7 The Constitutional Court and judicialization of Korean politics

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The Constitutional Court of Korea ~~has just~~ celebrated its 20th anniversary, a significant milestone. Of the five designated constitutional courts in East and Southeast Asia (the others being found in Indonesia, ~~Province of~~ Taiwan, Thailand and Mongolia), it is arguably the most important and influential, and therefore deserves close scrutiny as a case-study in judicialization of constitutional politics in Asia. This chapter examines some of the leading decisions of the Constitutional Court in light of the issues raised in this book.

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The Court was established in late 1988 as part of the 1987 constitutional establishment of Korea's Sixth Republic. Though expected by the constitutional drafters to be a relatively quiescent institution, the Court has become the embodiment of the new democratic constitutional order of Korea. The Court is routinely called on to resolve major political conflicts and issues of social policy. Since its establishment in late 1988, the Constitutional Court has rendered over 7,000 decisions.[1] It is consistently rated as one of the most effective institutions in Korea by the public. In a recent poll, for example, it received the highest ratings of any government body – and just behind several large corporations – in terms of public influence and trust.[2] For an institution expected to be rather peripheral, this is a remarkable achievement.

How did the Court get to this position? No doubt a major factor was the decision-making prudence of the justices, who when faced with major cases were able to resolve them in a manner that was perceived as neutral and legitimate. But there are also some structural factors that gave the justices these opportunities, notably the paralysis of, and occasional open conflict among, other more partisan government institutions. This led to a gradual judicialization of Korean politics, in which major social and political questions are increasingly determined in the court-room rather than the more conventional political institutions.[3] This chapter will review some of the leading case-law of the Constitutional Court and offer some thoughts on what lessons it might hold for other courts being established in new democracies.

Structure and jurisdiction

An initial point to note is that the Court was established as a distinct constitutional court of the Kelsenian type, in which the power of constitutional review is

reserved to a designated court rather than shared with other courts. This decision was a natural one, given the history of borrowing from civil law legal systems, though the model adopted differed from that adopted in the former colonial power of Japan. In general, concentrating the power of review in a single court can provide an incentive for a degree of activism, to the extent that the justices have some sense of needing to play the role they were assigned.[4]

The Court consists of nine justices who serve six-year renewable terms, now staggered so that justices are appointed in sets. Six votes are required to declare a law unconstitutional, to dissolve a political party, to accept a constitutional complaint or to overrule a previous precedent of the Constitutional Court. Three justices each are appointed by the Supreme Court, the National Assembly and the President. Some 25 persons have now served as justices, from a variety of backgrounds, including judges, prosecutors and politicians.

Modelled closely on the Federal Constitutional Court in Germany, the Court's jurisdiction includes: providing interpretations of the *Constitution of the Republic of Korea* (*Constitution*) at the request of ordinary courts (as in the German system of concrete norm-control); hearing public petitions relating to the *Constitution* as prescribed by law; deciding issues of impeachment; the constitutionality of political parties; and deciding jurisdictional conflicts between local and central governments or central government branches. There are, however, a couple of jurisdictional differences between the Korean and German courts. Unlike the German Court, the Korean Court cannot be requested by designated government agencies to perform 'abstract' review outside the context of a real dispute, nor can it review ordinary court decisions.

In rendering decisions, the Court in its early years adapted from the German system the notion of levels of constitutionality. The Court can hold the act constitutional or unconstitutional in whole or part, but also can find challenged acts to be limitedly conforming (constitutional if interpreted in a particular way), constitutional but applied in an unconstitutional fashion, or 'nonconforming,' in which case the National Assembly may be required to amend the act in the near future. These various gradations of declarations of constitutionality and unconstitutionality place the Court in dialogue with the legislative branches and executive agencies, and give it some flexibility in terms of how to handle politically sensitive issues. It need not render a binary decision of constitutionality. This feature of its institutional structure has proved useful at certain points in the Court's history.

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Petitions from the public are governed by Article 68 of the *Constitutional Court Act*. As in the German system, any person who asserts that his or her constitutional rights have been infringed by government action or inaction may directly petition the Court for relief. There are two separate grounds for such petitions. Article 68(1) of the *Constitutional Court Act* allows petitions, after all available legal remedies have been exhausted, by citizens whose rights have been infringed by unconstitutional state action. Most of these cases have involved allegations of abuse of prosecutorial discretion when prosecutors do not indict.[5] Article 68(1) cases dominate the docket, in part because decisions of ordinary courts (to whom plaintiffs must turn to exhaust legal remedies) are excluded from

the jurisdiction of the Constitutional Court. Article 68(2) allows filings after a party has unsuccessfully sought referral by an ordinary court under Article 41 of the *Constitutional Court Act*, and leads to a stay in ongoing litigation pending the Constitutional Court judgment.

