

Index

overview, 65-66, 103-4 Abusive constitutionalism, 9-10. See also authoritarian nature of, 29-30, 103-4 Hybrid constitutionalism Alibaba Group, 231 autonomy under, 84-85 CFA under, 16, 109 (See also Court of Final Alvares, Jorge, 73 do Amara, João Maria Ferreira, 74 Appeal (CFA) (Hong Kong)) checks and balances under, 136-37 Amparo procedure, 106-7 Chief Executive under, 85-87, 89, 96-97 Ao Man Long, 149-50, 195, 197 Argentina, hybrid constitutionalism on local civil liberties under, 84-85 level in, 4 constitutional review under, 97-100, 101-3 Aristotle, 25 (See also Court of Final Appeal (CFA) Asian comparative constitutional law, 26-27 (Hong Kong)) "Asset specificity,"42 Consultative Committee, 81-82 Atatürk, Mustafa Kemal, 55 democratization and, 66 Attitudinal model of judicial decisionmaking, design on, 29-30 20-21 Drafting Committee, 80-82 enforcement authority, 96-98, 104 Au Kam Sun, 82 Australia excluded provisions, 151 CFA, citation of decisions of, 201 executive orders under, 83 common law in, 202-3 failure to amend, 191-92 comparative constitutional law and, 25 legal model of judicial decisionmaking constitutional review in, 102 and, 21 non-permanent judges on CFA from, Legislative Interpretations and, 100-2, 221-22, 230-31 114 Lei Básica compared, 19, 220 Portugal compared, 208 state supreme courts, 26 living constitution doctrine and, 240 Austria, constitutional review in, 204 maintenance of prior laws, 96 Authoritarian constitutionalism, 9-10. See also non-excluded provisions, 151 Hybrid constitutionalism property rights under, 142-43 Azerbaijan, patterns of liberal democracy in, treaties under, 83 Battle of Sai Tso Wan (1522), 73 Battle of Tuen Mun (1521), 73 Bacelar Gouveia, Jorge, 210 Ban Ki-moon, 188 patterns of liberal democracy in, 3 Basic Law (Hong Kong) persistence of hybrid constitutionalism generally, 12-13 in, 5–6



Belgium	term limits and, 227
civil law in, 203	TUI versus, 128
ICCPR and, 149	One Belt-One Road Initiative, 227–28
Blackstone, William, 206	People's Political Consultative
Bokhary, Kemal, 190-91	Conference, 176
Brazil	Portugal, diplomatic relations with, 76
constitutional review in, 1	Special Administrative Regions (See
hybrid constitutionalism on local level in, 4	Hong Kong; Macau)
,	Standing Committee of National People's
Cameroon, patterns of liberal democracy in, 3	Congress
Canada	Basic Law and, 80–81, 82
CFA, citation of decisions of, 201	CFA versus, 121–25, 133–35, 154, 155,
common law in, 202–3	168–69, 173
comparative constitutional law and, 25	Chief Executives and, 86
constitutional review in, 102	constitutional review in, 16
non-permanent judges on CFA from, 238	enforcement authority, 96-97, 99-102,
Catholic Church, 182	103, 104
Cayman Islands, citation of decisions of CFA	Hong Kong Election Committee and,
in, 201	184–85
CFA. See Court of Final Appeal (CFA)	Hong Kong Nomination Committee
(Hong Kong)	and, 187
Chainrai, Bina, 237–38	interpretive authority, 220
Chan, Anson, 177	interpretive methodology, 132
Chan, Sonia, 237	judicial petitions, 150–54
Chan Kin-man, 190	Legislative Affairs Commission, 134–35
Chan Kuong Seng, 214	as legislative body, 133
Chao, Jason, 236	Legislative Interpretations, 100–2, 123–24
Checks and balances, 136–37	133, 135, 205, 221–22, 230–31
Chen, Albert, 135	Macau Election Committee and, 199
"Chilling effect" of actions against judiciary, 44	
China	referrals by, 150–54
	TUI versus, 154, 155–56, 168–69, 173
authoritarianism in, 226–28	State Council White Paper, 186–87, 227
Central Policy Unit, 176	Supreme People's Court, 16, 220
China Central Television (CCTV), 231–32	Tiananmen Square incident, 182, 198, 211, 234
Chinese Association of Hong Kong and	Chou, Bill, 236
Macao Studies, 176	Chui, Fernando, 193, 199, 234, 235–36
Communist Party, 80–81, 185–86	Chu Kin, 117, 119–20, 128, 130
comparative constitutional law and, 27–29	Civil law
Constitution, 30, 71, 82, 97, 98, 137–38, 227	common law versus, 202–6
constitutional law in, 26–27	constitutional review in, 204–5
Cultural Revolution, 69	historical background, 203
lack of constitutional court in, 43	legal origins hypothesis and, 202–6
Legislation Law of 2000, 138	Macau, civil law tradition in, 201
Liaison Office, 229	"philosopher-king" concept in, 203
National Flag Law, 125	Common law
National People's Congress	civil law versus, 202–6
constitutional review and, 96–97, 99–100	constitutional review in, 204-5
Constitution and, 71	historical background, 202–3
Lei Básica and, 83	Hong Kong, common law tradition in, 201
ratification of laws by, 218-19	legal origins hypothesis and, 202-6
selection of members, 91	"philosopher-king" concept in, 203



