

# **Taiwan's Semi-Presidential System Was Easy to Establish but Is Difficult to Fix A Comparison between the Constitutional Reform Efforts of 1997 and 2015**

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## **Abstract**

Taiwan's semi-presidential system was established in 1997, but demanded an overhaul in 2015. The constitutional reform efforts in both years began with the parliament delivering its proposal for revision by a three-quarters majority for approval at the next stage, and in both years the reform efforts were dominated by Taiwan's two largest political parties, the Kuomintang and the Democratic Progressive Party. Although the body responsible for approval in the second stage of passage was changed in 2005 from the National Assembly to the public, there was a significant similarity in 1997 and 2015 at the legislative stage. Why, therefore, did Taiwan's legislators adopt constitutional revisions in 1997 but fail to do so in 2015? Taiwan's two largest parties held diverse views concerning whether the appointment of the premier should be confirmed by the parliament, yet this difference existed at the time of both reform efforts. The real puzzle is why the consensus reached in 2015 did not result in constitutional amendments. This essay proposes that whether a constitutional reform can change the status quo is strongly affected by the separability of issue preferences. Accordingly, what must be compared is the package of issues rather than the individual issues themselves. Most likely, the decline of authoritarianism and growing consolidation of democratization has reduced room for party cooperation.

**Keywords:** Constitutional reform, democracy, semi-presidentialism, separability of preferences, Taiwan.

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## **The Puzzle**

**D**emocratization and constitutional revisions can come in tandem if new social forces unleashed by the former choose rules to institutionalize their

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ideas. Taiwan, a nascent democracy, experienced seven constitutional revisions between 1991 and 2005, rendering a reform every two years. Especially noteworthy are the constitutional reform of 1997, when direct presidential election and parliament's vote of no confidence were combined to establish Taiwan's semi-presidential system, and the attempted revision in 2015, which failed to reform this constitutional system. Both of the reform efforts focused on the adjustment of executive-legislative relations, both were dominated by Taiwan's two largest parties, the Kuomintang (KMT) and the Democratic Progressive Party (DPP), and both saw the two political camps attempt to reach a consensus on some issues.<sup>1</sup> Given the similar institutional environments in 1997 and 2015, why was there a difference in the outcomes of the reform efforts?

Although the body responsible for the approval of legislative proposals for constitutional amendments was changed in 2005 from the National Assembly to the public, the legislative stage for constitutional amendment was the same in 1997 and 2015. It seemed that the inability to adopt any amendment in 2015 was induced by the incompatibility of legislators' positions on issues.<sup>2</sup> Without a doubt, the political parties held different views on whether the appointment of the premier should be confirmed by the parliament, but this difference existed in 1997 as well. In both reform efforts, the constitutional decision makers shared consensus on some issues, so why did the common ground in 1997 lead to the establishment of semi-presidentialism, but in 2015 fail to result in passage of *any* proposal? This is an intriguing question, for consensus on some issues can lead to effective resolutions, even if legislators hold different positions on other matters.

The fundamental question is the definition of "issue positions." The main argument of this essay is that, even if a consensus seems to exist regarding some issues, preferences concerning individual issues may not be fixed; rather, they may vary according to how positions on issues are packaged. By this logic, the preferences of the 1997 reform effort concerning important issues can be evaluated independently, but those of the 2015 effort are mutually dependent. To verify this argument, the essay first examines the redefinition of issue positions and highlights its contribution to the literature. The essay then discusses the formation of partisan positions and explains why the results of

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<sup>1</sup> Constitutional revisions in Taiwan affect not only domestic interests but also external actors. For instance, when commenting on Taiwan's constitutional reform, an international publication viewed it as a spin away from the "one country, two systems" model proclaimed by the People's Republic of China (PRC). See J. R. Wu and Michael Gold, "Taiwan's New Political Voices Want More Openness on China Ties," *Reuters* (May 13, 2015), <http://www.reuters.com/article/2015/03/13/us-taiwan-politics-idUSKBNOM90JB20150313> (accessed July 1, 2016).

<sup>2</sup> Since we are comparing the same country over different time periods, many factors should be treated as parameters, such as the political culture that is dominated by respect for the educated class and the importance of personal connections in political life. Even the "five constitutional powers" principle embodied in Sun Yat-sen's doctrine remains unchanged.

the two constitutional reform efforts were divergent. The essay concludes by pondering the role of democratization in diminishing space for cooperation.

## What Are Separable Preferences?

Constitutional reforms seek to change the status quo, and almost all constitutional choices are adopted by voting for concerns listed on an agenda. Many theories have studied the rules for both voting and agenda-setting, but very few of them have applied these concepts to constitutional choice. Yet, two elements are essential to the theory of constitutional choice: the threshold for adopting an amendment and the nature of the positions on issues. The threshold ranges between simple majority rule to unanimous rule, and the difficulty to change the status quo increases with the number of votes needed to pass a resolution. The nature of the positions on issues is more complicated and must be explained in detail.

An issue is a matter to be discussed with the others, whereas positions on an issue are chosen through one's subjective will. The major question is whether a person can have a fixed preference regarding an issue no matter in which package of issues it is embedded.<sup>3</sup> Represent preferences as utilities and let  $u_i(x_i)$  be the utility on issue  $i$ . Then preferences are separable if, and only if,

$$u(x) = u_1(x_1) + u_2(x_2) \dots + u_m(x_m)$$

for  $m$  issues, so that the increase (decrease) of  $u_i(x_i)$  will monotonically increase (decrease)  $u(x)$ ; preferences are nonseparable if we cannot derive such an equation.<sup>4</sup> If a voter has a nonseparable preference regarding the issues, the preferences concerning the package of issues are nonseparable. This argument

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<sup>3</sup> Separable preferences almost never have been used to study constitution making. For one of the few exceptions, see the use of nonseparable preferences toward the limit of European integration in Daniel Finke, "Estimating the Effect of Non-Separable Preferences in EU Treaty Negotiations," *Journal of Theoretical Politics* 21, no. 4 (2009): 543-569. Other works tend to presume that the players have separable preferences so that the spatial model can be applied. See Bernard Steunenbergh, "Coordinating Sectoral Policy-making: Searching for Countervailing Mechanisms in the EU Legislative Process," in *A Constitution for the European Union*, ed. C. B. Blankart and D. C. Mueller (Cambridge, MA: MIT Press, 2004), 139-167.

