

THE BROOKINGS INSTITUTION
CENTER FOR EAST ASIA POLICY STUDIES

**TAIWAN'S LEGISLATIVE YUAN:
OVERSIGHT OR OVERREACH?**

The Brookings Institution
June 23, 2014
Washington, DC

[Transcript prepared from an audio recording]

ANDERSON COURT REPORTING
706 Duke Street, Suite 100
Alexandria, VA 22314
Phone (703) 519-7180 Fax (703) 519-7190

PARTICIPANTS:

Opening Remarks:

RICHARD BUSH

Senior Fellow and Chen-Fu and Cecilia Yen Koo
Chair in Taiwan Studies
Director, Center for East Asia Policy Studies
The Brookings Institution

SU CHI

Chairman and Chief Executive Officer
Taipei Forum

Panel One: Comparison of Oversight Mechanisms in Taiwan, Japan, and the United States

Moderator:

RICHARD BUSH

Senior Fellow and Chen-Fu and Cecilia Yen Koo
Chair in Taiwan Studies
Director, Center for East Asia Policy Studies
The Brookings Institution

Panelists:

SARAH BINDER

Senior Fellow, Governance Studies
The Brookings Institution

MICHAEL THIES

Associate Professor, Department of Political Science
University of California, Los Angeles

WU CHUNG-LI

Research Fellow, Institute of Political Science
Academia Sinica

Panel Two: Focus on the Legislative Yuan

Moderator:

SU CHI

Chairman and Chief Executive Officer
Taipei Forum

Panelists:

DAVID BROWN

Adjunct Professor in China Studies, Nitze School
of Advanced International Studies
Johns Hopkins University

JACQUES DELISLE

Stephen A. Cozen Professor of Law
University of Pennsylvania

NATHAN BATTO

Assistant Research Fellow, Institute of Political Science
Academia Sinica

PROCEEDINGS

RICHARD BUSH: Ladies and gentlemen, my name is Richard Bush, I'm proud to hold the Chen-Fu and Cecilia Yen Koo Chair in Taiwan Studies here at Brookings, and it's my pleasure to invite all of you to this afternoon's symposium, Taiwan's Legislative Yuan: Oversight or Overreach? We have an excellent line up of specialists to educate us today, not only specialists on Taiwan politics but also the Japanese Diet and the U.S. Congress. I think that if you asked an American about his or her impressions of the Taiwan legislature the odds are that he or she would answer none at all, and that's not surprising. But if our hypothetical American did have an impression it would probably be a negative one gleaned solely from videos of the fistfights in the Legislative Yuan. And that negative impression would not be surprising since the Taiwan public has a low regard for the Legislative Yuan, less than 20 percent approval in the last decade. But that does mean something interesting, that the Taiwan people have a higher regard for their legislature than the American people do about theirs. And in a way the negative impression would be too bad because it really is important to understand why the LY lacks public confidence and what the consequences of its dysfunction are for public policy and the legitimacy of the political system. After all it's the key institution in Taiwan's representative system of government. The voters who elected member of the LY likely had some expectation that their representatives would do a good job reflecting their will and wishes and also to look out for the interests of the country. I would offer the initial hypothesis that the incentive structure in the Legislative Yuan and the processes why which it enacts laws divert members from performing this representative function. I would stipulate of course that the same hypothesis could readily be applied to the U.S. Congress.

Today we wish to focus particularly on how the Legislative Yuan oversees the policies and operations of Taiwan's Executive Branch, an issue that has been at the forefront of political discussion in Taiwan for the last several months. And to frame our discussion at the outset we're very pleased that my good friend, Dr. Su Chi, will offer a keynote address that reviews the LY's procedures and practices. He does this from several perspectives. First as an accomplished scholar, as a past member of the Legislative Yuan, as a senior government official who had to endure the interpellations of LY members, first in his capacity as Chairman of the Mainland Affairs Council in the Lee Teng-hui administration and as Secretary General of the National Security Council in the Ma Ying-jeou administration. And he's now Chairman and CEO of the Taipei Forum Foundation, one of Taiwan's newest think tanks and on whose Board I proudly serve. So please join me in welcoming Dr. Su Chi.

(Applause)

Thank you. The screen will come down and it will...

SU CHI: Thank you, Richard, for inviting me here. It's great to be back to Brookings. I used to be a student across the street at SAIS so I came here often. Before I begin my talk, my job is to do an overview. The details will be covered by other experts who will follow my speech. But first I'd like to confess that being here I'm running a huge personal risk

because I will be washing the dirty linen in public and even though we're discussing in Taiwan pretty much an open secret, but people still like to keep it a secret, most people. So I may go home and find myself in big trouble. But nevertheless in serving the truth I'd like to share with you my thoughts and my studies and my experiences as a former legislator. Some of you may know that this issue, unlike U.S. Congress, Taiwan's Legislative Yuan is grossly, woefully understudied. I had to go through not just scholarly publications, very few of them unfortunately, I had to go through the master thesis, I have to talk to some legislators and other people who know. So here's the end result.

[View Su Chi's presentation slides [here](#).]

Let me -- just the title. Let me give you some brief introduction. LY very small, 0.6 acres in size was an all-girls high school during the colonial period. So it's very, very small and this is -- okay, the former auditorium and classrooms were converted into assembly hall, offices, and committee rooms; a legislators' office building, committee building were added within the compound. Proposals to relocate the LY have never been adopted; as such LY is easily accessible from the street on all sides. If you have ever visited there you will find out. But I'll show you some pictures. This is the front gate before '49 and this is current gate and they changed the façade, but the roof is the same. And this is the assembly hall. It was the same position but enlarged. And these are the -- this is the committee building, committee rooms. And that building is mostly offices including offices for the press, offices for KMT and DPP caucuses, and this is the committee -- I'm sorry, this is the office of the legislators. I used to be on the ninth floor. And this is a residential building that's outside the compound. So you can tell that the compound is really very, very small. And here, this is one of the colonial style rooms; this is one of the committee rooms. And that's -- on the right is the legislator's office building, on the left is the committee building. And you can tell it's just, you know, the street is -- so it's very hard to guard the door. I mean you can literally just walk in very easily. The same here.

LY meets twice a year, each session lasts four months. It's like a school semester. And the number of legislators varies over the years since 2008, 113, and before 2008, 225. I used to be 2005 and 2008. Each legislator now employs eight to fourteen assistants all paid by the LY. And by law LY's budget center has a staff 59; legal bureau and library also have 59 each. So the supporting system for LY is very, very weak; very, very weak. It's common knowledge that budget center -- how to be gentle -- budget center really offers very little help to me, to other legislators when we review the budgets. It's an easy job.

Okay. That's here to show that the LY is being and has been held in low esteem for a long time. And these three years, 2001, 2005, and 2010, this survey has been done by Larry Diamond two years ago. And this one I picked from this Taiwan Indicators Survey Research. So this round dot is the parliament. So it has consistently, you know, for staying at this low. I don't know about U.S. Congress but it's been, Taiwan LY's, been so low for so long. Political parties fare worse, news media also. Court is also very low. And the legislators -- okay, this is the seats, the number of seats, as I said right now total number is 113 and before that 225 and before then smaller. And the KMT, being the largest party now, 56 percent and the Ma Ying-jeou's first term, 70 percent, and DPP, substantially less, and smaller parties. And this number is three for TSU,

three for non-party, but right now TSU is down to two if I'm not mistaken, PFP also down to two because one of each went to jail.

(Laughter)

So they lost the caucus.

Okay. Until 2008 legislators had been elected from multimember district system. Japan and Korea used to be the same way but Taiwan held to the last moment. But since 2008 we switched to single district, two votes; one vote for the candidate, one vote for the party. The competition remains keen for the legislators before and after. Right now the legislators' greatest threat comes from the local mayors. I'm sure my colleagues from Taiwan will enlighten more on this. This is what I've been told by the legislators themselves.

Okay. Percentage of those who could survive three or more elections is quite small. Out of 113 legislators, now, only 1 legislator, i.e., Speaker Wang is serving his 12th term. The second longest is the Deputy Speaker, Hung Hsiu-chu; she is eighth term only. And five others, seventh term. All others are serving six or much less, actually much less. So you look at the percentages, it's really, really low, except here. But I don't know the number for U.S. Congress but I understand it's much, much higher than here. So you can tell the legislators in Taiwan really have to pay a lot of attention just to stay in the same office. So they much prefer to spend time in constituencies and not at LY. Some even travel daily between the LY and the constituencies thanks to High-Speed Rail and free travel expenses. Domestically, they get free ticket on every trip, every trip, all year round. So they love to go back home and pay respect at funeral in the morning and going to weddings for lunch or dinner and other events and celebrations, and spend so little time at the LY. Working the crowd or hitting the media is often given high priority than working hard at legislation.

So each party caucus has several people, you know, just -- their only job is trying to get hold of the legislators wherever they are. And these are the eight standing committees. Before 2008 used to be 12 and Mainland Affairs belongs to this Internal Administration Committee. The translation is official. Foreign Ministry and Defense Ministry belong here. And National Security Council belongs to this one, judiciary and organic law. So you can tell there's no appropriations committee, there's no ways and means committee because each of the eight committees reviews the budget of the ministries by themselves.

Okay. And this is the procedures. The bills goes in here at first reading. First reading can go directly to second reading if it's not controversial. And it goes to committees and then caucus consultation, or go directly here. Decision is made in the committee. But if committee members, if the legislators say, you know, create some debates and then a decision could easily be made to be moved here. If a bill is moved to caucus consultations it will be forever out the hands of the committee and into the caucus consultation. I'll explain to you later. And then caucus consultation goes directly to second reading and third reading. And many, many bills are going this route instead of normally, this route.

Okay. Committees. Each of the eight standing committees has two chairpersons. Until 2008 three chairperson. Usually one -- now issued one to KMT, one DPP. They alternate in chairmanship every other week. And no seniority system, a freshman could serve as a chairman. So when I served in '05 and '08, out of six sessions I chaired twice. Once in Foreign Affairs Committee, the other in the Defense Committee. So because of the, you know, the absence of seniority system neither party could dominate the agenda. And each committee now averages 14 legislators; one-third legislators would make a quorum. And this one-third I think until 2002 -- I may be mistaken -- until 2002 the quorum was one-fifth, and made into one-third. So one-third which means five legislators could make a quorum. And three legislators including the chairperson could decide anything. And those -- for the media particularly, those who are family with our LY many legislators they go to the committee and they sign their name just to make quorum, then quickly disappear into some -- maybe a funeral or something, just disappear. So it's difficult to keep the legislators inside the LY. And the committees normally meet on Mondays, Wednesdays and Thursdays. All meetings are open to the media, all. Hence the tendencies to feed the media and not to debate the merits of the issues at hand. I'll show you some pictures later, you can tell.

Okay. This is one of the scenes where the legislator is new. I think it's DPP and minister I think is Health Minister. And this chairperson is a legislator. All the rest are the committee staff. And you can see on the eboard the list of names. So this list -- these names are the legislators who are lining up to question the minister. So minister could stand there all day answering questions. And this is another room that the-- this is a legislator and the two on the right and two on the left are the committee staff. And this is -- I can't tell, this is mostly likely a legislator and a minister here. And the legislators will be sit around this table and officials will sit around the -- the administration office will sit around this table. And here the media or assistants over here. So if the questioning is over if the committee members are to discuss anything, for instance they budget they will discuss, you know, sitting around this table and discuss. And the media would come forward and surround the table. So there's no secret. There's no -- you know, you open the budget debate, whatever issue under the camera. And there's a camera at close range right here, right here. So that's how a committee works. I hate that. I'm sorry.

Each legislator can serve and vote in only one committee unlike in U.S. And he or she could hop around in different committees each year. It used to be each session. In other words you can join six different committees in your entire three years in LY. So I joined Foreign Affairs and I joined Defense. And most do, most people hop around, a little accumulation of expertise. And each legislator could visit. So even though you're affiliated with one committee, but you could visit other committees to speak on topics under discussion and question the administration officials, usually ministers. Hit-and-run legislators often follow the headlines of the day. They far outnumber those serving legislators and they tend to grill the administrators on minute details. As you remember the eboard, the list is very long. So they usually -- most of them come from other committees.

And now caucus consultation. This is a unique feature in Taiwan's LY. Usually most other countries as far as I know they also have this caucus consultations but they both -- most of the time they discuss procedural affairs, but in Taiwan they discuss procedural and

substantive issues. They came into existence in 1997, incorporating into law in January 1999, revised twice. They discuss mostly substantive issues. Number of party caucuses vary each term. So these are the numbers, right. This new term started out with five caucuses, reduced to four, reduced to three. Because the number goes down, the number of legislators go down belonging to the smaller parties. They lose the status. So right now three: KMT, DPP, and TSU. When I was at LY it was here, five caucuses. Before 2008 five legislators could form a caucus. From 2008, threshold lowered to three. And participants in the consultation include two members of each party, usually the whips. So the large party, KMT or DPP they send two whips or two members to the LY, but the smaller parties like TSU or non-party they have only three members, they still get to send two members into the committee. And most interestingly, because there are now eight standing committees, so the smaller parties say they have three members or five members, so there are many committees, three out of eight, so five committees these smaller parties are not even represented in, you know, the other five committees. But they still get to decide the bills coming out of those committees. It's ridiculous.

Participants include -- and the rapporteur where the bill was first considered, the speaker, deputy speaker of the party who sponsored the bill in question chairs the consultation. So in other words speaker chairs some, not all. Deputy speakers chair some and the party of whip chairs some. The study has shown -- I forgot which study -- I can't find out -- if I remember when I check it was done by a professor -- if speaker chairs consultations it has 95 percent to be passed. Signature of each participant is required for any bill to be passed. So each party and the participant could thus veto any bill. And you can imagine how much power those participants could wield behind the scenes. Parties are made equal in power regardless of their numbers. So KMT has 81 seats during Ma's first term, and KMT power is equal to non-party, four members. In Ma Ying-jeou's second term KMT has 64 and its power is equal to TSU. So this spring term this year, I think it's this year, TSU held up the opening of the LY spring session for two or three weeks, three weeks, just TSU refused to sign on the document which would allow the LY to start convening. This is a serious distortion of the democratic values in my view.

