

**Consolidating Taiwan's Democracy:
Challenges, Opportunities, and Prospects**

Legislative Structure and Reform

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Congress is central to the political life and process of a democratic society. In Taiwan, the Legislative Yuan is the highest legislative organ of the state and is constituted of popularly elected members. The Legislative Yuan is responsible for supervising the Executive Yuan, and all government policies and budgets should be reviewed and passed by the Legislative Yuan. Thus the quality of democracy hinges upon the performance of the Legislative Yuan. However, the performance of the Legislative Yuan is notorious in the eyes of the public. A survey conducted in December 2004 showed that a total of 62.4 percent of respondents were not satisfied with the performance of the Legislative Yuan. Another survey sponsored by Taiwan's Advocates further showed that 74.8 percent of respondents were not satisfied with the long-term image of the Legislative Yuan. The same survey also indicated that 75.5 percent of respondents agreed that there is chaos in the Legislative Yuan, and 33.4 percent believed that the source of Taiwan's political chaos is the Legislative Yuan itself. Among several institutions, including the central government, local government, political parties, the police, the military, and the bureaucracy, the Legislative Yuan is the least trusted institution according to the 2003 TEDS study, with only 25.7 percent of respondents saying they trust the Legislative Yuan.¹

This paper will deal with the question of what are the most serious institutional problems that the Legislative Yuan faces and how might they be remedied, what the prospects for seeing progress in these areas are, and, finally, what are the greatest obstacles to that progress.

Constitutional Status of the Legislative Yuan

In parliamentary elections, it is obvious that those who win the majority of seats in the congress shall form the government. In presidential elections, the winner of the presidential race will be the president and it is he or she who will form the government regardless of which party wins the majority seats in congress. In Taiwan,

¹ TEDS 2003 survey, "Taiwan's Election and Democratization Study, 2003."

since constitutional amendments in 1997, the Legislative Yuan no longer needs to approve the President's appointee for premiership. There is an elected president who shares power with a cabinet that is dependent on parliamentary support to stay in office. The problem is, is the government responsible to the Legislative Yuan, the President, or both? Moreover, there is still some disagreement about who shall form the government: the winner of the presidential election or the winner of the legislative election? Because the president can appoint the premier without the consent of the Legislative Yuan and legislators have no incentive to vote down the government, thus the President can appoint his party member as premier without the majority seats in the Legislative Yuan. The minority government thus formed. Confrontation and stalemate have recently become the norm in the Legislative Yuan.

According to the new constitutional amendment, the Seventh Legislative election will be held at the end of 2007. However, the presidential election will be held in March of 2008. Both terms are for four years. So every four years, we elect the legislators first, then; three months later, elect the president. The premier is supposed to be responsible to the Legislative Yuan; therefore, he or she shall resign after the election according to Grand Justice Interpretation. However, after the presidential election, the president shall appoint the new premier. The president appoints the new premier after the legislative election, several months later. If the new president's party is not the same as the majority party in the Legislative Yuan, then a new premier will be appointed again. Changing the premier so often is not good for political stability. Unless the constitution is revised, the situation will be very difficult when the president and the Legislative Yuan are divided.

It is stressed that if legislatures are strong in democratic countries, there are differences between parliamentary and presidential systems in terms the sources of strength.² In a presidential system, the power of the legislature rests on the autonomy and expertise which legislators have been able to create and maintain. Another aspect often mentioned is the fact that legislatures of presidential systems normally introduce bills themselves, meaning that the executive is hardly left with any important agenda setting power at all. Parliaments differ with respect to their ability to control governments, not their power of expertise and autonomy. But the problem in Taiwan is that it is not clear what the role of the Legislative Yuan should be as a parliamentary

² Bjorn Erik Rasch, "Parliamentarism and Legislative Dominance: Democratic Institutionalization in Europe," in *Working Papers on Comparative Legislative Studies III: The New Democratic Parliaments: The First Years*, ed. Lawrence D. Longley and Drago Zajc (Research Committee of Legislative Specialists International Political Science Association, 1998), 48.

type of legislature or a presidential type of legislature. Constitutional status of the Legislative Yuan is not clear and has never been clear. Moreover, whether the power of investigation and the power of audit should belong to the Legislative Yuan or Control Yuan is still an issue in debate. There is also a lack of consensus among the four major political parties as to the nature of the constitutional order.

