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Source of Rigid Constitution Myth in Taiwan and Its Impact

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Curiously enough, when asking a pupil in Taiwan to name one of the characteristics of the Republic of China Constitution, the common correct answer teachers expect is "ROC Constitution is a rigid constitution." It means that the threshold of amending the constitution shall be relatively high and any constitutional revision is supposed to be difficult to be realized. Yet why did Taiwan, as a newly emerged democracy and constitutional regime, freely accept a rigid constitution, create a mythological standing for this rigidity, and continue to embrace this idea even in the most recent 2005 constitutional revision?[1] What impact could constitutional rigidity impose upon the political development of Taiwan? Although these two questions are equally interesting and important, this paper will primarily explore the former question. The latter will be discussed only briefly, and suggestions for future research will be given.

To explore the above puzzles, this paper first examines the source of constitutional rigidity myth in Taiwan before seeking to explain why the rigidity myth has persisted. An analysis of the specific impact of this rigidity myth on curtailing political actors' choices through the power of confining and legitimizing choice making follows, and the paper concludes with an exploratory discussion on the potential implications of constitutional rigidity on Taiwan's future political development.

Origin of Rigid Constitution Myth

A myth is a belief that is firmly embraced, often unconsciously, without justification.[2] In this paper, we are drawn to explore the formation of a rigid constitution myth in Taiwan. Why is this particular myth in existence in Taiwan? How was it formed? What is its purpose or use, if any?

The Republic of China Constitution has historically been rigid in the procedure by which it can be amended, requiring a minimum of three-fourths approval in the upper house of parliament, the National Assembly. The latest constitutional reform in 2005 further requires a 50% of any approval vote in a referendum, building an even higher threshold in the constitutional revision procedure. The result is to position the ROC Constitution as one of the

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most rigid constitutions in the world. Table 1 below illustrates this.

Table1: Constitutional Amendment Procedure in Other Democracies*

	Amendment Procedure										
Country	proposal only needs to be approved by Parliament				Proposal needs to be approved first by Parliament, then by referendum						
	1/2	3/5	2/3	3/4	Parliament				Referendum		
					1/2	3/5	2/3	3/4	Y>N	1/2 of 1/2 eligible voters	1/2 of eligible voters
Greece		X									
Netherlands			X								
Portugal			X								
Mexico			X								
Costa Rica			X								
India			X								
Slovenia			X								
Belgium			X								
France		X**				X			X		
Japan							X		X		
South Korea							X			X	
Taiwan								**X**			**X**

*This is prepared by the authors in reference to selected countries' English version Constitutional texts. Source: International Constitutional Law (ICL) http://www.oefre.unibe.ch/law/icl/index.html

** The French President can decide not to go through a referendum, but only submit the constitutional amendment proposal to Parliament to be approved with 3/5 or more votes.

***US is not included in this list since it adopts an unique federal system where the Constitution amendment is proposed by ¾ of majority vote in both houses of Congress and ultimately approved and ratified by ¾ of states.

**** This table is created for illustrative purpose and provides readers a scale of comparison. It is not supposed to exhaust the country list or explain in full methodological note why some countries are not included.

Why did the political community in Taiwan collectively decide to create such a rigid constitutional mechanism? How is this factual mechanism translated from or to cognitive formation of a rigid constitution myth in Taiwan? Some of the extant literature on myth suggests cultural or religious roots[3] in myth formation.[4] Others discuss the effect of institutional inertia more commonly found in constitutional law than in ordinary law, since the number of veto players involved in constitutional reform is higher than in ordinary law revision.[5]

In the context of the ROC rigid constitution myth, however, this paper argues that neither the cultural, religious, political or institutional inertia theory is satisfactory, though still relevant, to explain the formation of the rigid constitution myth in Taiwan. Instead, this study borrows the term "imprinting" from psychology to analogize the learning process for a country that had had no constitution in its cultural background, yet had to create a constitution. Imprinting, in brief, is a phenomenon exhibited by the young of several species,

mainly birds, such as ducklings and chicks, which, upon coming out of their shells, will follow and become attached (socially bonded) to the first moving object they encounter (which usually, but not necessarily, is the mother duck or hen).[6]

This study, then, argues that once the idea of a rigid constitution was introduced early in the history of the ROC, the learning of it would be analogous to 'imprinting.' That is, a society just beginning to learn about constitutions might easily adopt a new and simple type and gradually take its initial form for granted. Certainly, although a human's learning is quite different from that of a duck, even current psychologists do not deny that human learning also involves a component of imprinting.

Where does the origin of a rigid constitution myth and "imprinting" begin then? In a historical sense, the origin of a rigid constitution myth finds its source during the period that the ROC (Taiwan) struggled to look for a constitutional model to emulate in establishing her own. The promulgation of the ROC Constitution in 1947 occurred at a time when the *Kuomintang* (*KMT, the Nationalist Party*) still ruled the mainland, and the ROC government was the only legitimate representative of China.[7] However, the ROC had been founded after the *Ching Dynasty* in 1911. Its founding father, Dr. Sun Yat-sen, proudly announced that the ROC was the first Republic in Asia. How was this newly born republic to make its own constitution, given the facts that its people had virtually no background in constitutionalism and that it had no predecessor in her neighbors?[8] Copying other nations' constitutional models might have been the key for a country just learning to create a constitution.

But copying per se is by no means an easy task. The problem of choosing a country to emulate is itself the subject of endless debate, even though there were not many role models other than the U.K. and the U.S. at the dawn of the twentieth century. Furthermore, the new republic had to face its own internal power struggles and so-called self-esteem (nationalism) problems, which made the choice of constitutional designs substantially more complicated. Thus, it took the ROC 36 years to finally, in 1947, establish her constitution.

Compared to various constitutional issues that have always provoked deep-seated power struggles—such as the relationship between the executive and the legislature, and that between the central and the local governments—the simple dichotomy[9] between a rigid and a flexible constitution should be easy to understand and should not provoke direct power confrontations. This paper tries to reveal that once the idea of a rigid constitution was introduced early in the history of the ROC, the learning of it would be analogous with "imprinting". That is, those just beginning to learn about constitutions might easily adopt a new and simple term and, therefore, gradually take it for granted. But to apply the imprinting theory to a collective, rather than an individual, one surely must provide evidence to show that the imprinting of an object upon one group of people can be transmitted to another, or from one generation to the next.[10] The next section of the paper focuses on this process of transmittal. This section shows how the concept of a rigid constitution was introduced in the ROC at her critical period of learning to make a new constitution.

