One Hundred Years after the Xinhai Revolution:
 A Critical Review of the Thoughts of Sun Yat-sen
 and the Global Development of the Ombudsman System (Draft)

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1. Foreword

 This year marks 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 Yat-sen 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 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 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 superiority of the *Three Principles of the People*. Deng Xiaoping has also adopted the reform and opening-up policy (*gaige kaifang* 改革開放) 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 Yat-sen 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 Yat-sen formed a new party to crush and usurp Yuan; hence, the “Third Revolution” [[1]](#footnote-1). After the success of the 1911 Xinhai Revolution, the provisional 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* 審計處) 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* 監察院, 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* 糾舉) and recommendation(*jian yi* 建(諫)議) 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]](#footnote-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, Dr. Sun Yat-sen’s ideals and ideas—one of which being the Five-Power Constitution—were progressively implemented. Henceforth, the author will study Sun’s thoughts and the development of powers 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.

1. China’s Political Tradition and Control System
2. 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)[[3]](#footnote-3). 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 society and thereafter, the Xia (夏), Shang (商) and Zhou (周) dynasties, followed by the Spring & Autumn and Warring States periods[[4]](#footnote-4).

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* 氏族) and brother-clans (*bao-zu* 胞族). 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* 糾察性監督) 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* 民主性監督) on 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*” 左右大監) whom Huang-Ti appointed to “watch over the numerous tribes” (*jian yu wan guo* 監于萬國) would be the earliest court officials that were 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 remonstration” (*min jian* 民諫) 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[[5]](#footnote-5).

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* 諫議式監督) 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* 糾察式監督) of the state bodies or of the nobility or functionaries by the ruler, specific state bodies, and their officials. The position of grand scribe (*tai-shi ling* 太史令), 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* 太史), under whom was the scribe of interior affairs (*nei-shi* 內史), the scribe in royal attendance or imperial censor (*yu-shi* 御史) and the provincial/department scribe (*sheng-shi* 省史). 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* 諫政) and open criticism of government affairs by the people (*bang-zheng* 謗政), the Zhou Dynasty also created an official position dedicated to persuading and remonstrating the emperor (*quan-jian* 勸諫)[[6]](#footnote-6).

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 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* 復事制) and the written reporting system (*shang-ji zhi* 上計制). 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 functionaries became increasing 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 remonstration officials, which was a step towards institutionalizing the remonstration 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 (秦) and Han dynasties[[7]](#footnote-7).

During the Qin (246~206 BC) and Han (206 BC~220 AD) dynasties, the censorate (*yu-shi fu (tai*) 御史府（台）) 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* 丞相司直) and colonel of prison laborers (*si-li xiao-wei* 司隸校尉) to assist supervision, and divided the nation into thirteen regions for local supervision. Additionally, 13 circuit inspectors (*bu ci-shi* 部刺史) 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* 台) and “remonstration office” (*jian* 諫). 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 (清) (1644~1911) dynasties, a censorate (*du-cha yuan* 都察院) was set up to supervise government ethics, thus, tightening supervision at the local level. The number of imperial censors (*jian-cha yu-shi*監察御史) was also increased from thirteen to fifteen. At the end of the Qing dynasty, the government reverted 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[[8]](#footnote-8).

As such, the system of control and supervision (*jian-cha* 監察) 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.

1. 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 his *Lecture Six on Democracy* (*min-quan zhu-yi* 民權主義), 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* 君權, *jian-cha* 監察, *kao-shi* 考試) powers, and had done so for thousands of years[[9]](#footnote-9). 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 which precludes occurrence of the western malpractice of abuse of the national assembly[[10]](#footnote-10).

During the earlier days, Sun referred to the power of control & supervision (*jian-cha quan*) as power of censure (*jiu-cha quan* 糾察權). He subsequently changed it to power of impeachment (*tan-he quan* 彈劾權), and then reverted to power of control & supervision[[11]](#footnote-11). As earlier 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.” [[12]](#footnote-12)

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.” [[13]](#footnote-13)

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 (堯), Shun (舜), Yu (禹), Tang (湯), Wen (文), Wu (武), Zhou-gong (周公), and Confucius (孔子) which continues one after another. The foundation of my ideals is based on this orthodoxy, and my revolution is built upon this orthodoxy.” [[14]](#footnote-14) 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 examination 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.”[[15]](#footnote-15)

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.”[[16]](#footnote-16) 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.”[[17]](#footnote-17) Sun also believed that when a national assembly has impeachment power, its 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* 御史大夫), i.e. an independent ombudsman.

