

**INSTITUTIONAL DESIGN AND DEVELOPMENT
IN THE ROC (TAIWAN): A CRITICAL REVIEW OF THE
THOUGHTS OF SUN YAT-SEN AND THE GLOBAL
DEVELOPMENT OF THE OMBUDSMAN SYSTEM**

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I. FOREWORD

Last year marked the 100th anniversary of the Republic of China. Without a doubt, the influence which Dr. SUN Yat-sen and his thoughts have had on China is the single greatest event of the past century. Dr. Sun led the national revolt against the Qing Dynasty and founded the first democratic republic in Asia—the Republic of China. Thereafter, despite internal strife and foreign invasion, a “Five Power Government” was established based on Sun’s political philosophy: *The Three Principles of the People* (*Sanmin Zhuyi*). During the 38th year of the Republic, the Kuomintang (KMT) moved to Taiwan after losing to the Chinese Communist Party in the civil war. The KMT, which retained its control over Taiwan, Penghu, Kinmen, and Matsu Islands, continued to practice Sun’s legacy with much success and international acclaim, especially in terms of economic development and the advancement of democracy.

The Chinese Communist Party (CCP)’s experiment with communism in the Chinese Mainland resulted in more than three to four decades of economic and political decline. Competition between Taiwan and Mainland China has proven the most important of the *Three Principles of the People*. DENG Xiaoping had also adopted the reform and opening-up policy (*gaige kaifang*) during the early 1980s to learn from Taiwan’s experience in modernization. *Reform and Opening* has also opened doors for Taiwan and Chinese Mainland to initiate dialogues on Sun’s thoughts and ideas. To all of China, Dr. Sun is still seen as a great man and leader of both Taiwan and the Chinese Mainland, and is embraced and well-respected by people on both sides. Sun also continues to act as an important bridge between Taiwan and the Mainland, and helps facilitate communication and foster a “common ground” between the two nations. As such, celebration of the Xinhai Revolution is incomplete without discussing SUN Yat-sen’s thoughts and influence.

Nowadays, historians refer to the Xinhai Revolution as the “First Revolution.” Eighteen months after the Qing emperor abdicated his throne, the KMT started the “Second Revolution” in Jiangxi against YUAN Shikai’s dictatorship. When the revolutionaries were defeated by Yuan’s armies, Dr. Sun formed a new party to crush and usurp Yuan; hence, the “Third Revolution.”¹ After the success of the 1911 Xinhai Revolution, the provi-

1. SHAO Ming-huang, *Jie er lian san zai jian mi li—Sun zhong shan xian sheng ce qin di san ci ge ming de jing li* (Unrelenting and Persevering in Times of Difficulty—Dr.

sional government chose to adopt the western system of government—that is, separation of powers—by dividing the government into three branches, and granting parliament the right to impeachment. In 1912, the central Audit Office (*Shen-ji Chu*) was established and made accountable to the prime minister. In 1914, the Audit Office was re-established as the Auditing Yuan, and was accountable to the President. On July 1, 1925, the KMT government was established in Guangzhou, followed by the Control Yuan (*Jian-cha Yuan*, also known as the “Supervisory Council”) on August 1.

The founding of the Control Yuan marked the beginning of the KMT government’s attempt to give rein to supervisory powers. At this time, other “Yuans” were not established due to the KMT’s Northern Expedition, and supervisory activity was temporarily suspended. Following the Northern Expedition, however, the country was reunited in 1928 and the KMT government adopted the five-power system. The Audit Yuan was established in February 1928, followed by the Control Yuan in February 1931. Later, the Audit Yuan was restructured into the National Audit Office under the jurisdiction of the Control Yuan. This authority, which possesses the right to impeachment and auditing, is the most powerful supervisory organization within the government. In 1937, following the start of the Sino-Japanese War, the powers of censure (*jiu ju*) and recommendation (*jian yi*) were added to the Control Yuan.

The *Constitution of the Republic of China* was enacted on 25 December 1947. According to the constitutional provisions, audit power was a supervisory power. Thus, on June 5, 1948, the Control Yuan was officially established following the enactment of the *Constitution*, and the members of the first Control Yuan were elected.² In summary, the Xinhai Revolution has several important implications for the political development of the Republic of China: (1) China has since become a democratic republic and steadily moved toward a path of modernization. Dr. SUN Yat-sen’s thoughts were not only propaganda tools during the revolution, but the tenets for nation-building and governance. (2) After the Xinhai Revolution,

SUN Yat-sen’s Experience in Planning for the Third Revolution), *Ji nian xin hai ge ming jiu shi zhou nian xue shu yan tao hui lun wen xuan ji* (Collection of Papers Presented at the 1911 Revolution 90th Commemorative Anniversary Academic Seminar). Taipei: Journal of the National Dr. SUN Yat-sen Memorial Hall, 2001.

2. Refer to “The Control Yuan-An Introduction”, published by the Control Yuan, Taipei: June 2008; Government’s Annual Audit Report, published by the National Audit Office, Taipei, 2010.

Dr. SUN Yat-sen's ideals and ideas—one of which being the Five-Power Constitution—were progressively implemented. For an institutional believer, one must wonder why Dr. Sun desired to design a five-power government. After the Xinhai Revolution, China began to transform itself into a democracy. The transition involves what in classical Marxist terminology would be called similar “tasks”: in the polity the design or reestablishment of governmental institutions and electoral systems conducive to the legitimation of the new and fragile democracies.³ A merge of western three-power system and Chinese traditional two-powers into a new five-power system would contribute to Chinese people's identification with the polity. In addition to legitimation consideration, efficiency gains – often taking transaction costs into account, according to economic explanations of institutional change – can also be used to explain the evolution of new institutions.⁴ Dr. Sun criticized the inefficiency of the western three-power system and argued that his creation of a new five-power system would function more efficiently than the western one. Henceforth, the author will study Sun's thoughts and the institutional development of five-power system after the Xinhai Revolution, with special attention paid to the practices of the control system in Taiwan; at the same time, the development of control powers within the international arena will be discussed.

II. CHINA'S POLITICAL TRADITION AND CONTROL SYSTEM

A. Ombudsman System in ancient China

According to popular belief, the ombudsman system in ancient China originated during the period of Qin and Han dynasties (*circa* 221 BC and 220 AD).⁵ However, formation of the ancient China's ombudsman system could be traced as far back as the heavy influence of power supervisory practices during the late primitive soci-

3. Arend Lijphart and Carlos H. Waisman, eds., *Institutional Design in New Democracies*, Westview Press, 1996, p. 2.

4. *Ibid.*, p.17.

5. Refer to PENG Bo, Ji Fei, *Zhong guo jian cha zhi du shi* (The History of the Ombudsman System in China), Beijing: China University of Political Science and Law Press, 1989, p12; QIU Yongming, *Zhong guo jian cha zhi du shi* (The History of the Ombudsman System in China), Shanghai: East China Normal University Press, 1992, p.3; MA Kong-Ch'un, *Qin han jian cha zhi du* (Ombudsman System during the Qin and Han Dynasties), Taipei: Taiwan Commercial Press, 1976.

ety and thereafter, the Xia, Shang and Zhou dynasties, followed by the Spring & Autumn and Warring States periods.⁶

Division of power had already appeared to some extent in the early primitive society of ancient China. During the primitive days, all members of the clan held power, and the governing authority of the clan exercised power. There was a certain level of separation between possession and exercise of power. This developed and eventually became integral to the power mechanism of ancient China. For example, the tribes that Huang-Ti ("Yellow Emperor") was leading were in fact made up of clans (*shi-zu*) and brother-clans (*bao-zu*). To go to war, several neighboring clans or clans related by blood would form alliances, and the leader of the alliance would be selected by the alliance's council. The council was the decision-making and administrative body that performed supervisory oversight (*jiu-cha xing jian-du*) of lower-level organizations and personnel. On the other hand, the entire membership of the clan and tribe could carry out democratic oversight (*min-zhu xing jian-du*) over the council and the alliance leader. In the former case, the head of the clan or tribe would exercise oversight by patrolling and guarding, and dedicated or part-time officials would be appointed to help exercise their powers of oversight. For example, "Left and Right *Dajian* officials" (*zuo you da jian*) whom Huang-Ti appointed to "watch over the numerous tribes" (*jian yu wan guo*) were the earliest court officials given supervision powers. In the latter case, the tribal or clan alliance leaders' concern with public opinions of lower ranking officials and the condition of citizenry, hence, the system of implementation of "people's remonstrance" (*min jian*) and the relevant institutions, became a basis for the remonstrating censure system of later generations. It also affected formulation of the control system during the era of imperial autocracy.⁷

By the time of the Xia, Shang, and Zhou dynasties, the institutions for power supervision became more developed. With the emergence of the imperial autocracy regime, the aforementioned democratic oversight of clan leaders began to take the form of remonstrative oversight (*jian-yi shi jian-du*) of the emperor by functionaries and the people; supervision of the higher level by the lower level oversight authorities would be transformed into supervisory oversight (*jiu-cha shi jian-du*) of the state bodies or of the no-

6. Refer to ZHANG Jinfan (Ed), *Zhong guo gu dai jian cha fa zhi shi* (A History of Control & Supervision and Legal Institution in Ancient China), Jiangsu: Jiangsu People's Publishing House, 2007, p.1.

7. *Ibid.*, pp.1-11.

bility or functionaries by the ruler, specific state bodies, and their officials. The position of grand scribe (*tai-shi ling*), who possessed supervisory duties, already existed during the Xia period. During the Yin and Shang periods, the emperor demanded that interim officials handle military and foreign affairs as well as oversee feudal lord matters.

During Western Zhou, the official oversight system expanded. The highest-ranking official was the grand scribe (*tai-shi*), under whom was the scribe of interior affairs (*nei-shi*), the scribe in royal attendance or imperial censor (*yu-shi*), and the provincial/department scribe (*sheng-shi*). The imperial scribe in royal attendance was responsible for documenting functionaries' performance observed during his inspection rounds. Thus, we can see that scribes of the Xia, Shang and Zhou did not only have to document remarks and events, but also supervise enforcement of the law by other functionaries. Supervision in terms of remonstrating censure of the emperor was also passed on from these periods. Aside from the system of admonition of government affairs by the nobility (*jian-zheng*) and open criticism of government affairs by the people (*bang-zheng*), the Zhou Dynasty also created an official position dedicated to persuading and remonstrating the emperor (*quan-jian*).⁸

During the Spring & Autumn and Warring States periods, imperial autocracy was taking root, and the centralized power of the bureaucracy became increasingly institutionalized. Both the remonstrative oversight and supervisory oversight systems were greatly improved. During this period, state rulers were observing the tradition of imperial inspection of their previous dynasties, and would personally conduct inspections and check on their functionaries. Rulers also supervised their officials through the oral reporting system (*fu-shi zhi*) and the written reporting system (*shang-ji zhi*). The oral reporting system required officials to report their administrative performance and the results of evaluation of their subordinates to the ruler. This was an important avenue through which rulers could better understand and grasp the current events of the administration of low-level officials. Under the written reporting system, officials of different levels were required to compile information pertaining to civil affairs, economic matters, and justice-related issues. The compiled reports would then be submitted to the entire official hierarchy for examination by the various levels before reaching the ruler. The system of dedicated officials supervising

8. *Ibid.*, pp. 12-26.

functionaries became increasingly institutionalized, especially the duty of oversight by the royal scribe.

In addition, remonstrative oversight was implemented by institutionalizing the system of conference during imperial audience or by using formalities similar to imperial audience. As such, the ruler could hear the opinions of his subjects and formulate decisions. The Spring & Autumn era also saw the appointment of dedicated remonstrator officials, which was a step towards institutionalizing the remonstrator system. In summary, the oversight system during the Spring & Autumn and Warring States period matured, and paved the way for establishment of the control system during the Qin and Han dynasties.⁹

During the Qin (246~206 BC) and Han (206 BC~220 AD) dynasties, the censorate (*yu-shi fu (tai)*) had oversight and control duties. Emperor HAN Wu-Ti added the posts of director of uprightness, subordinate of the imperial chancellor (*cheng-hsiang si-chih*), and colonel of prison laborers (*si-li xiao-wei*) to assist supervision, and divided the nation into thirteen regions for local supervision. Additionally, 13 circuit inspectors (*bu ci-shi*) were established to supervise local governments. Emperor Kuang Wu of the Eastern Han dynasty (25~57 AD) retained this system. His only change was to appoint a colonel of prison laborers and twelve circuit inspectors to supervise local governments.

Following the Wei and Jin dynasties, more minor modifications took place. During the Sui (581~618 AD) and Tang (618~904 AD) dynasties, the censorate was divided into "terrace" (*tai*) and "remonstrator office" (*jian*). Terrace officials were responsible for supervising civil officials and military officers, and remonstrators provided council to the emperor. In keeping with the Han Dynasty's regional inspector system, the nation was divided into fifteen provinces for supervision. In the beginning, the Song Dynasty (960~1297) continued the system used during the Tang Dynasty. By mid-Song, the functions of the offices of *tai* and *jian* gradually converged, and were eventually merged into one entity during the Yuan dynasty (1279~1368).

During the Ming (1368~1644) and Qing (1644~1911) dynasties, a censorate (*du-cha yuan*) was set up to supervise government ethics, thus, tightening supervision at the local level. The number of imperial censors (*jian-cha yu-shi*) was also increased from thirteen to fifteen. At the end of the Qing dynasty, the government reverted

9. *Ibid.*, pp. 35-59.

to the original system of using provinces as units of administrative division, and the number of imperial censors was increased to twenty. They were responsible for reporting to the emperor and impeachment, and for upholding justice and eradicating evil-doings.¹⁰

As such, the system of control and supervision (*jian-cha*) has been an extremely important political tradition in China since ancient times. It involves censuring functionaries and advising the ruler. Its purpose is to build a corruption-free government and improve welfare, and to ensure long-term peace and stability. In other words, the state of the control and supervision system determines the success of a nation's development.

