take shape on Taiwan.

### The Constraints of Semi-presidential Systems and the Revised ROC Constitution

In Taiwan, the process of democratization has been closely tied to a succession of gradual reforms to a constitution which was originally tailored for the whole of China to be adapted to the Republic of China on Taiwan.

The institutional outcome of this adaptation has been the emergence of a semi-presidential system influenced by, but also distinct from, both the cabinet system (*neigezhi*) formally established by the 1946 ROC constitution and the president-centered institutional arrangement that actually governed during the martial law era on Taiwan between 1950 and 1987.

Inspired by the model of Germany's Weimar Republic, the 1946 ROC constitution granted the prime minister and the Executive Yuan (the central government) much more power than the president.<sup>1</sup> Elected by the National Assembly, a body which was also in charge of revising the constitution and approving some nominations, the president as head of state had only a few prerogatives. Most importantly, he represented the ROC in foreign affairs and was supreme commander of the armed forces.

Furthermore, many of the president's powers were dependent on the National Assembly's approval (for example, appointment of members of the Judicial, Control, and Examination Yuans) and, most importantly, the prime minister; any law or mandate promulgated by the president had to be counter-signed by the prime minister and the ministers or chairmen of commissions concerned (Art. 37). And while the president was empowered to

declare martial law, this decision had to be confirmed by the Legislative Yuan, which also voted on laws and approved the budget. The prime minister (or president of the Executive Yuan) was to be appointed by the president with the consent of the Legislative Yuan. Responsible to the Legislative Yuan, the prime minister concentrated all the administrative powers of the executive branch of government in his office.

Chiang Kai-shek was unhappy with this arrangement and initially was tempted to become premier instead of president. But in attempting to keep the Kuomintang united, and preoccupied with the civil war against Mao Zedong and relying on his power in the military and the party, he eventually agreed to become president of the republic. The “temporary provisions effected during the period of communist rebellion,” which were adopted as early as 1948, and the declaration of Martial Law on Taiwan in 1949 as well as the military confrontation with the People’s Republic of China ultimately contributed to the concentration of power in the hands of the president for nearly four decades, thus providing much more presidential power than was indicated in the constitution. Finally, the fact that Chiang and all his successors until 2000 were chairmen of the KMT, the ruling party, also played a key role in this evolution.<sup>2</sup> It was on the basis of these entrenched institutional practices that in the 1990s President Lee Teng-hui initiated the first four series of constitutional amendments that resulted in the further development of the 1946 constitution. The amendments of 1991-1992 stipulated that the National Assembly and the Legislative Yuan would be elected by only the voters of the “free areas” (*ziyou diqu*) of the ROC. The 1994 revision implemented direct election of the president of the Republic by the voters. The 1997 amendments abolished the obligation of the president to secure the approval of the Legislative Yuan when appointing the prime minister, thus, allowing the former to constitute a minority government. As political

scientist Ho Fo has observed (need footnote), these constitutional revisions created a “second ROC,” which moved the ROC farther away from the original cabinet system and toward a more presidential system.

### The Problem with Semi-presidential Systems

Semi-presidential systems are far from perfect, but nor is any other system. Moreover, they follow no standard pattern. The power that is enjoyed by the head of state, the prime minister, and the legislature can vary considerably from state to state. In every democratic political system, what is important is that, on the one hand, the elected representatives of the people and the government enjoy sufficient democratic legitimacy, and, on the other, they are able to govern in a stable and efficient manner during their term of office. At the same time, the role of checks and balances played by parliament should be neither marginalized nor inflated to the extent that government action is paralyzed.

In semi-presidential systems as in other democratic systems, the condition of legitimacy is rather easily met. However, whenever the division of responsibilities between the main branches of government is unclear, the representatives elected during the latest elections may feel that they have stronger legitimacy, and hence more power, than those elected earlier. The second condition--the ability to govern--is harder to meet and is very much dependent upon the majority that the president, and his or her government, enjoys in parliament. This ability to govern is also influenced by the structure of the major political parties, particularly their internal discipline.

In other words, in semi-presidential systems, as long as both the presidential and the parliamentary majorities coincide there are few complications. This was the case in Taiwan

until the 2000 election of Chen Shui-bian. But the situation becomes more complex when the two majorities are not identical. In such cases, the French constitution, for instance, offers no other option but to force the president into a “cohabitation” with a government reflecting the opposition majority in parliament. In Taiwan, as we have seen, since 1997 the constitution no longer requires the president to select a prime minister acceptable by the Legislative Yuan.

