

Keynote Speech

The Emergence of Asian Constitutionalism: Features in Comparison

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ABSTRACT

The rise of modern Asia constitutionalism has not been widely discussed as its western counterparts; although Asia constitutionalism shared with tradition constitutionalism a thin understanding of a liberal constitutional foundation upon which state, society and individuals are defined, nevertheless the distinct developments and features of Asia Constitutionalism which has moved beyond Asia values in the last two decades is worth noting. Constitutional developments in Asia though seemingly share similar features with new democracies like Eastern Europe, nevertheless, Asia constitutionalism is embedded with fundamental differences that is distinguishable from the normative understanding of western constitutionalism. This Article analyses the distinguish development of Asia Constitutionalism in light of the evolving paradigms of modern constitutionalism; traditional constitutionalism, transitional constitutionalism and transnational constitutionalism, then concludes with the remark on the need to address the emerging trend of Asian Constitutionalism and how further investigation into the development and features of Asian Constitutionalism would shed a new light on contemporary constitutionalism.

Keywords: *Asian Constitutionalism, Traditional Constitutionalism, Transitional Constitutionalism, Transnational constitutionalism, Asian Value Discourse*

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I. FOREWORD

Vibrant constitutional democracies have taken hold in Asian soil. Scant attention, however, has been placed upon ways that constitutionalism has been brought into being and developed into distinctive forms in Asia. I would like to take the challenge and analyze some distinctive ways that constitutionalism in Asia has been developed particularly in the last two decades. Before discussing any salient features of Asian constitutionalism, however, it is important for us to understand how far and how much the ideas and institutions of modern constitutionalism has changed so far. In other places, I have identified three changing paradigms of modern constitutionalism: traditional constitutionalism, transitional constitutionalism and transnational constitutionalism. I would first briefly discuss the three models of constitutionalism and then place Asian constitutional development into these evolving paradigms of modern constitutionalism.

II. CHANGING PARADIGMS OF MODERN CONSTITUTIONALISM

A. *Traditional Constitutionalism*

As developed since the eighteenth century, traditional constitutionalism has been primarily of a limiting focus. Viewed as placing constraints on government powers, a constitution embodies limiting principles such as separation of powers, limited government, check and balance, guarantee of human rights and judicial review.¹ In the name of protecting individual rights, a constitution seeks ways to tie up the hands of the government rather than to empower them.

The fundamental theory behind this traditional reading of constitutionalism is a clear distinction between law and society, and a conviction that it is not the vocation of law or constitution to stabilize social order and to form political consensus.² Rather, a constitution is an end-result, a codified document of social and political conflicts and their

1. Traditional constitutionalism views a constitution as the guardian of fundamental rights through constraining government powers, including limited government, separation of powers, checks and balances, and judicial review. *See, e.g.*, Louis Henkin, *A New Birth of Constitutionalism: Genetic Influence and Genetic Defects*, in CONSTITUTIONALISM, IDENTITY, DIFFERENCE, AND LEGITIMACY: THEORETICAL PERSPECTIVES 39 (Michel Rosenfeld ed., 1994); Nevil Johnson, *Constitutionalism: Procedural Limits and Political Ends*, in CONSTITUTIONAL POLICY AND CHANGE IN EUROPE 46 (Joachim Jens Hesse & Nevil Johnson eds., 1995); Michael J. Klarman, *What's So Great About Constitutionalism?*, 93 NW. U. L. REV. 145 (1998).

2. *See generally* Gavin W. Anderson, *Social Democracy and the Limits of Rights Constitutionalism*, 17 CAN. J.L. & JURISPRUDENCE 31 (2004) (arguing that the rights constitutionalism rests on a view of the autonomy of law that is not always consistent with other democratic traditions).

resulting consensus. This understanding of the relationship between state, society and individuals may have helped certain functions of state as a political organization. Admittedly, however, this relationship has already been altered much with the fast, rapid transformation of social, cultural and technological foundations of human societies.

B. *Transitional Constitutionalism*

In the last two decades, constitutionalism has been changed much, if not entirely altered. The most important aspect of such transformation has come from the democratic transitions that began in the late 1980s³ and throughout the 1990s⁴ and took place in all over the world including many parts of Asia such as Taiwan, South Korea, Mongolia, the Philippines, Thailand, and Indonesia.