The Court's case-law

Space only permits discussion of a few of the cases the Court has decided. I focus especially on those involving the political process, in which the Court has become a final arbiter of major political conflicts. It bears mentioning, however, that the Court has been heavily involved in transforming Korea's military–bureaucratic regime into a constitutional democracy, in large part by striking down individual statutes left over from the previous regime.[6] At the same time, new political forces in a democracy often seek to entrench their position through rigging the rules of the game. The Court has done some important work in balancing between new political forces, while also serving as an instrument of transformation marking a break from the past.

The Court and the political process

The Korean Court has been frequently called on to adjudicate issues related to elections and political conflict. Many of these disputes involve schemes designed to restrict involvement in the political process, and the Court has consistently sided with political minorities in this regard. For example, a minority party challenged the *Local Election Law* of 1990, which required large registration fees from candidates. This provision served as a strong disincentive for minority parties to field candidates. The Court found that the provision in question violated the constitutional guarantee of equality, as it prevented sincere but resource-poor candidates from participating.[7]

Similarly, in 1989, the Court struck Article 33 of the *National Assembly Members Election Act*, which required a higher deposit from independent candidates than from those affiliated with a party. In its decision, the Court identified the right to vote and to run for office as core democratic freedoms that could not be granted unequally.[8] In 1992, the Court struck provisions in the same law that provided party-based candidates advantages over independent candidates in campaign appearances and leafletings.[9] The Court found that these provisions limited the *Constitution*'s guarantees of equality of opportunity and of the right to hold public office.[10] The Court thus rejected a party-based view of democratic governance, facilitating independent participation.

The Court in 1995 found several provisions of the *National Assembly Elections Law* to be 'non-conforming' because of excessively disproportional representation for rural districts compared with urban ones.[11] As in Japan, Korean districting has been designed to maximize the influence of rural areas at the expense of urban voters. Relying in part on Japanese, German and American cases, the Court set an explicit limit of 1: 4 disproportionality between urban and rural districts.

In an instructive contrast with similar cases before the Japanese Supreme Court, the National Assembly amended the election law to conform with the Court's decision.[12]

The Court's most prominent intervention in the political process no doubt involved the attempted impeachment of President Roh Moo-Hyun in 2004.[13] Roh, an activist labour lawyer who took office in 2003 with a reformist agenda, governed with an opposition-controlled National Assembly. His position became even less tenable when his own party split as a result of generational tensions in September 2003, and a corruption scandal related to campaign contributions erupted that October. Roh staked his future on a mid-term legislative election, but – in violation of South Korean law – appeared to campaign for his own party by urging voters to support it. The majority in the National Assembly responded with a motion for impeachment, which passed by the necessary two-thirds vote.

Under Korean law, Roh was suspended from office and the Prime Minister assumed the duties of the President. The case was then sent to the Constitutional Court for confirmation, as required under the *Constitution*.[14] During the deliberations of the case, however, the mid-term election was held and Roh's party received overwhelming support, winning an absolute majority in the Assembly.

It is pure speculation to suggest that this indicator of the public's preferences influenced the Court in its decision. However, the Court did reject the impeachment motion one month later.[15] The *Constitution* requires six out of nine justices to uphold the impeachment. In addressing the issue, the Court bifurcated the issue into the question of whether there was a 'violation of the *Constitution* or other Acts,' the predicate for impeachment, and whether those violations were severe enough to warrant removal. Although the Court found that Roh had violated the election law provisions that public officials remain neutral, along with other provisions of law, they decided that it would not be proportional to remove the President for the violation. Instead, they asserted that removal is only appropriate when the 'free and democratic basic order' is threatened. Roh's violations were not a premeditated attempt to undermine constitutional democracy. The court further rejected some of the charges, namely those concerned with campaign contributions that took place before he took office.