B. SUN Yat-sen's thoughts and ombudsman/control & supervisory (*jian-cha*) powers

Most governments operate based on a three-power (executive, legislative, judicial) system. Taiwan's five-power system (executive, legislative, judicial, examination and control & supervision (ombudsman)) is one of the exceptions. In fact, in Sun's *Lecture Six on Democracy (min-quan zhu-yi)*, he pointed out that foreign governments merely have a triple-power separation just as China had in the past, except that China had practiced the separation of autocratic, control & supervisory, and examination (*jun-quan, jian-cha, kao-shi*) powers, and had done so for thousands of years.¹¹ When comparing the three powers of the West and the three powers of ancient China, Sun thought that the throne in China was too powerful and should be further divided into three executive, legislative, and judicial branches.

According to Sun, control & supervisory power is the power to impeach, a power that also exists in foreign countries, only that it is placed in a legislative body instead of existing as a separate governmental power, and that it could easily allow abuse of power by the national assembly. Sun proposed establishing a five-power constitution, where control & supervisory power is separated from the national assembly, and examination power from executive power. It is a model which suits China's national conditions and tradition, and

10. Refer to *The Control Yuan—An Introduction*.

11. Refer to *The Complete Works of Dr. SUN Yat-sen*, Vol.1, Commission for the Compilation of the History of the Kuomintang, June 1973, p.154.

which precludes occurrence of the western malpractice of abuse of the national assembly.¹²

During the earlier days, Sun referred to the power of control & supervision (*jian-cha quan*) as power of censure (*jiu-cha quan*). He subsequently changed it to power of impeachment (*tan-he quan*), and then reverted to power of control & supervision.¹³ As previously mentioned, Sun advocated that the power of control & supervision be separated from the national assembly for two reasons: first, to take the best of China's system. He once said, "China long ago had the independent systems of civil service examination and censure, and they were very effective. The imperial censors of the Manchu (i.e., Qing) dynasty and the chief councilors of the Tang dynasty made a fine censuring system."¹⁴ Sun was very much influenced by China's tradition and culture. In 1923, Sun wrote in his Chinese Revolution History that "the Chinese revolution that I planned was based on principles derived from our country's existing thoughts, from Europe's doctrines and events, and from my own personal observations and creations."¹⁵

When Sun met special Communist International envoy Henk Sneevliet (alias Maring or Ma Lin) in December 1921, and when Ma Lin asked Sun about the foundation of his revolution, Sun replied, "There is an orthodoxy in China that can be traced way back to Yao, Shun, Yu, Tang, Wen, Wu, Zhou-gong, and Confucius which continues one after another. The foundation of my ideals is based on this orthodoxy, and my revolution is built upon this orthodoxy."¹⁶ When asked why he insisted on the five-power system, he said,

Why do we now want a separation of five powers? What is the source of the two new features in our five-power constitution? The two new features come from old China. China had the independent systems of civil service exami-

12. Refer to CHOU Yang-shan, *Min quan zhu yi yu wu quan xian fa* (The Principles of Democracy and Five-Power Constitution), in HU Fu, SHEN Ching-Sung, CHOU Yang-Shan, SHIH Chih-Yu. *Zhong hua min guo xian fa yu li guo jing shen* (The Constitution and the Founding Spirit of the Republic of China), Taipei: San Min Book Co., Ltd, 1993, pp.461-472.

13. SUN Wen. *San min zhu yi yu zhong guo min zu qian tu* (The Three Doctrines of the People and the Future of the Chinese Nation), Vol. 1, pp. 1-179.

14. *Ibid.*, p.178.

15. «Zongli Quanshu», Taipei: 1956, Vol. 5, p. 453.

16. Chronology of Dr. SUN Yat-sen, *Guo fu nian pu* (Founding Father of the Republic of China), Vol. 2, pp.800-801; HSI Fu-lin. *SUN yi xian: Mian wei qi nan de ge ming zhe* (SUN Yat-sen: The Reluctant Revolutionary), Boston, 1980, pp. 224-225.

nation and censure long ago, and they were very effective. Together, the imperial censors of the Qing dynasty and the chief councilors of the Tang dynasty formed a fine censure system. . . Control & supervisory power is the power to impeach, a power that foreign countries also have, only that it is placed in the legislative body instead of existing as a separate governmental power, and that it could easily allow abuse of power by the national assembly. . . However, we now want to combine the best from China and the best from other countries and guard against all kinds of abuse. We must take the three Western governmental powers—the executive, legislative, and judicial—and add to them the Chinese powers of examination and control & supervision to make a perfect government of five powers.¹⁷

During the revolution era, the invasion of western culture had seriously threatened Chinese culture. Sun's intention was to take the best of the west to plug China's gaps. He wanted to use China as the base to restore China's history of civilization. As such, Sun had said that "this revolution in China is to restore the civilization of China's many thousand years of history." YU Ying-shih had also said, "Sun is unique in that he did not want to discard China's tradition completely, and is also unwilling to copy the western model without modification."¹⁸ Hence, keeping China's tradition is a very important aspect in Sun's ideals.

The second reason that SUN Yat-sen insisted on separating the power of control & supervision from the national assembly was to correct the flaws in the western system of representative politics. Sun said, "In every constitutional country, legislative bodies hold the control & supervisory power. Although such power could be strong or weak, it is still not independent; many abuses arise as a result. For example, in the U.S.A., supervisory power is held by the Congress, and the Congress often uses this power to hold the executive branch hostage, thus forcing them to bend to its demands. As such, the Congress frequently becomes autocratic."¹⁹ Sun also believed that when a national assembly has impeachment power, its

17. SUN Yat-sen, *San Min Chu I* (Three Doctrines of the People), pp. 356-358.

18. YU Ying-shih, *Sun wen xue shuo yu zhong guo wen hua* (Sun Wen's Doctrines and the Chinese Culture), in Chu-Yuan Cheng (ed.), *Sun zhong shan si xiang yu dang dai shi jie* (The Thoughts of SUN Yat-sen and the Contemporary World), Taipei: National Institute of Compilation and Translation, February 1996, pp.95-122.

19. SUN Wen. *Five-Power Constitution*, Vol. 1, p2.

members would often use this power to suppress the government, such that the government's freedom was restricted. Therefore, the power of control & supervision must be separated from the national assembly.

In short, Sun was insistent on separating the power of control & supervision because he saw the advantage of keeping the good Chinese tradition of leveraging the power of control & supervision and the problem with the western three-power government, which puts the power of impeachment in the hands of parliamentarians. Sun's intention was to separate such power from the national assembly, but not to establish it as a separate national assembly. The nature of control & supervisory power is not a power of the national assembly, but something similar to the role of ancient censor-in-chief (*yu-shi da-fu*), i.e. an independent ombudsman.

III. THE NATURE OF CONTROL & SUPERVISION POWER

What are the essential qualities of control & supervision power? To answer this question, we have to look back to the ancient system. Since the Qin and Han dynasties, censors-in-chief (*yu-shi da-fu*) were installed as means of control, and the purpose of whom was to censure official transgression and to instill discipline and justice. The censure of the Ming and Qing dynasties corrected the behavior of officials, impeached evil officials, maintained law and discipline, redressed miscarriages of justice, cared for the common folks, regulated border administration and served the people's conveniences. The responsibilities of censure were expanding in scope.²⁰ Since the old days, the ombudsman system was not restricted to impeaching people; it also included taking corrective action.

The Sui Dynasty followed the Han model and created a terrace of convict laborers (*si-li tai*), and the Six Queries were:

One, if graded officials or officials of higher levels were capable administrators; two, if the officialdom were

20. YANG Shu-fan. *Wo guo jian cha zhi du zhi shi de fa zhan* (Our History of Development of the Ombudsman System), *San min zhu yi xueshu yan jiu zhuan kan* (Special Journal on the Academic Research of the Principles of Democracy), (15), National Cheng Chi University., pp.26-27. Refer to LI Fu-dian, "International Human Rights Regulations and the Control & Supervisory Function," presented at the international seminar on "International Ombudsman and Human Right Trend", the 26th Australia Pacific Ombudsman Region Meeting *Conference Handbook*, p.89.

greedy and ruthless, and if it was detrimental to the administration of state affairs; three, if the rich and the powerful were crafty and deceitful, if they harm their servants, and if their farmland and houses had violated regulations and if the authorities were unable to stop them from such violation; four, if floods, droughts and plagues wrought by pests have occurred but were not honestly reported, if taxes and corvee were imposed unnecessary, or if tax exemptions were implemented without disaster-related causes; five, if there was internal fraud that cannot be fully eradicated or that have been concealed; six, if filial piety and fraternal duty were observed, if the services of talented persons of high morality were not offered to the state.²¹

The Tang administration created the three divisions or *yuan*: “terrace” or division of imperial secretariat (*tai*), the division of imperial court (*dian*), and division of supervision (*cha*). All three *yuan*s operated based on the Six Queries: First, if officials were kind or evil; second, whether household members had disappeared, and accounts were used to conceal such disappearance and to impose corvee unfairly; third, if farming and silkworm-rearing were slothful and if there were losses in warehouse inventory; fourth, if there were deceitful thieves and robbers who did no productive work and who seek personal gains and cause harm; fifth, if filial piety and fraternal duty were observed, if the services of talented persons of high morality were not offered to the state, if weapons are hidden for use at the appropriate time; sixth, if there were crafty officials and rich and powerful families had annexed property and inflicted violence, and if the poor and the weak were unable to petition.²² The Six Queries show that control & supervision power is not only about impeaching people or correcting wrongdoings, but also about recommending talents and to right wrongs and rid of evils for the people.

The above Six Queries under the control & supervision regime have always been a very important component to local inspection systems. More than 4,000 years ago, Yao and Shun were diligent in administering state affairs and loved their people so much that they would tour the country with their functionaries and attendants every five years to check on how the local warlords were perform-

21. *The Book of Sui (Sui Shu)*, under *Baiguan*.

22. *New Book of Tang (Scroll 46)*, *Baiguan Zhiyi*.

ing and their moral standings. This was the system of inspection visits by the emperor (*tian-zi xun-shou zhi*). The *xun-shou* system was the origin of the inspection tour system (*xun-shi*) of later generations.

During the Wei-Jin and the Northern and Southern dynasties, the censorate or *yu-shi tai* became an independent control & supervisory body. Central governments would irregularly deploy scribes in royal attendance to survey localities and to supervise local officials. The scribes were also empowered to impeach and advise the ruler based on hearsay.

After the Sui and Tang dynasties, the post of scribe in royal attendance was retained, but his official powers had changed. However, the system of local inspection tour by the central authorities became increasingly entrenched, except that the name of the institution and title of the official were different.

The censorate or *du-cha yuan* of Ming Dynasty was derived from *yu-shi tai*, and was responsible for supervising the officialdom of the entire state, comment on administrative matters, and advise the emperor. The entire state was divided into 13 regions, and each region was assigned one imperial censor. Collectively, the imperial censors were called the "thirteen circuits of imperial censors" (*shi-san dao jian-cha yu-shi*). The censure system of Qing Dynasty was inherited from Ming, with fifteen circuits of imperial censors.

Thus, development of the power of control & supervision and the system of inspection tour was a long process. It budded in the primitive society, took shape during the Han Dynasty, optimized during High Tang, and stabilized during the Ming and Qing dynasties. The system was passed on for generations and remained strong and steadfast. The scope of the power of control & supervision was broad, involving not only people and matter, monitoring and impeaching officials and seeking justice for the people, and promoting clean and effective governance and protecting human rights, but also control and supervising central and local functionaries. Therefore, the power of control & supervision was in fact an effective means of governance on which the leadership relied. In ancient China, however, it was a system that served mainly imperial autocracy. Although there was a certain level of autonomy, it remained a part of executive power that translates into a political service for the imperial autocrat. The two core aspects of the system are: imperial censors checking on the conduct and performance of the officialdom and remonstrance officials advising the emperor or reporting on central decision errors. The former relies on the em-

peror's edict as basis, whereas effectiveness of the latter depends on imperial will.

The Control Yuan of the Republic of China exercises its right of control & supervision using mainly the same substance and methods in ancient China; however, the nature and subject matter has changed quite substantially. First, control & supervisory power is no longer the privilege of the sovereign. In fact, it has also become an important mechanism that oversees the ruler. In the past eras of monarchy power, the censor-in-chief (*yushi dafu*) would still have to take orders from the emperor; however, in present days, where the five-power government operates, the Control Yuan is only a constitutionally independent body which is not under the command of the president. The power of control & supervision is not subordinated to executive power, but is held by a supervisory body outside the executive powerhouse. It does not only supervise the executive power, but also other bodies under the five powers, including legislative, judicial, examination and control authorities. Only the central and local people's representatives do not fall within the scope of control & supervisory powers.

Secondly, the members of the Control Yuan are not Judge *Bao* or *BAO Qingtian* (a judge of ancient China invoked as a metaphor or symbol of justice) and do not have discretionary execution power. Most people would think of Judge Bao as someone who makes his visit in civilian attire and checks things out. Bao would deal with corrupt officials, correct miscarriages of justice, punish the wicked and the evildoers, and protect the poor and the vulnerable. Hence, people generally hope that members of the Control Yuan could play a similar role, who, like Bao, would be armed with an imperial sword and assume the duties of a Control Yuan inspector, a police officer, a prosecutor, a judge, and an executioner. He would hold judicial, executive, and supervisory powers, could mobilize a prosecutor's investigation, and has adjudication powers that could determine if a man would live or die.

However, based on the perspective of modern rule of law, Bao would be condemned for amassing and abusing power and disregarding due process. The system of concentrating power in the hands of the adjudicator will be criticized by the modern society as being autocratic, autarchic, and dictatorial. The traditional system of adjudication runs contrary to the modern system of governance,

which requires democratic processes, rule of law, separation of powers, procedural justice, and protection of human rights.²³

Thirdly, the Control Yuan is not a quasi-judicial body, but rather operates as one of the five powers, the control & supervisory power. During the second stage of the amendment of the *Constitution* in 1992, the election of members of the Control Yuan, their term, and some of their official duties were changed. Originally elected by the provincial and municipal councils, members of the Control Yuan are nominated by the president with the consent of the National Assembly (*guo-min da-hui*). Membership is now reduced to 29, with higher qualification requirements, and broader targets for impeachment. Members of the Control Yuan may accept written complaints, inspect the rural areas, and provide relief, all of which have functions similar to the control & supervision system of Nordic countries.²⁴ As the Control Yuan has powers to investigate, summon officials for interrogation, and impeach functionaries (similar to the power of prosecutors to prosecute), many refer to the revamped Control Yuan as a “quasi-judicial body”²⁵.

