Elder Law in Australia and China: From Protection to Empowerment
Benga, Florentina

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Event Schedule

Thu, Nov 29, 2018

8:00am

Registration

- 8:00am - 9:00am, Nov 29
- Outside 6_3_29 (Theatre 3)

9:00am

ECW Day 1 Session A - Welcome and Introductions

- 9:00am - 9:15am, Nov 29
- 6_3_29 (Theatre 3)

Speaker

Jonathan Liljeblad
Senior Lecturer, Swinburne University of Technology

9:15am

ECW Day 1 Session A - Developing Law and Society Scholarship

- 9:15am - 10:45am, Nov 29
- 6_3_29 (Theatre 3)

Speakers

Lynette Chua
National University of Singapore

Jonathan Liljeblad
Senior Lecturer, Swinburne University of Technology

Kaywah Chan
Senior Lecturer, Macquarie University
10:45am

Morning Tea
⏰ 10:45am - 11:00am, Nov 29
📍 Princeton Room (Building 6, Level 3) - Outside

11:00am

ECW Day 1 Session B: Funding for Law and Society Scholarship
⏰ 11:00am - 12:30pm, Nov 29
📍 6_3_29 (Theatre 3)

Early Career Workshop
Funding for Law and Society Research (panelists with Q&A discussion)

 Speakers

Jonathan Liljeblad
Senior Lecturer, Swinburne University of Technology

Setsuo Miyazawa
Professor Emeritus (Kobe) & Senior Visiting Professor (UC Hastings), Kobe University & UC Hastings College of the Law

Luke Nottage
Usydney

Pre-conference meeting lounge
⏰ 11:00am - 12:30pm, Nov 29
📍 6_3_04 Landing Opposite Princeton Room

A social space for early arrivals to meet and network.

12:30pm

Lunch
⏰ 12:30pm - 1:30pm, Nov 29
📍 6_2_97 Student Lounge (second floor)

1:30pm

ECW Day 1 Session C: Professional Development and Career Strategies
⏰ 1:30pm - 3:00pm, Nov 29
📍 6_3_29 (Theatre 3)
PGov Day 1 Session C - Model Conflicts in Asian Law Reforms: A Critical Review of the Washington Consensus

1:30pm - 3:00pm, Nov 29
6_4_11 (Case Study 1)

3. Public Governance (PGov)

Kieran Tranter (Chair)

Yuka Kaneko: "Insolvency Law Reforms in Asian Emerging Economies: Investment Promotion vs. Market Discipline"

Insolvency law has been the first priority in the donor-supported legal reforms in Asian emerging economies as well as the post-Asian Crisis structural adjustment loans. The model insolvency law led by the World Bank and IMF-sponsored ROSC (Reports on the Observation of Standards and Codes) evaluations has an obvious legal design for the promotion of investors who make profits by buying and selling insolvency companies in Asia. With a focus on the recent JICA-sponsored insolvency law reform in Myanmar, the author investigates into the policy dilemma in recipient countries which aims at the establishment of healthy legal infrastructure for the development of local industries and corporate finance.

Shiro Kawashima: "One Trend of Development of the Civil Dispute Resolution System in Southeast Asia: From Civil Procedure to Mediation"

Since the dawn of the new century we can observe the developments of civil procedure systems in several countries of Southeast Asia. As I have a chance to continue to commit several law reforms relating to civil dispute resolution systems specially in Vietnam, I could realize one distinct trend of law development in the field of the civil dispute resolutions. That is the expansion of civil justice system from establishment of modern Civil Procedure system to creation/utilization of Mediation/Conciliation system. In this report I would like to introduce and analyze such a trend including its background and suggest the future perspectives on how we should commit such development from the viewpoint of international technical legal support in order to construct the good and integrated civil justice system.

Kenzo Okawa: "Japanese Legal Technical Assistance in the Field of Drafting the Lao Civil Code"

Japanese legal technical assistance is taken the lead by International Cooperation Department of Ministry of Justice (ICD) and Japan International Cooperation Agency (JICA). They are supporting some Asian countries as legal
adviser. Lao PDR is also one of them, and they are assisting in making a Lao Civil Code draft. This presentation deals with the situation of the assistance to Lao Civil Code draft, the idea and principles of the draft, and an outline of their articles. Furthermore, I will take up the regulations of the immovable property especially "Land", in the draft.

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Chair

Kieran Tranter  
Associate Professor, Griffith University

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Speakers

Yuka Kaneko  
Kobe University

Shiro Kawashima  
Professor, Doshisha University

Kenzo Okawa  
Lecturer, Setsunan University

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3:00pm

Afternoon Tea

🕒 3:00pm - 3:15pm, Nov 29  
📍 Princeton Room (Building 6, Level 3) - Outside

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3:15pm

ECW Day 1 Session D: Mentoring Sessions

🕒 3:15pm - 4:45pm, Nov 29

Early Career Workshop

Concurrent breakout sessions with mentor discussions on ECW participants' papers

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4 Subsessions

- Mentoring Group 1
  
 🕒 3:15pm - 4:45pm, Nov 29  
  📍 6_2_05 (Seminar 5)

- Mentoring Group 2
  
 🕒 3:15pm - 4:45pm, Nov 29
### Kieran Tranter: "Doing Right in the World with 100,000 Horsepower: Osamu Tezuka's Tetsuwan Atomu (Astro Boy), Essence, Posthumanity and Techno-Humanism"

This paper considers the legalities of the posthuman as projected and anticipated by Osamu Tezuka's Tetsuwan Atomu (Astro Boy). Through using the 2002 Dark Horse English reprinting of the Tezuka's original manga (1951-1969) it will show how questions of authenticity shift from origin to action. While Astro does much crime fighting, the deeper legality of the series is on the immateriality of essence. Good and bad is not determined by programming or by biology but by choice and doing-in-the-world. As a text Astro Boy presents in a world of responsibility, responsibility borne not so much from formal duty, but from participation in 'living.' This could be seen as a techno-humanism law of love; but instead of the latent paternalism, there is a simply joy of play.

The value of this paper is in thinking about legalities - questions of right, responsibility and regulation - for the beings that come after human. Beings, whose origins are hybrid and shifting between a plastic biology and digital flows, beings whose capacity to know, gather resources and do in the real and the digital, potentially far outstrips their human ancestors. It is a about finding a form of techno-humanism - a civilising set of values and orientations for doing right - for the posthuman.

### Ashley Pearson: "Execution and Power in Death Note and the Japanese Capital Punishment System"

Written by Tsugumi Ohba and illustrated by Takeshi Obata, the Death Note series is an iconic Japanese popular culture series that animates tensions of justice, law, power, and death in a tantalizing cat-and-mouse tale of murderers, detectives, and reapers (shinigami). Through the acquisition of a supernatural notebook of a reaper that has the power to kill anyone whose name is written in it, a young genius, Light Yagami, begins to execute people with a view to deliver that which the human legal system cannot: true justice and a legitimate chance of a crime-free society.

The proposed chapter seeks to explore the relationship between the unforgiving, rapid dispersal of justice as death within Death Note as an answer to the real-life inefficiencies of the Japanese capital punishment system. The justice dealt by Light in Death Note is the antithesis of Japan's capital punishment: Light's executions are anonymous, expedient, public and effective whereas the executions performed in Japan are notoriously slow, secretive, and accountability is heaped upon the Minister of Justice. In spite of a legal system that deliberately and systematically displaces responsibility for violent acts, a rupture in Japan's network of accountability has made timely, lawful justice a near impossibility. The threat of Death Note is its emphasis on the humanity of legal actors: their names and faces, rather than their existence as administrators of justice. It is the confrontation of body and identity staged in Death Note that reveals a public disquiet and critique of the Japanese capital punishment system throughout the narrative.

### Dale Mitchell: "Law and Justice in Pokemon Black and White"

Battle. Capture. Win. These are the laws in the Pokémon universe, an ever-growing cosmopolitan world of Pocket
Monsters and the humans who seek to train, fight, steal, raise, breed and capture them. It is in this arena, a Hobbesian dystopia for Pokémon, that N, a trainer with the belief that Pokémon deserve independence and liberation from people, begins his quest.

As the King of Team Plasma, N becomes a villainous figure. His ideals and actions directly conflict with the player as they traverse the linear storyline of Pokémon Black and White. He speaks to Pokémon, detests the use of Pokéballs and wants to convince trainers to free their Pokémon. His ‘dream’ of Pokémon liberation is disturbed by a ‘grey’ world where ‘different values mix together’. By separating ‘Pokémon and people...black and white will be clearly distinct’ to reveal the truth of N’s ideals. N’s goal is the creation of an independent place for Pokémon.

This conflict between ‘normal’ trainers that capture and ‘use’ Pokémon and N, the villain who, despite engaging in Pokémon battles, seeks to liberate these creatures, depicts contrasting understandings of law, legality and justice. It articulates a relationship of dominion by the subject of law and certain objects (animals, resources, Pokémon) that is critiqued by what is villainous within this framing of legal subjectivity — the person who wants to release the object of law from dominion.

By exploring how this contrast between trainer and liberator is established through the narrative, artistic and gameplay elements of the Pokémon Black and White games, Manga and TV series, this chapter seeks to articulate how representations of justice are transformed by medium. This trans-modal examination provides a foundation for exploring the notion of ‘just representation’—the appropriate and ‘just’ reading of a text, and the representative nature of justice. Such an articulation, in the end, is not black, white nor grey, but rather imbued with complexity, colour and deeper meaning.

Timothy Peters: "'Holy Trans-Jurisdictional Representations of Justice, Batman!'": Globalisation, Persona and Mask in Kuwata's Batmanga and Morrison's Batman Incorporated"

Crafted at the height of Japanese ‘bat-mania’ in the 1960s, Jiro Kuwata’s 1967-68 Batman Manga series was little known in the West until its re-discovery and translation in 2008. The series depicts a classic take on Batman and Robin drawing on both the traditions of the Adam West television series and 60s sci-fi based comic book runs. In contrast to the darker versions of Batman seen both in comics and film since the 1980s, Batman here is a ‘legitimate’ crime-fighter, working with Gotham police in tackling a range of villains and criminals. Grant Morrison’s more recent run on Batman pays homage to Kuwata’s series, whilst exploring a more globalised vision of vigilante crime-fighting in Batman Incorporated(2012-2013). This chapter seeks to explore both the way in which Kuwata’s depiction of Batman and Robin presents a particularly unique take on the Dynamic Duo’s fight for justice, as US-influenced Japanese Popular Culture and the way in which this particular take has been incorporated into one of the most significant comic-book Batman narratives of recent times—a run which depicts the intentional globalization and trans-jurisdictional nature of Bat-justice. It does so by taking up one of the most significant tropes of the superhero genre—the mask—and its links to the nature of legal personhood as put into question through the meeting of different cultural traditions in these trans-cultural texts.

Leon Wolff: "The Drama of Japanese Law: Law and Justice on Prime-Time TV."

Presentation: https://sway.office.com/qPeoq4rn7YOZdmgS?ref=Link.

Japanese law is going “pop”. Since the turn of the century, Japanese popular culture, especially prime-time television, has dedicated more time to legal themes, characters and settings. Lawyers, overwhelmingly women, are the heroes in both dramatic and comedic television series. Court-room battles are the scene for plot developments. Practising lawyers are the new celebrities, joining actors and singers on the light-entertainment talk-show circuit.

Does this renewed popular interest in law signify growing legal consciousness in Japan? Japanese legal consciousness has been a longstanding controversy in the comparative law literature. For more than four decades, scholars have debated the extent to which law matters in Japan. Both Japanese and non-Japanese experts, legal and non-legal scholars alike, have sought to explain whether or not – and, if so, how – legal rules, legal processes, legal professionals and other legal actors play important roles in structuring and ordering society.

This presentation seeks to re-open and re-fresh this debate. Government reforms to civil justice make it timely to
And new methodologies are needed to rejuvenate the scholarly conversation for the new century. Quantitative data, after all, only tells part of the story. For one, reliable statistics on litigation in Japan (or, indeed, elsewhere) are hard to come by and even more difficult to compare meaningfully across time or jurisdictions. For another, quantitative data cannot answer qualitative questions. Litigiousness, after all, is a socio-cultural issue; it interrogates the extent to which people are conscious of the law and prepared to engage formal legal processes.

Enter popular culture. As Friedman (1989) argues, popular culture is a useful clue into how law functions in society, especially for capturing citizens’ perspectives on the desirability of invoking formal law to frame rights and settle disputes. This research proposal seeks to use Japanese popular culture as both a source of data (specifically, prime-time television shows) and as a research method (namely, a narrative analysis of the themes and concerns in these media texts).

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**Speakers**

Kieran Tranter  
Associate Professor, Griffith University

Leon Wolff  
Associate Professor, QUT (Queensland University of Technology)

Ashley Pearson  
Griffith University/University of the Sunshine Coast

Dale Mitchell  
PhD Candidate, University of the Sunshine Coast

Timothy Peters  
Senior Lecturer, University of the Sunshine Coast

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**4:45pm**

**ECW Day 1 Session E: Concluding Plenary**

**Date & Time:** 4:45pm - 5:30pm, Nov 29

**Location:** 6_3_29 (Theatre 3)

**Early Career Workshop**

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**Speaker**

Pip Nicholson  
Melbourne Law School
5:30pm

ECW Dinner
⏰ 5:30pm - 8:00pm, Nov 29
📍 Varsity Lakes restaurant

Early Career Workshop

Fri, Nov 30, 2018

8:00am

Registration
⏰ 8:00am - 10:00am, Nov 30
📍 Princeton Room (Building 6, Level 3) - Outside

8:30am

Welcome
⏰ 8:30am - 8:50am, Nov 30
📍 Princeton Room (Building 6, Level 3)

Opening Ceremony

Leon Wolff: Welcome to ALSA2018 - Law in the Asian Century
(https://sway.office.com/QBekjL05ndhCYHw?ref=Link)

Hiroshi Fukurai: Welcome from President, Asian Law and Society Association (ALSA)

Setsuo Miyazawa: Statement from Immediate Past President of ALSA and new President of the Asian Criminological Society

Speakers

Leon Wolff
Associate Professor, QUT (Queensland University of Technology)

Hiroshi Fukurai
University Of California Santa Cruz

Setsuo Miyazawa
Professor Emeritus (Kobe) & Senior Visiting Professor (UC Hastings), Kobe University & UC Hastings College of the Law

8:50am

Opening Keynotes
⏰ 8:50am - 10:30am, Nov 30
President Ik-Hyeon Rhee: Keynote Address

Development and Challenge of Rule of Law in Korea.

Powerpoints: Development and Challenges of Rule of Law in Korea.pptx

Dean and Professor Pip Nicholson: Keynote Address

The recent work of DING Xiaodong (2017) argues that the Chinese Communist Party does not understand law as a system of positive norms that ‘exist independently of politics’. Instead, law is understood, in China, as a ‘reflection of the party’s and the people’s will and a form of the party’s and the people’s self-discipline.’ The ‘will’ to which Ding refers, is ultimately expressed through the vanguard leadership of the CCP. Accepting this argument, the law is both developed and constrained, while always remaining party-led. This socialist conception of law challenges the idea that law reform in Asia is ultimately going to reflect Western, liberal conceptions of the rule of law. It also challenges any notion of a single ‘Asian’ law.

I argue that the principle of democratic centralism, as it operates in the Vietnamese courts, ensures that at least this legal institution remains infused and led by the Vietnam Communist Party. This understanding challenges the notion that the Western conception of the rule of law is the inevitable trajectory for regional legal reform. I suggest that the scholarly preoccupation with ‘socialist legality’ under-documents the continuing innately political and disciplining function of law in socialist states. The exportability of the rule of law is inevitably vulnerable while the socialist political project retains its resilience.

In developing this argument, I draw on earlier work that offers institutional analyses of legal reform in the Vietnamese courts.

Speakers

Ik-Hyeon Rhee
President, Korea Legislation Research Institute (KLRI)

Pip Nicholson
Melbourne Law School

10:30am

Morning Tea
10:30am - 11:00am, Nov 30
Princeton Room (Building 6, Level 3)

11:00am

LIA Day 2 Session B - Current Challenges for Judges in the Asia Pacific
11:00am - 12:30pm, Nov 30
6_4_11 (Case Study 1)
One of the more challenging aspects of a judge's role is the impartial management of expert testimony. Expert witnesses play an important role in a growing number of criminal and civil cases and bring increasingly specialised information to proceedings from fields as varied as medicine, psychology, engineering and IT. While judges have traditionally not been expected to be experts in fields other than the law itself, they might need to grapple with technical data and surrounding social contexts in order to understand salient legal issues arising from it. In the case of jury trials they may be under particular pressure to summarise the legal implications of expert testimony impartially. Reflecting on a career not only as a trial judge but also as a tribune for VCAT, Victoria's thriving mediation-based system for resolving conflicts involving both private and government parties, in this paper I shall summarise some of the key difficulties that can arise from the involvement of expert testimony and some differences of approach towards these difficulties between trial and tribunal proceedings. I will also offer some observations of the way other judicial systems such as Japan approach the issue of expert testimony.

Why should you be interested in expert evidence – particularly its admissibility and relevance in criminal and civil trials?

May I suggest that there is a powerful reason.

We are constantly bombarded with so called experts in the written and visual media – some simply promoting their opinions, others being put forward as experts by self-interested parties.

Drawing upon my experience as a lawyer and then a Judge, I have been frequently appalled at how gullible both journalists and the public can be in simply accepting these opinions without question or little scrutiny or enquiry.

I am mindful of course that the ALSA membership comprise members of extraordinary expertise in all areas of legal practise and endeavour.

In particular, you are experts in research and asking pertinent questions.

I hope you might find that the judicial experience in dealing with expert evidence also has relevance to our everyday analysis and assessment of purported expert opinions.
government are in disagreement on several points. In the case of the new Plea Bargaining program, for example, prosecutors argue that continued detention is justifiable even for those allowed to plead guilty to illegal possession rather than illegal sale as the latter offence carries a standard penalty of life imprisonment. Other concerned stakeholders also oppose early freeing of recidivists, who often emerge as victims, as well as convenient purveyors, of the illicit trade, as they may be lured straight back into crime. Rather than judicial intervention for the sake of speedy resolutions per se, it might be better to let the legal process take its course while addressing the overcrowding of detention facilities as a separate problem.

Hayato Aoki: "Reflections of a Japanese Judge on the Quasi-Jury System, Plea-bargaining, and Other Innovations"

I have been a judge of the Okayama District Court in Japan for more than three years and am currently conducting research at the Asian Law Centre, Melbourne Law School as a visiting scholar under the Overseas Training Programme of the Supreme Court of Japan. I have been involved in judicial panels dealing with numerous criminal cases, including about 30 cases adjudicated under the Saibanin (lay judge) system. Coming into operation in 2009, this system places lay judges alongside professional judges when deciding not only verdicts but also sentences. I will reflect on my personal experiences on the role of the judge in Japan under this relatively new system and give some illustrations of how it differs from a jury system such as the one in operation in Australia. Other recent key developments in Japanese criminal justice include the introduction of a plea bargaining system and I am interested to see how this system may develop after having had the opportunity to gain some understanding of Australia's approach to this issue. I will also discuss what the Supreme Court of Japan, and I personally, hope to gain from overseas research experience.

Stacey Steele: "Melbourne Law School's Visiting Research Program and Japan's Tradition of International Legal Outreach"

Melbourne Law School has hosted a Japanese judge as a visiting research scholar for 12 months each for over 15 years. The Supreme Court of Japan's normative position is that studying overseas is a good thing for Japanese judges and its program of sending judges overseas follows a tradition of international legal outreach immortalized in the Meiji Period (1868-1912), when Japan's fast-paced modernization demanded the adoption of Western legal technologies and constructs. Access to the latest thinking on emerging legal issues still plays a part in the Supreme Court's outreach effort. Twelve judges also visited Melbourne on short-term study tours in the years leading up to the introduction of the saiban-in (lay assessor or quasi-jury) system in May 2009, for example. The judges met with Australian judges, academics, and the Juries Commissioner of Victoria, and observed court trials and procedure to help them effectively establish a new system in Japan.

The process was akin to Japanese outreach in the Meiji period to understand civil and criminal law and procedure in France and Germany during the late 19th Century. The number of judges studying overseas has increased dramatically since the beginning of the 21st Century, however, and is part of a Supreme Court policy to broaden the social and political horizons of judges amidst community criticism of Japanese elites such as the judiciary.

This paper reflects on the program hosted by the Melbourne Law School and considers the potential longer-term benefits to the Japanese judiciary that such a program offers, as well as the challenges inherent in engaging in meaningful judicial and intellectual cross-cultural exchange.
Monika Prusinowska: "The World Arbitrates in Asia? The Analysis of Recent Trends and Predictions for the Future"

The center of the international arbitration gravity has currently shifted to Asia. By way of example, as supported by surveys conducted by the School of International Arbitration Queen Mary, University of London, Hong Kong and Singapore, as well as their leading arbitration centers, have been among the preferred choices of parties in international arbitration. Hong Kong and Singapore were selected as the third and fourth most preferred arbitration seats, and the HKIAC and the SIAC are the third and fourth most preferred arbitration institutions. In addition, the survey respondents in 2015 expressed the view that Singapore and Hong Kong are two most improved arbitration seats.

By way of further example, the Malaysian KLRCA re-branded itself recently to the "Asian International Arbitration Centre" (AIAC) in order "embark on a journey focused on shaping the global system of conflict resolution." A look into the caseload of the leading Asian arbitration centers confirms the trend, and the statistics reveal that not only Asian parties meet in front of the arbitral tribunals in Asia, but more and more non-Asian parties appear at the hearings.

This article aims to: (1) evaluate the factors that have led to the rapid development of international arbitration in the region of Asia; (2) review the most recent developments in the area; (3) predict the future trends, and in particular, it approaches this issue from the perspective of other mechanisms available to resolve international disputes, such as litigation and mediation.

Ana Ubilava: "Amicable Settlements in Investor-State Disputes: Empirical Analysis of Patterns and Perceived Problems"

This article empirically analyses investor-state arbitration cases that settle amicably after the arbitration has commenced but before the final award is rendered. The study investigates whether and to what extent some common criticisms of amicable settlements are evident in practice. It examines four research questions that correspond with the major critiques of amicable settlements in investor-state dispute settlement: (1) Is the amicable dispute settlement mechanism unsuitable for certain types of investor-state disputes? (2) Do amicable settlements impede transparency? (3) Does amicable settlement pay less compared to when the investor wins through an award? (4) Is the non-enforceability of settlement agreements a problem in practice? The findings of regression analyses suggest that not all these purported problematic aspects are as evident in practice as is
At first glance, the research regarding the colonialism appears irrelevant to present controversies and problems in contemporary international law. However, when identifying the circumstances of the early twentieth century when international law made an appearance in earnest, it becomes apparent that research into colonialism is necessary and important because colonialism was at the center of the law at the time.

Generally, “colonialism” denotes a method or policy by which one state or race dominates and conquers another and the key notion of colonialism is territorial conquest. The powers of the day, European nations designed this policy based on colonialism and expanded their territories through the annexation of other states or races, and as such, the world was never free from war. The scope of the powers in the early twentieth century corresponds to states that were central to the formation of early international law, who tried to expand their territories through colonial policies. Therefore, in the process of making international law, colonialism is involved with the domination of non-European states by European states in the first half of the twentieth century and European nations had special rights by which they could participate in the process of making international law. Indeed, international law in the early twentieth century was used as an instrument to justify colonialism and international law began its development as a reflection of colonial thinking.

Considering the fact, this article examines the method to expand their territories by utilizing international law in the early twentieth century. It can be classified as the system under international organization, occupation and colonial treaties. First, the mandate system in Article 22 of the Covenant of the League of Nations which began to be organized as a legitimate one was not, in fact, different from colonial policies. Second, the legal rule of occupation seems to have been established based on colonialism. Third, the provisions of colonial treaties include the content of colonialism and inequality.