Once passing the caucus consultation the bill would go straight into the second and third readings, skipping the committees altogether and become a law unless challenged by eight or more legislators. If challenged by eight or more legislators the voting would then be required to override. However no such case is known. And also the consultations could also change part or all of the committee version arbitrarily, all or parts, and often do. Unlike committees consultations could take place any day during the sessions. So committees meet three days a week, consultations could meet any day during the session. And in the summertime or wintertime the caucus consultations could also take place on procedural affairs, on procedural matters. But on substantive matters they could meet any day during the sessions. Until the recent reform consultations were totally intransparent and only the final result or signature showed up in print. And no explanations were given on those bills which turned out differently from the committee versions. Nobody knows what happened during the consultations which changed the committee version. So it's really talking about the black box, that's really a black box.

Reform of 2008 requires, this reform was proposed by KMT and this reform required the videotaping and tape recording of the consultations as well as explanations given on

the differences. Unfortunately through my interviews of people, knowledgeable legislators, these regulations remain largely on paper. In other words still intransparent. Darkest corner in Taiwan's democracy, I'm ashamed to say. But caucus consultation serves a purpose because legislators are spared the trouble to study and debate most of the bills. Most bills are passed during the consultations without legislators even knowing about them. I was a witness to that. When I was a legislator I cast my vote in Assembly Hall only one day each session, just one day I had the pleasure of being a legislator, usually on the final day. That day 10-30 bills would be passed. So without exception that final day would last through midnight and midnight hors d'oeuvres would be served. And this past spring terms too many bills I supposed. Thirty bills were passed on May 20th, another 30 on May 30th caucus. So this allows the legislators literally maximal time to engage in non-legislative duties and appears there's little incentive among the legislators to reform this practice. And that's my assumption, that's my assumption. DPP, by the way, in one month ahead of 2012 election, one month, December or late November, DPP proposed their reform resolution which would change this consultation system which also changed the seniority system. But since DPP lost the 2012 election no such effort has been made by either DPP or KMT. What puzzles me still is that KMT is the party that stands to lose most from this system but KMT has not proposed, throughout President Ma's presidency has not proposed to change or reform this consultation system. And one can only guess why.

Number of bills passed in LY. So I checked the South Korean parliament, if I remember correctly they passed about 200 bills per year, Taiwan passes about 130-150 per year, on average. So this is another unique feature of LY, long existence, more than I don't know how many years, requires the Premier along with all 30 plus ministers to appear in LY Assembly Hall two full days a week, Tuesdays and Fridays, and answer questions from each of the 113 legislators, each one, unless the legislators voluntarily give up their opportunity to question the Premier. And all of the Cabinet will sit there and waiting to be picked and he will usually pick the Premier, and he can also pick any of the ministers to stand by the Premier. And the rest just sit idling all day depending on the number of legislators and time. When I was a legislator it used to be 225 members and 40 minutes each. So now it's reduced to 113 and 30 minutes. And this practice easily costs the Premier and all the ministers 20-40 working days a year. Let's say 20 working days a year and plus the committees will cost another 20 days. So -- oh, I'm sorry. Anyway, the committee would cost the ministers another 20 working days a year and general interpellation will cost another 20; so in other words the ministers most likely will spend 40 working days in LY doing nothing but just waiting to answer questions. And this is the current Premier, Jiang Yi-huah, and this is Finance Minister. And this is -- used to be Interior Affairs, Foreign Minister, Defense Minister, and all that. And I don't know who he is. But anyway, he stand all day. And this is some sight. And the speaker is here chairing the session, general interpellation, and this is one lone legislator and the Premier standing here. They face each other. And he could pick any one of the Cabinet. So this is the committee staff on this side. This empty chair belongs to the Premier. The second one is I believe the Vice Premier, and the Interior Minister, Foreign Minister, Defense Minister. And Mainland Affairs is on the second row; Mainland Affairs somewhere here. I used to be Mainland Affairs. When I used to be GIO, also sit right here. And people who usually get picked are mostly sitting here. And these are also ministers; they are ministers without portfolio, agriculture, Hakka, not so popular. But they sit there anyway. The entire Cabinet is being held up for 20 days a year. And you can see this is

where the legislators seats, empty. And you can tell -- these are the video's pictures. And the cameras, where the cameras -- the media shooting this way. So the ministers can sit there idly and they can do whatever they like as long as they don't doze off or stick your finger in the nostril or, you know, otherwise you get yourself in the newspaper the following day. Otherwise you sit there all day. You can read the newspaper; you can write a book if you want. One minister told me that he wrote a book being a minister there in three years' time. I still remember his name.

And another unique LY is called -- most foreign analysts are not aware of this existence, this is another unique. It's called a Forum of National Affairs, Guóshì lùntán in Chinese. Every Friday 9:00 to 10:00 in the morning legislators line up to give a three minutes speeches. So it's a speech contest for one hour, speech contest, three minutes per person on any topic in national affairs. Topics are mostly driven by daily media and the partisan struggles. And the people like me, you know, who are not elected the party whip would always tell me and other that you guys become legislators you have to come to the speech contest to show how, you know, to show your loyalty to the party. So this is very unique. I'm not aware of other, you know, if other countries have this. Ethics committee exists in name only. It rarely met to pass judgment on a legislator's unseemly behavior or conflict of interest. When I was a legislator at one time a person, very famous guy, he spread tear gas in the room like this, much smaller than -- tear gas. I mean everybody choked. But nothing was done about it. The sergeant at arms also exists in name. The speaker is authorized by law and bylaw to call in the sergeant at arms to maintain order, but no such action has been taken. Legislative process could be blocked physically by a few determined legislators rendering the majority powerless, or even by outside as the recent student protests.

The current issues my colleagues will tell you more. Out of the 21 cross-strait agreements signed after 2008, 19 require neither amendment nor new legislation so they were submitted to LY for record in accordance with the governing statutes. This is, you know, the statute governing the cross-strait relations. And two others, ECFA and International Property Rights were submitted to LY for consideration and passed. Services agreement and establishment of offices would require amendments and they are still awaiting legislation. And a supervisory agreement requires new legislation. Partisan positions are wide apart. And free economic pilot zones also require new legislation and again are far apart.

So conclusion, briefly, legislators are busy mostly with non-legislative matters, standing committees are perfunctory, caucus consultations are undemocratic, intransparent and decisive. I should add another conclusion that is the majority party is basically castrated, for lack of a better term, and seem to be enjoying it perhaps. Speaker and party whips are the real legislators. So when I became legislator in 2005 a senior legislator told me in person, he said, Su Chi, don't be too happy. Unless you have a chance to go into that consultations room you will only be a, you know -- legislator in Chinese is Lifǎ wěiyuán, so legislative member, so you will only be a member of the LY but you will not be a legislator. In other words unless I go into that room I will not get to legislate and will enjoy the member status, but I don't get to legislate. In other words, the real legislators are those who have a seat in the caucus consultations room. And Speaker Wang is by far the most powerful person. And recently an editorial titled him, "The

Silent Real King." *Chénmò zhēnshí de guówáng*. The feud between President Ma and Speaker Wang is at the root, in my view, of the currently stalemate in LY as it sabotages relationship between EY and LY. Paralyze KMT and caucus in LY, emboldens the DPP to take a more hard line position and gives outside forces room to intervene. Saddening indeed but I prefer to give you the truth and now go back home and face music.

(Laughter)

Thank you very much. Thank you.

(Applause)

DR. BUSH: Thank you very much, Su Chi. Because we started late, we will not subject you to interpellation.

(Laughter)

We'll now move on to our first panel, and I'd like to start with an anecdote.

At one point during the time I was working for the House Foreign Affairs Committee in the U.S. Congress, we received a visit from a delegation from the Thai National Assembly -- not Taiwan, Thailand. And you know, we weren't too clear on what they wanted to know, and it was even more clear because they were from the Agriculture Committee of the National Assembly, and I did foreign affairs.

But we proceeded to do our normal briefing about the role of Congress in American foreign policy, and at one point, the head of the Thai delegation said, well, all this is very interesting, but what we really want to know is what you in the U.S. Congress do, when the executive violates the laws that you have passed. And at that point, the conversation moved from the theoretical to the very practical. And we then had an interesting discussion about, in effect, oversight, how the Congress monitors and adjudicates what the executive is doing, particularly on the laws that it has passed.

And so that's the focus of the first panel, and it will be comparative. We'll look as points of reference to the United States and Japan, and then look at Taiwan. And for this panel, we have three outstanding specialists. First of all, on the United States, Sarah Binder, who is a senior fellow here at Brookings in the Governance Studies program. She is also a professor of political science at George Washington University. At different points in the past, she and I had the honor to work for Congressman Lee Hamilton.

Michael Thies is an associate professor of political science at UCLA, and he's going to talk about the Japanese Diet. And then, Dr. Wu Chung-li is a research fellow at the Institute of Political Science at Academia Sinica, which is Taiwan's premiere research organization. So, each has a PowerPoint presentation, and each will come up in turn, and then for question time, we'll all come up here. So, Sarah, would you like to start?

SARAH BINDER: Okay. I am remarkably PowerPoint free today, but I do find -- can you see me over this lectern here? Okay. All right. Well, thanks very much for including me today. I've been asked to provide an introduction to the conduct of oversight by the U.S. Congress. So, my goal here is two-fold.

First, is to help give you a sense of the nuts and bolts, all right, what we might call the formal tools of oversight by the U.S. Congress. But second, I want to give you a sense of the politics of oversight. Under what conditions do lawmakers use these formal tools of oversight? And just roughly at the end, with what consequence for Congress' ability to hold the executive branch accountable?

So before we get going, just a few words about, I guess definitions here. First, what do we mean by oversight? In the U.S. context, with the separation of powers system, Congress, of course, writes the laws that delegate authority to the executive branch to carry out. Congress typically writes somewhat vague laws leaving thus, to unelected bureaucrats, the responsibility first, to write the rules that carry out the laws, and then to administer the programs that are created by those laws.

So, if we just want to understand how we think of oversight in the U.S. system, oversight is really at the simplest level, Congress' effort to hold the executive branch accountable for how they implement that authority that's been delegated to them by Congress. So, that's first, sort of the definitional matter.

Second, if you were to open up the U.S. Constitution, all right, and if you were to skim it or search it for the words like review, oversight, investigation, you're not going to find that anywhere in the U.S. Constitution. The framers didn't think it was actually necessary to be that explicit about granting authority to Congress to oversee the executive branch.

At that time, all right, late 18th century, framers of the Constitution didn't think it was necessary to make that explicit. The power to make laws as well as the power of the purse, implied the power to see whether laws had been faithfully executed. All right? Which is also the view that the Supreme Court has endorsed over the course of its history, even in the 19th century, when Congress' ability to investigate was challenged, the Court said basically, you can't legislate if you don't know what's going on.

All right? And so, the power to investigate and the power to legislate really go hand in hand. And in fact, just to keep in mind here, it wasn't until 1946 that Congress actually formalized in statute its oversight responsibilities; basically the House and Senate together writing a law directing its congressional committees to conduct legislative fiscal and investigative review.

So, a third definitional matter before we get going. We typically talk about congressional oversight, but oversight is almost rarely a joint or bicameral affair. House and Senate typically conduct oversight separately, both -- we might think for both institutional

reasons as well as political reasons. The institutional reason in some sense is simply that because oversight is conducted through the committee system, and each committee has its own set of committees, all right, it would be awkward in anything for the House and Senate to coordinate, and certainly, over investigation and oversight, as well.

The political reason probably is that lawmakers probably don't want to share the glory with the other chamber. It makes much more sense for them to conduct separate oversight. And if that sounds a bit inefficient, you would be correct thinking that.

So, just three definitional matters: What oversight is. Second, keep in mind it's implicit in the Constitution, and third, that it's unicameral. It doesn't really happen in a bicameral joint sense. So, first formal tools, and then we can think a little bit briefly about the politics of oversight.

I'm going to give you six different oversight mechanisms, again, keeping in mind that each of these are really conducted through the committee system. And keep in mind that this will make sense as we go along here. Because oversight and these tools are used through the committee system, oversight is typically decentralized. It's not necessarily coordinated, and it's quite specialized by committee.

So, six formal tools, just very briefly. First, the classic and most basic and probably broadest, committee hearings and investigations. Anyone who's been following the news in the U.S. lately would read about the Veterans' Affairs Committees in both the House and Senate investigating wait times at Veterans' Administration Hospital for veterans seeking medical care, which turned into a scandal that I'll come back to in a moment.

You might have followed an intelligence committee oversight investigating National Security Agency surveillance activities that many say and others dispute broke existing law. Some investigations or oversight is more -- probably politically inspired committee investigations -- the House Republican fixation with the attacks on the U.S. mission in Benghazi comes to mind.

But what's going on generally in the use of these committee hearings and investigations, committees are undertaking review and investigations of agencies and their conduct and administration of programs within their turf. So, first, committee hearings. Second, we can think of the authorization process as a mechanism of oversight; a legislative process here by which Congress creates or renews federal programs, whether it's education, environment, transportation, defense, what have you; any federal law here, Congress essentially starts the process by creating an authorization for a particular activity.

Many moons ago, Congress would write permanent authorizations, so the National Defense Bill was a permanent authorization. So, there was no annual review of how the Pentagon was carrying out its delegated authority. The modern Congress really writes temporary authorizations. Right? So, instead of that permanent authorization for defense, we now have annual authorization bills.

Other programs: Highway bills, farm bills. Right? We might be talking a five or six year authorization process. But at the point of renewal, congressional committees typically hold hearings at which bureaucrats and interested -- organized interests are called to testify about potential changes in the law.

And so, the idea here is that bureaucrats know they're going to have to defend themselves before Congress on a regular basis, or at least a several year basis, and that in theory, should be able to motivate them to do a better job executing congressional preferences, assuming there is a single congressional preference. But we can come back to that later, as well.

So, first, committee hearings. Second, authorization. Third, the appropriations process, which is the Constitution gives Congress the power of the purse. They carry that out by writing each year 12 separate spending bills, when the process is working well. That was a decade ago when it last worked well, but in theory, they write 12 spending bills that allocate funds across the federal government.

