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# THE PRESIDENT REFUSES TO COHABIT: SEMI-PRESIDENTIALISM IN TAIWAN

Thomas Weishing Huang<sup>†</sup>

*Abstract:* French constitutional practices suggest that cohabitation between the president and the prime minister, where the latter is the leader of the opposition majority in parliament, creates a workable governmental relationship. Taiwan's constitutional practice indicates, however, that a minority government, although it does not command the majority in parliament, may nevertheless survive if the system of semi-presidentialism is flawed. Instead of having the flexibility to change the government whenever it loses the confidence of parliament, minority governments under semi-presidentialism in Taiwan exhibit all the rigidity created by gridlock between the executive and the legislature. This gridlock is caused by fixed terms and dual legitimacies as found in pure presidentialism.

A constitution that adopts the semi-presidential system must contain two essential features: if a stalemate needs to be unlocked, the president must have power, properly restricted, to initiate dissolution of parliament, and the president must respect the results of parliamentary elections, whether they be for or against his political interests. To avoid a stalemate between the executive and the legislature, the Taiwanese constitution must be amended to include these features. Because the gridlock prevents normal cooperation between the executive and the legislature, including the passage of necessary proposals for constitutional amendments in Taiwan, the assumption, that the prime minister may fall and change, but the president, under semi-presidentialisms, will serve out a fixed term, should be abandoned. Instead of serving out a fixed term, the president may want to appeal to the electorate through plebiscites for a vote of confidence on his important political agenda, including constitutional amendments to cure the design flaws in the constitution. As a short term and an immediate step to resolve the stalemate, the president should reach a political understanding with the opposition in parliament to go forward with proposals to amend the constitution and correct design defects. A successful return of referendum will allow the president to stay in office and dissolve the parliament under the amended constitution. A negative return will mean that the president should resign to allow a new presidential election before the term is up. The possibility of resignation is a heretofore under-appreciated way, under semi-presidentialism, to break the gridlock between the executive and the legislature. Contrary to conventional opinion, cohabitation is a desirable way to prevent governmental standstill. In this sense, Taiwan's failure to come up with a functional semi-presidential government derives not so much from the inherent defects of this regime type, as from the institutional and cultural environment in which it operates.

## I. INTRODUCTION

Taiwan has practiced a form of semi-presidentialism (see below) since 1997, if not earlier. Because of its short history of political liberalization (beginning in the 1990s) and the relatively few scholarly researched works

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on semi-presidentialism, Taiwan's situation has attracted little attention on a global scale.<sup>1</sup> Under the current constitution, Taiwan has experienced continuous gridlock between the executive and the legislature since 2000. This seems to throw into question claims that semi-presidentialist governments enjoy both the regime stability of presidential governments and the flexibility of parliamentary systems.<sup>2</sup> Most commentators in Taiwan seem resigned to the fact that further constitutional amendments are virtually impossible due to the opposition's refusal to join in the required super majority in parliament for initiating constitutional amendments.<sup>3</sup> Since that is the case, there appears to be no feasible solution to the stalemate.<sup>4</sup> Neither impression is accurate.

This article will first describe the evolution of the concept of semi-presidentialism, both in Taiwan and worldwide. It will then explain how the institutional design of semi-presidentialism can resolve deadlocks between the executive and the legislature. I intend to show that the stalemate between Taiwan's president and the presidential cabinet on the one hand, and the legislature on the other, derives not so much from inherent difficulties of

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<sup>1</sup> Perhaps with the two exceptions of Robert Elgie, *Semi-Presidentialism: Concepts, Consequences and Contesting Explanations*, 2 POL. STUD. REV. 314 (2004) and HORST H. BAHRO, *Virtues and Vices of Semi-presidential Government*, 11 J. HUMAN. & SOC. SCI. & PHIL. 5 (1999), which does include Taiwan as a semi-presidential regime. The fact that the People's Republic of China claims Taiwan as part of China, and Taiwan was recognized as a sovereign State only by 28 countries up to 2001, and is not a member of the UN, may also have contributed to the neglect of serious studies on its semi-presidential system. However, in addition to being an intellectually interesting case, I would argue that since Taiwan has maintained effective control over the islands of Taiwan, Penghu, Kinmen and Matsu with a completely functional government (a political "unit" in Robert Dahl's sense), the study of its government and constitution should not be affected by the waxing or waning of its international relations. For the requirement as a political unit for political democratization, see ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* 207-09 (1989). For a similar idea (though termed "stateness" or "nation-state"), see JUAN J. LINZ & ALFRED STEPAN, *PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE* 25 (1996). For the number of countries which recognize the Taiwan government, see Statistics, <http://www.mofa.gov.tw/public/attachment/471416105071.pdf> (lasted visited April 20, 2005).

<sup>2</sup> For an example of such a claim, see GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING: AN INQUIRY INTO STRUCTURES, INCENTIVES, AND OUTCOMES* 124-25 (2d ed. 1997); see also, Petra Schleiter & Edward Morgan-Jones, *Semi-Presidential Regimes: Providing Flexibility or Generating Representation and Governance Problems?*, [http://government.politics.ox.ac.uk/materials/Working%20Papers/CSDG\\_WP05-1\\_Schleiter.pdf](http://government.politics.ox.ac.uk/materials/Working%20Papers/CSDG_WP05-1_Schleiter.pdf) (last visited July 21, 2005).

<sup>3</sup> The most recent constitutional amendment prescribes that any proposal for further constitutional revision shall be approved by the three-fourths of the legislators constituting the quorum. It is not rocket science to figure out that amending the constitution is almost impossible for the government or the opposition to undertake alone, as neither one can control or mobilize enough legislators to its cause. ZHONGHUA MINGUO XIANFA ZENGXIU TIAOWEN [Constitutional Amendment of the Republic of China] art. 12 [hereinafter CONST. amend.].

<sup>4</sup> Yureng Chou, *Jiuqi xiuxianhou woguo zhongyangzhengfu tizhi zhi dingwei* [The Nature of Our Central Government After the 1997 Constitutional Amendments], <http://www.npf.org.tw/e-newsletter/report/891209-R-1.htm> (last visited Mar. 17, 2005) ("Except for making the president comply with the Constitution, there is nothing we can do.").

this regime type but from haphazard constitutional drafting in 1997 and the particular political culture in Taiwan. I also will demonstrate that semi-presidential systems are not confined to either the super-presidential type,<sup>5</sup> or the sharing of executive power in the so-called cohabitation.<sup>6</sup> A less effective minority government<sup>7</sup> may nevertheless emerge under the semi-presidential regime, as is the case in Taiwan, if the selection of the prime minister does not require the consent of parliament.

Considering the presidential politics in Taiwan, I will argue that cohabitation, perhaps as the second-best choice, is not the necessary outcome where the president in a semi-presidential regime faces the opposition of the majority in parliament. Despite ample historical precedents, scholars have failed to stress that resignation, or an offer thereof, by the president could be a legitimate strategic maneuver for ending the gridlock between the executive and the legislature in semi-presidential regimes.<sup>8</sup> Obviously, there is no constitutional requirement that the president in a semi-presidential regime maintain the confidence of either the electorate or parliament during the fixed term. The fixed term, however, would not be a barrier to solving Taiwan's executive/legislative gridlock<sup>9</sup> if the requirement that the president serve the term is abandoned. I will argue that semi-presidential regimes should also require that the president possess the power to initiate the dissolution of parliament in order to break the executive/legislative gridlock, and that the constitution should contain

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<sup>5</sup> The term "super-presidentialism" has been used by scholars to define the situation where the president acts independently of party politics or parliamentary restraints in pursuing his own agenda, therefore, "super-presidential semi-presidentialism." See, e.g., TIMOTHY J. COLTON & CINDY SKACH, III GENERAL ASSEMBLY OF THE CLUB OF MADRID, SEMI-PRESIDENTIALISM IN RUSSIA AND POST-COMMUNIST EUROPE: AMELIORATING OR AGGRAVATING DEMOCRATIC POSSIBILITIES 7, 11, [http://www.clubmadrid.org/cmadrid/fileadmin/4-Colton\\_Skach.pdf](http://www.clubmadrid.org/cmadrid/fileadmin/4-Colton_Skach.pdf) (last visited May 10, 2006). In this article, "super-presidentialism" refers simply to the fact that the president is able to lead the majority in parliament without usual restraints of checks and balances associated with pure presidentialism.

<sup>6</sup> For descriptions of cohabitation in the French constitutional practice, see DIMITRI GEORGES LAVROFF, *LE DROIT CONSTITUTIONNEL DE LA V<sup>E</sup> RÉPUBLIQUE* 901-11 (3e éd. 1999).

<sup>7</sup> The term refers to the fact that the prime minister does not control, but is supported, or at least not opposed, by the majority in the parliament. For a classic study on this topic, see KAARE STRØM, *MINORITY GOVERNMENT AND MAJORITY RULE* (1990).

<sup>8</sup> The author first conceived this idea in Thomas Weisheng Huang, *Bulu iannan de zongtong: Lun xingzheng yu lifa jiangqu de taojie* [*The President's Dilemma: Solving the Gridlock between the Executive and the Legislature*], 46(4) *FALING YUEKAN* [THE LAW MONTHLY] 4 (2005).