Internal Structure of the Legislative Yuan

There are many problems concerning the internal structure of the Legislative Yuan, these include lack of specialization in the committees, information is not open for inter-party negotiation and Procedure committee meetings have become the veto player.

In the U.S. Congress, the committee system is at the heart of the legislative process. The committee members, aided by professional staff, frequently develop deep specialized knowledge in the areas under the committee's jurisdiction. However, this is not the case in Taiwan. Lack of specialization in the committee usually leads to poor quality of legislation. There are twelve standing committees in the Legislative Yuan. According to internal rules of the Legislative Yuan, each legislator is supposed to join one committee only. The maximum number of legislators on each committee is 21. However, each person has to register every session. Each Legislative Yuan, the term of three years is divided into six sessions, some legislators join six different committees in three years of service. If a legislator spends his time on six different committees each term, it would be very difficult to develop his legislative expertise.

The Legislative Yuan also never developed a seniority system regarding the selection of conveners as shown in Table 1. In the Fourth Legislative Yuan, 30.57% of newly elected legislators served as conveners in the committees, 22.22% in the Fifth Legislative Yuan, though the percentage down to 8.3% in the Sixth Legislative Yuan, the fact that newly elected legislators still can become a convener. Moreover, instead of a single chairperson, there are three conveners, usually each from a different party. Each takes turns serving as the chair. In each session there are thirty-six members who can be conveners. And, according the rules, conveners can only be re-elected once³. Therefore, almost anybody can become a convener. Table 2 shows that the majority of legislators have been conveners. In the Second Legislative Yuan, only 28.19 percent of legislators never served as conveners, 30.67 percent in the third term, 36.57 percent

³ This rule was changed in 2002.

**Table 1 Percentage of Conveners as Newly Elected Legislators at First Session of
Each Legislative Yuan**

Legislative Yuan, First session						
Second LY	KMT	DPP		Others		Total
	9/18	2/11		0		11/29
	(50.0%)	18.0%		0.0%		37.9%
Third LY	KMT	DPP	NP	Other	Total	
	2/16	1/10	1/3	1/1	5/30	
	12.5%	10.0%	33.3%	100%	16.7%	
Fourth LY	KMT	DPP	NP	Other	Total	
	10/22	0/11	0/2	1/1	11/36	
	45.5%	0.0%	0.0%	100%	30.56%	
Fifth LY	KMT	DPP	NP	TSU	Other	Total
	3/12	0/13	0/2	2/3	1/2	8/36
	25%	0%	0.0%	66.7%	50%	22.22%
Sixth LY	KMT	DPP	NP	TSU	Other	Total
	2/12	0/13	0/6	1/3	0	3/36
	16.7%	0.0%	0.0%	33.3%	0.0%	8.3%

The data were calculated by the author.

in the fourth term and 42.95 percent in the Fifth term. They have no incentives to devote their time and energy to their committees. They would rather spend more time in front of the camera or in their constituency than working hard in the committees. For them, working hard in the committees will not help their re-election efforts because media are would rather report conflicts or their interpellation to the ministers. Tedious committee work does not receive publicity, so nobody knows how hard he or she worked in the committee.

Congress is the institution most open and accessible to the general public. In order to make the institution more accountable to the public, the legislative process, the First Reading, committee examination, public hearing, Second Reading and Third Reading are supposed to be open to the public. In general, the public can access the

Legislative Yuan's written records from their website. However, there is some information which is very difficult to obtain. There is serious legislative absenteeism except when it is mobilized to vote. The records of the attending rate of the legislators are very difficult to access, thus, the public has a problem supervising their legislators.

Table 2
Numbers and Percentages of Legislators who have never been
Elected as Conveners

	Number of legislators who did not serve as conveners	Total number of legislators
The Second Legislative Yuan	42 (28.19%)	149*
The Third Legislative Yuan	46 (30.67%)	150*
The Fourth Legislative Yuan	79 (36.57%)	216*
The Fifth Legislative Yuan	91 (42.95%)	212*

Only members serving a full term were counted. Neither speaker nor vice speaker were counted.