278 Index

Comparative constitutional law, 25-26, 240 Competitive authoritarianism, 3-4. See also Hybrid constitutionalism Constitutional courts as "investments,"42 transaction costs, effect on control of, 49 Constitutionalism defined, 29 transaction costs of, 41 Constitutional review attitudinal model of judicial decisionmaking, 20-21 centralized model, 1 in CFA (See Court of Final Appeal (CFA) (Hong Kong)) in civil law, 204-5 in common law, 204-5 counter-majoritarian nature of, 240 decentralized model, 1 evolution of, 1-2 high-energy constitutional review overview, 22, 108–9, 240 in CFA, 170, 216 transaction cost theory and, 33, 63 in Hong Kong (See Court of Final Appeal (CFA) (Hong Kong)) in hybrid constitutionalism, 6-10 legal model of judicial decisionmaking, 21 low-energy constitutional review, 108-9, 170, 215, 216, 237 in Macau (See Tribunal de Última Instância (TUI) (Macau)) no guarantee of liberal democracy, 3 respect of countries and, 2 strategic model of judicial decisionmaking and, 22-23 (See also Strategic model of judicial decisionmaking) strong-form review, 99-100 in TUI (See Tribunal de Última Instância (TUI) (Macau)) weak-form review, 16, 102-3, 154 Corpus Juris Civilis, 203 Costa Pinto, Antonio, 65-66 Court of Final Appeal (CFA) (Hong Kong) overview, 66 appointments to, 111-12 attitudinal model of judicial decisionmaking and, 20-21 authoritarian nature of, 30 checks and balances in, 136-37 Chief Justice, 112-13

conflict regarding creation of, 109-10 constitutional review in overview, 16-20, 30, 154-55 abstract review, 139-40 activism, 16-17, 105-6, 221 criminal cases, 111 enforcement authority, 97-100, 101-3 high-energy constitutional review, 170, 216 interpretive methodology, 132-37 judicial petitions, 150-54 jurisdiction, 121-27, 173 list of cases, 162-67 predominant provision test, 151, 153 procedure, 110-11 proportionality standard, 140–45, 150 referrals to, 150-54 standards of review, 140-45, 150 Standing Committee of National People's Congress versus, 121-25, 133-35, 154, 155, 168-69, 173 TUI compared, 108-9, 120-21, 169-70, 220-21 weak-form review, 154 divergence from TUI, 16-20, 24-25, 31 enforcement authority, 104 establishment of, 16 final adjudication power, 111, 220 flag desecration and, 124-25 foreign and international law in, 135-36 foreign state immunity and, 151-53 freedom of expression and, 124-25 fundamental rights versus socio-economic policies, 144-45 homosexuality and, 139, 142 invalidation decrees, 126-27 Iudicial Officers Recommendation Commission, 111-12 jurisdiction, 97-98, 110, 121-27 legal model of judicial decisionmaking and, 21 Legislative Interpretations and, 123-24, 135, 205 list of judges, 156-60 marriage and, 127, 135-36 non-permanent judges, 114-15, 205-6, 238 property rights and, 142-43 public processions and, 141-42 qualifications of judges, 113-14 remedial interpretations, 126-27 right of abode of children of permanent residents and, 121-24, 133-35



> Index 279

Selection Committee, 86 civil law in, 204 separation of powers and, 127 comparative constitutional law and, 25 social security and, 143-44 constitutional review in, 204 surveillance and, 126-27 transaction cost theory and (See also Transaction cost theory) Gaddafi, Muammar, 43 overview, 24-25, 30-31 high transaction costs in, 170, 216 Germany Democratically disguised dictatorship, 3-4. See also Hybrid constitutionalism Deng Xiaoping, 71, 80-81, 88, 90, 136, 226-27 Dicey, Albert Venn, 206 Gibson, James L., 22 Disapplication doctrine, 129-32 Divided government, 37 Gittings, Danny, 206 Dixon, Rosalind, 1 Gorbachev, Mikhail, 43 Dualism, 83 Graber, Mark A., 37 Dündar, Can, 59-60 The Economist, 4 Gui, Michael, 231-32 Egypt Gül, Abdullah, 58 Constitutional Court, 42-43 Gül, Erdem, 59-60 patterns of liberal democracy in, 3 Gulen, Fethullah, 60 Electoral authoritarianism, 3-4. See also Hybrid constitutionalism Hale, Lady, 238 Elizabeth II (UK), 177 Helmke, Gretchen, 10 Elkins, Zachary, 64 Erdoğan, Recep Tayyip, 9, 56, 58, 59-60, 62-63 European Central Bank, 209-10 in CFA, 170, 216 European Convention on Human Rights, 207-8 Hirschl, Ran, 23, 33 European Court of Human Rights, 138, 150 European Court of Justice, 150 European Union, 209-10 Ho Chio Meng, 148 Ex ante actions against judiciary, 43, 45, 174 Hong Kong Ex post actions against judiciary, 43, 44-46, 176-77 Falklands War, 71 Falun Gong, 182 Ferejohn, John, 32 citation of decisions of CFA in, 201 Bar Council, 111-12 non-permanent judges on CFA from, 114 First Anglo-Chinese War, 10, 66 First Convention of Peking, 10-11, 67 First Opium War, 74 "Fishball Revolution,"232-33 Chief Executive Four Asian Tigers, 26–27