In fact, the so-called “quasi-judicial bodies” are independent administrative agencies which hold administrative powers as well as some judicial powers. For example, the commission of tenancy under the town or township office (*xiang-zhen gong-suo zu-dian wei-yuan-hui*) or commission of tenancy under the county/municipality government’s office (*xian-shi zheng-fu zu-dian wei-yuan-hui*) are of similar nature. The *Farmland Rent Reduction Act 375* provides that all disputes relating to farmland leases shall be first mediated (*tiao-jie*) by the commission of tenancy under the town/township office; if unsuccessful, the county/municipality government’s office’s commission of tenancy shall impose mediated judgments (*tiao-chu*). Any party that is unhappy with the mediation outcome may refer the dispute to judicial bodies. If the *tiao-jie* or *tiao-chu* award is accepted, it is as effective as final judgment, and the private dispute is resolved. Thus, the town/township office’s

23. *You guan ge jie dui jian cha zhi du suo ti yi jian zhi can kao zi liao* (Reference Materials on the Opinions of Various Parties on the Ombudsman System), Control Yuan, June 2008.

24. CHANG Chien-han, *Zhan wang xian fa xiu zheng hou zhi jian cha yuan* (A Control Yuan in the Era of Post-Constitutional Reform), *Xian zheng shi dai* (Era of Constitution), Vol. 19-1, July 1993.

25. CHEN Hsin-min. *Zhong hua min guo xian fa shi lun* (An Interpretation of the Constitution of the Republic of China), Taipei: San Min Book Co., Ltd, September 1997, 2nd print, p.698.

commission of tenancy is a “quasi-judicial body.” The same applies to the town/township mediation commission. The reformed Control Yuan is still the highest control & supervisory authority, which exercises control and supervisory powers as endowed by the *Constitution* and the relevant laws. It is not an administrative agency, and does not possess partial judicial power. As such, the Control Yuan may not be referred to as a “quasi-judicial body.”²⁶

Finally, the Control Yuan is no longer a representative body. Before its reform, the Control Yuan was seen as similar to a representative body. However, after its reform, members of the Control Yuan were no longer elected by the provincial and municipal councils; instead, the president would nominate candidates and the National Assembly would confirm them (the Constitution was amended again in April 2000, and the power of consent was fallen in the hands of the Legislative Yuan). Hence, Judicial Yuan’s *Interpretation No. 325* states:

Interpretation No. 76 of the Judicial Yuan states that the Control Yuan, together with other central representative authorities, are deemed equivalent to the national assembly of a democratic country. Such interpretation is no longer applicable to the Control Yuan because after the implementation of Article 15 of the *Amendment to the Constitution*, the Control Yuan is not considered as a central representative authority; moreover, its position and power have been changed as a result thereof.

Since members of the Control Yuan are no longer representatives of the public, the original power of consent for appointment of personnel, speech immunity and privilege from arrest shall all be revoked.²⁷ Similarly, as the Control Yuan is not the national assembly, its original powers of impeachment against the president and vice president shall also be transferred to the Judicial Yuan. The Control Yuan assumes different roles and functions after its reform; likewise, its control & supervisory powers differ much from those of ancient China.

26. Refer to supranote 22.

27. Refer to supranote 23; Refer to JHANG Rui-bin, *Wu quan xian fa zhong jian cha yuan diao cha quan zhi yan jiu* (A Study on the Control Yuan’s Investigation Power under the Five-Power Constitution), *Journal of the National Dr. SUN Yat-sen Memorial Hall*, Vol. 6, November 2000, pp.11-21.

IV. STRUCTURE AND FUNCTION OF THE CONTROL YUAN

A. Structure

The Control Yuan consists of 29 members, including a president and a vice president. SUN Yat-sen had originally planned the control & supervisory power as a governing power; as such, the Control Yuan is structured like four other Yuans, which adopts the unitary executive system with "supervising officers" (*jian-cha guan*). Hence, supervising officers are similar to judges and administrative officers, who are professional civil servants.²⁸

The president of the Control Yuan is basically one of the members, and is of the same rank as other members. Nonetheless, as the Control Yuan has an administrative staff strength of more than four hundred, he naturally oversees internal administrative matters to assist or support the members to perform their constitutional duties, so that the Control Yuan is fully leveraged to serve its intended purposes.

Members of the Control Yuan meet once a month at the Control Yuan plenary meeting (*yuan hui*). The plenary meeting is the highest decision-making authority. It deliberates on matters as: bills to be presented to the Legislative Yuan, constitutional interpretation to be presented to the Judicial Yuan, analysis of regulations of the Control Yuan, improvements to the deliberation and exercise of impeachment, censure and audit powers with respect to audit reports of the Central or local government's final accounts, matters proposed for corrective action, matters reported by the committee, matters about which the president requires deliberation, matters proposed by the members and other important matters.

The committee is the most important body in the Control Yuan. All investigation reports of Control Yuan members must be presented to the relevant committee for deliberation and adoption. The same applies to censure proposals for administrative agencies. Although Article 7 under the *Additional Articles to the Constitution of the Republic of China* states that "[m]embers of the Control Yuan shall be beyond party affiliation and independently exercise their powers and discharge their responsibilities in accordance with the law", members of the Control Yuan are also governed by other relevant laws such as the *Constitution* and *Control Law*.

28. Refer to SUN Yat-sen's "Speech on Five-Power Constitution" in 1917; refer to CHEN Hsin-min. *Zhong hua min guo xian fa shi lun* (An Interpretation of the Constitution of the Republic of China), September 1997, 2nd print, pp.690-691.

Article 97 of the *Constitution* provides that the Control Yuan may, based on the investigation and resolution of its committees, propose corrective measures passed to the Executive Yuan and the relevant ministries and commissions for improvement. Article 97 has specified that corrections should be proposed by the Control Yuan and not its members. As such, when a member has completed an investigation, if correction of administrative authorities is necessary, the proposal for correction must be presented for review and final resolution by the relevant committee. If adopted, the corrective measure will be passed on to the administrative authority in the name of the Control Yuan. As resolutions must be passed by the committee, the resolution procedure would necessarily include a voting process. The *Constitution* does not provide for the method of resolution. Based on experience, the committees' decisions are based on consensual resolution.

In summary, committees are the heart and soul of the Control Yuan's operations. The Control Yuan has two categories of committees: standing committees, which include the committees for Internal & Minority National Affairs, Foreign Affairs and Overseas Chinese Affairs, National Defense and Intelligence Affairs, Financial & Economic Affairs, Educational & Cultural Affairs, Communication & Procurement Affairs, and Judicial & Prison Administration; special committees, which include committees for Statutory Studies, Consultation, Discipline for Control Yuan Members, Anti-Corruption, and Human Rights Protection. A Petitions Review Committee was also established as a special committee.

Every month, a dialogue meeting (*tan-hua hui*) is organized one week before the Control Yuan plenary meeting. This is an important mechanism in the Control Yuan. Although called a dialogue meeting, it operates similar to an informal plenary meeting. It is a platform for members to exchange opinions on issues relating to control & supervisory powers informally. Once members of the Control Yuan have reached consensus on the issues being discussed in the dialogue meeting, they will then formally approve these issues in the plenary meeting.

Finally, the National Audit Office is also an important component to the Control Yuan. After the founding of the Republic of China by Dr. SUN Yat-sen and before 1927, audit powers were held by the Executive Yuan. After July 1928, audit agencies were officially institutionalized as Audit Yuan, which exercised its audit powers independently. By 1931, the Audit Yuan was changed to National Audit Office, a ministry under the Control Yuan. After

enactment of the 1947 *Constitution*, audit powers were provided under the *Constitution*. According to the *Constitution*, budget preparation is financial execution, and is the responsibility of the Executive Yuan; deliberation and adoption of the budget is financial legislation, and is carried out by the Legislative Yuan; assessment of the result of budget execution, or examination of the final accounts, is a matter of financial judiciary, and should be the responsibility of the Control Yuan's director-general of audit; each Yuan has its own official duties, and powers are divided among different Yuans to encourage checks and balances.

In May 1972, the *Audit Law* was enacted to improve on the quality of audit at different levels of government: provincial (municipality) level audit bureaus and county (city) audit offices were established. As of 1996, audit was required for the accounts of township/town/county/municipality bodies and foundations. Exercise of audit power has since been initiated from the central, provincial, municipality and county (city) government offices, to district offices at the township (town, city) level.²⁹

B. Function

According to Article 90 of the *Constitution*, the Control Yuan shall be the highest control body of the State and shall exercise the powers of consent, impeachment, censure, and auditing. And under Article 79 and Article 84 of the *Constitution*, the president and vice president of the Judicial Yuan and Examination Yuan, grand justices, and members of the Examination Yuan shall be nominated and, upon the consent of the Control Yuan, appointed by the President of the Republic. Consent power, together with investigation power as provided under Article 96 of the *Constitution*, give the Control Yuan investigation power. Even Mr. TAO Pai-chuan³⁰ thinks that the Control Yuan has the characteristics of a western parliament. Tao said, "the Control Yuan has inherited the Chinese censure system (*yu-shi zhi-du*), and has espoused the goodness of democratic nations. Censure had judicial powers, but the Control Yuan does not; however, the Control Yuan has consent power. Consent power changes the operations of the Control Yuan, such that it is no longer a replica of the ancient censure system. We now see that the Control Yuan has begun to take on the form of an

29. *Government's Annual Audit Report*, National Audit Office, 2010, pp.1-4.

30. A well-known and widely respected former member of the Control Yuan.

American congressional system."³¹ However, in 1992, when the Republic's *Constitution* was revised for the second time, the Control Yuan's consent power was revoked, and the Control Yuan reverted to its original function as the highest control & supervisory authority. Although the Control Yuan's powers of office have changed, it holds the powers of impeachment, censure and audit as set forth under Article 90 of the Constitution, as well as performs other functions. The following section discusses the functions of the Control Yuan.

1. *Acceptance of People's Petitions*

Article 4 of the Control Act provides that the Control Yuan and its members are entitled to receive petitions from the people. As petitions are the main source for the exercise of control functions and powers, anyone who has detected malfeasance by public servants at central or local levels in government, or has found a violation of law in the Executive Yuan and its subordinate agencies in government work and public facilities, is entitled to complain to or present accusations before the Control Yuan or its members by submitting a detailed account of facts and related data. In handling such complaints, the Control Yuan set up a member-on-duty office to enable its members to review the complaints. The complaint may be referred to a member, by rotation, for investigation, or sent to the related agencies of government for a reply. In either case, the Control Yuan will make a reply to the complainer.

A classification of petitions received by the Control Yuan from August 2008 to December 2011 is presented in Table 1. The table shows that the 4th Control Yuan has received the most (27,721) complaints for the Interior and Minority Affairs; the second most (22,670) complaints for the Judicial and Prison Affairs; the third (18,856) for the Financial and Economic Affairs. Those are the three most complaints petitioned by the people against the government. It also indicates that those three are the most needed reform areas in terms of good-governance.

31. TAO Pai-chuan. *Jian cha zhi du xin fa zhan* (New Developments in the Ombudsman System), Taipei: San Min Book Co., Ltd, October 1970, pp.8-9.

**Table 1 Classification of Complaints Received
by the Control Yuan**

| Item | 2008-2011 |
|---|-----------|
| Total | 90,952 |
| Interior and Minority Nationality Affairs | 27,721 |
| Foreign Affairs and Overseas Compatriot Affairs | 401 |
| National Defense and Intelligence Affairs | 4,479 |
| Financial and Economic Affairs | 18,856 |
| Educational and Cultural Affairs | 6,214 |
| Communication and Procurement Affairs | 4,566 |
| Judicial and Prison Administration Affairs | 22,670 |
| Others | 6,045 |

Source of Data: *A Brief Report on the Work of the Control Yuan*, 2008, 2009, 2010, 2011.

2. Impeachment power

Articles 98 and 99 of the *Constitution* provide that the Control Yuan may impeach public functionaries of the central and local governments and personnel of the Judicial Yuan and Examination Yuan. In fact, paragraph 4 of Article 7 of the additional articles provides that the Control Yuan may impeach Control Yuan personnel (after constitutional revision, members of the Control Yuan are no longer elected representatives; as such, Control Yuan personnel fall within the scope of the impeachment mandate). As such, except for members of the Legislative Yuan and elected representatives at the local level, the Control Yuan has impeachment power over functionaries of the other five Yuans and local governments.

The first impeachment case proposed by me and then approved by the review committee was related to several local police chiefs. Three local police chiefs in Taipei county and Chia-Yi city were impeached for their taking bribes and other misconduct. The other impeachment case I proposed and then established by the review committee was related to several government officials. A former deputy minister, a bureau chief of the Water Resources Agency of the Ministry of Economic Affairs and a manager of the Taiwan Water Corporation, were jointly impeached for their involvement in leaking confidential information, illegally lobbying, and delivering special interests to a specific company.

During this term of the Control Yuan, on January 14, 2009, members also impeached former secretary-general of the National Security Council (NSC) CHIOU I-jen and former foreign minister HUANG Chih-fang over the Papua New Guinea diplomatic scandal, which saw the country defrauded of US\$29.8 million by two brokers during an attempt to establish diplomatic ties with the Pacific island in 2006. When the foreign ministry found out that Papua Guinea had no intention of establishing diplomatic ties with Taiwan, it lost contact with the two brokers, and the funds, which were intended for the Papua New Guinea government, went missing.³²

The members also impeached Lieutenant General HU Chen-pu on November 2, 2010, a former Veterans Affairs Commission minister, for misappropriating funds earmarked for employee bonuses when he was director-general of the Ministry of National Defense's Political Warfare Bureau. Hu was the highest-ranking military officer to be impeached by the Control Yuan in recent years. He was accused of implementing rules that contravened the Accounting Act for a program to award bonuses to subordinates from a fund worth about NT\$11 million (US\$361,000) from February 1, 2005 to February 16, 2006.³³

Other than the impeachment cases mentioned above, the Control Yuan also impeached several judges and prosecutors. For example, the Control Yuan impeached a former High Court justice YANG Ping-chen on October 7, 2010 for soliciting prostitutes and gambling while on duty.³⁴ On February 14, 2012, the Control Yuan impeached Nantou District prosecutor LIN Tien-lin amid allegations of bribery and for carrying on an extramarital affair.³⁵ In another case, Prosecutor-general CHEN Tsung-ming, the chief of the nation's public prosecution system, failed to abide by the law and to conduct himself with discretion and self-restraint. While the corruption investigation against then President CHEN Shui-bian was ongoing, CHEN Tsung-ming attended private parties hosted by a close friend of CHEN Shui-bian, who, as an important witness in Chen's corruption case, was later allowed to leave the country. CHEN Tsung-ming, in spite of a conflict of interest, gave inconsistent statements during questioning in the Legislative Yuan concerning his dining with construction contractors, and even personally met with a construction contractor—a witness in the case against

32. See *Taipei Times*, Jan. 15, 2009, p. 1.

33. *Ibid.*, Nov. 4, p.3.

