

Semi-presidentialism in Taiwan A Shadow of the Constitution of the Weimar Republic

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Abstract

When a semi-presidential constitution is adopted in a young democracy, there is much discussion about the relationship between semi-presidentialism and the stability of the democracy. The Weimar Republic was one of the original semi-presidential regimes. Although the Weimar Constitution was meant to provide for a parliamentary system, the actual exercise of the Weimar Constitution was consistent with semi-presidentialism. Taiwan is a young democracy that has a semi-presidential constitution. The design of Taiwan's constitution resembles that of the Weimar Constitution. The first version was a revision of the Weimar Constitution and was primarily parliamentary. However, with the 1997 constitutional revisions, Taiwan's constitutional structure acquired many semi-presidential features. This essay argues that Taiwan's constitution was originally inspired by the Weimar model, and with revision in 1997, became very Weimar-like. It attempts to introduce the design, revisions, and functions of the constitution in Taiwan.

Key words: Weimar Republic, Taiwan, semi-presidentialism.

Constitutional Design in the Republic of China in 1946 and Amendment in 1997

The constitution of Taiwan was adopted by the National Assembly of the Republic of China (ROC) in December 1946, promulgated by the Nationalist Government in January 1947, and placed into effect officially in December the same year. Although the constitution was revised several times after the Republic of China retreated to Taiwan and following Taiwan's democratization, the original structure was retained. Thus, one must consider the original framework when discussing Taiwan's constitutional reform and the exercise of the constitution presently.

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The ROC constitution was designed by Chang Chun-mai (張君勱). In 1922, he created the *Constitutional Draft* (國憲草案), which became the blueprint for the constitution of the future. When Chang was about to design the constitution, he investigated the situation of Weimar Germany. In Chang's view, the Weimar Constitution was the best constitution in the world, and, consequently, the *Constitutional Draft* imitated it.¹ The president was the head of state and was empowered to make appointments and to impose a state of emergency. The prime minister, as the head of government, was responsible to the parliament. Both the Weimar Constitution and the *Constitutional Draft* prescribed a dual-executive system that characterizes Taiwan's current semi-presidential system. In the 1920s, mixing political systems in a constitution (parliamentarism plus presidentialism) was not popular, and the *Constitutional Draft* was not adopted.² The constitution, which prescribed a strengthened parliamentary system, was finally adopted in 1946, following the end of World War II. The National Assembly, rather than the electorate, elected the president and provided marginal political powers to the president. The government was formed with five Yuans (院), and the Executive Yuan (cabinet) answered to the Legislative Yuan (parliament). In a comparison of the 1947 parliamentary constitution with the previous *Constitutional Draft*, the latter resembles the Weimar Constitution more than the former. The failed experience of the Weimar democracy suggests that the power of that Republic's president was limited. Likewise, the 1947 ROC constitution limited presidential powers. In addition, this constitution was a mixture of Chang Chun-mai's design and the Kuomintang's (KMT's) insistence that the government should have five branches and an all-powerful National Assembly. It was not a replica of the Weimar Constitution, in part by having provisions closer to a parliamentary system. In other words, the adopted constitution reflected a compromise among different parties.³

The Weimar Constitution served as the original model from which political elites in the Republic of China learned about constitutionalism. But the Weimar Constitution later became teaching material for studying a failed republican experience. Even though the 1947 ROC constitution and the Weimar Constitution diverged greatly, one can still surmise that the Weimar

¹ Hua-yuan Syue (薛化元), *Min-zu-zhu-yi yu min-jhu-sian-jheng de bian-zheng fa-jhan* (民族主義與民主憲政的辯證發展) [The dialectical development of nationalism and constitutional democracy] (Taipei: Dao Siang, 1997), 58, and 145-148.

² There were three reasons for this. First, Chang's Democratic Socialist Party did not enjoy the pivotal position before the Constituent Assembly. Second, the ruling KMT was in no mood to accept any constitutional design other than the one based on the five branches of government and Sun Yat-sen's teaching. And third, the Sino-Japanese War erupted in 1937 and stopped the constitutional reform process.

³ Jhih-jen Jing (荆知仁), *Jhong-guo li-sian shi* (中國立憲史) [The constitutional history of China] (Taipei: Lian jing, 1984), 439.

Constitution influenced the drafters of the constitution that was enacted in China in 1947.

However, the Republic of China constitution was not effectively implemented in China or Taiwan because of the civil war between the communist and Kuomintang forces. In May 1948, Temporary Provisions Effective during the Period of Communist Rebellion (動員戡亂臨時條款) were enacted by the Kuomintang, and one year later, martial law was imposed in Taiwan.⁴ The constitution officially enacted in 1947 in China was never enforced in Taiwan. Beginning in 1948, Chiang Kai-shek ruled Taiwan in an authoritarian way, and his son Chiang Ching-kuo continued the dictatorship until he died in 1987. In Chiang Ching-kuo's later years, he encountered the demands of Taiwan's intellectuals for democratization. Civil society grew stronger and Taiwan's citizens looked for constitutional reform. The major elements of Taiwan's constitutional reforms reflect the path of the island's democratization.⁵ To begin with, and thanks to a constitutional ruling by the Grand Justices as well as a constitutional amendment, senior legislators elected in 1947 were retired and all members of the Legislative Yuan have had to face periodic elections since 1992. Next, and most importantly, a series of constitutional reforms was made in the direction of a semi-presidential system. What was driving the constitutional amendments? It might well have been President Lee Teng-hui's contemplation to introduce direct presidential election to consolidate his ruling position. The prevailing opinion among Lee's opponents in the KMT was that the country should follow the stipulations of the constitution and that the prime minister should take charge of the government and be responsible to the Legislative Yuan. President Lee and his KMT followers, however, astutely coalesced with the Democratic Progressive Party (DPP) to outmaneuver his KMT rivals to institute significant constitutional changes in the first half of the 1990s. These changes institutionalized the direct presidential election; gave the president the power to appoint and remove many officials without the endorsement of the premier; assigned to the president the power to issue emergency decrees; instituted the National Security Council and the National Security Bureau under direct presidential command; and vested the president with the power to appoint all the members of the Control Yuan and Examination Yuan.⁶ With this constitutional amendment, the presidency became a powerful political office. By accessing the office via popular election, commanding the national security apparatus, and exercising great power regarding personnel, a Taiwanese president now was able to sway the Executive Yuan.