1. 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, censor-in-chief (*yu-shi da-fu*) were installed as means of control, and the purpose of whom is to censure official transgression and to instill discipline and justice. The censure of the Ming and Qing dynasties must correct the behavior of officials, impeach evil officials, maintain law and discipline, redress miscarriages of justice, care for the common folks, regulate border administration and serve the people’s conveniences. The responsibilities of censure were expanding in scope[[18]](#footnote-18).

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* 司隸台), and the Six Queries were: “One, if graded officials or officials of higher levels were capable administrators; two, if the officialdom were 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[[19]](#footnote-19).”

The Tang administration created the three divisions or *yuan* (院): “terrace” or division of imperial secretariat (*tai*台), the division of imperial court (*dian*殿) and division of supervision (*cha*察). 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 person 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[[20]](#footnote-20). 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 has always been a very important component to local inspection system. 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 performing and their moral standings. This was the system of inspection visits by the emperor (*tian-zi xun-shou zhi* 天子巡狩制). The *xun-shou* system was the origin of the inspection tour system (*xun-shi* 巡視) 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* (都察院) of Ming Dynasty was derived from *yu-shi tai* (御史台), 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* 十三道監察御史). 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, or monitoring and impeaching officials and seeking justice for the people, or promoting clean and effective governance and protecting human rights, but also control and supervise 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: imperial censors checking on the conduct and performance of the officialdom and remonstration officials advising the emperor or reporting on central decision errors. The former relies on the emperor’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* 御史大夫) 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* (包青天, 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 checking things out. Bao would deal with corrupted 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, and 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[[21]](#footnote-21).

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 were then nominated by the president and consented by the National Assembly (*guo-min da-hui* 國民大會). Membership is now reduced to 29, with higher qualification requirements, and broader targets of impeachment. Members of the Control Yuan may accept written complaints, inspect the rural areas, and provide relief, all of which functions are similar to the control & supervision system of Nordic countries[[22]](#footnote-22). 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” [[23]](#footnote-23).

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* 鄉鎮公所租佃委員會) or commission of tenancy under the county/ municipality government’s office (*xian-shi zheng-fu zu-dian wei-yuan-hui*县市政府租佃委員會) are of similar nature. The *Farmland Rent Reduction Act 375* provides that all disputes relating to farmland leases shall be first mediated (*tiao-jie* 調解) 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* 調處). 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 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” [[24]](#footnote-24).

Finally, the Control Yuan is no longer a representative body. Before its reform, the Control Yuan was seen as similar toa 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[[25]](#footnote-25). 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.

1. Structure and Function of the Control Yuan
2. 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*監察官). Hence, supervising officers are similar to judges and administrative officers, who are professional civil servants[[26]](#footnote-26).

 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 would naturally oversees internal administrative matter to assist or support the members perform their constitutional duties, so that the Control Yuan would be fully leveraged to serve its intended purposes.

 Members of the Control Yuan meet once a month at the Control Yuan plenary meeting (*yuan hui* 院會). The plenary meeting is the highest decision-making authority. It deliberates on matters as: bills to be presented to the Legislative Yuan, constitution 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 in respect of audit reports of the Central or local government’s final accounts, matters proposed for corrective action, matters reported by the committee, matters that 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*.

 Article 97 of the *Constitution* provides that the Control Yuan may, based on the investigation and resolution of its committees, propose corrective measures and 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 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 committee: 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*談話會) 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.

 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[[27]](#footnote-27).

1. 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 a 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-chuan 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* 御史制度), 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 American congressional system. [[28]](#footnote-28)” 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. 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 electedrepresentatives at the local level, the Control Yuan has impeachment power over functionaries of the other five Yuans and local governments.

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[[29]](#footnote-29).

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 people’s 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’ right to proceed and to withdraw (including right to vote and right of recall).

Sanctions come in two forms: dismissal or written warning (*shenjie* 申誡). 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[[30]](#footnote-30). 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[[31]](#footnote-31).

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[[32]](#footnote-32), or that the Disciplinary Commission be move to the Control Yuan.

1. 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.
2. 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 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 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 that 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.

1. 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[[33]](#footnote-33).

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.

1. 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 for 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 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[[34]](#footnote-34). 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.