The incident illustrates two themes in the study of judicial politics. First is the great sensitivity of constitutional courts to delicate political questions. By splitting the difference in a manner that responded to recent signals from the electorate, the Court gave both sides what they wanted while avoiding a constitutional crisis. Second, and more importantly, is the subtle way in which the Court aggrandized its own power in making the decision. By failing to simply confirm to the National Assembly's factual findings, the Court placed itself in the position of reviewing the *political* assessment of the impact that the removal of the President would have on Korean democracy. The Court established itself, and not the Assembly, as the final arbiter of whether removal was actually warranted. In this sense, the Court ended up enhancing its ability to say what the law is, and did so in a manner that ensured it would be accepted by the majority of the public.

The Court was able to return to some of the issues in impeachment proceedings in 2007 and 2008. Incumbent President Roh Moo-Hyun had made some remarks concerning the presidential election; even though he was not running for re-election, the National Election Commission considered this to be a violation of his duty, and Roh petitioned the Constitutional Court in his personal capacity, claiming that his right to political expression was infringed by the electoral law. The Court rejected Roh's petition in early 2008, but did acknowledge that he had a right to file it in his personal capacity.

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Roh's party lost the 2008 presidential election to Grand National Party leader Lee Myung-bak, a former chief executive officer who had been accused in the campaign of financial improprieties. After prosecutors cleared Lee of all charges in December 2007, the legislature passed a law calling for an independent prosecutor to investigate the allegations. The law was challenged by Lee's allies, and the Court upheld most of the law, though it found unconstitutional a provision allowing the special prosecutor to subpoena witnesses without a warrant. Lee took office in February 2008, and was thus immune from further investigation, but the case again illustrates the theme of political conflict ending up before the Court.

The Court and issues of retroactive justice

The Court has also been heavily involved in sensitive political and historical issues. For example, it was called upon to consider whether the legislature committed an unconstitutional omission for failing to launch an inquiry into a massacre conducted in the Korean War. The Court found that the *Constitution* did not create an individually justiciable right to legislative consideration.[16]

In one notable series of cases in the mid-1990s, the Court was drawn into questions of retroactive justice for the famous 1980 'Kwangju incident,' in which military personnel slaughtered hundreds of non-violent protesters.[17] Two of the generals implicated in the incident (and the preceding military coup of 1979) were later Presidents, Chun Doo-hwan and Roh Tae-woo. When President Kim Young-Sam took power in 1992 as the first civilian, prosecutors investigated the two generals and found that no charges could be pursued. This failure to prosecute was challenged in the Constitutional Court through a petition under Article 68(1), and the Court was asked to toll the statute of limitations, whose 15-year period for prosecution would soon expire. In January 1995, the Constitutional Court upheld the tolling of the 15-year statute of limitations against the two men during their presidencies, on the grounds that the *Constitution* expressly provides that sitting presidents may not be prosecuted for any crimes other than insurrection or treason.

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For rule-of-law reasons, however, the Court would not allow retroactive application of the tolling so as to include offences for which the statutory period had already expired. On its face, this decision would have rendered the 1979 *coup d'état* unprosecutable. Other crimes, however, including those related to

the Kwangju incident, would remain prosecutable for several more years. This decision served notice that efforts to bring the two men to justice would have to conform to the dictates of the rule of law. However, the Court did not force the prosecution to prosecute Chun and Roh by declaring their exercise of discretion unconstitutional.

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The National Assembly, under the solid control of Kim Young-Sam's party, then passed special legislation to facilitate the prosecutions. These laws were challenged in trial court proceedings, and the issue of constitutionality become before the Constitutional Court. The Court eventually upheld the controversial Acts in 1996, although a majority of justices dissented.[18] The Court's decision allowed the prosecutors to proceed with the case in a local court, and both men were found guilty. Chun was sentenced to death and Roh to 22 years in prison. Both sentences were reduced on appeal, and the men were subsequently pardoned through the initiative of President-elect Kim Dae-jung in December 1997.

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The performance of the Constitutional Court through this series of decisions is ambiguous, but on balance reflects the Court's independence as well as its institutional sophistication. On the one hand, the Court ultimately allowed the prosecution to go forward, and in this sense can be seen as bending to the dictates of a popular political movement. Apparently, the Court was prepared to prevent the prosecution in December 1995, before the plaintiffs withdrew their case. Its mooting of that case after the withdrawal allowed the political process to continue. However, the dissenting opinion issued by a majority of the justices questioned the dubious legislation of the ruling party by calling attention to the rule of law values of consistency and predictability in criminal justice. Special legislation would be acceptable, but not if applied to those for whom the statute of limitations had already expired, a category that by 1996 included everyone involved in both the 1979 coup and the 1980 Kwangju incident. The Court thus avoided a direct challenge to the dominant political interests, but at the same time managed to focus on issues of legality, and caused maximum embarrassment to President Kim through dissent.

