

Jackson School Journal

of International Studies

Vol.10 No.1 Winter 2022



JS
J.

Art & Activism in Peru:

An Interview with Karen Bernedo
Morales, Jorge Miyagui, and Mauricio Delgado

Taiwan's Constitutional Court:

Judicial Activism and Politicization in a New Democracy

Jackson School Journal of International Studies

Vol. 10, No. 1: Winter 2022

Editor-in-Chief

Priya Sarma

Editorial Board

Sofia Brekkan, Katherine Lin, Phillip Meng, Jingyi Pan, Tara Saleh, Casper Suen and Wendi Zhou

Faculty Advisor

Dr. Sara Curran

Advisory Board

Dr. Sara Curran and Dr. David Bachman

Peer Reviewers

Michelle Fang Wu and Yolanda Yang

The Jackson School Journal of International Studies publishes Spring and Autumn issues and receives generous support and financial assistance from the Center for Global Studies and Title VI grant funding from the Office of Postsecondary Education, International Education Program Services, US Department of Education.

For print copies of the Jackson School Journal, please contact the Henry M. Jackson School of International Studies at the University of Washington, Box 353650, Seattle, WA 98195, (206) 685-0578. Access the Jackson School Journal online at: <http://jsis.washington.edu/jsjournal>

The views expressed in this Journal are those of the authors and not necessarily those of the editors or the Henry M. Jackson School of International Studies.

Cover Photo of Taipei, Taiwan by Unknown on <https://istockphoto.com>.

Letter from the Editors

To our readers,

We hope you enjoy the Winter 2022 issue of the Jackson School Journal of International Studies. This issue features a research article by Matt Chang about Taiwan's Constitutional Court. Also featured is an Expert Insights interview with members of an art collective from Peru. They discuss the ways in which art can function as powerful tools for memory and political protest. Their observations about art, politics, and social change in Peru are instructive for many other parts of the world, too! While the effects of the ongoing pandemic continue to be felt around the world, and as nationwide conversations regarding long-standing issues of equity and dignity continue to take place, we hope you enjoy this issue and take away from it new insights in our ever more interconnected world.

Sincerely,
The Jackson School Journal Editorial Board

Jackson School Journal of International Studies

Table of Contents

Policy Research	6
Taiwan's Constitutional Court: Judicial Activism and Politicization in a New Democracy <i>by Matt Chang</i>	
Expert Insights	22
Art & Activism in Peru: An Interview with Karen Bernedo Morales, Jorge Miyagui, and Mauricio Delgado <i>by Wendi Zhou</i>	

Matt Chang

Taiwan's Constitutional Court: Judicial Activism and Politicization in a New Democracy

The Constitutional Court of Taiwan (TCC) has been the subject of extensive research in the field of comparative judicial politics, recognized for its protection of civil rights and curtailment of Taiwan's authoritarian government in the 1990s. However, the literature does not continue its examination of the Court into the 21st-century, and little is known about the TCC's ongoing role within the new democratic government of Taiwan. My research fills this gap in the literature by examining the activity of the Court over the last two decades and its engagement with constitutional questions. Has the TCC remained activist in the 21st century and continued to impact politics in Taiwan? How do the findings contribute to the scholarship on constitutional courts in new democracies? To examine these questions, I analyzed 548 cases from 1987-2017 by coding Court decisions for variables to track its decision-making over time. I also draw from existing literature to investigate these cases' context and significance. Preliminary findings suggest that the Court has been politicized and has struggled to assert itself when faced with highly contentious questions regarding the separation of government powers. The TCC instead has focused on expanding individual rights protections and has actively developed Taiwan's constitution using international laws. My findings suggest that constitutional courts in new democracies can change in role and impact as nations mature, and cannot be categorized dichotomously as either activist or restrained. Additionally, these findings demonstrate the increasing politicization of the Taiwan Constitutional Court in the 21st century.

Introduction

At the end of the Second World War, strong judiciaries began proliferating around the world. Faced with the atrocities of the Holocaust, nations realized that certain fundamental rights needed to be protected by a governing constitution and courts capable of upholding those rights with total authority.¹ The judicial bodies mandated to interpret constitutions, known as constitutional courts, were given expansive powers to review and strike down legislation to ensure that civil, political, and human rights would be respected.² As courts were empowered to protect these rights through judicial review, they inherently gained a new attribute: courts became policymakers and embraced the role of changing and creating law.³

The modern scholarship within comparative judicial politics studies this politicization of courts around the world. Different opinions in the literature vigorously contend whether courts should have this role in policymaking, and whether courts can effectively impact politics at all when compared to the traditional democratic legislatures.⁴

The debate has focused partly on the role of constitutional courts in new democracies formed after the end of World War II, during a wave of global human rights reform.⁵ One such court is the Taiwan Council of Grand Justices, a constitutional court which played a key role in dismantling authoritarianism in Taiwan after the fall of the Kuomintang Regime. The Council has earned a reputation among the

scholarship as a strong and activist institution that has greatly impacted politics and rights protections in Taiwan.⁶ However, little research has explored the Court's role in the 21st century. In this research article, I inquire whether the TCC has continued its activist and impactful decision-making in recent years, or if its role has changed since the late 1990's. The findings contribute to the scholarship on international judiciaries by exploring the TCC's ability to uphold constitutional guarantees while embedded in systems of political governance.

The article is organized as follows: I first establish a theoretical framework around the conceptual role of courts, drawing from the scholarship on the role of courts, their impact on politics, and judicial activism. I narrow my inquiry on the role of constitutional courts in new and developing democracies, focusing specifically on the Constitutional Court of Taiwan (TCC) and present my core research questions. I then present my method of inquiry and sources of data, and how I analyzed the results from case coding. The study turns to existing literature to examine the context and impact of the TCC's decision in the 21st-century and explore the Court's trends of decision-making. After discussing several implications of the findings, the article concludes with a discussion of the limitations of my research and potential avenues for further inquiry.

Theoretical Framework

Empowered by judicial review and ability to form binding legal precedent, courts all over the world influence legislation and thus have entered the realm of policymaking.⁷ For example, abstract and concrete review processes allow courts to receive petitions that challenge the legitimacy of a law or state action. A court may review the act in question, scrutinize it

based on past precedent or constitutional validity, and choose to annul, uphold, or modify the law by reinterpreting its meaning based on judges' discretion. Many judiciaries even engage in judicial activism, in which a court develops its nation's constitution by reinterpreting provisions and changing their meaning over time. Because constitutional law is the highest legal authority in a nation, courts that change the meaning of the constitution are invoking powerful impact, if there are no other checks on that invocation of power.⁸

Some scholars have described this judicial policymaking as a usurping of power from the legislation and have criticized courts and judges.⁹ However, other scholars have embraced the empowerment of courts as a way to protect individual rights and minority groups against a democratic but oppressive majority. Some argue that courts serve a vital role in liberal democracies by placing a check on the legislature and preventing the passage or enforcement of unfair laws.¹⁰ Legendary cases such as *Brown v. Board of Education* in the United States are frequently cited as examples of how the policy-making powers of courts are an invaluable protection against civil rights violations such as segregation. Scholarship has also examined how powerful courts in Asia can enable victims of war crimes to voice their grievances against the national government of Japan through formal litigation and claim compensation.¹¹ In nations such as South Africa, Brazil, and India, courts have been used to improve welfare programs and increase accessibility to healthcare and education.¹²

This inquiry into the impact of courts and their activism continues in the era of new democracies, new constitutionalism, and constitutional courts. After the events of World War II and the mass atrocities of the Holocaust, the entire world realized the necessity

for implementing a check on democratic majority. New constitutional democracies proliferated rapidly around the world, spawning a number of constitutional courts which were given expansive powers to review laws and state actions.¹³ The New Kelsenian model of constitutionalism, conceptualized by the legal scholar Hans Kelsen, rearranged the structure of government around this governing constitution and conceptualized the constitutional court—a judicial body responsible for upholding and interpreting constitutional provisions.¹⁴ A portion of scholarship on comparative judicial politics today examines the role of constitutional courts in new democracies, whether they have impacted politics, and how they do so.¹⁵

One such constitutional court that grew in prominence and activity was the Taiwan Council of Grand Justices. In 1947, Taiwan created a new constitution and the Council of Grand Justices known as the Taiwan Constitutional Court (TCC). The Council's duty was to interpret the constitution and uphold it against contradicting legislation and state actors. However, Taiwan was plunged into totalitarianism from 1949-1987 as the Kuomintang Regime from mainland China took control over the island and suspended the constitution, democratic elections and civil rights, and the activity of the Court.