<sup>9</sup> An example of this assumption can be illustrated by Juan J. Linz, *Presidential or Parliamentary Democracy: Theoretical Observations*, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY* 52 (JUAN J. LINZ & ARTURO VALENZUELA eds., 1994) ("[T]he responsibility [under semi-presidentialism] becomes diffuse and additional conflicts are possible and even likely, creating situations in which a *fixed term of office* compounds the problem.") (emphasis added). A similar claim has been repeated in Mark Freeman, *Constitutional Frameworks and Fragile Democracies: Choosing Between Parliamentarism, Presidentialism and Semi-Presidentialism*, 12 *PACE INT'L L. REV.* 257 (2000).

provisions for the president to accept the outcome of parliamentary elections to prevent the occurrence of government deadlock between the cabinet and parliament.

## II. SEMI-PRESIDENTIALISM

The term “semi-presidentialism” first entered mainstream academic discussions with the arrival of Maurice Duverger’s disposition of the concept around 1970.<sup>10</sup> Later, in his 1980 article, discussing the practices of the French central government under the 1958 Constitution of the French Fifth Republic, Duverger established the definition of this regime type in the Western world.<sup>11</sup> Today, scholars generally agree that this design is unlike the parliamentary system, where the prime minister heads the government and is usually a leader of the majority party, or at least supported by the majority consisting of a coalition of parties in parliament. In such a system, the prime minister stays in power as long as he enjoys the majority's confidence. Semi-presidentialism is also different from pure presidentialism, such as that practiced in the United States, under which the directly or indirectly elected president, to whom the cabinet is answerable, serves a fixed term and is the head of both the State and the government. The survival of the president and the cabinet does not depend on retaining Congressional confidence.

Three features of semi-presidentialism place this regime somewhere between pure parliamentarism and presidentialism: (1) The president is elected directly or indirectly (as before 1962 in the French Fifth Republic) by universal suffrage to a fixed term, and serves as head of the State; (2) the prime minister is the head of the government and is responsible to parliament; and (3) the constitution gives the president considerable independent powers, which may include the authority to dissolve Parliament.<sup>12</sup>

France, Weimar Germany, Finland, Austria, Ireland, Iceland, and Portugal were practicing semi-presidentialism by 1986.<sup>13</sup> According to one

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<sup>10</sup> See Robert Elgie, *The Politics of Semi-Presidentialism*, in SEMI-PRESIDENTIALISM IN EUROPE 1-2 (Robert Elgie, ed, 1999).

<sup>11</sup> Maurice Duverger, *A New Political System Model: Semi-Presidential Government*, 8 EUR. J. POL. RES. 165 (1980). Some scholars prefer to call these constitutional designs simply “mixed constitutions.” See, e.g., Rett R. Ludwikowski, “Mixed” Constitutions—Product of an East-Central European Constitutional Melting Pot, 16 B.U. INT’L L.J. 34 (1998).

<sup>12</sup> Duverger, *supra* note 11, at 166.

<sup>13</sup> MAURICE DUVERGER (dir.), LES REGIMES SEMI-PRESIDENTIELS 7 (1986).

account, by 1999,<sup>14</sup> around fifty countries, particularly those considered part of the new wave of democratization,<sup>15</sup> had adopted some form of semi-presidentialism. Other semi-presidential countries include Colombia, Guatemala, Mozambique, Peru, and Taiwan.<sup>16</sup>

Some believe the superiority of semi-presidential regimes lies both in their ability to avoid the political gridlock so frequently associated with presidential systems and their fixed terms for the executive and the legislature. When the president under a semi-presidential regime is supported by a parliamentary majority, he can confidently nominate a prime minister of his own choice who will enjoy the confidence of parliament. If parliament is controlled by the opposing party, the president should appoint the leader of the opposition as prime minister, with whom he will cohabit by sharing executive powers.<sup>17</sup>

Less attention, however, has been paid to situations in semi-presidential regimes where parliament does not have a clear majority to either support or oppose the president.<sup>18</sup> Historical precedents support the conclusion that resignation, or the offer thereof, by the president, combined with the holding of a referendum or plebiscite, are effective ways to resolve the deadlock between the executive and the legislature in such a situation. Recent literature on semi-presidentialism, however, has failed to identify this mechanism. It is the contention of this article that by using the fate of his office to push his agenda during the fixed term, the president may effectively resolve the executive/legislative deadlock.

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<sup>14</sup> Elgie, *supra* note 10, at 14. These countries included Angola, Armenia, Austria, Azerbaijan, Belarus, Bénin, Bulgaria, Burkina Faso, Cape Verde, Croatia, Dominican Republic, Finland, France, Gabon, Georgia, Ghana, Guyana, Haiti, Iceland, Ireland, Kazakhstan, Kyrgyzstan, Lebanon, Lithuania, Macedonia, Madagascar, Maldives, Mali, Moldova, Mongolia, Namibia, Niger, Poland, Portugal, Romania, Russia, Slovenia, South Korea, Sri Lanka, Togo, Ukraine, and Uzbekistan. It is questionable, however, whether Azerbaijan, Guyana and Maldives should be considered countries which practice semi-presidentialism. The Azerbaijan prime minister is responsible to its president, instead of its parliament. AZER. CONST. art. 114.2. The Guyana cabinet, while whose prime minister and ministers must be selected from parliamentarians, does not appear to be responsible to parliament. GUY. CONST. art. 101.1. The Maldives constitution does not have a prime minister and the parliamentary censure is lodged against ministers. MALDIVES CONST. art. 61.3.

<sup>15</sup> By one account, there were more than thirty newly democratized countries in the world by 1991. SAMUEL HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* 21 (1991).

<sup>16</sup> See Elgie, *supra* note 1; Rafael M. Martinez, *Semi-Presidentialism: A Comparative Study* 8 (1999), <http://www.essex.ac.uk/espr/events/jointsessions/paperarchive/Mannheim/w13/martinez.pdf>.

<sup>17</sup> See Sartori, *supra* note 2, at 121-25.

<sup>18</sup> Although Duverger clearly mentioned the possibility of a minority government under the semi-presidential regime, the entire area of the minority government under any type of governmental structure seems to be underdeveloped. See Duverger, *supra* note 13, at 52. For treatment of this subject under parliamentary systems, see generally STRØM, *supra* note 7.

This possibility is unique under semi-presidentialisms. Under pure presidential regimes, a president who threatens to resign does not create the pressure of a political vacuum because the constitution usually provides a succession plan in the event of presidential resignation.<sup>19</sup> Under pure parliamentary regimes, the president usually does not possess enough constitutional power to actually make much of a difference. His offer to resign, therefore, would not carry nearly as much weight as it would in a semi-presidential regime.

### III. EVOLUTION OF SEMI-PRESIDENTIALISM IN TAIWAN

The basic structure of Taiwan's constitution was formulated by the Nationalist Government in 1947 during the Chinese Civil War. Under this constitution, the central government was divided into five different Yuans, or branches, of government according to the political doctrines of Dr. Sun Yat-sen:<sup>20</sup> the Executive Yuan,<sup>21</sup> the Legislative Yuan,<sup>22</sup> the Judiciary,<sup>23</sup> the Control Yuan,<sup>24</sup> and the Examination branch,<sup>25</sup> with the office of the President on top.<sup>26</sup> Many of the provisions of the 1947 Constitution were suspended by the so-called Provisional Articles<sup>27</sup> until 1991 when these Articles were abolished.<sup>28</sup> Although the constitution was suspended, academics in Taiwan continued to debate whether the governmental design under the 1947 constitution should be considered a presidential or a parliamentary system.<sup>29</sup>

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<sup>19</sup> See, for example, the succession plans under the United States Constitution. U.S. CONST. amend. XXV.

<sup>20</sup> DENNY ROY, *TAIWAN: A POLITICAL HISTORY* 84 (2003).

<sup>21</sup> ZHONGHUA MINGUO XIANFA [MINGUO XIANFA] [Constitution] arts. 53-61 (1947) (Taiwan).

<sup>22</sup> *Id.* arts. 62-76.

<sup>23</sup> *Id.* arts. 77-82.

<sup>24</sup> *Id.* arts. 90-106.

<sup>25</sup> *Id.* arts. 83-89.

<sup>26</sup> *Id.* arts. 35-52.

<sup>27</sup> Dongyuan kanluan shiqi linshi tiaokuan [Provisional Articles During the Period of Mobilization for the Suppression of Communist Rebellion] (1948, as amended 1972), in ZUIXIN LIUFA QUANSHU [NEW COMPILATION OF LAWS] (Tao Baichuan ed., 1980) [hereinafter Provisional Articles].

<sup>28</sup> ROY, *supra* note 20, at 185.

<sup>29</sup> The opinions were just about evenly divided. On the one hand, presidentialists argue that the existence of presidential independent powers, particularly the power to veto legislation, makes it a presidential system. On the other hand, parliamentarians pointed out that the parliamentary consent required for the appointment of the prime minister, who could also be forced to resign by the Legislative Yuan, if the former chooses not to accept certain programs overridden by the Legislative Yuan after a presidential veto, resembles a cabinet system.

Under the 1947 constitution, the president enjoyed considerable independent powers,<sup>30</sup> and the Provisional Articles gave the president even wider leverage, particularly through the emergency and discretionary powers.<sup>31</sup> Although lacking certain mechanisms, such as power to dissolve the Legislative Yuan or the Control Yuan (an office of ombudsmen), the constitution did give the legislature a modified power of investiture, or a limited vote of confidence, over the appointment of the prime minister.<sup>32</sup> It also contained a hybrid procedure for vetoing laws.<sup>33</sup> Combined with the fact that the president was elected by an electoral college called the National Assembly<sup>34</sup> and that the prime minister of the Executive Yuan was answerable to the Legislative Yuan (at least for “important policies”<sup>35</sup> and “legislation, budgets and international agreements”<sup>36</sup>), one could argue that the system actually was similar to a semi-presidentialism.

