arbitration since the seventeenth century before the "litigisation" (p. 334) of arbitration at the end of the twentieth century. Brazil analyses the historical pattern of user preferences among ADR processes in the Northern District of California and concludes that, the more ADR parallels the trial process, the less attractive it is. Important is his conclusion that "litigants and lawyers will value an ADR process in proportion to how well it enables and encourages them to explore a wider range of settlement-related matters in a wider range of ways than conventional litigation permits" (p. 335). In the final two contributions, Christopher Hodges and Gerhard Wagner discuss Consumer ADR (CDR) in the EU. Hodges stresses that this mechanism to address consumer disputes in the EU was introduced in 2013 and rapidly has become the mainstream method to resolve consumer disputes. He concludes that CDR is "here to stay" (p. 367). Hodges also stresses that this turn in Europe towards mediation is important to secure higher standards in consumer markets, mainly because it offers avenues for grievants in small claims, but also for mass or collective redress. Wagner does not agree with this optimistic assessment. He considers CDR a threat for the important role that the European Court of Justice (ECJ) plays in clarifying ambiguities in the law. By keeping the legal issues away from the courts, mediation in consumer cases will prevent the standards in the consumer markets from increasing. Wagner is sceptical and suggests that "the attempt of the European legislature to improve the enforcement of consumer law through ADR is doomed to failure" (p. 404).

In sum, the volume offers a welcome contribution to research on the resolution of civil disputes. Two important conclusions can be drawn overall. First, some regions or nations have a longstanding hybrid and integrated pallet of dispute-resolution mechanisms that contradicts the clear-cut distinctions between extrajudicial and judicial dispute resolution that is often made. Second, a critical assessment of the process and implementation of disputes-resolution procedures other than litigation is important in view of preserving and fortifying the rule of law. Different forms of mediation can undermine the rule of law in some cases but, in other cases and context, it can contribute to the development of the rule of law.

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Justine Guichard. *Regime Transition and the Judicial Politics of Enmity: Democratic Inclusion and Exclusion in South Korean Constitutional Justice* (New York: Palgrave Macmillan, 2016) pp 248. Hardcover: $76.00.
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This book examines the role that the Constitutional Court of Korea has performed since the transition from an authoritarian to a democratic regime in 1987. Reflecting the nature of the transition as well as the political divides on the Korean peninsula, the new constitutional order has retained repressive elements and institutions from the authoritarian era. The court, according to the author, has worked to adapt these elements and institutions to the current era,

while carefully asserting its role to limit the abuse of power and protect the rights of citizens. There is an "ambivalence" in which the court is simultaneously assertive and deferential in this role, and its decisions have led to both liberal and illiberal outcomes, reflecting the nature of the constitutional order.

Chapters 1–3 provide the background for constitutional politics in Korea. In Chapter 1, the author introduces the paradoxical role that the Constitutional Court of Korea has performed—namely "curbing existing security instruments while confirming their contemporary relevance" and "dismantling authoritarian remains while consolidating the non-inclusiveness of South Korean democracy" (p. 14).

Chapter 2 traces the origins of this role to the nature of the transition to democracy in 1987. The author finds that the transition was conducted through elite-controlled, exclusive reform talks among established political parties, to the exclusion of civil society and *minjung* forces seeking further democratization. The Constitutional Court was then created as a product of compromise between the established parties, in which the executive, the judiciary, and the parliament would each nominate three judges.

While the court was thus not particularly designed to be activist, human rights lawyers representing those who have been marginalized from mainstream politics have brought forth a continuous stream of constitutional challenges, especially regarding the use of the National Security Act to prosecute those deemed dangerous to the state.

Chapters 4 through 7 each offer a case-study of the paradoxical role that the Constitutional Court has performed.

Chapter 4 focuses on how the court has dealt with the National Security Act—a repressive instrument carried over from the authoritarian era. Article 7, section 1 of the Act provides for the imprisonment of "any person who praises, encourages, sympathizes with… an antistate organization" and section 5 criminalizes the "production, importation, duplication, possession, transportation, distribution" of expressive articles that support such activities.

The Constitutional Court, while expressing concern for the abuse of Article 7 if read literally, nonetheless chose to uphold its constitutionality. The court narrowly construed the provision to be applicable only to expressive activities that pose a "clear threat to the integrity and the security of the nation and the basic order of free democracy" (p. 75). In doing so, it imposed limits on the usage of these provisions while simultaneously giving them a new meaning, namely as an instrument to sustain "the basic order of free democracy," including such matters as the "economic order based on private property and market economy" (p. 76).

Chapter 5 deals with how the court has upheld the political exclusion of residents of the North, as well as ethnic Koreans in Japan who have had contacts with North-leaning ideas and people, which the government had targeted for "ideological conversion." Such policy was replaced with a "pledge to abide by the law" in 1998, but political dissenters have continued to be imprisoned for refusing to submit this pledge. The majority of the court has upheld the constitutionality of this system by holding that it merely reconfirmed the duty to abide by the law and did not touch upon matters of conscience (p. 113).

Chapter 6 examines the court's jurisprudence surrounding the rights of criminal defendants in national security cases. While the court seems to have taken an active role in expanding the rights of such defendants, the author finds that the reasoning the court has applied in such cases has tended to be "tailored" to the case at hand, thereby limiting its applicability in other cases (p. 139).

Finally, Chapter 7 deals with cases surrounding the national defence framework of Korea. The court has largely abstained from decision-making in this area, whether in cases challenging the dispatch of troops to Iraq, relocation of a US base, or joint military exercise with the US, though the rationale for doing so has varied. Cases challenging the compulsory conscription system have also been unsuccessful. For example, the court has upheld the punishment of conscientious objectors, such as Jehovah's Witnesses. Even the majority opinion noted that this potentially imposed a sacrifice of freedom of conscience and demanded that the legislature consider the issue, to no avail.

The image of constitutional courts, at least from a Western perspective, is that of a rights-protective institution that serves as a check against abuses of power by the majority. This role has been considered to be coextensive with the idea of *constitutionalism* itself, in which Constitutions are made to define and limit government power and to protect the rights of the people. This study meticulously puts forth a different image of constitutional courts—one in which constitutionalism and the effort of the court to defend it could paradoxically result in "illiberal outcomes," depending on the nature of the Constitution itself. It shows that the role of constitutional courts are confined by a nation's political history, and that its jurisprudence is governed by strategic and institutional concerns in this political context.

This reviewer notices an overlap between the Korean Constitutional Court's jurisprudence and the Japanese Supreme Court's jurisprudence in the area of national security. Both countries have a national defence framework that has its origins in the Cold War and their alliances with the US, and have been faced with constitutional challenges regarding the extent of military co-operation with the US. Courts in both countries have found reasons *not* to rule on those challenges, despite occasional dissent. How the courts in both countries have acted in such politically sensitive cases, and the factors that differentiate them, would provide the subject for an interesting comparative study in judicial politics.

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Marie Seong-Hak Kim, ed., *The Spirit of Korean Law: Korean Legal History in Context* (Leiden: Brill, 2015) pp 272. Hardcover: $173.00.
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The book includes the work of a selective group of scholars and illuminates the origins of Korean law, from the Chosŏn Dynasty through Japanese occupation up to the modern periods of the Republic of Korea. The book encompasses a wide range of historical developments of Korean law, not only seeking the spirit and legacies of Korean law derived from China, but also finding the uniqueness of Korean law in practice.