

The Grand Justices' Challenges in Transplanting Foreign Constitutional Jurisprudence

Frederick Chao-Chun Lin

Abstract

Transplanting foreign constitutional jurisprudence to solve domestic problems is a common phenomenon in Taiwan. However, many cases rendered by the Grand Justices of the Judicial Yuan have been severely criticized by scholars. Using and analyzing two famous Grand Justices' decisions as examples, this paper evinces various characteristics, challenges and difficulties of appropriating foreign constitutional jurisprudence in Taiwan. Six major challenges of transplanting foreign constitutional jurisprudence are in Taiwan now. First of all, the subject of legal transplant is a relatively neglected field in the local legal circles. Second, the studies of legal transplant in major western countries are not very helpful for the Grand Justices. Third, the political or social theories related to constitutional law are very difficult to be borrowed. Fourth, it is almost impossible to understand foreign constitutional jurisprudence without mistakes. Fifth, it is very tough to decide which part of foreign constitutional jurisprudence should be appropriated. Lastly, many other accidental factors will also exert influence on the outcomes of legal transplant, such as the quality of law clerks. Therefore, it is no wonder that there are so many problems in the process of transplanting foreign constitutional jurisprudence to Taiwan.

Keywords: Legal Transplant, Grand Justices of Judicial Yuan, Judicial Constitutional Review, Fundamental Rights, Separation of Power, Bill of Rights, Comparative Law, International Human Rights Convention