This paper analyzes the opinions of International Court of Justice such as the Judgement of the Mandate over Nauru Island, the Advisory Opinion on the International Status of South-West Africa and Western Sahara, the
views and opinions of international law scholars and treaties between colonial power and colonized nation to evaluate how it criticized three methods for colonizing the territories.

As a result, it can be proved the fact that the international law that was formed by European nations in the early twentieth century has expanded to a universal system in modern international society and the criticism that modern international law still reflects hierarchical and Euro-centric thinking should not be overlooked. By identifying that the powers of the day utilized international law as a method of bolstering their colonial holdings, the subject of colonialism will contribute much to the resolution of unresolved historical issues in contemporary international law.

Chunwoong Park: “Shaping the Juridical Field: Boundary Makings among Legal Professions of Post-Colonial South Korea from 1945 to 1960”

This research examines the historical process in which legal professions' boundary work was specified and therefore their relative hierarchy was (re)confirmed in post-colonial South Korea from 1945 to 1960. Although various legal professions were institutionalized for the first half of the twentieth century, Koreans took part of a minor position of judiciary and were not allowed in university law education under Japan's rule. As the Japanese retreated as a result of the World War II, some Korean legal professionals started to enter and occupied higher positions of the administration, the judiciary, and universities to which had long been restricted. However, it is noteworthy that only a small fraction of the legal professionals were eligible to get in the positions even after independence. To understand what determined the eligibility of judicial officials and law professors, I focused on their qualifications through investigating archival data and historical documents. Showing that the majority of higher judges, procurators, and law professors hailed from the old colonial qualification system, I propose that the juridical field of post-colonial South Korea was shaped in two entwined ways. On the one hand, it was an expansion as legal practitioners intruded to law education; while on the other hand, it was a stratification in a sense that the legal professionals were hierarchically assigned in the field by the type of qualification. I suggest that it is imperative to examine colonial legacy and legal professions' behaviors both of which contributed building the post-colonial juridical field.

Adity Shah (remotely): “The Concept of Sovereignty and the Never-ending Cycle of Colonization: Does South Asia Need New International Law to Protect its Citizens from the State-sponsored Aggression?”

The territorial boundaries of the South Asian countries have been determined solely on the political, religious and cultural background which was purposely done by the colonizers. It evolved the lack of solidarity among the South Asian nations. Even in this post-colonial era, the situation has not been much improved with the time. It ultimately reflects their marked tendency to overlook/non-reliance upon International legal obligation not only when it comes to deal with its neighbor states but also dealing with their own citizens. Despite all the diversities and differences, the South Asian country governments share quite similar attitude towards the international human rights and humanitarian obligations when it comes to the question to uphold the rights of their citizens.

In the present context, we have been witnessing innumerable internal conflicts within the domestic jurisdictions of the South Asian states in which civilians are subject to grave breaches of individual and collective human rights, and even forced to flee their countries of origin. (e.g. Recent Rohingya influx) The milieu articulates the traditional tyrannical nature of the South Asian state’s increasingly authoritarian position and state repression proves the practice nothing but the blind following of the colonial practice of power. The South Asian countries, like every other part of the Asian region, do not have any significant sub-regional international instrument on human rights and fundamental freedom of citizens.

This paper argues that as a part of the decolonization process the South Asian states are exercising the colonial practices on their citizens and this re-colonization are defining their concept of sovereignty which is actually derived from the western philosophy. In doing so it claims that the South Asian states should rethink and reform
its own concept of sovereignty and adhere to new international laws to protect the civilian against the state-sponsored aggression. It also points out the probable expansion and alteration of the existing international legal standards and scrutinizes the significant role of SAARC in the context.


In the 1980s more than 513 ‘vagrants’ died from ill-treatment and exploitation in Hyŏngje Pokchiwŏn, a facility for vagrants in Pusan. Within this presentation, I highlight the public discourse on human rights abuses in this and other vagrant houses that remained hidden from the public until 1987. More specifically, I problematize the tendency of the press at the time to emphasize the number of ‘normal’ and ‘sound’ citizens who were falsely confined as vagrants instead of criticizing the segregation and confinement of vagrancy itself. What did the signifier of ‘vagrant’ - at antipode of a normal and sound ‘citizen’ - represent, and under what context were such dominant signified constructed? How did the binary code of normal and abnormal and the segregation of vagrants from non-vagrants operate? To answer these questions, this presentation traces the genealogy of vagrancy in post-colonial Korea. In particular, it focuses on how the vagrant subject became re-invented during the course of developmentalism as a twofold body that was simultaneously excluded from the ‘healthy’ public sphere on one hand and incorporated into a cheap labor market through rehabilitation on the other. It also examines how various disciplinary technologies of anatomo-politics in making wholesome citizens (kŏnjŏnsimin) collaborate with the biopolitics of population in making wholesome society (kŏnjŏnsahoe). It can be said that vagrant crackdown was aimed at protecting not social minorities but rather the social body. Finally, it reveals the role assumed by law in the biopower to make live as wholesome citizens or let die as vagrant.

Speakers

Soyoung Lee
Assistant Professor, Jeju National University

Seo Hee Lee
Ph.D.candidate, Korea University

Chunwoong Park
Assistant professor, Chonbuk National University

Adity Shah
Senior Lecturer, East West University

Rohan Price
Lecturer, Southern Cross University, School of Law and Justice
Carol Lawson (Chair):

Sheikh Solaiman: "Preventing Corporate Manslaughter in Bangladesh: All Barks, Little Bite?"

Bangladesh, with around 6,000 garment factories, is the second largest apparel manufacturer in the world. The industry employs an estimated five million people; about 90 per cent of these are women who come from impoverished, uneducated and untrained backgrounds. A lack of safety at the workplace has long been commonplace in the industry. As a result, a total of 13,211 workers have reportedly died and numerous others got gravely injured caused by workplace accidents from 2005 to 2017. Additionally, workers are reportedly subjected to harassment in different ways, such as forced labour and sexual misconduct - totaling 34,357 of reported victims of deaths, injuries and harassment between 2009 and 2017 alone. Regrettably, all these deaths have occurred in a context of impunity, owing to employers' negligence demonstrated taking advantage of legal and regulatory weaknesses. The circumstances are so appalling that prevention of these accidents is long overdue.

Much was expected to come about after the 2013 Rana Plaza collapse which alone left 1,135 workers dead and 2,500 others critically injured. The tragedy drew attention of international, national and commercial organisations around the globe who exerted pressures on the Bangladesh government to bring about reforms in order to ensure workplace safety. Admittedly, a few changes have taken place contributing to improving the working environment to some extent, but much remains to be done. Shockingly, no change in the century-old manslaughter law, in the complete absence of a separate set of corporate manslaughter law, been even attempted to be made. Wrongdoers, exploiting the state infinite forbearance, take impunity as granted. This paper aims to critically analyse the country's existing manslaughter law and its applicability to workplace deaths. It concludes that the general penal law is evidently ineffectual in punishing corporate killings, which warrants enactment of separate legislation to deal with deaths at work in Bangladesh.

Naoko Akimoto: "Comparative Study on Legal Systems Handling Scientific Research Misconduct"

This paper focuses on the legal issues within the systems for dealing with research misconducts (here, research misconduct mainly means fabrication, falsification and plagiarism), especially in biomedical research area in the United States and Japan.

Since around 1980s, the problem of research misconducts especially started to attract the attention of government and society in the US, and in response, it has established specific governmental organization, now ORI (office of research integrity) and detailed administrative regulation on investigation and sanction of research misconducts for publicly funded research. In Japan, the same recognition had been heightened since 2000s and was tightened in these several years in response to the scandals in top research institutions. However, even under the current system, it relies on the guidelines by ministries which basically don't have legal binding power and provides not enough details of the procedure.

While the rigid procedure like in the U.S. provides due process for the suspected researcher, there are concerns whether application of the legal discipline and standard fits for judging scientific research. On the other hand, the informal governmental system, like in Japan gives too much discretion to institutions while lacking appropriate due process for the suspected researchers.

This paper analyzes the tension between the governmental regulation and academic autonomy, by comparing the system of two countries and to provide the new perspective for the future system on the problem of research misconduct.


The profession of lawyers is a key constituent part of a legal system. To maintain ethical standard in the profession, there usually is an ethics regulatory system. It commonly includes a mechanism whereunder lawyers who have committed misconduct will be disciplined. This is no exception for Japan. Its lawyers, called bengoshi in Japanese, are self-regulated. Disciplinary power is exercised by the bar associations. However, why is there a
need to maintain ethical standard in the profession? What are the actual objectives? Mainly on the basis of the American system, Zacharias (2003) has identified nine purposes under the overarching theme of protecting the public. They include punitive, remedial, preventive, rehabilitative and deterrent purposes. However, a lawyer disciplinary system may have the objective of protecting the profession itself. It may be for maintaining the elite status of the profession in the society. It may be for securing the public's trust in the profession. There may also be other objectives. Variations (if any) among jurisdictions may be due to their different social, political, historical and/or cultural background. Identification of these objectives and their genesis is crucial for an examination of the value of the lawyer disciplinary system in the society. This paper investigates the objectives of the lawyer disciplinary system in Japan. It will analyse whether the Japanese system has the nine objectives that Zacharias (2003) identified and whether there are other objective(s). The study will contribute to the academic discourse on the legal profession, legal ethics and the purposes of lawyer disciplinary systems. It will also contribute to analyses of the value of the lawyer disciplinary system in the Japanese society.

Kota Fukui: “Third-Party Committee for Corporate Misconduct: Sociological Analysis”

A "third-party committee" (Daisan-sha lin-kai) is a committee established by an organization, such as company, school, university, hospital, local government, etc., for dealing with various types of misconducts, but mainly set up for corporate scandals. Most members of the committee are lawyers but sometimes it includes CPAs and other related professionals.

In general, a “third-party committee” investigates the facts independently, clarifies the causes of scandal, and submits proposals to prevent recurrence of the events. However, a "third-party committee" is only a committee established by a company on the contract basis, not on any basis of legislation. The "third-party committee" is said to be a unique scandal-remedying mechanism in Japan. This paper discusses what the "third party committee" is, what kind of role it plays, how lawyers play a role, and how to implement recurrence prevention measures, based on empirical data.

ALSA Gold Coast 2018 Kota Fukui’s Presentation Slides.pptx

HeadersHeight Speakers

Sheikh Solaiman
Associate Professor, University of Wollongong, Australia

Naoko Akimoto
Assistant Professor, National Chiao Tung University

Kaywah Chan
Senior Lecturer, Macquarie University

Kota Fukui
Professor, Osaka University

Carol Lawson
Visiting Scholar, ANU School of Regulation and Global Governance
Joseph Lo Bianco: "Linguistic justice as an Instrument of Conflict Resolution"

This talk reports on a seven-year project undertaken in sub-national multi-ethnic conflict zones in Myanmar, Thailand and Malaysia on relations between social multilingualism, public policy, and conflict mitigation efforts (Lo Bianco, 2017). Included in the public policy focus are forms of legal protection for the distinctive languages and cultures of minority populations, both immigrant and indigenous. The instrument through which conflict mitigation efforts was pursued included 45 facilitated dialogues comprising participation from public officials, community and civil society representatives and expert researchers. In these facilitated dialogues notions of linguistic justice formed a major part of the discussion and a substantial component of the grievances of minorities. In South and Southeast Asia some 26 violent and chronic sub-national conflicts have a language dimension which however is broadly misunderstood by national authorities and frequently misrepresented by academic scholars as a mere proxy for essentially ethnicity based cleavages. Language grievances however are connected to violent conflict in particular ways and need to be researched and addressed according to their distinctive features. This research has identified that language questions are relatively more tractable than disputes related to religious, social class or ethnicity, and while most conflicts are essentially multi-causality this research identifies lines of conflict resolution and better understanding of the nature of social relations in multiethnic polities.


Isabel Martin: "Linguistic (in)justice in the Philippines: The Non-existence or Ineffectiveness of Laws and Policies for Philippine languages

This presentation looks into linguistic (in)justice in the Philippines. It considers the extent to which laws to protect language diversity exist and function effectively. The Philippines is not only highly multilingual, with 191 living languages currently reported (Ethnologue, 2018), but also the most linguistically diverse country in Southeast Asia, ranking second in Asia and 24th in the world. Linguistic diversity is “…the probability that any two people of the country selected at random would have different mother tongues” (Lieberson 1981, in Ethnologue 2018). Despite this multilingualism and linguistic diversity, Filipinos are reaping few benefits from their mother tongues since local languages remain confined to the fringes of important social domains. Although a survey of Philippine law reveals some laws and policies in place to safeguard or promote Philippine languages, supported by initiatives to open up space for mother tongues in the educational domain, much of this amounts to ineffective tokenism. Moreover it has had minimal impact on the legal domain. There is no law or agency that explicitly and exclusively supports the English language, yet English remains the dominant mode of communication in the legal community, which serves a population in which English-dominant speakers are in a minority. Through a survey of laws, policies and jurisprudence this investigation addresses the state of linguistic (in)justice in the country and calls on policy makers to consider the multilingual and linguistically diverse context of the Philippines and formulate laws and policies that are inclusive and just.

Richard Powell: "Enactments, Judgments, Rules and Customs: Legal and Quasi-legal Agents of Linguistic Justice in Malaysia"

Prioritising examples from Malaysia, this paper sets out to demonstrate the diversity of legal and quasi-legal measures a polity may draw on to influence linguistic ecologies or implement linguistic justice. It starts by overviewing some approaches to linguistic justice, many of which engage with legal, philosophical, political, sociocultural or economic perspectives transcending linguistics. A major impetus behind Malaysian language planning, for example, is economic, driven by the perceived material disadvantages of the Malay speech community. Hence planning has something in common with explorations by economists such as Van Parijs (2002) and Grin (2003) of language manipulation as an agent of distributive and remedial justice - even though in the Malaysian case it prioritises a linguistic majority. Turning to instruments for implementing linguistic justice, the
paper compares the role of national legislation and case law with institutional rules and institutionalised habits. While enactments such as constitutions wield the greatest authority, they tend to be drafted widely in order to give legislators flexibility to adjust to political and economic shifts. Judgments are necessarily more specific and often spring from disputes over legal interpretation, but Malaysian case law on language rights is sparse. Many key principles are encapsulated in Merdeka University v Government (1982) and Dato’ Seri Anwar Ibrahim (2010) between them. This leaves written rules about language use, together with unwritten rules that citizens habitually conform to, often unconsciously. It will be argued that this complex of laws, rules and customs offers a compelling example in a modern Asian society of behaviour regulated by governmentality (Foucault, 2004) more than coercion.

Lee-Anne Sackett: "Prospects for the Development of Bislama as a Medium of Law and Administration in Vanuatu"

Vanuatu is home to an estimated 138 distinct Oceanic languages and has the world's highest language density by land surface and by population. The language in which the largest number of people achieve literacy is Bislama, an English-based pidgin holding the unique status of national language, in addition to having official status alongside English and French. The latter two are the languages of education, yet they are the L1 of just 2% and 1% of the population respectively, and under the 2012 National Language Policy to fulfill early childhood education a shift towards the use of Bislama and other local vernaculars is being implemented. Within the state governance system, legislation is predominately drafted in English and translated into French, less frequently drafted in French and translated into English. There is currently no legislation officially available in Bislama. This includes the Constitution. Despite the absence of Bislama in the formal written laws of Vanuatu, it may be used for parliamentary deliberation, and in proceedings, particularly within the lower-level courts. Moreover customary laws are often drafted in it. However, the courts generally remain sceptical about its use in the legal system, citing lack of precision among other problems. The population remains divided on whether Bislama should be used in formal domains. This paper looks at prospects for Bislama's expansion in governance and will also critically examine possible conflicts among Bislama, English, French and the country's many indigenous languages.

Brett Todd: "Exploring Possibilities for Reparative Justice for Indigenous Linguistic Minorities"

The numerous harms inflicted upon Indigenous peoples by processes of conquest and colonisation include negative impacts upon their languages. In colonised territories all over the world, Indigenous peoples have faced a range of pressures that pushed them to abandon their traditional tongues and adopt the language imposed by the colonisers. At a time when there are calls for the return of stolen lands and cultural material as a part of processes of reconciliation and reparation, there is also scope for coloniser states to provide a form of reparative justice with respect to Indigenous languages. This goes beyond merely recognising the rights of Indigenous peoples to use their languages; rather, linguistic reparative justice would entail implementing measures to support Indigenous community endeavours to maintain languages that are still in use and to revive languages no longer spoken. For state institutions to work successfully towards this goal, a serious policy commitment is required, constructed upon the foundation of an appropriate legal framework. Over the last decade a string of Latin American countries followed one another in introducing laws aimed at protecting and promoting their respective Indigenous languages, but without always following through with adequate resourcing and implementation. The enactment in 2017 of Aboriginal languages laws in Taiwan and in New South Wales raises the possibility that a similar "legislative turn" (Williams 2013) might now be occurring in jurisdictions in the Asia-Pacific region, where hitherto only New Zealand, and to a lesser extent Hawaii, had legislated for native languages. Noting these recent regional developments, this presentation interrogates the potential for such legislation to deliver linguistic reparative justice for indigenous peoples.
Sex worker’s rights movements began from 1997 when the Taipei City government terminated the public prostitution policy. The old social order maintenance law only imposed sanction on prostitutes. Patrons are free to punishments. The unequal regulation was finally held unconstitutional by the Constitutional Court. Originally, the aim of the new restriction rule was to avoid unequal punishments on the vulnerable prostitutes. However, no local government created a “red-light district” since the law passed. Thus, selling sex is still illegal, and women are still disproportionately punished for engaging in commercial sex. Feminists in Taiwan were divided into two groups to this issue. Some support the view that prostitution is the outcome of male dominance, and legalizing commercial sex not only oppresses women, but also reinforces gender stereotypes. Others hold that legalizing selling sex not only changes the traditional constraints on women’s freedom of choosing sex partners, but also empowers women who are situated under strenuous social or economic circumstances. This paper will introduce the history of Taiwan’s feminist movement and the development of sex industry, including the “red-light district” policy under the new law through different approaches.

Aki Kurosawa: “Rethinking Japanese Fuzoku - Conceptualizing Young Women’s Perceptions of Their Work”

“Sex work” is a term coined by Carol Leigh (1978) to describe work that provides clients labor, including but not limited to, sexual services in exchange for rewards (or money for the most part). “Sex work” in the Western sense covers a wide range of jobs including strippers, escorts, hostesses, street prostitutes, etc. This term was given to sexual labor that women had provided to male clients throughout history. Since the term has spread and become popular around the globe, “sex work” has gradually been recognized as work in Germany, for example. Yet, a lot of countries do not recognize it as a profession that can be treated as a professional job like a teacher. “Sex work” has been applied to Japanese “sex work” and investigated in recent years. However, “sex work” does
not seem to be applicable to the labor Japanese women provide to clients in the industry where workers give physical and emotional services. This paper rethinks and examines what Japanese “sex work” is based on interviews with young women who currently work and have worked in the Japanese “sex work” industry. It is also crucial to examine laws and regulations around Japanese “sex work” as to how the law defines Japanese “sex work”, what it prohibits and protects, and how it can be modified to improve working conditions for Japanese “sex workers”.

Masako Tanaka: "Examining Sex Work in the Legal Framework and Civil Society Movement in Nepal"

There is no specific law in Nepal criminalizing sex work, but both previous law, the Human Trafficking (Control) Act, 1986 and current law, the Human Trafficking and Transportation (Control) Act, 2007 (HTTCA) have clauses on prostitution as parts of trafficking activities. And the no clear distinction between sex trafficking and sex work made confusions and often created conflicts among civil society organisations.

The paper aims to address the issues of sex work in Nepal particularly from the perspectives of identity-based associations (IBAs), both human trafficking survivors and sexual minorities, particularly gays. At first, the study reviews the chronology of legal framework related to sex work and human trafficking and identify the gaps with international protocols. Secondly, the paper illustrates actors, particularly IBAs, who advocate these issues. Finally, the paper examines the roles of IBAs that lead the on-going debate on sex work and how other actors approach the issues.

YuKyong Choe: "Banned or Protected? Sex Workers' Rights in South Korea"

In Korea, the “Act on the Punishment of Acts of Arranging Sexual Traffic (hereafter, the ‘PAAST Act’)” aims to eradicate sexual traffic, acts of arranging sexual traffic, etc. as well as human traffic aimed at sexual traffic and to protect the human rights of victims of sexual traffic. On the other hand, the “Act on the Prevention of Commercial Sex Acts and Protection, etc. of Victims (hereafter, the ‘PCSAPV’ Act)” prevents commercial sex acts, protect victims of commercial sex acts and persons in commercial sex acts, and to assist them in the recovery from victimization, self-reliance, and self-support. Both Acts are legislated in 2004.

This study examines legislative histories of the Korean law and legal system on sex work/trafficking, introducing it legal framework and functions. It focuses on how the laws have dealt with sex workers (sellers) in legal perspective. The Constitutional Court of Korea, in the case of 2013 Hun-ga 2 case (March 31, 2016), finally decided Article 21 (1) of the PAAST Act constitutional despite it has been extremely controversial for many years. The article provides “any person who has engaged in the conduct of sexual traffic shall be punished by imprisonment with labor for not more than one year, by a fine not exceeding three million won, or by misdemeanor imprisonment, or by a minor fine.” Based on the Court's decision, the study thoroughly analyzes whether the provision of criminal penalties against prostitution limits the freedom of sexual self-determination, the secrecy of privacy, the freedom of sex, and the freedom of sex choice of sex sellers. It basically articulates the criminal punishment against sex sellers is a violation of the Constitution by excessive exercise of penal rights could violate the principle of excessive prohibition. Based on the Constitutional Court's argument, the study ends up illuminating further legal ramifications on the sex work in a society.

 Speakers

Chih Chieh (Carol) Lin
National Chiao Tung University School of Law, Associate Dean

Lynette Chua
National University of Singapore
Yoshitaka Wada: "Paradox of Japanese Obstetric Compensation System for Cerebral Palsy: Does No-fault Compensation Reduce Litigation Rate?"

In Japan no fault compensation scheme for birth accident, Obstetric Compensation System for Cerebral Palsy (OCSCP), was introduced 2012. It is difficult in many cases to find out a birth accident resulting cerebral palsy is caused by negligence by physician or not, as the result does not become clear until at least one year after of the birth. The purposes of this scheme can be different among each actors. Medical professionals expect that introduction of the scheme would reduce the high rate of litigation in obstetrics field. Lawyers for patient's side expect that it would make it easier to sue doctors. This paper examines the problem embedded in this system and analyze its consequence.

Yong-Chi Chen: "Application of Communication and Caring in Healthcare Informed Obligation"

The medical informed obligation is a very important issue in medical practice and in defense of medical malpractice. This article links the practice of both in medical and legal aspects. And illustrates the use of communication with caring in medical practice through case studies from three court decision. These three cases are all about surgical procedure with insufficient informed action. Communication with caring has three fundamental concepts and techniques. Former contains conflict management, narrative approach, and constantly caring. Later contains perception and analysis, supporting, and facilitating communication. The application of these concepts and techniques in healthcare process in different stages of surgery: before, during, and after. It will get more important with unexpected result or lesser emergency case. Through implication of this system in hospital, it can reduce tense between doctor and patient lessen surveillance from outside, improving doctor-patient relationship, therefore overcome bad consequence. Hope to improve the situation in which both doctors and patients have suffered from the hardships as well as burden of prosecutor and judge under the current way of dispute resolution.