⁴ Yu-Shan Wu, "Semi-presidentialism in Taiwan," in *Semi-presidentialism outside Europe*, ed. Robert Elgie and Sophia Moestrup (London: Routledge, 2007), 202-203.

⁵ Jih-wen Lin, "The Evolution of Taiwan's Constitutional System," in *The Political System of Taiwan*, ed. Markus Porsche-Ludwig and Chin-peng Chu (Baden-Baden: Nomos, 2009), 34.

⁶ Wu, "Semi-presidentialism in Taiwan," 204.

Although the president was granted considerable powers, the prime minister still led the government. This division of powers between the president and the premier was the essence of the 1947 ROC constitution. However, a 1997 constitutional amendment changed this structure. As amending the constitution required a three-quarters majority of the members of the National Assembly, to achieve constitutional reform, President Lee had to make a deal with the DPP. In 1996, in exchange for the DPP's support for amending the constitution, Lee offered to DPP chairman Hsu Hsin-liang the Legislative Yuan's power to remove a premier via a vote of no-confidence in exchange for the latter's support for removing the Legislative Yuan's power to confirm the presidential appointment of a premier. The members of the Legislative Yuan were not given a chance to discuss this compromise.⁷ As a result of the 1997 amendment, the constitutional structure of Taiwan now could be defined as semi-presidential.

The constitutional reforms under President Lee were broad.⁸ Since these reforms, the president of Taiwan has been directly elected and granted considerable powers. The government is led by the prime minister, who is responsible to the parliament. It is a typical dual-executive system. To summarize, the constitution of Taiwan was originally a modification of the Weimar Republic's semi-presidential constitution and could be categorized as a parliamentary system. But through amendment, the constitution now has returned to a semi-presidential system, similar to the political system of the Weimar Constitution.

The Functioning of the ROC's Semi-Presidential Constitution

Taiwan's semi-presidential constitution works in a variety of manners. Government stability is affected by the party system and the relationships among the president, premier, and the parliamentary majority. The government was stable under President Lee from 1997 to 2000, but was unstable under President Chen Shui-bian from 2000 to 2008. The rigid party system is a key variable in explaining the functioning of the constitution during the Lee and Chen administrations. However, the structure of the semi-presidential constitution also played a critical role.

The Centrifugal Competition of Taiwan's Party System

After democratization, the DPP became the main opposition party. Also, the KMT separated into two factions. The competition for ruling power made it possible to effect a cooperative and competitive relationship between the KMT and the DPP before 2000. After Lee's successful reelection in 1996,

⁷ Ibid., 205.

⁸ The constitutional amendment included fourteen elements. The government system and the role of the president are two of them. See Lin, "The Evolution of Taiwan's Constitutional System," 39-44.

the KMT controlled both the legislative majority and the presidency. It was a typical stable government with a single party holding the majority. The constitution functioned like a presidential system. However, after the defeat of the KMT and the victory of the DPP in the 2000 presidential election, the party system became a centrifugal multiparty system. First, two new parties were established after the presidential election: the People First Party (PFP), led by James Soong, who was unsuccessful in his presidential bid, and the Taiwan Solidarity Union (TSU), formed by some local factions of the KMT, which built a cooperative relationship with the DPP then holding executive power. Under a multiparty system, it was very difficult to form a government with a single-party majority in the parliament. Second, President Chen Shui-bian won the presidential election in 2000 and the DPP also won the parliamentary elections in 2001. However, the DPP won both of these elections with a relative but not an absolute majority. The party was still too weak to maintain a stable government, but even so, the minority government persisted between 2000 and 2008. The minority government, however, provoked a polarized and centrifugal party system, the competition between the KMT and the DPP tending toward a zero-sum game.

