



How are the powers of the president decided? Vote trading in the making of Taiwan's semi-presidential constitution

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Jih-wen Lin

Academia Sinica, Taiwan

Abstract

To establish an unambiguous source of accountability, a semi-presidential constitution can either allow the president to dominate government formation and dissolve the parliament without a prior vote of no confidence being passed or it can reverse the arrangement of these powers. Accordingly, Taiwan is an unusual case of semi-presidentialism because the president can unilaterally appoint the premier but cannot actively dissolve the parliament, so the electorate is seldom called upon to evaluate the responsibility of the constitutional agents in a snap election. Vote-trading theory offers a reasonable explanation for this puzzling situation by showing how seemingly unconnected issues can be voted on as a package. In Taiwan, the choice of presidential powers was complicated by the sovereignty issue, leading the reformers of the constitution to deny the legislature the power to confirm the president's appointment of the premier in exchange for downsizing the Taiwan Provincial Government. This is exactly what vote-trading theory foresees: votes on different issues may be traded if no "pivot" finds the status quo to be his/her favorite option. By demonstrating how the linking of unconnected issues can obstruct institutional design, vote-trading theory expands our understanding of constitutional choice.

Keywords

Constitutional choice, vote trading, semi-presidentialism, presidential powers, Taiwan

Introduction

All semi-presidential systems have a popularly elected president who appoints a premier to head the cabinet, and a parliament that can hold cabinet ministers accountable by proposing a vote of no confidence in the premier (Elgie, 2007). Under this general principle, two subtypes can be derived from the relationship between the president, the premier, and the parliament. In the first subtype,

Corresponding author:

Jih-wen Lin, Institute of Political Science, Academia Sinica, 128 Academia Road, Section 2, Nankang, Taipei 11529, Taiwan.

Email: ljw@sinica.edu.tw

the president can unilaterally choose the premier and dissolve the parliament without a vote of no confidence being passed. Thus the president takes the lead and can test his/her credibility in a snap parliamentary election. In the second subtype, the appointment of the premier requires legislative approval and the parliament cannot be dissolved without the premier being sacked first, so the majority party (or coalition) in the parliament plays the determining role. Most semi-presidential regimes have adopted one or other of these two formulas.

Nevertheless, some exceptions exist and deserve further exploration. A good example is Taiwan, in which the president chooses the premier without legislative confirmation but cannot actively dissolve the parliament. Under this system, the parliament is unlikely to pass a vote of no confidence, as the president can either name another unpopular premier or dissolve the parliament and put all the legislators out of a job. The best evidence for this can be found in 2000, when Taiwan experienced its first transfer of power. The newly elected president, Chen Shui-bian of the Democratic Progressive Party (DPP), was inaugurated on May 20 at a time when the parliament was still dominated by the Kuomintang (KMT, the nationalist party). The first premier chosen by President Chen was Tang Fei, a retired general. Chen appointed Tang without any prior negotiation with the opposition-controlled parliament as he thought Tang's background as a member of the KMT would reduce parliamentary resistance. It turned out that not even Premier Tang could resolve the divergent positions taken by Chen and the opposition majority on the construction of a fourth nuclear power plant in Taiwan. Besieged from both sides, Tang resigned after only 136 days in office, to be succeeded by premiers who were members of the DPP. Most likely, this experience taught Chen that a DPP premier would both enhance the unity of the government and be unlikely to be subject to a vote of no confidence, as that would lead to the dissolution of the parliament.

Chen attracted some criticism for subsequently refusing to select premiers from the opposition party, the course of action taken by French presidents whenever an opposition alliance holds a majority in the National Assembly. Although the French constitution exerted a considerable influence over the making of Taiwan's semi-presidential system (Cabestan, 1997), Chen's critics overlooked the fact that the French president can dissolve the National Assembly before the premier is unseated. It is easy to see what the relationship is between the sharing of executive powers and the president's power to dissolve the parliament. Whenever a French president finds that power sharing is no longer necessary, he/she is free to dissolve the National Assembly and make French voters the ultimate arbiters. The chain of accountability is broken if a president does not have power of dissolution—there would be no snap election unless the premier is unseated, but legislators have little incentive to pass a vote of no confidence that might endanger their own seats. So the relationship between the executive and the legislature in Taiwan does appear puzzling. What is the explanation for Taiwan's constitutional choice?

In an attempt to answer this question, this article will focus on the president's powers to appoint the premier and dissolve the legislature discussed above. In the following empirical analysis, we do not use the well-known typology proposed by Shugart and Carey (1992: 23–24) because the president's power to dismiss the premier is not a commonly defined constitutional arrangement.¹ In a cross-national comparison, we should start from what is stipulated in most constitutions.² In the next section it will be demonstrated that the arrangement regarding the powers of the president in Taiwan is different from the arrangements in France and most other semi-presidential regimes. We will then try to ascertain whether vote-trading theory can be used to solve the Taiwan puzzle.