During these profound political transitions, constitutionalism has functioned quite differently. At the time of social-political disintegration, a constitution may function as a primary mechanism to forge new political agendas and helped form social consensus.⁵ It is there to steering new agendas, reconstructing societies and even empowering the next generation of leaders, certainly departing from what we understand as limiting focus of traditional constitutionalism.

In addition, main features of transitional constitutionalism also defy traditional ones. First, instead of immediately making a new constitution, many transitional states have relied upon more contingent or even provincial constitutional arrangements to steer for constitutional changes.⁶ Secondly, courts have shouldered unprecedented roles in facilitating the process of such grand political transformation and constitutional changes. Last and interestingly, a great deal of constitutional reforms take much less formal forms or normative mechanisms.

3. For discussions of democratic transitions in the 1980s, see generally SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991); BRUCE ACKERMAN, *THE FUTURE OF LIBERAL REVOLUTION* (1992).

4. For studies mostly in the 1990s, see generally JUAN J. LINZ & ALFRED STEPAN, *PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE* (1996); ANDREW ARATO, *CIVIL SOCIETY, CONSTITUTION AND LEGITIMACY* (2000); *DEMOCRATIZATION IN CENTRAL AND EASTERN EUROPE* (Mary Kaldor & Ivan Vejvoda eds., Pinter 1999) (2002); IAN JEFFRIES, *THE COUNTRIES OF THE FORMER SOVIET UNION AT THE TURN OF THE TWENTY-FIRST CENTURY* (2004).

5. See Ulrich K. Preuss, *The Politics of Constitution Making: Transforming Politics into Constitutions*, 13 L. & POL'Y 107, 113, 119 (1991); *POLITICAL CULTURE AND CONSTITUTIONALISM: A COMPARATIVE APPROACH* 5 (Daniel P. Franklin & Michael J. Baun eds., 1995).

6. See Jiunn-Rong Yeh & Wen-Chen Chang, *The Changing Landscape of Modern Constitutionalism: Transitional Perspective*, 4(1) NTU L. REV. 145, 150-53 (2009).

C. *Transnational Constitutionalism*

Besides the development of transitional constitutionalism, the other profound change in constitutionalism takes place not within any national borders.⁷ Driven by globalization and its related complexities, constitutionalism has developed beyond its traditional confinements, nation-states.⁸ We may observe this new development in three aspects.

First is the creation of or the attempt at creating transnational constitutions. The effort at passing the Constitutional Treaty for European Union was a good example.⁹ The second –and moreso astonishing– feature of transnational constitutionalism is the presence of quasi-constitutional arrangements at supranational levels. Treaties or agreements that traditionally bind only states have begun having direct or primary effects on national domestic legal regimes.¹⁰ A domestic constitution no longer possesses the status of the final and supreme law of its own land, but has to be superseded directly by transnational norms.¹¹ The third aspect is understood as “constitutionalization of constitutional law.” Due to the triumph of constitutionalism in the last two decades, increasingly more and

7. See Neil Walker, *Late Sovereignty in the European Union*, in SOVEREIGNTY IN TRANSITION 3 (Neil Walker ed., 2003) (arguing that constitutions may rise without sovereigns).

8. See Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771, 775-78 (1997) (arguing that constitutionalism may develop from treaty to constitution or vice versa); GAVIN W. ANDERSON, CONSTITUTIONAL RIGHTS AFTER GLOBALIZATION 17-35 (2005) (arguing that constitutionalism has developed beyond nation-states and advocating legal pluralism as a solution).

9. See J. H. H. WEILER, THE CONSTITUTION OF EUROPE: “DO THE NEW CLOTHES HAVE AN EMPEROR?” AND OTHER ESSAYS ON EUROPEAN INTEGRATION (1999); DEMOCRACY IN THE EUROPEAN UNION: INTEGRATION THROUGH DELIBERATION? 256-69 (Erik Oddvar Eriksen & John Erik Fossum eds., 2000). *But see* J. H. H. Weiler & Joel P. Trachtman, *European Constitutionalism and Its Discontents*, 17 NW. J. INT’L L. & BUS. 354, 392-93 (1996) (arguing that European Constitutionalism does not mark the creation of a new legal order but a mutation of old international law).