During the authoritarian rule of the Chiangs prior to 1988, the constitution also showed tremendous flexibility by vesting actual political power either in the hands of President Chiang Kai-shek, or of Chiang Ching-kuo, the son and the successor strong man, during both his brief interval as prime minister from 1980 to 1981, and throughout his presidency<sup>37</sup> until 1988.

In reality, the Chiangs ruled the island through the dominant Nationalist Party, or the Kuomintang (“KMT”).<sup>38</sup> The KMT originally consisted primarily of mainlanders who, with the Chiangs, evacuated mainland China after the Chinese communists triumphed in the Civil War. However, the growth of economic power in the middle class, as well as the

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<sup>30</sup> The president’s independent powers are considerable. MINGUO XIANFA arts. 35 (Head of the State), 36 (Commander-in-Chief), 37 (authority to promulgate laws and decrees), 38 (diplomacy), 39, 41 (emergency powers), 40 (pardon), 44 (arbitrage disputes among different Yuans), 55 (nomination of the Prime Minister), 79 (nomination of the head of the Judicial Yuan and constitutional judges), 84 (nomination of members of the Control Yuan).

<sup>31</sup> Provisional Articles, arts. 1, 4, 5, 6, 8, *supra* note 27, at 7.

<sup>32</sup> MINGUO XIANFA art. 55.

<sup>33</sup> *Id.* MINGUO XIANFA arts. 57.1(2) and 57.1(3) prescribe that the prime minister may request the president to veto important policies or legislation, budgets, or international agreements passed by the Legislative Yuan which can then override the veto by two-third votes of legislators present at the meeting. In such case, the prime minister must either accept the program or resign.

<sup>34</sup> MINGUO XIANFA art. 27.1.

<sup>35</sup> *Id.* art. 57.1(2).

<sup>36</sup> *Id.* art. 57.1(3). This provision is now suspended and being replaced by constitutional amendments under which the scope and the power of the Legislative Yuan to override the president’s veto on “legislation, budgets and international agreements” are much more restricted. *See* discussions in Part II.F. *infra* and *supra* note 33 for the original design.

<sup>37</sup> *See* ROY, *supra* note 20, at 156.

<sup>38</sup> *Id.* at 81-88. For more sympathetic views on the KMT’s rule in Taiwan, *see* LINDA CHAO & RAMON H. MYERS, *THE FIRST CHINESE DEMOCRACY: POLITICAL LIFE IN THE REPUBLIC OF CHINE ON TAIWAN* 21-71 (1998).

sheer numerical superiority of the local Taiwanese over the mainlanders (approximately 83% to 17%) made change in the political landscape inevitable.

Despite certain political leniencies on the Chiangs' part, such as ending martial law and acquiescing to the formation of the opposition Democratic Progressive Party ("DPP"),<sup>39</sup> Taiwan was under their authoritarian rule until Chiang Ching-kuo died in 1988. Upon his death, Lee Teng-hui, a Taiwanese, succeeded him as president. Lee's consolidation of power within the KMT and the DPP's political ascendance led to the start of Taiwan's political liberalization. This liberalization included abolition of the Provisional Articles<sup>40</sup> and no less than seven constitutional amendments, which, except for the last one, were initiated by the KMT without effective participation of the DPP.<sup>41</sup>

Two of these constitutional changes, the third of the 1994 amendments and the fourth of the 1997 amendments, are of fundamental importance to the dynamic between the executive and the legislature. Because Lee, a Taiwanese from a political party traditionally dominated by mainlanders, could no longer impose his agenda with an iron fist as did the Chiangs, he set out to create an electoral process in Taiwan that would allow for universal suffrage. The result was the third constitutional amendment which allows the electorate in Taiwan to directly elect the president.<sup>42</sup> A historical first election took place in 1996, resulting in Lee being elected the president with 54% of the votes cast.<sup>43</sup>

With this system in place, Lee then wanted more freedom in selecting the prime minister. He did not want his appointment dictated by factions within the KMT and the Legislative Yuan. The DPP, however, having its political base largely in the Legislative Yuan as the opposition party, wanted some control over the executive branch. The compromise was to design the relationship between the executive and the legislature after the constitution of the French Fifth Republic. The resulting fourth constitutional amendment removed the power of investiture from the Legislature, added a mechanism for legislators to censure the prime minister, and provided for a presidential discretionary power to dissolve the Legislative Yuan upon a vote of no confidence over the prime minister.<sup>44</sup> Due to the concerns of legislators and

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<sup>39</sup> ROY, *supra* note 20, at 174-78.

<sup>40</sup> *Id.* at 174-75; *see also* Provisional Articles *supra* note 27.

<sup>41</sup> CONST. amend., *supra* note 3. The KMT was able to accomplish these tasks because it controlled the now abolished National Assembly which had the power to amend the constitution.

<sup>42</sup> *Id.* art. 3.

<sup>43</sup> ROY, *supra* note 20, at 201.

<sup>44</sup> CONST. amend., *supra* note 3, art. 4.

the DPP, original proposals to add the vote of confidence and a presidential power to initiate dissolution of the Legislative Yuan were dropped.<sup>45</sup> The result was a distorted semi-presidential design.<sup>46</sup>

Although the liberalization process accelerated with the 2000 election and 2004 re-election of the DPP presidential candidate, Chen Shui-bian,<sup>47</sup> the constitutional design began to exhibit problems immediately after the 2000 presidential election. Elected by 39.4% of the vote in a three way race,<sup>48</sup> and with the DPP having only 70 out of 225 seats (31.1%) in the Legislative Yuan,<sup>49</sup> President Chen Shui-bian appointed General Tang Fei, a former minister of defense who was technically a member, but by no means the leader, of the opposition KMT party, to form the cabinet.<sup>50</sup> The motive was to gain acceptance of the opposition parties in the Legislative Yuan and, more importantly, to prevent a military coup. Tang's cabinet included many politicians from the president's own party, and therefore was not a true cohabitation of the president and the opposition party. Because Tang was not in the position to rally the support of the opposition party legislators to support the executive, the cabinet was rather ineffective and lasted only 134 days.<sup>51</sup>

Once the threat of an immediate military coup proved to be overstated, and with Tang gone, Chen consecutively appointed three different politicians from his own party as prime minister. These appointments followed the 2002 election for the legislators, in which the DPP captured only 87 out of 225 seats (38.7%),<sup>52</sup> and the 2004 parliamentary election, which gave the DPP only two more seats in the Legislative Yuan.<sup>53</sup> In the 2004 elections, the KMT captured 79 seats and, with the support of the 34 seats from the People's First Party (PFP), claimed majority status in the legislature. The KMT thus claimed the right to form the government which

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<sup>45</sup> Huang, *supra* note 8, at 15.

<sup>46</sup> *See id.* at 4.

<sup>47</sup> Central Election Commission Report, <http://210.69.23.140/vote3.asp?pass1=A2004A0000000000aaa> (last visited May 4, 2006).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *See* ROY, *supra* note 20, at 232.

<sup>51</sup> Statistics compiled by the Central Election Commission, <http://210.69.23.140/cec/cechead.asp> (last visited May 10, 2006). After being in office only for 134 days, Tang was removed because of his disagreement with the president over the issue of the construction of the No. 4 nuclear power plant, and because of the false alarm of a military coup.

<sup>52</sup> *Id.*; *see* Liu Bingkuan, *Woguo yu faguo xianzheng tizhi zhi bijiao yanjiu* [Comparative Studies of the Constitutions of Our Country and France] 170 (2004) (Ph.D. dissertation, Zhongshan Graduate School), [http://etd.lib.nsysu.edu.tw/ETD-db/ETD-search-c/view\\_etd?URN=etd-0701104-112001&filename=etd-0701104-112001.pdf](http://etd.lib.nsysu.edu.tw/ETD-db/ETD-search-c/view_etd?URN=etd-0701104-112001&filename=etd-0701104-112001.pdf) (last visited April 23, 2006).

<sup>53</sup> *Id.*

would have resulted in the president cohabiting with a prime minister from the opposition. The president, however, refused and instead appointed a prime minister from his own party.

Empirical studies have shown that it was very difficult for Chen's minority government to get legislative proposals through the Legislative Yuan.<sup>54</sup> In fact, one study shows that the government obtained approval of just 23 out of 149 priority programs (15.4%) submitted to the legislature in 2004.<sup>55</sup> On the other hand, the Legislative Yuan was able to pass legislation opposed and vetoed by the president.<sup>56</sup> In addition to blocking legislation proposed by the executive, the legislature refused to exercise its constitutional advice and consent over the president's nomination of members for the Control Yuan.<sup>57</sup> To gain support from the Legislative Yuan, the DPP first approached the KMT in hopes of forming some sort of a coalition by offering portfolios to the latter. This overture was rejected.<sup>58</sup> The DPP then tried rapprochement with the PFP. Although the move softened the opposition, the alliance has not given the DPP a solid majority in the legislature.<sup>59</sup> Thus, there has been severe deadlock, if not a complete breakdown, between the executive and the legislature with no workable constitutional or political solution acceptable to all parties. The reason for this failure is the subject of the next section.

