

SOCIO-ECONOMIC ORIGINS OF CONSTITUTIONAL REVIEW IN CENTRAL ASIA: POLITICAL ECONOMY AND POLITICO- HISTORICAL CONTEXT AS DEFINING FACTORS

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Abstract

This article pursues two main objectives. First, to identify the main factors behind the establishment of constitutional review in Central Asia. Second, to define how those factors have shaped the institutional design of constitutional courts. In doing so, this article revisits standard theories of comparative constitutional law in terms of the origin of judicial review. While the insurance theory dominates the present global discourse on judicial review, it cannot completely and accurately account for the origin of constitutional review in Central Asia. Rather, this article conveys that the main impetus and motivation behind the establishment of constitutional courts and their institutional designs has been the economic interests of Central Asian states, determined by the region's political and historical context.

Keywords: Central Asia, Constitutional Review, Constitutionalism, Judicial Review, Constitutional Courts.

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I. INTRODUCTION

Why do governments and legislative bodies willingly establish a system of constitutional review to which they themselves are then subjected? Comparative constitutionalists have developed numerous theories to explain the motives of drafters in forming constitutional courts. In recent global discourse, there has been a notable shift from the normative/institutionalist approach to a more theoretical and comparative approach when analyzing the origin of the judicial review.¹ Different models and theories on the origin and operation of judicial review have emerged, such as the rights-based² and rule of law hypothesis,³ the ideational approach,⁴ theories on internationalization and modernization,⁵ and the hegemonic preservation theory.⁶ There is also the diffusion theory, which holds that countries seek to emulate one another in adopting particular institutions. Thus, a global proliferation of comparative constitutional norms can force or foster states to establish constitutional courts either by coercion, competition or learning.⁷ Others have ascribed the origin of judicial review to politicians seeking to transfer responsibility from political branches to the judiciary.⁸ Finally, there is the insurance theory, which links the establishment of constitutional courts to the fundamentals of the electoral market or to the competitiveness of political parties.⁹ Insurance theory dominates the current global discourse on the origin of judicial review and has been tested in a number of third-wave democracies. This article therefore undertakes a study of the constitutional courts of Kyrgyzstan,

¹ Erin F. Delaney and Rosalind Dixon, "Introduction," in *Comparative Judicial Review*, eds. E. Delaney, R. Dixon (Camberley: Edward Elgar Publishing, 2018), 1-4; Tom Gerald Daly, *The Alchemists: Questioning our Faith in Courts as Democracy-Builders* (Cambridge: Cambridge University Press, 2017); Samuel Issacharoff, *Fragile Democracies: Contested Power in the Era of Constitutional Courts* (Cambridge: Cambridge University Press, 2015).

² Martin Shapiro, "The Success of Judicial Review," in *Constitutional Dialogues in Comparative Perspectives*, eds. Sally J. Kenney, William M. Reisinger and John C. Reitz (Great Britain: Palgrave Macmillan, 1999), 204.

³ Shapiro, "The Success."

⁴ Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Oxford: Clarendon Press, 1989).

⁵ Andrew Harding and Penelope Nicholson, *New Courts in Asia* (Oxfordshire: Routledge, 2010).

⁶ Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge: Harvard University Press, 2009).

⁷ Tom Ginsburg and Mila Versteeg, "Why Do Countries Adopt Constitutional Review?" *Journal of Law, Economics, and Organization* 30, no. 3 (2014): 587-622.

⁸ Carlo Guarnieri and Patrizia Pederzoli, *The Power of Judges: A Comparative Study of Courts and Democracy* (Oxford: Oxford University Press, 2002).

⁹ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003).

Kazakhstan, Uzbekistan and Tajikistan, employing a comparative legal analysis approach¹⁰ in combination with elements of contextual qualitative political,¹¹ political economy,¹² historical,¹³ and geopolitical analysis.¹⁴

1.1 Insurance Theory Revisited

The political account for constitutional review was developed by Martin Shapiro, who pioneered much of the scholarship on comparative constitutional law. His work paved the way for the development of other theories in this field, especially Ginsburg's insurance theory. Therefore, before revisiting Ginsburg's insurance theory, it is worth briefly reviewing Shapiro's approach to the origin of judicial review.

First, Shapiro claims that effective judicial review can be constructed only in states which have a history of rule of law commitment. He describes the origin of constitutional courts based on three primary propositions. First, the federalism proposition, where he argues that for federal states such as the USA, it was crucial to create a third party for resolving disputes between state governments and the federal government.¹⁵ This hypothesis was later confirmed by the experience of

¹⁰ Oliver Brand, "Conceptual Comparisons: Towards a Coherent Methodology of Comparative Legal Studies," *Brooklyn Journal of International Law* 32 (2007): 408-412; Mathias Siems, *Comparative Law* (Cambridge University Press, 2014), 31-40. For more on comparative methodology in law see Maurice Adams and Dirk Heirbaut (eds), *The Method and Culture of Comparative Law* (Hart Publishing, 2014); Maurice Adams, Jaakko Husa and Marieke Oderkerk, *Comparative Law Methodology: Volumes I and II* (Cheltenham: Edward Elgar Publishing, 2017); Pier G. Monateri, *Methods of Comparative Law* (Edward Elgar Publishing, 2012), 291; David Law, "Constitutions," in *The Oxford Handbook of Empirical Legal Research*, eds. Peter Cane and Herbert M. Kritzer (Oxford: Oxford University Press, 2010), 376.

¹¹ For more on contextual political analysis methodology, see Robert E. Goodin and Charles Tilly, *The Oxford Handbook of Contextual Political Analysis* (Oxford: Oxford University Press, 2006). See also Charles Tilly and Robert E. Goodin, "Overview of Contextual Political Analysis it Depends," in *The Oxford Handbook of Political Science*, ed. Robert E. Goodin, (Oxford: Oxford University Press, 2011); Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira, "Overview of Law and Politics the Study of Law and Politics," in *The Oxford Handbook of Political Science*, ed. Robert E. Goodin (Oxford: Oxford University Press, 2011).

¹² Barry R. Weingast and Donald A. Wittman, "Overview of Political Economy, the Reach of Political Economy," in *The Oxford Handbook of Political Science*, ed. Robert E. Goodin (Oxford: Oxford University Press, 2011); Antonio Nicita and Simona Benedettini, "Towards the Economics of Comparative Law: The Doing Business Debate," in *Methods of Comparative Law*, ed. Pier G. Monateri (Edward Elgar Publishing, 2012), 291.

¹³ For examples of contextual historical analysis of politics, see Douglas E. Ashford, "Historical Context and Policy Studies," in *History and Context in Comparative Public Policy*, ed. Douglas E. Ashford (Pittsburgh: University of Pittsburgh Press, 1992), 27-38; James Mahoney and Daniel Schensul, "Historical Context and Past Dependence," in *The Oxford Handbook of Contextual Political Analysis*, eds. Robert E. Goodin and Charles Tilly (Oxford: Oxford University Press, 2006).

