

我國憲法第一次增修要點評述 ——對執政黨所提修憲案平議

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Comments on the Key Points
of the ROC Constitution's First Amendment

by

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摘 要

民國八十年四月國民大會臨時會進行所謂第一階段修憲，為行憲後正式的第一次修憲。過去的動員戡亂臨時條款在修憲條文通過後，旋亦經國民大會議決廢止。我國憲法於此過程中變遷成長，而我國社會、政治環境實深刻影響憲法之運作。

雖然第一階段修憲尚因有資深代表（第一屆未曾改選之代表）參與，而所謂程序修憲與實質修憲本難於區隔釐清，致這次修憲容或有可議之處，唯藉修憲使憲法變遷成長，誠為國人所樂見。例如以政黨比例制選出全國不分區代表，即具憲政新義，而極待考驗。

本文記述於國民大會臨時會開會前，就執政黨所提憲法增修要點加以評述。一則針對若干歷史性課題（如增額代表如何定位、監委應否設置全國不分區代表，採行政黨比例制的憲政意義等）試申己見，一則以記中國憲政史上第一次修憲並供參考。

關鍵詞：修憲，國民大會，全國不分區名額，職婦代表，華僑代表。

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ABSTRACT

"Constitutions are the product of the times, it is also true that times change." Though this is almost a platitude, constitutions should and must change with times. K.C. Wheare argued that forces which cause constitution to be changed may operate in one of two ways. First of all, they may bring about a change in circumstances which, of themselves, do not lead to any actual change in the wording of the constitution to mean something different from what it used to mean or which disturb its balance. The second and obvious way in which such forces operate is that they produce circumstances which lead to a change in a constitution either by the process of formal amendment or through judicial decision or by the growth and establishment of some customs or conventions of the constitution.

In April 1991, the ruling KMT raised a nine-points framework for constitution reform. For the KMT, this will be the "first stage" reform. In this stage, the National Assembly is asked to abolish the temporary provisions to the Constitution and establish a legal basis for electing the second National Assembly by the end of this year. In addition, this stage's reform continuing the president's emergency-powers and maintaining some necessary national organizations and laws in limited time (with sun-set clause). By this way, the Constitution may change and grow successfully.

Key words: constitutional amendment, the first-stage reform, the second assembly members, constitutional change, proportional representation.