<sup>4</sup> Understanding an issue by its context is similar to but not exactly the same as nonseparable preferences, unless the former implies the change in preferences by contexts. The (non)separable utility is a generalization of the (non)separable preferences of binary choices. For the definition of separable preferences of binary choices, see Thomas Schwartz, "Collective Choice, Separation of Issues and Vote Trading," *American Political Science Review* 71, no. 3 (1977): 999-1010, and Dean Lacy and Emerson M. S. Niou, "Nonseparable Preference and the Elections in Double-Member Districts," *Journal of Theoretical Politics* 10 (2000): 89-110. For the relationship between these two concepts, see Yutaka Nakamura, "SSB Preferences: Nonseparable Utility or Nonseparable Beliefs," in *The Mathematics of Preference, Choice and Order: Essays in Honor of Peter C. Fishburn*, ed. Steven Brams, William V. Gehrlein, and Fred S. Roberts (Berlin: Springer, 2009), 39-55.

has been formalized as the following theorem. In reference to separability of preferences, Schwartz states that, “when at least some of the issues can be decided upon independently and when there exists a feasible outcome not dominated by any other, then that outcome will automatically be chosen in the absence of vote trading.”<sup>5</sup> In other words, if a constitutional reform aimed to adjust the status quo and preferences were separable, sincere voting would achieve this goal. Conversely, for the status quo to be unchangeable, even if consensus seemed to exist (when only issues favoring its passage were evident), nonseparable preference would be a necessary condition.

How the theorem can be extended to constitutional modifications with veto players is our major concern. To facilitate analysis, players whose agreement is needed to pass a resolution are labeled the “pivot.”<sup>6</sup> Two factors are correlated with the changeability of the status quo. First, the key determinant is the separability of preferences. When preferences are nonseparable, the barrier to a successful reform is much greater than if the preferences are separable. Second, using the concept of utility, payoffs may vary by issue. This factor has little effect on the stability of the status quo, but it affects setting the agenda (i.e., the order in which issues are to be discussed). The cost of a reform is reflected in the establishment of the agenda—otherwise no one would be interested in controlling the sequence of discussions. Consequently, we postulate the following hypothesis:

When the cost of constitutional reform is not zero, the higher the percentage of issues with nonseparable preferences and the lower the payoffs of issues with separable preferences, the less likely for the status quo to be changed.

The next question is how the above hypothesis may enhance our understanding of the theories of constitutional choice. The following section elaborates further upon this topic.

## **Theories of Constitutional Choice**

Focusing on questions concerning constitutional choice, this section explores the theoretical implications of the separability of preferences. Before addressing the works on constitutional choice, a distinction must be made between separable preferences and issue linkage. Issue linkage is an analytical tool in negotiation theory which asserts that the discussion of two or more issues is a bargaining strategy that may increase the probability of reaching

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<sup>5</sup> Thomas Schwartz, “Collective Choice, Separation of Issues and Vote Trading,” *American Political Science Review* 71, no. 3 (1977): 999.

<sup>6</sup> In Taiwan’s case, a pivot makes a decision until a strong intraparty disagreement arises. In this sense, no formal rule is used to constrain the pivot’s decision making.

an agreement.<sup>7</sup> For example, dilemmas in collective action can be solved by adding another issue that may persuade the potential free riders to collaborate. It is true that, in this essay, some issues are linked when a choice is to be made. However, issue linkage does not imply nonseparable preferences. That is, issue linkage is a necessary step to having a nonseparable preference, but the two concepts are different. Issues can be linked even when the preferences are separable.

Several general theories can be considered concerning empirical studies on constitutional choice. To begin with, interest in political institutions revived in the 1980s at the ebb of institution-free behavioralism. As symbolized by the book, *Bring the State Back In*,<sup>8</sup> students began to notice the indispensable role of political institutions. “Historical institutionalism” analyzes political institutions as a source of individual power but also as a constraint on the exercise of this power. As for how an institution is chosen, historical institutionalism tends to be cautious and explains institutional formation by path dependency (the future is conditioned by what has happened before) and critical juncture (events that may disrupt the equilibrium of the current situation).<sup>9</sup> The question is: Can we use historical institutionalism to make predictions for what types of constitutions are likely to emerge, especially for those outside a travelled path? Later, the essay explains how preferences matter in answering this question.

The rational-choice-based new institutionalism is the flip side of historical institutionalism. An institution by definition is supposed to be stable. In particular, a constitution should endure for as long as possible so that actors can have long-term expectations of how others will behave. Accordingly, while historical institutionalism is good at explaining institutional change, rational-choice-based new institutionalism usually is used to interpret the effects of a stable institution. In keeping with the “structure-induced equilibrium” metaphors,<sup>10</sup> one aims to maintain a fixed institution in order to study the behavior it produces; even if there are multiple institutions to be studied, the focus tends to be on comparative statistics concerning the consequences of a specific institution rather than on why a particular institution was chosen. One

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<sup>7</sup> For a recent review of issue linkage and empirical tests of whether this strategy is effective, see the articles published by Paul Poast, “Does Issue Linkage Work? Evidence from European Alliance Negotiations, 1860 to 1945,” *International Organization* 66, no. 2 (2012): 277-310; id., “Can Issue Linkage Improve Treaty Credibility? Buffer State Alliances as a ‘Hard Case’,” *Journal of Conflict Resolution* 57, no. 5 (2013): 739-764; and id., “Issue Linkage and International Cooperation: An Empirical Investigation,” *Conflict Management and Peace Science* 30, no. 3 (2013): 286-303.