¹⁴ Goodin and Tilly, *The Oxford Handbook*.

¹⁵ Shapiro, "The Success," 204.

Germany, which, according to Shapiro, was receptive to judicial review because of its longstanding tradition of *Rechtsstaat* (rule of law).¹⁶

His next proposition is grounded on the notion of diffusion or separation of powers between branches. He argues that the Constitutional Council established under France's Fifth Republic was created to safeguard the transition to the separation of powers system.¹⁷ According to Shapiro, the main reason for establishing the Constitutional Council was keeping the Parliament in check.¹⁸ This proposition was supported by Otto Pfersmann, who stated: "It was not introduced to protect rights and liberties or a distribution of competences between a center and decentralized entities. Instead, it was conceived of as a strictly preventive check on legislation, to prevent Parliament from overstepping its limited competences."¹⁹

Shapiro's final proposition is grounded in the rights-based approach. Under this approach, he believes the majority of states, including Spain, Italy, and Israel, adopted constitutional review mechanisms for protection and enforcement of constitutional rights.²⁰

Ginsburg describes Shapiro's hypothesis and account for the emergence of constitutional review as the "ideational account of judicial review".²¹ He states that in the ideational approach, the constitutional review becomes a dependent variable while rights become an independent variable. According to Ginsburg, Shapiro's approach puts judges as guardians of the public interest. In Ginsburg's words, "If courts succeed, they generate greater demands for constraining government, leading them to become, inevitably, deeply involved in policy-making."²² Thus,

¹⁶ Shapiro, "The Success," 179.

¹⁷ Shapiro, "The Success," 197.

¹⁸ Sophie Boyron, *The Constitution of France: Contextual Analysis* (Oxford: Oxford University Press, 2013), 150; Alec Stone, *The Birth of Judicial Politics in France: The Constitutional Council in Comparative Perspective* (New York: Oxford University Press, 1992), 220; John Bell, *French Constitutional Law* (Oxford: Oxford University Press, 1992), 120; Martin A. Rogoff, *French Constitutional Law: Cases and Materials* (Durham: Carolina Academic Press, 2011), 156; Andrew Knapp and Vincent Wright, *The Government and Politics of France* (London: Routledge, 2001), 320.

¹⁹ Otto Pfersmann, "Concrete Review as Indirect Constitutional Complaint in French Constitutional Law: A Comparative Perspective," *European Constitutional Law Review* 5 (2010): 224.

²⁰ Shapiro, "The Success," 204.

²¹ Tom Ginsburg, "The Global Spread of Constitutional Review," in *The Oxford Handbook of Law and Politics*, eds. Keith E. Whittington, R. Daniel Kelemen, and Gregory A. Caldeira (Oxford: Oxford University Press, 2010), 88.

²² Ginsburg, "The Global Spread," 89.

he claims that a rights-based argument is not sufficient to explain the political accounts for the logic of constitutional review. “The rights hypothesis is a demand-side theory that posits judicial review as an institutional response to societal forces.”²³ This demand-side argument, according to Ginsburg, is extremely difficult to assess due to its unspecified nature.

Therefore, Ginsburg claims that in order to objectively assess the logic behind the adoption of constitutional review across the regions, it is better to adopt an institutionalist approach. According to Ginsburg, institutions matter and choices of institutional design are not random.

Ginsburg has termed this approach the insurance theory. Under this theory, the ruling power, at the constitution-drafting phase, has concerns over the durability of its tenure. In an effort to protect their future positions, parties tend to create judicial review as an insurance or alternative mechanism for their powerholding purposes.

While the theory might sound simple, the basic argument has preconditions regarding the nature of the regime and circumstances surrounding the constitution-drafting phase. First, when one party controls the drafting process and when there is a high potential of this party staying in power, drafters prefer to choose a weaker court.²⁴ Second, when the drafting process is controlled by two or more parties in a more or less equal position and there is no certainty as to who is going to win power – they will most likely establish a strong court. This hypothesis has been tested by Ginsburg in his book, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*.²⁵

Current discourse on global judicial review indicates the insurance theory “seems to perform better than many alternatives in a range of circumstances”.²⁶

²³ *Ibid.*

²⁴ Ginsburg, *Judicial Review*, 22-26.

²⁵ *Ibid.*, 23-25.

²⁶ Tom Ginsburg and Mila Versteeg, “Why Do Countries Adopt Constitutional Review?” *Journal of Law and Politics* 30 (2014): 350-65; Rosalind Dixon and Tom Ginsburg, “Constitutions as Political Insurance: Variants and Limits,” in *Comparative Judicial Review*, eds. Erin Delaney and Rosalind Dixon (Cambridge: Edward Elgar Publishing, 2018), 1-4; Rosalind Dixon and Tom Ginsburg, “The Forms and Limits of Constitutions as Political Insurance,” *International Journal of Constitutional Law* 15 (2017): 988-1012; Brad Epperly, “The Provision of Insurance? Judicial Independence and the Post-Tenure Fate of Leaders,” *Journal of Law and Courts* 1 (2013): 250-75; George Tridimas, “Constitutional Judicial Review and Political Insurance,” *European Journal of Law and Economics* 29 (2009): 90-100.

A number of constitutional law scholars have tested the applicability of the insurance theory in different countries and deemed it one of the most accurate theories to explain the expansion of judicial review across the globe.²⁷ For instance, Hendrianto applied it to Indonesia,²⁸ Gatmaytan applied it to the courts of the Philippines,²⁹ Finkel applied it in the contexts of Mexico, Argentina and Peru,³⁰ and Volcansek in the context of Italy.³¹

On the other hand, a number of scholars have criticized the insurance theory, claiming it does not provide a compelling and accurate explanation of the origin and expansion of judicial review. Such scholars questioned the application of the insurance theory in the setting of non-democratic, authoritarian states.³² Inclan argues that in the context of Mexico, judicial review is more a form of political legitimacy for a regime, while the application of insurance theory in Mexico cannot reveal such nuance but rather leads to a misleading understanding of the role of judicial review.³³ Moreover, Hilbink maintains the insurance theory does not take into account the ideational factor, which in her opinion is among the key factors of judicial review in Chile.³⁴

When considering the reasons behind the establishment of constitutional review, one should be careful to avoid oversimplifying the facts. It is difficult to ascertain the precise reasons behind the establishment of constitutional courts; it depends on a range of factors such as political context, existence of

²⁷ Maria Popova, *Politicized Justice in Emerging Democracies: A Study of Courts in Russia and Ukraine* (Cambridge: Cambridge University Press, 2014); Lee Epstein, Jack Knight and Olga Shvetsova, "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Law & Society Review* 35 (2001): 115-120.

²⁸ Stefanus Hendrianto, *Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes* (New York: Routledge, 2018); Simon Butt, Melissa Crouch and Rosalind Dixon, "The First Decade of Indonesia's Constitutional Court," *Australian Journal of Asian Law* 16 (2016): 2-6.

²⁹ Dante Gatmaytan, "Judicial Review of Constitutional Amendments: The Insurance Theory in Post-Marcos Philippines," *Philippine Law and Society Review* 1 (2011): 75-85.

