

The Theory of Popular Sovereignty in Taiwan: Its Performativity¹

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1 Overview of the Taiwanese Theory of Sovereignty

When discussing sovereignty, it is customary to begin by indicating its dual character, that is, consistent and constituted (沈乃正 1959: 2-3; 芦部 1983: 320; Nootens 2013: 54; Huang 2017: 117). Furthermore, it may be also expressed as performative and constative, or legal and political (Bellamy 2003). Yet, since the demarcation of the world that turned sovereignty into a constative being, is performativity still required in the concept of sovereignty? In order to respond to this doubt, this article analyses the theory of sovereignty developed in Taiwan, where the argument concerning performativity in sovereignty is still alive. It shed lights on the significance of the theory of sovereignty against contemporary political studies, which suppose that the

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existence of sovereignty has already been sufficiently explained².

This paper focuses on the theory of sovereignty developed in Taiwan, rather than on the sovereignty of Taiwan itself. The article pays attention to the theorisation of sovereignty in the historical transformation of the sovereign status of Taiwan in the 1970s and in its democratisation during the 1980s and the 1990s. At the same time, I refer to the Sunflower Movement in terms of the history of sovereignty. The Taiwanese theory of sovereignty has on the one hand diligently absorbed the theory of sovereignty theorised in the Japanese academic world, and on the other hand, it has uniquely progressed in association with the contemporary Taiwanese history of politics and society (李鴻禧 1997; 許志雄 1997; 王志宏 2002). It is valuable to learn from the political theory in the Chinese-speaking world, where the concept of sovereignty is still a hot issue, because it expands political science methodologies as a whole. Thus far, the Chinese-speaking world has been only discussed in area studies, international relations, and classical studies of political thought.

First of all, I will discuss the basic understanding of sovereignty by citing Nobuyoshi Ashibe's (芦部信喜) *Kenpō Seitei Kenryoku* 《憲法制定權力》(1983), which has been often referred to in the research on sovereignty in Taiwan (許慶雄 2015: 24). According to this classic work, constituent power locates 'a cross point between politics and law'. This power is, in other words, 'a power to create a legal order' or 'a power to decide a form of political entities in the state'. Although Ashibe accepts Carl Schmitt's argument that constituent power is a political will, he does not identify it with a bare force that is free from any normative limits (芦部 1983: 3, 39). If this viewpoint is true, ideas of individual rights would become instable, and constitutions aiming to protect freedoms would completely lose its end (芦部 1983: 39-40). This is why Ashibe indicates human dignity as the principle of principles, or the fundamental principle (*konpon kihan* 根本規範), which are meta-legal rules regulating constituent power (芦部 1983: 41-42). The creation of a

² According to the Constitution of the Republic of China, which went into effect in 1947, the country is 'founded on the Three Principles of the People, shall be a democratic republic of the people, to be governed by the people and for the people' (Article 1), and its sovereignty 'shall reside in the whole body of citizens' (Article 2). This paper focuses on the process in which legal provisions in Taiwan have gradually obtained substantial content and on the discourses constituted in said process.

new legal order is nothing but destruction by bare facts, because practices of constituent power are immanently regulated by the fundamental principle. Furthermore, by emphasising the ideological aspect of constituent power that is closely related to the principle of national sovereignty, Ashibe identifies the subjects of constituent power with the embodied nation who participate in a constitution-building (芦部 1983: 43). According to him, national sovereignty is a principle in which the foundations of an authority of state power that belong to 'a whole nation' combines with the moment that the supreme actor of the force that decides the ways of the state is the whole electorate identified with the whole nation (芦部 1983: 318). Under this principle, constituent power is transformed into an institutional constituent power ordained by constitutional law, or constituted power, and relies on legal rules in its process and content (芦部 1983: 319).

Especially in terms of usefulness for our purpose to discuss the Taiwanese theory of sovereignty, it is possible to summarise Ashibe's theory of sovereignty as the following: the nation is assumed to be the subject of constituent power, where its people's individual freedoms seek legal order. In short, when the idea of liberal democracy consistently unites with a form of political entities in the state, there lies the principle of national sovereignty. The idea of liberal democracy as the fundamental principle has to be reflected in the subjects and the legal order, to discuss the existence of (Taiwanese) sovereignty. Therefore, the issue is democratisation in real politics and, through it, how to demonstrate national sovereignty with performativity.³

The next section will follow the formation of the Taiwanese theory of sovereignty in the history of post-war politics and the foundation of the concept of sovereignty based on the fundamental principle. The third section will consider the contemporary issues for the Taiwanese

³ According to Yasuo Sugihara (杉原泰雄), Ashibe's theory as a form of national sovereignty assumes, on the one hand, that the nation as a whole of those who possess a common nationality is identical to a supreme foundation of an authority of a whole state power, and on the other hand, the nation as a whole of those who participate in social contact obtains constituent power (杉原 2006: 129). In Ashibe's theory, the dual ways of the nation, which Sugihara terms a whole nation and people, are not separated. Sugihara argues that Ashibe's theory contradicts its affirmation of the people who are a positive nation because it neglects the domestic possession of a right of ruling, which is the original issue of a principle of sovereignty (杉原 2006: 170-71).

theory of sovereignty. Finally, by reconsidering a chronological study of Taiwanese sovereignty, we discuss some of its impacts on contemporary political theory beyond the Taiwanese context.

2 History of the Concept of Sovereignty in Taiwan

(1) From Liberal Constitution to Popular Sovereignty

In Taiwanese political science after 1945, it is evident that the theory of sovereignty has not been a main theme. According to Jiang Yi-huah (江宜樺), who surveys the Western-style research on political thought in Taiwan during the second half of the twentieth century, there are just three articles on sovereignty, two of which were published quite some time ago (江宜樺 2000).⁴ Is this indicative of the indifference of Taiwanese political science and its research on political thought toward sovereignty? By reconstituting the contemporary history of Taiwan, this section will pay attention to some of the historical phases when sovereignty was discussed, and it will consider the features regarding the theory of sovereignty developed in each phase.