The term 'rigid constitution' was first introduced in the ROC by Dr. Wang Chong-hui in 1913,[11] two years after the ROC was established. Dr. Wang, a Yale Ph.D. in law and a close friend of Dr. Sun Yat-sen, drafted a ROC Constitution (Zhong hua min guo wian fa cao an) in March 1913 and wrote a book entitled "About the Constitution" (*Xian fa ping yi*), in which he tried to explain why and how a ROC constitution should be designed as he had drafted it.[12] Wang also thoroughly discussed the nature and content of a rigid vs. a flexible constitution, emphasizing his belief that the ROC's constitution should be rigid.

The authors of the paper identified six dimensions of the rigid vs. flexible dichotomy

that will serve as a framework for comparing Wang's views with others' in the next section. These dimensions are as follows:

1. *The utility of this classification* or, in other words, the importance of using it to design and characterize the constitution. For Wang, there was no question that this was the proper kind of classification. He stated, "Among all classifications in constitutions, this is of the quintessence."

2. *The definitions of the two types of constitutions*. Wang made quite clear that "a constitution that can be altered by a specific amendment procedure, special institutions or both is a rigid or strong one. Otherwise, a constitution which can be amended by the same legislative authority with the same or similar procedure as that of passing ordinary legislation is a flexible or weak one."

3. *His rationale for adopting a rigid constitution*. Actually, Wang's entire argument in his essay focuses on convincing his readers to accept that the ROC constitution should be rigid. He did not comment at length on the shortcomings of a rigid constitution. Indeed, he repeatedly argued that a rigid constitution is able to embrace the strength of a flexible one—adaptability by virtue of designing a proper degree of rigidity. A flexible one, except for a few cases in which highly disciplined citizens have, throughout a long history, practiced constitutional politics, can neither offer the stability nor merit the people's veneration, as a rigid one can. So a logical approach to his argument is to discuss the degree of rigidity among the constitutions of different countries.

4. *The degree of rigidity of each constitution*. Most of these two sections in Wang's book are dedicated to a discussion of this issue. He tried to classify rigid constitutions into four types by their degree of rigidity: 1) an amendment is approved by ordinary legislative authority through an extraordinary procedure; 2) an amendment is approved by a separate appointed or elected constituent institution; 3) in addition to the above two procedures, an amendment must be submitted to local councils for further approval (Wang highly recommended this one.); and 4) in addition to the above three procedures, a popular referendum has the final say (Wang has reservations about this).

5. *The number of example countries used for making his argument*. Wang certainly not only offered a scheme to classify various rigid constitutions, but he also presented a lot of practical examples for each category. He used as examples more than 20 countries or regimes.

6. *The impact of the two types of constitutions on a given political regime*.

According to Wang, two impacts of a rigid constitution are the strengths of stability and veneration, while adaptability is an impact of a flexible one. As to the shortcomings of both, Wang was reluctant to say that a rigid constitution might not be able to adapt to a changing environment and, thus, might become an obstacle to the progress of a given society. In other words, he did not explicitly state what negative impact a rigid constitution might have; however, his views on the impact of a flexible constitution on a given political entity were quite clear: it could neither stabilize a regime and nor generate the veneration of the people toward the constitution.

As reviewed above, Dr. Wang Chong-hui made a quite comprehensive analysis of the advantages of adopting a rigid constitution. His main focus was on the degree of rigidity. He not only devised a four-category scheme that captured constitutions with various degrees of rigidity, but also strengthened his argument with quite a few empirical cases to exemplify each category. Wang highly recommended the third category of constitutional amendment procedures, in which a constitutional amendment bill should be first approved by ordinary legislative organs through an extraordinary procedure, and then further approved by local

councils. He therefore designed a constitutional amendment clause in his "Drafted ROC Constitution" accordingly.

The numerical threshold Wang set up for passing a constitutional amendment was two-thirds because he considered the U.S.'s three-fourths too rigid to be adopted in the ROC. However, Wang's analysis of the rigidity of a constitution and suggestions for the contents of the ROC's constitution seemingly did not receive too much appreciation in either the early stages of the new republic or the later period of 1946-7, when the new republic was eventually making her own constitution, even though he was also one of the constitutional drafters. His legacy to the ROC constitution, as well as to the people's understanding of constitutions—as this paper will show—is that a dichotomy exists between rigid and flexible constitutions, and that the ROC constitution should be rigid.

It is impossible here to say definitively how the concept or myth of a rigid constitution was passed from Wang to others who were also involved in the business of making constitutions in the early age of the republic. However, some drafted constitutions written at about the same period and some popular constitutional textbooks used before the promulgation of the ROC constitution may offer some clues for us to trace this transmission process which filtered something from what Wang said even important, and mainly conveyed a simplified idea regarding the rigid constitution. Furthermore, the imprinting effect may have been reinforced by two crucial sources: 1) Questions about constitutions were raised in various national examinations for recruiting civil servants; and these examinations, which have long been conducted in China as well as in current Taiwan, are famous for their power in guiding and framing people's learning. 2) The ROC constitution per se and the main drafter of it—Dr. Zhang Jun-mai.[13] How was the ROC constitution's amendment clause originally designed? Did it manifest the spirit of a rigid constitution? Did Dr. Zhang have the same concern about the rigidity of the constitution as Dr. Wang did, or he did pay little attention to this? Had he, in fact, already been imprinted with the dichotomy of rigidity/flexibility and taken for granted the idea that the constitution should be rigid?

Roughly nine different kinds of constitutional outlines, drafts or temporary provisions appeared between 1911 and 1947. Although not all of them included a clause regarding amendment procedure, one included a constitutional amendment process that embodied the spirit of a rigid constitution in that it differed from and was more difficult than the procedure for passing regular legislation. Take the first draft of the ROC constitution (*Zhong hua min guo wian fa cao an cu gao*), which was proposed in 1933, as an example. It regulated the amendment procedure as follows:

> To amend to the constitution requires one-third of the representatives of the National Assembly to propose, and two-thirds of those present to vote, as well as three-fourths of those present to approve.

This clause specified a special organization, the National Assembly (NA), which is different from a normal legislative organ and was originally designed by Dr. Sun Yat-sen to propose and amend the constitution. Moreover, it also set up two numerical thresholds, two-thirds and three-fourths, which were even higher than those suggested previously by Dr. Wang. This version of the constitutional draft, no doubt, fell into the category of rigid constitution, and the drafts that came after this one did not change that rigid nature. The only change had been that the degree of rigidity had varied between two-thirds and three-fourths for presence or for approval. It is, then, not a surprise that the amendment clause in the final version of the ROC constitution promulgated in 1947 was rigid.

