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Judicial Ideal Points in New Democracies: The Case of Taiwan

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Article

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ABSTRACT

This paper extends the empirical analysis of the determinants of judicial behavior by estimating the ideal points for the Justices of the Taiwanese Constitutional Court from 1988-2009. Taiwan presents a particularly interesting case because the establishment and development of constitutional review corresponds to the country's political transition from an authoritarian regime to an emerging democracy. The estimated ideal points allow us to focus on political coalitions in the Judicial Yuan based on presidential appointments. We did not find any strong evidence of such coalitions. Our empirical results indicated that, with the exception of a handful of Justices, most of them have moderate estimated ideal points. In the context of the Taiwanese Constitutional Court, our results also confirm the previous econometric analysis that largely rejected the attitudinal hypothesis, which predicted that Justices would respond to their appointers' party interests.

Keywords: Constitutional Court, Constitutional Review, Empirical Analysis, Grand Justice, Ideal Point, Judicial Yuan, Taiwan

CONTENTS

I. INTRODUCTION

In the field of comparative judicial politics, Taiwan is a particularly interesting case because the establishment and development of its constitutional review, to a large extent, corresponds to its transition from an authoritarian regime to an emerging democracy.[1] Further, scholars have identified Taiwan as a success story—Taiwanese constitutional judges have increasingly established themselves as a relevant role, while simultaneously avoiding excessive backlash from other political actors.[2]

The Taiwanese Constitution ("Constitution" or "ROC Constitution") is one of the oldest active constitutions remaining in the world. Similarly, the Taiwanese Constitutional Court (a.k.a. "Council of Grand Justices" or "Council") predates almost all other specialized constitutional courts on the globe. Although its composition and competence have been reformed in the last fifty years, the Taiwanese Constitutional Court is by no means a new product, as are the constitutional courts in many other third-wave democracies,[3] but it is instead an institution that has prevailed throughout the authoritarian period and the more recent emerging democracy. The age and role of the Council of Grand Justices substantially distinguish the court from other, seemingly similar, constitutional courts around the world.

The Council was founded in China in 1948 and retreated with the ROC government to Taiwan in 1949.[4] Prior to 2003, the Council was composed of seventeen Grand Justices who were appointed by the President and approved by the Control Yuan (1948-1992) or the National Assembly (1992-2000). The Grand Justices served renewable terms of nine years.[5] The Presidents of the Judicial Yuan presided over the Council meetings, despite the fact that they were not Grand Justices at the time.[6] Today, the

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1. On other transitions, *see generally* GRETCHEN HELMKE, COURTS UNDER CONSTRAINTS: JUDGES, GENERALS, AND PRESIDENTS IN ARGENTINA (2004); LISA HILBINK, JUDGES BEYOND POLITICS IN DEMOCRACY AND DICTATORSHIP: LESSONS FROM CHILE (2007); REBECCA BILL CHÁVEZ, THE RULE OF LAW IN NASCENT DEMOCRACIES: JUDICIAL POLITICS IN ARGENTINA (2004).

2. *See* TOM GINSBURG, JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES 42, 106 (2003).

3. For example, Spain, Portugal, Eastern European countries, or Chile (to some extent).

4. Yueh-sheng Weng, *Wokuo Shihhsien chihtu chih Techen yu Chanwang* [*The Features and Prospects of the Republic of China (ROC) Constitutional Review System*], *in* SSUFAYUAN DAFAKUAN SHIHHSIEN 50 CHOUNIEN CHINIEN LUNWENCHI [ESSAYS IN MEMORY OF THE FIFTIETH ANNIVERSARY OF CONSTITUTIONAL INTERPRETATIONS BY THE GRAND JUSTICES OF THE JUDICIAL YUAN] 297 (Dep't of Clerks for the Justices of the Constitutional Court ed., 2000).

5. Ssufayuan Tsuchihfa [The Organic Act of the Judicial Yuan], art. 3 (1947) (amended 2009) (Taiwan) [hereinafter OAJY], *available at* http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0010051; *see also* Constitution, (1947) (Taiwan); J.Y. Interpretation No. 541 (2002) (Taiwan), *available at* http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p03_01.asp?expno=541.

6. *See* OAJY, *supra* note 5, arts. 3(1), 3(2), 5(2); *see also* Thomas Weishing Huang, *Judicial Activism in the Transitional Polity: The Council of Grand Justices in Taiwan*, 19 TEMP. INT'L & COMP.

number of Grand Justices has been reduced to fifteen, and both the President and Vice President of the Judicial Yuan simultaneously hold a position as Grand Justice. With the exception of the eight Justices appointed in 2003 to serve four-year terms, today's Justices are appointed by the President with the majority consent of the Legislative Yuan and serve non-renewable eight-year terms.[7] About half of the Justices are renewed every four years, meaning, in theory, each President could potentially appoint seven or eight Justices during his or her four-year presidential term.

The Council of Grand Justices follows the centralized German model of constitutional review rather than the decentralized review system practiced in the United States or Japan.[8] The importance of the Council and the significant role that it plays in Taiwan provide an interesting framework to evaluate and analyze the judicial behavior therein.

In a previous paper we tested the attitudinal model in the Council of Grand Justices during the period 1988–2008.[9] We hypothesized that the Taiwanese constitutional judges responded to party interests, either because their preferences coincided with the appointer(s) or they wanted to exhibit loyalty to them. Given the disproportional influence of the Chinese Nationalist Party ("KMT" or "Kuomintang") in the appointment process throughout most of this period, we expected the Grand Justices appointed by KMT Presidents (in 1985, 1994, and 1999) to favor KMT interests. We also expected that the Grand Justices appointed by the President—who was supported by the Democratic Progressive Party ("DPP"), the major KMT opponent—in 2003 and 2007 would disfavor KMT interests.[10] Under this

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L.J. 1, 3 (2005).

7. *See* Constitution, Additional Articles (1991) (amended 2000) (Taiwan); *see also* Constitution, Additional Articles, art. 5 (1991) (amended 2005) (Taiwan). Moreover, it is noteworthy that the Justices who serve as President and Vice President of the Judicial Yuan are not guaranteed an eight-year term in office. Constitution, Additional Articles, art. 5(2) (1991) (amended 2005) (Taiwan).

8. *See* VICKI C. JACKSON & MARK TUSHNET, COMPARATIVE CONSTITUTIONAL LAW 465-66 (2d ed. 2006). The Council portrays itself as a "model similar to the German and Austrian system." *See also* J.Y. Interpretation No. 419 (1996) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=419.

9. *See* Nuno Garoupa, Veronica Grembi & Shirley Ching-ping Lin, *Explaining Constitutional Review in New Democracies: The Case of Taiwan*, 20 PAC. RIM L. & POL'Y J. 1 (2011). For a general view of the attitudinal model, *see* Saul Brenner & Harold J. Spaeth, *Ideological Position as a Variable in the Authoring of Dissenting Opinions on the Warren and Burger Courts*, 16 AM. POL. RES. 317, 317-28 (1988); Jeffrey A. Segal & Albert D. Cover, *Ideological Values and the Votes of U.S. Supreme Court Justices*, 83 AM. POL. SCI. REV. 557, 557-65 (1989); LEE EPSTEIN & JACK KNIGHT, THE CHOICES JUSTICES MAKE (1997); JEFFREY A. SEGAL & HAROLD J. SPAETH, THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED (2002); THOMAS G. HANSFORD & JAMES F. SPRIGGS II, THE POLITICS OF PRECEDENT ON THE U.S. SUPREME COURT (2008).

10. However, because the opposition never actually dominated the relevant confirming body (i.e., the Control Yuan, National Assembly, or Legislative Yuan), we expected the second effect (alignment between the interests of the opposition and the voting patterns of Justices appointed by the DPP President) to be less significant than the first (alignment between the interests of the KMT and the voting patterns of Justices appointed by the KMT Presidents).

hypothesis, the affiliation of the Grand Justices, as measured by the President who appointed them, should be a good predictor of their voting patterns in the Court.[11]

As mentioned earlier, the appointment mechanism is heavily dominated by the President and the political parties of the relevant confirming body (under the influence of the KMT and its allies). In this study, we assumed that the choice of Grand Justices would correspond to the preferences of the appointing President given the position of the Control Yuan, National Assembly, or Legislative Yuan.[12] Thus, we expected these preferences to largely align. Moreover, the Grand Justices have limited tenure and, prior to 2003, also faced the possibility of reappointment. Thus, we also expected that these two factors would influence the likelihood that the Grand Justices would seriously consider the interests of their appointers.

Our research proved to be quite convincing—although political variables partly explained how members of the Council made their decisions, the role of political variables was significantly limited and did not evidence notable party alignment. (Specifically, we tested how the Council members aligned with the KMT, the traditional ruling party).   Our empirical analysis provides evidence that, in general, the Taiwanese Constitutional Court remains fairly insulated from the main party interests. Also, our empirical research did not find any strong systematic interference of any other political variables or ideologies.

In addition, our results indicated that other explanations, such as judicial concern over advancing the reputation of the Court, exist to describe the Council's behavior. Moreover, since dissenting opinions had become more likely as the KMT gradually lost its political influence, while the likelihood of the opposition gaining the presidency increased (i.e., during the political transition), our results showed that the alignment of interests between the Council and political parties weakened during the transition (mid-1990s to early 2000s) but was noticeably stronger prior to the transition period.

In this paper, we address judicial behavior in the Council with a different empirical methodology. We estimate individual ideal points for each constitutional judge during the period 1988–2009. The American empirical literature on the behavior of the Supreme Court Justices developed a sophisticated empirical method for estimating individual judges' ideal points based on how judges manifest their views in dissenting and

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11. The following names are the elected Presidents of Taiwan since 1950: Chiang Kai-shek (1950-1975, KMT), Yen Chia-kan (1975-1978, KMT), Chiang Ching-kuo (1978-1988, KMT), Lee Teng-hui (1988-2000, KMT), Chen Shui-bian (2000-2008, DPP), and Ma Ying-jeou (since 2008, KMT).

12. While these bodies of government should not pose problems for KMT Presidents, they could potentially influence in the case of DPP President Chen (who never controlled a legislative majority).

concurring opinions.[13] Technically, the empirical method of estimation revealed those points in some n–dimensional space of politically relevant choices, which judges prefer over all other points in that space. Utilizing this particular approach allows us to estimate judicial ideal points by ranking them in one dimension. Essentially, we treated the period between 1988–2009 as a single large court, which based on how the Justices have voted, we estimated their individual ideal points.

In the context of the U.S. Supreme Court, it has been shown that the ideal points of individual Justices can be consistently estimated in a one-dimension space that reflects the traditional conservative-liberal dichotomy. Although results suggest that U.S. Supreme Court Justices do not have temporally constant ideal points, they seem to correlate quite significantly with the general perception of which Justices are conservative or liberal. Therefore, ideal point estimations are still viewed as a rightful measurement to predict judicial behavior.

