

Presidentialism and Divided Society: Comparing Constitutional Court Decisions in Taiwan and South Korea

*Jiunn-Rong Yeh**

Abstract

Many new democracies confronted social cleavages during the process of democratization, forming lasting divided societies. Causes and patterns of divisions are various in divided societies, but constitutional system, particularly the contentious presidential election and presidential power are engines of social mobilization and political conflicts. In the dynamics of social division, courts, particularly the constitutional court could play a critical role in reconciling or intensifying social divisions when the President is in the center of the political conflicts.

The transitional experiences of Taiwan and South Korea are similar in many ways. They all developed toward Presidentialism during democratic transition, and the Constitutional Court all made several important decisions regarding to controversies triggered by the President. The comparative study and analysis of the constitutional adjudications in these two countries indicates that, although they share many common features, some important differences are worthy of inquiries.

This article suggests that, Taiwan and Korean's experience indicates the winner-take-all presidential election system, dual democracy of President and the Congress, and contentious partisan politics are driving forces for social conflicts. Most controversies occurred during the period of first partisan turnover, the earlier stage of democratic transition. Also, in a divided government, political conflicts associated with the presidency were more often than in the period of united government. Despite of these commonalities, some

* Professor of Law, College of Law, National Taiwan University.
E-mail: jryeh@ntu.edu.tw

differences are salient. A relatively ambiguous definition of presidential power is more prone to political conflict than that of in South Korea. Although Constitutional Courts are expected to resolve conflicts, the article suggests that Constitutional Court in Taiwan and Korea tend to respect political branches, deal controversies with procedural dimension, leaving rooms for political branches to negotiation and compromise.

Keywords: social cleavage, divided society, governmental system, presidency, constitutional adjudications