10. See generally Harold Hongju Koh, *International Law as Part of Our Law*, 98 AM. J. INT’L L. 43 (2004). See also T. Alexander Aleinikoff, *International Law, Sovereignty, and American Constitutionalism: Reflections on the Customary International Law Debate*, 98 AM. J. INT’L L. 91 (2004) (arguing that Congress should make customary international law applicable in federal courts); Joan F. Hartman, *‘Unusual’ Punishment: The Domestic Effects of International Norms Restricting the Application of the Death Penalty*, 52 U. CIN. L. REV. 655 (1983) (arguing that denying the binding nature of customary international law would be definitely inadequate); Peter J. Spiro, *Treaties, International Law, and Constitutional Rights*, 55 STAN. L. REV. 1999 (2003) (arguing that the supremacy of constitutional hegemony should be reexamined as a single community with a shared set of core values). *But see* Joan L. Larsen, *Importing Constitutional Norms from a “Wider Civilization”: Lawrence and the Rehnquist Court’s Use of Foreign and International Law in Domestic Constitutional Interpretation*, 65 OHIO ST. L.J. 1283 (2004) (arguing against the U.S. courts’ use of foreign and international law); Ernest A. Young, *The Trouble with Global Constitutionalism*, 38 TEX. INT’L L.J. 527 (2003) (cautioning that a direct recognition of international treaties may change the use of the American Constitution to govern and make American law).

11. See IAN D. SEIDERMAN, HIERARCHY IN INTERNATIONAL LAW: THE HUMAN RIGHTS DIMENSION 123-45, 284-89 (2001) (arguing that the entire *corpus* of human rights law as *ius cogens* binds all states and gives rights to “obligation erga omnes” that demand state protection).

more people live in constitutional democracies that learn from each other and establish similar institutions reflected upon liberal constitutional principles. It is in this sense that transnational institutional borrowing and judicial dialogues¹² are made much easier and more frequently, just as the one we are having right now, the Asian Forum for Constitutional Law.

III. THE EMERGENCE OF ASIAN CONSTITUTIONALISM

Despite its growing importance political and economically, Asian development has not been a serious subject for modern constitutional discourse. It is thus not sure where there is in fact a recognizable Asian Constitutionalism. If, however, there is one, what would it stand for in the context of the evolution in modern constitutionalism?

A number of interesting features seem to be shared by various constitutional developments in the region. First of all, in all over the Asia, the building of a constitutional state was often undertaken rather instrumentally as an inevitable part of modernization.¹³ Second, there has existed certain interesting textual and institutional continuity in some constitutional developing processes. Thirdly, judicial review in Asia is often reactive and cautioned,¹⁴ unlike proactive and progress seen in some western new democracies. Last but not the least, rights agenda has been developed in Asia in ways that were in tune with social and political progresses but not ideologically left or right.

A. *Asian Constitutionalism in the Context of Traditional Constitutionalism*

Let me begin by examine how this Asian constitutional development fit into traditional constitutionalism. Despite its wide diversity, it is no surprise to find that many Asian constitutional democracies have been advanced by

12. See, e.g., *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002) (referencing the norm accepted by the Western European community).

13. See e.g., LAWRENCE W. BEER & JOHN M. MAKI, *FROM IMPERIAL MYTH TO DEMOCRACY: JAPAN'S TWO CONSTITUTIONS, 1889-2002*, at 7-21 (2002) (describing the making of the Meiji Constitution as part of the project of building a modern nation-state as well as industrial modernization); Marie Seong-Hak Kim, *Customary Law and Colonial Jurisprudence in Korea*, 57 AM. J. COMP. L. 205 (2009) (stating that western legal system including the constitution was introduced to Korea with specific aim of modernization); Herbert H. P. Ma, *The Chinese Concept of the Individual and the Reception of Foreign Law*, 9 J. CHINESE L. 207, 216 (1995) (stating that constitution-making was undertaken as part of modernization in China in the late nineteenth century).

