

Legislature in dire need of reform

By Lin Terng-yaw 林騰鶴 /

Thu, Oct 14, 2010 - Page 8

In a recent demonstration calling for better protection of minors in Taipei, activists used the white rose as a symbol. The protest was aimed against judges, but one also hopes that President Ma Ying-jeou (馬英九) was listening. The people have spoken. We are hoping for the speedy completion of legislation for the draft judges' act. It's up to the legislature to make the next move.

The ball is in their court.

The problem is, we cannot count on them to know what to do with it. Given the preposterous legislative system we have in this country, can we really expect lawmakers to deliver the judicial reform that the public wants?

The current legislative session only started on Sept. 24. It is true that this was within the period stipulated in the Constitution. One does wonder, though, whether legislators from either party caucus, that of the Chinese Nationalist Party (KMT) or the Democratic Progressive Party, were taking advantage of the rules here, waiting until the month was almost up before they opened the latest session. The upshot is that legislators who reported for duty on Sept. 1, in line with the Act Governing the Legislature's Exercise of Power (立法院職權行使法), did not have to attend any meetings for a full three weeks.

Ordinary legislative sessions are only held for eight months of the year, as is written into the Constitution. One should bear in mind, however, that the Constitution hails back to 1947, written when the Republic of China (ROC) was still in China. Back then, legislators had to travel greater distances to attend the sessions, and this was exacerbated by the fact that transportation certainly wasn't as convenient as it is today, in modern Taiwan. Surely, these parts of the Constitution no longer apply to today's reality. Isn't it high time they were changed?

The act also states that a session can start when a third of the legislators are present. This stipulation conflicts with the idea of a majority democracy, which would require the presence of over half of the legislators.

More preposterous still is the fact that Clause 2 of Article 4 in the act says that the number of legislators from which this percentage is taken must be calculated according to the number of people who actually reported for each session, minus those individuals who had left mid-session because of resignation, dismissal or death.

It fails to take into account the number of legislators who cannot attend because of overseas travel, long-term illness or any other circumstances.

This means that it is still permissible to start the session with only one in four, or even one in seven, of legislators present. This is clearly undemocratic.

To ensure that each legislator has adequate support, the Organic Law of the Legislative Yuan (立院組織法) states that each one should be provided with sufficient funds to hire between eight and 14 staff members. The point behind this is to ensure that each legislator has the back-up and research team to support them in political debates.

The problem is, of course, that the legislation leaves the choice of staff up to the legislators themselves, an open invitation to nepotism: They are free to employ their own wives, children, relatives and friends.

The result of this is that the country is left to foot a hefty bill to pay salaries for a staff there is no guarantee will actually improve legislators' ability to do their jobs. Actually, there have been several cases of prosecutions and public outrage over legislators abusing this clause. The law should be revised immediately.

Another responsibility of the legislature is to keep a tight grip on the nation's purse strings and a close eye on central government expenditures, the budget and final accounts. This task, however, requires a certain amount of dedication and professionalism, qualities sometimes found wanting in legislators.

The annual legislative budget review is often a rushed affair, often continuing into the early hours of the morning and reminiscent of the typical orgy of bargaining at the local market. This is exacerbated by the fact that the legislators and their support staff are often insufficiently prepared for the job, so that when the annual budget review comes around, there is no substantive policy debate or budget implementation performance review.

What is more likely to happen is that legislators let their emotions get the better of them and things descend into rounds of boycotts and brawls on the legislature floor. This is how our resources are being spent.

According to Article 60 of the ROC Constitution, the Cabinet is expected to present final accounts of revenues and expenditures to the Control Yuan, and the audit department of the Control Yuan is then to submit a report. It is then up to the legislature to do the final accounts review.

There is no obligation for the Cabinet, which put together the final accounts and budget in the first place, to explain itself during the accounts review in the legislature. This duty falls to the chief auditor of the Control Yuan.

Are you following the logic?

The current system, then, makes it very difficult for legislators to monitor the -department actually responsible for coming up with the accounts and budget.

The idea that legislators can keep the Cabinet in check is yet another fallacy. Legislative sessions are short, attendance is deplorable.

The idea that legislators would commit themselves to supervising institutions in the executive branch requires a stretch of the imagination that would challenge Scheherazade. Legislators even request that the different ministries or their subordinate organizations or foundations allocate funds to consolidate grassroots support.

It is difficult to see how one could expect legislators to apply professional ethics to monitoring the executive branch, given the circumstances. Only recently, the Control Yuan has moved to rein in fat cats in the Cabinet, individuals who were actually earning more than the president himself.

It has also had to do something about teachers moving into the private sector and leaving teaching positions unfilled, harming young students' chances of getting the education they need. These are typical examples of how legislators have failed in their duty to supervise the government.

The different mechanisms within a constitutional government, in Taiwan meaning the legislature and the Cabinet together with the Judicial, Examination and Control yuans, are there to keep each other in check, but they are also supposed to be mutually supportive.

Compared with countries like Germany and Japan, where the system is sufficiently well-organized for a resolution on a piece of legislation to be passed every few days, our own legislature is a joke. Surely it's time for reform of the system.

Lin Terng-yaw is a law professor at Tunghai University.

Translated by Paul Cooper

Published on Taipei Times :

<http://www.taipeitimes.com/News/editorials/archives/2010/10/14/2003485308>

Copyright © 1999-2010 [The Taipei Times](#). All rights reserved.