It appears that the myth of a rigid constitution for the ROC had been well embedded

through the long political process of creating the constitution. Despite the fact that there were a lot of disputes and disagreements about many issues in the process, no one requested that the constitution be flexible so as to lower the threshold for passing amendments. Even the members of the Chinese Communist Party (CCP), who attended the Political Negotiation Council (PNC, Zheng zhi xie shang hui yi) in the beginning (January 1946)—but who eventually decided not to attend the National Assembly at the end of 1946, which was held to make the final approval of the PNC constitutional draft (*Zheng xie xian cau*)—signed the PNC draft and did not oppose its rigid nature. Certainly, there is a political or ideological connection between rigidity and the ROC constitution. It was Dr. Sun Yat-sen's idea to have a National Assembly (NA) representing people's sovereignty, which was different from any regular legislative organ and had the final say on the constitution and its amendments. Such a design helped make the constitution rigid since it required a special organ, not a regular parliament, to amend the constitution. Perhaps Dr. Sun's honorable status prevented Wang from insisting on the adoption of his preferred amendment procedure, and he accepted this one in the process of making the constitution. Moreover, since Dr. Sun was also the founding father of the KMT, which had dominated the constitution-making process ever since 1928, the KMT insisted on having the NA written into the constitution.

In fact, the functions and roles of the NA caused many debates and suspicions and even became one of the focal issues in the process of creating the constitution. The chief drafter of the ROC constitution, Dr. Zhang Jun-mai, had very deep suspicions about this organ from the very beginning and tried every possible way to contain its power. Yet, he never questioned the rigid nature of every draft of the constitution and did not care whether the degree of rigidity was two-thirds or three-fourths. In his *Ten lectures on the ROC democratic constitution* (*zhong hua min guo min zhu xian fa shi jiang*), he devoted only about half a page to the nature of constitutions and also utilized the rigidity/flexibility dichotomy. It seems that the dichotomy was imprinted in him, and since he did not discount the idea of a rigid ROC constitution, he focused his attention on many other issues about which he was highly concerned (such as the NA).

Socially, the constitutional textbooks used at that period seemingly could not help but introduce the rigidity/flexibility dichotomy, though their forms were much simpler than Wang's and gave a better-balanced assessment of rigidity and flexibility.[14] For example, consider the most widely used text, reprinted more than ten times, *Comparative Constitution* (*Bi jiao xian fa*) written by Wang Shih-jie. His definitions for the two types of constitutions are no different from Wang's. But instead of focusing on the degree of rigidity, as Wang did, he stressed one weakness of a rigid constitution: its lack of adaptability could more easily obstruct societal evolution to the point of even provoking revolution. However, he also offered a balanced view, stating that while a flexible constitution would be good for coping with changing social needs, dictators could more easily manipulate it. He then explained three circumstances that might have led the newly emerging countries after WWI to prefer a rigid constitution: 1) when a revolution succeeded and people wanted to prevent the ruling class from violating their basic rights; 2) when multiple ethic groups or classes existed within the territory, and the minority groups wanted to protect their minimum status or rights; and 3) when several independent states were called to unify as a single country.[15] These scenarios seemingly enhanced the tie between rigidity and the ROC constitution since the ROC had coped with at least the first and second conditions.

In contrast to textbooks, examinations for recruiting civil servants raised questions that were not—perhaps necessarily—balanced and analytical. We found the following kind of question raised in both 1943 and 1947:

> What are the distinctions between rigid and flexible constitutions? And to which category should our constitution belong?

We do not know whether or not the answer to the second part of the question could be flexible at that time, but we know that current Taiwanese textbooks that cited these previous questions for reference indicate only a 'rigid' answer to this kind of question.[16]

All in all, it seems fair to say that Dr. Wang's initial introduction of the rigidity/flexibility dichotomy had produced a kind of imprinting effect that led those concerned about constitutions at that time to utilize it. As to Dr. Wang's opinion that the ROC constitution should be rigid, its imprinting effect might not have been as strong as that of the dichotomy per se, but both political and social forces had enhanced it either intentionally or unintentionally. How, then, did the myth of a rigid constitution travel to, and consolidate even more, in Taiwan?

Persistence of the Rigid Constitution Myth

The ROC's central government moved from the mainland to Taiwan in 1949, just two years after her constitution was promulgated. Since a rigid nature had been built into the constitution, the connection between rigidity and the constitution gradually became an objective fact that was beyond question in Taiwan. The myth of a rigid constitution was imprinted onto people's minds through social mechanisms such as the textbooks and examinations mentioned above, and the myth has since taken on a life of its own that exceeds the control of any political force. Even though the ROC constitution has been amended seven times since 1991[17], few in Taiwan have proposed that the constitution's nature should be changed from a rigid to a flexible one.

The following first presents how Taiwan's constitutional textbooks have introduced the concept of a rigid constitution from 1950 to 2006. One point worth noting is that all constitutional textbooks in Taiwan introduced the rigidity/flexibility dichotomy. We selected 15 different textbooks published before 2005 and 12 after 2005.[18] We treated 2005 as the cut-off point mainly because the most recent constitutional revision, which set up the most rigid threshold for passing amendments, was passed in that year. Given the fact that the KMT had been a predominant force in Taiwan, it was able to launch 6 constitutional revisions despite the rigid amendment procedure in place. The 7th revision done in 2005 was launched by the DPP, though the KMT's cooperation was crucial.

We would like to see whether or not the textbooks were able to echo these changes and how they dealt with the dichotomy, especially compared to Dr.Wang's conception of it. Thus, the six dimensions used to capture and structure Wang's view of the dichotomy are employed again here. Table one utilizes the six dimensions to show a sketch of constitutional textbooks regarding the dichotomy in Taiwan between the periods of 1950-2005 and 2005-06.

Three main differences between Wang's views and those in the Taiwanese textbooks can be generated from Table 1. First, while Wang viewed the dichotomy as very important, no textbooks shared this concern. Most of them took this concept as a given, something that had to be introduced in a textbook on the constitution. However, even considering the fact that the seven constitutional amendments between 1991 and 2005 had caused some people to question the classification of the constitution as 'rigid,' the textbooks of the period 2005-6 show no greater tendency than those of the period 1950-2005 to minimize the importance of classification. On the contrary, they are even more inclined to accept this dichotomy as an indispensable part of a textbook that introduces various ways of classifying constitutions.

Table 1: Sketch of Constitutional Textbooks regarding the Dichotomy of R/F in Taiwan between the periods of 1950-2005 and 2005-06

1	Utility of Classificatio n		Importance	Less importance	Not Important	Accepted as a given		total
		1950-2005	0	7	2	6		15
		2005-2006	0	2	1	9		12
2	Definition		Similar to Wang	Simple Def.	Both			
		1950-2005	1	9	5			15
		2005-2006	1	7	4			12
3	Provide reasons for adopting a rigid constitution		Yes (mainly copies Wang Shih-jie)	Not mention				
		1950-2005	3	12				15
		2005-2006	1	11				12
4	Rigid or flexible constitution examples?		> 10 countries	5-9 countries	< 4 countries			
		1950-2005	1	4	10			15
		2005-2006	1	1	10			12
5	Mention degree of rigidity?		Yes	No				
		1950-2005	1	14				15
		2005-2006	2	10				12
6	Impact		Similar to Wang Chong-hui	Difference on Rigid	Difference on flexible	Difference on both	Not men tion	
		1950-2005	3	3	2	5	2	15
		2005-2006	6	1	0	2	3	12

Sources: 27 textbooks published in Taiwan.