Our paper develops a similar exercise for the Taiwanese Judicial Yuan. The unique dataset is collected by the authors and includes 101 decisions ("interpretations") issued by the Taiwanese Constitutional Court during the time period between 1988 and 2009. We chose July 15, 1987 (the date of the lifting of martial law in Taiwan) to serve as the initial period because this date corresponds with the start of the transition from the traditional authoritarian period to an emerging democracy. Additionally, we chose those interpretations in which petitioners with certain political interests can be easily identifiable (particularly, when they are affiliated with the KMT and its allies or with the opposition).[14] However, unlike the American model, the Taiwanese Constitutional Court does not entertain concrete review, but instead employs abstract review when it delivers a constitutional interpretation. Therefore, all of the cases we have selected are abstract in nature and can be easily associated with political interests. If there are significant differences among judicial ideal points, these cases will present

13. *See* Andrew D. Martin & Kevin M. Quinn, *Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court*, 1953-1999, 10 POL. ANALYSIS 134 (2002). Other relevant references *see* Simon Jackman, *Multidimensional Analysis of Roll Call Data via Bayesian Simulation: Identification, Estimation, Inference, and Model Checking*, 9 POL. ANALYSIS 227 (2001); Joseph Bafumi et al., *Practical Issues in Implementing and Understanding Bayesian Ideal Point Estimation*, 13 POL. ANALYSIS 171 (2005); Michael Peress, *Small Chamber Ideal Point Estimation*, 17 POL. ANALYSIS 276 (2009). From a comparative perspective, *see also* Matthew E. Wetstein et al., *Ideological Consistency and Attitudinal Conflict: A Comparison of the U.S. and Canadian Supreme Courts*, 42 COMP. POL. STUD. 763 (2009); Chris Hanretty, *Dissent in Iberia: The Ideal Points of Justices on the Spanish and Portuguese Constitutional Tribunals*, EUR. J. POL. RES. (forthcoming 2012).

14. By no means are these the only cases with possible political consequences. However, in order to avoid subjectivity, we have only considered those cases that are obviously and remarkably political in nature. The argument should be that these are salient cases for which we should be able to detect politicization, if any exists.

the best evidence to reveal these points.

Unlike the standard results from research on the U.S. Supreme Court , the evidence from our Taiwan Constitutional Court study do not show significantly different estimated ideal points. In fact, the Taiwanese constitutional judges do not appear to be excessively polarized. Our results indicate that the ranking of estimated ideal points is fairly unrelated to presidential appointments. In addition, because part of our estimated results reflects a prevailing low rate of separate opinions, Justices who tend to author dissenting opinions more often are more likely polarized in terms of estimated ideal points.

Our results generally support our previous findings. The Council is largely non-polarized and seems to follow the pattern of civil law jurisdictions by pursuing a certain apolitical façade.[15] While some political influence can be detected empirically, it is generally insignificant once compared with the U.S. Supreme Court.

Our paper makes four main contributions to the growing comparative empirical studies on constitutional courts. First, it estimates judicial ideal points outside the U.S. court system. Second, it compares the Council of Grand Justices with other constitutional courts to confirm the Council's distinct elements. Third, it supports the view that, under certain conditions, constitutional judges in a particular setting might be willing to restrain their potential ideological biases and pursue other, more collective, interests. Fourth, it provides an empirically oriented framework for future research on Taiwanese judicial politics. In Part II we address the case of Taiwan. In Part III, we present our empirical results. And, finally, in Part IV we conclude this paper.

II. THE CASE OF TAIWAN[16]

Prior to Taiwan's transformation to a democratic system in the 1990s, the country experienced over 100 years of colonial and authoritarian rule.[17] In 1895, as a result of the First Sino-Japanese War, Taiwan was ceded by Imperial China (the Ching Dynasty) to Japan and became a Japanese colony

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15. *See* JOHN HENRY MERRYMAN & ROGELIO PÉREZ-PERDOMO, THE CIVIL LAW TRADITION (3d ed. 2007) (discussing the pressure for consensus in the civil law tradition).

16. This section largely follows Garoupa, Grembi & Lin, *supra* note 9.

17. *See* Tay-sheng Wang, *The Legal Development of Taiwan in the 20th Century: Toward a Liberal and Democratic Country*, 11 PAC. RIM L. & POL'Y J. 531, 531-39 (2002); *see also* Xiaohong Xiao-Planes, *Of Constitutions and Constitutionalism: Trying to Build a New Political Order in China, 1908-1949*, *in* BUILDING CONSTITUTIONALISM IN CHINA (Stéphanie Balme & Michael W. Dowdle eds., 2009) (discussing the Constitution as a political compromise and the later enactment of the Temporary Provisions during the period of the Communist Rebellion). The Temporary Provisions removed constitutional constraints imposed on the President and effectively allowed for a one-party state with no independent constitutional structures.

for fifty years until Japan was defeated during World War II in 1945.[18] That same year, the troops of Chiang Kai-shek, then-President of the Republic of China and Director-General of the KMT as well as the Supreme Allied Commander in Asia, took control of Taiwan on behalf of the Allied Forces. Followed by Chiang's defeat in the Chinese Civil War, the KMT-led government of the Republic of China declared martial law in Taiwan in May 1949. They also retreated from the Chinese mainland to Taiwan that year. The KMT continuously ruled Taiwan, Penghu, and several outlying Fujianese islands for fifty-five years[19] until the DPP won the presidential election in 2000.[20] The KMT imposed authoritarian rule on the Taiwanese people from 1949 until martial law was lifted in 1987.[21] This crucial political reform opened up a new era of liberalization and democratization for Taiwan.[22] Opposition parties were legalized in 1989, and many restrictions on public discourse were eliminated.[23] Beginning in 1991, various general elections have been held regularly.[24] Taiwan has been a liberal democratic state ever since.[25]

The complex political transition from colonial rule to authoritarian reign to democracy has inevitably affected Taiwan's laws and its overall legal system. The Constitution of Taiwan, which is also the Constitution of the

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18. *See* GOV'T INFO. OFF., REPUBLIC OF CHINA YEAR BOOK 53-54 (2010) [hereinafter 2010 Y.B.], *available at*
http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/2010/03History.pdf.

19. *See* Cheng-jung Lin, *The San Francisco Peace Treaty and the Lack of Conclusions on Taiwan's International Status*, TAIWAN HIST. ASS'N (Sept. 10, 2001), http://www.twhistory.org.tw/20010910.htm; *see also* Nigel Nien-Tsu Li, *Nishuihsingchou de Hsiancheng—Taiwan Chiehyen Erhshih Nien Huiku Hsianfa Laishihlu* [*The Constitution: March Forward or Be Swept Away—The Post-Martial-Law Path 20 Years On*], 46 SSU YU YEN: JENWEN YU SHEHUIKEHSUEH TSACHIH [THOUGHT AND WORDS: J. HUMAN. & SOC. SCI.] 2008, at 1, 3.

20. *See* 2010 Y.B., *supra* note 18, at 56. The DPP candidate, Chen Shui-bian, was elected in 2000 and re-elected in 2004. However, the KMT returned to power after its candidate, Ma Ying-jeou, won the presidential election in 2008 and re-elected in 2012.

21. *See* Wang, *supra* note 17, at 537-38. Parenthetically, Chiang Ching-Kuo, Chiang Kai-shek's son, was the President at the time; *see also* Jane Kaufman Winn & Tang-chi Yeh, *Advocating Democracy: The Role of Lawyers in Taiwan's Political Transformation*, 20 LAW & SOC. INQUIRY 561 (1995) (discussing the role of lawyers in promoting democracy in Taiwan both in increasing the autonomy of Judicial Yuan and in forming and shaping the DPP and pro-democracy social movements).

22. Wang, *supra* note 17, at 538; *see also* Sean Cooney, *Why Taiwan Is Not Hong Kong: A Review of the PRC's "One Country Two Systems" Model for Reunification with Taiwan*, 6 PAC. RIM L. & POL'Y J. 497, 518 (1997); Lin, *supra* note 19, at 2-3.

23. However, the DPP was already founded in 1986. *See* Tom Ginsburg, *Confucian Constitutionalism? The Emergence of Constitutional Review in Korea and Taiwan*, 27 LAW & SOC. INQUIRY 763, 770 (2002).

24. For example, the first election for all Representatives of the National Assembly was held in 1991; the first election for all Legislators was held in 1992; and the first direct elections for President and Vice President occurred in 1996, when KMT candidates Lee Teng-hui and Lien Chan were elected respectively. *See* 2010 Y.B., *supra* note 18.

25. *See* Wang, *supra* note 17, at 539; *see also* Cooney, *supra* note 22, at 518.

Republic of China,[26] is an excellent example of these changes. As originally drafted, the central government, according to Sun Yat-sen's political doctrines,[27] is separated into five branches ("Yuan")—the Executive, Legislative, Judicial, Examination, and Control Yuans,[28] with the President[29] and the National Assembly[30] separated outside of the five-power scheme. Among them, the Executive, Legislative, and Judicial Yuans reflect the conventional Montesquieuan framework.[31] The Examination Yuan is in charge of entry into the civil service and the Control Yuan is responsible for auditing as well as impeachment of public officials.[32] Furthermore, the Taiwanese government is divided into central, provincial or municipal, and district levels.[33]

In addition to Taiwan's relatively complicated political structure, the legitimacy of its Constitution was challenged during the authoritarian regime. First, the Constitution was imposed from the outside without the consent or approval of the Taiwanese people. Secondly, the Taiwanese government was dominated by the so-called "Mainlanders," who comprised approximately 13% of the population,[34] despite the fact that the native Taiwanese people comprised the overwhelming majority (approximately 87%) of the population.[35]

Setting aside the controversial, but valid, claims made by the Taiwanese people against their government, it is important to note that the Constitution has never been completely enforced in the country for several reasons. To begin with, the National Assembly enacted the "Temporary Provisions

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26. The Constitution was enacted in 1946 and went into effect in 1947 in China. *See* GINSBURG, *supra* note 2, at 111; Constitution (1947) (Taiwan).

27. *See* DENNY ROY, TAIWAN: A POLITICAL HISTORY 84 (2003).

28. Constitution, arts. 53-106 (1947) (Taiwan).

29. The President is the head of the state and serves a six-year term with a two-term limit. Constitution, arts. 35, 47 (1947) (Taiwan). The President's promulgation of laws and orders requires the countersignature of the head of the Executive Yuan (the Premier). Constitution, art. 37 (1947) (Taiwan). Meanwhile, his or her appointment to the Premier requires the consent of the Legislative Yuan. Constitution, art. 55(1) (1947) (Taiwan); *see also* Wang, *supra* note 17, at 541.

30. The National Assembly is a popularly elected body that is empowered to elect or recall the President or Vice President and to amend the Constitution. Constitution, art. 27 (1947) (Taiwan); *see also* Wang, *supra* note 17, at 541.

31. These three branches represent the state's highest administrative, legislative, and judicial organs respectively. Constitution, arts. 53, 62, 77 (1947) (Taiwan); *see also* Ginsburg, *supra* note 23, at 768 n.8.

32. Constitution, arts. 83, 90 (1947) (Taiwan); *see also* Ginsburg, *supra* note 23, at 768.

33. Constitution, arts. 107-111, 112-128. Because the Constitution establishes an extremely complex political structure, some have argued that the structure is more suitable for governing a huge country, such as China, than a small island like Taiwan. *See* Cooney, *supra* note 22, at 514.

34. "Mainlanders" (Waishengjen, literally "people from other provinces") refers to people who were born in China and emigrated from the Chinese mainland to Taiwan after 1945. *See* Wang, *supra* note 17, at 535, 537; *see also* GINSBURG, *supra* note 2, at 108.

35. "Native Taiwanese" (Penshengren, literally "people of this province") refers to the people, and their descendents, who inhabited Taiwan before 1945. *See* Wang, *supra* note 17, at 535.