So, when the House Appropriations Committee and then the Senate Appropriations Committee writes their individual versions of spending bills, that is another avenue or opportunity for oversight. So, take the House Appropriations Committee. It has an interior subcommittee, which in the U.S. system means land management, basically. So, the head of the National Parks Service will come, the head of the Bureau of Land Management, and so forth. They come before the subcommittee to defend their budgets. Then lawmakers, in theory, use the opportunity to scrutinize how budgets have been used and how they have been implemented.

Fourth, reports. Congress loves reports. Lawmakers see a problem and they demand that the executive branch, particularly agencies then submit periodic reports to Congress and its committees to update Congress on how things are going. Now, in theory, conceptually, this gives Congress data and it gives it analysis on how it might then want to hold -- how it might conduct oversight to hold the government accountable. That's probably more in theory than in practice.

From lawmakers' perspective, asking for a report from the executive branch is -- essentially it's costless to the member; not to the lawmakers, as I'm sure you can attest from being in the Foreign Affairs Committee. But from the lawmakers' perspective, it's essentially costless.

Now, most reports aren't read. Many are. The most important ones probably are. Many are test read before the government before Congress for testimony. But many are simply sent up to the Hill and never read. At last count, the House is expecting to receive in this current Congress, 4,291 reports. All right? So, you can be guaranteed that there is -- it might not be the most effective mechanism for oversight, even if it is a commonly used tool.

Okay. And keep in mind, after the purpose for which the report was requested,

even if that purpose no longer exists, the report is still on the books. Right? And so, bureaucrats will be writing these reports. There's one on the books to report on the treatment of veterans from the Spanish American War. All right? The last veteran of that war died in 1992, but the report is still sent on a periodic basis. Okay. That's four.

Number five: General accounting office, which is Congress' watchdog, conducts audits and investigations of different federal programs at the request of either committees or of lawmakers. If there is not oftentimes sufficient support to legislate on an issue, Congress could often essentially punt or take an intermediate step by demanding a GAO study, the results of which many of which are read and used, but many of which are not.

Finally, sixth mechanism of oversight here -- confirmation process for presidential appointees. The Constitution of course, allows presidents to make certain types of appointments to courts and the executive branch with the advice and the consent of the Senate. So, confirmation hearings, in essence, provide an opportunity to conduct what I think of as prospective accountability. Right? Not after the fact, but before the fact. All right? So that lawmakers try to elicit promises for how a rule might be written or how a program will be implemented.

So, lawmakers often will try to pin down nominees to see what their views are, so that they can then try to hold them accountable for those outcomes, once they're in office. So, the president nominated a new Health and Chief of Services Secretary, who of course, last month then was grilled about implementation of the Affordable Care Act or Obamacare. Again, these nomination hearings become opportunities, in theory, for prospective accountability.

So, those just give you a sense of the broad range of tools here, all of which essentially are exercised through the committee system. But then, with respect to the politics of oversight, the assessment of most congressional scholars is that Congress probably isn't very good at conducting oversight, and there are at least two reasons, and perhaps a third, but for starters, two.

First is electoral. As we say about members, they are single minded seekers of re-election. Even if they have important policy goals they want to pursue in a career in Congress, their first and foremost proximate goal, the thing they bump into first is they have to get re-elected. And so, lawmakers don't really have strong individual electoral motivations to invest time or resources in extensive oversight. It's hard. It's time consuming, and it's not clear to members always that there is an electoral payoff. It doesn't necessarily -- for a rank and file member -- probably different for a committee chair, but for a rank and file member, it doesn't make re-election probably any more likely.

Second reason, beyond electoral individual motivations is simply partisanship, the rise in partisanship in much more tightly competitive political parties in both the House and Senate over the past 30 years has really undermined good, effective oversight. When the president's party controls both chambers of Congress, lawmakers don't really have a very strong partisan incentive to investigate the executive branch. All right? In essence, I don't really want to

air all of the administration's dirty laundry lest the opposition party use it to campaign against the president and his party.

So, the loyalty as partisanship heats up and these parties become a little bit more cohesive, loyalty becomes to the party and less so to the institution. The Republican Congress was not very eager to investigate the Bush Administration in the 2000s, and the Democratic Senate does not have all that much interest in interrogating the Obama Administration.

So, finally, then, given these tools and given these incentives, what type of oversight do we get from Congress? Here, I'll just briefly make reference to two different models of how political scientists think about congressional oversight. First, we call it police patrols, right, which we might think of as routine surveillance of the committee's bureaucratic turf.

Think of the cop on the beat. He has a certain neighborhood, gets in the patrol car, and every Monday, goes to a different neighborhood. Every Tuesday, a different neighborhood, driving around, somewhat as a deterrent, but also, to keep an eye on developments on his turf. Well, Congress, not surprisingly, doesn't do an awful lot of that type of oversight. It's pretty costly, and with questionable electoral payoff. There is some of it, but not a lot of it.

The alternative model is what we think of as what we call fire alarms. All right? Keep in mind, firemen don't roam around neighborhoods in fire trucks looking for fires. Right? They sit in the fire house waiting for somebody to pull the alarm, and that is probably a better model of how Congress conducts oversight. Wait until interest groups or whistle blowers within the bureaucracy or the media or journalists to pull the alarm, and then, the scandal breaks.

Cameras show up, and there's Congress, ready to investigate. So the VA Hospital scandal -- there have been murmurings for years. There had been some congressional investigation, slowly out of the limelight a little bit, but very little action taken. The alarm then gets pulled very loudly this spring. Congress shows up, hearings, they call and they get the resignation of the VA secretary, and the House and Senate, in fact, each pass a bill and rush to conference. And in a Congress that doesn't often legislate, this is really quite remarkable how swiftly it happened, once a really strong alarm bell was pulled.

Why in this case? Veterans are electorally important. They're organized. They vote, and there's not a very strong organized opposition to veterans' groups, so it's relatively easy to legislate. Again, somewhat more of a fire alarm than a police patrol oversight. Now, you might wonder in conclusion here, whether fire alarm oversight is really sufficient for Congress to perform effective oversight, and many people are quite doubtful. And I will stop right there.

(Applause)

MICHAEL THIES: Okay. Thank you. I'm very happy to have been invited to participate, although at first, when I got the email from Kevin, I was a little confused. Legislative oversight isn't something I've thought a heck of a lot about when sitting in Japan, because Japan is a parliamentary system and there's no separation of powers, therefore.

[View Michael Thies's presentation slides [here.](#)]

So, one of the big reasons for the need for oversight in the United States and in presidential systems is that separately elected executive who is not responsible for his job or her job to the parliament points members of the bureaucracy. And so, once a law has been written and signed and is effective, it's sort of out of the hands of the legislature to control what's going on. So they try to oversee, they try to monitor, they ask for reports, they ask for all this sort of information.

But what can they do if they find out that what's happening is not what they intended? Not a heck of a lot. They can try to write another law, perhaps a more specific law that says okay, we wrote a vague one. And now that you've filled in the details in ways that we don't like, here is a more specific law to tell you exactly what we want. But the president has to sign that more specific law, and if the executive branch is sort of acting in ways that the president would like, particularly in the time of divided government, then he's not going to sign that more specific law to reign in the executive bureaucracy. So, the legislature has a bit of a problem. And I'll get back to police patrols and fire alarms in a minute.

So, Japan has a parliamentary system; no separation of powers. What that means, is the executive is headed by exactly the same people as the legislature. Right? The Cabinet are the leaders of the ruling party or the ruling coalition. So, the head -- the political part of the executive branch is the same as the leadership of the legislative branch.

In most parliamentary systems, you don't lose your seat in the legislature when you become a member of the Cabinet. You just get a new office and a better car and extra responsibilities. But then, if you leave the Cabinet, you just go right back to the back benches, and you're a member of your party still, throughout.

So, the major part of oversight in a parliamentary system is intraparty oversight. It takes place within party headquarters, behind closed doors. A few in the back bench are trying to oversee what your party leaders, qua ministers are doing. Why do that publicly? Why, again, air the party's dirty laundry in public? Do it within the party headquarters.

We think about leadership change in parliamentary systems, party leadership change, and although parliamentary systems by definition give the parliament the right to withdraw confidence from the prime minister and the Cabinet, to fire the executive, it almost never happens. Still, there's a lot of leadership change in parliamentary systems. How? Well, it happens inside the party.

The most famous example that Americans would probably know about would be when Margaret Thatcher was defenestrated by the conservative party. She had moved too far away from what the party wanted, and so they just had a meeting inside party headquarters and fired her and replaced her with John Major, and by virtue of the parliamentary majority, they had made now their new party leader, the new prime minister.

And every party leadership change in Japan during the LDP's long period of dominance, it was an intra-party decision to just renew the leadership within the party. And then, because they had a legislative majority, they could just impose their new leader on the country as the new prime minister. When the LDP lost power, I'll talk about in a minute, as well, the DPJ did the same things, and in three years, they went through three prime ministers, and those were just internal party decisions; no formal vote of no confidence in the legislature.

Of course, opposition parties would very much like to grill ministers, to oversee, to give them a hard time, harass them publicly. But then, the question is, if the majority party, the party whose ministers those are controls the procedures of the legislature, why would they introduce procedures to allow the opposition party that privilege?

Why give them the opportunity, the formal opportunity to possibly embarrass government ministers? Unless they feel, somehow, that the opposition would be an ally, if they're having a hard time holding their own agents, their own leaders accountable, and they feel that either the opposition or the public media would be an ally in somehow reigning in a problem that they can't control for whatever reason internally, it makes no sense for a ruling party to create legislative institutions. Because after all, the rules of the house, generally speaking, are whatever the majority says they are. Right?

Even if it's a law, if you have a majority, you control what the law is. Unless it's in the Constitution that gives these privileges to the opposition, it's unlikely that a ruling party, particularly one that has a long time horizon, that expects it's going to continue to be in power for the foreseeable future, for them to institute these formal procedures that the opposition can take particular advantage of when they wouldn't want to take advantage of them, themselves.

Now, there are a couple of complications. What I've been describing, sort of a cartoon image so far, is a typical Westminster system. I'm thinking of a unicameral system where there's a single majority party, usually, but most parliamentary systems are not actually like that. Coalition governments are more common around the world than single majority parties, and you can imagine that parties who've agreed temporarily to govern as a coalition might have reason to want to oversee each other's ministers.

So, they divide up the ministerial portfolio as party A gets a bunch of portfolios, party B gets another set of portfolios, and they want to make sure that whatever they've agreed is going to be the coalition policy is actually being faithfully implemented, given that there's delegation to a single party's ministers, ministry by ministry.

And so in the last 15 or so years, there's been a lot of attention in political science to asking how do coalitions actually monitor themselves, or how do coalition partners monitor each other. One of the things we know is, they tend to appoint junior ministers from the opposite party, or from a different party than the party of the minister, at least as someone who can ring a fire alarm back in the Cabinet meeting to say hey, that minister is not doing what he said he would.

Another thing that happens is in coalition governments, the more ideologically different the particular minister is seen to be from the coalition as a whole, the more his proposals get scrutinized in parliamentary committees; the more amendments, more time, more hearings, these sort of things, just to make sure that -- that's at the proposal stage.

Then, there's also divided parliaments; very rare. It turns out, a good number of parliamentary systems are bicameral, but almost always the second chamber, the upper chamber is extremely weak. It can't really do very much. It's sometimes a vestige of an old House of Lords that has some ceremonial role, but really can't do very much to slow down the government, and so there, it doesn't matter. But there are a few parliaments where the upper house is actually quite strong. The strongest would be Italy, where in fact, the government has to maintain confidence in each chamber.

Japan is another one where the upper house is extremely strong. Nobody knew this for 40 years, because the LDP, the Liberal Democratic Party, controlled majorities in both houses, so the fact that the upper house was strong never mattered, because it wanted, essentially, the same thing as what the lower house wanted.

But in the last few years, since 2007, there have been about five years where Japan has had what they've called a twisted Diet, where the upper house and lower house have been controlled by different political groups, and not surprisingly, the opposition, so not the group controlling the lower house that therefore supported the government, used the bully pulpit of the upper house as much as possible to obstruct and harass government ministers.

Still, that's all about ministers. Most actors in the executive branch are not party leaders; they're career civil servants. Right? They're unelected bureaucrats, and this agency relationship still requires oversight, how best to do it. Again, if the ministers themselves are good agents of the legislative majority, they are the leaders of the legislative majority party or the coalition of parties, then it makes sense for oversight of line bureaucrats, of career civil servants to take place within the ministry where the party does what it can through its political appointees in the ministry to make sure that bureaucrats are faithfully implementing laws, and not, again, to do it in public where the press is there, where the opposition can participate, where people can see that the government is having a hard time controlling itself.

So again, as long as the ruling party has a long time horizon, they have no real incentive to codify oversight or rule making. They much prefer to exert informal pressure of one kind or another. And that goes for indirect monitoring, too -- fire alarm oversight, as Sarah was just talking about.

A ruling party in a Westminster system may choose to empower favored constituents to contest agency decision making, but then they want the fire alarm to ring in party headquarters. They want that alarm to go off so that they can rush to the rescue, provide what Mo Fiorina famously called bureaucrat fix-it services, ride in on the white horse and solve the problem. Right? The canonical story of my grandmother didn't get her Social Security check,

can you fix that, is a way to get a thousand votes in the next election doing things like that.

So, they don't want that fire alarm to ring anywhere else. Where else might it ring? Well, in the United States, quite often, by virtue of the Administrative Procedure Act and other sorts of legislative oversight laws, the fire alarm rings in the courts. So, when a favored constituent notices, observes, claims, that there's malfeasance or some other sort of violation of legislative intent in what an agency has done, what they do is, they sue. They bring the agency to court.

They have been given by the law, standing to bring the legislator to court, so then the fire alarm is ringing in the court house, and it's the judges who have to decide whether or not legislative intent has been violated. When in a Westminster parliamentary system, why get the judges involved? Right? It's easy to write a new law. You control the majority.