<sup>8</sup> Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., *Bring the State Back In* (Cambridge, UK: Cambridge University Press, 1985).

<sup>9</sup> For the formalization of path dependency, see the overview by R. A. W. Rhodes, Sarah A. Binder, and Bert A. Rockman, eds., *The Oxford Handbook of Political Institutions* (New York: Oxford University Press, 2006).

<sup>10</sup> Kenneth A. Shepsle and Barry R. Weingast, “Structure-induced Equilibrium and Legislative Choice,” *Public Choice* 37 (1981): 503-519.

even can argue that the more stable an institution (such as a constitution), the harder to explain its change. Endogeneity is another problem stemming from the approach of keeping institutions intact. For example, it is well known that electoral systems shape party systems,<sup>11</sup> an argument provoking many empirical tests. But can the causality be reversed? A party may choose a majoritarian electoral system precisely because it is likely to dominate the parliament.<sup>12</sup> Both approaches are exacerbated by the assumption that institutions do not change. For the purpose of this essay, therefore, the key question is how to study the changes in a constitution by what the constitution produces. We will come to this point later.

In the meantime, discussions about the choice of constitutional systems arise.<sup>13</sup> The first type of argument assumes an “engineering” perspective and addresses the likely consequences of a particular institutional arrangement. Linz started the debate: the presidential system is a danger because the winner takes all, leaving no political status for the defeated candidate.<sup>14</sup> Lijphart also cast some doubt on the presidential system because it could place the leader of a plurality group in power.<sup>15</sup> Some scholars have refuted these arguments, and have thought that the electoral system plays a more critical role than constitutional systems regarding unwanted consequences.<sup>16</sup> Moreover, the most typical winner-takes-all system can be found in the United Kingdom, a country that has adopted the pure parliamentary system, because the majority party controls almost all political powers.<sup>17</sup> As for semi-presidentialism, a hybrid of presidentialism and parliamentarism, the subtypes are so complicated that we cannot easily attribute its advantages or problems to presidentialism

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<sup>11</sup> Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (London: Methuen, 1963).

<sup>12</sup> Carles Boix, “Setting the Rules of the Game: The Choice of Electoral Systems in Advanced Democracies,” *American Political Science Review* 93, no. 3 (1999): 609-624, and Josep M. Colomer, “It’s Parties That Choose Electoral Systems (or, Duverger’s Laws Upside Down),” *Political Studies* 53, no. 1 (2005): 1-21.

<sup>13</sup> Some of the most well-cited studies in constitutional choice belong to this type. For example, Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (New York: New York University Press, 1997); Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven, CT: Yale University Press, 2012); George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton, NJ: Princeton University Press, 2002); and David J. Samuels and Matthew S. Shugart, *Presidents, Parties, Prime Ministers: A Framework for Analysis* (Cambridge, UK: Cambridge University Press, 2010).

<sup>14</sup> Juan J. Linz, “The Perils of Presidentialism,” *Journal of Democracy* 1, no. 1 (1990): 51-69.

<sup>15</sup> Lijphart, *Patterns of Democracy*, 105-129.

<sup>16</sup> Donald L. Horowitz, “Comparing Democratic Systems,” *Journal of Democracy* 1, no. 4 (1990): 73-79.

<sup>17</sup> Scott Mainwaring and Matthew S. Shugart, *Presidentialism and Democracy in Latin America*, (Cambridge, UK: Cambridge University Press, 1997).

or parliamentarism.<sup>18</sup> Again, we are not certain why a country selects a particular constitutional system and whether the “normative values” and the “partisan positions” are linked, let alone are we certain about the separability of preferences.

The theories reviewed above all pay inadequate attention to the final stage of constitution making: how votes are aggregated and by which rules. These will have a tremendous effect on the collective choice. It is here that preference structure plays an important role. First, while historical institutionalism tends to be vague about *ex ante* expectations of institutional arrangement, preference structure may help to narrow unlikely paths. From the separability of preferences, we also can distinguish between the likelihood of sincere or strategic voting when a choice is being made. Whether a constitutional choice reflects the true preferences of the reformers is a critical lesson of democracy. Second, regarding rational-choice-based new institutionalism, the tendency to observe the effects of an institution forces a theorist to keep the latter unchanged. What we can do is to apply the concept of “quasi-parameters”—changes that appear to be parameters in the short term but variables in the long run.<sup>19</sup> We have shown that nonseparable preferences resist change in the status quo, but that sometimes leaders who set the agenda may raise new and important issues with separable preferences that can upset the status quo. In this way, whether an institution is changeable depends on our horizon. Third, the selection of constitutional systems can be studied in a similar way. Bargaining over the final decision suggests the coexistence of several feasible outcomes. Whether the pivots have nonseparable preferences plays a decisive role. Presenting a nonseparable preference is a useful strategy for those who prefer maintaining the status quo to accepting alternatives proposed by the other parties. Conversely, smooth adoption of a reform suggests that the preferences are separable on the most critical issues.

In summary, preference structure is a minute illuminator enlightening the grand theories of constitutional choice. As long as constitutional choice is made by voting, the separability of preferences affects how individual positions can be aggregated into a collective decision. On this basis, the following sections validate the hypothesis that the separability of preferences matters by comparing Taiwan’s constitutional reform efforts of 1997 and 2015. Before setting the stage for these reforms, we discuss how democratization has shaped the issue preferences of the key players.

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<sup>18</sup> Giovanni Sartori, “Neither Presidentialism nor Parliamentarism,” in *The Failure of Presidential Democracy, Vol. 1: Comparative Perspectives*, ed. Juan J. Linz and Arturo Valenzuela (Baltimore: Johns Hopkins University Press, 1994), and Robert Elgie, “Variations on a Theme,” *Journal of Democracy* 16, no. 3 (2005): 98-112.