According to Tsai Yin-wen (蔡英文), one of the leading political theorists in the Chinese-speaking world, the idea of democracy, which has developed along with democratisation in Taiwan, contains an aspect of resistance (蔡英文 2009: 21). On the one hand, the democratic resistance is one against the Kuomintang's autocratic administration and tries to compel governmental power to follow the constitutional rules and to protect human rights. In other words, this movement is constitutionalism, which Tsai describes as an idea of liberal constitution (自由憲政). On the other hand, democratic resistance appeals to the will of the people, contradicts any sort of arbitrary power, revokes all social privileges, and emphasises the importance of popular

⁴ Two (沈乃正 1959; 張佛泉 1960) were written by the scholars who had been active in the mainland before 1945. The other (楊永明 1996) will be mentioned later. On a side note, Jiang Yi-huah (江宜樺) would come to stand face to face with the Sunflower Movement as Premier of the Executive Yuan in later years.

debate and acknowledgement of formal rules and policies that would affect popular benefits. These constitute functions of mass democracy, which Tsai states as an idea of popular sovereignty (人民主權).

Tsai Yin-wen goes on to point out immediately that these two characters of the democratic resistance maintain tension at all times because there are possible and obvious risks; the idea of liberal constitution may become a sort of formalism that neglects legal authority, whereas the idea of popular sovereignty may be transformed into populism that disdains constitutional regulations (蔡英文 2009: 22).⁵ The following section will analyse the history and theory of sovereignty from the perspective of these two forms of democracy as resistance.

The aspect of liberal constitution emerged first. In 1948, the National Assembly adopted the Temporary Provisions against the Communist Rebellion (動員反亂鎮壓時期臨時條項), which allowed the President to be exempted from the office limit and extra-Constitutional powers and made it possible to create the Taiwan Garrison Command. Human rights in the Constitution lost their relevance by the Temporary Provisions and Martial Law declared in 1949. In the same year, the Kuomintang government was evacuated from mainland China to Taiwan and maintained the Republic of China and its Constitution. In Taiwan, some of the intellectual elite, who had internalised the Western-way of thinking such as liberalism and constitutionalism, published the *Free China Journal* 《自由中國》(1949-60)⁶ in protest against the violation of human rights that had become constant in the Kuomintang administration.

From the perspective of liberal constitution, the Kuomintang government was a rule by bare violence, in contrast to a constitutional government. However, the influence of this movement and resistance was limited to the elite class, although it did not aim to promote a radical reformation of the government. According to Tsai Yin-wen's frank statement, liberal constitution did not seek a more positive idea of democracy nor aim to obtain substantial rights

⁵ Tsai Yin-wen identifies the harmony between liberal constitution and popular sovereignty in Hannah Arendt's theory of constituent power as political legitimacy (蔡英文 2002).

⁶ After the mid-1950s, when the White Terror by the Kuomintang government settled down, the main target was changed from communists to liberal intellectuals affected by the American way of democracy or by the Taiwanese independence movement (丸川 2010: 135).

and face popular demands. All it could do was to expect 'good will' of the dictator (蔡英文 2009: 24). Although the aspect of liberal constitution contained several theoretical limits and failed to reach popular influence due to severe suppression, Tsai Yin-wen evaluates this movement in terms of the creation of a public sphere and of a foundation for the subsequent democratisation (蔡英文 2009: 25). Furthermore, Tetsushi Marukawa (丸川哲史) points out that while the political thoughts of the liberal intellectuals did not lead to a concrete political body, they had significant connections to the Dang-wai (党外) movements in the 1970s in terms of human resources and networks (丸川 2010: 139).

The aspect of popular sovereignty inspired the political practices and democratic movements in the 1970s to the 1980s. The dictatorial Kuomintang government led by Chiang Kai-shek (蔣介石) and Chiang Ching-kuo (蔣經國) insisted on its legitimacy in the Great China identity with the 'take back the mainland' policy (反攻大陸) and defended its administration of martial law against democracy. In other words, this government theorised its sovereignty by insisting that China is one and that the government in Taiwan was the authentic Chinese government. However, it already had become clear that Taiwan was inferior to mainland China in most aspects during the '60s, and this finally became globally apparent in 1971, when Taiwan lost its seat at the United Nations. The banishment from the UN meant, at the same time, forfeiture of the legitimacy of the government. This situation brought forth the dilemma in Taiwanese democratic consciousness that the country was a *de facto* sovereign state but could not recognise its sovereignty internationally (蔡英文 2009: 28).

Following this radical transformation of international relations surrounding Taiwan, Japanese sovereignty over the Senkaku Islands (釣魚台) came to be disputed in the Chinese-speaking world around 1970. As explained below, this dispute had an impact on the theorisation of sovereignty in Taiwan. In 1970, Japan proclaimed its sovereignty over the islands. In the following year, the Okinawa Reversion Treaty passed the United States Senate, thus returning the islands to Japanese control in 1972. In response to the tense situation regarding the islands, Taiwanese students in Taiwan as well as in the United States led the Baodiao Movement

(保釣運動) and organised several demonstrations.⁷ The movement was not simply preoccupied with nationalistic reactions to the Japanese imperialistic policy (as well as to the United States). What we should pay attention to, rather, is that one of its targets for criticism was the Kuomintang government's weak foreign policy. This dissatisfaction in the then regime in Taiwan led to expansion of the movement. What is more, the students who led the movement were not only from Taiwan but also from other Chinese-speaking regions, such as Hong Kong. It was in this sense that the movement was one to recreate the Chinese identity, in contrast to the severe political situation for 'Chinese' students. In other words, although the Baodiao Movement certainly contained anti-colonialist and anti-imperialist aspects that was sometimes associated with objections to the Kuomintang government, it could not be attributed to a simple dichotomy between democracy and authoritarianism. According to Lin Shu-fen (林淑芬), the movement had a 'hetero-topological nature' and was 'the emergence of a new politics' that was able to ascribe to the complexity and multiplicity of identities (Lin 2014).