Taiwan's position among the world's semi-presidential systems

A brief examination of the world's semi-presidential constitutions reveals that the Taiwan case is unusual. Individual scholars produce different lists of semi-presidential regimes, among which

Siaroff (2003) is a detailed count based on the powers of the president.³ To ensure that we do not include presidents whose power to appoint the premier is only symbolic, we add a condition that the president should also play a central role in government formation (Siaroff, 2003: 204). To ensure that the constitution is effective, we focus on democracies in which transition of power is normally peaceful.

Siaroff lists thirty-eight semi-presidential democracies. We find that in most of these cases presidential powers are designed in a consistent way: a president can appoint the premier without legislative confirmation and dissolve the parliament with little constraint, or he/she can do neither of these things. Using these institutional powers as screeners, the following regimes (ordered alphabetically) appear to be headed by a strong president with constrained dissolution power:⁴

1. Finland (1956–1994). In this period, the Finnish president was active in the selection of premiers. Under the 1919 constitution, the president could dissolve the parliament after some conditions were met.
2. Mozambique. Under the constitution, the president, as head of state, appoints and dismisses the premier but is also the head of government. The president may dissolve the assembly if it rejects the government's program and he/she may then call for a new legislative election.
3. Peru. Under the constitution, the president appoints and removes the premier. While the 1979 constitution allowed the president to dissolve the congress after it had censured cabinet members three times, the current (1993) constitution reduces this to two times.
4. Russia (after 1993). The president's appointment of the premier of the Russian Federation must be agreed to by the State Duma (parliament); if the nominated premier is rejected three times, the president can dissolve the parliament or appoint another premier.

It is, in fact, debatable whether Finland and Mozambique are genuine semi-presidential regimes at all, as before 1994, the Finnish president was indirectly elected, and in Mozambique, the president is also the head of the government. Peru and Taiwan appear similar, even though the Peruvian constitution allows the parliament to censure the cabinet two times; a similar argument can be made for Russia. When compared with most of the semi-presidential regimes, Taiwan's constitutional design does seem to be exceptional.

As will be explored in the next section, Taiwan's current semi-presidential system may have been shaped by the trading of votes on issues involving the arrangement of constitutional powers and Taiwan's idiosyncratic sovereignty status. We will first review the literature on constitutional choice and then address the likely contribution of vote trading.

How the issue of vote trading in Taiwan's constitutional reform can enrich the literature

When we investigate the general nature of constitutional choice, several theories are worth considering. The classification of constitutional systems is a popular approach, but it is typically concerned with the consequences of the choice rather than the bargaining that takes place before that choice is made.⁵ Constitutional study is another frequently used methodology but the emphasis is mainly normative rather than empirical. The puzzle at the heart of this article—why did Taiwan choose this particular constitution?—should be seen as an empirical question. Among the empirical studies, historical institutionalism stresses not only the micro dynamics but also the macro transformations of constitutional change. Nevertheless, this approach focuses more on path-dependent specificities than on the overall pattern of constitutional choice.⁶ What we need is a general theory that can account for a particular case like Taiwan.

In a case study with general implications, an abnormal example (an outlier) deserves special attention because its deviation from the overall pattern may point to directions in which the theory can be modified. Vote-trading theory, which has been widely applied in legislative studies, is a likely example of such a theory. Vote trading refers to an agreement made between at least two legislators to vote strategically on at least two issues to produce an outcome better than the one that could be achieved by voting sincerely. Vote trading shows how seemingly unconnected issues can be decided together.⁷ In the making of a semi-presidential constitution, executive–legislative relations and some unconnected issues may be voted on as a package the outcome of which may undermine the consistency of the former. Most research on constitutional choice seems to have missed this possibility.

Many studies of constitutional reform in Taiwan employ the jurisprudential or historical approaches. Among the few empirical studies on the subject, Higley et al. (1998) discusses the pre-1997 negotiations and depicts them as an “elite settlement.” What this study does not anticipate is that as soon as the National Assembly was convened in 1997, the provisional agreement faded away as political reality set in. Missing from these studies is the formation of the issue package in the 1997 constitutional revisions. The issues voted on together with the rearrangement of constitutional powers were important but also peculiar to Taiwan, and they can be used to explain the atypical result of Taiwan’s constitutional reform. Without inquiring how the issue package was formed, one could easily describe the 1997 reform as an “opportunity lost” in the overhauling of Taiwan’s constitutional system (Noble, 1999).

