IEL PAPER IN COMPARATIVE ANALYSIS OF
INSTITUTIONS, ECONOMICS AND LAW NO. 2

# *The Effect of Rules Shifting Supreme Court Jurisdiction from Mandatory to Discretionary An Empirical Lesson from Taiwan*

**Theodore Eisenberg & Kuo-Chang Huang**

April, 2011

# The Effect of Rules Shifting Supreme Court Jurisdiction from Mandatory to Discretionary—An Empirical Lesson from Taiwan

Theodore Eisenberg† & Kuo-Chang Huang‡

Abstract

*Theoretical works suggest that granting a supreme court discretion in choosing the cases to be decided on the merits could shift dockets away from traditional case-based adjudication and towards issue-based adjudication. According to this prediction, legislatures can recast supreme courts' roles in society by modifying jurisdictional rules. This study tests this prediction empirically. Using a newly assembled data set on appeals terminated by the Taiwan Supreme Court for the period 1996-2008, we study the effect of jurisdictional-source procedural reform, a switch from mandatory jurisdiction to discretionary jurisdiction in 2003, on the Taiwan Supreme Court's performance. Our study shows that the 2003 reform failed to transform the function of the Court from correcting error to a greater role in leading the development of legal doctrine as intended by the legislature. Our findings suggest that a supreme court can adjust the way it conducts business according to its own preference and the role it defines for itself, which are influenced both by the background against which it operates and the inertia of its members' working habits. Our study informs policy-makers that merely amending procedural rules, without more, is unlikely to change the function of a supreme court. Our findings also suggest that statutorily dictated mandatory jurisdiction may not be implemented by a high court faced with caseload pressure.*

## I. Introduction

Within any jurisdiction, the institution of the highest court, usually referred to as the supreme court, is of great importance. Not only do its decisions dictate the final resolution of individual cases, the legal doctrines it develops over time also shape the directions of numerous lower court decisions. It is thus not surprising that supreme courts have attracted much scholarly attention, both within and outside legal communities. Many studies have addressed the functioning of supreme courts from various perspectives and disciplines.

Early studies explored the relationship between socioeconomic environmental change and supreme courts' functions, in an attempt to build a macro-level theory to identify the factors determining the functions and business of supreme courts. The most notable is a series of longitudinal studies of state supreme courts (SSCs) in the United States (Cartwright 1975; Kagan et al. 1977; Kagan et al. 1977-1978; Friedman 1981; Kagan et al. 1984; Wheeler 1987). For example, Kagan et al. (1977) traced the dockets of a sample of 16 SSCs over the period 1870 to 1970, observed the change of caseload as well as distribution of case types for three time periods (1870-1900, 1905-1935, and 1940-1970), and outlined four sets of factors that affect change in SSCs business: socioeconomic factors; judicial structure; judicial culture; and substantive doctrine. A more recent study continued to document the case types of SSCs (Kritzer 2007).

While these studies greatly enhanced understanding of SSCs' operations and functions, aggregate analysis of a long time period or study of multiple states is subject to the limitation that broad generalizations without deeper, more detailed data about specific courts provide little help in

† Henry Allen Mark Professor of Law & Adjunct Professor of Statistical Sciences, Cornell University. This paper was first presented at the International Conference on Efficiency and the Judiciary—Law and Economics Perspectives, conducted by the program on Institutions, Economics, and Law, held at the Collegio Carlo Alberto, Turin, Italy, on December 3 & 4, 2009. The authors would like to thank all participants for helpful comments, and Kevin M. Clermont and Geoffrey Miller for insightful suggestions on a preliminary draft.

‡ Assistant Research Professor, Institutum Iurisprudentiae, Academia Sinica in Taiwan. This author would like to thank National Science Council of Taiwan Government for funding support.

understanding the complex relationship between the SSCs' business and environmental and structural factors (Daniels 1988). In suggesting directions for future research, Daniels (1988) pointed out that studies of shorter periods of time, chosen for a specific theoretical reason because of some particular changes, are needed to improve understanding of the relationship between legal institutions and the structural, jurisdictional, and procedural constraints within which courts operate. Recent studies have narrowed the focus and tried to isolate the effect of a particular factor on SSCs' adjudication activities. For example, political science research has assessed the relation between judicial backgrounds and SSC outcomes (Hall 1992; Brace et al. 2000).

Interest in the role of jurisdictional source—the distinction between mandatory and discretionary jurisdiction—has existed for several decades (Note 1951; Note 1952; Baum 1976). Insight into the importance of this distinction emerges from National Center for State Courts data, which distinguish between the two jurisdictional sources (Court Statistics Project 2007; Table 11). The data show substantial interstate variation in the number and fraction of discretionary jurisdiction cases.

Studies suggest that accounting for jurisdictional source can substantially affect basic views of SSC activity. Eisenberg and Miller (2009), using data on SSC cases leading to opinions in 2003, investigated the associations between jurisdictional source and case outcomes, dissent patterns, case category, and opinion characteristics. Based upon the finding that important variation exists between mandatory-jurisdiction cases and discretionary-jurisdiction cases, they suggested that studies of SSC activities must take into consideration jurisdictional source. 1Kastellec and Lax show that not accounting for the way in which cases come to a court can distort findings about the effects of judicial characteristics on case outcomes (Kastellec & Lax 2008). Law and economics scholar Steven Shavell has explored economic aspects of the distinction between mandatory and discretionary jurisdiction (Shavell 2009).

Most relevant to this study are theoretical works suggesting that granting a supreme court discretion in choosing the cases to be decided on the merits could shift dockets away from traditional case-based adjudication and towards issue-based adjudication (Kornhauser 1992; Kornhauser & Sager 1993). This prediction is important because it suggests that legislatures can recast supreme courts' roles in society by modifying jurisdictional rules and the criteria used to select cases for review. If the legislature wants to shift a supreme court's function away from an error-correction role and towards a policy-oriented role, the legislature might increase the court's discretion to control its own docket. However, whether and to what extent the legislature can recast a supreme court's function by amending procedural rules has not been empirically tested. One relevant historical example is the United States (U.S.) Supreme Court's reaction to docket pressure in cases theoretically appealable as of right. For many years, U.S. litigants were entitled to an "appeal as of right" to the United States Supreme Court in large classes of cases. The Court effectively seized control of its docket by summarily dismissing most such cases "for want of a substantial federal question,"[1] and the legislature eventually acquiesced to the Court's expanded discretionary jurisdiction (Public Law 100-352, June 27, 1988, 102 Stat. 662). U.S. state supreme courts employ a range of techniques to avoid providing full consideration to many mandatory jurisdiction cases (Eisenberg & Miller 2009, p. 1459). Our study of Taiwan offers the converse situation in which the legislative mandate was to shift to more discretionary jurisdiction and we assess whether the Taiwan Supreme Court (TSC) acquiesced. Such a study can provide not only valuable information about the interaction between procedural rules reform and supreme court function but also insights about the efficacy of this approach in achieving institutional reform.

This study explores the effect of jurisdictional-source procedural reform, a switch from mandatory to discretionary jurisdiction, on a supreme court's performance. Studying this question empirically requires a jurisdiction in which the legislature sought to alter the supreme court's role by amending procedural rules and data about the court's performance. Taiwan's 2003 reform presents an excellent opportunity to assess the effect of a shift from mandatory to discretionary jurisdiction. Prior to the 2003 reform, the TSC exercised only mandatory jurisdiction; it was required to adjudicate cases on the merits if the relevant procedural requirements were met. Thus it was observed that the TSC mainly performed the function of error-correction and did not seem to undertake the role of leading the development of legal doctrines (Huang 2003). In an effort to transform the function of the TSC and to direct its energy to important legal issues, Taiwan's legislature amended the Taiwan Code of Civil Procedure (TCCP) to grant the TSC discretionary jurisdiction in most cases, maintaining mandatory jurisdiction only in a limited number of specific situations.[2] Whether this reform successfully changed the TSC's role and the way the TSC conducts its business has not been fully explored. This article supplies that analysis.

---

1 E.g., Zucht v. King, 260 U.S. 174 (1922). See generally Eisenberg (1974; p. 522).

2 These limited grounds for invoking the TSC's mandatory jurisdiction are explained in Section II.B. below.

Surprisingly, by analyzing the data on the TSC's operations and decisions from 1996 to 2008, our study finds that the 2003 reform has had at best minimal impact on how the TSC conducts its business. While one expects a court with pure discretionary jurisdiction to have a higher reversal rate than a court with mandatory jurisdiction, the expected change in reversal rates is not observed for the TSC. Furthermore, the TSC has not devoted increasing attention to the development of substantive law. And frequent reversal of lower courts on the ground of erroneous fact-finding continues despite the legislature's intent to change that practice. Perhaps more surprising is that the TSC, before the Taiwan Congress authorized it do so through the 2003 reform, had started to exercise *de facto* discretionary jurisdiction via manipulating the procedural requirements for appealing to the TSC. The TSC experience suggests that the highest judicial institution could adjust the way it conducts business according to its own preferences. Merely amending procedural rules, without more, did not change the institution's behavior, behavior that is largely dictated by its members' working habits and inertia.

Part II of this article explains relevant background and outlines theoretical hypotheses for empirical testing. Part III describes the data. Part IV reports our findings. Part V discusses the results and the implications. Part V concludes.

## II. Background and Hypotheses

### A. Background

Taiwan has a three-tiered court system: courts of first instance, intermediate appellate courts, and the TSC. Courts for each tier are divided into civil and criminal divisions, with the former hearing civil cases and the latter hearing criminal cases. An independent system of tribunals—the administrative courts—hears public-law cases, mainly arising from disputes between citizens and the government. This article is limited to discussion of civil cases.

Both the courts of first instance—the district courts—and the courts of second instance—the high courts—adjudicate fact and law, which means that the first appeal adopts the standard of *de novo* review. Further appeal, to the TSC, is limited to questions of law. Prior to the 2003 Amendment of the TCCP, as long as the relevant procedural requirements were satisfied, the party who lost in the high court had the right to appeal to the TSC. In other words, TSC, at least in theory, adjudicated the appeal on the merits if the prescribed requirements were met.

The first, and the most important, requirement of appealing to TSC was that the appealed judgment involved erroneous application of the law, either procedural or substantive. Mere assertion of erroneous fact-finding was not a valid ground for the second appeal. Based on this requirement, the appellant had to specify how the judgment in issue contravened the law. Failure to do so would result in dismissal by a procedural ruling, which meant that the TSC did not have to adjudicate the appeal on the merits. Nevertheless, it should be noted that the rules of logic and experience are considered part of the "law." Thus, if inferior courts erroneously applied the rules of logic and experience in finding the facts, their judgment would be considered to commit erroneous application of the law. This mechanism was used by the TSC to reverse judgments involving clearly erroneous fact-findings.

Another requirement of appealing to TSC was that, in the cases where the cause of action concerns proprietary rights, the amount in controversy must exceed a certain amount of money. On the other hand, in the cases where the cause of action concerned personal status, such as a divorce case, this requirement did not apply. Since most judgments of the high courts involved proprietary rights, this requirement significantly limited the losing party's ability to take a second appeal. In fact, because the TSC had to exercise mandatory jurisdiction, increasing the jurisdictional amount had been the most important way for the congress to relieve the TSC from the heavy caseload about which the TSC often complained. The amount in controversy was raised three times within the last decade: from 450,000 to 600,000 NT dollars (NT$)[3] in 1999, then to NT$ 1,000,000 in 2000, and to NT$ 1,500,000 in 2002.

When an appeal was filed, the TSC would first examine whether the relevant requirements were satisfied. All appeal requirements other than the requirement of specifying the reasons for appeal were straightforward and could be readily satisfied. It has been observed that almost all procedurally dismissed cases were therefore dismissed because of failure to specify the reason for appeal. As will be shown later, procedural dismissals on this ground became an important instrument for the TCS to control its docket. On the other hand, when the procedural requirements were satisfied, the TSC would adjudicate the cases on the merits by one of its panels.

---

3 The New Taiwan dollar is the official currency of Taiwan. The exchange rate as compared to the United States dollar is around 33 NT dollars per 1 US dollar in recent years.