If the bureaucrats are doing something you don't like and you need to write a more specific law to say no, this is exactly what we want you to do, you can do it. There's no president out there running the executive branch can veto is, because it's a parliamentary system. So, even fire alarm oversight should work a little bit differently. All right. Enough theory.

What about Japan? During the LDP's long period of dominance, so they were a majority party, they controlled both houses of parliament from 1955 to 1989; they lost their majority in the upper house in 1989. They still were the biggest party by far, and in 1993, for the first time, lost control of the lower house.

Decision making in this very routinized, almost four decade long reign was very bottom up. And the way it would work would be, there would be committees -- the Liberal Democratic Party had its own party committee system that paralleled the formal committee system in the legislature. And so, everyone who was on the legislative committee was also on the party committee, and there were more people in the party committee, too.

So, ideas would bubble up from the bottom. And throughout the process, there would be interaction between committees within the party and bureaus within the legislature. And so ideas for draft legislation would have to go up through each of those hierarchies -- the party hierarchy and the bureaucratic hierarchy. When it made it to the top of both, it had been vetted by all of the stakeholders and by the leadership of the party and the leadership of the ministry.

It was then given to the Cabinet, and the Cabinet submitted it as draft legislation to the House. And not surprisingly, very few Cabinet-submitted bills ever failed or were even amended. Why? Because the members of the legislative committee said, oh yeah, we've seen this before. We wrote this, right, back in the party committee, and so things would just go through very -- and the committees were moribund. They didn't do anything.

The description of a typical committee hearing back then during the LDP's period of dominance was that the LDP committee chair would bang the gavel, call the committee to

order. The opposition would take turns standing up, talking about how democracy was going to hell in a hand basket, and the LDP was ruining Japan. And after a while, the chair would get bored and he'd bang the gavel again and say, okay, it's time for a vote.

And the LDP guys would wake up. They'd vote yes, and they've move on to the next piece of legislation. So, it was very -- it wasn't what, I think it was Polsby called a transformative legislature, the formal process, because all of the action happened behind closed doors within party headquarters, and there was nothing interesting to see, really, in the legislature.

But then, the LDP lost power in 1993, and there have been a bunch of changes since then. And so then the question is, has legislative oversight improved or changed in any material kind of way? First, in 1993, Japan passed its own version of an administrative procedure act. They had been talking about it for 40 years, but for 40 years, the LDP would always say no, why do we need that? We can do things informally. We don't need a formal law.

As soon as the LDP lost power, the new seven party coalition that for good reason, didn't think it would be in power for very long, passed an APA setting up procedures, and I'll talk a little bit about that in a second. They also changed the Diet law, you know, to require ministers to actually appear before the Diet to answer questions. There had always been in the rules the privilege of the parliament to grill ministers, but the fact of what would happen is the minister would send a bureaucrat to the meeting instead and say, you answer the questions. You're the expert, anyway. And so, at least even the appearance and maybe even the reality of political accountability was lacking, because they were just sending career civil servants to do the job that the minister was supposed to be doing.

They also instituted prime minister question time. At first, they didn't get this quite right. I have this awesome C-Span VHS tape of the first prime minister's question hour, which was an hour long speech by the leader of the opposition, and then an hour long speech by the prime minister, or maybe it even went in the other order. And that was prime minister's question time. If you've ever watched David Cameron or Tony Blair or someone get it on C-Span, it was nothing like that. They have since made it more interesting. In 1999, now it's more questions and shorter back and forth; not quite as raucous as the British parliament, but still more interesting.

There were changes in the Cabinet Law, which I'll describe in a minute, to give more power to the Cabinet, which is interesting. And then finally, Japan passed its own version of a Freedom of Information Act in 1999. It came into force in 2001; the ability of ordinary citizens to demand answers -- information about what's going on in the bureaucracy.

So, let's start with the Cabinet Law changes, because I think these are pretty interesting. So, the LDP lost power in 1993; was out of power for about nine months, and then came back in, in the coalition in late 1994. In 1997, an administrative reform council headed by the prime minister at the time, Hashimoto Ryutaro submitted a final report to create a new Cabinet Law.

The stated goal was to enhance the ability and the responsibility of the prime minister and the Cabinet to actually take the lead in policy making. So, this bottom up system, where there were all these essentially ex-anti veto players before anything ever got to the Cabinet, was to be de-emphasized, and the Cabinet was charged with planning and drafting, and not just with coordinating what the various ministries were producing.

The Cabinet was given increased resources, more special advisors, more ability to take advantage of expertise from outside government, from outside the parliament. There were ministers for special missions appointed whose job it was to coordinate the activities of several ministries that might be working on a particular set of policies.

And the prime minister was granted these councils -- they were called collegial bodies, the most famous of which is the Council on Economic and Fiscal Policy, where he would appoint professors or others from outside of the bureaucracy, outside of politics to advise him. And so, the model and the reality became a lot more top down agenda setting, where the prime minister's office was actually writing bills.

So, it's not surprising that given this newly sort of empowered and active and proactive agenda setting Cabinet, that the legislature was going to then want to pay more attention to what they were doing, because no longer was it the case that every bill that was submitted from the Cabinet was something that they had seen within the party committee. Sometimes, these were brain children of the prime minister and the prime minister's unelected advisory councils.

So, there were changes in the Diet. One I alluded to before was a requirement now that if a minister is asked a question, the minister has to answer the question and can no longer fob it off on a bureaucrat. The committee may still, at its discretion, call a bureaucrat, if they want actual technical expertise on something, but so the change -- the terminology was a change from a government delegate system, where the ministers were delegating to some bureaucrat to go there and face the music, to a government witness system where not the minister, but the committee are the ones who can decide whether to ask a bureaucrat to come and testify on some matter. But if they want to grill a minister directly, they may do that, and the minister is obliged to show up and answer questions as well or as badly as he or she is able.

There was also the establishment of formal government oversight committees within each -- in each chamber. In the lower house, the House of Representatives, it was an additional responsibility given to the budget audit committee, and in the upper house, a separate government oversight committee was created.

QT, I mentioned.

The question, however, is whether any of this matter, or if it was just kind of for show. Remember, committees had always -- not just these oversight committees, but all line policy committees had always had the power to launch investigations and to call for testimony by government ministers, but they didn't want to use it very often, because the committee was

controlled by the same party that controlled the ministry, so why do that sort of thing publicly?

And they just didn't use it very much, and so the impression was that the legislature wasn't doing anything. At least in terms of police patrol oversight, they weren't doing very much to oversee what the bureaucracy was doing. Now, there seems to be considerably more activity in these committees, but activity doesn't necessarily mean effectiveness.

And the whole enterprise smacks a bit of theatre. MPs have to submit any questions they want to ask ahead of time to the committee chair. And the committee chair is a member of the majority party, a member of the same party that controls the executive. So, if there's something that's going to be embarrassing, most likely from an opposition MP, they'll not pass it along.

There are points to be scored, even for ruling party MPs for grilling bureaucrats, if there is a scandal, if there's some sort of policy mistake. The Veterans Affairs Committee in the United States now is grilling -- each house's Veterans' Affairs Committee is grilling Democratically appointed bureaucrats and civil servants in a Democratic administration.

Even the Democrats in the Senate are doing that, because that's one of those situations where the scandal is out there. The media knows about it. They can't just sit on it and do nothing, so they are going through the procedure of holding these hearings. I bet if you did content analysis of what's going on in the Senate Committee versus what's going on in the House Committee; their hearts are in it more in the House because of the current president is a Democrat.

So, here is just a chart of -- these are the interpellations -- individual questions asked by MPs of ministers, and we see a huge spike in activity. And just to give you an idea of what's going on, lower house and upper house. So, I've separated the data into periods of divided parliament, where the upper house was controlled by the opposition and unified parliament, where both houses are controlled by the government coalition.

And what you see is a lot more of this activity going on when the opposition controlled the upper house. Even in the lower house, there's more of this activity going on. And I haven't had time to really get into the content of it yet, but my guess would be that once something is out, because the opposition controlled the upper house, then the lower house felt obliged to allow these kinds of questions to be asked, as well.

Watching some of the YouTube videos of these things, which are now all over the web, it does still seem a lot like theatre, where there are you know, tough looking questions being asked, particularly by members of the opposition, but not really satisfying answers, I wouldn't say -- a lot of evading of questions by ministers. And there is no particular sanction for not giving someone satisfaction. And there are, in fact, rules saying you can't answer the same question, I think it's more than three times in a session. So, if they can just stonewall you that long, then you're good.

What about fire alarms oversight? Well, I mentioned that they passed an APA in 1993, and if you read the bullet points there, that looks like the kinds of things you want to see in an Administrative Procedure Act where agencies are required to have procedures, to publicize the procedures, to give notice before they make a decision, call a public hearing, invite people to offer comment. They need to give answers.

The only really important one that I can see is the third one; that agencies have to give reasons if they deny an application or if they refused to answer a question. Legal scholars think that this may actually be an important detail, because this could be the fodder for legal cases; that if a minister or a ministry sort of refuses to answer a question or doesn't give a good explanation for why an application was denied, if it was illegitimate, then in principle, the group or individual who is unsatisfied, would be able to take his agency to court and ask the Court to require the agency to give them what they wanted, the license or whatever it might be.

But that, of course, requires a court system that's willing to play that role. And again, in a parliamentary system, in most parliamentary systems, particularly parliamentary systems that have had continuous majority control by a single party, the Court system is not like what we're used to here. It's not an independent third party of government. It is under the thumb of the Cabinet.

They can't be fired. They can't have their pay docked. They're independent enough in that sense, but really, scholars like Mark Ramzire have done a lot of work on the Japanese court system and said that really, if you start making decisions that are unpalatable to the political powers that be, you will find your career sidetracked pretty quickly.

And the mandatory retirement ages at the high level courts, so the Cabinet doesn't appoint judges who are more than a few years away from retirement, just in case they make an Earl Warren type of mistake and appoint someone who starts making decisions they don't like, it's not going to last for very long, because these aren't lifetime appointments. So, the Courts don't play that role in Japan so far. There is some possibility that that could happen in the future.

The other thing to say about the APA is, if you read the fine print, there are a lot more exemptions, a lot more areas where the rules of the APA apply, except in these cases, and a lot more discretion given to bureaucrats to determine whether it is one of those cases or what it is they are required to do, and no real sanction, as I said, if they make decisions that the people applying for whatever it is to the bureaucracy are not satisfied with.

The Information Disclosure Act has the same shortcoming. All agencies have written standards of disclosure, but still, much more restrictive than the U.S. Freedom of Information Act, with more exemptions and more discretion for officials. So, the laws are on the books, but absent sanctioning mechanisms or a sort of canon of law that fills in the details and enforces these kinds of rules, they really seem to be formal on paper kinds of privileges, but not really a big change; no sanctions, they said.

So, finally, just to assess it all, I think it is fair to say, looking at the records of

what's going on in the parliament, that there's more activity in the parliament that looks like oversight. The changes to the Cabinet Law have incentivized politicians to publicly participate in law making and in questioning of ministers.

The advent of YouTube and cameras in all of the committee rooms has made for a lot of playing to the gallery, as well. I don't know if it's quite like C-Span, where -- I can't remember when it was -- when they first put cameras in the House chamber, and there would just be a straight on shot of the speaker, and you didn't know that the room was empty, because they were just doing it for television, and then once, some administration then or a majority put a camera on the side where you could see the empty seats to embarrass people into not doing that anymore.

But it's maybe not quite as extreme as we heard about at the Legislative Yuan in Taiwan, there does seem to be a taste for this sort of participation among Japanese politicians, and more than there used to be. I think there are political points to be scored for looking like you're participating, and for occasionally jumping on the bandwagon when there is a policy failure or a scandal of some sort and grilling bureaucrats.

So, both police patrol and firearm oversight have increased quite a bit. Perhaps, there is a bit of a change in attitude among both government ministers and civil servants -- the presumption that MPs and citizens have rights and privileges. And while they can be circumvented pretty easily, there might be a political cost for doing it now, because there's more political competition, and therefore, there are groups with an incentive to expose circumvention.

But still, I think it's safe to say that in Japan, because it's a parliamentary system, especially because it's a parliamentary system, parliamentary activity is still very well controlled by the majority. And demands for information about and reversal of bureaucratic activities are still most effective when they're channeled through the ruling party or the ruling coalition. So, more activity, but still, the ultimate decisions are being made within the headquarters of whatever party or coalition is actually in control of the lower house, and therefore, the government. Thanks.

(Applause)

WU CHUNG-LI: Okay. Thanks for Brookings' invitation, and I'm more than happy to be having this opportunity to have a talk right here. And then, my talk will be closely related to Dr. Su Chi's keynote address. And I am assigned to talking about the defined and undefined roles for Legislative Yuan, and especially in shaping and monitoring the Executive Yuan and the president.

[View Wu Chung-li's presentation slides [here](#).]

First of all, I am going to look at the first part. I have to confess that this should be pretty dry and boring. I mean, especially, I'm going to be talking about some parts of the Constitution. So first of all, I'm going to look at the relationship between the Legislative Yuan

and the Executive Yuan.

The first one would be the consent of appointment. From Article 55, the prime minister of the Executive Yuan is nominated by the president, but must be approved by the Legislative Yuan. But actually, in 1997's first Constitutional reform, this article has been nullified by an additional article, and right now, the president of the Executive Yuan is only appointed by the president. So recently, there was some discussion probably talking about whether the Legislative Yuan should retake the power, especially on the consent of appointment of the prime minister.

And then, the second defined role of the Legislative Yuan would be the Article 57. I think this should be the most important article in this constitution. And you know, it is pretty much like the veto power of the presidential system in the United States. So, when the Legislative Yuan considered -- I mean, the Executive Yuan must report all major policy changes to the Legislative Yuan. And then, our legislators can directly question members of the Executive Yuan of the contents of the policies, and as the highest administration authority, the Executive Yuan has the responsibility to inform the Legislative Yuan.

And then, the third one, the next one, I would say that might be the most important part. That's why I'm saying this is the presidential veto power in the United States. That is Article 57, Section 2 says the Legislative Yuan can ask the Executive to change the contents of the important policies. And then, if the Executive Yuan, with the presidential approval can request the Legislative Yuan to consider.