Napoleonic Code of 1804, 203 Portugal compared, 208 comparative constitutional law and, 25 constitutional review in, 204 Länder, constitutional courts in, 26 Portugal compared, 208 Ginsburg, Tom, 1, 19–20 "Gray zone," 3-4. See also Hybrid constitutionalism High-energy constitutional review overview, 22, 108-9, 240 transaction cost theory and, 33, 63 High transaction costs, 170, 175-76, 181, 216, 239 Ho, Edmund, 76, 193-94, 196 Administrative Officers (AO) Party, 69, Airport Authority, 229 as "Asian Tiger,"26-27 authoritarianism in, 229-30 autonomy in, 84-85, 232-33 Bar Association, 185 Basic Law (See Basic Law (Hong Kong)) Bill of Rights Ordinance, 210-12 capitalism in, 13-14 checks and balances in, 136-37 overview, 12, 71-72, 171 appointment of, 89

CFA and, 111-12

Fox, Hazel, 152

France



> 280 Index

Hong Vong (cont.)	enlite in 1916
Hong Kong (cont.)	splits in, 216
elections, 172, 220	as unified government, 66, 173
enforcement authority, 104	Executive Council, 29–30, 65–66, 67
high transaction costs and, 175–76, 181	as "executive-led" system, 136
implementation of laws by, 96–97	executive orders, 83
Legislative Interpretations and, 123–24	Federation of Trade Unions (FTU), 179
Macau compared, 194	Financial Services Development
political corporatism and, 14–15, 29–30,	Council, 229
65–66	"Fishball Revolution,"232–33
powers of, 85–87 Selection Committee, 86	foreign relations, 152
	freedom of press in, 231–32
vetting of candidates, 187	future trends in, 233–34
vulnerability of, 216	Governor, 67, 171
Civic Party, 184	historical background, 10–12, 66–73
civil liberties in, 84–85, 210–12	hybrid constitutionalism in
common law tradition in, 201	generally, 9–10, 13–14
comparative constitutional law and, 27–29	deliberate design, 14–15, 168–69
Comprehensive Social Security Assistance,	Macau compared, 219–20
143-44	ICCPR in, 136, 140–41
constitutional review in, 97–100, 101–3,	Immigration Department, 122
210–12 (See also Court of Final Appeal	Immigration (Amendment) (No. 2)
(CFA) (Hong Kong)) Consultative Committee on Economic and	Ordinance, 122–24
Trade Co-operation between	Immigration (Amendment) (No. 3)
Hong Kong and the Mainland, 229	Ordinance, 122–24 Independent Police Complaints
	Council, 229
Copyright (Amendment) Bill 2016, 183 Court of Final Appeal (CFA) (See Court of	Judicial Officers Recommendation
Final Appeal (CFA) (Hong Kong))	Commission, 111–12
Court of Final Appeal Ordinance, 109–10	Justice Department, 178
Crimes Ordinance, 139	Law Society Council, 111–12, 185
Cultural Revolution, impact of, 69	League of Social Democrats, 184
Democratic Alliance for the Betterment and	legal origins hypothesis and, 201–2
Progress of Hong Kong (DAB), 179	legal-political comparison with Macau, 11
Economic Development Commission, 229	Legal Practitioners Ordinance, 111
Economic Synergy (party), 180	Legislative Council
Election Committee, 90–93, 94–95, 180–81,	overview, 171–73
184–85	Basic Law, failure to amend, 191–92
elections in, 88–90	CFA and, 111–12
Electoral Affairs Commission, 229–30	composition of, 172
Electoral Legislation (Miscellaneous	Election Committee and, 95–96
Amendments) Bill 2011, 111	elections, 220
Establishment Coalition	enforcement authority, 104
overview, 81	factions within, 179
business elites in, 180	Finance Committee, 195
factions within, 176-79, 180-81	legislative record, 224
fragility of, 200, 223	Letters Patent, 68–69
high transaction costs and, 175-76	members of, 92
Macau compared, 30	political corporatism and, 15, 29–30
political corporatism in, 14-15, 180	poor legislative record, 182-83
poor legislative record, 182–83	separation of powers and, 127
realignment of, 228–29	subconstitutional measures in, 221