³⁰ Jodi Finkel, *Judicial Reform as Political Insurance: Argentina, Peru and Mexico in the 1990s* (Notre Dame: University of Notre Dame, 2008).

³¹ Mary Volcansek, "Bargaining Constitutional Design in Italy: Judicial Review as Political Insurance," *West European Politics* 33 (2010): 281-95.

³² Kirk Randazzo, Douglas Gibley and Rebecca Reid, "Examining the Development of Judicial Independence," *Political Research Quarterly* 69 (2016): 584-91.

³³ Silvia Inclan, "Judicial Reform in Mexico: Political Insurance or the Search for Political Legitimacy?" *Political Research Quarterly* 62 (2009): 754-63.

³⁴ Lisa Hilbink, *Judges Beyond Politics in Dictatorship and Democracy* (Cambridge: Cambridge University Press, 2008).

plurality, recent history of rule-of-law practice, external influences, the timing of the formation, demands by civil society, globalization and modernization. Any one of these elements or the occurrence of two or three of them could be a triggering mechanism for the establishment of judicial review and the choice of institutional model for these courts.

This article concurs with the main tenets of critics of the insurance theory and contends that the insurance theory does not completely and accurately account for the reasons behind the creation of Central Asian constitutional courts. In order fully comprehend this process, a wider and complex approach shall be applied, taking into consideration nuances that are unique to these states and the region. Accordingly, this work suggests that broader socio-economic, politico-historical reasons, transitional constitutionalism and predominantly the political economy were the defining factors in the establishment of these courts.

II. DISCUSSION

2.1 Political Economy and Politico-Historical Context as the Defining Factors of the Emergence of Central Asian Constitutional Courts.

Historical Context

Throughout Central Asian history, there was no classical interpretation of the nation-state as it is usually understood in Europe. In general, when an elite was formed among khanates or emirates, it never depended on a single ethnicity; hence historians describe Central Asian realms as “polyethnic societies”.³⁵ Under the empire of Imperial Russia, all of Central Asia was united under a single colonial administrative unit, which was named Turkestan. When the Bolsheviks seized power in Russia, subsequent fear of pan-Turkism³⁶ and pan-Islamism

³⁵ Yuriy Kulchik, Andrey Fadin and Victor Sergeev, *Central Asia After the Empire* (London: Pluto Press, 1999), 2-4; Peter Roudik, *The History of the Central Asian Republics* (Connecticut: Greenwood Publishing Group, 2007).

³⁶ Pan-Turkism is defined by historians as an “idea of political, cultural and ethnic unity of various Turkic peoples who often shared historical, cultural, and linguistic roots in common”. See Dagikhudo Dagiev, *Regime Transition in Central Asia: Stateness, Nationalism and Political Change in Tajikistan and Uzbekistan* (Oxfordshire, Routledge, 2013).

prompted the Soviets to split Turkestan into different territorial units. Thus, the present five states of Central Asia were born. However, historians have noted the boundaries of the political map were drawn artificially arbitrarily without due consideration of ethnic, cultural roots or historical roots, and without “sufficient knowledge nor consistent conceptual framework for their national policy”.³⁷ Division was predominantly made to prevent the emergence of a single united Turkestan or pan-Turkism, while suppressing any ideological movements united under the Turkist idea.³⁸

Another fear of the Soviet rule was of pan-Islamism. As already mentioned, the Turkic groups in Central Asia did not associate themselves in the classical concept of an ethnicity-based nation-state; instead, religious affiliation was a major determinant. Historians have noted that “religious affiliation in conditions of polyethnicity was the basis of self-identification for local communities”.³⁹ Therefore, following the creation of the Soviet regime, the practice of Islam in Central Asia came under tight control. However, political scientists and historians have noted that during the Soviet occupation of Afghanistan, the Soviet Union deliberately used the Muslim population, especially citizens from the Tajik Soviet Republic and “the government-controlled Muslim establishment to penetrate the Arab-Islam world”.⁴⁰ It has been argued that this maneuver of the Soviet Union aided the creation of Islamic movements, notably the politicization of Islam in Central Asia, especially in Tajikistan, which went on to become one of the main factors of the Tajikistani Civil War. Thus, these flawed decisions during the Soviet Union’s rule of Central Asia and at the foundation of these states created an “incoherent sense of stateness”⁴¹ that would have a tremendously detrimental effect, after these states gained independence following the fall of the Soviet Union.

³⁷ Kulchik *et al*, *Central Asia After the Empire*, 5.

³⁸ The Soviets named these movements the Basmachi movement. The Bolsheviks killed the movement’s main leader, Enver Pasha, while its other leaders fled to Afghanistan. See Dagiev, *Regime Transition*.

³⁹ Kulchik *et al*, *Central Asia After the Empire*, 2-4.

⁴⁰ Lena Jonson, *Tajikistan in the New Central Asia: Geopolitics, Great Power Rivalry and Radical Islam* (London: I.B. Tauris, 2006), 45-55.

⁴¹ Dagiev, *Regime Transition*.

Transitional Context

Scholars have noted that in order to understand the constitutional landscape, it is important to look beyond the formal texts of the originally adopted constitutions and see how they were drafted.⁴² Clearly, the process of constitution-making matters and is of utmost importance in the context of political transformation in Central Asia. The transitional period after the collapse of the Soviet Union was not smooth in Central Asia. Transitional constitutionalism in Central Asia reveals that farther beyond the Eastern European and Baltic states,⁴³ the transition from communism to democracy⁴⁴ seemed to be more technical and far less driven by national liberation and democratization movements.⁴⁵ The transition in Central Asia reflected the continued strength of “subnational clan identities and patronage networks”.⁴⁶ Existing literature on history and political science suggests the ‘revolution from below’ never occurred in Central Asia, unlike in Eastern European states. Put simply, the change in Central Asia mostly reflected a top-down approach.⁴⁷ Thus, transition tended to be left to the hands of influential

⁴² Jon Elster, “Forces and Mechanisms in the Constitution-Making Process,” *Duke Law Journal* 45 (1995): 364–86; Justin Blount, Zachary Elkins and Tom Ginsburg, “Does the Process of Constitution-Making Matter?” in *Comparative Constitutional Design*, ed. Tom Ginsburg (Cambridge: Cambridge University Press, 2012), 33–56; Cass R. Sunstein, *Designing Democracy: What Constitutions Do* (Oxford: Oxford University Press, 2001).

⁴³ David Mason, *Revolution and Transition in East-Central Europe* (London: Routledge, 1996); George Schopflin, “The End of Communism in Europe,” *International Affairs* 66, no. 3 (1990); Steven Levitsky and Lucan A. Way, *Competitive Authoritarianism: Hybrid Regimes After the Cold War* (Cambridge: Cambridge University Press, 2010); David R. Cameron and Mitchell A. Orenstein, “Post-Soviet Authoritarianism: The Influence of Russia in Its ‘Near Abroad’,” *Post-Soviet Affairs* 28, no. 1 (2012).