The civil division of the TSC contains several panels, each of which consists of five judges. TSC judges are all professional judicial officers, who followed the career path of passing the Judge Examination Test, serving in the district courts at the early stage of their career, elevating to the high courts afterwards and finally reaching the top of the judiciary pyramid. Taiwan courts do not have authority to review constitutional issues, which are within the exclusive jurisdiction of the Constitutional Court (the Council of Grand Justices).[4] If any court believes that a law bearing on the resolution of the pending case is unconstitutional, the proper course of action is for the court to suspend the litigation and refer the issue to the Constitutional Court.[5] Other than constitutional issues, TSC has the final say on how a case should be disposed of.

In a particular case, the decision of each TSC panel is *final and binding*. However, in interpreting a legal issue, one panel's view does not bind other panels or the inferior courts, although it constitutes an important guidepost for other TSC panels and inferior courts addressing the same legal issue in the future. As a result, on a novel or controversial legal issue, it is not unusual for different panels within the TSC to adopt different views.[6] A TSC judgment has *stare decisis* effect only if and only after it is adopted as a *precedent.* Since the TSC does not have the procedural mechanism of *en banc* hearing in a particular case, the question whether a particular civil judgment should be adopted as a precedent is discussed and determined by the joint conference of all TSC civil judges. While this joint conference is not an adjudicative body, it is an important administrative mechanism for the TSC to adopt, amend, and abolish precedents.

While authorized by TCCP, traditionally the TSC did not hold hearings for cases to be decided on the merits. The TSC decided the case solely based on the parties' briefs and the dossier collecting all materials reviewed by the inferior courts. If the TSC found that the court of second instance committed an error of law, it would vacate the judgment and remand the case to the inferior court with jurisdiction. Though it was often emphasized that the TSC only dealt with questions of law, clearly erroneous finding of fact were often categorized as legal error through interpretation. It was observed that the actual function of the TSC was more to correct error than to decide important legal issues (Huang 2003).

The TSC was bound to issue written opinions in every appeal, regardless of how the case was disposed of. Such written opinions were not necessarily publicly reported before the On-Line Decision Search System (OLDSS) was established in 1996. All TSC decisions after 1996 were available through OLDSS, except for the rare cases where the appeal was withdrawn, the parties reached settlement, or the subject matter involves sensitive privacy. When the procedural requirements for appealing to the TSC were not satisfied, the TSC would dismiss the case by a procedural ruling. All cases adjudicated on the merits were decided by a formal judgment. Written by trained and experienced career judges, the rulings and judgments rendered by the TSC basically followed the same style and format. Specifically, for a procedural ruling to dismiss the case, normally the court would use a "standard format," which is less than one page in length, stating the requirement of specifying the legal ground for appeal and the appellant's failure to meet this requirement. For a judgment on the merits, the court would recite the parties' assertions and the inferior court's finding and reasoning first, which normally constituted the lengthiest part of the whole judgment, and then explain its own decision, which normally was much shorter, rarely exceeding one page.

B. The 2003 Reform

The TSC's traditional operation was criticized as failing to perform the true expected function of a supreme court—to adjudicate important legal issues and to lead the development of legal doctrine. The TSC judges responded that their caseloads were simply too heavy to allow them to spend much time on

---

4 For an introduction to Taiwan's Constitutional Court, visit the official website at http://www.judicial.gov.tw/constitutionalcourt/EN/p01_01_01.asp (last visited November 10, 2009).

5 While Article 5, paragraph 2 originally provided that only the Supreme Court could petition the Constitutional Court to interpret the constitutionality of the law in issue, that provision has been declared unconstitutional by Interpretation No. 371 of the Constitutional Court. In accordance with Interpretation No.371, when any judge sincerely believes the statute or regulation at issue before the court is in conflict with the Constitution, the court may adjourn the proceedings *sua sponte* and petition the Constitutional Court to make interpretation.

6 For example, whether to adopt the American doctrine of issue preclusion has became a controversial issue in Taiwan, among both academics and courts. While a majority of courts, including several TSC panels, have recognized a similar doctrine, a few courts, including one TSC panel, still refuse to recognize the effect of issue preclusion. For a thorough examination of this issue in Taiwan, see Huang (2005a).

important legal issues. The TSC received more than 3,000 filings of appeals from judgments, along with about 1,500 other procedural rulings per year but had fewer than 35 judges in its civil division.

In an effort to transform TSC from an error-correcting institution to an institution leading the development of legal doctrine, the congress amended the TCCP in 2003. On the one hand, the 2003 Amendment of the TCCP granted the TSC broad discretion on whether to hear a case on the merits, while maintaining limited grounds for appeals as of right. On the other hand, the TCCP required TSC to hear oral arguments for cases to be decided on the merits, except where the court considers such hearing unnecessary. In addition, in order to cure the inefficient practice of sending cases back and forth between the high court and the TSC, the TCCP also required the TSC to render final judgment without remanding the case back to the high court. The basic idea behind the 2003 reform is to allow the TSC to control its own docket and invest more time on cases involving important legal issues. Aside from the expansion of discretionary jurisdiction, all procedural requirements mentioned above, such as the requisite amount in controversy, remain intact.

After the 2003 reform, the TSC has mandatory jurisdiction only if one of six serious procedural errors, as provided in Article 469 of the TCCP, occurred in the inferior courts, including (1) unlawful composition of the court, (2) failure of judge to disqualify himself in prescribed circumstances, (3) lack of subject matter jurisdiction or exclusive jurisdiction, (4) lack of lawful representation for parties, (5) failure to conduct trial in open court, and (6) failure to provide sufficient reasons, including provision of contradictory reasons, by the inferior court in its judgment.[7] Appeals on the grounds other than these are heard on the merits only if the TSC permits it. The TCCP explicitly specifies that such permission shall be granted only if one of the following three conditions is met: (1) the appeal is necessary for the continuous development of the law; (2) the appeal is necessary for resolving inconsistent decisions; or (3) the appeal involves legal questions of principal importance.

As a result, the 2003 Amendment to the TCCP divide the TSC's jurisdiction into mandatory jurisdiction and discretionary jurisdiction. Since the mandatory jurisdiction is narrowly defined, the TSC is expected to have great control over its docket through its discretion on whether to hear a case on the merits. How the TSC responded to this reform and whether, and to what extent, the TSC changed its function are important questions.

C. Hypotheses

After the 2003 reform, based on the legislative intention, we should expect to observe significant change in how the TSC conducts its business and the functions it performs. We list a number of hypotheses that can be reasonably made based the legislature's purposes. We use these hypotheses as the indicators of whether, and to what extent, the procedural reform transformed the basic character of the TSC.

1. Hypothesis One: Increased Dismissal Rate

The first and most straightforward prediction about the 2003 reform's effect is an increased dismissal rate. The dismissal rate refers to the percent of cases dismissed procedurally without being heard on the merits. Since the 2003 reform grants the TSC broad discretion in deciding whether to adjudicate an appeal on the merits, we should naturally expect a higher proportion of cases to be disposed of by a procedural ruling and lower proportion of cases to be heard on the merits.

2. Hypothesis Two: Increased Reversal Rate

Prior research suggests that "given discretion to select cases and human nature, one also expects judges to tend to review outcomes with which they disagree." (Eisenberg & Miller 2009). One thus predicts that reversal rates will be higher in discretionary jurisdiction cases than in mandatory jurisdiction cases. Existing empirical evidences from the United States indeed supports this theoretical hypothesis (see, for example, Eisenberg & Miller 2009).

While the above prediction is made as to a cross-sectional comparison between discretionary and mandatory jurisdiction cases in the same period, the same prediction can be made with regard to a longitudinal comparison of the TSC switching from mandatory to discretionary jurisdiction. Since the 2003 reform intended to allow the TSC to have greater control over its docket, we should expect that the TSC would tend to select cases with which its judges disagree. As a result, among all cases adjudicated on the merits, the post-reform reversal rate should be higher than the pre-reform reversal rate.

7 For a literal English translation of the TCCP, see Huang & Thurston (2006).

3. Hypothesis Three: Changed Ground for Reversal

Besides the reversal rate, a more direct test of the effect of the 2003 reform is the distribution of the grounds for reversal. The 2003 reform was intended to transform the TSC from case-based adjudication to issue-centered decision making. Due to the increased selectivity of cases to be heard on the merits, we expect that the TSC would reverse lower court decisions on grounds more related to legal issues than to erroneous fact-finding in the post-reform regime.

As explained above, although an appeal to the TSC is limited to questions of law, TSC allowed appeal of cases involving clearly erroneous fact-finding by categorizing misapplication of rules of logic and experience in finding the facts as misapplication of the law. However, after the 2003 reform, this ground of appeal should no longer be allowed even if "the rules of logic and experience" are still deemed to be "laws," because misapplication of such "laws" does not satisfy the explicit requirements provided in Article 469-1 of TCCP for the TSC to grant discretionary review.

Accordingly, if the 2003 reform has the effect of directing the TSC's attention to cases involving important legal issues, we should observe that, except for appeals invoking the TSC's mandatory jurisdiction, reversals by TSC are based on substantial legal issues, not on erroneous fact-findings. This distribution of the grounds for reversal has not been investigated in prior studies of supreme courts.

4. Hypotheses Four: Changed Style and Increased Length of TSC opinions

The most important instrument with which the TSC exerts its influence is its opinions. Since the granting of discretionary jurisdiction allows the TSC to invest more energy and time on cases involving important legal issues, it is natural to expect that the TSC will write longer opinions with more substantial content in its judgments on the merits after the reform took effect.

In evaluating the characteristics of TSC opinions, the first measure we use is the length of opinions. Prior studies indicate that length of opinions varies significantly across different jurisdictions and changes in the length of opinions over time may reveal changes in legal culture (Friedman et al. 1980-1981: 775-785). Our purpose in this regard is less ambitious. We simply hypothesize that by directing the TSC's attention to issue-oriented cases, the 2003 reform would lead the TSC to write longer opinions in explaining the resolution of a legal issue.

We also assess whether there is a post-reform change of citation patterns. One expects an opinion engaging in deeper and more substantial discussion of legal issues to make more reference to more "authorities," such as precedents, law review articles, and even foreign law materials. Moreover, the decrease of the caseload to be decided on the merits should also allow TSC judges to conduct more in depth legal research. Accordingly, we rely on the citation patterns to assess whether the 2003 reform has achieved its intended purposes.

## III. DATA

A. Cases Sampling

Because our main interest is to evaluate the impact of the 2003 Amendment on the TSC's function in hearing appealed cases, we need to include pre-reform cases. The earliest TSC decisions on appeals taken from lower court judgments available in the On-Line Decision Search System (OLDSS) are cases terminated in 1996.[8] Accordingly, we assemble a dataset of TSC decisions terminated during the period of 1996-2008 on appeals taken from the high courts' judgments. This time-span allows us not only to have sufficient number of pre-reform and post-reform opinions but also to cover 13 years' opinions to conduct a longitudinal study.

To balance available resources and the goal of including a sufficient number of opinions in our dataset, we decided to sample 5% of all TSC decisions reported in OLDSS per year. A summary of our sampling process is appropriate here. First, because the TSC numbers the case first terminated in a given

8 The On-Line Decision Search System (OLDSS) is an official court decision search system established by the Judicial Yuan, the highest judicial office in Taiwan. This system is designed to report *all* court decisions, except for the cases involving protected secrets or privacy. Since it is officially established and administered, this system is regarded as the most reliable and comprehensive decision search system in Taiwan. One of us has relied on this system to conduct a number of empirical studies in Taiwan. Prior experiences in using the OLDSS indicate that while occasionally decisions cannot be found in OLDSS due to administrative omissions, OLDSS is extremely reliable and such omissions are rare.

year as No. 1 and the following cases are sequentially numbered, we are able to assemble a numbered list of TSC decisions decided in every year from 1996 to 2008. Second, by using a random number generator from a computer program, we randomly sample 5% of TSC decisions from the case list each year. It should be noted that OLDSS does not intentionally exclude procedural dismissal decisions from its database, nor do we in our sampling process. Unlike prior studies which eliminate summary dispositions and focus only on decisions on the merits, our study includes those procedural dismissals into our dataset for subsequent analyses. Third, through this process, the sample size in each year is proportional to the number of all decisions in a given year. We sampled 1,914 cases in total. In those 1,914 cases, 74 decisions, albeit listed in OLDSS, cannot be downloaded because they are characterized as being protected from publication by law. While we can reasonably assume that those unavailable decisions involving protected secrets or privacy, we are unable to ascertain the characteristics of those cases with regard to the methods of case dispositions and whether those cases involve important legal issues. Nevertheless, given the fact that those decisions are less than 5% of all sampled cases, we believe that exclusion of those decisions will not distort our results. The sampling process produces a sample of 1,836 decisions in our study. The number of sampled decisions and available decisions are reported for each year in the last two columns of Table 1 below.