Legislative Council (Amendment) Bill	overview, 24–25, 223–24
2011, 185	high transaction costs, 175-76, 181, 216, 239
Legislative Council Ordinance, 111, 127	implications of, 199–200
Legislative Council (Amendment)	Macau compared, 225, 226
Ordinance 2012, 185	predictiveness of jurisprudence from,
Legislative Interpretations, 100-2, 123-24,	190–91
135, 205, 230–31	Umbrella Revolution, 186, 187–90, 192,
legitimacy in, 192	224-25, 229-30, 232-33, 234
Letters Patent, 67-69, 210-11, 212	unified government in, 173
Liberal Party, 179, 180, 191	University of Hong Kong, 186–87
maintenance of prior laws, 96	Hongkong-Zhuhai-Macau Bridge, 219
Medical Registration (Amendment) Bill	Ho Yin, 193
2016, 183	HSBC, 69
"most similar cases" analysis and, 19–20,	Hu Jintao, 226–27, 228
219–20	Hungary, Constitutional Court, 7–8
National Flag and National Emblem	Hybrid constitutionalism
Ordinance, 125	overview, 238–39
national security legislation in, 224	aggrandizement of power in, 8–9
as natural laboratory to study hybrid	"chilling effect" of actions against judiciary
constitutionalism, 219–20	in, 44
Nomination Committee, 187	constitutional review in, 6–10
Occupy Central with Love and Peace	in democracy-authoritarianism
Movement, 186–87	continuum, 4–5
Pan-Democratic Opposition, 24, 179, 181,	ex ante actions against judiciary in, 43,
182, 184–85, 190, 191–92, 223, 230–31, 233	45, 174
political corporatism in, 14–15, 29–30, 65–66,	ex post actions against judiciary in, 43,
69, 89–96, 180	44–46, 174
political discord in, 24–25	façade of liberal constitutionalism in, 6, 42–43
Political Officials Accountability System	flexibility of, 6
(POAS), 177	growth of, 218–19
protests in, 184–90	in Hong Kong
Provisional Legislative Council, 122–23	generally, 9–10, 13–14
Public Order Ordinance, 141–42	deliberate design, 14–15, 168–69
Quasi-Referendum, 184–85	Macau compared, 219–20
Regional Flag and Regional Emblem	indecisiveness in, 240
Ordinance, 125	independence of judiciary in, 6–10
Rehabilitation of Offences Ordinance, 146	influence of constitutions in, 64–65
Royal Instructions, 68	inherent fragmentation in, 48
Science and Technology Parks	in Macau
Corporation, 229	generally, 13–14
Selection Committee, 86	deliberate design, 14–15, 168–69
separation of powers in, 127, 228	Hong Kong compared, 219–20
socio-economic comparison with Macau, 11	multiparty elections in, 6
Solicitors Disciplinary Tribunal, 111	natural laboratories to study, 219–20
as Special Administrative Region, 71–73	persistence of, 5–6
Special Administrative Region Preparatory	rise of, 3–5
Committee, 133, 135	strategic model of judicial decisionmaking
Town Planning Board, 142–43	and, 37–38, 41–42
Trade Development Council, 229	transaction cost theory (See Transaction cost
transaction cost theory and (See also	theory)
Transaction cost theory)	uniqueness of, 5–6



Hybrid regimes, 3-4. See also Hybrid	common law and, 202–6
constitutionalism	failure of, 202, 225–26, 240
	Hong Kong and, 201–2
ICCPR. See International Covenant on Civil	Macau and, 201–2
and Political Rights (ICCPR)	Lei Básica (Macau)
Ideological homogeneity versus heterogeneity,	generally, 13
47–48	overview, 65–66, 103–4
Illiberal democracies, 4. See also Hybrid	authoritarian nature of, 29–30, 103–4
constitutionalism	autonomy under, 84–85
India	Basic Law compared, 19, 220
common law in, 202–3	Chief Executive under, 85–87, 96–97
constitutional law in, 26–27	civil liberties under, 84–85
hybrid constitutionalism on local level in, 4	constitutional review under, 97–100, 101–3
Indonesia, constitutional law in, 26–27	(See also Tribunal de Última Instância
	(TUI) (Macau))
Inherent tragmentation, 48 International Covenant on Civil and Political	Consultative Committee, 82–83
Rights (ICCPR)	
	design on, 29–30
in Hong Kong, 136, 140–41	Drafting Committee, 82–83
reservations to, 149	enforcement authority, 96–98, 104
TUI and, 18, 107, 125, 138, 147–50	equality under, 147
International Monetary Fund, 209–10	executive orders under, 83
"Investments," constitutional courts as, 42	legal model of judicial decisionmaking
Ip, Eric C., 71, 240	and, 21
Israel, comparative constitutional law and, 25	Legislative Interpretations and, 100–2, 221–22
Italy	maintenance of prior laws, 96
civil law in, 203	treaties under, 83
constitutional review in, 204	TUI under, 16, 18, 109 (See also Tribunal de
ICCPR and, 149	Última Instância (TUI) (Macau))
	Leung, Andrew, 230
Jardines, 69	Leung, Baggio, 230
Jhaveri, Swati, 16–17	Leung, C.Y., 180-81, 183, 186, 189, 192, 228-29,
Jiang Zemin, 83, 227	230, 233
Judicial activism, 22	Leung, Elsie, 178–79
"Judicial holdup problem,"43	Leung Ka-lau, 183
Judicialization of politics, 1–2	Leung Kwok Hung, 141–42
Judicial petitions, 150–54	Li, Andrew, 113, 114, 134, 135–36, 140,
Judicial support networks, 49	178
Justinian (Rome), 203	Liberal autocracies, 4. See also Hybrid constitutionalism
Kelsen, Hans, 83	Libya, lack of constitutional court in, 43
Klabbers, Jan, 83	de Lima, Viriato Manuel Pinheiro, 119–20,
Kumar, Vikas, 64	131, 214 Liu Viu abu ag ag
Lam Carria 181 and and	Liu Yiu-chu, 98–99
Lam, Carrie, 181, 233, 238	Living constitution doctrine, 240
Lau, Kevin, 231	Low-energy constitutional review, 108–9, 170,
Lau Siu-kai, 176, 178, 181	215, 216, 237
Lee, Martin, 81, 82	Low transaction costs, 170, 196, 216–17, 239
Legal model of judicial decisionmaking, 21	Luxembourg, civil law in, 203
Legal origins hypothesis	N 0 "
overview, 30–31, 171, 201–2, 217	Ma, Geoffrey, 139–40, 228
civil law and, 202–6	Macau