Table 1. Major Parties' Seats in the Legislative Yuan (% in parentheses)

Date	KMT	PFP	NP	DPP	TSU	Others	Total
Dec. 1986	59 (80.8)	n.a.	n.a.	12 (16.4)	n.a.	2 (2.8)	73 (100)
Dec. 1989	72 (71.3)	n.a.	n.a.	21 (20.8)	n.a.	8 (8.0)	101 (100)
Dec. 1992	102 (63.4)	n.a.	n.a.	50 (31.1)	n.a.	9 (5.6)	161 (100)
Aug. 1993a	94 (58.4)	n.a.	7 (4.3)	51 (31.7)	n.a.	9 (5.6)	161 (100)
Dec. 1995	85 (51.8)	n.a.	21 (12.8)	54 (32.9)	n.a.	4 (2.4)	164 (100)
Dec. 1998	123 (54.7)	n.a.	11 (4.9)	70 (31.1)	n.a.	21 (9.3)	225 (100)
May 2000b	114 (50.7)	17 (7.5)	8 (3.6)	64 (28.4)	n.a.	17 (7.6)	225 (100)
Dec. 2001	68 (30.2)	46 (20.4)	1 (0.4)	87 (38.7)	13 (5.8)	10 (4.4)	225 (100)
Dec. 2004	79 (35.1)	34 (15.1)	1 (0.4)	89 (39.6)	12 (5.3)	10 (4.4)	225 (100)
Dec. 2007	81 (71.7)	1 (0.9)	0 (0)	27 (23.9)	0 (0)	4 (3.5)	113 (100)

a. The New KMT Alliance split from the KMT and formed the New Party.

b. The PFP was formed from the KMT after the presidential election.

From table 1, we can see that the KMT could maintain a majority alone before 2000. Therefore, Taiwan's semi-presidentialism was stable and led by the president who enjoyed a majority in the Legislative Yuan. But the DPP held the relative majority between 2002 and 2007 after the PFP split from the KMT. Following the DPP victory in the presidential election of 2000, a fragmented and polarized party system became the main cause of the minority divided government between 2000 and 2007. However, the electoral formula was changed from Single Non-Transferable Vote (SNTV) to a mixed form that benefited big parties. The KMT won an absolute majority in 2008, and, combined with the PFP, also won the presidency in 2008. Since 2008, a shift has been taking place toward a two-party system and the functionality of the constitution resembles the presidential system that existed from 1997 to 2000.

Triangular Relations among the President, Premier, and Parliament

The dual-executive system is the most notable feature of a semi-presidential constitution. In a semi-presidential system, government stability is affected by the relationships among the president, prime minister, and parliamentary majority. Skach classified three qualitatively different electorally generated subtypes within semi-presidentialism. The first is the *consolidated majority government*. This means that the president and prime minister enjoy the same majority in the legislature. It is the best subtype for minimizing institutional conflict in a semi-presidential system. The second subtype is the *divided majority government*, in which the prime minister holds the majority but the president does not. The cabinet, led by the prime minister, remains stable because of support from the majority in the legislature. Constitutional operations are uncertain only when the president wants to use his constitutional power to counterbalance the cabinet's legislative majority. This is cohabitation within the dual-executive system. The third subtype is the *divided minority government*. This is the most conflict-ridden subtype because neither the president, nor the prime minister, nor any party or coalition enjoys a substantive majority in the legislature.⁹ Theoretically speaking, there should be a fourth subtype, *consolidated minority government*, in which the president and the prime minister belong to the same party but this party is not the majority or a member of the majority coalition in the legislature. In sum, the categorical research about the president, prime minister, and parliamentary majority can be described as shown in table 2.

Taiwan's first semi-presidential government was formed with a consolidated majority after 1997. President Lee and his prime minister both enjoyed a stable KMT majority in the legislature. However, when the DPP won the presidential election in 2000, a consolidated minority formed. Even though the DPP was

⁹ A more detailed discussion about these three subtypes can be seen in Cindy Skach, *Borrowing Constitutional Designs* (Princeton, NJ: Princeton University Press, 2005), 15-21.

Table 2. Subtypes of Semi-presidentialism

		Executive System	
		Consolidated	Divided
Cabinet's seats in the legislature	Majority	<i>Consolidated majority:</i> Coherence of the president, prime minister, and the legislative majority	<i>Divided majority:</i> Incongruence within the executive, and the prime minister enjoys the legislative majority
	Minority	<i>Consolidated minority:</i> Coherence of the executive system but incongruence with the legislative majority	<i>Divided minority:</i> Incongruence within the executive, and no majority in the legislature

the largest party in the Legislative Yuan in 2001, it still held only a minority position. The question is: Why didn't the KMT call for a vote of no-confidence and form a government which would have let constitutional operations reflect the divided majority?

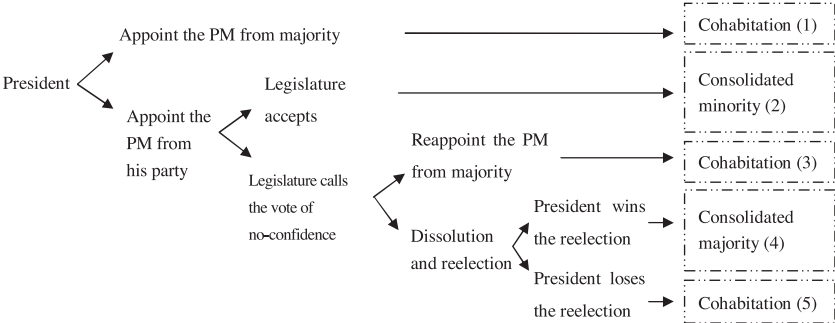
The reason why the KMT did not call for a vote of no-confidence is found in Taiwan's constitutional reform and electoral formula. According to Taiwan's semi-presidential constitution, the president can dissolve the Legislative Yuan only if a vote of no-confidence is passed. Had the KMT called for a vote of no-confidence, President Chen certainly would have dissolved the Legislative Yuan, which would have confronted the KMT with the high costs of reelection. Therefore, the problem was the costs of reelection for the KMT. Whether legislators advocate a vote of no-confidence concerns the electoral system. Before 2007, the electoral system used for Taiwan's Legislative Yuan was SNTV with multimember districts. This is a candidate-centered system in which the cost of a campaign is very high. Each individual candidate needs to obtain only enough votes to pass the threshold of exclusion to be elected; during elections, intraparty competition might be stiffer than interparty competition.¹⁰ Moreover, the outcome of an SNTV election is usually uncertain. Consequently, it is irrational for a legislator to call for a vote of no-confidence which would bring about the dissolution of the legislature and the need to campaign for reelection. Thus, the KMT and other opposition legislators did their utmost to discredit the DPP government, but never attempted a vote of no-confidence to topple the government.¹¹

It also was a rational decision of President Chen to appoint the prime

¹⁰ Gary W. Cox and Frances Rosenbluth, "The Electoral Fortunes of Legislative Factions in Japan," *American Political Science Review* 87 (1993): 579.