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<sup>54</sup> Huang Xiurui, *Shaoshu zhengfu zai guohui de kunjing* [Difficulties of the Minority Government in Parliament], 7(2) TAIWAN ZHENGZHI XUEKAN [Taiwan Political Science Rev.] 39-40 (2003).

<sup>55</sup> Liu Bingkuan, *supra* note 52, at 356, n. 1130.

<sup>56</sup> The most recent example was the passage of the Statute on the Organization of the National Communications Commission, for which the Executive Yuan promptly petitioned the Council of Grand Justices (the constitutional court) for a constitutional interpretation. For legal issues involved in this controversy, see Thomas Weisheng Huang, [Rapporteur's] Legal Memorandum to the Council of Grand Justices, Mar. 5, 2006 (on file with the Council and the author). For a report on related earlier development, see DPP Caucus Holds Back on NCC Constitutional Ruling, Taipei Times, Nov. 11, 2005, <http://www.taipetimes.com/News/taiwan/archives/2005/11/11/2003279668> (last visit May 15, 2006).

Another example was the controversy surrounding the enactment of the Statute for the Truth Commission which was vetoed by the president and then overridden by the legislature in 2003. For a discussion of the constitutionality of the statute as decided by the Council of Grand Justices, see Thomas Weisheng Huang, *Huigui jiben: zong zhentiaohui tiaoli xianfa jieshan lun xingzheng yu lifa guanxi he quanli fenli* [Back to Basics: On the Relationship Between the Executive and the Legislature and the Separation of Powers in the Constitutional Interpretation of the Statute for the Truth Commission], 56(2) FALING YUEKAN [THE LAW MONTHLY] 4 (2005).

<sup>57</sup> *DPP Sticks to Its Control Yuan Picks*, TAIPEI TIMES, Feb. 22, 2005 (on file with Pacific Rim Law & Policy Journal).

<sup>58</sup> *New Cabinet Post Is Same Old Wine in New Bottles*, TAIPEI TIMES, Feb. 6, 2005 (on file with Pacific Rim Law & Policy Journal).

<sup>59</sup> *DPP-PFP Coalition Seems Inevitable*, TAIPEI TIMES, Jan. 10, 2005 (on file with Pacific Rim Law & Policy Journal).

#### IV. AVOIDING GRIDLOCK: A COMPARISON OF THE FRENCH & TAIWANESE PRACTICES

Since it was KMT's intention to install a French semi-presidential system in Taiwan in 1997, a comparison of the constitutional designs and practices between the two countries is in order. Despite this intention, however, the comparison will show that there are critical differences in constitutional design and political culture resulting in dissimilar performances.

##### A. *Cohabitation*

After the 1986 election in France, in which the opposition leader Jacques Chirac commanded the majority in the *Assemblée Nationale*, President Francois Mitterrand declared that the president alone could nominate the premier. He also declared that the president had to designate someone within the parliamentary majority, or at least someone who could withstand a vote of confidence or censure in parliament.<sup>60</sup> As to the division of power between the president and the premier, Mitterrand made it clear that the president possessed authority under the constitution, particularly in the areas of foreign affairs and national defense.<sup>61</sup> He also defined the role of the president as an arbiter of national interests and the guardian of constitutional values.<sup>62</sup> These arrangements became known as cohabitation between the Left and the Right, which again took place in 1988, 1993-1995, and 1997-2002.

Taiwan's experience, however, indicates that cohabitation is by no means a necessary or logical course of action for semi-presidential regimes. The arrangement of cohabitation has not been seriously entertained since the 2000 presidential election even though Chen and the DPP are currently confronted with the opposition-dominated Legislative Yuan. However, the president may form a minority government because there is no requirement for investiture by the legislature after the prime minister is nominated.<sup>63</sup> While the legislature may initiate a vote of no confidence and a censure against the prime minister, the president may then (and only then) dissolve the legislature, making this course of action rather unattractive to the

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<sup>60</sup> See LAVROFF, *supra* note 6, at 906 (quoting Mitterrand).

<sup>61</sup> For a summary of comments made by De Gaulle at a meeting with the drafting committee, see I COMITÉ NATIONAL CHARGÉ DE LA PUBLICATION DES TRAVAUX PRÉPARATOIRES DES INSTITUTIONS DE LA V<sup>E</sup> RÉPUBLIQUE, DOCUMENTS POUR SERVIR À L'HISTOIRE DE L'ÉLABORATION DE LA CONSTITUTION DU 4 OCTOBRE 1958, at 237 (1987) [hereinafter I L'ÉLABORATION DE LA CONSTITUTION].

<sup>62</sup> *Id.* at 907.

<sup>63</sup> See discussion *infra* Part II.B.

opposition parties in the legislature.<sup>64</sup> The opposition in a parliamentary system would normally only take this risk if, in its judgment, the country would favor political change by voting the opposition into the government. In sum, because the president is not constitutionally required to allow the majority to head the cabinet after the new election, there is absolutely no incentive for Taiwan's opposition in legislature to initiate a vote of no confidence and be dissolved.

There are three reasons why the semi-presidential constitutional design has failed to induce cohabitation in Taiwan. First, prior to the recent political liberalization, Taiwan underwent a period of authoritarian rule from 1945 to 1988. Except for a brief period from 1981 to 1982 when Chiang Ching Kuo was prime minister, the political power was concentrated in the hands of the Chiangs as presidents. Even during the political transformation led by President Lee Teng-hui, Lee effectively ruled the island through the KMT more or less as a strong president. A political culture has thus been created where the president is not just a figurehead and the prime minister does not possess all executive powers. Second, ancillary to the first reason and contrary to the French tradition, Taiwan has never had a strong legislature, let alone parliamentary sovereignty. For this reason, the opposition in the Legislative Yuan is not comfortable with the idea of exercising the vote of no confidence and censure. The opposition seems resigned to the fact that once the vote of no confidence passes, the only possible course of action from the president would be to dissolve the legislature. However, no one is certain that this would indeed be his course of action, considering the potentially awkward timing and equal extent of trouble and expense to the legislators of the president's own party. Third, as Duverger points out, the circumstances under which semi-presidentialism is created and practiced affect the actual interpretation and expectation of the system.<sup>65</sup> Through the 1997 constitutional reforms, Lee's intention was to strengthen the power of the presidency by giving the president the authority to nominate the prime minister without the need for investiture by the legislature, and by adding the power to dissolve the Legislative Yuan in the event of a censure. The result was a strong presidency.

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<sup>64</sup> See discussion *infra* Part II.E. However, if the president insists on appointing his own man after the new election, the opposition majority in the Legislative Yuan could continue to force the president to dissolve parliament by voting out the prime minister each time he appoints one. It would be interesting to contemplate whom the electorate would eventually blame for the political instability.

<sup>65</sup> DUVERGER, *supra* note 11, at 179-82.

### B. *Nomination of the Prime Minister*

The way the prime minister (and to some extent other cabinet ministers) is nominated and discharged sets the stage for interaction between the executive and the legislature. With very few exceptions,<sup>66</sup> the president under semi-presidentialisms enjoys at least the initial right to nominate the prime minister.<sup>67</sup> Variations arise as to whether the president or the parliament has the ultimate authority to make the final decision.<sup>68</sup> Because the president could potentially nominate a prime minister not aligned with majority interests, some semi-presidential constitutions stress that in choosing the prime minister, the president must take into account the election results<sup>69</sup> or the party politics in parliament.<sup>70</sup> In countries like France<sup>71</sup> and Taiwan, however, the president has a freer hand in choosing the prime minister because the constitution does not require the prime minister to immediately seek a vote of confidence from parliament upon his appointment.

In other semi-presidential systems, the legislature has the final say in the selection of the prime minister either because approval of the parliament is required,<sup>72</sup> or because the parliament elects the prime minister as a matter of right.<sup>73</sup> (Sometimes this right may be exercised only after the presidential nominee fails to meet parliamentary approval.)<sup>74</sup> Therefore, the only way a president may nominate a prime minister without the need for ascertaining the intention of parliament first is through a constitutional design such as

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<sup>66</sup> Although it may be debatable to consider the Mongolian constitution a semi-presidential design, its parliament may, at its initiative, appoint and replace the prime minister. MONG. CONST. art. 25(6) (1992).

<sup>67</sup> This is normal under semi-presidentialisms, as is reflected by many examples. See, e.g., 1958 CONST. art. 8 (Fr.); PORT. CONST. art. 187(1) (1997).

<sup>68</sup> E.g., DIE VERFASSUNG DES DEUTSCHEN REICHES [Constitution], art. 53 (1919) (Weimar Republic).

<sup>69</sup> E.g., PORT. CONST. art. 187(1) (“[T]aking the opinion of the parties represented in the Assembly . . . and with due regard for the results of the general election.”).

<sup>70</sup> E.g., ROM. CONST. art. 102 (1) (1991) (“[C]onsultation with the party which has obtained absolute majority in Parliament, or—unless such majority exists—with the parties in Parliament.”); ANGL. CONST. art. 66(a) (1992) (“[A]ppoint the prime minister after hearing the political parties represented in the National Assembly.”); BENIN CONST. art. 54 (1990) (“[A]ppoint, after an advisory opinion of the National Assembly, the members of the Government . . .”).