Index 283

Antitobacco Law 2011, 196 Anti-Welfare Package demonstrations, Associação Comercial de Macau (ACM), 192-93 autonomy in, 84-85 capitalism in, 13-14 Chief Executive overview, 171 elections, 172 enforcement authority, 104 Hong Kong compared, 194 implementation of laws by, 96-97 Legislative Assembly, lack of conflict with, 194-95 political corporatism and, 14-15, 29-30, 65-66 powers of, 85-87 regulations, authority to promulgate, 138 Selection Committee, 86 strength of, 194, 216 TUI and, 119 civil law tradition in, 201 civil liberties in, 84-85, 212 Civil Referendum, 235–36 Código Civil (Civil Code), 129, 212-13 Código do Procedimento Administrativo (Code of Administrative Procedure), Código do Processo Administrativo Contencioso (Administrative Litigation Code), 132 comparative constitutional law and, 27-29 constitutional review in, 97-100, 101-3, 212-15 (See also Tribunal de Última Instância (TUI) (Macau)) Consultative Council, 75 Decree Laws, 212-14 Direcção dos Serviços de Educação e Juventude (Education and Youth Affairs Bureau), 146-47 Election Committee, 90-95, 199 elections in, 88-90 Establishment Coalition "casino faction,"236-37 cohesiveness of, 194-95, 200, 223, 237 factions within, 192-93, 194-95, 234 Hong Kong compared, 30 lack of splits in, 216 political corporatism in, 14-15, 95 as unified government, 66, 173

Estatuto Orgânico de Macau (Organic Statute of Macau), 75-76, 115, 212 Executive Council, 29-30, 65-66 executive orders, 83 Federation of Trade Unions (FTU), 192-93 gaming in, 28, 77, 236-37 General Union of Neighbors Association of Macau (GUNA), 192-93 Governor, 75-76, 171 historical background, 10-12, 73-79 hybrid constitutionalism in generally, 13-14 deliberate design, 14-15, 168-69 Hong Kong compared, 219-20 Illegal Immigrant Law, 212-13 Instituto para os Assuntos Cívicos e Municipais (Civil and Municipal Affairs Bureau), 107, 130 Jiangmen Communal Society, 197 Judicial Council, 115-16 Labor Relations Law 2008, 196 lack of viable opposition in, 195-96 Land Law 2014, 196 legal origins hypothesis and, 201-2 legal-political comparison with Hong Kong, 11 Legislative Assembly overview, 171-73 appointments to, 220 Chief Executive, lack of conflict with, composition of, 173 Election Committee and, 95–96 enforcement authority, 104 Governor and, 76 legislative record, 196, 224 members of, 75-76, 90-96 subconstitutional measures in, 221 TUI and, 119 Legislative Council, 15, 29-30 Legislative Interpretations, 100-2 Lei Básica (See Lei Básica (Macau)) Lei de Bases da Organização Judiciária (Fundamental Law on Judicial Organization), 109-10, 117, 139, 148, 237 Lei relativa á defesa da segurança do Estado (National Security Law), 198-99, 224 Macau Conscience, 234 Macau Lawyers' Association, 237 Macau Polytechnic Institute, 147 maintenance of prior laws, 96