⁴⁴ Cass R. Sunstein, “Constitutionalism, Prosperity, Democracy: Transition in Eastern Europe,” *Constitutional Political Economy* 2 (1991): 375–85.

⁴⁵ Claus Offe, “Capitalism by Democratic Design? Democratic Theory Facing the Triple Transition in East Central Europe,” *Social Research* 58 (1991): 866–89; Michael McFaul, “The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Post-communist World,” *World Politics* 54, no. 2 (2002): 220–39; Bunce Valerie, “Rethinking Recent Democratization: Lessons from Post-communist Experience,” *World Politics* 55, no. 2 (2003): 168–85; Russell Bova, “Political Dynamics of a Post-Communist Transition: A Comparative Perspective,” *World Politics* 44, no. 1 (1991): 114–25; Mark R. Beissinger, *Nationalist Mobilization and the Collapse of the Soviet Union* (Cambridge: Cambridge University Press, 2002), 72–75.

⁴⁶ Sally Cummings, *Power and Change in Central Asia, Politics in Asia* (London: Routledge, 2002); John Anderson, *Kyrgyzstan: Central Asia’s Island of Democracy?* (London: Routledge, 1999); Kathleen Collins, “Clans, Pacts, and Politics in Central Asia,” *Journal of Democracy* 13, no. 3 (2002): 127–152; Asel Murzakulova and John Schoeberlein, “The Invention of Legitimacy: Struggles in Kyrgyzstan to Craft an Effective Nation-State Ideology,” *Europe-Asia Studies* 61, no. 7 (2009); Eugene Huskey and Gulnara Iskakova, “Narrowing the Sites and Moving the Targets,” *Problems of Post-Communism* 58, no. 3 (2011). For an overview of the constitutional framework of Central Asian states, see Scott Newton, *The Constitutional Systems of the Independent Central Asian States: A Contextual Analysis* (London: Bloomsbury Publishing 2017).

⁴⁷ Uuriintuya Batsaikhan and Marek Dabrowski, “Central Asia – Twenty-Five Years after the Breakup of the USSR,” *Russian Journal of Economics* 3, no. 3 (2017): 296–301.

figures within regime elites and clan elites.⁴⁸ The constituent assemblies of Central Asian states comprised sitting Supreme Soviets (deputy parliaments from Soviet rule)⁴⁹ and these assemblies were led by the sitting leaders of the Soviet Central Asian republics (*partiyno-sovetskaya nomenklatura*),⁵⁰ namely, the old establishment and Soviet political elite. Evidently, all the reforms were headed and carried out by political forces that were the part of the old Soviet regime.⁵¹

The historical past and early transition processes of Central Asian states shaped the internal and external political and economic outlooks of these states, directly impacting the design of constitutional courts that emerged in the region.

2.1.1. Subsequent Politico-Legal Landscape of Post-Soviet Central Asia

Foreign Policy

Foreign policies of Central Asian states have generally depended on two factors. First, on the states' abilities to direct or determine security of their borders in their initial years of independence. Second, on the political economy and economic landscape. While Uzbekistan and Kazakhstan were able to build

⁴⁸ Kathleen Collins, *Clan Politics and Regime Transition in Central Asia* (Cambridge: Cambridge University Press, 2006), 210-215; Gregory Gleason, *Central Asia's New States* (Colorado: Westview Press, 1997); Beissinger, *Nationalist Mobilization and the Collapse of the Soviet Union*, 72-75.

⁴⁹ With the exception of Tajikistan, where the Civil War delayed its constitution-making process for 4-5 years and the final text of the Constitution was adopted as a consensus document between conflicting parties. *Konstitucia Respubliki Tajikistan* [Constitution of The Republic of Tajikistan], November 6, 1994, was adopted by referendum.

⁵⁰ *Zakon Respubliki Uzbekistan o Poryadke vvedeniya v deystvie Konstitucii Respubliki Uzbekistan* [Law of the Republic of Uzbekistan on the Procedure for introduction of the Constitution of the Republic of Uzbekistan], December 8, 1992, No. 725, adopted by the Supreme Soviet of the Republic of Uzbekistan; *Postanovlenie Verhovnogo Soveta Respubliki Kyrgyzstan o sozdaniy rabochei gruppy po podgotovke proekta novoi Konstitucii* [Resolution of the Supreme Soviet of the Republic of Kyrgyzstan on establishment of a working group to develop a draft of the new Constitution], May 15, 1991; *Konstitucia Kyrgyzskoi Respubliki* [Constitution of the Republic of Kyrgyzstan], May 5, 1993, adopted by the Supreme Soviet of the Kyrgyz Republic; *Postanovlenie Verhovnogo Soveta Respubliki Kazakhstan ob obrazovanii konstitucionnoi kommissii* [Resolution of the Supreme Soviet of the Republic of Kazakhstan on establishment of a constitutional assembly], December 15, 1990; *Postanovlenie Verhovnogo Soveta Respubliki Kazakhstan o naznachanii Nazarbayeva N.A. Predsedatelem Konstitucionnoi Kommissii* [Resolution of the Supreme Soviet of the Republic of Kazakhstan on the appointment of N.A. Nazarbayev as chairman of the Constitutional Assembly], December 15, 1991; *Konstitucia Respubliki Kazakhstan* [Constitution of the Republic of Kazakhstan], January 28, 1993, adopted by the Supreme Soviet of the Republic of Kazakhstan.

⁵¹ Ruti Teitel, "Post-Communist Constitutionalism: A Transitional Perspective," *Columbia Human Rights Law Review* 26 (1994): 175-79; Stephen Kanter, "Constitution Making in Kazakhstan," *International Legal Perspectives* 5 (1993): 64-66; John Anderson, "Constitutional Development in Central Asia," *Central Asian Survey* 16, no. 3 (1997); Ashurboy Imomov, "Razvitie Konsepsii Konstitucii Suverennoi Respubliki na opyte Tadjikistana" [The Development of the Concept of Constitution of the Sovereign Republic based on the Experience of Tajikistan], " *Sovetskoe Gosudarstvo i Pravo* 11 (1991): 18; Scott Newton, "Transplantation and Transition: Legality and Legitimacy in the Kazakhstani Legislative Process," in *Law and Informal Practices: The Post-Communist Experience*, eds. Denis Galligan and Marina Kurkchiyan (Oxford: Oxford University Press, 2003), 152-65.

