

Dear Justice Tsai, dear Justice Kang, and dear Prof. Liu,

It is my great honor to serve as a discussant in this panel. Thank you so much for the invitation. As a student of comparative constitutional law that focuses specifically in East Asia, I really enjoy Justice Kang's presentation, in which he not only introduced the constitutional adjudication system in Korea but also analyzed the constitutional development of Korea in the past several decades. Indeed, there are many political and institutional similarities between Korea and Taiwan, and between the Constitutional Court of Korea and Taiwan Constitutional Court. Based on these similarities. I would like to raise three issues that I hope could further stimulate our discussion.

The first one involves the decision-making threshold. The Constitutional Court of Korea is one of the very few top courts that require a supermajority threshold to declare a law unconstitutional. Some Korean scholars have used the adultery decisions of the Constitutional Court of Korea to suggest that the supermajority threshold may provide a signaling function. When there are five votes against the constitutionality of a law, the Korean Constitutional Court has highlighted the constitutional deficiency of the law without immediately invalidating it. Doing so may prevent a head-on conflict with the political branches. In the past, the Taiwan Constitutional Court also required a supermajority to make constitutional decisions, but it changed the requirement from a two-thirds supermajority to a simple majority in 2022. And the major reason is because doing so could arguably make the Court more efficient by preventing unnecessary negotiation and compromise. In fact, as I just said, most apex courts adopt a simple majority for similar concern. Given the global trend, what are the reasons that the Constitutional Court of Korea decides to maintain the supermajority voting rule?

Secondly, we know that the Constitutional Court of Korea has dissolved a political party that had taken some actions to support North Korea in 2014. The dissolution of any political parties inevitably raises the concerns of the freedom of expression and democratic backsliding. In Taiwan, several political parties are pro-China or pro-unification, although it is debatable whether they have taken any actions to undermine the democracy in Taiwan. It is not unthinkable that the Taiwan Constitutional Court will face similar cases in the near future. Would you please provide some thoughts on this topic? How should a constitutional court strike a balance between the protection of free speech and defending democracy?

The last issue I want to raise here is about the war of courts between constitutional courts and supreme courts. In Justice Kang's presentation, he mentioned the conflict

between the Constitutional Court of Korea and the Supreme Court of Korea. In April this year, the Supreme Court of Korea seemed to have disagreement with the Constitutional Court regarding gay soldiers for having sex outside their military facilities. From the perspective of comparative constitutional law, most countries that have multiple top court inevitably face this problem. Taiwan is no exception. The Taiwan Constitutional Court and the Taiwan Supreme Court sometimes would disagree with each other as well, with the Supreme Court claiming that the Constitutional Court encroaching upon its jurisdiction. In Taiwan, this tension may intensify in the future because of the introduction of constitutional compliant in 2022. In a word, constitutional courts in both countries have to deal with the issue of division of labor inside the judicial branch. I am wondering whether Justice Kang could further elaborate on how the Constitutional Court of Korea has managed this issue.

My time is up and I will stop here. Thank you so much again for the insightful presentation and I look forward to your responses.