Effective during the Period of Communist Rebellion" ("Temporary Provisions") in China in 1948.[36] The Temporary Provisions suspended many provisions of the Constitution while strengthening presidential powers[37] until their abolishment in 1991.[38] Additionally, the Constitution has been amended seven times since 1991.[39] Although these amendments, which are known collectively as the "Additional Articles," preserve the original text of the Constitution, they have significantly reshaped the structure of the government and its political practices.[40] The central government provides a noteworthy example of how the Additional Articles have affected the Constitution and its uniform implementation throughout Taiwan.

For example, the position of the President has been substantially reorganized by the 1994 and 1997 Additional Articles, which allow for the President's direct election by the Taiwanese people for a four-year term (that may only be renewed once). Under the Additional Articles, the President is no longer required to seek the Premier's countersignature to promulgate personnel orders and is also permitted to appoint the Premier without the consent of the Legislative Yuan. Moreover, the President, upon passing a vote of "no confidence" against the Premier, has been granted the authority to dissolve the Legislative Yuan.[41] These changes to the Taiwanese central government indicate that the country has adopted a semi-presidential system since 1997.[42]

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36. Tungyuan Kanluan Shihchi Linshih Tiaokuan [The Temporary Provisions Effective During the Period of Communist Rebellion] (1948) (repealed 1991) (Taiwan) [hereinafter Temporary Provisions], *available at* http://en.wikisource.org/wiki/Temporary_Provisions_Effective_During_the_Period_of_Communist_Rebellion (non-official translation).

37. For example, the Temporary Provisions facilitated the President's ability to issue emergency orders and empowered the President to create extra-constitutional agencies as well as suspended the two-term limit on the presidency. *See* Temporary Provisions, arts. 1, 3, 4; *see also* Wang, *supra* note 17; Cooney, *supra* note 22, at 515; GINSBURG, *supra* note 2, at 113-15.

38. *See* Wang, *supra* note 17, at 542. Parenthetically, Lee Teng-hui, Chiang Ching-kuo's successor, was President at the time.

39. The Constitution was revised in 1991, 1992, 1994, 1997, 1999, 2000, and 2005. However, the Council of Grand Justices declared the 1999 Additional Articles unconstitutional and void because the Amendments permitted Representatives of the National Assembly to extend their own terms for almost three years. *See* Constitution, Additional Articles, (1991) (amended 2005) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p07_2.asp?lawno=98. For a more detailed discussion, *see* Jiunn-rong Yeh, *Constitutional Reform and Democratization in Taiwan: 1945-2000*, *in* Taiwan's Modernization in Global Perspective 47-77 (Peter Chow ed., 2002). *see also* J.Y. Interpretation No. 499 (2000), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=499.

40. *See* Cooney, *supra* note 22, at 520; *see also* Wang, *supra* note 17, at 542.

41. *See* Constitution, Additional Articles (1991) (amended 1994) (Taiwan), Constitution Additional Articles (1991) (amended 1997) (Taiwan); *see also* Constitution, Additional Articles, arts. 2(1), 2(2), 2(6), 3(1), 3(2) (1991) (amended 2005) (Taiwan).

42. For a detailed discussion, *see* Thomas Weishing Huang, *The President Refuses to Cohabit: Semi-presidentialism in Taiwan*, 15 PAC. RIM L. & POL' Y J. 375, 375-402 (2006).

However, unlike other semi-presidential countries, Taiwan has neither a constitutional mechanism nor a provision that requires the President to take into account the results of parliamentary elections when appointing a prime minister.[43] The country also lacks a political culture of a legislature with a strong sense of political identity, such as the French tradition,[44] that would urge the President to accept "cohabitation." [45] As a result, Taiwan experienced a chronic political deadlock between the executive and legislative branches when DPP President Chen Shui-bian refused to cohabitate with the opposition coalition (referred to as the "Pan-Blue" Alliance[46]), which dominated the Legislative Yuan throughout his terms (2000–2008).[47]

Moreover, the 1992 and 2000 Additional Articles have considerably altered the status of the Control Yuan by allowing the President, with the consent of the Legislative Yuan, to elect its members. These Additional Articles also allow the President to appoint the Grand Justices of the Judicial Yuan and the Members of the Examination Yuan in the same manner.[48] Even more dramatically, the 2005 Additional Articles abolished the National Assembly[49] and set a very high threshold for constitutional amendments.[50] As a result, the Constitution has since become extremely difficult to change.

Further, it is important to understand how the Additional Articles have transformed the judicial branch of the Taiwanese government. Prior to the Articles, the Constitution granted the Judicial Yuan, the highest judicial organ, the authority to: (1) adjudicate civil, criminal, and administrative cases, as well as cases concerning disciplinary measures against public officials; [51] and (2) interpret the Constitution as well as unify the

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43. *Id.* at 387.

44. The tradition of a strong legislature existed at least between the Third and Fourth Republics. *See id.* at 386.

45. *Id.* at 385, 387.

46. This alliance was formed by the KMT and the People First Party ("PFP"). *See Background Note: Taiwan*, U.S. DEP'T OF STATE, BUREAU OF EAST ASIA AND PAC. AFF., http://www.state.gov/r/pa/ei/bgn/35855.htm (last updated Feb. 7, 2012).

47. *See* Huang, *supra* note 42, at 386.

48. *See* Constitution, Additional Articles, arts. 5(1), 6(2), 7(1), 7(2) (1991) (amended 2005) (Taiwan).

49. *Id.* art. 1.

50. *Id.* art. 12 ("Amendment of the Constitution shall be . . . passed by at least three-fourths of the [legislators] present at a meeting attended by at least three-fourths of the total members of the Legislative Yuan, and sanctioned by electors . . . at a referendum . . . wherein the number of valid votes in favor exceeds one-half of the total number of electors. . . .").

51. Constitution, art. 77 (1947) (Taiwan). However, in practice, these cases are adjudicated by the ordinary court system, Administrative Courts, and Commission on the Disciplinary Sanction of Functionaries, which are outside the Judicial Yuan but under its supervision. Because these practices have made the Judicial Yuan "the highest judicial administrative organ," rather than the highest judicial (adjudicative) organ, the related laws were declared unconstitutional in 2001. *See* J.Y. Interpretation No. 530 (2001), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=530.

interpretations of laws and ordinances.[52] However, the 1997 and 2005 Additional Articles have further expanded the power of the Judicial Yuan[53] by empowering the Grand Justices to adjudicate cases that related to the impeachment of the President or Vice President as well as cases concerning the dissolution of unconstitutional political parties.[54] In order to safeguard judicial independence, the 1997 Additional Articles have also prohibited the Executive Yuan from eliminating or reducing the annual budget proposal of the Judicial Yuan.[55]

The Council of Grand Justices has the potential to play a significant role in the governmental system. For example, the Council has the authority to take action in the following scenarios by: (1) dealing with the "most contentious moral and political issues," as its counterparts do in other democracies;[56] (2) acting as an arbiter when a political deadlock occurs between the executive and the legislature under the present semi-presidential system;[57] (3) interpreting the Constitution authoritatively, especially now that it is immensely difficult to amend; and (4) deciding some of the most politically controversial cases (e.g., impeaching the President or dissolving an "unconstitutional" political party). Unsurprisingly, this authority has become more of a coveted object for various political, economic, and judicial actors than ever before.[58] Regardless of the heightened desirability of the Council's Grand Justices positions, we cannot ignore that the Council once operated as an instrument of the KMT regime, rather than a guardian of the Constitution, during the authoritarian era.[59] The most infamous example was *Interpretation No. 31* of 1954, when the Council allowed the Members of the Legislative Yuan, Control Yuan, and National Assembly, who were elected in China in 1948, to remain in power for more than forty years.[60]

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52. Constitution, art. 78 (1947) (Taiwan). The power of judicial review lies with the Council of Grand Justices, a component of the Judicial Yuan. *See* Wang, *supra* note 17, at 545; *see also* Ginsburg, *supra* note 23, at 768.

53. *See* Huang, *supra* note 6, at 4.

54. *See* Constitution, Additional Articles, art. 5(4) (1991) (amended 2005) (Taiwan).

55. *See* Constitution, Additional Articles, art. 5(6) (1991) (amended 1997) (Taiwan).

56. *See* Ran Hirschl, *Reviews (2002-2005), December 2003, Ginsburg, Tom, Book Review: Judicial Review in New Democracies: Constitutional Courts in Asian Cases by Tom Ginsburg*, LAW & POL. BOOK REV. (Dec., 2003) [hereinafter Hirschl, *Book Review*], *available at* http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/Ginsburg1203.htm (last visited Feb. 10, 2012).

57. A good example is *Interpretation No. 632*, which was filed by the DPP legislators because the Pan-Blue-dominated Legislative Yuan had refused to exercise its consent power over President Chen's nominees of the Members of the Control Yuan for more than two and a half years. The Council finally ruled the action of the legislature unconstitutional. J.Y. Interpretation No. 632 (2007), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=632.

58. *See* RAN HIRSCHL, TOWARDS JURISTOCRACY: THE ORIGINS AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM 11-12 (2004).

59. *See* Wang, *supra* note 17, at 545; *see also* GINSBURG, *supra* note 2, at 130-34.

60. *See* Wang, *supra* note 17, at 543-44; *see also* J.Y. Interpretation No. 31 (1954) (Taiwan) *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=31. However, the Council eventually overturned *Interpretation No. 31. See* J.Y. Interpretation No. 261 (1990) (Taiwan),

Since the martial law was lifted in 1987, fifty-two Grand Justices have served on the bench. Our research covers forty-nine of these Justices,[61] all of whom were respectively appointed by President Chiang Ching-Kuo in 1985 (i.e., the fifth term), President Lee Teng-hui in 1994 and 1999 (i.e., the sixth term), President Chen Shui-bian in 2003 and 2007, and President Ma Ying-Jeou in 2008.[62] Twenty-three of the forty-nine Justices were former Supreme Court judges in the ordinary court system (OAJY art. 4(1)(1)); twenty-three were formerly law professors (OAJY art. 4(1)(3)); two were senior prosecutors; and only one was a legislator (OAJY art. 4(1)(2)).[63] In addition, 80% and 40% of Chiang and Ma's appointees are Mainlanders or their second generation. In contrast, 79% and 74% of Lee and Chen's appointees are native Taiwanese. Evidently, Mainlander Presidents (i.e., mainly Chiang) exhibited a tendency to appoint Mainlanders, despite the fact that Mainlanders only represented 13–15% of the Taiwanese population. To the contrary, Taiwan's native-born Presidents (i.e., Lee and Chen) had a tendency of appointing a greater number of native Taiwanese to the bench, even though these appointments did not accurately reflect the population ratio.

As mentioned above, the Grand Justices presently enjoy the following powers to: (1) interpret the Constitution; (2) unify the interpretations of laws and ordinances; (3) adjudicate cases relating to the impeachment of the

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available at
http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=261.