The Inter-party negotiation was set up to facilitate the progress of the reviewing process. But today inter-party negotiation has become the “black box” of the legislative process. Many under-the-table exchanges are said to occur during the negotiation.

Though members of standing committees can decide which bills shall be sent to inter-party negotiation, only 22% of bills were sent to inter-party negotiation during the Fifth Legislative Yuan. According to a study by Yang and Chen⁴, most of them were subjected to substantial change. Since the inter-party negotiation can completely overturn all the committee decisions, committees have become more powerless.

⁴ Yang Wan-Yang and Tsai-Wei Chen. 2004 “The Transformation and Evaluation of the Inter-party Negotiation System after the Congressional Reforms.” *Soochow Journal of Political Science* vol. 19:111-150.

The other problem is the Procedure Committee⁵. The thirty-six members in the Procedure Committee have become the focus of media attention for the past two to three years. The Committee has become the killer of bills. It can block or kill any bill it dislikes without any public discussion or debate. During the period of unified government, no proposed bill was blocked in the Procedure Committee, however, during the period of divided government, the committee started to wield its power. During the Fourth Legislative Yuan, 72 bills were blocked (see Table 3). This increased to 2076 bills during the Fifth Legislative Yuan. Among these were 698 bills which had been proposed by the Executive Yuan. The problem of the Procedure Committee is that none of their meetings are open to the public and they do not keep any written records open to the public unlike other standing committees. The general public cannot access the data from the Procedure Committee. If citizen participation and transparency is the way to keep the legislatures more accountable and responsible, the Procedure Committee is certainly far away from that.

Table 3 Number of Bills blocked by the Procedure Committee

	Number of bills blocked by the Procedure Committee	Number of bills proposed by the Executive Yuan blocked by the Procedure Committee
The Fourth Legislative Yuan (1999/02/01-2000/05/20) (unified government)	0	0
The Fourth Legislative Yuan (2000/05/20-2002/01/31) (divided government)	72	25
The Fifth Legislative Yuan (2002/02/01-2005/01/31) (divided government)	2076	698

Corruption Problems in the Legislative Yuan

Special interests and money politics in the Legislative Yuan are suspected by

⁵ After government bills and the statutory bills proposed by the members get to the Procedure Committee, the Secretary General sets the agenda which goes to press upon approval by the Procedure Committee. If approved, they will be printed. Thirty-six members shall be deployed in the Procedure Committee according to a formula of proportional representation among political parties (caucuses). Each party (caucus) shall have at least one member in the committee.

most people. According to a report by Transparency International in Taiwan, 78% of respondents said corruption in the legislature was either “serious” or “very serious” in 2005, compared to 68.3% in 2004 (see Table 4). If the Legislative Yuan wants to gain the respect of the public and the trust of the people, conflict of interests should be avoided and corruption must be reduced. However, the behavior of legislators in Taiwan is regulated by very few restrictions or regulations, often leaving party caucuses all but helpless when it comes to dealing with them. An incumbent legislator may simultaneously serve as board director or chairman of multiple corporations, and a legislator involved in ongoing legal proceedings may not only become a member on the Judiciary Committee, but he can even become the convener of that committee. Board directors and chairmen of securities companies may become members of the Financial Committee and gain access to insider information. Presidents of investment companies may become members of the same committee where they can exert pressure on state-owned banks where to invest in their funds. Members of the board of directors of private schools may become members of the Education and Culture Committee with the idea of obtaining subsidies from the Ministry of Education. Legislators have even become members of the Transportation Committee and the Economics and Energy Committee to be able to win construction contracts. The list goes on and on.

