

Did the 2004 “Peace Referendum” Contribute to the Consolidation of Taiwan’s Democracy?

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Abstract

The first nation-wide referendum in Taiwan, held on March 20, 2004, was much disputed regarding its legality and constitutionality. It was also considered by its opponents to be merely a campaign plot designed by the incumbent, President Chen Shui-bian, to ensure his reelection. Despite the above controversies, the author argues that the 2004 “peace referendum,” on balance, contributed to the consolidation of Taiwan’s democracy by institutionalizing uncertainties associated with attitudinal, institutional, and identity aspects of the democratic polity. As results of the controversial nature of the 2004 peace referendum and the demobilization of voters by opposition parties, the two referendum propositions were rejected. However, there were important implications of the referendum. One is that Taiwan’s president was able to use the 2004 referendum to establish a viable campaign agenda against his electoral opponents; this aspect of Taiwan’s referendum process is worthy of our attention. To reduce political manipulation at the elite level, the author suggests some needed revisions of the current referendum law in Taiwan.

The first nation-wide referendum in Taiwan (officially called the “peace referendum”) was held on March 20, 2004, and according to the government, it should be regarded as a milestone of “deepening democracy” in Taiwan. Notwithstanding that the referendum’s two propositions were rejected because the number of votes failed to pass the mandatory 50 percent turnout threshold, the 2004 “peace referendum” (hereafter, the 2004 referendum) should be seen as part of the continuing progress of democratic consolidation in Taiwan for the following reasons. First, a referendum has always been one of the crucial missions for the ruling party, the Democratic Progressive Party (DPP), since its establishment in 1986. For years, the DPP sought to use a referendum to promote independence and to terminate the authoritarian regime in Taiwan.

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However, due to strong opposition from the People's Republic of China (PRC) and Chiang Kai-shek's authoritarian regime in Taiwan, a referendum law was never enacted. It was not until the campaign leading to the 2004 presidential election that legislators from the opposition parties (Kuomintang, or KMT, and the People First Party, or PFP), under public pressure, agreed to enact the referendum law. Therefore, the enactment of the referendum law itself helped to sweep away authoritarian legacy in Taiwan, contributing to the deepening of democracy on the island.

Second, since the Constitution of the Republic of China (ROC) stipulates that people have the right to initiate a referendum, the enactment of Taiwan's referendum law simply restored people's constitutional rights. Thus, the 2004 referendum should be seen as a step in the consolidation of constitutional democracy in Taiwan. Third, because Taiwan's independence movement has always been associated with a nation-wide referendum, the 2004 referendum was opposed unanimously by international powers such as Japan, the United States, and European powers for fear that it would provoke a Chinese military attack and upset regional stability.

Given that the 2004 referendum was held on schedule despite international opposition, the DPP claimed a victory for Taiwan's people, as if from then on Taiwanese could be true masters of themselves, hence, fulfilling the very meaning of democracy.¹

In contrast, although endorsing the value of a referendum as an institution, the opposition parties consistently argued that the 2004 peace referendum, held concurrently with the presidential election, was no more than a campaign plot deployed by Chen Shui-bian (the incumbent president) to rescue his failed tenure in government and to boost his chance for reelection.² According

¹ There were various reports indicating that foreign leaders took a negative view on the planned referendum in Taiwan. For example, see BBC News, "Taiwan Referendum Law Signed: Taiwan's President Chen Shui-bian Has Signed a Controversial Law Which Allows the Island to Hold Referendums," December 31, 2003, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/3358665.stm>; CNN, "U.S. Urges Taiwan Status Quo: The United States Has Called on Taiwan's President Chen Shui-bian to Back Down from Moves to Call a Referendum on the Island's Sovereignty or Change Taiwan's Status," December 1, 2003, <http://edition.cnn.com/2003/asiapcf/east/12/01/taiwan.china/index.html>; and BBC News, "Taiwan Rejects Paris Poll Warning," January 27, 2004, <http://news.bbc.co.uk/go/pr/fr/-/hi/world/asia-pacific/342675.stm>.

² For accounts of the opposition's views on the 2004 "Peace Referendum," please refer to a series of public TV debates held by the Central Election Commission from February 29 to March 14, 2004. Although the debates should have been focused on the two referendum propositions, the opposition's arguments were centered on the legality and constitutionality of the 2004 referendum itself. See serial reports provided by the Central News Agency (CNA). For example, Shu-Jour Wu, "The First Referendum Debate: Lin Chia-Lung vs. Kau Chin Shu Mei," February 29, 2004; Chia-Fei Lee, "Hsu Hsin-Liang: Rejecting the March 20 Referendum is the True Demonstration of the Sovereign's Will," CNA, March 3, 2004; Chia-Fei Lee, "Yei Yiaw-Peng: Taiwanese People Should Oppose Illegal and Unconstitutional Referendums," CNA, March 7, 2004; and Ming Huei Huang, "Sissy Chen: Referendum is Illegal and the Public Should Refuse to Pick Up Referendum Ballots," CNA, March 14, 2004.

to the opposition parties, the 2004 referendum had nothing to do with the consolidation of Taiwan's democracy. On the contrary, they maintained that it was both illegal and unconstitutional. It was illegal, they maintained, because the statutory condition (clear and imminent danger), under which the president would be allowed to initiate a referendum, did not exist, and because holding a referendum concurrently with the presidential election violated the statutory provision of the referendum law itself. It was unconstitutional because, if the condition for the president to initiate a referendum did exist, the president should have declared a state of emergency, subject to the approval of the Legislative Yuan (LY), within seven days. Because President Chen did not declare a state of emergency, either the condition necessary for the president to initiate a referendum did not exist, or the constitutional provision had been violated.³ Therefore, opposition forces asserted that the 2004 referendum in Taiwan did not facilitate democratic consolidation. Rather, they claimed that it undermined Taiwan's constitutional democracy.

Given the above dispute between the government and its opposition, to what extent did the 2004 referendum in Taiwan contribute to democratic consolidation? In this essay, I argue that the 2004 referendum was an important landmark for Taiwan's democratic consolidation, but for reasons other than what the DPP government has stipulated. Nevertheless, there are inherent contradictions in the new referendum law, which cannot be resolved unless the law itself is amended. Given such inherent contradictions, it is possible to regard the 2004 referendum as both illegal and unconstitutional. Even if the Grand Justices were to declare the 2004 referendum to have been compatible with the ROC constitution, frequent uses of a referendum by the president and the LY would undermine the very essence of representative democracy. It is in this sense that the 2004 referendum may have established a bad example for politicians to follow, that is, use of a referendum to manipulate the public in an attempt to reap political benefits.

What follows first is a brief review of the concept of democratic consolidation and criticisms of it. Further, four dimensions are introduced to analyze the concept of democratic consolidation. Second, there is an elaboration on referendum movements in the context of democratic transition and consolidation in Taiwan. Third, developments leading to the enactment of Taiwan's referendum law are highlighted and the controversy over the president's initiative of the peace referendum is examined critically. In addition, based on the four dimensions of democratic consolidation mentioned above, the essay seeks to answer to what extent the 2004 referendum has

³ On the legality and constitutionality of the 2004 "Peace Referendum," there was a series of debates by constitutional scholars and former Grand Justices, such as Hu Fo, Chen Ai-O, Wu Gern, Chang Tei-Shen, and Cheng Chien-Tsai. See Shao-Yu Lin et al., special report, "Can Article 17 of the Referendum Law Surpass Constitutions?" *United Daily*, February 12, 2004, A13. Also see, Hsian-Fei Dong, "Article 17 of the Referendum Law is Unconstitutional," *Opinion Forum*, *United Daily*, March 4, 2004, A15.

contributed to democratic consolidation in Taiwan. Finally, a conclusion is given to elaborate on the implications and the impact of the referendum (as an institution) on the prospects for Taiwan's democracy.

Democratic Consolidation and Its Dimensions

Democratic consolidation is an illusive concept, as the artificial boundaries to delimit the beginning and end of the consolidation of democracy is inevitably blurred. Nevertheless, for Linz and Stepan, consolidated democracy means "a political regime in which democracy as a complex system of institutions, rules, and patterned incentives and disincentives has become, in a phrase, 'the only game in town'.... In short, with consolidation, democracy becomes routinized and deeply internalized in social, institutional and even psychological life, as well as in political calculations for achieving success."⁴ In other words, consolidation involves more than an adherence to specific rules and constraints of the constitutional system. As Dahl observes, democratic consolidation implies the emergence of a democratic political culture, in which democratic institutions are braced by shared norms such as trust, tolerance, willingness to compromise, and belief in democratic legitimacy.⁵

Similarly, Schmitter defines democratic consolidation as "the process of converting patterns into structures, of endowing what are initially fortuitous interactions, episodic arrangements, *ad hoc* solutions, temporary pacts, etc. with sufficient autonomy and value to stand some chance of persisting."⁶ That is, democratic consolidation is a process of removing transitional uncertainties, institutionalizing constitutional structures, internalizing democratic rules and norms, and disseminating democratic values.

For Pasquino, however, democratic consolidation should refer to expectations of (democratic) regime continuity and to nothing more.⁷ Accordingly, democratic consolidation is invariably lengthier than democratic transition, so that (democratic) regime continuity over time is expected. Regarding "consolidation" as regime continuity over time, Przeworski et al., suggest that, "A democracy becomes 'consolidated' if its aforementioned

⁴ Juan Linz and Alfred Stepan, "Toward Consolidated Democracies," in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore, MD: Johns Hopkins University Press, 1997), 15-16.

⁵ Robert A. Dahl, "Development and Democratic Culture," in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore, MD: Johns Hopkins University Press, 1997), 34-39.

⁶ Philippe Schmitter, "The Consolidation of Political Democracies," in *Transitions to Democracy: Comparative Perspectives from Southern Europe, Latin America and Eastern Europe*, ed. Geoffrey Pridham (Dartmouth: Aldershot, 1995), 550.

