



## **Constitutional Implication of the 2012 Elections in Taiwan<sup>+</sup>**

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### **Abstract**

The year 2012 was the first jointly-held presidential and legislative elections since the Republic of China began the direct presidential election in 1996. The election outcomes not only reflect the influences of the new legislative electoral system amended by the seventh constitutional revision, but also the political impacts of the concurrent presidential and legislative elections on the constitutional operation. This paper will first illustrate the impacts of the 2012 legislative elections, and further assess the constitutional implication of the jointly-held presidential and legislative elections.

**Keywords:** *2012 presidential election, 2012 legislative election, constitutionalism, majority government, presidentialized system, rule by majority*

**JEL classification:** *D72, D78, H11, Z18*

### **1. Introduction**

In the 2005 constitution amendment, seats of the Legislative Yuan (LY) were halved from 225 to 113, which stipulates a single-district-two-votes system for legislative election. Voters could cast two ballots, one for a





district candidate and the other for a political party. Only those parties that acquire more than 5 per cent of the party vote can fill the seats.

According to Duverger's Laws, a plurality electoral system leads to two-party system and a coherent parliament and government; a proportional representation (PR) system leads to multi-party system.<sup>1</sup> Anthony Downs also argues that a "winner-take-all" election in a plurality system leads to two-party system.<sup>2</sup> The single constituency system reduces the number of effective parties.<sup>3</sup> It not only favours large parties, party that wins the legislative elections is also more likely to win the following presidential election.<sup>4</sup> If the presidential election and legislative elections are jointly-held or the former only slightly later than the latter, the possibility is also higher that party whose presidential candidate wins will also control the legislature.<sup>5</sup>

Legislative elections based on the single constituency system in Japan and the United Kingdom proved that the largest party won more seats than the votes it won. In 1996, for instance, the Liberal Democratic Party (LDP) won 38.6 per cent of the votes but 56.3 per cent of the seats in the Diet. The Labour Party won 43.2 per cent of the votes but 63 per cent of seats in the Lower House of the United Kingdom in 1997. Small parties had little chance to win under the single constituency system.

After the 2005 constitutional amendment in Taiwan, both the president and the legislator have four-year term. Legislative elections will precede the presidential election by only two to three months, unless the LY is dissolved in advance. In theory, a three-month time lag may produce a coattail effect or result in a "honeymoon election"<sup>6</sup>. This constitutional design therefore provides opportunity for the presidential election to influence the legislative election.

On January 2008, the KMT won 53.48 per cent of the votes for 78.08 per cent of the seats for single constituency legislators. The DPP won 38.65 per cent of the votes and won only 16.44 per cent of the seats. The PR system also did not favour small parties. Small parties can hardly cross the 5 per cent threshold.

On March 2008, voters chose Ma Ying-jeou of the KMT for a majority government which showed that the party that wins the legislative elections is more likely to win the following presidential



election. The coattail effect triumphs over the pendulum effect in the presidential election. The 2008 elections show that timing of the legislative and presidential elections may contribute to a majority government.<sup>7</sup> The likelihood of majority government will be higher than a minority one under the new constitutional design.

## **2. The 2012 Legislative Elections**

In 2012, Taiwan's presidential and legislature elections were held jointly. Although the voting rate for president declined from 76.33 per cent in 2008 to 74.38 per cent, the voting rate of legislature jumped up from 58.72 per cent in 2008 to 74.72 per cent. The KMT won the presidential election with 51.6 per cent of the vote; the DPP garnered 45.6 per cent. In the legislature, the KMT won 48 district seats (includes aboriginal legislators) with 48.18 per cent of the vote, the DPP 27 seats with 43.80 per cent, the People First Party (PFP) one seat, the Non-Party Alliance 2 seats, and one seat went to the independent. In the part of PR system, the KMT garnered 47.59 per cent of the party votes, and was allocated 16 seats; the DPP 36.98 per cent with 13 seats, the Taiwan Solidarity Union (TSU) 8.82 per cent and 3 seats, and the PFP won 2 seats with 5.88 per cent. Among the 113 seats, the KMT maintained its majority with 64 seats.

