Three Opposites in Taiwan's Refracted Constitution

A Postscript to Taiwan's (Unsuccessful) Democratic Experiment with Mass Recall

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Civil society groups have initiated a mass recall movement in Taiwan. The movement targeted parliamentarians of the main opposition party, the Nationalist Party (also referred to as Kuomintang (KMT)), and was backed by the ruling Democratic Progressive Party (DPP). On 26 July, it received an electoral setback. The movement has been hailed as the most recent evidence for Taiwan's robust democracy. But its result – none of the twenty-four KMT parliamentarians that ended up on the recall ballots of 26 July were unseated – suggests a more complicated story concerning Taiwan's refracted constitutional image and the constitutional reality underneath it. Beneath the surface of Taiwan's robust democracy lie three constitutive opposites in constitutional imagining about the separation of powers, the character of political parties, and the political difference on Taiwan-China relations. As I will explain, the advocacy for the mass recall movement fails to recognize these constitutional opposites at play in Taiwan's democracy, and thus portrays an image of Taiwan's constitutional democracy that is refracted.

Constitutional rebalance vs institutional maximalism

Since the elections of January 2024, Taiwan has braced itself for its first divided government in sixteen years. While the opposition KMT and its partner, the Taiwan People's Party (TPP), have since formed a de facto coalition and held majority seats in the Legislative Yuan (the parliament), the DPP has continued to control the executive branch and retained the presidency. With the government divided, popular calls for mass recall of parliamentarians first emerged just five months after the elections in January.

One of the justifications for the mass recall movement was the alleged abuse of power by the legislative majority over government budget, legislation, and the appointment of constitutional court judges. The foremost evidence was the parliament's continuing obstruction of the appointment of seven constitutional court judges. This has meant that the Taiwan Constitutional Court (TCC) has effectively ceased to function since November 2024 because the quorum required for judicial deliberation within the Court could not be achieved. The movement's list of such legislative abuses extended further to the passage of a statue granting the parliament an array of investigative powers, including the power to subpoena government officials backed by sanctions. This was declared unconstitutional by the TCC in October. It also includes the statutory manoeuvres on the quorum requirement for the TCC proceedings for judicial deliberation, and the large-scale budget cut on national defence and cultural sectors, among others.

Having effectively held up the DPP government's policies and personnel choices thanks to their majority seats in the parliament, the KMT and the TPP were thus accused of a power grab at the expense of the proper functioning of other constitutional powers and public interest. Against this backdrop, civil society groups, supported by the DPP, launched a mass initiative campaign to recall all the thirty-nine KMT parliamentarians who were elected for district constituencies (thirty-six) and special aboriginal constituencies (three) in the 113-seat parliament, hoping to break up the opposition's control of the parliament. Notably, all the TPP's eight parliamentarians and the KMT's remaining thirteen parliamentary seats were elected on the party list and were thus unrecallable. Ultimately, thirty-one KMT parliamentarians in total ended up on the recall ballots – to be cast on 26 July (twenty-four) and 23 August (seven) separately – while

the KMT-sponsored countercampaign to recall DPP parliamentarians went nowhere.

Whether all of the charges against the opposition parties by the mass recall movement should be considered an "abuse of the legislative power" is debatable. Even if the legislation on parliamentary investigation was struck down by the TCC on the grounds of separation of powers, the TCC's judgment itself is not beyond criticism. Also, whether mass recall is the proper means to rein in the seemingly runaway parliament is contestable. Yet the alleged abuse of the legislative power by the opposition coalition and the ruling DPP's endorsement of the mass recall give away the two opposite constitutional imaginings on the separation of powers in Taiwan. To the opposition coalition, the assertion of legislative power vis-à-vis the executive branch – effectively headed by the president – is nothing but a rebalancing of constitutional powers in response to a defiant administration. The problem is that such constitutional rebalance is seen through a maximalist lens of institutional competence – as if anything short of legislative supremacy would be evidence for failing to rebalance constitutional powers. At the same time, the executive power does not escape such a maximalist mindset, either: it regards the introduction of parliamentary investigative powers as an attempt to hold the government back only to the detriment of public interest and national security. As a result, the system of checks and balances is degenerating to a fight over maximal institutional autonomy – if not supremacy – under a divided government.

Consider the stalled appointment of constitutional court judges. According to the Constitution, the president appoints constitutional court judges subject to legislative consent to his nominees. In essence, such appointment power is shared between the president and the parliament: the former nominates, and the latter approves after vetting. Yet, within the maximalist mindset, the president tended to consider the power to nominate exclusive – rejecting the need for prior parliamentary participation. Conversely, the parliament regarded its approving role as a legislative privilege to be exercised with total discretion. Eventually, the parliament rejected both the president's first cohort of seven judicial nominees in December 2024 and the second cohort in July 2025. The opposition-controlled parliament and the administration are thus at loggerheads as they see each other through the lens of the opposite imaginings of the separation of powers: each is striving for rebalance of constitutional powers against the other through asserting its own maximal institutional independence. Moreover, as the mass recall movement's laundry list of charges suggests, these opposite imaginings set the opposition parties and the mass recall movement activists apart when it comes to how much a legislature should be able to check on the administration.