¹¹ Lin Jih-wen, "Parliamentary Cohesion and Government Formation in Semi-Presidential Democracies," paper delivered at a conference on Semi-Presidentialism and Democracy, Institute of Political Science, Academia Sinica, October 17-18, 2008, Taipei, Taiwan, 15.

Figure 1. Game Tree between President and Legislature on Appointment of Prime Minister When President's Party Is the Minority in Parliament



minister from among members of the DPP. A consolidated minority was an equilibrium under the constitutional structure and the SNTV electoral system. This is because the president held active appointment power and he knew that most legislators would not support a vote of no-confidence. It could be deemed a game between the president and the Legislative Yuan majority. The game tree is shown in figure 2.

In the above game, the performance utilities of the president and the legislative majority are in tension. The best outcome for the president is a consolidated majority, and the worst, cohabitation (5). By contrast, cohabitation (5) is the best outcome for the legislative majority, and the worst, a consolidated majority. Although President Chen would have liked to have dissolved the Legislative Yuan in 2000 and 2001, he did not have active dissolution power. He could dissolve the Legislative Yuan only when a vote of no-confidence had been passed. Thus, the best choice of the president at the start of this game was to appoint a premier from his own party. If the Legislative Yuan accepted the appointment, the outcome would be a consolidated minority. If the Legislative Yuan did not accept the appointment and called a vote of no-confidence, the president would dissolve the Legislative Yuan. To avoid the high risk and cost of reelection, the KMT, the legislative majority, accepted a consolidated minority from 2000 to 2008.

From a Consolidated Minority to a Consolidated Majority

Following the discussion above, we can see that the consolidated minority in Taiwan from 2000 to 2008 was a product of the constitutional structure and the SNTV electoral system. It also could be deemed a compromise between the institutions and reality. In Taiwan's institutional structure, the form of government would change only after a new presidential or parliamentary election. On January 12, 2008, the KMT won the majority in the Legislative Yuan. A few months later in March 2008, Ma Ying-jeou of the KMT won the

presidential election. The form of the government then became a consolidated majority. The types of government since 1997 are shown in table 3.

From the short review above, we can cull some characteristics of Taiwan's semi-presidentialism. First, the DPP has never held the majority in the Legislative Yuan. In contrast, the KMT always has possessed the majority.¹² This means that the form of government is dependent on the president. Second, the presidential and prime-ministerial executive system always has been consolidated. Even when the DPP was in the minority in the legislature during 2000 to 2008, the government still was formed as a consolidated minority. Third, besides Yu Shyi-kun, none of the prime ministers has been in office for the full term of the Legislative Yuan. Yu Shyi-kun took office after the legislative election in 2002 and also resigned after the legislative election in

Table 3. President, Premier, Duration of Government and Subtypes after 1997

President	Premier	Term	Days of Government	Type of Government
Lee Teng-hui (KMT)	Vincent Siew	9/1/1997/ - 5/20/2000	992	Consolidated majority
Chen Shui-bian (DPP, term I)	Tang Fei ¹⁴	5/20/2000 - 10/6/2000	139	Consolidated minority
	Chang Chun-hsiung	10/6/2000 - 2/1/2002	472	Consolidated minority
	Yu Shyi-kun	2/1/2002 - 2/1/2005	1095	Consolidated minority
Chen Shui-bian (DPP, term II)	Frank Hsieh	2/1/2005 - 1/25/2006	359	Consolidated minority
	Su Tseng-chang	1/25/2006 - 5/21/2007	481	Consolidated minority
	Chang Chun-hsiung	5/21/2007 - 5/20/2008	365	Consolidated minority
Ma Ying-jeou (KMT)	Liu Chao-shiuan	5/20/2008 - 9/10/2009	478	Consolidated minority
	Wu Den-yih	9/10/2009 - present	---	Consolidated minority

¹² Although the KMT also was in the minority in the elections in 2001 and 2007, the Pan-Blue Coalition (including the KMT and PFP) was still a stable majority coalition during this time.

¹³ The elections were held in December 2001 and 2004. But the new assemblies both started in February 2002 and 2005.

¹⁴ Although Tang Fei was a member of the KMT, he was appointed as the premier personally without interparty negotiation. It could also be classified as a consolidated government between the president and the premier. His term of office is also the shortest.

2005.¹³

Taiwan's semi-presidentialism is affected by a centrifugal party system and a dual-executive constitution. According to the constitution, the government should be responsible to the legislature. However, because of the dissolution power of the president and the high risk of reelection, the vote of no-confidence exists in name only. Thus, the president cannot actively dissolve the Legislative Yuan but can appoint the prime minister according to his will. If the position of the majority in the Legislative Yuan is shared by the president, the government will be a consolidated majority and led by a super-president. If the legislative majority is in opposition to the president, it will prefer to accept the appointment of a prime minister. The government will be a consolidated minority and fall into gridlock.

