

## CONSTITUTIONAL COURTS IN ASIA

The founding of a constitutional court is often an indication of a chosen path of constitutionalism and democracy. It is no coincidence that most of the constitutional courts in East and South East Asia were established at the same time as the transition of the countries concerned from authoritarianism to liberal constitutional democracy. This book is the first to provide systematic narratives and analysis of Asian experiences of constitutional courts and related developments, and to introduce comparative, historical and theoretical perspectives on these experiences, as well as debates on the relevant issues in countries that do not as yet have constitutional courts. This volume makes a significant contribution to the systematic and comparative study of constitutional courts, constitutional adjudication and constitutional developments in East and South East Asia and beyond.

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# CONSTITUTIONAL COURTS IN ASIA

A Comparative Perspective

Edited by

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## PREFACE

This volume consists of essays on constitutional courts and related judicial developments in Asia, that is to say, East and South East Asia. The purpose is to examine the experiences of these constitutional courts and developments and to introduce comparative, historical and analytical perspectives on such experiences as we near the end of the second decade of the twenty-first century. It is hoped that this volume can contribute to the comparative study of constitutional courts, constitutional adjudication and constitutional developments in Asia and beyond.

We seek to provide a systematic study of all seven constitutional courts that have been established (those of Taiwan, South Korea, Mongolia, Cambodia, Thailand, Indonesia and Myanmar) in East and South East Asia from the perspectives of comparative constitutional law and regional studies. Thus, this volume contains case studies of these seven constitutional courts, as well as, for appropriate comparison, constitutional adjudication or discourse concerning constitutional review in four other countries. Furthermore, the volume provides general theoretical and comparative reflections on Asian constitutional courts in a global context. Hence, the chapters in this volume fall into two categories.

The first category consists of ‘country studies’, each focusing on an individual country, introducing the historical and institutional background of the constitutional court (or constitutional council or tribunal), explaining the sociopolitical context in which it operates and analysing selected major (especially recent) cases decided by it. To provide a comparative perspective, some East Asian countries which do not have a constitutional court are also covered in this volume: Japan, the Philippines, China and Vietnam. In the cases of Japan and the Philippines, constitutional adjudication by their supreme courts are examined. In the cases of China and Vietnam, the relevant discourse and institutional developments relating to constitutional review are considered.

The second category of chapters consists of theoretical and comparative analysis of, and reflections on, the experience of Asian constitutional



courts, their role in the political system and their performance in constitutional adjudication. These chapters also include a study of the reception in Asia of different Western models of constitutional judicial review, a study of the informal or personal relations dimension of constitutional politics in Asia and a study of regional judicial cooperation and dialogue in Asia in the domain of constitutional adjudication.

The drafts of most of the chapters in this volume were presented for discussion as conference papers at the Sixth Asian Constitutional Law Forum held at the National University of Singapore (NUS) in December 2015. We are grateful to the Centre for Asian Legal Studies at NUS Law Faculty for their generous support for this conference. We are also much indebted to the contributors to this volume for setting aside their precious time and energy to participate in this book project. Last but not least, we record our gratitude to Mr Joe Ng and his colleagues at Cambridge University Press for their encouragement and support, without which this book could not have been published.

**Albert H. Y. Chen and Andrew Harding**