In brief, the issue voted on together with the rearrangement of constitutional powers originated from Taiwan’s sovereignty status, and this is a circumstance unlikely to occur in other semi-presidential constitutions. The Constitution of the Republic of China (ROC), as its title suggests, was promulgated in 1947 (when a civil war was raging in China) and implemented in Taiwan and its offshore islands after the mainland was taken over by the People’s Republic of China (PRC). The fact that the constitution was only effective in a limited area was justified by two mechanisms: the Temporary Provisions Effective during the Period of Communist Rebellion that gave the executive branch unlimited powers; and the retention of a proportion of unelected legislators representing mainland Chinese constituents. As time went by, the leaders of the authoritarian regime gradually died off, allowing an opportunity for political reform. The first revision of Taiwan’s constitution took place in 1991 during the presidency of Lee Teng-hui when the Temporary Provisions were terminated. Lee had been vice president under President Chiang Ching-kuo, the KMT strongman. When Lee, a native Taiwanese, succeeded Chiang in 1988, he attempted to institute direct presidential elections in an effort to expand his power base beyond the limits imposed by the conservatives in the KMT. At that time, the ROC constitution stipulated that for a constitutional amendment to be adopted, it had to win the approval of at least three-quarters of the membership of the National Assembly. Given the number of its National Assembly delegates, the KMT was able to achieve this goal for the first three constitutional revisions it introduced. However, in the 1996 elections, the KMT’s seat share was reduced to 54.79 percent, meaning that it had no choice but to collaborate with the DPP.⁸ In contrast to the KMT, the DPP questioned the very legitimacy of the ROC constitution—how could a constitution designed for the whole of China be applicable to Taiwan? In electoral races, most voters have no problem distinguishing between the two parties by their divergent stances on Taiwan’s national identity. How then could these two parties collaborate to amend the ROC constitution?

Taiwan’s constitutional reform was a sensitive issue because the external community—the PRC in particular—presumed that a new constitution could only be made by a new nation. Understandably, international pressure precluded a completely new constitution. For the DPP, therefore, the main problem was how to modify the ROC constitution in such a way as to manifest Taiwan’s *de facto* independence. Two strategies were available: first, to have the ROC president popularly elected by the people of Taiwan; second, to reorganize Taiwan’s constitutional structure—especially in terms

of its administrative levels, which signified that the island was a part of China—so that it looked more like an independent country.

With regard to the first strategy, it happened that direct presidential elections were also what Lee wanted. Note here that having a popularly elected president does not necessarily create a presidential system. In the mid-1990s, the DPP felt that it had more chance of increasing its number of legislative seats than it did of winning a presidential election. In these circumstances, the only way out was semi-presidentialism, a hybrid of presidentialism and parliamentarism. There are many types of semi-presidentialism, and the DPP could choose the one most conducive to the party's growth. The KMT, on the other hand, wished to maximize the president's powers within the semi-presidential framework. As for the second strategy, the DPP wanted a reformed constitution that looked like a new constitution and the KMT attempted to substantiate the president's administrative powers. The best target was therefore the Taiwan Provincial Government, the existence of which indicated that Taiwan was no more than a "province" of China. If the Taiwan Provincial Government could be abolished, Taiwan would be closer to an independent country in name. Note that these two objectives could be handled separately. To analyze how the two parties teamed up to amend the constitution by combining these issues into an issue package, we need the help of vote-trading theory.

Before applying this theory, two things have to be clarified. First, the chairpersons of the KMT and the DPP, as the leaders of the bargaining teams, were mandated to set the agenda. Hsu Hsin-liang, the DPP's chairperson at that time, was surrounded by party members who would have preferred an alternative constitutional system; some of them strongly criticized the KMT's proposal to give the president the power to actively dissolve the legislature. Hsu's job was to set an agenda that most DPP politicians could accept even though they might still have reservations. Lee Teng-hui's position was more fragile—the KMT was divided between his supporters who endorsed the idea of direct presidential elections and anti-Lee members who opposed the expansion of the president's powers.

The second point that must be clarified is that there was a reason for the two parties to converge on the issue of the Taiwan Provincial Government. While the constitution purported to apply to the whole of China, the jurisdiction of the ROC after it retreated to Taiwan was almost identical to that of the Taiwan Provincial Government. Naturally, the DPP endeavored to abolish the provincial government (Chao et al., 1997: 674), a symbol of the idea that the ROC still represented the whole of China. For Lee, the then governor of Taiwan Province, James Soong, was becoming a menace, but the most Lee could do was to halt elections for the Taiwan Provincial Government.

The DPP was attempting to use the constitutional reform to highlight Taiwan's *de facto* independence, but Lee's primary goal was the consolidation of his executive power. The two party chairpersons therefore made the "Taiwan Provincial Government" and the "appointment of the premier" indispensable elements of the issue package. As a reassurance, a National Development Conference (NDC) was held in December 1996, awaiting the National Assembly to approve its proposals. Whether the tentative settlement reached at the NDC could be carried over into the constitutional revision was another story.