Macau (cont.)	Maldives, Supreme Court, 8
"most similar cases" analysis and, 19–20, 219–20	Maritime Silk Route, 73–74
as natural laboratory to study hybrid	Mascarenhas, Dom Francisco, 74
constitutionalism, 219–20	Mason, Anthony, 127, 169
New Macau Association, 197, 234	McLachlin, Beverly, 238
political apathy in, 197–98	Menderes, Adnan, 56
political corporatism in, 14-15, 29-30, 65-66,	Mexico, hybrid constitutionalism on local
89–96	level in, 4
political discord in, 24–25	Ming Pao, 231
Pro-Democracy Opposition, 24–25, 195, 196,	Mixed constitutionalism, 9–10. See also Hybrid
197, 234, 237	constitutionalism
protests in, 196–97	Mongolia, "most similar cases" analysis in,
Regime Jurídico de Enquadramento das	19–20
Fontes Normativas Interna (Juridical	Monism, 83
Framework for the Formulation of	Montez Melancia, Carlos, 82
Internal Norms), 215, 237	"Most similar cases" analysis, 19–20, 170,
Selection Committee, 86	215–16, 219–20
Senado, 74	21) 10, 219 20
Serviços de Saúde (Bureau of Health), 147	Nasheed, Mohamed, 8
Sociedad de Turisomo e Diversões, 77	Nasser, Gamal, 42–43
socio-economic comparison with	Netherlands
Hong Kong, 11	civil law in, 203
as Special Administrative Region, 78–79	ICCPR and, 149
transaction cost theory and (See also	Neto Valente, Jorge, 237
Transaction cost theory)	New Zealand
overview, 24–25, 223–24	CFA, citation of decisions of, 201
Hong Kong compared, 225, 226	common law in, 202–3
implications of, 199–200	constitutional review in, 102
low transaction costs, 196, 216–17, 239	non-permanent judges on CFA from, 114
predictiveness of jurisprudence from,	Ng, António, 82, 235
198–99	North Korea, lack of constitutional court in, 43
Tribunal de Segunda Instância, 116, 138,	rvortii Roica, iack of constitutional court iii, 43
212–14, 226	"One Country, Two Systems,"71, 88, 186–87
Tribunal de Última Instância (TUI) (See	Orbán, Viktor, 7–8
Tribunal de Última Instância (TUI)	Originalism, 150
(Macau))	Originalism, 150
Tribunal Superior de Justiça, 115–16, 117, 212	Pakietan constitutional law in 26 27
unified government in, 173	Pakistan, constitutional law in, 26–27 Parliamentary sovereignty, 206
United Citizens Association, 197, 236	Partlett, William, 71
University of Macau, 147	Patten, Chris, 113, 177, 193
Wealth Partaking Scheme, 197	Philippines, constitutional law in, 26–27
Welfare Package for Designated, Incumbent	Poland, civil law in, 203
and Former Chief Executives and	Polatkan, Hasan, 56
Principal Officers Bill, 234–35	Political corporatism
in World War II, 74–75	defined, 65–66
Malaysia	in Hong Kong, 14–15, 29–30, 65–66, 69,
CFA, citation of decisions of, 201	89–96, 180
constitutional law in, 26–27	in Macau, 14–15, 29–30, 65–66, 89–96
hybrid constitutionalism in, 9–10	Political opportunism, 48–49
persistence of hybrid constitutionalism	Politics (Aristotle), 25
in, 5–6	Portugal



Assembleia da República, 209	Sadat, Anwar, 42–43
austerity in, 209–10	Sam Hou Fai, 119–20
Australia compared, 208	Sampaio, Jorge, 116
Carnation Revolution, 2, 75, 115, 212,	Sautede, Éric, 236
225–26	Scully-Hill, Anne, 16–17
China, diplomatic relations with, 76	Second Convention of Peking, 10-11, 67
civil law in, 203	Second Opium War, 67
Constitution, 75, 115, 117, 208–9, 210,	Semi-authoritarianism, 3-4. See also Hybrid
212	constitutionalism
constitutional review in, 204, 208-10	Semi-democracy, 3-4. See also Hybrid
Estado Novo, 75	constitutionalism
France compared, 208	Separation of powers
Germany compared, 208	in Hong Kong, 127, 228
Macau, historical background, 10–12, 73–79	transaction costs of, 41
(See also Macau)	Sham constitutionalism, 9-10. See also Hybrid
Official Secrets Act 1993, 209	constitutionalism
Supreme Administrative Court, 210	Shanghai-Hong Kong Stock Connect, 28
Supreme Court of Justice, 210	Shapiro, Martin, 32
Tribunal Constitucional, 115–16, 117, 208–10,	Shenzhen-Hong Kong Stock Connect, 28
212, 221, 225–26	Singapore
US compared, 208	CFA, citation of decisions of, 201
Predominant provision test, 151, 153	communitarianism in, 54–55
Proportionality standard	Constitution, 52–53
in CFA, 140–45, 150	constitutional law in, 26–27
in Prussia, 150	control of courts in, 52
in TUI, 145–50	Court of Appeal, 52–55
Protocol of Lisbon, 74	deference in, 54–55
Prussia, proportionality standard in, 150. See	historical background, 50–51
also Germany	hybrid constitutionalism in, 9–10
,	patterns of liberal democracy in, 3
Qian Qishen, 122	People's Action Party, 50–53, 175
	persistence of hybrid constitutionalism
Referrals, 150–54	in, 5–6
Regime cohesion	regime cohesion in, 51
overview, 46–47	threats against courts in, 52
ideological homogeneity versus	transaction cost theory in, 50-55, 62, 63,
heterogeneity, effect of, 47–48	222–23
political opportunism, effect of, 48-49	unified government in, 49–50
in Singapore, 51	Sino-British Joint Declaration (1984)
Reporters without Borders, 231	overview, 12, 65
Ríos-Figueroa, Julio, 10	autonomy under, 84
Rocha Vieira, Vasco, 82	Basic Law and, 96–97, 103
Russia. See also Soviet Union	CFR and, 109–10
aggrandizement of power in, 8-9	credibility and, 80
Constitutional Court, 7, 8–9, 43	transfer of sovereignty under, 71-73
hybrid constitutionalism on local level in, 4	Sino-Portuguese Joint Declaration (1987)
member republics, constitutional courts	generally, 198
in, 26	overview, 13, 65
patterns of liberal democracy in, 3	autonomy under, 84
persistence of hybrid constitutionalism	credibility and, 80
in. 5–6	Lei Básica and, 06-07, 102