Economic rights

Although not the most spectacular line of decisions, perhaps the Court's greatest contribution to liberalization has been undermining the legacy of government controls over the economic system. In the Kukje case in 1993, the Court considered the Chun regime's dissolution of one of Korea's *chaebol* industrial conglomerates, allegedly because of its failure to make donations to the ruling party. The Court held that the government's action toward the private firms was an unconstitutional taking of private property, and that the former owner could retake control of the firms through the ordinary judicial process.[19] In a country where the state has always had tremendous power over the economy, this decision struck a blow at state interference, and marked a qualitative difference in the new era. The Court has also invalidated tax legislation and provisions of property law that provided special privileges for state-owned firms.[20] Such mechanisms previously

allowed Korean state capitalism to blur the distinction between the state and private economic activity.[21] In striking down these rules, the Court has bolstered the private–public distinction, a core principle of modern liberalism as well as of German legal theory.

Confucian constitutionalism?

A crucial issue implicit in the organization of this publication is whether or not there is anything particularly Asian about the activities of the new courts. In another article, I have articulated a model of 'Confucian Constitutionalism,' which suggests that judicial review can be understood in terms compatible with Confucian political tradition.[22] Government by judges is akin to the Confucian ideal of government by a generalist meritocracy, in which notions of 'remonstrance' may be revitalized in the language of constitutional law. Whatever the compatibilities, it is useful to examine the Court's behaviour in cases that confront Confucian or traditional norms. As in other areas, the Court seems to have walked a line between transforming the highly traditional Korean social order, in particular by striking at features of the law that reflect Confucian paternalism, while upholding certain principles.

In July 1997, the Court struck out an Article in the *Civil Code* that prohibited intermarriage of Koreans with the same family name and regional origin.[23] This provision reflected a law originally written in 1308, when clan-based social structure prevailed. The decision had immediate effects on an estimated 60,000 couples who lived together but whose clan names had prevented them from legally marrying. The decision prompted protests from Confucian groups but was celebrated by women's groups.

In another case, these two social forces found themselves on the same side. Adultery in Korea is considered a criminal act, reflecting Confucian values and the broader tendency of utilizing the criminal law to regulate what might otherwise be considered private behaviour. The relevant provision of the *Criminal Code* was challenged as a violation of the constitutional right to pursue happiness, but an odd alliance of traditionalists, women's groups and the bar association supported the law. The Court refused to strike down the law, but the Ministry of Justice, responding to dissenting opinions in the Court decision, announced that it would initiate amending legislation to eliminate the controversial provisions. However, it ultimately failed to do so in the wake of protests by social activists. This decision illustrates the myriad ways a constitutional decision can shape social change: although the Court appears to speak for traditional values, it also reflects active interest-group politics. The interest of advocacy groups in the constitutional litigation process shows that the Court is an increasingly important political arena; furthermore, the role of these groups reflects the strengthening of civil society vis-à-vis the formerly dominant state apparatus.

Another case demonstrating the Court's willingness to uphold traditional norms involved criminal law. Like Japan and other Confucian societies, Korea has traditionally punished those who kill a spouse or lineal ascendant more

severely than ordinary murder. The party who brought review of the case argued that the statute violated his constitutional right of equality. The Court highlighted that the constitutional guarantee of equality prohibits only differential treatment without a reasonable basis in legislative purpose. The Court noted the importance of love and respect in the Korean familial situation, and said that the statute is not unconstitutional because protection of such relationships is a valid legislative purpose. The Court upheld the statute.[24]

The National Security Act cases and military secrets

The Court has been especially visible in dealing with the legacies of the authoritarian regime, particularly the *National Security Act* (*NSA*) and the *Anti-Communist Act*. These laws were used to suppress independent political organizations by providing draconian sanctions against dissenters and loosely-defined illegal associations. The laws were therefore a target of human rights activists and regime opponents. The two laws operated by carving out exceptions to normal requirements of criminal procedure. For example, Article 19 of the *NSA* of 1980 allowed longer pre-trial detention for those accused of particular crimes, and this article was struck down by the Constitutional Court in 1992.[25] The provisions in question extended pre-trial detention for up to 50 days, an exception from the normal period of 48 hours allowed under the *Code of Criminal Procedure*.[26] The Court held that the extended period constituted an excessive limitation on the basic right to a speedy trial.