Second, while Wang paid a lot of attention to the degree of rigidity and also offered more than 20 countries as examples, Taiwanese textbooks paid virtually no attention to this issue and certainly raised a very limited number of cases (fewer than four: see Item 4 in Table 1) to support their arguments if they had any. Both the periods before and after 2005 are similar in this regard.

Third, Wang's main objective was to convince others that the ROC constitution should be rigid. Textbooks usually have no such intention. Table 1 utilizes Wang Shih-jie's three reasons to serve as a comparative basis for Taiwan's textbooks.[19] The table shows that most of the Taiwanese textbooks in both periods did not provide reasons to illustrate why countries chose either flexible or rigid constitutions. If they did provide reasons, they were quite similar to Wang Shih-jie's. This repetition of his reasons occurred more frequently in the first than in the second period (Item 3 in Table 1).

As to the similarities between Wang Chong-hui's view of the dichotomy and that of Taiwanese textbooks, two dimensions in Table 1 may fall into this category. One is the definition dimension (Item 2 in Table 1). Although Table 1 lists three kinds of definitions—similar to Wang, simple definition, and both, their differences lie only in the format, not in

the contents of these definitions. As Table 1 shows, only one textbook in each period adopted Wang's format for making the distinction between rigidity and flexibility, which quite comprehensively involves three elements that differ from the way an ordinary law is passed or revised: the amendment procedure; the amendment institutions; or both. All the other textbooks adopted either a simple form (the revision of a rigid constitution is more difficult to pass than an ordinary law, and vice versa for a flexible constitution) or both a simple one and one as complicated as Wang's. In other words, while there was no substantial difference between Wang's and the textbooks' definitions of rigidity and flexibility, the textbooks in both periods tended to have simple definitions (Item 2 in Table 1).

The last similarity, or semi-similarity, lies in the impact dimension (Item 6 in Table 1). As mentioned before, Wang emphasized the strengths (treated as impact) of a rigid constitution—namely, stability and the veneration of the people—although it would be less adaptable. On the other hand, the strength (also viewed as impact) of a flexible constitution is its adaptability, but it might not be able to deliver stability and win respect from the people. We used these factors accordingly to code Taiwanese textbooks regarding the impact dimension. Surprisingly, Wang's views were not so different from those of the textbooks, especially those written in the period 2005-6. Half of the sampled textbooks in this period (6/12) reflected Wang's preference for a rigid constitution, despite the fact that the outside political world had changed and that the so-called rigid ROC constitution had been amended seven times before this period. Interestingly, among the textbooks written between 1950 and 2005, more offered views different from Wang's on the impact of the two kinds of constitutions (5/15 vs. 2/12, Item 6 in Table 1). We have no way to explain why the textbooks from 2005-6 appear to take a more conservative view of impact than those written earlier. There seems to be a tendency among all the textbooks to be detached from real-world change, and some long-term, perpetuated ideas or concepts are more easily cemented in the textbooks as time goes by.

In sum, Taiwanese textbooks have filtered out the most important element of Wang's original introduction of the dichotomy—i.e., the *degree* of rigidity. It appears that they have simply included the concept of the dichotomy, as well as definitions for the two kinds of constitutions, in keeping with the requirement for textbooks to do so. Although a few textbooks from 1950-2005 questioned the validity of utilizing this classification scheme, most textbooks in the period of 2005-6 just took it for granted without elaborating on its significance. However, one thing that was not included in Table 1 is to which category the ROC constitution belongs. Certainly, no textbooks have said anything different from a standardized answer that it is rigid. Since this appears to be an accepted truth in Taiwan, we did not include it in Table 1. The questions raised in the national examinations regarding this may best exemplify the inextricable tie between the ROC constitution and the Taiwanese people's view that it is rigid.

We collected questions regarding the constitution raised in various national examinations for recruiting public servants from 1992 to 2006, and then further divided the period between 1992 and 2006 into three sections. The first one is from 1992 to 2000, during which the constitution was amended six times. The second is from 2001 to 2004; the constitution was not formally amended during this period, though the Legislative Yuan approved the proposal for the seventh revision in August 2004. The third consists of the years 2005 and 2006; the seventh revision to the constitution was made in 2005.

After reviewing all the questions related to the concept of rigid constitutions that we found from various national examination questionnaires throughout those years, we categorized two types of questions:

1. Questions that ask for the definitions of rigid/flexible constitutions;
2. Questions that ask for categorizing the ROC's constitution.

We then counted how often each type of question appeared during the three periods mentioned above and summarized the results in Table 2 below:

Table 2: The frequency of the two types of questions regarding the concept of a rigid constitution appearing on the national examinations from 1992 to 2006

Year	Type	Frequency	average per year
1992-2000	1.definitions of R/F constitutions	23	23/9 = 2.56
	2.categorization of ROC constitution	42	42/9 = 4.67
2001-2004	1.definitions ofR/F constitutions	4	4/4 = 1
	2.categorization of ROC constitution	12	12/4 = 3
2005-2006	1.definitions of R/F constitutions	9	9/2 = 4.5
	2.categorization of ROC constitution	11	11/2= 5.5

Sources: The database of Ministry of Examination and Recruitment, The Examination Yuan of Taiwan, ROC. The authors made the raw data into Table 2.

From Table 2, one can see that, in every period, questions regarding the categorization of the ROC's constitution have been raised more frequently than those asking for definitions. In fact, this kind of question has never been absent from the national examinations in any year. Furthermore, a tendency seems to have existed in these national examinations: questions regarding the rigidity of the constitution appeared more frequently during periods in which the constitution had been amended than in periods in which no amendments had been made. During the period of 2005 to 2006, especially, the two types of questions regarding rigid constitutions were raised more frequently than in the two preceding periods. On the one hand, this seems to indicate that the national examinations echoed reality, given the fact that the last revision, done in 2005, made the constitution even more rigid than before by raising the approval threshold to one-half of eligible voters. On the other hand, this tendency also seems to reveal that the examination system in Taiwan reinforces the persistent concept of a rigid constitution, despite the fact that even with its stringent amendment procedures, the so-called rigid constitution had been successfully amended seven times.

