

From five to three branches of government

Written by Hsu Ya-chi 許家齊

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Modern democracies are usually divided into a tripartite framework with an executive, a legislative and a judicial branch, dividing responsibilities between accountable government, legislative oversight and judicial authority, all in the hope of achieving good governance.

When US Federal Judge James Robart recently blocked US President Donald Trump's executive order banning citizens of seven Muslim countries from entering the US, it was an example of how the judicial branch supervises the government and stops it from abusing its powers.

The Republic of China (ROC) Constitution prescribes a five-branch framework, which perhaps could be called a “deformed” tripartite system with Chinese characteristics.

The five-branch system, which originated in China, is a continuation of the traditional Chinese system of government with two branches for assessing and supervising government personnel.

Nevertheless, the differences between the five-branch system and the three-branch system are relatively minor. There is nothing particularly clever about the five-branch system, as its main feature is merely that it separates the personnel issue and hands it over to the examination and supervisory powers.

The five-branch system is not an attempt to expand the Western triangular relationship into a pentagonal relationship; rather, it isolates the examination and supervisory functions in the triangular framework — executive, legislative and judiciary — and assigns them to personnel matters, thus creating another triangular framework consisting of the executive, the examination and supervisory branches.

It creates a main tripartite framework that divides responsibilities between the executive, legislative and judicial branches, and a minor tripartite framework for handling personnel assessment and supervision between the executive, examination and supervisory branches.

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In theory, there is nothing inherently wrong with separating the assessment and supervisory powers. However, in practice, the Examination Yuan and the Control Yuan are not operating effectively and they have long been used to reward people for political services or as a tool in political warfare.

In addition, they have come to be seen as symbols of reactionary forces, opposition to reform and confused conservatism. As an example, the Examination Yuan is perhaps the strongest opponent of pension system reform for military personnel, civil servants and public-school teachers.

It is clear that this five-branch system is inferior to the three-branch system and that it gives rise to many other flaws and irregularities. Furthermore, since there are no major differences between a five and a three-branch system, abolishing the Examination and Control branches to become a three-branch system — which is based on solid theoretical foundations and practical experience — would not have a big impact requiring a lot of systemic changes.

The five-branch system must be reformed and hopefully the Democratic Progressive Party administration will adhere to its pre-election views and abolish the Examination Yuan and the Control Yuan, and do so by allowing the general public to participate in writing a new constitution.

However, the Referendum Act (公投法) restricts the general public's rights with respect to creating a new constitution. The government should start by amending the act.

That is the way to follow up on the promise to amend the Constitution and abolish the examination and control branches.

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Translated by Perry Svensson

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