<sup>71</sup> Lavroff, *supra* note 6, at 913. But see, STRØM, *supra* note 7, at 79.

<sup>72</sup> CROAT. CONST., art. 109 (2001); GHANA CONST. art. 78.1 (1992); HAITI CONST. art. 137 (1987); S. KOREA CONST. art. 86.1 (1948); KYRG. CONST. art. 46.1(B) (1993); LEB. CONST. art. 53.2 (1990 as amended); LITH. CONST. art. 84.4 (1992); MACED. CONST. art. 90 (1991); TOGO CONST. art. 78 (1992); UKR. CONST. art. 114 (1996); UZB. CONST. art. 93.9 (1992).

<sup>73</sup> FIN. CONST. art. 61 (2000); MADAG. CONST. art. 90 (1992).

<sup>74</sup> AZER. CONST. art. 118 (1995); POL. CONST. art. 154.3 (1997). These processes are different from those under which Parliament initiates the nomination and selection of the candidate for the prime minister.

that of France and Taiwan, where no investiture is constitutionally required. The difference between the two countries is that French practice has developed into cohabitation and has therefore avoided potential gridlock, while Taiwan's president has refused to cohabit, making deadlock between the executive and the legislature inevitable.

### C. *Vote of Confidence*

Because, by definition, the prime minister and the cabinet are responsible to parliament in semi-presidential regimes, the prime minister must maintain parliament's confidence to stay in power. In contrast, under a pure presidential system, the cabinet is solely responsible to, and serves at the pleasure of, the president, and neither the president nor the cabinet legally needs to maintain the confidence of parliament during the term of the president.<sup>75</sup> Therefore, in the case of a conflict between the parties occupying the office of the president and those in parliament, a deadlock occurs under the pure presidential, but not, under normal circumstances, in the semi-presidential regime. In the latter case, the cabinet simply cannot survive.

The vote of confidence comes in various shapes and forms. As mentioned above, if the prime minister must obtain parliament's consent immediately after his nomination, this power of investiture, in reality, is a vote of confidence.<sup>76</sup> Allowing parliamentary voting on general programs or on particularly important projects, as practiced in France, is also a *de facto* vote of confidence, whether or not it is so designated.<sup>77</sup> A more extreme form of a vote of confidence is one in which the prime minister designates a specific bill (*un texte*) as a matter which will require parliament to show its confidence in the cabinet. Once designated, parliament is required to follow a special (frequently an expedited) procedure.<sup>78</sup> Should the bill fail to pass, however, the prime minister must resign.<sup>79</sup> In all three cases, there should not be gridlock between the executive and the legislature so long as the former maintains the confidence of the latter, or resigns if this confidence is lost.

Part of the reason for the continuous gridlock between the executive and the legislature in Taiwan is the lack of the vote of confidence

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<sup>75</sup> The best example is the U.S. Constitution.

<sup>76</sup> *E.g.*, POL. CONST. art. 154; HAITI CONST. art. 158.1; LEB. CONST. art. 64.2; MACED. CONST. art. 90.

<sup>77</sup> 1958 CONST. art. 49.1 (Fr.).

<sup>78</sup> *Id.* art. 39.3.

<sup>79</sup> *Id.* arts. 49.1, 49.3.

mechanism under the current constitution. Although the constitution stipulates that the prime minister and the cabinet are responsible to the Legislative Yuan,<sup>80</sup> there is neither the requirement for investiture, nor the provision for obtaining an indication of confidence by the legislature. While the prime minister must explain his policies to, and be subject to legislative oversight,<sup>81</sup> there is no constitutional consequence, even if the general programs or major projects are defeated in the Legislative Yuan. In other words, the prime minister legally is not required to resign, unless, as is discussed below, the legislature initiates a vote of no confidence.

A vote of confidence mechanism was proposed but not adopted during Taiwan's 1997 constitutional reform,<sup>82</sup> making gridlock between the executive and the legislature substantially more likely than with such a device.

#### D. *Vote of No Confidence*

Most semi-presidential regimes maintain the vote of no confidence mechanism by which parliament may, by its own initiative, vote the cabinet out of office.<sup>83</sup> In a more extreme form, parliament is required to treat certain requests from the government as a matter of confidence and follow the procedure of a vote of no confidence. For example, under the 1958 French constitution, once the government attaches the question of confidence to its program, parliament must respond with a vote of no confidence in order to defeat these bills.<sup>84</sup> The cabinet, therefore, will either prevail on its projects or be voted out of office.<sup>85</sup> In either case, the potential deadlock between the executive and the legislature is avoided.

In the 1997 Taiwan constitutional amendment, the vote of no confidence mechanism was indeed adopted. Under the amendment, the legislature can initiate a vote of no confidence for any reason. If a motion of no confidence is passed by an absolute majority of the Legislative Yuan, the cabinet has no choice but to resign, unless the president agrees to dissolve the Legislative Yuan.<sup>86</sup> In addition to the modified veto system to be

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<sup>80</sup> CONST. amend., *supra* note 3, art. 3.

<sup>81</sup> *Id.*

<sup>82</sup> Chou, *supra* note 4.

<sup>83</sup> See, e.g., 1958 CONST. art. 49.2 (Fr.); ANGL. CONST. art. 88(n); PORT. CONST. art. 163(e); Bundes-Verfassungsgesetz [B-VG] [Constitution], art. 74, ¶ 1 (Austria.); S. KOREA CONST. art. 63; FIN. CONST. art. 64; MONG. CONST. art. 43 (4); Konstitutsiia Rossiiskoi Federatsii [Konst. RF] [Constitution] arts. 103 (1), 117 (3) (Russ.); MINGUO XIANFA art. 115 (Taiwan).

<sup>84</sup> 1958 CONST. art. 39.3 (Fr.).

<sup>85</sup> See JOHN BELL, FRENCH CONSTITUTIONAL LAW 117-18 (1992) on the reasons for the design.

<sup>86</sup> CONST. amend., *supra* note 3, art. 3.2(3).

discussed later,<sup>87</sup> this mechanism appears to be the only alternative for the legislature to force the cabinet out of office and thus resolve any gridlock that may arise without this mechanism. However, as was pointed out earlier, the Legislative Yuan has never seriously considered using the vote of no confidence despite serious deadlocks between the legislature and the minority government. Because the prime minister, if defeated by a vote of no confidence, could request the president to dissolve the legislature, the latter has been hesitant in voting the cabinet out of office. The Legislative Yuan knows that even if the opposition wins the new parliamentary election, cohabitation is not guaranteed.

#### *E. Dissolution of Parliament*

Almost all semi-presidential regimes equip the president with the power to dissolve parliament—some only in specified situations,<sup>88</sup> others by the sole discretion of the president.<sup>89</sup> By the power of dissolution, a new mandate may be sought from the electorate to solve the deadlock between the executive and the legislature. Just like parliamentarism, if the return of the election is in favor of the government, the prime minister should stay in office. If, on the other hand, the opposition clearly wins the new election, its leader should be invited to form a new government. However, in a multiparty election, there may not be a clear majority either for or against the existing government. In this case, the president may have some leeway in selecting the prime minister, and may create a minority government with no clear backing in parliament.

In France, the presidential power to initiate a dissolution of parliament has turned into a weapon—one likely unforeseen by the constitutional makers.<sup>90</sup> In other words, dissolution has been sought, not so much for breaking a stalemate or ascertaining the opinion of the electorate in order to form the government, but for furthering the president's desire to have a working majority in parliament. Thus, both in 1981 and 1988, Mitterrand dissolved the parliament right after the presidential election, which he had just won, to seek a majority of the Left in parliament.<sup>91</sup> Later, in 1999, Chirac dissolved the parliament after he was elected president to create a

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<sup>87</sup> See discussion *infra* notes 102 and 103 and the accompanying texts.

<sup>88</sup> *E.g.*, POL. CONST. art. 98(4) (limiting the president's power to dissolve parliament to the situation where the parliament disagrees with the president's nomination of the prime minister, but cannot produce one itself).

<sup>89</sup> *E.g.*, 1958 CONST. arts. 12(1), 12(3) (Fr.).

<sup>90</sup> See Lavroff, *supra* note 6, at 868.

<sup>91</sup> See *id.* at 869.

more workable Right majority even though the Right constituted the majority before the dissolution.<sup>92</sup>

Perhaps because of this potential for abuse, some semi-presidential constitutions include restrictions far more stringent than those in the French constitution. In addition to the French provision prohibiting the president from dissolving parliament within one year of a parliamentary election,<sup>93</sup> some constitutions also limit the power of dissolution in other circumstances.<sup>94</sup> While it appears to be a necessary mechanism for breaking the executive/legislative deadlock, the device for dissolving parliament must be allowed with moderation.

As mentioned above, Taiwan's 1997 constitutional reform created the mechanism for the president to dissolve the legislature at the request of the prime minister through a vote of no confidence.<sup>95</sup> So far, there has been only one attempt for a vote of no confidence, which the DPP launched as a symbolic gesture with no chance of success.<sup>96</sup> As a result, there has never been dissolution of the Legislative Yuan by the president. Because the president cannot initiate the dissolution, he has not been able to resolve the gridlock between the Executive and the Legislative Yuan. The president's reactive power to dissolve the legislature, therefore, may be effective in intimidating the latter and thus preventing it from voting no confidence in the prime minister, but it has been rather ineffective as a design to break the executive/legislative stalemate.