### The Openings and Constraints of the Revised ROC Constitution

Today a semi-presidential system clearly holds sway in Taiwan. Since the constitutional reform of 1994, the president has been directly elected by universal suffrage and not by the National Assembly, a non-permanent body whose role after 2000 was restricted to constitutional revision and in June 2005 was finally dissolved. The government, led by the prime minister, is appointed by the president, but is responsible to the Legislative Yuan.

However, there are important differences between Taiwan and many other semi-presidential systems, such as that of France.<sup>3</sup> The first is that, as indicated above, in Taiwan since the 1997 constitutional revision, the prime minister is appointed by the president *without* the approval of the legislature.<sup>4</sup> Moreover, there is no legal requirement that the president ask a new parliamentary majority to form a government. It is true that forced to work with a parliament dominated by the KMT, Chen selected as his first prime minister Tang Fei, a KMT general and ex-defense minister who formally left the party before being appointed to this position.

But soon thereafter, in October 2000, Chen replaced Tang with Chang Chun-hsiung, a DPP leader, when it became clear that Tang was a hindrance to his policies (see below). Similarly, taking into account the changing political climate, Chen Shui-bian decided to

appoint a new prime minister in the aftermath of the December 2001 and the December 2004 legislative elections as well as after the December 2005 local election debacle: Yu Shyi-kun in February 2002, Frank Hsieh in January 2005, and Su Chen-chang in January 2006. In other words, since 1997 minority governments have been formed, making Taiwan's institutional arrangement and presidential system closer to that of the United States where the executive branch continues to rule even when the legislative branch is controlled by the opposition.

The second difference is that since 1997 the president in Taiwan may dissolve parliament only after it has succeeded in tabling a vote of no-confidence (as in France, this is a power not shared with the prime minister). This is a "passive" or "reactive" power. Although Lee Teng-hui and his advisers openly took the French political system as a model, the difficult bargaining they had to face in 1997, with the DPP as well as within the KMT itself, prevented them from fully adopting the French system. One may add that Lee himself—probably keeping a closer eye on South Korea's presidential system (where the prime minister has very little power and autonomy)—did not like the idea of a prime minister automatically being a representative of the new parliamentary majority and would probably have preferred restraining the powers of dissolution held by the president rather than enhancing the control that parliament can exercise over the Executive Yuan.

This arrangement serves to deter the Legislative Yuan from tabling a vote of no-confidence, since it may automatically trigger a dissolution followed by a costly new election campaign. This sword of Damocles over the head of the legislators explains why neither in October 2000 when Chen appointed Chang Chun-hsiung as prime minister (see below), nor after the December 2001 or the December 2004 legislative elections, did the opposition parties push hard to impose their own prime minister and cabinet. Of course, the opposition

legislators could have still tabled a vote of no-confidence, hoping that the president, knowing that another legislative election would only confirm the results of the previous election, would give in and appoint an opposition prime minister. But the risks of dissolution were too high (in particular in October 2000) and the frustration of having to share executive power as well as the danger of shouldering political responsibility with a DPP president were even higher. This convinced the pan-blue parties to remain safely in the opposition while turning the parliament into an institution of resistance against the government.

That they could do this was the result of a third major difference between the ROC revised constitution and other semi-presidential systems. This relates to the powers of the legislature. In the French Fifth Republic, for example, the scope of legislative power is strictly defined and limited. Moreover, if parliament refuses to approve a government-drafted bill or drags its feet in the process, the government can use the procedure of adoption to turn a bill into law, as indicated in Art. 49, paragraph 3, of the constitution, better known in France as a *vote bloqué* (or “locked vote”). Nothing of that sort exists in Taiwan with the exception of Article 70 that forbids parliament from increasing budgetary expenses; on the contrary, the 1997 and 2000 constitutional reforms have enhanced the powers of the Legislative Yuan.<sup>5</sup>

For instance, since 1997 parliament can more easily force the government to accept measures or legislation that it previously could have rejected as “difficult to implement.” As before, and subject to presidential approval, the Executive Yuan can require the Legislative Yuan to reconsider (*fuyi*) its decision within a fifteen-day period. Unlike before, however, the government must now yield if, on a second vote, only a simple majority of deputies approves the decision; previously, there had to be a two-thirds majority.

