The Federalist Papers No. 10, 51: Their Implications for Contemporary Constitutional Development in Taiwan

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Abstract

Taiwan in 2000 for the first time ended ex-incumbent party [KMT] long-term rule, which was viewed as an important symbol of its democratic development. Although this improved Taiwan’s reputation among the nations of the world, its political situation did not become more stable. To the contrary, it became steadily worse under the struggle between the so-called Pan-green and Pan-blue Camps. How Taiwan can bring this political chaos to a close has become the main matter for constitutional scholars in the upcoming constitutional government reform.

The Federalist Papers, a series of famous historic American documents from the 18th century, in particular some ideas such as factions, checks and balances, majority rule and the role of the mass media in No. 10 and No. 51 could inspire us to find resolutions to political chaos in Taiwan. Under this circumstance Taiwan has to build a new constitutional frame based on the principles of majority government, power exercised with responsibility, the highlighting of the function of the Council of Grand Justices, and the expectation that the mass media will help us build a mature political culture.

Key words: factions; majority rule; checks and balances; mass media
1. Introduction

Taiwan in 2000 for the first time ended ex-incumbent party [KMT] long-term rule, which was viewed as an important symbol of its democratic development. Although this improved Taiwan reputation among the nations of the world, its political situation did not become more stable, to the contrary, it become worse steadily under the struggle between the so-called Pan-green and Pan-blue Camps. Even in 2004, political chaos would not be recede along with the incumbent party’s [DPP] victory in the presidential election. How Taiwan can bring this political chaos to a close has become the main matter in the upcoming constitutional government reform.

As we seek a way to solve this political chaos in Taiwan, we may find some inspiration in a historic American document from 18th century, *The Federalist Papers*. What were *The Federalist Papers*? They were a commentary on the U.S. Constitution and the theories behind it, published in New York newspapers in 1787-1788, and were considered by many political scientists to be the most important work of political theory written in the United States. The papers were a series of articles written under the name of Publius by Alexander Hamilton, James Madson, and John Jay. The entire purpose of *The Federalist Papers* was to gain popular support for the then-proposed constitution. Some would call it the most significant public-relations campaign in history, which urged New York to ratify the new Constitution. The “Federalists” were those who supported the U.S. Constitution before its ratification. Two hundred old articles published in newspapers, which helped frame the debate on what would “constitute” the new identity and which had such as influence on American constitutional ratification, could become precious historical documents will be inspire to Taiwanese in our own Constitutional debate. Of the 85 essays, the *Federalist Papers No.10, 51* were regarded as the two most important. In this paper, the author will try to introduce these two Papers and highlight their significance for upcoming constitutional reforms in Taiwan.

2. The Main Ideas in *The Federalist Papers No. 10, 51*

2-1 Factions

James Madison, author of *Federalist Papers No. 10*, stated precisely the meaning of “factions” as a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community. Madison addressed the problem of factions, namely, when groups of people pursue benefits for themselves at the expense of others. Madison offered two methods of curing the mischief of

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factions: first, by removing its causes; second, by controlling its effects. He defined two methods of eliminating the causes of factions; first, by destroying the liberty essential to a faction’s existence; second, by giving to all citizens the same opinions, the same passions, and the same interests. As to first method, government should not forbid its citizens to form factions, or join them. because citizens should enjoy the liberty of sharing their valuation with others, even united together in the for struggle for their common good. The second expedient was as impracticable as the first would be unwise. Madison stated factions are “sown in the nature of man.” Humans have a natural lust for domination, an urge to “vex and oppress” each other than to co-operate for their common good.

Madison also stated that we could not eliminate the causes of factions (at least not without destroying liberty), but we can control their effects. Here the way to control a faction’s effects is to have a republic large enough to contain a variety of factions; so that competition among factions will prevent any single one from taking control. That, concluded Madison, is why a federation is better than a single state. A faction might take over one state, but it could never hope to dominate an entire federation. In short, Madison points out the dark side of human nature and the advantage of a large republic. In this Federalist Papers’ view, factions may seek their own interests, and in doing so, sacrifice national interests. A useful method for us to prevent this, is by constituting a “Large Republic” in which factions could not easily maintain then majority within entire country. That was why federalists urged New York to ratify the new constitution and build a large country.