<sup>19</sup> Avner Greif and David Laitin, “A Theory of Endogenous Institutional Change,” *American Political Science Review* 98, no. 4 (2004): 639.

## Formation of the Issues

Despite the high frequency of Taiwan's constitutional revisions, some common goals have been shared by the political parties across time.<sup>20</sup> After the first direct presidential election in 1996, the Kuomintang, under the chairmanship of Lee Teng-hui, sought to maximize the president's powers, while the Democratic Progressive Party and the other opposition parties sought to augment the powers of the legislature, or parliament (Legislative Yuan). Nevertheless, the DPP also supported direct presidential election because Taiwan's residents would constitute the electorate, a significant symbol of independent sovereignty.

While the KMT remained the largest party in the 1990s, the National Assembly election held in 1996 made the DPP a veto player because the passage of amendments required the support of three-quarters of the body. The only compromise the two parties could achieve was a constitutional system combining the features of presidentialism and parliamentarism. A change in Taiwan's constitutional system was an immense project, involving vital matters such as the parliament's vote of no confidence, appointment of the premier, the president's power to dissolve the parliament, and the legislative threshold to override an executive veto. Other concerns included the status quo of the Taiwan Provincial Government (TPG), the jurisdiction of which was essentially equivalent to that of the Republic of China (ROC), and electoral systems for legislative elections. On the basis of the direct election of the ROC president, the KMT endeavored to remove the parliament's confirmation power over the appointment of the premier and to give the president active power to dissolve the parliament. Given its strength at that time, the DPP was able to assume positions opposite those of the KMT. As will be elaborated later, the two pivots agreed to abolish the parliament's confirmation power over the appointment of the premier, but did not allow the president to dissolve the parliament unless, first, the premier had been dismissed.

In 2000, the DPP's nominee, Chen Shui-bian, won the presidential election by gaining a plurality (but not a majority) of the votes, while the KMT

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<sup>20</sup> These constitutional reforms and their major accomplishments are the following: (1) 1991: definition of the electoral systems for the elections of the national legislative bodies and the two political entities across the Taiwan Strait; (2) 1992: election of the president of the Republic of China by residents living in the country's free area; (3) 1994: direct election of the president of the Republic of China by the people residing in the country's free area, and removal of the premier's countersignature for personnel appointed by the president; (4) 1997: removal of the parliament's confirmation power for the appointment of the premier and downsizing of the Taiwan Provincial Government; (5) 1999: definition of both the electoral system for and the size of the National Assembly; (6) 2000: redefinition of the electoral system and powers of the National Assembly; and (7) 2005: change of the electoral system for the election of the Legislative Yuan. Accordingly, only the 1997 reform dealt with a significant adjustment of executive-legislative relations.



remained the parliament's majority party. According to the constitutional reform of 1997, the president could not dissolve the parliament unless the premier first had been unseated. However, the legislators preferred to keep the existing premier in office because the parliament had no power to confirm the appointment of the next premier. To minimize the probability of divided government, some regarded the timing and formula to elect the legislators important. In the constitutional reform of 2005, Taiwan switched from the single nontransferable vote (SNTV) under the multimember district system to the mixed-member majoritarian (MMM) system and extended the term of the legislators from three years to four, hoping that the majoritarian-leaning electoral system and the simultaneous electoral timing would reduce the chances of a minority government.

Constitutional revision turned out to be more complicated than expected. The first unified government under the new electoral system was formed in 2008. Hong-Ming Chen and Jung-Hsiang Tsai discovered that executive-legislative incongruence under President Ma Ying-jeou, Chen Shui-bian's successor, remained prevalent.<sup>21</sup> Hong-Ming Chen also found that, although the president, rather than the premier, officially was the proposer of major policy under Taiwan's semi-presidential constitution, in reality, the president's legislative influence was limited because it was the premier who faced the parliament.<sup>22</sup> Lin demonstrated that the parliament could create dissonance between the premier and the president because the executive and legislative powers were separated, and the president did not hold veto power.<sup>23</sup> Such studies point to the innate defects of Taiwan's semi-presidential constitution: the president, as the primary decision maker, can neither chair the cabinet meeting nor actively dissolve the parliament. By this design, a serious coordination problem hinders communication between the executive branch of the government and the parliament, even though both may be controlled by the same party.

The cross-Strait agreements signed between Taipei and Beijing are a litmus test for the executive-legislative tension under the unified government. The KMT government sought to minimize legislative oversight of the Economic Cooperation Framework Agreement (ECFA), signed on June 29, 2010, and suggested that the Legislative Yuan only could accept or reject, rather than revise, this agreement. Although ECFA was passed as a framework agreement,

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<sup>21</sup> Hong-Ming Chen and Jung-Hsiang Tsai, "Impact of the Electoral Cycles on Government Formation in Semi-Presidentialism: A Comparative Study," *Soochow Journal of Political Science* 26, no. 2 (2008): 117-180.

<sup>22</sup> Hong-Ming Chen, "The President's Position Taking of Bills and His Influence on Legislation under Semi-Presidentialism: The Experience of President Ma Ying-jeou," *Soochow Journal of Political Science* 30, no. 2 (2012): 1-71; in particular, see 48-49.

<sup>23</sup> Jih-wen Lin, "A Veto Player Theory of Policymaking in Semipresidential Regimes: The Case of Taiwan's Ma Ying-jeou Presidency," *Journal of East Asian Studies* 11, no. 3 (2011): 407-435.

subsequent agreements were more controversial. In Ma's second term as president, the Cross-Strait Agreement on Trades in Services (CSATS), a follow-up agreement to ECFA, aimed to liberalize investment by service industries across the Strait. Again, the executive branch insisted that the parliament could not have an item-by-item vote on the CSATS, with the rationale that the rejection of a single article might place the entire agreement at risk. When a KMT legislator attempted to move promptly on CSATS, the student-led Sunflower Movement erupted on March 18, 2014. That students could occupy the parliament for twenty-three days revealed that the legislators—some of whom perhaps were from the KMT—were dissatisfied with the government's behavior.