14. See Yasuo Hasebe, *The Supreme Court of Japan: Its Adjudication on Electoral Systems and Economic Freedoms*, 5 INT'L J. CONST. L. 296, 298-300 (2007) (arguing that the reason that the Japanese Supreme Court rarely strikes down legislation is due to the strong capacity of the Cabinet Legislation Bureau and the Ministry of Justice in preparatory legal works, and even in case of legal deficiency or unconstitutionality, the Court would rather anticipate self-correction by these agencies and thus render decisions with some guidance).

and large in tandem with the traditional constitutionalism developed in the West. For example, the kind of constitutionalism in North Eastern Asian states such as Korea, Japan and Taiwan all embody basically liberal constitutional structures, enshrining popular sovereignty, placing checks and balances among government powers, and empowering courts to safeguard rule of law and individual rights.

Notwithstanding framework commonalities, the East Asian constitutionalism has developed, in contrast with its Western counterparts, into some distinctive features on its own. For instance, all of them lacked a clear founding moment and observed –perhaps too strictly– textual and institutional continuity in gradual constitutional evolutions.¹⁵ Second, while most western constitutional jurisprudence develops the idea of constitutionalism as an end in itself, real constitutional experiences in East Asia clearly began with its instrumental value in facilitating modernization.¹⁶ Constitutional institutions were from the start seen as part of state apparatus and only gradually evolve into democratic ones after decades of struggles.

Regarding judicial review power, Supreme Courts of Japan, Korean and Taiwanese Constitutional Courts, for example, have become mostly trusted constitutional institutions compared to their respective governments and parliaments. Still, the three courts have reacted to social and political demands with a very self-conscious observance of larger institutional and

15. See e.g., Tom Ginsburg et al., *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*, 3(2) NTU L. REV. 143, 159-60 (2008); ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, JAPAN: PROGRESS IN IMPLEMENTING REGULATORY REFORM (2004); EIJI KAWABATA, CONTEMPORARY GOVERNMENT REFORM IN JAPAN: THE DUAL STATE IN FLUX (2006) (detailing government reforms particularly postal reforms in the 1990s); AURELIA GEORGE MULGAN, JAPAN'S FAILED REVOLUTION: KOIZUMI AND THE POLITICS OF ECONOMIC REFORM (2002); Dae-Kyu Yoon, *Constitutional Amendment in Korea*, 16 KOREAN J. COMP. L. 1, 1-13 (1988) (addressing the actual process of South Korean constitutional amendment); Jiunn-Rong Yeh & Wen-Chen Chang, Lu Ching Hsian Yi Huo Chih Tu Hsuan Tse? Lun Min Chu Chuan Hsing Yu Hsien Fa Pien Chien Te Mo Shih [*Path Dependency or Collective Institutional Choice? Modeling Constitutional Changes in the Context of Democratic Transitions*], 45 WENTI YU YANJIU [ISSUES AND STUDIES] 1 (2006) (explaining Taiwan's particular incremental pattern of constitutional changes).

16. See e.g., BEER & MAKI, *supra* note 13; Wen-Chen Chang, *East Asian Foundations for Constitutionalism: Three Models Reconstructed*, 3(2) NTU L. REV. 111, 116-19 (2008). For other discussions on Japanese constitution-making, see Katsutoshi Takami, *From Divine Legitimacy to the Myth of Consensus: The Emperor System and Popular Sovereignty*, in FIVE DECADES OF CONSTITUTIONALISM IN JAPANESE SOCIETY 9, 12-17 (Yoichi Higuchi ed., 2001). See also KOSEKI SHŌICHI, THE BIRTH OF JAPAN'S POSTWAR CONSTITUTION (Ray A. Moore ed. & trans., 1997); THEODORE MCNELLY, THE ORIGINS OF JAPAN'S DEMOCRATIC CONSTITUTION 98-100 (2000); Yoichi Higuchi, *The Paradox of Constitutional Revision in Postwar Japan*, in FIVE DECADES OF CONSTITUTIONALISM IN JAPANESE SOCIETY, *supra*, 351, 351-55; Kyong Whan Ahn, *The Influence of American Constitutionalism on South Korea*, 22 S. ILL. U. L.J. 71, 72 (1997); Howard S. Levie, *How It All Started-and How It Ended: A Legal Study of the Korean War*, 35 AKRON L. REV. 205, 206 (2002) (quoting the Cairo Declaration and the General Order by the U.S. Secretary of War, in the United States and Korean Problem, S. Doc. No. 83-74); Tay-Sheng Wang, *The Legal Development of Taiwan in the 20th Century: Toward A Liberal and Democratic Country*, 11 PAC. RIM L. & POL'Y J. 531, 542 (2002) (examining the legal modernization in Taiwan during the past century).

