

# **Imbalance of Five-powered Government**

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## **Summary**

The five powers of the Republic of China were made imbalanced in 2005. The DPP wants to abolish the Control Yuan, which is to discipline guilty functionaries, and the Examination Yuan, which holds civil service examinations. The Legislative Yuan has not acted on the nomination of President Chen and this led to an idle Control Yuan since Feb. 2005. Although the Examination Yuan continues to operate despite President Chen's strong propose of its abolishment, it could not act in the interest of the public for it was politicized. The five-powered government founded by Dr. Sun Yat-sen should be maintained for the principle of democracy.

## I. Foreword

The five-powered government of the Republic of China lost its balance in 2005.

The Constitution of the Republic of China aims at maintaining a power balance among five branches of the government. They are the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Control Yuan and the Examination Yuan. They exercise the five powers for which they are named, all of them equal and each independent of the other.

The Executive Yuan is responsible to the Legislative Yuan. The Executive Yuan can ask the Legislative Yuan to reconsider its resolution. Though the Legislative Yuan can vote out the president of the Executive Yuan, he can request the President of the Republic to dissolve the Legislative Yuan and call for a new legislative election.

The judicial power is exercised normally in Taiwan, though the independence of that power has occasionally come under question. But there are problems concerning the normal functioning of the other two powers: the powers of control and examination.

## II. Control Yuan

The Control Yuan can right the wrongs of government officials. It can censure or impeach them. They may be disciplined by the Disciplinary Commission for Public Functionaries under the Control Yuan. Those officials impeached have to resign.

Most countries of the world merge the power of control power with the legislative power. Their parliaments exercise the power of control. The merger of the two powers may lead to the abuse by the parliament of the power of control. To prevent the abuse, Dr. Sun Yat-sen, the founding father of the Republic of China, created an independent power of control.

The power of control is not exercised in Taiwan now. President Chen Shui-bian nominated a new Control Yuan in 2004. The nomination, subject to confirma-

tion by the Legislative Yuan, has not been acted on. As a result, the new Control Yuan has not been inaugurated, albeit it was required to start operation on February 1, 2005. There are no Control Yuan members to exercise the power of oversight over government officials. Over 10,000 cases that have to be investigated have been left unattended to. The Control Yuan left idle has adversely affected the balance of the five powers.

The Democratic Progressive Party wants a separation of three powers in government. The government party wants to abolish the Control Yuan and the Examination Yuan, the institutions which exercise the two powers that are included in the Constitution in addition to the executive, legislative and judicial powers.

To maintain the balance among the five powers, President Chen Shui-bian should submit a new list of nominees for the Control Yuan. The Legislative Yuan should act on the nomination, confirming qualified ones and rejecting those who are not qualified.

## III. Examination Yuan

The Examination Yuan is the other constitutional institution the governing Democratic Progressive Party wants to abolish.

In a 2000 campaign white paper, Chen Shui-bian, the DPP candidate for president, declared his plan to abolish the Ministry of Personnel under the Examination and let the Central Personnel Administration under the Executive Yuan to take over all its functions. He advocated a civil service examination commission to replace the Examination Yuan. The committee would be created under the Office of the President and made responsible to the President of the Republic. Chen, who was elected in 2000 and reelected four years later, wants to get rid of the independent power of examination, created by Dr. Sun Yat-sen, the founding father of the Republic who wanted to prevent the abuse of civil service examinations by the executive branch of the government.

The Examination Yuan was inaugurated in accor-

dance with the Constitution of the Republic of China promulgated in 1947. It holds civil service examinations and supervises personnel management for public functionaries. Only those who pass the examinations can be made public functionaries.

During the Period of National Mobilization for Suppression of Communist Rebellion proclaimed by President Chiang Kai-shek in 1948, a Central Personnel Administration was created under the Executive Yuan, but the Ministry of Personnel under the Examination Yuan was not abolished. The CPA handles personnel management for public functionaries working for all Executive Yuan agencies. The Period of National Mobilization was terminated on May 1, 1991, but the CPA has continued to function. Its functions overlap many of the functions of the Ministry of Personnel.

However, this conflict of function has been greatly reduced after a constitutional amendment was adopted. The Examination Yuan is responsible only for the institutional affairs of personnel administration, according to the amendment. Appointments remain the CPA function.

The DPP is not satisfied with the compromise. Yao Chia-wen, president of the Examination, insists that his own constitutional institution be abolished. The Constitution has to be amended to abolish the Examination Yuan. According to the Constitution as amended, a future amendment has to be initiated and adopted by the Legislative Yuan and then put to a referendum for ratification. The ruling party has no control of the Legislative Yuan, and it is next to impossible to have it adopt an amendment to abolish the Examination Yuan.

Though it may not be abolished, the Examination Yuan is facing the problem of politicization that is likely to affect adversely the balance of the five powers of the government.

For instance, Amoy or Min which is spoken by the majority of Hoklo people is introduced to civil service

examinations. Questions are set in the Min dialect to the disadvantage of those non-Amoy speaking candidates who take the examinations. It is unfair. The Control Yuan investigated the complaints about the unfair disadvantage. During the investigation, Control Yuan members in charge asked the Examination member who made the decision to use the dialect to attend an inquiry. He refused to attend. The Control Yuan is entitled to investigate, and his refusal to attend is a breach of the constitutional principle of the independence of the five powers of the government.

In August 2005, bar examination takers were asked to write a Chinese composition on the subject: "The Character of a Lawyer and the Leadership of the Nation." Apparently, "The Leadership of the Nation" referred to the leadership of President Chen Shui-bian. That was a highly politicized topic that should not have been discussed in a civil service examination. It caused a public uproar. Finally, under tremendous public pressure, the Examination Yuan decided that a composition would be graded by two different readers and the final score would be the mean of the two grades.

A politicized Examination Yuan is not in the interest of the general public. The power of examination should be independently exercised.

#### **IV. Conclusion**

When Dr. Sun Yat-sen laid down the framework for the five-power Constitution, he regarded the relationship among the five powers as cooperative rather than mutually restraining. It differed from the Western principle of separation of three powers, which is characterized by check and balance.

The five branches of the government instituted under the Constitution should cooperate with each other. The fact, however, is that they do not work closely together. They often compete against each other. Separation of powers in the West often results in a "limited government." The rights of the people are protected, and the powers will in balance under the limited gov-

ernment.

The balance of the five powers must be maintained, for an imbalance threatens the rights of the people. It runs counter to the principle of democracy.