If they consider, I mean, those policies are difficult to implement. So, if that happens -- and then, one half or more legislators vote to support policy changes, the Executive Yuan must make the requested changes. You know, originally, that is the two-thirds. The threshold is two-thirds. And then in 1997's constitutional reform has lowered the threshold to one-half.

And then, ironically, we just talking about this, that is kinds of parts of the presidential system. And then the following one, this part is part of the parliamentary system. So, somebody criticized Taiwan's constitutional governmental structure is pretty much like a hodgepodge system. You know, since the vote of confidence, it is a very important political operation in a parliamentary system.

So, according to 1997's force revision constitutional reform, the president may, within 10 days following the passage of the Legislative Yuan, offer a no confidence vote against the president, the prime minister of the Legislative Yuan. But right now, I mean, even the Chen Shui-bian he face some family scandals, and somebody is thinking about probably we should initiate the vote of confidence. But actually, that kinds of things never happen. The reason is because once the votes of confidence did happen, and then, the president has the right to resource all of the parliament and ask for all of the re-elections for all of the members of the Legislative Yuan.

And then, the next one will be consultation of a bill. That is, in Article 58, and then the members of the Executive Yuan, they must reach conclusive decisions on important bills before submitting them to the Legislative Yuan. And the last one, I mean, focusing on the relationship between the Executive Yuan and the Legislative Yuan that is in Article 67, Section 2, the members of the Executive Yuan can attend formal meetings and committees in the Legislative Yuan to defend certain policies, of course, including the rulings parties, their party manifestos or party reforms.

Okay. I think compared to the Executive Yuan, most of the people or the opposition party are much more concerned about what kinds of oversight mechanisms of the Legislative Yuan they have to checks and balances the power of the president. So in the following one, I'm going to look at the relationship between the Executive Yuan and the president.

The first one, that is in Article 55 and 102 -- that is the president of both the Executive Yuan and Control Yuan are nominated by the president, but must be approved by the Legislative Yuan. And as I had mentioned earlier, in the 1997's constitutional reform nullified Article 55, and nowadays, the presidents of the Control Yuan, Judicial Yuan and Examination Yuan must be approved by the Legislative Yuan.

And then, the following one will be the promulgation of laws. And after laws are passed by the Legislative Yuan, they are given to the president, and then the executive for final confirmation and signing into law. And then, unless the president decides to approve any requests for reconsideration by the Executive Yuan, the president must make the new laws known to the public within 10 days.

And then, the next one will be the approval for consideration, thus the parts I just mentioned in Article 57, the most important article in the Constitution. It says any consideration by the Legislative Yuan or the Executive Yuan can be requested only with presidential approval.

That is two important presidential powers, meaning the president can make some important decision making. That is in Article 39. The president can declare martial law. Of course, the Legislative Yuan can request the president to terminate martial law. And then, according to Article 43, the president can issue emergency orders during times of national crisis or disasters, but still, the Legislative Yuan can nullify these emergency orders by refusing to confirm them.

And the last one will be the assembly of special sessions defined in Article 69, Section 1. The president can request the Legislative Yuan to hold extraordinary sessions to discuss urgent matters. This request is applicable anytime the Legislative Yuan is not in regular session.

Okay. A little bit, I just finished the dry and boring parts. And then, the following question is a little bit extended from Dr. Su Chi's keynote address, saying I think the fundamental and one philosophical question is, what does the general public expect the

Legislative Yuan they can play to check and balance the Executive Yuan and the president.

Just like Professor Sarah Binder, she just mentioned about the three meanings of oversight. Literally, by definition, oversight means to watch the performance of a people or groups, and also show them how to do and also show them directions. So, the following question is, do the Taiwanese people really expect the Legislative Yuan to oversee the president and the Executive Yuan? Frankly speaking, I don't have that answer, but we can look at some data and look at what's the general public's attitude towards the Legislative Yuan.

So, since I'm one of the members of the TEDS -- the acronym is TEDS. What we call is the Taiwan Elections and Democratization Studies. I think this should be the most authoritative face to face survey data that is conducted every year. And one question is, what [is] your level of political trust toward the following government agencies: Do you trust them greatly, slightly, not so much, or not at all?

So, we asking 10 social political institutions including the courts, the central government, the local governments, political parts, the Legislative Yuan, civil servants, the military and police, newspapers and television. Right here are the figures. I know you will have a hard time reading it, so I tried to bring all of the numbers and then the trust and slightly trust.

We can see that actually, the higher level of political trust is the military. So that is about 82 percent. Since we [are] going to make the comparative comparison -- so right there, the central government, refers to the prime minister or Cabinet in the parliamentary system, and refers to the president in the presidential system. So, we can say the central government right here refers to the president and the Executive Yuan.

But look at it. I mean, the Legislative Yuan is the lowest one. Dr. Su Chi just presented the political parties -- actually, it's lower than the Legislative Yuan in his analysis. But actually, in TDS, we found out that the Legislative Yuan has lowest level of political trust.

I remember a couple of years ago, a professor from the Department of Political Science in National Chengchi University, she and her graduate students, they just finished a paper. The title is "Why do the People Hate the Legislative Yuan?" Okay. You can try to find that paper and try to contact her.

Okay. So, the following one, I'm going to look at some undefined roles of the Legislative Yuan. Of course, we can find the Legislative Yuan can use some undefined roles. For example, like filibustering, like they can use occupying the podium, or they can go to the mass media and criticize the ruling party, criticize the president, so on and so forth, and also support the social groups to protest.

But I think the most important undefined roles still are the political parties to an extreme, I would say, to let the opposition party to control the majority of seats of the Legislative Yuan. That might be the most powerful way to checks and balance the Executive Yuan and president. Right? Actually, that is -- that thing happened during the Chen Shui-bian

[administration] from the years of 2000 to 2008. So, that is what we call a divided government.

You know, a divided government is a fancy topic in the United States, and I should mention about one scholar. His name is Jim Sundquist. He published a paper in 1989 talking about that that is American's politics. They just face it. That is the big problem. That is what he called divided government.

So, divided government exists when the president and the majority of the Congress comes from oppositional political parties. So, when the executive and legislative elections are held separately -- so generally speaking, that only happens in the presidential system or the semi-presidential system. It seems in the parliamentary system, just like Michael just mentioned, there is fusion of executive and legislative powers.

So, a divided government in Juan Linz's terminology belongs to the category of dual democratic legitimacies. So, when the executive and legislative they have control by the different political parties. So, according to Jim Sundquist, he said there is a lack of unified leadership, and this tends to lead to conflicting policy positions.

So, during the past two decades, there are lots of books and articles and monographs. They are going to talking about -- actually, it still is a kind of debate whether divided governments leads to poorer performance of government. So, somebody argued just like a very well-known scholar -- her name is Sarah Binder. She published a paper in APSR in 1999 talking about unified divided government. Unified parliaments or divided parliaments -- whether they have a big difference.

So, there is one argument believes that when the divided government happened, there's lower policy efficiency and greater policy conflicts and stalemate between the executive and legislative branches due to the lack of unified leadership. However, some scholars, for example, like David Mayhew of Yale University, Morris Fiorina, Gary Jacobsen, they argued that divided government matches the major American constitutional principles. They fit into the separation of powers and checks and balances, and also, corresponded to the voters' expectations.

So, they believe that divided government is a kind of a scapegoat for poor governance and policy formulations. So, how about -- actually, during the past one decade, there are lots of studies on divided governments in Taiwan. Still, I'm going to use the TDS, and that is newest one. That is the question -- well, I designed it, so I am asking, which of the following two statements do you agree with more?

The first one is, the opposition party should have a majority of the seats in the Legislative Yuan, so that they can provide checks and balances on the government. Or, do you agree more that the president's party should have a majority of seats in the Legislative Yuan so that it can implement its policies? So, you can find out that the outcome is pretty -- kind of a dilemma.

On the one hand, the general public has very low levels of political trust, but on

the other hand, more than 55 percent of the general public believe that the opposition party should have the majority of the seats in the Legislative Yuan so they can check and balance the government. And only 34 percent of the general public believes the ruling party should have the majority, so they can implement the ruling party's policies.

So, in order to save time, I'm trying to summarize. Since there are more than a hundred papers and books talking about the divided government in Taiwan, I only summarized four papers. The first one is written by me and my student. We found out that there is quite a difference between the divided government and the unified government. And then especially on some controversial issues and changes in electoral -- I mean, especially the budget cut.

On the second paper, I cited the publishing party politics that is still written by me and my colleague. We found out that the residents, actually, the people living in the divided government tend to have a negative view towards the government.

And then the third one is, I tried to compare the economic performance between the divided government and unified government from 1992 to 2006. We found out actually that the economic performance did have the poor performance under the divided government. However, the last piece I cited -- that is the papers just published, they find out actually, they have no big difference between the divided government and unified government in terms of the passage of important laws. So, I had better stop here and any comments are welcome. Thank you.

(Applause)

DR. BUSH: So, Sarah has reported to us that at least in the American presidential system, oversight is mixed, at best. Michael told us that in Japan's parliamentary system, it's pretty limited. And so it wouldn't be surprising that in Taiwan's hodgepodge system, it wouldn't be perfect, either.

We have time for a couple of questions, and then we'll do a short break. Once I recognize you, if you'd just identify yourself and to whom you want to pose the question. Who would like to -- yes? Alan?

QUESTION: Thanks. Alan Romberg, Stimson Center. On the U.S. side, legislative history is often said to play a really critical role in understanding and interpreting and justifying what happens. How is that history recorded and accessed, and then actually used, in your understanding?

DR. BINDER: Well, that's a great question, and it gets contested, right, what counts as legislative history, and it comes in several forms. And typically, it comes in the form of the committee report itself that accompanies the actual legislation as a separate document. And I might defer to Richard on the details of how the Foreign Affairs Committee does it.

But of course, then the committee report can be contested, a majority can have a

view and a minority can have a dissenting view. And so, I don't know that there's any final pure statutory treatment of legislative history, because it gets contested -- particularly, it gets contested in the courts and justices read it differently.

DR. BUSH: And it's true that legislative history comes into play mostly when the language of the legislation itself is vague. When it's clear, then it doesn't come into play. Another question? Any questions? This is your big chance. Oops, there go the lights.

(Laughter)

Okay. Well, I want to thank each of the presenters. As both a political scientist and former staff person in our legislature, it was really fascinating for me. Let's take a five minute break. Just go to the rest room quickly or get some coffee, and then we'll resume with the second panel. Thanks.

(Applause)

(Recess)

SU CHI: Okay, my dear friends. Coffee break is always too short, but we have to come back.

The second panel will feature three distinguished experts, Richard and Kevin put together, and we will talk about three concrete cases -- important cases -- now still ongoing in Taiwan politics. I will introduce the issues and speakers first, and then they will go on with their presentation.

Our first speaker would be Dave Brown, and I'm sure you know him very well. He's been teaching at SAIS for quite some time now. But before that he served for over 30 years in US State Department, including stops at Taiwan and Hong Kong and Beijing. A very distinguished, experienced diplomat. Now he's been working on Taiwan politics for a long time. He will be analyzing the ECFA experience.

The second speaker would be Jacques deLisle, and he is also a familiar face in Taiwan politics; speaks excellent Mandarin, and he will be talking about services agreement which triggered this Sunflower Movement.

He will be followed by Nathan [Batto]. He's very young; you can tell. Speaks excellent Mandarin, and I understand he speaks better Taiwanese than I do. He will talk about the oversight bill which is under consideration in Taipei right now.

All three are pending -- no, I'm sorry. The ECFA is done, but the other two are pending. So, we'll hear about their analysis.

David, you want to go first?

DAVID BROWN: Thank you to Brookings for including me in this panel and to Su Chi for the introduction. As Su Chi mentioned, my role is to talk about ECFA as a case study for LY oversight of a cross-strait agreement.

Couple of things by way of background before I get into ECFA itself. First, what's the legislative basis for the LY's role in oversight of cross-strait agreements? It's what Su Chi mentioned in his presentation which is Article 5 of the cross-strait statute in Taiwan.

That Article 5 states that if a agreement, a cross-strait agreement, will require legislation to put it into effect, then the agreement must be sent to the legislature for its consideration and approval. If, however, it does not require legislation, then it is sent there simply for what might be called a legislature's information, or as a term of record, art, is for record. Article 5 is a very general, simple feature without specifics, and it references only a role to the legislature after an agreement has been concluded.

Now, before ECFA was concluded, 12 other cross-strait agreements had been signed by the executive under President Ma's administration, and a couple of memorandums of

understanding. None of these agreements was judged by the executive to require legislation, and each of them had a provision that would go into effect automatically within a certain period of time after its being signed. The executives sent all of these agreements to the legislature simply for their information or record.

The LY didn't entirely agree with this assessment. They felt that some of them really should be considered, and so they sent them to committee. But the committees didn't act on them, and the LY was, in effect, powerless to contest the executive's decision. The record before ECFA was of the Executive Yuan, the administration, acting entirely independently and simply sending the final product to the legislature.

Now, turning to ECFA, this was an idea that was part of President Ma's campaign platform in 2008, and in early 2009 a long process of consultation between Taipei and the mainland began. When it was originally floated, it was said that this economic agreement would be called the Comprehensive Economic Cooperation Agreement, CECA.

This proposal for CECA prompted a long period of debate within Taiwanese society. That debate, to a certain extent, shaped the way the final agreement came out. The proposal was controversial, and some of the issues which the opposition party and media raised were as follows: One was that the proposal would somehow denigrate Taiwan's sovereignty by looking like a copy of the Hong Kong agreement with China called CEPA. It looked like the administration envisaged the agreement treating Taiwan in the same way that the mainland treated Hong Kong. There were accusations that somehow it would undermine Taiwan's sovereignty; lead to unification.

As a result of this, the name of the agreement got changed to ECFA, Economic Cooperation Framework Agreement, which didn't sound like the Hong Kong agreement; had a softer tone to it, and the administration made clear there would be no political strings attached.