These three main differences explain why Taiwan can avoid uncomfortable periods of “cohabitation” when the two branches of government are controlled by different parties. To be sure, the Executive Yuan remains responsible to the Legislative Yuan. This includes the duty of the government to “present a statement on its administrative policies and a report on its administration.” And since the 1990s, the legislators have been clearly granted “the right to interpellate the president of the Executive Yuan and the head of ministries and other organizations under the Executive Yuan” (additional Art. 3, paragraph 1), giving them an often unnecessarily hard time when they appear in the Legislative Yuan.<sup>6</sup> Today, rather than acting as the chief of the parliamentary majority, the prime minister appears more as the president’s chief of staff.

In short, the constitutional amendments of the 1990s adopted against the background of the martial law period have moved the 1946 constitution closer to a presidential system and farther away from a parliamentary system, much to the chagrin of many (but not all) pan-blue politicians. Still, owing to a lack of bi-partisan consensus, it would be difficult to reform the current distribution of power between the executive and legislative branches of government. The most obvious drawback of this institutional arrangement is that when the presidential and legislative majorities differ, the executive branch cannot implement its platform without constantly negotiating with the legislature, raising serious problems of governance. This became obvious after the election of Chen Shui-bian.

### Problems of Governance

Chen Shui-bian has tried various methods to minimize the problems of governance in Taiwan’s semi-presidential government. In 2000, as we have seen, he first selected General

Tang Fei as his prime minister. This choice may have stabilized the relationship between the first DPP president and the military, which remains largely blue, or even dark blue. However, this move rapidly proved unsatisfactory since it became a direct obstacle to some of the DPP policies--in particular the decision to freeze construction of a fourth nuclear plant already partially built in Kungliao. But Chen's appointment of DPP prime ministers, first Chang Chun-hsiung in October 2000 and then Yu Shyi-kun in February 2002, did not increase his room for maneuver very much. In early 2001, the grand justices annulled Prime Minister Chang's decision to stop construction of the nuclear plant on the grounds that he could not question a project approved by the Legislative Yuan. And the legislature subsequently complicated the efforts of the government not only in the adoption of the state budget but also in the passage of practically every single law.

In many of the negotiations that took place between the two government branches between 2000 and 2004, speaker of the Legislative Yuan, Wang Ching-ping, often played a crucial and moderating role. Although a prominent KMT leader and close to Lien Chan, Wang, a local Taiwanese, has maintained regular contact with ex-president Lee Teng-hui and the DPP. He revealed himself as an indispensable go-between and negotiator, avoiding a paralysis of government on numerous occasions.

But not always, of course. A prominent example of serious gridlock was the refusal of the pan-blue controlled parliament to approve the special budget established to purchase weapons systems that the George W. Bush administration had agreed to sell to Taiwan in 2001 (diesel submarines, anti-submarine P-3C aircraft, and PAC-3 missile defense systems). True, the DPP government submitted this supplemental budget to the Legislative Yuan only in July 2004, postponing the issue due to the financial difficulties raised by the expense of such

acquisitions. But since then, the KMT and PFP legislators have taken advantage of their dominant position in parliament to question both the price (US\$ 18 billion originally) and the usefulness of these armaments, seemingly for the sole purpose of embarrassing Chen and his government.<sup>7</sup> This example of institutional paralysis caused by internal political rivalries has contributed to weakening support for Taiwan in the Bush administration, underlining the harmful international implications of the lingering tug-of-war between government and parliament.

But negotiations around draft legislation sometimes took an unexpected turn, depending on the particular committee and legislators involved. Such was the case with the referendum law adopted in November 2003. The drafting of this law was almost entirely controlled by pan-blue legislators who vetoed most of the pan-green parties' ideas, such as permitting the cabinet to hold advisory referenda to gauge public opinion and excluding such issues as sovereignty, territory, and a proposed new constitution from the referendum process.

However, after much bargaining within the law committee of the Legislative Yuan, the DPP members were allowed to insert an article (Art. 17) granting the president the right to initiate a “defensive referendum” when the country faced external threats to its security and sovereignty. What the KMT and PFP legislators did not expect was Chen Shui-bian’s immediate use of this article to organize a referendum on China’s missile threat on the same day as the March 2004 presidential election, thus triggering an unexpected negative reaction from President Bush on December 10, 2003.