By revealing the mechanism of vote trading, we will show in the next section how the arrangement of constitutional powers was affected by unrelated issues, and how bargaining can lead to multiple outcomes. In this way, vote-trading theory not only answers the question we raised but enriches the literature of constitutional choice.

A model of vote trading

Vote trading is an important topic in legislative studies (Buchanan and Tullock, 1962; Mueller, 1997). Since constitutional choice also involves decision-making by vote, the theory of vote

trading can be immediately applied to it. Most public choice theories ask how vote trading affects the final decision. In particular, Schwartz (1977: 999) proves 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. An implication of this statement is that if preferences are nonseparable (i.e., cannot be measured independently), vote trading may occur and create an unstable decision.⁹

These models of vote trading leave some important questions unanswered. The first is which analytical tool should be used. Cooperative game theory, a widely used tool for the study of vote trading, focuses on coalition formation rather than commitment to the agreement reached by a coalition. In contrast, the equilibrium concept in non-cooperative game theory is designed to handle the enforceability problem.¹⁰ This article will use the non-cooperative game as the analytical tool because enforceability is one of the essential issues in vote trading. Second, the higher the threshold for passing a resolution, the more difficult it becomes to change the status quo. The ability to change the status quo is thus an important issue under the qualified majority rule. This is also a matter of practical importance because constitutional revisions usually involve multiple issues and qualified majority rules. Third, Tullock (1959) and Riker and Brams (1973) have shown that vote trading may create Pareto inefficient outcomes. From the perspective of citizens of a country, social optimality is a critical issue in their evaluation of constitutional choice. These are all problems that a model of vote trading should take into account.¹¹

To cope with these problems, the following propositions are derived from the equilibrium of a non-cooperative game of vote trading. Here we define an “issue package” as the set of issues that must be voted upon at the same time. For vote trading to happen, the voters must identify at least two issues to form an issue package. Two voting results on an issue package are inconsistent if they differ on at least one issue even if votes on the other issues are the same. Proposition 1 specifies the conditions of vote trading, and Proposition 2 demonstrates how the preference order of the status quo determines the likelihood of vote trading.

Proposition 1: if preferences are separable for all issues in the issue package and players can reach an undefeatable decision to replace the status quo, vote trading will not happen.

What this proposition says is that if no alternative can defeat the best choice of issues in the issue package, which must exist because preferences are separable, then no group in the decision-making body can choose any other option that would increase the payoff for any member.¹² Conversely, vote trading may happen if preferences on some issues are nonseparable or the players cannot reach an undefeatable decision to substitute the status quo. An implication is that voting in line with one’s principles on the separable preferences may still result in the absence of consensus, and the status quo will not be changed. On this occasion, players with separable preferences are encouraged to trade their votes to obtain a Pareto optimal outcome.

Note that Proposition 1 applies to all types of majority rule, and the probability of a player being included in a winning coalition increases with the threshold of decision-making. A player who is needed by all the winning coalitions to adopt a resolution—who may or may not exist—is called a *pivot*. The following proposition addresses the relationship between vote trading and the preference of the pivot.

Proposition 2: if vote trading happens when preferences are separable, then the status quo across all issues in the issue package is not the best choice for any pivot.

To understand why this is the case, consider a pivot who contradicts this proposition and has the status quo on a particular issue in the issue package as his/her second choice.¹³ In these circumstances, the pivot's best choice must be a change in the status quo on this issue. We cannot exclude the possibility that sincere voting by this voter will create an inconsistent voting result for this issue package, so that the status quo will be kept intact. The only way to prevent vote trading from happening is to have the status quo across all issues as a pivot's best choice, in this way he/she can unilaterally veto any change.

Note that this proposition suggests that "if vote trading happens, then the status quo across all issues in the issue package is not the best choice for any pivot" is a necessary condition of vote trading. Since we know that vote trading took place in Taiwan in 1997, we have to show that the status quo in the issue package could not have been the best choice of either the KMT or the DPP. Also note that this proposition applies to any issue package no matter how the weights are determined across issues. Therefore, this proposition can be used to tackle the issue package on which the weight of issues varies by pivots. These points will be elaborated in the next section.

Vote trading in the making of Taiwan's semi-presidential constitution

To apply vote-trading theory to Taiwan, we will first define the reform issues and the status quo, and then identify the stances of the reformers on these issues. To rephrase the core question: is the status quo across all issues in the issue package the top choice for the KMT and the DPP?

Issues

We learn from Proposition 2 that the satisfaction of the stated condition does not imply that vote trading will take place on all issues. For instance, for an issue position seen by all pivots as the best choice, trading votes is unnecessary; it is also pointless to cast a strategic vote to support options at the bottom of one's preference list.¹⁴ Excluding these alternatives, there may still be multiple tradable issues which necessitate the agenda setter deciding the order of voting. The chairpersons of the two parties have to establish a consensus acceptable to their intraparty and interparty partners.