Clearly, the national examinations help perpetuate the concept of a rigid constitution. And although the national examination system in Taiwan aims mainly at recruiting bureaucrats, its influence may extend far wider than the group of bureaucrats it recruits. In addition, the Taiwanese constitutional textbooks reviewed above have also consistently introduced the dichotomous classification and categorized the ROC constitution as a rigid one. These two important social mechanisms, as we have argued, play a crucial role in transmitting the concept of a rigid constitution, as well as the fixed relationship between the ROC constitution and its rigidity, from generation to generation in Taiwan. The myth of a rigid constitution, therefore, has gradually taken on a life of its own, separate from the political support of the KMT. Currently, both the Taiwanese people and politicians hold this

view. No matter how calculating politicians are supposed to be in theory, and even in practice, as human beings, they cannot fully escape the influence of cultural beliefs, myths, and so on. Thus, we now turn to the impact of the myth of a rigid constitution on politicians, especially those from the DPP, as well as on the passage of one of the toughest thresholds in the world for approving amendments.

Impact of Rigid Constitution Myth

As we briefly mentioned in the first section of the paper, the impact of a myth should be measured by its power to confine and legitimize certain choices. That is, it should first preclude certain choices from a plausible spectrum of choices with regard to the decision being made. Then, after precluding certain choices, it should legitimize the choice made only if it falls within the limited spectrum of remaining choices allowed by the myth. The following discussion tries to show how the myth of a rigid constitution has been exercising these two effects on the constitutional drafts or outlines proposed primarily by the DPP politicians, and upon the passage of the toughest threshold for amending the constitution, which was instituted in 2005.

The current ruling party, the DPP, was formally established in 1986—i.e., a year before the lifting of martial law, which had been effective for more than 37 years under the KMT's authoritarian rule in Taiwan (1949-1987). The birth and growth of the DPP was nurtured largely by the Taiwanese people's reaction against the KMT's authoritarianism. The DPP, thus, has embodied a sentiment of Taiwanese nationalism and a dream of building a new nation that should have been separate from China (the mainland) from the very beginning of its establishment. Therefore, the DPP has continuously set agendas for either making a new constitution or reforming the current one. More than ten drafted constitutions or outlines appeared within the DPP from 1988 to 2000[20]. A review of these documents, especially regarding the constitutional amendment procedures they propose, reveals that, on the one hand, no one has ever designed a flexible procedure for amending the constitution in the future in a manner similar to that of passing ordinary legislation. On the other hand, no one has ever expressed concern about the degree of rigidity either. All of the proposals have called for a direct referendum of the people, either for passing a new constitution at an initial stage or for amending a new constitution in the future, though most of them did not make a clear distinction between these two stages.

It might sound very silly to point out that the DPP constitutional drafts have never included a clause that cited a flexible procedure for amending the constitution. For many people in Taiwan, this would not even be a question since political calculation seems reason enough to explain why the DPP members did not have an incentive to embrace a flexible constitution. First, the KMT predominated in the NA when the DPP was established. In the first half of the 1990s, the KMT occupied 80 to 90 percent of the seats in the NA, which was the final authority to approve constitutional amendments before 2005. At that time, the DPP's share of seats ranged from two to about 20 percent. This means that the DPP had no way to push forward their pet proposals on their own or to even block the KMT's proposals, as the amendment procedure required three-fourths of the national assembly members to be present and to approve. The best strategy for the DPP at that time, then, was to discredit the entire KMT system, so they called for having a constitution-making council instead of the NA so as to have representatives from all corners of Taiwanese society. Since the DPP at that time was mainly concerned about using some extra-institutional strategies to fight against the KMT's predominance everywhere, how could the DPP think of adopting a flexible constitution that

actually followed regular and institutionalized procedures to make changes?

Second, the DPP embodied the sentiment of Taiwanese Nationalism and also claimed that the ROC government under the KMT was a foreign regime. Therefore, it asked for a referendum by the Taiwanese people so as to invalidate the current system, in which the mainlanders who came into Taiwan with the KMT regime after 1949 were over-represented in the political arena, and the Taiwanese people, who composed more than 75 percent of the population, had very limited room to express themselves.[21] Thus, the DPP seemingly had no choice at that time but to take people into account the constitutional making or revising process. If it was a must for the DPP to have a direct referendum of the people to approve anything related to constitutional affairs, this choice, by its very nature, excluded the possibility of having a flexible constitution that renders sovereignty mainly to parliaments.

Third, since some of the DPP documents did not make a distinction between the process of making a new constitution and that of amending the new one in the future—and did not clearly specify the threshold for passing a referendum—some might suspect that the DPP's advocacy of Taiwan's nation-building and constitution-making might have been their means, not really their ends. Especially the last two documents delivered by Zhou Yi-cheng and Chen Shui-bian in 1996 and 1999, respectively, already pointed out an inside-system approach by which the DPP should accept the current system, including the national name and the constitution, and make changes through the current rules of the game. Furthermore, the DPP leaders knew that if they were truly to create a new nation and a new constitution, there should be a lot of international constraints. However, they have also learnt that advocating Taiwanese nation-building is so attractive to their fundamental supporters that they could not be quiet on this issue, especially during election periods. So, the DPP leaders could not be bothered with defining how to design a real constitutional amendment procedure in a new constitution, should it be eventually passed. But they have had to mention ideas of having a new constitution and a new nation by virtue of a people's referendum whenever such proposals could translate into some solid votes.

Indeed, all of the above-mentioned rational accounts or political reasons might have more or less characterized the DPP leaders' or politicians' ways of thinking about constitutional issues. It is difficult to know to what extent the myth of a rigid constitution has constrained their design of the amendment procedure. However, not all DPP politicians have been pragmatic. Some of them seem to be sincere in advocating the new constitution, and they had drafted their own versions of constitutions that considered what the amendment procedures would be after the new republic was established. We carefully select three symbolic figures that have been involving in Taiwan Independent movement, and are still fully respected by DPP members now. These three are: Xu Shi-kai, Lin Yi-xiong, and Yao Jia-wen.

We looked into their constitutional proposals respectively, and found that they all followed Xu's design for constitutional amendment procedures since he was the first one to offer a more comprehensive draft of Taiwan constitution (*Tai wan gong he guo xian fa cao an*). In his draft, his idea for passing the new constitution and amending it in the future is quite clear. His design included a national council that would pass the drafted new constitution by means of two-thirds of the council members' approval. Then the approved draft would go to a referendum by the people and would be approved when more than one-half of eligible voters voted and more than one-half of those valid votes were in favor of the draft. The constitutional amendment procedure, then, requires first that two-thirds of the legislators approve a constitutional amendment proposal and second that the people have the final say by the same threshold as the one approving the draft. This process falls in the category of a rigid constitution, though the threshold for people's approval is not that rigid.

Xu seemingly cared mainly about how the idea of the people's sovereignty could be embedded in the constitution, but he never clearly analyzed the degree-of-rigidity problem as Dr. Wang Chong-hui did more than 75 years ago. In his book, regarding his comments on a new constitution for Taiwan (*Tai wan xin xian fa lun*), Xu only briefly introduced the dichotomy and seemingly took for granted the idea that Taiwan's constitution is rigid.

