

Abeyance of Control Power: Impact on Constitutional Government

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Abstract

President Chen made the nomination of Members of the Control Yuan when the fifth Legislative Yuan was about to be dissolved and the sixth Legislative Yuan to be elected. However, the fifth and sixth Legislative Yuan, did not act on the nomination. Thus, the constitutional power of control was not exercised for more than two years. In this article, we will try to examine and analyze two questions: first, to what degree does this dysfunction impact the operation of a constitutional government? Second, Will it impact the future development of the constitutional system?

I. Preface

The third Control Yuan of the Republic of China was dissolved on January 31, 2005. According to Article 7 of the Additional Articles of the Constitution, all Members of the Control Yuan shall be nominated and, with the consent of the Legislative Yuan, appointed by the President of the Republic. President Chen Shui-bian submitted a list of 29 nominees for the fourth Control Yuan to the Legislative Yuan on December 20, 2004. Clement C.P. Chang (張建邦) and Michael Hsin-huang Hsiao (蕭新煌) were named president and vice president of the fourth Control Yuan.

President Chen made the nomination when the fifth Legislative Yuan was about to be dissolved and the sixth Legislative Yuan to be elected. There was opposition to the confirmation by the outgoing legislature. No action was taken on the presidential nomination for the fourth Control Yuan.

The sixth Legislative Yuan, however, did not act on the nomination either. Its steering committee failed to place the recommendation on the legislative agenda for 47 times. In the meantime, the Control Yuan ceased to function, for it had no Members. The constitutional power of control was not exercised for two years.

To what degree, if any, does this dysfunction impact the operation of a constitutional government? Will it also impact the future development of the constitutional system? These are the questions that need to be examined and analyzed.

II. Functions of Control Power in the Five-Power Constitutional System

In most countries the power of control is exercised by parliament. It is subsumed under the legislative power, which appears not fully in line with the proportionate separation of powers for democratic government. Moreover, if Members of Parliament attempt to jeopardize the executive and judiciary powers, nothing can be done but to recall them. It is very difficult to pass a motion to recall an MP; and even if the motion has

been passed, it is more difficult to pass a recall vote in his or her constituency. To prevent such eventualities, Dr. Sun Yat-sen, the father of the Chinese republic, decided to take the power of control out of the Legislative Yuan, creating his five-power system of government for the Republic of China. In Taiwan, the powers of control and examination are added to the prevalent three executive, legislative, and judicial powers.

The competence and functions of the Control Yuan include: 1) acceptance of people's petitions, 2) audit, 3) invigilation, 4) investigation, 5) execution of corrective measures, 6) impeachment, 7) censure, 8) circuit supervision and inspection, 9) review of assets disclosures by public functionaries, and 10) review of the results of investigations conducted by the other four Yuan and/or their subordinate organs.

The power to impeach the President and Vice President of the Republic was once exercised by the Control Yuan. Under an amendment to the Constitution adopted on June 10, 2005, that power is now exercised by the Legislative Yuan. But the Control Yuan keeps the power to impeach all government officials except the President and Vice President of the Republic.

In the past two years, however, the Control Yuan did not exercise the impeachment power, while government corruption became rampant. The abeyance of the power of control is widely accepted as a cause of the surge of government corruption. The government of the Republic of China has lost one of its pillars. It lacks checks and balances.

III. 'Dystocia' for the Fourth Control Yuan

What prevents the 29 nominees from assuming their positions? One reason is that the legitimacy of President Chen is under question. He was reelected, thanks to sympathy votes cast following a mystery-shrouded shooting incident in which he was slightly wounded on March 19, 2004. The opposition that controls a slight majority in the Legislative Yuan was not cooperative. There are, however, other reasons

for the dystocia of the fourth Control Yuan. They include:

1. Fairness of the Nomination Committee

Tradition requires the President of the Republic to appoint a Nomination Committee for the Control Yuan. The Committee is charged with screening and recommending candidates for the Control Yuan. It may recommend candidates all by itself or accept candidates recommended by the public at large. Individuals interested in and capable of becoming Control Yuan Members may recommend themselves to the Committee. The Committee appointed by President Chen made its list of recommended candidates public at the end of 2004. Clement C.P. Chang was recommended for president of the Control Yuan and Michael Shin-muang Hsiao for vice president. Both of them, however, were also members of the Nomination Committee. They were criticized for violation of the *Refrainment Principle for the Conflict of Interest* (利益迴避原則). Public opinion was strongly against their nomination as president and vice president of the Control Yuan. Besides, although he was not prosecuted, Chang had been suspected of involvement in the Hualon scandal (華隆案) in the early 1990s.¹ With his probity in doubt, Chang's competence as head of the nation's highest watchdog body was seriously questioned.