Comparison with the Weimar Republic

Taiwan's constitution was influenced by the Weimar Constitution. Under the shadow of the Weimar Republic's unstable semi-presidential politics, the primary constitutional structure in the 1947 ROC constitution was essentially a logically constructed and typical parliamentary system. However, constitutional amendment in 1997 returned the constitutional structure to a semi-presidential system. What follows is a brief review of the Weimar Republic's semi-presidential constitution and a comparison with Taiwan's experience.

Framework of the Weimar Constitution

The Weimar Constitution was drafted during a time of internal revolt and foreign invasion. In 1918, the establishment of a new republic was not the goal of Germans, but it was one attempt at government after the collapse of the monarchy. The formation of a new republican government resulted from pressures from the international community and from domestic social movements following World War I. After five modifications, the Weimar Constitution was adopted on July 31, 1919, by a vote of 262 to 75. The Weimar Constitution was designed as a dual-executive system. The Reich president of the Weimar Republic not only was the head of state, but also a political leader and moderator of legislative and executive powers. He was directly elected by the people, thus he could be considered equal to parliament in having a mandate from the public. The intention of Hugo Preuss, drafter of the constitution, was for the Reich president to be the representative of all the people in order to prevent parliamentary absolutism. The Reich president possessed many important constitutional powers. One of the most disputed powers was provided in article 48, the president's emergency power, which even was seen by some as dictatorial power. Under article 48, the Reich president not only could decree administrative orders without the support of the majority of the Reichstag, but also suspend some of the civil rights protected by the constitution. He even

could exercise this power with the help of the armed forces. However, there were some restrictions in the article. First, the powers provided were similar to police powers. The powers could be exercised only in the event of a major disruption or threat to public safety and order. Second, under article 48, the Reich president could suspend only some of the guaranteed human rights. He could adjust the scope of rights, and still the constitution could be exercised. But he could not make new laws to change the essence of the constitution. This meant that the Reich president could not change important principles such as the framework of government or the system of the state.¹⁵ Finally, the Reichstag could demand that the Reich president cease measures which he had taken. This meant that the Reichstag could keep a balance and maintain equilibrium between legislative and executive powers. Even so, article 48 was later regarded as the source of Germany's dictatorship.

The relationship between the Reich president and the Reichstag is a prominent characteristic of semi-presidentialism. According to article 25, the Reich president was endowed with strong powers to curb the Reichstag. He could dissolve the Reichstag without being told to do so by the Reich chancellor or another proviso. Hugo Preuss hoped that a strong Reich president with such powers could help to avoid absolute parliamentarianism as in France.¹⁶ Using his constitutional powers, the Reich president also could serve as a moderator between other executive and the legislative powers. He could dissolve the Reichstag and call for a new election when there was a conflict between executive and legislative branches of government.¹⁷

The Reichstag and the Reich chancellor were the other two important organs in the Weimar Constitution. Although the Reich chancellor was appointed by the Reich president, under article 54, the government, which was led by the Reich chancellor, was responsible to the Reichstag. Thus, the Reich president was not actually as free in his choice of Reich chancellor as might have seemed the case given his constitutional powers, for by necessity, he had to be guided by the party political situation in the Reichstag. Max Weber thought

¹⁵ Christoph Gusy, *Die Weimarer Reichsverfassung* [The constitution of the Weimar Republic] (Tübingen: Mohr Siebeck Verlag, 1997), 70.

¹⁶ Jasper Mauersberg, *Ideen und Konzeption Hugo Preuß' für die Verfassung der deutschen Republik 1919 und ihre Durchsetzung im Verfassungswerk von Weimar* [Hugo Preuss's ideas and concepts for the Constitution of the German Republic in 1919 and his implementation of the Weimar Republic's constitutional design] (Frankfurt: Peter Lang Verlag, 1991), 73.

¹⁷ The Reich president also could call a referendum to resolve the deadlock. These two constitutional powers were to be treated as the Reich president's instruments to resolve conflict or deadlock between the executive and the legislative powers. Please see Peter Haungs, *Reichspräsident und Parlamentarische Kabinettsregierung* [President and parliamentary government] (Cologne: Westdeutscher Verlag, 1968), 28. Or see Hugo Preuß [Preuss], *Staat Recht und Freiheit: Aus 40 Jahren Deutscher Politik und Geschichte* [State law and freedom: 40 years of German politics and history] (Tübingen: J. C. B. Mohr Verlag, 1926), 388-389.

that government should work through compromise between the parliament and public opinion (reflected by the directly elected Reich president).¹⁸ The relationship between the president and the cabinet included both cooperation and a reciprocal balance and control of powers. In terms of the essence of the Weimar Constitution, it was expected that the normal constitutional order would function as a parliamentary system. The Reich president played a critical role only when there was gridlock between the cabinet and the parliament or when the country was in a state of emergency. Even though the Reich president was granted many important powers, the basic foundation of the Weimar Constitution was parliamentarism. The Reich president would play the role of a reserve domain in the constitution. He would be the political leader only when the parliamentary system did not work. The Reich president also was a political adjudicator between the Reichstag and the government. He had the right to dissolve the Reichstag or to call a referendum. These powers were to be used when there was a deadlock between the Reichstag and the cabinet. The Reich president could use his powers to appeal to the judgment of all the people.¹⁹ It was a compromise between a purely parliamentary system, such as the French model, and a purely presidential system, such as the American model.²⁰