Download paper

Nakanishi Toshimi: "Informed Consent by Medical Mediation Gives Good Effect to Patient Satisfaction"

The quality of informed consent (IC) given by patients and their families to their physician is strongly related to the background of the patient and particulars of a given medical situation. For this reason, the quality of communication in disclosing and sharing information between physician and patient is always a key issue in achieving IC. This study examines the effect on IC of using medical mediation (MM) principles and skills on the level of patient understanding and satisfaction.
METHODS

Two physicians with experience using MM principles and two physicians without such experience participated in simulated patient and family consultations. Each physician consulted with the role-playing patient and family to explain the situation and achieve IC for the physician's recommended treatment plan. These consultations were recorded and the medical students playing the role of patient and family answered a 45 item patient satisfaction questionnaire broken into four categories: 1) taking a patient-first approach to communication, 2) receptiveness and empathy, 3) high value contribution by the doctor and 4) medical management. These questionnaires were compared to examine any difference in patient satisfaction and understanding after IC was given. The consultation recordings were also converted to text and subjected to text mining analysis to confirm and measure the quality of communication between physician and patient/family.

RESULTS

This study indicates that higher patient satisfaction (as reflected by role-playing students) was achieved by physicians with MM experience.

DISCUSSION

There is a tendency for a physician to believe strongly in their treatment plan and in the course of consultations to achieve IC, to attempt to convince the patient. The results of this study suggest this pattern of behavior. On the other hand, when an interactive dialogue is carried out, patients and their families may report higher satisfaction in the quality of IC achieved.

CONCLUSION

In the context of this study, IC achieved by physicians with medical mediation experience was associated with higher patient satisfaction.

Shih-Ying Lee: "Administrative Mediation Current Situation and Future Development in Taiwan-Medical Dispute Mediation for Example"

This article discusses current situation and future development of administrative mediation. Then focus on medical dispute mediation as an example. Administrative mediation can be confusing, as it can be of two main types of scope: 1. civil dispute with administrative involvement in mediation; 2. administrative dispute with mediation involvement. Most article means the first one when referring administrative mediation in Taiwan. Since, the development of mediation is in order of, civil, criminal, and administrative dispute in Taiwan same as the world. And it was just being considered to develop of administrative litigation mediation. Mediation as one of ADR system still believed had place in civil dispute only in most of scholar of Taiwan. That's why administrative mediation means only one scope in Taiwan. It is right movement to widen concept of administrative mediation.

Many types of civil dispute are controlled under administrative law with ADR system regulation such as labor dispute, medical dispute, etc. Current existing administrative dispute mediation can be found in Chap. 5 mediation procedure of Civil Service Protection Act.

The types of cases that may be applicable to the development of administrative dispute mediation including: 1. Administrative contract disputes mediation: Dispute resolution arising from the civil contract; 2. Secondary administrative dispute mediation: caused by pure civil disputes; 3. Pre-litigation administrative dispute mediation: Assistance in the settlement of administrative settlement contracts; 4. Litigation administrative dispute mediation: Mediation in administrative litigation proceedings. Medical dispute mediation can be applied in 3 stages same as that in Caring style mediation: 1. With mediation mind and skill in hospital; 2. During administrative mediation at Department of Health of local Government, or Township City Mediation; 3. Mediation pre or during civil litigation. The application of Caring style mediation for each stage and administrative dispute mediation will be discussed.

 Speakers
12:30pm

Lunch
© 12:30pm - 2:00pm, Nov 30
📍 Princeton Room (Building 6, Level 3)

2:00pm

LIA Day 2 Session C - Juries and Lay Participants
© 2:00pm - 3:15pm, Nov 30
📍 6_4_11 (Case Study 1)

1. Legal Institutions and Actors (LIA)

Setsuo Miyazawa (Chair)

Mong-Hwa Chin: "Lay Participation in Taiwan: Observations from Mock Trials"

This article attempts to address issues relating to Taiwan’s new lay participation system introduced in 2018. From the beginning of 2018, the Judicial Yuan requested that all district courts in Taiwan conduct mock trials. The purpose of conducting these mock trials was to promote the new system. For legal professionals, the mock trials provided a platform for practice and discussion. These mock trials were held in real courtrooms, real professional judges presided over the trial, and lay judges were chosen from the public through a voir dire process. The mock trials also used real case files and invited local attorneys to serve as defense attorneys and prosecutors.

From January to May 2018, I attended four of these mock trials in four different district courts. This paper will focus on the gap between the judiciary and the lay judges and what happens when these two parallel worlds clash with each other, including: the citizens' lack of understanding of legal language and lack of legal knowledge, the difficulties of making sentencing decisions, the incapability of attorneys in making oral presentation and argument, and lack of evidence rules. This paper argues that although the Judicial Yuan’s effort to reconnect with the people is worthy of praise, the designers should also realize that the gap between lay people and legal professionals cannot be bridged overnight. To narrow the gap and make lay participation work, education is
needed on both sides. Lay people must learn more about the procedures and rules of law to participate meaningfully in the procedures, and legal professionals should continue to accommodate the special needs of lay judges.

**Naoko Yamada-Furuta: "Ladies & Gentlemen of the Jury, What Did You See in the Interview Room? –How the Difference of Media & Interview Techniques of Suspect Interview Recording Affect upon the Juror’s Fact-finding"**

Our experimental study’s aims are to clear 3 questions in Jury’s fact-finding: 1) Does the difference of media recording suspect’s interview affect on fact-finders’ decision? 2) Even if the media recording suspect’s interview is ‘Audio’ or ‘Transcript’, do the ‘interviewing technique’ affect on fact-finding? And 3) When the fact-finders have to make a decision of ‘voluntariness’ & ‘credibility’ of suspect’s confession and ‘appropriateness’ of the interview, how much they focus on ‘silence of suspect’ and/or ‘leading question’?

We did our experiment with 176 participants and they were under graduate & graduate student. They were divided into 8 conditions at random, and they examined each media for 40 minutes and answered the questionnaire for 20 minutes.

We analyzed the data and found out that for the percentage of affirmative responses to ‘voluntariness’, ‘credibility’ of the confession, and negative responses to ‘appropriateness’ of interview, we conducted an analysis of variance using arcsine transformation with the interview techniques (2: Reid vs. PEACE) and the presentation medium (4: SF image vs. EF image vs. Audio vs. Transcript). Regarding ‘credibility’ and ‘appropriateness of the interview’, the interaction had a significant tendency. Results of the subordinate test revealed that regarding the ‘credibility’, in Reid the SF image was significantly lower than the EF image and the Audio, and in the SF image, PEACE was significantly higher than Reid. Further, about ‘appropriateness’, only in Reid, the EF image was higher than the Audio and the transcript, and in all presentation media, Reid was higher than PEACE.

The result can be summarized as below: 1) There are no differences among medium on fact-findings. 2) The interview technique has strong effects on fact-findings. And 3) ‘Silence of suspect’ and ‘leading question’ are considered very much in fact-findings and those suggest interview situation raise the unfair bias in reality.

**Dayeo Yun: "Korea’s Participatory Trial and its Role as a Field for Legal Education"**

Starting from January 1st, 2008, participatory trial system was newly adapted in Republic of Korea according to ‘Act on Citizen Participation in Criminal Trials’. Jurors deliver the verdict of guilty or not guilty and if guilty, the sentence. As jury system itself is not a familiar concept to Korean citizens, each district court runs a program called “shadow jury”. Shadow jurors see the trial at the bench and do mock deliberation, verdict, discussion, and sentencing. In this “shadow jury” program, citizens learn the basic process of jury system and related law. Besides the initial intention of district courts to promote jury system to the public, the shadow jury program became a field for legal education. Many students who want to apply for law schools attend the shadow jury program and learn jurisprudence. Meanwhile, they also learn how to divide the guiltiness/non-guiltiness and sentencing.

By using participant-observant method, I could analyze two participatory trials and their jury shadow programs. The first trial I participated as a shadow juror was at Chuncheon District Court, and the second trial was at Busan District Court. The common issue was that both cases were about a crime that was committed during suspension of execution of sentence. Nullification of suspension of execution of sentence was discussed importantly during the deliberation. The attorney's method of appealing to the emotion of jurors was not effective. The verdict of shadow jurors and the actual jurors were highly similar.

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**Speakers**

**Mong-Hwa Chin**
Assistant Professor, National Chiao Tung University, Taiwan

Calls for constitutional reform persist across many parts of the global. Demands for constitutional change are often perceived as an unwanted critique of the current political regime and for this reason are highly controversial, even deadly. This is the case in Myanmar, where in January 2017, the most prominent lawyer and advocate for constitutional reform, U Ko Ni, was brutally assassinated. His death is an illustration of the intense struggle for constitutionalism in Myanmar. My paper considers to what extent and why does Myanmar’s 2008 Constitution enable or limit the potential shift to constitutionalism. I offer a new framework for understanding the Constitution and debates for constitutional reform. I suggest that the Constitution represents a codified and hybrid system, blending remnants of its earlier model of parliamentary democracy with an agenda of socialist-military legality. From its inception, this constitutional vision and its associated institutions have been the subject of fierce contestation. Not least is contestation over the militarization of governance through direct and indirect means. Central to the future direction of constitutionalism in Myanmar is the role of the military in governance, and the extent to which the country will shift from a highly centralised Union system to a federal or decentralised system of governance.

Jeff Redding: "The Boundaries of (Non-State) Constitutionalism in India"

Where constitutionalism begins and ends has been a question both of deep practical and theoretical importance in India recently. What should count as a ‘court,’ and who should be able to legislate ‘law,’ are questions which have not only been at the centre of constitutional litigation in India, but are also questions which speak to fundamental issues about legal authority and power—or, in other words, constitutionalism—in contemporary India. At the very least, such questions bring into relief not only the existence—but also the unavoidability—of non-state constitutionalism in India and the ways in which non-state actors (including Muslim ones) not only help constitute the state but also shape its constitutional identity. Indeed, as this talk will explore, if we expand our understanding and archive of constitutionalism to non-state actors and processes, India can not simply be a secular state, and may even be (at least in part) an Islamic one.

Moeen Cheema: “The Mythology of a Consensus Constitution in Pakistan”

Pakistan’s 1973 Constitution, framed after several botched attempts at constitutional making and ultimately the dismemberment of the country after a civil war precipitated principally by the failure of an inclusive constitutional design, has come to acquire the mythical status of being the manifestation of a historic democratic consensus.
This perception has been heightened in the political imagination by the constitutional mayhem perpetrated by successive military regimes of General Zia ul Haq (1977-1988) and General Parvez Musharraf (1999-2008), which while nominally recognizing the continuity of the 1973 Constitution sought to alter the basic framework from a parliamentary to quasi-presidential scheme. As a result, in the subsequent periods of civilian rule the call to revert the Constitution to its original text and spirit gained considerable hold. This paper scrutinises the founding of the 1973 Constitution to show that far from being the glorious culmination of a belated political consensus, it was a product of messy political bargaining which resulted in a constitutional design and text riven with glaring contradictions. It will also highlight how the failures of the original 1973 design, as much as the subsequent machinations, have contributed to the perpetuation of military and civilian authoritarianism in the 44 years since its promulgation. Even as Pakistan has sustained an unsteady transition to civil democratic rule since 2008, the Constitution appears unable to cater to some of the significant challenges in statecraft that continue to threaten its civil-democratic evolution. Therefore, it is argued that the country needs a radical rethinking of constitutional design which is only possible if the mythology of the 1973 Constitution as well some of its core structures are jettisoned.


In post-conflict states like Afghanistan facilitating ethnic accommodations and developing cross-ethnic institutions are the primary concerns of constitutional designers. While some constitutional choices successfully address these concerns others wholly or partly fail. The Afghan Constitution tells a story partly of success and partly of failure. Its success highlights the formation of cross-ethnic coalitions and inclusive governments. Its failure underlines the inability of cross-ethnic coalitions to endure beyond elections or at most cabinet formation.

In order to explain the success and failure of cross-ethnic coalitions, this article focuses specifically on the role of the constitutional features of Afghan presidential elections. Examining these features one by one, it reveals that they do not have similar impacts on coalition building: While some electoral features encourage the formation of cross-ethnic coalitions, others hinder their consolidation. Through this analysis, this article suggests that constitutional designers should consider remedying the negative features of presidential elections rather than abandoning presidential system altogether. As for the remedies, this article recommends the adoption of concurrent elections as well as some nomination thresholds.

Chair

Kaywah Chan
Senior Lecturer, Macquarie University

Speakers

Melissa Crouch
UNSW Sydney

Jeff Redding
New Generation Network Scholar/Senior Research Fellow, University of Melbourne Australia India Institute & Law School

Moeen Cheema
Senior Lecturer, The Australian National University
Dan Foote (Chair)

Peter Rush: "Monitoring Confessions: Recent Transformations in the Laws Regarding the Audio-visual Recording of Interrogations in Japan and Australia"

This talk addresses contemporary relations between law, state and society in Japan and Australia. Lay participation has been one way in which this issue is broached and evaluated. Here, the example is the laws and policies governing the audio-visual recording of interrogations or interviews. Australia introduced its audio-visual regime in the 1980s, but recently there has been judicial concerns expressed about changes in police interviewing techniques that effectively evade the recording of confessions and the communication of associated rights and cautions. At the same time, Japanese criminal law is in the process of implementing the audio-visual recording of interrogations by police and prosecutors, which has prompted judicial debate about the role of the confession in the criminal trial. Based on interviews with defence lawyers, police, prosecutors, and judges in Japan, it will be suggested that the monitoring of confessions is best understood in terms of changing relations between the roles of criminal justice institutions. Three themes will be broached in the talk: (i) changing police interviewing techniques and their relation to audio-visual capture, (ii) the legal aesthetics of the form of audio-visual recording, and (iii) judicial responses to the ‘voluntariness’ of the confession. As a matter of jurisprudence, if not sociology, it will be argued that criminal procedure both creates and shapes the institutional transformation of civil and social relations.


The Prosecution Review Commission (PRC) was introduced into Japan in 1948, under the advice of GHQ, in order to “democratize” the prosecution in Japan. However, until recently, the PRC has not been regarded as an influential agency, largely because the PRC’s power was advisory. With the promotion of lay participation in several areas of criminal justice, the authority of the PRC has been augmented: since 2009, prosecution becomes mandatory after the decision of the prosecutors not to indict is reviewed twice.

In this paper, I explain the revised structure of reviewing system by the PRC before analyzing all nine mandatory prosecuted cases and the issues they present. The prosecutor’s monopoly on bringing cases to trial, it will be argued, has been effected by the reformed role of the PRC. But this has not always been beneficial: there is “the dark side” of mandatory prosecution in terms of rights of the defendants.

Carol Lawson: "Civil prison Oversight in Japan and the Australian Capital Territory: Empirical Insights & Comparative Contests"

In the ‘regulatory state’ mode of governance, some regulatory functions are outsourced to private actors (Levi-Faur 2013, 2014), including the state’s security functions. Civil oversight is a method used to regulate prisons and other risk-laden secure environments. Ordinary members of society are asked to inspect a prison periodically to enhance accountability and transparency.

The ACT civil prison oversight system echoes modern Eurocentric norms, like those found in the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
(OPCAT). Modern European-style civil oversight has been widely championed – for decades – as preventing human rights abuses and promoting prison reform (notably by Owers across 2006-2014). But there has been little or no empirical evidence to this effect. Meanwhile, the Japanese system adopts a 19th century German model, which predates modern human rights discourse. But is this sharp divergence in design definitive?

This presentation reports on the empirical insights gained in a four-year comparative empirical study of civil prison oversight in Japan and the Australian Capital Territory. The study investigated the nature and impact of both systems, as seen by over 2500 prisoners, corrections officers and civil overseers, with some surprising results.

In conclusion, the paper argues that this study supports the utility of adopting a nodal analysis of how regulatory systems and institutions develop and change, rather than the comparative yardstick approaches that have characterized much of the comparative scholarship in the Asia-Pacific to date (Miyazawa, 2013; Braithwaite 2015; Liu & Miyazawa 2018; Okano & Sugimoto 2018).

Speakers

Peter Rush
Associate Professor, Law Faculty, University of Melbourne

Mari Hirayama
Associate Professor of Law, Hakuoh University

Daniel Foote
Professor, The University of Tokyo

Carol Lawson
Visiting Scholar, ANU School of Regulation and Global Governance

Sj Day 2 Session C - Elder Law
2:00pm - 3:15pm, Nov 30
6_3_23 (Case Study 1)
5. Social Justice (SJ)

Ana Ubilava (Chair)

Adam Horalek: “The Retirement Age and Aging in Taiwan from the Perspective of Total Institution Theory”

Asian Century - it is not only the era of political and economic boost of Asian countries, but also a significant social transformation - in demographic, social, cultural and political meaning. Among others, aging is one of the most vivid and most ultimate social changes Asia is facing - especially the East Asia. Every year, in East Asia more people reach the retirement age than the rest of the world altogether. It is truly the most aging society - in the significance, speed and rate. Taiwan is a unique example of how to perceive East Asian aging societies - it has very similar patterns with those Japan had couple of decades ago and therefore the study of the future of Taiwan’s aged society can be juxtaposed to the current situation in Japan.

Moreover, Taiwan society is in many ways similar to the one in China and therefore the current development in Taiwan can be studied as a future scenario for China - inevitably the most populous aged society in the world.
Currently, Taiwan has implemented changes in retirement age, but this will not solve the whole problem. What other challenges does Taiwan face regarding its aging and aged society? And what role the government should take in it? The theory of total institution is applied to this topic to describe the role of state in demographic development of its society.


The 21st century is facing challenges of a globally aging society. Based upon the human rights of elder people to dignity and care, socio-legal measures are designed to strengthen social welfare, long-term care, adult guardianship systems, trust arrangements for senior citizens as well as to promote living wills or supported decision-making for an autonomous elderhood. Arguments for the human dignity of elderly people tend to avail of the equal protection provisions of the Convention on the Rights of Persons with Disabilities (CRPD), but why do we need to define the elders as “disabled persons” who need extra efforts to maintain equal protection, autonomy or even legal capacity?! How much do we know about an elder to justify the decision to surrender an adult to guardianship?! In the days that all states are enforcing various human rights laws, on which grounds may we take to diminish the intact human dignity of an aged person?!

This paper intends to urge for the human dignity of elders against presumed disabilities. Current socio-legal measures, such as the care and guardianship systems, tend to focus on the “disabilities” of an elderly person. In East Asian countries, some maintain that, under Confucius ideology, elders should be well cared for by the family, others urge for the state to take over the responsibilities to care for elderly like children. The Chinese saying of “lau-hsiao” takes behaviours of elders as “childish” disregarding the fact that aged people have the experiences, skills, wealth and wisdom that children have not begot. We used to define humanhood as to include childhood and adulthood. In the aging society, should we not add the stage of elderhood that deserves its own redefined rights to physical and psychological developments?! Chinese poetry used to equate elderhood as “sunset” which is declining to the dark night. It is time to challenge the metaphor and praise for the worth of an enlightened night that many people enjoy pleasure, love and wisdom.

Florentina Benga: “Elder Law in Australia and China: From Protection to Empowerment”

The latest Australian Census (2011-2016) has revealed that, for the first time, the number of Australians of Chinese and Indian birth combined is greater than that of English birth. This article seeks to demonstrate how law and culture are inter-related and how an understanding of both provides a better protection of people’s rights. Given the recent statistics and changes in elder law in Australia and China, this article specifically focuses on the rights of older persons in residential care and family accommodation in both countries. This article aims to present opportunities to promote elder justice as a matter of everyday justice. It demonstrates the need for a new paradigm shift: from protection to empowerment.

Keywords: law and culture, elder justice, paradigm shift

Speakers

Amy Shee
Professor and Director, National Chung Cheng University

Adam Horalek
Head of the Department of Social Sciences, University of Pardubice

Ana Ubilava
PhD Candidate, The University of Sydney Law School
SJ Day 2 Session C - Discrimination and Vilification

2:00pm - 3:15pm, Nov 30
6_2_07 (Seminar 6)

5. Social Justice (SJ)

Carol Lin (Chair)

Sung Soo Hong: "Regulating Hate Speech in Korea since 2010"

Korea has faced new social issues of ‘hate speech’ against social minorities since 2010. Some suggested that criminalizing hate speech is needed just as European countries has dealt with it, but other insisted that criminalizing hate speech would collide with freedom of speech and hate speech should be addressed by free market of ideas. In the past, Korean progressive groups supported freedom in particular against the state, and conservative groups preferred to restrict freedom to protect the interests of the state or the whole communities. However, in terms of hate speech, the opinions of the two were reversed. In fact, progressive groups in Korea has tried to enact a new hate speech law although it has not been enacted. However, some human rights groups are reluctant to enact this hate speech law, because they supposed that other alternative ways of regulation rather than law criminalizing hate speech. My paper will focus on this suggestion of regulation. This is worthy of notice because this suggestion reflects an important development of human rights and democracy in Korea. This means that leaders of Korean civil society no longer supposes legal enforcement (in particular criminalization) is a single way to regulation. They began to recognize the adverse effects of legal enforcement, and supposed that multi-layered approaches are more useful to tackle social issues such as hate speech.

Junko Kotani: "The Response of the Academic Community to the Problems of Racist Hate Speech in Japan"

This paper analyzes the response by legal scholars to the problems of racist hate speech in Japan. Although the Diet passed the Hate Speech Elimination Act in 2016, it is merely a “principle law” which declares hate speech “inappropriate” and does not criminalize or illegalize such speech. Faced with increasing racist propaganda in the society that the Act cannot effectively cope with, human rights advocates have called for criminalization of narrowly defined hate speech and demanded the government to deny the application for permit by racist groups to hold racist rallies in public places. The response by legal scholars to the issue is complex. While many argue that it is constitutional to criminalize narrowly defined hate speech that satisfies the requirements of incitement of imminent lawless action, there is no consensus over the constitutionality of regulation of hate speech that does not meet the criteria. One of the fault lines seems to exist between scholars who have long referred to legal doctrines of international or European jurisdictions and those who have advocated for stronger free speech based on the First Amendment theory of the U.S. Supreme Court. While the former group rather easily find the ground to justify regulation of narrowly defined hate speech, the latter seems to have more trouble balancing the interests of free speech and other fundamental human rights. By closely analyzing the response by legal scholars on hate speech regulation, this paper attempts to find common ground for the ongoing academic debate in Japan.

Dan Rosen: "Trademarks and Taboos: What Registration Restrictions Reveal about Asia/Pacific Societies"

In its decision in what is known as “The Slants” case, the U.S. Supreme Court struck down the Lanham Act’s prohibition of disparaging trademarks. Matal v. Tam, 137 S. Ct. 1744 (2017). The Court said the provision violated the constitutional protection of free speech, ruling that a band of Asian-Americans had the right to call itself by a name that, if spoken by non-Asians, would be discriminatory.

Notwithstanding the American case, other countries routinely enforce such registration restrictions. However, the understanding of what is disparaging or offensive differs from place to place, sometimes involving societal
taboos. This presentation will discuss the content of the restrictions and what they reveal about the pressure points in China, Japan, Taiwan, and Thailand.

(Note: this is a revised and reconceived version of a presentation made at the 2018 LSA conference.)

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**Speakers**

- **Sung Soo Hong**
  Associate Professor, Sookymung Women’s University

- **Chih Chieh (Carol) Lin**
  National Chiao Tung University School of Law, Associate Dean

- **Junko Kotani**
  Professor, Shizuoka University

- **Dan Rosen**
  Professor, Chuo University Law School

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**Ec Day 2 Session C - Financial Markets and Regulation**

- **Time**: 2:00pm - 3:15pm, Nov 30
- **Location**: 6_2_12 (Lecture 1)
- **Chair**: Sung Soo Hong

**Poomsiri Dumrongvute: “Fintech vs. Folktech: Comparing Development of P2P Lending Regulations in the United States and Thailand”**

Peer-to-peer (P2P) lending extends access to credit to the unbanked and underbanked by letting them bypass banks and lend money directly from their peers. Regulators across the world take precautioned stances against P2P lending and regulate P2P lending in different ways. American regulators see P2P loans as securities thereby requiring P2P lending operators to register and comply with SEC formalities. P2P lending operators also face discrepancy in state-level regulation. In response to this complex regulatory setting, American operators become ‘marketplace’ lending platforms which partner with FDIC-insured banks, take most investment from institutional investors as supposed to retail investors, and engage in selling prepackaged loans as a new class of investment. Marketplace underwriting has also formalized. Marketplace operators require high FICO scores thereby limiting credit access of the unbanked.