Official archives reveal the following issues to be important to the chairpersons of the two parties (for the references and details of the bargaining, see Table 1):

1. Vote of no confidence: whether to allow the parliament to unseat the premier by a vote of no confidence.
2. Appointment of the premier: whether to allow the president to appoint the premier without legislative confirmation.
3. Dissolution of parliament: whether to allow the president to dissolve the Legislative Yuan (parliament); if yes, whether the president has to wait until a vote of no confidence is passed.
4. Legislative powers: whether to give members of the Legislative Yuan the powers to investigate, audit, hold hearings, and impeach the president and vice president.
5. Reconsidering legislative resolutions: whether to lower the legislative threshold for re-passing a resolution which the government has demanded to be reconsidered.
6. Electoral systems: whether the constitution should define the electoral systems for the presidential and legislative elections; if yes, what the electoral systems should be.

Table 1. Issue stances.

Kuomintang (KMT)	Democratic Progressive Party (DPP)
<i>Vote of no confidence</i>	
<ul style="list-style-type: none"> 19/12/96: Legislative Yuan (LY) should have vote of no confidence (VNC) 26/6/97: Agreed to the restriction that VNC and dissolution cannot be used within the first year after the LY's election 	<ul style="list-style-type: none"> 21/12/96: LY should have VNC 23/4/97: DPP insisted on VNC even if LY is not allowed to confirm the appointment of the premier 26/6/97: With some intraparty disagreement, agreed to the restriction that VNC and dissolution cannot be used within a year after the LY's election
<i>Dissolution of parliament</i>	
<ul style="list-style-type: none"> 19/12/96: Executive Yuan (EY) can dissolve LY 12/4/97: President can actively dissolve LY 10/6/97: Consensus reached on passive dissolution 	<ul style="list-style-type: none"> 26/4/97: President can only passively dissolve LY 10/6/97: Consensus reached on passive dissolution
<i>Appointment of the premier</i>	
<ul style="list-style-type: none"> 19/12/96: President can unilaterally appoint the premier 21/3/97: President can unilaterally appoint the premier 26/6/97: Consensus reached that president can unilaterally appoint the premier 	<ul style="list-style-type: none"> 9/6/96: DPP strongly opposed Lien Chan continuing as premier and asserted that LY should reconfirm the appointment of the premier 26/6/97: Consensus reached that president can unilaterally appoint the premier
<i>Legislative powers</i>	
<ul style="list-style-type: none"> 21/6/97: KMT agreed to give members of LY the power to impeach the president in exchange for the removal of LY's power to confirm the appointment of the premier 	<ul style="list-style-type: none"> 19/12/96: Members of LY should have the powers to impeach, investigate, and audit 21/6/97: Members of LY have the power to impeach the president
<i>Reconsideration of legislative resolutions</i>	
<ul style="list-style-type: none"> 11/4/97: EY's request for reconsideration should be maintained even if VNC is adopted 26/6/97: Consensus reached that LY's threshold for overriding EY's request for reconsideration should be lowered from two-thirds to absolute majority 	<ul style="list-style-type: none"> 25/4/97: LY's threshold for overriding EY's request for reconsideration should be lowered from two-thirds to absolute majority 26/6/97: Consensus reached that LY's threshold for overriding EY's request for reconsideration should be lowered from two-thirds to absolute majority
<i>Electoral systems</i>	
<ul style="list-style-type: none"> 22/12/96: Size of LY should be increased to 200 and term to 4 years 12/4/97: Term of LY should be extended to 4 years 26/6/97: Consensus reached that presidents should be elected by a runoff system 	<ul style="list-style-type: none"> 22/12/96: LY election should use mixed-member proportional (MMP) system; terms of LY and president should be the same; NA should be abolished 25/4/97: LY election should use MMP 26/6/97: Some DPP members questioned the consensus that presidents should be elected by a runoff system
<i>Taiwan Provincial Government</i>	
<ul style="list-style-type: none"> 19/12/96: Taiwan Provincial Government should not be abolished 26/6/97: Consensus reached that Taiwan Provincial Government elections should be suspended 	<ul style="list-style-type: none"> 19/12/96: Taiwan Provincial Government should be abolished 26/6/97: Consensus reached that Taiwan Provincial Government elections should be suspended
<i>Cross-Strait relations</i>	
<ul style="list-style-type: none"> 22/12/96: One country, two political entities 	<ul style="list-style-type: none"> 22/12/96: Taiwan is an independent country; political entity is equivalent to a country

Notes: The NDC was convened between December 23 and December 28, 1996. The NA was convened to carry out revision of the constitution between May 5 and July 18, 1997.