Table 1: TSC Caseload & Sample Size

| | TSC True Caseload* | Number of Cases Listed in OLDSS | Percent of Cases Not Pursued to Completion | Number of Sampled Decisions** | Number of Published Decisions |
|---|---|---|---|---|---|
| 1996 | 3414 | 3148 | 7.79% | 157 | 150 |
| 1997 | 4137 | 3887 | 6.04% | 194 | 178 |
| 1998 | 3312 | 3084 | 6.88% | 154 | 147 |
| 1999 | 3769 | 3521 | 6.58% | 176 | 156 |
| 2000 | 3242 | 2974 | 8.27% | 149 | 143 |
| 2001 | 2697 | 2469 | 8.45% | 123 | 120 |
| 2002 | 2879 | 2657 | 7.71% | 133 | 129 |
| 2003 | 3026 | 2824 | 6.68% | 141 | 139 |
| 2004 | 2831 | 2657 | 6.15% | 133 | 133 |
| 2005 | 2582 | 2406 | 6.82% | 120 | 113 |
| 2006 | 3174 | 3001 | 5.45% | 150 | 148 |
| 2007 | 3082 | 2930 | 4.93% | 147 | 147 |
| 2008 | 2897 | 2739 | 5.45% | 137 | 133 |
| Total | 41,042 | 38,297 | 6.69% | 1914 | 1836 |

Note: * The number for the TSC caseload per year is taken from the official statistical report.
** 5% of cases listed in OLDSS.
Source: Annual Report of Judicial Statistics of Taiwan; TSC OLDSS opinions 1996-2008.

Also note that there is discrepancy between the number of filed appeals and the number of appeals terminated by a TSC decision. Since it is possible for parties to settle the case or for the appellant to withdraw the appeal during the appeal process, an appeal to the TSC does not necessarily lead to a TSC decision. To assess how great this difference might be, we sought information regarding the actual number of appeals filed from lower courts' judgments from the official statistics reports (Judicial Yuan 2008), which are listed in the first column of Table 1. Comparing this number with the number of decisions listed in OLDSS, as reported in the second column of Table 1, indicates that around 6.69 percent of filed appeals, on average, did not result in a TSC decision. Since the percent of appeals not pursued to completion is quite low and remains stable over time, this discrepancy is unlikely to bias our observation of the TSC's activities through sampling cases from OLDSS.

B. Decisions Coding and Data Description

After selecting the sample of 1,836 cases, we started the process of reading the decisions and coding important and available information.[9] Table 2 summarizes the main results.

9 During the process, two assistants helped to code basic variables which can be easily ascertained from the decisions, such as the date of decision, the status of legal representation and the method of case disposition, and the like. For variables requiring substantive judgment, such as the ground of reversal, one of the authors did the coding.

Table 2: Data Description

| Variable | | | Freq. | Percent |
|---|---|---|---|---|
| Methods of Case Disposition (1,836) * | | Procedural Dismissal | 883 | 48.09 |
| | | Affirming Judgment | 301 | 16.39 |
| | | Reversing Judgment | 652 | 35.51 |
| Cases Processed after the 2003 Reform took effect | | Post-reform Cases | 641 | 34.91 |
| | | Pre-reform Cases | 1,195 | 65.09 |
| Type of Disputes (1,836) | | Torts, General | 145 | 7.90 |
| | | Traffic Accident | 46 | 2.51 |
| | | Unjust Enrichment | 60 | 3.27 |
| | | Contract, Sales | 236 | 12.85 |
| | | Contract, Hire of Work | 174 | 9.48 |
| | | Contract, Loan | 132 | 7.19 |
| | | Contract, Others | 232 | 12.64 |
| | | Ownership | 202 | 11.00 |
| | | Family & Inheritance | 132 | 7.19 |
| | | Other Civil Code Cases | 38 | 2.07 |
| | | Labor Disputes | 74 | 4.03 |
| | | Commercial Law & IP Cases | 87 | 4.74 |
| | | Public Liability Cases | 42 | 2.29 |
| | | Other Special Statute Cases | 105 | 5.72 |
| | | Unknown | 131 | 7.14 |
| Who Appeals (1,836) | | Plaintiff | 830 | 45.21 |
| | | Defendant | 655 | 35.68 |
| | | Both Parties | 56 | 3.05 |
| | | Unknown | 295 | 16.07 |
| Status of Legal Representation (1,836) | One Party Appealed (1,780) | Neither Represented | 448 | 25.17 |
| | | Appellant Represented Only | 645 | 36.24 |
| | | Appellee Represented Only | 114 | 6.4 |
| | | Both Represented | 573 | 32.19 |
| | Both Parties Appealed (56) | Neither Represented | 10 | 17.86 |
| | | Plaintiff Represented Only | 5 | 8.93 |
| | | Defendant Represented Only | 4 | 7.14 |
| | | Both Represented | 37 | 66.07 |
| Nature of Parties (1,836) | One Party Appealed (1,780) | Individual v. Individual | 858 | 48.20 |
| | | Individual-Appellant v. Corp-Appellee | 373 | 20.96 |
| | | Corp-Appellant v. Individual-Appellee | 238 | 13.37 |
| | | Corporation v. Corporation | 311 | 17.47 |
| | Both Parties Appealed (56) | Individual v. Individual | 16 | 28.57 |
| | | Individual-Appellant v. Corp-Appellee | 14 | 25.00 |
| | | Corp-Appellant v. Individual-Appellee | 5 | 8.93 |
| | | Corporation v. Corporation | 21 | 37.50 |
| Number of Parties (Cases Appealed by Only One Party) (1,780) | Appellant | 1 | 1,380 | 77.53 |
| | | 2 | 166 | 9.33 |
| | | 3-5 | 146 | 8.20 |
| | | 6-10 | 50 | 2.81 |
| | | More than 10 | 38 | 2.13 |
| | Appellee | 1 | 1,291 | 72.53 |
| | | 2 | 197 | 11.07 |
| | | 3-5 | 172 | 9.66 |
| | | 6-10 | 70 | 3.93 |
| | | More than 10 | 50 | 2.81 |

Note: * Number of observations.
Source: TSC OLDSS opinions, 1996-2008.

The first major variable is the method of case disposition. A procedural dismissal indicates that the TSC did not hear the case on the merits. While failure to comply with any procedural requirement may result in a procedural dismissal, as shown in our subsequent discussion, most appeals are procedurally dismissed on the ground that the appellants fail to specify the reason for appeal. An affirming judgment indicates that the TSC affirmed the appealed judgment and dismissed the appeal on the merits. A reversing judgment indicates that the TSC found for the appellant and reversed the judgment below, without distinguishing between whether the TSC entered a final judgment on its own or remanded the case back to the high court for further proceedings. Note that we categorize partial reversal as reversal in our coding and subsequent analyses.

To assess the hypotheses described above, our primary approach is to observe whether significant differences exist between the cases decided before the 2003 reform took effect and the cases thereafter. The 2003 reform took effect on February 7, 2003 and all judgments entered by the high courts

after that date were subject to the new requirements of appealing to the TSC.[10] By coding when the appealed judgment was entered by the high court, we were able to determine whether an appeal was taken under the pre-reform mandatory jurisdiction regime or under the new requirements after the 2003 reforms. We identified 641 post-reform cases and 1,195 pre-reform cases.

To observe TSC workloads and assist our analyses, we defined 14 case categories, as reported in Table 1. Note that when the TSC uses a standard-format ruling, which often reveals little about the case, to procedurally dismiss the appeal, we cannot always ascertain the case type from the ruling itself and have to rely on other means to obtain this information. Our usual approach was to try to obtain the appealed judgment below. However, due to the fact that OLDSS did not systematically collect the judgments entered by the high courts until 2000, we could not always successfully ascertain the case type by this approach either. Accordingly, there are 131 cases, 7.14% of the sample, with missing case categories, labeled "Unknown" in Table 1.

Initially, we planned to code whether the plaintiff or the defendant filed an appeal with the TSC. However, as with case type, such information may be unavailable in TSC decisions, predominantly in procedural dismissals. If the appealed high court judgments could not be obtained via OLDSS, we could not determine whether the plaintiff or defendant appealed in 295 cases, though we know that only one party appealed.[11] Because the unavailability of this information in 16.07% of our sample seems to be too frequent to be ignored, we only controlled for whether the appeal was taken by only one party or by both parties in our analyses.

In addition, since both whether the appellant/appellee was represented by attorneys and whether the appellant/appellee was an individual or corporation have theoretical potential effects on TSC outcomes, we also coded these two variables. Note that only in the cases where the appeal was taken by one party, could we validly distinguish whether appellant/appellee was legally represented and whether appellant/appellee was an individual or corporation. In cases where both parties appealed, it was impossible to make these distinctions. As a result, in our subsequent statistical analyses where the variables of appellant/appellee's legal representation and of appellant/appellee's characteristics are controlled for, we use only the cases where the appeal was taken by one party only.

## IV. RESULTS

### A. Preliminary Observation of TSC Caseload over Time

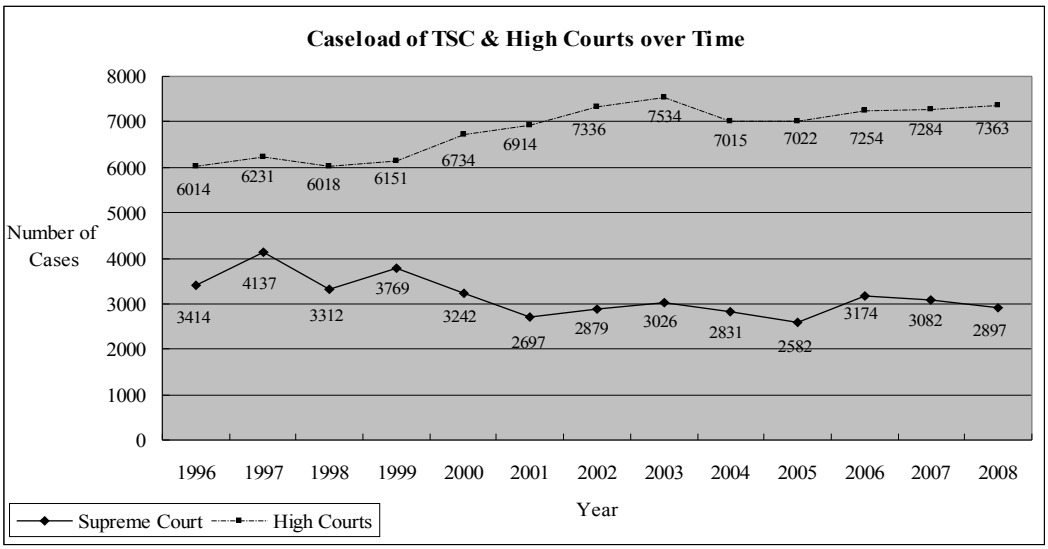
Before reporting the results of our analyses, it is helpful to observe the TSC caseload over time. Theoretically, the 2003 reform, by making it more difficult for the losing high court party to appeal by moving from mandatory jurisdiction to discretionary jurisdiction, could affect the TSC caseload. With a set of more stringent requirements, the losing party may be deterred from appealing to the TSC, thereby causing the TSC caseload to decline. In evaluating the TSC caseload change over time, it is also necessary to take into consideration the caseload of the high courts, the variation of which over time could naturally affect the TSC caseload. This observation of caseload provides an important piece of background information for our subsequent analyses.

Figure 1: Caseload of TSC & High Courts during 1996-2008

10 Article 4-3 of the Enforcement Act of the Taiwan Code of Civil Procedure provides:

> The pre-amendment provisions relevant to Article 469-1 and Article 470 of the Amended Code shall continue to apply to actions on which, in accordance with the provision of the second paragraph of Article 12 of this Act as amended and promulgated, the court of second instance has entered a judgment prior to the coming into force of the provisions of the said articles as provided in the Amended Code.

