

The Use of Foreign Law by the Constitutional Court of Taiwan: A Case-By-Case Analysis from 1990 to 2017

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Abstract : The increasing transactions among countries worldwide have brought about a trend of comparative law research in the legal community. An important branch of legal research, i.e., constitutional law, is no exception to the trend. The comparative study of constitutional law takes various forms, and one of these is to study the use of foreign law by constitutional courts. There are, in essence, three sources of foreign law usually used by constitutional courts: foreign constitutions, decisions by foreign constitutional courts, and legal theories developed by foreign scholars. There are two types of using foreign law by constitutional courts: citing any of the forenamed sources for reference purpose, ruling based on the contents or logic of any of the forenamed sources. This paper examines all the decisions handed down by the Constitutional Court of Taiwan from 1990 to 2017. Its purpose is to seek out the occasions, the extent, the significance, and the approach of such usage.

Keywords : comparative constitutional law, constitutional court, judicial review, Taiwan judiciary

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