⁷ Gianfranco Pasquino, "Democratic Consolidation: Between Institutional Engineering and International Support," *West European Politics* 25, no.4 (2002): 229-236.

‘hazard rate’ declines with its age.”⁸ However, Przeworski and his colleagues find that hazard rates of democratic regimes become independent of age after controlling for the level of development. This means that, for a given level of development, democracies are about equally likely to die at any age. Since the mere passage of time does not make the survival of democracies more likely, Przeworski and his co-authors conclude that the term, “consolidation,” is an empty concept.

Taking Linz and Stepan’s definition as a given, O’Donnell further challenges the analytical utility of democratic consolidation.⁹ For O’Donnell, the strength of democratic norm, rule, institution, and constitution as opposed to informal practices of clientelism, vote buying, rule-bending, and executive domination may “facilitate” the endurance (thus consolidation) of democracy. However, the appearance of strong democratic institutions should not be equated to the consolidation of democracy. In Brazil, Argentina, Bolivia, and Ecuador, for example, democratic regimes have persisted for some time, even in the face of weak institutionalization of democratic rules and structures. It seems that there are “other factors that [are] most likely to have strong independent effects on the survival chances of polyarchies.”¹⁰

Given diverse definitions of democratic consolidation and criticisms of them, how can one recognize the phenomenon of democratic consolidation? Let me synthesize the above discussion and offer four dimensions to analyze the concept of democratic consolidation. The first dimension considers the entrenchment of democratic institutions, such as inclusive suffrage, free and competitive elections, functioning government based on constitutionalism, viable political parties, an independent judiciary, free expression and association, autonomous media and civil society, civilian control of the military, constitutional protection of minority rights, and so on. The above items of democratic institutions more or less resemble Dahl’s definition of a polyarchy.¹¹ However, it is necessary to stipulate what democracy looks like before establishing what democratic consolidation is. Only when democratic institutions are persistently respected and effectively operated can one recognize the formal contour of democratic consolidation. Although the entrenchment of democratic institutions facilitates the consolidation of democracy, as O’Donnell suggests, by itself it is not sufficient to guarantee the endurance of democracy.

⁸ Adam Przeworski, Michael Alvarez, José Antonio Cheibub, and Fernando Limongi, “What Makes Democracies Endure?” in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore, MD: Johns Hopkins University Press, 1997), 306.

⁹ Guillermo O’Donnell, “Illusions about Consolidation,” in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore, MD: Johns Hopkins University Press, 1997), 40-57.

¹⁰ *Ibid.*, 45.

¹¹ Robert Dahl, *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, 1971), and *id.*, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

This insufficiency brings us to the second dimension of democratic consolidation, that is, the wholehearted endorsement of democratic values such as liberty, rights, justice, trust, toleration, mutual respect, willingness to compromise, and above all, a belief in legitimacy derived from the practices of democratic institutions. The values sustaining a consolidated democracy not only should be embedded in rules of law, but also they should be internalized by citizens to form a fundamental value system that distinguishes right from wrong. Without wholehearted endorsement of democratic values, the practices of democratic institutions are likely to be challenged and undermined, potentially leading to a break down of democracy.

The third dimension of democratic consolidation refers to identification with the democratic state. As Linz and Stepan contend, "Democracy is a form of governance of a state. Thus, no modern polity can become democratically consolidated unless it is first a state."¹² However, one fundamental problem arises when large groups of individuals in a territory want to join a different state or seek to create a state that is independent from another political entity. In this situation, regime legitimacy derived from democratic practices cannot be taken for granted, for there are always some people who, believing that sovereignty belongs to a different political entity, would challenge the domain of democratic decisions. Nevertheless, the chances of consolidating democracy can be increased if political leaders adopt proper policies that not only grant inclusive citizenship and equal rights to all nationals, but also accommodate specific needs of national minorities. The aim, as Linz and Stepan suggest, is to enhance the formation of "state-nations, [that is], those multicultural or even multinational states that nonetheless still manage to engender strong identification and loyalty from their diverse citizens."¹³

The fourth dimension of democratic consolidation concerns coherent mechanisms that assist democracies to endure. A democratic regime may satisfy institutional, attitudinal, and identity-oriented criteria of a consolidated democracy, but still fail to endure because of the inherent incompatibility of these criteria. For example, the winner-take-all feature of presidentialism may be less compatible with the inclusion of minorities than is consociational parliamentarism. However, a consociational parliamentary system in the form of grand-coalition government may, in the long run, encourage collusive behavior among major political parties, hence, ignoring "politically incorrect" concerns of the electorate. These "politically incorrect" concerns, such as xenophobia and racism, if inadequately addressed or if suppressed by political elites, may turn into antagonistic political identities among segments of the population, further undermining people's beliefs in trust, toleration, justice, and legitimacy

¹² Juan Linz and Alfred Stepan, "Democracy and Its Arenas," in *Problems of Democratic Transition & Consolidation*, ed. Juan Linz and Alfred Stepan (Baltimore, MD: Johns Hopkins University Press, 1996), 7.

¹³ Linz and Stepan, "Toward Consolidated Democracies," 27.

of democratic decisions. In such a vicious circle, democracy is not likely to endure.

What mechanisms make democracies endure? Przeworski and his colleagues, based on their analyses of the survival and death of political regimes in 135 countries from 1950 to 1990, revealed that the answer is “democracy, affluence, growth with moderate inflation, declining inequality, a favorable international climate, and parliamentary institutions.”¹⁴ While Przeworski and his colleagues’ answer is that an ideal combination of empirical factors contributes to the endurance of democracies, their answer does not address the underlying mechanisms of democratic consolidation. Perhaps it is true that “the secret of democratic durability seems to lie in economic development—not, as the theory dominant in the 1960s had it, under dictatorship, but under democracy based on parliamentary institutions.”¹⁵ However, why do elites and the masses, under reasonable economic development with parliamentary institutions in place, choose to endure democracy rather than resort to alternative authoritarian or totalitarian regimes?

In Przeworski’s earlier work, he argues that what makes democracy more appealing than an authoritarian regime is that democracy institutionalizes, but does not entirely eliminate, uncertainties.¹⁶ First, because the tenure of democratic governments automatically expires, political disputes are “temporarily suspended rather than resolved definitively.”¹⁷ Thus, democracy creates a regularized “possibility of change.”¹⁸ Second, in democracy, no single force is able to control what occurs, because outcomes of each action depend on the actions of others. Since actors in democracy cannot know in advance the results of elections and policy contests, democracy intrinsically creates ex-ante uncertainty. This aspect of uncertainty is, in fact, good for attracting actors to democracy over authoritarian rule, one that “is certain that political outcomes will not include those adverse to the will of the power apparatus.”¹⁹

Since, in democracy, everybody knows that there will be another election in a few years but nobody knows beforehand who will win that election, the losers in a previous democratic contest may decide to comply with democracy simply because of democracy’s distinctive opportunities for a future victory. The open-endedness of democratic contests is what Di Palma calls the best trump card of democracy in attracting support.²⁰ That is, in democracy, the

¹⁴ Przeworski et al., “What Makes Democracies Endure?” 295.

¹⁵ Ibid., 306.

¹⁶ Adam Przeworski, *Democracy and the Market* (Cambridge, UK: Cambridge University Press, 1991).

¹⁷ Ibid., 11.

¹⁸ Philippe Schmitter and Terry Lynn Karl, “What Democracy Is ... and Is Not,” *Journal of Democracy* 2 (1991): 82.

¹⁹ Przeworski, *Democracy and the Market*, 47.

²⁰ Giuseppe Di Palma, “Government Performance: An Issue and Three Cases in Search of Theory,” in *The New Mediterranean Democracies*, ed. Geoffrey Pridham (London: Frank Case, 1984).

game is never final, and nobody loses once and for all and in all arenas. It is, as Linz suggests, “the hope of the reverse of the [electoral or policy] outcome in a reasonable time, a framework of a few years” that attracts support for democracy.²¹

Although democracy creates ex-ante uncertainty that attracts elite and public support, democratic uncertainty is not unbounded. Typically, democratic outcomes are bounded by preferences of the electorate taken as a whole.²² Within this outer boundary, unpredictability in democracy is high when the spectrum of voters’ and parties’ preferences is polarized. In this case, alternation in office can produce dramatic shifts in policies such that actors cannot, in advance, exclude many policies as implausible. This is why democratically elected governments may sometimes produce policies infringing on minority rights. To reduce policy uncertainties as a result of changes in democratic governments, Linz and Stepan suggest that a constitution and the rule of law can limit discretionary power of officeholders over a narrow range of issues, hence, creating some predictable scenarios that enable elites and citizens to form reasonable long-term plans and expectations. Moreover, the formal decision rules of democracy may shape what substantive outcomes are possible, and, therefore, reduce uncertainty over policy domains. Finally, democracy requires equal treatment before the law, so even those who lose elections will be treated within a “floor” standard, below which the value of political outcomes is not allowed to fall.

Therefore, it is the constitutional form of democratic government embedded in the rule of law that institutionalizes uncertainties arising from democratic competition. However, democratic uncertainties can never be eliminated, as the outcome of any democratic contest cannot be known for certain *a priori*. Institutionalized uncertainties, in turn, attract elites and citizens to endure democracy rather than cause them to pursue alternative courses of regime change. Yet, while the above mechanism of how democracy attracts continuing support seems logically plausible, it can be misleading because the alternative (authoritarian/totalitarian) regimes are characterized by their corresponding differences with democracy. As Alexander points out,

...rule-of-law claims overestimate the systematic differences in outcomes that actors can expect under regime alternatives because they understate the extent to which both regimes are ruled by people, not laws. Institutionalized-uncertainty claims also overestimate differences in outcomes between regime types because they fail to recognize that the people who rule

²¹ Juan Linz, “Democracy’s Time Constraints,” *International Political Science Review* 19 (1998): 20.

