

[Working Paper Series: Horizontal Accountability in Asia]

## Parliamentary Supervision in Taiwan: Consensus Building versus Majoritarian Rule

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### 1. Political Institutions

Taiwan adopted a semi-presidential system in which the president is directly elected and can serve up to two terms and nominate the premier. The Legislative Yuan, Taiwan's parliament, has 113 members who are elected every four years. It includes 73 geographical seats, 34 party-list seats, and six aboriginal seats. As of 2023, Taiwan has held seven presidential elections and nine parliamentary elections. Taiwan experienced its third transfer of executive power between parties in 2016. The previous two transfers took place in 2000 and 2008. The 2016 election also marks the first parliamentary majority for the Democratic Progressive Party (DPP), one of the two main parties in addition to the Kuomintang (KMT).

Under Taiwan's semi-presidential system, Congress can file a no-confidence motion against the Prime Minister. The president can dissolve the parliament and appeal to the voters as a countermeasure. Taiwan and France have a similar constitutional provision that the president appoints the premier without the consent of the parliament. In France, however, when the president's party does not enjoy a majority of seats in the parliament, the opposing camp obtains the right to form the cabinet where the president's party is excluded, which means that cohabitation between the two main political camps occurs. In contrast, the likelihood of proposing a vote of no confidence in Taiwan's Legislative Yuan is very low. The president has the power to dissolve the parliament only if the latter passes a vote of no confidence. The cost and uncertainty of running for the legislature election are very high. When a divided government occurs, the opposition party that controls the parliament does not dare to propose a motion of no confidence but instead chooses to block the minority government's legislative agenda, resulting in a legislative deadlock. This situation happened during the two terms of President Chen Shui-bian between 2000 and 2008.

Since 2008, the KMT and DPP governments have enjoyed most of the seats in the parliament. The concurrent election of the president and the legislators after 2008 reduced the likelihood of a divided government. In addition, since 2008, the change in the election formula from a single non-transferable vote (SNTV) to a single-member district also tends to boost the seats of the president's party. Under these conditions, the president's party can more easily control the executive and legislative branches. The system, in essence, is closer to the presidential system with a unified government.

However, the new political structure does not guarantee that the presidents can push through their legislative agenda without considerable difficulty. Their legislative power depends on several

confounding factors. The first factor concerns whether the president is also the party chairman. The president tends to have more power presiding over the executive and legislative branches with party chairmanship. Most of the time during the Ma and Tsai governments, the presidents also served the president of their parties. Therefore, we will focus on the other factors.

The second factor is associated with the degree of party unity. When there are strong factions within the ruling party, the president may be unable to pass all the bills he wants. During President Ma's administration, the President and Speaker Wang Jin-pyng were not congruent on many things, hindering the President's ability to control the legislative agenda. The third factor concerns the law-making rules in the parliament. When the legislative procedures allow the opposition party and civil society organizations (CSOs) to exercise filibuster actions, they are permitted to enjoy de facto veto power on some contentious issues. The president often finds it difficult to pass some important bills. The last two factors are critical to the executive and legislative relationship, and we will explore them in detail below.

## **2. How the Constitutional and Legal Mechanisms of Horizontal Accountability Fulfilled Their Expected Functions**

The arrangement of the legislative process in democracies faces a dilemma. On the one hand, the political system encourages consensus building and power sharing. On the other hand, a desired political system also needs to allow the ruling party to pass the bills that the government prioritizes.

Since democratization in 1987, Taiwan has witnessed several party turnovers. The smooth transition of executive power has disguised the truth that the majority party is not able to exercise its lawmaking power smoothly. Since the first party turnover in 2000, gridlock in parliament has become frequent. During President Chen's government, a minority government that did not have majority support in the parliament, the coalition of the KMT and the People First Party blocked many major legislative bills introduced by the DPP government, some of which were drafted under KMT President Lee's terms before 2000.

Although the KMT has enjoyed a majority of seats in Parliament since 2008, it was unable to push its own agenda forward in many cases. Issues relating to pension reforms, beef imports from the United States, recruitment of college students from Mainland China, and service sector trade agreements across the Strait are some notable examples from President Ma's tenure. A problem that arises from immobilism is that it harms electoral accountability. It is similar to the divided government situation, where voters cannot tell which party is responsible for the final political and economic outputs.

Unlike the filibuster rule in the U.S. Congress, where only ongoing, non-stop speech is allowed and recognized, the methods of filibusters in Taiwan's parliament are quite extensive. Multiple amendments, physical clashes, and blocking of the committee and the chamber are all tolerated in the Legislative Yuan. There are no formal rules to end a filibuster. Unlike other democracies, the committee chair and speaker in Taiwan do not have the power to end a filibuster. In many Western parliaments, there are motions to end the debate on a matter, limit the amount of time that members of parliament (MPs) can spend on a particular bill, and timetable a bill's progress by setting out the time allowed for debate at each stage in advance. As a result, despite being a

majority party in the parliament, Presidents Ma remained unable to advance their party's policy agenda because of filibustering.