34. *Ibid.*, Oct. 8, 2010, p.3.

35. *Ibid.*, Feb. 16, 2012, p.3.

CHEN Shui-bian—at his office. He also failed to answer questions from all sectors of society honestly, and seriously compromised the authority of the judiciary and the image of the government. On the grounds of serious offenses of misfeasance, he was impeached in accordance with the law.³⁶

According to the statistics provided by the Control Yuan, the total number of impeachment cases against judges and prosecutors that have been established until February 29, 2012 is 111. 66 of them are judges and 45 are prosecutors (See Table 2). For members of the 4th term, it has been now a little bit more than one half of our six-year term. But already, the impeachment cases established against judges and prosecutors have reached 30, which have almost come close to the numbers of the previous two terms. We have reasons to believe that the number of the impeachment cases against judges and prosecutors of the 4th term will surpass those of the previous terms, since many members of the 4th term are strong believers of what I called “aggressive control or supervisory power,” which means members of the Control Yuan should exercise their powers proactively in response to public demands of establishing a clean, responsible, efficient, fair and just government.

Table 2 Statistic Chart of impeachment of judges and prosecutors from the 2nd to the 4th terms of the Control Yuan
(February 1, 1993-February 29, 2012)

| Terms | Number of impeachment cases | Impeached cases from judges and prosecutors | | | |
|-------|-----------------------------|---|--------------|--------|-------------|
| | | Number of cases | Impeachments | | |
| | | | Subtotal | judges | prosecutors |
| 2nd | 186 | 35 | 42 | 27 | 15 |
| 3rd | 118 | 26 | 39 | 22 | 17 |
| 4th | 91 | 23 | 30 | 17 | 13 |
| Total | 395 | 84 | 111 | 66 | 45 |

Source of Data: Supervisory Operations, the Control Yuan

In order to initiate the impeachment case, two members are needed to propose the case to a review committee, composed of 9-13 members. The impeachment case must be approved by at least

36. CHOU Yang-sun, “*The Impeachment of Judges and Prosecutors in the ROC (2008-2011)—A Comparison with the Cases of the USA*,” in the Proceedings of the 26th Australasian and Pacific Ombudsman Region Conference, Taipei, Taiwan, ROC, March 23-26, 2011, published by the Control Yuan, pp.213-214.

half of those reviewing the case. If approved, then the case is forwarded to the Commission on the Disciplinary Sanctions of Functionaries of the Judicial Yuan. The Commission will then conduct review proceedings on the case and subsequently hand out varying degrees of sanctions, such as removal from office, suspension from duty, recording of demerit(s), and written admonition, according to the seriousness of the circumstances. Therefore, the Control Yuan can propose the impeachment case, but it is up to the Commission on the Disciplinary Sanctions of Functionaries to make a final say. Compared with the United States, the impeachment and disciplinary power of the ROC also involves a two-step procedure, but is exercised by two different government establishments, while the power to impeach and impose disciplinary action is solely in the hands of the United States Congress. For the ROC, the power of impeachment belongs to the Control Yuan, whereas the Commission on the Disciplinary Sanctions of Functionaries of the Judicial Yuan possesses the disciplinary power. In other words, the Control Yuan is only responsible for impeaching delinquent officials (i.e. functioning as the first step in the impeachment process like the US House of Representatives), and the Commission on the Disciplinary Sanctions of Functionaries is responsible for taking disciplinary actions against delinquent officials from various administrative agencies—including the impeachment cases approved by the Control Yuan, and can be regarded as the second step in the process of impeachment, functioning similarly to that of the US Senate.³⁷

If the impeachment case is not approved, the proposing members can voice their opposition to the rejection of the impeachment proposal within ten days and ask for the second review. The impeachment case shall be then transferred to a new 9-13 member review committee to make a final decision.

Also according to academics, to prevent the Control Yuan's impeachment power from conflicting with popular politics and party politics, or impeachment power within the power of governance from infringing upon the exercise of power of recall within political power (the continuance or discontinuance of elected local government leaders should be decided by popular vote), local government leaders emerging from regular elections should be excluded from the Control Yuan's impeachment categories.³⁸ In one

37. *Ibid.*, pp.203-204.

38. CHEN Hsin-min. *Zhong hua min guo xian fa shi lun* (An Interpretation of the Constitution of the Republic of China), Taipei, San Min Book Co., Ltd, September 1997, 2nd print, p710; CHOU Yang-shan. *Min quan zhu yi yu zhong hua min guo xian*

impeachment case against Taichung city mayor Jason HU, who was blamed for being responsible for a night club fire that killed nine people and injured twelve others after a flame show went disastrously wrong at the "Ala" night club March 6, 2011. The proposed impeachment of Hu was voted down 2-10 by the review committee, but three other officials who were directly responsible for supervising the public safety were impeached.³⁹

There was a debate during the review process. The members who initiated the impeachment of Hu argued that Hu should be held accountable for his "inadequate supervision." My argument is that "inadequate supervision" is not a necessary and sufficient condition to impeach an elected local government leader. There are two categories of sanctions for the political appointees and the elected local government leaders: one is "dismissal from office," and the other "written warning." Since "written warning" means nothing, then "dismissal from office" has a significant political connotation: it is like a "recall" power possessed by the people. Once the impeachment is approved by the Control Yuan and affirmed by the Commission on Disciplinary Sanctions of Functionaries of the Judicial Yuan, political appointees or elected local government leaders, in many cases, would resign from offices. For example, CHEN Tsung-ming, the former Prosecutor-general, resigned immediately after his impeachment case established by the Control Yuan, without waiting for the final verdict of the Commission on Disciplinary Sanctions of Functionaries of the Judicial Yuan. Hence, my argument is that the impeachment power is similar to "dismissal or removal power" for the political appointees or elected local government leaders. The Control Yuan should be more prudent when it exerts its impeachment power so that it will not infringe upon the exercise of power of recall of the people. In general, we should let the people decide if a local government leader should stay or leave, unless this elected local government leader violates the law—such as committing a crime, taking a bribe—or makes a wrong decision that causes serious damage to people's lives or properties, or seriously neglects his or her duties that directly leads to the threat to public safety. "Inadequate supervision" does not constitute a necessary and sufficient condition for impeachment.

fa (A New Interpretation of the Thoughts of Sun Yat-sen: The Principles of Democracy and the Constitution of the Republic of China), Taipei: San Min Book Co., Ltd, 1992, pp.123-124.

39. *China Post*, May 5, 2011.

In this aspect, leadership elected by popular vote and local council leaders (according to Interpretation No. 33, both categories are outside the Control Yuan's impeachment power) differ. Local leaders elected through popular vote have disposition to huge fiscal budgets, and are responsible for administering government programs and driving development. Basically, a local elected leader has higher executive powers than the council leader. The importance of an elected local leader is incomparable with that of a local council leader. If an elected local leader is derelict in the performance of duties, the harm that he does to people's lives, property, and safety also cannot be mentioned in the same breath as that of local council leaders and peoples' representatives. As such, elected local representatives should not fall outside the Control Yuan's impeachment powers. However, when impeaching elected local administrative leaders, the Control Yuan should exercise extra care, and should avoid using its impeachment powers to infringe upon the right of local administrators to proceed and to withdraw (including right to vote and right of recall).

Sanctions come in two forms: dismissal or written warning (*shenjie*). Clearly, the Control Yuan institutes formal proceedings to impeach a local leader elected by popular vote to determine if dismissal is necessary, and not only to issue warnings. Impeachment powers in parliaments of western societies are also given ultimately to recall. For example, Paragraph 7 under Section 3 Article 1 of the *US Constitution* provides that judgment in cases of impeachment shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit within the United States. Hence, the approval of an impeachment case includes ordering dismissal of the impeached party from office.⁴⁰ Impeachment powers should be exercised with caution. If impeachment action is initiated on the grounds of "inadequate guidance and supervision, therefore jointly and severally liable," many elected local leaders could be impeached by the Control Yuan.⁴¹

40. CHEN Hsin-min, see book cited earlier, pp.714-715.

41. On 4 May 2011, Taichung city mayor HU Chih-chiang was impeached for poor oversight. A fire occurred at ALA Pub, a night club in Taichung, and caused 9 deaths and 12 to be injured. During the first impeachment session, most members believed that HU had failed in oversight, but failed to reach consensus on whether he should be held responsible for the fire directly. Eventually, in a vote of 10 to 2, the impeachment bill was denied. The members who proposed the impeachment did not ask for a second review.

From Article 99 of the *Constitution*, we can see the grounds for impeachment of public functionaries are mainly because they have violated the law or have neglected their duties. Although Article 100 of the original *Constitution* endowed the Control Yuan with powers to impeach the president and vice president, the power was transferred to the Legislative Yuan during the constitutional revision in 1997.

After passing an impeachment motion, the impeachment bill must be transferred to the Commission on the Disciplinary Sanctions of Functionaries ("Discipline Commission"), Judicial Yuan, to decide if sanction is required; and if so, the type of sanction. The Control Yuan has no sanction powers, and impeachment by the Control Yuan is similar to prosecution taken up by the prosecutor's office. This is the reason why the Control Yuan is sometimes taunted as a "tiger without teeth."

To meet the objective of sanction, the Legislative Yuan passed a preliminary amendment of the *Public Functionaries Discipline Act in April 2010*, which included a provision for the "reduction or deprivation of retirement benefits or imposition of fines." Additionally, some academics suggested that the Control Yuan be given sanction powers,⁴² or that the Disciplinary Commission be move to the Control Yuan.

From Table 3, we can see that the number of impeached functionaries from the judicial branch, including courts at all levels, is the largest one. Thirty-one out of 149 impeached persons are from the judicial affairs. Military personnel constitute the second largest category. Twenty-five out of 149 are from the national defense affairs. This has a significant meaning in Taiwan's democratic development. Traditionally, functionaries of the judicial branch are well-protected in the name of judicial independence. Functionaries of the national defense are too well-protected in the name of national security secret. Sometimes it is difficult for members of the Control Yuan to conduct investigations on the cases which may concern with the violation of law or dereliction of duty of those functionaries in the judicial branch or in the national defense units.

From Table 4, we can also see that eleven generals were impeached and four of them were impeached by members of the 4th term. This will contribute to the establishment of a transparent government.

42. HWANG Chin-Tang, see paper cited earlier.

**Table 3 Classification of organization
whose personnel impeached**
By the Control Yuan from August 2008-December 2011

| Item | Numbers of persons impeached |
|---|------------------------------|
| Total | 149 |
| General Administration | 15 |
| Land Administration | 2 |
| Finance | 1 |
| Ministry of National Defense and its subordinate agencies | 26 |
| Judicial Affairs | 31 |
| Ministry of Economic Affairs and its subordinate agencies | 25 |
| Police Administration | 6 |
| Office of the President, R.O.C. | 1 |
| Culture & Education | 3 |
| Foreign Affairs | 4 |
| Ministry of Justice and its subordinate agencies | 1 |
| Sports Affairs Council | 1 |
| Local Governments | 18 |
| Budget, Accounting & Statistics | 2 |
| Transportation | 9 |
| Information | 4 |

Source of Data: *A Brief Report on the Work of the Control Yuan, 2008, 2009, 2010, 2011.*

Table 4 Impeachment According to Positions of the Impeached
(August 2008-December 2011)

| Item | Number of Persons Impeached |
|---------------------|-----------------------------|
| Total | 149 |
| Officials Ranks | |
| Elected | 5 |
| Specially Appointed | 19 |
| Selected | 74 |
| Recommended | 25 |
| Delegated | 2 |
| Generals | 11 |
| Colonels & Majors | 13 |

Source of Data: *A Brief Report on the Work of the Control Yuan, 2008-2011, Control Yuan.*

3. *Censure power*

Paragraph two of Article 97 of the *Constitution* provides that the Control Yuan may initiate censure or impeachment when functionaries are found to have violated the law or neglected their duties. Under Article 19 of the *Control Act*, in the event that a public official has violated the law or neglected his duties such that the Control Yuan should suspend the public official from duties or take other emergency disciplinary action against, the Control Yuan may issue a written censure. The prerequisites of censure are: where there has been violation of the law or where emergency disciplinary action is necessary. Apart from having violated the law, the censured person may cause greater harm if he stays in the current position; hence, censure is initiated after suspension from official duties or other emergency disciplinary action is taken. Only one member of the Control Yuan is required to motion for censure, and 5 members of the Control Yuan must be in the censure review panel with 3 persons attending the censure review, and a resolution is passed by a simple majority vote. After the censured case is approved, then the case shall be referred to the censured official's superior for action. If the case involves a violation of the criminal code or military law, it shall be sent directly to the competent court or military court for action. If the censured person's official in charge or superior fails to act, or if two or more Control Yuan members deem the action taken is improper, a case of impeachment may be initiated. If the censured official is impeached, his or her higher-up in charge or superior shall be held responsible for the neglect of duty.

For example, WANG Show-lai, director of the Headquarters Administration of Cultural Heritage under the Council of Cultural Affairs, was censured by the Control Yuan for his dereliction of duty and mishandling a controversial art exhibition in March 2, 2010. The art exhibition was organized by Wang and the Council of Cultural Affairs at the JinMei Human Rights Memorial and Cultural Park in December 2009. The exhibition included a public art installation by an artist YU Wen-fu, who displayed his work where WANG Hsi-ling, former head of the Military Intelligence Bureau was kept under house arrest for ordering the murder of Chinese-American writer LIU Yi-lian.⁴³ Human rights activists in Taiwan

43. On 15 October 1984, Mr. Henry LIU, a prominent Chinese-American journalist, was murdered at his home in Daly City, a suburb of San Francisco. The case has received wide international attention because of the subsequent revelations that the murder was committed by three underworld figures from Taiwan on the order of top-

criticized YU's art display and said that placing the art work there was the same as commemorating WANG Hsi-ling. As an organizer, WANG Show-lai did not realize that this was a sensitive issue and subsequently caused the conflict between the human rights activists and the artist who argued for the freedom of artistic expression. This incident seriously hurt the image of government.