²² Gerard Alexander, “Institutionalized Uncertainty, the Rule of Law, and the Sources of Democratic Stability,” *Comparative Political Studies* 35, no. 10 (2002): 1164.

both regimes vary sharply across countries and time.²³

Although Alexander is empirically correct to point out that outcomes derived from authoritarian rule are no more uncertain or no less certain than those derived from democracy, he underestimates the risk of authoritarian succession. Given that the succession rule of authoritarian/totalitarian regimes is either arbitrary or nontransparent, it is very likely that regime opponents may miscalculate the chances of overthrowing the current authoritarian/totalitarian regime, leading to periodic violent uprisings and suppression. In contrast, actors in democracy at least “know what is possible and likely but not what will happen.”²⁴ In authoritarian/totalitarian regimes, actors only know what is certain not to happen, but not what is impossible. That is, in authoritarian/totalitarian regimes, it is certain that anyone who is against the will of the incumbent leaders will not succeed to leadership, unless the incumbent leaders are violently ousted. However, nobody knows what is impossible when violent uprisings, which aim at challenging the authoritarian incumbent, occur.

Unlike democracy in which procedural rules are clear but the electoral outcome of leadership succession is uncertain, in authoritarian/totalitarian regimes, decision rules are nontransparent, but outcome of succession is fairly certain not to include regime opponents. If the outcome of succession is certain, then there is no need for regime opponents to play the game forever. At some point in time, especially when authoritarian leaders become weak, regime opponents will challenge the established order, whatever the cost. Consequently, the options for either unwilling subjugation or violent uprisings offered by authoritarian/totalitarian regimes are clearly less desirable than those derived from periodic elections in democracy. For this reason, we should still take democracy’s mechanism of institutionalized uncertainty seriously. Specifically, we should analyze whether any addition to the existing institutional, attitudinal, and identity-oriented dimensions of democratic consolidation will eventually undermine or enhance the institutionalization of regime uncertainty. Only when a referendum institutionalizes, but does not entirely eliminate, regime uncertainty can we say that it contributes to democratic consolidation in Taiwan.

Referendum Movements and Democratic Transition/Consolidation in Taiwan

Before assessing what contribution the 2004 referendum made to democratic consolidation in Taiwan, we should outline what Taiwan had achieved already in terms of democratic transition and consolidation. Democratic transition

²³ Ibid., 1146.

²⁴ Przeworski, *Democracy and the Market*, 12.

refers to “the first major stage of regime change commencing at the point when the previous authoritarian/totalitarian system begins to collapse and leading to a situation when, with the new constitution in place, the operation of the new political structures can start to be routinized.”²⁵ According to Tien, the birth of the Democratic Progressive Party on September 28, 1986, and the KMT authority’s emerging tolerance of multiple voices in politics marked the beginning of democratic transition in Taiwan.²⁶ Less than a decade after the transition began, liberalization measures and democratic reforms, such as dismantling repressive institutions and removing legal impediments to political participation, were pushed forward without serious social unrest or economic decline, hence, enlisting the people of Taiwan in the consolidation phase of democratization. Nevertheless, ethnic divisions and their corresponding disputes over national identity remained tense, posing a serious challenge to Taiwan’s democratic consolidation.

Democratic transition in Taiwan often has been characterized as a “transformation,” in which strategic interaction and negotiation between the incumbent and opposition elites took the lead, while socio-economic pressures fell into the background.²⁷ The authoritarian regime in Taiwan was not overthrown or replaced. Rather, it remained in power throughout the transition phase, controlling its direction, pace, and political agenda. During the transition period, the KMT regime initially revived a commitment to constitutionalism, next took a few steps to dismantle the authoritarian institutions, and finally terminated the state of emergency that had been imposed in 1948. To be specific, the KMT regime (under various pressures) abolished martial law in 1987, lifted press restrictions in 1988, passed the Assembly and Parade Law in 1988, revised the Law on Civic Organization to legally allow the formation of opposition parties in 1989, forced retirement of mainland China-elected parliamentarians by the end of 1991, implemented free and competitive elections for all seats in the National Assembly in 1991 and the Legislative Yuan in 1992, terminated the period of National Mobilization for the Suppression of Communist Rebellion and abolished Temporary Provisions to the ROC constitution in 1991, revised article 100 of the Criminal Code (which made criminal “intention” punishable) in 1992, depoliticized the military in 1993, relaxed the restrictions on eligibility for political candidacy in 1994, and, also in 1994, reformed the ROC constitution

²⁵ Geoffrey Pridham, “Theory of Regime Change and Interactive Dynamics,” in *The Dynamics of Democratization*, ed. Geoffrey Pridham (London: Continuum, 2000), 19.

²⁶ Hung-mao Tien, “Taiwan’s Transformation,” in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore, MD: Johns Hopkins University Press, 1997), 123-161.

²⁷ Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991), and Thomas B. Gold, “Taiwan: Still Defying the Odds,” in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore, MD: Johns Hopkins University Press, 1997), 162-191.

to allow the president and vice president to be directly elected by people residing in territories under effective jurisdiction of the ROC.²⁸ On March 23, 1996, Taiwan elected its president, Lee Teng-hui, for the first time by popular vote, thus completing its democratic transition, if according to the standard set by Huntington's definition of democracy.²⁹

While the above achievements in the transition period are certainly remarkable, we have to put them into the context of our four analytical dimensions of democratic consolidation. Our aim is not to measure the durability of these achievements, but to see whether these achievements fall within the parameters of democratic consolidation. Whether these transitional achievements are consolidated or not depends ultimately on the continuity of their existence, as well as on the mutual reinforcing effect of their interactions. First, the termination of martial law in 1987 and the subsequent lifting of the bans on new newspapers, magazines, radio stations, and other media certainly helped to open up Taiwan's public sphere. However, it should be noted that the first autonomous associations and movements were the consumer, environmental, and women's movements, flourishing without being repressed in the early 1980s.³⁰ According to one study, the number of reported protest incidents relevant to various social movements increased from 175 in 1983 to 1,172 in 1988.³¹ These "new social movements" served to demand greater autonomy for civil society. Further, during this early liberalization period, a pluralist market economy and a strong private sector were firmly established, which reinforced demands from civil society. Finally, the *tangwai* gradually evolved into a *de facto* nonparty organization, resembling a party and serving as a magnet for these flourishing social movements. After the abolishment of martial law in 1987, the DPP, in coalition with social movements, became more audacious in challenging the state authority directly, especially regarding issues such as environmental protection and nuclear power stations. The liberalization of the media also witnessed a growing number of cable TV stations and (underground) radio stations, providing means for political opponents to air different views. Indeed, these cable TV and radio stations were so popular that state-owned TV stations became less effective in the spread of political propaganda. Thus, by 1996, Gold could make the following assessment: "Clearly, civil society wields much clout in Taiwan, as politicians attempt to co-opt and latch on to movements originating within society. Much

²⁸ Tien, "Taiwan's Transformation," 132-135.

²⁹ Huntington states that "a twentieth-century political system is democratic to the extent that its most powerful collective decision makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote." Huntington, *The Third Wave*, 7.

³⁰ Michael Hsin-Huang Hsiao and Hagen Koo, "The Middle Classes and Democratization," in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore, MD: Johns Hopkins University Press, 1997).

³¹ Yun-han Chu, *Crafting Democracy in Taiwan* (Taipei: Institute for National Policy Research, 1992), 102.

of the political agenda is now being set within civil, not political, society.”³²

Second, the legalization of the formation of opposition parties in 1989 not only legitimized the DPP, but also opened up new political space in which more than eighty parties registered for electoral competitions. Although the number of viable parties could be reduced to less than five in any given election, the sheer potentiality of party realignment after each major national election implied intense competition among parties. Indeed, free and competitive elections for all seats in the National Assembly and Legislative Yuan were first held in 1991 and 1992, respectively, followed by Taipei and Kaohsiung mayoral elections and the Taiwan provincial governor’s election in 1994, the second LY election in 1995, the second National Assembly election in 1996, and the first popular-ballot election for the president and vice president in 1996. The election cycles went on and on, with virtually one type (local or national) of election in every year. Taiwanese citizens began to complain about too many, rather than too few, elections. Interestingly enough, despite precipitous declines in the KMT vote shares between 1980 and 1995, the KMT was able to cling to power and continue its focus on winning elections, with no intention to invalidate polls not in its favor. To some extent, elites and citizens in Taiwan seemed to have internalized the norm of democratic legitimacy from various practices of local elections (dating back to 1949) and national elections. Indeed, the entrenchment of free and competitive elections always has been the most recognized evidence of Taiwan’s democracy.

Third, the repeal of the Temporary Provisions and article 100 of the Criminal Code in 1991 and 1992, respectively, helped to restore the constitutional rights of ordinary citizens not only to participate in politics but also to engage fully in social activities, without fear of punishment for their “intentions,” whatever they might be. These two moves also allowed the removal of the last legal barrier to freedom of speech by releasing the advocates of Taiwan’s independence from jail. The legal system appeared to protect civil rights, albeit some legal enforcement was criticized as highly selective. Given that the KMT had manipulated the legal system for so many decades, separating the KMT from the judiciary was yet another formidable challenge. Nevertheless, progress was notable, as then KMT Minister of Justice Ma Ying-jeou assiduously attacked local mafia and cleaned up local legislatures by prosecuting cases of vote buying and other offenses, even though most offenders were affiliated with his party. Further, under public pressure, the KMT also took a few steps to protect the independence of the prosecution and the judiciary. With alternation of power in 2000, the DPP government generally respected the independence of judiciary, although its minister of justice sometimes offered ill-conceived and highly partisan remarks during campaigns leading to various elections. Overall, legal professionals

³² Gold, “Taiwan: Still Defying the Odds,” 174.

have acknowledged some improvement of judicial independence, but ordinary citizens still might hold a stereotypical impression that justice is a luxury for the rich and powerful.