In 1987, President Chiang Ching-kuo ended martial law after initiating a series of democratic reforms in Taiwan, including allowing opposition political parties to run for office and the opening of free elections. With the fall of martial law, the TCC began taking cases and issuing interpretations with remarkable speed and decisiveness, striking down laws leftover from authoritarianism that violated civil rights and establishing clear boundaries for the fledgling democratic state.

Many scholars have pointed to the Taiwan Constitutional Court as a paradigm of judicial empowerment and impact. The Court's assertiveness in protecting constitutional rights and adjudicating over conflicts between state bodies has earned it a reputation as an activist and impactful court.¹⁶ Indeed, one scholar writes that "The Council has transformed itself from a weak organization to an activist court" since the fall of martial law in 1987, and in its modern period of law-making, "...[the Court's] constitutional review can be anything but passive."¹⁷ The general literature frequently cites cases such as Interpretation #261 (1990), where the Court struck down the life-long appointment of all Kuomintang representatives in the legislature, which had blocked general elections and retained their offices with immunity. Other celebrated interpretations include #636, in which the Court struck down laws which had allowed the police to detain and punish suspects without due process of law.¹⁸

Although some scholarship has extended its study of the TCC into the 21st century, the bulk of the literature predominantly focuses on the Court's activity between the fall of martial law in 1987 to the end of the century, highlighting its role in Taiwan's democratization during that era, and rarely covers the TCC's decisions past the 2000's. However, the nation has changed dramatically since the end of authoritarianism; in contrast to the single-party rule of the Kuomintang Regime, Taiwan's politics today is sharply partisan, with major political parties conflicting heavily over the control of power in government.¹⁹ In this new democratic environment, the role of the Taiwan Constitutional Court remains largely unexplored. Thus, I draw from the scholarly debate on the politicization of courts, their impact on politics, and judicial activism, and apply it to the TCC, and further exploring the Court's role today.

What role has the Taiwan Constitutional Court played in the 21st century? Has it continued to impact politics through judicial activism and the development of the constitution?

Data and Methods

To address these questions, I engage in two forms of analysis: case-coding directly from the Court's decisions, and an examination of literature. I accessed the TCC's interpretations from a database on its official website. Complete with the year of judgment, title, question, holding, and reasoning, these interpretations formed the bulk of my research data. I coded all 548 interpretations that the TCC has delivered between 1987 and 2017 for several variables, which I discuss more in the following section. These interpretations were located and read from the Judicial Yuan's English database of all TCC decisions. The second source of data was the existing literature on the TCC, predominantly from scholars in Taiwan who documented the rise and fall of authoritarianism in the nation and the impact of the TCC. I drew from seventeen journal articles in total to supplement data obtained from the TCC's database and to provide context for cases examined.

Analysis

In my case-coding analysis of the TCC's interpretations, I coded for four variables: issue area, outcome, development of the constitution through international laws, and time period. I explain how each variable relates to my central research questions in the following sections.

Variables

Because my research question seeks to

understand the activism and impact of the TCC in the 21st century and compare it to the Court's post-regime role shortly after 1987. I first and foremost tracked the TCC's decisions each year. Figure 1. depicts the total number of interpretations the Court has delivered since its creation in 1949 to 2017.

Towards the end of the 1990s, the Court began decreasing its total output of interpretations, dropping from an average of 27 interpretations per year between 1995-1999 to only 16 annually between 2000-2006. The sharp decrease in activity began around the year 2000, so I divided my inquiry into two time frames, 1987-1999 and 2000-2017, with the expectation that some event had caused the Court to significantly alter its caseload. Indeed, this drop in TCC decisions provides the background for my later exploration into the political forces affecting the Court's ability to rule on civil rights and government powers.

Secondly, to examine the question of whether the TCC has been impactful or activist, I focused my analysis on two issue areas of interpretations: (1) separation of powers questions, which concern the delegation of constitutional powers to different branches of the state, and (2) individual rights questions, in which a state action or law threatens to violate the constitutional rights of citizens. I narrow my analysis to these two issue areas for two reasons. Firstly, they form the majority of the TCC's interpretations. Between 1987-2017, 70.2% of all interpretations involved a question over separation of powers or individual rights; the remaining interpretations almost exclusively dealt with tax laws. Additionally, they are by far the most commonly discussed types of interpretations that scholarship on the TCC examines. The vast majority of journal articles discussed Court's individual rights protections or separation of

Figure 1

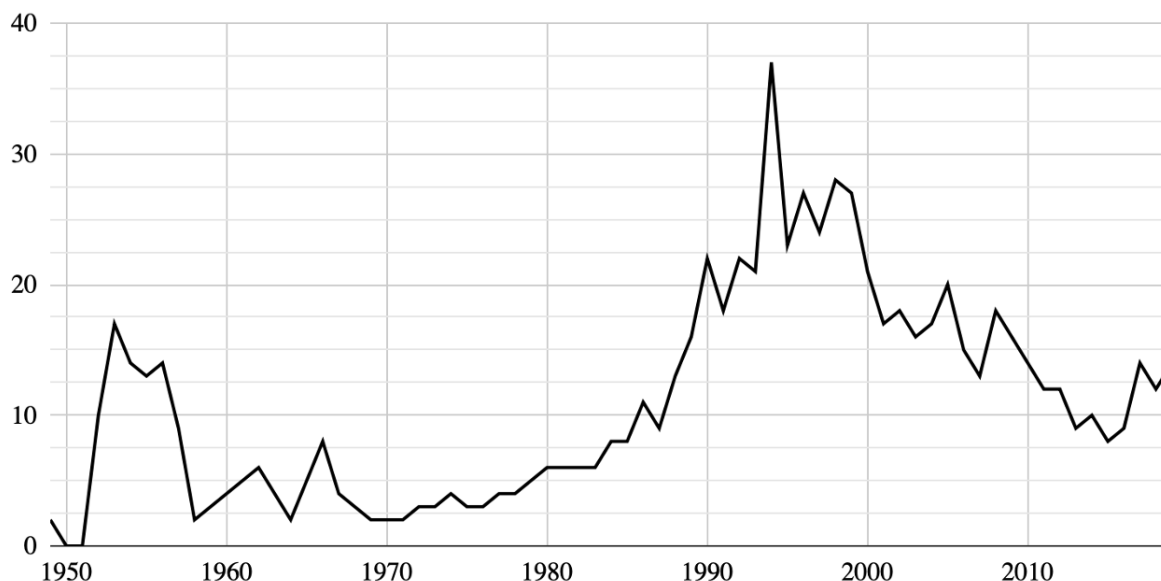


Figure 1. Annual number of interpretations delivered by the Taiwan Constitutional Court, 1949-2018. N = 789 interpretations. Source: Data compiled by the author from the official website and database of the Taiwan Constitutional Court.

powers cases exclusively. I coded for the issue area to examine how these two issue areas of interpretations have changed over time and whether there were any significant trends.