61. We only have forty-nine Justices in our dataset for the following reasons: First, Fan Shin-Shiang, a Chiang's appointee, had taken a sick leave beginning in July 1987 and eventually died of liver cancer in November 1987. Considering that she did not attend any Council meetings while in office, we decided not to include her in our dataset. *See* Hua-yuan Hsueh, *Taiwan Lishih Tzutien— Chiuhua—Fan Hsin-Hsiang* [*Dictionary of the Taiwan History—Nine Strokes—Fan Hsin-Hsiang*], TAIWAN LISHIH TZUTIEN [DICTIONARY OF THE TAIWAN HIST.],
http://nrch.cca.gov.tw/ccahome/website/site20/contents/009/cca220003-li-wpkbhisdict002006-0612-u.xml (last visited Apr. 4, 2011). Second, Rai Hau-Min (the current president of the Judicial Yuan) and Su Yeong-Chin (the current vice president of the Judicial Yuan), Ma's appointees, did not take up their posts until October 2010. These two Justices rendered none of the decisions that we collected for our dataset so we decided to exclude them as well. *See Rai Promises to Win Back Public's Trust in Judiciary*, TAIPEI TIMES, Oct. 14, 2010, at 3, *available at*
http://www.taipeitimes.com/News/taiwan/archives/2010/10/14/2003485347.

62. *See Former Justices*, JUSTICES OF THE CONST. COURT—JUD. YUAN,
http://www.judicial.gov.tw/constitutionalcourt/en/p01_04.asp (last visited Feb. 10, 2012); *see also, Justices*, JUSTICES OF THE CONST. COURT—JUD. YUAN, *available at*
http://www.judicial.gov.tw/constitutionalcourt/en/p01_03.asp (last visited Feb. 10, 2012).

63. OAJY, art. 4. "To be eligible for appointment as a Justice of the Constitutional Court, a candidate must: (1) have served as a Justice of the Supreme Court for more than ten years . . . ; or (2) have served as a Member of the Legislative Yuan for more than nine years . . . ; or (3) have been a [law] professor . . . for more than ten years . . . ; or (4) have served as a Justice of the International Court, or have had authoritative works published in the fields of public or comparative law; or (5) be a person highly reputed in the field of legal research and have political experience. The number of Justices qualifying under any single qualification listed above shall not exceed one third of the total number of Justices."

President or the Vice President; and (4) declare the dissolution of unconstitutional political parties. [64] The Constitutional Interpretation Procedure Act of 1993 ("CIPA") applies different procedures to each set of powers.[65] In short, the Council conducts an abstract review in the first two categories of jurisdiction and forms a Constitutional Court to hear the other two types of "cases or controversies" (i.e., to exercise concrete review).[66] Although the Council has not yet dealt with any cases to impeach the President or Vice President or been required to dissolve an unconstitutional party (and taking into consideration that interpreting the Constitution is the core of constitutional review), our research thus concentrates on the Justices' rulings under Article 5 of the CIPA,[67] especially cases filed under Articles 5(1)(1) and 5(1)(3) (the petitioners in these cases are comprised of either the central government, local governments, or at least one–third of legislators). We also focused our research on a few other important cases that are related to party politics and were filed under Articles 5(1)(2) and 5(2) (the petitioners in these cases are comprised of individuals, legal persons, political parties, or judges of the other courts[68]).[69]

The CIPA grants an individual or a judge of the other courts standing to

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64. *See* Constitution, arts. 78-79 (1947) (Taiwan); Constitution, Additional Articles, art. 5 (1991) (amended 2005) (Taiwan).

65. *See* Constitutional Interpretation Procedure Act (1948) (amended 1993) (Taiwan) [hereinafter CIPA], *available at*
http://www.judicial.gov.tw/constitutionalcourt/en/p07_2.asp?lawno=73.

66. *See* JACKSON & TUSHNET, *supra* note 8, at 468.

67. Article 5(1) of CIPA provides
A petition for an interpretation of the Constitution may be filed under one of the following circumstances: (1) Where a central or local government agency is uncertain regarding the application of the Constitution in exercising its powers, or, where the agency, while exercising its powers, is in dispute with another agency regarding the application of the Constitution, or where the agency is uncertain of the constitutionality of a particular law or order when applying it; (2) Where an individual, a legal person, or a political party, having exhausted all judicial remedies provided by law, alleges that her/his/its constitutional rights have been infringed upon and thereby questions the constitutionality of the law or order applied by the court of last resort in its final decision; (3) Where the members of the Legislative Yuan, in exercising their powers, are uncertain regarding the application of the Constitution or regarding the constitutionality of a particular law when applying the same, and at least one-third of the members of the Legislative Yuan have filed a petition.
Besides, since Interpretation No. 371 expanded the application of art. 5(2), now when any judge sincerely believes the statute or regulation at issue before the court is in conflict with the Constitution, the court has the authority to adjourn the proceedings and petition the Constitutional Court to interpret the constitutionality of the statute or regulation at issue. J.Y. Interpretation No. 371 (1995) (Taiwan) *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=371. Additionally, unlike the Justices of the U.S. Supreme Court, the Grand Justices have no discretion when determining which cases they would like to hear. In other words, the Grand Justices have to deal with all of the petitions unless a petition does not meet the requirements of CIPA and, in that case, the Council should dismiss the case without issuing any interpretation.

68. They include the ordinary court system, Administrative Courts, and Commission on the Disciplinary Sanction of Functionaries. *See supra* notes 51 & 66 and accompanying text.

69. Out of 101 decisions in our dataset, 10 were filed under Article 5(1)(2) and 1 under Article 5(2); hence, the remaining ninety decisions were filed under Articles 5(1)(1) and 5(1)(3).

file a petition for a constitutional interpretation under Articles 5(1)(2) or 5(2). However, the Council's constitutional interpretations are not equivalent to the concrete review used by the American and Japanese Supreme Court Systems because the Council does not have the authority to directly declare another court's final decision unconstitutional.[70] Instead, the Council is permitted only to interpret the constitutionality of the laws, regulations, or legal precedents on which another court's decision was based. [71] Furthermore, although our research mainly focuses on those cases filed under Articles 5(1)(1) and 5(1)(3) of the CIPA on account of their political nature and significance, the cases filed by individuals (i.e., the cases of Article 5(1)(2) comprise a large portion of the Council's docket.[72]

The Council must obtain an absolute majority of votes in order to declare a constitutional interpretation. Prior to 1993, the Council had the authority to adopt an interpretation with a three-fourths majority of the attending Justices as long as it had a quorum consisting of three-fourths of all the Justices.[73] However, in 1993, the CIPA was amended to require the Counsel to obtain a two-thirds majority of attending Justices with a quorum consisting of two-thirds of all Justices in order to adopt an interpretation.[74] Additionally, prior to the changes imposed in 1993, any Justices with separate opinions were only permitted to issue "dissenting opinions," even if

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70. In addition to this difference, there are other distinctions between the Council and the Supreme Courts of the United States and Japan. For example, the President, the other four Yuans, or even one-third of legislators have the right to challenge, on an "abstract" basis, the constitutionality of laws enacted by the Legislative Yuan. In this case, many of the "cases or controversies" doctrines that form an important part of the U.S. constitutional jurisprudence cannot be applied naturally. However, the role and profile of the Council seems to be consistent with general trends in East Asia. *See* Jiunn-rong Yeh & Wen-Chen Chang, *The Emergence of East Asian Constitutionalism: Features in Comparison*, 59 AM. J. COMP. L. 805 (2011).

71. *See* CIPA, art. 4; *see also* J.Y. Interpretation, No. 154 (1978) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=154; J.Y. Interpretation, No. 271 (1990) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=271; J.Y. Interpretation, No. 374 (1995) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=374; J.Y. Interpretation, No. 569 (2003) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=569; J.Y. Interpretation, No. 582, (2004) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=582 .

72. For example, in the fifth and sixth terms, 97% and 92% of petitions respectively were filed by individuals. In addition, 72% and 75% of interpretations, based on the cases filed by individuals, received judicial rulings. *See* Judicial Yuan, *Tiyichieh chih Tiliuchieh Tafakuan Chiu Chikuanshengchingche yu Jenminshengchingche Tsocheng Chiehshih chih Tungchishuchupiao* [*The Proportion of the Cases Filed by Individuals and by Institutions from the First Term to the Sixth term of the Grand Justices*], TUNGCHI TZULIAO [STAT.], http://www.judicial.gov.tw/constitutionalcourt/uploadfile/E100/第一屆至第六屆大法官作成解釋之 統計數據表.htm (last visited Feb. 10, 2012).

73. *See* Ssufayuan Tafakuan Huiyi Fa [The Act of the Council of Grand Justices of the Judicial Yuan], art. 13(1) (1948) (amended 1958) *available at* http://www.judicial.gov.tw/constitutionalcourt/p07_2_one.asp?lawno=61&types=all.

74. *See* CIPA, art. 14(1).

their opinions differed only in the reasoning, but not the final ruling, from the majority opinion.[75] Thus, the changes implemented under the 1993 CIPA have allowed any Justices with separate opinions to issue either concurring or dissenting opinions, which are proclaimed along with the interpretations of the Council.[76]

Under the Constitution, the Council has the power to declare laws and ordinances unconstitutional and void.[77] However, like other German-style constitutional courts, the Council does not always act to explicitly declare a law or governmental action unconstitutional or immediately invalid even when it is not in conformity with the Constitution.[78] For example, in *Interpretation No. 419* of 1996, although the Council did not proclaim that the status of the Vice President concurrently serving as Premier of the Executive Yuan unconstitutional, it instead concluded that this situation was "constitutionally inappropriate."[79] In addition, in *Interpretation No. 530* of 2001, the Council struck down the related laws, which included the OAJY, the Organic Act of Court, and the Organic Act of the Administrative Court, but rather than immediately voiding them, the Council granted the Legislative Yuan two years to revise the laws.[80]

These two examples prove the Council's tendency to adopt a cautious and self-restricted role when making decisions that directly affect other branches of the government or important political actors. In return, the government and political parties in Taiwan generally respect the Council's decisions. A successful example of the Council's cautious decision-making tactics occurred with *Interpretation No. 419*. After this interpretation was released, Vice President Lien Chan resigned from his post as the Premier even though the Council did not explicitly prohibit the Vice President from simultaneously serving as the Premier. On the other hand, the Council's rulings are not respected absolutely. For instance, although the Council issued *Interpretation No. 530*, which demanded the Legislative Yuan to amend the unconstitutional laws within a two-year time frame, ten years

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75. *See* ACGJ, art. 17.
76. *See* CIPA, art. 17. However, it is important to note that the Justices vote in secret. Therefore, if a Justice votes with the minority, but he or she refuses to write a separate (especially dissenting) opinion, then, according to the public record, that vote will be counted toward the majority. When this occurs, it is possible to assume that the Justice voting with the minority opinion may have later changed his or her opinion to align with that of the majority. However, it is more likely that, prior to voting, the lobbyists of different political parties or interest groups have targeted the Justice, and, as a result of these lobbying efforts, the Justices do not want to publish an individual opinion.
77. *See* Constitution, arts. 171-172 (1947) (Taiwan).
78. *See* J.Y. Interpretation No. 419 (1996) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=419. *See also* J.Y. Interpretation No. 530 (2001) (Taiwan), *available at* http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=530.
79. *See id.*
80. *See id.*

have passed without legislative action.