Fourth, like the new democracies of post-communist Europe, Taiwan benefited from the military's lack of direct intervention in authoritarian government. The problem for Taiwan was that its military was penetrated extensively by the KMT. Although KMT supremacy over the military was an integral part of the party-state, the armed forces had not been excluded from politics. To the contrary, military personnel often occupied prominent positions in the KMT's Central Committee and Central Standing Committee, and they provided the "iron votes" necessary to keep the party in power. Therefore, the principal task for Taiwan's democratic transition was to depoliticize the military. This task was not accomplished until 1993, when General Chief of Staff Haul Pei-tsun was forced to retire to become the minister of defense, and later Taiwan's premier. Haul's departure enabled President Lee Tung-hui to exert civilian control over the military, establishing a precedent that only civilian politicians could assume the post of minister of defense. Over the years, military, security, and intelligence forces and their budgets had been subjected to the extensive scrutiny of the LY. Moreover, over time, the KMT-military ties weakened, as military representation in the party's central committee declined substantially following 1993.³³

Finally, increasing entrenchment of the above democratic institutions and practices seemed to be supported by citizens' corresponding commitments to democratic values. As table 1 indicates, Taiwan citizens upgraded their commitments to various democratic values from 1984 to 1996, although there was a slight decline in commitment to democratic values in 2001. To be specific, from 1984 to 1996, there were increasing numbers of Taiwan citizens who disagreed or disagreed strongly with statements such as, "Everybody should think uniformly, otherwise the society will become unstable"; "Government should decide what ideas ought to be circulated in society"; "If there are too many parties, political stability will be undermined"; "In a locality, if there are divergent groups, local harmony and stability will be affected"; "If the government is constantly checked by the legislature, the government cannot be competent"; and, "When deciding important cases, judges should accept opinions from the executive branch."

³³ Tien, "Taiwan's Transformation," 139-141.

Table 1. Commitment to Democratic Values in Taiwan (1984-2001)

Democratic Values	1984	1990	1996	2001
Equality				
MPs should be highly-educated people.				54
Women, unlike men, should not participate in politics.				93
Rule of law				
Strong leadership is more important than good law.				51
Head of the government is just like a parent of a family, so everything in government should be decided by him.				74
Liberty				
Everybody should think uniformly, otherwise the society will become unstable.	24	43	44	38
Government should decide what ideas ought to be circulated in society.	44	62	77	72
Plurality				
If there are too many parties, political stability will be undermined.	25	40	61	40
In a locality, if there are divergent groups, local harmony and stability will be affected.	26	45	50	37
Check and balance				
If the government is constantly checked by the legislature, the government cannot be competent.	40	48	54	35
When deciding important cases, judges should accept opinions from the executive branch.	54	67	71	67

Source: Sing-Yuan Sheng and Yih-Yan Chen, "Political Cleavage and Party Competition," *Journal of Electoral Studies* 10, no. 1 (2003): 24.

Note: Figures indicate percentages of respondents who "disagree" or "strongly disagree" with statements.

The commitment to freedom of thought seemed a bit lower than average, indicating a consistency of belief in authoritarian values held among Taiwan's citizens. Moreover, experience following the first turnover of power to the DPP in 2000 did not meet the expectations of Taiwanese regarding a competent democratic government. The DPP minority government complained

publicly that the opposition parties sabotaged legislative bills relevant to reform and social welfare. The DPP claimed that the legislative deadlock led to dysfunction within the democratically-elected government, which should be overhauled by purging political diversity by means of the 2001 LY election. People could take these excuses for the elimination of political opposition to heart and come to the conclusion that values such as equality, plurality, check and balance, and rule of law were less important than unity, competence, and strong government. If the above contention were correct, then it would be premature to write off the impact on democratic consolidation of the psychological factor “luan” (disorder or chaos) derived from Chinese political culture.³⁴

While democratic institutions had been established and democratic values had been accepted, two crucial issues remained unresolved, namely, national identity and constitutional choice. These two issues interacted in such a way that discourse about the former set the parameters for discussion about the latter. The rivalry of national identities between Taiwanese and mainlanders always has been the dominant factor dictating political developments in Taiwan. Taiwanese are mainly those persons who came to the island prior to or during the 1895-1945 Japanese occupation and who speak the Hokkien and Hakka dialects. Mainlanders are those who came after 1945, especially the group that retreated from the mainland to Taiwan with the KMT regime in 1949. The mainlanders came to Taiwan as an occupying army that treated local Taiwanese as second-class citizens. Tensions escalated, culminating in an uprising which was brutally suppressed by the mainlander regime on February 28, 1947. Despite persistent resentment by Taiwanese, mainlanders established an authoritarian system, monopolizing the commanding heights of the political, military, and social hierarchies.

To justify their political and social control, the KMT regime, like the Beijing government, consistently claimed that it represented the legitimate government over the whole of China. Moreover, because mainlanders believed that their regime was to be based only temporarily in Taiwan, they could not turn power over to only one regional group, that is, local Taiwanese. Based on this Chinese national mythology, the KMT regime refused to acknowledge its *de facto* state boundary and rejected the idea of a new constitution tailored only for Taiwan. As we shall see below, such Chinese national ideology not only legitimized the mainlander regime’s monopoly of power in Taiwan, but also confined the path of Taiwan’s democratic transition. In particular, anything that challenged (Chinese) national identity and the mainlander-enshrined ROC constitution was firmly rejected and repressed by the KMT regime. The KMT and mainlanders hold that the ROC constitution can be only amended, not abolished or replaced.

³⁴ Lucian W. Pye, *Asian Power and Politics: The Cultural Dimensions of Authority* (Cambridge, MA: Harvard University Press, 1985).

Because of the KMT's insistence, the ROC constitution was revised four times between 1991 and 1997.³⁵ On the occasion of each constitutional revision, the division of national identities resurfaced as a salient issue, setting parameters for constitutional reform. For example, following the National Affairs Conference (NAC) in 1990, the KMT still maintained that the original text of the 1947 constitution was not to be deleted, that the constitutional amendments could be effective only in Taiwan, and that the current governmental structure, which divided power among the Executive, Legislative, Judiciary, Control, and Examination Yuans, must be preserved. Within the above parameters, the DPP, although dissatisfied with the KMT's determination to maintain the status quo, came to an agreement with the KMT. The first stage of constitutional revision featured ten constitutional amendments, which, in 1991, repealed the president's emergency power that was vested in the Temporary Provisions. The second stage of constitutional revision between 1992 and 1994 added eight new articles to allow direct popular election of the president. The third stage of constitutional revision took place in 1997, aimed mainly at "hollowing out" Taiwan's provincial government, in exchange for the removal of the requirement for legislative approval of the premier.

However, the above constitutional reforms did not usher in a coherent governmental structure with fine balance of power between the central and local governments, and among the executive, legislative, and judicial branches. Constitutional disputes and political deadlocks became regular and intense, leading to mass discontent. The deep division of national identities that lay under the surface of constitutional revision contributed to this dissatisfaction. Taiwan's five-branched structure of central government could not be modified into either a three-branched presidential system or a parliamentary system, partly because of the requisite for power compromise, but more likely because of the roots of the five-branch structure in the 1947 constitution, a symbol of Chinese identity. Similarly, the Taiwan provincial government, although almost completely overlapping with the ROC government's jurisdiction, could not be abolished for fear that such an act would be misread as a move toward Taiwan's independence. By preserving the provincial tier of Taiwan's government (albeit a hollow tier), the KMT regime and its old guard at least could claim that Taiwan was still a province of the Republic of China, not its equivalent. While a popular election for the presidency in Taiwan addressed the issue of national identity, it did so by reinforcing a separate Taiwan identity at the expense of Chinese identity.

However, the seeds of a separate Taiwan identity had been sown at the time of the 1947 bloody repression. Initially, anti-mainland feelings were manifested in anti-Chinese sentiments, but eventually such sentiments were transformed by leaders of Taiwan's independence movements into a campaign

³⁵ Te-Chung Tang, "The Division of Power after the 1997 Constitutional Revision in Taiwan" (in Chinese), *Taiwan University Law Review* 27, no. 2 (1998): 135-178.

for a separated identity for Taiwan. Before the formation of the DPP, the opposition movements in Taiwan were not distinct from the Taiwanese independence movements. The DPP later incorporated both independence advocates, who sought to establish an independent Taiwan state by all means, and activists for democracy, who emphasized self-determination as essential to the democratic process of shaping Taiwan's future. Torn by these two groups, the DPP and its predecessors, the *tangwai* (literally, non-KMT), nonetheless adopted a common platform relevant to Taiwan's identity between the 1986 and 1991 election campaigns. For example, seventeen DPP candidates adopted a common platform for "self-determination of Taiwan's future" in the 1986 legislative elections. Three years later in the 1989 legislative elections, the DPP pledged to promote a "new state with a new constitution." On the eve of the 1991 National Assembly elections, the DPP convention amended its platform, stating that "the formation of an independent sovereign Republic of Taiwan with the establishment of a new constitution must be decided upon by all Taiwan inhabitants through a plebiscite." In 1992, the DPP proposed a new draft constitution for the Republic of Taiwan.³⁶

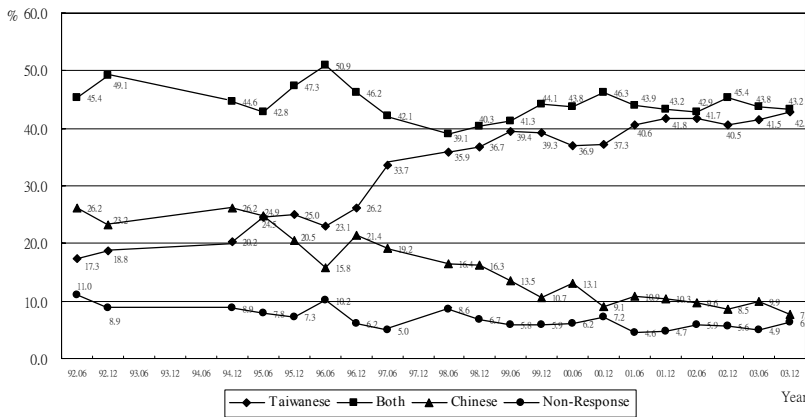
In response to the DPP's persistent advocacy for Taiwan's self-determination, the public sentiment moved. According to one survey, in 1986, only 10.5 percent of Taiwan's citizens believed that democratization would affect national identity and intensify ethnic conflict within the island, but by 1989, the figure had risen to 31.9 percent.³⁷ More recently, a rising trend in support of a separate identity for Taiwan has never been clearer. As figure 1 suggests, 17.3 percent of the people identified themselves as exclusively "Taiwanese" in 1992, but 42.9 percent of the people expressed their exclusive Taiwanese identity in 2002. In contrast, the proportion of those holding "Chinese" identity exclusively fell from 26.2 percent in 1992 to 7.7 percent in 2003. Obviously, from early on there has been a market for identity politics. However, it has taken two to tango: the KMT and the DPP have been the leading contending parties in Taiwan's identity politics.