With a long history of high-profile fundraising frauds, Thai regulators put red tape on online lending activities. Lacking a formal channel to borrow and lend money online, Thai netizens take matters into their own hands. Self-created lending groups have sprung over social platforms such as Facebook and Line. These self-created groups operate like Rotating Savings and Credit Association (ROSCA) which has always been a prevalent in Thailand. However, Thai law specifically bans public solicitation of ROSCAs. Online ROSCAs are operating illegally without proper supervision. The absence of supervision encourages frauds and causes unaware lenders their money. I argue that different regulatory schemes contribute to different outcomes for P2P lending in the US and Thailand. The Thai-style regulation is designed to provide extra consumer protection. Yet, such a rigid regulation creates regulatory vacuum which allows unregulated lending operations to take over. The American-style regulation, which gravitates toward securities market, provides a strong foundation...
for safe and sound lending. Yet, the complex regulation makes it too burdensome to serve retail investors and unbanked borrowers. Striking a balance between the two styles of regulation might help making P2P lending safe and accessible for all.

Haroun Rahimi: "Hawala as a Source of Credit: Recognizing the Unrecognized Aspect of Hawala System in Afghanistan"

Hawala is an ancient system of remittance that originated from South Asia. It has proven to be very adaptive and hence it is still an important part of economic life in less developed countries especially in its birth place of South Asia. Hawala provides a user-friendly, inexpensive, and opaque way to move funds within a dense network of Hawaladars across disparate locals. Hawala was originally used to facilitate long-distance trade. Hawaladars would issue, negotiate, and discount bill of exchange issued in variety of currencies along the famous trade route of Silk Road allowing merchants to safely move funds. More recently, with globalization of labor markets and the concomitant expansion of labor migration (especially from South Asian countries to Gulf Countries) Hawala remittance emerged as the method of choice for migrant works remitting a portion of their income to their families. Terrorism financing and money laundering are two other globalization phenomena that came to use Hawala remittance system as an integral part of their illegal financial activities. The opaque operation of Hawala system has made it attractive to those who wish to move funds covertly to finance terrorist or other illegal activities or launder the proceeds from these illegal activities. The Hawala entanglement with illicit funds has caused it to be perceived as an impediment to combating illicit funds. Relatedly, some policymakers attribute the failure of financial inclusion policies, at least in part, to the stickiness of the informal financial systems like Hawala. To counter the precited and real negative roles of Hawaladars in the financial system, regulators have adopted anti-hawala policies in different countries. These policies range from complete outlawing of the practice to a series of licensing and transparency-enhancing measures. These policies have often had modest success, and in most cases, due to the scarcity of reliable data, their full impact on the economic life of the Hawala-users is not completely understood.

Drawing on extensive field research in Afghanistan, this article introduces a completely neglected aspect of Hawala system in the literature and raise new issues in the debate over the regulation of Hawala system: Hawala system operates as a credit system as well. Within supply chain structures, Hawaladars execute Hawalas on credit to pay importers’ foreign suppliers thus smoothing imports and protecting importers against cash flow interruptions. The existing literature has completely ignored the credit function of Hawala system for the merchant-users. Interestingly, the Hawala role in financing and supporting transnational trade is very salient in the historical studies of Hawala systems in South Asia. However, the globalization trends of labor migration, terrorism, and money laundering have completely occupied the contemporary Hawala research field. This article describes the credit and import-financing function of Hawala in Afghanistan, highlighting the continued nexuses between transnational trade and Hawala in modern Afghanistan. Overlooking the credit and import-smoothing function of Hawala causes regulators not to fully appreciate the consequences of anti-hawala policies and hawala regulation thus failing to consider all stakeholders and their needs in the process of regulating the Hawala system.

Kelly Chen: "The Chinese Financial Markets in a New Era: Challenges and Opportunities from an EU Perspective"

This paper focuses on the recent financial regulatory reforms, which have further opened up the Chinese markets to foreign financial institutes.

Mauro Zamboni
Professor, Faculty of Law, Stockholm University
Shiri Krebs: “What do We Talk about when We Talk about Rights? The Impact of the Legal Rights Discourse on Attitudes about Refugees

What role do human rights organizations play in influencing attitudes about refugees and asylum-seekers? Does their reliance on international law backfire? Much research in the social sciences has concentrated on the social factors influencing attitudes about refugees. At the same time, the legal literature has focused, instead, on the interpretation and implementation of the legal regime. Almost no research has explored the intersection of the two: the impact of the legal rights discourse on social attitudes about refugees.

This article begins to fill this gap. It argues that the legal rights discourse adopted to mobilize inclusionary policies about refugees may trigger, instead, perceptions of threat and animosity, backlash and resentment. First, I argue that the legal rights discourse is especially prone to instigate negative attitudes about refugees due to its adversarial nature, which frames social problems in terms of conflict and competition. Second, the legal rights discourse is too abstract, distant, and professionalized to touch and affect people in a meaningful way. Third, the human rights terminology has been so bitterly attacked that many see it as a threat on national identities and social order. Ultimately, the project provides governments, human rights organizations, and the international community, with better tools to reshape the public debate about refugees, reduce disinformation, and introduce policy reforms.
Chih-Ming Liang: "Engaging the Legal Boundary in the Context of Medical Malpractice Litigation: The Concept of Institutional Liability in Taiwan as an Example

2018 ALSA Manuscript 20181120 - Conference Draft.pdf

A key challenge for modern-day jurisprudence and legal education regards how legal insiders could make effective observations of law's environment to bridge the gap between law-in-book and law-in-action. To contribute to the discussion, the proposed research selects the concept of institutional liability in the Taiwanese context of medical malpractice litigation as an example. The institutional liability, which holds healthcare organizations jointly or independently liable in medical disputes, is a legal construct long existed in Taiwan's civil liability system. In recent years, however, the discussion has evolved and incorporated the dimension of patient safety, that is, whether the court could contribute to the pursuit of patient safety by encouraging healthcare organizations, which often possess more control over healthcare delivery than individual physicians, to actively reflect and learn from their mistakes.

The proposed research argues the incorporation of patient safety provides an opportunity for socio-legal scholars to examine how law can be influenced by changes in its environment, i.e., growing emphasis on patient safety by the healthcare system. It also allows socio-legal investigation of how such influences might lead to doctrinal modifications to better coordinate law and medicine, which Luhmann refers to as structural coupling mechanisms. By applying literature review and landmark cases analysis, the proposed research plans to examine the following subject areas: 1) the history and current status of patient safety in Taiwan; 2) the conceptual and theoretical connection between patient safety and institutional liability; and 3) the current landscape of judicial interpretation of institutional liability in Taiwan. In doing so, the proposed research attempts to explore practical jurisprudential strategies that may provide the court with more flexibility in balancing the need to holding individuals liable and promoting system safety of healthcare organizations, examples of which may include more reliance on breach of contract than tort liability in medical disputes.

Tamara Relis: "Indian and Tibetan Normative Orders in Non-State Justice Processing: Ideologies for Enhancing Justice Conceptions in the West

The paper draws on new qualitative, partly ethnographic data from Tibetan refugee settlements in India and Nepal focusing on the non-state justice conflict resolution methods of the Tibetan Justice System, as well as the perceptions of legal and lay actors involved in human rights cases processed within it. The paper contrasts this data with earlier findings examining concurrent non-state justice processes in Indian communities (panchayats/adalats) also involving human rights cases (The Purchase of Human Rights: Standards and Legal Pluralism in the Global South, OUP, forthcoming).

The paper elucidates the ways in which different forms of conflict resolution utilize dominant normative structures within communities as compared with or in addition to formal state laws and international human rights laws focused on individual rights. In so doing, the paper highlights limits of law's capabilities, the power of informal laws operating on the ground and the relationship of formal law with non-state laws and norms of community and religion. It further demonstrates how through the lens of legal pluralism, we can more clearly assess not only the actual workings of transnational human rights laws and domestic laws in compliance, but also the impact and internalisation of these laws by those whom they are designed to protect.

Relatively little legal scholarship bases its analyses on the actual discourse of those actually involved in human rights violations cases in the postcolonial world in the context of legal pluralism.

The data presented here through local actors' voices elucidate the basic argument that human rights have not only individual but also many collective aspects. In so doing, they further demonstrate diverse approaches to perceiving harm, conflict and its resolution—in ways that may enhance justice processes in the West.

The paper also shows how studies in legal pluralism within the global North/South debate highlight the resilience of non-state laws and norms in the face of contemporary global changes and state legal reforms.

RELIS.T - 2018.12 Asian Law and Society Conference Australia.pptx
1. Legal Institutions and Actors (LIA)

Stacey Steele (Chair)

Richard Wu, Vicci Lau (Julienne Jen): “Engaging School Teachers with Common Law Concepts and Values Through Experiential Learning - The Hong Kong Experience”

In 2017, the authors of this paper, together with other local academics, undertook a knowledge exchange project in Hong Kong to engage local school teachers with a deeper understanding of general common law concepts. It aimed at impacting them with a greater appreciation of specific common law values like justice and equality in the attainment of social inclusion in the school setting. In the project, a total of 249 local school teachers in six schools attended 3-hour workshops on common law concepts and values relating to discrimination. Law videos, lecture by lawyer and group discussion on scenarios were included in the workshops to facilitate deeper understanding general common law concepts and values. This paper reports the findings of a research project undertaken with the participant teachers during the workshops. We found that teachers from ethnically diverse schools did not have more legal knowledge in discrimination than their counterparts from ethnically homogeneous schools. In fact, the results showed that they had less. In addition, they did not have higher self-evaluation in legal knowledge than their counterparts from ethnically homogeneous schools. The results did not show significant difference between the two groups of teachers in self-evaluation. However, teachers from ethnically diverse schools were found to have higher self-efficacy in dealing with discrimination issues than their counterparts form ethnically homogeneous schools.

Isabelle Giraudou (remote presentation): "Climate Change Law Education in Post-Fukushima Japan and the Progressive Building of a Cross-Disciplinary 'Anthropocene Curriculum''"

<Zoom link: https://qut.zoom.us/j/151064673 >

How can environmental legal education engage with the proposed ‘Age of Humankind’ and how might we train the so-called ‘Gaian generation’ of environmental learners? This paper is largely a speculative attempt to answer
Adopting a reflexive approach, it interweaves my own biography (i.e. a recent professional move from the Law Faculty to the Graduate School of Arts and Sciences) with analysis of how multi- and interdisciplinary teaching frameworks may provide a vantage point for progressively ‘reshaping the edges’ of environmental law education in the context of the Anthropocene. It discusses in particular the practical and theoretical conditions under which integrated syllabi and innovative case-based pedagogies may – beyond law faculties and the new law schools' disciplinary focus – contribute to the development of Climate Change Law education in post-Fukushima Japan. In this regard, I will consider the extent to which a set of courses recently established for a mixed body of under- and postgraduate students in environmental sciences and social sciences help move beyond the human/environment unproblematised distinction by combining law and environmental sciences (ES) in a way that belongs solely neither to law nor to ES.

**Speakers**

Richard Wu  
Associate Professor, The University of Hong Kong

Isabelle J. Giraudou  
Associate Professor, The University of Tokyo, The Organization of Programs on Environmental Sciences

Stacey Steele  
Associate Professor, Melbourne Law School

**Co-author**

Vicci Lau  
Senior Lecturer, The University of Hong Kong

**SJ Day 2 Session D - Religion**  
3:45pm - 5:00pm, Nov 30  
6_4_01 (Seminar 1)

2. Context, Theory and Scholarship (CTS)

Jeff Redding (Chair)

Rung-Guang Lin: "Towards a Jurisdictional Autonomy Approach: Rethinking State Regulation of Religious Organizations in Taiwan"

This paper calls for a reorientation of Taiwan's approach to regulating religion towards a new paradigm that recognizes the jurisdictional autonomy of religious organizations. I argue that an essential element of Taiwan's tradition of regulating religious affairs is a discourse that characterizes religion as a problem that must be contained and controlled for the benefit of society as a whole. Such a “religion as a problem” discourse gave rise to a number of paternalistic policies and regulations aimed at religious organizations. In contrast to a state paternalistic approach to regulating religion, the jurisdictional conception of church autonomy holds that religious organizations enjoy an exclusive jurisdiction over some of their internal affairs immune from state interference. In this paper I defend the legitimacy of this conception of religious autonomy and explore the proper scope of the exclusive jurisdiction of religious organizations. The paper concludes by presenting some of the
positive changes to Taiwan's current regulatory scheme for religious organizations that could be brought about as a result of the recognition of the jurisdictional conception of church autonomy.

Download paper.

**Manotar Tampubolon: "The Denial of the Parmalim Indigenous Religious Rights in Indonesia"**

Regardless of the controversy about restrictions on religious freedom of the “major world's religions”, violations of freedom of religion and belief of indigenous religions in Indonesia is a more interesting topic to study. This article explores the denial of religious freedom of the Parmalim by the state. The primary aim of this article is to enlighten people to understand the core problem of growing violations towards the Parmalim, the Indonesian indigenous religions as distinct from world religions. This objective is going to be achieved by examining law in action, the application of non discrimination and equality principles recognized under the Universal Declaration of Human Rights and the attitude of the government towards the Parmalim. This article argues that the Parmalim is not state supported religions, but can formally be practiced as cultural, and religionization have undoubtedly contributed to this discrimination. Moreover, freedom of religion is a freedom of conscience that is not only subjective in accordance with higher norms (conscientia recta), but is also shaped by the true objective norm (conscientia vera). This article considers the right to religious freedom and religious autonomy as the solutions to discrimination against the Parmalim in Indonesia.

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**Speakers**

**Rung-Guang Lin**  
PhD Candidate, McGill University

**Dr. Manotar Tampubolon**  
Lecturer, Fakultas Hukum (Law School), Christian University of Indonesia (UKI) Jakarta

**Jeff Redding**  
New Generation Network Scholar/Senior Research Fellow, University of Melbourne Australia India Institute & Law School

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**PGov Day 2 Session D - Emerging Issues in Cultural Heritage Law in Asia**

**3:45pm - 5:00pm, Nov 30**  
**6_3_23 (Case Study 1)**

**3. Public Governance (PGov)**

**Stefan Gruber (Chair)**

**Jonathan Liljeblad: "Navigating World Heritage in a Transition Context: The Consequences of Ethno-nationalism for World Heritage Nominations in Myanmar"**

Myanmar aspires to submit 17 nominations for World Heritage status. The allure of World Heritage status, however, requires commitments under World Heritage guidelines with respect to sustainable development, human rights, and effective governance. The progress of Myanmar towards such expectations are not assured, particularly with respect to a number of World Heritage nominations situated in locations facing ethno-nationalist tensions. The presentation discusses the implications of ethno-nationalism in Myanmar for the prospects of World Heritage nomination, and the significance of such issues for the World Heritage system as a whole.
Hitoshi Ushijima: "Conserving the Old Capitals: Cultural Heritage, Regulatory Takings, and Just Compensation"

This paper will argue the challenges and opportunities of the Japanese law to conserve old capitals. Japan has enacted the Old Capitals Conservation Law in 1966, which has been playing a major role to conserve the buildings and the landscape of old capitals such as Kyoto, Nara, and Kamakura.

First, this paper will overview the structure of the Law, which consists of zoning, just compensation, and the land-purchase request.

Second, this paper will explore the issues of regulatory takings derived from zoning. Due to strict regulation in order to conserve the buildings and landscape of old capitals, regulatory taking issues will be raised if no compensation. The land-purchase request may be working as an alternative.

Third, this paper will discuss and delineate the boundary of regulatory taking in this particular law, referring to general rules in this field.

Lastly, this paper will conclude that the mechanism in this law shows the potential for the development of regulatory and compensation tools that could be applied to the conservation of cultural heritages with extended-scope.

Yuichiro Tsuji: "Impact of cultural heritage on Japanese towns and villages"

When very important clays and clay pots were found in one place, the city would submit an application for its registration as a historic site, and permission would be granted. However, the prefecture could lift the permission to promote development around such a place. Historians have sought revocation of this administrative decision under the Administrative Litigation Act (ALA), but the Supreme Court has denied standing. This case asserts that the Japanese Supreme Court allows the prefecture to destroy a historical site.

The general public typically holds interest in cultural heritage. The judiciary is required to limit the scope of the plaintiff who brings cases as above to the court.

By analyzing this case, this paper seeks to discuss, first, the doctrine of standing as to who can seek administrative litigation. The revised ALA broadened the scope of standing, and established new litigations such as action for declaration of nullity, action for declaration of illegality of inaction, and mandamus action. These litigations make the Japanese judiciary switch from concrete to abstract judicial reviews. Today the judiciary is obligated to answer questions if wild life, animal seeks litigation in the court.

Second, this paper reviews the efforts of local government autonomy on cultural heritage. As a result of Japan's aging society, the population in local cities is decreasing rapidly. Local governments prefer using historical or cultural sites to revitalize the town, and lure more people into visiting. The application of the Act on Protection of Cultural Properties shifts from preservation of heritage to revitalization of small towns.

Cities and towns undergo financial burden to prepare applications for their registration as world heritage sites, and then to maintain the quality of the heritage. The registration may promise to bring more people into the small region, which may change the quiet life amidst nature. These cities and towns are seeking to maintain a balance between protection of the environment and revitalization.

Speakers

Jonathan Liljeblad
Senior Lecturer, Swinburne University of Technology
Hiromi Amemiya: "Regulation on Cadmium in Rice and Health Issues from the Study of Itai-itai Disease in Japan"

The first successful law suit arising from complications due to Itai-itai began in 1968. Much later, in 2013, a victims group and the responsible company, Mitsui Mining & Smelting Co. Ltd., agreed to a settlement which compensated a patient with a kidney disorder caused by cadmium. Itai-itai disease is generally portrayed in Japan as a rare condition that causes bones to weaken leading to breaks. However, more accurately, Itai-itai is a kidney disorder, one symptom of which is a weakening of bone structures.

Even after the 2013 agreement, the true nature of Itai-itai is still contested. Nevertheless, books such as "Itai-itai Disease and Education"(Itai Itai-byo to Kyoiku) published by Noto Shuppanbu have assisted in understanding the true nature of the disease.

This paper will examine the history Itai-itai disease and contemporary implications, particularly in the context of food safety. Japan has the highest kidney cadmium accumulation levels in the world. Food safety is a problem directly connected with current Japanese public health. This seminar will examine Itai-itai disease as an inheritance from past generations and policies, and help us to understand how to overcome this public health issue.

Amemiya paper.pdf


Medical error is estimated to be a cause of > 200,000 deaths annually in the US. Similarly, blunders at some of Japan’s famous hospitals led to a national uproar there in the early 21st century, and reports of iatrogenic injury have directed attention to legal reforms in Taiwan as well. The author’s interviews with Japanese, American, and Taiwanese patients and families, doctors, judges, lawyers, prosecutors, journalists, academics, and health policy officials form the background for this analysis of the politics of medical injury review and compensation systems in the three countries. The paper discusses a little-known recent reform of Japan’s dysfunctional system of peer review of medical errors – a reform engaging the national political parties in surprising ways, leading to 2014 legislation setting out the framework for a new structure for peer review nationwide. The paper also touches on the different approach taken in Taiwan. The paper notes the legal, medical, and political developments leading up to the Japanese law of 2014, including
the health ministry's "Model Project for the Investigation and Analysis of Medical Practice-Associated Deaths." The paper offers a critical analysis of the 2014 law, its ambiguities, and the health ministry's struggles to implement the new system, and contrasts that system with US approaches to obtaining and reacting to information about iatrogenic injuries. The paper suggests that the new system's reporting mechanisms, as well as health ministry statistics, may seriously underestimate Japanese hospital mortality rates, with adverse consequences for public and political attention to the problems of medical error.

Vera Lúcia Raposo: "Traditional Chinese Medicine in the Framework of the Right to Health"

In most western countries traditional Chinese medicine is neglected in favour of the so-called conventional or western medicine, mostly due to the lack of knowledge about the way it operates and existing prejudices regarding the unknown. It is a fact that traditional Chinese medicine still lacks a proper scientific basis to be fully recognised (namely to the absence of scientific studies and clinical trials). However, the attribution of the Nobel Prize in 2015 to Youyou Tu for her discoveries on the use of the herb Artemisia annua (qinghaosu 青蒿素) to fight malaria might change western perception on the contribution of traditional Chinese medicine to the development of medicinal science and to promotion of patients' well-being.

The desirable scenario is the one in which the patient can opt for one or the other of these two types of health care delivery, or even for both in conjunction, in a free and informed way. For that to happen is essential to guarantee that western medicine and Chinese medicine co-exist together in harmony, so that the patient does not feel inhibited to choose and to communicate to both practitioners that he/she is receiving health care from the two.

This presentation will describe the major characterizing notes of traditional Chinese medicine, pointing out the differences in what regards western medicine and identifying its benefits. The final conclusion intends to demonstrate why traditional Chinese medicine should be included in the framework of the right to health and become a part of national health services.

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 Speakers

Hiromi Amemiya
Associate Professor, University of Toyoma

Yoshitaka Wada
Professor, Waseda Law School

Vera Lucia Raposo
Assistant Professor, Faculty of Law, Macau University

Rob Leflar
Professor, University of Arkansas

5:00pm

LIA Day 2 Session E - Lawyers
© 5:00pm - 6:00pm, Nov 30
1. Legal Institutions and Actors (LIA)

Dan Rosen (Chair)

Akira Fujimoto: "Japanese Lawyers Income – An Analysis of Income Tax Statistics"

Since the number of attorneys has been increasing rapidly as a result of the Justice System Reform in Japan, it has been told that lawyers income going down because there are too many lawyers competing each other within the limited legal market. In this paper, I will examine the Annual Tax Statistics of the National Tax Agency of Japan and figure out how much of the decrease could be explained for by the demographic composition of the attorneys.

The business income statistics is available for the attorneys since 2008 in this annual tax statistics. The mean business income of attorneys was JPY 14.0 million or USD125,000 in 2008, but it went down to JPY 9.7 million or USD 87,000 in 2014. Those with less than JPY 700,000 or USD 6,000 annual income suddenly increased from 11.3% in 2008 to 19.3% in 2009.

It seems that the decrease of attorney's income indeed happened. However, the ratio of young lawyers in their 20s and 30s, who tends to have lower income in comparison with older experienced generations, has been well over 30 percent. In addition, the number of lawyers employed at the legal professional corporation is also increasing. Their earnings is in the form of salary, which is not reflected in the business income statistics.

I will show the result of multivariate analysis of these factors.

Setsuo Miyazawa: "Advancement of Criminal Defense Lawyering in Japan: A Preliminary Analysis with Survey and Interview Data"

Criminal defense lawyering in Japan was generally considered extremely weak compared to prosecutors who are full-time specialists in criminal cases working in a well-funded and well-organized national organization at least until the 1990's. Causes of their weakness are many: what lawyers could do were quite limited by law; there was no state-appointed attorney during the investigation stage which was more crucial than trials in Japanese criminal justice system; most defendants were represented by private attorneys who took the case as a state-appointed attorney, but their compensation was so low that specialization in criminal defense was financially difficult; most lawyers who took criminal cases were either inexperienced young lawyers who took state-appointed cases as stable income sources or old former prosecutors who could do nothing else. However, the situation may have changed, particularly as a result of the comprehensive Justice System Reform introduced in the early 2000's. A group of researchers led by Miyazawa and including Bushimata has started a three-year project to find out how and to what extent criminal defense lawyering has changed recently. This paper will present preliminary findings from sample surveys of attorneys and interviews of some exemplary attorneys.