11 Fewer cases lack information on case type than on whether plaintiff or defendant appealed. This difference is due to the fact that, even with the unavailability of high court judgments below, the boilerplate rulings sometimes reveal the case type, but not the identity of the appealing party.




Source: Judicial Statistics of Taiwan.

The official statistical reports report the number of judgments on the merits entered by six high courts [12] and the number of appeals to the TSC per year. Figure 1 shows the change of caseloads of both the TSC and the high courts during the period 1996-2008. Overall, the caseloads of both the TSC and high courts remain quite stable after 2001, fluctuating around 3,000 cases per year and 7,000 cases per year, respectively. The most noticeable pattern is the caseload change during 1999-2001. Specifically, the number of high courts' judgments increased from 6,151 in 1999 to 6,914 in 2001. On the other hand, the number of TSC appeals decreased from 3,769 in 1999 to 2,697 in 2001. This opposite trend of caseload change is most likely driven by the fact that the requisite amount in controversy for appealing to the TSC was raised twice during this period.[13] Increasing the requisite amount in controversy makes it less likely that a high court judgment would be appealed to the TSC. However, after 2001, the TSC caseload maintained at the same level. This phenomenon indicates that raising the requisite amount in controversy has only a short-time effect in reducing the TSC caseload.

More importantly, contrary to what theory would suggest, the 2003 reform did not seem to reduce the number of appeals taken to the TSC. The relatively stable caseload of the TSC over time, especially after the 2003 changes took effect, indicates that we need not be concerned that the results of our analyses are driven by significant change in the TSC caseload. As to the question of why the TSC caseload did not decrease after the 2003 reform, the answer shall become clear as we report the results for four hypotheses.

B. Results Relating to the Four Hypotheses

1. Dismissal Rates

In the 1,836 sampled cases, 883 cases were dismissed by a procedural ruling, resulting in an average dismissal rate of 48.09 percent. The TSC dismissed 502 of 1,195 cases (42.01 percent) prior to the 2003 reform and dismissed 381 of 641 cases (59.44 percent) after the 2003 reform. At first glance, the increased reversal rate after 2003 seems natural since the 2003 reform grants the TSC broad discretion in deciding whether to hear the appeals on the merits. However, a closer examination of the changing dismissal rate reveals that a more striking story is behind the dismissal rate pattern.

Table 3 reports the average dismissal rate per year for the period 1996-2008. On the one hand, even before the 2003 reform took effect, the dismissal rate had started to increase from 30 percent in 1996 to 53.49 percent in 2002. On the other hand, after the 2003 reform, the mean dismissal rate remains at the level of about 50 to 60 percent. This pattern, as clearly shown in Figure 2, indicates that the 2003 reform does not seem to have significantly influenced the dismissal rate. The TSC had started to increasingly dispose of cases by procedural rulings even before it was granted discretionary jurisdiction.

Table 3: Dismissal Rate over Time

| 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|---|---|

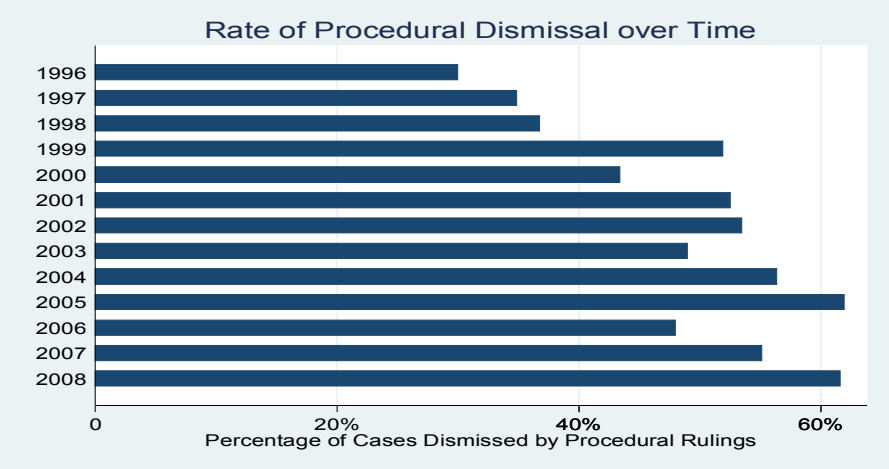
12 The six high courts are: Taipei High Court, Taichung High Court, Tainan High Court, Kaohsiung High Court, Hwalien High Court, and Kinmen High Court. They are distributed in different geographic locations in Taiwan.

13 Specifically, the requisite amount in controversy was raised from NT$ 450,000 to 600,000 in 1999 and to NT$ 1,000,000 in 2000.

| | | | | | | |
|---|---|---|---|---|---|---|
| 30.00% (150) | 34.83% (178) | 36.73% (147) | 51.92% (156) | 43.36% (143) | 52.50% (120) | 53.49% (129) |
| **2003** | **2004** | **2005** | **2006** | **2007** | **2008** | **Total** |
| 48.92% (139) | 56.39% (133) | 61.95% (113) | 47.97% (148) | 55.10% (147) | 61.65% (133) | 48.09% (1,836) |

Source: TSC OLDSS opinions, 1996-2008.

Figure 2: Dismissal Rate over Time




Source: TSC OLDSS opinions, 1996-2008

To more fully explore the dismissal rate pattern, we used a multivariate logistic regression model to test the effect of the 2003 reform on the likelihood of procedural dismissal. The key independent variable is a dummy for whether the appeal was processed under the 2003 Amendment of TCCP. To capture the trend of dismissal rate change over time, we also included the calendar year in which the case was terminated by TSC as an explanatory variable in our model. To clarify the meaning of variables representing whether appellant/appellee was represented by lawyers and whether appellant/appellee was an individual or corporation, we excluded the 56 cases that both parties appealed from the analysis.[14] In addition, we controlled for category and locality of court through dummy variables. The result of this regression analysis is consistent with our above interpretation of the descriptive statistics. Specifically, it shows that the estimated likelihood of post-reform procedural dismissal is not statistically different from its pre-reform counterpart (with odds ratio of 1.34 and p-value of 0.138). On the other hand, the dismissal rate's increase over time is statistically significant (p-value of 0.001). If we divide our sample into pre-reform cases and post-reform cases and run two separate regressions to observe the trend of dismissal rate over time, the results are even more informative. The regression model for pre-reform cases shows that appeals became more likely to be procedurally dismissed over time and the result is statistically significant. However, the post-reform regression indicates that the likelihood of being procedurally dismissed decreases, rather than increases, over time. All the above regression results are reported in Appendix A.

The significant increase in dismissal rate over time prior to the 2003 reform raises the question of how the TSC could increasingly dispose of cases by procedural rulings under the mandatory jurisdiction regime. The TSC achieved this by procedurally dismissing the cases on the ground that the appellant failed to specify the reason for appeal. Among 502 pre-reform cases which were disposed of by procedural rulings, 453 cases were dismissed on this ground, accounting for 90.24 percent of all procedural dismissals.[15] Increased procedural dismissal rate over time under the mandatory jurisdiction regime was driven solely by this dismissal ground. During the period 1996-2002, the percentage of cases dismissed for failure to specify the reason for appeal among all procedurally-dismissed cases increased

14 If we include these cases and exclude the variables representing appellant/appellee's legal representation and characteristics, a regression model, controlling for case category, locality of court, and whether the appeal was taken by one or both parties, yields results consistent with our findings here. To conserve space, we do not report the results here but they are available upon request.

15 5 cases were dismissed because the amount in controversy did not exceed the requisite amount and 5 cases were dismissed due to failure to pay the filing fees. Another 39 cases were dismissed on miscellaneous grounds.

from 82.22% in 1996 (37 of 45 cases) to 94.20% in 2002 (65 of 69 cases), a difference statistically significant at p=0.06.

This result raises the question of why appellants increasingly over time failed to satisfy the procedural requirement of specifying the ground for appeal. One possible answer is that these appellants did not retain counsel in filing appeals and thus lacked adequate legal knowledge to write an appropriate appeal brief. Note that the appellant was not required to be represented by a lawyer to appeal to the TSC before 2000. It is thus possible that the increase in procedural dismissals was caused by an increase of *pro se* appellants. However, this possibility is unlikely because even after TCCP's 2000 Amendment required all appellants to be represented by lawyers, the dismissal rate during 2001-2002 still exceeded 50% and more than 90% of these dismissals were based on the ground of failure to specify the reason for appeal. A comparison between cases where the appellants were represented and the cases where the appellants were not represented prior to the 2003 reform further confirms that the increase of procedural dismissals for failure to specify appeal reason was not caused by the rate of legal representation. Among all pre-2003 reform cases in which one party filed an appeal (1,160 cases in total),[16] the likelihood of appeals by represented appellants being dismissed for failure to specify reason was even higher (241 of 605 cases; 39.83%) than the likelihood of appeals taken by unrepresented appellants (208 of 555 cases; 37.48%). Moreover, despite the increased representation rate for appellants from 1996-2002, the percentage of appeals dismissed for failure to specify reason still consistently increased over time (from 25.00 percent in 1996 to 52.42% in 2002), as shown in Table 4. Thus the lack of legal representation is not the reason for the proliferation of procedural dismissals during the same period.

Table 4: Appellant's Representation Rate & Likelihood of Procedural Dismissal due to Failure to Specify Reason (One-Party Appealed Cases Only)

| Year | Representation Rate of Appellant | Dismissal Rate for Failure to Specify | Year | Representation Rate of Appellant | Dismissal Rate for Failure to Specify |
|---|---|---|---|---|---|
| 1996 | 22.30% (148) | 25.00% (148) | 2003 | 99.26% (136) | 44.12% (136) |
| 1997 | 24.71% (170) | 31.18% (170) | 2004 | 99.21% (126) | 56.35% (126) |
| 1998 | 30.50% (141) | 31.21% (141) | 2005 | 100.00% (110) | 60.00% (110) |
| 1999 | 26.80% (153) | 49.02% (153) | 2006 | 97.90% (143) | 45.45% (143) |
| 2000 | 51.43% (140) | 43.57% (140) | 2007 | 98.59% (142) | 50.00% (142) |
| 2001 | 77.12% (118) | 49.15% (118) | 2008 | 99.22% (129) | 57.36% (129) |
| 2002 | 95.16% (124) | 52.42% (124) | Total | 68.43% (1,780) | 44.94% (1,780) |

Note: Table 4 includes only cases in which an appeal was taken by one party only.
Source: TSC OLDSS opinions, 1996-2008.

Based upon the above results, we believe that the most plausible explanation is that the TSC used procedural dismissal for failure to specify reason as a technique to gradually exercise *de facto* discretionary jurisdiction even before the 2003 reform. The question whether an appellant has specified the appeal reason with requisite particularity is solely subject to the TSC's interpretation. The TSC's dismissal is conclusive and is not subject to review. Procedural dismissal is a convenient instrument for the TSC to dispose of cases it does not want to hear on the merits. We find that the TSC used a "boilerplate ruling," a standard format using virtually identical sentences, to first state the requirement of specifying the reason for appeal and then to conclude that the appellant failed to satisfy this requirement without further explanation. This boilerplate ruling allows the TSC efficiently to dispose of a case without having to provide a case-specific explanation.

16 We exclude from the sample the cases in which both parties appealed because it is nearly impossible to make this comparison in those cases.

More interestingly, after the 2003 reform, the TSC continued to use the same style of boilerplate rulings to procedurally dismiss cases, except that the post-reform rulings added sentences indicating that the appellant failed to raise important legal issues. Because such boilerplate rulings merely recited all procedural requirements together and conclusorily declared the appeal failed to meet these requirements without specifying the exact ground of dismissal, it is nearly impossible from this amended boilerplate ruling to tell whether the appeal was dismissed due to failure to specify the reason for the appeal or due to failure to raise important legal issues. This practice further supports our interpretation that the 2003 reform did not significantly increase the dismissal rate because the TSC in fact gradually exercised discretionary jurisdiction long before the TCCP granted discretionary jurisdiction. The TSC did so by manipulating the requirement of specifying the reason for an appeal.

2. Reversal Rate

We use two different measures of the reversal rate. The first measure is the percent of cases reversing the judgments of high courts in all appealed cases and the second measure is the percent of cases reversing the judgments of high courts in appealed cases adjudicated on the merits. The first measure (hereinafter referred to as appellant's win rate) includes procedurally dismissed cases in computing the reversal rate while the second measure (the reversal rate) excludes procedural dismissals.