## Constitutional Reform as a Political Issue

During the first term of Chen Shui-bian's presidency constitutional reform became a political issue only in second half of 2003, when Chen, in anticipation of the upcoming 2004 presidential campaign, indicated the need to draft a new constitution. However, after the April 2000 revision, cross-party discussions about further adaptation of the 1946 ROC constitution to the Taiwanese reality continued, allowing the Legislative Yuan in July 2004 to approve a reform aimed both at simplifying the institutions and overcoming some of the gridlock described above.

In April 2000, the National Assembly approved an important constitutional revision: it turned itself into a non-standing body only responsible for endorsing future constitutional amendments and it transferred all its other prerogatives, such as presidential nomination of Judicial, Control, and Examination Yuan members and recall of the president and vice president (with a two-thirds majority), to the Legislative Yuan. Although James Soong and his newly formed PFP party, criticized the bill as "hasty" and "careless," the three major parties represented in the National Assembly (the KMT, DPP, and the New Party [NP]) all backed the reform.<sup>8</sup>

This decision underscored a bi-partisan political consensus on a necessary simplification of ROC institutions. Though some in the pan-blue camp were in less of a hurry to abolish the National Assembly altogether, the decision did not question the final objective of this reform. Similarly, a reform of the electoral system and an extension of the term of the legislators were supported by the major political parties and led to the constitutional revision approved by the Legislative Yuan in August 2004 and endorsed by the National Assembly a year later (see below).

Still, this consensus has not prevented the old debate on the most appropriate constitutional model for Taiwan from continuing along nearly unchanged political lines. Actually, the repeated gridlocks between the executive and legislative branches of government fed and partly renewed this constitutional debate. Throughout the first term of President Chen, while the pan-green camp remained in favor of moving toward a more presidential system in order to free itself from pressures from the Legislative Yuan, the pan-blue camp was largely inclined to at least introduce—restore they argued—a semi-presidential system closer to the French model in which the government would be representative of the parliamentary majority. Indeed, a growing portion of the pan-blue camp appeared to be in favor of establishing a cabinet system whereby the president would be only a symbolic figure.

However, this debate remained very detached from the reality, and somewhat subdued, since the major parties were all aware that they could not agree on any dramatic change of the current institutional setting, including submitting the appointment of the prime minister to a parliamentary consent. Holding merely a thin majority in the Legislative Yuan and on the island, the opposition was unable to get the support of three-quarters of the National Assembly members, the required threshold, to pass a constitutional amendment.

One constitutional issue that the Chen presidency was keen to push forward from the very beginning was the adoption of a referendum law, understood and presented as the legal implementation of one of the four basic political rights granted by Sun Yat-sen and the 1946 ROC constitution to the citizens: election (*xuanju*), recall (*bamian*), initiative (*chuangzhi*), and referendum (*fujue*) (Art. 17). Proposed in June 2003 by the DPP, the referendum bill (*gongtou fa cao'an*), could be passed only after lengthy negotiations with and much input from the parliamentary majority, in particular the KMT and the PFP. Because of Chinese and American

concerns, the scope of and the terms used in the law (*gongtou*) were somewhat narrower than the right granted by the constitution (*fujue*). Nevertheless, it was difficult for the pan-blue camp not to approve this long-overdue fleshing out of the referendum right.

In any case, it was only in September 2003 that Chen Shui-bian began to propose the drafting of a new constitution that would “make Taiwan a normal, complete, great country.”<sup>9</sup> There was obviously a close connection between this political initiative and the coming presidential election, perceived as an uphill battle by the pan-green camp. Chen’s main argument was twofold: 1) Drafted on the Mainland for all of China, the old ROC constitution had become an incoherent patchwork after its six revisions since the beginning of democratization. It therefore required a total overhaul. More than half of the articles, Chen argued, were not appropriate for the Taiwan situation, and 2) Taiwan needed a constitution that reflected its true political and cultural identity and that would contribute to turning the island into a “normal country.”

Of course, as a precaution, Chen’s close associate Chiu I-jen quickly indicated that the official name of the country—the ROC—would not change. But neither Beijing nor Washington were reassured. Besides, this initiative was launched more as a political and mobilization campaign than as a solution to the multiple weaknesses and potentials for gridlock in the current constitution. In other words, crafting a better balance and working relationship between the government and the parliament was not part of Chen’s constitutional agenda at that time. His plan was more focused on sensitive, divisive, but mobilizing symbols than on anything substantive, suggesting that he was happy with the constitutional arrangement that had emerged from the 1997 revision and the “*cohabitation à la taiwanaise*” that had prevailed since 2000.