The purpose of the 2005 constitutional revision that amended the legislative electoral system was as the following: moving towards the two-party political system, avoiding candidates from the same party to compete each other at one constituency, guiding winners to conduct moderate and mild manner, benefiting to an establishment of seniority in the legislature, and promoting qualifications of legislators so that the legislature's quality and legislative efficiency could be improved.<sup>8</sup> However, the new electoral system appeared some problems, including unequal values of votes in certain constituencies with wide population disparity, gap between percentage of votes and percentage of legislative seats too large to fully reflect the political reality, threshold of the PR legislator electoral system so high that small parties be suppressed, and smaller constituency narrowing legislators tantamount to the role of



local council members.<sup>9</sup> This paper will first illustrate the impacts of the 2012 legislature election, and then assess the constitutional implication of the jointly-held presidential and legislative elections.

### 3. Impacts of the New Legislative Electoral System

After the single constituency was adopted, although candidates from the same party compete at the primary, it becomes rare for a politician to break away from his/her party to compete in the formal election. Take the Eighth Legislature in 2012 as an example, candidates of the Pan-blue camp (including the KMT, the PFP, and the New Party) splitting from the KMT and attending the legislative election were few. The Pan-green camp appeared to be more united. Moreover, none of these candidates won.

In addition, small parties were almost wiped out from the Seventh legislative election in 2008. Among 113 seats, the PFP garnered only 1 seat, the Non-Party Alliance 3, and one for independent. In the 2012 election, the TSU and the PFP won only 3 seats, respectively, the Non-Party Alliance 2, and one for independent.

Take the formula of Markku and Taagepera for calculation.<sup>10</sup> The two party-plus systems existed from the Second to the Fourth Legislature, with two large political parties and one small. Since the legislature adopted the SNTV from 1992, small party and independent candidates had larger political space. Various political parties competed in the Fifth and Sixth Legislature. However, after the electoral system was amended in 2005, the space for small parties obviously shrunk, and it became difficult to form the third force<sup>11</sup>. This result is conformed to Shugart and Carey's arguments that single constituency system will reduce the number of effective political parties.

If the influences of former President Lee Teng-hui and former Governor James Soong failed to be remained in the coming legislature election, it will be more difficult for the TSU or the PFP to win the PR seats in the future legislature elections. Thereafter, Taiwan's political party system is quite possible to remain a two-party system under this new electoral system.



Finally, comparing the proportion of re-elected legislators from the Fourth to the Eighth Legislature, the percentage in the Seventh Legislature sharply increased because the legislature's total seats were halved. In terms of district legislators, the percentage of re-elected in the Eighth Legislature obviously went up to 65.75 per cent. Overall, the new electoral system gives an edge to incumbent district legislators in seeking re-election; and this should be helpful in establishing seniority in the legislature.

Generally speaking, the new legislative electoral system, to some extent, has moved Taiwan towards a two-party system. Taiwan's experiences prove Duverger's Laws and Anthony Downs' arguments that a plurality system leads to two-party system. However, what we are more concerned is the constitutional implication of the concurrent presidential election and legislature election under the new legislative electoral system.

#### **4. Constitutional Implication of the 2012 Concurrent Elections**

In the 2005 constitutional revisions, the tenure of a legislature was extended from three to four years. In the past, the difference between the presidential tenure (4 years) and the legislature's tenure (3 years) resulted in the gap between both elections. From the first direct Presidential election in 1996 to the one in 2008, the biggest gap between both elections was 2 years and 8 months, and the least one was 2 months and 10 days. (See Table 1)

With a higher importance, the presidential election becomes a battlefield for political parties to mobilize all resources and manpower. Between 2000 and 2008, the turnout for the presidential election is about 16 per cent to 21 per cent higher than that of the legislative elections. However, the turnout of 2012 district legislative elections rise about 16 per cent.

In addition, in a view of split voting, the jointly-held elections may undermine the inclination of split voting, and make the results of presidential election and legislative elections more convergent. The turnout of the legislative elections was raised to 74.72 per cent in 2012

**Table 1** Schedules and Turnouts for Presidential and Legislative Elections

Time for presidential elections	Ninth 1996.03.23	Tenth 2000.03.18	Eleventh 2004.03.20	Twelfth 2008.03.22	Thirteenth 2012.01.14
Turnout for presidential elections (1)	76.04%	82.69%	80.28%	76.33%	74.38%
Time for legislative elections	Fourth 1998.12.05	Fifth 2001.12.01	Sixth 2004.12.11	Seventh 2008.01.12	Eighth 2012.01.14
Turnout for legislative elections (2)	68.31%	66.31%	59.35%	58.72%	74.72%
Gap of voting days	2 years, 8 months, and 13 days	1 year, 8 months, and 13 days	8 months and 21 days	2 months and 10 days	None
(1) – (2)	7.73%	16.38%	20.93%	17.61%	-0.34%

Note: The turnouts for the legislative elections consist of district legislators only.