Another concern that was raised was that Taiwan agriculture would be harmed by increased imports. That led the Ma administration and Beijing to make clear early on that there would be no increases in the export of mainland agricultural products to Taiwan.

A third area of concern had to do with really a straw man, but nevertheless something that the opposition brought up, which was that there would be a flood of Chinese workers coming into Taiwan as a result of the trade agreement. Here the administration made clear that that was not going to happen.

The fourth of many other major concerns was that the LY would be sidetracked in the negotiation and approval process just the way it had been sidetracked in all of the previous agreements. This led the administration to give assurances that when ECFA was concluded it would be sent to the LY.

There was a very active public date for over a year about this agreement, and the debate shaped the outcome to a certain extent. Individual legislators took part in this debate, but

the LY as an institution was not involved in the process.

By early 2010, consultations shifted into very formal negotiations between SEF and ARATS and their advisors over the content of this bill. As that stage began, LY interpellations, which had been mentioned here, began to question the administration about the progress of the negotiations; that a certain amount of information came out.

The administration also began a process of trying to keep at least some members of the LY informed, and in particular Speaker Wang Jin-pyng, keep him informed of the process of the negotiations.

In May, which was about six, seven weeks before the agreement was actually finalized and when details about it were still uncertain, Premier Wu Den-yih visited Wang Jin-pyng, and they formally agreed that the LY would review the agreement, and that in order to do this a special session of the legislature would have to be called because the LY would be out of session before the negotiations were concluded.

Then in mid-June, about two weeks before the end, the Ministry of Economic Affairs and the MAC sent their ministers to the LY to formally brief the caucuses of the various parties in the LY about the status of negotiations. Those consultations didn't go very well, in part because the administration was still not prepared to give out details about the content of the agreement; specifically weren't prepared to share the early harvest list with the legislators.

As a result, the DPP boycotted the consultation process and accused the administration -- I think with some correctness -- that these weren't really consultations at all; it was just information sessions.

That was the process leading up to the conclusion of the agreement. June 29th, the agreement was signed in Chongqing, and this agreement, unlike the other ones, had a specific entry into force provision which stated that it would not enter into force until a domestic process is, on both sides, would be completed. In line with that provision and also with the assurances that had been given to Speaker Wang in the LY, the executive sent the ECFA agreement to the legislature very rapidly after his conclusion in the first days of July. A special session of the legislature was scheduled to take place between June 8th and June 14th.

Now, in preparation or in the run up to that special session, it was very clear that there were severe differences of opinions between the administration and the opposition. The opposition party felt that the agreement ought to be reviewed article by article; that it ought to be sent to committee and, in effect, treated as if it were an international agreement. The KMT, on the other hand, felt that the agreement should be dealt with in plenary session and that there should simply be a vote on whether it would be approved or not.

When the special session opened on June 8, as has been mentioned, a fight broke out in the plenary session. The Democratic Progressive Party and other opposition tried to prevent decisions being made. But the LY was controlled by a very large KMT majority, and

there was a degree of cooperation within the KMT party. Its members were able physically to protect Wang Jin-pyng, the speaker, and he ruled that the agreement would be dealt with in the plenary session.

The next day, the DPP refused to participate. They boycotted the discussions, and without their presence there couldn't be any meaningful review of the agreement. On June 14th, the special session ended and ECFA remained unapproved.

This required a delay of about a month, and perhaps Su Chi could explain why it was a month for a second special session to be held in August. A couple of days before that special session was to convene Speaker Wang Jin-pyng announced that a compromise had been worked out.

The compromise was that the agreement would be considered in plenary, but that it would be conducted as an article-by-article review, and that the opposition, DPP, would be able to raise questions and propose changes on each of the articles, and all of those would be voted on, and that when that process was finished there would be a vote on whether or not to approve the agreement as a whole.

I commend to a certain degree the DPP for accepting this because with the KMT controlling two-thirds of the members of legislature, it was very clear how all of those votes would likely come out. But they did accept it, and so on the opening day of the second special session there was a 10-hour debate. Each article was reviewed. The DPP put forward a whole series of proposals. Each of them was defeated. Then the agreement as whole was put to a vote, and ECFA was approved.

This was an example, in my mind, of the review process working in a reasonably effective way. The DPP, in my mind, acted as a responsible democratic opposition party at this final session by insisting that the minority's point-of-view be thoroughly considered before any action was taken.

But they also agreed to let the majority have its vote. They did not try to physically block the outcome the way they had when it first came up on the first day of the special session. So, the outcome was approval of the agreement.

Since we're looking at oversight as a whole, let me just quickly mention that after the agreement was concluded there was some opportunity for the LY to be involved in further oversight. First of all, trade adjustment assistance funding had to be passed by the legislature in order to help those sectors of Taiwan society that were affected. A bill was presented by the Executive Yuan. There was no evidence that I was able to find that there was ever any consultation with the LY about the content of the trade adjustment assistance, and the bill passed in a very routine fashion. Here the LY seemed to just abdicate any particular role.

Finally, the EFCA itself set-up a process whereby a cross-strait economic cooperation committee would meet periodically both to review its content and to oversee the

negotiation of the supplementary agreements under ECFA. Here again it seems that the executive did nothing to keep the legislature informed about implementation issues and didn't even brief them -- as far as I am able to determine -- on the outcome of those oversight committee meetings.

To sum up, I would say on the one hand the ECFA experience reflects the fact that the executive has the leadership on external policy issues as would normally be expected in a presidential government system. But on the other hand, in the four years that have transpired since ECFA was adopted, it's very clear that the public is now demanding a much larger say both for the legislature and for itself in the oversight of cross-strait agreement; oversight both during the negotiation stage as well as in the actual approval of the agreement and its implementation, and those are issues that will be discussed by my fellow speakers.

Why things were different in 2010 than they are now in 2014 is an interesting question we can explore in the question and answer period. Thank you for your patience.

DR. SU: Thank you, David. It's apparent that you mastered a lot more details about ECFA than I possibly could have.

(Laughter)

Our next speaker will be Jacques, please. Yes.

JACQUES DELISLE: Thank you. It's a pleasure to be back here at Brookings. Thank you, Richard and others and Su Chi for putting this together. I'm going to pick up where the story David was telling left off. We're doing this nicely chronologically.

Of course, ECFA did go through the process as David just described it. One of the major follow-on agreements and, I think it's fair to say, the most controversial follow-on agreement so far is the Trade in Services Agreement [TISA] which was, in the vernacular, opaquely negotiated and was signed on June 21, 2013 -- my birthday actually -- with considerable objections from people -- I had nothing to do with it -- considerable objections from people at various social and economic sectors about what it might mean for them.

The question was then what would happen with the Legislative Yuan role which is, of course, our topic here today. The initial position of the administration was that this was one of those bills that did not need to go through the consideration and review, but could be done for reporting purposes, but partly for the reasons that we've heard, that was not a wise political thing to do. So, in what was officially described as or portrayed as an act of political wisdom or grace, the administration was going to let the legislature have at it.

Indeed, the legislature did decide to have it, and did decide to have at it not just as a general approval process but to do it line by line, item by item, considering it in a fine-grain way. At this phrase, the prospect, indeed the hope for some of the DPP who were skeptical or opposed to it or that they would be able to get a couple of dings into the agreement so it would have to be sent back and renegotiated -- as one legislator put it -- back to square one. There was

clearly an agenda to use this process to scuttle the agreement.

In addition to the review and the review being done line-by-line with item-by-item voting was also to be a public process at this stage, so 20-some hearings, 100-some public forums, a lot of stuff which was clearly going to take a lot of time. This was a slow process, and it did drag out, and there was a decision not, in this case, to hold a special session to deal with it. So, that put the consideration of this agreement, which was signed in mid-2013, pushed it all the way back to March of 2014.

Now, we get to March of 2014 and suddenly it's the bad, old days in the Taiwan legislature again. We get committees that can't meet, doors being blocked, people not getting microphones, and so on. This comes against the backdrop of a restatement by the administration spokesman that says this really is one of those things that never needed to be reported to the legislature and so it could just let it go through in the course of time.

That, I think, was something of a nonstarter, but we had, again, the debate not happening because of the return of some of the fisticuffs and such in the legislature with the KMT delegates complaining of the DPP behaving in an undemocratic, obstructionist way using its minority position to stop something which had majority support, and the DPP charging that the KMT was returning to its old authoritarian ways.

This, of course, culminates in Chang Ching-chung saying I've got the microphone 10 minutes. We're going to declare this done. It's been debated. It can go to the floor now. Then leading to, I think, one of the most absurd moments in this whole thing which is debating whether he had the right microphone; was it a smuggled in, lapel microphone or was it the real microphone for recording.

I say this not to make light of what is a serious undertaking here, but to show just how much of a log jam and a gridlock this had turned into, and then how petty the tactics being used in a fairly momentous discussion had become.

So, a suspecting or fearing, of course, that the Ma administration and its allies in the legislature were going to push TISA through without the kind of debate that had been hoped for and promised, we get the Sunflower Movement.

We get the students showing up occupying the legislature and briefly occupying the Executive Yuan as well, and they have a fairly substantial list of complaints; ones which the DPP comes along and takes to a significant degree as its own. As I was saying earlier to one of my colleagues here, it's a little bit like the old joke about the 1960s French revolutionary who sees the crowd headed off down the street and says, "There go my people. I must find out where they are headed so that I could lead them."

(Laughter)

There was a certain reactive quality, which is not to say that it didn't become fully

politically serious.

A list of complaints ran from the substance of the agreement, what it would mean economically. Here the opacity, I think, was harmful. There were all sorts of rumors going around about what it might mean, rather like the TPP debates here, and that, I think, stoked fear as again the openness to an influx of workers from China and so on.

There were complaints about the opacity of the negotiating process itself, and there were complaints about the lack of democracy in the legislative review process, and this, of course, was met with countercharges of the lawlessness of the students, the risk of this very unruly process, and the stalling of the approval of TISA, the Services Agreement, would harm Taiwan's reputation in the outside world and would put at risk further progress in cross-Strait relations and equally crucially progress in signing those other agreements with other states that were the thing to which TISA and other cross-Strait agreements constituted the gateway.

There were also specific demands including things like an apology from the president, the resignation of the Premier -- it depends on which set of lists you look at, but they were fairly extensive. More important procedurally perhaps, certainly as a narrow TISA issue, was the demand that the agreement be withdrawn, and that would have really taken us back to square one.

Then, of course, the demands for the following through on the initial promise of line-by-line review and an item-by-item vote. Most crucially -- and this, I think, is Nathan's topic -- a call for a new set of tiáolì [regulations]; not the ones on the relations between the people of the mainland area and Taiwan, but one on the review of the supervision, jiāndū, of the cross-Strait agreements. Finally, a citizens' constitutional conference. I'm sure I'm leaving something off; it tends to happen with these long lists of demands.

So, you have a 24-day sit-in, a brief seizure of the Legislative Yuan, a brief seizure of the Executive Yuan which was quickly ended by force, and hundreds of thousands of people in the streets. Pretty dramatic stuff. Not exactly a quiet legislative review process. That's the, sort of, tick-tock on that. Let me now say a little bit about what comes out of that and how to understand it.

They got some of what they wanted; that is the students and the DPP that sided with them. No withdrawal, certainly, of no formal agreement that this should never have been put forward in the first place. We did get a return to the pledge of disaggregated and probing review, but dark warning about the consequences of if you tinker with anything we are back at square one, and that's a real problem. An acceptance of a supervision and monitoring law, although what exactly that is going to look like we'll hear about later -- or not. Maybe much later after this meeting, of course. They also got an agreement from Wang Jin-pyng in the legislature that this supervision law could proceed ahead of deciding on TISA. Getting a constitutional conference, well, not so much. What Ma offered was a national affairs conference on economics and trade -- a smaller subset of the kinds of issues that might be on the table -- and the preliminary meetings for that have been boycotted by the DPP, the opposition.

Along the way, we wound up with some familiar old tropes of Taiwanese politics; that is you very quickly wind up in discussions of big issues that get far beyond the immediate policy question on the table. The talk of a constitutional conference at all takes you into fairly big issues. There was talk of a referendum on TISA perhaps -- that's another familiar trope -- and talk of what it all meant for cross-strait relations and indeed Taiwan's status.

Now, this has been clearly a messy, chaotic review process, lacking clear agreement on the rules *ex-ante* or the rules as they evolved in the review process. It's been damaging to both the government and the opposition and to Taiwan's reputation; whoever you think is at fault. That this has not been an ideal process, and we still don't have a clean resolution of what we're going to have going forward for supervision of future cross-Strait agreements.

This happens oddly despite the fact that it's a one-party-in-control system. Yes, a reduced majority in the LY compared to ECFA, but still, this isn't supposed to happen at some level. How do we understand it?

I'll say a few words in closing about what I think are three categories of problems or features that contribute to this.

One is basic institutional, structural, quasi-constitutional if you will. This is partly the consequence of Taiwan's half-presidential, half-parliamentary system. It's not entirely clear what the executive and legislative and the presidential roles are supposed to be. In that area of ambiguity there's a lot more pressure to negotiate something that will work in the individual case.

It's murkier still because cross-Strait agreements live in this halfway house of not quite fully international, not really treaties, so what are they? There's not such a robust set of rules on them. The grand justices don't like to weigh in on separation of powers questions. I think it's fair to say they like to say normative things, but they don't like to really resolve the tough questions.

And, of course, in any system, trade agreements are this kind of funny thing that are partially international and partly require a domestic change. There's structural things that contribute to that.

The second set of issues, I think, have to do with Taiwan's particular brand of partisan politics. It's deeply polarized across party lines. Anything can't be just about TISA. It has to be about TISA and everything else, so you get then into debates about what it means for the national economic interest, for national security, and so on.

Secondly, you get allegations on both sides that everyone is playing politics; that Ma wants to turn the topic back to cross-Straits which was his relative strong suit when his approval ratings were fast-headed below those of the U.S. Congress; that the DPP wanted to use TISA as a way of enhancing its electoral chances once it saw there was a popular opinion turning against it, and so on. A deep lack of trust in the *bona fide* as of what either side was up to.

