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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CONTENTS

List of Figures ix
List of Tables x
List of Contributors xi
Preface xvii

1 Constitutional Courts in Asia: Western Origins and Asian Practice 1
ALBERT H. Y. CHEN

2 Constitutional Review in Asia: A Comparative Perspective 32
CHERYL SAUNDERS

3 The Informal Dimension of Constitutional Politics in Asia: Insights from the Philippines and Indonesia 60
BJÖRN DRESSLER

4 Towards More Intra-Asian Judicial Cooperation in the Constitutional Sphere 87
MAARTJE DE VISSE

5 An Evolving Court with Changing Functions: The Constitutional Court and Judicial Review in Taiwan 110
JIU NN-RO NG Y EH AND WEN-CH EN CH ANG

6 Constitutional Court of Korea: Guardian of the Constitution or Mouthpiece of the Government? 141
CHAIHARK HAHM

7 Avoiding Rights: The Constitutional Tsets of Mongolia 168
TOM GINSBURG AND CHIMID ENHBAATAR
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>The Constitutional Court of Thailand: From Activism to Arbitrariness</td>
<td>184</td>
</tr>
<tr>
<td></td>
<td>Khemthong Tonsakulrungruang</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Indonesia’s Constitutional Court and Indonesia’s Electoral Systems</td>
<td>214</td>
</tr>
<tr>
<td></td>
<td>Simon Butt</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Constitutional Council of Cambodia at the Age of Majority: A History</td>
<td>240</td>
</tr>
<tr>
<td></td>
<td>of Weathering the Rule of Law Storms in Peacetime</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Teilee Kuong</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>The Short but Turbulent History of Myanmar’s Constitutional Tribunal</td>
<td>270</td>
</tr>
<tr>
<td></td>
<td>Andrew Harding</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>The Supreme Court of Japan: A Judicial Court, Not Necessarily a</td>
<td>289</td>
</tr>
<tr>
<td></td>
<td>Constitutional Court</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yasuo Hasebe</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Establishing Judicial Review in China: Impediments and Prospects</td>
<td>311</td>
</tr>
<tr>
<td></td>
<td>Qianfan Zhang</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Why Do Countries Decide Not to Adopt Constitutional Review? The</td>
<td>335</td>
</tr>
<tr>
<td></td>
<td>Case of Vietnam</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ngoc Son Bui</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Index</td>
<td>365</td>
</tr>
</tbody>
</table>
FIGURES

1.1 Asian constitutional courts: their jurisdiction and manner of exercise 27
1.2 Judicial independence and involvement in megapolitics 27
1.3 Supply of judicialization and demand for rule of law 28
1.4 Degree of judicial activism and degree of public confidence in the court 28
9.1 Judicial review cases 218
9.2 Legislative election disputes 220
9.3 Pemilukada disputes 221
TABLES

3.1 Network influence in the judiciary 68
3.2 Composition of the Philippine Supreme Court Bench, 1987–2016 70
3.3 Composition of the Constitutional Court Bench in Indonesia, 2003–2016 71
7.1 Tsets’ decisions on constitutional violations 172
9.1 Cases decided by the Indonesian Constitutional Court 215
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xvi

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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
PREFACE

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.

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