Source: Chou Yujen, Liu Jia-wei and Li Chia-wei (2012: 23).

from 58.72 per cent in 2008, approximately 16 per cent in a rise. Overall, the vote for KMT district legislators was 5.3 per cent lesser than that of the previous election, and 5.15 per cent in increase for the DPP.

Compare the turnouts of the 2008 and 2012 presidential elections, the KMT experienced a setback in 6.85 per cent, and the DPP increased by 4.08 per cent. Without the interference of Chen Shui-bian's scandals, the results in the district election between the pan-blue and pan-green camps moved closer (49.62% : 43.8%).

A comparison of four presidential elections and four legislative elections between 2000 and 2012 discovers that the closer these two elections were held, the lesser of split voting became. In 2008, these two elections were held in an interval of two months and its coattail effect was quite obvious.<sup>12</sup> In 2012, the differences in the votes for these two elections for both the KMT and the DPP were reduced to a record low (see Table 2), with 3.42 per cent for the KMT and even as low as 1.8 per cent for the DPP. The Pan-blue camp might appear in split during the presidential election in 2012, but James Soong of the PFP garnered merely 2.77 per cent of the vote. The PFP received only 1.33 per cent votes in the district legislative elections, proving that the Pan-blue camp supporters did not split their votes in the presidential election or the legislature district election. However, in the PR legislators, thanks to the charismas of former president Lee Teng-hui and former governor James Soong, both camps obviously split their votes with the PFP gaining 5.49 per cent vote and two seats, while 9.57 per cent for the TSU to grasp three seats.

The PFP and the TSU had once been quite active between 2000 and 2004, so voters had more options in voting. After the new electoral system was introduced in 2008, small political parties were almost wiped out from the political arena, limiting choices of voters in split voting. With regard to the presidential elections, if excluding the 2004 presidential election which was probably affected by the March 19 Shooting Incident, the vote for the Pan-blue camp after 2000 was between 51.6 per cent and 59.94 per cent, and figures for the Pan-green camp were between 39.3 per cent and 45.6 per cent at the same period of time. In 2008 when the DPP was in deep trouble because of the Chen Shui-bian scandal, its seats in the legislature significantly dropped to 27, less than a quarter of 113. Nonetheless, its presidential candidate still enjoyed 41.55 per cent vote. By excluding the Chen Shui-bian cause, the

**Table 2** Percentages of Votes for Political Parties between 2000 and 2012

		Presidential Election in 2000; Legislative Elections in 2001	2004	2008	2012
Gap between two elections		1 year, 8 months, and 13 days	8 months and 21 days	2 months and 10 days	None
KMT	Percentage of vote for Presidential Elections (1)	23.1	49.89	58.45	51.6
	Percentage of vote for district Legislative Elections (2)	28.6	32.83	53.48	48.18
	(1) – (2)	-5.5	17.06	4.97	3.42
DPP	Percentage of vote for Presidential Elections (1)	39.3	50.11	41.55	45.6
	Percentage of vote for district Legislative Elections (2)	33.4	35.72	38.65	43.8
	(1) – (2)	5.9	14.39	2.9	1.8
FPF	Percentage of vote for Presidential Elections (1)	36.84	0	0	2.77
	Percentage of vote for district Legislative Elections (2)	18.6	13.9	0.02	1.33
	(1) – (2)	18.24	-13.9	-0.02	1.44
TSU	Percentage of vote for Presidential Elections (1)	0	0	0	0
	Percentage of vote for district Legislative Elections (2)	7.8	7.79	0.96	0
	(1) – (2)	-7.8	-7.79	-0.96	0

Source: Chou Yujen, Liu Jia-wei and Li Chia-wei (2012: 28).





vote basis for the Pan-blue and Pan-green camps in both elections was roughly maintained at 55:45.