This hybrid movement came apart whenever it reached junctions, for example, pro-Kuomintang or anti-Kuomintang, party-internal reforms or party-external activities, pro-communism or anti-communism, Chinese unity or Taiwanese independence, and so on, until it was ultimately dismantled by both hard and soft reactions of the Kuomintang government.⁸ But during the crisis of external sovereignty and the instability of the legitimacy of the Kuomintang government, the Baodiao Movement had been the opportunity to demonstrate the performativity of sovereignty and its national and democratic subjectivity.

⁷ At the time, there were almost no students from the People's Republic of China in the United States because of the lack of diplomatic relations.

⁸ For the context of the Baodiao Movement and its historical meanings, see 本田 (2016), in which Sechin Y. S. Chien (錢永祥), a political philosopher often referred to in this paper, has been interviewed as a person concerned. Chien says that 'although Baodiao itself did not have great significance, it changed students of the day, who had been indifferent in political issues, into partisans of political reforms. The democratic movements happened on this mode such as the Kaohsiung Incident (美麗島事件) in 1979, the birth of the Democratic Progressive Party in the 1980s, and student movements in the 1990s. [...] What is more, before the [Baodiao] movement, *Free China Journal* (自由中國) published by Lei Chen (雷震), Yin Hai-kuang (段海光) and so on, sowed the seed' (本田 2016: 122-23).

As Christopher Hughes points out below, Taiwan's Dang-wai Movement, which had experienced the rise and fall of the Baodiao Movement, was transformed into an issue of political identity in the late 1970s:

What the Dang Wai activists were working towards by the late 1970s, then, was an ideology linking the individual with the political community that reverses the subservience of the individual to the nation-state in Chinese nationalism. In evaluating the legitimacy of a regime, the true patriot should not consider its ethnic identity but the quality of life it provides. The only real criterion to decide whether or not a person's actions are patriotic is whether or not those actions are good for the life of the people. But 'the people' in this formula is now talked of in terms of the Chinese term *renmin*, denoting a political community, rather than the term *minzu*, implying an ethnic nation (Hughes 1997: 39-40).

The contradiction between *benshengren* (本省人) and *waishengren* (外省人) that had originated under the brutal rule by the Kuomintang was transformed into a discursive politics of the Taiwanese people's subjectivity separated from the mainland identity. Now, the connection between 'to be the people' and 'to be Taiwanese' became a criterion to evaluate real politics. Needless to say, this new discursive politics about Taiwanese identity radically swayed the rule by the Kuomintang, which was both an illegal and non-democratic government as well as a sort of exotic administration. Since the Taiwanese government lost its legitimate representation of China and its sovereign status, democratisation in Taiwan has confronted the connection between a sovereign status and a national identity (蔡英文 2009: 27).

The new phase of (popular) sovereignty in Taiwan was clearly shown in the insistence of the 'bio-community' and 'popular sovereignty' by Lee Teng-hui (李登輝), successor to Chiang Ching-kuo and a *benshengren*. By Chiang Ching-kuo's era, the Kuomintang government in fact

gave up its policy to take back the mainland by military force and instead sought for its administration's Taiwanisation (本土化) by utilizing and appointing *benshengren* within its ranks.⁹ The Lee Teng-hui Administration intended to remedy the situation of civil war against mainland China and to drastically reform the National Assembly, which had been rendered ineffectual and undemocratic because of its discrepancy of jurisdiction. This series of reforms by the Kuomintang government signifies a redefinition of the boundary of sovereignty and 'a reduction of the sovereign subject from whole Chinese people to Taiwanese people' (蕭高彥 2013: 402). In short, the foundation of a constitutional order has proceeded in accompaniment with the delineation of the bounded nation as the sovereign. As we saw in Nobuyoshi Ashibe's theory of sovereignty, the combination between liberal constitutionalism and popular sovereignty came to be established as a theory to defend democratisation in Taiwan.¹⁰

(2) National Identity and Portraits of the People

Taiwan in the 1970s experienced much turbulence, such as its exclusion from the UN and the Baodiao Movement, the rupture of diplomatic relations with Japan and the United States, the National Taiwan University's Philosophy Department Incident (臺大哲學系事件), Chiang Kai-shek's death, the Kaohsiung Incident, and so on. Entering the 1980s, the Senkaku Dispute settled down, the Taiwanese economy developed enough to become one of the Four Asian Tigers, and democratic movements in Taiwan came to be realized in the political process. In 1986, the Democratic Progressive Party [hereafter DPP], the first genuine opposition party in Taiwan, was

⁹ According to Masatake Wakabayashi (若林正丈), Chiang Ching-kuo's policy toward building 'internal legitimacy' by appointing *benshengren* (本省人) was to compensate for the failure of 'the external legitimacy' of the Republic of China accompanied with the loss of representation. The 'success' of his reaction, however, was to empower the political activities challenging the internal false-consciousness for the Chinese state and the inequality composed by the exotic government (若林 2008: 8). Regarding the Taiwanisation of the Kuomintang, see Lin Chia-lung (林佳龍)'s chronological arrangement (2001).

¹⁰ Lin (2004) focuses on social movements in Taiwan and its transnationalisation concerning 'protect of human rights' and 'expansion of democratic imaginary'.

born, albeit under the tacit consent of the authorities. Then in the following year, the government proclaimed the lifting of Martial Law, qualified at the time as the longest imposition of martial law in the history of the world.

