In recent decades, new democracies around the world have adopted constitutional courts to oversee the operation of democratic politics. Where does judicial power come from, how does it develop in the early stages of democratic liberalization, and what political conditions support its expansion? This book answers these questions through an examination of three constitutional courts in Asia: Taiwan, Korea, and Mongolia. In a region where law has traditionally been viewed as a tool of authoritarian rulers, constitutional courts in these three societies are becoming a real constraint on government. In contrast with conventional culturalist accounts, this book argues that the design and function of constitutional review are largely a function of politics and interests. Judicial review – the power of judges to rule an act of a legislature or executive unconstitutional – is a solution to the problem of uncertainty in constitutional design. By providing “insurance” to prospective electoral losers, judicial review can facilitate democracy.

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Judicial Review in New Democracies

Constitutional Courts in Asian Cases

TOM GINSBURG

University of Illinois
To Amber
“...in the mysterious East as in the pellucid West, constitutions, however detailed, are no better than the institutions they are written into.”


“Every judge who judges truly becomes, so to speak, an associate of the almighty in the creation of his World.”

– Talmud Shabbat 10a
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Notes on Usage

Chinese and Korean names appear throughout the text and notes with family names first. For consistency, the anglicization of Korean names has been made uniform, with personal names hyphenated and the second syllable in lower case. I apologize should this deviate from preferred usage. Japanese names appear mainly in the references and are presented in western format with personal name first.
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