Speakers

Akira Fujimoto
Professor, Nagoya University

Setsuo Miyazawa
Professor Emeritus (Kobe) & Senior Visiting Professor (UC Hastings), Kobe University & UC Hastings College of the Law

Dan Rosen
Professor, Chuo University Law School
Arinori Kawamura: “Criminal Investigation and Administrative Investigation of Corpses at Sea”

In Japan, when the investigating authority deemed that a crime had been committed, criminal investigation was performed on the corpse. However, when the investigating authority did not deem so, no action was taken with regard to the corpse. Concretely speaking, the investigation of a corpse meant that postmortem inspection was performed by a public prosecutor or by a judicial police officer, etc. on behalf of the public prosecutor when the investigating authority found a person who had died a suspicious death or the body of a person who was suspected to have died a suspicious death. In some cases, a doctor formed an appraisal of the detailed cause of death and other matters and performed an autopsy. The corpses not subject to criminal investigation were ignored. In this situation, the Japanese Society of Legal Medicine pointed out problems about the cause of death investigation system in 2009 and prepared a proposal which led to the establishment of two cause of death investigation laws. The Act on the Investigation into the Cause of Death or the Identity of Corpse by Police or Security Forces (hereinafter the “Identity Investigation Act”) was enforced in 2013 with regard to the corpses not subject to criminal investigation. It required a police officer etc. to perform administrative investigation on the corpses not subject to criminal investigation.

In this paper, I summarize the current legal procedures for criminal investigation and administrative investigation of corpses at sea. I also state the matters found by a hearing with the Sixth Regional Coast Guard Headquarters of the Japan Coast Guard about the current status of operation of a judicial autopsy and an autopsy performed under the Identity Investigation Act and thereafter examine the functions and issues of postmortem inspection of corpses under the Code of Criminal Procedure.

Yong Chul Park: “Considering Legitimacy of Criminal Process in South Korea”

Any decision-making infringing one’s natural right has to be based upon legitimate authority. In terms of criminal procedure where violation of human right is given and grave in the Process, inevitable invasion needs to be justified by proper means. Different to many other democratic countries, South Korea does not opt in democratic election to legitimize such intrusion, thereby the weight on due process consideration is even heavier and the system of criminal process has to be carefully designed and monitored. It is true that judicial authority prescribed to courts and prosecutors is solely upon Constitution that people voted for in 1987, the lack of immediate authorization by people in managing criminal process leaves a great hole when it comes to people's confidence. That is, the remoteness from immediate democratic authorization gives more reason to be lawful and reasonable in Criminal Process. However the current status of legitimacy of criminal process in South Korea is in great peril, where the damage done to judicial agencies was too great to repair at the moment. Among many allegations to surface at the moment, seemingly back-scratching alliance of the Park administration and judicial agencies was a deadly poison to legitimacy of criminal process in South Korea. In this paper, I plan to pinpoint the indispensable chain of collusive ties between politics and judicial agencies, thereby explaining the present chaos pothering the legitimacy of the criminal justice system and I hope to present any solution out of overworked solutions.
Ana Ubilava (Chair)

Vivien Chen, May Cheong: "Gender Diversity on Malaysian Corporate Boards: A Law and Social Movements Perspective"

This article examines gender diversity on Malaysian corporate boards through the lens of law and social movements. It explores the regulatory reforms mandating gender quotas for women on corporate boards against the backdrop of initiatives towards gender equity for women. The analysis considers the dichotomy between state-sanctioned measures, which advocate a particular construction of the role of women in line with the dominant political economy, and the civil rights movement that has lobbied for substantive equality, at times risking punitive sanctions for challenging hegemonic thought.

The state-led push for gender diversity on corporate boards reflects a co-opting of the women's agenda, appealing to an important constituency, while largely maintaining state-sanctioned constructions of gender. The introduction of gender quotas also resonates with established patterns of corporate law reform which have underscored the importance of capital as an impetus for legal change. Nonetheless, law and social movements scholars argue that regulatory reforms are often instrumental in reconstructing societal perceptions of gender roles and strengthening rights which foster substantive equality.

The article seeks to gain a more nuanced understanding of evolving perceptions of gender roles, in the context of the reforms, through interviews with directors and key players. The article then considers potential flow-on effects of having more women with corporate decision-making power in facilitating substantive equality through private ordering.

Candice Lemaitre: "Transfer of Business Anti-corruption Norms in Vietnam"

In the 1990s, several international intergovernmental and non-governmental organisations proposed various measures intended to reduce corruption. In response, many governments in developing countries, such as Vietnam, enacted these global anti-corruption provisions into their national law. However, research shows that the outcomes in reducing corruption have been modest. This article aims to understand why global anti-corruption norms are ineffective in reducing corruption in Vietnam.

Rather than investigating state compliance with global anti-corruption provisions, a topic that has already attracted considerable attention, this article explores the comparatively under-researched area of business compliance.

Based on data collected from semi-structured interviews with business managers in Vietnam and archival research, this article examines how businesses in Vietnam interpret and comply with global anti-corruption norms. In other words, it investigates how companies in Vietnam engage with and respond to these norms.
This article suggests that global anti-corruption norms have not been effective in reducing corruption in Vietnam because there is fragmentation in the way companies in Vietnam interpret and respond to these norms. This fragmentation results from the fact that different types of companies belong to different epistemic (or interpretive) communities that interpret global anti-corruption norms in different ways. This article uses discourse analysis to understand how the communities interpret global anti-corruption norms. This investigation aims to generate some predictive insights into how companies are likely to respond to anti-corruption regimes based on global anti-corruption norms.

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### Speakers

- **May Cheong**  
  Senior Lecturer, Australian Catholic University
- **Vivien Chen**  
  Monash Business School
- **Ana Ubilava**  
  PhD Candidate, The University of Sydney Law School
- **Candice Lemaitre**  
  Casual Research Assistant, Department of Business Law and Taxation, Faculty of Business and Economics, Monash University

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### 6:30pm

- **Conference dinner**  
  - 6:30pm - 9:00pm, Nov 30  
  - 6_3_01 (University Club)

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### 7:15pm

- **Twilight Keynote**  
  - 7:15pm - 8:00pm, Nov 30  
  - 6_3_01 (University Club)

  - **Daniel Foote**: "Revisiting 'The Benevolent Paternalism of Japanese Criminal Justice'"

  (After mains are served)

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### Speaker

- **Daniel Foote**  
  Professor, The University of Tokyo
9:00am

LIA Day 3 Session A - Courts

- 9:00am - 10:30am, Dec 1
- 6_4_11 (Case Study 1)

1. Legal Institutions and Actors (LIA)

Mong-Hwa Chin (Chair)

Oh Geol Kwon: "A Study on the Criminal Retrial in South Korea"

A retrial system is justice by eliminating the injustices that occurred in a concrete case relief system of special rights. The most important cause of the restriction to find substantial truth is the limitation of human faculty. The substantial truth in the Criminal Procedure come from the judge's subjective belief. The truth in the Criminal Procedure is made through the investigation process as well as procedure in a public trial.

The truth must be found through the evidence which is present at the time, The Law give the truth the effect of 'non bis in idem'.

It is the request of the legal stability that materielle Rechtskraft has to be acknowledged unless a special case. But this materielle Rechtskraft can be excluded, if materielle Rechtskraft rather play a role keeping the unjustice. This is what is Retrial system.

The Formula of the Radbruch declare that substantial justice is superiority over the formal justice, If Law and norms, final judgement and Positive law system are enough contradictory to substantial justice.

At this time substantial justice include procedural justice which is on the assumption to guarantee the right of accused for the finding the substantial truth.

Vai Io Lo (with Xiowen Tian): "Communication Technology and Judicial Transparency in China"

Judicial transparency is a significant component of China's recent wave of judicial reforms. To promote judicial transparency, the people's courts at various administrative levels are to establish disclosure platforms in four areas: adjudicatory process, court trial, adjudicatory document, and enforcement information. Considering the widespread diffusion of communication technology in China, this study audits the websites of 50 Chinese courts and examines how communication technology has been instrumental in promoting judicial transparency in China.

Hong Tram: "Developing Case Law in Vietnam- Transplanting Common Law into a Socialist Context"

After many years of discussion, Vietnam finally formalized the case law system (The Civil Code Procedure, 2015). Though regarded as an important landmark of the court reforms in Vietnam, the development of case law triggers the doubt of how it fits in with the country's socialist court system. My paper investigates the recent
introduction of case law in Vietnam to understand the interaction between the newly introduced case law with
the socialist court system. Using the multi-actor approach, the article interprets the discourses by court
reformers, judges and lawyers to understand the different narratives underlying the development of case law in
Vietnam. It argues that Vietnam’s civil socialist regulatory context has shaped the imported case law system to fit
its socialist pragmatism and positivism. The paper illustrates a problem of legal transplantation where an
imported legal regime struggles to fit in with the local context. Furthermore, it ventures some suggestions to
pursue effective legal reforms in Vietnam.

David Law (with Brian Hsieh Hsiang-Yang): "Judicial Review of Constitutional Amendments: The Case of
Taiwan"

Link to paper:
Law Hsieh, JRCA Taiwan 01J DL.pdf

Scholars frequently distinguish between “hard” and "soft" forms of judicial review: "hard" review gives courts the
final say on constitutional questions, while “soft” review attempts to strike a balance between judicial and
legislative supremacy by giving the legislature the ability to override or set aside what the courts have done.
However, the binary hard/soft distinction does not reflect the full spectrum of possibilities that lie between the
extremes of legislative and judicial supremacy. In reality, so-called "hard" review can be rather soft, and courts
have increasingly turned to options that are harder than “hard” review. On the one hand, even in systems of
nominally hard review, the government usually retains the ability to effectively override the courts via
constitutional amendment. On the other hand, a small but growing number of courts—the Taiwanese
Constitutional Court among them—have claimed the power to invalidate constitutional amendments as
unconstitutional.

Using Taiwan as illustration, this paper argues that "hard" and "soft" judicial review are merely intermediate
points on a spectrum that ranges from no judicial review to judicial insistence upon the adoption of a
constitutional amendment. Moreover, even at the extreme ends of the spectrum, the outcome is never truly final
because some response is always available to the losing side. In constitutional politics as in other forms of
politics, for every move, there exists a countermove. Different responses are available to each actor at different
points on the spectrum, but a response always exists. Consequently, every form of judicial review can be
characterized as “dialogic” in the sense of allowing or inviting some degree of interaction, or “dialogue,” between
the courts and the legislature.

 Speakers

Oh Geol Kwon
Law School Kyungpook National University

Mong-Hwa Chin
Assistant Professor, National Chiao Tung University, Taiwan

Vai Io Lo
Professor, Bond University

Hong Tran
Director of Civil and Business Law Department, Institute of Legal Science
LIA Day 3 Session A - Bridge-Type Model of Legal Education

9:00am - 10:30am, Dec 1
6_4_29 (Lecture 3)

1. Legal Institutions and Actors (LIA)

Hiroshi Matsuo (Chair)

Rikiya Kuboyama: "The Method of the “Bridge-Type” of Education of a Law” and the Challenge of South Korea"

Legal education is getting more attraction not only among educators engaged in higher education but also among those engaged in secondary education. This is a global trend. However, their interest is generally domestic. This is because they tend to focus on educating domestic law to students of the same nationality. Although this should not be criticized at all, legal education needs to be more developed in our global world where we need to conduct dialogues among people having different ethnicities or religions.

Thus, our panel will name a new legal education to connect the domestic society to the global world as “the bridge-type of legal education,” and discuss about how this new type of legal education should be planned and implemented. As the main target of this bridge-type of legal education is foreign students or children raised by foreign people, we would like to focus on raising life skills to survive in a society having different cultures or religions.

We started a project funded by Japan Society for the Promotion of Science, which aims to develop innovative programs and materials utilizing ICT or a method of gaming. We plan to develop a program for negotiation or mediation among people having diverse cultures and religions. Also, we are considering to develop multilingual contents. Although a direct target of our project would be foreign people preparing for work or studying in Japan, the programs developed through our project can be utilized by all foreigners living in Japan or having interest in staying in Japan as well as Japanese people who work with or support foreigners. Our project team consists of experts of legal education. We are staying or stayed in Mongolia, Vietnam, Cambodia or Uzbekistan, and engaged in legal education on Japanese law to students of these countries. Based on our experiences as global legal educators, we would like to discuss what kind of cross link type of legal education can be promoted especially in the East Asia.

I will discuss about the method of the “bridge-type” of Education of a Law”, and the case of South Korean experiences.

Eiji Takao: "analysis of Policy of the Japanese government for Employment of Foreign Workers"

Shohei Sugita: “Legal Protection of Technical Intern Trainees”

In Japan, there is a program called “Technical Intern Training Program”.

The purpose of this program is to transfer Skills to Technical Intern Trainees who will form a basis of economic development in their respective countries and play an important role in Japan's international cooperation and contribution. Thus, Technical Intern Trainees usually come from developing countries. Technical Intern Training Program allows technical intern trainees to acquire and master the skills of the Japanese industries and professions under the employment relationship for a maximum period of 5 years. The purpose of the program is to transfer Skills to the trainees, however some Japanese companies thinks trainees as labor force. And, some Japanese companies commit human rights violations. To protect trainees from human rights violation, trainees are provided legal education. However, the education is not enough and suit for
trainees. In this research, I present suit legal education for the trainees to protect their rights.

**Hiroshi Matsuo: "Comments"**

This presentation will make some comments to the previous presentations from the viewpoint of legal cooperation activities which promote the more inclusive legal education.

### Speakers

- **Rikiya Kuboyama**
  - Visiting researcher, Waseda university

- **Hiroshi Matsuo**
  - Professor, Keio University Law School

- **Shohei Sugita**
  - Nagoya University

- 高尾栄治
  - Total Solution

### CTS Day 3 Session A - Book Introductions and Reviews

- **Kay-Wah Chan (Chair)**

- **Amy Shee:**

- **Luke Nottage:**

- **Charlie Xiao-Chuan Weng:**

- **Reiko Kage:**

Hiroshi Fukurai:


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**Speakers**

**Amy Shee**  
Professor and Director, National Chung Cheng University

**Hiroshi Fukurai**  
University Of California Santa Cruz

**Luke Nottage**  
Usydney

**Rieko Kage**  
University of Tokyo

**Kaywah Chan**  
Senior Lecturer, Macquarie University

**Charlie Xiao-Chuan Weng**  
University of New South Wales

**Peter Grabosky**  
Australian National University

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**SJ Day 3 Session A - Human Dignity in East and Southeast Asia**

**Overview:** This session explores human dignity and the right to life as a constitutional concept in East and Southeast Asia. Human dignity as a legal concept has attracted widely scholarly interest, because of its...
paradoxical prominence and elusiveness in the context of judicial adjudication. Literature is fast accumulating addressing it in Western countries. But Asian voice is still largely absent. This session features a part of a collaborative book project on "Human Dignity in Asia".

Nadirsyah Hosen: “Human Dignity in the Constitutional Jurisprudence of Indonesian Constitutional Court”

The Amendments to the 1945 Indonesian Constitution mentions the word “dignity” three times in Article 28G(1), Article 28H(3) and Article 34(2). While “dignity” in Article 28G(1) is mentioned in the context of the rights of honour and security, both Article 28H(3) and Article 34(2) mention “dignity” in the context of the rights of social security. My presentation will examine several constitutional cases on those three Articles as have been decided by the Indonesian Constitutional Court (Mahkamah Konstitusi). My preliminary research shows that the Court interprets the concept of “dignity” differently in those articles. While the Court has agreed that the exercising of the rights of honour and security is limited by the law, rights of others and also religious values as determined by limitation clause under Article 28J(2), the Court has confidently maintained the “dignity” under social security rights. Arguably, the Indonesian court takes the position that human dignity under individual rights should be limited, but human dignity under community/collective rights should be supported. My presentation will provide a critical analysis on why the Court has taken such position. This will assist our understanding of what human dignity means in the Indonesian Constitution.

Jimmy Hsu: "The Right to Life and Human Dignity in Asia"

In this paper, I survey the right to life as a constitutional right in Japan, South Korea, Taiwan, Hong Kong, the Philippines, Indonesia, Malaysia, and Singapore. I begin with a recount of the history of the right to life and human dignity. I argue that the right to life before WWII is typically formulated in the “due process model”, such as in the Fifth and Fourteenth Amendments to the US Constitution. After WWII, the second generation of the right to life exhibited the following features: First, it becomes a right in its own right; second, it is asserted in the positive; third, it has an elevated status among human rights; fourth, it involves strong substantive limits in addition to legal procedural safeguards. In recent decades, the right to life has been absolutized to the extent that it cannot be subject to any balancing except when it conflicts with itself, such as self-defense, necessity, and other occasions where taking a life is strictly necessary to preserve another life in an imminent timeframe. The direct effect of this development is the decline of death penalty.

The right to life in Asia mainly reflects the first generation understanding. Only along with the Third-wave Democratization did the spirit of the second-generation begin to infiltrate into some Asian constitutions. Most of the apex courts in this region, whether liberal democracies or hybrid regimes, delivered decisions upholding the death penalty per se. On the right to life of the unborn, this region is divided roughly along cultural or religious line. East Asian societies are generally permissive of abortion. In contrast, Southeast Asian societies with dominant monotheistic religions, such as the Philippines (Catholicism), Indonesia, and Malaysia (Islam) are more restrictive of abortion, with the Philippines having the most restrictive law in this region.

Robert Real: "Human Dignity and Public Welfare in the Philippines"

In The Sacredness of the Person, Hans Joas argues that the history of human rights is a history of the sacralization of the person. According to him, analyzing socio-historical events would reveal that a significant portion of our commitment to values and our notion of what is valuable emerged from experiences of violence that were “culturally traumatic.” These violent experiences created “motivational and sensitizing effects” that impelled communities to mobilize and transform the value generated from such traumatic events into universal value commitments. The analysis of the reactions of communities to these events shows the increasing recognition of every single person as valuable and “sacred,” and the institutionalization of the law of such understanding. The eventual belief in human rights and universal human dignity was thus the culmination of this process of sacralization of the person. This seemingly individualist approach to “sacredness,” however, may not necessarily hold true for societies that have reacted differently to culturally traumatic experiences—a stronger emphasis may be given to the good of the community than the sacredness of a single person. This article examines how the concept of human dignity has been appreciated in the Philippines, and how this fits in with Joas’ argument on the increasing sacredness of the person. This paper will adopt a historical approach, and trace the particular types of actions that were considered to have violated human dignity in the Philippine legal system.
It focuses on the judgments of the Supreme Court, the institution tasked to interpret the Constitution and the laws passed by Congress, as well as the branch of government empowered to exercise judicial review. It will then analyze how the Court has approached the interpretation of human dignity in the context of individual rights and collective rights.

**Sang Soo Lee: "Human Dignity for or against Human Rights in Korean Constitutional case?"**

Human dignity has been one of the most fundamental values in international and domestic legal discourse. Typically UDHR, ICCPR and ICESCR write human dignity as a grounding value which justifies, unifies and expands human rights. And human dignity appears in the decisions of international human rights tribunals. Human dignity is also found in national constitutions and their decisions as one of the core constitutional values. In this context some scholars argue that human dignity has the potential to became a common value on which to build global jurisprudence.

In the mean time, we recently witness serious suspicions on the role of the concept of human dignity, because human dignity seems to undermine the idea of human rights as developed since WW II. Actually Some conservatives mobilize human dignity to deny individual's rights to autonomy, which is one of the core feature of human rights.

With this disputes in mind, I tried to reveal what kind of role human dignity has in the context of the Korean Constitution. After the introduction of the Korean Constitutional Court in 1987, about 300 cases of the Court made reference to human dignity in some way or other. I tried to find out whether and how the term human dignity is promoting or repressing the idea of human rights in the Korean constitutional decisions. My research shows that human dignity is, in many cases, working against human rights, and more often than expected. It does not provide answer to how to address the contradiction or ambiguity of human dignity, but at least it shows the urgency with which the problem is solved.

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**Speakers**

- **Nadirsyah Hosen**
  Faculty of Law Monash University
- **JR Robert Real**
  NUS
- **Francesca Bartlett**
  Associate Professor, University of Queensland
- **Sang Soo Lee**
  Sogang University School of Law
This paper analyzes diesel car regulation in Tokyo by using a comparative law analysis. First, this paper reviews the Japanese Supreme Court decisions on delegation issues. These cases illustrated that the Japanese Supreme Court reviewed the limit of law interpretation and the law-making power of administrative agencies. In the U.S. chevron doctrine case, the U.S. Supreme Court deferred to the interpretation of a statute by the administrative agencies. The grounds to defer were expertise and democratic accountability, and this also applies to the Japanese administration.

The second part of this paper reviews diesel car regulation in Tokyo. If regulation of the central government is weak, local governments may establish stricter regulations within the scope of the national statutes. In the U.S., for example, California State may make its own regulations. Other states may then choose from California or federal regulation. State law may be trialed to promote federal regulation. Otherwise, federal regulation may oppress state regulation. The Tokyo and California regulations prove that local governments are promoting a response to climate change. This paper reviews the uniqueness of Japanese diesel car regulation by comparing it with U.S. law.

Renewable energy penetration is an essential tool to reduce CO2 emission in the energy sector. As of 2016, around 15 % of electricity was generated by renewable energy sources such as solar, wind, geothermal, biomass and water (including hydro-power generation with big dam sites) in Japan. The Feed-in Tariff scheme (FIT), which is introduced after Fukushima nuclear disaster in 2011, contributed to the penetration of renewables. The FIT replaced the Renewable Portfolio Standard scheme (RPS), which was introduced by RPS Act of 2002. In California, U.S.A., the RPS has been successful in the penetration of renewables. However, in Japan, it did not work sufficiently to increase the generation of renewable electricity. Before the Fukushima disaster, the focus of climate policy of the Japanese government was on nuclear energy. Therefore, the portfolio of renewables was kept quite small in the RPS. So, it failed to attract investments in renewables.

The more FIT electricity generated, the more FIT surcharge consumers are required to pay. So, a new scheme is coming. The Energy Supply Structure Sophisticating Act set the non-fossil electricity target, which each electricity retailer should achieve. The target can be met by purchasing the non-fossil value at market. The value is separated from renewable electricity and can be sold at market. This scheme looks like a kind of RPS. The sales amount is used to reduce the surcharge. Now, the non-fossil value is generated only from the renewable electricity. Since the nuclear electricity is also a non-fossil electricity, it will be a big issue whether the nuclear electricity generates the non-fossil value near future.

Several factors influence the differences in climate policy between Japan and California. This presentation focuses on the functions of administrative agencies in the policy process addressing climate and energy issues, based on the different political systems in Japan and California.

In the case of California, the state legislature set ambitious targets for reducing GHG emissions and promoting renewable energy resources. This process is also informed and influenced by the Governor’s preferences in establishing policies and programs. Administrative agencies draft specific regulations to achieve the reduction targets.

Under the parliamentary cabinet system in Japan, the cabinet submits to Parliament a bill prepared by ministries under its jurisdiction. Since the cabinet does not pursue aggressive policies targeting climate change, the policy preferences of the Ministry of Economy, Trade and Industry (METI) are reflected in the bill-making process. In addition, industrial interests of METI influence the policy implementation process in areas such as budgeting, subsidizing, and the preparation of Environmental Impact Assessments for power plants.
This presentation will analyze five factors concerning administrative agencies in Japan and California, in light of the difference in political systems between the two. These factors are:
1. The policy orientation and authority of each administrative agency with jurisdiction over climate or energy policy
2. The extent of delegation to the administrative regulations by law
3. Types of organizations (ministry/department or commission)
4. The role of expert knowledge in providing evidence in support of policies and programs
5. The role of actors outside of the governmental structure

Hitoshi Ushijima: "Opportunities and Challenges of Japan's Climate Litigation"

This paper will explore opportunities and challenges of climate litigation in Japan.