The DPP, which originated from the Dang-wai Movements, is a loosely united group of anti-Kuomintang movements and factions, while it obviously inclines towards Taiwanisation. The party platform proclaims the foundation of the rule of national sovereignty as the fundamental principle of the liberal and democratic state. According to its description, the legality and the legitimacy correspond to each other in national sovereignty, and the people have the right to resistance and to be a priority for the government.¹¹ Then in 1991, the DPP added a statement to this platform, which was to found the Taiwan Republic as an independent state, in accordance to both the reality of Taiwanese society and the real national identity. This insistence is clearly different from the past Kuomintang's doctrine of the political community extending to the mainland. Here, the foundation of sovereignty was not an aim, but rather, a given, and how to express this in real politics as an issue of discursive politics, would be the next concern for the theory of national sovereignty in Taiwan.

In the social context after the Cold War, where even the Kuomintang could not help but compromise the fact that national sovereignty is given to the Taiwanese people, a new problem has become highlighted concerning sovereignty. This is the problem of who the sovereign is, which is a theme that deeply affects the directions of real politics. Indeed, the description of the sovereign is not settled in even the platform of the DPP, whether it is 'the nation' or 'the people'. The academic dispute between 'popular democracy' (人民民主) and 'civil society' (民間社会), occurred around 1990, and this was a typical case of the discursive politics of images of the sovereign subjects. I will shed light on this point through the discussion by Chen Kuan-hsing (陳光興), who is well known as a leading researcher of cultural studies in Asia and belongs to the group of 'popular democracy' group.

According to Chen Kuan-hsing, not only pro-Kuomintang unionists but also pro-DPP

¹¹ <http://www.dpp.org.tw/history.php>

independents were easily absorbed by 'words and forms of statism' (陳光興 2011: 170) in the reactions of Taiwanese society to the Tiananmen Square Protests of 1989 (天安門事件). Under this social condition, what 'popular democracy' criticised is the theory of 'civil society'. In this theory, contradictions in Taiwanese society can be converged in the ruling relationship between the state (Kuomintang) and civil society. Then the purpose of civil society is to subvert the former (Chien 2014: 129). According to the theory of 'civil society', the DPP, united in defeating the Kuomintang government, should be a locomotive of civil society against the state apparatus and should direct various social movements.¹² In short, the opposition force was fascinated by state power as well and was no different from the ruling party in terms of not hesitating to suppress differences and to resort to brutal means in order to obtain it. In Chen Kuan-hsing's point of view, the change of government by Chen Shui-bian (陳水扁) in 2000 was expected to fail from the start. According to his words, 'civil society becomes the state. Originally a part of civil society becomes an agency of state apparatus!' (陳光興 2011: 187).

What sort of theory, then, does 'popular democracy' establish? The movement defends the autonomy of each social movement and tries to deepen each aim without becoming absorbed by party politics. This attitude to movements is able to ideologically insist on avoiding a simple dichotomy between unification and independence by fixing both sides of nationalism. At the same time, 'popular democracy' may evade the essentialism of ethnicity and province. The essentialist formularisation of identity aiming to imperiously acquire political power disturbed development of each social movement, gave rise to conflicts and suppressions, and 'reduced the possibility of plural collaborations in the post-Kuomintang period' (陳光興 2011: 171). In other words, from the theoretical point of view, 'popular democracy' criticises the reductionist model of a dichotomy between the state versus civil society, and instead, it proposes a dynamic contradiction between 'the people' and 'the power bloc'.

It goes without saying that 'popular democracy' had been composed under the deep theoretical influence of Ernesto Laclau and Stuart Hall (Lin 2009: 237). 'Popular democracy'

¹² For discursive politics about the DPP and the dispute between 'popular democracy' and 'civil society', see Lin (2009).

attempted to dismantle its aspirations for the state and did not place political parties at the centre of pluralistic unification of subjects (陳光興 2011: 172).¹³ The following significant points can be pointed out through explanations on the dispute between ‘popular democracy’ and ‘civil society’ based on the theory of sovereignty: The logic of national sovereignty, which has led democratic movements so far, has reached the stage in which its content is critically interpreted. It becomes obvious that the composition of the sovereign people is immanent in the power relationships in Taiwanese society. Essentialistic discourses have already become out of date because, as the dispute shows, to be a national subject is both a base of resistance and a form of suppression.¹⁴

For the final topic of this section, we will confirm the results of Taiwanese political studies concerning the connection between national identity (國家認同) and the theory of sovereignty. Theories of nationalism became popular throughout the academic world from the late 1980s. In Taiwan, this was discussed in a foundation of a national community and its subjects.¹⁵ In particular, the problem of identity, whether residents in Taiwan are Taiwanese or Chinese, was relevant to the policies toward the mainland (若林 2008: 3). Yet, at the same time, the pragmatic character allows confusion between the problem of national identity with the problem of the contradiction between unification and independence. According to Jiang Yi-huah, the issue of independence means a separation of sovereignty from the mainland and connects to macro

¹³ For the criticism against ‘civil society’, see Chen Kuan-hsing’s argument (2000). While the problem clearly lies in the content of ‘popular sovereignty’, according to the discussion of the day, there was a huge disagreement on the understanding of ‘popular sovereignty’ in the subjects, directions, basements, identities, and images of politics (何方 1990, 1991; 陳宜中 1990).

¹⁴ According to Sechin Y. S. Chien (錢永祥), both ‘popular democracy’ and ‘civil society’ shares the logic that democracy is obtaining an autonomy of society itself, and on the contrary, the state is an anti-democratic organization. Therefore, both theories have few words on institutions, lack concern over human relationships enabling promises and norms, and underestimate the functions of the state (錢永祥 2014: 129-34). These weak points will be a theme of contemporary theories of sovereignty discussed in the following section.