When the censure case was transferred to the Council of Cultural Affairs, SHENG Chih-jen, then Minister of Council for Cultural Affairs and superior of WANG Show-lai, declined initially to remove Wang from his current position. Later on, SHENG realized that he may be impeached if he failed to act, and eventually Wang was transferred from his current position to another.

4. *Correction power*

Under Article 96 of the *Constitution*, the Control Yuan may take into account the work of the Executive Yuan and its various Ministries and Commissions, and set up several committees to investigate all activities, so as to ascertain if there has been a violation of law or neglect of duty.

Article 97 of the *Constitution* provides that the Control Yuan may propose corrective measures based on the investigations and resolutions of its committees, and forward such corrective measures to the Executive Yuan and the relevant ministries and commissions, directing their attention to the necessary improvements.

Notably, a correction proposal is aimed at the Executive Yuan and its subordinate entities. As such, the president's office and its subordinate entities do not fall within the Control Yuan's correction mandate. Similarly, other Yuans and their subordinate entities do not fall within the same mandate. Nonetheless, the prerequisite of a correction proposal is to investigate if there is violation of law or neglect of duty of the Executive Yuan and its subordinate government bodies with respect to work or facilities. A correction proposal is directed at the matter, and not the person. Although the Control Yuan cannot take corrective action against other Yuans except for the Executive Yuan and their subordinate organizations, it could recommend review and improvements if violation of law or

officials of the Military Intelligence Bureau of the Ministry of Defense. Furthermore, there are allegations that a link existed between the leader of the underworld gang, Mr. CHEN Chi-li, and the second son of President CHIANG Ching-kuo, Mr. CHIANG Hsiao-wu.

neglect of duty in work and facilities is discovered upon investigation.

When a correction proposal is presented to the committee, the bill must be reviewed by the committee and a resolution passed. As mentioned earlier, when a resolution is passed, the Control Yuan proposes to the administrative body corrective measures in the name of the Control Yuan, instead of in the personal capacity of the Control Yuan member. Review is conducted based on the consensual method.

From Table 5, we can see that there are 678 corrected cases approved in the 4th term Control Yuan. Among them, 217 (32.01%) of those corrected cases were about financial and economic affairs; 171 (25.22%) were from the interior and minority affairs; and 96 (14.16%) were about educational and cultural affairs. There are only 6 cases (0.88%) of the entire corrected cases for foreign and overseas Chinese affairs. The fewest cases corrected by the Control Yuan do not mean that the foreign ministry makes few mistakes; it simply indicates that the Control Yuan does have the difficulties in supervising the ministry, since most of its work and offices are in the foreign lands.

Table 5 Cases of Corrective Measures

| Item | 2008-2011 | % |
|--|-----------|-------|
| Total Cases | 678 | |
| Committees: | | |
| Internal and Minority Nationality Affairs | 171 | 25.22 |
| Foreign and Overseas Chinese Affairs | 6 | 0.88 |
| National Defense and Intelligence Affairs | 78 | 11.5 |
| Financial and Economic Affairs | 217 | 32.01 |
| Educational and Cultural Affairs | 96 | 14.16 |
| Communication and Procurement Affairs | 77 | 11.36 |
| Judicial and Prison Administration Affairs | 33 | 4.87 |
| | | |
| Total Cases | 777 | |
| Agencies sent to: | | |
| Executive Yuan | 640 | 82.37 |
| Others | 137 | 17.63 |

Source of Data: *A Brief Report on the Work of the Control Yuan, 2008-2011*, Control Yuan.

5. *Audit power*

Article 90 of the *Constitution* provides that the Control Yuan shall be the highest control body of the State and shall exercise the powers of consent, impeachment, censure, and auditing. According to Article 2 of the *Audit Act*, the Control Yuan's power of audit consists of seven areas, including supervising the execution of budgets, approving receipt and payment orders, examining and approving the financial receipts and final accounts, etc. As the accountability of the government of present days has expanded from the previous financial focus to administration, planning and integrated public responsibilities, government audit has also evolved, from the traditional emphasis of preventive pre-audit or financial audit, to performance audit, which emphasizes economy, efficiency, and effectiveness.⁴⁴

Since audit power lies with the Control Yuan, not only pre-audit is necessary, performance audit is also necessary; and not only supervision of budget execution is required, execution of the final accounts is also needed to determine if there is unlawful or ineffective practice. If unlawfulness, malpractice, or ineffectiveness is found, the ministry of audit will refer the case to the Control Yuan, based on which the Control Yuan will decide if invoking its investigation power is necessary.

Therefore, some people are of the opinion that control & supervisory power is an ex-post power, instead of an ex-ante or mid-course power, which not only has no legal basis, but may seriously undermine the control & supervisory power, such that the control power's supervision of the government is impaired.

6. *Power to access documents and files*

Under Article 95 of the *Constitution*, to exercise its control & supervisory power, the Control Yuan may request the Executive Yuan and its ministries and commissions to submit for review original orders and other relevant documents issued.

In recent years, the Legislative Yuan has been seeking to obtain the power to access documents and files, and *Interpretation No. 325* of the Judicial Yuan endows the Legislative Yuan with such power. The Legislative Yuan's power in this respect manifests as follows: (1) when the Legislative Yuan exercises such power, it must be "necessary to assist the Legislative Yuan to exercise its powers

44. *Government Annual Audit Report*, see paper cited earlier, p.2.

of office"; (2) when the Legislative Yuan exercises such power, it must be subject to the resolution proceedings of the Yuan plenary meeting or committee meetings, and only "if necessary"; (3) where there is legal basis or proper reason, administrative authorities may refuse to allow the Legislative Yuan to exercise such power.⁴⁵ As investigation power and power to access files and documents are the Control Yuan's core powers, members of the Control Yuan do not require prior approval by the Yuan plenary meeting or committee meeting before exercising their right of access to files and documents. According to Article 26 of the Law of the Control Yuan, Control Yuan members may, where necessary, present their control & supervision pass or investigating officers their investigation pass, visit the institution under investigation and access files and other relevant document without prior notice.

7. Power to investigate

Articles 95 and 96 of the *Constitution* provide the basis for the Control Yuan's investigation powers. As earlier discussed, the Legislative Yuan has been seeking to obtain inspection powers in recent years. *Interpretation No. 585* of the Judicial Yuan opined that the Legislative Yuan should have investigation power in some extent: "The Legislative Yuan may exercise its investigation power in a manner that is not limited to the power to access files and documents, under which it requests production of reference materials in respect of the matter that the Legislative Yuan is exercising its powers of office or to request the relevant institutions to provide original documents." Where necessary, the Legislative Yuan may also, through resolution at its plenary meeting, request testimonies or opinions by civilians or government officials related to the investigated matter, and may, within the scope of pecuniary fines, impose reasonable enforcement measures on persons who refuse to fulfill their duty to assist in investigation. The said *Interpretation* also states that

The scope of the targets or matters subject to the Legislative Yuan's investigation power does not grow unchecked. The matter to be investigated by the Legislative Yuan must be substantially related to the exercise of its powers under the *Constitution*; whenever a matter is related to a

45. *You guan ge jie dui jian cha zhi du suo ti yi jian zhi can kao zi liao* (Reference Materials on the Opinions of Various Parties on the Ombudsman System), as cited earlier.

body of the State exercising its independent powers of office as mandated by *Constitution*, such matter does not fall under the Legislative Yuan's investigation mandate.

The *Interpretation* also states that "the scope of the investigation in a specific case shall not be in violation of the principles of separation of powers and checks and balances, nor can it infringe upon the core authority of another constitutional body or cause material harm to the exercise of powers by another constitutional body."

This shows that the Legislative Yuan has obtained a certain level of investigation power, although such power is very much restricted, which on one hand, must be substantially related to the exercise of its official powers; on the other hand, state bodies that are independent in exercise of official powers, such as the Judicial Yuan, Examination Yuan, and Control Yuan, do not fall within the investigation mandate of the Legislative Yuan. Additionally, *Interpretation No. 585* also stated that "investigation powers as mandated under Articles 95 and 96 of the *Constitution* shall be the exclusive power of the Control Yuan." Hence, investigation power is the Control Yuan's key constitutional power upon which the Legislative Yuan cannot infringe.

The subject of investigation by the Control Yuan covers people, which includes public functionaries at the central and local levels, and matter, which includes the work and measures of the Executive Yuan and its subordinate bodies. Case establishment and investigation methods include: rotational deployment, deployment by a committee, voluntary investigation, and appointment of external parties.

From Table 6, we can see that most of the investigation cases are established by Yuan assignment, 938 cases out of 1981. Next is the cases assigned by members, 687 cases out of 1981. These are the

Table 6 Cases Investigated by the Control Yuan 2008-2011

| Item | 2008-2011 |
|---|-----------|
| Number of cases | 1,981 |
| Mode of investigation (cases) | |
| Assigned by Yuan | 938 |
| Assigned by Committee | 356 |
| Assigned by member(s) | 687 |
| Number of times members make investigations | 3,358 |

Source of Data: *A Brief Report on the Work of the Control Yuan, 2008-2011*, Control Yuan.

cases conducted by members' voluntary investigation. There are 356 cases assigned by the committees. Sometimes, a member may ask the committee to assign a case which is to his or her interest for investigation, so that his or her number of voluntary investigation cases will not reach too high.

One issue was raised when I conducted the investigation of malfunctions of Taipei Metro Wenhua Line. The Wenhua Line began operations on July 4, 2009 after seven years of construction, but frequent malfunctions and a major system shutdown had sparked concerns about the line's stability. A sudden power outage on July 10, for instance, forced some 700 passengers to walk along the tracks to the nearest station and thousands more to find alternative transportation until the service resumed the following day. Along with the investigation process, I found that it was necessary not only to summon the incumbent mayor but also his predecessor, MA Ying-jeou, who was the incumbent President of the ROC, to be questioned to get a whole picture of the Wenhua Line decision-making process.

The problem is that the Control Yuan, after the constitutional revision in 1997, does not have the power to impeach the President and the Vice President. Members of the Control Yuan, according to the conventional wisdom, cannot exercise their investigation power over the President, since the investigation power goes with the impeachment power. My argument, however, is that I was not investigating the President for what he had done in the capacity as President, but what he had done in the capacity as Taipei city mayor. I started to contact the presidential staff in an attempt to arrange a meeting with the President. At first, the staff was reluctant to do that and raised the constitutional controversy on this issue. After almost one month of communication, the President himself decided to invite our investigation panel to the presidential office, instead of coming to the Control Yuan. After discussing with other members of the investigation panel, I decided to take the offer of the President, on the grounds that there is a legal basis for us to do so.

According to the Article 52 of the Constitution, the President shall not, without having been recalled, or having been relieved of his functions, be liable to criminal prosecution unless he is charged with having committed an act of rebellion or treason. Also according to the *Interpretation No. 627*, presidential criminal immunity does not extend to the evidentiary investigation and preservation directed at the President for a criminal case involving another per-

son. Further, presidential criminal immunity does not extend to his duty to testify as a witness in a criminal case involving another person. Nevertheless, when the criminal investigation authorities or the trial courts consider the President as a witness in a criminal procedure involving someone else as a defendant, Article 304 of the *Code of Civil Procedure* shall apply mutatis mutandis so as to show respect for the presidency. The said provision reads, "Where the witness is the Head of the State, the examination shall be conducted at the place of his/her choosing." Even though Article 52 of the Constitution and the *Interpretation No. 627* are not intended for the control power, I believe that it can be applied to the exercise of the control power when the President is asked to testify as a witness. During the meeting, President Ma agreed that this meeting was a questioning meeting. It was a win-win situation for both sides; the President was able to maintain his dignity and gained a positive image of respecting the Constitution and the control power, while the Control Yuan was able to question the President on key issues and subsequently completed the investigation smoothly. Regarding the constitutional controversy, both sides agreed that the Control Yuan should ask for the Grand Justices' constitutional interpretation to solve the problem. The Control Yuan has already done that.

8. *Power to inspect*

Members of the Control Yuan have inherited the tradition of inspection tours to different localities from the censor-in-chief (*yushi dafu*) of ancient China. Article 3 of the Control Law provides that members of the Control Yuan may conduct circuit supervision and inspection. In principle, every member of the Control Yuan should inspect a different county or city. Every member of the Control Yuan should visit a different location every quarter within a year. Besides local inspection tours, members of the Control Yuan should inspect central authorities. The central level includes the Executive Yuan, the Judicial Yuan, the Examination Yuan, and their subordinate agencies. Inspection on the central level is done by the various committees that are related to the business of the central organization to be supervised. Inspection for the local level is based on the geographic divisions and carried out by 13 teams. On the local level, agencies to be supervised and inspected are the provincial government, the city governments under the direct jurisdiction of the Executive Yuan, and the various county and city governments and their subordinate agencies. Members of the inspection tour teams are decided in rotation at the ple-

nary meeting held every July. Inspection tours are not conducted for specific cases, but to find out the status of budget implementation by the various authorities, perform financial examinations, discover any violation of the law or dereliction of duty by government functionaries or at work or in facilities, status of implementation of correction proposals, and check on how complaints and petitions by the people are handled.

Although some think that inspection is now reduced to mere formality—and therefore unnecessary⁴⁶—inspection powers continue to exist for important reasons. First, a Control Yuan member touring a locality would always set aside time to meet petitioners, as people from counties and cities would usually come forward to offer opinion or raise petition in respect of central and local administration. If such opinions or petitions are related to the local government, the Control Yuan member will usually request that the relevant local official join the meeting and offer explanation. Occasionally, a Control Yuan member may play the role of a mediator, whereby he would help mediate complaints raised by the people; therefore, grievances are resolved promptly.