armies and exercise control of their own borders, such security measures proved to be more challenging for Kyrgyzstan and Tajikistan. Hence, in its early independence, Kyrgyzstan signed a border cooperation agreement with Russia, while Tajikistan's civil war resulted in a heavy presence of Russian military services at its border. These situations later shaped the two states' respective foreign policies. Kazakhstan followed a multi-vector foreign policy,⁵² which featured a constant balancing act between historical and traditional relations with Russia and important economic partnerships with China. To a certain degree, Kazakhstan's long-serving first president Nursultan Nazarbayev, who held office from 1990 to 2019, considered Kazakhstan as a bridge between Asia and Europe. Kyrgyzstan, during the presidency of Askar Akayev (1990–2005), adopted his Great Silk Road foreign policy doctrine,⁵³ centered on the concept of mutual dependence and the development of “mutually advantageous international cooperation”⁵⁴ in the Silk Road region. Tajikistan in 2002 declared an “open door” policy that included “broad and constructive cooperation with all states and entities of international relations”⁵⁵ while preserving its national interests and sovereignty.⁵⁶ Turkmenistan's foreign policy doctrine is enshrined in its constitution, which reflects the “positive neutrality” doctrine adopted by the 1995 UN General Assembly Resolution on the “Permanent Neutrality of Turkmenistan”.⁵⁷ Uzbekistan under Islam Karimov

⁵² *Strategia Stanovlenia I Razvitiya Kazakhstana kak suverenogo gosudarstva* [Strategy of the Establishment and Development of Kazakhstan as a sovereign state], May 16, 1992, adopted by the President of the Republic of Kazakhstan; *Konsepsia Vneshnei Politiki Kazakhstana* [Concepts of Kazakhstan's Foreign Policy], 1995, adopted by the President of the Republic of Kazakhstan; Sally Cummings, “Eurasian Bridge or Murky Waters between East and West? Ideas, Identity and Output in Kazakhstan's Foreign Policy,” in *Ideology and National Identity in Post-Communist Foreign Policies*, ed. Rick Fawn (London 2004), 139-155.

⁵³ Askar Akayev, *Diplomatia Shelkovogo Puti: Doktrina Prezidenta Kyrgyzstakoi Respubliki* [The Silk Road Diplomacy: The Doctrine of the President of the Kyrgyz Republic], (Bishkek, 1999); Eugene Huskey, “National Identity from Scratch: defining Kyrgyzstan's role in World Affairs,” in *Ideology and National Identity in Post-Communist Foreign Policies*, ed. Rick Fawn (London 2004), 111-138.

⁵⁴ Askar Akayev, “President of Kyrgyzstan: Our foreign policy doctrine is the Great Silk Road,” *EIR* 26, no. 15 (1999), https://larouche.com/eiw/public/1999/eirv26n15-19990409/eirv26n15-19990409_049-president_of_kyrgyzstan_our_fore.pdf.

⁵⁵ Avaz Yuldoshev, “Tajikistan Pursues Open-Door Policy, Says Tajik Leader,” *Asia-Plus*, published 26 April 2013, <https://asiaplus.tj.info/en/news/tajikistan/power/20130426/tajikistan-pursues-open-door-policy-says-tajik-leader>.

⁵⁶ Lena Jonson, *Tajikistan in the New Central Asia: Geopolitics, Great Power Rivalry and Radical Islam* (London: I. B Tauris, 2006), 59-61.

⁵⁷ Resolution A/50/80 of the United Nations General Assembly of 12 December 1995 “A Permanent Neutrality of Turkmenistan” stipulated the following: “(1) Recognizes and supports the of permanent neutrality, declared by Turkmenistan; (2) Calls upon States Members of the United Nations to respect and support this status of Turkmenistan and also to respect its independence, sovereignty and territorial integrity.”

opted for a self-reliance foreign policy doctrine, based heavily on respect and recognition of national sovereignty.⁵⁸ As this article will show, these elements of foreign policy direction also have some reflection of the institutional design of the Central Asian states.

Political Economy

In Central Asia, the political economy was the main factor in the origin and choice of models for their constitutional courts. Central Asian states under the Soviet Union were part of the Soviet State planned economy.⁵⁹ Being a landlocked region, Central Asia did not have much interaction with the rest of the world and mainly played the role of a supplier in the Soviet economy, providing raw materials, cotton, minerals and energy resources.⁶⁰ Among those materials, cotton was the predominant commodity; thus, historians and political scientists have described the Soviet economic policy toward Central Asia as a “white gold cotton dictatorship”.⁶¹ Central Asia was substantially financed by Moscow for its cotton production; however, the Soviets simultaneously used “repressive command methods to enforce the monoculture status of cotton” that later caused extreme ecological problems regarding water balance and the disappearance of the Aral Sea, a lake that was located between Kazakhstan and Uzbekistan.

After the demise of the Soviet Union in 1991, the Central Asian states not only had to build their respective nation-states but also had to develop their own economic systems and policies. As this article will reveal, there is a strong link between the institutional design of Central Asian constitutional courts (and the emergence of judicial review) and the choice of economic systems and political economy approaches that were pursued by each of these states.

⁵⁸ Annette Bohr, *Uzbekistan: Politics and Foreign Policy* (London: Royal Institute of International Affairs, 1998).

⁵⁹ For detailed descriptions of the Soviet economy, see Richard Ericson, “The Classical Soviet-Type Economy: Nature of the System and Implications for Reform,” *Journal of Economic Perspectives* 5 (1991): 11-20; Gregory Gleason, *The New Central Asian States* (Colorado: Westview Press, 1997); Gregory Gleason, *Markets and Politics in Central Asia* (London: Routledge 2003); Richard Pomfret, *The Economies of Central Asia* (New Jersey: Princeton University Press, 1995). Richard Pomfret, *The Central Asian Economies in the Twenty-First Century* (New Jersey: Princeton University Press, 2019).

⁶⁰ Pomfret, *The Central Asian Economies*, 4.

⁶¹ Kulchik et al, *Central Asia After the Empire*, 2-4.

In the field of international political economy, scholars have identified four main different approaches that states can pursue: Marxist, liberal-pluralist, realist, and domestic politics.⁶² In the post-Soviet era, Central Asian states have tended to pursue a combination of the realist and domestic politics approaches.

Prior to World War I, much of the international political economy was dominated by empires, usually led by hereditary or oligarchic elites. These empires justified their pursuit of expansion and exploitation of colonial resources as a means to promote their particular civilizations, arguably resulting in a Marxist approach in terms of control over capital, labor and profits. Following World War I, the economic system of Soviet Union was predominantly based on the Marxist approach.⁶³ The liberal-pluralist approach to international political economy can be observed in the US-Europe relationship and in the North Atlantic region, which predominantly center on financial stability as well as liberal free market ideas.⁶⁴ The realist approach holds that “hegemonic power can ease the achievement of collective goods or trade”.⁶⁵

In the absence of such hegemonic power, states will typically choose short-term bilateral agreements rather than becoming involved in long-term, strategic and broad commitments. Stated simply, their economic strategy is indicative of the realism that surrounds them. In the final decade of the 20th century, when Central Asia’s independent states emerged, there was no such hegemonic power. Russia was preoccupied with handling its own domestic political and economic reforms, and among Central Asian states there was no evident hegemon among the leaders. Consequently, it has been argued, Central Asian states opted for a realistic perspective on international political economy,⁶⁶ adopting economic policies that were sporadic and not comprehensive, mostly balancing between Russia, China and other potential partners.