#### F. *Veto*

A surprising number of semi-presidential regimes have adopted the so-called "revisionary power" on the part of the executive—first conceived by the U.S. constitution<sup>97</sup>—but with many variations. The most benign form consists of the French president's right to return a bill to parliament for

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<sup>92</sup> *Id.* at 870.

<sup>93</sup> 1958 CONST. art. 12 (4) (Fr.).

<sup>94</sup> *E.g.*, NIGER CONST. art. 89 (1999) (limited to vote of no confidence); Konst. RF art. 117.4 (Russ.) (same); SLOVN. CONST. art. 117 (2004) (same); SRI LANKA CONST. art. 49.2 (1978) (same); GEOR. CONST. art. 81.1 (1998) (no confidence vote for the second time); KYRG. CONST. art. 71.5 (1993) (same); MADAG. CONST. art. 95 (same); POL. CONST. art. 155 (when parliament can neither agree to the president's nomination of prime minister, nor select its own); ROM. CONST. art. 89.1 (same). One of the most original designs is the Lithuanian Constitution under which the newly elected parliament could by 3/5 votes force the president to resign. LITH. CONST. art. 87.

<sup>95</sup> See discussion *supra* Part II.D.

<sup>96</sup> Huang, *supra* note 8, at 14.

<sup>97</sup> See JAMES MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787, at 336 (Bicentennial ed. 1987); see also THE ANTI-FEDERALIST PAPERS AND THE CONSTITUTIONAL CONVENTION DEBATES 120-24, 247-48 (Ralph Ketcham ed., 1986).

reconsideration. On the surface, this power bears some resemblance to the veto authority of the U.S. president, except that in France, parliament is not required to acquire more votes upon reconsideration of the bill.<sup>98</sup> Many other semi-presidential constitutions, however, do require parliament to override the president's veto with higher voting standards, be that an absolute majority<sup>99</sup> or a super-majority.<sup>100</sup>

Regardless of the overriding veto requirements, the result of the exercise of this power will either be a defeat of the bill favored by the opposition, or a forced acceptance of a bill with which the president disagrees. The more stringent the requirement for overriding a presidential veto, the more likely a stalemate will ensue, as the majority is unable to pass its desired legislation. Most commentators agree that there is no solution to this gridlock under a pure presidential system.<sup>101</sup> Under semi-presidential constitutions, however, this mechanism is not the only tool available to the president for breaking the deadlock between the executive and the legislature.

Whatever flaws Taiwan's 1947 constitution may contain, one of its most amazing features is its veto mechanism. Alleging that the aim was to create a modified parliamentary system, the drafters of the 1947 constitution included both a mild form of the mechanism for the vote of confidence<sup>102</sup> and the veto mechanism, which is usually seen only in pure presidential regimes.<sup>103</sup> Although there is no evidence that this innovative design has actually influenced the design of other semi-presidential constitutions, it must be said that the 1947 constitution was far ahead of the trend in this

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<sup>98</sup> 1958 CONST. art. 10 (2) (Fr.).

<sup>99</sup> Depending on the nature of the bills, the requirement to override shall be an absolute majority or a two-thirds vote (for example, treaties). PORT. CONST. art. 123(1)-(3).

<sup>100</sup> E.g., POL. CONST. art. 122(5) (requires three-fourths of the legislators present at the voting).

<sup>101</sup> José A. Cheibub, *Presidentialism and Democratic Performance*, in *THE ARCHITECTURE OF DEMOCRACY: CONSTITUTIONAL DESIGN, CONFLICT MANAGEMENT, AND DEMOCRACY* 111 (Andres Reynolds ed., 2002).

<sup>102</sup> The 1947 constitution stipulated that the Legislative Yuan may vote to change the important policies of the Executive Yuan. With the consent of the president, the Executive Yuan may veto such changes to which the Legislative Yuan may override the veto by a vote of the two-thirds of the legislators present for voting. In such a case, the premier may accept the change or resign. MINGUO XIANFA art 57.1(2). This hybrid provision of vote of no confidence and veto mechanism was abolished by the 1997 constitutional amendments. CONST. amend., *supra* note 3, art. 3.2.; NEW COMPILATION OF LAWS, *supra* note 27, at 2.

<sup>103</sup> The 1947 constitution prescribes that, with the consent of the president, the Executive Yuan may return the legal or budgetary bills, or treaties to the Legislative Yuan for reconsideration. The latter, however, may by a two-thirds vote of those present at the meeting override the President's veto. In such a case, the Premier shall either accept the bill or the treaty, or resign. MINGUO XIANFA art. 57.1(3); NEW COMPILATION OF LAWS, *supra* note 27, at 2. This provision is substantially retained by the 1997 constitutional amendment with a change of the requirement for overriding the veto to an absolute majority of the Legislative Yuan. CONST. amend., *supra* note 3, art. 3.2(2).

regard. However, this mechanism has not solved the basic inconsistency in policies between the executive and the legislature because the prime minister may choose to accept the overridden legislation and stay in office.

### G. *Strengthening the Presidency and Rationalizing Parliament*

One of the greatest concerns of French President Charles de Gaulle and the other drafters of the constitution of the French Fifth Republic was how to control the unruly assemblies for the sake of a stable government.<sup>104</sup> Their partial answer was to strengthen the presidency and rationalize parliament.<sup>105</sup>

De Gaulle believed strongly that the executive power should derive from the president, rather than parliament. In his famous 1946 Bayeux Manifesto, he stated: “[T]he executive power ought to emanate from the chief of state, place above the parties, elected by a body which includes the parliament but which is much larger and is composed in such a manner as to make him the president of the French Union, as well as of the Republic.”<sup>106</sup> In his view, the president externally represents the State. Internally, the president should have substantial power over national security; appointment of personnel, including the premier; and serve as the arbiter of national interests. All these powers are to be independent from the parliamentary sovereignty.<sup>107</sup>

Much more innovative is the way the French drafters conceived to “rationalize” parliament. From the very beginning, methods were devised to curtail the power of parliament. The period of time that parliament is in regular session is limited to 186 days per year.<sup>108</sup> Executive bills enjoy priority over private bills from the members of parliament.<sup>109</sup> The prime minister may make a bill a question of confidence thereby forcing the *Assemblée* to follow a much tighter schedule of a vote of no confidence in order to have any chance of defeating the designated bill.<sup>110</sup> As a result, and exactly as the president of the parliamentary consultative committee had

<sup>104</sup> See, e.g., 1 L'ÉLABORATION DE LA CONSTITUTION, *supra* note 61, at 237.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 3, 6. For an English translation of the excerpt of this declaration, see AREND LIJPHART, PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT 139, 140-41 (1992).

<sup>107</sup> See, e.g., 1 L'ÉLABORATION DE LA CONSTITUTION, *supra* note 61, at 258.

<sup>108</sup> Lavroff, *supra* note 6, at 611. For the standard treatments in this regard of the French 1958 Constitution in English, see BELL, *supra* note 85, at 78-137.

<sup>109</sup> This is achieved by government's setting the parliamentary agenda. 1958 CONST. art. 48 (Fr.); see BELL, *supra* note 85, at 18, 125.

<sup>110</sup> 1958 CONST. art. 49(3) (Fr.) (Once so designated, the National Assembly only has 24 hours to decide.)

forewarned, parliament has been reduced to voting “yes” or “no” without much time for deliberation or debate.<sup>111</sup>

The practices under Taiwan’s constitution have been very different. First of all, the constitution does not provide a similar mechanism under which the executive may force its way through by demanding a vote of confidence on government projects or bills. Second, under the influence of the German concept of “statutory reservation,”<sup>112</sup> and due to the interpretation of the Council of Grand Justices (the constitutional court), vast areas, particularly those concerning civil and political rights, have been reserved for legislative deliberation.<sup>113</sup> Thus, Taiwan is moving in the opposite direction of French practices. There are merits to Taiwan’s practices, especially in light of the transitional nature of Taiwan’s polity that requires corrections of many past administrative abuses of the authoritarian regime; it is not guaranteed however, that a prolonged practice will be compatible with the nature of the semi-presidential design in the long run.

#### H. *Plebiscites*

Plebiscites are not the invention of the French Fifth Republic. Many constitutions which could be classified as semi-presidential incorporated plebiscites long before the 1958 French Constitution did. For example, the right of the president to resort to plebiscites existed under the Weimar, the Austrian, and the Icelandic constitutions at the beginning of the twentieth century.<sup>114</sup> However, plebiscites do have a particular affinity to the 1958 French constitution in the sense that de Gaulle insisted that there must be a way for the president to connect directly with the people.<sup>115</sup> He also enticed the parliamentary constitutional consultative committee with the argument that the right to initiate plebiscites would make the president less likely to dissolve parliament.<sup>116</sup> Commentators believe, therefore, that plebiscites

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<sup>111</sup> 2 L’ÉLABORATION DE LA CONSTITUTION, *supra* note 61, at 494 (“[S]i c’est une loi sur laquelle la question de confiance sera posée, L’Assemblée nationale ne votera pas la loi, elle n’aura qu’un droit de veto.”).

<sup>112</sup> For the concept of legislative reservation under German constitutional law, *see*, for example, NIGEL G. FOSTER & SATISH SULE, GERMAN LEGAL SYSTEM AND LAWS 165 (3d ed. 2002).