Climate litigation is two-fold: suing a) governments or b) business in pursuing mitigation and adaption of climate change. Litigation challenging governments may request some governmental actions/inactions in legislation and policy. Litigation challenging business may request injunction, damages, and information disclosure of financial risk derived from environmental risk. In addition to individuals and/or NGOs, local governments may sue business like City of Oakland v. BP p.l.c. (N.D. Cal., June 25, 2018).

Starting with Massachusetts v. EPA, 549 U.S. 497 (2007), we have been witnessing climate litigation all over the world though a part, based on impacts of resource extraction or particular emissions on climate change, public trust doctrine, sustainable development, and intergenerational equity.

Climate litigation will make governments and business pay more attention to climate change in policy or business-strategy making.

Citing these cases and considering Japan’s legal systems in practice, this paper will argue two strategies for climate litigation: a) more sophisticated legislative policy to enhance judicial review and b) case-based procedural claims in climate litigation such as challenges to illegality of environmental impact assessment procedure or environmental/financial risk disclosure.

Chair

Ben Connors
Adjunct Lecturer Faculty of Law, University of Technology Sydney

Speakers

Satoshi Kurokawa
Professor, Waseda University

Hitoshi Ushijima
Professor of Law, Chuo University

Patricia Blazey
senior lecturer, Macquarie University
LIA Day 3 Session B - Judges
10:30am - 11:00am, Dec 1
6_4_11 (Case Study 1)

1. Legal Institutions and Actors (LIA)
Setsuo Miyazawa (Chair)

Manabu Matsunaka: "The Career Judge System and Court Decision Biases: Preliminary Evidence from Japan"

Laws are made by the judiciary as well as by the legislative and the executive branches of government. This article explores how the career judge system of Japan affects the efficiency of court decisions both theoretically and empirically. We find evidence that judges under the career judge system are tempted to place great weight on case-handling efficiency rather than substantive efficiency, which leads to socially efficient outcomes in some cases, but suboptimal outcomes in others. We also highlight several important factors for the analysis of court behavior.

Because, as a coauthor, I played major roles in corporate law part (section 5). Accordingly, I will give greater weight on corporate law issues. Furthermore, I will dig into details of courts’ behaviours in that filed and compare it with the behaviour in other field.

Jhuma Sen: "Mapping Gender in Judiciary and Judicial Practice: A Case of the Indian Supreme Court"

The state of women’s representation in higher judiciary has been abysmally low in India. The Supreme Court, since its inception has seen only 7 women judges and currently has two sitting woman judges; the state is equally bad, if not worse in High Courts. Out of the 24 High Courts, a little over 10% judges are women and eight High Courts do not even have any woman judge. The representation of women has remained skewed since the early days and women have occupied the position of a High Court judge only 86 times since Anna Chandy was made the first woman judge in the Kerala High Court in 1959.

While these numbers of women in appellate judiciary speaks for its lack of diversity, my paper seeks to trace how this lack of diversity constituted the experience of their profession i.e. in the way these judges framed their judicial role; in other words, I, in my paper inquire if gender had any defining role to play in crafting the identity of a judge in a profession where the figure of the judge is always seen as ‘male’ whereas the figure of justice is ‘female’. More importantly, I trace if and how their gendered experiences shaped their judicial common knowledge, or exposed to them the gendered nature of apparently neutral legal rules and if the same translated in the way in which they reasoned in their decisions. My inquiry is based on extensive interviews with the five
retired women judges of the India Supreme Court and a close legal technical reading of the judgments delivered by them during their tenure as justices.


Good faith serves as a foundational and important principle in all civil law systems. Civil codes generally use that principle as a tool to complete the codification. It enhances true values of civil justice that requires the contractual freedom of the parties to be limited to an ethical standard. However, because of the ambiguity of the term, its reality depends on the role of the judge in each case. Thus, the distinction of the general principle when it comes to its meaning, scope, and application may represent a meaningful part of the legislative policy and judicial techniques applied in each country. This paper identifies the distinctive features of good faith principle in Mainland China, Taiwan, Japan, South Korea and Vietnam. Thereby, it explores how the principle is applied and whether it is a bridge of shifting decision-making power from legislations to judges or just an underenforced legal duty. The analysis will be developed focusing on key differences arising from the number of cases where the courts have been more receptive to good faith claims in some areas than in others. Through the structure of relevant textual provisions and case study, this paper aims to provide more understanding of the Asian legal culture and a tendency of its reality of judicial enforcement. In addition, the author analyzes the concept of legal transplant as applied in Asia from European countries law and from these countries' own civil judicial path.

Noboru Yanase: "Judicial Integrity and Deviation in Japan: Judging from Judge Impeachment Cases"

In Japan, judges in courts keep high integrity and hold a deep trust from the people. It is argued that this stems from both judges' individual self-restraint and bureaucratic control. However, there have also been some judges who deviated from this integrity. Over the 70 year history of the postwar judicial system, eight judges have been tried in the Judge Impeachment Court and removed from office due to their misbehavior. In this paper, the author would like to show and analyze all impeachment cases in Japan. By placing them in the context of judicial history and delving into the hidden impeachable judge cases, the author hopes to unveil structural problems regarding judges and courts in Japan.

Speakers

Manabu Matsunaka
Associate Professor, Nagoya University

Jhuma Sen
Jindal Global Law School

Daniel Foote
Professor, The University of Tokyo

Truong Huynh Nga
PhD student, National Chung Cheng University

Noboru Yanase
Professor, Nihon University
Rikiya Kuboyama (Chair)

Hiroshi Matsuo, "The Use of Common Topics for the Comparative Legal Education"

Legal education is an indispensable part of establishing the rule of law, because access to justice of the ordinary people can be promoted through various intermediaries including not only legal professions but also business persons, local officials and NGO members who have certain knowledge of law and legal way of thinking. For the promotion of legal education, the use of Common Topics seems to be innovative. It is the use of common legal questions based on the practical cases in a law class where students and teachers from different countries participate in the presentation about the solution of that common questions by applying the law of their own country and in the following discussion from the comparative viewpoint. It would be productive to identify the characteristics of each country's legal system and to share the advantage and the uniqueness of legal thinking in each country. For that purpose, however, the content of Common Topics should be arranged to be easily used in the classrooms of different countries. In this panel, presenters will provide the experiences of their use of Common Topics on the legal questions such as concerning legal personality, property, contract, family relations and succession in their international exchange programs among different universities in the Asian region. Comparative legal education by using the Common Topics would promote the pedagogical method as well as the materials for legal education in Asian universities where international exchange of students and teachers have been increasing as a part of international legal cooperation activities. We will discuss about the possibilities, problems and their solutions for the further promotion of the use of Common Topics as a material of comparative legal education in the Asian universities.

Hitomi Fukasawa: "The Use of Common Topics from the Experience in Cambodia"

This presentation is about the use of the Common Topic based on the legal education program experiences in Cambodia in 2017 and 2018.

Keio University Law School (KLS) started the collaboration program from 2017 with universities in Mekong region countries. KLS held joint study program in twice in 2017 and 2018 in Cambodia with the Pannasastra University of Cambodia Faculty of Law and Public Administrative (PUC-FLPA).

Since the first program, KLS assigned the same legal case which we call the "Common Topic" to both Cambodian and Japanese students and making a presentation: how the case is solved by application of law in each country. In the 2017 program, Japanese students made the presentation. Students discussed the difference between Japanese and Cambodian Civil Code. However, we could not examine that how Cambodian students analyze the legal case nor how they interpret Cambodian Civil Code nor how they apply the Civil Code for the case. The experience of 2017 program showed that the difficulties of use of the Common Topic in the different legal education background countries.

In 2018 program, KLS and PUC-FLPA introduced two changes for the improvement of the program. First change was introduction of starter lectures by Japanese and Cambodian teachers prior to the student's presentations. Second change was making a mixed group of Japanese and Cambodian students, because most of Japanese law schools introduce the case study method for legal studies. The presenter presents how these changes influenced student presentations, discussions and achievements of the program. In the last, the presenter suggests about the possibility of the use of the Common Topics for legal education in international program.
Shohei Sugita: "The Use of Common Topics from the View Point of Legal Education in Vietnam"

As a lawyer, I was a teacher of Japanese law at the Center for Asian Legal Exchange in Hanoi Law University (Vietnam) from 2015 to 2017. I will make a presentation about the advantages, problems and possibilities of the use of Common Topics in the Vietnamese legal education by considering the characteristics of teaching method in the Vietnamese universities.

Speakers

Hiroshi Matsuo
Professor, Keio University Law School

Rikiya Kuboyama
Visiting researcher, Waseda university

Hitomi Fukusawa
Candidate of PhD, Keio University

Shohei Sugita
Nagoya University

PGov Day 3 Session B - Socio-Legal Issues in Disaster Response: The Cases of Japan, the Philippines and New Zealand

11:00am - 12:30pm, Dec 1
6_3_23 (Case Study 1)


On 11 May 2011, then President Benigno S. Aquino III issued Executive Order No. 43 which reorganized his cabinet into five clusters. One of the clusters created was the Climate Change Adaptation and Mitigation (CCAM) Cluster, which was tasked with a three-fold mission, i.e., conserve, and protect the environment and natural resources; take the lead in pursuing measures to adapt to and mitigate the effects of climate change on the Philippine archipelago; and undertake all the necessary preparation for both natural and man-made disasters. This mission was an integral part of the government's development framework for inclusive growth and poverty reduction for 2011-2016. It involved several agencies, the most important of which are the Department of Environment and Natural Resources as chair, Climate Change Commission as secretariat, and the Department of National Defense as one of the members.

The paper aims to assess the cluster approach adopted by the government of then President Aquino III in the integrated implementation of climate change adaptation (CCA), disaster risk reduction (DRR), and environmental...
protection (EP) programs and projects from 2010 to 2016. It attempts to answer the following questions: What has the administration of President Aquino III achieved in these three areas? What lessons on integrated CCA-DRR-EP cluster system approach can be learned?

To answer the questions above, the paper: (1) compares the achievements of the Aquino Administration in the protection and conservation of the environment and natural resources, climate change adaptation and mitigation, and disaster risk reduction from 2011 to 2016; (2) analyzes the preparedness and cooperation of the agencies to implement the CCAM cluster approach; and (3) highlights lessons for a more effective and coordinated implementation of the latter. Data were obtained from printed and online annual reports and databases. Key informant interviews among key government officials were also conducted.

Toshihisa Toyoda: "Earthquake Insurance as a Livelihood Reconstruction Measure: A Comparison between Japan and New Zealand"

Earthquake insurance (EI) is a very important measure for housing and livelihood reconstruction in both Japan and New Zealand. No other countries in Asia, even in the world, have such nation-wide EI systems strongly supported by the central governments as in the two countries.

In this report, I will elucidate similarities and differences of the EI schemes as well as their legal backgrounds and try to compare which is more economically efficient between the two systems.

The organization of the report is as follows:
1. Introduction
2. Comparison of Earthquake Insurance Systems between Japan and New Zealand
3. Toward a More Efficient Government Support System for Livelihood Reconstruction
4. Concluding Remarks

Eiichi Yamasaki: "Natural Disaster and Personal Information"

The purpose of this report is to clarify the challenges of collecting and sharing personal information at the time of natural disaster.

It is important to first clarify the location of any disaster victims so as to be able to provide appropriate and effective support to those victims in the event of a disaster. How can we collect and share information about the location of disaster victims? These challenges can be considered in two parts - before and after the disaster.

It is important to ascertain the location of persons vulnerable to natural disasters before a disaster actually occurs.

Vulnerable persons can include but not be limited to the elderly, persons with disabilities, persons suffering from serious illness, infants, women and foreign nationals. It is particularly necessary for government agencies to ascertain the location of vulnerable persons such as the elderly, persons with disabilities and persons suffering from serious illness who would have trouble evacuating from a disaster and share that information with regions responsible for evacuation support prior to a disaster.

As well as ascertaining the location of vulnerable persons, it is also important to construct a system to comprehensively ascertain the location of disaster victims after the occurrence of a disaster. Disaster victims often evacuate from their residence at the time of a disaster and can be difficult to track down. So, how should information be collected under such circumstances, and by whom? And with whom should information about the location of disaster victims be shared?

This report will provide an explanation based on the current situation in Japan and will also introduce the state of personal information collection and sharing in connection with natural disasters in New Zealand and Australia as well as trends in international conferences as comparative studies.

Takayuki Ii: "Dispute Resolution of Tsunami Accidents in Japan"

The East Japan Great Earthquake and Tsunami of 2011 did severe damages to the houses and people. Most
victims lost their lives by tsunami accidents. Some family members of the victims seek to find the reason why they were killed by the tsunami and pursue liabilities of the parties concerned. Some affected local governments set up the third-party inspection committees to examine the tsunami accidents. Several applications were submitted to the bar association’s disaster ADR. Furthermore, at least 16 civil actions were brought to the courts by family members of the tsunami victims. Some arguments by the bereaved were accepted by the courts, but others were not. Around half cases ended by the court-mediated settlement. This paper considers an optimal and most desirable way of dispute resolution of tsunami accidents based on related lawsuits and interviews to family members of the victims.

**Speakers**

**Ebinezer Florano**
Associate Professor & Director, University of the Philippines-National College of Public Administration and Governance

**Toshihisa Toyoda**
Kobe University

**Eiichi Yamasaki**
Professor, Kansai University

**Dan Rosen**
Professor, Chuo University Law School

**Takayuki Ii**
Associate Professor, Senshu University

**PGov Day 3 Session B - Constitutionalizing Transnational Nationhood, Cross-Border Connectivity and National Identity**

11:00am - 12:30pm, Dec 1
6_2_05 (Seminar 5)

**3. Public Governance (PGov)**

**David Law (Chair and Discussant)**

**Chulwoo Lee: “Constitutionalizing Transborder Nationhood: Comparative and Theoretical Discussion”**

The talk concerns constitutional bases for, or regulations on, diaspora engagement policies or kin-minority politics across the world. The constitutions of some countries have explicit reference to concern for coethnics or emigrants including noncitizens - e.g., Art. 2 of the constitution of the Republic of Ireland, Art. 10 of the Croatian constitution, and Art. 13(2) of the Serbian constitution. Why do these constitutions refer to national identities that expand beyond the citizenry and Staatsvolk? What are the types of such transborder engagements and what are the similarities and differences between those practices? What kinds of responses does these attempts of decoupling the nation and the state receive from other countries and the international community? If the practices of some countries are accepted while others are not, what are the reasons? The talk responds to these questions in a way that facilitates discussion by the whole panel.
Hiroshi Fukurai: "Decoupling of the Constitutions of the State v. the Nation: The Cross-Border Connectivity, Diaspora, and "National" Identity-Affiliation"

Constitutions play a definitive role on the regulation of kin-minority relations, diaspora engagement, and "trans-border" movements of emigrants and coethnics across the state and the nation. As Professor Chulwoo Lee suggests, many constitutions have clearly-delineated references and parameters for coethnics, emigrants, citizens, and non-citizens, as well as their movements and references for group-affiliations. Based on the Original Nation Approaches to International Law (ONAIL, formerly known as Fourth World Approaches to International Law or FWAIL) which centers the nation at the core of geo-political analysis, the paper explores the connectivity of historically-exploited, yet culturally-bounded, people across the nation and the state. Two specific parameters of constitutional scrutiny are thus employed for the analysis: (1) constitutions that the state has established and (2) constitutions that the nation has adopted. Specific constitutions of the nation examined in the paper include: (1) Kashmir, (2) Moro, (3) Iraqi Kurd; (4) Palestine, (5) West Papua, and (6) Okinawa (aka Ryukyu). The constitutions of these nations are compared to the state constitutions of: (1) India, (2) the Philippines, (3) Iraq, (4) Israel, (5) Indonesia, and (6) Japan. While the nation has been often partitioned into multiple states, such as Kashmir which national territory has been dismembered into three states of India, Pakistan, and China, the paper compares and contrasts the constitutions of Kashmir and India, as the later continues the military occupation of partitioned Kashmir and imposes strict regulations on Kashmiris' "cross-national" movements. Similar methodologies have been adopted to other "national" analyses. Specific focus is thus on the regulation of the kin-minority relations, diaspora movement, and "trans-national" and "trans-state" movements with respect to their right to leave from, as well as their right of return to, the "original" state and nation, as guaranteed by Article 13 of the 1948 Universal Declaration of Human Rights (UDHR) in which all these Asian states became the signatory members. How the constitutions of the state and nation fare well with international law on the geographical mobility and "national" affiliation among the state and nation subjects is also the central focus of this paper.

Hee-moon Jo: "Constitutionalizing Transborder Nationhood: From Latin American Perspectives"

The relationship between state and absent citizens is becoming more important after the globalization of the 1990s. In addition to their own nationals abroad, absent citizens also include non-national citizens who are connected by blood. Countries are trying to increase the number of their citizens in two main ways. These policies are being used in the international policy context to expand state power. The first is to increase the number of nationals in overseas residents using dual nationality. This is a state-based expansion policy of the state power. There are many countries that make it easy to acquire nationality for up to three generations. Countries that have operated colonies in the past, such as Italy, Spain, and Portugal, have a large number of compatriots living in the country because they have many overseas residents. Since most of the dual citizens living abroad live in their residence, it is not so much that they return to their mother country. However, dual citizens can provoke a number of important problems with regard to political engagement in overseas. The second is to expand state power through dual culturalism. It is a strategy to maintain an inter-action with the mother country based on nation-based expansion policy of state power. Although it does not fall under the dual nationality requirement, it is a way to support, for example, local overseas Koreans such as Hangul School, King Sejong Institute, Korean Cultural Center, and Korean American Association of New York and to maintain ties with their home country. It is a way of indirectly increasing the state power by actively inducing the trans-state political and economic participation of domicile countries. This method is mainly used by Asian countries and Latin American countries who have experienced colonization. These two methods are very useful in terms of expanding the international capacity of the mother country by sending out the de facto nation to the outside of the state territory from the perspective of state power in international relations. Both approaches have obviously some advantages and disadvantages. As an example, there is a criticism that overseas Koreans are not obliged to pay taxes, while increasing their political participation in their home country. The study seeks to examine legal policies in a comparative context on absent citizens in Latin American countries, including Spain and Portugal. We will analyze whether these countries have provisions on absent citizens in the Constitution, examine other legal provisions, and analyze the theory of legal foundations supporting such policies from a political perspective as well as from a human rights perspective.
This paper will study the diaspora engagement politics or kin-minority politics of main asian countries through comparing constitutional texts and relevant statutes of these countries. According to the traditional constitutional principles, any country as a nation-state can treat its nationals and aliens in different ways. In here nationality is an important criterion for distinguishing. On other hand, inconsistency between nation and state’s territory caused by various historical reasons and the increasing transnational migration ask to creates a third category differ from nationals and aliens, which may be called ‘Overseas’, ‘Kin-foreigners/minority’, ‘Coethinics’ or others.

For example in Korea, besides a constitutional provision("it shall be the duty of the State to protect citizens residing abroad as prescribed by Act." Art.2(2)), there is a legislation called ‘the Overseas Koreans Act’ which gives preferential treatment to those ethic-koreans living abroad who have not Korean nationality. China, as a country having 2 million Korean-Chinese minority, is critical of this Korea’s diaspora policy, said this might have negative impact on China’s minority policy.

However, China has its own policy on the ‘Overseas Chinese.' "The People’s Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.”(Article.50, the Constitution of China). In addition, China passed ‘the Protection of the Rights and Interests of Returned Overseas Chinese and Relatives of Overseas Chinese’(1990) and other legislations to protect rights and interests of the overseas Chinese.

Except Korea and China, the study covers the other asian countries including Japan, Taiwan, India, Indonesia, Turkey, Vietnam, The Philippines, etc. Among their regulations and policies there are differences and common points. This essay will focus on analyzing the background of the differences and show the reasons why these countries take each their strategy.

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**Speakers**

Chulwoo Lee  
Yonsei Law School

Hiroshi Fukurai  
University Of California Santa Cruz

Heemoon Jo  
Professor, Law School HUFS

Jiang Guangwen  
부교수, Seoul National University

David Law  
Sir YK Pao Chair in Public Law & Charles Nagel Chair of Constitutional Law and Political Science, University of Hong Kong & Washington University in St. Louis

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**SJ Day 3 Session B - Gender and Work**  
**⏰ 11:00am - 12:30pm, Dec 1**
Amy Barrow: "The Promise and Limitations of Institutional Mechanisms for the Advancement of Women in Hong Kong"

This paper explores the roles of institutional mechanisms for the advancement of women in advancing the status of women in Hong Kong. While scholars including Shirin Rai (2003), Dorothy McBride and Amy Mazru (1995) have analysed the role of national machineries in advancing gender equality in Western liberal democracies, there has been limited evaluation of the role and effectiveness of institutional mechanisms in non-Western contexts, particularly in authoritarian societies. The project focuses on the diffusion of gender equality policies in Hong Kong, a political system with no universal suffrage, and where only fifty per cent of Legislative Council Seats are democratically elected. Despite Hong Kong's perceived democratic deficit, the territory has a strong rights-based legal framework; the Equal Opportunities Commission (EOC), a statutory body, which investigates and conciliates complaints of discrimination on the grounds of sex, family status, disability and race; and the Women's Commission, an advisory body to the Hong Kong Government. Despite this strong institutional infrastructure to support gender equality laws and policies, there are a number of shortcomings in Hong Kong's equality policies similar to other developed societies. Hong Kong also has its own set of distinct social problems. The EOC has secured some important advances in relation to societal understandings of sex-based discrimination and harassment, the Women's Commission's role in breaking down the deep social conservatism around gender roles and gender-variant sexual identities has been heavily criticised. Grounded in more than fifty in-depth, semi-structured research interviews conducted in both Cantonese and English with current and former members of Hong Kong's Women's Commission, members of the EOC, representatives from a broad range of women's organisations including grassroots organisations and larger scale non-governmental organisations, this paper provides rich and compelling insight into the promise and limitations of institutional mechanisms for the advancement of women in non-democratic political contexts.

Francesca Bartlett: "The Changing Professional Identity of Hong Kong Women Lawyers: From Local to Transnational Practitioners"

This paper reports on the results of our empirical project on women lawyers qualified to practice in Hong Kong. Our study involved two participant groups: one currently working Hong Kong and the other in Australia. We conducted semi-structured interviews with these participants and asked them to reflect on the career trajectories of their own and their peers. The paper draws on the insights from the existing literature on women lawyers to explain the similarities and differences of Hong Kong women lawyers working at home and abroad. Our findings reveal that while women lawyers encounter similar gendered stereotypes about professional aptitudes and inclinations in Hong Kong and Australia, they experience a range of structural and cultural differences in the two common law jurisdictions. Finally, this study argues that not a few Hong Kong women lawyers have succeeded in transforming their professional identity from local practitioners to transnational practitioners due to the internationalization of legal practice and the growing influence of China and Chinese clients in the global legal market.

Jinsook Yun: "Sexual Harassment Issues from Perspective of Justice and Human Rights"

Human Rights have been one of the most controversial issues to be resolved throughout the history. Among them, the most complicated issue seems to be that of sexual harassment. Because of its sensitive and complicated nature of male dominance and power concerning this issue, this has not been clearly discussed or resolved.