What is more interesting is that the intensity of electoral competitions did not moderate identity politics. Rather, it turned out to be the ace for parties and factions from the extremes of the ideological spectrum. In LY and local assembly elections where the Single Non-Transferable Vote (SNTV) system was adopted, candidates who professed strong national identities were easily elected by small numbers of identity voters. But in mayoral, county magistrate, and presidential elections where the plurality system was in place, parties and candidates were supposed to moderate their strong identity images in an attempt to enlist support from wider sections of the electorate. For example, anticipating the coming presidential election, the DPP revised its

³⁶ Tien, "Taiwan's Transformation," 136-137.

³⁷ Fu Hu, "Election and Political Transition," paper presented at the Seminar for Voting Behavior, Constitutional Order and Political Transition, sponsored by National Taiwan University and the National Science Council, Taipei, December 17, 1993, 14.

Figure 1. National Identity of Taiwan, 1992-2003



Source: Election Study Center, National Chengchi University.

party platform in 1998 to suspend its pledge to pursue Taiwan's independence.

In reality, the matter of Taiwan's identity has never disappeared in electoral campaigns, for it has been subtly transformed into a form of party identity. The DPP, blessed by its long-term commitment to Taiwan's independence, has never been doubted in its authenticity as a native Taiwanese party. The KMT, with its Chinese authoritarian legacy, has struggled hard to be recognized as a party for Taiwanese, even though the party has gone through stages of indigenization and "Taiwanization" (that is, bringing more Taiwanese politicians into its leadership). As a result of an expansion of Taiwan's identity and the KMT's "black-gold" scandals, the KMT saw its electoral bases eroded quickly, from 71.7 percent of the vote share in the 1980 LY elections, to 46.1 percent in the 1995 LY elections. Among the reasons why the KMT's support collapsed was that its elites split away to form new parties, such as the New Party in 1993, the People First Party in 2000, and the Taiwan Solidarity Union (TSU) in 2001. However, the result of the 2004 presidential election has made it clear that Chen Shui-bian and his Pan-Green alliance (DPP plus TSU), despite their poor governing records, could break the mould by winning the majority (50.1 percent) of the vote simply with a campaign designed (through the use of a referendum) to inspire the building of a separate identity for Taiwan.

Although the referendum was used very effectively to establish Chen's campaign agenda in the 2004 presidential election, the DPP's previous link to the Taiwan independence movement was what made it possible to promote Taiwan's unique identity in the 2004 presidential race. As mentioned, the hawks of Taiwan's independence movement consistently have sought to use a referendum (or precisely, a plebiscite) to establish the Republic of Taiwan,

while doves have reiterated the principle of “self-determination” and insisted that any changes in Taiwan’s status must be decided by Taiwan’s residents through a referendum. Thus, a referendum was seen as the best means to promote Taiwan’s independence and related Taiwan identity.³⁸ However, such a controversial referendum for independence has never been realized, owed to China’s military threat and to opposition from international powers. Instead, local referendums on issues relating to various social movements have become popular since 1990.

As appendix 1 demonstrates, sixteen local referendums were held between 1990 and 2003. The first one was held in the Houching Area, Kaohsiung City, on May 6, 1990, concerning whether the fifth naphtha cracker should be built. A total of 66.4 percent of the local residents turned out to vote and 59.1 percent opposed the proposition. Because there was no referendum law and, hence, no legal obligation, the result of the vote on this proposition was not adopted by the relevant authorities. Overall, twelve of nineteen referendums were organized by local governments or their subdivisions as a way to defy powerful central or county governments. In particular, the DPP-led counties and cities were keen to use a referendum to defy the central government that was controlled by the KMT. For example, DPP-led Taipei City, Taipei County, and Ilan County held four referendums on a single issue, namely, whether the fourth nuclear power plant (FNNP) should be built. Each time, the referendum proposition on FNNP was opposed by the majority of voters, but turnout rates varied from 18 percent in Taipei County in 1994 to 58 percent in Taipei City in 1996. Given the nonbinding nature of these referendums, the KMT authority ignored them and continued to build the FNNP.

While many local referendums have concerned environmental issues, some have been related to local (primarily economic) development. As appendix 1 shows, of nineteen referendum propositions, seven were relevant to environmental issues, nine to local development, and three to other concerns. Five (of nine) local referendums that were concerned with local development were actually organized by local governments in an effort to consult with their residents. In a referendum that was held by a local association on behalf of township leaders on September 14, 2003, in Pinglin, Taipei County, of the 64 percent of the people who voted, 97 percent supported the idea to open a new highway junction nearby. However, the DPP-led central government, like the KMT administration in the past, considered the referendum to be merely consultative, and refused to change its original highway junction design, despite the results of the referendum.

Due to a lack of a legal basis for local referendums, considerable efforts have been made to promote the enactment of a referendum law, a topic to be discussed in the next section. Nevertheless, from the above discussion, we know that referendum movements have served two functions in the process

³⁸ Yung-ming Hsu, Chia-hung Tsai, and Show-ting Huang, “Referendum: A New Way of Identifying National Identity,” unpublished manuscript, 2004.

of Taiwan's democratic transition and consolidation. First, referendum movements were linked to various social movements, which revived civil society and challenged the KMT authoritarian regime. Second, referendum movements were linked to Taiwanese independence movements, which helped to inspire a separate identity for Taiwan. However, there might have been a third type of impact of the referendum movements on democratic institutions, if they had been strengthened by a proper legal basis. Specifically, should democratically elected government be bound by the will of the people in local referendums? For those local governments that sponsored local referendums, the answer was obviously "yes." But for the central government, the answer was "no." Nevertheless, the decision not to be bound by the results of local referendums remained difficult for any democratically elected leader, even though no legal effect was attached. Thus, it will become very interesting to see how the newly enacted referendum law in Taiwan will affect existing democratic institutions. Does the new referendum law institutionalize uncertainties of Taiwan's constitutional democracy?

Contributions of the 2004 Peace Referendum to the Consolidation of Taiwan's Democracy

As discussed, referendum movements in Taiwan in the 1980s through 1990s might have embodied institutional, attitudinal, and identity dimensions of democratic consolidation. However, the pressure for enacting a referendum law came largely from the independence faction of the DPP, notably legislator Tsai Tung-jung. He drafted a referendum law in the early 1990s and anticipated that a referendum on Taiwan's sovereignty would help Taiwan to join the United Nations. Tsai's motion was blocked several times by the KMT and even by some DPP legislators, who accused him of being irresponsible in provoking a possible attack by China in order to fulfill his pipe dream of a plebiscite on Taiwan's independence. Indeed, China's threat always has been a confining condition hampering Taiwan's democratic transition and consolidation.³⁹ It was not until 2000 when the DPP gained control of executive power that many referendum proponents saw the possibility of the enactment of a referendum law.

Under the pressure of former DPP chairman, Lin Yi-hsiung, President Chen Shui-bian initially stopped the construction of the fourth nuclear power plant by executive order in 2000, but he failed in this effort because the Grand Justices ruled that his decision was unconstitutional. Then, Chen promised to introduce a national referendum on the issue of FNNP during his term as president. However, it was the DPP's ally, the TSU, that vigorously pushed

³⁹ Tien, "Taiwan's Transformation," and Yun-han Chu, Fu Hu, and Chung-in Moon, "South Korea and Taiwan: The International Context," in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore, MD: Johns Hopkins University Press, 1997).

for the passage of its version of a referendum bill in February 2003. Following the TSU's lead, DPP legislators introduced their own referendum bill in early March 2003, but it became bogged down among the opposition parties in the Home Affairs Committee of the LY. On March 28, 2003, the cabinet of the DPP government approved a draft bill of the Initiative and Referendum Law, which excluded referendums on controversial issues such as independence or unification, national security, the national budget, military and foreign affairs, major government construction, and so on. Some DPP and TSU legislators were upset by the cabinet's draft bill because of its timid stance and tight restrictions. Instead, they introduced their own version without any restrictions on a vote concerning Taiwan's sovereignty or the FNNP.

In May 2003, following the nation's failed bid to join the World Health Organization (WHO), President Chen again called for a national referendum to be held on Taiwan's entry into that international body. However, without a referendum law, Chen's call was not taken seriously. The public mood at that moment was very critical. For years, the public more than the elite had tended to be more supportive of using a referendum to resolve political disputes. Yet, even in surveys of Taiwan's elite that were conducted between 1997 and 1999, 59 percent of intellectual elites and 45 percent of executive elites thought it was a good idea to use a referendum to resolve political disputes.⁴⁰ The legislative impasse and the failed bid for WHO membership in 2003 naturally fueled public discontent, creating pressures for the opposition parties (KMT and PFP) to pay lip service to various draft referendum bills. In June, the KMT and PFP finally agreed to take a vote on the TSU's referendum bill, but they voted it down twice with their solid majority in the LY.