Even more important was the Court's limitation of offences defined under the Act. Article 7(1) of the *NSA* penalized any person who 'praises, encourages, or sympathizes with the activities of an anti-state organization or its members, or any person who receives orders there-from; and any person who by any means whatever benefits an anti-state organization'.[27] This provision was held to be vague and overbroad, and to threaten constitutional guarantees of freedom of the press and speech,[28] freedom of academic study[29] and freedom of conscience.[30] Noting the continuing confrontation with North Korea, the Court did not actually strike down the law, but ruled that the provisions only be applied in the case of danger of actual security risks. The Court restricted interpretations of the law and asked lower courts to balance the proximity of danger with the constitutional position of freedom of expression. In particular, the Court held that the law could only be used to punish activities posing a substantive danger, so merely 'encouraging' or 'sympathizing' without a showing of substantive danger could not be prosecuted. However, a dissenting opinion called for the Court to require a higher standard of 'clear and present danger' before a prosecution could be upheld in an *NSA* case.[31] The next year, the National Assembly amended the law so as to apply only where the person charged had *knowledge* that his or her actions might endanger the existence or security of the state or the 'fundamental order of liberal democracy'.[32] Once again, a Court decision led the legislature to substantially narrow its definition of an offence, introducing the element of specific knowledge to limit the application of a law that had been subject to serious abuse.

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In 1994, the Court struck out a provision of the *Private School Act* requiring that any teacher prosecuted in a criminal case would lose her or his job.[33] In the case at issue, a teacher was prosecuted under the *NSA* and immediately fired. The Court found that this rule violated the presumption of innocence. This group of decisions had the effect of domesticating the administration of the *NSA*, the single most egregious law associated with military rule, by bringing it into conformity with the dictates of ordinary procedural law.

The *Military Secrets Protection Act* of 1972, which prohibited the collection or dissemination of military secrets, led to another politically charged case for the Court. The Act had been interpreted quite broadly, and was used to prevent any media coverage of military matters whatsoever. The Court found that the constitutional freedom of expression encompassed a public right to information, and that this could not be infringed by a broad application of the law.[34] The Assembly subsequently revised the bill, narrowing the interpretation of military secrets, so the decision had a direct impact on broadening freedom of expression.

Relations with the Supreme Court

In all systems with designated constitutional courts, relations between the constitutional review body and the top ordinary tribunals can be complex. This is particularly true in Korea, where the Supreme Court has been assigned the explicit power to adjudicate the constitutionality of administrative regulations, in accordance with post-war Korean tradition.[35] Indeed, the past few years have witnessed a battle over jurisdiction between the two top courts, not unusual for courts in the early years of a new democracy.[36]

The two courts are clearly separate but equal bodies in formal terms, each described in a separate constitutional article as an organ of state power. Ideally, the two courts have mutually independent jurisdictions, while retaining equally high status. In fact, of course, cases do not neatly fit into one or the other's purview, and each court seeks to assert its predominance. The distinction between administrative and legislative interpretation is not as clear or straightforward as might be imagined. The question of the constitutionality of an administrative regulation frequently requires interpretation of the relevant statutory text. A restrictive interpretation of a statute will tend to void on constitutional grounds any administrative actions taken under it, where those actions rely on a broad reading of the statute. So, the Constitutional Court is able to shape Supreme Court constitutional interpretations where the Constitutional Court is able to issue a prior decision on the statute underlying administrative action.

In 1990, the Constitutional Court unilaterally decided that it had implied jurisdiction over administrative regulations issued pursuant to statutes, and that the assignment of administrative review in Article 107(2) to the ordinary courts was not exclusive.[37] The case was especially controversial, because it concerned the administrative action of the Supreme Court itself in its role as the licensing authority for lower level judicial officials known as judicial scriveners. The petitioner had charged that scriveners' licences were given disproportionately to

those with experience in courts' and prosecutors' offices, without justification. The Constitutional Court found that, by failing to administer examinations, the Supreme Court had not followed its own administrative regulations under the *Judicial Scriveners Act*. In response to the decision, the Supreme Court issued a statement to all ordinary judges condemning the Constitutional Court decision, and stating that it had 'gone beyond its domain'.[38]