The Sunflower Movement also opened the gate for constitutional reform. Concerns included restoring legislative power to confirm the appointment of the premier, lowering of the voting age, and updating the constitution's human rights list, among other objectives. As will be explained in the next two sections, the success of constitutional reform is strongly affected by whether partisan preferences regarding the important issues are separable.

## **The 1997 Constitutional Reform**

This section examines in detail the 1997 issue preferences of the KMT and the DPP to determine whether they were separable. We would expect that, even when taking into account the cost of constitutional reform, amendments still would have been passed if the preferences regarding important issues were separable. However, as will be demonstrated in the next section, separable preferences do not necessarily lead to successful constitutional reform if the issues are of minor importance to the pivots.

Taiwan's 1997 constitutional reform was a significant event because it marked the establishment of the semi-presidential system, following Taiwan's first direct presidential election in 1996. As the two pivots prepared to establish the semi-presidential system, the most vital issue to the KMT was the president's direct control of the premier. Prior to the 1997 reform, presidential appointment of the premier had to be approved by the parliament. The most critical issue for the DPP, an independence-leaning party, was not so much the selection of a constitutional system as it was the status of the TPG—abolishment or significant downsizing of this administrative unit could help to normalize Taiwan as a country. The KMT wished to downsize (rather than abolish) the TPG and allow the president to actively dissolve the parliament (before dismissal of the premier by the Legislative Yuan), whereas the DPP hoped to abolish the TPG and permit the president to dissolve the Legislative Yuan only if a vote of no confidence to dismiss the premier first were passed (passive dissolution).

To probe the bottom lines of the political parties, the National Development Conference (NDC, 國家發展會議) was convened in December 1996. The major points of debate included presidential appointment of the premier; the

parliament's vote of no confidence regarding the premier; dissolution of the Legislative Yuan; the powers and functions of the Legislative Yuan and the National Assembly; public referenda; the sizes and terms of the Legislative Yuan and the National Assembly; the electoral systems to govern future elections; cross-Strait relations; and the TPG. Basically, the 1997 constitutional reform effort followed the issue agenda of the NDC. Among the multitude of proposals raised in this reform effort, four were especially critical and suffice to demonstrate the adoptability of the issues. These issues and the respective alternative positions held by the pivots are listed below.

1. Appointment of the premier: (1) maintain the status quo, or (2) remove the Legislative Yuan's confirmation power.
2. Vote of no confidence: (1) maintain the status quo, or (2) enable the Legislative Yuan to pass a vote of no confidence to dismiss the premier.
3. Dissolution of the Legislative Yuan: (1) maintain the status quo, (2) permit the president to dissolve the Legislative Yuan before passage of a vote of no confidence to dismiss the premier (active dissolution), or (3) permit the president to dissolve the Legislative Yuan only following a vote of no confidence to dismiss the premier (passive dissolution).
4. TPG: (1) maintain the status quo, (2) downsize the TPG (halt the elections for the Governor and Provincial Council of the TPG) and simplify its organization, or (3) abolish the TPG.

Although all of these matters were important, the one with the highest utility for the KMT was appointment of the premier. For the DPP, it was the TPG. In other words, the pivots had to place these two concerns on the bargaining table.

Table 1 shows clearly that, for both pivots, preferences were separable because, no matter how the issues were considered, the ordinal sequence of the utilities remained the same. Notice that "the dissolution of the Legislative Yuan" was linked with "the Legislative Yuan can pass a vote of no confidence." Since the two pivots had little disagreement regarding the parliament's ability to sack the premier, the focus was on the timing of the president's dissolution of the parliament.

Even after taking into account the cost of the reform, the separable preferences of the critical issues still could lead to a changeable status quo.<sup>24</sup>

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<sup>24</sup> Also see James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), and Dennis C. Mueller, ed., *Perspectives on Public Choice* (Cambridge, UK: Cambridge University Press, 1997).

Table 1. Preferences on the Agenda of the 1997 Constitutional Reform Effort

Issue	KMT	DPP	Note
Appointment of Premier	1. Remove confirmation power 2. The status quo	1. The status quo 2. Remove confirmation power	Most critical concern of the KMT
Vote of no confidence	1. Yes 2. The status quo	1. Yes 2. The status quo	If a vote of no confidence is passed, the parliament can be dissolved
Dissolution of parliament	1. Active dissolution 2. Passive dissolution 3. The status quo	1. Passive dissolution 2. Active dissolution 3. The status quo	
TPG	1. Downsize 2. Abolish 3. The status quo	1. Abolish 2. Downsize 3. The status quo	Most critical to the DPP

Source: A summary of the Central Daily News, the United Daily News, and the Central News Agency.

Note: Numbers indicate preference order revealed at the beginning of the negotiation.

Since the two pivots engaged in vote trading across their critical issues, the benefits received by each side should have been higher than that from sincere voting. In fact, the importance of their traded issues *enlarged* the total gains because of the addition of the TPG issue. Meanwhile, the enlarged space for consensus increased the necessity of agenda-setting.

Why did the TPG issue facilitate the establishment of the semi-presidential system? It is because the KMT could not agree with the DPP’s goal to abolish the TPG, thereby leading to greater concessions on the other issues. Except for the KMT’s insistence on the removal of the parliament’s confirmation power, the DPP made gains on other issues such as the president’s passive dissolution power regarding the parliament and the lowering of the parliament’s overriding threshold. Eventually, both pivots found the final result better than retaining the status quo.

The 1997 constitutional reform indicates that changing the status quo hinges more on the separability of preferences than on the complexity of issues. To test the flip side of the hypothesis, the next section uses the constitutional reform of 2015 to gauge the impact of nonseparable preferences.

### The 2015 Constitutional Reform Effort

Taiwan’s experience with a semi-presidential system—especially between 2008 and 2016—shows the flaws of institutional design irrespective of the

dividedness of government. Since the constitutional revision efforts held in 1997 and 2015 had almost identical legislative procedures, it is worthwhile to study whether the abortive reform in 2015 had something to do with the nonseparable preferences of the key issues.