¹⁵ The features of Taiwanese political studies may be, in association with the nationalisation of the regional state, a part of an academic trend in Taiwan where Taiwanology has been significantly popular. For the context of Taiwanology since the late 1980s, see 莊雅仲(2014). Masatake Wakabayashi also points out the existence of civic nationalism in the background of the rise in Taiwanology (若林 2017).

ideas such as Taiwanese society and cross-strait relations. In contrast, the issue of national identity is a problem of what and how an individual does hold and ‘a more abstractive and philosophical thinking’ that needs multi-disciplinary analyses (江宜樺 1998: 4, 137). As Tsai Yin-wen points out, facing pluralisation of Taiwanese society after its democratisation, Taiwanese identity became a sign for ‘political mobilization’ in party politics, which is relevant to the desire to be internationally recognised under the long-enduring isolation from international society. In addition, as an external point of view, the ascending mainland China has made Taiwan constantly reconsider its relationships in economics, social activities, politics, and culture. It is through such internal and external changes of the environment that political identity has come to be one of the main topics in Taiwan (蔡英文 1997: 77).¹⁶

Jiang Yi-huah determines two currents of national identity, which are ethnicism, in which nation takes the core, and liberalism, which is derived from the theory of social contract.¹⁷ Certainly, ethnicism by itself no longer provides the whole foundation for a political community. In the Taiwanese context, national identity based on ethnicism, whether it is unitalists or independents, cannot avoid a moment of essentialism. It is already well-known that ‘both Chinese ethnicism and Taiwanese ethnicism is a highly constitutional product’ (江宜樺 1998: 159-61). On the contrary, liberalism does not require ethnic homogeneity and treats ‘the Constitution as a base of identity which is the only resource of the legitimacy’ (江宜樺 1998: 162). Most political scientists such as Tsai Yin-wen tend to have a foundation of a political community based on liberalism (蔡英文 1997: 79). Yet Jiang Yi-huah, while confirming a theoretical propriety of liberalism, does not at all deprecate a role that ethnicism is taking. Therefore, he names his

¹⁶ Chang Yia-chung (張亞中) insists that Lee Teng-hui’s statement on ‘the sorrow of Taiwanese people by nature’ in 1994 (within a dialogue with a Japanese famous novelist, Ryōtarō Shiba) highlighted the identity problem of the Taiwanese people based on a victim mentality. Regarding the political context in which national identity and democratisation were combined in Lee Teng-hui’s administration, Carl K. Y. Shaw (蕭高彥) points out its three reasons: first, to deprive a nationalistic base of anti-Kuomintang forces; second, to place the presidential election of Taiwan at the core of political legitimacy; and third, to lead the Constitutional reforms and power game within the Kuomintang (蕭高彥 2003: 151-52).

¹⁷ For a similar dichotomy, see 蔡英文 (1997), 蕭高彥 (1998).

stance ‘pragmatic liberalism’, which is mainly based on liberalism in theory and assumes a political unit following to the real boundary (江宜樺 1998: 191).¹⁸ In other words, it is a compatibility between the fundamental principle and the nation state.

In this section, we have re-experienced swiftly the half-century of the Taiwanese theory of sovereignty. It is the history of stabilising national sovereignty in accordance with the real boundary and of discursive politics about it. According to Carl K. Y. Shaw, democratisation in Taiwan has been realised with liberal and constitutional political values on the one hand and has on the other hand established ‘a transformation from state sovereignty to popular/national sovereignty’ and ‘the Taiwanese subjectivity’ (蕭高彥 2004: 13, 17; 2013: 397).¹⁹ One of the main aims of the democratic movements was to seize the imaginary of (popular) sovereignty. The Taiwanese political experience after democratisation has sought to realize universalistic principles while turning Taiwan into a self-evident political community. Needless to say, an accumulation of internal democratic sovereignty is not as fully interchangeable with external sovereignty as independence is (Copper 2010).²⁰ As Lin Shu-fen points out, ‘the people’ and ‘popular sovereignty’ had been political terms which any political forces could appropriate by the

¹⁸ Carl K. Y. Shaw expresses Jiang Yi-huah’s view as a state identity rather than a national one (蕭高彥 2003: 155).

¹⁹ According to Jiang Yi-huah (江宜樺 2001), in virtue of what various democratic movements had done since the 1980s, which he defines the new state movements as national movements without ethnicity, Taiwan almost became free of the influence of the Great China identity and accepted its given boundary as a political community in the ’90s. Referring to detailed dates, Lin Chia-lung (林佳龍 2001) leads a similar understanding. In the background of the transformation, Jiang Yi-huah points out experiences of democratic politics in which Taiwanese people are the sovereign as well as rapid accumulations of common lives through the mass media, including typhoons, earthquakes, fashions, and sport events. For the transformation of nationalism from Chinese to civic accompanied with the exercise of ‘sovereign power by Taiwanese residents’, see Hughes (2011).

²⁰ In order to accord internal sovereignty with an external one, Philip Y. M. Yang (楊永明 1996) proposes the concept of ‘democratic sovereignty’. In ‘democratic sovereignty’, the people are not only the sovereign subjects but also provide the legitimacy and the legality to an autonomic, democratic regime. Although it is questionable if ‘democratic sovereignty’ is theoretically sustainable, because Yang’s view of the elements of internal sovereignty (a constitutional regime, democratic elections, and a domestic jurisdiction) is fairly monotonous, it is clear that his intention is to build and maintain sovereignty by accumulating democratic practices.

late 1980s (Lin 2009: 244). Although the sharpness of popular sovereignty has been lost, we should focus on its stabilisation (or indeed of national sovereignty, which is found on a given political community) in the main discourses of Taiwanese politics. ‘The two concepts [of popular sovereignty and national identity] came to be converged’, made a new power form of the state, and ‘institutionalised a sort of the concept of popular sovereignty for the first time’ (莊雅仲 2014: 27). The incident for which mainland China threatened Taiwan by military exercises when the first presidential election in its history was about to take place in 1996 revealed that a policy of distancing oneself from the mainland would no longer damage Taiwanese politics.²¹ Since then, the experiences of presidential elections every four years have been powerful occasions to build the nation as ‘the sovereign political community in Taiwan’ (若林 2008: 390). The stabilisation of national sovereignty can separate democratic legitimacy from governmental legitimacy and to criticise an elective government in terms of the sovereign people (Huang 2016). In the next section, let us begin by considering the content of the sovereign people, which become a target of critical thinking for the theory of sovereignty in contemporary Taiwan. The problem is, *what* are the sovereign people?