The ruling party KMT won in both the 2012 presidential election and legislature election, which allows President Ma to organize a majority government again and which seems should strengthens his power over the government through participation in government's political procedure.

Ginsburg argued that the constitutional design matters in determining the locus of political power.<sup>13</sup> According to the Republic of China (ROC) Constitution, "the Executive Yuan (EY, cabinet) shall be the highest administrative organ of the State" (Article 53) and therefore, the premier shall be the head of the government. Like the design in parliamentary system, the cabinet "shall be responsible to the Legislative Yuan (LY)" (Article 57) and the President shall, in accordance with law, promulgate laws and issue mandates with the counter-signature of the premier (Article 37). These Articles rules that the ROC Constitution does not authorize real or independent power to the President. However, since the Constitution was put into effect in 1947, the leaders of the majority party in the LY chose to serve as President rather than premier, and therefore, shifted the political power from premier to the President. In other words, constitutionalism seems not realized in Taiwan since 1947.

"Constitutionalism means that the power of government is limited ... A constitution is also a blueprint, a written description of who does what in government, defining the authority and limiting the powers of each branch.<sup>14</sup> However, Duverger argues that there was a disjunct between formal power and informal power in the assignment of presidential powers in Europe. He argued that informal powers were more important than formal powers.<sup>15</sup> Before 1990 in Taiwan, the President's informal political power was promoted through controlling the ruling party and its members in the EY and LY.

Since 1991, the ROC's Constitution has undergone amendments for seven times. The 1992 revision ruled that the President shall be elected by the people. The 1997 amendment adopted a revised dual-executive system and the President is authorized the power to appoint the premier





without the confirmation by the LY. However, according to the Additional Articles, the premier remains the head of government and still should be responsible to the LY rather than to the president.

Although the 1997 amendment designs a so-called “dual-executive” system of government, the President only has the appointment power of the premier and has no power to participate in government’s normal political procedure.<sup>16</sup> The President can only indirectly influence the operation of the cabinet through the premier. Most people take it for granted that the popularly elected President should be authorized real power to implement his political views and the premier he appointed should be the administrative CEO of the President.<sup>17</sup> Robert Elgie mentioned that one of the disadvantages of semi-presidentialism is that the directly elected president could encourage the rise of populist and autocratic leaders who felt that they had the legitimacy to act above the rule of law.<sup>18</sup> However, French experience shows that if a popularly elected President does not control the parliament majority, to assure that the cabinet is responsible to the legislature, he will ask the majority party in the National Assembly to form a cabinet. In other words, even the President enjoys constitutional power to appoint a premier, he also needs to consider his constitutional obligations that whether the premier he appointed could fulfil his constitutional role, that is, to be responsible to the legislature and play the role of the head of the government.

The constitutional practice after 1997 in Taiwan seems not follow the rule of constitution. Taiwan’s Constitution made it possible for the president to control government behind the scenes through appointment of the premier and his role as the leader of the ruling party.<sup>19</sup> In both majority and minority government periods, the President tried to control the government which made Taiwan’s political system more presidentialized. The 2000-2008 minority governments in Taiwan witnessed a period of policy paralysis and confusion<sup>20</sup>. Although President Chen tried to control the government through appointing premier, the division of executive and legislative powers between the ruling DPP and the opposition KMT “engendered political gridlock”.<sup>21</sup>

At the beginning of his term, President Ma faithfully obeyed the Constitution by letting his premier take charge of administration. Before



assuming office, Ma once said, “Since there is the “dual-executive” system stipulated in the constitution of the ROC, I will retreat to the second line.”<sup>22</sup> Moreover, he preferred to be the president of all the people rather than of his party alone. He therefore refused to be the chairman of the ruling Kuomintang at the beginning. One result is conflict between the legislature and the administration. For example, the Kuomintang lawmakers vetoed the vice-president and three members of the Control Yuan nominated by President Ma. Relations between President Ma and the Kuomintang legislative caucus have improved later, however. A series of serious problems arising from the worldwide financial crisis forced Ma to face the challenges as the chief executive rather than to remain a constitutionally figurehead president. President Ma becomes more powerful since he won the re-election in 2012. He not only exercise his power on defence, foreign affairs and mainland China affairs that constitutionally authorizes to the President, but also extended his power into economic affairs and other domestic affairs which constitutionally should be commanded by the premier.<sup>23</sup>

Taiwan’s experiences showed that a popularly elected President with limited constitutional power become a powerful president through appointment of the premier. The President therefore replaced the premier as the head of government and the President’s political power is no longer constrained by the constitution.