The mismatched power and accountability under Taiwan's constitutional system can be seen in the communication problem occurring among the president, the premier, and the parliament. The Sunflower Movement took place exactly when the personal relationship between the president and the speaker of the Legislative Yuan soured and no channels could institutionalize the negotiations between the two sides. As could be expected, the demand for constitutional reform rose again. The major proposals covered three areas: (1) executive-legislative relations, (2) voting age, and (3) human rights and other issues. As discussed above, the KMT and the DPP may have taken different stances on executive-legislative relations, but that did not imply a lack of consensus on the other issues.

The formal proposal for constitutional revisions was launched by thirty-seven legislators from the KMT, the DPP, the Taiwan Solidarity Union (TSU), and the People First Party (PFP) in a December 12, 2014 press conference, two weeks after the KMT suffered a disastrous defeat in the local elections.<sup>25</sup> These legislators assembled a Constitution Amendment Committee in the Legislative Yuan (CACLY, 立法院修憲委員會).<sup>26</sup> On December 17, 2014, a DPP legislator proposed updating the human rights articles in the constitution and lowering the voting age to eighteen; the same legislator also suggested that the threshold to amend the constitution should be lowered.<sup>27</sup> On January 15, 2015, the KMT proposed restoring the legislative power to confirm the appointment of the premier, while the DPP proposed that the president should have the active power to dissolve the Legislative Yuan.<sup>28</sup> After the political parties finished

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<sup>25</sup> For the signatures, see Yen-ting Chen and Hui-ping Chen (陳彥廷、陳慧萍), "37 Legislators Proposed to Form the Constitution Amendment Committee in the Legislative Yuan" (跨黨派 37 立委提案要求成立修憲委員會), *Liberty Times* (December 12, 2014), <http://news.ltn.com.tw/news/politics/paper/838395> (accessed June 25, 2016).

<sup>26</sup> For the organization of the CACLY, see *Organic Regulations of Committee on Constitution Amendment Committee, Legislative Yuan* (立法院修憲委員會組織規程), [http://www.ly.gov.tw/02\\_introduce/0204\\_comml/intro.action?comtcd=29](http://www.ly.gov.tw/02_introduce/0204_comml/intro.action?comtcd=29) (accessed June 25, 2016).

<sup>27</sup> *Liberty Times*, "DPP Legislator Li-chun Cheng Proposed to Update the Human Rights Articles in the Constitution" (綠委提修憲案·擴充憲法人權清單), *Liberty Times* (December 17, 2014), <http://news.ltn.com.tw/news/politics/breakingnews/1183641> (accessed June 25, 2016), and Ya-chen Tai (戴雅真), "Legislator Li-chun Cheng Proposed to Amend the Human Rights Articles and Lower the Threshold of Constitution Amendment" (鄭麗君提案人權入憲降修憲門檻), *Central News Agency* (中央社), <http://www.cna.com.tw/search/hydetailws.aspx?qid=201412170408> (accessed June 25, 2016).

<sup>28</sup> The DPP's proposal regarding the president's dissolution power was based on the advice of a scholar. In response to the KMT's proposal to restore the Legislative Yuan's power to confirm the appointment of the premier, the DPP made a counter-proposal that the president must be able to dissolve the Legislative Yuan prior to passage of an ensure motion, which would make

drafting their proposals, the constitutional reform effort was launched in the Legislative Yuan on March 4, 2015.

The following list enumerates the major issues and the stances taken by the political parties. A party's position is defined by what was formally stated in the documents prepared by the CACLY, even though intraparty noises might still have existed.<sup>29</sup>

1. Human rights. When the Constitution of the ROC was adopted on January 1, 1947, the scope of human rights was much smaller than what it was in 2015. This issue of protecting expanded human rights was initiated by scholars working on this topic and endorsed by the DPP.<sup>30</sup> This was an issue for which the other parties (such as the KMT) lacked good reasons to voice their disapproval.
2. Voting age. Most democracies have used age eighteen as the start of the voting age. Eric Chu, the KMT's chairperson at that time, asserted that the KMT's top priority was to lower the voting age to eighteen.<sup>31</sup>
3. Absentee voting. As the KMT expressed it, enlarged suffrage should include not only young persons between eighteen and twenty years old, but also people living temporarily outside their voting districts.<sup>32</sup> The KMT justified this reform as a global trend, whereas the DPP did not think a constitutional amendment was needed to achieve this goal.

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Taiwan's people the ultimate arbitrator in a snap election. See Kang-yan Liu (劉康彥), "DPP Held the Constitutional Reforms Conference and Discussed the Draft Report of 'Modified Presidential-Parliamentary Democracy'" (民進黨憲改會議，黨中央擬提「改良的總統議會民主制」), *ETtoday.net* (January 29, 2015), [http://www.ettoday.net/news/20150129/460601.htm?feature=fashion&tab\\_id=110](http://www.ettoday.net/news/20150129/460601.htm?feature=fashion&tab_id=110) (accessed June 25, 2016).

<sup>29</sup> Since no roundtable was held to address the 2015 constitutional reform effort, the proceedings of CACLY have been used to identify the positions of the political parties. See 2015, CACLY, [http://www.ly.gov.tw/02\\_introduce/0204\\_comm/business/businessFolderList.action?comctcd=29&id=46981&itemno=02082900](http://www.ly.gov.tw/02_introduce/0204_comm/business/businessFolderList.action?comctcd=29&id=46981&itemno=02082900) (accessed July 3, 2016).

<sup>30</sup> See Fang-shuo Fu (符芳碩), "Scholars: People Would Be Ashamed of the Legislative Yuan If the Constitutional Revision Fails to Adopt the Human Rights List" (修憲若不納入人權清單，學者：立院愧對人民), *newtalk.tw* (May 7, 2015), <http://newtalk.tw/news/view/2015-05-07/59857> (accessed June 25, 2016). In this public hearing, a scholar complained that only one public hearing was held concerning human rights.