The party caucus negotiation mechanism is the central mechanism for ending filibusters and allowing parties to negotiate in the Legislative Yuan in Taiwan. Party whips can ask the speaker to send the bills that cannot reach consensus in the committee to the party caucus negotiation mechanism, comprised of all the party whips with a party caucus. With a small number of participants, all with mandates from their respective parties, the meeting can more easily reach a consensus. If all sides agree with the amendment, the bill is sent to the plenary session, and a roll-call vote is held. Almost all such bills approved in the meeting will pass the second and third reading without much difficulty.

Before 2016, given the frequent filibuster actions taken by the opposition parties, this mechanism helped to reach agreements between the ruling party and the opposition parties regarding contentious bills. A bill is not pushed forward into the plenary session unless a consensus is reached in the negotiation process. In other words, the opposition parties enjoyed veto power regarding the bills they strongly opposed. Two notable cases were the pension schemes reform of civil servants and public school teachers and the pension schemes reform of laborers. During this period, the mechanism essentially made Taiwan's legislative process close to the consensus model proposed by Lijphart (2012). The government institutions of Taiwan, including the semi-presidential system that is, in essence, close to a presidential system; and the first-past-the-post electoral system that entails a high disproportionality of seats to votes, make it a majoritarian system. However, filibusters and party caucus negotiation mechanisms essentially convert the political system into a consensus model. The ruling party needs to amend the bills to be accepted by the opposition parties, and the opposition party can also block the bills they do not like. The downside of the quasi-consensus model is that the ruling party is unable to push through some of the core agendas.

However, not all bills that failed to reach a consensus in the party caucus negotiation mechanism were killed. In a few highly significant and non-identity bills, such as the US beef cases, the Ma government pushed through a roll-call vote, imposed strict party discipline, and passed the bills.

In some cases, filibusters launched by the opposition party involve a third player-civil society groups, thus increasing the hurdles to passing laws. The Sunflower Movement in March 2014 is a salient example. The issue at stake was the service trade agreement between Taiwan and China. After the DPP blocked this agreement in the committee for a month, the KMT committee chair suspended the review and sent the bill to the floor for a vote, sparking massive student protests that occupied the floor of the Legislative Yuan. One significant reason the student groups acted was that they believed the DPP MPs would back off in the review process.

When the DPP took power in 2016, the opposition party, the KMT, like its predecessor, quickly sought to block several DPP initiatives using various filibuster tactics. The DPP responded swiftly by restricting the debate in the Parliament. More importantly, the DPP changed the rule of the party caucus negotiation mechanism. The ruling party still negotiates with the opposition parties in the party caucus negotiation mechanism; however, if no agreement is reached, a bill is not killed. The retirement of the long-serving KMT speakers who were able to effectively mediate disagreements among parties reduces the mechanism's effectiveness in fostering agreement. In addition, the DPP is more assertive than the KMT in exercising its majority rights. Both factors contribute to the weakening of the party caucus negotiation mechanism. As a result, the party caucus negotiation

mechanism ceased to be the gate through which the opposition parties could block the bills they did not like. If parties cannot reach an agreement in the negotiation, the bill simply moves to the plenary session, and the ruling party can get it passed with its majority seats (Ting 2021).

In general, bills related to the national identity, such as abolishing the Mongolian and Tibetan council and transitional justice, are least likely to reach a consensus in the party caucus negotiation mechanism. But now, the ruling party can bypass the party caucus negotiation mechanism and move on to the second and third readings (Ting 2021).

The positive impact of this new process is that the ruling party is able to pass the bills they want. Fights in Parliament result in immobilism. In a highly competitive international economic structure, delays and immobilism may put Taiwan's development at a more significant disadvantage. Recent changes in legislative process may set a precedent for future governments, rendering the country's legislative process closer to a majoritarian model.

Taiwan's civil society, which includes academics, students, NGOs, the civic tech community, grassroots advocates, and the news media, plays an important role in its legislative process, as mentioned above. When the ruling party controls the executive and legislative branches and the party caucus negotiation mechanism is weakened, the opposition parties have no effective tactics to stop legislation. Civil society's response has become the sole force that can block the contentious bills. However, the effectiveness of such factor depends on the size of civil society organizations that oppose the bills. In some cases, such as the pension reform of civil servants in 2017, the protesters of the anti-pension reform also sought to break into and occupy the Legislative Yuan but failed because of police interruption. It appears that the police, after the Sunflower Movement, have ramped up their ability to prevent protesters from breaking into the parliament. More importantly, such action did not garner extensive social support to block the bills. The government was eventually able to get the pension reform passed.

After its defeat in the 2018 local elections, the DPP blamed the disinformation war for distorting the truth, demonizing political leaders, and planting a misleading view of the government, putting the DPP at a distinct disadvantage. The government and DPP legislators proposed or planned to propose several items of legislation designed to curb disinformation. The most important one is the Digital Intermediary Services Bill, introduced in 2022, which would have given government agencies the power to initiate legal action against online news stories that were deemed to violate the law or damage the public interest. A court would have 48 hours to decide whether a story had to be removed from internet platforms. Before the court made its decision, the government agency could require the platform provider to add a warning to the post for 30 days. Faced with extensive opposition from civil society organizations, netizens, and internet providers, the government withdrew the bill (Wu 2013).