⁶² Martin Spechler and Dina Spechler, “The International Political Economy of Central Asian Statehood,” in *Stable Outside, Fragile Inside? Post-Soviet Statehood in Central Asia*, ed. Emilian Kavalski (2010), 72-73; Robert Gilpin, *The Political Economy of International Relations* (New Jersey: Princeton University Press, 1987), 12-13.

⁶³ Spechler and Spechler, “The International Political Economy,” 72-73.

⁶⁴ *Ibid.*, 73-74.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

Finally, the domestic politics approach suggests that international trade can shape the political development of a country, such as enhancing the powers of domestic regimes if there are available natural resources, which can lead to the 'natural resources trap'.⁶⁷ Therefore some Central Asian states, due to the availability of natural resources, choose to retain a command economy, as access to international trade has enabled these regimes to consolidate and strengthen their power.⁶⁸

Thus, considering these various approaches to international political economy, economic choices and perspectives of the Central Asian states can be considered in a spectrum ranging from most liberal to least liberal.

Kyrgyzstan is known for having adopted one of the most liberal economic systems. This is because, unlike its neighboring countries, it lacks natural resources and materials that it could extract and export itself. Clearly, there was an urgent need to attract international investment and to achieve that, Kyrgyzstan had to begin liberalizing its economy and legal system. Thus, following recommendations of the World Bank and the International Monetary Fund, Kyrgyzstan adopted liberal reforms in the economic sector. Those reforms were reflected in the reorganization and liquidation of enterprises, also known as PESAK,⁶⁹ in the agricultural economy, also known as APEAK,⁷⁰ and the reorganization of the financial market, also known as FINSAK.⁷¹ This liberal approach to the economic system also impacted the development of the politico-legal landscape of Kyrgyzstan, which was one of the most liberal in Central Asia.

⁶⁷ Ronald Rogowski, *Commerce and Coalitions* (New Jersey: Princeton University Press, 1989).

⁶⁸ Spechler and Spechler, "The International Political Economy," 72-73.

⁶⁹ *Postanovlenie Pravitel'stva Kyrgyzskoi Respubliki o merah po demonopolizacii ekonomiki i podderzskii predprenimatelstva v Respublike Kyrgyzstan* [Resolution of the Government of the Kyrgyz Republic on measures to demonopolize the economy and support entrepreneurship in the Republic of Kyrgyzstan], August 25, 1992, No. 421.

⁷⁰ *Ukaz Prezidenta Respubliki Kyrgyzstan ob osobennostyah razgosudarstvleniya i privatizacii sovhozov i drugih gosudarstvennyh, kommunalnyh, selskohozyastvennyh predpriyatij v Respublike Kyrgyzstan* [Decree of the President of the Kyrgyz Republic on the peculiarities of the privatization of state farms and other state (communal) agricultural enterprises in the Republic of Kyrgyzstan], January 13, 1992, No. УП-10.

⁷¹ *Ukaz Prezidenta Kyrgyzskoi Respubliki o razrabotke ekonomicheskoi strategii razvitiia Kyrgyzskoi Respubliki na period do 2005 goda i indakativnogo socialno-ekonomicheskogo plana na 1996-1998 gody* [Decree of the President of the Kyrgyz Republic on the development of an economic development strategy of the Kyrgyz Republic up to 2005 and an indicative social and economic plan for 1996-1998], December 29, 1995; *Postanovlenie Pravitel'stva Kyrgyzskoi Respubliki ob agenstve po reorganizacii bankov i rekonstrukcii dolgov pri Ministertste Finansov Kyrgyzskoi Respubliki* [Regulation of the Government of the Kyrgyz Republic on the Agency for the Reorganization of Banks and Restructuring Debt with the Ministry of Finance of the Kyrgyz Republic], February 19, 2002, no. 87.

Furthermore, it also influenced the establishment of one of the region's most empowered constitutional courts, which enjoyed expansive institutional design and competencies.⁷²

The second Central Asian state that also opted for the liberal economic system is Kazakhstan. In contrast to Kyrgyzstan, Kazakhstan is rich in oil and gas resources; however, after the fall of the Soviet Union, Kazakhstan lacked sufficient capacity for extracting these natural resources. It therefore also had to commence liberalization of its economic and legal policies to attract investors. Similar to Kyrgyzstan, it established a constitutional court with substantially broad powers and competencies. Despite that liberal foundation, rising oil prices meant that Kazakhstan enjoyed “energy driven booms”⁷³ and the privatization of state assets resulted in the formation of an “autocratic economy, dominated by oligarchs”.⁷⁴ This change of the political landscape, manifested in the consolidation of power by Nazarbayev, led to the 1995 transformation of the Constitutional Court of Kazakhstan into the less powerful and more façade-like Constitutional Council. Thus, the choice of institutional design of the Constitutional Court in Kazakhstan was also predominantly driven by the economic interests and approaches of Kazakhstan to political economy.

Uzbekistan initially pursued the least liberal economic system, opting to maintain a state command economy. This was justified by the factor that unlike Kazakhstan and Kyrgyzstan, Uzbekistan under the Soviet regime was a leading supplier of cotton. Given that cotton, unlike oil or gas, is easily produced and exported without needing to attract investors, Uzbekistan chose to retain its state command economy.⁷⁵ Therefore, Uzbekistan had no economic motive to undertake

⁷² More detailed analysis of the institutional design is discussed in the next section.

⁷³ Pomfret, *The Central Asian Economies*, 4.

⁷⁴ Pomfret, *The Economies of Central Asia*; Pomfret, *The Central Asian Economies*, 70-75; Karla Hoff and Joseph Stiglitz, “After the Big Bang? Obstacles to the Emergence of the Rule of Law in Post-Communist Societies,” in *American Economic Review* 94, no. 3 (2004), 754-60; Carol Kerven, Sarah Robinson, Roy Behnke, Kanysh Kushenov and E.J. Milner-Gulland, “A pastoral frontier: From chaos to capitalism and the re-colonisation of the Kazakh rangelands,” *Journal of Arid Environments* 127 (2016), 110-18.

⁷⁵ Bakhodyr Muradov and Alisher Ilkhamov, “Uzbekistan’s Cotton Sector: Financial Flows and Distribution of Resources” (Open Society Eurasia Program Working Paper, 2014); E.J.F., *White Gold – The True Cost of Cotton: Uzbekistan Cotton and the Crushing of a Nation* (London: Environmental Justice Foundation, 2005).

liberalization of its economic and politico-legal systems. Consequently, of all Central Asian states, Uzbekistan created the least powerful constitutional court.

Tajikistan is in the center of this spectrum, mainly because of the civil war that broke out once it had become an independent state. The Tajikistani Civil War put on hold the entire process of constitution-making, economic policies and the creation of a constitutional court.⁷⁶ After the Civil War had concluded with the assistance of international parties, a constitution was drawn up that also created a constitutional court. As Tajikistan's economy was severely damaged after the war, it became imperative to liberalize its economy and woo investors. Yet the tide of political change across Central Asia and the former Soviet Union that paved the way toward more authoritarian presidentialism also had an impact on the institutional design of the Tajik Constitutional Court. Accordingly, Tajikistan established its Constitutional Court with comparatively fewer powers than those of Kazakhstan and Kyrgyzstan, but relatively more powers than the Constitutional Court of Uzbekistan.

