

摘 要

依憲法第 78 條以及第 79 條規定，我國司法院大法官職司憲法之解釋，惟其具體運作方式，憲法並未明文；現行係依「司法院大法官審理案件法」及其施行細則等規定，作為大法官解釋憲法實務運作之規範。值得注意的是，大法官本身的實務運作結果又與前述規範並未一致，其中尤以大法官們對於是否擴大受理人民聲請憲法解釋標的之認定，最受爭議。當然多數的大法官認為應擴大受理解釋標的「法律或命令」可及於「判例、決議」，並據以受理審查及作出解釋。惟這些解釋是否是一個有充分理由的裁判（解釋），能否為其見解辯護，則是值得深入探究之議題，也是法律人論證志業的一大挑戰。

本文首先討論大法官內部對將判例、決議作為人民聲請憲法解釋標的之不同意見以及衍生的爭議。

其次，分析整理德沃金法理學的發展，從其理論發展之背景談起，將其理論主要區分為 1970 年代之權利論以及 1980 年代以詮釋理論再建構的兩個時期，權利論時期的原則論證，重點在說明分析其權利、詮釋、融貫、整全性等概念。

再以德沃金創立的哲學家法官海克力士在「精神損害賠償問題案」與「布朗控告托皮卡教育局案」，實踐整全法之裁判，建構發展出我國的海克力士大法官在解釋憲法的論證方法。

最後，以前述論述方法建構大法官將判例作為人民聲請憲法解釋標的之詮釋，並透過憲法解釋之制度、依法裁判、基本權保護等價值權衡，證立最符合融貫一致性的整全法理念之最佳詮釋。

ABSTRACT

A Critical Analysis of the Reviewability of Precedent in Grand Justice Conference of R.O.C. Based on Dworkin's Theory of Adjudication

In Accordance with Article 78 of the constitution of the R.O.C., The Judicial Yuan shall interpret the Constitution and shall have the power to unify the interpretation of laws and orders. The Constitution Interpretation Procedure Act is hereby enacted. The grounds on which the petitions for interpretation of the Constitution may be made as follow : promulgated by when an individual, a legal entity, or a political party, whose constitutional right was infringed upon and remedies provided by law for such infringement had been exhausted, has questions on the constitutionality of the statute or regulation relied thereupon by the court of last resort in its final judgment.

The thesis aims to examine the Reviewability of Precedent in Grand Justice Conference of R.O.C. in light of Dworkin's Theory of Adjudication. This thesis first describes the facts, issues and options of Precedent in Grand Justice Conference of R.O.C., and after introducing a series of debates on Dworkin's Theory of Adjudication.

In *Taking Rights Seriously*, Dworkin found a basis for judges through asserting that there exists principle. When a hard case occurs, there is no definite way of determining pre-existing law and this is when judges engage in law interpretation and the argument of principle.

A more complete and detailed explanation in *Law's Empire*. Dworkin developed a distinctive legal theory based on the core idea of integrity. The idea that we must treat like cases alike. Law as integrity assumes, that Judges must make their decisions on grounds of principle, not policy. They must deploy arguments why the parties actually had the legal rights and duties they enforce at the time the parties acted or at some other pertinent time in the past.

Dworkin separates judicial decision making into two stages: fit and justification. During the fit stage, all prior judicial precedent chains that are above a specific threshold are identified. In the justification stage, the moral conception which best coheres with "the community's moral traditions" is selected as the basis for a decision. To resolve conflicts over competing conceptions of morality, Dworkin believes judges adopt arguments of principle that weigh the value of each competing conception before making their final reasoned decision.

The finally, applying Dworkin's judicial decision making stages (fit and justification) to argue the Precedent in Grand Justice Conference of R.O.C.