## The Scope of Constitutional Reform in Taiwan and its Limits

Actually this “*cohabitation à la taiwanaise*” has had something of a stabilizing effect on the Taiwan Strait situation by thwarting any constitutional change that might be opposed by Beijing and Washington. It is true, as we have seen, that before his reelection, Chen had been rather ambiguous about the content of the new constitution that he wanted to draft for Taiwan, in spite of the commitment in his inaugural speech in May 2000 (the five no’s).<sup>10</sup> And the referendum that he organized in March 2004 increased concern by both China and the United States about the procedure he might use to adopt it. Specifically, he was suspected of seeking to introduce a new procedure for constitutional amendments that, if adopted by three-quarters of the National Assembly (an unusually high threshold), would have allowed further constitutional revisions to be approved only by a referendum approved by a majority of the voters.

However, these concerns soon became unfounded since most pan-blue legislators, although open to ratification of constitutional amendments by referendum, were opposed to abandoning their own prerogatives with respect to constitutional revision.

## The First Administration in Retrospect

The institutional patterns and constraints that became clear during Chen Shui-bian’s first administration, to a large extent, have shaped the various initiatives taken by Chen after his reelection as well as the constitutional revisions upon which both camps were ultimately able to agree.

On the one hand, after his reelection in March 2004, Chen toned down his rhetoric, proposing only an undefined “re-engineering” (*xianzheng gaizao*) of the constitution; a formulation he purposely used in order to reassure his electoral base. He also reiterated the “five no’s,” underscoring the impossibility for the DPP government to get out of the ROC “bird cage” designed by China and the United States and accepted by the opposition parties.

And, as expected, the constitutional reform plan adopted by the Legislative Yuan in August 2004 only included those items supported by both the pan-blue and pan-green camps. Confirmed by the National Assembly in early June 2005, this reform mainly focused on the electoral system, e.g., the abolition of the SNTV (single non-transferable vote in multiple-seat constituencies) and constitutional revision procedures. With respect to the latter change, from 2007, the year of the next legislative election, voters will cast two ballots--one for a candidate and one for a party; only one candidate will be elected per voting district; the number of legislative seats will be cut from 225 to 113, including 73 regional seats, 6 seats designated for aborigines, and 34 for lawmakers-at-large based on the party lists; only parties that receive more than 5 percent of the votes will be allowed to win lawmakers-at-large seats, (potentially marginalizing such third parties as the PFP and the TSU); and the lawmakers’ tenure will be lengthened from three to four years in order to better coincide with the president’s tenure due to begin with the election four months later (March 2008).

Though it will not necessarily prevent situations of conflicting presidential and legislative majorities, this last reform will definitely contribute to diminishing their likelihood. Moreover, the package approved in the summer 2004 also included the abolition of the National Assembly, transferring the power to revise the constitution to the Legislative Yuan. The KMT, the DPP, and the PFP agreed to allow the public to ratify via referenda

constitutional amendments passed by the legislature but refrained from allowing the public to initiate amendment bills via referenda (only the TSU insisted on introducing this right).<sup>11</sup> In other words, the public will be asked to confirm and endorse amendments that have already been approved by three-quarters of the Legislative Yuan, virtually excluding the possibility of a future plebiscite on a completely new constitution or on amendments directly questioning the “five no’s.” And to be confirmed by a referendum, any constitutional revision will have to be approved by at least 50 percent of the *registered voters*, a rather high threshold that, in fact, would generally require the support of two-thirds of the active voters.

This package was passed by a 200-1 vote (ten lawmakers abstained and the others did not show up for the vote), underlining the large bi-partisan support it received. And in June 2005, the DPP and KMT delegates, who between them held over three-quarters of the National Assembly seats, ratified the package.

On the other hand, after his razor-thin and contested reelection in March 2004, Chen campaigned hard to win a majority in the parliament. However, in the December 2004 legislative election he failed to reach this goal. Since he did not have to face another reelection (as in the United States, presidents in Taiwan can only serve two four-year terms), he modified his tactic. Taking advantage of James Soong’s fresh electoral setback, on February 24, 2005, Chen concluded a ten-point political agreement with Soong, in doing so hoping to secure a political majority in the parliament.