Secondly, although Taiwan is small and transportation is convenient, it would seem that petitioners could go to Taipei to petition their case, and members of the Control Yuan would not be required to travel to the local regions to hear complaints. However, as mentioned earlier, members of the Control Yuan inspecting at the local level to hear petitions by the people is but one of their responsibilities. Also, reaching out to the people is one way of providing convenience for the people, and would help save the people's money and time. This is especially important for the vulnerable groups.

Thirdly, taking inspection tours at the central and local level helps the inspector find out the state of the government's administration and to understand the people's responses to the government's administration. A Control Yuan member could, on the one hand, report to the government the public sentiments and the people's difficulties, so as to inform the direction of change; on the other hand, the Control Yuan member could also convey to the people accurate information about the government's administration, so as to resolve any misunderstanding or grievance. As such, members of the Control Yuan are also important agents of political communication between the government and the people.

46. Refer to work cited above by CHEN Xinmin, p.723.

9. *Implementing agency of the Sunshine Act*

The four Sunshine acts refer to the *Act on Property-Declaration by Public Servants*, *Act on Recusal of Public Functionaries Due to Conflicts of Interest*, *Political Donations Act*, and *Lobbying Act*. According to the *Act on Property-Declaration by Public Servants*, the President and Vice President, the presidents and vice presidents of the five Yuans, politically assigned officials, paid staff advisors, and people's representatives above the county level shall report their assets to the Control Yuan.

The *Act on Recusal of Public Functionaries Due to Conflicts of Interest* is aimed at addressing situations where functionaries have duty of recusal, but have, because of their action or omission, directly or indirectly caused such functionaries or their related parties to obtain gains. The *Act* provides that investigations may be conducted and/or fines imposed by the Control Yuan.

The *Political Donations Act* is similar, and the entity to report any political donation is the Control Yuan. Political parties, political groups and election candidates must apply for approval by the Control Yuan to open a political donations account, and must report to the Control Yuan within two months before the election date. However, the Control Yuan had problems implementing the laws as the laws were in force for only a short time, and the provisions were too stringent. However, under the *Constitution*, the Control Yuan is the body that monitors the government and protects civil rights; but on the other hand, the *Political Donations Act* provides the Control Yuan with the powers to control & supervise and to sanction the people. Deeper studies must be conducted to determine if the Control Yuan's sanction power conflicts with its constitutional role.

For example, in August 2006, former chairman SHIH Ming-the of the then ruling Democratic Progressive Party (DPP) launched a "one person, NT\$100 (US\$3.06)" campaign to topple then incumbent President CHEN Shui-bian, who had been plagued by a spate of corruption and embezzlement scandals implicating himself and his family. Vice Interior Minister of the DPP government said that the donations being collected by Shih were illegal because Shih was not a candidate in any elections. The Vice Minister indicated that her ministry had asked the nation's highest watchdog body to look into the matter.⁴⁷ Shih and the other organizers, however, argued that they had studied relevant laws and concluded that their call for the public to make a NT\$100 donation will not break the law. They

47. *China Post*, August 12, 2006; *Taiwan News*, August 22, p.2.

argued that the NT\$100 contribution is a "registration fee" for joining the campaign, not a donation for somebody to engage in a political activity. The NT\$100 contributions, they pointed out, will be used to pay for food and drinks and cleaning the proposed one million people sit-ins.⁴⁸

The case was not managed by the Control Yuan until the 4th term. The case was discussed by the Committee on consultation and Committee on anti-corruption, which is dealing with the implementation of the *Sunshine Act*. Many members suspected that this case should be regulated by *Political Donations Act*, since the money was not intended for a political election campaign, while others argued that this case did not fall within the jurisdiction of the Control Yuan. The Control Yuan, they stated, is responsible for supervising public functionaries, not to monitor the people and should not impose the sanctions upon private citizens. In the end, the Control Yuan returned this case to the Interior Ministry and suggested that the *Political Donations Act* be revised.

10. Examination invigilation power

Traditionally, China has always emphasized the fairness and independence of examination. To prevent fraud, imperial examinations during the Ming and Qing dynasties were invigilated and administered by imperial censors. As such, control & supervisory powers had included examination powers.⁴⁹ Under the *Examination Invigilation Act*, for all examinations held by the Examination Yuan or by examining & selection bodies, the Control Yuan should be invited to also deploy invigilators to invigilate the examinations. The Control Yuan should also be consulted and Control Yuan member deployed to observe the formation of examination affairs committees.

The following table shows that during the three years and five months of the fourth Control Yuan membership term, the members have contributed positively by admonishing the officialdom, improving government effectiveness and in protecting human rights through impeachment, censure, and corrective actions. The members of the fourth membership term have received 88,749 written public petitions, a figure that is far higher than any previous panel. The panel has passed 89 impeachment bills, a record number in the Control Yuan's history; 6 established censure cases, the same as

48. *Ibid.*, *China Post*.

49. *Ibid.*, p.724.

that of the third term; and 684 correction cases passed, also the highest number in history. The Control Yuan has also demanded that various bodies impose sanctions on 2,871 people, also the highest number in history.

**Table 7 Statistics on Exercise of Control & Supervisory Power
(Term of Office: 3 years 5 months)**

| Item | Unit | 4th Term (Aug 2008 to January 2012) | 3rd Term (Feb 1999 to Oct 2001) | 2nd Term (Feb 1993 to Oct 1995) | 1st Term (Feb 1987 to Oct 1989) | 2012 |
|--|---------|---|---|---|---|---------|
| | | | | | | January |
| People's Petition Received | nos. | 88,749 | 45,768 | 37,837 | 20,708 | 1,142 |
| People's Petition Processed *Note 1 | nos. | 89,067 | 45,675 | 37,232 | 20,707 | 1,263 |
| Verified & deployed investigation | cases | 2,003 *Note 2 | 1,843 | 1,614 | 1,446 | 23 |
| Proposed investigation report | cases | 1,723 | 1,661 | 1,250 | ... | 24 |
| No. of times of investigation by a member | times | 3,388 | 3,235 | 1,830 | 1,681 | 36 |
| Established impeachment case | cases | 89 | 53 | 60 | 28 | - |
| No. of persons impeached | persons | 149 | 119 | 181 | 114 | - |
| Concluded impeachment case | cases | 91 *Note 3 | 66 | ... | ... | 2 |
| No. of persons impeached | persons | 229 | 171 | ... | ... | 4 |
| Established censure case | cases | 6 | 6 | - | - | - |
| Concluded censure cases | cases | 5 | 6 | - | - | - |
| No. of people censured | persons | 8 | 8 | - | - | - |
| Established correction case | cases | 684 | 489 | 188 | 52 | 6 |
| Concluded correction case | cases | 595 *Note 4 | ... | ... | ... | 10 |
| Notified authorities in writing to make improvements | cases | 1,343 | 1,194 | ... | ... | 29 |
| Concluded cases where authorities notified in writing to improve | cases | 1,307 *Note 5 | ... | ... | ... | 20 |
| Correction and written notification of improvement case | | | | | | |
| Outcome of action by the authorities | | | | | | |

| | | | | | | |
|---|---------|-------|-------|-----|-----|----|
| Administrative authorities taking internal disciplinary action on their personnel | persons | 2,871 | 1,271 | ... | ... | 39 |
| Outcome of cases where authorities have transferred personnel to another sanction authority | persons | 11 | ... | ... | ... | - |
| Exam invigilation Cases | cases | 82 | 75 | 69 | 60 | 7 |
| Exam invigilation frequency | times | 284 | 146 | 117 | ... | 30 |

Source: Department of Supervisory Operations, Department of Supervisory Investigation, and standing committees of the Control Yuan, Prepared by: Statistics Office, Control Yuan.

Notes:

1. The number of written public petitions processed in the current term, and includes those that were received but have not been processed.
2. No. of cases verified and investigations deployed, includes unconcluded cases whereby re-verification and redeployment was necessary, cases which have yet to receive a final ruling from the 3rd term, as well as cases that were approved for deployment of investigators previously, but that deployment letter was approved and issued only during the current term.
3. Among the 77 impeachment cases concluded, 41 cases (57 persons) were resolved by the 4th membership term.
4. Among the 485 correction cases, 291 cases were resolved by the 4th membership term.
5. Among the 1,013 completed cases where various bodies were asked to take improvement action, 550 cases were resolved by the 4th membership term.

V. ORIGIN AND DEVELOPMENT OF THE OMBUDSMAN SYSTEM: A GLOBAL COMPARISON

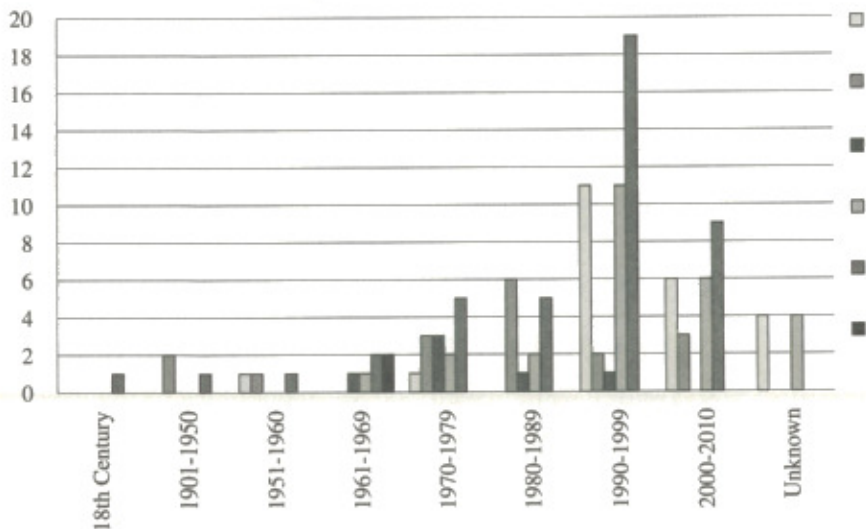
In 1809, Sweden established the parliamentary ombudsman system whereby the parliament would appoint officials, who would accept and investigate petitions relating to infringement of the people's rights to provide relief against unlawful or undue conduct by government authorities or officials.⁵⁰ The system was adopted by Finland in 1919 and Denmark in 1953. In fact, Denmark had widely publicized the system when it was adopted. After the 1960s, the parliamentary ombudsman system was well-adopted by the rest of the world.⁵¹ According to the statistics from the International Ombudsman Institute (I.O.I.), as of 2010, more than 140 countries and regions had established independent ombudsman positions or an ombudsman system.

50. CHANG Chien-han, (*Jian cha zhang zhi du zhi fa sheng yu fa zhan*), *Xian zheng si chao* (Constitutional Ideology), Vol. 12, November 1970.

51. JHANG Rui-bin, *Wu quan xian fa zhong jian cha yuan diao cha quan zhi yan jiu* (A Study on the Control Yuan's Investigation Power in a Five-Power Constitution), *Journal of the National Dr. SUN Yat-sen Memorial Hall*, November 2000, p.11-21.

As we can see in Fig. 1, the ombudsman systems became well developed in Europe, Africa, and Latin America in the 1990s. During the period between the late 1980's and the beginning of the 1990's, among the aforementioned nations, Latin America started prosperous developments of the Tribune system. Since the "Paris Principles"⁵² became effective in 1991, the nations of Central and South America, aiming to show the world their high regard for human rights, started establishment of the Tribune system; perhaps the other two Continents were also influenced by them regarding the system.⁵³

Fig. 1 Statistical diagram of occurrences of Ombudsman systems in the world



Source of Data: LI Bing-Nan, CHOU Yang-Sun, WANG Tseng-Hwa, "The Global Development of the Ombudsman System and Taiwan's Experience," in the Proceedings of the 26th Australasian and Pacific Ombudsman Region Conference, Taipei, Taiwan, ROC, March 23-26, 2011, published by the Control Yuan, p. 127.

52. The Paris Principles encourage countries to establish their own impartial National Human Rights Commission that ensures alignment of local regulations with international human rights norms. It also coordinates and consolidates related regulations, publishes human rights reports, and promotes human rights education to ensure protection of human rights. See LI Fu-dien, Supranote 18, p.70.

53. LI Bing-Nan, CHOU Yang-Sun, WANG Tseng-Hwa, "The Global Development of the Ombudsman System and Taiwan's Experience," in in the Proceedings of the 26th Australasian and Pacific Ombudsman Region Conference, Taipei, Taiwan, ROC, March 23-26, 2011, published by the Control Yuan, p.127.

There are many different types of ombudsman systems (See Table 8). Some are external supervisory mechanisms that are outside the administrative bodies, such as those in Sweden and Taiwan; others are internal control mechanisms, such as Japan's Administrative Evaluation Bureau under its Ministry of Internal Affairs and Communications.⁵⁴ There are also legislative parliamentary ombudsman, such as that of Sweden; independent ombudsman bodies, such as our Control Yuan; Korea's Board of Audit and Inspection; administrative ombudsman systems, such as Japan's; judicial ombudsman system, such as Nicaragua's Ombudsman's Office for the Defense of Human Rights; special ombudsman systems, such as the State Comptroller of Israel also serves, by law, as Ombudsman; hybrid ombudsman bodies, such in the unification of supervision and human rights in Russia, where the post of ombudsman in Russia is called Commissioner for Human Rights.⁵⁵

54. Refer to *A Study of the Executive & Control System in Japan*, Development, and Evaluation Commission, Executive Yuan, October 1998.

55. *Shi jie jian cha zhi du shou ce* (Handbook on the Ombudsman Systems of the World), International Affairs Committee, Control Yuan, 2010, pp.259-327.