III. THE DATA AND RESULTS

We have analyzed and coded 101 decisions issued by the Grand Justices of the Taiwanese Constitutional Court from 1988 to 2009.[81] As discussed earlier, we included all cases that are political in nature. These decisions have obvious political content and, therefore, do not require second-guessing concerning the political interests involved. These decisions include all cases of abstract interpretations (filed under articles 5(1)(1) and 5(1)(3) of the CIPA) and some cases of concrete interpretations (filed under articles 5(1)(2) and 5(2) of the CIPA) issued during the relevant time period.[82]

When coding the decisions, we focused on the peculiarities of the Taiwanese system of concurring and dissenting opinions (also known as separate opinions). We also ensured that the different political interests were accurately identified.[83] Furthermore, we studied a total of 49 Grand Justices.[84] Table I provides the general descriptive statistics concerning gender, first-time appointment/reappointment, career backgrounds, and origins (meaning Mainlander or Native Taiwanese) of these forty-nine Justices.

We began our study by conducting a descriptive analysis of dissent rates (which we defined as the number of decisions with dissents over the total number of decision) in the Council for each term in order to get a sense of any judicial polarization that was employed. While almost two-thirds of the decisions selected for our sample were decided unanimously (including separate opinions that do not disagree with the Council's decision), slightly more than one-third of the decisions included dissenting votes, which are separate opinions that disagree with the outcome derived from the majority opinion.[85] During the early period of Taiwan's transition to democracy (1988–1994) the dissent rate was less than 30%, but the rate increased to 50% in the following decade (1995–2003). However, once democracy began to root itself (2004–2009), the dissent rate declined to approximately 28%. Table II provides additional details and explanations for dissent rate

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81. Our previous work included ninety-seven decisions issued by the Grand Justices. *See* Garoupa, Grembi & Lin, *supra* note 9. The list of cases is detailed in Appendix B.

82. *See supra* text accompanying note 69.

83. Appendix C provides a detailed explanation of the coding of controversial cases, which we defined as those that required a more comprehensive explanation concerning the identification of "concurring" and "dissenting" opinions. *See supra* text accompanying note 76. Our sample likely underestimates actual dissent so, in this sense, we have only studied the reported dissent.

84. *See supra* text accompanying note 61. A list with their names in English and in Chinese is reported on Appendix A.

85. Notice our functionalist definition of "dissent": an opinion that proposes a different outcome in terms of pro-petitioner or against-petitioner.

fluctuations.

    After completing our dissent rate analysis, we focused on the next step in our study—estimating judicial ideal points in the context of our sample. We followed the methodological approach of previous scholarship, which is based on item response modeling (IRT).[86] We let x_{ij} represent the vote of each justice j ($j = 1, \ldots, J$) for decision i ($i = 1, \ldots, N$). Further, we assigned a vote in favor of the constitutionality of a particular law, ordinance, or government behavior a value of one ($x_{ij} = 1$), while the votes against constitutionality received a value of zero ($x_{ij} = 0$). In our study, $J=49$ represents the number of respondents and $N=101$ represents the number of items.

    Each Justice's vote responds to the personal attributes of the judge as well as the characteristics of the decision. In particular, we focused on the judge's ideal point (θ_j), which is a latent variable that can be measured indirectly by observing the judge's manifest opinions on several decisions of the Constitutional Court. We also considered a possible case characteristic that adjusts the particular preference of an individual judge to the relevant dimension when faced with a particular decision (β_i). In other words, β_i, which is parallel to the discrimination parameter in IRT models, provides information on how effectively a decision on a given issue can discriminate between judges on the recovered dimension. We also accounted for a particular location of the decision in the relevant space (α_i). Again, α_i is parallel to the difficulty parameter in Two-Parameter IRT models.

Suppose that the excess utility to a given justice, j, voting for constitutionality in a particular decision, i, is the following:

$$z_{ij} = \alpha_i + \beta_i\theta_j + e_{ij}$$

where the error term e_{ij} is distributed according to a standard normal distribution. Since z_{ij} is a latent variable, we assumed that $x_{ij} = 1$ if $z_{ij}>0$ and $x_{ij} = 0$ if $z_{ij}\leq 0$.

    Moreover, the model is not identified unless additional restrictions are imposed. In the event that additional restrictions are imposed, it is possible to either normalize the ideal points or constrain the position of two of the Justices in the one-dimensional latent space in such a way that all of the other Justices' ideal points are estimated in relation to the two fixed positions.[87] We chose to employ the latter empirical strategy and assumed

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    86. Martin & Quinn, *supra* note 13; Hanretty, *supra* note 13. Other papers that use non-dynamic simulations include: Joshua Clinton, Simon Jackman & Douglas Rivers, *The Statistical Analysis of Roll Call Data*, 98 AM. POL. SCI. REV. 355 (2004); Jackman, *supra* note 13.

    87. Normalized estimates typically show better convergence properties compared to non-normalized ones. *See* Bafumi et al., *supra* note 13. However, here we use the standard procedure

standard normal priors for the item parameters.

The estimated judicial ideal points are presented in one relevant dimension. These estimations typically follow the left-right or liberal-conservative dimension. But, in the context of Taiwan, such traditional dimension seems inapplicable considering the political culture of the Council. The obvious approach may be favorable-unfavorable to the KMT, given the political context and the transition period included in our dataset. However, considering the potential complications caused by the internal problems of the KMT during President Lee's terms, we decided to loop together non-KMT's interests and suggested the relevant dimension to be the KMT's political interests versus the political interests of non-KMT groups.[88]

Through a careful analysis of the dissenting opinions, we began utilizing this method by setting Yang Chien-hua and Li Chih-peng, both appointed by President Chiang, to -2 (opinions favorable to non-KMT groups) and +2 (opinions favorable to KMT party), respectively. If the relevant dimension is correctly identified, we expect these Justices to be at the extremes, while the values corresponding to the other Justices should fall between -2 and +2. If, however, we incorrectly identified the relevant dimension, the estimated model should experience convergence problems or Justices are situated in less likely positions.[89] In order to address these shortcomings, in addition to the complications in framing Taiwanese judicial politics in the recovered dimension, we have estimated ideal points with multiple combinations of Justices in -2 and +2, using those that the algorithm systematically locates in the extreme positions. As a result, we therefore produced nine estimations of ideal points to guarantee robustness and avoid the standard methodological shortcomings of misidentifying the relevant dimension.

Given our dataset, we have a matrix of 49 Justices by 101 decisions with a total of 1,415 observations. Since we estimated judicial ideal points over a time period of more than twenty years, many individual votes in these decisions are missing (because not all 49 Justices voted in all of the decisions we used) and many pairs of Justices were never matched (because they did not decide any cases together). Equivalently, we estimated ideal points for a Council composed of 49 Justices where many were absent for a significant number of decisions.[90] Since President Ma's appointees were

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only included for a handful of decisions (four), we produced separate estimations of judicial ideal points that include and exclude these Justices.

　　　We used the MCMC pack for R to estimate the model.[91] This approach is advantageous because it uses Bayesian Markov Chain Monte Carlo to provide for robust intervals for the estimated parameters. Each model was run for 1,200,000 iterations, discarding the first 2,000 as burn-in. The thinning interval that we used in the simulations is 10. Gibbs sampling was adopted.

　　　The results of our nine estimations are presented in Tables III and IV as average estimated ideal points conditioned on presidential appointments, including and excluding President Ma's appointees, respectively.[92] Evidently, there is no correlation between the average estimated ideal points and presidential appointments.[93] Examples of individual simulations in terms of estimated ideal points and corresponding confidence intervals are presented in Figures I and II.

　　　Tables V and VI present the individual average ideal estimate points for 44 Justices (excluding President Ma's appointees) and all 49 Justices (including President Ma's appointees). The appropriate graphs are presented in Figures III and IV. By ranking Justices from -2 to +2, the results clearly confirm no relationship between the opinions of the Grand Justices and presidential appointments. In addition, with the exception of six Justices, the large majority seemingly favor a moderate ideal point. Furthermore, the direct comparison of scores, including and excluding priors from the computation, show that the six Justices in the extremes are robust to different alternatives. JusticesShih Wen-sen, Dong Shiang-fei, and Yang Chien-hua are close to -2 (favorable to non-KMT groups in the recovered dimension)

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to playing no role in the assessing judges' alignment. *See* NORMAN ROSE, MATTHIAS VON DAVIER & XUELI XU, MODELING NONIGNORABLE MISSING DATA WITH ITEM RESPONSE THEORY (IRT), 10-11 (2010), *available at* http://www.ets.org/Media/Research/pdf/RR-10-11.pdf.

　　91. *See* MCMCPACK: MARKOV CHAIN MONTE CARLO (MCMC) PACKAGE (2005), http://mcmcpack.wustl.edu/ (last visited Feb. 10, 2012).

　　92. The detailed results of the nine estimations in terms of individual estimated ideal points and standard deviations are available upon request.

　　93. Correlation coefficients between estimated ideal points and the President who appointed the judge are not statistically significant. We also computed correlation coefficients between estimated ideal points and other potentially relevant variables (gender, whether justice is a mainlander, a second-generation mainlander, a career judge, a law professor, and has been reappointed) in order to check whether there may be other elements interfering with our interpretation of the recovered dimension. We obtained one significant negative coefficient (-0.25) between average ideal points and the professional origin of judges being a law professor (i.e. law professors are more likely to be associated to negative ideal points). However, the coefficient turns to be non-significant once judges appointed by President Ma are included in the computation of average points. Furthermore, considering the absolute value of ideal points helps understanding whether there are other characteristics pushing judges towards a greater degree of polarization, regardless the recovered dimension. We find that more polarized justices are mainlanders, and have been appointed by President Chiang, while less polarized ones have been appointed by President Chen.

and Sun Sen-yan, Li Chung-sheng, and Li Chih-peng are close to +2 (favorable to KMT in the recovered dimension).

Table VII summarizes relevant information concerning the six Justices we have identified in the extremes. There are no strong common attributes or traits, except that they dissent more than the average Justices that we studied. Unlike the results gathered from the U.S. Supreme Court Justices studies, the judicial opinions of the Taiwanese Grand Justices do not lend themselves to an easily detectable pattern that serves as an explanation for polarization.

Our results highlight the importance of dissenting opinions. Apart from the six more polarized Justices, the next three Justices who have dissented most often tended to have "off-center" opinions that were not statistically significant. The three "off-center" Justices are: Liu Tieh-cheng (wrote five, which was the highest number, of the dissenting opinions in our dataset), Su Chun-shiung (wrote three dissenting opinions) and Shu Yu-shiu (wrote three dissenting opinions) even though Justice Shu's ideal point is surprisingly closer to center than those of the other two. Since not all of the dissenters are on the margins, this reinforces the importance of our analysis and emphasizes that these six polarized Justices are statistically different.

Our results also indicate that the Justices appointed after 2000, the year of the first democratic alternation of ruling parties in Taiwan, seem to issue more moderate opinions than the Justices before them. This conclusion is evidenced by the incidence of dissent rates in the period 1995–2003, as documented by Table II. Moreover, although our dataset shows that three of the four new decisions in 2009 include dissenting votes, we believe this to minimally affect the overall results for reasons already explained. Therefore, we concluded that, unlike some of their predecessors, Justices appointed after the first democratic alternation of ruling parties tended to issue seemingly more politically moderate, or less polarized, opinions. This observation is potentially in contradiction with the perceived reduction of the individual cost of dissenting after 2000 (given the more democratic nature of the political regime), but fully explained by our account elsewhere.[94]

There are three potential objections to using the recovered dimension for our analysis that we would like to address. The first argument against our analysis is that a political dimension is irrelevant for judicial decision-making in Taiwan. However, we found that the robustness and convergence of results seem to indicate otherwise, even in the case that in some specifications convergence is difficult to achieve given the limitations of the dataset where the number of dissenting opinions only constitutes one-third of the sample. We do not find this surprising since our dataset reflects the politically salient cases rather than the entire workload of the

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94. *See* Garoupa, Grembi & Lin, *supra* note 9.