Sexual harassment is a critical issue, particularly for females as more frequent victims in sexual harassment cases. However, as the comparative analysis among three countries reveals, the laws and legal cases do not clearly demonstrate whether underlying problems of sexual harassment are sufficiently taken into consideration. This problem seems to stem from the fundamental lack of understanding and respect toward victims to begin with. Therefore, it is necessary to redefine sexual harassment in laws and legal cases. Discrimination-based approach would provide us more equitable solutions together with dignity-based approach.
Leon Wolff: "Gendered Careers on the Japanese Bench: A Reply to Ramseyer"

Presentation: https://sway.office.com/OxCh0loaakiwkgknW?ref=Link

This presentation overviews the debate on the relevance of gender on judicial careers in Japan between J Mark Ramseyer, a distinguished Japanese law researcher based at Harvard University and me. Using regression analysis, Ramseyer dismisses my conclusion that sex is statistically relevant to determining career success on the Japanese bench. Using updated statistics and qualitative evidence, I offer a reply to Ramseyer’s criticism.

Speakers

- **Amy Barrow**
  Senior Lecturer, Macquarie University

- **Leon Wolff**
  Associate Professor, QUT (Queensland University of Technology)

- **Francesca Bartlett**
  Associate Professor, University of Queensland

- **Jinsook Yun**
  Professor, Soongsil University (Seoul, Korea)

Env Day 3 Session B - Nature

- **6. Environment (Env)**
- 11:00am - 12:30pm, Dec 1
- 6_2_12 (Lecture 1)

**Jeanne Huang (Chair)**

**Feiyue Li: "The Role of International Water Laws in the Governance of Trans-boundary River Basins of China"**

Competition over fresh water resources has become a possible cause for water disputes or violent conflicts among riparian countries of transboundary river basins. Although water conflicts are usually dealt with through water diplomacy and political arrangement, international law also plays an important role in reaching international consensus and forming international principles of transboundary water utilization and preservation.

China has frequently been criticized as harming its downstream neighbors through its unilateral domestic water activities. National interests, territorial sovereignty and political consideration are the major concerns of China’s transboundary river basin governance. There are a number of academic papers that have been undertaken to investigate China's policies of transboundary river governance from the perspectives of diplomacy and political negotiations. However, the deep analysis of the role of international water law and the formation process and the normative effects of international rules in China has not been paid sufficient attention. This paper focuses on the role of international water laws in the governance of China's transboundary rivers by exploring if international
water law matters in China, how China views and deals with the normative conflicts in international water law, and if it is possible to establish the normativity of international water law in China.

The paper will mainly focus on China's treaty practices (including diplomatic documents, bilateral treaties and multilateral cooperation), domestic legal practices and national policies as to inquire into China's attitudes toward and perceptions of the qualities of legal norms and the normativity of international water law. This paper will build an analytical framework, based on China's perceptions of its own identity, common knowledge and interests, to interpret the normative characters of international water law, and the reception and adaptation of international rules in China's legal system. The investigation of these variables of interaction will help to understand China's perceptions of the legal normativity of international water laws.

Huiyu Zhao, Robert Percival: "Species Protection in Asia and North America: The Case of Migratory Birds"

The history of human efforts to protect wildlife stretches back more than two millenia to the India Emperor Ashoka in the third century B.C. At the first global earth summit in 1972 Indian Prime Minister Indira Gandhi referenced Ashoka's ancient wildlife protection decrees as foreshadowing the rise of modern environmental concerns. But long before the 1972 Stockholm Conference on the Human Environment, nations recognized the importance of global cooperation to protect species of birds that travel vast distances across national boundaries. Protection of migratory birds spawned one of the first international environmental treaties, the Migratory Bird Treaty between the United States and Great Britain, representing the interests of Canada. In 1918 the U.S. Congress adopted the Migratory Bird Treaty Act (MBTA) that established a crucial legal precedent for governmental efforts to protect birds that cross national borders.

Each year millions of birds migrate from New Zealand and Australia to Arctic areas of Siberia and Alaska, many of them stopping in China on the way. This paper will review legal initiatives to protect migratory birds in Asia and North America, including treaties between the U.S., Japan and Russia; Also the Migratory Bird Treaties between China, Australia, New Zealand, Japan, and Russia. Even as other countries strengthen their protection of migratory birds, the Trump administration is seeking to weaken migratory bird protection law in the U.S. It has dramatically reversed a long-standing interpretation of the MBTA that prohibited incidental takes of migratory birds. In China, the wetland is shrinking and threatening the migratory birds in the East Asian-Australasian Flyway. This paper will examine these changes and their implications for global species protection efforts.

Download paper

Speakers

Feiyue Li
PhD Candidate, Bond University

Huiyu Zhao
Associate professor, School of Law, Shanghai Jiaotong University

Jeanne Huang
Associate Professor, University of Sydney Law School

Robert Percival
Robert F Stanton Professor of Law, University of Maryland Carey School of Law
12:30pm

Lunch

12:30pm - 2:00pm, Dec 1
Princeton Room (Building 6, Level 3)

1:00pm

ALSA Board Meeting

1:00pm - 2:00pm, Dec 1
6_3_23 (Case Study 1)

2:00pm

PGov Day 3 Session C - Accountability

2:00pm - 3:15pm, Dec 1
6_4_11 (Case Study 1)

3. Public Governance (PGov)

Jonathan Liljeblad (Chair)

Zejun Du: "Government Information Publicity in China: Development and Further Improvement"

China promulgated the Regulation on Government Information Publicity of the People’s Republic of China (hereinafter referred to as the Regulation) on 1 May, 2008, which marked the official launch of government information publicity in China. The right to know, the right to speak and the right to supervise owned by Chinese citizens have been legally guaranteed. However, there are many problems in government information publicity in China, in terms of active publicity, publicity upon application, management system of publicity, channels of publicity, supervision and remedy of publicity. In order to resolve these problems, the Regulation that had been put into force for nine years was first revised in June 2017, which was called Draft of the Regulation on Government Information Publicity for Soliciting Opinions (hereinafter referred to as the Draft). According to the Draft, the Regulation has been expanded from 38 to 54 clauses; the basic principal of “publicity as the norm, while not publicity as an exception” has been clarified; and the precondition of applying for government information publicity has been abolished. Despite the progress of the Draft, there is still room for further improvement. This paper will describe the problems of government information publicity in China, development in recent years, and make recommendations for further improvement. Government information disclosure-Zejun Du.pdf

Stefan Gruber: "Cultural Heritage, Rights and Access to Justice in Asia"

The presentation explores the links between heritage protection, rights, and access to justice in Asia. The protection of cultural heritage endorses the survival of cultural identities, backgrounds, practices, and traditions in Asia, promotes cultural diversity, and functions to improve the quality of life of local populations and particularly minorities. In addition, it is also essential for the protection of human rights and intergenerational justice. Present decisions regarding the conservation or abolishment of cultural heritage and diversity will be made on behalf of future generations without their consultation and must therefore be made with utmost care and consideration. While there has been a strong push towards the strengthening of cultural heritage protection law, policy, and related authorities throughout East and Southeast Asia in recent decades, most of the relevant regulations do not provide for an adequate level of public participation in related decision-making. The authority to identify and protect heritage continues to belong primarily to the states. However, as heritage can be a very individual concept, encouraging heritage discourses and conserving heritage through broad participation of relevant stakeholders are important aspects of that process. Of particular importance in this context is the ability of stakeholders and public interest groups to challenge relevant decisions by the authorities in court. However, standing in this context is defined in a rather narrow way in most Asian jurisdictions which in many cases denies...
stakeholders and other parties access to justice.

The presentation stresses the importance of adequate impact assessments, cultural heritage discourse, community empowerment, and enhanced public participation in heritage identification and protection, and in the assessment, supervision and judicial review of development projects that affect cultural heritage assets and rights. The presentation includes relevant case studies from several Asian countries.

Rieko Kage: "Please Sue Us? The Politics of Administrative Litigation Reform in Japan"

Limited standing and justiciability have made administrative lawsuits exceedingly difficult to file, let alone win, in Japan. Indeed, Japan has had among the lowest rates of administrative litigation, not only among Asian democracies but in the developed world more broadly. The revision of the Administrative Case Litigation Act in 2004, however, substantially lowered the hurdles for Japanese citizens to file suits against the government, expanding legal standing and extending the statute of limitations, among other reforms. Since then, administrative litigation in Japan has risen more than thirty percent. Why would a government like Japan, that had steadfastly restricted litigations against the state, shift to allow citizens to more easily bring cases against them? This question is important because examining why states may choose to invite citizens to file against themselves in a country like Japan that had hitherto imposed high hurdles against litigation should yield important insights for thinking about the sources of administrative litigation reform elsewhere. Drawing on the minutes of the debates in the Justice System Reform Council (1999-2001) as well as the Office for the Promotion of Justice System Reform (2002-04), this study assesses which actors pushed most strongly to ease restrictions on administrative lawsuits and for what reasons, and it argues that expert ideas by legal scholars were crucial in shaping the direction of reform.

Speakers

Zejun Du
PhD Candidate, Bond University

Jonathan Liljeblad
Senior Lecturer, Swinburne University of Technology

Stefan Gruber
Associate Professor, Kyoto University

Rieko Kage
University of Tokyo

PGov Day 3 Session C - Citizenship, Nationality and Migration

2:00pm - 3:15pm, Dec 1

6_3_23 (Case Study 1)

3. Public Governance (PGov)

Hee Moon Jo (Chair)

Susan Kneebone: "Nationality and 'Incipient Transnationalism': Nationality and Marriage Migration to East Asia"
In this paper I examine how the laws and policies on nationality of ‘foreign spouses’ from Southeast Asia to South Korea (the Republic of Korea or ‘Korea’) and Taiwan (the Republic of China) range from highly discriminatory practices intended to ‘police’ the women, to policies which favour the marriage migrant when she is performing the role of ‘idealised cultural and biological reproducer’. I consider the implementation and practical consequences of the framing of these changes which have substantial effect on the lives of the women and their children, to evaluate whether they are effective tools for regulation of marriage migration. I consider whether there is an evolving ‘incipient transnationalism’ in the region through evidence of cooperation on the effects of these laws, as distinct from instrumental use of marriage migrants for development of the ‘nation-state’.

Michael B Krakat: “Citizenship, Enlightenment, and Global Markets: Cash for Passport Laws and Exceptional Naturalization and Residence Schemes in Asia

The power of the global market for membership has created novel pathways for select groups of applicants in relation to the legal concepts of naturalization, residency, citizenship and nationality. Despite (or because of) emerging concurrent developments that emphasize national borders, the existing citizenry and increasing re-nationalisations of the polity (including citizenship deprivation), globalization is still well and alive: joining the concepts of global trade and capital mobility, the individual’s quest to plural membership (dual and multiple citizenship and/or residence status) for heightened personal (visa free) migration and political diversification as a form of political and economic crisis escapism has both entered globalization’s race and global market rule, having pierced the veil of public law citizenship as statehood’s inner sanctum: The emergence of the commodification and recreation of citizenship’s narrative as ‘passports of convenience’ brings in its wake common (market driven) denominators, international as well as supra-state regulation and harmonization, including standards of due diligence and transparency. These coming mercantile standards for membership showcase that the public sphere conceptions of membership are undergoing rapid re-imaginations, transforming local, regional and global conceptual spheres. Reconciling these perspectives, between statehood and marketization, this paper sets out to introduce the Asian experience of select economic Citizenship- and Residence by Investment programs (‘CBI’, ‘RBI’), otherwise known as ‘cash for passport’ and ‘cash for visa’ programs. States directly sell membership entitlements for one off payments, often coupled with tax exemptions, and, in case of CBI, do so without requiring actual or only negligible periods of actual physical residence. Exceptionally wealthy migrants in turn purchase CBI passports and RBI visa to diversify and thus enhance personal and economic mobility, to achieve flexibility and create exit strategies for political protection. Asian special naturalization and residence laws then range from programs in a divided Cyprus at the gates of Asia, pertain to “free trade” membership entitlements in the middle Eastern region, from emerging conceptions in the Soviet successor states in central Asia, ‘Golden Visa’ as well as Retirement schemes of Far- and South East Asia. These schemes finally include the successful (and, at times, failed or re-invented) experiments in Australasia and the Pacific Islands. In the often linear, state centric West, conceptual legal references made in the Caribbean islands as well as some of the European Union member states, both birthplaces of CBI and RBI, may include the national interest, the interest of the international community of states, individual philanthropy and the common (including global) good. In political citizenship’s exposure to globalization, its renationalization, marketization, commodification and fragmentation, Eastern schemes appear to be situated between markets, Western membership standards, as well as remnants of a perceived Asian sanctuary built on an internalized conception of the world and derived from collective thought, demarked by holism and the Godhead. Before the backdrop of an emerging global market for membership entitlements and international harmonisations of naturalisation and citizenship law, this paper discusses some of the fundamental elements, common denominators and recurring legal mechanisms of the Asian experience of exceptional naturalization and residence schemes. While many Asian countries share a substantial heritage with European law, they have often kept as well as developed their own distinct legal identity and requirements. The paper concludes that nothing else than a multi-regional perspective should be employed when attempting to conceptualize any ‘Asian’ view on CBI and RBI developments in addition to more established mercantile and Western paradigms.

Arvin Kristopher Razon: "Reframing Nationality Rules in the Philippine Constitution as a Tool for Political and Economic Suppression"

Mass media and telecommunications are nationalised industries in the Philippines, limited to entities that are solely Philippine-owned, or at least 60 per cent Philippine-owned, respectively. This constitutionally enshrined protectionist policy, which was contemplated by the framers to prevent the propagation of foreign influence on Philippine culture and ideals at a time when the Internet had not even reached the Philippines, has been
expanded by the Philippine Securities and Exchange Commission to include online service providers or ‘Internet intermediaries’ involved in the dissemination of information. This interpretation is the primary basis by which the regulator has deemed Rappler, an online news platform critical against the current administration's human rights record and foreign policy, as violative of the foreign ownership limitation on mass media. Further, the loose ‘dissemination of information’ standard has produced a chain effect in the regulator's issued opinions, where it has deliberately crafted a policy to include even websites that transmit information to its audience as an incident of its primary activities.

This paper argues that the apparent lack of discernment by the regulator in appreciating the divide between traditional mass media and the Internet, and indiscriminately applying the mass media limitation to the latter, poses a double threat to the Philippines in two ways. First, it produces a thinly veiled chilling effect on the freedom of speech and a regrettable, if not assertive, demonstration of government-sponsored suppression of human rights, which are fundamentally set out in the Constitution in clearer terms than the supposed violation of foreign ownership limitation. Second, along with similar protectionist policies by other government agencies like the National Telecommunications Commission and the National Privacy Commission, the Philippines has, whether unwittingly or deliberately, created an unfavourable business climate for investments and innovation, that ultimately threatens the country's economic progress.

Applying Foreign Ownership Restrictions on Mass Media to the Internet - Arvin Razon.pdf
Sex work and purchasing sexual services is not a criminal offence in China, but it is considered to be morally reprehensible conduct that is deserving of punishment and control. For conduct that is punishable administratively, we would expect to see stronger protections and less severe punishments than those in the criminal justice system. But this is not always the case and so it is necessary, when thinking about criminal justice, to keep in mind the nature of punishment and the ideas of justice that are enacted in dealing with conduct seen to be not sufficiently serious to warrant a criminal sanction.

This paper explores the concepts of justice as they relate to punishment of sex workers. The first line of analysis considers the degree of institutionalisation of the administration of justice in the supposed move from populist, mass-line forms of justice exemplified in the public parading and humiliation of sex workers, to a more institutionalised, bureaucratic form of justice bounded by legal rules and procedures. The second considers the values embedded in the text of the law and the ways it institutionalises power in the alleged move from state-oriented governance to people-oriented governance. It finds that part of the incoherence of the legal rules for sanctioning sex work lies in the coexistence of concepts and values that are in fundamental tension with each other; state-centred and people-centred governance, which in turn encompass elements of both populist and formal legality. It concludes that incoherence in official approaches in how to characterise and deal with sex work is reflected in incoherence in the law, which in turn results in unpredictability in enforcement and punishment regimes.

Susan Trevaskes: “Placing the Trial and the Centre of the Criminal Process: What this Means for Criminal Justice Reform

‘Making the trial hearing central to the criminal process’ is an important Chinese criminal justice reform concept. It is part of the repertoire of the Xi Jinping administration’s moves to create a new discourse of “judicial justice” (sifa gongzheng) to counter frequent occurrence of miscarriages of justice in China. Otherwise known in English as ‘trial centeredness’, it acts as reform strategy but not for substantial structural change. It emphasizes the notion of compliance through moral effort and adherence to socialist values. Hence rather than changing the current structures that support ‘mutual coordination’ between different arms of the justice system, the reforms downplay the need for dispersed and independent power arrangements. Exhortations by the Communist Party to deliver judicial justice in a morally virtuous way are tied directly to Xi’s political ideology of integrating law and moral virtue.


Honesty, discipline, trustworthiness and individual accountability are some of the values that have inspired numerous political-legal initiatives promoted under Xi Jinping. These principles have inspired his battle against miscarriages of justice, central to his “Governing the Nation in Accordance with the Law” (yifa zhiguo) governance platform. With the aim of creating a clean justice system, Xi has promised a zero-errors justice system. To this end, he has not only focussed on remedying the causes of judicial errors, but also strengthened the patchy system for establishing and investigating responsibilities for cases of miscarriages of justice. The issue relates both to the process of finding culprits for mistakes and punishing them accordingly, and, more prominently, to the creation of institutional incentives/disincentives to regulate and control individual judicial conduct.

This paper examines the political-legal instruments that have been adopted in post-Mao China to hold the judiciary accountable for its decision-making process. It provides an overview over the legislative and political instruments that have been used prior to 2014 and, in this respect, it discusses in detail the novelties introduced under Xi Jinping. On the whole, the paper reflects on the delicate balance existing between individual justice agencies, institutional structures and political values in the Chinese contemporary criminal justice system.
Amy Barrow (Chair)

Xin He: "Gendered Litigation: Judging Divorce Cases in China"

Drawing on data on participation observation and interviews with judges and litigants in China, this study finds a systematic failure of the courts in improving gender equality. Indeed, the divorce litigation process has aggravated the situation of gender inequality faced by Chinese women. It argues that the performance assessment system of the judges was a key to understand the judicial behavior.

Insil Kang: "Displaying Gi-saeng, Replacing Geisha"

At 1903 Osaka and 1907 Tokyo fairs where Korean live exhibitions, Japan installed three Korean women at its expositions, mimicking how Western empires treated colonial subjects from Asia and Africa. At the 1903 Osaka Exhibition, Japan installed two Korean gisaeng, the female courtesans who gave art performances to King or gentry as Japanese female geisha at the Science of Anthropology Pavilion (學術人類館). They were placed in the second section, the Race Exhibit Room with twenty-six people such as native Taiwanese, Ainus, Ryukyuans, Javanese, Indians, one Turkish man and so on. The second Korean display was at the Crystal Pavilion in the 1907 Meiji Industrial Exhibition in Tokyo. The Crystal Pavilion was a place for entertainment composed of three sections: a long dark cave starting from the entrance, the mirror room located at the end of the cave and two Koreans in the middle of the mirror room. The woman wound up a music box and the man sat beside her, with both dressed the Korean traditional garments.

Korean displays also have been understood within the Western framework that germinated in imperialistic anthropology and eugenics in academia. However, the two Korean exhibitions in Osaka and in Tokyo were different in several respects from the human zoos held in the West at Japanese expositions. At the 1903 Osaka exposition, only two Korean women were present, neither a couple nor a family, but gisaeng, who professionally conducted artistic performances and offered sexual services, among the twenty-eight people present as exhibits in the Science of Anthropological Pavilion. Other live exhibits such as Ainu and Ryukyuans, the minority who lived in the Japanese archipelago or the native Taiwanese who came from another colony, were all brought to Osaka by the unit of couples or families. Also, at the 1907 Tokyo exposition, one Korean man and one Korean woman were assigned to be in the middle of the mirror room at the Crystal Pavilion, the amusement quarter without any Korean indigenous settings except for the clothes that they were wearing. Even the Korean woman at the Crystal
Pavilion was asked to play a music box, the latest imported item from the West that became popular in Japan. Then why did Japanese display Koreans? I found the answer in what Japanese did when they participate in European expositions.

When Japan firstly showed up at international expositions in the 19th century, Japan advertised itself in a dualistic way: a modern, westernizing country, but an Oriental and aesthetic one. Participating in the 1867 Paris Exposition, Japan set up a conventional tea house in which three geisha served customers and performed Japanese dances and songs. It was the first exposure of a female Japanese archetype to the wider world and the first Japanese national pavilion at an international fair. The influence of these Oriental women in kimonos was sensational.

When hosting its own national and international expositions, Japan replaced the Japanese geisha with Korean gisaeng. It was not a mere utilization or consumption of colonial sexuality conducted by white male colonizers over colored colonial women, but a replacement of self-Orientalized Japanese sexuality with manipulated and Japanized Korean sexuality. In doing so, Japan could upgrade its status from observed to observer and from displayed to displayer. Before the performing Korean women, Japan could become civilized watchers and superior customers of Korean sexuality. That was what European audiences did when they visited Japanese teahouses at Western expositions and fetishized geishas.

Yun Hsien Lin: "Same-sex Marriage in an Asian Context: The Changing Family and Society"

On May 24, 2017 Taiwan's Constitutional Court ruled in favor of allowing same-sex marriage, paving the way for Taiwan to become the first jurisdiction in Asia to legalize same-sex marriage and cementing its status as a beacon for LGBT rights. The Constitutional Court found that Taiwan Civil Code failed to provide two persons of the same gender the right to create a permanent union of intimate and exclusive nature, and such failure violated constitutional guarantees on freedom of marriage.

As above court ruling made activists for LGBT rights proud and excited, how legal experts and laypeople in Taiwan see the issue of same-sex marriage is worth exploring. Just a few months before this milestone judicial decision, the author was commissioned by Taiwan Department of Justice to draft Same-sex Civil Partnership Act (the Draft) under the consideration of potential social impact. In this capacity, sessions of focus group discussion were conducted, which consisted experts including family court judges, lawyers, advocates for LGBT rights and children's rights. And in-depth interviews with family law professors were completed to make the content of the Draft comprehensive and precise. Finally, based upon the theory of deliberative democracy, four civil consensus conferences were held in four different cities in Taiwan to open a dialogue with the public in general on the topic of same-sex unions.

The results of this research reconfirms the diversity of opinions within the Taiwanese society. It is revealed that Taiwan's dynamic civil society is the basis for LGBT social movements and the later legal reform. And the generational gap, legal transplantation and civil participation are among the most important factors in shaping Taiwan's law and society on the issue of same-sex marriage.

Speakers

Xin He
Professor, University of Hong Kong

Amy Barrow
Senior Lecturer, Macquarie University
Improving food security in China is an urgent challenge on the social justice agenda. This multi-authored paper seeks to examine and focus on organic food security in China, with a specific reference to China's regulatory frameworks surrounding the domestic production, distribution and importation of organic food. It also aims to explore growing niche organics that are being imported by China to exploit seasonality gaps and varietal novelty and to meet increasing consumer demand. As a case study, the paper highlights cherries exported from other other countries including Canada, into the Chinese market, and the accreditation compliance methods required by both Canadian and Chinese organic food regulations. It is interesting to note that New Zealand has recently secured the Mutual Recognition Arrangement for Certified Organic Products with China allowing for the ease of bilateral organic food trade. An aspirational goal of this research is to investigate the New Zealand model for use by Canada and Australia for future bilateral trade access negotiations in organics.

Target marketing refers to concentrating promotion of a product to a segment of consumers due to the attractiveness of the group, in term of certain characteristics as its size, age or status. This marketing tactic could be friend or foe for consumers because it depends on whether the strategy is tailor-made to address consumers real need or used by unscrupulous business operators to boost sale at the expense of consumers. While the Australian Consumer Law is well designed to address this form of misconduct conduct, a new challenge arises for the legislation is when the said tactic deploys online by an overseas operator. Thus, this presentation aims to identify and discuss the potential insufficiency of the Australian Consumer Law in a cross-border scenario, through a hypothetical application of the legislation into the event of the “Singles Day” shopping spree.

