The judicial politics of enmity: a case study of the Constitutional Court of Korea’s jurisprudence since 1988

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Among the countries which have experienced a political transition away from authoritarianism in the 1980s, South Korea is usually considered as a model of both democracy and judicial review. Relying on an interpretive reading of jurisprudence, the present research however uncovers the double-edged way in which the Constitutional Court of Korea has discharged its role as guardian of the constitution. A critical analysis of constitutional jurisprudence indeed reveals how the court’s commitment to define and defend the post-transition constitutional order has translated into both liberal and illiberal outcomes. This ambivalent dimension of the court’s role has unfolded as the institution came to intervene in the major dispute opposing the state and parts of civil society after the 1987 change of regime: reshaping the contours of enmity in the post-transitional period. Through the contentious issue of enmity, what has been put at stake in the constitutional arena is the very challenge of delineating the boundaries of inclusion and exclusion in South Korean democracy. In light of this task, constitutional justice has imposed itself as a paradoxical site, where the post-transitional disagreement about what counts as “national” and “anti-national” has been both staged and interrupted.

Parmi les sociétés ayant fait l’expérience d’une transition politique au cours des années 1980, la Corée du Sud est d’ordinaire tenue pour un modèle de “réussite” démocratique et constitutionnelle. L’analyse interprétative du corpus jurisprudentiel sur laquelle le présent travail de recherche repose révèle l’ambivalence qui a caractérisé la manière dont la cour a endossé son rôle de défenseur de l’ordre constitutionnel dans la période post-transitionnelle. Cette ambivalence se traduit par la dualité d’effets, libéraux et illibéraux, produits par les décisions de la cour à mesure qu’elle est intervenue dans le conflit majeur ayant opposé l’État sud-coréen et une partie de la société civile depuis le changement de régime : redéfinir les contours de qui, et ce qui, constitue l’ennemi après la transition. A travers la question polémique de l’ennemi, ce sont les dynamiques d’inclusion et d’exclusion au sein de la démocratie sud-coréenne qui ont été mises en jeu sur la scène constitutionnelle. La Cour constitutionnelle de Corée a joué un rôle paradoxal au regard de cette dispute, ou “mésentente”, que son intervention a contribué à mettre à la fois en scène et en sommeil.

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Regime transition and the judicial politics of enmity: democratic inclusion and exclusion in South Korean constitutional justice / Justine Guichard.

From a domestic viewpoint, the court's jurisprudence is largely celebrated for having fulfilled both purposes, thereby importantly contributing to the process of establishing the rule of law after the change of regime. In a comparative perspective, the South Korean constitutional adjudicator is today identified as "the most important and influential" institution of its kind amid its counterparts in the...