Table 4 Perception of Corruption among Taiwan Institutions

(The percentage of responds who said corruption in this sector was either “serious” or “very serious”)

Institutions	2004	2005
Legislature	68.3%	78.0%
Political Parties	63.4%	69.0%
Customs	43.7%	48.0%
Military	40.4%	48.0%
Police	41.5%	45.0%
Legal system/Judiciary	43.9%	43.0%
Utilities	37.6%	41.0%
Private sector	26.7%	26.7%
Tax agencies	27.0%	35.0%
Medical services	18.0%	32.0%

Education system	21.6%	25.0%
Media	23.5%	19.0%
Religious bodies	18.4%	16.0%
NGOs	8.3%	7.0%
Household registry services	6.0%	5.0%

Source: excerpted from the Taiwan Portion of the Global Corruption Barometer of Transparency International

According to a Taipei Society survey for the Fifth Legislative Yuan, 71 out of 225 legislators have 176 positions on the boards of profit making companies.⁶ Moreover, 95 legislators have director or president positions on non-profit organizations. Article 22 of the Legislators' Conduct Act clearly states that “when legislators encounter issues involving possible conflicts of interest, they should avoid participating in the review and voting process of said issue.” But there is virtually no punishment when a legislator violates conflict of interest rules, rendering this article impotent. The Regulations Regarding Public Servants and Avoidance of Conflicts of Interest passed by the legislature on June 27, 2000 also clearly specifies that legislators may not participate in the review and voting process for legislation involving their individual interests and that legislators in violation may be fined between NT\$1 million and NT\$5 million. Despite these laws, many legislators in Taiwan do not avoid conflicts of interest. In fact, several do not normally attend the legislature or participate in political activities. Only when there is a review of, or vote regarding, legislation involving their individual or family interests do they show up. It also goes without saying that no legislator has been reported to the Discipline Committee for violating the regulations regarding conflicts of interest. For one thing, no member wants to offend his fellow legislators. For the past three years, no meeting has been held for Discipline Committee. Secondly, the thirty-six committee members are made up of three members from each of the other twelve legislative committees, elected by the other members on their committee.⁷ Such an appointment process sets the stage for booty sharing. What is more, legislators involved in ongoing legal

⁶ Chu Hai-yuan, “Report on Legislators’ Positions on the Boards of Profit-Making Companies,” in *To See Through the Legislative Yuan: 2003 Report on the Supervision of the Congress*, ed. Chu Hai-yuan (Taipei: Asian Culture, 2004), 24.

⁷ At the beginning of the second session of the Fifth Legislature, the size of the Discipline Committee was reduced from thirty-six to twelve, one member from each of the twelve standing committees.

proceedings or who are in violation of the regulations regarding conflicts of interest are all eligible for membership on the Discipline Committee. Due to these circumstances, the committee does not even enjoy the most basic levels of public trust.

The Political Campaign Contribution Law was passed on March 18, 2004. All candidates shall report their campaign money to the Control Yuan; however, the Control Yuan did not function for the past year because the Legislative Yuan refused to approve the members of the Control Yuan nominated by the president.

What Needs to be Done in the Future?

Regarding the constitutional status of the Legislative Yuan, the high threshold of passing a constitutional amendment makes it almost impossible to change the situation. Amendments to the Constitution shall be made in accordance with the following procedures: first, one-fourth of the total number of the legislators are needed to propose an amendment and by a resolution of three-fourths of the legislators present at a meeting having a quorum of three-fourths passed, then, an amendment may be submitted for popular referendum. Such a proposed amendment to the Constitution shall be ratified by one half of the total electorate in Taiwan. Unless there is consensus for change in this society, the status quo will remain unchanged for a long time.

Two fundamental changes are sure to make the Seventh Legislative Yuan to be elected at the end of 2007 a far different organization because of the constitutional amendment ratified in 2005. The first change is the Seventh Legislative Yuan will be only half the size as its predecessor, that is, the total number of members will decrease from 225 to 113. The second change is the electoral system will change from a SNTV system to a two-vote system. Perhaps it may be a good time to make some revisions when the legislators realize that half of them- and probably more than half- will not be back again in the next legislature. Their personal interests will be less at stake and they might want to do something for the future. At least, for the new two-vote system, it is easier for the public to supervise their legislator, and the party will be more cautious about their nomination. Hopefully, this new system will provide better incentives for legislators to spend their time working on legislation.

In terms of internal structure of the Legislative Yuan, among those issues needed to be remedied are the committee structure, selection of committee chairmen,

information transparency, and prevention of conflict of interest.