3 Popular Sovereignty and Its Critics

The Taiwanese theory of sovereignty in the 21st century, on the one hand, constitutes the delineation of national sovereignty following the Taiwanese people through seven times Constitutional reforms and the treating of Taiwan as a political unit, apart from its independence (蕭高彥 2013: 402-03; Chen 2015: 223-24). Yet, on the other hand, the content of the sovereign people may have been unclear. Disagreement with the Kuomintang has not already been simply

²¹ Even *Liberty Times* (自由時報) (first published in 1981), which is obviously anti-Kuomintang, acknowledges the significance of the first presidential election in 1996, because Taiwan came into ‘the era of perfect democratisation’ on this occasion and established the legitimacy and legality of the Taiwanese government, formal independence outside the People’s Republic of China, ‘popular sovereignty’ or the embodiment of the people as actors, and so on (自由時報 2000).

identified with national democracy. Furthermore, the current Kuomintang does not directly oppose Taiwanese identity or democratic values. As such, the status of the sovereign people becomes ambiguous, faced with rapid changes in Taiwanese politics. Such transformations include deep economic dependence on China, determined insistence for the maintenance of the status quo, a revival of the Great China identity led by the Ma Ying-jeou administration from 2008 (Hughes 2016), and political corruption within the DPP, as demonstrated in Chen Shui-bian's arrest. In this section, we consider the features of the theory of sovereignty in Taiwan by examining contemporary politics concerning the sovereign people. In particular, we begin by referring to the minority status in the theory of sovereignty and discuss the specific views on populism, which is a contemporary issue in political studies worldwide, and their connection to the democratic movements arising in the Chinese-speaking region. Finally, this section will clarify the theoretical achievement of the theory of sovereignty developed in Taiwan. In other words, our purpose is to face the exclusive aspect of democratisation and the Taiwanese identity, both of which have so far mutually developed and been highly evaluated (Hwang 2014: 76).

As is well known, several ethnic groups such as Hoklo, Hakka, and Austronesian Taiwanese aborigines exist in Taiwan. In the 1980s, ethnic minority movements, which required the recognition of these ethnic groups, took part in the democratic movements. In other words, democratisation in Taiwan was a moment of building a multi-ethnic society. Identity politics in Taiwan, which defines the residents as national sovereign people, have been developed hand in hand with ethnopolitics, which seeks recognition of ethnic groups. The multi-ethnic transformation of Taiwan is, in a sense, a conscientious response with a foundation in national democracy, in which the sovereign people are constituted mainly by the logic of resisting the rule by a foreign force, because it must be sensitive to the external coercion of homogeneity on each ethnic group.

The Constitution was revised to include indigenous peoples as an achievement of the dual subjectification of nation and multi-ethnicity (1997). Then from 2000, Chen Shui-bian's government promoted multi-cultural policies and the unification of the peoples (若林 2008; 石垣

2014). Such discursive politics in Taiwan aimed to make a soft landing of identity politics by making the dominant *waishengren* into one of the ethnic groups and to delineate the sovereign people from actual Taiwanese residents. At the same time, this calls to mind an inner division of the mainlanders. Now the sovereign people demand to join in exercising power with self-consciousness, as the subjects of power relations. While accepting of the history and culture of the indigenous peoples, this new national sovereignty is wary of a reformation of a homological base of the unification of the Taiwanese nation (石垣 2014: 97). Amid ongoing globalisation, the entity of the Taiwanese people has been significantly changed by the huge population influx from other Asian countries, including the mainland, and this has accelerated the difficulty of the sovereign people's self-definition. In short, the establishment of sovereignty and the sovereign people in Taiwan has stalled in a gap between the collaboration of democratisation and Taiwanisation and an international unauthorisation. The Taiwanese theory of sovereignty is facing 'an internal contradiction' between nationalism and ethnicity, which is accompanied by the collaboration (蔡英文 2009: 44).

The predicament of sovereignty, which may be described as its stable instability, induces a political tendency to define the sovereign people intentionally to some extent and then cannot help but coexist with populism (民粹主義). In fact, political science in Taiwan does not miss the point that the democratisation of Taiwanese society has developed in the shadow of populism. In particular, because cross-strait relations have been the major battlefield for the Taiwanese theory of sovereignty, Taiwanese discourses on the sovereign people as the nation and on populism tend to focus on this area (胡全威 2003).

As we have seen, 'Taiwanese people' or 'Taiwan identity' became 'a common word of the DPP and Kuomintang' (Wang and Chien 1995: 19, 26-27) in the establishment of democratic processes in the early 1990s. It means, at the same time, a name for the people must explain its democratic significance. Wang Jenn-hwan (王振寰) and Sechin Y. S. Chien (錢永祥) pay attention in particular to relationships of state-building and propose the concept of 'populist authoritarianism'. While they are, of course, well conscious of Stuart Hall's theory of 'authoritative

populism', their concept demonstrates the features of Taiwanese politics, in which the authoritative residues in structures gain 'an ardent legitimacy' by populist mobilisation although the authoritarianism regime was institutionally democratised to some extent (王振寰·錢永祥1995: 31)²².