Both Lin Yi-xiong and Yao Jia-wen did not offer a different view from Xu's regarding how to revise the new constitution, should it be promulgated, in their respective versions of the Drafted Constitution for Taiwan Republic in 1989. Yao once even expressed that the "U.K. has a flexible constitution which is quite democratic; France has a rigid constitution which often causes revolutions; the American constitution is rigid too, but does not regulate too many things . . . Taiwan's constitution is rigid."[22] He also seems to take for granted the view that Taiwan's constitution is rigid. No further elaboration is needed.

In sum, these three, generally viewed as quite sincere Taiwan Independence advocates, gave up trying to think about whether or not Taiwan could have a flexible constitution if the so-called Taiwan Republic were established. Although Yao did worry that a rigid constitution might provoke revolutions, he seemingly never thought the other way around to design constitutional amendment clauses. However, there was a consensus among the three, as well as in some other DPP drafted constitutions, regarding the threshold for amending the constitution by means of a people's referendum—i.e., over one-half of eligible voters turn out to vote and over one-half of these turn-out votes approve a given constitutional amendment bill. Why, then, did the DPP, which had long supported this threshold, support a much tougher threshold than theirs in 2005?

We raised this question to several key DPP poiliticians who were deeply involved in the process of amending the constitution the seventh time in the Legislative Yuan. They are: Legislator Lin zhuo-shui, General Coordinator of the DPP Caucus at the Legislative Yuan (LY), Ke Jian-ming, and some legislative assistants to the DPP Caucus at the LY. How did they answer?

Legislator Lin, who strongly opposed the high threshold proposed by the KMT, said as follows:

> My impression was that The KMT advocated the high threshold because they were afraid of constitutional revision, which would eventually touch the issue of national territory and name,[23] so they would prefer to set a very high bar for constitutional amendment. However, why the DPP agreed to this high bar, I think, was mainly because of Lin Yi-xiong. At that time, Lin Yi-xiong just wanted to have the number of the LY members reduced to a half. If the DPP would have opposed the high Bar, the KMT might have stopped supporting constitutional revision this time. In turn, Lin must have given a hard time to the DPP.

Then two follow-up questions were posed to him since he strongly opposed the high bar. One was why he, but not other DPP members, had worried about the effect of the high bar. What were the others' considerations?[24] We believe that the answer to this question is fourfold: 1) If the people's referendum could be written into the constitution, nothing else would be as important; 2) This high bar should have been acceptable to the DPP since the DPP were so good at mobilizing votes and could once more try to bond the constitutional referendum with the national elections,[25] 3) Both of these points are valid ; or 4) Who really cared about whether or not we could further amend or make a new constitution in the future? We first needed to make Taiwan Solidarity Union (TSU, Tai wan tuan jie lian meng) become bubbles

so as to consolidate our votes. The second question, then, was who was the final decision maker for accepting this high bar? Was it President Chen? Lin's answer to these was:

> All the reasons you mentioned are not correct. The DPP's acceptance of the high bar, as I said before, was mainly due to fear about making Lin angry. If the KMT had not joined to revise the constitution because of the DPP' s refusal to this high bar, then the downsizing of LY, about which Lin cared most, might not have been passed. As to the second question, Chen's only instruction was to have the downsizing clause passed; other clauses that either passed or not in the LY were all negotiable. But the DPP Caucus General Coordinator of LY, Ke Jian-ming, decided to have the five constitutional amendment clauses all pass.

Then, Ke Jian-ming was asked what he thought about this question of why the DPP accepted the high bar:

> Actually, there was not much difference between the KMT's and the DPP's version of constitutional amendments this time. The DPP set up some obstacles in its version in order to use them as bargaining chips with the KMT. Actually, there was no difference between the ruling and the opposition parties, especially regarding the threshold of three-fourths of the legislators to approve a constitutional amendment bill. Why did former president Lee Deng-hui blame the DPP for the passage of the high threshold?. . . . There was not much argument between the KMT and the DPP. . . . The DPP did feel the pressure mainly from Lin Yi-xiong, from public opinion and from the presidential election, but the DPP at least put the clause about the people's referendum into the constitution. That should symbolize Taiwan's sovereignty. . . .

He disagreed with Lin Cho-shui's view that he compromised with the KMT so as to let the five clauses all pass in the LY. What he said seemed to reveal that the DPP did care about whether or not the referendum clause appeared in the constitution, but the high bar was not a problem at all. Thus, while the DPP might not have 'accepted' what the KMT suggested, they nevertheless agreed to it without too much struggle.

How could the DPP just agree to this so easily? Several legislative assistants responded:

> The original spirit of the constitution is rigid, so to agree to the KMT's version just followed the original legislative spirit.
> This is because the DPP's previous constitution-making advocates also proposed a threshold as high as this one! Although usually the counting base depends upon who turns out to vote, we just use the entire eligible voters as the counting base.

The above quotes support our argument that the myth of a rigid constitution has had an impact both on limiting the spectrum of choices and on legitimizing any choice that falls within the spectrum limited by the myth. To the former, the DPP legislative assistants showed that they took the ROC constitution being rigid for granted, and couldn't think of anything else. To the

latter, they also appeared an attitude that the degree of rigidity wasn't an issue, if only a given proposal coped with the rigid spirit.
Indeed, there must be a lot of political calculation and many power struggles involved in a process of amending a constitution, especially in a country in which the problem of national identity has long existed. The issue of a people's referendum and the power struggle among different parties and between the legislative and other sectors in Taiwan might fully exhaust politicians' attention. The myth of a rigid constitution, to a certain extent, allows these politicians to focus on things other than the threshold issue. But the myth also leads to a new uncertain situation in which nobody can tell whether or not future constitutional amendments or new constitutional proposals can be passed under the highest threshold in Taiwan's history.

Concluding Discussion

This paper uses a mythical angle to understand why Taiwan has one of the most difficult thresholds in the world for amending constitutions, which was the case since her establishment and continued to exist in that spirit in the 2005 constitutional revision. We study the myth of the so-called 'rigid constitution' and its relationship to the Taiwanese constitution. The paper also tries to shed some theoretical light on the origin, persistence and impact of a myth. It borrows the term "imprinting" from psychology to analogize how a newborn republic with no constitutional cultural background learnt to make a constitution in the earliest stages of the republic. A simple stimulus, such as the dichotomy of the rigid/flexible constitution, having been introduced into the constitution-making context at this stage of Taiwan's development would have been easily imprinted onto constitutional practitioners' minds. Then, the dominant political force might just have accepted it as a given and formulate constitutional clauses that could accommodate both the interests of the political force and the requirements of the imprinted concept. The political force, if still dominant, then would have been able to reinforce the myth by virtue of various public channels, such as educational systems and public servant recruitment systems. However, the myth, once formed, would have taken on a life of its own beyond the support of any political force. It then, in turn, would have been able to constrain and legitimize people's choices within the territory confined by it.