Sources: *Central Daily News*, *United Daily News*, *United Evening News*, Central News Agency, and Guomin dahui (1998).

- Taiwan Provincial Government: whether to downsize or to abolish the Taiwan Provincial Government.
- Cross-Strait relations: whether to set up an extra-constitutional council to handle cross-Strait affairs.

Of these issues, cross-Strait relations are extra-constitutional, electoral systems may or may not be constitutional, and the Taiwan Provincial Government is not constitutional unless its relationship with the central government is to be adjusted.¹⁵ Vote trading would affect the functioning of semi-presidentialism if a vote of no confidence, the appointment of the premier, and the dissolution of the parliament are addressed together.

Preferences

To verify Proposition 2, we will examine whether any pivot ranks the status quo across all issues in the issue package as his/her favorite choice. Another condition of Proposition 2 is that sincere voting cannot defeat the choice of strategic voting. These conditions will be tested later.

The issue stances of the two parties can be traced back to the first direct presidential election held in 1996. The most pressing issue for Lee, who had just won the election, was the power of the Legislative Yuan to approve the appointment of the premier. The blocking of Lien Chan, Lee's handpicked premier, by the Legislative Yuan in 1996 explains why Lee wanted to exclude legislators from the process of cabinet formation. Thus, "appointment of the premier" was the most critical issue for Lee. Moreover, Lee preferred the president to have active rather than passive dissolution power, with the status quo as the last choice (Noble, 1999: 105). The DPP put the greatest emphasis on abolition of the Taiwan Provincial Government, which would eliminate a symbol of the ROC as the representative of the whole of China.¹⁶ On the "dissolution of parliament" issue, the DPP's chairperson preferred passive to active dissolution, with the status quo as the last choice, because the party seemed to have little chance of winning a presidential election in the 1990s.

On the issue of "vote of no confidence," there was a strong bipartisan consensus. Under semi-presidentialism, a vote of no confidence can coexist with a strong or a weak presidency, and was thus acceptable to both parties. On "legislative powers," the DPP sought to expand them, and the KMT agreed as long as the DPP would endorse the exclusion of legislators from the appointment of the premier. As for "reconsidering legislative resolutions," there was disagreement at first, but the two chairpersons quickly agreed to reduce the threshold from a two-thirds majority to an absolute majority. "Electoral systems" and "cross-Strait relations" were dropped from the agenda because the two parties held incompatible positions.

Vote trading

The following list summarizes the most critical issues and the possible alternatives (as indicated by the numbers):

1. Appointment of the premier: (1) status quo, (2) no confirmation.
2. Dissolution of parliament: (1) status quo, (2) active dissolution, (3) passive dissolution.
3. Taiwan Provincial Government: (1) status quo, (2) abolish, (3) downsize.

There were other issues as well, but these three represented the major concerns of the two pivots. We want to demonstrate that vote trading was possible even with these three issues. Issues 1 and 2 should have been deliberated after there was bipartisan consensus on the "vote of no confidence," and their combination determined the subtypes of Taiwan's semi-presidential system. In contrast, issue 3 had nothing to do with the rearrangement of constitutional powers and could be addressed independently. However, the DPP placed the greatest emphasis on issue 3 and insisted that it must be included in the issue package if the constitution was to be amended.

Table 2. Preferences of the Kuomintang (KMT) and the Democratic Progressive Party (DPP) on the key issues.

Issues	Appointment of premier	Dissolution of parliament	Taiwan Provincial Government
	1. SQ (confirmation needed)	1. SQ	1. SQ
	2. No (no confirmation)	2. Active dissolution	2. Abolish
		3. Passive dissolution	3. Downsize
KMT	2 > 1	2 > 3 > 1	3 > 2 > 1
DPP	1 > 2	3 > 2 > 1	2 > 3 > 1

Note: "SQ" = "status quo", ">" = "preferred to".

Source: Author's count.

Table 2 displays the preferences of the two parties. It shows clearly that vote trading happened while the two pivots ranked the status quo as their least favorable choice on the critical issues. In the following, Result 1 deals with the social optimality of the consensus the two parties could have reached; Result 2 says more about the impact of these two equilibria on Taiwan's constitutional system.¹⁷ For the purpose of this article, the key question is whether vote trading mismatches the power and accountability of Taiwan's president.

Result 1: "No confirmation, passive dissolution, downsize the Taiwan Provincial Government" and "no confirmation, active dissolution, abolish the Taiwan Provincial Government" are Pareto efficient equilibria.

