

Course title	Comparative Constitutional Law (Intensive Course)				
Responsible person to enter grades	KINOSHITA Masahiko, Yeh Jiunn-Rong			開講区分	単位数
				1st semester	1.0
Numbering Code		Day・Period, etc.	Other(対面)	Timetable Slot Code	1J398

Lesson topic

Three themes underline the course. 1. changing constitution in transformative societies. 2. comparative analysis of the constitutional law and contextual dynamics. 3. regional constitutionalism with Asia in focus. These themes combined help us approach constitutional law beyond texts with contextual sensitivity in comparative terms.

Lesson target

This course intends to enable students to 1. develop more functional way of thinking constitutional law beyond texts and judicial decisions. 2. build a new and yet solid perspective about the contour and framework of constitutional law in Asia. 3. come to better appreciation of constitutional function and practice in each Asian states in terms of universal application and particular features.

## Syllabus and plan

The Course is divided into 6 sessions (with sessions 5-6 in conjunction with the symposium). In line with the comparative feature of the course, 5 sessions aim to compare chosen key constitutional issues across the spectrum of constitutional law, including presidentialism, judicial review, constitutional revisions, political question doctrine, democratic elections, and culturally subtle issue on court-ordered apology. A general discussion and comparison on constitutional thoughts and methodology is well placed in session 1 for foundational discussion, including liberal, transitional, transnational and Asian constitutionalism. State constitutional practices involved in the comparison includes such Asian constitutional jurisdictions as Mongolia, China, Korea, Japan, Taiwan, the Philippines, Indonesia, Singapore, Thailand, Vietnam, and others.

### Sessions 1 (July 21)

#### Comparing constitutionalism and methodology

Contemporary constitutional discourse has been foundationally shaped by the understanding of liberal constitutionalism and more recent divergent development in democratic transition and globalization in terms of transitional and transnational constitutional discourse. The understanding of these changing contours and comparison among them is foundational to comparative constitutional law.

### Sessions 2 (July 21)

#### Comparing presidential administration, divided society and function of Judicial Review

Many new democracies in Asia have experienced contentious politics. In a winner-takes-all presidential system, political divisions tend to center around the role of the president, as demonstrated in Taiwanese and Korean politics. How constitutional courts adjudicate on contentious presidential politics in new democracies remains a significant issue in comparative constitutionalism. We would look into five constitutional courts in Asia, and compare how courts deal with political disputes arising from presidential politics in Korea and Taiwan

### Sessions 3 (July 22)

#### Comparing constitutional eternity and revisions

### Sessions 4 (July 22)

#### Comparing democratic elections and constitutional impediments

### Sessions 5 and 6 (July 23)

#### Comparative Constitutional Law Symposium

\*Session assignments and the symposium schedule are subject to change

### Sessions 7 (July 24)

Comparing judicial strategies in applying the political question doctrine: The Philippines, Taiwan, Many Asian states confront politically charged issues in the constitutional actuality, many of those demand judicial resolution. Where and how the courts resort to the political question principle in handling these highly contentious issues? Were there judicial strategies involved?

### Sessions 8 (July 24)

#### Comparing Court-ordered apology: Taiwan and Korea

In Taiwan and Korea, constitutional courts were requested to rule whether the court-ordered apology is constitutional when the defendant was not sorry in defamation charges. These cases are controversial, on the one hand because they touch upon the constitutional concern of freedom of speech and the freedom of conscience. On the other hand, the meaning of the "face" and apology stand out in the context of Asian culture. Taiwan and Korean Constitutional courts, while facing the same issue, rendered completely opposite rulings. What were the contextual factors that could have led to the divergent ruling and reasoning?

## Evaluation method

Final grades will be calculated based on the following process:

- Class participation 30%
- Final essay: 70%

#### Evaluation baseline

- Class participation will be graded on in-class verbal contributions, such as taking part in open discussions or raising relevant questions in class. Priority will be given to those who have had less chance to speak out.

- Students can choose whatever topic related to comparative constitutional law for their final essay. The length required is from 7 to 10 pages on Microsoft Word, double spaced, font size 11 or 12. The essay should be completed with appropriate research questions, logical arguments, and evidence based on the discussion in the course. References are also required. Citation style, footnotes or endnotes may be selected freely as long as it is consistently applied.