Thirdly, I also coded for whether the Court found a constitutional violation in its interpretations and used the outcome of cases as a rough proxy for the activism of the Court. When a court strikes down a law or state action as unconstitutional, it strengthens the body of constitutional law. Interpretations that find constitutional violations can also develop the meaning of the constitution by expanding the scope of its protections. Within the issue areas of individual rights protections and separation of powers, I thus examine whether the Court has frequently struck down or

upheld laws as a rough indicator for whether the TCC has been activist in these issue areas.

Lastly, I coded for whether interpretations developed the constitution by citing or incorporating international laws, treaties, or legal doctrine. I use the TCC's expansion of constitutional provisions as an indicator for activism: frequent use of international law to develop the body of constitutional law in Taiwan might suggest that the Court has been activist. Although there are many other methods that can be used to gauge whether a constitution has been expanded in meaning—such as through an examination of changes in the rulings of lower courts or the application of statutes after a TCC decision—methodological limitations in translation and access to

Taiwan legislation prompted me to use the citation of international law as a more accessible, shorthand gauge for constitutional development. These limitations are discussed in greater depth in the conclusion of this research paper.

In sum, I examine the TCC's response to individual rights claims and separation of powers issues, its willingness to find violations of the constitution, and whether the Court has expanded its case law with international legal frameworks. By coding for these variables across all of the TCC's interpretations throughout the last seventy-odd years since its creation, this paper attempts to shed light on the Court's general activity and its curious trend of caseload.

Findings

Table 1. shows the overall data from this examination of the TCC's interpretations from 1987-2017.

First and foremost, the TCC has sharply increased the number of interpretations addressing individual rights protections. Between the years 1987-1999, just under forty percent of the Court's decisions addressed civil, social, or political rights in the constitution. However, when examining this same variable from 2000-2017, we find that over two-thirds of the Court's caseload have addressed individual rights protections. This finding may suggest a trend towards upholding civil liberties in Taiwan. We also see a corresponding, slight increase in the TCC's willingness to strike down government laws or actions, from around 63% of cases in the late 20th century to just over 66% from 2000-2017. Although the increase in prevalence of striking down law that contravene the constitution is moderate, the findings may similarly

suggest that the Court continues to attempt to uphold individual rights against state action. The TCC also appears to be increasingly proactive in seeking out expansions to its constitutional jurisprudence. In its 20th-century interpretations from 1987-1999, only 3 decisions (~1%) supplemented existing constitutional rights with international laws, treaties, or legal doctrines. However, from 2000 and onwards, 9 interpretations (~3%) so far have cited UN treaties such as the UDHR, CRC, and ICCPR, and some decisions have even included legal standards from high courts of other nations, such as from the United States Supreme Court.

The data therefore suggests that the Court has been activist in the issue area of individual rights, increasing its output of rights protections cases that strike down laws as unconstitutional in the majority of decisions. For example, Interpretation #407 in 1996 struck down legislation that censored publications on the grounds that it violated constitutional freedoms of expression and speech. Interpretations #224, #269, #295, and #445 collectively voided state restrictions on public political activities such as rallies, petitioning, and political speeches (McBeath 2004; Lin et. al. 2018; Constitutional Court, Judicial Yuan, ROC). Interpretation #380 struck down a law which forced university students to take certain government-approved courses that taught nationalist propaganda.²⁰ Most recently in May of 2017, the TCC ruled in favor of individual rights by overturning a statute prohibiting same-sex marriages in Interpretation #748, stating that the ban violated Articles 7 and 22 of the Constitution.²¹ The Court gave authorities two years to amend the necessary civil codes to comply with its decision.

These individual rights interpretations have had political impact to the extent that forced the

Table 1

	1987-1999	2000-2017
Percentage of Rights Interpretations	39.3%	66.7%
Percentage of Rights Interpretations Violation(s) found	63.7%	66.4%
Number of Rights Interpretations Developing w/ International law	3	9
Percentage of Separation Interpretations	22.3%	9.7%
Percentage of Separation Interpretations Violation(s) found	56.4%	73.2%
Number of Separation Interpretations Developing w/ International Law	3	0

government to curtail its infringement on civil and social rights of the people. Because the Court has also increasingly turned to international laws to expand rights within the constitution, these findings also suggest that the TCC has engaged in judicial activism in the issue area of individual rights protections by developing the constitution.

For the issue area of separation of powers, the data is more ambiguous. Compared to the post-regime era of 1987-1999, the Court has delivered very few separation of powers decisions since the year 2000, falling from 22.3% to 9.7%. Firstly, it is possible that the TCC has simply lacked the opportunity to adjudicate over separation of powers cases due to a dearth in petitions involving this issue area. I was not able to control for this factor in this research paper, which is a limitation I discuss in more depth in the conclusion. However, it is also possible that some

significant internal factor within the Court caused the judges to avoid separation of powers questions over the last fifteen years.

For instance, consider the TCC's institutional reforms of 1997. Prior to 1997, the terms of all TCC justices started and ended in synchronized nine-year terms. The incumbent president during the period of reelection would nominate all seventeen justices, and upon confirmation by the Legislative Yuan, could appoint them to the bench.²² The institutional reform in 1997, which was part of a wide-spread series of anti-partisan reforms in the government, staggered the election terms of the Justices so that in any given election term and legislative arrangement, the sitting president would only nominate half of the judges. Combined with a series of early resignations of several judges and the Legislative Yuan's delay of the 2007 nominations, the reforms resulted in a politically

divided Constitutional Court, with a scattered appointment of judges from both the Democratic People's Party and the Kuomintang Party.²³

In the last decade and a half, the TCC has thus grown more divided between KMT and DPP judges, especially when the Court addressed political questions such as the balance of constitutional power between different state branches. Although this paper does not explore the individual ideologies of justices on the bench, it is quite possible that KMT and DPP justices would seek to uphold the interests of their particular political viewpoint, which would almost certainly be aligned with the party that elected them to the bench. The politicized, partisan Court and its internal conflict is reflected in the dissenting rates within the TCC, which skyrocketed from around 20% before the 1997 reforms, to over 70% after the reforms.²⁴

Ironically, although my data suggests that the Court has failed to greatly impact the politics of Taiwan through separation of powers cases, the TCC has become more politicized in the 21st century through the institutional reforms of 1997. It is possible that the Court has therefore decreased its numbers of separation of powers decisions because of internal difficulties in engaging highly political questions.

One final potential explanation for the Court's apparent hesitancy to engage in separation of powers questions is its difficulty enforcing decisions against other, less cooperative branches of government. An examination of the literature suggests that beginning around the year 2000 and onward, the Court began struggling to deliver impactful interpretations for separation of powers questions. Interpretations #585, #601, and #633 (2004-2007) were three joint decisions that addressed the constitutionality of an

extra-parliamentary body created to investigate the 2004 presidential election.²⁵ The investigatory body was challenged on three occasions. Interpretation #585 initially ruled that the body violated the constitution and must be dissolved. In response, the legislature retaliated by cutting off the Court's funding and refusing to shut down the operations of the investigation. While the TCC's funding was restored in a subsequent interpretation in #601, the Court did not fully strike down the legislature's actions in Interpretation #601, nor in a final petition challenging the legislature in Interpretation #633. The Court made partial annulments to the law but permitted the investigative body to remain active in spite of clear constitutional violations.

In Interpretations #627, despite its clear constitutional supremacy, the TCC's decision was blatantly overruled by the Taiwan Supreme Court.²⁶ The original petition involved the right of the incumbent president to withhold documents containing state secrets from the legislature. The Court ruled in favor of the president but also determined that the case should be retried in the Supreme Court. In response, the Supreme Court refused to hold a retrial, overturned the TCC's interpretation, and forced the incumbent president to allow the legislature access to the documents. Despite the TCC's history of consistently overruling the Supreme Court's decisions in Interpretations #256, #297, #338, and #371 (1990-1995), the Court did not challenge the lower court's insubordination here in Interpretation #627 (2007).