<sup>31</sup> See Pei-wen Chiu (邱珮文), "Eric (Li-lun) Chu: 18 Years Old and Absentee Voting Are Global Trends" (朱立倫：18歲、不在籍投票都是世界趨勢), *newtalk.tw* (March 27, 2015), <http://newtalk.tw/news/view/2015-03-27/58307> (accessed June 30, 2016).

<sup>32</sup> There are many types of absentee voting. For the KMT's proposal, see a legislator's opinion in a public hearing, "Report of Public Hearing no. 3 and 4 of CACLY" (立法院修憲委員會公聽會報告·第三場及第四場) (May 1, 2015), <http://www.ly.gov.tw/saveAs.action?comctcd=29&fileName=201505041720270.pdf> (accessed June 25, 2016).

4. The confirmation power of the parliament on the appointment of the premier.<sup>33</sup> Initiated by the KMT, the justification for this reform was that the best means to fulfill the constitutional requirement of the premier's responsibility to the parliament was to let the appointment of the former be confirmed by the latter. For this reason, the KMT placed considerable emphasis on this reform.<sup>34</sup> The DPP, on the other hand, was hesitant to approve this revision, claiming that this change might produce a conflict between the premier and the president and blur the lines of political accountability.
5. The threshold to amend the constitution. Initiated by the DPP, the current threshold required an amendment to be proposed by a three-quarters legislative majority and approved by more than half of the electorate in the most recent presidential election. The DPP sought to reduce the threshold, without specifying the exact formula.
6. Electoral system. This reform reflected the dissatisfaction of the small parties regarding the current electoral system not only because of its single-member simple plurality tier but also because of the 5 percent threshold needed to obtain seats in the proportional representation (PR) tier. Owing to the disgruntlement of Taiwan's small parties, a proposal was raised to decrease the threshold to 3 percent, to which neither the KMT nor the DPP voiced their disagreement.
7. The status of the Control Yuan and the Examination Yuan. The DPP considered these two institutions redundant, but the KMT refused to abolish these institutions.<sup>35</sup>

No doubt there were disagreements between the two pivots on many issues. But some issues appeared to be negotiable, such as voting age and changes to the electoral system. Given the existence of consensus on some issues, the factor that prevented the KMT and the DPP from acting on these areas is worth explaining. First we summarize the issue positions, then explore the likely answers.

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<sup>33</sup> See Ying-yu Tseng (曾盈瑜), "KMT Member of CACLY Focuses on Confirmation Power of the Parliament on the Appointment of the Premier" (國民黨修憲小組，聚焦閣揆同意權), *Central News Agency* (January 15, 2015), [http://www.ly.gov.tw/03\\_leg/0301\\_main/leg\\_news/newsView.action?id=119457&lgn=00104&stage=8&atcid=119457](http://www.ly.gov.tw/03_leg/0301_main/leg_news/newsView.action?id=119457&lgn=00104&stage=8&atcid=119457) (accessed June 25, 2016).

<sup>34</sup> *Ibid.*, 34.

<sup>35</sup> See DPP, "DPP Advocated Constitutional Reform at This Stage. Chairperson Tsai Ing-wen: Constitutional Revisions Should Consider the Long-term Interests of the Nation" (民進黨提出現階段憲改主張，蔡英文：修憲要看國家長遠利益), DPP (March 30, 2015), [http://www.dpp.org.tw/m/index\\_content.php?sn=7790](http://www.dpp.org.tw/m/index_content.php?sn=7790) (accessed July 3, 2016).

Table 2 reports the positions of the two pivots on the most important issues. It is quite obvious that the KMT did not have a separable preference regarding “voting age and absentee voting.” “Absentee voting” was more preferable to the KMT than “no absentee voting,” and the party claimed that “18 years old, plus absentee voting” was its formal proposal. If “18 years old and no absentee voting” was the worst choice for the KMT, then we have the rank of preferences shown in table 2. “No absentee voting” ranked higher than “absentee voting” for the DPP. For the DPP, “18 years old, with no absentee voting” was the best option, and “20 years old, with absentee voting” was the worst. It is debatable how the DPP ordered the remaining two alternatives, but the result does not change the KMT’s nonseparable preferences on “voting age and absentee voting.” Therefore, the nonseparable preferences could prevent the two pivots from reaching a compromise. Given this structure, it is unlikely that the KMT would have “delinked” the two issues. Regarding the confirmation power of the parliament, another critical concern, the KMT and the DPP held contradictory stances. They also held opposing views on whether

Table 2. Issue Preferences on the Reform Agenda in the 2015 Constitutional Reform Effort

Issue	KMT	DPP	Note
Human rights	1. Add 2. The status quo	1. Add 2. The status quo	An issue initiated by scholars
Voting age and absentee voting	1. 18 years old if absentee voting is passed 2. 20 years old if absentee voting is passed 3. 20 years old if absentee voting is not passed 4. 18 years old if absentee voting is not passed	1. 18 years old if absentee voting is not passed 2. 20 years old if absentee voting is not passed 3. 18 years old if absentee voting is passed 4. 20 years old if absentee voting is passed	Critical issues for the two pivots; KMT’s position is conditional on absentee voting; DPP insisted that absentee voting should be defined by law rather than the constitution
Threshold of constitutional amendment	1. The status quo 2. Reduce	1. Reduce 2. The status quo	An important issue for the DPP
Electoral systems	1. Reduce to 3% 2. The status quo	1. Reduce to 3% 2. The status quo	An issue of concern to small parties
Control Yuan and Examination Yuan	1. The status quo 2. Abolish	1. Abolish 2. The status quo	

Source: Author’s summary of existing studies or government archives.