Two policy implications can be drawn from this study. First, for late-developed democracies such as Taiwan, textbooks and teaching about a constitution should be repeatedly reviewed and updated. Otherwise, some imprinted constitutional concepts may be transmitted from generation to generation; they might not even be so conducive to the constitutional development of a new democracy. Second, the idea of a flexible constitution should not be viewed as a totally alien choice for a junior democracy. On the contrary, a flexible constitution would allow a young democracy to have more legitimate chances to fix its less-experienced problems written into a constitution. Take Taiwan as an example. If it had had a flexible constitution, it might not have had to go through 7 majority-dominated and unsophisticated constitutional amendment processes that eventually discredited the legitimacy of the current constitution, but set up the highest threshold for any further revision.

What is the impact of a rigid constitution on the general political development in Taiwan then? What will happen next in Taiwan with the toughest threshold in its history having been put in place in 2005? Although this is not the primary investigation of this paper, we would like to frame this research as a departure point to raise awareness on the importance of this question. Three potential impacts can be posited with historically supported evidence yet to uncover and analyze.

First of all, will this high bar provoke revolutionary actions as many have predicted? In the past, no revolution occurred in Taiwan. Yet with the 2005 constitutional revision setting an even higher bar for future revisions, any upcoming revision would need at least 8,6000,000 valid votes to be approved. So far, no political party, individual politician or referendum bill in Taiwan has ever been able to gain that many votes in a single election. It inevitably implies that it is nearly impossible to revise the constitution in the future. Does this provide more incentive for parties or individuals to forment revolution either to bypass the rigid constitution in order to reach whatever political goal, or to simply express dissatisfaction with a constitution that is way too rigid, inadaptable to changes in society and gradually becoming outdated? In this case then, the current rigid constitution might be considered an institutional hazard and a potential contributor to a regime breakdown.

Second, since a rigid constitution is a myth, few in both the KMT or DPP groups would advocate for changing this rigidity. Might this force a consensus among even extremely oppositional political parties so as to maintain the stability of the current constitutional regime? In this scenario, the current highly rigid constitution would be a positive force behind the creation and promotion of consensuses in an ideologically divided society like Taiwan, which has long been involved in a struggle between unification with the mainland and independence.

Or lastly, because the constitution has become so difficult to be revised ,will it be able to generate people's respect for the constitution and the political institutions as a whole? Or, on the contrary, will the rigidity of the constitution be a source for a lack of confidence in the political regime which is not elastic enough to echo people's immediate needs?

Again this paper is not intended to answer the above questions and speculations, but to alert readers' attention to the potential hazards or benefits a rigid constitution that is taken for granted by a newly democratizing regime may impose upon the political development of that regime. More empirical cases and analyses are needed to yield satisfactory answers to those questions in the future.

Notes

[1] The 2005 constitutional amendment set up the highest threshold in ROC's constitutional revision procedure. That requires a two-step procedure: an amendment be approved by at least three-fourths of the legislative members present at a meeting attended by at least three-fourths of the total members of Legislative Yuan (Li fa yuan); then the amendment be sanctioned by voters in Taiwan (or the so-called free area of the Republic of China) at a referendum wherein the number of valid votes in favor exceeds one-half of the total number of electors.(Article 12 of the Seventh Amendment in ROC Constitution)

[2] The etymological meaning of a myth refers to "relating," which describes a kind of connection and identity having no clear logical or rational link. (C.J. Jung, and C. Kerenyi, *Essays on a Science of Mythology*, (New York: Pantheon, 1949); Harold Lasswell, Daniel Lerner, and Ithiel de Sola Pool, *The Comparative Study of Symbols*, (Stanford, Ca.: Stanford University Press, 1952). However, it has also been conceived as some more concrete concepts, such as belief, ideology, moral system, narrative vision, thought structure, etc. See Georges Sorel, *Reflections on Violence*, (Cambridge: Cambridge University Press,.1909); Lewis S Feuer, "Political Myths and Metaphysics," *Philosophy and Phenomenological Research*, Vol. 15, No. 3 (March, 1955), pp. 332-55; Hans Blumenberg (translated by Robert M. Wallace), *Work on Myth*, (Mass: MIT Press, 1985).

[3] Emile Durkheim (trans. by Joseph W. Swain), *The Elementary Forms of the Religious Life*, (London: Longmans, Green& Co, 1952); Ben Halpern, '"Myth" and "Ideology" in Modern Usage,' *History and Theory*, Vol. 1, No. 2 (1961), pp. 129-49.

[4] Henry Tudor, *Political Myth*, (London: Pall Mall Press, 1972); D. Bruce Marshall, *The French Colonial Myth and Constitution – Making in the Fourth Republic*.. (New Haven: Yale University Press, 1973); Theodore J. Lowi," Toward a More Responsible Three-Party System: The Mythology of the Two-Party System and thhe Prospects for Reform," *Political Studies*, Vol. 16, No. 4 (Autumn, 1983), pp. 699-706; Paul J. Hopper, and

Elizabeth Closs Traugott, *Grammaticaization*, (Cambridge: Cambridge University Press, 1993); David C. Williams, *The Mythic Meaning of the Second Amendment*, (New Haven: Yale University Press, 2003); Ernst. Cassirer, *The Myth of the State*, (New Haven: Yale University Press, 1974); Lewis S. Feuer, "Political Myths and Metaphysics," *Philosophy and Phenomenological Research*, Vol. 15, No. 3 (March, 1955), pp. 332-50; John Day, "The Creation of Political Myths: African Nationalism in Southern Rhodesia." *Journal of Southern African Studies*, Vol. 2, No. 1. (Oct, 1975), pp. 52-65.

[5] Adam Przeworski and José María Maravall, *Democracy and the Rule of Law*, (Cambridge University Press, 2003), p89; George Tsebelis, "Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentalism, Multicameralism and Multipartyism," *British Journal of Political Science* 25, pp. 289-325.

[6] The first scientific studies of this phenomenon were carried out by Austrian naturalist Konrad Lorenz (1903 - 1989), one of the founders of ethology (the study of animal behavior). Imprinting theory later generated a lot of scientific studies. These investigations have shown that imprinting is neither rapid nor irreversible, nor necessarily restricted to a critical period, as Lorenz and his followers claimed. However, since these studies have been conducted mainly in an experimentally controlled environment, their findings can compensate for the incompleteness of Lorenz's, but do not rule out the correctness of his, which he conducted in a natural environment. It has since been discovered that imprinting occurs in other species and that learning components are more important than previously thought. Howard Hoffman, *Amorous Turkeys & Addicted Ducklings*: The Science of Social Bonding and Imprinting, (Boston, Mass.:Authors Cooperative Inc. Publishers, 1996); Silvia Helnena Cardoso, and Sabbatini ,Renato M.E, "Learning Who Is Your Mother: The Behavior of Imprinting," *Brain & Mind Magazine*, (State University of Campinas, Nov. 4 (2001).