Under the first measure, the TSC reversed challenged high court judgments in 652 of 1,836 cases, an appellant win rate of 35.51%. Under the second measure, the reversal rate was 68.42% (652 of 953 cases on the merits). Since the second measure excludes procedurally dismissed cases, naturally it is higher than the appellant's win rate. A pre-and-post 2003 reform comparison reveals that neither the reversal rate nor the appellant's win rate significantly increased after the 2003 reform took effect. The reversal rate of pre-reform cases was 68.11% and the reversal rate of post-reform cases was 69.23%. The appellant's win rate decreased from 39.50% in pre-reform cases to 28.08% in post-reform cases.

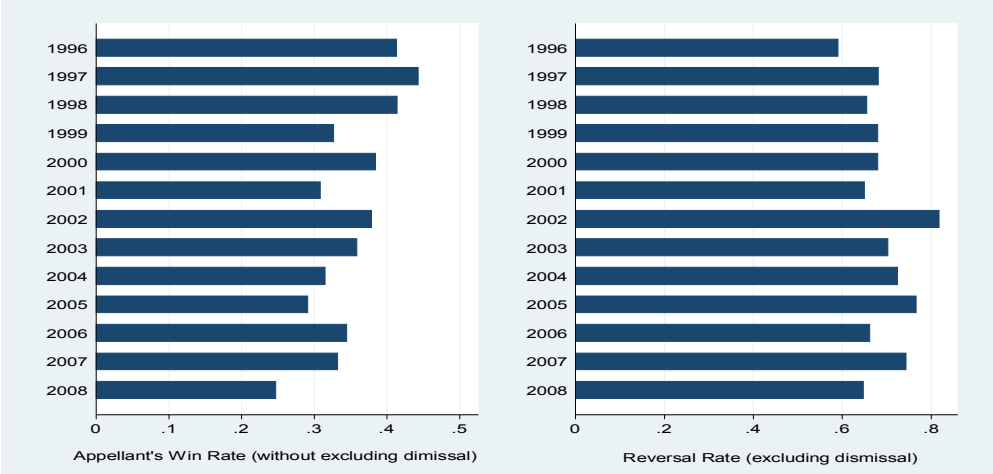
Table 5 reports the reversal rate as well as the appellant's win rate over time. As shown in Figure 3, the reversal rate remained relatively stable from 1996 to 2008. On the other hand, the appellant's win rate gradually decreased over time. Taken together, these results suggest that the proliferation of procedural dismissals over time did not change the ratio of the appellants' loss on the merits to their victories. Both types of case disposition decreased as the dismissal rate increased.

Table 5: Appellant's Win Rate and Reversal Rate over Time

| Year | Appellant's Win Rate | Reversal Rate | Year | Appellant's Win Rate | Reversal Rate |
|---|---|---|---|---|---|
| 1996 | 41.33% (150) | 59.05% (105) | 2003 | 35.97% (139) | 70.42% (71) |
| 1997 | 44.38% (178) | 68.10% (116) | 2004 | 31.58% (133) | 72.41% (58) |
| 1998 | 41.50% (147) | 65.59% (93) | 2005 | 29.20% (113) | 76.74% (43) |
| 1999 | 32.69% (156) | 68.00% (75) | 2006 | 34.46% (148) | 66.23% (77) |
| 2000 | 38.46% (143) | 67.90% (81) | 2007 | 33.33% (147) | 74.24% (66) |
| 2001 | 30.83% (120) | 64.91% (57) | 2008 | 24.81% (133) | 64.71% (51) |
| 2002 | 37.98% (129) | 81.67% (60) | Total | 35.51% (1,836) | 68.42% (953) |

Source: TSC OLDSS opinions, 1996-2008

Figure 3: Appellant's Win Rate/Reversal Rate over Time




Given that the TSC had started to exercise discretionary jurisdiction before the 2003 reform, it is difficult to evaluate whether and how the reform influenced the reversal rate. The most significant phenomenon emerging from observing the reversal rate is that the TSC's increasing exercise of discretionary jurisdiction, either on its own or under the TCCP's authority, was not associated with an increased reversal rate, a result contradicting the theoretical predictions and inconsistent with empirical studies in other countries (e.g., Eisenberg & Miller 2009). There must be some reason contributing to this puzzling result. We will explore possible explanations after further exploring the TSC's operations and the effect of the 2003 reform.

3. Grounds for Reversal

As discussed in Part II, the main purpose of the 2003 reform was to shift the TSC's function away from error-correction and towards development of legal doctrine. To evaluate the reform's effect on this goal, it is helpful to analyze the distribution of reasons for the TSC reversing lower judgments and to assess whether the pattern changed after the reform. Even with an unchanged reversal rate, if the TSC reversed judgments based on an important legal question rather than on clear errors more frequently after the 2003 reform, the 2003 reform arguably achieved its intended purpose.

Table 6 reports the percentage of five grounds for reversing high court decisions both before and after the 2003 reform and Figure 4 shows the respective distributions. Our primary interest is whether the rate of reversal based on substantial legal issues significantly changed but, to promote understanding of reversal pattern, we also address the other grounds for reversal. Note that one reversal ground is not exclusive of another and it is therefore possible for a reversed case to have more than one ground for reversal.

Reversal on one of the five grounds for appeal as of right provided in Article 469 (we treat the sixth ground separately—failure to supply sufficient reasons) is rare, which indicates that the inferior courts are unlikely to commit such fundamental procedural errors. Reversal based on clear error of law refers to cases in which inferior courts acted in manifest contradiction to the law, such as by rendering a decision beyond the litigation's subject matter. Because such errors, albeit legal in nature, are so manifest that it is unnecessary for the TSC to engage in meaningful analysis or interpretation of law, we do not categorize these cases as involving substantial legal issues. Two grounds for reversal are strongly associated with one another. Reversing for failure to sufficiently explain a judgment is strongly associated with the reversal ground of clearly erroneous fact-finding. Of 291 cases in which the TSC found a failure to provide sufficient reasons, the TSC also found clearly erroneous fact-finding in 234 cases. This strong association supports the observation of many scholars and practitioners that the ground of failure to provide sufficient reason has been frequently used by the TSC to reverse the appealed judgments involving incorrect fact-finding (see, e.g., Huang 2003).

Table 6: Distribution of Reversal Grounds

| | Pre-2003 Reform Cases (Ob. 472) | Post-2003 Reform Cases (Ob. 180) | Total Cases (Ob. 652) |
|---|---|---|---|
| Serious Procedural Error (Article 469 I-V) | 1.27% (6) | 0.00% (0) | 0.92% (6) |
| Failure to Sufficiently Explain Judgments | 44.70% (211) | 44.44% (80) | 44.63 (291) |
| Clear Error of Fact-Finding | 85.59% | 88.89 | 86.50 |

| | | | |
|---|---|---|---|
| | (404) | (160) | (564) |
| Substantial Legal Issues | 7.63% | 9.44% | 8.13% |
| | (36) | (17) | (53) |
| Clear Error of Law | 9.75% | 10.00% | 9.82% |
| | (46) | (18) | (64) |

Source: TSC OLDSS opinions, 1996-2008

Figure 4: Distribution of Reversal Grounds Before & After 2003 Reform

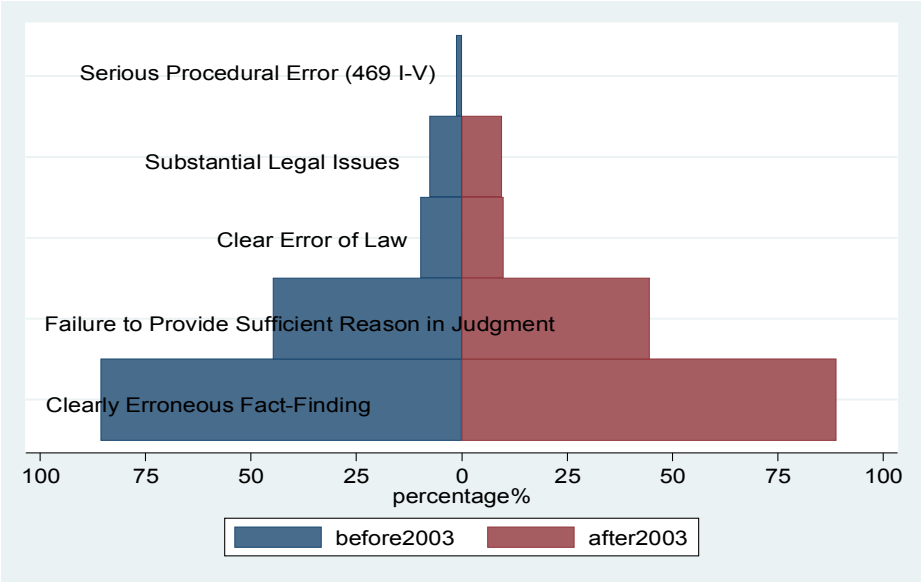



Table 6 and Figure 4 show that the distribution of grounds for reversal remained virtually the same before and after the 2003 reform. In more than 85% of all reversed cases, the TSC found that the lower courts committed clear errors of fact-finding, by far the most frequent ground of reversal. This dominance prevailed both before and after the 2003 reform. If we restrict the sample to cases in which clearly erroneous fact-finding was the sole ground for reversal, the rate was 42.58% in pre-reform cases and 43.89% in post-reform cases. Although "clearly erroneous fact-finding" should not constitute a valid ground for appeal or reversal after the 2003 reform, a large portion of cases were still reversed on this ground. This result not only confirms that the TSC's major role was to correct clearly erroneous fact-finding before the 2003 reform but also establishes that this role's dominance persisted after reform.

Returning to the basis for reversal of prime interest, the rate at which the TSC reversed lower court judgments based on a substantial legal issue, confirms that the 2003 reform did not shift the TSC's focus towards cases involving important legal questions. As shown in Table 6, the likelihood of a reversal being based on a substantial legal issue prior to the 2003 reform was 7.63% and the likelihood after the reform was 9.44%. While there was a modest post-reform increase, the difference is not statistically insignificant (p=0.448).

Taken together, the pattern of reversal rate reasons over time establishes that the 2003 reform did not transform the TSC's function from error-correction to law-development.

4. Style and Length of Opinions

A. Citation Pattern

We initially attempted to detect a post-reform change in judicial style by observing not only the length of opinions but also the pattern of citation to different authorities. However, the sampled decisions revealed that the TSC cites most kinds of authorities so rarely as to make the pre-and-post reform comparison nearly meaningless. In the 1,836 sampled cases, the TSC never cited secondary authorities such as law review articles. Foreign materials, including foreign statutes, decisions, secondary authorities, and treaties, were cited in only one opinion and that was a case involving international transactions.

The only kinds of authority regularly cited by the TSC are its own precedents or resolutions of the TSC's joint conference. As noted in Section II, a TSC judgment has *stare decisis* effect only if the joint conference of all TSC civil judges adopts it as a precedent. A resolution adopted by the joint conference has the same binding effect. Even as to those binding precedents/resolutions, citation in TSC opinions was rare. Only 121 out of 1,836 (6.59%) opinions cite at least one precedent/resolution. More significantly for our purposes, the rate at which the TSC cited such precedents/resolutions remained virtually the same after the 2003 reform took effect, as shown in Table 7.

Table 7: Frequency of Citing Precedent/Resolution

| | None | One | Two or More | Total |
|---|---|---|---|---|
| Pre-2003 Reform Cases | 93.47% (1,117) | 5.02% (60) | 1.51% (18) | 100.00% (1,195) |
| Post-2003 Reform Cases | 93.29% (598) | 5.30% (34) | 1.40% (9) | 100.00% (641) |
| Total | 93.41% (1,715) | 5.12% (94) | 1.47% (27) | 100% (1,836) |

Source: TSC OLDSS opinions, 1996-2008.

Cross-sectional analysis indicates that a reversal judgment was most likely to cite at least one precedent/resolution and a dismissal ruling was least likely to do so, with an affirming judgment lying in between. Of 652 cases in which the TSC reversed high court judgments, 50 opinions cite one precedent/resolution (7.67%), 16 opinions cite two or more (2.45%), and 586 opinions cite none (89.88%). Of 301 cases in which the TSC affirmed high court judgments and overruled the appeal, 11 opinions cite one precedent/resolution (3.65%), 10 opinions cite two or more (3.32%), and 586 opinions cite none (93.02%). Of 883 cases the TSC dismissed by a procedural ruling, 33 opinions cite one precedent/resolution (3.74%), 1 opinion cites two precedents (0.11%), and 849 opinions cite none (96.15%). This pattern is consistent with the intuition that a judgment on the merits is more likely to deal with legal issues and therefore more likely to rely on prior court decisions.

