

Appendix 145 -- DPP Policy Statement on a New Constitution

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i. Why Is a New Constitution Needed?

The current Constitution was enacted by the Kuomintang [KMT] in 1947 on the basis of Sun Yat-sen's ideas.

The scope of its application extends to the vast Chinese mainland. That is why it provides for three levels of government, dual legislative bodies, and the world's only five-power government system and contains special provisions on "ethnic groups in frontier regions." That is why it enunciates a basic national policy of "equalizing land rights and regulating capital." Naturally, it is difficult to apply these provisions in Taiwan. For example, Taiwan does not need three levels of government at all, and there are no "ethnic groups in frontier regions" in Taiwan. And given Taiwan's economic development model, it is meaningless to talk about "equalizing land rights and regulating capital."

As a matter of fact, after its move to Taiwan, the KMT also noticed that the Constitution, in its current form, did not accord with Taiwan's reality. The KMT sought to deal with some of the issues under the "Temporary Provisions in Effect During the Period of General Mobilization for the Suppression of the Communist Rebellion." For example, it suspended end-of-term elections to the Legislative Yuan and the National Assembly and replaced them with by-elections in the "free area." On some other issues, the KMT either remained silent or tried to rationalize its actions. For example, the KMT maintained a superfluous provincial government in Taiwan because it claimed that Taiwan was a "model province for the Three Principles of the People." However, it kept silent on the issue of how to reconcile Taiwan's economic development model with the strongly socialist clauses in the Constitution.

It is fair to say that the KMT long ago found that the current Constitution was not applicable to Taiwan, but it refused to admit it. The six constitutional amendments introduced since 1991 were all aimed at addressing issues that the KMT had been unable to deal with otherwise. To this day, many of these issues remain unresolved. In the three years since the transfer of power to another political party, the basic incompatibility between the current Constitution and Taiwan's current situation has been thoroughly exposed. This has seriously undermined Taiwan's competitiveness.

Take the previous session of the Legislative Yuan as an example. The Executive Yuan submitted 106 bills for priority consideration, but the Legislative Yuan passed just 17 bills, representing a mere 16-percent rate of passage. On average, passage of each bill costs 123 million New Taiwan dollars in taxpayer money. Also, none of the bills concerning economic development were passed. This shows that the stalemate between the executive branch and the legislative branch has seriously affected the government's administrative efficiency. Every year since 2000, the American Chamber of Commerce has issued a scathing criticism of

Taiwan's legislative efficiency and political instability. In 2003, only 13 percent of people thought that the executive branch was doing a better job than in the preceding year, and 6 percent of people said that the legislative branch was doing a better job.

As another example, take the controversy over the Fourth Nuclear Power Plant, which has caused social turmoil and instability. At the time, the Legislative Yuan was in a position to introduce a no-confidence motion against the Executive Yuan, and the President was in a position to dissolve the legislature on the basis of the motion and allow public opinion to decide the matter. However, the opposition parties, fearing that new elections would not be favorable to them, abandoned the proper course of introducing a no-confidence motion and insisted on removing the newly elected president. Had our country practiced a purely cabinet system that would allow the Executive Yuan to dissolve the legislature on its own initiative, or had our country practiced a purely presidential system that would allow the President to exercise veto power to settle the dispute, this kind of chaos would not have arisen.

As yet another example, take the constitutional clauses on the national economy that do not conform to reality. Article 143 of the Constitution provides for the levy of land value increment taxes. However, this practice is deeply flawed. These taxes, whether levied on the basis of government-assessed current land values or government-assessed land prices, are very different from market prices. Instead of achieving the intended goal of curbing land speculation, this has fueled land speculation. The peculiar provision on "high value increment tax and low land price tax" has impeded effective land utilization. Currently, countries in the world collect taxes on land transaction proceeds as part of consolidated income taxes. Only our country implements an independent system of land value increment taxes, because this is provided for in the Constitution. A review of this practice is indeed warranted.

