
Introduction

In the past century, as the winds of political change swept across the globe, Asian nations too experienced a wave of democratisation as countries in the region gained independence or transitioned from authoritarian military rule toward more participatory politics. In tandem with this democratisation trend, we have also witnessed a concomitant expansion of judicial power in Asia, whereby new courts or empowered old ones emerge as independent constraints on governmental authority.¹ The rise of the courts, and the accompanying ‘judicialisation of politics’,² is as much an Asian phenomenon as it is a prevalent trend in the West.

There is now a rich corpus of literature on how Asian courts have participated in and even reshaped the human rights discourse in their respective jurisdictions.³ However, little academic literature has examined how Asian judiciaries have responded to deficiencies in the electoral processes and the concomitant problem of partisan self-dealing. Specifically, partisan self-dealing occurs when the political actors devise electoral rules that govern voting, political parties, electoral boundaries, apportionment, the administration of elections, and campaign finance that are designed to entrench themselves in power.⁴ The purpose of this book is to redress this gap in the scholarship by focussing on the cases

¹ Tom Ginsburg, ‘Courts and New Democracies: Recent Works’ (2012) 37 *Law and Social Inquiry* 720; Tom Ginsburg, ‘Constitutional Courts in East Asia: Understanding Variation’ (2008) 3 *Journal of Comparative Law* 80; Andrew Harding and Penelope Nicholson (eds) *New Courts in Asia* (London: Routledge, 2010).

² Ran Hirschl, *Towards Juristocracy* (Cambridge, MA: Harvard University Press, 2004) 211; Björn Dressel (ed) *The Judicialisation of Politics in Asia* (Abingdon, Oxon: Routledge, 2012).

³ Po Jen Yap, *Constitutional Dialogue in Common Law Asia* (Oxford: Oxford University Press, 2015); Po Jen Yap and Holning Lau (eds), *Public Interest Litigation in Asia* (London: Routledge, 2010); Albert Chen (ed), *Constitutionalism in Asia in the Early Twenty-First Century* (Cambridge: Cambridge University Press, 2014).

⁴ Yasmin Dawood, ‘Electoral Fairness and the Law of Democracy: A Structural Rights Approach to Judicial Review’ (2012) 62 *University of Toronto Law Journal* 499, 500.

in which the courts in Asia have impeded or enhanced the competitiveness of the political system when addressing this central challenge to democratic governance.

This book critically examines the state of play in nine Asian jurisdictions, i.e. Bangladesh, Hong Kong, India, Malaysia, Pakistan, Singapore, South Korea, Taiwan, and Thailand; and it seeks to illuminate an interesting phenomenon.

In jurisdictions such as Hong Kong, Malaysia, and Singapore, where a dominant political party or coalition has remained in power since independence or decolonisation, the courts may formally superintend the electoral process, but in reality they do so at the fringes of the entity's political life. On the other hand, in dynamic democracies where there have been extended periods of competing political parties taking turns in office, the courts play a more central role in democratic consolidation.⁵ Such courts as those found in India, Taiwan, and South Korea have not only provided constitutional redress for vulnerable or unpopular groups that have been excluded from the voting process; they have also ameliorated major systemic inequalities in their electoral systems. Finally, we have fragile⁶ or unstable⁷ democracies in Thailand, Pakistan, and Bangladesh, where the armed forces are *not* under firm control of the civilian government and the country oscillates regularly between military and civilian rule. In these fragile democracies, Asian courts, which become partisan tools that assist one political camp to dislodge its rivals, as the Constitutional Court of Thailand did, or pose existential threats to military interests, as the Supreme Court of Pakistan did under the stewardship of Chief Justice Iftikhar Muhammad Chaudhry, would only accelerate a political crisis that sends the country over the constitutional cliff. In these unstable democracies, prudent judges should have insulated the courts against political attacks (from the civilian government or the military) rather than engaged in confrontational strong-form judicial review over the electoral process that antagonises political incumbents. This appears to be the path taken by the Supreme Court of Bangladesh (Appellate Division).

⁵ Samuel Issacharoff, 'Constitutional Courts and Consolidated Power' (2014) 62 *American Journal of Comparative Law* 585.