Still, public pressure for political reform remained strong and the referendum bill came to the forefront of public attention. On the one hand, the ruling DPP unveiled a draft referendum bill on July 7, 2003, which authorized the president, under the endorsement of the Executive Yuan, to initiate a referendum on issues pertinent to national security if Taiwan were threatened by foreign powers such that its sovereignty could be altered. This is the famous clause of the "defensive referendum." On the other hand, the DPP government had made it clear that it would hold a referendum on various issues before the end of Chen's tenure, with or without a referendum law. Further, the cabinet was contemplating an executive decree to carry out its referendum plans if a referendum law were not enacted in time. In September 2003, 50,000 activists for Taiwan's independence staged a march in Taipei, demanding a referendum to change the ROC's official title.

Given the DPP's referendum strategy and public demand, the opposition parties were forced into a vote showdown in the LY again. The KMT and PFP did not oppose a referendum as a constitutional institution in principle, but

⁴⁰ Chih-Li Yu, *Public Opinion and Public Policy* (in Chinese) (Taipei: Wu-Nan Press, 2001), 200.

they feared that a referendum on Taiwan's official national title or Taiwan's sovereignty would invite an attack by China. Moreover, since a referendum law would inevitably alter the constitutional structure, they preferred that it be discussed under the circumstances of constitutional revision. However, as the 2004 presidential election approached quickly, the KMT and PFP made a U-turn and decided to enact the referendum law to shed their bad image as anti-reform parties. The votes for the new referendum bill were cast article-by-article and version-by-version on November 27, 2003. The KMT/PFP version of the referendum bill was passed item-by-item, with one exception, that is, the clause calling for a "defensive referendum." The new referendum law was very restrictive with regard to signature threshold, turnout threshold, scrutiny procedure, and permissible subject, but it was good enough for President Chen to call for a "peace referendum" on the same day (March 20, 2004) of the presidential election.

Before discussing the details of the 2004 peace referendum, we should clarify a few legal essentials of the new referendum law. First, the referendum law stipulates that issues relating to budget, taxation, investment, salary, and personnel matters cannot be subjected to a referendum. Second, for a referendum to be considered valid, half the total number of eligible voters must vote in the referendum. Third, for a referendum proposition to pass, not only half of the electorate must turn out, but also half of those who vote must agree to the proposition. Fourth, an issue that is placed on a referendum and rejected cannot be reinitiated within three years. Fifth, a referendum can be initiated through three legal channels: (1) by citizens, (2) by the legislature, and (3) by the president. The citizens have the right to call for a referendum if 5 percent of those who voted in the last presidential election (as screened by the Referendum Review Committee) sign a petition for one. On major policy issues (article 16), a simple majority of the Legislative Yuan may initiate a referendum. On matters of national security, when the country faces a threat to national sovereignty, the president may initiate a referendum (article 17). Sixth, eligible topics for a referendum are annulment of laws, proposed new laws, major national policies, and constitutional amendments. More precisely, the initiative can be applied only to legislative principles or major policies, whereas the referendum is applied to existing laws or policies and constitutional amendments.

According to an updated report from the Initiative & Referendum Institute Europe (IRI Europe), there are the following drawbacks in Taiwan's new referendum law. First, almost all financial matters held dear by most people, such as budget, taxation, investment, salaries, and personnel matters, are excluded from popular decision-making. Second, the referendum law does not provide any rules on disclosure of campaign financing or the limitation of spending by one or the other side. Third, with a 5 percent signature threshold, it is extremely difficult for ordinary citizens or NGOs to obtain enough signatures for a successful initiative. Fourth, the referendum law establishes

a partisan-based Review Committee, which checks all incoming referendum proposals. However, since the referendum is designed to circumvent the dysfunction of a partisan deadlock in the LY, the partisan-based Review Committee could hamper the very purpose of the referendum.⁴¹

In the light of the above legal hurdles of the new referendum law, Lin Jih-wen argues that, “with the exception of the ‘defensive referendum’, [t]he law in fact adds more veto-playing forces to the existing political system and raises the cost to change the status quo.”⁴² Derived from the theory of the veto player,⁴³ Lin maintains that the government-initiated referendum is the one most likely to be manipulated, followed by the legislature-initiated referendum, although the latter does not make changes to the status quo any easier. Most intriguingly, issue manipulation and changes to the status quo are much more difficult in the citizen-initiated referendum than in the government- or legislature-initiated referendums. For the status quo to be changed, the signature threshold cannot be high, however, a low signature threshold risks manipulation of the ballot.⁴⁴ The incentive structure provided by the new referendum law in Taiwan, with one exception, seems to confirm Lin’s expectation in which the status quo is not likely to be altered by a citizen-initiated referendum (owing to its tight restrictions), nor by a legislature-initiated referendum (because the legislative majority is the beneficiary of preservation of the status quo), nor by the executive branch (because of the law’s tight constraint).

Provisions of Taiwan’s new referendum law not only restrict the subject matter but also create high hurdles for ordinary citizens who want to initiate a proposition. In addition to the compulsory 5 percent signature threshold (article 12) and the 50 percent turnout threshold (article 30), the referendum law requires the approval of all citizen-initiated ballot proposals by a partisan-based Review Committee (article 34). To deliberate on a ballot proposal, more than half of the commissioners must be present, and a proposal can be passed only when more than half of the commissioners present favor the proposal (articles 31 and 36). Thus, political parties can easily veto citizen-initiated proposals by asking their representatives not to show up at the committee meeting, rather than by instructing them to vote against the proposals. Moreover, once a referendum proposal has passed through the Review Committee and become a valid proposition, the government and the legislature can halt the referendum process simply by proposing a similar bill that may realize the purpose of that particular proposition (article 20). Taking together

⁴¹ Bruno Kaufmann and Mattias Goldmann, *Taiwan 2004 Referendum Assessment Report*, The Initiative & Referendum Institution Europe, 2004.

⁴² Jih-wen Lin, “Taiwan’s Referendum Act and the Stability of the Status Quo,” paper presented at the Institute of Political Science, Academia Sinica, Taipei, April 15, 2003.

⁴³ George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton: Princeton University Press, 2002).

⁴⁴ Lin, “Taiwan’s Referendum Act and the Stability of the Status Quo,” 9-10.

the above articles, it is extremely difficult for Taiwan's citizens to launch a direct initiative. The best that citizens may hope, according to Taiwan's referendum law, is to reject a passed law or policy, an act that would preserve the status quo.

What about the prospect of changing the status quo by legislature-initiated referendums? There is a possibility for a legislative majority to manipulate issues in a referendum. For example, knowing that some citizen initiatives might undermine its vested interests, the legislative majority could propose a similar but innocuous proposal in order to manipulate the Review Committee and ground the citizen initiatives. Moreover, since the referendum law does not make the legislature-initiated referendum mandatory, the most likely initiators in the legislature would be the minority parties. However, the proposals of minority parties that would upset the majority status quo likely would be voted down in the Review Committee. Consequently, referendums initiated by the legislature are likely to protect the status quo favored by the majority.

In short, with the exception of the "defensive referendum" clause, Taiwan's referendum law is essentially a mechanism to preserve the status quo. It was designed and passed by the KMT and the PFP to minimize the impact of a referendum on the existing constitutional structure and political institutions. Given its tendency to preserve status-quo institutions, Taiwan's referendum law, in fact, institutionalizes uncertainties for democratic institutions. In the first place, the restriction on subject in the referendum law implies that some issues are excluded from the institutional uncertainty of a referendum itself. Second, a partisan-based Review Committee, although unsatisfactory, may still serve as a gatekeeper to exclude from the ballot any proposal that is incompatible with existing law or that violates the rights of others. Thus, the Review Committee is another mechanism to institutionalize the uncertainty of referendum propositions.

Third, high signature and turnout thresholds can be used to minimize the manipulation of issues, so that any successful proposition will be endorsed by the greatest number of people concerned. To minimize the effect of issue manipulation means to institutionalize uncertainties generated by agenda setters. Fourth, the fact that constitutional initiative is not allowed in the current referendum law means that any constitutional reform must go through a laborious amendment process. This requirement ensures that the constitutional form of government will be preserved, thus contributing to the entrenchment of democratic institutions. Finally, while the referendum law does not specify whether the issue of national identity can be resolved through a referendum, the law, in fact, makes it difficult to openly promote changes in the national title and flag that are enshrined in the ROC constitution. However, it is possible to use a referendum to promote some latent projects relevant to Taiwan's identity, such as Taiwan's membership in the WHO. For this reason, the referendum law helps to institutionalize uncertainty caused by Taiwan's

identity politics, but does not eliminate it.

The only exception in Taiwan's referendum law that may upset the status quo and create institutional uncertainties is the "defensive referendum" clause (article 17). Article 17 stipulates: "When the country is threaten by external powers to the extent that national sovereignty is likely to be altered, the president, under the endorsement of the cabinet, may initiate a referendum on issues pertinent to national security." Based on article 17, with just four months left in the 2004 presidential election campaign, President Chen seized the opportunity to announce a peace referendum to be held on the same day as the presidential election. Chen's announcement was immediately rebuffed by the opposition parties as a campaign plot designed to divert public attention from Chen's poor governing record. Later, the opposition parties challenged the legality and constitutionality of Chen's "peace referendum," urging their supporters to boycott it. Moreover, initial responses from the international community were predominately negative, as Chen's move was seen by the United States not only as campaign rhetoric, but also as unnecessary provocation of a potential attack by China. Under international pressure and a domestic boycott, Chen delayed the announcement of the wording of the propositions until January 17, 2004. The exact wordings of Chen's two referendum propositions were as follows:

1. The People of Taiwan demand that the Taiwan Strait issue be resolved through peaceful means. Should Mainland China refuse to withdraw the missiles it has targeted at Taiwan and to openly renounce the use of force against us, would you agree that the Government should acquire more advanced anti-missile weapons to strengthen Taiwan's self-defensive capabilities?(Anti-missile Proposition)
2. Would you agree that the government should engage in negotiations with Communist China on the establishment of a cross-Strait "peace and stability" framework for interaction, in order to build cross-Strait consensus and the welfare of people on both sides? (Peace-talk Proposition)

When these wordings were unveiled, U.S. Secretary of State Colin Powell was obviously relieved and made a brief remark: "Taiwan has shown its flexibility." The opposition parties, on the other hand, derided the wording of Chen's two referendum propositions as insignificant, meaningless, and unnecessary, because they believed that all people in Taiwan would agree to these two propositions. Nevertheless, Chen maintained that China's missile threat to Taiwan was both real and dangerous and that it was about time for Taiwanese to recognize this fact and decide what to do.