<sup>113</sup> *See, e.g.*, Sifayuan Shizi di 532 hao [Interpretation 532 of the Judicial Yuan] (Nov. 2, 2001).

<sup>114</sup> DIE VERFASSUNG DES DEUTSCHEN REICHES [Constitution], arts. 73, 74 (1919) (Weimar Republic); B-VG, arts. 43, 46, ¶ 2 (Austria); ICE. CONST. art. 26 (1991 as amended).

<sup>115</sup> 1 L’ÉLABORATION DE LA CONSTITUTION, *supra* note 61, at 247.

<sup>116</sup> *Id.* (“Le général de Gaulle...pense...que la possibilité pour le président...de recourir au référendum sera de nature à empêcher la multiplication des dissolutions.”).

were adopted to break the stalemate between the executive and the legislature by resorting to the electorate as the arbiter.<sup>117</sup>

Although plebiscites may be effective methods for solving the executive/legislative stalemate in some situations, Taiwan's Law of Referendum has played a very limited or almost nonexistent role in this regard. Under the current law, the president may resort to plebiscites only on topics concerning national security.<sup>118</sup> Under the most recent constitutional amendment in Taiwan, there is a previously unavailable mechanism for amending the constitution by referendum.<sup>119</sup> However, it requires the approval of proposed amendments by three-fourths of the legislators present, and thus is a very high hurdle.<sup>120</sup> Accordingly, in order to use plebiscites to help resolve the executive/legislative gridlock, the current Law of Referendum must be revised to allow the president to use it more effectively. In addition, in order to improve the constitutional semi-presidential design, the constitution must first be revised in conjunction with holding a referendum.

### I. *Constitutional Review*

In view of the traditional French attitude toward parliamentary sovereignty and judicial review, acceptance of any form of constitutional review would have been a struggle.<sup>121</sup> The decision to move away from the "sovereignty of the Assembly" and to increase the power of the president and the *gouvernement*, however, forced the drafters of the French Fifth Republic to entertain the idea of judicial review. Although the suggestion of having a constitutional court with appellate jurisdiction over the *Cour de Cassation* or the *Conseil d'État* (respectively the highest ordinary and administrative courts) was rejected early in the game,<sup>122</sup> one of the chief constitutional designers, Michel Debré, decided that it was important to have a third organization outside the executive and the legislature to arbitrate conflicts between the two<sup>123</sup> and perhaps make some sense out of the uncharted course presented by the new constitutional design, particularly the

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<sup>117</sup> See AUDE BOLLET-PONSIGNON, *LA NOTION DE SÉPARATION DES POUVOIRS DANS LES TRAVAUX PRÉPARATOIRES DE LA CONSTITUTION DE 1958*, at 56 (1993).

<sup>118</sup> Gongmin toupiao fa [Law of Referendum], art. 17, available at <http://glin.ly.gov.tw/web/nationalLegal.do> (last visited April 23, 2006).

<sup>119</sup> CONST. amend., *supra* note 3, art. 7.

<sup>120</sup> *Id.* art. 12.

<sup>121</sup> See ALEC STONE, *THE BIRTH OF JUDICIAL POLITICS IN FRANCE: THE CONSTITUTIONAL COUNCIL IN COMPARATIVE PERSPECTIVE* 23-45 (1992).

<sup>122</sup> I L'ÉLABORATION DE LA CONSTITUTION, *supra* note 61, at 249, 272.

<sup>123</sup> *Id.* at 260.

uncertain division of legislative power. Under this thinking, and also for the purpose of curbing traditional parliamentary power,<sup>124</sup> the French Constitutional Council (*le Conseil Constitutionnel*) was born.

For almost fifty years, the French Constitutional Council has been frequently called upon to resolve conflicts between the executive and parliament. Unsurprisingly, the Council has been asked to make delicate decisions regarding the allocation of executive and legislative power under Article 34 of the Constitution, much as the drafters had anticipated.<sup>125</sup> A much more active use of the Council came from the parliamentary minority's request for constitutional opinions.<sup>126</sup> For a very long period of time during which the government controlled the parliamentary majority, this was virtually the only weapon the minority had to counter government proposals.<sup>127</sup>

Although it may be too strong a claim to say that constitutional review is required under semi-presidential regimes, this mechanism, as France and other countries have demonstrated, is useful in resolving gridlocks between parliament and the government. In this sense, Taiwan has been lucky that the Council of Grand Justices, created under the 1947 Constitution, serves as a constitutional court.<sup>128</sup> Its jurisdiction has continued to expand either through its own interpretation of the Constitution or by the addition of power to the enabling statute. Its exclusive jurisdiction to interpret constitutional issues arising in lower courts, for instance, was created by interpretation.<sup>129</sup> Similar to the power of the German Constitutional Court<sup>130</sup> and the French Constitutional Council after 1974,<sup>131</sup> the Taiwanese enabling statute gave the Council of Grand Justices the power to hear petitions on constitutional issues lodged by one-third of the legislators.<sup>132</sup> In practice, the Council of Grand

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<sup>124</sup> In the early discussion of the constitution, the concept of constitutionalism began to compete with the traditional notion of parliamentary supremacy. See 1 *id.* at 382. ("M. le garde des Sceaux [Michel Debré] estime qu'aucun organe de l'Etat ne doit se considérer comme souverain et que par conséquent de lois contraires à la Constitution doivent pouvoir être censurées.")

<sup>125</sup> See BELL, *supra* note 85, at 32 (saying this is the Council's primary original function).

<sup>126</sup> For the origin of this idea, see Hans Kelsen, *La Garantie Jurisdictionnelle de la Constitution*, 44 *Revue du Droit public* [197] 51, 57 (1928) (reprint pages).

<sup>127</sup> Stone, *supra* note 121, at 3-5.

<sup>128</sup> See generally, Thomas Weishing Huang, *Judicial Activism in the Transitional Polity: The Council of Grand Justices in Taiwan*, 19 *TEMP. INT'L & COMP. L.J.* 1 (2005).

<sup>129</sup> This is clearly the influence of the German Constitutional Court. Grundgesetz [GG] [Constitution] art. 100(1).

<sup>130</sup> GG art. 93.2a (F.R.G.). For a lucid treatment of the centralized constitutional review in general, see HERMAN SCHWARTZ, *THE STRUGGLE FOR CONSTITUTIONAL JUSTICE IN POST-COMMUNIST EUROPE* 13-21 (2000).

<sup>131</sup> 1958 CONST. art. 61.2 (Fr.).

<sup>132</sup> Sifayuan dafaguan shenlianjianfa [Law of Constitutional Interpretation of the Council of Grand Justices] art. 5.1(3).

Justices has been called upon on many occasions to resolve conflicts between the executive and the legislature.<sup>133</sup> It is unclear however, how the Justices of the Council would rule on the issue of constitutional cohabitation, or the refusal thereof, should it be put before them.

#### V. HOW TO BREAK THE STALEMATE

Study of the French Fifth Republic and Taiwan, reveals that there are two main ways to break the executive/legislative stalemate. First, the president must be able to initiate the dissolution of parliament. If the power to dissolve parliament is passive and can only be a response to a parliamentary vote of no confidence, the opposition in parliament must be willing to use the mechanism of no confidence to end, or allow the president to break the gridlock. Second, whenever the return of a parliamentary election does not favor the president's own political party, the president must be willing to share the executive power with a prime minister who can effectively lead the majority in parliament. Only together will these strategies prevent the stalemate from occurring.

##### A. *Improving Semi-Presidentialism*

Most observers agree that the semi-presidential design of Taiwan's Constitution has functioned rather poorly.<sup>134</sup> While the opposition controls the legislature, the president nevertheless has refused to appoint and cohabit with a prime minister who theoretically might be able to mobilize parliament. The executive/legislative stalemate seems to be entrenched within the constitutional design, and has not added flexibility by way of a responsive cabinet. Many commentators have therefore asserted that the system has inherent flaws as a governmental design.<sup>135</sup> They have advocated either a return to the pre-1997 cabinet system, that they claimed existed,<sup>136</sup> or a re-design to a U.S.-style presidential system.<sup>137</sup> Both recommendations are off the mark.

The current debates concerning the constitutional design in Taiwan resemble the arguments surrounding the choice between a presidential or a

<sup>133</sup> Huang, *supra* note 128, at 12.

<sup>134</sup> See Huang, *supra* note 8, at 4-5.

<sup>135</sup> Zhou Zhihong, Comments at the Taiwan Law Society's Conference on Constitutional Design, May 1, 2004, at 4, <http://www.taiwanlawsociety.org.tw/home.htm> (last visited April 23, 2006).

<sup>136</sup> *Id.* at 6.