B. Length of Opinion

TSC opinions follow a particular formalistic style, depending on the method of case disposition. For a procedural ruling dismissing a case for failure to specify the ground for appeal, the TSC almost universally adopts a standard "format" to reiterate the procedural requirement of specifying the ground for appeal and directly concludes that the requirement has not been satisfied. Occasionally, at the end of such a formalistic ruling, the TSC expressed substantive opinions on the issues raised by the appeal, but only in a few sentences. In TSC judgments on the merits, the Court always recited the parties' respective claims and the lower court's finding and reasoning, and then explained why it reversed or affirmed the decision. In such decisions, the TSC's own reasoning, often one page or less, tended to be much shorter than the portion of the opinion used to describe the lower court's judgment. Given this pattern, we analyze separately the length of opinions (in words) for the different kinds of case disposition.

Table 8 reports the basic statistics relating to procedural dismissals. Overall, opinion length increased from a mean of 621 words per opinion before reform to 852 words per opinion after the 2003. However, closer examination reveals that this increase was mainly driven by the increased length of boilerplate rulings. More than 90% of procedural rulings relied on the standard format and there was a slight increase in the use of that format after the 2003 reform from about 91% to about 93%. Since the procedural requirements for filing an appeal with the TSC became more complicated after the 2003 reform, the length of the boilerplate rulings explaining the requirements also increased from a mean of 660 words per opinion to 889 words per opinion. Increased length also occurred for rulings not using the standard format.

Table 8: Length of Opinion in Procedural Dismissal Cases

| | | Pre-2003 Reform Cases | Post-2003 Reform Cases | Total Cases |
|---|---|---|---|---|
| Total Length of Ruling (mean number of words) | | 621 (Ob.502) | 852 (Ob. 381) | 721 (Ob. 883) |
| Percent of Decisions Using Standard Format | | 91.24% (Ob. 502) | 93.44% (Ob. 381) | 92.19% (Ob. 883) |
| Among Standard Format Decisions | Length of Ruling (mean number of words) | 660 (Ob. 458) | 889 (Ob. 356) | 760 (Ob. 814) |
| | Percent of Decisions Expressing Substantive Opinion | 17.69% (Ob. 458) | 12.64% (Ob. 356) | 15.48% (Ob. 814) |
| | Length of Substantive Opinion (mean number of words) | 226 (Ob. 81) | 273 (Ob. 45) | 243 (Ob.126) |
| Length of Ruling of Non-Standard Format Decisions (mean number of words) | | 221 (Ob. 44) | 332 (Ob. 25) | 261 (Ob. 69) |

Source: TSC OLDSS opinions, 1996-2008.

On the other hand, the frequency with which the TSC provided substantive opinions in addition to formalistically reciting procedural requirements decreased from 17.69% to 12.64% after the 2003 reform. Although substantive opinions tended to be longer after reform, a simple regression of opinion length (log) as the dependent variable and the pre- and post-reform dummy variable as the explanatory variable indicates that this increased length is not statistically significant. Regression models that included dummy variables for case type and court also yield insignificant results. Moreover, the increase from an average of 226 to 273 words does not seem to be large enough to offset the drop in the number of decisions providing substantive reasons. These results suggest that the grant of discretionary jurisdiction in the 2003 reform made the TSC more comfortable with not providing substantive opinions when dismissing appeals via boilerplate rulings.

With regard to judgments on the merits, their average length, as expected, was much longer than in procedural dismissals. Table 9 reports the mean words used in judgments affirming lower court decisions and in judgments reversing low court decisions, respectively. Note that the part of TSC decisions reciting the high court judgments ("Reciting Part" in the table) is much longer than the TSC's own opinions. This is true with respect to both affirmances and reversals. Also note that while the number of words used in affirmative judgments on average is comparable to the number of words used in reversals, the distribution between the reciting part and the part with the TSC's opinion is strikingly different for affirmances and reversals. While the TSC's opinion accounts for about 10% to13% of the whole decision in affirmances, it accounts for around 35% in reversals. This difference shows that the TSC is more likely to provide longer explanations when reversing than when affirming. But even in reversing judgments, it appears that the TSC does not provide lengthy reasoning for its own opinion.

Table 9: Length of Opinion in Cases with Judgments on the Merits

| | Affirmance Judgment | | | Reversal Judgment | | |
|---|---|---|---|---|---|---|
| | Reciting Part | Opinion | Total | Reciting Part | Opinion | Total |
| Pre-2003 Reform Cases | 1,632 (89.82%) | 185 (10.18%) | 1,817 (100%) | 1,263 (64.44%) | 697 (35.56%) | 1,960 (100%) |
| Post-2003 Reform Cases | 1,914 (86.18%) | 307 (13.82%) | 2,221 (100%) | 1442 (64.12%) | 807 (35.88%) | 2,249 (100%) |

Source: TSC OLDSS opinions, 1996-2008. Note. Opinion lengths are reported as the mean number of words. Numbers in parentheses are the percent of words devoted to the Reciting Part of the judgment and to the non-Reciting Part (the "Opinion").

Further analysis of the length of affirmance judgments reveals that the TSC did not provide any opinion in 47.18% of the judgments and merely conclusively dismissed the appeal after reciting the high court judgment. To account for these many zero-length opinions, we separate the affirmance judgments without a TSC opinion from those with a TSC opinion and report the relevant statistics in Table 10. The first column of Table 10 shows that the frequency with which the TSC did not provide an opinion in affirmance judgments decreased from 48.42% before the reform to 43.75% after the 2003 reform; however, this difference is not statistically significant (p=0.474). In addition, while the TSC's opinions'

portion of the whole decision in affirmances increased from about 19% before the reform to about 23% after, excluding zero-length affirmance opinions, the mean affirmance opinion length is still substantially shorter than the mean reversal opinion length.

Table 10: Length of Opinion in Cases with Affirmance Judgments

| | Affirmance Judgment without Opinion | | Affirmance Judgment with Opinion | | |
|---|---|---|---|---|---|
| | Frequency (Percent) | Total Length | Reciting Part | Opinion | Total |
| Pre-2003 Reform Cases | 107 (48.42%) | 1,777 | 1,496 (80.69%) | 358 (19.31%) | 1,854 (100%) |
| Post-2003 Reform Cases | 35 (43.75%) | 2,021 | 1,830 (77.05%) | 545 (22.95%) | 2,375 (100%) |

Source: TSC OLDSS opinions, 1996-2008. Note. The first column under "Affirmance Judgment without Opinion" reports the frequency of such judgments and its percent of all affirmance judgments before and after the report respectively. Opinion lengths are reported as the mean number of words. Numbers in parentheses under the major column of "Affirmance Judgment with Opinion" are the percent of words devoted to the Reciting Part of the judgment and to the non-Reciting Part (the "Opinion").

With respect to the pre-and-post reform comparison, post-reform judgments are longer than pre-reform judgments. However, the increased opinion length occurs not only in the part of the TSC's judgment containing its reasoning, but also in the reciting part of the judgment, in which the TSC recites the necessary background and boilerplate information related to its judgment. This increased length in both parts may be due to cases becoming increasingly complicated over time. The TSC has to use more words both to describe what was claimed and adjudicated in the high courts and to explain its own decision. On the other hand, in terms of the distribution between the reciting part and the TSC's reasoning, no significant change occurs after the 2003 reform, especially for reversal judgments.

Taken together, the opinion-length results indicate that if the 2003 reform was intended to allow the TSC to devote more energy to important legal issues and to provide more thorough analyses in its opinions, this intended effect was not detected in analyzing the length of TSC opinions.

5. Time to Case Disposition

One purpose of the 2003 reform was to redirect the TSC's time and energy towards cases involving important legal issues and to allow the Court to expeditiously dispose of less important cases. While this goal does not dictate a specific effect on the time for the TSC to dispose of a case, it is helpful to observe whether the time to case disposition changed after the 2003 reform.

Table 11 reports the mean days for case disposition by different methods of disposition over time, which show several clear patterns. First, the time to dispose of a case by procedural dismissal was on average in all years shorter than the time to render an affirming or reversing judgment. Second, in most years the time to an affirmance was on average shorter than the time to a reversal. While the shorter disposition time for procedural dismissals is consistent with the conventional wisdom that dismissing an appeal procedurally is a more efficient way to dispose of a case, it is somewhat surprising that it still took the TSC 248 days, on average, to render a procedural dismissal. Given that a procedural dismissal only involves review of straightforward procedural requirements, it seems puzzling that it takes more than half of the time necessary for a judgment on the merits. The difference between time to procedural dismissal and time to affirmance or reversal is less puzzling if one examines the median time to disposition. The median elapsed time for procedural dismissals was 184 days compared to 371 days for affirmances and 396 days for reversals. Using the median, procedural dismissals took less than half the time of rulings on the merits. We will discuss possible explanations for the difference in means in the next section.

Table 11: Mean Days of Case Disposition

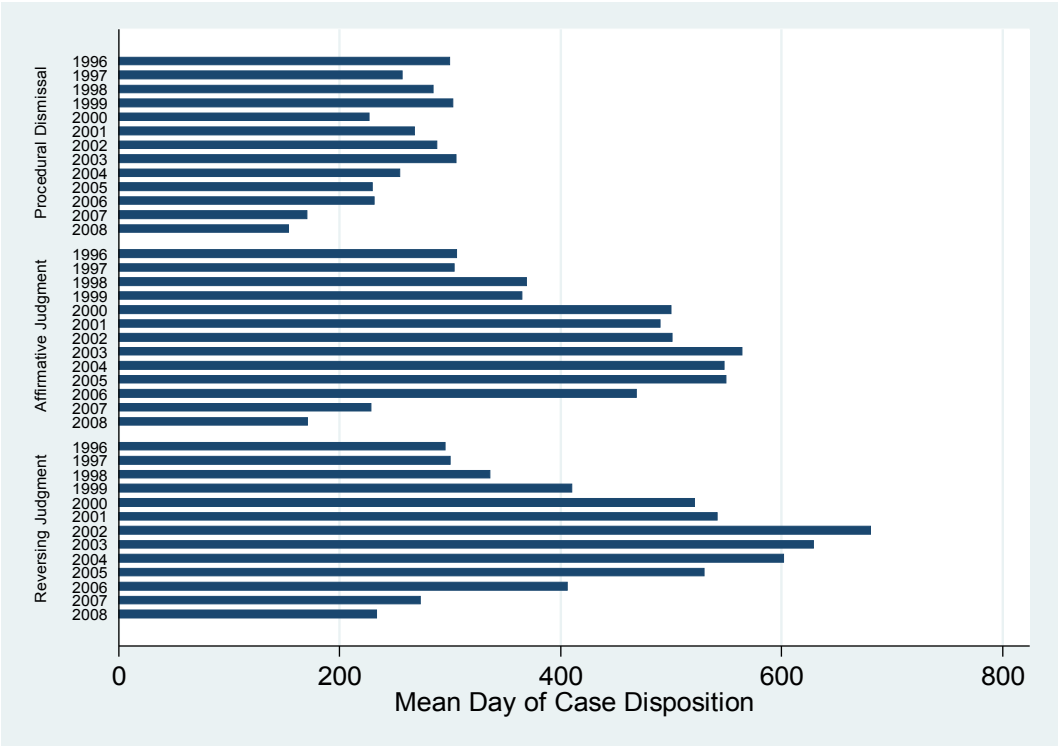
| Year | Procedural Dismissal | Affirming Judgment | Reversing Judgment | Total |
|---|---|---|---|---|
| 1996 | 300 (45) | 306 (43) | 296 (62) | 300 (150) |
| 1997 | 257 (62) | 304 (37) | 301 (79) | 286 (178) |
| 1998 | 285 (54) | 369 (32) | 337 (61) | 325 (147) |

| | | | | |
|---|---|---|---|---|
| 1999 | 303 | 366 | 410 | 348 |
| | (81) | (24) | (51) | (156) |
| 2000 | 227 | 500 | 521 | 390 |
| | (62) | (26) | (55) | (143) |
| 2001 | 268 | 491 | 542 | 389 |
| | (63) | (20) | (37) | (120) |
| 2002 | 288 | 501 | 681 | 456 |
| | (69) | (11) | (49) | (129) |
| 2003 | 306 | 565 | 629 | 461 |
| | (68) | (21) | (50) | (139) |
| 2004 | 255 | 548 | 602 | 400 |
| | (75) | (16) | (42) | (133) |
| 2005 | 230 | 550 | 530 | 346 |
| | (70) | (10) | (33) | (113) |
| 2006 | 232 | 469 | 407 | 334 |
| | (71) | (26) | (51) | (148) |
| 2007 | 171 | 229 | 273 | 212 |
| | (81) | (17) | (49) | (147) |
| 2008 | 154 | 172 | 234 | 177 |
| | (82) | (18) | (33) | (133) |
| Total | 248 | 394 | 432 | 337 |
| | (883) | (301) | (652) | (1,836) |

Source: TSC OLDSS opinions, 1996-2008.