In Interpretation #632 (2007), the TCC's decision failed to have an impact yet again. The petition once again involved the Taiwanese legislature, which was controlled by a majority of Kuomintang Party (KMT) members at the time.²⁷ The legislature

had deadlocked the government by refusing to hold a parliamentary vote in determination of the administrative branch's cabinet. Although the Court ruled that the legislature must reconvene and hold the vote according to its constitutional duties in its decision, the legislative majority exceeded the deadline for compliance and refused to vote until the following year. The TCC received no further petition on this issue, and thus was helpless against a thoroughly recalcitrant legislative branch.

In sum, although interpretations #585, #601, #633, #627, and #632 are only a subset of the separation of powers cases that the TCC has addressed in the 21st century, the literary findings suggest that the TCC has been unable to significantly impact politics in the issue area of separation of powers. Faced with uncooperative branches of government, the Court has consistently attempted to uphold the constitution and point out violations but has been ignored and overruled on multiple occasions. Thus, one possible explanation for the TCC's decreased engagement with this issue area is that the Court has failed to find much success with separation of powers decisions and has turned to rights protections instead.

The data suggests that the Court has continued to develop the body of constitutional law through individual rights protections in the 21st century. Maintaining a high rate of finding constitutional violations of around 70%, the TCC has also expanded the definition of certain rights or added new ones entirely by incorporating international laws. The Court appears to have continued its trend of impactful, activist interpretations upholding civil, social, and political rights into the present day, similar to its "hay day" in the post-regime era of 1987-1999.

On the other hand, however, the Court has not been able to meaningfully develop Taiwan's constitution in cases of separation of powers nor impact politics. On paper, the TCC's separation of powers decisions ruled that a state body had overstepped its constitutional powers in nearly 75% of the cases. However, these interpretations did not build a strong body of constitutional law because they were frequently ignored or overruled by other government bodies. Because its interpretations have no great effect, the Court has also struggled to develop the constitution regarding separation of powers. This political irrelevance was further perpetuated by the institutional reforms that occurred to the TCC, which politicized the Court and hampered its ability to efficiently process political questions. Thus, although far from exhaustive, my research suggests that the TCC has not continued its trend of impact and activism in the issue area of separation of powers in the 21st century.

Conclusion

The purpose of this research article was to contribute to the body of scholarship on the Taiwan Constitutional Court and the role of courts in new democracies. I anchored my analysis in existing theory on the role of courts in society as lawmakers equipped to engage with and impact politics. Within this framework, I examined the TCC's role in the 21st century and compared it to the Court's reputation as an activist institution in the decade after the fall of authoritarianism. Although faced with many methodological limitations which I discuss later, these preliminary findings seem to suggest that the TCC has decreased its engagement in highly political, separation of powers cases when confronted with branches of the state that overrule or ignore the Court's decisions. On

the other hand, TCC appears to have greatly increased its engagement with individual rights protections, both in numbers and in practice. Individual rights have been expanded through the citation and incorporation of international laws, suggesting that the Court has been activist in developing the constitution through rights protections.

Implications of Research

My research suggests two main implications for courts in new democracies. Firstly, new constitutional courts may not be isolated and static institutions but instead are embedded within politics. The TCC was heavily impacted by the institutional reforms of 1997, which were part of a larger set of structural changes in Taiwan's government. Combined with intransigent state branches that struggled over the balance of powers and refused to heed the Court's rulings, these reforms politicized the TCC and seemed to have caused it to withdraw from very political questions of separation of powers. The Court has possibly refocused on changing the law through individual rights protections as a result. Although my research is limited to the TCC, these findings seem to suggest that in light of often-tempestuous politics of a new and maturing democracy, constitutional courts might easily be swept up in ongoing changes to government.

Secondly, when placed in dialogue with existing scholarship, these findings suggest that constitutional courts in post-authoritarian democracies may prioritize individual rights protections. One piece of literature examined the constitutional courts in Chile and Spain, both of which had suffered under repressive authoritarian regimes and democratized in the 20th century.²⁸ Since then, Chile and Spain

have empowered their constitutional courts to protect civil, political, and human rights, and these courts have independently expanded judicial review powers and their authority in interpreting governing constitutions. Hilbink argues that shared social and political trauma, such as past authoritarian rule and rights violations, can result in strong constitutions and judiciaries designed to prevent the repeat of history. We see a similar pattern in Taiwan and the TCC. After the fall of martial law, the Taiwan Constitutional Court has actively sought to uphold and expand individual rights, and appears to have been relatively unchallenged in its jurisdiction over rights protections. Although preliminary, my research aligns with existing literature and suggests that courts in post-regime democracies may more aggressively protect individual rights through judicial activism, and in fact may find abundant state and public support when doing so.

Limitations of Research

This research project was limited strongly by a language barrier. The TCC's database in its native language, Mandarin, contained significantly more information than the translated English version. Compared to the original database, the English translations lacked information on the petitioners, amicus briefs, dissenting or concurring opinions, and facts of the case. Relevant laws cited in the TCC's English interpretations were often mistranslated and could not be located in Taiwan's legislative database, making it difficult to determine exactly what laws were struck down and further complicating the task of determining whether Taiwan's constitution had undergone a substantive change in meaning. To compensate for these limitations, I relied heavily on existing literature to provide context and the significance of cases, but only a small subset of

the 548 cases I coded for actually were analyzed at depth by literature. Combined with time restraints on this study, the difficulty in reading and coding information from TCC interpretations resulted in very few variables examined. With no real method of controlling for external factors, such as changes in petition rates, and a limited array of literature to work with, the correlation between the trends of decision-making and the Court's impact and activism is too tenuous to draw any conclusive results. For instance, without having examined the number of petitions to the TCC involving separation of powers questions, it is impossible to definitively show that the Court has decreased its involvement in this issue area. It is possible that instead of shying away from these constitutional questions, the Court has simply lacked the opportunity to adjudicate over cases concerning the balance of government powers. The central findings in this paper are merely preliminary, and a repeat and more exhaustive study must be completed before any results can be truly significant.

Further Avenues of Inquiry

Many avenues for future research remain open. Firstly, I recommend an in-depth analysis of the TCC's case law during the reign of authoritarianism from 1949-1987. The scholarship on Taiwan and the TCC has generally depicted the Court as heavily suppressed and inactive during this time. However, there is existing literature that has examined constitutional courts under authoritarian regimes and has found that courts do find ways to subtly defy state power and protect rights.²⁹ It is possible that the TCC has engaged in subtle activism in its earlier years under authoritarianism. Secondly, I suggest further research into the impact of the Court's interpretations. Have its interpretations caused the state to end rights

violations? Do citizens litigate over newly established rights in courts, and successfully gain compensation? Do lawyers' associations, non-profit groups, or grassroots advocacy movements use the TCC or its decisions as an avenue to pursue further change? While the TCC has upheld and expanded individual rights, it is unclear whether these changes to constitutional law have resulted in meaningful differences in the daily lives of citizens. I recommend an in-depth examination of whether the Court's interpretations have substantively impacted people's rights in Taiwan.

Although many avenues for further research remain unexplored, these preliminary findings that I present in this research article suggests that the TCC has not hesitated to expand the constitution through individual rights protections, a hopeful outlook for the Court's legitimacy and establishment as a strong judicial body. However, whether the TCC can regain its composure in a conflicted political arena and assert the constitutionality of its decisions remains to be seen.