Note: Numbers indicate preference order revealed at the beginning of the negotiation. The second and third preferences of the DPP’s position on “voting age and absentee voting” can be switched, but the KMT’s preferences remain nonseparable.



the threshold to amend constitutional revisions should be reduced and whether the Control Yuan and the Examination Yuan should be abolished. The only hope was that human rights concerns and a reduction of the threshold to gain PR seats were separable preferences, which might produce some degree of consensus about revising the constitution.

After the CACLY sent its proposal to the “Consultation Mechanism Among Political Parties” (朝野黨團協商)<sup>36</sup> on June 16, 2015, no concessions were made to adopt any revisions because the KMT caucus insisted that the votes on lowering the voting age and absentee voting must be made together.<sup>37</sup> But why was it that the consensuses on human rights and the reduction of the threshold to obtain PR seats were not turned into proposals for constitutional amendments? Two possibilities exist.

First, issues advanced by legal scholars and small parties were far from the core interests of the two pivots, despite their seemingly separable preferences on these issues. Consensuses on these issues were thus insufficient to cover the cost of persuasion regarding constitutional reform. Moreover, had these two issues been modified and turned into proposals for constitutional amendments, the two pivots would have had to explain to the public why compromise could not also be extended to issues on which they seemed to share consensus. Second, it is also possible that the pivots were not genuinely in support of reform in the two areas—when one side was reluctant to show ardent support for change, the other side might follow. Of what we are certain is that nonseparable preferences regarding critical issues prevented the pivots from revising the status quo in the 2015 constitutional reform effort.

## Conclusion

The constitutional reform efforts of 1997 and 2015 warrant comparison. In the legislative stage, they were identical in procedure but divergent in content—a semi-presidential system was successfully established in 1997, but could not be renovated in 2015. Cultural and institutional factors can be only parameters; we need to show how the stances of the two pivots, which was the major variable, were different. This essay highlights a concept commonly addressed by legislative studies but rarely mentioned in the literature concerning constitutional choice: the separability of preferences. This study shows that

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<sup>36</sup> Taiwan’s two major parties plus significant small parties, each with at least five members of parliament, are given seats at the negotiation table in this body. The rule of decision is consensus, which gives even the smallest party with five members of parliament a veto power in this “consultation” process.

<sup>37</sup> See Fang-ho Su (蘇方禾), “Consultation of Constitution Amendments Failed Again: DPP Said That the KMT Wanted to Decouple the Dates of Elections for President and Legislators” (修憲又破局·綠：國民黨想總統立委脫鉤選), *Liberty Times* (June 12, 2015), <http://news.ltm.com.tw/news/politics/breakingnews/1350365> (accessed July 3, 2016).

separable preferences explain the outcomes of constitutional revisions when the preferences are not affected by other concerns to which they are compared. The variant weights placed on issues on the agenda do not matter much regarding change to the status quo, but have a role in agenda-setting: when persuasion and negotiations involve some cost, issues of minor importance may be kept intact, even if there is consensus to change them.

In 1997, the two pivots had separable preferences on critical issues of constitutional reform, giving them the incentive to modify the status quo, even in light of the considerable cost of negotiation. Introduction of the seemingly irrelevant TPG issue further enlarged room for cooperation. The vital issues of the two pivots were different but not in conflict, allowing the separable preferences on these issues to be traded and to produce a better outcome than if both had made their sincere choices.

However, vote trading mismatched power and accountability regarding Taiwan's semi-presidential system, and pressures to alter the system gave rise to the constitutional reform effort of 2015. The KMT, expecting the 2016 presidential election to be a tough race, yearned for reinstatement of the parliament's confirmation power. Tsai Ing-wen, the DPP's presidential nominee at that time (and always the front-runner in opinion polls), had been hesitant to give this power to the legislators. For the KMT, lowering the voting age was linked with absentee voting, creating a nonseparable preference unfavorable to collaboration. Although the two pivots seemed to have reached a consensus to update the list of human rights and reduce the threshold for small parties to obtain a PR seat, these issues were not significant enough to compensate for the cost of bargaining. Ultimately, no amendments were made to the constitution.

The comparative study of two constitutional reform efforts with almost identical legislative backgrounds has broad implications. Regarding the study of constitutional choice empirically, the structure of the actors' preferences illustrates an important dimension that could have an important effect on the final choice. The separability of preferences is nothing new—it has been widely used to study legislative behavior and vote trading in legislative studies. If constitutional choice is made by voting, this concept can be applied immediately. Variables of preference structure also can bridge theories of historical institutionalism, rational-choice-based new institutionalism, and constitutional classification. In the context of these general theories, issue structure clarifies why some institutional reforms are possible and others impossible, even when the parameters look the same. From this perspective, Taiwan is a special case of a general theory of preference separability.

We also learn from this essay how the preferences of the constitutional decision makers might be shaped by the process of democratization. At the beginning of democratization, common distaste for the authoritarian past might have unified different factions and pushed their representatives to write a new constitution. In Taiwan's case, the chairs of the DPP and the KMT both supported direct presidential election, with the DPP hoping it would demarcate

the boundary of a sovereign state, and the KMT envisioning such election consolidating the regime's legitimacy. By proposing an alternative solution to power succession, the conservatives became a minority. Once the two pivots found that a semi-presidential system was the only compromise, other issues were raised to satisfy the demand of each side. Especially interesting was the topic of the TPG, which was only remotely correlated with the constitutional system but nevertheless was placed on the negotiation table to broaden the scope of cooperation.

Although the loopholes of the constitution were basically institutional, presidential elections forced the political parties to adopt a partisan perspective regarding the necessity for reform. Issues raised by the KMT mostly related to its chance of winning the 2016 presidential election, such as the linkage between voting age and absentee voting and the restoration of the parliament's confirmation power. The DPP, on the other hand, was cautious about the KMT's proposals. Although a consensus was forged on human rights and the threshold to obtain PR seats, these two proposals were far from the core interests of the two pivots. The contrasts between 1997 and 2015 show the importance of understanding Taiwan's constitutional reforms in the context of its democratization.