Third, the mean days to disposition on the merits increased steadily from 1996 to 2003 and then declined. These opposing trends are clearly separated by the year 2003. Fourth, the time to procedural dismissal fluctuated around the mean from 1996 to 2003, without particular direction, and then decreased after 2003. These patterns are clearly shown in Figure 5. Given that 2003 is when reform took effect, it is unlikely that the change in 2003 was mere coincidence. It appears that the 2003 reform expedited the appeal process.

Figure 5: Mean Day of Case Disposition over Time by Methods of Disposition




Regression analysis confirms most of the patterns revealed by Table 11 and Figure 5. We use the elapsed time (log of days) to judgment as the dependent variable and controlled for case category and locality of court through dummy variables in addition to using the year of the case as an explanatory variable. Because of the obvious break in the trends in 2003, we ran separate regression models for pre- and post-reform years. For affirmed cases before reform, the coefficient for the year variable was positive and highly statistically significant ($p<0.001$). For affirmed cases after reform, the coefficient for

the year variable was negative and statistically significant (p=0.003). For reversed cases before reform, the coefficient for the year variable was positive and highly statistically significant (p<0.001). For reversed cases after reform, the coefficient for the year variable was negative and highly statistically significant (p<0.001). These results, as reported in Appendix B, are consistent with the table and figure results for cases resolved on the merits.

For the procedural dismissal cases before reform, the coefficient for the year variable, as expected, was small and not close to statistically significant (p=0.807). For the procedural dismissal cases after reform the coefficient for the year variable remained statistically insignificant (p=0.547). The insignificance of the post-reform time trend in procedural cases is surprising in light of the pattern for these cases suggested by Table 11 and Figure 5. The distribution of even the log transformed times for procedural disposition is highly skewed, as suggested by the large difference between median and mean elapsed time. So the mean central tendency summarized in the table and figure presents an incomplete picture of elapsed time in procedural dismissal cases. The difference between means and medians is noticeably smaller for cases resolved on the merits. Quantile (median) regression in fact suggests a slight but significant (p=0.009) increase in median elapsed time for procedural dismissals during the post-reform period. The results of both regressions are reported in Appendix C.

## V. Discussion

The above results support two pictures of the TSC's operation, one before and one after the 2003 reform. Under the pre-reform regime, although the TSC had only mandatory jurisdiction, it increasingly relied on procedural dismissal to dispose of cases over time by manipulating the procedural requirement of specifying the reason for appeal. During the period 1996-2002, once the TSC decided to adjudicate cases on the merits, the reversal rate was high and consistently exceeded 65%. However, most reversals were based on clearly erroneous fact-finding and rarely addressed important legal issues. Even for TSC reversals, cases that had the longest TSC opinions compared to affirmances and procedural dismissals, opinions tended to be short and seldom cited authorities. Also, while the time to procedural dismissal of appeals during this period remained stable, the time for disposing of cases on the merits increased over time.

On the other hand, under the post-reform regime, while the TSC was formally given broad discretion to control its docket, the dismissal rate did not continue to increase. Except for the phenomenon that the TSC on average disposed of cases more expeditiously, almost all characteristics of TSC pre-reform operations remained true in the post-reform period. Reversal rates stayed at approximately the same level. Most reversals were based on clearly erroneous fact-findings. The percent of reversals judgments addressing substantial legal issues remained low. The length of TSC opinions increased to a limited extent.

For most purposes, the 2003 reform did not significantly impact how the TSC functions. Nor did the reform achieve the goal of converting the TSC from case-based to issue-based adjudication. The TSC's major focus remains on correcting the lower courts' erroneous decisions instead of leading the development of legal doctrine. In short, the TSC remains an error-correcting institution, not a policy-oriented or issue-oriented court. This result leads to all four hypotheses finding little support in the data.

The important lesson from our analysis is that merely amending procedural rules, without more, is unlikely to change how the TSC conducts its business or defines itself. The lesson raises the obvious but difficult question of why the 2003 reform failed to transform the TSC's function. We propose that both the TSC's institutional character and the environment in which the TSC functions help explain the observed results.

With respect to institutional character, how the TSC conducts its business is subject to virtually no scrutiny. Unlike lower court judges, whose conduct of judicial business is subject to appellate review, TSC judges can perform their duties in accordance with their preferences without concern about formal review of their actions. As long as TSC opinions do not raise a question of unconstitutionality, which would be subject to review by the Constitutional Court, no judicial body reviews the TSC's conduct. Its supreme status within the ordinary judiciary pyramid makes it possible for the TSC to ignore the spirit, if not the letter, of the amended procedural rules.

Two examples clearly demonstrate the TSC's ability to ignore policy-makers' goals in amending the procedural rules. First, to promote directing TSC energy to cases involving important legal issues, the 2003 Amendment of the TCCP provides that the TSC should, in principle, hold hearings in cases to be decided on the merits. The purpose of this amendment is to inform the TSC of the legal arguments proffered by the parties and to allow TSC judges to engage in substantive discussion of legal issues with

counsel. However, after the 2003 reform, deciding cases on the merits without a hearing is still the dominant norm, with rare exceptions.[17] Second, the amended rule instructs that the TSC, when reversing an appealed judgment, enter final judgment on its own to the extent possible and not remand the case to the inferior courts. The goal of this reform is to conclude disputes as soon as possible and avoid the time-consuming old practice of routing cases back and forth between high courts and the TSC. However, the TSC continues to remand cases back to high courts in almost all of its post-reform reversals.

The same reason also helps to explain how the TSC could exercise *de facto* discretionary jurisdiction before it was authorized to do so. Increasing reliance on procedural dismissal to dispose of cases was clearly the TSC's reaction to its constant complaint of a heavy workload. The rapid proliferation of procedural dismissal within a short period was soon noted by the bar, which responded with unusually strong counteractions. Many clients accused their attorneys of malpractice because their appeals to the TSC were dismissed on the ground of failure to specify reasons for appeal. For those clients, the Court's procedural dismissal suggested that their attorneys did not write an appropriate appeal brief. For those attorneys, the TSC's procedural dismissal damaged their reputations and challenged their professional expertise. As a result, the Taiwan Bar Association asked two civil procedure professors to review many cases which were procedurally dismissed for failure to specify reason for appeal and to provide their expert opinions. The bar also held three nationwide conferences to address this controversy and invited TSC judges to engage in public discussion. Although these efforts helped the attorneys' reputations by establishing that the TSC was overusing procedural dismissals,[18] the TSC was virtually unaffected. Despite such strong criticism, the TSC simply chose not to respond and continued to rely on procedural dismissal. In a sense, the most important effect of the 2003 reform was to elevate the TSC's choice of cases above the controversy and to formally justify what the TSC had been doing before it was granted discretionary jurisdiction.

While institutional characteristics explained how the TSC could disregard criticism from the bar and even resist the directives in the amended rules, this factor alone could not fully account for the TSC judges' behavioral pattern. If the judges were acting purely in their own self-interest, we should have observed the dismissal rate continuing to grow after the 2003 reform. After all, TSC judges were authorized by the legislature to procedurally dismiss cases with insufficient importance. Fewer cases on the merits save both time and labor. However, as our results show, the dismissal rate instead stopped increasing over time after the TSC was formally granted discretionary jurisdiction. It appears that the TSC judges decided not to further increase the procedural dismissal rate, a result contrary to their self-interest. We submit that environmental factors played an important role behind this phenomenon.

One significant finding is that the TSC continued to reverse lower court judgments on the ground of clearly erroneous fact-finding. Despite the fact that erroneous fact-finding is not a valid ground for appealing to the TSC after the 2003 Amendment, it remains the most frequently invoked ground for the TSC to reverse a judgment. Under the criteria for its exercise of discretionary jurisdiction, the TSC could have, and arguably should have, procedurally dismissed those appeals. Instead, the Court not only chose to hear these cases on the merits but also found for the appellants. This result indicates that the TSC, when facing so many judgments involving what it perceived to be clear errors of fact-finding, could not tolerate ignoring them and leaving those judgments intact. In other words, the quality of fact-finding in a large percent of appealed cases raised the TSC's concern, which lead it to continue to act without regard to the amended rules' review standards.

The results also suggest that the TSC has started to examine the merits of the appeal during the process of deciding whether to hear the case on the merits. The determination of whether to hear an appeal on the merits and the determination of whether an appealed judgment should be reversed are, to some extent, interwoven during the TSC's adjudication process. This analysis explains why it takes the TSC a substantial amount of time, on average, to issue a procedural dismissal, as observed in our study.

Taken together, the institutional characteristics and the environmental factors lead to the TSC conducting its business according to the role it defines for itself against a given background. This conduct of business is unlikely to be altered by merely amending procedural rules. On the one hand, while the TSC caseload did not seem to increase from 1996 to 2002, the gradually increasing length of

17 As of November 2009, the TSC held hearings in only two cases. Both cases involved high-power politicians and were widely publicized. The first one was a libel case filed by then-vice-president of Taiwan, Ms. Annette Lu, against a political magazine which ran a story alleging she told scandalous story about the then-President, Mr. Shui-Bian Chen. The second case was again involved the then-president and then-vice-president who were accused of involving in fraud in their 2004 presidential election campaign. In this case, their opponents sought the court to declare nullity of the election results and to order a reelection.

18 For a discussion of this controversy, see Huang (2005b).

time for merits case disposition indicates that the TSC was unable to perform its judicial duties efficiently throughout that time period. The Court therefore adopted the strategy of disposing of appeals, which appeared to be meritless after preliminary scrutiny, by the efficient method of procedural dismissal. A procedural dismissal allows the judges to use a boilerplate ruling and relieves them of the work of writing a judgment on the merits. On the other hand, because maintaining a dismissal rate of about 50-60% is enough for the TSC to manage its docket, the Court did not seek to increase the rate of procedural dismissal, despite explicit authorization to do so. As the judicial institution which controls the final outcome of every appealed case, the TSC cannot close its eyes to clear errors of fact-finding in a large portion of appealed cases and therefore chooses to follow its long-time practice of reversing and remanding them back to the inferior courts for further adjudication.

A remaining question is why the TSC did not choose to reallocate its time and energy and to invest more in issue-based adjudication activities. Our data show that after the 2003 reform, the TSC disposed of cases, on average, either by procedural dismissal or by judgments on the merits, more quickly. This indicates that the TSC is less pressured by its workload and suggests that more room exists for the Court to direct its attention to important legal issues. However, our empirical evidence shows that the TSC continues to conduct its business in the same manner as before, albeit more efficiently. One possible explanation is that the function of leading development of the law in Taiwan, a civil law jurisdiction that codifies most of its law, can be, and is, performed by the legislature through constantly enacting and revising statutes. It is therefore unnecessary for the TSC to act in a policy-oriented role at all. In this perspective, the TSC's unresponsiveness to the congressional mandate in the 2003 reform seems natural.