Endnotes

1 Stone Sweet, Alec. "Trustee Courts and the Judicialization of International Regimes: The Politics of Majoritarian Activism in the ECHR, the EU, and the WTO," *Journal of Law and Courts* 1, no. 1 (2013): 61-88

2 Reinhardt, Stephen. "The Supreme Court as a Partially Political Institution," *Harvard Journal of Law & Public Policy* 149 (1994): 149-154

3 Graglia, Lina. "Do Judges Have a Policy-Making Role in the American System of Government?" *Harvard Journal of Law and Public Policy* 17, no. 119 (1994): 119-130; Merrill, Thomas. "A Modest Proposal for a Political Court," *Harvard Journal of Law* 17

(1994): 137-148

4 Galanter, Marc. "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change," *Journal of the Law and Society Association* 9, no. 1 (1974): 95-160; McCann, Michael. "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Society* 2 (2006): 17-38; Reinhardt, Stephen. "The Supreme Court as a Partially Political Institution," *Harvard Journal of Law & Public Policy* 149 (1994): 149-154; Shapiro, Martin. "Judges as Liars," *Harvard Journal of Law and Public Policy* 17 (1994) 155-156

5 Stone Sweet, Alec. "Trustee Courts and the Judicialization of International Regimes"; McCann, Michael. "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Society* 2 (2006): 17-38; Stone Sweet, Alec. "Constitutional Courts and Parliamentary Democracy," *West European Politics* 25, no. 1 (2002): 77-100; Brinks, Daniel; Gauri, Varu. "The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights," *American Political Science Association* 12, no. 2 (2014) 375-393; Zemans, Frances. "Legal Mobilization: The Neglected Role of the Law in the Political System," *The American Political Science Review* 77, no. 3 (1983): 690-703.

6 Chang, Wen-Chen. "The Convergence of Constitutions and International Human Rights: Taiwan and South Korea in Comparison," *North Carolina Journal of International Law and Commercial Regulation* 36, no. 3 (2011): 593-624; Chiu, Hungdah; Fa, Jyh-Pin. "Taiwan's Legal System and Legal Profession," *Occasional Papers/Reprints in Contemporary Asian Studies* 5, no. 124 (1994) 21-37; Chu, Jou-Juo. "Global Constitutionalism and Judicial Activism in Taiwan," *Journal of Contemporary Asia* 38, no. 4 (2008): 515-534; Hwang, Jau-Yuan. "Taiwan's Constitutional Court from 2003 to 2011: New Appoints and Different Performance," *Seoul Law Journal* 53, no. 2 (2012): 41-63; Lin, Tzu-Ti; Kuo, Ming-Sung; Chen, Hui-Wen. "Seventy Years On: The

Taiwan Constitutional Court and Judicial Activism in a Changing Constitutional Landscape," *Hong Kong Law Journal* 48, no. 3 (2018): 995-1028; McBeath, Jerry. "Democratization and Taiwan's Constitutional Court," *American Association for Chinese Studies* 11, no. 1 (2004): 51-71; Su, Yen-tu; Ho, Han-wei; Lin, Chien-chih. "Are Taiwan Constitutional Court Justices Political?" *Comparative Supreme Court Decision Making Workshop* (2018): 1-24

7 Shapiro, Martin. "Courts: A Comparative and Political Analysis," *The University of Chicago Press* (1981): 1-64

8 Stone Sweet, Alec. "Trustee Courts and the Judicialization of International Regimes"; McCann, Michael. "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Society* 2 (2006): 17-38; Brinks, Daniel; Gauri, Varu. "The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights," *American Political Science Association* 12, no. 2 (2014) 375-393; Zemans, Frances. "Legal Mobilization: The Neglected Role of the Law in the Political System," *The American Political Science Review* 77, no. 3 (1983): 690-703

9 Shapiro, Martin. "Judges as Liars," *Harvard Journal of Law and Public Policy* 17 (1994) 155-156

10 McCann, Michael. "Law and Social Movements: Contemporary Perspectives"

11 Arrington, Celeste. "The Mechanisms behind Litigation's "Radiating Effects": Historical Grievances against Japan," *Law & Society Review* 53 no. 1 (2019): 6-40

12 Brinks, Daniel; Gauri, Varu. "The Law's Majestic Equality?"

13 Stone Sweet, Alec. "Trustee Courts and the Judicialization of International Regimes"; McCann, Michael. "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Society* 2 (2006): 17-38; Stone Sweet, Alec. "Constitutional Courts and

Parliamentary Democracy," *West European Politics* 25, no. 1 (2002): 77-100; Brinks, Daniel; Gauri, Varu. "The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights," *American Political Science Association* 12, no. 2 (2014) 375-393; Zemans, Frances. "Legal Mobilization: The Neglected Role of the Law in the Political System," *The American Political Science Review* 77, no. 3 (1983): 690-703.

14 Stone Sweet, Alec. "Constitutional Courts and Parliamentary Democracy," *West European Politics* 25, no. 1 (2002): 77-100

15 Epstein, Lee; Knight, Jack; Shvetsova, Olga. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Journal of the Law and Society Association* 35, no. 1 (2001): 117-164

16 Chang, Wen-Chen. "The Convergence of Constitutions and International Human Rights: Taiwan and South Korea in Comparison"; Chiu, Hungdah; Fa, Jyh-Pin. "Taiwan's Legal System and Legal Profession"; Chu, Jou-Juo. "Global Constitutionalism and Judicial Activism in Taiwan"; Hwang, Jau-Yuan. "Taiwan's Constitutional Court from 2003 to 2011: New Appointments and Different Performance"; Lin, Tzu-Ti; Kuo, Ming-Sung; Chen, Hui-Wen. "Seventy Years On: The Taiwan Constitutional Court and Judicial Activism in a Changing Constitutional Landscape"; McBeath, Jerry. "Democratization and Taiwan's Constitutional Court"; Su, Yen-tu; Ho, Han-wei; Lin, Chien-chih. "Are Taiwan Constitutional Court Justices Political?"

17 Huang, Thomas. "Judicial Activism in the Transitional Polity: The Council of Grand Justices in Taiwan," *Temple International & Comparative Law Journal* 19, no. 1 (Spring 2005): 1-62

18 McBeath, Jerry. "Democratization and Taiwan's Constitutional Court," *American Association for Chinese Studies* 11, no. 1 (2004): 51-71; Liu, Shao-Liang. "Judicial Review and Emerging Constitutionalism: The

Uneasy Case for the Republic of China on Taiwan," *The American Journal of Comparative Law* 39, no. 3 (1991): 509-558

19 Su, Yen-tu; Ho, Han-wei; Lin, Chien-chih. "Are Taiwan Constitutional Court Justices Political?" *Comparative Supreme Court Decision Making Workshop* (2018): 1-24; Wu, Chung-Li. "Partisan Divergence and Public Support for the Courts of Taiwan," *Japanese Journal of Political Science* 18, no. 1 (2017): 139-154

20 McBeath, Jerry. "Democratization and Taiwan's Constitutional Court," *American Association for Chinese Studies* 11, no. 1 (2004): 51-71; Chu, Jou-Juo. "Global Constitutionalism and Judicial Activism in Taiwan," *Journal of Contemporary Asia* 38, no. 4 (2008): 515-534; Huang, Kuo-Chang. "How Legal Representation Affects Case Outcomes: An Empirical Perspective from Taiwan," *Journal of Empirical Legal Studies* 5, no. 2 (2008): 197-238

21 Zheng, Junteng. "Same-Sex Marriage Development in Taiwan: Constitutional Ruling or Putting Equality to A Vote?" *Georgetown Journal of International Affairs*. Georgetown University, April 29, 2020. <https://gjia.georgetown.edu/2020/04/29/same-sex-marriage-development-in-taiwan/>