2-2 Checks and Balances

Madison discusses another means of controlling factions, checks and balances. Derived from the writings of the French philosopher Baron de Montesquieu (1689-1755), checks and balances were designed to protect liberty by keeping the branches of government in competition with one another. Madison stated that they must be divided into three separate branches: an executive, a legislature, and a judiciary. Each branch should be given partial control over the others. For example, the executive should have a qualified veto over legislation, and the legislature should have the power to turn down executive appointments. By giving these powers to each branch, we also give each the means of warding off a takeover by one of the others. “Ambition must be made to counteract ambition.” No single power can take over the entire government and threaten civil liberties.

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3 Ibid.
4 Ibid., p. 79.
5 Ibid., pp. 80-83.
Madsion also stated in *The Federalist Papers No. 51* that to what expedient, the partition of power among the several departments was necessary. Nowadays, checks and balance have become a major principle in democratic society.

**2-3 Majority Rule**

One of the most important principles of democracy is majority rule. It can be a useful tool to solve disputes peacefully. However, majority rule may become a tool for the majority to oppress the minority. Madison stated that if a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. When a majority is included in a faction, the form of popular government, on the other hand, enable it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. Majority rule is the most controversial of all principles of democracy. A true democracy certain kinds of action must not be taken by popular majorities. Such majorities, for example, must not destroy any principles of democracy by such actions as transferring sovereignty from the people to a dictator, giving certain people multiple voting power, prohibiting certain people from expressing their political views, or abolishing elections. Bare popular majorities must not destroy any of the specific kind of liberties and guarantees of due process of law. Unlimited majority rule cannot be considered a principle of true democracy. In addition to unlimited majority rule, in a true democracy bare popular majorities must be limited by some agency independent of control by such majorities, like judicial review or a requirement of “extraordinary” majorities (two-thirds or three-quarters, rather than 50 percent plus one) for certain kinds of action. Of course, majority rule is not an excuse for politicians to betray their voters for the sake of their own interest. As Madison stated in *Federalist Papers No.10*, men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people.

Another principle of majority rule is, “it is workable only on condition that majorities and minority are variable, not permanent”. If majority and minority are perpetual, then government ceases to have a remedial function, and becomes an instrument of perpetual oppression of the minority by the majority. Most people couldn’t get insight what real majority rule is? It is equal to minority shall follow what majority have decided. Majority rule can only be used under certain conditions mentioned above. Each group or association should be careful when they make a final decision by the principle of majority rule.

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8 Ibid., p. 80.
2-4 Mass Media

No political scientist or politician dares deny the influence of the mass media on political issues, even in the shaping of candidates’ image. The most famous case happened in the 1960 presidential campaign when the two candidates, John F. Kennedy and Richard Nixon went on the first televised political debate. Kennedy’s superior use of the still-new medium was a key factor leading to his victory six weeks later. Of course, there was no TV in Madison’s day, however newspapers had been published since 1690 in America. 11 The authors of The Federalist Papers wrote 85 essays that appeared in New York newspapers during the ratification debates there. The authors tried to convince delegates to the convention to vote for ratification, although there was little evidence the essays swayed any of the delegates. Yet they have endured because readers have seen them as an original source of political thinking and as one of the best guides to the intentions of the Framers (who read the essays). 12 New York State ratified the Constitution with the final vote 30 to 27 on July 26, 1788.

In this day, mass media include not only newspaper, TV but internet. These medium has been playing main roles in the process of political socialization. They also can be best guides to the public.

3. The Roots of Current Political Chaos in Taiwan

The ultimate source of Taiwan’s constitutional chaos stemmed from its history background and 6 constitutional amendments in the 1990s. On December 25, 1947, the government of the ROC proclaimed the establishment of Constitutional Government. However the Period of Mobilization for the Suppression of Communist Rebellion, was declared the following May. At the same time, the First Session of the National Assembly enacted the “Mobilization for the Suppression of Communist Rebellion Temporary Provisions.” [hereafter referred to as Temporary Provisions]. The so-called “Temporary Provisions” actually violated the operational process of a normal constitutional government. In the wake of several Temporary Provisions amendments, enabled the ROC government to make a transition to dictatorship. The characteristics of dictatorship in Taiwan including expanded powers of government leaders, no party politics, and no checks and balances, etc.

