Taiwan’s Constitutional Court from 2003 to 2011: New Appointments and Different Performance*

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Abstract

In October 2003, Taiwan’s Constitutional Court underwent its first structural change, mainly in the number and term of Justices, since its establishment in 1948. Meanwhile, this new court also faced the first party turnover and divided government in the history of Taiwan. Against the above backdrop, this paper discusses the impact of such structural and political changes on the overall performance of this new court. After a brief review of the development of Taiwan’s Constitutional Court under the authoritarian rule (1950s to 1980s), this paper went on to analyze the major reforms during the democratization process of 1990s. Comparing the performance of Taiwan's Constitutional Court before and after 2003, this paper finds the post-2003 court has been a much more active and divided one, due to the above structural change and some personal factors. Moreover, the change toward staggered and individualized terms has triggered an unintended consequence of increasingly partisan appointment process. In terms of career backgrounds of Justices before appointment, this paper also finds that those scholars-turned-Justices, particularly those formerly pubic law scholars, have been the most outspoken and active Justices in practice.

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1. Introduction

Taiwan’s Constitutional Court1) (hereinafter “CC”) is probably the oldest one in Asia. It was formally established in 1948.2) However, it did not function well during the subsequent four decades of authoritarian rule under the Nationalist Party (Kuomintang, hereinafter “KMT”) regime. Only beginning from the late 1980s did Taiwan’s CC start significant reforms along with the democratization process. Since then, it has gradually established itself as the Guardian of Constitution or Guardian of Human Rights, as claimed by its Grand Justices3) and many constitutional lawyers.4) However, its organization had remained largely unchanged until the turn of century, in spite of apparent expansion in its jurisdictions.

In October 2003, a new group of 15 Grand Justices took office under the 1997 Constitutional Amendments. This was the first major structural transformation of

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1) Taiwan’s Constitution does not expressly provide for the title and organization of “Constitutional Court” as such. Instead, it mandates that the Judicial Yuan (the highest institution of the judicial branch), via its Grand Justices, shall exercise the power of constitutional interpretation. Taiwan Const. Art. 79, Sec. 2. Until the early 1990s, the Constitutional Court was called the “Council of Grand Justices.” Since 1993, the name of “Council of Grand Justices” has no longer been used by Judicial Yuan. For simplicity, this paper uses the title of “Constitutional Court” to refer to the institution of Grand Justices in charge of constitutional interpretation throughout its history, unless otherwise indicated.