22 Chang, Wen-Chen. "The Convergence of Constitutions and International Human Rights: Taiwan and South Korea in Comparison," *North Carolina Journal of International Law and Commercial Regulation* 36, no. 3 (2011): 593-624; Hwang, Jau-Yuan. "Taiwan's Constitutional Court from 2003 to 2011: New Appointments and Different Performance," *Seoul Law Journal* 53, no. 2 (2012): 41-63

23 Hwang, Jau-Yuan. "Taiwan's Constitutional Court from 2003 to 2011: New Appointments and Different Performance," *Seoul Law Journal* 53, no. 2 (2012): 41-63

24 "Constitutional Court, Judicial Yuan, R.O.C.," *Judicial Yuan*. <http://cons.judicial.gov.tw/jcc/en-us> (March 8, 2020)

25 Kuo, Ming-Sung. "Moving towards a Nominal Constitutional Court: Critical Reflections on the Shift from Judicial Activism to Constitutional Irrelevance in Taiwan's Constitutional Politics," *Washington International Law Journal* 25, no. 3 (June 2016): 597-642

26 Kuo, King-Sung. "Moving towards a Nominal Constitutional Court."

27 Lin, Tzu-Ti; Kuo, Ming-Sung; Chen, Hui-Wen. "Seventy Years On: The Taiwan Constitutional Court and Judicial Activism in a Changing Constitutional Landscape," *Hong Kong Law Journal* 48, no. 3 (2018): 995-1028

28 Hilbink, Lisa. "The Constituted Nature of Constituents' Interests: Historical and Ideational Factors in Judicial Empowerment," *Political Research Quarterly* 62, no. 4 (2009): 781-797

29 Epstein, Lee; Knight, Jack; Shvetsova, Olga. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Journal of the Law and Society Association* 35, no. 1 (2001): 117-164; Moustafa, Tamir. "Law and Courts in Authoritarian Regimes," *Annual Review of Law and Social Science* 10 (2014): 281-299; Stern, Rachel. "On the Frontlines: Making Decisions in Chinese Civil Environmental Lawsuits," *Law & Policy* 32, no. 1 (2010): 79-103

References

Arrington, Celeste. "The Mechanisms behind Litigation's "Radiating Effects": Historical Grievances against Japan," *Law & Society Review* 53 no. 1 (2019): 6-40

Brinks, Daniel; Gauri, Varu. "The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights," *American Political Science Association* 12, no. 2 (2014) 375-393

Canon, Bradley. "Defining the Dimensions of Judicial

Activism," *Judicature* 66 no. 6 (1983)

Chang, Wen-Chen. "The Convergence of Constitutions and International Human Rights: Taiwan and South Korea in Comparison," *North Carolina Journal of International Law and Commercial Regulation* 36, no. 3 (2011): 593-624

Chiu, Hungdah; Fa, Jyh-Pin. "Taiwan's Legal System and Legal Profession," *Occasional Papers/Reprints in Contemporary Asian Studies* 5, no. 124 (1994) 21-37

Chu, Jou-Juo. "Global Constitutionalism and Judicial Activism in Taiwan," *Journal of Contemporary Asia* 38, no. 4 (2008): 515-534

Chu, Yun-han. 1998. "Taiwan's Unique Challenges." In Larry Diamond and Marc F. Plattner, eds. *Democracy in East Asia*. Baltimore, MD: The John Hopkins University Press.

Cichowski, Rachel. "The European Court of Human Rights, Amicus Curiae, and Violence against Women," *Law and Society Review* 50, no. 4 (2016) 890-919

Collier, Jane. "Law and Social Change in Zinacatan," *Standard: Stanford UP*, 1973. pp. 13-48.

"Constitutional Court, Judicial Yuan, R.O.C.," *Judicial Yuan*. <http://cons.judicial.gov.tw/jcc/en-us> (March 8, 2020).

"Corruption Perceptions Index," *Transparency International*. <https://www.transparency.org> (March 8, 2020).

Epstein, Lee; Knight, Jack; Shvetsova, Olga. "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Journal of the Law and Society Association* 35, no. 1 (2001): 117-164

Galanter, Marc. "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change," *Journal of the Law and Society Association* 9, no. 1 (1974): 95-160

Garoupa, Nuno; Grembi, Veronica; Ching-Ping, Shirley. "Explaining Constitutional Review in New Democracies: The Case of Taiwan," *Pacific Rim Law & Policy Journal* 20, no. 1 (January 2011): 1-40

Graglia, Lina. "Do Judges Have a Policy-Making Role in the American System of Government?" *Harvard Journal of Law and Public Policy* 17, no. 119 (1994): 119-130

Hilbink, Lisa. "The Constituted Nature of Constituents' Interests: Historical and Ideational Factors in Judicial Empowerment," *Political Research Quarterly* 62, no. 4 (2009): 781-797

Hirschl, Ran. "The Judicialization of Mega-Politics and the Rise of Political Courts," *Annual Review of Political Science* 11 (2008): 93-118

Huang, Kuo-Chang. "How Legal Representation Affects Case Outcomes: An Empirical Perspective from Taiwan," *Journal of Empirical Legal Studies* 5, no. 2 (2008): 197-238

Huang, Thomas. "Judicial Activism in the Transitional Polity: The Council of Grand Justices in Taiwan," *Temple International & Comparative Law Journal* 19, no. 1 (Spring 2005): 1-62

Hwang, Jau-Yuan. "Taiwan's Constitutional Court from 2003 to 2011: New Appointments and Different Performance," *Seoul Law Journal* 53, no. 2 (2012): 41-63

Kuo, Ming-Sung. "Moving towards a Nominal Constitutional Court: Critical Reflections on the Shift from Judicial Activism to Constitutional Irrelevance in Taiwan's Constitutional Politics," *Washington International Law Journal* 25, no. 3 (June 2016): 597-642

Lake, Milli. "Organizing Hypocrisy: Providing Legal Accountability for Human Rights Violations in Areas of Limited Statehood," *International Studies Quarterly* 58 (2014): 515-526

"Laws & Regulations Database of the Republic of

China," Legislative Yuan. <https://law.moj.gov.tw/ENG/Index.aspx> (March 8, 2020).

Lin, Tzu-Ti; Kuo, Ming-Sung; Chen, Hui-Wen. "Seventy Years On: The Taiwan Constitutional Court and Judicial Activism in a Changing Constitutional Landscape," *Hong Kong Law Journal* 48, no. 3 (2018): 995-1028

Liu, Shao-Liang. "Judicial Review and Emerging Constitutionalism: The Uneasy Case for the Republic of China on Taiwan," *The American Journal of Comparative Law* 39, no. 3 (1991): 509-558

McBeath, Jerry. "Democratization and Taiwan's Constitutional Court," *American Association for Chinese Studies* 11, no. 1 (2004): 51-71

McCann, Michael. "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Society* 2 (2006): 17-38

Merrill, Thomas. "A Modest Proposal for a Political Court," *Harvard Journal of Law* 17 (1994): 137-148

Moustafa, Tamir. "Law and Courts in Authoritarian Regimes," *Annual Review of Law and Social Science* 10 (2014): 281-299

Reinhardt, Stephen. "The Supreme Court as a Partially Political Institution," *Harvard Journal of Law & Public Policy* 149 (1994): 149-154

Rosenberg, Gerald. "Courting Disaster: Looking for Change in All the Wrong Places," *Drake Law Review* 54, no. 4 (2006): 795-830

Rotoroski, Artour. "Book Review — David A. Strauss' *The Living Constitution*," *German Law Journal* 12, no. 7 (July 1, 2011): 1545-1552

Shapiro, Martin. "Courts: A Comparative and Political Analysis," *The University of Chicago Press* (1981): 1-64

Shapiro, Martin. "Judges as Liars," *Harvard Journal of*

Law and Public Policy 17 (1994) 155-156

Stern, Rachel. "On the Frontlines: Making Decisions in Chinese Civil Environmental Lawsuits," *Law & Policy* 32, no. 1 (2010): 79-103

Stone Sweet, Alec. "Constitutional Courts and Parliamentary Democracy," *West European Politics* 25, no. 1 (2002): 77-100

Stone Sweet, Alec. "Trustee Courts and the Judicialization of International Regimes: The Politics of Majoritarian Activism in the ECHR, the EU, and the WTO," *Journal of Law and Courts* 1, no. 1 (2013): 61-88
Su, Yen-tu; Ho, Han-wei; Lin, Chien-chih. "Are Taiwan Constitutional Court Justices Political?" *Comparative Supreme Court Decision Making Workshop* (2018): 1-24

Su, Yen-Tu; Ho, Hang-wei. "A Study of Decision Timing in Taiwan's Constitutional Court," *Center for Empirical Legal Studies* (July 2014): 1-26

"Taiwan (Republic of China) 1957 (rev. 2005)," *Constitute*. https://www.constituteproject.org/constitution/Taiwan_2005?lang=en (March 8, 2020).