1. 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 request 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 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.

1. 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 shall inspect different regions by rotating their inspection tours. 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. 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 unnecessary[[35]](#footnote-35)—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 convenience, 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 inspect 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 and misunderstanding or grievance. As such, members of the Control Yuan are also important agents of political communication between the government and the people.

1. 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 cause 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.

 9. 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[[36]](#footnote-36). 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 two years and nine 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 73, 197 written public petitions, a figure that is far higher than any previous panel. The panel has passed 72 impeachment bills, a record number in the Control Yuan’s history; 4 correction bills, 2 fewer than the third term; and 528 correction cases passed, also the highest number in history. The Control Yuan has also demanded that various bodies impose sanctions on 2,596 people, also the highest number in history.

**Statistics on Exercise of Control & Supervisory Power**

**(Term of Office: 2 years 9 months)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Item | Unit | 4th Term(Aug 2008 to April 2011)  | 3rd Term(Feb 1999 to Oct 2001)  | 2nd Term(Feb 1993 to Oct 1995)  | 1st Term(Feb 1987 to Oct 1989)  | 2011 |
| January - April |
| People’s Petition Received  | nos. | 73,187 | 45,768 | 37,837 | 20,708 | 6,699 |
| People’s Petition Processed \*Note 1 | nos. | 73,609 | 45,675 | 37,232 | 20,707 | 6,579 |
| Verified & deployed investigation | cases | 1,619 \*Note 2 | 1,843 | 1,614 | 1,446 | 153 |
| Proposed investigation report | cases | 1,333 | 1,661 | 1,250 | … | 158 |
| No. of times of investigation by a member  | times | 2,778 | 3,235 | 1,830 | 1,681 | 280 |
| Established impeachment case | cases | 72 | 53 | 60 | 28 | 10 |
| No. of persons impeached | persons | 118 | 119 | 181 | 114 | 18 |
| Concluded impeachment case | cases | 77 \*Note 3 | 66 | … | … | 9 |
| No. of persons impeached | persons | 204 | 171 | … | … | 12 |
| Established censure case | cases | 4 | 6 | - | - | - |
| Concluded censure cases | cases | 4 | 6 | - | - | - |
| No. of people censured | persons | 6 | 8 | - | - | - |
| Established correction case | cases | 528 | 489 | 188 | 52 | 55 |
| Concluded correction case | cases | 485 \*Note 4 | … | … | … | 68 |
| Notified authorities in writing to make improvements | cases | 1,002 | 1,194 | … | … | 141 |
| Concluded cases where authorities notified in writing to improve | cases | 1,013 \*Note 5 | … | … | … | 113 |
| Correction and written notification of improvement case  |  |  |  |  |  |  |
| Outcome of action by the authorities  |  |  |  |  |  |  |
| Administrative authorities taking internal disciplinary action on their personnel | persons | 2,596 | 1,271 | … | … | 184 |
| Outcome of cases where authorities have transferred personnel to another sanction authority | persons | 10 | … | … | … | - |
| Exam invigilation Cases | cases | 67 | 75 | 69 | 60 | 7 |
| Exam invigilation frequency | times | 217 | 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.

1. Origin and Development of the Western Ombudsman System

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[[37]](#footnote-37). 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[[38]](#footnote-38). According to the statistics from the International Ombudsman Institute (I.O.I.), as at 2010, more than 140 countries and regions have established independent ombudsman positions or an ombudsman system.

There are many different types of ombudsman systems. 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[[39]](#footnote-39). 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[[40]](#footnote-40).

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 position of staff ombudsman in 1974, and the International Monetary Fund in 1979. As of 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.

 **Basic Types of Ombudsman Systems[[41]](#footnote-41)**

|  |  |  |
| --- | --- | --- |
| **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

1. 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* 民權主義), 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* 君權, *jian-cha* 監察, *kao-shi* 考試). Such separation of the three powers has been in place for several thousand years[[42]](#footnote-42). 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[[43]](#footnote-43).

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 I.O.I., as at 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 inclining 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 system[[44]](#footnote-44). 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[[45]](#footnote-45). In additional, 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 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” [[46]](#footnote-46).

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 administrators of political affairs, 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.