That Chen was able to withstand international pressures and domestic boycotts by introducing innocuous wording for his two propositions demonstrates that the initiative power of referendum vested in the president can be highly manipulative. Not only could the president effectively establish a campaign agenda by initiating a “peace referendum,” but also he could manipulate the potential for serious negative consequences of the referendum by toning down the wording of the propositions. From the perspective of the institutionalization of uncertainty through democratic consolidation, the “peace referendum” has done nothing except to generate new uncertainties for Taiwan’s constitutional democracy. First, there is virtually no procedural constraint on the president’s initiative power in the current referendum law. The scrutiny power of the Review Committee does not apply to the president’s referendum proposition. While the president needs to secure the cabinet’s endorsement, the cabinet always will endorse the president’s proposition, since the premier and ministers of the cabinet are all appointed by the president under current constitutional practices.

Second, although a “defensive referendum” is confined to the matter of national security, in reality, the president can define what falls within the domain of national security. Similarly, while the president’s initiative is subject to the precondition stipulated in article 17 of the referendum law, it is up to the president to decide whether such a precondition has been met. Finally, when the president initiates a “defensive referendum,” no signature drive is needed and no minimal time of public deliberation is required. In other words, the president can select any date for a “defensive referendum,” subject to the provisions of article 17, namely, the exclusion of article 24, which stipulates that a referendum and national elections can be held on the same date. The only constraint on the president’s power of initiative is the 50 percent turnout threshold. As seen in the 2004 peace referendum, this turnout requirement is insurmountable if the opposition parties are determined to demobilize voters. Overall, the initiative power vested in the president is likely to generate considerable institutional uncertainties, but this potential power to upset the status quo can be constrained by the required 50 percent turnout threshold, thus minimizing unintended risks as a result of the passage of the president’s referendum proposition. Nonetheless, the president’s power to set an agenda and manipulate it in referendums remains unchecked. This unchecked power could be the most dangerous threat to democratic consolidation in Taiwan.

If the president’s agenda-setting power in a referendum can generate institutional uncertainty, then to what extent did the 2004 referendum contribute to democratic consolidation in Taiwan? First, while there is always an inherent risk associated with the president’s agenda manipulation in referendums, this risk was greatly reduced by the high turnout threshold. Therefore, the 2004 referendum result, invalidated by its under-threshold 45 percent turnout rate, did not change the status quo. Because of the 50

percent turnout threshold, status-quo institutions can be changed only by bipartisan consensus, a condition that greatly reduced institutional uncertainty associated with the “peace referendum.” Second, the 2004 referendum addressed the issue of Taiwan’s identity and sovereignty, which was relevant to the identity dimension of democratic consolidation. The precondition of the 2004 referendum was China’s missile threat (albeit in existence for a while), to the extent that Taiwan’s sovereignty was likely to be altered. Whether the precondition stipulated by President Chen was valid or not is subject to various disputes. However, the fact that Taiwanese people for the first time could determine issues pertinent to national sovereignty was itself a remarkable achievement of democratic consolidation.

Third, due to the opposition parties’ demobilization of their supporters, the 2004 referendum was invalidated by the insufficient 45 percent turnout rate. For those who voted, more than 84 percent supported both propositions.⁴⁵ So, in total, about 38 percent of the electorate clearly favored both propositions, a figure that was impressive enough to send a clear message to China and other international powers. Fourth, in addition to the importance of the 2004 referendum results was the significance of the campaign process. During the campaign process leading to the 2004 referendum, there were several heated debates over the legality and constitutionality of the referendum, with the electorate divided according to party lines between Pan-Green (the ruling alliance) and Pan-Blue (the opposition alliance) camps. The party divisions were genuine and the debates substantial, causing half of the electorate to decide not to cast their votes in the referendum. In spite of the government’s (false and ruthless) accusation that referendum abstainers were China’s compatriots, many abstainers believed that their abstention, which led to the defeat of the propositions, was a vindication for the illegality and unconstitutionality of the 2004 referendum. In their abstention, they were convinced that they held true to their democratic values and acted as law-abiding citizens.

In other words, the in-depth debates over the 2004 referendum’s constitutionality and legality were signs of democratic consolidation. We can highlight a few debates to show the quality of the democratic arguments in Taiwan’s civil society. Essentially, the Pan-Blue elite and supporters argued that the 2004 peace referendum was illegal because it violated the statute provisos of article 17, which precluded application of article 24 to a “defensive referendum”—article 24 stipulates that a referendum and national elections can be held on the same day. A preclusion of its application meant that the 2004 referendum could not be held concurrently with the presidential election. However, the Pan-Green scholars and supporters contended that the preclusion

⁴⁵ According to the official statistics of the Central Election Commission, among those who voted, the approval rates for the first and the second propositions were 87.4 percent and 84.9 percent, respectively. Among valid ballots, the approval rate for both propositions was 91.8 percent and 92 percent, respectively.

of the application of article 24 to a defensive referendum did not mean that it should not be held on the same day as the presidential election. The Pan-Green camp asserted that the legislative intent of Taiwan's referendum law did not stipulate that a defensive referendum should not be held on any particular date, for doing so would hamper the "defensive" feature of a defensive referendum. (One simply cannot exclude any date for defending one's country!)

Another challenge from the Pan-Blue camp was aimed at the alleged unconstitutionality of the 2004 peace referendum. Specifically, the legislative intent of article 17 is to delegate to the president a power to initiate a "defensive referendum" in the case of an emergency (e.g., when the country is threaten by external powers so that its sovereignty is likely to be altered), but the referendum law itself does not require the president to subject this emergency power to legislative approval, as stipulated by the constitution. Therefore, the Pan-Blue camp asserted that the 2004 referendum was unconstitutional. In rebuttal, the Pan-Green camp argued that article 17 did not stipulate that the precondition for a defensive referendum must be an emergency situation. Moreover, the president's emergency power, as defined by the constitution, is used to restrict people's rights, but the president's power to initiate a defensive referendum actually gives the right to make a decision on defensive matters to the people. Therefore, the president's power to initiate a defensive referendum must not be confused with the president's emergency power.

The Pan-Green camp's interpretation is literally correct. According to article 17, it is the president's right to interpret whether an external threat exists and whether such a threat is likely to undermine Taiwan's sovereignty. So there was no violation of the referendum law by President Chen when he decided to hold a defensive referendum because he contended that the legal precondition existed. Of course, whether voters were convinced by the president's interpretation of the referendum precondition was another matter, subject to dispute. However, we should make it clear that the president's initiative of a "peace referendum" was legal in the sense that it met all legal requirements that are stipulated in article 17.

Nevertheless, that the 2004 referendum was legal did not make it any more democratic. After all, nobody wants every president in Taiwan to initiate his own defensive referendum at his own choosing and for his own electoral interests. For a democracy to be consolidated, the president's power must be checked, no matter whether it is a power subjecting the government's authority to a popular vote or a power to restrict people's rights. Here is the real tension between the referendum law and the constitution. Unless the referendum law is revised to be compatible with Taiwan's constitutional democracy, there always will be a potential risk that the president's agenda-setting power in referendums will upset democratic institutions, undermine democratic values, reinforce identity divisions, and, hence, frustrate democratic consolidation in Taiwan. One way to restrain the president's power to initiate a referendum is

to require that his or her referendum proposal be approved by the Legislative Yuan. However, in the case of a state of emergency, whether the above remedy is feasible is certainly subject to heated debate.

As already observed, however, without any democratic check, the president's agenda-setting power in a referendum potentially can generate many uncertainties in various political arenas, such as in the referendum arena itself and in the presidential election arena. Fortunately, the president's agenda-setting power in the referendum arena is constrained largely by the mandatory high turnout threshold, so that the potential impact of a referendum on status-quo institutions is not significant. However, institutional uncertainties in other election arenas caused by the president's agenda-setting power in a referendum are not checked by law or any institution. Indeed, when this referendum-induced agenda-setting power is operated in other democratic arenas, the referendum could be a major threat to democratic consolidation in Taiwan.

Conclusion: The Effect of the 2004 Peace Referendum on Further Consolidation of Democracy in Taiwan

This essay set out to reflect on whether the 2004 peace referendum was a net contribution to Taiwan's democratic consolidation. The answer is yes, but a danger remains. The real danger of the 2004 peace referendum lay not in the referendum itself, but in its agenda-setting power in the presidential election arena. It is no secret that Chen Shui-bian used the referendum to hijack the entire campaign agenda, so much so that political reform and Taiwan's identity became salient issues during the campaign, leading to the enactment of the referendum law and later to heated debate during the 2004 presidential election. Although the opposition candidates preferred to stress other issues in their campaigns such as reviving the economy and reviving educational reform, at the end of the day, they were forced to center their attention on Chen's referendum agenda. While there has been no solid evidence so far to prove how much benefit was gained by Chen's agenda-setting tactics, my own analyses of election and referendum results have shown a high correlation between Chen's vote shares and the referendum turnout rate at the township level ($N=368$). The bivariate correlation coefficient for these two variables is .976. A followed-up multivariate regression analysis, controlling for various contextual variables such as percentage of illiteracy, percentage of population in the agriculture sector, percentage of population aged 65 and up, and so on, also has shown a similar strength of correlation between these two variables.⁴⁶ In other words, Chen's vote share was highly correlated with the turnout rate for the referendum. This result is not surprising, given that the

⁴⁶ David W. F. Huang, "Exploring Factors Influencing the 2004 'Peace Referendum' in Taiwan: An Analysis of Aggregate Data at Township/District Level" (in Chinese), *Taiwan Democracy Quarterly* 1, no.3 (2004): 73-98.