Voeten, Erik. "The Impartiality of International Judges: Evidence from the European Court of Human Rights," *American Political Science Review* 102, no. 4 (2008): 417-433

Wu, Chung-Li. "Partisan Divergence and Public Support for the Courts of Taiwan," *Japanese Journal of Political Science* 18, no. 1 (2017): 139-154

Zemans, Frances. "Legal Mobilization: The Neglected Role of the Law in the Political System," *The American Political Science Review* 77, no. 3 (1983): 690-703
Zheng, Junteng. "Same-Sex Marriage Development in Taiwan: Constitutional Ruling or Putting Equality to A Vote?" *Georgetown Journal of International Affairs*. Georgetown University, April 29, 2020. <https://gjia.georgetown.edu/2020/04/29/same-sex-marriage-development-in-taiwan/>

Matt Chang graduated from the University of Washington in 2021 with a major in Law, Societies, and Justice and a minor in Political Science. He originally wrote this paper for the seminar POL S 447 and presented the findings at the Undergraduate Research Symposium in May 2021. Matt's keen interest in law and international courts and his family's roots in Taiwan prompted him to explore the rich history of Taiwan's democratization and the growth of the nation's Constitutional Court. Matt will be beginning law school at the University of Michigan in August, after which he hopes to pursue a career in administrative or appellate law.

Wendi Zhou

Interview with Karen Bernedo Morales, Jorge Miyagui, and Mauricio Delgado: Art & Activism in Peru

On May 18th, the UW Simpson Center for the Humanities hosted a conversation about art and political activism in Peru with visual artists Jorge Miyagui and Mauricio Delgado, and visual anthropologist Karen Bernedo Morales. JSJ Editor Wendi Zhou had the opportunity to interview Bernedo, Delgado, and Miyagui afterward about the 2021 Peru general election, the relationship between art and activism, and the politics of memory in this country.

Jackson School Journal: Hello, everyone. Thank you all for making the time for this interview. The first question is perhaps a general one: For readers not familiar with Peru, can you each describe what the recent election between Keiko Fujimori and Pedro Castillo has meant for the country?

Jorge Miyagui: In my opinion, this election is very special. The corporations have invested millions of dollars in the campaign against Castillo and they have lost. They have the media on their side and pay a lot for advertising against the so-called "communists" and "terrorists," and they lost. In my opinion, this indicates that many Peruvians think that the neoliberal economic model is not possible to continue. This is because of the inequality between the elite--who have money and power--and most Peruvians. That is the most important idea in the context of the election.

Mauricio Delgado: I agree with Jorge. It's a political crisis after coronavirus and thirty years of neoliberalism. Here we have two candidates--one who brings the possibility of change and the other who sticks to the status quo. For me, it is literally future vs. past, but the election has also been an opportunity to

confirm how conservative, racist, and violent some Peruvians are, specifically the Peruvian economic elites. There have been racist organized groups, demonstrations, pro-military putsches, etc. This is one of the most violent elections that I have ever seen. A conservative group, for example, says they are against communism, or in favor of democracy. But the real reason for the group's hate is the fear about an Indigenous Peruvian getting the presidency, the fear about an Indigenous person getting power. Because hidden under the mask of democracy, lies our violent colonial face as a society.

Karen Bernedo Morales: I agree with both colleagues. And I think that the election is a special one in the context of commemorating 200 years of independence in Peru. It's a very special moment. And Pedro Castillo would be the first Indigenous president and the first president who is a teacher--not a man that came from the elite. So, I think that is very important. If you see the graph of the people who voted for Castillo, you're going to see that it was the whole of Peru, and the people who voted for Fujimori were mainly based around Lima. Castillo's victory is a sign that the privilege and centrality of Lima is going to change.

Jackson School Journal: Hello, everyone. Thank you all for making the time for this interview. The first question is perhaps a general one: For readers not familiar with Peru, can you each describe what the recent election between Keiko Fujimori and Pedro Castillo has meant for the country?

Jorge Miyagui: In my opinion, this election is very special. The corporations have invested millions of dollars in the campaign against Castillo and they have lost. They have the media on their side and pay a lot for advertising against the so-called "communists" and "terrorists," and they lost. In my opinion, this indicates that many Peruvians think that the neoliberal economic model is not possible to continue. This is because of the inequality between the elite--who have money and power--and most Peruvians. That is the most important idea in the context of the election.

Mauricio Delgado: I agree with Jorge. It's a political crisis after coronavirus and thirty years of neoliberalism. Here we have two candidates--one who brings the possibility of change and the other who sticks to the status quo. For me, it is literally future vs. past, but the election has also been an opportunity to confirm how conservative, racist, and violent some Peruvians are, specifically the Peruvian economic elites. There have been racist organized groups, demonstrations, pro-military putsches, etc. This is one of the most violent elections that I have ever seen. A conservative group, for example, says they are against communism, or in favor of democracy. But the real reason for the group's hate is the fear about an Indigenous Peruvian getting the presidency, the fear about an Indigenous person getting power. Because hidden under the mask of democracy, lies our violent colonial face as a society.

Karen Bernedo Morales: I agree with both colleagues.

And I think that the election is a special one in the context of commemorating 200 years of independence in Peru. It's a very special moment. And Pedro Castillo would be the first Indigenous president and the first president who is a teacher--not a man that came from the elite. So I think that is very important. If you see the graph of the people who voted for Castillo, you're going to see that it was the whole of Peru, and the people who voted for Fujimori were mainly based around Lima. Castillo's victory is a sign that the privilege and centrality of Lima is going to change. Power in Lima is political power, but I think that the election represents a shift in symbolic power as well.

Jackson School Journal: As you know, there is currently a lot of contention and worry over Peru's election in general, and especially since Keiko Fujimori has attempted to challenge the election results recently. So could you tell me about current artistic initiatives you are working on to address the memory issues that are brought up due to this election?

Bernedo: There has been a lot of symbolic production. In a political situation, there are a lot of graphic designs and a lot of street art. You can see that in demonstrations, in mobilizations--there's an immediate response and an immediate answer. But I think that we, as artists, are probably going to reflect deeply over this period--a month, two months, a year. I think that the pandemic, the centenary of our independence, and the election with Fujimori and Castillo are going to be themes that the artists are going to put in dialogue with each other. Currently, we are still in the situation and are still dealing with how to engage in this reflection. And for the other side, I can see a lot of groups that are exploring themes of colonialism in one way or another, and that I think is very linked to the current moment. We are talking about neoliberalism and the continuation of the

privilege of a very small group of Peruvians. I think that those kinds of questions, that kind of art that is examining colonialism, are also linked to the things that are happening now.