Resistance movement vs party politics

These opposite imaginings of the separation of powers in Taiwan fit within the broader context of political polarization and its effect on divided government in countries that have adopted presidentialism or semi-presidentialism. In Taiwan, however, they are further complicated by the institutional character of political parties. As long as political parties do not endanger the existence of the Republic of China (the official name of Taiwan, hereinafter ROC) or the free and democratic constitutional order of Taiwan, they are free to compete with each other for power (see the 5th Additional Article paragraph 5). This competition between parties has materialized in fierce forms, which only speaks to the vigour of political contestation following the end of Taiwan's decades-long martial-law rule in 1987. Upon a closer examination, however, political parties in Taiwan resemble resistance movements more closely than institutional participants in democratic competition due to conflicted identities.

The question of political and constitutional identity continues to haunt Taiwan even if its political system as envisaged in the 1946 ROC Constitution – originally designed for governance needs vis-à-vis China – has undergone a process of indigenization (see here and here for examples). Despite standing as a self-ruled island nation independently of China on the international plane, Taiwan is straight-jacked by constitutional provisions to the effect that Taiwan stands as the "free area" of the Republic of China

before "national unification", while China is legally considered the "mainland area" of the same Republic in the amendment to the ROC Constitution (see the preamble and the 11th Additional Article). The pro-independence DPP has campaigned and been perceived as a movement party for Taiwan's sovereignty and eventual *de jure* independence. Conversely, the KMT regards itself as the standard-bearer of the Chinese legacy in Taiwan. As China's threat to invade Taiwan looms ever larger, the KMT, together with its partner TPP, is regarded as China's ally. The rivalry between the DPP and the KMT is thus more than a function of normal party politics. Rather, it amounts to rivalling movements battling against each other in the guise of party competition in a democracy, with each side seeing the other as the existential threat to its own political and constitutional identity: the DPP frames its political tactics vis-à-vis rivalling parties as the resistance movement against the Chinese external enemy and its internal collaborators, while the KMT strategizes its position as the resistance movement against the indigenous usurper of the (Chinese) constitutional identity it affirms. More importantly, the opposite imaginings about the character of political parties – resistance movement vs party competition – not only radicalize the political rhetoric from rivalling parties but also permeate social sectors and thus divide society more deeply, as seen in the mass recall campaign.

Conciliation with a challenging neighbour vs capitulation to the enemy

The conflicted identities in Taiwan's dysfunctional party politics – manifested in parliamentarians of different parties brawling instead of arguing over legislative bills – also cast a long shadow over Taiwan's relations with China. It is not unusual to see parties in a country diverge on foreign policy, including choosing between suing for peace and continuing the historic struggle with the archenemy. But Taiwan's relationship with China is something different.

As noted, under Taiwan's Constitution, "national unification" remains a legitimate political option. Seen in this light, it should be no surprise that political parties may take a conciliatory approach towards Beijing without ruling out possible "unification" in future, although such positions are not likely to have much traction among the general populace. Yet, due to Taiwan's conflicted identities, the policy choice over China tends to be seen in existential terms. As China, with its ambition to reunify or rather annex Taiwan, stands as the existential threat to Taiwan, political parties whose platforms are seen as not promoting sovereign independence are liable to the criticism of Beijing's collaborators, while opinions sympathetic to peaceful unification are trashed as giving voice to the enemy. So, even policies that are not directly pertinent to the Taiwan-China relations – such as the opposition-sponsored legislation shifting financial resources from the central government to local governments – can be portrayed as lending implicit assistance to China at the expense of Taiwan's national security, the first step towards capitulating to Beijing. Beyond contestation and confrontation, Taiwan's imagining about its relationship with China is framed by the opposites of conciliation and capitulation beneath the surface of Taiwan's refracted constitution.

Through the conciliation-vs-capitulation lens, the mass recall movement has been presented as an exercise of "civic self-rescue" in the face of various policies adopted by the opposition-controlled parliament as the KMT-TPP opposition coalition departs from President LAI Ching-te's more confrontational stance on China. The undertone of this advocacy is that democracy in Taiwan is facing some existential threat, part of which are the opposition parties and the legislative power wielded under their direction. With their conciliatory attitudes to China, the opposition parties are seen as acting as China's proxies, posing no less threat than the ultimate existential challenger, China, to Taiwan's national security from within. Conversely, the DPP's defence policy is accused of provoking a war with China. Debates over how to manage the Taiwan-China relationship and maintain peace across the Taiwan Strait are thus hollowed out. Different policy voices are drowned in the accusations of warmongering and appeasement between the KMT supporters and

those leaning towards the DPP's pro-dependence position.

A more complicated story

As another seven KMT parliamentarians' fate is yet to be determined by a separate recall vote scheduled for 23 August, it is too early to judge the almost one-year-long initiative for mass recall simply based on the electoral result of 26 July. Instead of joining the crowd in characterizing this mass recall movement as "great" or not, I have taken a look beneath the surface of the rancorous recall campaign to shed light on the state of Taiwan's democracy under its refracted constitution. With its vibrant civil society and energized electoral politics, Taiwan has been praised as the fortress of freedom and democracy standing at the forefront of the struggle against Chinese authoritarianism and expansionism. Through this lens, Taiwan is a thriving constitutional democracy and the mass recall movement is just the latest evidence of it. Yet the result of the recall vote suggests that the story of Taiwan's success is more complicated than this narrative purports. Beneath the surface of Taiwan's robust democracy lie three constitutive opposites in constitutional imagining about the separation of powers, the character of political parties, and the Taiwan-China relations. Failing to see these constitutive opposites, the constitutional image portrayed of Taiwan is refracted and the nuance of Taiwan's recent democratic experiment is lost.

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