The committee structure needs to be changed when the legislative size is down to 113. If each legislator can only join one committee, as it used to be, then the size of each committee will be too small. It will be very risky if the committee decision is controlled by only a very small number of members. Therefore, each legislator should be allowed to join two different committees. But they are not allowed to move from one committee to another committee during their term. Committee assignment should be done according to their seniority. Each committee only needs one chairperson, and no junior legislator should be allowed to be elected as chairperson. Moreover, in order to increase in the specialization of the committees, sufficient staff support is also needed.⁸ The standing committees should be given more defensive power and more responsibility. When a bill is overturned in the inter-party negotiation, it shall be sent back to the committee for approval. We also need more information and written records about the process and content of the inter-party negotiation. When the article has been revised or overturned, it shall be given a strong reason and justification.

The Procedure Committee should go back to their original power to set the order of the bills in which the bills will be deliberated in the Yuan sitting. If a bill is blocked for more than two sessions, it shall be automatically sent to the Yuan sitting for review.

As mentioned in the last section, the general public perception of corruption in the Legislative Yuan is very serious. Such corruption does damage to the quality of democracy and erodes its legitimacy, potentially putting it at risk. Controlling corruption and vote buying will require several reforms to regulate campaign spending and strengthen the legal system. Several sunshine laws have been discussed very often recently, including the Campaign Finance Law, Political Party Law, and a Lobbying Act. However, only the Campaign Contribution Law has been passed.⁹ Unless all these laws are passed and rigorously implemented, the corruption in the Legislative Yuan will not be reduced. If the corruption problem cannot be solved, then the legitimacy of the Legislative Yuan will continue to decline.

Moreover, in connection with the corruption problem, the Legislative Yuan needs to revise its internal rules regulating the behavior of legislators to preclude any

⁸ Hawang Shiow-duan, "The Operation of Committees and Congressional Reform," (Paper delivered at the Conference on Establishment of New Congress, Center for Study of Public Law, National Taiwan University, Taipei, 2002).

⁹ Campaign Contribution Law was passed in the Legislative Yuan on March 18, 2004.

conflict of interests between the narrow interests of private employers and the broader interests of the general public. In other words, the Legislative Yuan should set limitations and ethical guidelines on outside economic activities and personal finances governing the activities of legislators. For example, it should adopt rules to restrict outside earned income, outside employment, post employment lobbying and the receipt of honoraria, and also to require annual public financial disclosure by legislators. The Discipline Committee should also be given more power to deal with ethical problems in the Legislative Yuan.

Though it may be a good time for the Seventh Legislative Yuan to make some reforms, it will also require a push from outside, including scholars, NGOs, media, and the general public, especially dealing with the anti-corruption problem. Finally, we need to establish a grassroots organization, such as Common Cause in the U.S., to constantly push reform in the Legislative Yuan.

Conclusion

The Legislative Yuan has played an important role in promoting democracy in Taiwan. However, in recent years, it has become infamous for its corruption and not performing its jobs well. People are not pleased with the quality of the legislative output and the performance of the legislators; this kind of feeling could possibly ruin the legitimacy of the Legislative Yuan. Reform in the Legislative Yuan is urgently needed.

The constitution itself does not provide a way to guarantee a majority government to be formed. In the near future, this will not be easy to change, unless there is consensus among different parties. The SNTV electoral system has long been criticized for its creation of particular interests and factions and its curbing of the incentive to work by the legislators in the Legislative Yuan, but this will be changed in the Seventh Legislative Yuan by using a two-vote system. In terms of the internal structure of the Legislative Yuan, the fact that the seniority system and the selection of conveners are not established; the process of inter-party negotiation has become the black box of the Legislative Yuan and the internal behavior codes of conducts are absent, there are still a lots of reforms needed to be done. Furthermore, several important sunshine laws, such as the Political Party Law and the Lobby Act are still pending in the legislature. In order to improve the poor image of the Legislative Yuan, the passage and execution of these laws is important. In order to improve the quality

of democracy, the legislative body needs to take more responsibility to make the government more accountable. Moreover, the Legislative Yuan itself should be more accountable, responsive, representative, and less corrupt.