According to Wang and Chien, there were three phases in the Kuomintang government in the early 1990s. The first was the chaotic period facing division within the party caused by Lee Teng-hui's inauguration of the President and the rising of the DPP (from 1987 to May 1990). The second was the period when new authoritarian state structures were constituted by a compromise between the progressives and the conservatives in the party affected by economic force (from May 1990 to February 1993). The third was the period when the alliance of the progressives and the Taiwan-oriented local forces expelled the conservatives (after February 1993) (王振寰·錢永祥1995: 36-42). Populism was relevant to this third phase. In order to seize the state apparatus, the Kuomintang reformers led by Lee Teng-hui mobilised the homogeneous sovereign people as their legitimacy. Thus, the theory of 'populist authoritarianism' severely criticises the trends of Taiwanisation and the stabilisation of national sovereignty in the early 1990s because of its lack of substance in popular sovereignty. Furthermore, Sechin Y. S. Chien speculates on the possibility to resist a unified populist ruling by proposing democratic institutions that are harmonious with pluralising the people and establishing publicity (錢永祥 1997). In the post-authoritarian era, Taiwanese politics was in a chaotic situation woven by various and ambiguous discourses on the sovereign people.

The first change of government in 2000 did not release Taiwanese politics from the populist trend. According to Lin Shu-fen, populism had become 'the floating signifier' (Laclau) in the 1990s. Therefore, on the one hand, all parties and factions called themselves as 'the people' and, on the other hand, they took various roles to build a united political platform across

²² For the difference between the two theories of populism, Lin Shu-fen (林淑芬) points out that, while Hall's 'Authoritative Populism' is conscious of the ambiguity between democracy and populism, 'Populist Authoritarianism' sees authoritarianism as the essence of the Kuomintang rule although it has emphasised popular sovereignty and Taiwanisation (林淑芬 2005: 146). For more detail, see her article in English (Lin 2009: 244-45).

themselves. Finally, when President Chen Shui-bian was re-elected in 2004, populism was the most commonly propagated infamous political expression (林淑芬 2005: 143-44)²³. Apart from her intention to salvage democratic values in populism, what is obvious is that the discursive politics of ‘what is the people’ becomes the central stage of power struggles. Not only does each force in Taiwanese politics, but also the observers who interpret and criticise it, bear some sort of idea regarding the sovereign people. This is why none can help escaping from populist tendencies.

The Sunflower Movement was not an exception of such populist discourse. This movement was an illegal occupation of the Legislative Yuan by students and activists for a month from March 2014. It was a reaction to the closure of discussions and the steamrolling of the ratification of the Cross-Strait Service Trade Agreement. As the background, process, and evaluation of this movement cannot be covered in full here, let us just pay attention to the points concerning the theory of sovereignty.²⁴ In Jin Ishizuka’s (石塚迅) argument, the Sunflower Movement contained a sense of crisis aroused by unilateral economic unification between China and Taiwan, which might have eroded Taiwanese sovereignty as a supreme independence of state power, as well as repulsion for the Kuomintang’s attitude to the democratic process and its neglect of popular sovereignty as the final say in domestic politics (2017: 105). As we have seen, the demarcation of Taiwan, separated from the mainland, and the establishment of the sovereign people as the nation constitute both faces of the Taiwanese theory of sovereignty. It was in such a critical moment that the Sunflower Movement emerged. Certainly, there are powerful oppositional opinions to the movement; for instance, Chang Yia-chung (張亞中) explains that enhancing state power by the Cross-Strait Service Trade Agreement is an ideal way of maintaining sovereignty, and he condemns the unlawfulness and irrationality of the movement

²³ For the rising of Taiwanese identity and of ethno-politics, which was a background of the presidential election in 2004, see 小笠原 (2005).

²⁴ For juridical principles of the Sunflower Movement, see 菅原 (2014) and Chang (2015). For its achievements, see Cole (2015). Jones and Su (2015) focus on the democratic justifications of the movement. Huang Cheng-yi (黃丞儀) finds the root of the movement in the schizophrenic constitutional identity of the presidency, which is to say that she or he covers all of China and at the same time represents the population of Taiwan (Huang 2017: 121).

(2016: 160-63, 177-94). In the following, we refer to some of the contemporary political theories that focus on the performative aspect of sovereignty as a dividing ridge of views on the Sunflower Movement.

Yeh Jiunn-rong (葉俊榮), who has become the Minister of the Interior in the Tsai Yin-wen administration, researches civic constitutionalism (市民憲政主義) that has been consistent with democratic movements and the Constitutional reforms since the 1980s. In civic constitutionalism, the representative government reflects the will of citizens, the judiciary positively defends human rights, and citizens actively proclaim reformations of the Constitution (葉俊榮 2015: 20). Yeh indicates four points in the Sunflower Movement, all of which succeed a spirit of civil constitutionalism. First, the movement expresses the division of power; second, it accumulates knowledge through automatic discussion and study; third, it promotes disclosure of administrative information, and fourth, it invokes human rights, in particular the freedom of association. Taking these features into account, the Sunflower Movement is not a deviation from the current of conventional democratisation, but rather, its main stream.²⁵ On the contrary, the inclination of the Ma administration for ‘unpopular sovereignty’, which is the discrepancy between the substantial people and the jurisdiction, shares the idea of sovereignty with past Kuomintang governments (Huang 2017: 120). According to Brian Christopher Jones and Su Yen-tu (蘇彥圖), what we should focus on more is that the centre of the movement was on the Legislative Yuan, which is the place for ‘the most democratic manifestation of “we the people” sovereignty’ (Jones and Su 2015: 200). The occupation of the Legislative Yuan asserts that it belongs to the people. It is the choice of venue as ‘a strategic democratic contestation’ that makes the Sunflower Movement different from other democratic movements. The movement, which reminds ‘the ultimate democratic symbol “we the people” popular sovereignty’, shows clearly that Taiwan is a democratic country, unlike China (Ibid.).