social constraints. Despite their popularity, the three courts have never insisted on constitutional values without any underlying political and public consensus nor have they openly defied the will of the political majority. While traditional constitutionalism may endorse judicial defiance with the political majority, the three courts are certainly reluctant followers of that tradition. Additionally, the way that rights were recognized and affirmed in judicial discourse in Asia was more reflective of constitutional contexts and constructive in nature, exhibiting more complex conciliations between rights with changing social context.¹⁷

All mentioned above mark a clear contrast with the foundational liberal constitutionalism that deems the embodiment of constitutional institutions and the protection of civil and political rights as gains of revolutionary triumphs.¹⁸ What is really shared between East Asian constitutionalism and traditional constitutionalism is a thin understanding of a liberal constitutional foundation upon which state, society and individuals are defined –to one aspect– in terms of state-centered institutions and rights guarantees.

In line with the limiting focus of traditional constitutionalism, Asian constitutionalism seems to be shadowed by the Asian value discourse.¹⁹ In reality, however, in East Asian constitutional adjudication, courts have rarely demanded citizen's duty in constitutional context, but rather emphasized state's duty to protect citizen's economic, social or political rights, even to full realization. Such judicial practice clearly observable at least in East Asian courts defies what the Asian value discourse had been advanced.

Indeed, the development of East Asian constitutionalism has gone far beyond Asian value arguments and to a substantial extent has contradicted with such claims. In defiance with the "state before self" thesis, Asian constitutional developments have been focused on constraining the exercise of government powers and to a divergent degree empowering a vibrant civil

17. See Jiunn-Rong Yeh, *Changing Forces of Constitutional and Regulatory Reform in Taiwan*, 4 J. CHINESE L. 83 (1990); Hasebe, *supra* note 14, at 297; Jong-sup Chong, *Political Power and Constitutionalism*, in RECENT TRANSFORMATIONS IN KOREAN LAW AND SOCIETY 11, 30 (Dae-Kyu Yoon ed., 2000); Wen-Chen Chang, *The Role of Judicial Review in Consolidating Democracy: The Case of Taiwan*, 2(2) ASIA L. REV. 73, 86-87 (2005); Rosa Kim, *The Legacy of Institutionalized Gender Inequality in South Korea: The Family Law*, 14 B.C. THIRD WORLD L.J. 145, 145-60 (1994).

18. See Yeh & Chang, *supra* note 6.

19. For a more thorough discussion on Asian Value discourse, see Fareed Zakaria, *Culture Is Destiny: A Conversation with Lee Kuan Yew*, 73 FOREIGN AFF. 109, 111 (1994). Lee argues that "the East places emphasis on a well-ordered society. Only with such a society will everyone have 'maximum enjoyment of his freedoms.' Again, the argument seems to be that the West has its priorities reversed by not valuing social order over individual rights." For quotation and a concise review of Asian Value Debate, see Karen Engle, *Culture and Human Rights: The Asian Values Debate in Context*, 32 N.Y.U. J. INT'L L. & POL. 291, 319-20 (2000). Three essential characters of Asian Values, see Scott L. Goodroad, *The Challenge of Free Speech: Asian Values v. Unfettered Free Speech, An Analysis of Singapore and Malaysia in the New Global Order*, 9 IND. INT'L & COMP. L. REV. 259, 261 (1998).

society. Civic and political rights are no less important than collective values or public morals in individuals' rights claims as well as judicial discourse. Media in Korea and Taiwan for example have developed into enjoying an autonomous status with independent operations, gradually creating a public space that is neither state nor market and allowing for open criticism and public deliberation.²⁰

B. *Asian Constitutionalism in the Context of Transitional Constitutionalism*

In the wake of the third wave democratization, constitutional developments have been assessed against the backdrops of profound social transitions, breeding the regime of transitional constitutionalism. A number of constitutional democracies in Asia belong to this group of new democracies, representing strong resemblance on transitional constitutionalism.