It is true that the TSC is not as expected or as needed to shape public policy as is the U.S. Supreme Court. Nevertheless, many important legal issues involving interpretating the codified law or resolving inconsistent rulings require the TSC's attention. One of the many well-known examples is whether Taiwan should recognize the doctrine of issue preclusion as part of its *res judicata* law. Although the issue-preclusion doctrine appeared in a TSC decision as early as 1984, this issue has not been conclusively resolved by the TSC. As a result, while more and more TSC decisions recognize such the doctrine, its exact contours remain undeveloped for the past twenty-five years. Various aspects of issue-preclusion doctrine, such as its third-party effect, have never been discussed, or even acknowledged, by the TSC when applying the doctrine in cases. These doctrinal gaps persist even after the TSC heard cases involving issue-preclusion under the post-reform regime.[19]

Issue preclusion illustrates the important legal questions the legislature had in mind when amending the procedural rules to direct the TSC to reallocate its energy and time. Greater attention to such important questions also motivated the changes generally requiring that the TSC hold hearings and write more substantial opinions. However, none of these changes have occurred since the 2003 reform took effect. It appears that the inertia of TSC judges' working habits, a product of accumulated practices with a long history, cannot be easily changed, even by the legislature's amendment of procedural rules.

As of 2008, the 2003 reform did not achieve its intended purpose. While this result is disappointing from the policy-makers' viewpoint, we are reluctant to conclude that it is necessarily an undesirable result. From the perspective of the appellants who lost their cases due to the inferior courts' clearly erroneous fact-finding, the TSC's continuing practice is beneficial. If the price of directing the TSC's entire focus to cases involving important legal issues is to ignore cases with serious fact-finding errors, the desirability of the tradeoff is still open for debate.

## VI. Conclusion

Our study shows that the 2003 reform did not successfully transform the TSC's function from correcting error to a greater role in leading the development of legal doctrine. Before the TSC was authorized by the amended rules to control its docket, it had started to exercise *de facto* discretionary jurisdiction. The TSC's use of procedural dismissal to control its pre-reform docket is similar to the U.S. Supreme Court's exercise of control over its docket by summarily dismissing many cases. In the case of the TSC, its *de facto* control reached, from TSC's perspective, an optimal level right before the 2003 reform so that the newly granted *de jure* discretionary jurisdiction did not induce the TSC to continue to increase the procedural dismissal rate. The TSC continued its accustomed way of conducting judicial business. It did not invest more time and energy on issue-based adjudication. Nor did it ignore the cases involving clearly erroneous fact-findings. As a result, all the hypotheses we used to detect the effect of the 2003 reform found little support in the data.

---

19 For a detailed examination of the underdevelopment of the issue-preclusion doctrine in Taiwan, see Huang (2008).

The most important lesson from our study is that policy-makers are unlikely to change the TSC's function by merely amending procedural rules. The TSC's institutional character enables it to conduct its business in a way consistent with its own preference and the role it defines for itself. The background against which the TSC operates influences how it operates more than the procedural rules. Its members' working habits and the inertia of traditional practices are also essential to explaining its behavior. Any reform that does not consider these factors is doomed to fail.

**References**


Baum, L. (1976) "Decisions to Grant and Deny Hearings in the California Supreme Court: Patterns in Court and Individual Behavior," 16 *Santa Clara Law Rev.* 713.

Brace P., L. Laura, & M.G. Hall (2000) "Measuring the Preferences of State Supreme Court Judges," 62 *J. of Politics* 387.

Cartwright, B. (1975) "Conclusion: Disputes and Reported Cases," 9 *Law & Society Rev.* 369.

Court Statistics Project, State Court Caseload Statistics, 2007(National Center for State Courts 2008)

Daniels, S. (1988) "A Tangled Tale: Studying State Supreme Courts," 22 *Law & Society Rev.* 833.

Eisenberg, T. (1974) "Congressional Authority to Restrict Lower Federal Court Jurisdiction," 83 *Yale Law J.* 498.

Eisenberg, T., & G. P. Miller (2009) "Reversal, Dissent, and Variability in State Supreme Courts: The Centrality of Jurisdictional Source," 89 *Boston Univ. L. Rev.* 1451.

Friedman, L. M., R. A. Kagan, B. Cartwright, & S. Wheeler (1981) "State Supreme Courts: A Century of Style and Citation," 33 *Stanford Law Rev.* 773.

Hall, M. G. (1992) "Electoral Politics and Strategic Voting in State Supreme Courts," 54 *J. of Politics* 427.

Huang, K.C., & R. L. Thurston (2006) Taiwan Code of Civil Procedure. *Taipei: Judicial Yuan Republic of China.*

Huang, K.C. (2003) "A Pyramid Litigation System for Whose Purpose?—An Analysis of the Supreme Court's Discretionary Jurisdiction under the 2003 Amendment of Taiwan Code of Civil Procedure," 46 *Taiwan L. Rev.* 1 (in mandarin).

——(2005a) "Issue-Preclusion Effects on Third Parties—Starting from Two Supreme Court Cases," 16(3) *Soochow University Law Rev.* 225 (in mandarin).

——(2005b) "Failure to Satisfy Procedural Requirements or With No Merits—The Supreme Court's Disposition Method of Appeal," 9(9) *National Lawyer* 99-107 (in mandarin).

——(2008) "It Is Time to Develop a More Sophisticated Issue-Preclusion Doctrine—A Comment on the Supreme Court Judgment No. 1782 of Year 2007," 108 *Taiwan Law Rev.* 67-77 (in mandarin).

Judicial Yuan (2008) Annual Report of Judicial Statistics—Year 2008. *Taipei: Judicial Yuan Republic of China.*

Kagan, R. A., B. Cartwright, L. M. Friedman, & S. Wheeler (1977) "The Business of State Supreme Courts, 1870-1970," 30 *Stanford Law Rev.* 121.

Kagan, R. A., B.D. Infelise, & R. Detlefson (1984) "American State Supreme Court Justices , 1900-1970," 1984 *American Bar Foundation Research J.* 371.

—— (1978) "The Evolution of State Supreme Courts",76 *Michigan Law Rev.* 961.

Kastellec, J. P., & J. R. Lax (2008) "Case Selection and the Study of Judicial Politics," 5 *J. Empirical Legal Studies* 407.

Kornhauser, L. A. (1992) "Modeling Collegial Courts. II. Legal Doctrine," 8 *J. Law, Economics & Organization* 441.

Kornhauser, L. A., & L. G. Sager (1993) " The One and the Many: Adjudication in Collegial Courts," 81 *California Law Rev.* 1.

Kritzer, H. M., P. Brace, M. G. Hall, & B. T. Boyea (2007) "The Business of State Supreme Courts, Revisited," 4 *J. Empirical Legal Studies* 427, 429

Note, *To Hear or Not to Hear: A Question for the California Supreme Court*, 3 *Stanford Law Rev.* 243 (1951).

Note, *To Hear or Not to Hear: II*, 4 *Stanford Law Rev.* 392 (1952).

Shavell, S. (2009) "On the Design of the Appeals Process: The Optimal Use of Discretionary Review Versus Direct Appeal," *Harvard Law & Econ. Discussion Paper* No. 625.

Wheeler, S., B. Cartwright, R. A. Kagan, & L.M. Friedman (1987) "Do the Haves' Come Out Ahead? Winning and Losing in State Supreme Courts, 1870-1970," 21 *Law & Society Rev.* 403.

Appendix A: Logistic Regression of Determinants of Dismissal Rate

Dependent Variable: Whether the appeal was dismissed procedurally (excluding both-party appeals)

| | All Cases | | Pre-Reform Cases | | Post-Reform Cases | |
|---|---|---|---|---|---|---|
| Ob. | 1780 | | 1158 | | 616 | |
| Pseudo $R^2$ | 0.1568 | | 0.2153 | | 0.0463 | |
| | Odds Ratio | Robust Std. Error | Odds Ratio | Robust Std. Error | Odds Ratio | Robust Std. Error |
| Calendar Year | 1.102 | (0.031) *** | 1.185 | (0.040) *** | 0.866 | (0.051) ** |
| 2003 Reform | 1.336 | (0.261) | | | | |
| Appellant is a corporation | 0.722 | (0.094) ** | 0.804 | (0.139) | 0.730 | (0.147) |
| Appellee is a corporation | 1.208 | (0.146) | 1.305 | (0.208) * | 0.974 | (0.189) |
| Appellant is represented | 1.403 | (0.216) ** | 1.185 | (0.203) | 0.339 | (0.387) |
| Appellee is represented | 0.632 | (0.073) *** | 0.588 | (0.093) *** | 0.658 | (0.118) ** |
| Log of number of appellant(s) | 0.759 | (0.072) *** | 0.847 | (0.105) | 0.688 | (0.103) ** |
| Log of number of appellee(s) | 0.828 | (0.064) ** | 0.766 | (0.085) ** | 0.885 | (0.106) |
| Case type | omitted | | omitted | | omitted | |
| Locality | omitted | | omitted | | omitted | |

NOTES: Standard errors are in parentheses. *, ** and *** represent the significance at the 10%, 5% and 1% nominal levels, respectively. The regression models include dummy variables for locality (court) and case categories as explanatory variables. To conserve space, we do not report the coefficients for these variables.

Appendix B: Regressions of Time to Case Disposition (Judgment on the Merits)

Dependent Variable: log of mean days to case disposition

| | Affirmance | | | | Reversal | | | |
|---|---|---|---|---|---|---|---|---|
| | Pre-reform case | | Post-reform case | | Pre-reform case | | Post-reform case | |
| Ob. | 221 | | 80 | | 472 | | 180 | |
| $R^2$ | 0.2906 | | 0.3804 | | 0.4801 | | 0.1988 | |
| | Coef. | Robust Std. error | Coef. | Robust Std. error | Coef. | Robust Std. error | Coef. | Robust Std. error |
| Calendar Year | 0.091 | (0.014) *** | -0.229 | (0.074) *** | 0.129 | (0.006) *** | -0.181 | (0.036) *** |
| Case type | omitted | | omitted | | omitted | | omitted | |
| Locality | omitted | | omitted | | omitted | | omitted | |
| Constant | -176.370 | (27.892) *** | 466.362 | (149.437) *** | -252.947 | (11.583) *** | 369.335 | (71.434) *** |

NOTES: Standard errors are in parentheses. *, ** and *** represent the significance at the 10%, 5% and 1% nominal levels, respectively. The regression models include dummy variables for- locality (court) and case categories as explanatory variables. To conserve space,- we do not report the coefficients for these variables..

Appendix C: Regressions of Time to Case Disposition (Procedural Dismissal)

| Dependent Variable: log of elaspsed days | | | | | Quantile regression--Dependent Variable: log of elapsed days | | | |
|---|---|---|---|---|---|---|---|---|
| | Pre-reform case | | Post-reform case | | Pre-reform case | | Post-reform case | |
| Ob. | 502 | | 381 | | 502 | | 381 | |
| $R^2$ (Pseudo $R^{2)}$ | 0.0382 | | 0.0638 | | (0.0432) | | (0.0348) | |
| | Coef. | Robust Std. error | Coef. | Robust Std. error | Coef. | Std. error | Coef. | Std. error |
| Calendar Year | -0.004 | (0.014) | 0.011 | (0.018) | -0.045 | (0.018) ** | 0.0505 | (0.019) *** |
| Case type | omitted | | omitted | | omitted | | omitted | |
| Locality | omitted | | omitted | | omitted | | omitted | |
| Constant | 12.633 | (28.884) | -17.103 | (37.104) | 95.127 | (36.211) *** | -96.635 | (38.552) ** |

NOTES: Standard errors are in parentheses. *, ** and *** represent the significance at the 10%, 5% and 1% nominal levels, respectively. The regression models include dummy variables for locality (court) and case categories as explanatory variables. To conserve space, we do not report the coefficients for these variables.. The quantile regressions of elapsed days in the two right-hand columns use the .50 quantile (median) and the number below Ob. represent pseudo $R^2$.

The **IEL International Programme** is an educational and research pole in law and economics promoted by a number renowned institutions.

Details are available at: iel@carloalberto.org or http://iel.carloalberto.org/

IEL papers in Comparative Analysis of Institutions, Economics and Law are published by the Departement POLIS, Università del Piemonte Orientale, partner of IEL programme and are available at http://www.iel.carloalberto.org/Research-and-Pubblication/Working-papers.aspx or http://polis.unipmn.it/pubbl/index.php

**Recent working papers**

2011 No.2 Theodore Eisenberg and Kuo-Chang Huang: *The Effect of Rules Shifting Supreme Court Jurisdiction from Mandatory to Discretionary – An Empirical Lesson from Taiwan*

2011 No.1 Guido Calabresi and Kevin S. Schwarts: T*he Costs of Class Actions: Allocation and Collective Redress in the U.S. Experience*