[7] The KMT was defeated by the Chinese Communist Party (CCP, *zhong guo gong chan dang*) in 1949 and moved the ROC central government from the mainland to Taiwan around 1949-50. The People's Republic of China (PRC, *zhong hua ren min gong he guo*) then was founded by the CCP in 1950, and has hence gradually become the only legitimate representative of China in the world.

[8] During the Ching dynasty, there were several drafted constitutional outlines, but all were from the royal monarch and designed to have a monarchical constitutional regime similar to Japan's at that time. But the ROC was built as a republic, no longer as a monarchical regime. See Hsieh Zheng-dao,,*Zhong hua min guo xiu xian shi* (*The History of Revision to the ROC Constitution*).

[9] The dichotomous scheme was set up first by Dicey (Albert Venn Dicey, 1835-1922) in 1885, then followed by Bryce (James Bryce, 1838-1922) in 1888, to classify a constitution as either rigid or flexible in accordance with whether the constitution's amendment passage procedure is as ordinary as that of regular parliamentary legislation or more rigid. See James Bryce, *The American Commonwealth*, (Electronic texts at James Bryce Online Library, 1888). Dicey also offered some theoretical flavor with his idea that a federalist system should have a rigid constitution, while a centralized one should have a flexible one. See Albert V. Dicey, *An Introduction to the Study of the Law of the Constitution*, (Internet *Wikipedia on Dicey:* external links,1885). Lijphart (1999) later proposed that the majoritarian model of democracy he inducted could have a flexible constitution, but that the consensus model of democracy he developed would be better off with a rigid constitution for the sake of keeping the stability of a given polity. See Arend Lijphart, *Patterns of Democracy*, (New Haven: Yale University Press, 1999.). The other school of thought then argues that the so-called constitution should be above, and in some sense even "outside," the everyday system of ordinary political decision making, so that it should not be too easy to amend all of a constitution's provisions. If a polity does not make any clear distinction between revising a constitutional law and passing ordinary legislation, it may not have a "constitution" at all. M. Tushnet, " The Whole Thing," *Constitutional Commentar*y, Vol. 12 (1995), pp. 223-5; L. A. Baker, "Constitutional Change and Direct Democracy," *University of Colorado Law Review*, Vol. 66 (1995), pp. 143-58; Sanford Levinson ed., *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, (New Jersey: Princeton University Press, 1995); Sanford.Levinson, " Designing an Amendment Process," in John Ferejohn, Jack N. Rakove, and Jonathan Riley eds., *Constitutional Culture and Democratic Rule*, (Cambridge: Cambridge University Press, 2001), pp. 271-287. However, these kinds of theoretical underpinnings of this dichotomy have not been well discussed in Taiwan's various constitutional textbooks. The paper will turn to these in its second and third sections.

[10] Anjali Sastry, and Corrine Coen, "Beyond the Beginning: Building a Theory of Organizational Imprinting," *University of Michigan manuscript*.(Department of Economics, 2001).

[11] During the Ching Dynasty, we found no discussion about the issue in various constitutional documents. See *Miu Quan-ji* ed., *Zhong guo zhi xian shi zi liao hui bian—xian fa pian* (*A Collection of Chinese constitution-making historical documents—Chapter on Constitution*) (Taipei: *Guo shi guan*, Bureau of National History, 1989).

[12] Wang Chong hui, "Xian fa ping yi (About the Constitution, 1913)," in Wang Chong hui, .Collection of Wang Chong-hui, (Taipei: Yuntian Publisher, 1970).

[13] Dr. Zhang was one the founders of the Democratic Socialist Party in the 1920s and the main drafter of the ROC constitution. Many even labeled this constitution as his. See Xue Hua-yuan, *Min zhu xian zheng yu min zu zhu yi di bian zheng fa zhan—Zhang Jun-mai si xiang yan jiu* (*The Dialectical Development between Constitutional Democracy and Nationalism—A Study of Zhang Jun-mai's Thought*) (Taipei: Dao-he Publisher, 1993), p. 189.

[14] The textbooks we sampled from this period were: Wang Shih-jie, *Bi jiao xian fa* (*Comparative Constitution*) (Shanghai: Shang-wu Publisher, 1927); He Zhi-hao, *Xian fa gai lun* (*Introduction to Constitution*) (Shanghai: Hua-nan shu dian, 1934); Hu Jing-ming, *Xian fa gang yao* (*Main Ideas in Constitutions*) (Nanjin: Dou-li Publisher, 1946); Liu Zong-lu, *Zhong guo xian fa lun* (*The Constitution of ROC*) (Nanjing: Nanjing Institute of Politics, 1947).

[15] Wang, Shih-jie, Bi jiao xian fa (Comparative Constitution) (Shanghai: Shang-wu, 1948), p. 11.

[16] Hsieh Rui-zhi cited this question in his book, *Xian fa gai yao* (*An Introduction to Constitution*), as a reference for readers to pay attention. See Hsieh, *Xian fa gai yao* (*An Introduction to Constitution*) (Taipei: Author self-published, 1999), pp. 5-6.

[17] No revision attempt was made before 1991 since Republic of China was under martial law and one party rule between 1948 to 1987 – the "Temporary Provisions Effective During the Period of Communist Rebellion". The ROC Constitution, under martial law, was frozen and no revision attempt was thinkable.

[18] These sampled textbooks were selected in accordance with their popularity in Taiwan.

[19] Wang Shih-jie's three reasons can be found in the previous section on "The origin of the myth."

[20] See Tseng Chien-yuan and Hsieh Bing-xian, "Tai wan min jian shi xian yun dong di hui gu yu zhan wang." ("Review and Prospect of Constitution-Making Movement in Taiwan Society") paper presented at Tai wan zheng zhi xue hui (the Annual Conference of the Taiwanese Political Science Association) Taipei: Soochu University, Dec.11-12, (2003).

[21] See Liao Da-chi, "The Transformation of the Role of Taiwan's Legislative Yuan during the Process of Democratization (1950-2000)," pp. 31-79.

[22] See: http://news.sina.com/can/101-102-101-101/2006-02-14/0153641536.

[23] The current ROC constitution still covers the mainland as ROC's territory.

[24] The following four answers were offered by the authors.

[25] In the 2004 presidential election, a referendum on two issues regarding the cross-strait relationship was conducted simultaneously with the election.