⁶ Samuel Issacharoff, *Fragile Democracies: Contested Power in the Era of Constitutional Courts* (Cambridge: Cambridge University Press, 2015).

⁷ For an excellent collection of essays on unstable democracies in South Asia, see Mark Tushnet and Madhav Khosla (eds), *Unstable Constitutionalism: Law and Politics in South Asia* (New York: Cambridge University Press, 2015).

All courts operate within political parameters, and the task of scholars is to explain how these parameters can empower or constrain courts.⁸ As Tom Ginsburg has observed, the extent of political diffusion within the legislative and executive structures determines how successfully courts can assert their judicial power.⁹ Constitutions are incomplete contracts, and while all judges are delegates tasked with the interpretation of imprecise text,¹⁰ the courts' 'zone of discretion'¹¹ is greater when government is divided and opposing parties in the legislature have to cooperate to effectuate any disagreement with the judiciary.

In dominant-party democracies, courts can only take a limited range of actions before they outrun the government's 'tolerance interval'¹² as the government can respond to confrontational judicial decisions by deploying constitutional or unconstitutional means to overrule or 'punish' the courts.¹³ While their courts are unable to successfully challenge the core interests of their governments, they must pursue 'dialogic'¹⁴ pathways to constrain the 'structural pathologies'¹⁵ of authoritarian politics. Bipartisan legislative agreement to overrule or punish judges would be less likely and frequent in dynamic democracies as the 'fragmentation of authority across separate institutions makes coordinated attacks on judicial independence more difficult'.¹⁶ Where political power regularly rotates between competing political parties – a cardinal feature of dynamic democracies – the courts can not only facilitate micro-systemic electoral changes to their countries' voting process or provide 'dialogic' electoral redress for

⁸ Tom Ginsburg, 'Courts and New Democracies: Recent Works' (2012) 37 *Law and Social Inquiry* 720, 738.

⁹ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003), 19.

¹⁰ Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (Oxford: Oxford University Press, 2000), 22–23.

¹¹ Alec Stone Sweet, 'Constitutions and Judicial Power', in Daniele Caramani (ed.), *Comparative Politics* (Oxford: Oxford University Press, 2014), 157.

¹² Lee Epstein, Olga Shvetsova and Jack Knight, 'The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government' (2001) 35 *Law and Society Review* 117, 128; Stone Sweet (n 10), 23–24.

¹³ For a comparative perspective on Japan, see David S. Law, 'The Anatomy of a Conservative Court: Judicial Review in Japan' (2009) 87 *Texas Law Review* 1545, 1587–1588.

¹⁴ Dialogic review herein refers to a judicial practice whereby courts enforce constitutional rights in a way that provides sufficient decisional space to the legislature or allows the legislature to respond in disagreement using the ordinary political process. See Po Jen Yap, *Constitutional Dialogue in Common Law Asia* (Oxford: Oxford University Press, 2015).

¹⁵ Guy-Uriel E. Charles, 'Democracy and Distortion' (2007) 92 *Cornell Law Review* 601, 604.

¹⁶ Georg Vanberg, 'Constitutional Courts in Comparative Perspective: A Theoretical Assessment' (2015) 18 *Annual Review of Political Science* 167, 181.

vulnerable groups, they can also make macro-institutional changes to the political system. Finally, for fragile democracies where the military is not under the firm control of the civilian government and the country regularly oscillates between martial law and civilian rule, their courts – unlike those in dominant-party democracies – tend to consistently overreach. Such high-octane judicial review by partisan or imprudent judges can easily facilitate or precipitate a hostile takeover by the armed forces, and lead to the demise of the rule of law. Courts in brittle democracies should therefore avoid strong-form judicial review unless their institutional independence is under threat.¹⁷

At the outset, I should clarify that I am herein making *both* a descriptive and a normative claim. My prescriptive claim about how Asian courts *should* behave is also consistent with my descriptive claim of how the Asian judiciaries have enhanced or undermined the state of democratisation within their respective political systems. Furthermore, I should also state that I am not attempting to offer a quantitative or empirical proof of my claims. My claims are more modest, as I merely seek to describe, explain, and account for this phenomenon I have identified, and defend my normative prescriptions. But, in doing so, I have examined in this book all the relevant cases decided by the Constitutional Courts or generalist courts of final resort on the electoral processes in the nine jurisdictions.

