

台灣剛性憲法的迷思： 源起、賡續暨其對憲改的影響*

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自 1991 年以來，台灣已歷經了七次的憲法修訂。最近的一次修憲是在 2005 年 6 月。然而，該次修憲卻為將來的進一步修憲定下了一個極高的門檻。本文所要探討問題即在於：此一高修憲門檻是如何形成的？為什麼還有後續修憲意圖的民進黨，會同意接受國民黨所要求的這麼一個高難度的修憲門檻？本文的研究主要採用迷思的觀點，亦即試圖揭露出，一旦一個迷思形成之後，它對於界定以及合理化政治選擇所扮演的角色為何？在台灣廣被用來描述我們的憲法之特徵的「剛性憲法」概念，便是本文所要探討的迷思。

至於「剛性憲法」的迷思是如何形成的？本研究則是從心理學借用了「銘印」一詞作為類比，據以說明一個沒有憲政文化背景的國家在首度嘗試制定它自己的憲法之初始階段，是如何學習其有關於憲法的相關概念的。根據銘印理論，銘印作用可能發生在學習的關鍵期內所接受到的一個適當刺激。因此本文回顧了中華民國憲法的制定歷史，檢視其關於剛性修憲程序設計之演進過程。其次，本文進一步地分析了導致剛性憲法概念與中華民國憲法密不可分地交織在一起之社會機制，以及其如何限制了後來的憲法改革者之選擇光譜。最後，本文認為，剛性憲法概念的迷思對於民進黨在 2005 年的修憲中接受現行的修憲程序，發揮了特定的影響力。

儘管修憲程序的議題在憲法設計中並不是一個受到高度關注的焦點，但是對於一個後進民主化國家來說，其影響力可能遠超過我們目前的理解，頗值得我們做進一步的研究。因此，本文或可作為這方面的論述與討論之起點。

關鍵字：迷思、剛性憲法、台灣、中華民國、憲政改革、修憲程序

The Myth of a Rigid Constitution in Taiwan: Its Origin, Persistence, and Impact upon Constitutional Reforms

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ABSTRACT

Taiwan has amended its constitution seven times since 1991. The most recent revision, done in June 2005, established a very high threshold for amending the constitution in the future. This paper focuses on the questions of how the high threshold came about and how it received enough support from the DPP to become part of the constitution. It studies the questions from a mythical perspective, in particular, and tries to uncover how a myth, once formed, may play a role in confining and legitimizing political choices. The concept of "rigid constitution" is the myth subject to study because of its prevalent use by many people in Taiwan to characterize the ROC constitution.

This study borrows the term "imprinting" from psychology to analogize the learning process for a country that had had no constitutional cultural background but had to make its own constitution. How could a country with no experience with constitutions learn about the

concept at the very early stage of creating its own constitution? The imprinting theory suggests that it might imprint on the first suitable stimulus they saw within a critical period of time. The paper then looks back to the evolutionary process of a rigid design for constitutional amendment inherent in the history of the Republic of China (ROC). It further analyzes the social mechanism in which the rigid constitution has been inextricably tied with the ROC constitution, and therefore confined the choice spectrum of constitutional reformers later on. It eventually reveals how the myth of a rigid constitution had a certain impact upon the acceptance of the current constitutional amendment procedure by the DPP in 2005.

Even though the issue of the constitutional amendment procedure may not be viewed as a hot one in constitutional design, the influence of that upon constitutional development in a newly democratized country may be far beyond our current understanding and deserves further research. This paper, then, serves as a departure point for these kinds of arguments and discussions.

Key Words: myth, rigid constitution, Taiwan, R.O.C.,
constitutional reform, constitutional amendment