Council.

A related objection could be that our estimations are fundamentally driven by dissent in these politically salient cases whereas in the more general workload of the Council dissent patterns are significantly different. However, there has been no systematic work on explaining general dissent patterns at the Council, making it difficult to assess the extent to which politically salient cases are exceptional in this respect. Moreover, the direction of such alleged differences is simply unclear. That is, one could argue that there will be more dissents in politically salient cases since the appointers and their administration's interests are highly implicated. Nonetheless, we could equally argue that there will be less dissents in politically salient cases because, under these circumstances, Justices are more likely to compromise or even consent in order to face less additional pressure from outsiders. At the same time, in other less politically visible and controversial cases (such as human rights), Justices could more freely express their divisions within the Council. Compared with these seemingly plausible, but contradictory, arguments, using politically relevant cases is advantageous in order to nail down the interpretation of the recovered dimension, which is not convoluted with potentially inconsistent explanations.[95]

The second argument against our analysis is that the Council of Grand Justices is characterized by n-relevant dimension and the recovered dimension does not fully reflect ideal points in this Court. Although the dataset cannot completely exclude the existence of other relevant (unrecovered) dimensions, we believe that the robustness of our results—absolutely clear evidence of no relationship between presidential appointments and the systematic empirical identification of the same few polarized Justices' points—evidences otherwise. Finally, we recognize that it is certainly possible that the estimation of the moderate ideal points may not be statistically strong, especially considering that some Justices are subject to significantly larger standard deviations. However, our results indicate that the six polarized Justices survive the difference in specifications.

The third argument is that our results do not reflect conventional wisdom concerning some particular Justices. For example, Justice Shu Yu-shiu emerges in our analysis as a moderate judge while many local legal experts have recognized her work at the Court as promoting a particularly outspoken line. Without questioning these general perceptions, our results are driven by the dataset and therefore limited to politically salient cases. It goes without saying that the area of human rights is of fundamental political

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95. On the general discussion about political relevant cases, *see* Wen-Chen Chang, *Strategic Judicial Responses in Politically Charged Cases: East Asian Experiences*, 8 INT'L. J. CONST. L. 885 (2011).

importance, but it is not politically salient in our sense unless there is a clear implication for the interests of the KMT (favorable or unfavorable). The Justices are ranked in this light rather than by their general tendency to dissent or to promote a particular unconventional approach to a particular area of law. While recognizing the limitations of our dataset, the serious advantage is a clean and transparent interpretation of the results.

IV. CONCLUSION

This paper presents an application of ideal point estimation to the Taiwanese Constitutional Court. Unlike the published literature discussing the Justices of the U.S. Supreme Court, we did not find a strong indication of any relationship between judicial ideal points and presidential appointments. Our results did not confirm any indication of political allegiance by Council members.

Our estimated model is consistent with an interpretation we have offered and defended in a previous article.[96] While politics certainly influence the Taiwanese Constitutional Court, it is not in the conventional government-opposition or left-right dimensions. First, during Taiwan's political transition from an authoritarian regime to a democracy, the Council of Grand Justices had to liberate itself from the KMT tutelage and establish a solid reputation for judicial independence. As a result, Grand Justices appointed by KMT Presidents were willing to disregard, and even disfavor, KMT interests when necessary. Second, the appointment process and other features of the Taiwanese Constitutional Court do not generate the kind of party quotas or majority-versus-minority coalitions seen in similar courts of other countries. Third, the rate of dissenting opinions is low as compared with those published by the U.S. Supreme Court.[97] Thus, we conclude from our studies that the Council has been primarily concerned with actively asserting its independence from the other branches of government by establishing consensus and sound legal doctrines.

The absence of polarization is not necessarily synonymous with a consensual model. It could merely reflect lack of judicial independence. However, the fluctuation of dissent rates and the consistency of our results seem to make such explanation less plausible.

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96. *See* Garoupa, Grembi & Lin, *supra* note 9.
97. It is important to note that, unlike the manner in which the U.S. Supreme Court disposes of cases, an absolute majority (two-thirds or even three-fourths of the votes) is required for the Taiwanese Constitutional Court to render a decision.

TABLE I   Characteristics of Taiwanese Constitutional Court Judges, 1985-2008

	Appointed by Chiang Ching-kuo (1985)	Appointed by Lee Teng-hui (1994; 1999)	Appointed by Chen Shui-bian (2003; 2007)	Appointed by Ma Ying-jeou (2008)
Number	15	19	19	5
Mainlander	12	4	3	1
Second generation Mainlander	0	0	2	1
Native Taiwanese	3	15	14	3
Career Magistrate	9	7	8	1
Law Professor	5	11	9	4
First Time Appointment	12	16	13	5
Reappointment by a Different President	3(*)	3	6	0
Female	0	1	3	0
Male	15	18	16	5

Source: Taiwanese Constitutional Court, 1985-2009
Note: Some judges are counted more than once because they were appointed and reappointed by different Presidents.
(*) Two were originally appointed by Yen Chia-kan (1976) and one by Chiang Kai-shek (1972).

TABLE II   Dissent in the Court By Years

	Number of Decisions Without Dissent	Number of Decisions With Dissent	Percentage of Dissent
1988-1994	22	9	29.0%
1995-2003	19	19	50.0%
2004-2009	23	9	28.1%
Total	64	37	36.6%

Source: Taiwanese Constitutional Court, 1985-2009; own calculations.

TABLE III   Average Scores Excluding President Ma' appointees

-2	+2	Average score appointed by President Chen	Average score appointed by President Lee	Average score appointed by President Chiang
Shih, Wen-sen (Lee)	Sun, Sen-yan (Lee)	0.036	-0.074	-0.009
Shih, Wen-sen (Lee)	Li, Chung-sheng (Chiang)	0.032	-0.155	-0.019
Shih, Wen-sen (Lee)	Li Chih-Peng (Chiang)	0.026	-0.177	-0.117
Dong, Shiang-fei (Lee)	Sun, Sen-yan (Lee)	0.042	-0.095	0.013
Dong, Shiang-fei (Lee)	Li, Chung-sheng (Chiang)	0.028	0.061	0.005
Dong, Shiang-fei (Lee)	Li Chih-Peng (Chiang)	0.030	0.053	-0.094
Yang, Chien-hua (Chiang)	Sun, Sen-yan (Lee)	0.050	-0.025	0.140
Yang, Chien-hua (Chiang)	Li, Chung-sheng (Chiang)	0.046	0.015	0.129
Yang, Chien-hua (Chiang)	Li Chih-Peng (Chiang)	0.031	0.010	0.029

Note: Average scores exclude priors

TABLE IV   Average Scores Including President Ma' appointees

-2	+2	Average score appointed by President Ma	Average score appointed by President Chen	Average score appointed by President Lee	Average score appointed by President Chiang
Shih, Wen-sen (Lee)	Sun, Sen-yan (Lee)	0.158	-0.007	-0.087	-0.007
Shih, Wen-sen (Lee)	Li, Chung-sheng (Chiang)	0.091	0.000	-0.059	-0.009
Shih, Wen-sen (Lee)	Li Chih-Peng (Chiang)	0.083	-0.001	-0.066	-0.110
Dong, Shiang-fei (Lee)	Sun, Sen-yan (Lee)	0.082	0.024	0.003	0.015
Dong, Shiang-fei (Lee)	Li, Chung-sheng (Chiang)	0.074	0.018	0.050	0.002
Dong, Shiang-fei (Lee)	Li Chih-Peng (Chiang)	0.093	0.003	0.0039	-0.094
Yang, Chien-hua (Chiang)	Sun, Sen-yan (Lee)	0.100	0.026	-0.047	0.139
Yang, Chien-hua (Chiang)	Li, Chung-sheng (Chiang)	-0.011	-0.024	-0.067	0.162
Yang, Chien-hua (Chiang)	Li Chih-Peng (Chiang)	0.009	0.037	-0.018	0.030

Note: Average scores exclude priors

TABLE V   Individual Average Scoring Excluding Appointees of President Ma

Justices	Averages with priors	Averages without priors
Yang, Chien-hua[c]	**-1.743**	**-1.614**
Dong, Shiang-fei[b]	**-1.720**	**-1.580**
Shih, Wen-sen[b]	**-1.391**	**-1.086**
Liu, Tieh-cheng[c]	-0.932	-0.932
Tseng, Hua-sung[b]	-0.539	-0.539
Shu, Yu-shiu[a]	-0.426	-0.426
Tseng, Yu-tien[a]	-0.395	-0.395
Huang, Yui-chin[b]	-0.306	-0.306
Shu, Tsung-li[a]	-0.253	-0.253
Li, Chen-shan[a]	-0.243	-0.243
Chen, Jui-tang[c]	-0.223	-0.223
Chen, Chi-nan[b]	-0.217	-0.217
Cheng, Chung-mou[b]	-0.196	-0.196
Chang, Cheng-tao[c]	-0.144	-0.144
Lin, Tze-yi[a]	-0.128	-0.128
Wung, Yueh-sheng[c]	-0.109	-0.109
Zhai, Shao-shien[c]	-0.108	-0.108
Yang, Jih-jan[c]	-0.107	-0.107
Ma, Han-bau[c]	-0.106	-0.106
Liao, Yi-nan[a]	-0.060	-0.060
Shih, His-en[c]	-0.059	-0.059
Cheng, Chien-tsai[c]	-0.059	-0.059
Lin, Guo-shien[b]	-0.056	-0.056
Wu, Geng[c]	-0.031	-0.031
Wang, Tse-chien[b]	-0.022	-0.022
Yang, Hui-ying[b]	-0.021	-0.021
Wang, He-shiung[b]	0.055	0.055
Shu, Bi-hu[a]	0.153	0.153
Lai, Ying-jao[b]	0.219	0.219
Peng, Feng-chih[a]	0.234	0.234
Chih, Chi-ming[a]	0.262	0.262
Tsai, Ching-yu[a]	0.262	0.262
Li, His-yao[a]	0.266	0.266
Lin, Yung-mou[b]	0.274	0.274
Dai, Tung-shiung[b]	0.369	0.369
Yu, Shueh-ming[a]	0.393	0.393
Yang, Jen-shou[a]	0.396	0.396
Shieh, Tsai-chuan[b]	0.450	0.450
Yang, Yu-ling[c]	0.547	0.547
Chang, Te-sheng[c]	0.547	0.547
Su, Chun-shiung[b]	0.896	0.896
Li, Chung-sheng[c]	**1.464**	**1.196**
Sun, Sen-yan[b]	**1.531**	**1.297**
Li, Chih-peng[c]	**1.834**	**1.751**