Sino–Portuguese (cont.)	civil law in, 203
transfer of sovereignty under, 77–79	ICCPR and, 149
TUI and, 109–10	
Sino-Portuguese Treaty of Friendship and	Tai, Benny, 186, 190
Commerce, 74	Taiwan
Sino-Portuguese Treaty of Peking, 74	Constitutional Court, 43
Song Man Lei, 119–20, 148	constitutional law in, 26–27
Sou, Sulu, 235	"most similar cases" analysis in, 19–20
South Africa, comparative constitutional law	as proposed Special Administrative Region,
and, 25	70-71
South China Morning Post, 231	in United Nations, 70
South Korea	Tan, Kevin Y.L., 53
Constitutional Court, 43	Tang, Henry, 180–81
constitutional law in, 26–27	Thailand, constitutional law in, 26–27
constitutional review in, 1	Third wave of democratization, 2, 3–4
"most similar cases" analysis in, 19–20	Tien, James, 191
de Souza, Lionel, 73	Tonga, citation of decisions of CFA in, 201
Soviet Union. See also Russia	Transaction cost theory
Constitutional Supervision Committee,	
Constitutional Supervision Committee,	generally, 20 overview, 29, 32–33, 61–63, 168–71, 215–17,
43 Loninism in 42	
Leninism in, 43	222–23, 239 "accet on a i Fait." in 12
perestroika in, 43	"asset specificity" in, 42 CFA and
Spain	
civil law in, 203	overview, 24–25, 30–31
constitutional review in, 204	high transaction costs in, 170, 216
Special Administrative Regions. See	"chilling effect" of actions against judiciary
Hong Kong; Macau	ın, 44
Sri Lanka	collective decisionmaking and, 174–75
Freedom Party, 8	constitutional courts as "investments,"42
Supreme Court, 8	constitutionalism, transaction costs of, 41
Standards of review	control of constitutional courts, effect on, 49
in CFA, 140–45, 150	conventional models versus, 173-74
in Prussia, 150	economics, transaction costs in, 38–39,
in TUI, 145–50	40-41
Stephenson, Matthew, 22	ex ante actions against judiciary in, 43,
Strategic model of judicial decisionmaking	45, 174
generally, 20	ex post actions against judiciary in, 43,
assumptions underlying, 21–22	44–46, 174
competitive versus non-competitive systems,	high-energy constitutional review and, 33, 63
35–36	high transaction costs, 170, 175–76, 181,
constitutional review and, 22–23	216, 239
electoral competition, importance of, 36-37	Hong Kong and
"friction" and, 37–38	overview, 24–25, 223–24
hybrid constitutionalism and, 37–38, 41–42	high transaction costs, 175-76, 181, 216, 239
interbranch competition, importance of,	implications of, 199–200
37	Macau compared, 225, 226
interdependence and, 33-35	predictiveness of jurisprudence from,
political realities in, 35–36	190–91
transaction cost theory and, 23-24, 41-42	"investments," constitutional courts as, 42
Strong-form constitutional review, 99–100	"judicial holdup problem,"43
Switzerland	low transaction costs, 170, 196, 216–17, 239



