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978-1-108-47489-4 — Constitutional Transition and the Travail of Judges  
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## *Constitutional Transition and the Travail of Judges*

This book looks at the history of the courts in South Korea from 1945 to the contemporary period. It sets forth the evolution of the judicial process and jurisprudence in the context of the nation's political and constitutional transitions. The focus is on constitutional authoritarianism in the 1970s under President Park Chung Hee, when judges faced a positivist crisis as their capacity to protect individual rights and restrain the government was impaired by the language of the new Constitution. Caught between the contending duties of implementing the law and pursuing justice, the judges adhered to formal legal rationality and preserved the fundamental constitutional order, which eventually proved essential in the nation's democratization in the late 1980s. Addressing both democratic and authoritarian rule of law, this volume prompts fresh debate on judicial restraint and engagement in comparative perspectives.

MARIE SEONG-HAK KIM is a legal historian and attorney at law. She specializes in Korean, Japanese, and French law. She is the author of *Michel de L'Hôpital* (1997) and *Law and Custom in Korea* (2012) and is the editor of *The Spirit of Korean Law* (2016). She is the recipient of the National Endowment of Humanities Fellowship and the Fulbright Senior Scholar Grant. She was a fellow at the Collegium de Lyon, the Netherlands Institute for Advanced Study, and the Freiburg Institute for Advanced Studies. As a native of South Korea, she graduated from Ewha Womans University in Seoul and received her PhD and JD from the University of Minnesota. She is a member of the Minnesota Bar since 1995.

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The Courts of South Korea

MARIE SEONG-HAK KIM



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*In memory of my parents*

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Contents

<i>List of Figures</i>	<i>page</i> ix
<i>List of Tables</i>	x
<i>Preface</i>	xi
1 Introduction	1
The State of Questions	5
Constitutional Authoritarianism	13
2 The Making of the Constitution and the Courts, 1945–1962	18
Judicial Tradition, Old and New	20
The Constitutional Review System	31
Judicial Tenure and Independence	45
Political Mutations	52
3 Jurisprudential Evolution, 1962–1972	57
Legislative Supremacy and the Courts	58
National Security and the Laws	66
The Court in Action	75
Judges versus Prosecutors	92
4 The Yusin Era, 1972–1980 (1): The Laws	108
The 1972 Constitution	110
A Troubled Legal System	118
Emergency Decrees	132
5 The Yusin Era, 1972–1980 (2): The Courts	159
The Prerogative State: Security Cases	161
The Normative State: Nonsecurity Cases	191
Coping with the Constitution	200
6 The Yusin Era, 1972–1980 (3): The Judges	205
Judges and Unjust Laws	206
Judicial Profession and Career	217

viii	<i>Contents</i>
	Taming Judges, Blaming Judges 226
	The Killing of the President 241
7	Political Transitions and Rule of Law, 1980–1987 242
	Unraveling of the Yusin System 244
	Judicial Ambivalence in the Post-Yusin Era 268
	Rule of Law and Judicial Independence 275
	Democratization and New Judicial Ideals 284
8	Democracy and Travails of Judges, 1987 to the Present 285
	Transitional Justice and Justice in Transition 287
	Judicial Turnabout: Revisiting Emergency Decrees 289
	An Unconstitutional Constitution 308
	Constitutions and the Courts 316
9	Conclusion 319
	<i>Bibliography</i> 324
	<i>Index</i> 345



Figures

2.1	Judicial Council, 1958	<i>page</i> 51
2.2	Courtroom in the Supreme Court, circa 1960	54
3.1	Tongbaengnim (East Berlin) Case Trial, 1968	72
3.2	Conference of Chief Judges, 1970	80
5.1	President Park Chung Hee and the Supreme Court Justices, 1976	179
7.1	The Supreme Court in Session, 1980	248
7.2	The Supreme Court Judgment, 80To306	255
7.3	Justices of the Supreme Court of Korea, 1980	266
7.4	The Supreme Court Petty Bench, circa 1978	267

Tables

3.1 Arrest Warrants, 1965–1994	<i>page</i> 95
3.2 Judicial Workload, 1965–1984	99
3.3 Judicial Workload, 1985–2004	101
4.1 Pretrial Release, 1970–1984	123
4.2 Sentences Rendered by the Emergency Appellate Military Court in 1974 (Emergency Decrees No. 1 and No. 4 and Security Laws)	145
4.3 Sentences for Emergency Decree No. 9 Violations (First Instance), 1976–1979	154
4.4 Sentences for Emergency Decree No. 9 Violations (Second Instance), 1975–1979	155
5.1 National Security Act and Anticommunist Act Prosecutions, 1965–1994	187
5.2 Capital Punishments, 1974–1984	188
5.3 Sentences for National Security Act and Anticommunist Act Violations (First Instance), 1974–1979	189
5.4 Population and Civil Litigation, 1965–1994	193
6.1 Judicial Vacancies, 1975–1979	224

## *Preface*

The writing of this book has taken much longer than I envisioned. Along the way, I came to realize the full extent of the daunting task I had taken on. Attempting to make sense of law and justice in modern Korea has been particularly challenging because much of it covers a period of Korean history I lived *in loco*. I was a high school and then college student in Seoul in the 1970s and spent the early part of the 1980s there before moving to the United States. Watching the unfolding of Korean politics from afar since then, I thought that there was a story to tell about this pivotal era in the contexts of law and the courts and that my perspectives as both an insider and an outsider might be of some use in helping readers understand it better. I was especially interested in the role of judges, as I grew up in the family of a Supreme Court justice. The following pages represent a modest effort on my part to fulfill a historian's duty to be faithful to the facts, in ways that I believe are not very different from a judge's duty to be faithful to the facts and the law. My late parents and my family have shared, in spirit and in person, my long and continuous journey to study different legal traditions of the world. I hope this book brings Christopher, John-Paul, and Joel a deeper understanding of my native country.

The research and writing of the book have been supported by fellowships from the Netherlands Institute for Advanced Study (NIAS) (2013–2014) and from the Freiburg Institute for Advanced Studies (FRIAS) where I was a Marie Curie Fellow of the European Institutes for Advanced Study (EURIAS) (2016–2017). To these and other institutions, and above all the many individuals who graciously offered me inspiration and encouragement, I remain deeply grateful.

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