<sup>137</sup> Xu Zhengrong, "Zuoyou gongzhi" xianzheng tizhi zhi chutan—jinlun fawo lianggezhi zhi bijiao [A Preliminary Study on the "Co-habitation" Constitutional Design—A Comparison of French and Our Systems], 30(1) TAIWAN U. L.J. 36, 41 (2001).

parliamentary system in American academic circles in the 1980s and 90s.<sup>138</sup> Most of the remarks are therefore quite familiar and uninspiring. Executive/legislative deadlocks caused by either dual democratic legitimacies or the lack of immediate response to a change in the will of the electorate are the most commonly mentioned defects of pure presidential systems.<sup>139</sup> At the same time, others have cited the potential for governmental instability and the difficulty of having a State figurehead act contrary to the political culture as reasons for rejecting the cabinet system in Taiwan.<sup>140</sup> Despite their differences, parliamentarians and presidentialists seem to join in their attack against semi-presidential systems for the so-called lack of political responsibility on the part of the elected president.<sup>141</sup> Compared with the cabinet system, there may be some truth in such a claim. Compared with the presidency, however, the claim is completely inaccurate.<sup>142</sup>

This is not to say that semi-presidential regimes have no theoretical or institutional difficulties as constitutional designs for democratic governments. The first issue is the “unchecked power” of the presidency. Looking back at the history of constitutional development, the design of an elected president with considerable constitutional powers is an obvious imitation of enlightened monarchies prior to their development into the modern cabinet system, under which the power of the monarch is usually only symbolic.<sup>143</sup> The forerunner of this design under semi-presidentialism, the Weimar Constitution, appeared to have been influenced not only by Germany’s own strong monarchical tradition, but also by the concept of the charismatic leader conceived by Max Weber, one of its constitutional drafters.<sup>144</sup> Similar to the concept of a charismatic leader, one who is not supposed to be restricted by bureaucratic rules and organizations,<sup>145</sup> de

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<sup>138</sup> For standard treatments of these topics, *see*, for example, AREND LIJPHART, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES (1999), and PARLIAMENTARY VERSUS PRESIDENTIAL GOVERNMENT (Arend Lijphart ed., 1992).

<sup>139</sup> *See* Thomas Weishing Huang, *Maixiang kaifang, lixing, keji yu zhengti de xiangzheng lunzheng* [Toward an Open, Rational, Interdisciplinary and Holistic Constitutional Discourse] (A Review Essay), 209 DANGDAI [CONTEMPORARY] 128-29 (2005).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 131.

<sup>142</sup> There is no real difference between the president under a presidential or a semi-presidential regime in terms of the political responsibility to the electorate. MATTHEW SOBERG SHUGART & JOHN M. CAREY, PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS 49 n.17 (1992).

<sup>143</sup> *See, e.g.*, discussions in MADISON, *supra* note 97, at 136-37.

<sup>144</sup> *See* HANS MOMMSEN, THE RISE & FALL OF WEIMAR DEMOCRACY 57 (E. Forster & L. E. Jones trans., 1989).

<sup>145</sup> 3 MAX WEBER, ECONOMY & SOCIETY 1404 (G. Roth & C. Wittich eds., 1968)

Gaulle and his constitutional advisors advocated having the president as the arbiter of national interests, above and beyond petty party politics.<sup>146</sup>

Whether the president enjoys considerable constitutional powers, however, may not in and of itself dictate the success or failure of a constitutional design under which the cabinet is answerable to parliament. The success of the French Fifth Republic is evidence of this proposition. Although the Weimar Constitution with its strong presidential powers was a failure, the semi-presidential design under the French Fifth Republic which has employed a similar strong presidentialism has worked reasonably well. While fragmentation of the parties in Weimar failed to produce an effective government, the French have been able to reduce fragmentation to a manageable level, particularly with the dual-run electoral system which divides parties into two camps.

The second issue with semi-presidentialism is presented by the fact that the minority governments in Taiwan, despite the difficulties they have encountered, have survived. Although minority governments in parliamentary systems do not necessarily create paralyzing executive/legislative stalemates,<sup>147</sup> in such systems the prime minister must be able to lead the parliament, either through a coalition, or through the support of the majority. Such support may be given or accepted reluctantly, and when the executive cannot achieve its goals due to lack of parliamentary cooperation, deadlock often results. In this situation the prime minister can either resign or request dissolution of parliament and a new election from the president or the monarch. As was pointed out earlier, under the current constitutional design in Taiwan, the president does not have the power to initiate dissolution of the Legislative Yuan in order to break the deadlock. At the same time, the president is unwilling to take the high road by foregoing the minority government, and by appointing the leader of the majority in parliament as the prime minister.

This leads to the third cause of the failure of the semi-presidential design in Taiwan: there is no parliamentary tradition or mechanism which prompts the president to cohabit with the opposition leader as the prime minister. While the political culture of the parliamentary tradition in France cannot be created overnight, some constitutions in newly created democracies use institutional design to reduce the president's insistence on forming minority governments with politicians from his own party as the prime minister. Some of these constitutions mandate that the president

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<sup>146</sup> See discussion *supra* Part II.G.

<sup>147</sup> See generally, STRÖM, *supra* note 7.

invite the leader of the largest party or the coalition majority as prime minister,<sup>148</sup> reducing the chance for a minority government in the first place. Others stipulate that after several failed attempts by the president to nominate the prime minister, parliament may step in and elect the prime minister, who will then be appointed by the president.<sup>149</sup>

*B. Vote of Confidence on the President*

While not every device for resolving the executive/legislative deadlock in the 1947 Constitution and its subsequent amendments is dysfunctional, a few additional mechanisms need to be in place for a smoother operation. However, the above suggestions for improving the electoral system and the constitutional design—by allowing for the dissolution of parliament, or by requiring the president to involuntarily cohabit with opposition leaders—together with a change in political culture, obviously cannot be achieved immediately. The vicious cycle of stalemate presents an added difficulty: the president will not appoint an opposition leader as the prime minister, and the opposition reciprocates by refusing to cooperate with the president in carrying out his presidential agenda, including necessary constitutional revisions (which require parliamentary initiative) to improve the semi-presidential design.

The question then becomes, is there any mechanism under Taiwan's flawed semi-presidentialism that can break the executive/legislative stalemate? There is one way, which will require considerable political courage on the part of the president. The president should offer to stay or resign depending on the outcome of a national plebiscite for constitutional amendments which will give the president the power to initiate dissolution of the Legislative Yuan. If the electorate agrees with the president, the president should remain in office, immediately dissolve parliament, and seek a new national mandate that is likely to favor the president's party under the circumstances. In case the president fails to persuade the electorate to go along with the constitutional amendments, he should resign and call for a new national election. To deal with the situation in which the president and the majority of the parliament again belong to opposition parties or a coalition of parties, constitutional amendments should include the arrangements suggested in the last section—that the president must cohabit

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<sup>148</sup> MACED. CONST. art. 90.1; *see also* discussions *supra* notes 73 & 74, and the accompanying texts.

<sup>149</sup> FIN. CONST. art. 61; POL. CONST. art. 154.3 (within 14 days).

with the opposition.<sup>150</sup>

Perhaps, because most presidents under semi-presidential regimes possess the power to dissolve parliament, there is normally no need to resort to the threat of resignation. It must be noted however, that even if the constitution does grant the president the power to dissolve parliament, such power normally may not be exercised at will under all circumstances. For example, many constitutions stipulate that the president may not dissolve parliament during the year following the parliamentary election. Whether or not the power to dissolve parliament is subject to restrictions, the president, as de Gaulle did on several occasions, may appeal to the public to arbitrate in order to carry out important items on the presidential agenda that have been crippled by the government stalemate.

The above described idea derives from abandoning the assumption that the president under semi-presidential regimes must, much like the president under pure presidentialism, serve out fixed terms. De Gaulle's offering to resign several times during his terms, if the electorate disagreed with his proposals during the plebiscite, provides a precedent for this practice. In other words, to break the executive/legislative deadlocks, the president must think like a parliamentarian. After all, prime ministers under parliamentary systems put their political lives on the line and request votes of confidence from parliament all the time. Why can't presidents under semi-presidential regimes do the same? The national plebiscite could then be viewed as the functional equivalent of a vote of confidence on the executive under a pure parliamentary regime.

There are incentives both for the president and the opposition to opt for this extra-ordinary course of action. The president will be able to improve the constitutional design and possibly realign the political forces in parliament. The opposition will benefit from constitutional amendments requiring the president to invite the leaders of the opposition majority to form the government after the election. Most important, if the president fails in these efforts, the opposition gets an earlier crack at capturing the presidency.

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<sup>150</sup> See discussions *supra* notes 151 & 152 and the accompanying texts. This is not to suggest that cohabitation does not have its problems as a constitutional design. Relationships between the president and its cohabiting prime minister could be difficult and tense. However, as compared to the stalemate created by the minority government and the parliamentary majority, co-habitation must be viewed as the lesser of the two evils. For executive conflicts during co-habitation, see Robert Elgie, *Cohabitation: Divided Government French-Style*, in *DIVIDED GOVERNMENT IN COMPARATIVE PERSPECTIVE* 120-26 (Robert Elgie ed., 2001).

## VI. CONCLUDING REMARKS: A PRESIDENTIAL DESIGN WITH PARLIAMENTARY FLEXIBILITY

Although Taiwan's semi-presidential system has a limited history, it presents an interesting case study for students of government and constitutional design. Its lessons may not be so much about what a semi-presidential regime can do in a transitional democracy, but rather what not to do when a government tries to imitate a semi-presidential system. One may argue that one purpose of semi-presidentialism is to allow the president wider latitude in national politics, including the selection and dismissal of the prime minister, where he is given the right of first refusal. But, if and when a dysfunctional minority government comes into existence during the term of the president, the constitution requires mechanisms to create a new national mandate by the dissolution of parliament. The president must then obey the new mandate by allowing himself to cohabit with the opposition. To break the vicious cycle of government stalemate and to amend the constitution to include these mechanisms, the president may offer to resign prior to the end of his term, so that the electorate has a chance to approve or disapprove the constitutional proposals and render a new mandate to eliminate the paralyzing governmental gridlock.