Moreover, Nita Ing, chairperson of the Taiwan High Speed Rail Corporation (THSRC) who had been investigated on eight different occasions by the Control Yuan, was also a member of the nomination committee. Could a Control Yuan Member she has *recommended* fairly and independently investigate the THSRC scandal?

2. Controversial Candidates

A nominee must fulfill at least one of the requirements in Article 3-1 of the Organic Law of the Control Yuan. The requirement in Paragraph 1 of the Article 3-1 is "to serve at least one term as an MP, with eminent fame, in a national legislative body, or at least two

terms as a councilor in a provincial or municipal council." Ten candidates fulfilling this requirement were nominated. The requirement in Paragraph 6 of the Article is "being honest and upright, free from corruption, as well as full of experience in politics or having taken charge of any journalistic or cultural enterprise with eminent fame." Six candidates, including Clement C.P. Chang, were nominated because they met this requirement. Such a nomination is generally considered a kind of *political reward* or even *political bribery*. Sixteen of the 29 nominees met just one of these two requirements. Such a Control Yuan is not likely to exercise its constitutional power fairly and independently.

Little attention was paid to other qualifications, which are deemed much more important by the public at large. Only five candidates were nominated because of "serving as an eminent professor for more than ten years." One candidate was named because he served "as a high-ranking civil servant for more than ten years." The other two were law-enforcement officers, a requirement that has significant impact on the exercise of the power of control.

As most of the nominees were considered President Chen's political appointees who lacked strong qualifications, the opposition in the sixth Legislative Yuan refused to act on the nomination for the fourth Control Yuan for two years.

3. Stalemate

Two forces are behind the appointment of Members of the Control Yuan. The President of the Republic has the authority to nominate them, while their nomination has to be confirmed by the Legislative Yuan.

President Chen never has the trust of the opposition in the Legislative Yuan. The appointment of the sixth Control Yuan is a tug of war between the president and the legislature, where the opposition holds a majority. President Chen named whoever he wanted for the Control Yuan, but the Legislative Yuan, where the opposition dominates, refused to confirm his nomination

of candidates. Negotiation has to be made to reach a compromise, but given their current confrontation, no dialogue is possible. The stalemate continues. This is another main cause of the “dystocia” of the Control Yuan.

Meanwhile, the opposition is attempting to make it more difficult to confirm the nomination to force President Chen to respect the legislative power of approval. Currently, a simple majority vote approves the nomination, but the opposition wants a two-thirds majority vote for confirmation. If the current rule is not changed, the majority in the Legislative Yuan will monopolize the appointment of Members of the Control Yuan, the President of the Republic can arbitrarily nominate the Members, and the Members cannot shed their political attributes.ⁱⁱ That is why the opposition is trying to raise the threshold of approval to a two-thirds majority of all legislators present and voting. Consequently, the opposition will not approve the nomination of the fourth Control Yuan until after an amendment is made to the current rule to require the higher threshold.

IV. Conclusion

The Constitution is based on the separation of, and the checks and balances among, the five powers of government. One power is missing now. The Control Yuan has ceased to function for two years. On the one hand, President Chen has arbitrarily named candidates for the nation’s highest watchdog organ; and on the other, the opposition in the Legislative Yuan has repeatedly boycotted his nominees. The resulting stalemate has aroused public discontent. It is widely acknowledged that the surge of government corruption has resulted from the abeyance of the Control Yuan. The opposition Kuomintang wants to retain Dr. Sun’s five-power system of government, while the ruling Democratic Progressive Party is pushing for the separation of three powers, subsuming the Control Yuan under the Legislative Yuan. Moreover, the ruling party can claim that the country was able to do without the Control Yuan for two years.

That claim lacks substantiation, however. The fact is that tens of thousands of cases have been filed with the non-functioning Control Yuan over the past two years. They should have been investigated.

President Chen called in late December 2006 for all political parties to recommend candidates for the fourth Control Yuan. He scrapped the plan to form a Nomination Committee. Candidates should be recommended in proportion to the seats each of the parties holds in the Legislative Yuan. Response to the call was mixed. Whether the new arrangements for nomination can solve the current stalemate remains to be seen.

ⁱ In late 1990, the Hualon Corporation was involved in insider trading. The company was able to raise enough hard cash through insider trading to start a bank. Clement C.P. Chang, the then minister of transportation and communications, and his daughter, as well as more than ten professors of Tam Kang University were involved in the scandal. Chang was forced to resign. Chang was not prosecuted. Wong Da-ming (翁大銘), chief executive officer of Hualon, was tried but acquitted.

ⁱⁱ Lee Jia-wei[黎家維]: “Guohue Xinshe Jienwei Tongyiquan Zhedu Tiaozhen Zhi Pingxi”[國會行使監委同意權制度調整之評析], in *Guozhe Pinglun*[國政評論], Xiengai(Ping)094-114, Oct. 24th, 2003, p.1.<www.npf.org.tw 2006/12/24>, °