Table 8 Basic Types of Ombudsman Systems⁵⁶

| Classification | Fundamental Forms | | Remark |
|------------------------------|--|--|---|
| Form of Supervision | External | Ombudsman mechanism outside the executive body | "External" + "Bottom-Up" → "Heteronomy" |
| | Internal | Ombudsman mechanism within the executive body | "Internal" + "Top-Down" → "Self-discipline" |
| Subordinated Entity | Legislative | Parliamentary ombudsman | Under the parliament |
| | Independent | Independent ombudsman mechanism | Independent of the executive, legislative and judicial authorities |
| | Executive | Administrative ombudsman system | Under the executive authority |
| | Judicial | Under judicial authorities | |
| | Special | Auditor-general cum chief inspector for public petition | Auditor-general cum ombudsman |
| | Hybrid | Hybrid ombudsman | Made up of ombudsman body and human rights organization (ombudsman-human rights) |
| Scope of Mandate | International or supra-national level | | WHO, World Bank, European Ombudsman |
| | National level | | |
| | Sub-national level | | Regional, local, state, provincial, city |
| Public-Private Nature | Public sector ombudsman | General ombudsman (All-purpose) | E.g. parliamentary and State ombudsman |
| | | Special purpose ombudsman/professional ombudsman (partial purpose) | E.g. ombudsman for matters relating to gender equality, protection of children, consumer protection, prison, education and military |
| | Private sector professional ombudsman | | E.g. ombudsman for schools, banks, insurance companies and media |
| Organizational Form | Individual System (executive system, single leadership system) | One-person system | 1 person |
| | | Group system | 2 persons or more |
| | Council system (collegial system, group-leadership) | | Commission |

Source: Prepared by LI Wen-Lang

From Table 9, we can compare ombudsman organizations in the world in terms of functional distinction. Basically, there are four

56. Extracted from CHOU Yang-shan. *Ge guo jian cha zhi du de bi jiao fen xi yu fa zhan qu shi* (A Comparative Study of the Ombudsman System of Different Countries), *Handbook of Ombudsman Systems in the World*. p.264.

different functions of the ombudsman organizations: corruption prevention, dispute mediation, financial auditing, and human rights protection. Each country may have its own way of performing these functions and form different combination types. About 63% of the national ombudsman organizations in the worlds have this function of dispute mediation. Nearly 65% of the world ombudsman organizations perform this function of corruption prevention. Only about 10 countries include financial auditing in the operational scopes of their ombudsman systems: Republic of China (Taiwan), Japan, Israel, Libya, Republic of Sao Tome and Principe, Iran, Jordan, Kingdom of Saudi Arabia, Yemen Republic and Chili. Around 56% of countries endow their ombudsman organizations with the function of human rights protection.⁵⁷

Table 9 Comparison of Ombudsman Organizations in the World

| Country (District) | Functional distinction | | | | |
|--|------------------------|-------------------|--------------------|-------------------------|------------------|
| | Corruption prevention | Dispute mediation | Financial auditing | Human rights protection | Combination type |
| Benin - National Mediation Office -(Africa) | | o | | o | o |
| Burkina Faso - National Mediation Office -(Africa) | o | o | — | o | o |
| Burundi - Office of Ombudsman -(Africa) | o | o | | o | o |
| Chad - National Mediation Office -(Africa) | | o | | | |
| Republic of Congo - National Mediation Office -(Africa) | | o | | o | o |
| Egypt - National Committee of Human Rights -(Africa) | | o | | o | o |
| Gabon - National Mediation Office -(Africa) | | | | | |
| Ghana - Committee of Human Rights & Executive Justice -(Africa) | o | | | o | o |
| Libya - Committee of Investigation & Supervision by People -(Africa) | o | | o | | o |
| Ivory Coast - National Mediation Office - (Africa) | | o | | | |
| Mali - National Mediation Office - (Africa) | | o | | | |

57. Please refer to Supranote 51, pp.108-110, 119-123.

| | | | | | |
|---|---|---|---|---|---|
| Mauritania - National Mediation Office -(Africa) | | o | | | |
| Morocco - Office of Ombudsman -(Africa) | o | | | o | o |
| Namibia - Office of Ombudsman (Ombudsman in Chief) -(Africa) | o | | | o | o |
| Niger - National Mediation Office -(Africa) | | o | | o | o |
| Nigeria - Committee of Public Complaints -(Africa) | | o | | o | o |
| Luanda - Office of Ombudsman -(Africa) | o | o | | | o |
| Democratic Republic of Sao Tome & Principe - Auditing Court -(Africa) | | | o | | |
| Senegal - National Mediation Office -(Africa) | o | o | | | o |
| Sierra Leone - Office of Ombudsman -(Africa) | o | | | | |
| South Africa - Tribune Office (Ombudsman in Chief) -(Africa) | o | | | | |
| Sudan - Committee of Public Complaints & Correction - (Africa) | | | | | |
| China - Ministry of Supervision -(Asia) | o | | | | |
| Hong Kong - Office of the Ombudsman -(Asia) | o | | | | |
| India - Office of the Ombudsman (Example of Kerala Province) -(Asia) | o | | | | |
| Indonesia - National Ombudsman Office -(Asia) | o | | | o | o |
| Iran - Monitoring Department -(Asia) | o | | o | | o |
| Japan - Ministry of Internal Affairs Administrative Evaluation Bureau -(Asia) | | o | o | | o |
| Jordan - Auditing Bureau -(Asia) | | | o | | |
| Korea - National Interests Committee -(Asia) | o | o | | o | o |
| Macao - Independent Commission Against Corruption -(Asia) | o | | | o | o |
| Malaysia - Public Complaints Authority -(Asia) | | o | | | |
| Pakistan - Federal Ombudsman Office -(Asia) | o | o | | o | |
| Philippines - Ombudsman Office -(Asia) | o | | | | |
| Kingdom of Saudi Arabia - General Accounting Office -(Asia) | | | o | | |
| Singapore - Corrupt Practices Investigation Bureau -(Asia) | o | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Republic of China - Control Yuan (Asia) | o | o | o | o | o |
| Thailand - Ombudsman Office (Asia) | o | o | | o | o |
| Yemen Republic - Central Auditing Bureau - (Asia) | | | o | | |
| Australia - Commonwealth Ombudsman Office -(Oceania) | o | o | | o | o |
| Cook Islands - Ombudsman Office - (Oceania) | o | o | | o | o |
| New Zealand - Ombudsman Office - (Oceania) | o | o | | o | o |
| Papua New Guinea - Ombudsman Office - (Oceania) | o | o | | o | o |
| Palau - Ombudsman Office - (Oceania) | | o | | | |
| Samoa - Ombudsman Office - (Oceania) | o | o | o | o | o |
| Solomon Islands - Ombudsman Office - (Oceania) | o | o | | | o |
| Tonga - Office of Public Relations & Ombudsman - (Oceania) | | o | | | |
| Vanuatu - Ombudsman Office - (Oceania) | | o | | o | o |
| Argentina - State Ombudsman Office - (Latin America) | | o | | o | o |
| Barbados - Ombudsman Office - (Latin America) | o | o | | | |
| Belize - Ombudsman Office - (Latin America) | o | o | | o | o |
| Chile - Audit Commission - (Latin America) | o | | o | | o |
| Columbia - Tribune Office - (Latin America) | o | | | o | o |
| Costa Rica - Tribune Office - (Latin America) | o | | | o | o |
| Curacao - Ombudsman Office - (Latin America) | | | | | |
| Ecuador Republic -Tribune Office - (Latin America) | | o | | o | o |
| Salvador - Human Rights Protection Prosecutor's Office - (Latin America) | | | | o | |
| French Guiana - Ombudsman Office - (Latin America) | | o | | | |
| Guatemala - Human Rights Protection Prosecutor's Office - (Latin America) | | o | | o | o |
| Guyana - Ombudsman Office - (Latin America) (operation suspended) | | | | | |

| | | | | | |
|--|---|---|--|---|---|
| Dominica – House Committee - (Latin America) | ○ | ○ | | | |
| Dominica Republic – Tribune Office - (Latin America) | ○ | | | ○ | ○ |
| Grenada - Ombudsman Office – (Latin America) | ○ | | | | |
| Haiti - Tribune Office – (Latin America) | | ○ | | ○ | ○ |
| Honduras – Committee of National Human Rights - (Latin America) | | | | ○ | |
| Mexico – Committee of National Human Rights - (Latin America) | ○ | ○ | | ○ | ○ |
| Nicaragua - Human Rights Protection Prosecutor's Office – (Latin America) | | ○ | | ○ | ○ |
| Panama - Tribune Office – (Latin America) | ○ | ○ | | ○ | ○ |
| Paraguay - Tribune Office – (Latin America) | ○ | ○ | | ○ | ○ |
| St. Christopher - Ombudsman Office – (Latin America) | ○ | ○ | | | ○ |
| St. Lucia – Parliament Ombudsman Office – (Latin America) | ○ | ○ | | | ○ |
| Trinidad - Ombudsman Office – (Latin America) | | ○ | | | ○ |
| Uruguay - Tribune Office, Montevideo Province – (Latin America) (Only at Capital; not a nationwide organization) | | ○ | | ○ | ○ |
| Venezuela - Ombudsman Office – (Latin America) | | ○ | | ○ | ○ |
| Armenia - Human Rights Protection Tribune Office – (Europe) | | ○ | | ○ | ○ |
| Austria - Ombudsman Office – (Europe) | ○ | ○ | | ○ | ○ |
| Azerbaijan - Human Rights Ombudsman Office – (Europe) | | | | ○ | |
| Belgium - Federal Ombudsman Office – (Europe) (Having local Ombudsman Office in each District) | ○ | ○ | | | ○ |
| Bulgaria - Ombudsman Office – (Europe) | ○ | ○ | | | ○ |
| Croatia - Ombudsman Office – (Europe) | | | | ○ | |
| Cyprus - Ombudsman Office (or Executive Senior Expert Office) – (Europe) | ○ | ○ | | ○ | ○ |
| Czech Republic – Public Rights Tribune Office – (Europe) | ○ | ○ | | ○ | ○ |
| Denmark – Parliament Ombudsman Office – (Europe) | ○ | ○ | | ○ | ○ |

| | | | | | |
|--|---|---|---|---|---|
| Greenland – Ombudsman Office – (Europe) | o | | | | |
| Estonia – General Office of Legal Affairs - (Europe) (Similar in nature to Administrative Court & Justice) | o | | | o | o |
| European Union (EU) - Ombudsman Office – (Europe) (Only applicable to EU Organizations) | o | | | o | |
| Faro Islands - Ombudsman Office – (Europe) | o | o | | o | |
| Finland – Parliament Ombudsman Office – (Europe) (And having General Office of Legal Affairs: Highest Ombudsman Office, with 6 Ombudsman members) | o | o | | o | o |
| France – National Ombudsman Office – (Europe) (Having District Ombudsman Representative, volunteer) | o | o | | o | o |
| Georgia - Tribune Office – (Europe) | o | o | | o | o |
| Germany – Federal Parliament Appeals Board – (Europe) | o | o | | | o |
| Greece - Ombudsman Office – (Europe) (Deputy Ombudsman Office, appointed by Interior Minister, 6 Members) | o | o | | o | o |
| Hungary – Parliament Ombudsman Office – (Europe) (Total 4 Members, for 4 different missions) | o | | | o | o |
| Iceland – Parliament Ombudsman Office – (Europe) | o | o | | o | o |
| Ireland – Parliament Ombudsman Office – (Europe) (Having 4 additional Special Ombudsman Offices) | o | o | | | o |
| Israel – Chief Auditor Office – (Europe) (Originally dealing with Financial issues; then by revising Laws to extend to Administrative organizations) | o | o | o | o | o |
| Kazakhstan – Human Rights Ombudsman Office – (Europe) | o | o | | o | o |
| Kyrgyzstan - Ombudsman Office – (Europe) | o | | | o | o |
| Latvia - Ombudsman Office – (Europe) | o | o | | o | o |
| Liechtenstein – Consultation and Appeals Office – (Europe) | | o | | | |
| Lithuania– Parliament Ombudsman Office – (Europe) | o | o | | | o |
| Luxembourg – Parliament Ombudsman Office – (Europe) | | o | | | |
| Macedonia – Ombudsman Office – (Europe) | o | | | o | o |

| | | | | | |
|---|---|---|---|---|---|
| Moldova – Human Rights Center – (Europe) | ○ | | | ○ | ○ |
| Netherlands – National Ombudsman Office – (Europe) (Having District Ombudsman Offices, and Amsterdam Ombudsman Office) | ○ | ○ | | | ○ |
| Norway – Parliament Ombudsman Office – (Europe) (Having National Defense Ombudsman Office, and Military Service Ombudsman Office) | ○ | | | ○ | ○ |
| Poland – Human Rights Ombudsman Office – (Europe) (Having Ombudsman Offices for: Children Rights, Insurance, Consumers, Gender Equality) | ○ | ○ | | ○ | ○ |
| Poland – Highest Ombudsman Administration – (Europe) | | | ○ | | |
| Portugal – Ombudsman Office – (Europe) | ○ | ○ | | ○ | ○ |
| Russia – Federal Human Rights Ombudsman Office – (Europe) | ○ | ○ | | ○ | ○ |
| Slovakia – Human Rights Public Protection Office – (Europe) | | | | ○ | |
| Slovenia – Human Rights Ombudsman Office – (Europe) | | ○ | | | |
| Spain – Tribune Office – (Europe) | ○ | ○ | | ○ | ○ |
| Sweden – Parliament Ombudsman Office – (Europe) (And having General Office of Legal Affairs, and 6 Ombudsman Offices) | ○ | ○ | | ○ | ○ |
| Swiss States – Ombudsman Office – (Europe) (As example: Ball State Race Village) | | ○ | | | |
| Northern Cyprus Turkish Republic – Ombudsman Office – (Europe) | ○ | | | | |
| Ukraine – Parliament Human Rights Ombudsman Office – (Europe) | | | | ○ | |
| United Kingdom – Parliament & Medical Service Ombudsman Office – (Europe) (And, Ombudsman Offices for: Northern Ireland, England, Scotland, Wales) | | ○ | | | |
| Uzbekistan – Parliament Human Rights Ombudsman Office – (Europe) | ○ | | | ○ | ○ |
| Canada – (Example: Alberta Province) Ombudsman Office – (North America) (And, Ombudsman Offices available for: Other 9 Provinces and Yukon Area) | | ○ | | | |
| USA – (Example: Hawaii State) Ombudsman Office – (North America) (Do not have one for national level's; available only as per each State's requirement) | ○ | ○ | | | ○ |

| | | | | | |
|---|--|--|---|--|--|
| USA - Government Accountability Office - (North America) (Old name: Audit Commission of Congress) | | | o | | |
|---|--|--|---|--|--|

Source: LI Bing-Nan, CHOU Yang-Sun, WANG Tseng-Hwa, "The Global Development of the Ombudsman System and Taiwan's Experience," in Australian and Pacific Ombudsman Region Conference, pp.140-144.