Though this alliance did not cover all issues (for instance, it did not specifically include the special weapons budget),<sup>12</sup> it was expected to widen Chen’s room for maneuver and to contribute both to dividing the pan-blue camp and to isolating the DPP’s main rival, the KMT. In return, Chen agreed to revise the current constitution according to the existing

procedure (*xiuxian*), abandoning his dream of promulgating a “new constitution” (*xinxian*) for Taiwan.<sup>13</sup> The new internal political balance of power obviously forced a choice on Chen that external constraints (China and the United States) had already imposed.

However, this alliance was short-lived: it came to an end during James Soong’s visit to China in May 2005 after Chen accused Soong, without any clear evidence, of having secretly met with the director of China’s Taiwan Affairs Bureau, Chen Yunlin, in Washington in early 2005. Though Lien Chan’s visit to China in April 2005 directly sabotaged the Chen-Soong alliance, forcing the latter to make a trip to Beijing as well, opposition to the alliance in both the pan-green camp as well as in the PFP put an end to what could have been a solution to the current gridlock.<sup>14</sup>

With the face-off between the pan-blue and pan-green camps renewed, Chen reactivated his constitutional reform initiative. Clearly, the constitutional reform passed in June 2005 represented only a fraction of the plan of Chen Shui-bian and the DPP. This “constitution crafting” (*zhixian*) plan included: abolishing the Examination Yuan and Control Yuan (in other words, adoption of a three-branch system instead of the current five-branch division of powers); better protection of human rights; and, eventually, movement toward a truly presidential system (although as noted below, since 2006 the DPP’s view on this latter change may have changed). However, changes in the name of the country, the flag, the borders, and other symbols of the ROC were publicly and repeatedly excluded from the reform, although neither Beijing nor Washington was totally convinced.<sup>15</sup>

In June 2005, Chen promised to launch these latter reforms, or what he called “the second round of constitutional reforms” through a social mobilization campaign, the aim of which was to circumvent and marginalize, at least in the first stage, the blue-camp-dominated

Legislative Yuan.<sup>16</sup> Chen and the DPP's hope was to create momentum in the society that would put the opposition on the defensive and force it to approve a package in which many green-camp ideas, through "deliberative democracy," would have been included.<sup>17</sup>

Chen's initiative in February 2006 to scrap the National Unification Council as well as the National Unification Guidelines, an institution and a document based on two presidential orders made by Lee Teng-hui in 1990 without any parliamentary endorsement—and before any democratization of the Taiwanese polity—should be understood as direct signals of this new objective—a Taiwan-based constitution—and strategy drafted through consultation with the people rather than with the approval of parliament.<sup>18</sup> This move only fed the concerns expressed by the Chinese or the American governments regarding the outcome of a "consultation-mobilization" that could very well end up touching upon earlier pledges regarding the limits of any constitutional changes (e.g., the name, the borders, and the symbols of the country).

However, under the current circumstances—Chen's declining popularity, increasing DPP and Chen's family corruption, and the failed attempt to recall the president by the Legislative Yuan in June 2006—any new constitutional package has little chance of getting off the ground or being approved by the KMT and other pan-blue parties. In other words, deeply divided and unable to mobilize the society on constitutional reform, the pan-green camp has been unable to submit, as originally planned, a new constitution draft to the public in 2006, in order to have it adopted by the Legislative Yuan and then approved through referendum on the occasion of the December 2007 legislative elections or March 2008 presidential election.

By 2006 there was little prospect for any fresh constitutional reform for two main reasons. On the one hand, both the pan-blue and the pan-green camps probably will first have to fully implement and test the impact of the main achievement of the June 2005 reform (the long-overdue abolition of the very unhealthy SNTV electoral system) before embarking on any other constitutional revisions. Inspired by Japan, which abandoned this system in the early 1990s, it has contributed to vote-buying and the election of candidates with extreme positions that appeal to only a small minority of voters. Conversely, single-seat constituencies will contribute to moving legislators closer to their voters, enhancing their legitimacy as well as their accountability even as it weakens, if not marginalizes, the smaller parties and thus moves Taiwan's polity more toward a two-party system.