In essence, this book explores how democracy sustains and is sustained by the exercise of judicial power and how courts impact and are impacted by the state of democratisation in their countries.¹⁸ Naturally, the role of any court is not static; it can and will change as the state of democracy in that country evolves.

Dominant-Party Democracies

In dominant-party democracies, the main obstacle to electoral competition is not violence typically associated with fragile or unstable democracies, but the overwhelming control asserted by one party/coalition that has successfully consolidated its political apparatus in office.¹⁹ The People's Action Party has been the ruling party in Singapore since the

¹⁷ Stephen Gardbaum, 'Are Strong Constitutional Courts Always a Good Thing for New Democracies?' (2015) 53 *Columbia Journal of Transnational Law* 285.

¹⁸ For a discussion on how courts become effective political players, see Alec Stone Sweet, 'Constitutions and Judicial Power', in Daniele Caramani (ed.), *Comparative Politics* (Oxford: Oxford University Press, 2014), 160–165.

¹⁹ Issacharoff (n 5), 588.

country's independence and the party has controlled over 90% of the elected seats in Parliament since 1968. Malaysia has been ruled by the same political coalition since its independence, i.e., the Alliance Party, which was renamed Barisan Nasional in 1974. In turn, their courts have acquiesced to the state of affairs by playing a more limited role in their countries' political life as their judges are unable to rely on the support of other strong institutional actors to counter any backlash from the dominant government if they engage in robust judicial review over electoral disputes.

Furthermore, both countries are arguably still reeling from judicial crises that have cast a pall over the state of constitutional review. With regard to Singapore, when the Court of Appeal ruled against the government on *constitutional* grounds for the first and last time in 1988, the government overruled the decision with a series of constitutional and statutory amendments within a month.²⁰ In Malaysia, the Lord President (now known as Chief Justice) Tun Salleh and two other judges on the Supreme Court of Malaysia (now Federal Court of Malaysia) were impeached and removed on trumped-up charges of judicial misconduct in 1988.²¹ While it is not uncommon for judges in all countries to act prudentially when they seek to avoid legislative or electoral outrage, this concern about political reprisals is particularly pronounced in these jurisdictions as dominant-party governments can display their displeasure more easily by ousting judicial review or even the judges themselves.

Therefore, it is perhaps unsurprising that in the first and only election case ever decided in Singapore, its Court of Appeal conceded that judicial intervention in election disputes would arise in the most 'exceptional cases';²² and on the facts of the by-election dispute, so long as its Prime Minister did not openly reject the possibility of a by-election when a casual vacancy arose, it would appear that the Court did not impose any

²⁰ In *Chng Suan Tze v. Minister of Home Affairs*, [1988] 2 SLR(R) 525, the Singapore Court of Appeal, after surveying a litany of Commonwealth precedents, quashed a preventive detention order issued under the Internal Security Act (ISA) against various alleged Marxist conspirators and concluded that the ministerial discretion to detain personnel under the ISA would be subject to an 'objective' test of review by the courts. This decision proved to be sufficiently disquieting to the Executive; the government quickly overturned this decision and henceforth restricted judicial review in ISA cases to only procedural grounds.

²¹ For a full discussion, see H.P. Lee, *Constitutional Conflicts in Contemporary Malaysia*, 2nd edn. (Oxford: Oxford University Press, 2017).

²² *Vellama d/o Marie Muthu v. Attorney-General* [2013] SGCA 39, [2013] 4 SLR 1 [85] (Singapore Court of Appeal).

additional limits on the Prime Minister's exercise of his discretion to fill that vacancy.²³ In the same vein, the Malaysian courts have accepted that their state-controlled Election Commission has no statutory obligation to arrange for persons in detention to vote at the requisite polling centres,²⁴ nor is it obliged to allow Malaysian citizens living abroad to be registered as absentee voters.²⁵ Furthermore, the Malaysian courts have also consistently refused to review any alleged irregularities in the electoral roll *after* it has been published and certified by the Election Commission.²⁶