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3. Refer to PENG BO, JI Fei. *The History of the Ombudsman System in China* (*Zhong guo jian cha zhi du shi*), Beijing: China University of Political Science and Law Press, 1989, p12; QIU Yongming, *The History of the Ombudsman System in China* (*Zhong guo jian cha zhi du shi*), Shanghai: East China Normal University Press. 1992, p3; MA Kong-Ch’un. *Ombudsman System during the Qin and Han Dynasties* (*Qin han jian cha zhi du*). Taipei: Taiwan Commercial Press. 1976. [↑](#footnote-ref-3)
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7. Supra. p35-59. [↑](#footnote-ref-7)
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25. Refer to footnote 23; Refer to JHANG Rui-bin, A Study on the Control Yuan’s Investigation Power under the Five-Power Constitution (*Wu quan xian fa zhong jian cha yuan diao cha quan zhi yan jiu*), *Journal of the National Dr. Sun Yat-sen Memorial Hall*. Vol. 6, November 2000, p11-21. [↑](#footnote-ref-25)
26. Refer to Sun Yat-sen’s “Speech on Five-Power Constitution” in 1917; refer to CHEN Hsin-min. *An Interpretation of the Constitution of the Republic of China* (*Zhong hua min guo xian fa shi lun*),. September 1997, 2nd print, p690-691. [↑](#footnote-ref-26)
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28. TAO Bai-chuan. *New Developments in the Ombudsman System* (*Jian cha zhi du xin fa zhan*), Taipei: San Min Book Co., Ltd, October 1970, p8-9. [↑](#footnote-ref-28)
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30. CHEN Hsin-min, see book cited earlier, p714-715. [↑](#footnote-ref-30)
31. 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, and the matter was serious. Eventually, in a vote of 10 to 2, the impeachment bill was denied. [↑](#footnote-ref-31)
32. Hwang, Chin-Tang, see paper cited earlier. [↑](#footnote-ref-32)
33. *Government Annual Audit Report*, see paper cited earlier. p2. [↑](#footnote-ref-33)
34. *Reference Materials on the Opinions of Various Parties on the Ombudsman System* (*You guan ge jie dui jian cha zhi du suo ti yi jian zhi can kao zi liao*), as cited earlier. [↑](#footnote-ref-34)
35. *Refer to work cited above by Chen Xinmin, pp 723.* [↑](#footnote-ref-35)
36. Supra. P724. [↑](#footnote-ref-36)
37. CHANG Chien-han, (*Jian cha zhang zhi du zhi fa sheng yu fa zhan*), *Constitutional Ideology* *(Xian zheng si chao*), Vol. 12, November 1970. [↑](#footnote-ref-37)
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39. Refer to A Study of the Executive & Control System in Japan, Development, and Evaluation Commission, Executive Yuan, October 1998. [↑](#footnote-ref-39)
40. *Handbook* *on the Ombudsman Systems of the World* (*Shi jie jian cha zhi du shou ce*). International Affairs Committee, Control Yuan. 2010, p259-327. [↑](#footnote-ref-40)
41. Extracted from CHOU Yang-shan. *A Comparative Study of the Ombudsman System of Different Countries* (*Ge guo jian cha zhi du de bi jiao fen xi yu fa zhan qu shi*), *Handbook of Ombudsman Systems in the World*. p264. [↑](#footnote-ref-41)
42. Refer to *The Complete Works of Dr. Sun Yat-sen*, Vo1. 1. Commission for the Compilation of the History of the Kuomintang. June 1973, p154. [↑](#footnote-ref-42)
43. Refer to CHOU Yang-Shan. *The Principles of Democracy and Five-Power Constitution* (*Min quan zhu yi yu wu quan xian fa*), in HU Fu, SHEN Ching-Sung, CHOU Yang-Shan, SHIH Chih-Yu. *The Constitution and the Founding Spirit* *of the Republic of China* (*Zhong hua min guo xian fa yu li guo jing shen*). San Min Book Co., Ltd, 1993, p461-472. [↑](#footnote-ref-43)
44. HAGUE, Rod. Ko Yung-kuang (trans), *Comparative Government and Politics*, Conference on Constitutional Government, the National Assembly of the Republic of China. 1987, p143. [↑](#footnote-ref-44)
45. KO Yung-kuang. *Party Politics and Development of Democracy* (*zheng dang zheng zhi yu min zhu fa zhan*). National Open University Publication Center, 2000, p266. [↑](#footnote-ref-45)
46. “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: 29-62.* [↑](#footnote-ref-46)