According to the analysis above, the jointly-held elections raised the turnout for the legislative elections, and the victory of the KMT presidential candidate also helped the victory of KMT legislative candidates, leading to the KMT majority in the legislature. The reduction of split-voting also facilitated the convergence of the votes in the presidential and legislative elections, which in turn helped in creating a majority government. Therefore, under the new legislative electoral system and the jointly-held elections, chance for minority government will be reduced. Furthermore, under the rule of majority government, the President with limited constitutional power would become powerful which goes beyond the rule of the constitution and the spirits of constitutionalism.

Finally, when a political party simultaneously holds executive and legislative powers, theoretically, it is helpful in promoting legislative efficiency. Most people think that decisions in the Legislature are dominated by majority; however, that is not the case under the inter-party negotiating system in Taiwan. Whenever there is controversy, any caucus could prevent a vote even after a month of negotiations. The negotiating system was established in 1999 which was designed to fasten the passage of legislation. The caucus members have the power to set the agenda for bills review. Under this system, all bills should be signed by all caucus members before reviewing and voting. As a result, even though the ruling party enjoys majority in the legislature, it still could not dominate the agenda or realize its majority vantage by voting. For example, before the Eighth Legislature 3rd regular session in 2013 ended at the end of May, no any major bills were passed. In addition, though “the Executive Yuan has the duty to present to the Legislative Yuan a statement of its administrative policies and a report on its administration.” (Article 57), Premier Jiang Yi-huah’s statement to the LY in the 4th session of 2013 was boycotted again and again by the opposition party for six times in one month.

For the Economic Cooperation Framework Agreement (ECFA), the KMT government claimed that scope of the review of the ECFA by the LY should be limited to prevent modification of the agreement. For the executive branch, the LY should only engage in “wholesale review” and accept or reject the ECFA in its entirety rather than modify individual clauses. The opposition DPP argued for clause by clause review which allows possible amendment of each clause. In inter-party negotiation, Speaker Wang Jin-pyng suggested to allow ECFA to be reviewed clause by clause, but be voted on as a whole.<sup>24</sup> Although the ECFA was passed finally, the cross-strait service trade agreement faced the same challenge in the LY. The DPP insisted clause by clause review and vote by clause, but the ruling party accepted “wholesale review” and “wholesale vote” only. Under the opposition’s continuous boycotts, it’s hard to tell when this agreement will be passed.

As a whole, even the ruling party controlled more than half seats in the LY, under the boycotts of the oppositional caucus by inter-party



negotiations; the majority government could not assure the efficiency in the LY and fulfilled its will. The basic principle of “rule by majority” in representative democracy failed to be realized in Taiwan’s LY.

## **5. Conclusion**

There are three findings in this article. First, jointly-held presidential and legislative elections helped elevate the turnout for the legislative elections. As long as wins the Presidency, the chance for a majority government will be increased. Second, the chance that a minority government will become lower means that Taiwan’s constitutional system will be presidentialized even though the Constitution did not authorized the president real power to involve in government’s normal political procedure. Third, constrained by party negotiation mechanism in the LY, ability for the majority government to control legislative agenda is still limited.

The jointly-held presidential and legislative elections showed that concurrent election will make majority government more possible and the President will become more powerful in the operation of government, which challenges the constitutional role of the premier. The role of premier to be the head of the government was weakened and his responsibility to the LY was also deteriorated. Nevertheless, a powerful president still could not realize his will through his control over the LY owing to the boycotts of party negotiating mechanism in the LY.

Taiwan’s experience highlights the fact that concurrent presidential and legislative elections may contributed to the presidentialization of the dual-executive system, which will challenge the spirits of constitutionalism. Nevertheless, the majority government will be unable to dominate the policy-making process if the legislature failed to follow the basic principle of representative democracy, that is, rule by majority. It is obvious that concurrent presidential and legislature elections could not guarantee an efficient and workable majority government.





## Notes

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