2.1.1.1 Institutional Design of Central Asian Constitutional Review Mechanisms

A comprehensive picture of the institutional designs of Central Asian constitutional courts is outlined in the following series of tables.⁷⁷ These tables also reflect subsequent institutional adjustments to these courts, made either via constitutional amendment or amendments to the respective laws on constitutional courts.

⁷⁶ Isaac Scarborough, "Economic Causes of Strife in Tajikistan," *Voices on Central Asia*, March 20, 2018, <https://voicesoncentralasia.org/economic-causes-of-strife-in-tajikistan>; Bakhtiyor Sobiri, "S Shiroko Zakrytyimi Glazami: Dolgoe Eho Grazhdanskoi Voiny v Tajikistane [Eyes Wide Shut: Long Echoes of the Tajik Civil War]," *Open Democracy*, 22 June 2017, <https://www.opendemocracy.net/ru/exo-grazhdanskoi-voiny-tadzhikistan>.

⁷⁷ Gretchen Helmke and Julio Rios-Figueroa, *Courts in Latin America* (Cambridge: Cambridge University Press, 2011); Anja Seibert-Fohr, "Judicial Independence in Transition: Strengthening the Rule of Law in the OSCE Region," *Max Plank Institute series on comparative and international law* (2012): 307-40; Ginsburg, *Judicial Review*; Mark Ramseyer, "The Puzzling Independence of Courts: A Comparative Approach," *The Journal of Legal Studies* (1994): 721; John Bell, *Judiciaries within Europe* (Cambridge: Cambridge University Press, 2006); Linda C. Keith, "Judicial Independence and Human Rights Protection around the World," *Judicature* 85 (2000): 193-97; Nuno Garoupa and Tom Ginsburg, "Guarding the Guardians: Judicial Councils and Judicial Independence," *The American Journal of Comparative Law* 57 (2009), 103-120.

Composition of Central Asian Constitutional Courts				
	Number of Justices	Organizational Structure	Appointment	Dismissal
Kyrgyzstan Constitutional Chamber*	11 judges,** 40-70 years old, higher education in law, minimum of 15 years' professional legal experience.**	Chairperson (elected among judges), deputy chairperson and 9 judges. Judge rapporteurs designated for each case by Chairperson.**** Apparatus of the Chamber.	Appointed by Parliament upon submission by the President, based on proposal by the Council of Judges.***** Appointed for an initial term of 7 years, which may be renewed, allowing tenure until mandatory retirement age.*****	A judge may be dismissed by not less than two-thirds of votes of the deputies of Parliament upon submission by the President, based on proposal by the Council of Judges.*****

* De facto and de jure, by the letter of both the Kyrgyzstan Constitution and the Constitutional Law on the Constitutional Chamber of the Supreme Court, the Constitutional Chamber is an autonomous court that does not report to the Supreme Court in any way. See Konstitucionnuj zakon Kyrgyzskoj Respubliki o Konstitucionnoj palate Verhovnogo suda Kyrgyzskoj Respubliki [Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic], June 13, 2011, No. 37, Articles 2, 3, 11.

** Konstitucionnuj zakon Kyrgyzskoj Respubliki o Konstitucionnoj palate Verhovnogo suda Kyrgyzskoj Respubliki [Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic], June 13, 2011, No. 37, Article 5.

*** Konstituciya Kyrgyzskoj Respubliki [Constitution of the Kyrgyz Republic], 27 June 2010, Article 97 (2); Konstitucionnuj zakon Kyrgyzskoj Respubliki o statute sudej Kyrgyzskoj Respubliki [Constitutional Law on the Status of Judges in the Kyrgyz Republic], July 9, 2008, No. 141, Article 15 (1).

**** Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, Article 5.

***** Constitutional Law on the Status of Judges in the Kyrgyz Republic, Article 15.

***** Ibid. According to the Venice Commission, "setting probationary periods can undermine the independence of judges, as they may feel under pressure to decide cases in a certain manner," European Commission for Democracy through Law (Venice Commission), Opinion on the Draft Amendments to the Constitutional Law on the Status of Judges of Kyrgyzstan, Opinion no. 480/2008, CDL-AD(2008)039, p. 4, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2008\)039-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)039-e).

***** Constitutional Law on the Status of Judges in the Kyrgyz Republic, Article 25 (2); Constitution of the Kyrgyz Republic, Article 97 (1). A Kyrgyzstan Constitutional Chamber judge may be subject to early dismissal in the following cases: "on the judge's own application; health grounds (attested by a medical commission); appointment to another court or position; a guilty criminal verdict; a court judgment to apply compulsory medical measures; a disciplinary infringement incompatible with the calling of a judge, confirmed by decisions of the Council of Judges; activity incompatible with the office of a judge; political party membership, promotion of any political party; registration as a candidate for Presidency, registration as member of a political party that is participating in Parliamentary elections, or registration as a candidate for local self-governance body representative elections." Constitutional Law on the Status of Judges in the Kyrgyz Republic, July 9, 2008, No. 141, Article 26 (2).

Composition of Central Asian Constitutional Courts				
	Number of Justices	Organizational Structure	Appointment	Dismissal
Kazakhstan Constitutional Council	7 members + all ex-Presidents are <i>ex officio</i> life members.* Minimum age of 30, higher education in law, minimum 5 years' professional legal experience.**	Chairperson (appointed by President), 6 members. Rapporteurs designated for each case by Chairperson.*** Apparatus of the Council.	Chairperson and two members of Council are appointed by President, two members by the upper house of Parliament and two by the lower house of parliament for a term of 6 years.****	Chairperson may be dismissed by the President, other members by the respective bodies that appointed them, on grounds listed in Article 15 of the Constitutional Law.*****
Tajikistan Constitutional Court	7 judges, 30-65 years old, lawyers with minimum 10 years' professional legal experience.*****	Chairperson (elected among judges), deputy chairperson and 5 judges. Judge rapporteurs designated for each case by the Chairperson***** Apparatus of the Court.	Appointed by Parliament upon submission by the President.***** Appointed for a term of 10 years.*****	A judge may be dismissed by Parliament upon submission by the President on grounds listed in the Constitutional Law.*****

* Konstitucionnuj zakon Respubliki Kazahstan o Konstitucionnom Sovete Respubliki Kazahstan [Constitutional Law on the Constitutional Council of the Republic of Kazakhstan], December 29, 1995, No. 2737, Article 2.

** Ibid, Article 4.

*** Ibid, Articles 10, 26.

**** Ibid, Articles 3, 5.

***** Ibid, Article 15. A member of the Council may be subject to early dismissal in following cases: "on the member's own application; a guilty criminal verdict; a court judgment to apply compulsory medical measures; a disciplinary infringement incompatible with the calling of a judge; and violation of the oath."