Obviously, a fundamental approach toward improving the country's competitiveness and enhancing the government's administrative efficiency is to redesign the government structure by way of a new constitution. A new constitution is closely linked to Taiwan's competitiveness. When we propose a blueprint for Taiwan's future, we cannot just talk about economics. We should also talk about the accompanying constitutional structure. This is the most compelling reason why a new constitution is urgently needed.

II. What Issues Should a New Constitution Address?

The Democratic Progressive Party [DPP] has summed up the constitutional propositions of the ruling party, the opposition parties, and academia into 12 issues that must be dealt with.

First, how should the legislature be reformed?

The first step to improve the quality of the legislature is to reform the electoral system. The DPP advocates a "single-legislature, two-vote system." What should the total number of legislative seats be? Should the two-vote system follow the "German-style mixed system" or the "Japanese-style parallel system"? How should women's rights to political participation be guaranteed under a single-seat-district system? These issues can only be resolved through a constitutional amendment.

Second, should we adopt a presidential system or a dual-leadership system [semi-presidential

system]?

Ever since the introduction of direct presidential elections, our country's constitutional structure has been tilting toward the presidential system. However, the spirit of the original cabinet system lingers on, giving rise to the so-called "dual-leadership system." This patchwork "dual-leadership system" is flawed in that it renders presidential powers and duties unclear. The opposition parties advocate adherence to the French-style dual-leadership system.

However, to avert the prospect of "left-right cohabitation," France shortened the presidential term from seven years to five years in a 2000 referendum. We must decide whether Taiwan should adhere to a political system that even the French were dissatisfied with.

Third, should the power to approve the appointment of the premier be restored to the Legislative Yuan?

On the one hand, the opposition parties advocate strict adherence to France's dual-leadership system; on the other hand, they advocate restoring the Legislative Yuan's power to approve the appointment of the premier.

However, the power to approve the appointment of the premier was revoked in the first place because we opted for the French model. Notwithstanding the conflicting positions of the opposition parties, this issue warrants discussion.

Fourth, should the mission-specific [ren wu xing; ad hoc] National Assembly be abolished?

The current "mission-specific National Assembly" is seated in proportion to the votes garnered by each political party. In practical terms, it cannot go against the will of various political parties in the Legislative Yuan. That being the case, why should any proposal by the Legislative Yuan to amend the Constitution, change the territory, or recall the President or Vice President be subject to deliberations by the National Assembly? Isn't this arrangement redundant?

Fifth, should the President be elected by a plurality or an absolute majority?

Many people favor the election of the President by an absolute majority. We can discuss this issue because a president elected by a minority has difficulty carrying out government affairs.

Sixth, should government power be divided into three branches or five branches?

To be sure, there ought to be powers of examination and oversight. However, in other countries, the power of examination is part and parcel of the executive power, whereas the power of oversight is largely vested in the legislature. Even if separate agencies are established for these purposes, they are not elevated to the same status as the legislature. In view of the experience of advanced countries, whether Taiwan needs to maintain the five-power framework is open to discussion.

Seventh, should Taiwan's provincial government be abolished altogether or should it be restored?

The fifth constitutional amendment adopted in 1997 deprived Taiwan's provincial government of real power.

However, today, four years after "the provincial government was suspended," some people

continue to raise objections. Recently, People First Party [PFP] Chairman James Soong [Sung Ch'u-yu] said that he would restore the provincial government's functions if the KMT and the PFP win the election. Of course, to accomplish this, the Constitution would have to be amended.

Eighth, should the minimum voting age be lowered from 20 to 18?

The right to vote at age 18 is the trend of the world. As of now, 162 countries, or 93 percent of the countries in the world, have adopted this practice. Since 1996, the DPP has formally advocated lowering the minimum voting age to 18. However, the KMT is continuing to obstruct adoption of this practice due to its own electoral considerations. The upshot of this is that Taiwan is one of six countries with the highest minimum voting age in the world.

Ninth, should we have a conscription army or a volunteer army?

Although Taiwan is no longer in an era in which "all citizens are soldiers," the Constitution still makes military service mandatory for men. This causes problems with planning for the military structure. Many outstanding people in science, technology, and sports have experienced disruptions in their careers because of the issue of military service.