Hong Kong provides yet another fascinating case study. After the resumption of sovereignty over Hong Kong in 1997, China had deliberately retained the Functional Constituencies (FC) electoral method in Hong Kong, a system in which the right to vote depends upon a person's membership or registration in a recognised social, economic, industrial, commercial, political advisory, or professional body represented in the legislature. In many of these FCs, e.g., Insurance, Transport, Tourism, Finance, Labour, it is not individuals working in these professions that are eligible to vote; instead, it is only the recognised corporate bodies operating in these professions that can vote. It is significant that since the establishment of the Hong Kong Special Administrative Region (HKSAR), the pro-Beijing/ pro-establishment camp has relied on these 'corporate' votes to dominate the FC elections, such that the pro-establishment camp is able to command an overall majority of the seats in the Legislative Council, even though it lags behind in the Geographical Constituencies (GC) elections that are constituted via universal suffrage.²⁷ (One may note that since the Hong Kong executive government is heavily reliant on the support of the pro-establishment camp in the legislature for the passage of its bills, unrestricted elections by universal suffrage for all of the seats in the Legislative

²³ *Ibid.* [87].

²⁴ *Yazid bin Sufaat & Ors v. Suruhanjaya Pilihanraya* [2009] 6 MLJ 152 (Federal Court of Malaysia).

²⁵ *Teo Hoon Seong & Ors v. Suruhanjaya Pilihanraya* [2012] 4 MLJ 245 (High Court of Malaysia).

²⁶ *Muhammad Sanusi Md v. Mohd Tajuddin* [2009] 1 CLJ 1 (Federal Court of Malaysia); *Charles Anthony Santiago v. Suruhanjaya Pilihan Raya* [2014] 7 MLJ 271 (High Court of Malaysia).

²⁷ Currently, 35 seats in the Legislative Council are constituted via universal suffrage in Geographical Constituencies (GC) elections while another 35 seats are constituted via Functional Constituencies (FC) elections. Ma Ngok, 'Political Parties and Elections', in Wai-man Lam, Percy Luen-tim Lui, Wilson Wong and Ian Holliday (eds), *Contemporary Hong Kong Politics: Governance in the Post-1997 Era* (Hong Kong: Hong Kong University Press, 2007), 131–132. See also Sonny Lo, *Competing Chinese Political Visions* (Santa Barbara: Praeger, 2010), 130–131.

Council would unlikely be allowed until the pro-establishment camp is able to form a clear majority in the Legislative Council, without the use of the FC system as a political crutch.) Furthermore, the Standing Committee of the National People's Congress (NPCSC) is empowered under Hong Kong's Basic Law to overrule the Court of Final Appeal's decision via a Legislative Interpretation. In light of these political realities, it is thus unsurprising that the Hong Kong judiciary has adopted a haphazard approach in electoral challenges: its traditionally active judiciary has been willing to extend voting rights writ small to disenfranchised prisoners²⁸ and allow those who had been convicted of minor offences to stand for elections;²⁹ but the courts have been reluctant to make major *systemic* changes that would invalidate 'corporate voting',³⁰ a cardinal feature of the FC electoral system.

Dynamic Democracies

On the other hand, courts operating within dynamic democracies function differently. Where there have been extended periods of competing political parties taking turns in office, courts have less to fear as bipartisan legislative agreement to overrule or punish judges is less likely and frequent in such contested environments. Parties in power may also acquiesce to the robust exercises of judicial power as constitutional review by an independent branch of government provides a form of insurance against their electoral competitors when political fortunes turn.³¹ For India and Taiwan, since they transitioned from dominant-party to dynamic democracies, their courts have had more opportunities to innovate and can play a more central role in democratic consolidation by making larger systemic changes to the electoral systems. Specifically, such courts improve 'the performance of democratic institutions through time'³² by ensuring that the political incumbents do not insulate themselves from political or legal accountability³³ and/or overcoming the anti-competitive electoral rules that existing

²⁸ *Chan Kin Sum v. Secretary for Justice* [2009] 2 HKLRD 166 (Hong Kong Court of First Instance).

²⁹ *Wong Hin Wai v. Secretary for Justice* [2012] 4 HKLRD 70 (Hong Kong Court of First Instance).

³⁰ *Chan Yu Nam v. Secretary for Justice* [2010] HKEC 1893 (Hong Kong Court of Appeal).

³¹ Ginsburg (n 9). See also Matthew C. Stephenson, "'When the Devil Turns...': The Political Foundations of Independent Judicial Review' (2003) 32 *Journal of Legal Studies* 59.