As discussed above, this research defines the Weimar Constitution as having a vertical dual executive. In normal times, the Reich chancellor governed, based on the majority of the parliament, while the president was forced to live in the shadows. However, in abnormal times, the Reich president was able to assume all powers in order to restore normalcy to the country, making the Reich chancellor his henchman. That is why Preuss emphasized that the basic principle behind the constitution was parliamentarianism.²¹

The Functions of the Weimar Constitution

After the 1918-1919 revolution and the adoption of the Weimar Constitution, constitutional politics in the Weimar Republic remained extremely unstable. This was not owed to the political arrangements of the Weimar Constitution, but to the radically fragmented party system. However, the Reich president still played a critical role after 1930.

The research now turns to a discussion of the unstable politics within the party system and the role of the president. The party system of the Weimar Republic could be divided basically into three types. The first was the “Weimar

¹⁸ Haungs, *Reichspräsident und Parlamentarische Kabinettsregierung* [President and parliamentary government], 32.

¹⁹ Peter Strik, “Hugo Preuss, German Political Thought and the Weimar Constitution,” *History of Political Thought* 23, no. 3 (2002): 504.

²⁰ *Ibid.*, 514.

²¹ Preuß [Preuss], *Staat Recht und Freiheit: Aus 40 Jahren Deutscher Politik und Geschichte* [State law and freedom: 40 years of German politics and history], 426.

Coalition,” which was composed of the Social Democratic Party of Germany (*Sozialdemokratische Partei*, or SPD), the German Democratic Party (*Deutsche Demokratische Partei*, or DDP), and the Central Party (*Zentrum*, or Z). They were the main foundation supporting parliamentary democracy. The second type was the “Bourgeois Coalition,” which was composed of the German People’s Party (*Deutsche Volkspartei*, or DVP), the German National People’s Party (*Deutschnationale Volkspartei*, or DNVP), and the Bavarian People’s Party (*Bayerische Volkspartei*, or BVP). They were conservative, right-wing organizations which supported a monarchical constitutional system. There were even two antidemocratic parties, the Communist Party of Germany (*Kommunistische Partei Deutschlands*, or KPD) and the National Socialist German Workers’ Party (*Nationalsozialistische Deutsche Arbeiterpartei*, or NSDAP). The Weimar Coalition gained more than a three-quarters majority in the legislature in 1919, but this coalition was formed through a compromise between the bourgeoisie and the socialists. Differing political opinions existed, however.²² The cabinet fell after only 128 days because of the terms of the Treaty of Versailles,²³ which fomented more distrust between the left and the right. From that time until 1930, most of the governments were minority governments tolerated by the SPD. Until the breakdown of the Weimar Republic, there were four kinds of coalition governments: (1) governments of the Weimar Coalition (formed by the SPD, the DDP, and the Z); (2) governments of the Bourgeois Coalition (formed by the Z, the DDP, the DVP, or the BVP, and twice with the DNVP); (3) governments of the Grand Coalition (formed by the SPD, the DDP, the Z, and the DVP, or the BVP); and (4) the presidential cabinet (formed by the president without party support). Within these different coalition governments, the Z and the DDP were fundamental members. However, the parties that could influence the government’s survival were the SPD, the DVP, and the DNVP, which could defect and bring down a coalitional government. Most government collapses were due to differing opinions. The ideological position of these parties and the three kinds of coalitions are shown in figure 2; the specifics of all the governments of the Weimar Republic from 1920 to 1932 are shown in table 4.²⁴

The party system of the Weimar Republic was fragmentary due to the historical backgrounds and the different positions of Germany’s foreign and constitutional policies. The competition between the main parties was diversified and zero-sum. There were left-wing socialists (in the SPD, the USPD, and the KPD), conservative nationalists (in the DNVP, the NSDAP,

²² Heinrich August Winkler, *Weimar 1918-1933* (Munich: C. H. Beck Verlag, 2005), 102.

²³ The Weimar Coalition differed over whether to accept the Treaty of Versailles. Chancellor Philipp Scheidemann opposed accepting the treaty and left office. See Peter-Christian Witt, *Friedrich Ebert* (Bonn: Neue Gesellschaft Verlag, 1987), 138-139.

²⁴ The first government under the Weimar Constitution was the government led by Gustav Bauer, not the government led by Philipp Scheidemann.

Figure 2. Party System and the Three Kinds of Coalitions of the Weimar Republic

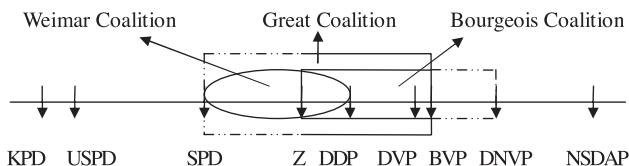


Table 4. Type of Government and Duration of the Government

Parties within the Government	Number of Parties	Type of Government and Veto Players	Days of Government (beginning and end)
SPD, DDP, Z	3	WCG	279 (01/1919-3/1920)
DDP, DVP, Z	3	BCG	315 (6/1920-5/1921)
SPD, DDP, Z	3	WCG	165 (5/1921-10/1921)
SPD, DDP, Z	3	WCG	384 (10/1921-11/1922)
DDP, DVP, Z	3	BCG	304 (11/1922-8/1923)
SPD, DDP, DVP, Z	4	Great	99 (8/1923-11/1923)
Z, DDP, DVP, BVP	4	BCG	178 (11/1923-5/1924)
Z, DDP, DVP	3	BCG	196 (6/1924-12/1924)
Z, DDP, DNVP	3	BCG	323 (1/1925-12/1925)
Z, DDP, DVP, BVP	4	BCG	111 (1/1926-5/1926)
Z, DDP, DVP, BVP	4	BCG	215 (5/1926-12/1926)
Z, DVP, DNVP	3	BCG	499 (1/1927-6/1928)
SPD, DDP, Z, BVP, DVP	5	Great	637 (6/1928-3/1930)
No Parties	0	PC	729 (3/1930-5/1932)