On the other hand, both the pan-green and the pan-blue camps are more divided than ever about any rebalancing of power between the executive and the legislative branches of government. For instance, in spring 2006, fearing that the pan-green camp is likely to lose power in 2008, some DPP leaders, such as Parris Chang, proposed moving the constitutional order in the direction of a cabinet system.<sup>19</sup> Among the pan-blue legislators, there has been considerable frustration about the cutting by one-half the size of the Legislative Yuan and many would like to revive a constitutional reform that would allow them to “kill two birds with one stone” by restoring the right of the Legislative Yuan to endorse the prime minister's appointment by the president while substantially increasing the number of legislators and thus securing employment for most of them after 2007. Nevertheless, because of the opposition of the KMT leadership in general, and Chairman Ma Ying-jeou's opposition in particular, to any constitutional reform before the 2008 presidential election, not to mention the society's deep

dissatisfaction with their privilege-hungry legislators, there is little chance of any cross-camp coalition taking shape on this issue or of any change being introduced in the coming two years.

## Conclusion

Taiwan is not condemned to institutional immobilism. Some important constitutional amendments have been introduced. However, as in any polity, institutional reforms are possible only when the major parties involved have a clear self-interest to introduce them. In the foreseeable future, more ambitious constitutional revision, and, in particular, any move out of the pattern that has evolved since the ROC came to Taiwan remain unlikely for both international and domestic reasons. On the one hand, any symbolic evolution toward a Republic of Taiwan constitution will continue to be barred by Beijing and Washington, as well as by the pan-blue camp. Although domestically the constitutional reform package adopted in June 2005 has contributed to consolidating the ROC institutional status quo, it has isolated the more nativist and fundamentalist segments of the pan-green camp.

On the other hand, the political spectrum remains deeply divided about the fundamental orientation that the ROC institutional arrangement should take. The politicians supporting a move toward a parliamentary system appear unable to build a consensus even within the pan-blue camp, while those in favor of establishing a fully presidential system are not strong enough, even among pan-green legislators, to initiate any genuine reform. In other words, the Taiwanese political system is bound to remain semi-presidential, granting more power to the president and his government than most other semi-presidential systems (in particular, as far as external security is concerned), but also giving the parliament the teeth to check, and sometimes block, the presidential program when the majorities differ.

Having said that, there remains a strong consensus on the need to adapt further the old ROC constitution to fit the island's reality. For this reason, the gradual simplification and rationalization of institutional arrangements will continue, allowing a deeper redrafting of the constitution and, possibly later, abolition of the most marginal or inefficient institutions (the Examination Yuan and the Control Yuan). In this respect there are perhaps fewer differences between the green and the blue camps than all the politics and politicking would suggest. And maybe, if the DPP presidential candidate is defeated in 2008, a new consensus might emerge among the major political forces in Taiwan in favor of a process of submitting the appointment of the prime minister for approval by the Legislative Yuan, thus making him or her truly responsible to the elected representatives of the nation and opening the way to more stable and able coalition governments.

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<sup>1</sup> Cf. Roger B. Jeans, *Democracy and Socialism in Republican China: The Politics of Zhang Junmai (Carsun Chang), 1906-1941* (Lanham, MD: Rowman & Littlefield, 1997), pp. 27-48.

<sup>2</sup> Shelley Rigger, *Politics in Taiwan: Voting for Democracy* (New York: Routledge, 1999), p. 61.

<sup>3</sup> Jean-Pierre Cabestan, "Constitutional Reform: Is Taiwan Moving Towards A French-style Semi-Presidential System?," *China Perspectives*, no. 14, (November-December 1997), pp. 40-44. Cf. also, Jean-Pierre Cabestan, *Le système politique de Taiwan* (Paris: Presses Universitaires de France, 1999), pp. 64-82.

<sup>4</sup> Article 55 of the constitution was abolished. It stated:

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>5</sup> Article 70 of the constitution states:

The Legislative Yuan shall not make proposals for an increase in the expenditures in the budgetary bill presented by the Executive Yuan.

<sup>6</sup> On the organization and operation of the Legislative Yuan, cf. Thomas J. Bellows, *The Republic of China Legislative Yuan: A Study of Institutional Evolution*, Maryland Series in Contemporary Asian Studies, no. 4, 2003 (175) (Baltimore: School of Law, University of Maryland, 2003).

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<sup>7</sup> Ironically, when in power, the pan-blue leaders had begged the United States to provide Taiwan with these very same weapon systems.