The first step is to verify that these two outcomes are in equilibrium. The stances of the two parties will first meet at "no confirmation, passive dissolution, downsize the Taiwan Provincial Government," the KMT's second choice and the DPP's sixth choice, or "no confirmation, active dissolution, abolish the Taiwan Provincial Government," the fourth choice of both. Accordingly, if the two parties adopt one of these two outcomes, neither has the incentive to adjust its strategy because the payoffs are sure to decrease. Second, regarding their Pareto optimality, we can see from the ranking of their preferences that no other equilibrium improves the payoff of both pivots, or at least increases the payoff of one pivot and keeps the payoff of another pivot constant, apart from the two outcomes described here.

Result 2: "No confirmation, passive dissolution, downsize the Taiwan Provincial Government" and "no confirmation, active dissolution, abolish the Taiwan Provincial Government" are both the result of vote trading, but only the former does not permit the president to dissolve the parliament before a vote of no confidence is passed.

According to Proposition 2, both equilibria reflect the necessary conditions of vote trading. "No confirmation, active dissolution" allows the president to unilaterally appoint the premier and actively dissolve the parliament, which means that the president takes the greatest administrative responsibility and can ask the electorate to arbitrate when the premier is no longer supported by the parliament. But the status of the Taiwan Provincial Government complicated the negotiations. Expecting that the KMT would at most downsize the Taiwan Provincial Government, the DPP turned down the KMT's proposal for the power of active dissolution. Yet both parties still found "no confirmation, passive dissolution, downsize the Taiwan Provincial Government" to be better than no change at all. That is why the KMT, although it favored giving the president active

dissolution power, supported the DPP's request for "passive dissolution," and the DPP, although it wished to maintain the confirmation power, had the incentive to endorse the KMT's demand for "no confirmation." If there had been no external constraints preventing the two parties from abolishing the Taiwan Provincial Government, the chain of accountability would have been maintained in a more consistent way.

We saw at the beginning of this article that "no confirmation, active dissolution" is what is stipulated in the French constitution. Taiwan could have created a similar arrangement if the KMT had been willing to abolish the Taiwan Provincial Government in exchange for the DPP's support for giving the president active dissolution powers. The first occasion on which the two parties might have made such a deal was during the NDC. President Lee had won a second term in 1996, so at the time of the NDC power succession was an imminent problem. Lee's attempt to limit support for Governor Soong coincided with a campaign for independence by the DPP; that explains why the NDC put equal emphasis on the Taiwan Provincial Government and the rearrangement of constitutional powers.¹⁸

For this reason, votes could have been traded between the independence-leaning DPP and the power-seeking KMT to abolish the Taiwan Provincial Government and create a constitutional system that would allow the electorate to make the ultimate decision. Had this been the case, the DPP would have been more willing to compromise on the president's active dissolution powers because its chances of winning a presidential election were positively correlated with the credibility of Taiwan independence. It was external pressure that made this prospect less likely. The KMT's hesitation also explains why the end of the NDC marked the beginning of the constitutional reform and the resolutions adopted in the latter were different from the decisions taken by the former. Before the NDC, the DPP insisted that the premiership be reconfirmed and sought to strengthen the powers of the legislature as an instrument of checks and balances. Above all, the powers of the Legislative Yuan would have been enhanced if the dissolution of parliament had to be preceded by the passage of a vote of no confidence. Unfortunately, the calculations made in the 1997 revision of the constitution deprived Taiwan's voters of a mechanism for identifying who is accountable in a snap election. The shrewd behavior of the two party chairpersons may have created loopholes in Taiwan's semi-presidential constitution.

Conclusion

We have demonstrated in this article how Taiwan's semi-presidential system mismatches the power and accountability of the constitutional actors. Most seriously, although the president dominates the formation of the government, he/she is not allowed to call for an early parliamentary election and ask voters to speak out. There are two other systems that would obviously be preferable. The first is a system in which the president takes the lead in that he/she can appoint the premier without parliamentary confirmation and dissolve the parliament before the premier is unseated so that voters are mandated to judge who is accountable. In the second, the premier would have the upper hand as he/she represents the majority in the legislature and the president could only dissolve the parliament after a vote of no confidence had been passed. Most semi-presidential regimes have adopted one of these two designs. Taiwan is an exception, and we cannot explain why this is the case without understanding how its sovereignty status is connected with bargaining over constitutional reform.

The issue of Taiwan's sovereignty was exemplified by the direct presidential election—the electorate consisted of citizens living in Taiwan and its offshore islands but the president was elected to represent the whole of China. The DPP, constrained by the framework of the ROC constitution, attempted to revise this constitution to make Taiwan more like an independent country. That meant

that the existing rules governing constitutional amendment had to be followed. Although they had very different ideas about Taiwan's national identity, the KMT and the DPP teamed up in 1997 to revise the constitution. Vote trading took place because Lee Teng-hui was trying to exclude legislators from playing a part in the appointment of the premier and the DPP wanted to abolish the Taiwan Provincial Government. This transaction produced an innately flawed semi-presidential system.