Tenth, should the process of amending the Constitution be put to a referendum?

Many countries require that constitutional amendments be put to a referendum. Alternatively, they allow their citizens to initiate a signature drive to propose constitutional amendments. However, since our Constitution does not have relevant provisions, the ruling party and the opposition parties are still debating whether referenda can cover the issue of constitutional amendments.

Eleventh, basic human rights and care for the underprivileged

Following a supplementary interpretation by the Council of Grand Justices, our country has made tremendous progress in basic human rights. However, there are still many issues that must be clarified.

Twelfth, clauses on the national economy

The clauses on the national economy in the current Constitution originated from Sun Yat-sen's Principle of the People's Livelihood. However, provisions on "land value increment tax" and "developing public capital and regulating private capital" are not compatible with the real environment or the trend of the world.

In addition to these 12 issues, people in all sectors of society have also raised a host of other issues that merit discussion. For example, the provisions on "ethnic groups in frontier regions" in Article 168 and Article 169 of the Constitution clearly do not accord with the current state of ethnicity in Taiwan. The provisions of Article 151 on "supporting and protecting the development of business enterprises by ethnic Chinese residing abroad" also distort the market and hamper fair competition...[ellipses as published] The DPP will take an open attitude toward these issues and is willing to hold discussions with people in all walks of life.

III. What Is Wrong With a Gradual Approach Toward Amending the Constitution? Why Should We Push for a New Constitution?

The first reason why a gradual approach toward amending the Constitution is not feasible is

because many parts of the Constitution need to be changed. To start from scratch is preferable to making small changes each year. The 12 issues summed up by the DPP alone would entail changes to as many as 117 articles in the Constitution, accounting for two-thirds of the total number of articles. If the Constitution is amended each year, it will take at least 10 years to complete the amendments. In view of this, we might as well seek a one-time solution.

The second reason why a gradual approach toward amending the Constitution is not feasible is because Taiwan society is already mature and need not "cross the river by feeling for the stones." In the past 10 years, Taiwan adopted a gradual approach toward amending the Constitution mainly because it did not want to trigger a backlash from conservative forces with the introduction of significant institutional changes and thus escalate the dispute over unification or independence during its transition to democracy. This tactic is commonly adopted in newly democratized countries during their transition to democracy. Examples include South Africa, Poland, and Hungary. However, the tactic of gradualism is no longer needed after democracy has been firmly established. For example, Poland introduced six constitutional amendments after 1987, but it ended up holding a referendum in 1997 to write a new constitution after realizing that constitutional amendments could not solve the fundamental problems of the original Constitution. We believe that democracy has been firmly established in Taiwan. Now is the time to introduce a wholesale constitutional amendment.

Some people say that the United States also adopted a gradual approach toward amending the Constitution.

Why can't Taiwan continue to make piecemeal changes? But it should be noted that the United States did not include safeguards for basic human rights in its Constitution in the first place. It later "added" relevant clauses through a supplementary constitutional amendment. This is different from our country's attempt to "replace" the original clauses with new clauses. In addition, US-style constitutional amendments did not touch upon the basic framework of the Constitution (for example, the presidential system and the separation of government power into three branches). This is different from the overhaul that our country seeks.

iv. Is the DPP Seeking To Write a New Constitution or Amend the Current Constitution?

In our view, whether a new constitution represents the enactment of a new constitution or a constitutional amendment is a conceptual issue. Any constitution will become a "new" constitution if two-thirds of it is amended. However, we can deal with the issue by holding a conference on constitutional amendments or by following constitutional amendment procedures as provided for in the current Constitution. For example, while the post-war "Constitution of Japan" is generally seen as a product of the writing of a new constitution, it was passed by the lower and upper houses of the Diet by two-third majorities on the basis of the old "Constitution of the Empire of Japan." The Constitution of the Fifth Republic of France, which was also seen as a product of the writing of a new constitution, was proposed by then-Prime Minister de Gaulle under the authority of a law passed by parliament to amend the Constitution on the basis of the Constitution of the Fourth Republic. It was then passed by parliament and approved in a referendum.