[a]President Chen; [b]President Lee; [c]President Chiang

TABLE VI   Individual Average Scoring Including Appointees of President Ma

Justices	Averages with priors	Averages without priors
Yang, Chien-hua[c]	**-1.739**	**-1.609**
Dong, Shiang-fei[b]	**-1.548**	**-1.323**
Shih, Wen-sen[b]	**-1.267**	**-0.900**
Liu, Tieh-cheng[c]	-0.877	-0.877
Tseng, Hua-sung[b]	-0.497	-0.497
Huang, Yui-chin[b]	-0.263	-0.263
Chen, Jui-tang[c]	-0.220	-0.220
Chen, Chi-nan[b]	-0.209	-0.209
Cheng, Chung-mou[b]	-0.193	-0.193
Tseng, Yu-tien[a]	-0.155	-0.155
Shu, Yu-shiu[a]	-0.146	-0.146
Chang, Cheng-tao[c]	-0.143	-0.143
Shu, Tsung-li[a]	-0.120	-0.120
Li, Chen-shan[a]	-0.119	-0.119
Yang, Jih-jan[c]	-0.106	-0.106
Ma, Han-bau[c]	-0.106	-0.106
Zhai, Shao-shien[c]	-0.104	-0.104
Wung, Yueh-sheng[c]	-0.100	-0.100
Lin, Guo-shien[b]	-0.067	-0.067
Lin, Tze-yi[a]	-0.060	-0.060
Shih, His-en[c]	-0.058	-0.058
Cheng, Chien-tsai[c]	-0.058	-0.058
Wu, Geng[c]	-0.044	-0.044
Yang, Hui-ying[b]	-0.040	-0.040
Wang, Tse-chien[b]	-0.040	-0.040
Liao, Yi-nan[a]	-0.017	-0.017
Wang, He-shiung[b]	0.021	0.021
Chen, Xin-min[d]	0.022	0.022
Shu, Bi-hu[a]	0.047	0.047
Peng, Feng-chih[a]	0.074	0.074
Huang, Mao-rong[d]	0.081	0.081
Ye, Bai-xiu[d]	0.089	0.089
Li, His-yao[a]	0.090	0.090
Chen, Chun-sheng[d]	0.092	0.092
Chih, Chi-ming[a]	0.092	0.092
Chen, Min[d]	0.093	0.093
Tsai, Ching-yu[a]	0.096	0.096
Lai, Ying-jao[b]	0.114	0.114
Yu, Shueh-ming[a]	0.159	0.159
Yang, Jen-shou[a]	0.168	0.168
Lin, Yung-mou[b]	0.239	0.239
Shieh, Tsai-chuan[b]	0.239	0.239
Dai, Tung-shiung[b]	0.307	0.307
Yang, Yu-ling[c]	0.551	0.551
Chang, Te-sheng[c]	0.551	0.551
Su, Chun-shiung[b]	0.767	0.767
Sun, Sen-yan[b]	**1.350**	**1.025**
Li, Chung-sheng[c]	**1.465**	**1.198**
Li, Chih-peng[c]	**1.836**	**1.753**

[a]President Chen; [b]President Lee; [c]President Chiang; [d]President Ma

TABLE VII   Details About the Six Polarized Justices

	Close to +2			Close to -2		
	Li Chih-Peng	Li Chung-Sheng	Sun Sen-Yan	Yang Chien-Hua	Dong Shiang-Fei	Shih Wen-Sen
Appointer	Chiang	Chiang	Lee	Chiang	Lee	Lee
Career Background	Legislator (KMT)	Judge	Judge	Judge	Professor	Professor
Origins	Main-lander	Main-lander	Native Taiwanese	Main-Lander	Main-lander	Main-lander
First Appointed/ Reappointed	First Appointed	Re-appointed (by Chiang)	First Appointed	Re-appointed (by Chiang)	First Appointed	First Appointed
Dissent Ranking in his term	1st (4 cases) (5th term)	2nd (3 cases) (5th term)	2nd (4 cases) (6th term)	2nd (3 cases) (5th term)	1st (5 cases) (6th term)	2nd (4 cases) (6th term)

* In our dataset, there were 9 decisions with dissent in 1988-1994, part of the 5th term.

** In our dataset, there were 19 decisions with dissent in the 6th term (1994-2003).

Figure I   Example of Estimated Ideal Points (Excluding appointees of President Ma): Justice Li Chih-peng as +2 and Justice Yang Chien-hua as -2.
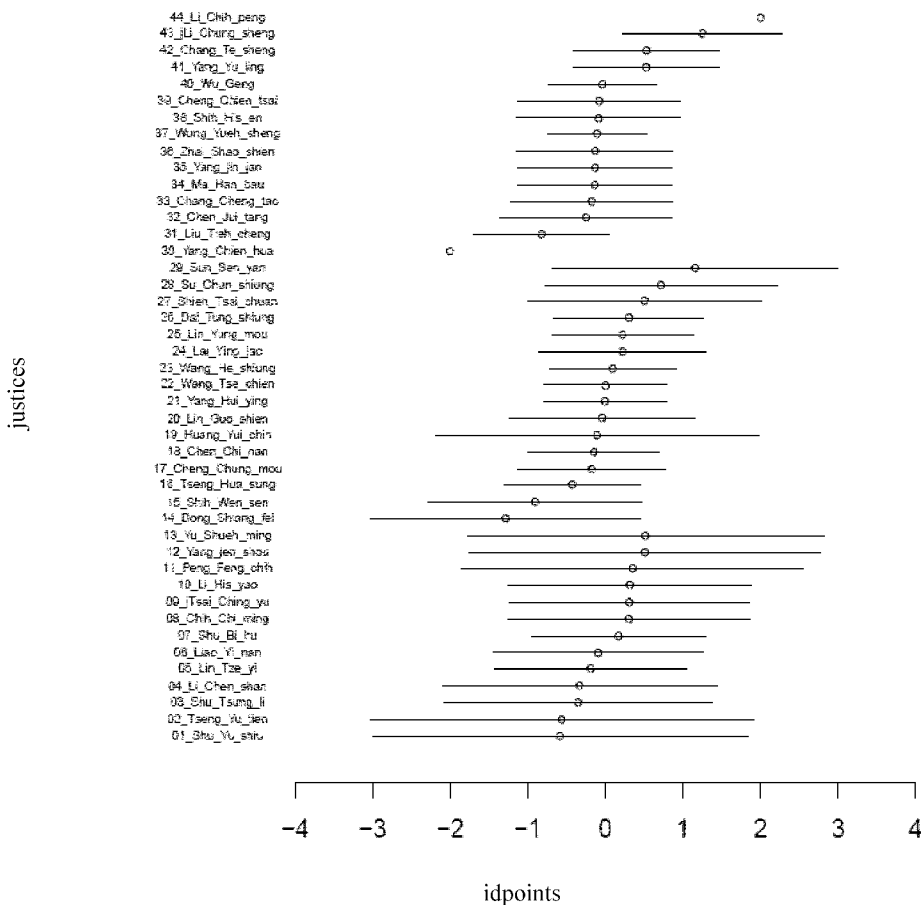
Positions 1 to 13 refer to judges Appointed by President Chen Shui-bian (DPP)
Positions 14 to 29 refer to judges Appointed by President Lee Teng-hui (KMT)
Positions 30 to 44 refer to judges Appointed by President Chiang Ching-Kuo (KMT)

Figure II   Example of Estimated Ideal Points (Including appointees of President Ma): Justice Li Chih-peng as +2 and Justice Yang Chien-hua as -2.
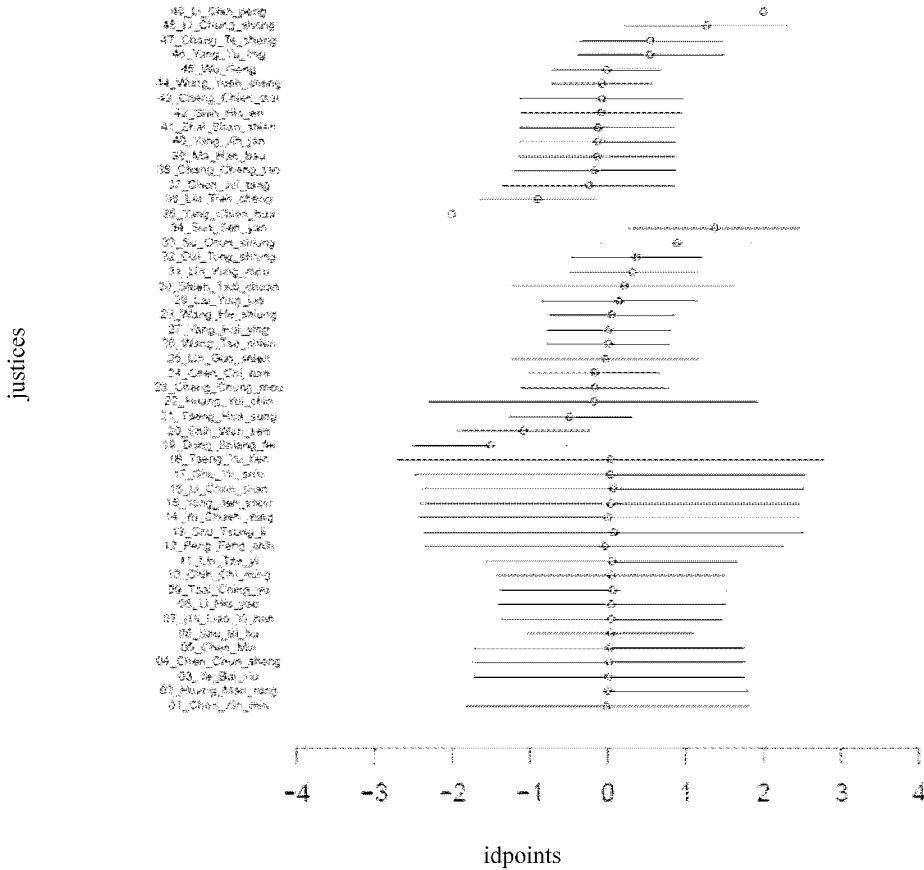
Positions 1 to 5 refer to judges Appointed by President Ma Ying-jeou (KMT)
Positions 6 to 18 refer to judges Appointed by President Chen Shui-bian (DPP)
Positions 19 to 34 refer to judges Appointed by President Lee Teng-hui (KMT)
        Positions 35 to 49 refer to judges Appointed by President Chiang Ching-Kuo (KMT)