and the DVP), parties interested in Catholicism as a political base (the Z and the BVP), a liberal party (the DDP), and others. Some of the parties cooperated on specific issues but competed against one another on others. For example, the Grand Coalition formed by the SPD, the DDP, the Z, and the DVP worked collaboratively on domestic issues but did not come to an agreement on foreign policy. The Bourgeois Coalition, formed by the DDP, the Z, the DVP, and the DNVP, cooperated on foreign policy but competed against each other on domestic politics. Yet, even though these parties had their respective social bases, no party could win a majority alone. This made for a special situation in that the basis of many of the coalition governments was personality, not party. Gustav Stolper, a member of the Reichstag, said that the coalition government

was formed by personal ministers, not by parties. Also, there were only opposition parties, but no governing parties, in the Reichstag.²⁵ Both the right-wing and the left-wing coalitions faced a critical challenge not only from the other side but also from anti-republic parties.²⁶ The party system of the Weimar Republic was fragmented, zero-sum, polarized, and lacking the capability to form a majority coalition.²⁷

At the level of institutions, the superiority of the executive, especially the role of the Reich president, was a remote cause of executive dictatorship. The Reich president played an important role in the vertical dual-executive constitution. He was elected directly by the people (article 41) and could act independently of a changing Reichstag. Furthermore, the Reich president could use constitutional powers, such as dissolution of the parliament (article 25), referendum (article 73), compilation of the laws (article 70), and emergency powers (article 48) to affect politics and to defend the constitution.²⁸ According to the essence of the constitution, however, the Reich president was expected to be a political leader and to use these powers only in the event of abnormal circumstances. But, in reality, the Reich president affected or even changed the fundamental principle of the parliamentary constitution.

The Reich president of the Weimar Republic could not be the defender of the constitution for several reasons. First of all, even though he was elected directly by the people, it was difficult to claim that he could represent the entire population. Because of the multiplicity of political parties, it was almost impossible for a candidate to receive a majority of the votes. It was unexpected that the power and the influence of the Reich president would be strengthened just because there was a multiplicity of political parties. So, it was difficult for the Reich president to be a true agent of the entire population. As Hans Kelsen believed, the Reich president of the Weimar Republic could not play a neutral role presiding over its political parties. It was even difficult to elect a Reich president with a majority, which would have signified strong legitimacy.²⁹ In fact, the first Reich president was elected by the National Constituent Assembly. Furthermore, nobody received a majority of the votes in the first canvass in the other two elections in 1925 and 1932. Even Reich President Hindenburg was

²⁵ Hans Boldt, "Die Stellung von Parlament und Parteien in der Weimarer Reichsverfassung" [The position of the parliament and parties in the Weimar Constitution], in *Demokratie in der Krise* [Democracy in crisis], ed. Eberhard Kolb (Munich: R. Oldenbourg Verlag, 1997), 45.

²⁶ Gusy, *Die Weimarer Reichsverfassung* [The constitution of the Weimar Republic], 386.

²⁷ Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789. Band VII: Ausbau, Schutz und Untergang der Weimarer Republik* [German's constitutional history since 1789, volume 7: Expansion, protection, and destruction of the Weimar Republic] (Stuttgart: W. Kohlhammer Verlag, 1984), 260.

²⁸ Carl Schmitt, *Der Hüter der Verfassung* [The guardian of the constitution] (Berlin: Duncker & Humblot, 1931), 158-159.

²⁹ Hans Kelsen, *Wer soll der Hüter der Verfassung sein?* [Who should be the guardian of the constitution?] (Berlin: C. Schulze & Co., 1931), 44.

elected by only 48.3 percent of the votes in the second canvass in 1925.

The second controversy over the Reich president regards his constitutional powers. He could call a referendum and dissolve the Reichstag as a representative of the German people. But these powers were instrumental only in calling for a judgment on a conflict between the executive and legislative powers. The conclusive judgment still rested in the hands of the German people. In other words, the Reich president could not use these powers to rule or to decide between executive and legislative powers. Even though the Reich president had emergency powers (article 48), these were similar to police powers. The Reich president could use emergency powers to maintain or to restore public security or public order, but he could not use them to change the essence of the constitution. In a critical moment in 1930, Reich President Hindenburg invoked the emergency powers and dissolved the Reichstag. His intention was not to call for a judgment by the people, but to hold the reins of government without the Reichstag. These measures transgressed the essence of the constitution that the Reich president should preside neutrally over all parties. The governments following 1930 also could be deemed a consolidated minority. After 1930, the cabinet stayed in office with the confidence of the Reich president but not of the parliament. The Reich president was expected to be a defender, a moderator, and a neutral head of state with some important powers. Instead, he used the emergency powers to affect politics, and even to intervene between the executive and the legislative powers. Hugo Preuss, the designer of the Weimar Constitution, probably never expected this situation to occur.