Also, the division within the KMT itself. Famous for its factionalism, as everybody in this room well knows, I think it's fair to say, as Su Chi alluded to earlier, that there is not a whole lot of love lost between Wang Jin-pyng and Ma Ying-jeou trying to get him kicked out of the party. That's not a way to have good presidential, legislative relations.

There was, I think, enough division within the KMT that it was telling -- it was in the legislature that one of the things that people pushed for was for party discipline to be relaxed so that legislatures could vote their individual consciences. That's a suggestion that there's a real underlying split there.

Finally, you have a lame-duck president with not terribly great approval ratings, and a proposal that was becoming unpopular.

Of course, the DPP has its own political problems trying to find its way back from the political wilderness, trying to minimize the risks that it's going to be a long-term minority party in the legislature with not much hope beyond that, and yes, anti-Ma and cross-strait issues, but trying to find its own footing for a cross-Straits policy that will work electorally, and doing so when the student movement thing comes in and swamps the whole thing.

Beyond that, I'd say the other thing that happens is coming out of this you essentially see a perfect storm happening. That is, you have the elections approaching, which makes every democracy a little crazy. You have the TISA provoking particular fears of economic vulnerability among those who opposed it most vocally, and you have the broader phenomenon in the development of cross-Straits relations under Ma Ying-jeou; that the strategy of first easy, then hard eventually starts getting harder. Everybody can agree on the first steps, but you start losing bits of the coalition as you take farther steps, so that was inevitable. And then you just get the path-dependent escalation that happens with the student movement.

I think everybody in this room knows the narrative in an amount of time so I won't go through it, but it becomes this huge narrative about all good and all bad. Everything is tied together; that is you're hurting the national economic interest, you're hurting the national security interest, you're hurting national autonomy, and the other side making the same change back.

Now, you could think that this is an old dragnet episode. The names have been changed to protect the innocent. That is, I'm really talking about Washington, and I've just substituted all these Taiwan terms in there. But I think it's fair to say that these things are more severe in Taiwan.

Partly the democratic and constitutional institutions that we're talking about are less well-consolidated and less well-worked out. Partly they are more immediately tied up in the politics of Taiwan. You go immediately to these quasi-constitutional questions whenever any political problem arises, and the stakes are high. At least people claim they're existential, and I think a lot of people genuinely believe that.

What does that mean for what lies ahead? Here I'll throw it to Nathan. It seems to me it depends partly on what the external fallout of this is. That is, will it be possible to make more agreements? That's partly a matter for Beijing and Taiwan and others, the other potential parties to agreements with Taiwan, to decide. Has the TISA process caused a loss of confidence in that? Who will win the next couple rounds of elections? The immediately upcoming one and the presidential in 2016 will have a lot to do with this. And will there be any sort of structural adjustments? These things, of course, interact.

I think the likelihood of really formal structural agreements are not high, partly because there are genuinely tough calls to be made. As we heard on the first panel, there are genuinely tough calls to be made about the merits or demerits of a more presidential or more parliamentary system, about a more purely majoritarian system or one that remains heavily consensus driven.

And there are, unfortunately, short-run calculus. Each side thinks it benefits or loses from various moves, and that's a hard thing to sort out in a highly polarized system. The seriousness of the polarization of which, I think, has been given eloquent testimony by Su Chi and his colleagues in the five principles for cross-strait.

And with that, I will stop. Thanks.

DR. SU: Okay. Thank you, Jacques. Listening to what you said, I hope you will turn to what -- into an article. The tempo of political life in Taiwan is quite fast. People are now forgetting about the Services Agreement and focusing on Mr. Zhang Zhijun's visit, but in my view, ECFA was a watershed, and the disputes surrounding the Services Agreement is another watershed. So, I hope that you would write it up and publish it into an article. Thank you.

And, Nathan, please, on oversight mechanism, oversight different containing versions, containing proposals. Yeah, please go ahead.

NATHAN BATTO: I'm going to try to be at least as entertaining as Jacques was, but I probably won't be.

My talk, I'm going to talk about two topics really. I was asked to talk about competing proposals for oversight reform in Taiwan, and so I want to talk a little bit about general oversight and then specifically about the Services Trade Agreement monitoring mechanism.

[View Nathan Batto's presentation slides [here](#).]

As we talk about general oversight, Sarah this morning had a list of tools that the U.S. Congress has. Taiwan also has a list of tools, and in talking with various scholars and politicians, you come to the realization that all of these tools are deeply compromised in some way.

Oral and written interpellation is compromised in that it is not necessarily a tool to get the executive to do what the legislature wants it to do. It's often more about political communication with your constituents or doing constituency service; if you ask an official a very pointed question about some case, and they take the hint, and they go do a deed for your constituent.

When the interpellation is done in committee as opposed to on the floor, some people thought that that was more effective because the committees tend to be a little bit less partisan, the media focus is a little bit less intense, and the legislators asking the question tend to have a little bit more expertise.

But even in committee the usefulness of interpellation is compromised because the legislators just aren't expert enough. The committees are too small. There aren't enough committees with divided jurisdiction, so you don't get nearly enough focus on specific topics. There's too much turnover in committees because, as Dr. Su mentioned earlier, you can change from biannual session to biannual session. And because there are multiple chair people -- or conveners, as they're called in Taiwan. The committees don't work very well as Dr. Su pointed out this morning.

So, the oral and written interpellation power doesn't work as a really effective oversight mechanism. The legislature doesn't have investigation power. One of the primary powers of U.S. Congress is to hold hearings and to order people to show up and compel them to tell the truth. Taiwan's Legislative Yuan doesn't have that power, the counsel of grand justices ruled that they should have it -- the constitution implies that they do have it -- but to actually get that they need to change one of their organic laws, and that hasn't happened. The Executive Yuan isn't interested in introducing that bill, and the majority KMT isn't interested in passing it because the executive doesn't want them to pass it. The minority maybe would like to do this, but this is not worth it, I guess, electorally yet.

At any rate, for right now the legislature doesn't have investigative power. Even if they did, there are people who are worried that that would overlap with the Control Yuan's investigative power. Formally the Control Yuan, so Taiwan has five Yuan in its government. It's a five-branch system instead of a three-branch system; the fourth and fifth branches being the Examination Yuan and the Control Yuan, responsible for appointment of government officials and overseeing the government.

The Control Yuan currently has the power to do investigations and to impeach and discipline bureaucrats, and there are worries that if the legislature took that power there would be overlaps, and then who would the executive be responsible to? They might play off the institutions against each other.

The legislature does have the power to requisition documents which is useful, except then they can't do anything with those documents because they don't have the power to hold hearings, and they don't have the power to compel bureaucrats to come before them and

report. So, this power is not very useful, and in fact the Executive Yuan doesn't always bother to provide the documents because they're of limited use anyway.

The two last powers here that I've listed are the nuclear bomb powers that really should underpin all legislative powers so the legislature has budgetary powers. But again, the deck is stacked against the legislature here.

The legislature in Taiwan doesn't write the budget; the executive writes the budget. The legislative power is only to cut individual budget items, and they cannot rearrange the budget. You can't transfer funds from one item to another item. All you can do is cut, and that gives enormous power to the executive. If you're the legislature you can't cut a single item by too much without incurring a public backlash. In these budget fights, the executive always wins. The legislative threat to redo the budget is muted.

Finally, there is the vote of no-confidence, which in parliamentary systems is the nuclear bomb. You have the power to actually determine the shape of the government, and in the extreme you can do the Margaret Thatcher, John Major thing and throw everybody out. Government bureaucrats have to worry -- the executive branch has to worry about provoking that.

In Taiwan, that hasn't been a real threat. Even under divided government, even with Chen Shui-bian being a very unpopular president, the legislature didn't dare to pass a no-confidence measure. They brought several no-confidence measures up, but they never passed because the legislature doesn't want the president to be able to dissolve the legislature, and then they would all have to face reelection.

So, that these tools are all compromised in some way, and the legislature simply doesn't have the power to do effective government oversight. The toolbox is just too limited.

There are two big questions about this. The first one is how much power should the Legislative Yuan have, and there are a lot of people who think this is fine. This is not the United States. Legislative oversight isn't about making sure that the powers that Congress delegates to the executive, as Sarah Binder pointed out, it isn't about that because the constitution doesn't give the legislature those powers to delegate to the executive branch. The executive is given a lot of those powers in the constitution, or at least that's what many people interpret the constitution to say. There are quite a few expectations that the executive should be leading the process.

There are also people who are worried that if the legislature got too much power the individual legislators would be able to use that power for blackmail purposes so that they would be able to increase corruption essentially by demanding specific goodies be given to them or else I will cause problems. That is one concern; not everybody is worried about that.

There is this debate about what should the balance of power between the legislature and the executive be. It's not obvious that there is overwhelming demand for a stronger legislature.

The second thing that really surprised me in talking to people was about reform. I was given the task to talk about reforms, and so I would ask people what would you like to see done? For example, Taiwan doesn't have a contempt mechanism. In the U.S. Congress, if you bring somebody into a hearing and they don't answer your questions, you can hold them in contempt and impose criminal penalties. They can go to jail.

Taiwan doesn't have this, and so I would say what do you think about a contempt mechanism? They told me, well, that'd be great, but you're missing the point or they tell me you're just missing the point. We don't need these small reforms. We don't need an enhanced investigation measure. What we need is thorough constitutional reform to clarify what kind of legislature should we have; what kind of executive should we have.

Should we be a presidential system? Should we be a parliamentary system? What is the role of the National Security Council? As one person told me, that's a third executive branch. You have the president, you have the premier, and you have the head of the national security system. What is the relationship between those things?

You can't just clarify those; you have to do everything. You have to expand the size of the legislature so that there will be more legislators on each committee. You have to increase the numbers of committees. You have to change the electoral system so it's not quite so majoritarian and that the legislature will reflect the public sentiment better. You need to change the system of party negotiations; the caucus consultations as it was termed. But to do that you need to change the committee convener system.

I got these people saying don't mess with these small reforms. What Taiwan needs now is fundamental, overall reform. This is mostly coming from the DPP side of the bench. I would say, well, that's not very practical, is it? The administration's never going to go for this.

I get the feeling that the DPP is preparing the long game here. They're laying the groundwork not because they expect the Ma administration to ever accept any of these, but because the Ma administration is on its way out, and other parts of the KMT might be willing to accept some of these changes at some point in the future, although what kind of package would emerge is not clear.

But that's the picture of general oversight. It's a broken system that there are calls for a fundamental reform or just to keep it as it is with a strong executive.

To go to the more specific -- the cross-strait agreement oversight framework, we are now in a special session of the legislature, and the president has asked the legislature to pass this bill. There are currently five versions of the bill before the legislature. There are two important ones: One is the bill raised by the executive branch; another is one written by the members of the Sunflower Movement, and the main person writing the bill was a lawyer named Lai Chung-chiang.

The bill was introduced by a DPP member and cosigned by almost all of the DPP caucus except for Ker Chien-ming who is the most important DPP legislator. The DPP has promised -- this is not a DPP bill though; this is the Sunflower bill. The DPP has promised to introduce its own bill, but it hasn't done so as of yet, so I'm guessing about what the DPP bill will look like when they get around to introducing it.

These bills have very different visions of the proper division of power. Our fundamental question was how much power should the legislature have and how much should the executive have, and it's reflected in this. The executive bill gives free reign to the executive basically and actually constrains the legislature, and I'll explain how.

The Sunflower bill does exactly the opposite. It empowers the legislature to determine policy outputs, and it puts the legislature as almost the dominant power vis-à-vis the executive. The DPP bill, I imagine, will be closer to the Executive Yuan bill, but the DPP is in a different position because, as Jacques was saying, they have to follow the Sunflower Movement for political reasons. They have a fine road to toe here.

I'm going to talk about several differences in the bills. The first one is the executive's responsibility to report to the legislature. In the executive bill, the verbs are things like "report" and "explain". The executive has the duty to report to the legislature at specific times, and the legislature has the duty to listen, and maybe they can ask some questions and the executive might deign to answer them. This process is run by the -- it advantages the executive.

The Lai bill on the other hand says things like "The legislature may require the executive to give reports and may accept those reports or may demand revisions. They may compel changes," and it has a provision for actually compelling changes if the legislature demands changes and the executive doesn't follow those in subsequent negotiations. If they don't follow the vision set out by the legislature there are criminal implications or administrative punishments.

The DPP vision is probably closer to the executive branch although I don't really know about this.

We talked a lot about the associated legal revisions and whether something is presented for consideration or for record. This is a key point of debate. The current status is that the current law governing cross-strait negotiations says that only things that involve legal changes need to be considered by the legislature. That clause, in fact, was introduced by President Chen in a very shortsighted move. His administration didn't consider what a post-Chen administration might do.

The executive bill maintains that current system, but actually strengthens it by saying if something is introduced for the record, it has three months to be handled by the legislature, and it can extended for another period of three months, and after that it automatically is considered to be finished and accepted. It doesn't have to be voted on, but the relevant committee has to call it up on the floor and report it -- read it out, and then it's done. But the

executive bill puts a time limit on that, and after the time limit passes it's finished.

The Lai bill does exactly the opposite. It makes all these for-record things very easy to turn into for-consideration where you actually have to vote. One-third of the legislature can demand that a bill's status be changed. Instead of the executive deciding what's what, the legislature essentially has the power to decide what's what. After three months, if it's not considered by the legislature, it automatically changes from a for-the-record bill into a for-consideration bill, and there is no time limit to pass this. Essentially, under the Lai vision, something can be stalled to death in the legislature.

The DPP, as far as I could tell, is divided. It's probably closer to the executive version maybe without the enhanced time limits. However, they are very concerned about the narrow scope of things -- maybe the too-wide scope of things -- sent for the record, and they want a larger set of things sent to be voted on. There are various ways of doing this, but one of them was to just say, well, anything in several important categories, whether it can be treated by executive order or not, needs to be passed by the legislature.

So, oversight by other bodies. The Executive Yuan bill actually gives more oversight to other bodies than to the legislature. Things will be thoroughly reviewed by the National Security Council and by bodies of experts, and they put a big stress on national security, which I think probably is a code for "we need to maintain secrecy." But at any rate, they stress that things are considered by the National Security Council, which, of course, is an executive body and controlled by the president and the administration.