Delgado: Well, it has been a very busy year for me. I have been working a lot since the second round of elections started, especially against the Keiko Fujimori campaign. And because of this, I collaborated with other artists and friends to form an artist and activist group. We are a group of around eighty people. We don't have an official name, but people just call it Bloque de Arte Cultura. It's a very young group. We have participated in demonstrations and also made weekly lectures about memory and art. We have made videos, posters, stickers, etc. against Fujimori's campaign. It's an art collective and it's easy to take action because we are a lot of people. At the same time, three colleagues and I have posted a photo album about Alberto Fujimori's crimes via social media. It was an intervention album—the history is that Fujimori's followers published a Fujimori version album with a lot of lies, and my friends and I posted a corrected album through collage, scrawls, stickers, etc. like a punk style. We post two pages per week on Instagram and Facebook.

Jackson School Journal: I'm very curious about your work in art collectives. Would you mind telling me a bit about the importance of collaborative art, community work, or how you perceive your role in art and activism?

Delgado: First of all, as a citizen and as a Peruvian, I think we have to be organized. We are in the middle of a systemic crisis, where Castillo's election is not the final crisis—it's just another chapter. This is a time to change. America is changing and I think Peru has to change too. As artists, we have the possibility to work

through emotions and feelings. And I think emotions and feelings are the key to change the world or keep going. And this is an emotional tax. It's not only an ideological or rational issue. Art collectives and organized artists have the potential to organize rage and strengthen solidarity. Inside the bigger process of social organization we have the skills to organize the imagination. Accordingly, I think my role these days is to organize and make art to get an emancipatory imagination to the people.

Miyagui: In the same way, I have participated in many activist and community art spaces in the previous years. But, I want to point out that activists and art in the streets are not enough to change the power hierarchy—a bigger articulation is necessary. That is why I think it's very important to be part of political organizations, too. I guess Karen and Mauricio think the same way, that art is necessary. But you have to also be part of a political organization if you want to change the world, if you want to make the world a little more beautiful. The cultural dimension, too, is a space where the people decide about the collective.

Bernedo: I think that there are several ways of being organized, and I think we can see that today. Organization is an immediate response to a political crisis. When these kinds of things happen, you can see historians against Fujimori, architects against Fujimori, and artists against Fujimori—there are people organizing. I think that also happens with artists, and not just during these political crises. I'm part of Museo Itinerante Arte por la Memoria, and have also been part of cultural spaces in leftist parties. But, I can see now that there are a lot of ways of being organized. I'm part of a group of feminist social media communicators and feminist journalists. And, it was a very big learning experience for me in terms of how we read the news but, also how we can create resistance

or other ways of making the news. So I can see a lot of spaces that are organizing now.

Jackson School Journal: Your answer leads into my next question, which is a question for Karen Bernedo regarding something she said in her presentation at the University of Washington on the artistic project "Resistencia Visual [Visual Resistance]," but if others have thoughts on this, I would love to hear more. Karen, you say that memory art in Peru has been slower to develop connections with capitalism, feminism, and related movements done in other countries such as Chile. Why do you think that is?

Bernedo: I took Chile as an example because I was inspired by a project from Chile to do visual resistance in Peru. I think that is because we have the history of Shining Path in Peru. [Throughout this election], the leftist political organizations have been completely criminalized. The parties have been blamed along the lines of "If you are a leftist, you are a terrorist." The opposing parties likened leftism and terrorism during the ten years of Fujimori's dictatorship. That's why, if you ask for a new constitution or assembly, you are called a communist—leftist proposals have been criminalized along with leftist organizations. If you talk about the fair distribution of resources, then you are called a communist, you are called a terrorist, and you are said to be in favor of Shining Path. So that's why I think it was really difficult to link the memory of the internal armed conflict to the neoliberal system. In fact, when we made "Visual Resistance," one of the big questions was why there was a poster about privatization in a memory exhibition. But now I think that is changing. A few years ago, you could not see a lot of people talking about the Constitution. It was seen as the agenda of the red, the agenda of the communists. Now, there are a lot of Peruvians asking for a new constitution. I think that again, Chile is an example. In

the case of Chile, the leftist parties have seen a lot of power. They have another political culture, and they have a woman leader in regionals. So I think that we are going to get there someday.

Jackson School Journal: Thank you for your answer. The next question is for Jorge Miyagui, but if others have thoughts on this, I would love to hear more. I'm curious about the place of Japanese Peruvians in Peru. Since your kimono exhibition that protested the Fujimori dictatorship, have you noticed any changes in the political views of this community? How has art been important for the Nikkei community in Peru to express itself politically?

Miyagui: It's a difficult question because Nikkei, or the Japanese Peruvian community, is very diverse. There are Nikkei people who vote for the right, a few Nikkei people who vote for the left, and a lot of people who are not interested in politics. And the problem, in my opinion, is not the Nikkei people. The problem is the management of the institutions such as the Japanese Peruvian Association, the Japanese Peruvian cultural centers, etc, and the kind of culture politics an institution implements. I guess there is a tendency among some of these institutions to present themselves as neutral when, in my opinion, neutrality doesn't exist.

Jackson School Journal: Thank you. The last individual question is for Mauricio Delgado. In your presentation for the University of Washington, you said that "memory is an action that must be done permanently to be such." Could you say more about that and perhaps how your work on anti-memorials might fit in here?

Delgado: I think the worst for memory is to make a monument. It's like we feel the homework is done, and

we forget it. Counter-monuments or anti-memorials set out the responsibility for memory in people, not in stone. The art of memory is just us, an action—the continuous transmission of information depends on us. Our memorials and monuments are not memory. But we have to talk for it to become memory. People say, "An image is worth a thousand words." I agree, it's true. But a thousand words—we have to say it. Memory is like plowing on water. If you're still plowing you can see the results. A society with memory isn't a society that builds monuments. It's a society that is checking the past constantly to understand its present and to imagine and build a better future.

Karen Bernedo Morales is an award-winning curator, documentary filmmaker and visual anthropologist trained at the Pontificia Universidad Católica del Perú. She teaches visual arts at la Universidad Científica del Sur. She is also the curator of various projects including the "Museo Virtual de Arte y Violencia Política," the video project "Poéticas Visuales de la Resistencia," the exhibit "#EmancipadasyEmancipadoras," and the public art workshops "Jornadas de Arte." With Miyagui and Delgado, she formed part of the collective art project that received the National Human Rights Award in 2012 and the Prince Claus Award in 2014.

Mauricio Delgado is an award-winning visual and performance artist, trained at the Institute of Visual Arts Edith Sachs. His work has been showcased internationally in Cuba, El Salvador, the United States and throughout Peru. He is active in public, collaborative and multi-media artistic production. He has seven solo exhibitions. The most recent solo exhibiti3n was El damero de Pizarro-Antimemorial on Museo de arte de san marcos. Like much of his work, this engages themes of memory, rights, and violence.

He is a member of Más Cultura Más Perú Collective. Currently he works as a museographer at Casa de la Literatura Peruana.

Jorge Miyagui is a celebrated visual artist, trained at the Pontificia Universidad Católica del Perú. His work has been the subject of solo exhibitions in Helsinki, Finland and various cities in Peru, and has been included in various collective exhibitions in Argentina, Chile, Venezuela, Germany, Spain, the United States. His work in countercultural projects, alternative cultural organizations, and public artistic interventions has been featured in various publications in Perú, Argentina, Holland, and Finland. He has also been a featured speaker at many academic conferences and events in Peru and internationally. He has been a member of the Aguaitones Collective (1998-2001) and the Forum for Cultural Solidarity (2004-2009). Currently he is involved in the following collective projects: the Muralist Brigade, the Averno, and the Traveling Museum: Art for Memory (Museo Itinerante Arte por la Memoria).

The artists are co-founders of the collective art project Museo Itinerante Arte por la Memoria, which received the National Human Rights Award in 2012 and the Prince Claus Award in 2014.

JS
J.