

論司法改革會議 「司法院定位」結論之可行性 ——以「大法官釋憲制度」 所面臨的變革為中心*

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本文主要目的在於檢討民國 88 年 7 月份所舉行的「全國司法改革會議」多項結論中，有關「司法院定位方案」的結論。「司法院定位方案」被提出於司法改革會議，主要是為了調整司法行政權的歸屬；但此次會議結論所主張的方案，在達成上述目的之餘，卻也將對我國大法官釋憲制度帶來革命性的衝擊，也就是說現有釋憲制度將中斷，未來將改由各級法院於審判之餘兼理釋憲的任務。基於改革的比例原則等理由，本文認為應在保留既有釋憲體制結構的方向下，探索改革方案。為了清楚彰顯現行大法官釋憲制度所將面臨的衝擊，本文先探討大法官釋憲要件之類型，藉以呈現目前釋憲制度的原貌。本文並將檢視此次全國司法改革會議本項議題的討論過程，以證實此項結論之得出乃基於不完全的討論與粗淺的論證。

關鍵詞：司法改革會議、司法院定位、一元單軌制、多元多軌制、大法官釋憲、集中制釋憲制度、分散制釋憲制度

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The Feasibility of the Role of the Judicial Yuan as Determined at the National Conference on Judicial Reform — Based on the Contingency in the Council of Grand Justices

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ABSTRACT

The main purpose of this essay is to critique the role of the Judicial Yuan as determined at the National Conference on Judicial Reform in July, 1999. The role of the Judicial Yuan was raised at the Conference in order to revise the jurisdiction of judicial administrative litigation. We believe, however, that the trend inherent in this revision will have a detrimental revolutionary impact. Specifically, the Council of Grand Justices will be overhauled and the Judicial Yuan will emerge as the nation's highest judicial organ in charge of trying cases and interpreting the constitution. Based on the principle of proportionality, we argue that there is good reason to preserve the existing structure of constitutional interpretation, including the power of the Council of Grand Justices. In this paper, our analysis of the impending impact on the Council of Grand Justices proceeds as follows: First, we examine the important conditions of the Council of Grand Justices in order to manifest the origin of the present system. Next, we review the issues and process concerning the National Conference on Judicial Reform's conclusion and demonstrate that the proposed revision is based on very incomplete and insufficient evidence.