There are also a fair number of expert review bodies which are, in part, appointed by legislative caucuses, but then the executive branch then gets to also add a few more so that it controls those bodies more than it would control the legislature.

The Lai bill on the other hand empowers the legislature as you might see. It stresses, instead of national security, it stresses impact assessments, so what would be the impact on various sectors of the economy and what would be the impact on human rights and on the environment and that kind of thing. They do this by setting up various fire alarm -- they empower various citizen groups to report.

The legislature controls this process though, whereas in the executive bill the executive determines who the committees are -- the expert bodies are, and when they should meet and discuss. Here the legislature is controlling this process of when there will be hearings and who will be there.

Then we have the how should agreements be amended or should they be allowed to be amended. Under the executive vision, the legislature is supposed to vote up or down, and they talk a lot about the USA fast track negotiation. The argument is if you demand any revision that is tantamount to killing a bill, and this is based on the multilateral -- like the WTO negotiations where you have 100 and some odd -- there are various parties, and you can't just change one clause and expect everybody to change it. You have to take the very package that

everybody else is passing.

So, there's a little bit of fudging here because this is a bilateral negotiation. The logic of multilateral negotiations isn't necessarily correct. In a bilateral negotiation, if you demand a change the other side can either reject it or accept it, but it doesn't necessarily kill the whole thing. You might have to make minor renegotiations or whatever, but it's not an automatic death penalty the way it would be in a multilateral trade negotiation.

At any rate, the executive demands that the legislature has the obligation to either vote up or down but not to amend. The Lai version takes the exact opposite tack, which is that the legislature has the power to determine goals, demand revisions, and restart the process at every stage if they're not satisfied with how things are going.

The DPP's position, as far as I could tell, is sympathetic to the idea that the legislature should be able to demand revisions although they are skeptical that the legislature actually has the capacity to do that or that any changes would actually be demanded or be followed through on.

What they really want, I think, is more communication during the process with key legislative leaders so that the executive negotiating team incorporates legislative demands into the negotiating process. That was one of the key complaints about this negotiating process is that the executive locked everybody out and a very small number of bureaucrats negotiated the cross-strait services trade agreement without any input.

Finally, there is the question of political agreements. We've been talking about economic agreements this whole time, but there might be political agreements in the future. Now, the executive bill doesn't make a distinction between economic agreements or political agreements; they're all to be treated in the same way, whereas the Lai bill puts a much higher threshold on anything that might impinge on sovereignty or Taiwan's future status or a whole broad range of things that might be considered political. They have to be passed by three-fourths of the legislature, and they are then subject to a public referendum. In Taiwan, referendums are very difficult to pass. That's a very, very high threshold.

I didn't get what the DPP bill would be except that they said -- and we haven't even begun to talk about the political part, so I would assume that they see economics as different from politics.

You see, there are very, very different visions here. In the executive bill I think it's only a little bit of an exaggeration to say the only oversight in the executive bill is in the title of the bill.

(Laughter)

Whereas in the social movement bill, the executive really isn't given the role to do anything but implement the legislature's will. We don't really know what the DPP will

demand, but they need to pay lip service to the Sunflower Movement while also probably coming closer to the KMT vision, and I'll stop here.

(Applause)

DR. SU: Thank you, Nathan, for a very comprehensive review of this highly important bill.

Now we have time for a 15-minute QA. If possible we may extend it a little bit. Please identify yourself before you raise a question, and please try to be focused and short, and raise question more than making comments. Please, if you prefer, identify the speakers you'd like to address your question to. Anyone on the floor? Yes, Alan?

QUESTION: Mr. Batto -- thank you all by the way for really terrific presentations. The debate over the supervision bill, or whatever you're calling it, is obviously going to be pretty contentious and fierce. What is the prospect that this thing will also just drag out forever? That may be an exaggeration, but for a very long time? Then the Services Trade Agreement and the suspended talks about the Commodities Trade Agreement and the Dispute Resolution Agreement; all that is just not going to come to fruition.

DR. BATTO: There is a possibility that this will drag out at least long enough for the Ma administration's term to end. We're doing this step-by-step, so the monitoring mechanism has to pass first. Then you get into the actual Services Trade Agreement. Now we're talking into election season, and once election season happens my best guess is the KMT is looking at a bad year. Then the presidential and legislative elections will be the next year, and then it might be too late for this to go through in the next two years. But this is not about a single agreement; you have to think about the longer-term implications.

DR. SU: You want to comment?

MR. BROWN: I agree.

DR. SU: Okay. Me too.

(Laughter)

Anyone? Okay, Barbara.

QUESTION: Barbara Schrage. As Nathan was just saying, we do have to think about the longer-term implications. I'm wondering in particular is this kind of controversy limited to agreements having to do primarily with Taiwan-China agreements? What does it mean for agreements with other countries?

DR. DELISLE: I think that was something that was much debated in the context of TISA. It once again broke down very much on partisan lines, and the complaint from the

government and the administration and much of the KMT position was whether or not you like TISA, and whether or not you liked the process that got us to TESA, the opaque negotiations and what happened in the legislative review process, if you scuttle this no one will trust Taiwan.

The U.S. won't go forward with TIFA. You're not going to see anymore Singapore or New Zealand. It's just not going to happen because who wants to go through all the hassle of negotiating a trade agreement and the political hits of negotiating a trade agreement with Taiwan when the Mainland support for it is always a little contingent, and will the Mainland be even willing to do this? There was a very close monitoring of the Mainland's reaction which initially was really quite reserved, and then you got a little more grumbling about the messy democracy again.

So far it doesn't seem to have done much damage, but the rhetoric was definitely there, and the U.S., I think, has walked that line too saying TPP isn't contingent on what happens with TISA, but you can't really say it's got nothing to do with it. You get into -- it is what Doug Paal says, consistent with U.S. positions and all that sort of thing. But without getting the equities of predicting what's going to happen, it has become yet another one of the political footballs in this whole discussion.

MR. BROWN: We don't know the answer to that question, but I think that with respect to agreements by other governments that it's possible those other governments will recognize that cross-strait agreements has very special sensitivities in Taiwan. It's not beyond the realm of the possible that other New-Zealand-like agreements will come forward.

With respect to cross-strait agreements, after TISA there have been more agreements approved, but they were very noncontroversial ones, and they've gone forward. Zhang Zhijun is coming to Taiwan in a couple of days, and my impression is Beijing wants to find a way to move things ahead even with prospect that the oversight bill and TISA are going to be stalled for perhaps as long as two years. We'll just have to wait and see.

If a controversial bill is going to go forward, I think regardless of whether there's an oversight bill or not, the executive is going to have to do a great deal more to prepare the legislature for whatever it is they're going to present if they want to have a hope of it getting through.

QUESTION: Rick Ruzicka from AIT in Washington. This is a question for all the panelists. In your research did you find -- it's my understanding that Taiwan has an Administrative Procedures Act that was a result of the WTO negotiation. It also has some kind of an advisory structure where advice is to be gotten from the private sector. Did you find in your research any evidence of the Administrative Procedures act or this advisory consultation structure being applied to the TISA -- the cross-strait TISA?

DR. DELISLE: I haven't looked into whether the particular administrative procedure structures are in place. In terms of consultation the complaint was generally a lack of ex-ante consultation. What happened with the process that was worked out as far as legislature

review was to get everybody around the table. The initial stakeholders were consulted early on in a fairly informal way and in a fairly opaque way. Then everybody else who felt affected by it were critical, people who were brought in with those legislative hearings and the public forum, they went with it, but precisely to your question I don't know.

DR. BUSH: I'm curious about the impact of this chain of events on the norms of the legislative process. There's a word in U.S. tradition that refers to this; it's comity. Not comedy, but C-O-M-I-T-Y, and that is that all members in a legislative body recognize that they have a common interest in certain norms being followed and a recognition that if one side violates those norms then the whole institution is at risk.

I think what happens is that if one part of the legislature uses all the powers that are available to them to obstruct the process, then when the other guys take their place, either as the majority or the minority, they'll do the same thing, and so nothing gets done. Are we in danger of this sort of situation occurring in Taiwan or are we already there?

MR. BROWN: Yes, and I'll let other people provide the detail.

(Laughter)

It's a rhetorical question, I think.

DR. SU: I think we're already witnessing that; the breakdown of the comity. As I said in my presentation, I think the root is the problem between president and the speaker.

I'm sure you're aware that the following fact: all the DPP chairmen, all chairperson, have served at one time or another a longer, shorter period of time in the Legislative Yuan, so they are familiar with the legislative process. They are familiar with all the tricks. They're familiar with not just the young side but the inside -- the inside in LY politics; the inside. The hidden side is actually more important than the young side. I was amazed when I was made a legislator.

All the DPP chairpersons have that kind of experience, but on the other hand all the KMT chairmen have never, look at Ma Ying-jeou, never, Wu Po-hsiung, never, Lien Chan, never, Lee Teng-hui, never. So, the KMT chairperson, or president, have to rely more on speaker and the caucus; the party whip, two party whips.

So, if you retain the speaker's goodwill, it's easier to get things done. If you don't, then as is now, President Ma and the Speaker Wang have a lawsuit between them. How can you have comity on the opposite side? This will force the KMT legislators to -- they don't want to be seen as they're choosing sides, so the KMT legislators are put in a very awkward position.

So, KMT caucus, KMT party caucus, even though with 64 seat strong, quite weak. Quite weak, even before the lawsuit and now it's even paralyzed. The situation has less to do, in my view, with the marriage of the bills themselves, but have a lot to do with the two big guys.

But at this point, unfortunately, people like me and everybody else have no say at all because this is in a legal process, and nothing can be done. Hence we're all hanging and praying for whatever luck will come our way. Sorry, I sound a little bit pessimistic, but that's the way it is.

DR. DELISLE: I think the signs are fairly good for pessimism as it were. I take great interest in Su Chi's description of backgrounds. Of course, you have the irony that the people with legislative experience are from the party that has never led the legislative majority. Yes, they were the largest party briefly, but they were still the minority in the blue-green split.

I think it's also discouraging that in the TISA context the rhetoric went very quickly to talking about who's really standing up for democracy. Democracy got held up as this idea relatively separated from the institutions that would be -- the institutions would have to exhibit comity toward one another or within any given institution.

Was the KMT being undemocratic by not consulting broadly with the wider society? Were they being undemocratic by taking their not-huge electoral majority, but which under Taiwanese rules gives you a huge majority of seats or at least a disproportionate chunk of seats? Were the students really being democratic or were they being lawless? We really got extra-institutional pretty quickly, and we pretty quickly got the discussions -- Tsai Ing-wen was raising this -- to change the electoral procedures so that you would have something where you have more of a proportional representation system. That strikes me as something that's talking about changing institutions or going outside of institutions rather than working within them, and that's not good in terms of your question.

MR. BROWN: In addition to those two points, the breakdown of comity between the key individuals and Jacques point, I think another underlying reason for pessimism is that so often the issues in the legislature become issues that are considered by one side or the other as existential questions, and that this comes about because there isn't agreement within Taiwan society of what we are.

A stable democracy really requires an understanding of what the society is and what it represents. As long as that key issue isn't resolved, I think it's going to be reflected repeatedly in a party's seeing an issue as existential and therefore justifying any means to prevent something from happening.

DR. SU: Thank you, David. Any -- yeah, Dr. Wu?

QUESTION: This is Chung-li Wu from Academia Sinica. I have a quick question for my colleague, Nathan, and to be a political scientist we always believe that political reforms always brings about unexpected results.

How about this one? Even the LY accept the Lai's versions of the oversight mechanism, and then how about if the Tsai Ing-wen wins the next presidential election, and then but the pan-blue still control the majority seats of the Legislative Yuan? How comes they might expect to downplays the oversight powers of the LY again? Is this possible? Thank you.

DR. BATTO: Yeah, and I did get the feeling in talking to a couple of DPP legislators that they are worried about exactly that problem. That one of the possible scenarios is exactly that they'll win the presidency but not the legislature again.

That's one of the reasons that I think the DPP position is actually closer to the KMT position than through the Sunflower position. I got the impression that they fundamentally think that the executive should be leading the policy process. Maybe the legislature has too little power now and it should be enhanced a bit, but they don't want a thorough revision of that balance of power, I don't think. But it's hard to tell because they haven't actually introduced a bill.

DR. SU CHI: Thank you. One more question.

QUESTION: This actually follows up on the last question. The Lai bill that you've described sounds to me to be tantamount to changing to a parliamentary system where the executive's job is to implement the will of the legislature. Now I finally understand why I was invited to talk about Japan.

(Laughter)

In that case, and particularly where the probability of a, unless you change the electoral system too, where the probability of a majority party is pretty strong, wouldn't that frustrate the actual aims of the Sunflower Movement in that you move to a Japanese-type outcome where the executive is the executive committee of the majority party of the legislature, and then they'll be delegated the authority to make decisions on behalf of the majority party? The legislature itself will become just a kabuki.

DR. BATTO: The Lai bill was written with two sources of inspiration: One is the U.S. Congress and the other is South Korea, so not Japan. They thought that the first half, everything up until the signing would follow the American procedure so that the Congress sets out the goals and the broad policy outlines, and this is what you may negotiate and this is what you may not negotiate. But then the difficulty in passing things and implementing things was following a stricter South Korean process.

I think one of the main aims of the Sunflower bill was actually -- the executive has criticized this and said it's an attempt to make any agreements impossible, and there is some truth to that. It does become very difficult to pass anything. It becomes very easy for any minority even in a legislature to block things. That reflects a fundamental distrust of China and dealing with China.

DR. SU: Okay. I'd like to thank the speakers for your thorough preparation of the tough issues, and thank you all for your participation and attention. Richard, last word?

DR. BUSH: I'd like to thank all the presenters and Su Chi for his keynote talk. I

detect that we remain about as pessimistic going out of the auditorium as we did when we came in, but at least we understand why.

(Laughter)

Because I think each of the presenters has enriched our level of knowledge, and we may not feel better, but at least we're well informed, and that's what Brookings is all about. So, thank you very much.

(Applause)

* * * * *