#### Notice (include info. on related class)

No prior course on constitutional law is required, but it will be assumed that students will have basic knowledge on law in general.

#### Review and preparation

Preparation: Read the assigned section of the textbook and prepare to share your thoughts in class, including (but not limited to) questions or possible disagreements with the author.

- Review: Students should think about how each topic is manifested in their relevant jurisdictions after class and also take up further reading if it is related with their final essay.

#### Office hour · Contact information

Contact details will be announced during the course.

#### Message for student

This course is recommended for students who wish to learn more about various foreign systems of law, especially the different aspects of both constitutional design and constitutional adjudication.

#### Improvements in Teaching

#### Text

##### Textbook:

Wen-Chen Chang, Li-ann Thio, Kevin YL Tan, and Jiunn-rong Yeh, 2013, *Constitutionalism in Asia: Cases and Materials*, Hart Publishing

##### Reference for R1-2:

R1-a Jiunn-rong Yeh and Wen-Chen Chang, 2009, *The Changing Landscape of Modern Constitutionalism: Transitional Perspective*, 4 *National Taiwan University Law Review*, No.1., 145-183

R1-b Jiunn-rong Yeh & Wen-Chen Chang, 2011, *The Emergence of East Asian Constitutionalism: Features in Comparison*, *American Journal of Comparative Law* Vol. 59 No. 3, pp 805-840.

R1-c Jiunn-rong Yeh, 2015, *Marching towards Civil Constitutionalism*, 45 *Hong Kong Law Journal*, 315-29

R2-a Jiunn-rong Yeh, 2011, *Presidential Politics and Judicial Facilitation of Political Dialogue between Political Actors in New Asian Democracies: Comparing the South Korean and Taiwanese Experiences*, *International Journal of Constitutional Law* Vol. 8.No. 4. pp.911-949

R2-b Jiunn-rong Yeh, 2018, *Constitutionalism and Judicial Review in East Asia*, in Tun-jen Cheng and Yun-han Chu eds., *Routledge Handbook of Democratization in East Asia*, Routledge: London and New York, pp225-248.

R2-c Jiunn-rong Yeh, 2016, *Politicization of Constitutional Courts*, in Henning Glaser ed., *Constitutional Jurisprudence -Function, Impact, and Challenges*, NOMAS

## Reference Material

### Reference for R3-8:

R3-a Jiunn-rong Yeh & Wen-Chen Chang, 2025, Changing Dynamics of Constitutional Progress and Regression in Asia: Interplay of Electoral, Civic, and Judicial Constitutionalism, *Constitutional Studies*, Vol. 11. No. 1. 1-31 (PP. 1-14)

R3-b Jiunn-rong Yeh, 2021, Beyond Constitutionality: The Public Oversight of Constitutional Revision in Taiwan, In the Law and Politics of Unconstitutional Constitutional Revision in Asia, Rehan Abeyratne and Ngoc Son Bui eds., Routledge, pp. 153-168.

R4 (R3a) Jiunn-rong Yeh & Wen-Chen Chang, 2025, Changing Dynamics of Constitutional Progress and Regression in Asia: Interplay of Electoral, Civic, and Judicial Constitutionalism, *Constitutional Studies*, Vol. 11. No. 1. 1-31(PP. 14-24)

R7 Jiunn-rong Yeh, 2016, Judicial Strategies and Political Question Doctrine: An Investigation into the Judicial Adjudications of the East Asian Courts, in *Legal Thkoughts between the East and the West in the Multilevel Legal Order* (Chang-fa Lo, Nigel N.T. Li & Tsai-yu Lin eds.), pp. 47-73, Singapore: Springer

R8 Jiunn-rong Yeh, 2015, Court-ordered Apology: The Function of Courts in the Construction of Society, Culture and the Law, in Jiunn-rong Yeh ed, *The Functional Transformation of Courts: Taiwan and Korea in Comparison*, 21-38, V&R

### Classroom Language

English

### Keywords

Constitutional law; Comparative Legal Studies; Asian Law