Using reform of Taiwan's constitution as a special case, this article proposes a new method for studying the general nature of constitutional choice. When dealing with multiple issues, vote trading is frequently used and can be applied to any voting body. Given the large number of issues and the qualified majority rules that are often involved in the choice of a constitution, minority interests will have a certain amount of leverage that enables them to influence the final outcome. We have also shown that the non-cooperative game is a useful tool for unravelling the mechanism of vote trading when no rule enforces the consensus reached by the voters. Moreover, the qualified majority rule increases the chances of a voter being a pivot, and vote trading may occur if all the pivots find issues on which the status quo is not the best choice.

There are other implications as well. Questions arise as to how negotiations may help to achieve an eventual equilibrium and how the reform process is conditioned by the rules of decision-making. There is also an important normative question: who should be the decision-makers when a constitution is to be made or amended? We have seen how elected delegates may trade their votes on different issues to prevent gridlock, even though the package that is eventually negotiated may not function well. If a referendum or another independent agency had been required to ratify the constitutional revisions, there is a good chance that the current semi-presidential system would have been rejected. Indeed, the rules of constitution making affect the content of the constitution, so the former are as important as the latter.

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Notes

1. The typology we construct here is close to but different from the one that Samuels and Shugart (2010) fine-tuned. According to their definition, in a president-parliamentary regime, the premier is dually accountable to the president and the parliament; in a premier-presidential regime, the premier is formally accountable exclusively to the parliament and not to the president.
2. Passive dissolution power is different from a president having active dissolution power but not using it—the former is an institutional constraint while the latter comes from a calculated action.
3. For a detailed discussion of the different varieties of semi-presidentialism, see Roper (2002).
4. We use Elkins et al. (2014) to verify the coding of Siaroff (2003).
5. Representative works on comparative constitutional systems are to be found in Goodin (1996), Lijphart (1999), Sartori (1997), Samuels and Shugart (2010), and Tsebelis (2002).
6. For studies of constitutional change from the perspective of historical institutionalism, see Broschek (2010, 2011), Filippov and Shvetsova (1999), Immergut (2005), Jung and Deering (2015), McFaul (1999), Pierson (1996), and Solum (2008).
7. Vote trading and logrolling are sometimes used interchangeably. For a definition of vote trading, see Stratmann (2008: 372).
8. For Taiwan's election results, see the Central Election Commission, available at: <http://db.cec.gov.tw/histMain.jsp?voteSel=19960301A9> (accessed October 5, 2015).
9. For an application of (non)separable preferences, see Lacy and Niou (2000).
10. An illustrative example is the prisoner's dilemma: in the cooperative game, "mutual defection" will not occur because it is Pareto dominated; in the non-cooperative game, "mutual defection" is the *only* equilibrium because "defection" is the strictly dominant strategy.

11. Aside from a few exceptions, earlier studies on vote trading are largely theoretical. For empirical works, see Finke (2009), Kau and Rubin (1979), and Stratmann (1992, 1995).
12. If preferences on every issue are separable, then the best choice of each issue is tantamount to the best choice of the issue package, but the converse may not be true.
13. The status quo ranked below the second choice can be proven to have the same effect.
14. Details of the 1997 constitutional reform are to be found in *Guomin dahui huiyi shilu* (Meeting records of the National Assembly), Volume 16–18, available at: <http://lis.ly.gov.tw/nacgi/ttsweb?@0:0:1:dbini/lymeetingdb@@0.6962012632289616> (accessed October 5, 2015).
15. The original constitution stipulated legislative confirmation of the appointment of the premier (Art. 55), the reconsideration threshold (Art. 57), and the legal status of the provincial governments (Art. 112).
16. If issues have equal weight, further equilibria may emerge. Issues with different weights may thus reduce the cost of bargaining.
17. Some other consensuses may also be Pareto efficient, but they are not the best consensus the two pivots can obtain.
18. According to Chao et al. (1997: 679), the DPP had insisted that the Taiwan Provincial Government should be abolished throughout the NDC. Some would even argue that the subsequent constitutional reform was carried out in order to resolve the Taiwan Provincial Government problem. See <http://www.haixiainfo.com.tw/80-3377.html> (accessed October 5, 2015).

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Author Biography

Jih-wen Lin is a research fellow at the Institute of Political Science at Academia Sinica, Taiwan, and professor of political science at National Chengchi University, National Taiwan University, and National Sun Yat-Sen University. He received his PhD in political science from the University of California, Los Angeles (1996). His research interests include East Asian politics, comparative institutional design, and formal modeling, and he has had articles published in *Party Politics*, *Journal of Democracy*, *Electoral Studies*, *The China Quarterly*, *Journal of East Asian Studies*, *BMC Public Health*, and *Issues & Studies*, among others.