The ombudsman organizations of the Republic of China (Taiwan) and Israel are the only two in the world that perform all four functions. However, the Control Yuan, compared to the other countries, has the following features. 1. The jurisdiction of the Control Yuan is broader: it not only supervises the executive branch but also the legislative, judicial, examination Yuans as well as the Control Yuan itself. 2. The functions of the Control Yuan are wider: it includes all the four above -mentioned functions. 3. The history of the Control Yuan is longer: its origin can be traced back to the ancient China. 4. The Control Yuan is more independent: it is a constitutionally independent body, while others like Japanese Administrative Evaluation Bureau belong to Ministry of Internal Affairs, or the Ombudsman offices, such as Sweden and other western countries, are the parliament's subordinates. 5. The Control Yuan has sanction powers: it can remove public functionaries from their current positions after its censure motion approved. It can demand the concerned government agencies to correct their mistakes; otherwise the functionaries in charge will be impeached. Most of the ombudsman organizations in other countries, however, do not have the sanction powers. 6. The Control Yuan has a strong human rights protection function: as Table 10 shows, 56.5% of those investigated cases, during the period of August 2008 to February 2012, involved human rights, while 43.5% of did not. 11.9% of those investigated cases were concerned with property rights, while 10% were related to rights of jurisdiction justice and 8.3% involved rights of survival and medical care.

The United Nations' Millennium Declaration emphasizes the importance of good governance. At the international level, good governance is mainly proposed by the UN. In recent years, the UN Assembly has begun to realize the importance of good governance at the international level, apart from good governance by national governments. In its Millennium Declaration, the UN Assembly stated that a commitment to good governance, both nationally and internationally, is necessary for economic development and reduction in poverty. As such more countries have begun to establish an ombudsman system. The World Health Organization created the

Table 10 Statistics of Investigative Reports by the Control Yuan Involving Human Rights (August 2008-February 2012)

| Item | No. of Cases | % |
|-------------------------------------|--------------|--------------|
| Right of Freedom | 35 | 2% |
| Equal Rights | 31 | 1.8% |
| Rights of Survival and Medical Care | 143 | 8.3% |
| Right to Work | 61 | 3.6% |
| Property Rights | 204 | 11.9% |
| Political Participation | 13 | 0.8% |
| Jurisdiction Justice | 172 | 10% |
| Culture | 27 | 1.4% |
| Education | 50 | 2.9% |
| Environmental Resources | 98 | 5.7% |
| Social Security | 67 | 3.9% |
| Other Human Rights | 69 | 4% |
| Human Rights | 967 | 56.5% |
| Non Human Rights | 746 | 43.5% |
| Total | 1,713 | 100% |

Source of Data: The Control Yuan of the Republic of China.

position of staff ombudsman in 1974, and the International Monetary Fund in 1979. Since the 1970s, certain UN agencies have established an ombudsman system; however, the United Nations has only had its UN Ombudsman since 2002. The European Union did not establish an ombudsman system until 1995. Nonetheless, we can see that creating an ombudsman system has become a trend among international organizations.

VI. CONCLUSION

Nearly all countries adopt the three-power system (executive, legislative, judicial); only Taiwan has a five-power government (executive, legislative, judicial, examination and control). In fact, in his *Lecture Six on Democracy (min-quan zhu-yi)*, Sun pointed out that, although the west adopts a triple-power separation, and so too did China in the past, China had also separated autocratic, control & supervisory, and examination powers (*jun-quan, jian-cha, kao-shi*). Such separation of the three powers has been in place for several

thousand years.⁵⁸ After comparing the three powers of the west and of the east, Dr. Sun believed that emperors in China were too powerful, and that autocratic power should be separated into executive, legislative and judicial powers. According to Sun, control & supervisory power is the power to impeach. It is a power that also exists in the west, but it is vested with the legislature and cannot be exercised independently. Its lack of independence allows abuse of power by a national assembly. Sun proposed establishing a five-power constitution, where control & supervisory power is separated from the national assembly, and examination power from executive power. To Sun, it is a model which suits China's national conditions and traditions, and which prevents the western malpractice of abuse of the national assembly from occurring.⁵⁹

Whether it is a three-power or five-power system, the earlier elaboration shows that separating control & supervisory power from the national assembly appears to be a global trend. And as mentioned earlier, according to the statistics from the International Ombudsman Institute, since 2010, more than 140 countries and regions have established independent ombudsman positions or an ombudsman system. Also the western ombudsman system is incomparable to the power and function of the Republic of China, and most countries are clearly looking towards developing an independent ombudsman system. In a certain way, when we compare the development of the system of governance, governments are moving towards establishing a fourth power (control & supervision); that is, the traditional three-power system seems to be evolving into a fourth power system.

In the scholarship of contemporary government systems, it is important that we devise a way to supervise or control the government, such that its powers are neither abused nor reduced to depravity. In western countries, the parliament is the key mechanism that oversees the government; however, for the parliament's supervision to work, power struggle between political parties cannot be too intense. Parliamentarians should have professional ethics and abilities, and their work supported by a comprehensive committee

58. Refer to *The Complete Works of Dr. SUN Yat-sen*, Vo1. 1. Commission for the Compilation of the History of the Kuomintang, June 1973, p.154.

59. Refer to CHOU Yang-Shan, *Min quan zhu yi yu wu quan xian fa* (The Principles of Democracy and Five-Power Constitution), in HU Fu, SHEN Ching-Sung, CHOU Yang-Shan, SHIH Chih-Yu, *Zhong hua min guo xian fa yu li guo jing shen* (The Constitution and the Founding Spirit of the Republic of China), Taipei: San Min Book Co., Ltd, 1993, pp.461-472.

system.⁶⁰ Regretfully, most parliaments have become the battleground for political parties; especially for the opposition parties, the parliament is the place where the most important battles against the ruling party are fought. Opposition parties win votes to form a government based on how they perform in parliament.⁶¹ In addition, as parliamentarians represent the interests of their constituencies and various groups, their actions are driven by interest and most parliamentarians are unprofessional, whether in attitude or ability. Therefore, western governments are compelled to establish a professional ombudsman system as an important means to improve oversight of the government.

The evolution of the western ombudsman system proves that Dr. Sun's model of establishing control & supervisory power as the fourth power to watch over the government's administration as a key system was a unique concept with great foresight. Compared to our ombudsman system, the western system exercises ombudsman power within too small a domain and ineffectively. Western ombudsmen watch over mainly the executive bodies, whereas our Control Yuan supervises the Executive Yuan, Legislative Yuan (excluding members of the Legislative Yuan), Judicial Yuan, Examination Yuan and the Control Yuan itself. The ombudsman of some western countries concentrates mainly on local governments; others have ombudsman for the federal or central government, but not for the local government. In certain countries, although the ombudsman watches over the central and local government administrations, the exercise of control & supervisory power is divided between either the central or federal and the local ombudsmen. In Taiwan, the member of the Control Yuan oversees both the central and local governments.

More importantly, western ombudsmen play a role similar to a mediator, which is the reason why France calls its ombudsman a "mediator." The ombudsman is the bridge between the government and the people. Petitions and complaints by the people are heard and dealt with by the ombudsman, and the ombudsman tries to reconcile the differences between the government and the people. In the west, the ombudsman has no sanction power. In most cases, sanction is imposed on the government via parliamentarians. In our

60. Rod Hague, GER Yeong-kuang (trans), *Comparative Government and Politics*, published by the National Assembly of the Republic of China, 1987, p.143.

61. GER Yeong-kuang, *zheng dang zheng zhi yu min zhu fa zhan* (Party Politics and Development of Democracy), National Open University Publication Center, 2000, p.266.

case, the Control Yuan does not only mediate, but has powers of investigation, impeachment and censure, through which it impeaches unlawful and derelict officials as a way of disciplining functionaries and improving governance. Also, by using its correction powers, the Control Yuan may require administrative departments to correct any ineffective measure or action to improve performance. Of course, by accepting petitions and complaints, the Control Yuan may right wrongs and improve justice, which serves to protect human rights. Hence, our Control Yuan is superior to the western ombudsman system in terms of power and effectiveness, and produces a greater impact in enabling "good governance."⁶²

Although the public often refers to Control Yuan as "a tiger without teeth", this is the result of lack of understanding of our ombudsman system and baseless hearsay. Clearly, when compared with the western ombudsman system, our Control Yuan is a tiger with teeth. Perhaps the tiger's teeth are not yet sharp enough. However, we do see that members of the Control Yuan's fourth membership term have adopted a "proactive ombudsman philosophy", and have been actively involved. After the Judicial Yuan amended the *Public Functionaries Discipline Act* to include the provision on "deprivation or reduction of retirement pension or imposition of fines" on political appointees, judges and persons who have retired, recalled, or have left the job for other reasons, and when officials impeached by the Control Yuan are subject to a greater variety of sanctions, the Control Yuan will be transformed into a tiger with very sharp teeth, indeed. Looking at how the "fourth power" develops on the international landscape, Dr. Sun's concept will surely be affirmed, and the five-power government system will be valued and perpetuated.

62. "Good governance" in a government consists of the following characteristics: participatory, consensus oriented, accountable, transparent, responsive, effective & efficient, equitable and inclusive, and follows the rule of law. Refer to Shalendra D. Sharma, "Democracy, Good Governance, and Economic Development," in the *Taiwan Journal of Democracy*, Vol. 3, No.1, pp.29-62.

GLOSSARY OF SELECTED NAMES AND TERMS

Selected Names

| | |
|---------------------|---------------------|
| BAO Qingtian 包青天 | CHEN Shui-bian 陳水扁 |
| CHEN Tsung-ming 陳聰明 | CHIOU I-jen 邱義仁 |
| Confucius 孔子 | DENG Xiao-ping 鄧小平 |
| GER Yeong-kuang 葛永光 | HUANG Chih-fang 黃志芳 |
| HU Chen-pu 胡鎮埔 | LIN Tien-lin 林天麟 |
| LIU Yi-liang 劉宜良 | SHENG Chih-jen 盛治仁 |
| SHIH Ming-the 施明德 | SUN Yat-sen 孫中山 |
| TAO Pai-chuan 陶百川 | WANG Hsi-ling 汪希苓 |
| WANG Show-lai 王壽來 | YANG Ping-chen 楊炳祺 |
| YUAN Shi-kai 袁世凱 | YU Wen-fu 游文富 |
| YU Ying-shih 余英時 | |

Selected Terms

| | |
|---|-------------|
| Act on Property-Declaration by Public Servants | 公職人員財產申報法 |
| Act on Recusal of Public Functionaries Due to Conflicts of Interest | 公職人員利益衝突迴避法 |
| admonition of government affairs by the nobility | 諫政 |
| Audit power | 審計權 |
| Audit Yuan | 審計院 |
| autocratic power | 君權 |
| brother-clans | 胞族 |
| CCP (Chinese Communist Party) | 共產黨 |
| Censorate | 御史府 (台) |
| censorate | 都察院 |
| censor-in-chief | 御史大夫 |
| chancellor | 國相 |
| clans | 氏族 |
| circuit inspectors | 部刺史 |
| colonel of prison laborers | 司隸校尉 |

- commission of tenancy under the town or township office
鄉鎮公所租佃委員會
- commission of tenancy under the county/municipality government's
office 縣市政府租佃委員會
- Commission on the Disciplinary Sanctions of Functionaries
公務人員懲戒委員會
- Control Yuan 監察院
- Control Yuan plenary meeting 監察院院會
- Control Yuan dialogue meeting 監察院談話會
- Control & Supervisory Power 監察權
- Correction power 糾正權
- county fief 郡國
- democratic oversight 民主式監督
- dismissal or written warning 申誡
- du-cha yuan 都察院
- division of imperial court 殿
- division of imperial secretariat 台
- division of supervision 察
- Examination invigilation power 監試權
- Examination power 考試權
- Executive power 行政權
- feudal lord 諸侯
- Five Power Government 五權政府
- good governance 善治
- governor 州牧
- grand administrator 郡守
- grand scribe 太史令
- Han dynasty 漢朝
- Impeachment power 彈劾權
- imperial censor 監察御史
- imperial chancellor 丞相司直
- inspection tour system 巡視
- inspection division 行部
- International Ombudsman Institute (I.O.I.) 國際監察組織

- Judicial Power 司法權
KMT (Chinese Nationalist Party) 國民黨
Lecture Six on Democracy 民權主義第六講
Left and Right Dajian officials 左右大監
Legislative power 立法權
Lobbying Act 遊說法
mediated judgments 調處
National Audit Office 審計部
National Assembly 國民大會
Ombudsman 監察使
open criticism of government affairs by the people 謗政
oral reporting system 復事制
Parliamentary Ombudsman 國會監察使制度
people's remonstrations 民諫
persuading and remonstrating the emperor 勸諫
powers of censure 糾舉權
Power to access documents and files 調閱權
Political Donations Act 政治獻金法
Power to inspect 巡察權
Power to investigate 調查權
provincial/department scribe 省史
Qin dynasty 秦朝
Qing emperor 滿清皇朝
quasi-judicial body 準司法機關
reform and opening-up policy 改革開放
remonstrative oversight 諫議式監督
royal fief 王國
written reporting system 上計制
scribe in royal attendance / imperial censor 御史
scribe of interior affairs 內史
Second Revolution 二次革命
Shang dynasty 商朝
Sino-Japanese War 中日戰爭
Six Queries 六條問事

Spring & Autumn and Warring States periods 春秋戰國時代

subordinate of the imperial chancellor 丞相司直

Sunshine Act 陽光法案

supervising officer 監察官

Supervisory power 糾舉權

supervisory oversight 糾舉式監督

system of inspection visits by the emperor 天子巡狩制

terrace of convict laborers 司隸台

Third Revolution 三次革命

thirteen circuits of imperial censors 十三道監察御史

Three Principles of the People 三民主義

town or township office 鄉鎮公所租佃委員會

watch over the numerous tribes 監于萬國

written reporting system 書面申報制度

Xia dynasty 夏朝

Xinhai Revolution 辛亥革命

xun-cha shi 巡察使

xun-an yu-shi 巡按御史

Yao, Shun, Yu, Tang, Wen, Wu, Zhou-gong

堯、舜、禹、湯、文、武、周公

Zhou dynasty 周朝