***** Konstitucionnuj zakon Respubliki Tajikistan o Konstitucionnom Sude Respubliki Tajikistan [Constitutional Law on the Constitutional Court of the Republic of Tajikistan], November 3, 1995, No. 84, Articles 7, 8.

***** Ibid, Article 8.

***** Ibid.

***** Ibid, Article 9.

***** Ibid, Article 14. A Tajikistan Constitutional Court judge may be subject to early dismissal in following cases: "on the member's own application; a guilty criminal verdict; a court judgment to apply compulsory medical measures; a disciplinary infringement incompatible with the calling of a judge; a violation of the oath; and loss of citizenship."

Composition of Central Asian Constitutional Courts				
	Number of Justices	Organizational Structure	Appointment	Dismissal
Uzbekistan Constitutional Court	7 judges, [*] 35-70 years old, specialists in law and politics. ^{**}	Chairperson (elected among judges), deputy chairperson and 5 judges. Judge rapporteurs designated for each case by the Chairperson. ^{***} Apparatus of the Court	Appointed by Parliament upon submission by the President, based on proposal by the Supreme Judicial Council. Appointed for a term of 5 years, renewable only once. ^{****}	A judge may be dismissed by the Parliament on grounds listed in the Constitutional Law. ^{*****}

Jurisdiction of Central Asian Constitutional Courts	
Kyrgyzstan Constitutional Chamber (since 2010) ^{*****}	<ol style="list-style-type: none"> 1. Review constitutionality of normative legal acts (individual complaints included). 2. Review constitutionality of international treaties before ratification. 3. Review constitutionality of constitutional amendments.^{*****}

* Konstitucionnuj zakon Respubliki Uzbekistan o Konstitucionnom Sude Respubliki Uzbekistan [Constitutional Law on the Constitutional Court of the Republic of Uzbekistan], May 27, 2017, No. 3PY-431, Article 5.

** Ibid, Article 16.

*** Ibid, Article 5.

**** Ibid, Article 5.

***** Ibid, Article 23. An Uzbekistan Constitutional Court judge may be subject to early dismissal in the following cases: "on the judge's own application; health grounds (attested by a medical commission); a guilty criminal verdict; a court judgment to apply compulsory medical measures; loss of citizenship; and violation of the oath."

***** Compared to the previous Kyrgyzstan Constitutional Court, which was suspended in 2010, the Constitutional Chamber's powers are much more limited. For instance, the additional competencies of the previous Constitutional Court were: review application of laws, interpret the Constitution, impeachment of president and judges, and review election results. For more information, see Konstitucionnuj zakon Kyrgyzskoj Respubliki o Konstitucionnom Sude [Constitutional Law on the Constitutional Court of the Kyrgyz Republic], December 18, 1993, No. 1335-XII 37, Article 13.

***** Constitutional Law on the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic, Article 4.

	Jurisdiction of Central Asian Constitutional Courts
Kazakhstan Constitutional Council (since 1995)*	<ol style="list-style-type: none"> 1. Review elections and referenda. 2. Review constitutionality of acts of parliament before promulgation.** Since 2017, after promulgation at the request of the President.*** 3. Review constitutionality of international treaties before ratification. 4. Official interpretation of the Constitution.
Tajikistan Constitutional Court	<ol style="list-style-type: none"> 1. Review constitutionality of normative legal acts. 2. Review constitutionality of international treaties before ratification. 3. Review constitutionality of constitutional amendments. 4. Resolve competence disputes between state officials. 5. Review individual complaint since 2008.****
Uzbekistan Constitutional Court	<ol style="list-style-type: none"> 1. Review constitutionality of normative legal acts 2. Review constitutionality of international treaties before ratification. 3. Review constitutionality of autonomous Karakalpakstan Republic's Constitution and laws. 4. Official interpretation of the Constitution. 5. Review concrete cases upon referral by the Supreme Court (since 2017). 6. Other competencies defined by law.*****

* Before 1995, Kazakhstan had a Constitutional Court, which had substantially more powers, including individual complaint, the review of actions of state officials, and the review of decisions of ordinary courts. For more information, see Konstitucionnuj zakon Respubliki Kazakstan o Konstitucionnom Sude Respubliki Kazakstan [Constitutional Law on the Constitutional Court of the Republic of Kazakhstan], June 5, 1992, Article 10.

** Constitutional Law on the Constitutional Council of the Republic of Kazakhstan , Article 72.

*** Ibid, Article 17.

**** Constitutional Law on the Constitutional Court of the Republic of Tajikistan, Article 34.

***** Constitutional Law on the Constitutional Court of the Republic of Uzbekistan, Article 4.

This article, including the tables above, show that in Central Asia, the politico-historical context and political economy were the key elements that influenced the origin of constitutional courts. These determinants also shaped subsequent institutional adjustments conducted by these courts.

For example, after investors were attracted to Kazakhstan and various state enterprises were privatized, an economic boom from higher world oil prices enabled Nazarbayev to strengthen his power and to establish an autocratic economic system that no longer required a powerful constitutional court. Therefore, in 1995, the Kazakh Constitutional Court was replaced with the considerably weaker Constitutional Council, the powers of which were much lower. Circumstances were different in Kyrgyzstan, which maintained the initial institutional design of its Constitutional Court for a longer time because it required ongoing investment and international backing. However, the situation changed after the 2010 Tulip Revolution, when the Kyrgyzstan Constitutional Court was replaced with the Constitutional Chamber. Conversely, while Tajikistan and Uzbekistan established relatively less powerful courts, they have more recently seemed to be broadening the jurisdictions of these courts, which has also influenced by political economic interests.

III. CONCLUSION

This article pursued two central objectives. First, it sought to identify the primary factors and motives behind the creation of constitutional courts in Central Asia. Second, it defined how those factors and motives influenced the institutional design of these courts. In meeting these objectives, the article first examined the formation of constitutional courts in the setting of the former Soviet Union. It then explored popular theories of comparative constitutional law on the origin of judicial review.

Next, this article explained that in the setting of Central Asia, the insurance theory cannot completely and accurately explain the origin of constitutional review. On the contrary, the primary force behind the establishment of Central

Asia's constitutional courts and their institutional design has been the politico-economic interests of their states, shaped by the regional politico-historical and transitional context.

For the sake of highlighting the principal findings from this article, the following points can be restated. First, the historical context shows the Soviet Union's strategy based on fear of pan-Islamism and pan-Turkism toward Central Asia caused an "incoherent sense of stateness"⁷⁸ that resulted in a severely negative impact after those states gained independence following the demise of the Soviet Union. Second, the examination of the transitional events shows the early stages of transition in Central Asia were generally left in the hands of clan elites, regime elites, the old establishment and the Soviet political elite.

Thus, while the insurance theory may serve as a general explanation for the origin of constitutional review in some states, the experience of Central Asia shows otherwise, as the design and development of its constitutional courts has been based more on political economy and politico-historical factors.

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⁷⁸ Dagiev, *Regime Transition*.

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