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Edited by Albert H.Y. Chen

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CONSTITUTIONALISM IN ASIA IN THE EARLY TWENTY-FIRST CENTURY

Examining developments in the first decade of the twenty-first century, this authoritative collection of essays studies the evolving practice of constitutional law and constitutionalism in Asia. It provides a comprehensive overview of the diverse constitutional issues and developments in sixteen East, Southeast and South Asian countries. It also discusses the types of constitutionalism that exist and the general trends in constitutional developments whilst offering comparative, historical and analytical perspectives on Asian constitutionalism. Written by leading scholars in the field, this book will be of great interest to students and scholars alike.

Albert H.Y. Chen is Chan Professor in Constitutional Law at the University of Hong Kong.

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Preface

This book is a study of constitutional developments and the practice of constitutional law and constitutionalism in sixteen selected Asian countries or jurisdictions in the first decade of the twenty-first century. The objective is to create systematic narratives to document such developments, and to provide comparative, historical and analytical perspectives on various elements of converging or diverging practices and trends of constitutionalism in the jurisdictions concerned. It is hoped that this book will be of interest to scholars and students of comparative constitutional law, comparative politics, and Asian studies, particularly human rights, democracy, legal systems, the rule of law, constitutional adjudication and governance in Asia.

The existing English-language literature on comparative constitutional law, like the literature on comparative law generally, focuses mainly on Europe and North America, and also to some extent South Africa and Japan, but devotes relatively little attention to Asian countries.¹ There do exist some valuable works on constitutional law and constitutionalism in Asia, such as Lawrence Beer (ed.), *Constitutional Systems in Late Twentieth Century Asia* (Seattle: University of Washington Press, 1992), and Cheryl Saunders and Graham Hassall (eds.), *Asia-Pacific Constitutional Yearbooks* (Centre for Comparative Constitutional Studies, University of Melbourne, 1995–9). These works are, however, no longer up to date. More recently, some works have appeared on constitutional courts in Asia.² These works focus mainly on constitutional courts and judicial review, and are less concerned with broader issues of constitutional law and constitutional developments. As far as Southeast Asia is concerned, a relevant work is Clauspeter

¹ See, e.g., Norman Dorsen et al., *Comparative Constitutionalism: Cases and Materials*, 2nd edn (St Paul, MN: West, 2010); Vicki C. Jackson and Mark Tushnet, *Comparative Constitutional Law*, 2nd edn (New York: Foundation Press, 2006).

² Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003); Andrew Harding and Penelope Nicholson (eds.), *New Courts in Asia* (London: Routledge, 2010); Björn Dressel (ed.), *The Judicialization of Politics in Asia* (London: Routledge, 2012).

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Hill and Jörg Menzel (eds.), *Constitutionalism in Southeast Asia* (Singapore: Konrad-Adenauer-Stiftung, 2008). The coverage of that book, however, is limited to Southeast Asian countries.

It is hoped that this present book can contribute to filling a gap in the existing literature, because (1) it is more comprehensive in coverage than existing works, both in terms of the countries or jurisdictions covered and in terms of the constitutional issues and developments covered; (2) it is more up to date than existing works; and (3) it attempts to contribute comparative and theoretical reflections on contemporary constitutional phenomena in Asia.

In this book, apart from Chapters 1, 2 and 17, which are on theoretical, comparative and transnational perspectives, all other chapters are ‘country chapters’ devoted to describing and analysing constitutional developments in the particular country or jurisdiction concerned. It is hoped that these ‘country chapters’ as a whole will enable readers to acquire an overall view of constitutional developments in East and Southeast Asia, India and Nepal in the first decade of the twenty-first century. The ‘country chapters’ are designed not to be too specialised or detailed, but to provide a comprehensive and systematic review of major constitutional developments in the countries or jurisdictions concerned in the first decade of the twenty-first century. Authors of these chapters were invited to cover, as far as practicable, some or all of the following aspects of constitutional development: (1) discussions or proposals regarding, or actual enactment of, in the first decade of the twenty-first century, a new constitution or constitutional amendment, (2) major constitutional-law cases decided by the courts in this period, and the trend, if any, emerging from the cases, (3) major legislative developments in the domain of constitutional law in this period, and (4) major political developments in this period that can inform our understanding of constitutional developments in the country or jurisdiction concerned, such as changes of government, or major political, social or economic events.

Contributors to this book were all invited to attend the Fourth Asian Constitutional Law Forum (4th ACLF) held at the Faculty of Law, University of Hong Kong (HKU), on 16–17 December 2011, and to present their draft chapters as papers for this conference. The manuscripts were then revised, taking into account comments received at the conference, and updated to take into account developments in 2012, and, in some cases, also particularly significant developments in early 2013. The publication of this book would not have been possible without the successful organisation of the 4th ACLF at HKU. I am therefore much indebted to all those who contributed to the 4th ACLF, particularly Professors Jiunn-rong Yeh and Wen-Chen Chang of the College of Law of National Taiwan University, who, as organisers of the 3rd ACLF in Taipei in 2009, passed to me the ‘torch’ for organising the 4th ACLF; Dean Johannes Chan of our Faculty of Law, HKU, who secured the financial resources for the 4th ACLF; Professor Simon Young, Director of the Centre for Comparative and Public Law (CCPL) at the Faculty

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of Law, HKU, who decided that the CCPL would host the 4th ACLF; and, last but not least, Ms Sharron Fast and Ms Flora Leung – our able and dedicated staff at the CCPL – who provided excellent administrative support in planning, organising and managing the conference. I am also grateful to Mr M. Howard-Johnson – JD student and my research assistant in 2012 – for his invaluable editorial assistance in the preparation of the manuscript for this book. May I also take this opportunity to record my deepest gratitude to the contributors to this volume for their willingness to participate in, and their hard work and steadfast support for, both the conference and this book project, and to Ms Finola O’Sullivan of Cambridge University Press for her keen interest in, and kind support for, the present project.

Albert H.Y. Chen