**Figure III   Individual Average Scoring Excluding Appointees of
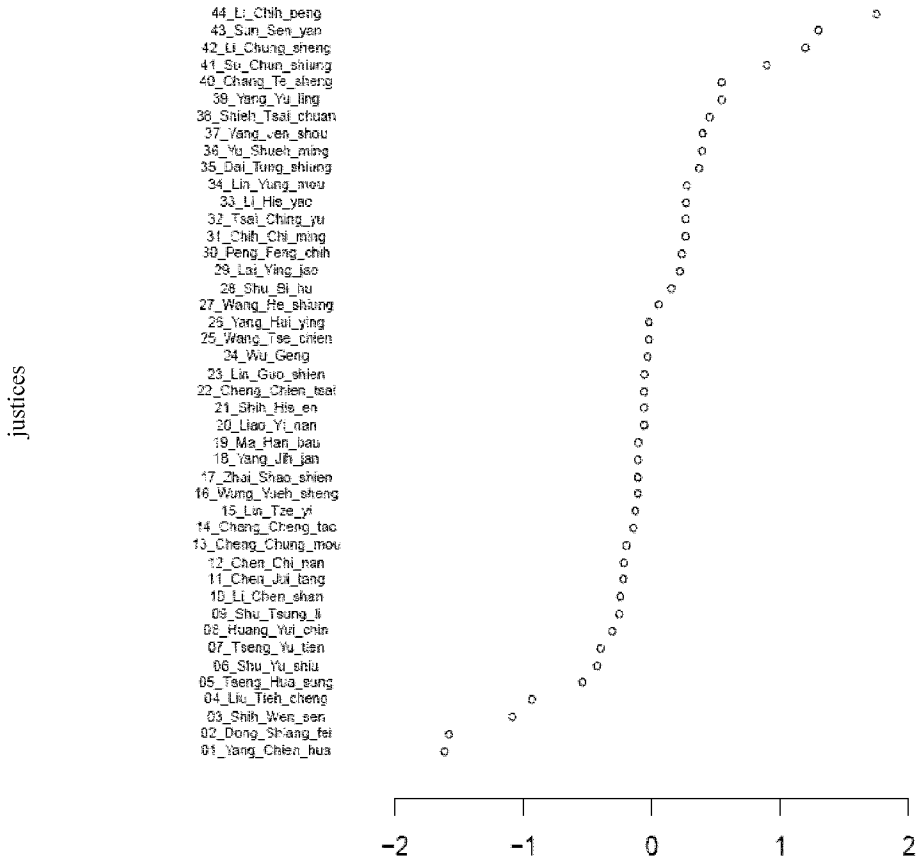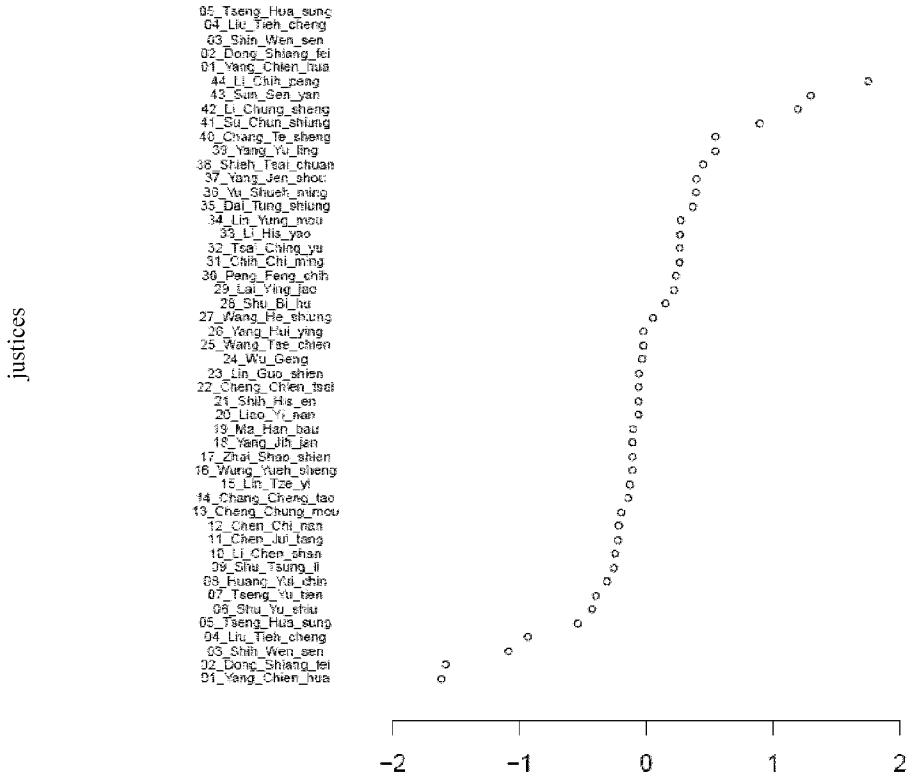   President Ma**

Figure IV   Individual Average Scoring Including Appointees of President Ma

APPENDIX A: LIST OF GRAND JUSTICES' CHINESE &
ENGLISH NAMES

As mentioned in the text, our research covers forty-nine of Grand Justices. The following is the contrast list of their Chinese names and according English spellings.

黃茂榮 Huang Mao-rong	陳　敏 Chen Min	葉百修 Yeh Bai-xiu
陳春生 Chen Chun-sheng	陳新民 Chen Xin-min	賴英照 Lai Ying-jao
謝在全 Shieh Tsai-chuan	徐璧湖 Shu Bi-hu	林子儀 Lin Tze-yi
許宗力 Shu Tsung-li	許玉秀 Shu Yu-shiu	林錫堯 Li His-yao
池啓明 Chih Chi-ming	李震山 Li Chen-shan	蔡清遊 Tsai Ching-yu
翁岳生 Wung Yueh-sheng	林永謀 Lin Yung-mou	余雪明 Yu Shueh-ming
曾有田 Tseng Yu-tien	彭鳳至 Peng Feng-chih	城仲模 Cheng Chung-mou
王和雄 Wang He-shiung	廖義男 Liao Yi-nan	楊仁壽 Yang Jen-shou
劉鐵錚 Liu Tieh-cheng	吳　庚 Wu Geng	王澤鑑 Wang Tse-chien
林國賢 Lin Guo-shien	施文森 Shih Wen-sen	孫森焱 Sun Sen-yan
陳計男 Chen Chi-nan	曾華松 Tseng Hua-sung	董翔飛 Dong Shiang-fei
楊慧英 Yang Hui-ying	戴東雄 Dai Tung-shiung	蘇俊雄 Su Chun-shiung
黃越欽 Huang Yui-chin	馬漢寶 Ma Han-bau	張特生 Chang Te-sheng
楊建華 Yang Chien-hua	李鐘聲 Li Chung-sheng	鄭健才 Cheng Chien-tsai
翟紹先 Zhai Shao-shien	楊與齡 Yang Yu-ling	楊日然 Yang Jih-jan
史錫恩 Shih His-en	陳瑞堂 Chen Jui-tang	李志鵬 Li Chih-peng
張承韜 Chang Cheng-tao		

APPENDIX B: THE LIST OF THE CASES

Our paper has analyzed and coded 101 decisions issued by the Grand Justices of the Taiwanese Constitutional Court from 1988 to 2009. The following is the list of the cases:

Interpretation No. (Year)	Interpretation No. (Year)	Interpretation No. (Year)
665 (2009)	655 (2009)	645 (2008)
644 (2008)	633 (2007)	632 (2007)
627 (2007)	613 (2006)	603 (2005)
601 (2005)	599 (2005)	592 (2005)
589 (2005)	585 (2004)	553 (2002)
550 (2002)	546 (2002)	543 (2002)
541 (2002)	530 (2001)	520 (2001)
499 (2000)	498 (1999)	485 (1999)
481 (1999)	472 (1999)	470 (1998)
468 (1998)	467 (1998)	463 (1998)
461 (1998)	453 (1998)	450 (1998)
436 (1997)	435 (1997)	426 (1997)
421 (1997)	419 (1996)	405 (1996)
401 (1996)	392 (1995)	391 (1995)
388 (1995)	387 (1995)	381 (1995)
380 (1995)	371 (1995)	365 (1994)
364 (1994)	357 (1994)	342 (1994)
340 (1994)	331 (1993)	329 (1993)
328 (1993)	325 (1993)	314 (1993)
307 (1992)	299 (1992)	298 (1992)
294 (1992)	290 (1992)	283 (1991)
282 (1991)	278 (1991)	277 (1991)
264 (1990)	262 (1990)	261 (1990)
260 (1990)	259 (1990)	258 (1990)
254 (1990)	250 (1990)	235 (1989)
234 (1989)	231 (1988)	

The actual case number is less than 101 because some interpretations include more than one issue, and, under these circumstances, a Justice may make plural decisions in one case.

APPENDIX C: CODING CONTROVERSIAL CASES

All of the coded controversial cases are listed as follows. We have also included an explanation of why some Justices' dissenting opinions have been coded as the majority opinions in those Interpretations of the Judicial Yuan.

1) *Interpretation No. 592*: In this case the majority opinion favors the petitioner, so their votes have been coded as zero (*i.e.* unconstitutional).   As for Shieh Tsai-chuan's dissenting, he is also favorable to the petitioner, so his vote has been coded as zero as well. However, Tseng Yu-tien argues that this case should be dismissed (unfavorable to the petitioner) and we have therefore coded his vote as one.

2) *Interpretation No. 585*: Although it is not a unanimous decision, we have not coded Shu Tsung-li and Shu Yu-shiu's votes as dissents after reviewing their partial dissenting opinions.

3) *Interpretation No. 553*: The majority and concurring opinions have both been coded as one.   However, because Shieh Tsai-chuan's dissenting opinion expresses that this case should be dismissed (also unfavorable to the petitioner), we have also coded his vote as one.

4) *Interpretation No. 543*: In this Interpretation the majority opinions declare that the regulations at issue do not absolutely fit in with the Constitution and should have been reviewed by the legislators (favorable to the petitioner), so their votes have been coded as zero. As for Dong Shiang-fei's dissenting opinion, we coded his vote as zero as well because the Justice clearly and strongly argues that the regulations are unconstitutional (also favorable to the petitioner).

5) *Interpretation No. 520*: In this Interpretation the majority and concurring opinions have been coded as one (unfavorable to the petitioner, Executive Yuan). Because Chen Chi-nan presented a partially concurring opinion, we decided to code his vote as if it were part of the majority (*i.e.* one). As for the dissenting opinions of Liu Tieh-cheng, Shih Wen-sen and Dong Shiang-fei, we also coded their votes as one because they all argue strongly against the petitioner.

6) *Interpretation No. 485*: The majority opinion declares the law at issue to be constitutional (unfavorable to the petitioners). However, Chen Chi-nan's dissenting opinion is also unfavorable to the petitioners (he argues that the case should be dismissed), so we have also coded his vote as one.

7) *Interpretation No. 450*: We have coded the majority opinion as zero because it favors the petitioners. As for Chen Chi-nan's dissenting opinion, since he only disagrees with the reasoning of the majority but not their conclusion (*i.e.* the holding), we have coded his vote as zero.

8) *Interpretation No. 419*: On issue (1)—whether the Vice President may concurrently hold the position of the Premier of the Executive Yuan while serving his term as Vice President—the votes of the majority have been coded as zero (*i.e.* unconstitutional) for two reasons. First, unlike Liu Tieh-cheng and Dong Shiang-fei's dissenting opinions (coded as zero), the majority does not argue that this status is obviously unconstitutional, but instead declares that it is constitutionally inappropriate in the end. We also coded the majority opinion as zero because then Vice President Lien Chan resigned his post as Premier of the Executive Yuan after this Interpretation was released.

9) *Interpretation No. 290*: We have coded the majority's votes as one. The Cheng Chien-tsai and Yang Jih-jan's alleged "dissenting" opinions were also coded as one, since, upon a careful reading of each opinion, it becomes evident that they are actually concurring opinions (they only disagree with the majority's reasoning, but not the holding).

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新興民主的司法理想點
——以臺灣為例

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摘　　要

　　本文以1998年至2009年任職臺灣司法院的大法官為研究對象,估計其理想點,以實證分析方法研究影響其司法行為的決定因素。又,臺灣違憲審查制度的建立與發展,與該國由一黨專政的威權體制轉型為新興民主政體息息相關,故其在個案研究上更具價值。根據本文研究結果,亦即估計出來的理想點顯示,首先,無法證明總統與其提名、任用之大法官具有政治結盟的關係。其次,除少數例外,絕大多數大法官的理想點均分佈在中庸地帶。最後,對於作者群先前運用計量經濟分析,否定態度性假設的研究成果,本文也再度確認司法院大法官並不傾向響應其提名人的政黨利益。

關鍵詞：大法官、司法院、理想點、臺灣、實證分析、違憲審查、
　　　　憲法法院