In short, the issue of whether to write a new constitution or amend the current Constitution is a

relative issue, not an absolute question. The key issue is to what "degree" the Constitution needs to be amended. But opinions differ on what this "degree" should be. Constitutional scholars believe that an abstract principle of so-called "constitutional guidelines" exists and that changing these guidelines will amount to writing a new constitution. And yet, what are "constitutional guidelines"? That depends entirely on the specific situation. In 1962, French President de Gaulle introduced direct presidential elections. At the time, many French scholars believed that the move signified the birth of the "Constitution of the Sixth Republic." Likewise, when our country amended the Constitution in 1991 to hold elections to the National Assembly and the legislature in the Taiwan area, many mainland scholars believed that the move was actually aimed at "creating a new constitution in the name of amending the current Constitution." Many foreign scholars believe that the Republic of China, as it currently exists, is actually a "Second Republic."

Therefore, it is meaningless to draw an arbitrary distinction between "writing a new constitution" and "amending the current Constitution." We believe that the substance of a new constitution is more important than its form. There is no need to argue over its name.

v. The DPP Calls for Putting a New Constitution to a Referendum. However, the Current Constitution Does Not Have Relevant Provisions. Does This Mean That the DPP Is Seeking a New Constitution, Not a Constitutional Amendment?

vi.

It is normal practice for advanced democratic countries to put the results of a constitutional amendment to a referendum. The constitutions of Austria, Denmark, France, Ireland, Italy, Spain, Sweden, and Switzerland require putting the results of constitutional amendments to a referendum. Examples of new constitutions born of referenda are common and can be found in Bulgaria, Denmark, France, Greece, Ireland, Portugal, Romania, Russia, Spain, Turkey, Chile, Colombia, and our neighbors, the Philippines and the Republic of Korea.

In other words, it is common practice to put a new constitution or a constitutional amendment to a referendum in a democratic country. The reason for doing so is because the Constitution affects not only a country's founding goals but also the operation of the government structure and safeguards for the people's basic rights. It is not a matter to be decided through consultation by a few politicians or by the ruling party and the opposition parties.

The DPP acknowledges that putting a new constitution to a referendum is beyond what is provided for in the current Constitution. However, the DPP, in keeping with the spirit of its platform--that "the people are the source of all power in the country"--does not want the new constitution of the future to resemble the current one, as if it is "a gift from the heavens." The DPP also believes that the people of Taiwan will never accept a constitution without holding a referendum.

vii. What Are the Timetable and Procedures for Pushing for a New Constitution?

To push for a new constitution, it is essential to achieve consensus in society through discussion among the ruling party and the opposition parties and to eventually seek approval in a referendum. This is sure to be a lengthy process. That is why we can only hope to accomplish the task by the end of 2007 at the earliest, when the term of the next legislature

ends. That is why we have designated 2006 as the time to "push for a new constitution." By that time, we hope that a stable majority will have formed in the legislature and that we will have gained enough practical experience with referenda to provide legitimacy to a new constitution.

More importantly, 2008 will be the year in which the Chinese Communists will host the Olympic Games and formally join the ranks of the world's powerful countries. We hope that, by 2008, Taiwan will have put in place brand-new political and economic structures that would allow the newly elected president to cope with any challenges from the Chinese Communists.

We hope to launch a movement in 2006 to push for a new constitution, and, after finalization through a referendum on 20 May 2007, to implement the new constitution when the president after the next takes office on 20 May 2008.

Procedurally speaking, there are three specific ways to push for a new constitution:

1. Proposing a draft constitution at a political consultation conference or a constitutional amendment conference to be held outside the establishment, just as the KMT and the CPC did in 1947 and 1949, respectively, to enact new constitutions.
2. Amending the Constitution according to the current procedures for constitutional amendments, just as Japan did for its post-war new constitution and France did for the Constitution of the Fifth Republic.
3. Proposing a constitutional amendment plan by way of a referendum after passage of the Referendum Law.

All three methods have referential value, and it is not necessary to adopt a specific method. The most important thing is that a new constitution is enacted on the basis of open and rational discussion, with the final decision to be made jointly by all the people. This is what the DPP insists on.