There has been sustained economic growth and the spread of universal education over the
past several decades. Under the circumstances, the aspiration for political participation by indigenous Taiwanese has grown in strength and gradually came to challenge the regime [KMT, ruling party]. Despite thousands of people being imprisoned or even sentenced to death, the trend of democracy did not diminish or weaken island-wide.

Since the lifting of Martial Law in July 1987, Taiwan’s political system has undergone a remarkable change. In January 1988, Chiang Ching-huo passed away, and Lee Teng-hui, his successor, managed to minimize disruption within the island. He carried on a series of political reforms under termination of the Period of Mobilization for the Suppression of Communist Rebellion and started constitutional revisions. In the 1990s Taiwan transferred to democracy from Authoritarian rule then and won an improved reputation among nations, called the “silent revolution.” After more than 50 years of ruling by the ruling party, the KMT stepped down and an opposition party took over. However, Taiwan’s democratic system did not ensure a stable political process because constitutional revision in 1990s only responded to temporary political demands, and failed to solve controversy over election method for legislators.

The current election method for parliamentary members was regarded as the source of political chaos by several scholars such as Hawang Shiow-duan, Wang Yeh-lih etc. Since the 1992 elections for the second Legislative Yuan, the elections have been held by the method of “single non-transferable vote” [only used in Taiwan] and “proportional representation” for political parties. The total number of members in the Legislative Yuan is high with 225 since the fourth in 1998. The major disadvantage of the current electoral system is the winner can be decided by only a very small percentage of the overall vote. The problem is candidates can win seats by leaning towards extremist stances, catering to certain ethnic groups, or serving the constituents of certain geographic districts or interests.

In addition, the fourth constitutional revision, 1997, stated that the president can appoint the Prime Minister directly without getting the agreement of the Legislative Yuan. That would not be a problem under a cabinet system. However Taiwan’s Constitution is closer to a presidential system than cabinet system in accordance with constitution amendment. If the ruling party is not a majority in the Legislative Yuan, legislative proceedings may be boycotted by opposition parties.

4. What Constitution Principles does Taiwan Need for Constitutional Development?

In order to establish a stable political situation, the constitution reform should at least consist of 3 principles, namely reform of electoral system, Majority government, power correspond with responsibility and highlighting the function of the Council of Grand Justices.

13 “Let’s Quickly Amend the Constitution to Halve the Number of Legislators!” Taiwan News, March 9, 2004.
14 Ibid.
15 Maurice Duverger called it “semi-presidential system.”
In the light of the disadvantage of the current electoral system mentioned above, what new system does Taiwan need? Some social science scholars prefers to promote “single-seat districts in a two–vote system. Under the other pressure of public opinion, the constitutional amendment bill on legislative reform and downsizing passed on 23 August 2004. That is, the nation will adopt the “single-seat district, two–vote system,” for legislation, and there will be only 113 lawmakers since 2008. The 113 seats, consisting of 73 regional lawmakers, will be elected by constituents of 73 districts, with each city and county electing at least one. The tenure of the new Legislative Yuan will be increased to four years. On the surface of this passage, all parties’ caucus announced at the same time that the passage of amendment is the triumph of their parties and Taiwan. However many regulations and law amendments are requested to facilitate new constitutional amendments. Current lawmakers should take full responsibility for dressing these matters. Otherwise political chaos will accompany the adoption of new constitutional amendments.

The other cause of political chaos in the past 5 years is the number seats of the ruling party in legislature is less than the opposition parties have. The opposition parties, in particular, boycott legislative processing irrationally since they lost the presidential election in 2000. For example, the opposition parties forbid their parliamentary members from approving candidates for Grand Justices who were recommended by the president in June 2002. And even some physical conflicts have occurred outside the chamber, which seriously damages the image of our democracy. The situation may not occur under a Cabinet System, however it could happen in a Presidential System, in particular, when countries do not have a healthy democratic political culture. Majority government should be one of the main means for Taiwan to establish a stable political process at this moment.