The problem is caused in part by the design flaw that ordinary court decisions are not explicitly included within the jurisdiction of the Constitutional Court.[39] At the same time, the law provides that rulings of the Court on unconstitutionality are to be respected by ordinary courts, other state agencies and local government bodies.[40] This means that while ordinary courts must abide by Constitutional Court decisions, they are themselves the sole determiners of what those decisions require. Ordinary courts cannot be corrected by the Constitutional Court for failure to apply its decision correctly. Rather the Supreme Court is the sole body able to overrule lower court decisions. Therefore, much is at stake on the question of whether Supreme Court decisions can be appealed to the Constitutional Court. On the one hand, the maintenance of the *Constitution* as the highest normative level of the legal system would seem to require reviewability of Supreme Court decisions. On the other hand, if Supreme Court decisions can be appealed, that means they are not final.

In keeping with its efforts to expand access to constitutional justice, the Constitutional Court has sought to extend its jurisdiction to cover ordinary court decisions. In 1995, the Court declared a tax law partially unconstitutional, and dictated that it could only be applied if given a particular, narrow interpretation by ordinary courts.[41] The Supreme Court responded in April 1996 saying that since the Constitutional Court had no authority over ordinary court judgments; its decision could only be taken as an expression of opinion regarding constitutionality, and had no binding force over ordinary courts. The ordinary courts then proceeded to apply the controversial tax law in the manner that the Constitutional Court had criticized. In December 1997, the original petitioner again sought relief from the Constitutional Court, and the Court obliged by annulling the Supreme Court judgment, even though it had no explicit power to do so in the *Constitutional Court Act*. The Court also voided that portion of the *Constitutional Court Act* that excluded ordinary court decisions from constitutional review, saying that Constitutional Court decisions must be binding on all. The Supreme Court responded by holding a press conference, asserting that it would reply through a judgment.[42] Subsequently, the Constitutional Court continued to consider ordinary court judgments in certain cases and it now appears that the theory of the Constitutional Court has been accepted.

Ultimately, the conflict may be about competing ideas of the role of courts and the meaning of judicial independence. The Constitutional Court sees itself as the embodiment of a new constitutional order, a vehicle for making a bold break from the past. The Supreme Court sees itself as the inheritor of Korean legal tradition, a tradition that sought to preserve professional autonomy under difficult conditions of authoritarian rule. As such, the Supreme Court has always sought

to insulate itself from other institutions intent on interfering with its position at the apex of the legal hierarchy.

Conclusion

The Korean Constitutional Court has managed to become a major institution in Korean governance. The Court is a forum for groups seeking to advance social change as well as for individual disputes. The Court frequently strikes down legislative action and also regularly overturns prosecutorial decisions. The Court has demonstrated its independence in politically charged cases, such as in the retroactive justice case where it embarrassed the ruling party, while remaining responsive to the broad trends of public opinion. The Court has participated in the subjugation of both state and military to civilian political control, transforming the character of state–society relations. At the same time, the Court has avoided decisions that might provoke hostile reactions from prominent political forces. The Court has thereby contributed to the consolidation of Korean democracy.

What explains this early and unexpected success?[43] One important factor has been the Court's formation as a new and distinct body with the express mission of protecting the 1987 *Constitution*. The Court's position as designated protector of the constitutional bargain has given it a sense of institutional mission, identified closely with a broad notion of democratic values.

A second important factor is the extent to which the design reflected what I have called elsewhere the needs for political 'insurance'.[44] The 1987 constitutional design reflected the deep political uncertainty faced by three political forces of roughly equal strength. No party could confidently predict it would win power, and the institutions of the 1987 *Constitution* reflected this, both in the single-term presidency and the Constitutional Court. A system of constitutional review served the interests of all parties under such uncertain conditions, and the design of the court provided it with institutional power to expand its power. This has been assisted by the fragmented and dysfunctional nature of Korean politics since the Court was established. Korean parties remain weak and unstable, and each President has failed to maintain high ratings throughout their term. Calls for constitutional amendment are picking up.

Finally, one must credit the justices of the Court themselves for the success of the institution. The ability to remain a relevant body, responsive to Korean political and social forces, requires a certain degree of prudence and skill on the part of the members of the Court. This is a variable that one cannot always anticipate, and reminds us of the contingency of effective judicialization.