Macau and	low-energy constitutional review, 170, 215
overview, 24–25, 223–24	216, 237
Hong Kong compared, 225, 226	National People's Congress versus, 128
implications of, 199–200	philosophy of, 129–32
low transaction costs, 196, 216–17, 239	procedure, 116–17
predictiveness of jurisprudence from,	proportionality standard, 145–50
198–99	standards of review, 145–50
"most similar cases" analysis, 170, 215–16	Standing Committee of National People'
political transaction costs defined, 222	Congress versus, 154, 155–56,
politics, transaction costs in, 39-41	168–69, 173
predictiveness of jurisprudence from, 49-50,	weak-form review, 154
190–91, 198–99	corruption and, 149–50
regime cohesion, effect of	Decree Laws and, 213–14
overview, 46-47	divergence from CFA, 16-20, 24-25, 31
ideological homogeneity versus	enforcement authority, 104
heterogeneity, 47–48	equality and, 146–47
political opportunism, 48–49	establishment of, 16, 116-17
in Singapore, 51	final adjudication power, 220
separation of powers, transaction costs of, 41	ICCPR and, 18, 107, 125, 138, 147–50
in Singapore, 50–55, 62, 63, 222–23	jurisdiction, 97–98, 121–27
strategic model of judicial decisionmaking	legal model of judicial decisionmaking
and, 23–24, 41–42	and, 21
transaction costs defined, 38	list of judges, 161
TUI and	number of judges, 118
overview, 24-25, 30-31	nurse salaries and, 147
low transaction costs in, 170,	President, 117–18
216–17	public processions and, 130–31
in Turkey, 55–61, 62–63, 222–23	qualifications of judges, 117–18
Treaty of Friendship and Commerce between	residential permits and, 146
Portugal and China, 11	teacher service hours and, 146-47
Гreaty of Nanking, 10, 66	transaction cost theory and (See also
Гribunal de Última Instância (TUI) (Macau)	Transaction cost theory)
overview, 66	overview, 24-25, 30-31
amparo procedure, 106–7	low transaction costs, 170, 216-17
appointments to, 118-19	Trinidad and Tobago, citation of decisions of
attitudinal model of judicial	CFA in, 201
decisionmaking and, 20–21	Tsang, Donald, 178, 184, 191–92
authoritarian nature of, 30	Tsang, John, 181
Chinese Constitution and, 137–38	Tsang Hin-Chi, 122
constitutional review in	TUI. See Tribunal de Última Instância (TUI)
overview, 16-20, 30, 155-56	(Macau)
abstract review, 139	Tung, C.H., 113, 176–78, 191, 193
CFA compared, 108–9, 120–21, 169–70,	Turkey
220-21	aggrandizement of power in, 9
criminal cases, 147–50	attempted coup in, 59-60
disapplication doctrine, 129–32	Constitution, 55, 58–59
enforcement authority, 97-100, 101-3	Constitutional Court, 9, 56, 57-61
interpretive methodology, 137–38	hegemonic preservation in, 56
jurisdiction, 121–27, 173	historical background, 55–56
lack of activism, 16-17, 106-7, 117,	Islamic Justice and Development Party,
127–29	56–57, 58–61



288 Index

Turkey (cont.) Kemalism in, 55-61, 62-63 laïcité policy in, 55 National Assembly, 56 Peace at Home Council, 59-60 Penal Code, 58 persistence of hybrid constitutionalism in, 5–6 repression in, 56-57 Republican People's Party, 55, 59, 60 transaction cost theory in, 55-61, 62-63, 222-23 unified government in, 49-50 Umbrella Revolution, 186, 187-90, 192, 224-25, 229-30, 232-33, 234 Unified government, 37, 46-47, 49-50, 173 United Kingdom British Overseas Territories, supreme courts in. 26 CFA, citation of decisions of, 201 Colonial Laws Validity Act 1865, 68 common law in, 202-3, 204 comparative constitutional law and, 25 constitutional review in, 102, 206-8 Criminal Justice and Public Order Act 1994, Hong Kong, historical background, 10-12, 66-73 (See also Hong Kong) Human Rights Act 1998, 207-8, 225-26 non-permanent judges on CFA from, 114, 238 Orders of Council, 83 parliamentary sovereignty in, 206 Prevention of Terrorism Acts, 206-7 Privy Council, 114, 211 Public Order Act 1936, 206-7 Supreme Court, 209 United Nations Charter, 70 Educational, Scientific and Cultural Organization (UNESCO), 198 Human Rights Committee, 107, 149

United States attitudinal model of judicial decisionmaking in, 20-21 common law in, 202-3, 204 comparative constitutional law and, 25 constitutional review in, 22 decentralization in, 37 divided government in, 37 originalism in, 150 Portugal compared, 208 state supreme courts, 26 Universal Declaration of Human Rights, 208 Uzbekistan, patterns of liberal democracy in, 3 Vanberg, Georg, 35 Venezuela, persistence of hybrid constitutionalism in, 5-6 Victoria (UK), 66-67 Wah, Szeto, 81, 82 Weak-form constitutional review, 16, 102-3, 154 Webb, Philippa, 152 Wilson, David, 211 Wong, Joshua, 186 Wong Yan Lung, 178 World Press Freedom Index, 231 Wu Jianfan, 13, 97 Xiao Weiyun, 99 Xi Jinping, 189, 226-28, 237

Yameen, Abdulla, 8
Yau, Regine, 230
Yavuz, M. Hakan, 57–58
Ye Jianying, 70–71
Yeltsin, Boris, 7
Yep, Ray, 232
Yew, Lee Kuan, 50

Young, Simon N.M., 109–10 Yuen, Rimsky, 230

Zhang Xiaoming, 169–70, 228 Zimbabwe, patterns of liberal democracy in, 3 Zorlu, Fatin Rüştü, 56