In addition, before 2016, party caucus negotiation meetings were closed-door; therefore, there are no discussion records. Party supporters were not able to track the positions of individual party whips. As such, party whips were not held accountable for the decision to concede in the meeting. Since 2016, the party caucus negotiations have been videotaped, which tends to increase the pressure on the individual whips and induce them not to concede in the meeting. This factor has also likely contributed to the less compromised model after 2016.

### 3. What are the Determinants of Horizontal Accountability Performance?

Weak control of legislative power by the ruling party in a united government hurts the governability of the democracy. As Galston (2018) points out, gridlock is a significant reason people have lost confidence in representative democracy, as weak governance increases popular discontent with the existing political system. This situation points to a dilemma that Taiwan faces. On the one hand, it must ensure majority rule to enhance governability. When checks and balances are pushed to an extreme, they weaken democratic governability. On the other hand, a desired system would also need to encourage power-sharing and consensus-building. Especially regarding the Taiwan-China relationship, the threat from China is looming and genuine, and the opposition and the civil society, by and large, are uncomfortable with a closer economic relationship between Taiwan and China. Therefore, people demand that the Ma government step back from its close relationship with China. The 2012 Taiwan Election and Democracy Survey shows that during President Ma's term, people who considered the rise of China a threat to Taiwan tended to endorse strong checks and balances.

Because of the dichotomous nature of national identity issues and the lack of democratic norms in the legislative reviewing process, the opposition party tried hard to filibuster the main legislative agenda of the ruling party. The deliberation of any issue related to China often escalates to the level of saving Taiwan or selling Taiwan. This attitude exists not only among the elite but also among the public. This national identity cleavage causes great distrust in the political actors representing the other camp. People often question the loyalty of political leaders to Taiwan or the Republic of China. People supporting the opposition party are uncomfortable letting the other party rule alone. They seek many different ways to hinder the government's policy agenda.

### 4. What Should Be Done to Improve the State of Horizontal Accountability Performance?

In an ethnically divided society, power sharing is crucial. In the winner-take-all nature of Taiwan's political system, there is not much room for institutional power sharing in the elections and the process of government formation. Under the semi-presidential system, the party that controls the presidency also controls the parliament. Moreover, the elections of the presidential and legislature both adopt the single-member-district electoral systems, rendering the election results highly disproportional. These two institutional features render institutional power sharing largely absent.

Under this institutional structure, tactics such as the division of the government, filibustering, closed-door party caucus negotiation, and even the occupation of parliament essentially serve as non-institutional power-sharing mechanisms. The function of the party caucus negotiation mechanism also serves as a way of encouraging consensus building. These mechanisms prevent drastic changes in important policies. In some sense, this is a good thing for a divided society to maintain social peace. These informal power-sharing mechanisms, however, have their downsides. For instance, they harm the ruling party's ability to advance its policy agenda. In addition, the current system fails to encourage the formation of an accepted quorum in the parliament. In each legislative battle, there are fierce fights until one side eventually concedes. These fights tear society apart without being able to cultivate democratic norms gradually. Taiwan must encourage the formation of a norm in which opposition elites are willing to respect the opponents' right to govern, and things may slowly change in that direction. Since the Tsai Ing-wen administration began in 2016, the ruling party has been able

to force a vote by shortening the debate in committees, employing the police force to prevent social groups from occupying the parliament, and weakening the party caucus negotiation mechanism.

Taiwan is a divided society with different national identities and views of the cross-strait political and economic relationship. It is preferable to encourage deliberation and compromise regarding identity-related issues. It might be better to maintain a party caucus negotiation mechanism regarding identity-related bills and encourage political parties to seek compromise. However, for non-identity issues such as economic reforms, weakening the party caucus negotiation mechanism and allowing the ruling party to advance its policy agenda should be the right direction. It is sometimes challenging to distinguish between the two cases as they often overlap. For example, Taiwan's trade liberalization is closely related to the trade relationship across the Taiwan Strait. Other issues relating to emigration and foreign student policy involve the China factor but to a different extent. As such, there is no easy solution for this kind of policy. ■

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This series of reports was compiled as a part of Asia Democracy Research Network's joint research project on Horizontal Accountability in Asia. The research for these reports was conducted entirely by EAI and its partner think tanks in Asia, including Academia Sinica, Academy of Political Education, Independent Research Institute of Mongolia, International Center for Innovation, Transformation and Excellence in Governance, La Salle Institute of Governance, King Prajadhipok's Institute, National Research and Innovation Agency, Observer Research Foundation, Pakistan Institute of Legislative Development and Transparency, Samata Foundation, and Verité Research.

This program was funded in part by the National Endowment for Democracy (NED).

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979-11-6617-621-0 95340

Date of Issue: 2 June 2023

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