³² David Landau, 'A Dynamic Theory of Judicial Role' (2014) 55 *Boston College Law Review* 1501, 1536.

³³ Michael Pal, 'Breakdowns in the Democratic Process and the Law of Canadian Democracy' (2011) 57 *McGill Law Journal* 299.

partisan forces erect or manipulate to entrench themselves in power.³⁴ In short, courts in dynamic democracies can adopt what John Hart Ely terms a ‘participation-oriented, representation-reinforcing approach to judicial review’³⁵ and serve as a crucial safeguard against ‘self-interested lock-ups’³⁶ of the electoral process by political incumbents and their allies.

In India, after the Congress Party lost its hyper-dominance in national politics, the Supreme Court became zealous in rooting out systemic and prevalent corrupt practices amongst politicians by adopting a very robust reading of the Representation of the People Act (RPA). Accordingly, the Court was able to mandate election candidates to disclose the source of their political donations,³⁷ their criminal antecedents³⁸ and even unseat convicted criminals from elected office.³⁹ Furthermore, the Indian Supreme Court has directed the country’s Election Commission to provide each voter with a choice to cast a negative vote against all the contesting candidates because a ‘provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate think about them.’⁴⁰

In Taiwan, after the dominant Kuomintang (KMT) lost the Presidency for the first time in the nation’s history, its Constitutional Court in 2000 invalidated two constitutional amendments passed by the National Assembly in 1999, which had attempted to extend the existing term of the National Assembly delegates by over two years and allow lawmakers in the Legislative Yuan (Taiwan’s primary legislative chamber) to appoint delegates to the said Assembly.⁴¹

In the same vein, the Constitutional Court of Korea has also directly rectified many of the country’s systemic electoral defects. The National Assembly is composed of (1) members elected directly by voters in individual electoral districts and (2) proportional representatives, ranked on

³⁴ See Samuel Issacharoff and Richard Pildes, ‘Politics as Markets: Partisan Lockups of the Democratic Process’ (1998) 50 *Stanford Law Review* 643.

³⁵ John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980), 87.

³⁶ Pal (n 33) 306; Ely (n 35) 103.

³⁷ *Common Cause v. Union of India* [1996] 3 SCR 1208 (Supreme Court of India).

³⁸ *Union of India v. Association for Democratic Reforms* [2002] 3 SCR 696 (Supreme Court of India).

³⁹ *BR Kapur v. State of Tamil* [2001] 7 SCC 231 (Supreme Court of India); *Lily Thomas v. Union of India* [2013] 7 SCC 653 (Supreme Court of India).

⁴⁰ *People’s Union for Civil Liberties v. Union of India* [2013] 10 SCC 1 [56] (Supreme Court of India).

⁴¹ JY Interpretation No. 499, 24 March 2000 (Constitutional Court, Taiwan).

a party list by their own political parties, whom voters elect indirectly when they cast ballots in favour of their preferred political party. Prior to the 2004 National Assembly election, a voter could only vote for the district representative. But in 2001, the Constitutional Court mandated that each voter be allowed to cast two votes in the National Assembly election: one for his/her preferred individual candidate in the electoral district and the other for his/her preferred political party that would field the proportional representative in the national legislature.⁴² Furthermore, the Constitutional Court of Korea has over time also reduced the disparity in size between the most populous electoral district and the least populous district.⁴³ However, the Court's record is far from perfect; oddly enough, it has largely upheld all of the oppressive rules regulating electoral campaigns⁴⁴ that date back to the authoritarian military era in South Korea.

While courts in these dynamic democracies have creatively consolidated the democratic process by amplifying the competitiveness of elections and electoral institutions, they have also displayed remarkable restraint by strategically not removing top leaders. This was so not only when their courts operated within a dominant-party democracy, as India was when its Supreme Court strategically avoided the removal of Prime Minister Indira Nehru Gandhi from office for an electoral-campaign violation after she was re-elected with a super-majority in Parliament,⁴⁵ but such judicial restraint was equally practised by courts after the nation transitioned to a dynamic democracy.