According to the ROC constitutional amendment II, the president would be elected by a relative majority of votes cast directly by the Taiwanese electorate. The current constitutional system in Taiwan against a cabinet system, and not a pure presidential system, because the ROC Constitution established the Executive in the supreme position. However the President could directly appoint the Prime Minister without approval by the Legislature. In other words, the Prime Minister is definitely subject to the president except, if he decides to step down. That also violates Article 53 [Executive in supreme position]. Prime Minister actually becomes an executive office for the president’s will. The Premier has to attend sessions and be questioned by lawmakers in the Legislative, and nothing can check presidential power except the mass media and reelection every four years.

On 24 August, 2004, the opposition parties [KMT and People First Party], the so called “pan-blue camp” passed their version of “the March 19 Shooting Truth Investigation Special Committee Statute”. The law bestows on the committee [the members in proportion to party representation in Legislature] the power to investigate criminal cases. This special committee
has become a tool to injury judiciary, in a statement by the Ministry of Justice. And some civil society organization, such as Justice Reform Association is also against this law. However, nowadays only the Executive Yuan could ask the Legislative Yuan for reconsideration or the Council of Grand Justices to announce that the Truth Investigation Special Committee Statute is unconstitutional. The former may not be easy to accomplish, if the KMT and PFP strongly insist on their original decision. The latter may be workable, when we look back to 1999 when the National Assembly violated basic Constitutional principles by extending their own term by 2 years. The constitutional dispute spread island-wide until the Council of Grand Justices solved it.

5. Conclusion

New Constitutional Amendments were passed in the Legislature in August 2004, and they may come into effect in 2005. The “single-seat district, two–vote system” will be implemented in the 7th Legislative reelection in late 2007. All 73 legislators will be elected by constituents of 73 districts, with each city and county electing at least one. Redistricting will be a concern under the new electoral system. The problem is that Taiwan, [including on off-shore island] will be divided into a 73 constituency base from 21 current counties and cities [the city’s position is equal to county, such as Taichung city].

In other words, this new constituency arrangement should be smaller than it currently is. Although the winner in each district could get at least 50% of the votes, factious leaders could still win the seat if they are more powerful in a small constituency. The worry, as Madison mentioned in the Federalist Papers No. 10, is that “The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States,” may be realized in the near feature in Taiwan. Because the 73 constituencies in Taiwan is too large, factious leaders many easily control in each small electoral districts. Furthermore according to the new Amendment, an unfair matter is that Masu, the smallest county with less than 10, 000 residents, could elect one lawmaker, compared to Iland with a population of 460, 000. That severely violates the principle of “ one man one vote, one vote one value.” The new Constitutional amendment leaves much to be desired, and a stable politics in the future may be still far away.

Basically new ideas should be discussed and any major changes must be tested in a public forum before being introduced in a constitutional reform process. As Alexander Hamilton, one of the authors of the Federalist Papers in the 18th century, stated, “the people would not

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17 The Federalist Papers No. 10, see Clinton Rossiter ed., p. 84.
accept the proposed constitution unless they understood it."18 Facing the current constitutional chaos in our land, what is there that political science scholars and the mass media can do? Don’t be frustrated, let us just do our best to educate the public on the basis of democratic principles and the national interest, such as the Federalist Papers functioned to stimulate and facilitate debate which led to the American Constitution’s ratification in the 18th century.

Bibliography


聯邦主義者第十號與第五十一號報告書給台灣憲政

改革之思考

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摘要

西元二○○○年總統大選後，由於立法院這個單一國會的政治版圖是朝小野大，加上台灣尚不成熟的政治文化，帶給首次政黨輪替的台灣進入所謂「泛藍」與「泛綠」陣營惡鬥的政治紛亂期，即使西元二○○四年總統大選現任者獲得連任，朝野仍舊嚴重對立。此時讓憲政學者思考憲政改革以建立長治久安憲制體制的重要性。在此過程中，我們發現在十八世紀時的美國聯邦主義者在報紙上發表的報告書，尤其它最負盛名的第十號與第五十一號報告書中的「派系」、「分權制衡」、「多數統治」與當時大眾媒體之角色，對我國以後的憲政改革，提出了「選舉制度改革」、「權責相符的多數政府」、「彰顯大法官會議功能」以及如何讓媒體發揮教育民眾功能以提升民主政治文化等思考的方向。

關鍵字：派系、多數統治、制衡、大眾傳媒