VIII. Is the DPP Seeking To Found an Independent Country by Pushing for a New Constitution?

There is no denying that the DPP has expounded the issue of "writing a new constitution to found an independent country" since the time when it was an opposition party. That is why whenever people hear President Chen talk of the need to push for a new constitution, they immediately think of the founding of an independent country. However, the DPP believes that Taiwan is already a de facto sovereign country, having held legislative elections in 1992 and a direct presidential election in 1996 and launched such political reform projects as amending the Constitution to abolish the provincial government. That is why the DPP, at a congress of its members in 1999, adopted a "Resolution on Taiwan's Future," which states that Taiwan is an independent sovereign country whose territory covers Taiwan, Penghu, Kinmen, Matsu, and their affiliated islets. There is no relationship of subordination between Taiwan, whose current national title is the Republic of China, and the People's Republic of China. "Any change to the current state of independence must be determined by all the people of Taiwan

through a referendum." In other words, since our national status has been defined, the DPP's push for a new constitution is not aimed at resolving the so-called issue of unification or independence but is aimed at establishing long-term institutions.

As a matter of fact, writing a new constitution does not necessarily mean founding an independent country. Take France as an example. The Constitution of the Fifth Republic adopted in 1958 was France's 16th constitution, but no one thought that France was being founded for the 16th time. Also, the People's Republic of China has promulgated five constitutions since its founding in 1949. If we do not think that the Chinese Communists embarked on five rounds of nation building, there is no reason for us to believe that the DPP's push for a new constitution is aimed at founding an independent country.

Conversely, founding an independent country does not necessarily entail writing a new constitution. For example, when Canada gained independence in 1931, it did not write a new constitution. Instead, it continued to apply the British North America Act that the British Parliament enacted in 1867 and subsequently adopted the Statute of Westminster. Although Canada recognizes the British monarch as its head of state under the Statute of Westminster, its parliament wields independent legislative power without being subject to restrictions by the British Parliament. From the point of view of parliamentary sovereignty, Canadian sovereignty was transferred from Britain to Canada. With the transfer of sovereignty, Canada became independent without having to write a new constitution.

The "Resolution on Taiwan's Future" clearly expounds the issues of the national title, the national flag, and territory. Before there are any changes, all DPP members, including President Chen, must abide by this document. For this reason, the contents of a new constitution cover only the 12 issues raised by the DPP above. The issue of changing the national flag, the national title, and territory does not fall within the scope of changes envisioned by the DPP. Nevertheless, the DPP does not have the right to overrule other people's propositions. The DPP will respect the wishes of other political parties, whether they advocate unification with the People's Republic of China or a new national title during discussions of a new constitution. The DPP only insists on holding a referendum to decide the matter, be it unification or changing the national title.

IX. Does the DPP's Push for a New Constitution Has Something To Do With the Election? Is It Aimed at Provoking China In Order To Win the Election?

The opposition parties like to criticize the DPP's propositions as "election ploys." However, we believe that it is a normal practice of multiparty politics as well as a manifestation of responsible politics for a president seeking reelection to propose the goals of future national development and government administration in the course of contesting the election. We hope that, instead of criticizing these moves as "election ploys," the KMT and the PFP will come up with their own ideas and hold rational discussions with the DPP.

Also, some people believe that the DPP won the 2000 presidential election because of the threat from China and that it is seeking to provoke China and create tension in cross-strait relations in order to help President Chen Shui-bian [Ch'en Shui-pien] win reelection. These accusations are wide of the mark. For example, on 15 March 2000, former Chinese Premier

Zhu Rongji [Chu Jung-chi] issued a tough warning to the people of Taiwan in a televised broadcast: "Whoever advocates independence for Taiwan will come to a bad end." According to an internal poll conducted by the DPP, Chen Shui-bian's approval rating on that day dropped nearly seven percentage points from two days earlier. This shows that provoking China will harm, not aid, the DPP's electoral prospects. That is why the KMT likes to use the "Chinese Communist card" to threaten voters, because the only party to gain from provoking China is the KMT.