

The Constitutional Moments in Taiwan

A Fledgling Constitutional Democracy in Struggle

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Introduction

I. Structure Transformation: The 1997 Constitutional Amendments

- 1947 Constitution: a *modified parliamentary system*

I.1 Process and Dynamics of the 1997 Constitutional Amendments

- March 1989 Wild Lily Demonstration: a *crisis of democratic legitimacy*
- Interpretation No. 261 (June 21, 1980): shall *resume* periodic elections at the central level *in the Taiwan area by December 31, 1981* ⇨ constitutional reforms by constitutional revisions
- Popular and direct Presidential election in March 1996 to counteract the scheduled return of Hong Kong to the PRC in 1997
 - 1997 Constitutional Amendments transformed into a modified presidential system
How did they make it | PP/1 §3-II, 1997 Amend.
Why it is a *seemingly semi-presidential system*, yet *actually a modified presidential system*
 - No single party won over 3/4 seats in the National Assembly election in 1996⇨ 1997 Amend. was a *pact/compromise* reached between the KMT and DPP

I.2 Forces/Factors Contributing to the 1997 Constitutional Amendments

1. The direct and popular election of the President
2. The legacy of the authoritarian rule
3. The ingenuity of codification

I.3 Impact/Consequences of the 1997 Constitutional Amendments

1. Strategic ambiguity has caused serious confusion of recognition concerning the characterization of the extant government structure
2. The President under such a modified presidential system would either become a weak president or an imperial president
 - Why is it a weak president?
 - How could it become an imperial president?
 - Illustration of *Decision No. 9, Year 2024* of the Constitutional Court

II. Identity Transformation: The 1999 Constitutional Amendments and Their Invalidation by Interpretation No. 499

II.1 Process and Dynamics of the 1999 Constitutional Amendments

- Highlights of the 1999 Amendments
PP/2_1999 Amend.
- Syllabus of *Interpretation No. 499*
(March 24, 2000) PP/3_Interp. No. 499

II.2 Forces/Factors Contributing to the 1999 Constitutional Amendments

- Why *to* transform National Assembly Delegates into *wholly* proportional representatives is a puzzle
1. The theory of “going with the flow” (順水推舟) or “tasting the marrow and wanting more” (食髓知味)
 2. Theory of scheming a grand strategy

II.3 Impact/Consequences of the 1999 Constitutional Amendments and Interpretation No. 499

1. The 1999 Amendments have thoroughly undermined the cornerstone of popular sovereignty
2. Interpretation No. 499 safeguarded the democratic democracy from being transformed into a party-dominated state

III. Rights Transformation: Legalizing Same-sex Marriage by Interpretation No. 748

- Holdings of the Interpretation [PP/4_Holding, Interp. No. 748](#)

III.1 Process and Dynamics of the Same-sex Marriage Ruling

- It's a key platform of DPP presidential nominee Tsai's campaign in 2016
- Newly appointed C.J. promptly persuaded the Court to hear the case
- An intriguing scenario of competition between Justices and Legislators emerged

III.2 Forces/Factors Contributing to the Same-sex Marriage Ruling

1. As the debut work of Hsu's Court, failure was not tolerated
2. To ensure the legalization of same-sex marriage, C.J. Hsu tried hard to foster a tolerating and compromising atmosphere
 - Accommodating rule of law with democracy [PP/5_Para 10, Reasoning, Interp. No. 748](#)
3. There seemed to be a strategic division of labor between the Executive-Legislative branches and the Judicial branch

III.3 Impact/Consequences of the Same-sex Marriage Ruling

1. Interpretation No. 748 might have set up a paradigm for the Court in tackling hard cases
2. The Ensuing Act for Implementation of Judicial Yuan Interpretation No. 748 has officially ushered in the era of legalized same-sex marriage
3. With the issuance of this Ruling, the tension between judicial/constitutional review and plebiscite, a form of popular sovereignty exercise, has intensified
 - 2018 referendum concerning Interp. No. 748 [PP/6_2018 Referendum results](#)

Conclusion