

A Preliminary Inquiry of Selection of the Justices of the Constitutional Court

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Abstract

According to the additional article of the Constitution of the Republic of China, the candidate of Justices of the Constitutional Court is nominated by President and is consented by Legislative Yuan. In this sense, President is taking the political responsibility at one hand, and Legislative Yuan is administrating the judicial function at the other. It does not reveal any problematic issues on the basis of legitimacy; however, the selection system of Justices of the Constitutional Court is the major concern in this paper. In order to strengthen the Justices' organizational and democratic legitimacy, I propose that we could legitimate the advice procedures, evenly distribute nominated institutions, include auditing process in Legislative Yuan, and adjust the ratio to two-thirds to experience consent.

Keywords: Justices of the Constitutional Court, nominate, consent, democratic legitimacy

我國司法院大法官選任制度之初探

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摘 要

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我國司法院大法官之選任，依憲法增修條文規定係由總統提名與立法院同意而產生，除可具備來自雙元民主之總統及國會共同所賦予之組織與人事之民主正當性外，並可確定總統提名之政治責任，且能讓國會發揮其監督司法之功能，於制度上應尚無疑義，而符合現代憲政國家之潮流。惟於司法院大法官選任制度上仍有應予改進之處，諸如提名程序應予法制化、並分散提名機關，立法院行使同意權程序宜增設委員會之聽證程序，並將行使同意權之門檻適度提高至三分之二之特別多數決，藉以強化大法官之組織與人員之民主正當性。

關鍵詞：司法院大法官、提名、同意、民主正當性