In Taiwan, after President Chen Shui-bian was re-elected with a razor-thin margin in the 2004 presidential election, the dissatisfied opposition party – KMT – insisted that he had staged an assassination attempt on his life on the eve of the election⁴⁶ so as to gain sympathy votes for

⁴² 13-2 KCCR 77, 2000 Hun-Ma 91, 2000 Hun-Ma 112 (consolidated) (19 July 2001) (Constitutional Court, Korea).

⁴³ 7-2 KCCR 760, 95 Hun-Ma 224 (27 December 1995) (Constitutional Court, Korea); 13-2 KCCR 502, 2000 Hun-Ma 92, 2000 Hun-Ma 240 (consolidated) (25 October 2001) (Constitutional Court, Korea); 2013 Hun-Ma 781, 2014 Hun-Ma 53 (consolidated) (30 October 2014) (Constitutional Court, Korea).

⁴⁴ 13-2 KCCR 174, 99 Hun-Ba 92, 2000 Hun-Ba 39, 2000 Hun-Ma 167-168-199-205-280 (consolidated) (30 August 2001) (Constitutional Court, Korea); 17-2 KCCR 160, 2004 Hun-Ba 52 (29 September 2005) (Constitutional Court, Korea); 2014 Hun-Ba 253, Gongbo Vol. 237, 1049 (30 June 2016) (Constitutional Court, Korea).

⁴⁵ *Indira Nehru Gandhi v. Shri Raj Narain* [1976] 2 SCR 347 (Supreme Court of India).

⁴⁶ A gunman attempted to assassinate both President Chen Shui-bian and Vice President Annette Lu when they were campaigning on 19 March 2004, the eve of Taiwan's presidential election; but both of them suffered only minor injuries. This event has been termed the '319 Shooting' in Taiwan.

his re-election. As the KMT retained a parliamentary majority in the Legislative Yuan, it statutorily created a special commission to investigate the foiled assassination attempt.⁴⁷ One may note that members of the special commission were primarily KMT affiliates and the deeply partisan commission was statutorily authorised to launch criminal prosecutions relating to the assassination attempt and overturn any factual findings in a court of law if they differed from the outcome of the investigation conducted by the commission. The Constitutional Court accepted that the Legislative Yuan was empowered to create a special commission to investigate the assassination attempt but it decisively invalidated the statutory provisions that authorised the commission to launch criminal prosecutions and revoke judicial findings.⁴⁸ The Court's decision, rendered on 15 December 2004, in essence prevented the special commission from overturning a High Court's ruling on 4 November 2004, which decided that the assassination attempt was neither staged by President Chen nor did the gunshot incident illegally interfere with the conduct of the election.⁴⁹ Likewise, in impeachment proceedings, the Constitutional Court of Korea also strategically avoided removing President Roh Moo-hyun from power after Roh's Uri Party won resoundingly at the 2004 National Assembly election during the deliberations of the impeachment case.⁵⁰

Fragile Democracies

In contrast, courts that have come too close to the 'live wire of electoral politics'⁵¹ may end up doing a disservice to their country's transition to a stable democracy; and the state may, as a consequence, backslide

⁴⁷ See Jiunn-rong Yeh, 'Presidential Politics and the Judicial Facilitation of Dialogue between Political Actors in New Asian Democracies: Comparing the South Korean and Taiwanese Experiences' (2010) 8(4) *International Journal of Constitutional Law* 911, 932.

⁴⁸ JY Interpretation No. 585, 15 December 2004 (Constitutional Court, Taiwan) < http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=585 > accessed 1 February 2017.

⁴⁹ The High Court's ruling was also confirmed by the Supreme Court in 2005.

⁵⁰ 16-1 KCCR 609, 2004 Hun-Na 1 (14 May 2004) (Constitutional Court, Korea); see Wen-Chen Chang, 'Strategic Judicial Responses in Politically Charged Cases: East Asian Experiences' (2010) 8(4) *International Journal of Constitutional Law* 885. In contrast, the Constitutional Court of Korea in 2017 decisively removed President Park Geun-hye from office. One must note that President Park's approval ratings were in single digits at the time of her impeachment – the lowest for any sitting President in South Korea – and the court was merely reflecting public opinion when it chose to remove a deeply unpopular President for her role in an influence-peddling scandal.

⁵¹ Issacharoff (n 5), 610.