opposition parties asked their supporters to abstain from the 2004 referendum. What is more interesting is that Chen's vote share was less affected by the approval ratings of the two referendum propositions. The initial bivariate correlation analysis shows that the correlation coefficient between Chen's vote share and the approval rating for the first referendum proposition was .614, but the association of his vote share with the approval rating for the second proposition was .225. In other words, those who voted for Chen did not necessarily respond to Chen's call for these two referendum propositions. Contrary to the opposition's claim that those who voted for Chen would agree with the 2004 referendum propositions, my analysis shows some deviations. In particular, Chen's supporters were less likely to approve the peace-talk proposition than the anti-missile proposition.⁴⁷

The above analysis, of course, does not amount to proof of the contention that Chen's electoral success was entirely owed to his privileged status as a referendum agenda-setter. Nevertheless, high correlations between the results of the 2004 presidential election and the 2004 referendum were the first signs to indicate the possibility of using a referendum to establish a campaign agenda. Indeed, the DPP announced that it would initiative five propositions pertinent to political reforms before the election of the Legislative Yuan in December 2004. The KMT and PFP also contemplated the initiation of their own propositions. If these referendum proposals had been approved by the Review Committee, the referendums could have been held concurrently with the LY elections. Whether the agenda-setting effect of these contemplated referendums would have been as significant as that of the 2004 referendum remained to be seen. Unfortunately, none of the above announced referendum propositions were initiated by either the Pan-Blue or the Pan-Green camps during the period leading to the 2004 LY elections. However, my hunch is that their effect would have been greatly reduced if both the government and the opposition had campaigned for their own propositions. In this case, the large amount of information regarding referendum propositions would have become noise in the ears of the public, leading to voters' abstention from casting their ballots and to negative votes. Then, the status quo likely would have been preserved owed to the invalidation of these referendums, while at the same time their agenda-setting effect in the LY election arena also would have been insignificant.⁴⁸

By means of the above speculation, we can conclude, to borrow Harold Laski's observation, that "they [referendums] have led to no widespread

⁴⁷ Ibid., 79.

⁴⁸ Whether the invalidation of these hypothetical referendums results in public cynicism is another subject worthy of exploration. Currently, the author has no empirical evidence to answer this interesting question. However, if voters' rejection of referendums is due to too much information and too much noise about propositions themselves, then it is difficult to argue that "rejection" leads to cynicism. Voters may simply try to reduce the cost of digesting an overabundance of information by voting "no" to all propositions. In this case, it is rational calculation, rather than cynicism, that prompts voters to reject referendum propositions.

changes and they are... more likely to rally the conservative rather than progressive forces of society.”⁴⁹ Indeed, from the content of Taiwan’s referendum law, we find that it is extremely “conservative,” given its great tendency to protect the status quo. However, it is also because of the tendency of Taiwan’s referendum law to protect the status quo that we believe that future referendums in Taiwan are unlikely to upset status-quo institutions, unless they can command consensus from an over-sized majority. Taking into account a 20 percent abstention rate in any election and a 50 percent turnout threshold in a referendum, the opposition parties need only 30 percent of the electorate to block any progressive referendum proposition. Thus, Taiwan’s referendum law is likely to institutionalize uncertainty in association with its practice.

Moreover, the 2004 referendum demonstrates the in-depth ongoing debate in Taiwan’s civil society. Some chose to abstain from the 2004 referendum because it violated their firm beliefs concerning democratic values, such as the need for constitutionality and legality. Others chose to participate in the 2004 referendum because they thought that their participation was an exercise of their constitutional rights. Still, some believed that the 2004 referendum installed a great defensive weapon that could deter aggressive regional powers. Others thought that the referendum was provocative and unnecessary, and that it potentially could lead to international crisis. Whichever thoughts were in people’s mind about the 2004 referendum, the campaign process seems to have educated ordinary people about the value of democracy. The fact that over half of the electorate abstained in defiance of the government’s propaganda was solid evidence of democratic consolidation in Taiwan.⁵⁰

Finally, the 2004 referendum was a new way of expressing Taiwan’s identity. According to one survey conducted just before the 2004 referendum, 73.4 percent of those identifying themselves as Taiwanese intended to vote on the referendum propositions, while 73.4 percent of those who identified themselves as Chinese said that they would abstain. As for people with dual identity (viewing themselves as both Chinese and Taiwanese), one-third of them leaned toward voting in the 2004 referendum, but two-thirds preferred abstention. Obviously, most people with dual identity were not likely to make a shift in their identities immediately, but some of them were effectively courted by the appeals of the DPP’s referendum.⁵¹ While there always is a risk that a referendum could be used to resolve the issue of national identity, the 2004 referendum simply offered a venue for people to express their identities,

⁴⁹ Harold Laski, *A Grammar of Politics*, 5th ed. (London: G. Allen & Unwin, 1967), 321.

⁵⁰ Whether this evidence is a manifestation of voters’ maturity or partisan demobilization is difficult to judge. Because of a lack of survey data, the author cannot explain voters’ motivation or maturity. But if one defines voters’ maturity as defying the government’s propaganda, then the invalidation of the 2004 referendum would certainly qualify as a manifestation of voters’ maturity, even though voters might have been demobilized by opposition parties.

⁵¹ Yung-Ming Hsu, Chia-hung Tsai, and Show-ting Huang, “Referendum: A New Way of Identifying National Identity,” 12.

without resolution of the national identity dilemma. In my opinion, the tight restrictions of Taiwan's referendum law have precluded any attempt to openly resolve the national identity debate through initiative and referendum. What are left available are referendums on some laws or policies with identity implications. This type of referendum can address the identity dimension of democratic consolidation without upsetting the process of democratic consolidation itself.

My only reservation is that the 2004 referendum was actually used to establish a campaign agenda in the presidential election that was so effective that the opposition parties' agenda was not heard. This agenda-setting power through the initiation of a referendum has unchecked ramifications in other political arenas and their results could tend to undermine the fairness of electoral competitions. This was the reason for the opposition parties' appeal to invalidate the 2004 presidential election. After all, nobody wants every president in Taiwan to initiate his or her own "defensive referendum" solely to gain personal electoral advantage. It can be anticipated that the people of Taiwan certainly do not want to see the frequent use of a "defensive referendum" for purposes of advancing the political prospects of individuals, nor do they want the misuse of a referendum to undermine Taiwan's constitutional democracy. A solution to the dilemma would be to revise the current referendum law to make the president's privilege to initiate a referendum subject to legislative approval, and at the same time to reduce the signature threshold to encourage citizen initiatives.⁵² The composition of the Review Committee should be nonpartisan judges, so that judicial review replaces political review. By making the referendum law more compatible with Taiwan's constitutional democracy, the prospect would be enhanced that the referendum law could further advance the consolidation of Taiwan's democracy.

⁵² In theory, reducing the signature threshold for citizens makes referendum initiation easier and, hence, more likely to change the status quo. In practice, the approval of referendum propositions does not depend entirely on the ease of the referendum initiation. It also depends on the number of propositions, the abundance of contradicting information, the maneuvering power of political elites, the timing of the referendum, the threshold of turnout, and so on. Therefore, reducing the signature threshold does not necessarily lead to changes in the status quo, but it nevertheless is one of the factors contributing to its change. It is also for this reason that President Chen Shui-bian prefers a "bottom up" constitutional reengineering process, in which people conduct the signature drive for constitutional reform. From Chen's perspective, the LY route for constitutional reform is virtually impossible, given that the majority of the LY is controlled by the opposition. The signature drive for constitutional reform is difficult, but it is possible if the signature threshold can be reduced. Further, the LY lacks justification not to reduce the signature threshold in revision of the referendum law. After all, the right to initiate a referendum is guaranteed by the ROC constitution. Even if the signature threshold is not reduced, the signature drive for constitutional reform still can establish a viable campaign agenda for future elections.

Appendix 1. Local Referendums Held in Taiwan, 1990-2003

Date	Place	Issue/Question	Orga-nizer	Result	Effect
May 6, 1990	Houching Area, Kaohsiung City	Should the fifth naphtha cracker be built?	CS	T 66.4% O 59.1%	NA
May 22, 1994	Kungliao TS, Taipei County	Should the FNPP be built?	LG	T 58.36% O 96.1%	NA
Nov. 27, 1994	Taipei County	Should the FNPP be built?	LG	T 18.45% O 87.11%	NA
March 29, 1995	Hsichih TS, Taipei County	Should a tunnel be built to connect to the Far Eastern project?	LG	T 17% S 95%	Not yet built
June 18, 1995	Taliao TS, Kaohsiung County	Reclaimed land development project	LG	T ? S over 50%	Not yet built
Aug. 12, 1995	Yungkang Borough, Taipei City	Closure of alley next to park	LG	T 15% S 81.71%	A
March 23, 1996	Taipei City	Should the FNPP be built?	LG	T 58.71% O 51.54%	NA
Aug. 3, 1997	Liaoting Community, Minhsiung TS, Chiayi County	Community development project	LG	T approx. 50% O over 50%	A
1998	Tali St., Wanhua D., Taipei City	Should a nursing home be built?	CS	T 65.47% O 86%	A
Dec. 5, 1998	Tahu Borough, Neihu D., Taipei City	Should a medical center be built?	CS	T 65.47% O 51.54%	NA
		Should a park be built?	CS	T ? S 90.1%	NA
Dec. 5, 1998	Tainan City	Can Taiwan accept being governed by the PRC?	LG	T 25.% O 77.88%	*
		Should an airport be built?	LG	T 16.82% S 73.68%	*
Dec. 5, 1998	Ilan County	Should the FNPP be built?	LG	T 44.39% O 60.1%	NA
June 8, 2001	Penghu County	Should a special gambling district be created?	CS	T 45% S 79.8%	NA
		Should Tungchi V, Wangan TS be transferred to Tainan County?		T 45% S 91%	NA