Chen Chia-min (陳嘉銘) clarifies a singularity of the Sunflower Movement in terms of the theory of popular sovereignty. Although this movement was illegal, it did not carry on a

²⁵ This point has been further described by Yeh Jiunn-rong (2017).

criminal offence against decency and instead exhibited a civic spirit of compliance. According to him, the attitude to legality, while seemingly contradictory, is based on the will to participate in ‘the promised future of a better democracy’ (Chen 2015: 221). In other words, what the Sunflower Movement relies on is a higher authority than the government or the state. In fact, there was an attempt to establish a new constitutional order in the name of the Taiwanese people (not the Chinese people) within the movement (Chen 2015: 223). Chen emphasises that, in a transitional democracy, popular sovereignty is relevant to its future rather than its past,²⁶ and the present authority is provided by the democratic future (Chen 2015: 227). Let us refer to his more daring words, below:

My account of transitional constitutional populism suggests that transitional democracies typically have no choice but to subscribe to a transitional idea of popular sovereignty that looks towards the future (Chen 2015: 228).

In defining the sovereign subjects, the movement is carrying on self-affirmation by the performativity of political practices, which may provide more democratic authority of legal order. Needless to say, because the future here is a constituting one, the sovereign people have to face the politics of its discourse, at the risk of their existence.

The final part of this section sees discussions in Taiwanese political studies about the open future in the theory of sovereignty. In Taiwan, where the external aspect of sovereignty has not been established, sovereignty has been performatively composed in the real political process, undistinguished from a populist moment that tends to confirm the sovereign people as well. It is the *raison d'être* of democratic movements that sovereignty will be established in the future and is under construction in the present. What is specific in political theory in Taiwan is the awareness of temporal duration in democracy.

²⁶ According to Carl K. Y. Shaw, that Taiwanese people became sovereign subjects in the 1990s provided ‘a base of exercising sovereignty by *future* nation’ (蕭高彥 2013: 403; emphasis added). Chen Chia-min’s (陳嘉銘) theory of future popular sovereignty stands exactly on the same time line.

Learning from Claude Lefort's theory of democracy as an un-determinative process, Tsai Yin-wen indicates an interpretation of durative popular sovereignty. The people, which contain a symbolic aspect, reflect inner-social discrepancies and, therefore, cannot be fully embodied in a single entity. Therefore, sovereignty has not been occupied by any substance nor closed for its competition, thus showing contingency in this sense (蔡英文 2009: 242-43). In addition, in a recent work, he points out two of significant aspects of democracy with an empty place, which are as follows: first, it promotes a persistent competition for power and the will of the people as its legitimacy, and second, the lack of substance brings a sense of belonging and alliances in democratic society (蔡英文 2015: 225). In short, once popular sovereignty becomes the legitimacy, a continuous democratisation accompanied with demarcation is inevitable because popular sovereignty cannot be embodied. It is in this sense that the democratic 'future is open' forever (蔡英文 2015: 378-83).

However, the open future may take a risk to impose a specific burden on democratic theory as well. As Lin Shu-fen emphasises, to establish popular sovereignty as the basic legitimacy of democratic politics, the accumulation of knowledge and practices by the people is necessary because engagement of 'the people' is inevitable in a democracy (2005: 176). Undoubtedly, such subjectification gives rise to populism and is likely to be identified with it. Hsu Kuo-hsien (許國賢) proposes the concept of 'defensive popular sovereignty' to make the difficult distinction between popular sovereignty and populism. In this theory, the logic of popular sovereignty is used to protect individual rights and freedom and against ruling force. It aims to evade populism and authorise deliberation as a democratic process (許國賢 2008: 4). For sake of the people who are the sovereign, we must embody popular sovereignty perpetually, by continuing to distinguish populism from our democracy.

Furthermore, whether or not the future is truly open is not certain. The future may be a discursive product of power relations, onto which the current sovereignty and the nation state is projected. As such, there is still room to consider the meaning and effects of talking to the future. In any case, what is obvious is that the boundary of sovereignty is tenacious and highly regulates

our political imaginary.

4 Conclusion: Sovereignty and the Outside

How can we review the trajectory of the adventurous consideration of the theory of sovereignty developed in Taiwan? First of all, we may notice that the performative aspect of sovereignty has been dominant and it is an authoritative foundation for both practical democracy and autonomy of a political community at the same time. From the beginning of the democratic movements to today's Sunflower Movement, sovereignty appears through performative political processes and has contributed to enhance democracy by organising the sovereign people. Indeed, as the content of the fundamental principle and its institutional embodiment have changed, sovereign performativity has led an establishment of multi-culturalism and political values based on direct democracy.

In the theorisation of sovereignty and its subjects, 'China', 'the fundamental principle', and 'the open future' have taken a role of the constitutive outside. They require more democratisation in Taiwanese society because they cannot be filled with the concepts of current national sovereignty in Taiwan. In particular, the existence of China brings a normative demand that Taiwan must be a democracy because China prompts the necessity of a geo-political distinction as well as Taiwanese ethico-political priority, in terms of a more advanced democracy. That sovereignty is constituted performatively always delineates the border, which contains distinction from the outside. Certainly, the Taiwanese theory of sovereignty, portions of which tend to neglect power relations contained in the future as well as the people, the community, and the will of the people, is sometimes too bright for us who have already been accustomed to a post-modernist way of thinking.²⁷ However, performative sovereignty obtains strength to overcome such uneasiness by calling for a more ideal democracy. What the development of the

²⁷ This is why we should pay attention to Chen Kuan-hsing's critical analysis of the discourse on the Taiwan-independents (陳光興 2011).

Taiwanese theory of sovereignty demonstrates is the annoyance of politics concerning democratic legitimacy, and it also reveals the tension in democratic politics, in which once the former loses, democracy becomes necrotic.

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