Thus, at the institutional level, the power arrangement of the Weimar Republic's constitution benefited the executive, not the legislature. This is shown through the power of the president to initiate dissolution of the parliament, his free hand to appoint the chancellor, his unlimited emergency powers due to the fragmented party system, and even his power to call a referendum. Moreover, the Reichstag was weak because of the polarized multiparty system. This made the Reich president an even greater fountainhead of executive dictatorship after 1930.

The experience of the Weimar Republic was that it moved from a divided minority government to a consolidated minority. A divided minority is semi-presidentialism's most conflict-prone subtype. Under a divided minority government, there are at least three types of internal conflict, or incongruence, within the state: (1) the president and the prime minister belong to different parties; (2) the president's party and the parliament's lead party are not the same; and (3) the premier's party and the parliament's lead party are not the same. Terrible triangular relationships exist in semi-presidentialism. Because of the deadlock under the divided minority, the Reich president controlled the government through his emergency powers and the power to dissolve the parliament in the 1930s. Even the governments that were characterized as a consolidated minority were still unstable and in the end gave rise to Hitler's dictatorship.

Conclusion

After a brief discussion of semi-presidentialism in Taiwan and the Weimar Republic, the research suggests that Taiwan's constitution, enacted in December 1947, was an improvement over the Weimar Constitution and came closer to providing for a parliamentary system. After five decades of authoritarian rule in Taiwan, however, this constitution was amended in 1997 and reverted to provisions for a semi-presidential system. How can we compare the semi-presidential systems of the Weimar Republic and Taiwan? What can the experience of the Weimar Republic teach students of constitutionalism?

First of all, there were some similar reasons why the Weimar Republic in 1919 and Taiwan in 1997 both chose a semi-presidential constitution. Both were young democracies when they adopted a new constitution or amended a relatively new one. They did not have previous successful democratic experience. Therefore, a directly elected president as the head of state could to be viewed as a symbol of democracy. This also is a common factor for many young semi-presidential democracies in Central and Eastern Europe. Moreover, the president was granted some critical emergency powers with the expectation that, as a political leader, it would be appropriate for him to use them if the state fell into a state of crisis. The Republic of China's constitution was designed as a "rational parliamentary system" in 1945, which was deemed an improvement over the Weimar Constitution. However, after Taiwan's democratization, the constitutional structure was amended to once again provide for semi-presidentialism. Moreover, the president was given far more active political power.

Second, even though Taiwan's constitution made improvements over the Weimar Constitution and also provided for a powerful president, Taiwan's constitution functioned quite differently, thanks to the island's party system. The Weimar Republic's party system was much more fragmented than Taiwan's. Though the political parties in Taiwan were short of mutual trust, in order to avoid dissolution of the Legislative Yuan by the president, the legislative majority did not adopt a vote of no-confidence to replace the government. This meant that a consolidated minority government was possible and could function. However, the polarized and fragmentary party system in the Weimar Republic unfortunately was a lethal problem for the new democracy. Either a divided minority or a consolidated minority government was the norm, which became the Achilles' heel of the Weimar Constitution. Most importantly, there have been no anti-democratic parties, such as a Nazi or Communist Party, in Taiwan. All the parties compete for ruling power with each other within the political institutions. According to the discussion in this essay, we can see that complicated triangular relationships among the president, prime minister, and the parliament have been characteristic of semi-presidentialism. The party system is the critical variable in this triangle, or in shaping the political structure. Different party systems create different subtypes and constitutional

modus operandi.

Finally, a supplemental but not an institutional variable is the political condition of the country. The political conditions of Taiwan are more stable than those of the Weimar Republic. The functioning of the constitution of the Weimar Republic was unstable under the pressures of defeat and the terms of the Versailles Treaty. Moreover, the Wall Street Crash in 1929 was another critical disaster, which promoted the formation of a presidential government with emergency powers for the Reich president. The specific conditions of the party system and the semi-presidential constitution worked together to make the Weimar Republic's transitional tasks even more complex than they already were, thereby facilitating constitutional dictatorship.³⁰ By contrast, Taiwan's domestic and international affairs are stable. Though the threat from China is always present, Taiwan is not likely to fall into a serious state of emergency or witness the collapse of its government. The effectiveness of Taiwan's semi-presidentialism is dependent on the congruence or incongruence between the executive and legislative branches of government. This can make for a problem of inefficiency but does not challenge the survival of Taiwan's democracy.

Taiwan and the Weimar Republic are two cases in different times and are separated by many miles with respect to geography. However, they both classify as young democracies with semi-presidentialism. Moreover, Taiwan's constitutional amendments in 1997 can be considered as reversion to a semi-presidential system similar to that of the Weimar Republic. The task of this essay has been not only to clarify the relationship between Taiwan and the Weimar Republic, but also to provide some implications for new semi-presidential democracies. From the viewpoint of semi-presidentialism, the constitutional order in Taiwan is working with a dual-executive system. If the triangular relationships among the president, prime minister, and the parliament are a mutual chasm because of the fragmentary party system, constitutionalism will be unstable and the duration of governments will be short. This is precisely the experience of the Weimar Republic. However, if the executive system is coherent or the cabinet can survive with a parliamentary majority as in Taiwan, the semi-presidential constitution will function in a steady manner.

³⁰ Skach, *Borrowing Constitutional Designs*, 70.