<sup>8</sup> Myra Lu, “Assembly Fading from Scene,” *Taipei Journal*, vol. 17, no. 18 (May 12, 2000), p. 1. This was the sixth series of constitutional amendments since the fifth revision introduced by the National Assembly in 1999 and aimed at extending the term for deputies from four to six years (1996 to 2002 instead of 1996 to 2000), but it was invalidated by the Council of Grand Justices in March 2000.

<sup>9</sup> “Call for New Constitution Aimed at Making Taiwan Great Country: Chen,” China News Agency, October 4, 2003, at LexisNexis (accessed December 1, 2006).

<sup>10</sup> Or “four no’s and one don’t” (*si bu, yi mei you*); these commitments were included in the Chen-Soong statement: “On the premise of cross-Strait peace, President Chen commits to the following pledges that: during his term as President, he will not declare independence, will not change the national moniker, will not push forth the inclusion of the so-called “state-to-state” description in the Constitution, will not promote a referendum to change the status quo in regards to the issue of independence or unification. Furthermore, the abolition of neither the National Reunification Council nor the National Reunification Guidelines will be set forth as an issue. Chairman Soong has expressed his consent and support for the position stated above.” (Need source)

<sup>11</sup> Jewel Huang, “Amendment Raises Hopes for a New Constitution,” *Taipei Times*, August 24, 2003, p. 3, at [www.taipeitimes.com/News/taiwan/archives/2004/08/24/2003199996](http://www.taipeitimes.com/News/taiwan/archives/2004/08/24/2003199996) (accessed December 1, 2006); Kathrin Hill, “Taiwan Vote Stamps Out Hopes of Chen’s Promised

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New Constitution,” *Financial Times*, August 24, 2004, p. 7, at LexisNexis (accessed December 1, 2006).

<sup>12</sup> On national security, the joint statement vaguely says: 7. Taiwan needs sufficient national defense capabilities to ensure peace across the Taiwan Strait. In the future, with "security of the nation, stability across the Taiwan Strait, peace throughout the region" as our strategic objectives, Taiwan will substantiate necessary arms and military equipment for our national defense.

<sup>13</sup> The third point of the Chen-Soong joint statement indicates: “To bolster national competitiveness and enhance governmental efficiency, it is necessary to garner consensus among the governing and opposition parties regarding constitutional reform. President Chen and Chairman Soong both agree and pledge that the constitutional reform project will not involve issues of national sovereignty, territory, or status quo across the Strait; and that the reform project will follow due procedure as set forth in the Constitution.”

<sup>14</sup> Cf. in particular Chen Shui-bian’s reply to Lee Teng-hui’s criticism of his (Chen’s) inability to have changed the name of the country and create a new constitution. Jacky Hsu, “One-China Consensus Irrelevant,” *South China Morning Post*, May 10, 2005, p. 6, at LexisNexis (accessed December 1, 2006).

<sup>15</sup> Cf. the excellent analysis by Alan Romberg, “The Taiwan Tangle,” *China Leadership Monitor*, no. 18 (Spring 2006), at [www.hoover.org/publications/clm/issues/3294486.html](http://www.hoover.org/publications/clm/issues/3294486.html) (accessed December 1, 2006)..

<sup>16</sup> Cf. Chen Shui-bian’s National Day Address, October 10, 2005, at [www.gio.gov.tw/taiwan-website/4-oa/20051010/2005101001.html](http://www.gio.gov.tw/taiwan-website/4-oa/20051010/2005101001.html) (accessed December 1, 2006), and interviews, Taipei, May 2006.

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<sup>17</sup> *The China Post*, November 8, 2005. Actually, a working group chaired by then prime minister Yu Shyi-kun was established in the presidential palace in October 2004 and seventeen subjects of revisions were subcontracted to various experts and green-leaning NGOs. The main subjects were: national identity, government structure and institutional aspects, Control Yuan, Examination Yuan, and Legislative Yuan functions and election system, Judicial Yuan central and local government relations, redefinition of the military service (conscript system), the basic policies of the state (*jiben guo ce*) -- the economy, education, culture and science, human rights, rights of the minorities, the weak, and the handicapped. This work continued in 2005 but slowed down in 2006 because of domestic political difficulties and the lack of interest in constitutional reform by the society.

Interview, Taipei, May 2006.

<sup>18</sup> Cf. Romberg, "The Taiwan Tangle."

<sup>19</sup> Personal interview, Taipei, May 2006.