In those contexts, constitutional developments have been undertaken to tackle with larger political and social transformations underpinned on certain legal continuity. Despite clashes among political forces over major controversies, constitutional means were employed as background norms for political negotiation and competition, forming dialectic constitutional undertakings against profound transformation. And courts have taken significant functions in the flux of political dealings and changes. All these features resemble strongly a transitional nature of constitutionalism in transitional democracies.²¹

The flip side of the coin, however, displays certain departures from the transitional constitutionalism mainly developed in East and Central Europe, Latin America and South Africa. First, constitutional transitions have not particularly focused on the transformation from controlled economy to liberal market, as relatively stable market economy had been in place.²² Secondly, the tension between liberal rights and social rights was not as strong as that in the East and Central European context. There was not much ideological struggle between civil/political rights and social/economic rights. Rather, rights have been developed in tandem with social and political

20. The openness and autonomy of media in the three democracies in East Asia have often been used as the benchmark to evaluate media developments of other parts of Asia. See e.g., Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1 (2005).

21. See Yeh & Chang, *supra* note 6.

22. Chung-in Moon & Song-Min Kim, *Democracy and Economic Performance in South Korea*, in CONSOLIDATING DEMOCRACY IN SOUTH KOREA, 139, 139-50 (Larry Diamond & Byung-Kook Kim eds., 2000); JOHN KIE-CHIANG OH, KOREAN POLITICS: THE QUEST FOR DEMOCRATIZATION AND ECONOMIC DEVELOPMENT 48-73 (1999); Jong H. Park, *The East Asian Model of Economic Development and Developing Countries*, 18 J. DEVELOPING SOCIETIES 330 (2002).

progresses,²³ and for example, in South Korea and Taiwan, political rights and labor rights were almost recognized at the same time of political openings. Lastly, constitutional developments in many Asian new democracies have been advanced by individual states without regional or international collaborations. This marks somehow a departure from typical transitional constitutional developments in East and Central Europe that were largely shaped and aided by international and regional communities.²⁴

C. *Asian Constitutionalism in the Context of Transnational Constitutionalism*

Transnational constitutionalism has undoubtedly begun taking its roots in Asia. Unlike Europe, there has not been any attempt at creating an Asian Constitutional Treaty nor has there been any Asian Convention on Human Rights. However, transnational economic cooperation in this region has moved much and much closer and begun involving domestic policy issues. Both ASEAN and APEC have exhibited certain tendencies in this direction.

Transnational human rights NGOs in this region have been active and engaged in transnational legal advocacy and even litigation. Human trafficking, rights of foreign spouses and guest workers or rights of war victims are some good examples. By now, most Asian nations joined the two International Covenants of Civil and Political Rights and Social, Economic and Cultural Rights. In some jurisdictions, these international human rights norms have been given a primary normative status or at least paid special respects. Judicial adoption to these international human rights norms has in many jurisdictions made into practice. Last –but not the least–, transnational judicial dialogues have been also observable even at a few court cases. For instance, there was a case from the South Korean Constitutional Court cited in the opinions of Taiwan’s Constitutional Court. To my knowledge, these exchanges of Asian constitutional practices and court cases occurred even much more often in some rather informal ways. This is a good trend, and we are pleased to see it happen more and more often.

IV. CONCLUSION

These interesting constitutional features that have been quite observable in most Asian constitutional jurisdictions do not simply mirror western constitutionalism. Nor are they under the shadow of Asian values. Reflected upon many practices, Asian constitutionalism embodies without a doubt a

23. See, e.g., Yeh, *supra* note 17; Chong, *supra* note 17.

24. See Yeh & Chang, *supra* note 15 (providing four models of constitutional change for new democracies).

thin understanding of liberal constitutionalism upon which state, society and individuals are defined. Despite many state-centered institutional arrangements, states and individuals become more than ever distinguished, if not become confrontational. In many aspects, constitutional developments in Asia look similar to those in new democracies like Eastern Europe. But they are not the same. For example, the driving forces for constitutional changes in Asia have not been focused on market transformation. The tension between liberal rights and social rights has not been strong. In a rather significant way, constitutionalism in Asia has already developed its own paths and patterns that require more of scholarly attentions. Hopefully, the full blossom of Asian constitutionalism will shed a new light on contemporary constitutionalism and become the center of comparative constitutional studies for the next decades to come.

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