Indonesia has a formal consumer protection system consisting of the Consumer Protection Law (Law no.8/1999) and supporting institutional structures in the form of the National Consumer Protection Body and regional Consumer Dispute Settlement Agencies. The banking and finance industry also has some additional specialist consumer protections. However, the existing literature suggests a number of key weaknesses in the effectiveness of these systems. This paper presents evidence of alternative regulatory consumer protection spaces in Indonesia, where consumers use print and on-line letters to the editor, and social media (particularly Twitter), to complain and resolve disputes. We argue that these alternative regulatory spaces bypass state-based laws and institutions and instead draw on and promote the circulation of both international consumer protection principles and local ideas of justice. We reflect on the implications of this research for designing consumer protection systems in emerging economies, as well as for advancing theoretical understandings of the interactions between formal and informal regulation.
1. Legal Institutions and Actors (LIA)

Setsuo Miyazawa (Chair)


As showcased by Dr. Kawashima's argument, the earlier sociolegal studies discussed Asian preference for mediation/conciliation over litigation/judicial decision, as means for dispute resolution. Those studies cited key features of Asian mediation such as keeping faces of the parties, dependence on authorities of elders/superiors. Recently mediation thrives in both East and West. However, it is still open to empirical researches if Asian...
mediation practices are taking over the world; or even if there are Asian mediation practices at all.

In this paper, the author discusses perception of judges’ behaviors in the eyes of parties to civil litigations in Japan, focusing on judicial intervention to facilitate or solicit settlements. For that purpose, the author examines and analyses data set from the Civil Litigation Research Project, a nation-wide survey research project, which synthesizes data from court records, the litigants, and their lawyers of randomly selected sample cases. The author analyzes how the parties view their judges’ behaviors and how it relates to their evaluation of the settlement facilitation/solicitation process. The author also discusses the differences in perception and evaluation between settled and decided cases.

Tu Nguyen: “Coping with precariousness: How social insurance law shapes workers' survival strategies in Vietnam?” Legal consciousness draft_261118.docx

This paper examines the role of social insurance law in factory workers’ survival strategies in Vietnam, especially when they are faced with pressing family needs and future uncertainty. Despite official discourse of the law which encourages employees to accumulate social insurance for their pension benefits, workers in this study have considered their social insurance fund as a form of saving and opted to gain early access to it when they are in desperate need of money. This perception led them to understand and use law in a way that suits their needs; however, their action at the same time excludes them from the protection of the law. In workers' daily struggles, law is central to creating a moral dilemma between rights and needs, and to perpetuating their precarious, vulnerable condition. The paper demonstrates that workers' legal consciousness varies according to their perception of their precariousness, which mainly concerns the fragile nature of their work and is underpinned also by their familial moral obligations. Even though law in authoritarian regimes has been used to serve different purposes, the way law informs social action and consciousness still speaks to its effects in bringing about social change.

Hai Jin Park: "Why Is Securities Class Action Seldom Used in Korea?: Understanding the Reluctance of Plaintiff’s Lawyers"

The Securities-Related Class Action Act ("the SCAA") was enacted in 2004 in Korea but over the last 13 years, only 10 cases have been filed. Securities damage suits in the form of non-class action ("securities damage suits") have been far more frequently used than class action suits. This paper aims to answer the question why securities class action is seldom used in Korea. To do this, this paper relies on a mixed method of qualitative and quantitative research approaches: (1) interviews with plaintiff's lawyers and plaintiffs and (2) content analysis of court decisions on securities class action suits and securities damage suits. This research finds that facing large costs to bring securities class action suits, risk-averse plaintiff's lawyers consider bringing securities class action only with cases that have a higher possibility of winning and enforcing the judgment. First, to bring class action suits, plaintiff's lawyers have to bear the litigation costs and also the fee-shifting risk in the case of losing the suits, whereas plaintiffs bear those costs under securities damage suits. Next, plaintiff's lawyers in securities litigations are conditioned to be risk-averse because they are mostly small-sized firms or practically operate as solo-practitioners, with no 3rd party funding available. Third, plaintiff's lawyer's consideration of merits and enforcement largely reduces the pool of cases to be brought as securities class action suits. Merits do matter in securities class action in Korea because early settlement rarely happens. Since there is no discovery system in Korea and the alternative method of document production order is often ineffective, plaintiff's lawyers usually depend on governmental investigations to gather evidence from the defendant's side. However, the cases with preceding governmental investigations often have issuing companies under bankruptcy or rehabilitation proceeding. Therefore, only a paucity of cases satisfying the high bar of certainty of winning and enforcement may appeal to the risk-averse plaintiff's lawyers as worthwhile to bring as class actions and therefore on which to take a larger risk.

Ummey Tahura: "Will ADR be Able to Impact on Access to Justice and Litigation Costs?"
The purposes of courts or its effort to trial confining the process within the courtroom, or, rendering all possible assistance to litigants in all cases on their dockets are the few basics had been told thousands time but yet to be resolved. The shortcomings of the courts in timely disposing of cases have stimulated the growth of alternatives to the traditional court-based litigation process. However, it has been also seeking out that whether access to justice could be ensured through privatizing the court proceeding as the mediators may not be concerned about substantive justice rather focused on reaching a settlement of their dispute. Due to the growing costs of litigation and delays in the court proceedings, ADR is being encouraged amongst the litigants. Even it has been considering as the first port over ordinary court proceedings especially for the civil, family and commercial disputes through the whole world. It is sought to be popular as it offers the other options than the winner takes all outcomes that characterise the judicial process. Moreover, it is apparent that ADR is saving time and money of the litigants. The wealth disparity of the parties to the litigation may put at risk of mandatory mediation for the weaker parties. The UK courts are now imposing a future threat of financial penalty upon the parties who refuses to mediate that raises the argument that ADR has been antipathetic to the commitment of equal access to justice. A successful ADR may reduce the time of litigation whether an unsuccessful one will lead to additional cost in the proceedings. This paper will examine will ADR be able to ensure justice? And finally, how litigation expense could be reduced using the ADR system in appropriate case and time through diagnosing dispute or conflict.

Speakers

Tomohiko Maeda
Professor, Meijo University

Tu Nguyen
Postdoctoral Research Fellow, Griffith University

Hai Jin Park
Stanford Law School

Setsuo Miyazawa
Professor Emeritus (Kobe) & Senior Visiting Professor (UC Hastings), Kobe University & UC Hastings College of the Law

Ummey Tahura
Judge, Bangladesh, Macquarie University

CTS Day 3 Session D - Regions and Systems

03:45pm - 5:15pm, Dec 1
6_4_29 (Lecture 3)

2. Context, Theory and Scholarship (CTS)

Kieran Tranter (Chair)

Rostam J. Neuwirth: "Law in the Time of Oxymora: Or the Beginning of a New Mode of Cognition?"

In 1995, James N. Rosenau wrote that global governance in the decades ahead will mean “to discern powerful tensions, profound contradictions, and perplexing paradoxes”. The same year, Charles Handy declared the
current era to be an “Age of Paradox”. Yet, the discourse about global affairs is not alone with an increasing use of so-called “essentially oxymoronic concepts”, as is exemplified by many oxymora like “glocalisation”, “soft law”, “fragmegration”, “regionalization of multilateralism”, “culture industry” or “regulatory coopetition”. Oxymora and paradoxes share that apparently contradictory terms appear in conjunction. In the past, these rhetorical figures have been known to have been widely used in mysticism, religion or poetry. However, their rise in modern science appears new and potentially more troubling. The reason is that these concepts challenge binary thinking and exclusive logic, which is seemingly more at odds with a dualistic conception of law and life in a time of an accelerating pace of change and increasing complexity of problems.

It is against this backdrop that the present paper first presents evidence supporting a rise of the number of oxymora and paradoxes in art, science and notably law. With regard to law, it will ask whether these oxymoronic concepts provide a serious threat or great opportunity for the integrity of law in the future and to what extent they mark the advent of a major paradigm shift in thinking in general and legal reasoning in particular. The paper will also compare Western and Eastern foundations of logic and try to answer the question whether Eastern and particularly Chinese modes of thinking are better equipped to address the challenges arising from new realities in technologies and societies around the world.

Susan Ostermann: “Regulatory Pragmatism and Legal Knowledge: Explaining Compliance with Law in Areas of State Weakness”

The literature suggests that compliance with law is unlikely in areas of state weakness absent increased state capacity. Utilizing three novel data sets collected in adjacent districts in India and Nepal, this paper demonstrates that weak states can significantly increase compliance by fostering accurate legal knowledge—something the literature often assumes is widespread. This assumption is problematic because principal-agent problems prevent many weak states from behaving consistently; target populations, often lacking education and competent legal advice, then struggle to learn about the law via observation. States that employ regulatory pragmatism, however, may overcome this challenge; they do so by designing implementation strategies for on-the-ground realities. I investigate two such efforts—delegated enforcement and information dissemination through local leaders. The data indicate that strategies consistent with regulatory pragmatism, in contrast to those that are legally doctrinaire or deterrence-based, significantly increase legal knowledge and compliance, even where the
Yoomin Won: "Do States Listen to International Human Rights Recommendations? Case Study of South Korea and Japan"

Focusing on the Role of Civil Society as Transnational Actor Unlike domestic law, international human rights system does not have coercive enforcement mechanism. Instead, international treaties monitor states’ implementation of the recommendations. What are the factors that make improvements to human rights violations? In this process, what is the role of the civil society as a transnational actor? This paper examines in-depth case studies of South Korea and Japan. Content analysis is conducted on all reports submitted by various stakeholders in the follow-up procedure of the Human Rights Committee (“HRC”), a treaty body established by the International Covenant on Civil and Political Rights (“ICCPR”).

South Korea and Japan share some characteristics, affecting each other not only in the legal systems but also in the culture. Some common human rights issues are followed-up in both countries. Different levels of NGO participation, however, was found in Japan and South Korea depending on the type of issues. There are institutional differences between the two. While the National Human Rights Commission monitors implementation of international human rights treaties in South Korea, there is no such equivalent institution in Japan. Regarding a social change through judicial review, the South Korean Constitutional Court is very active, striking down 60 statutes per year on average since 1988, but the Japanese Supreme Court has declared a statute unconstitutional in a very few cases since 1947. Another difference is ratification of the Optional Protocol to the ICCPR, which allows individuals to bring their cases before the HRC. South Korea has a record of the largest number of decisions that found a violation of human rights among the 115 countries. Meanwhile, Japan did not accept the competence of the HRC to find violation of individual's rights. A study on these issues in South Korea and Japan adds a comparative aspect to the implementation of recommendations of international human rights institutions.

Implementation of international recommendations_Korea and Japan_Won.pdf

Luke Nottage: "Comparative Law and Society Research in and for Japan"

Japan has a long and successful history of carefully investigating and adapting foreign laws to build up its own legal system, considering their likely socio-economic impact. In addition, Japan has also exported its law, through colonization in North Asia in the first half of the 20th century, and through legal technical assistance especially in Southeast Asia since the 21st century (as explained further in Part II of my paper, for an OUP Handbook). Comparative law and society research continues to be a cornerstone for most law reform projects within Japan, with academics playing significant roles. However, law reform processes have become more complex especially over the last two decades, while comparative studies remain quite focused on black-letter law (Part III).

Japanese law in socio-economic context has also impacted on comparative lawyers from abroad, beginning from the 1960s when Japan's economy boomed, and continuing from the 1990s as economic stagnation engendered a raft of law reforms. This has generated a sophisticated comparative law literature and practice for Japan (as outlined in Part IV). In turn, methodological insights have also influenced contemporary comparative law and society research into other Asian legal systems.

Despite the strong tradition of comparative law within Japan, reinforced by innovative approaches developed as outside observers have sought to compare Japanese law, challenges arise particularly for comparative law and society studies within Japan. The main concern is persistent pressure on legal academia despite - or perhaps because of - major reforms to Japan's legal education system introduced in 2004, and linked to an ambitious justice system reform program (Part V).
CWS Day 3 Session D - ALSA Best Book Award Roundtable
3:45pm - 5:15pm, Dec 1
Princeton Room (Building 6, Level 3)

2. Context, Theory and Scholarship (CTS)

Lynette Chua (Chair)

Discussion of ALSA Best Book with author response

Judicial Decision-Making In China
Embedded Courts
Kwai Ng and Xin He
4. Crime and Misconduct (Crim)

Mari Hirayama (Chair)

Zenny Rezania Dewantary: “Death Row and The Rights of Death Row Convicts in Indonesian Criminal Justice System”

Since 1998, Indonesia has performed 84 death executions. Indonesia actively performed death executions until 2016. After 2016, although no execution has been done, there was a death penalty dropped in 2018. In relation to that, death penalty is still stated in the Indonesian Criminal Justice System (ICJS) and this makes Indonesia as a retentionist country. Death penalty delivers a death row. Death row is a prolonged death execution, which usually measured in years. This situation caused a double-punishment, where the convicted must serve in an isolation room in prison, while waiting to be executed. This waiting period seems unavoidable due to some factors. Using normative-empirical research method, this research aims to bring the fact that in Indonesia, there are several factors that have been causing a death row. In this research, this situation is tested using state responsibility principle and some international conventions Indonesia has ratified. The absence of provision related to maximum death execution time after verdict is binding without further objections, together with the hierarchical system of court trial in Indonesia is the cause factor for the prolonged death execution. To encounter this situation, the Government of Indonesia is proposed to (1) for short term goal, regulate strictly about the implementation of death execution; (2) for long term goal, to abolish capital punishment from the justice system.

Daniel Pascoe, Tobias Smith (with Trang Mae Nguyen): "Is China Exporting the Suspended Death Sentence to Southeast Asia?"

This paper examines the proposed introduction of suspended execution, traditionally recognized as a
distinctively Chinese innovation in capital punishment administration, in two other jurisdictions in Asia. In China, suspended execution is a formal death sentence for which execution of the condemned is suspended for a set period of two years, conditional on the behavior of the condemned. If the condemned individual commits a new intentional crime during the period of suspension the court shall impose the death penalty; otherwise, as is typically the case, at the end of the two-year period the death sentence is converted to a period of incarceration. China's Supreme People's Court is widely credited with using suspended execution as a diversionary policy tool to drastically reduce the number of executions that take place in China. Because suspended execution is a formal death sentence that nonetheless normally spares the life of the condemned, suspended execution has been dubbed the death penalty that isn’t” and an “honorary death sentence”.

Nevertheless, despite recognition of the policy significance of suspended execution in China, there has been no empirical study to date on the proposed introduction of suspended execution in jurisdictions outside China. In the past at least two of China's neighbors—Japan and Taiwan—considered and rejected proposals to adopt suspended execution. Today two other nearby nations—Indonesia and Vietnam—are considering similar proposals to introduce suspended execution. What are these proposals, how do they compare with the Chinese sentence of suspended execution, and when and how have they come to be introduced? These are the questions we take up in this paper.

Zalmay Mallyar: "War Crimes Against the Cultural Heritage: Case study Crime in Palmyra by ISIS"

After the Arabic Spring revolution in the Syria, ISIS as a non-governmental organized group, in the area between Iraq and Syria, started a long fierce battle against the governments of Syria, Iraq, and other countries and groups in Middle East. They were committed numerous war crimes including: war crimes against civilians, including killings of journalists, aid workers, civilians and raping women and killing children Yazidis, Christians, and Turkmen; crimes against the wounded and prisoners of war, such as the burning alive of Jordanian pilot; demolished thousands of historic artefacts such as Palmyra; and other crimes such as horrific killing soldiers and civilians like beheadings, live burning, buried alive, the enslavement of women and girls, torture, rape, imprisonment, ethnic cleansing (Kurds, Yazidis, Christians and Turkmen s) looting, destruction of towns, villages and places of religious and historical. In Afghanistan, Taliban with their radical Islamic ideas wanted to change all modern life system and made an Islamic society like the prophet Mohammad society, with same life facilities. For this reasons they destroyed all new life tools like technologies, videos, televisions, and many other things. One of the more radical Taliban groups that had ideas in the Islamic caliphate and led by Taliban leaders who had close proximity to the Pakistani intelligence agency (ISI), began to wreak havoc on ancient monuments. They believed that these were pre-Islamic or non-Islamic and everything other symbol, which haven't Islamic symbol (albeit Islamic extremists that they believed in) should be destroyed. Accordingly, they destroyed thousands of historical things. The Taliban, at the beginning of their government, destroyed the famous Bamiyan idols with thousand years. They destroyed Bamiyan's great idols with using bombs and these valuable historical monuments were considered to be human identities. These monuments were part of human history, which determined part of the life history of the people of the world. Of course, we must remember, the big difference between the destruction of the historical monuments of Palmyra by ISIS and the Bamiyan idols by the Taliban was that the Taliban destroyed it as a kind of government, but ISIS is considered a terrorist non-state group. With this reason, according to some lawyers, can make a difference in the definition of a crime and in the process of handling it. According to the customary law and Common Article 3 of Geneva Conventions, this war is a non-international armed conflict, since it is not between two States. Palmyra city is in the middle of the Syrian desert with ancient treasures, temples from 2000 years ago, ancient roads, and museum containing precious historical artifacts. This city for centuries was the caravan's stopover on the Silk Road and the center of wealth and commerce. Over time, the golden age ended and the city was under sand and soil. The Romans destroyed Palmyra in the year 272 AD. Later this area was excavated and the ruins of this city were discovered in 1980 and contains in the list of world’s cultural heritage by UNESCO. Temple of Baal, the Triumphal Arch and the majestic ruins of the city before the civil war in Syria was one of the most attractive destinations for tourists in the Middle East. Destruction of antiquities and cultural heritage of Palmyra, Syria, and Bamiyan, Afghanistan, in accordance with the Under Article 8(2)(e)(iv) of the Rome Statute, the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), 1874 Brussels Declaration, instruction Oxford in 1880, 1899 and 1907 Hague Conventions, the Geneva Conventions Quartet, Additional Protocol II to the Convention on the protection of cultural property (1999), IHL/LOAC, international human rights, decisions of the UN Security Council and customary international humanitarian law is a war crime and perpetrators, like Ahmad al-Faqi for destroying mausoleums in Timbuktu, deserve to be punished.
Plastic debris pollution is now a major contaminant on land, foreshores and in the oceans. The problem stems from producers, distributors and consumers who are involved in the use of plastic. At the international level there is an urgent need for a Convention that address the problem. At the local level there is an urgent need for the establishment of a regional framework that aspires to lowering plastic production, reducing plastic use and dealing with plastic waste. Plastic waste debris is now so serious resulting in the death of fish, mammals and birds and ultimately affecting the health of humans that urgent measures need to be introduced to tackle the problem. This paper argues that solutions need to be found in the Asia Pacific region to deal with this 21st century hazard. The paper gives an overview of the plastic waste problem and existing legal frameworks with a focus on China. It suggests innovative responses and the challenges faced in their introduction.
In Northeast Asia, dust and sandstorms (DSS or yellow dust storms) emanating from the deserts of Mongolia and inland China have historically been affecting the Korean peninsula and Japan. Since China’s massive industrialization along its east coast, emissions from coal power plants, factories, and vehicles have soared massively. Burning fossil fuels generates significant amounts of particulates and gases of NOx, SOx and VOCs, which in turn form particulates through photochemical reactions. In order to reduce transboundary air pollution, the regional countries (Russia, Mongolia, China, North and South Korea, and Japan) should cooperate together. Despite the clear and growing threat in Northeast Asia, no international legal regime for addressing transboundary air pollution has been established, unlike other regions in the world. Nevertheless, since 1990s, Northeast Asian countries have also made efforts to cope with regional environmental issues by establishing bilateral and multilateral settings in various occasions. It is crucial to build trust in the region through scientific evidence collected by joint research of the countries in the region. It is more practical to sign on the very basic principles for information exchange and consultation among regional countries. More advanced rules may be developed and amended with time through protocols or annexes. Preexisting international institutions should be fully utilized. The UNESCAP East and Northeast Asia Subregional Office, which is located in Incheon, South Korea, can be utilized by Northeast Asian countries. International liability rule is difficult to be realized and is not an essential means for achieving environmental goals. Transboundary air pollution treaties do not typically state liability provisions, but rather adopt flexible provisions to build relationships. Nevertheless, implementation of those agreements turned out to be successful in reducing transboundary air pollution.

Jeanne Huang (with Jiaxiang Hu): "Can Free Trade Agreements Enhance MARPOL 73/78 Compliance?"

Whether Free Trade Agreements can effectively encourage states to comply with the International Convention for the Prevention of Pollution from Ships and its Protocols although the latter has not been well researched, although the latter has been incorporated into the former since the U.S.-Peru FTA in 2006 and most recently in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership in 2018. This paper explores the FTA’s achievements and deficiencies to enhance marine environment protection from four aspects: flags of convenience, the vague role of coastal states, affecting trade or investment, and dispute resolution. This paper concludes with proposals to address the deficiencies.

Moon-Hyun Koh: "Current Status of Korean Project on Carbon-Dioxide Capture and Storage (CCS) as a Large Scale Reduction Means to Greenhouse Gases and Korean Draft of CCS Act"

The energy and climate debate is among today’s most pressing and most relevant points of discussion. There are different strategies for meeting the future energy demand without harming the climate.

Carbon-Dioxide capture and storage (CCS) is a climate change mitigation option that reduces CO2 emissions by capturing them at major fossil fuel combustion plants and other industrial facilities such as bitumen upgrades, and storing them underground.

Exactly because nuclear energy will be banned in South Korea in the future, CCS will increasingly be in the focus of the debate on climate protection, since at the moment, renewable energies are not yet sufficiently available to guarantee a nationwide energy supply.

Under these circumstances, recourse to energy generation from coal is the most obvious option. CCS might make this type of energy generation a low-carbon option.

Therefore, some related Korean Ministries such as Ministry of Environment, Ministry of Trade, Industry and Energy and Ministry of Maritime Affairs and Fisheries etc. have supported research and development on CCS to research institute under the Ministry. Into the bargain, these ministries have tried to make a proposal of Korean Carbon-Dioxide Capture and Storage Act, KCCSA in short Korean.

By the way, Germany tried to make Carbon Dioxide Storage Act, KSpG(Kohlendioxid-Speicherungsgesetz) in short German. But the first proposal of German Carbon Dioxide Storage Act(2009) did not pass in the Senate (Bundesrat) because of unsolved safety risk and ambiguous liability. Especially, people of potential carbon dioxide storage site opposed this proposal strongly. We can learn a lot from trials and errors in process of legislating...
German Carbon Dioxide Storage Act. Bearing in mind bitter experiences of Germany, we can't emphasize the importance of public acceptance on CCS too much.

This essay is composed of four chapters. The first chapter is an introduction. The second chapter is on current status of Korean research and development project on CCS as a large scale reduction means to greenhouse gases. The third chapter is outline of a proposal of Korean Carbon-Dioxide Capture and Storage Act. The last chapter is conclusion.

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**Speakers**

### Patricia Blazey
Senior Lecturer, Macquarie University

### Young-Geun Chae
Professor, Inha University

### Jeanne Huang
Associate Professor, University of Sydney Law School

### Kaywah Chan
Senior Lecturer, Macquarie University

### Moon-Hyun Koh
Professor, Soongsil University

### Ben Connors
Adjunct Lecturer Faculty of Law, University of Technology Sydney

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**Ec Day 3 Session D - Intellectual Property**

🕒 3:45pm - 5:15pm, Dec 1

📍 6_2_12 (Lecture 1)

#### 7. Economy (Ec)

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**Mauro Zamboni (Chair)**

**Muhammed Atiqur Rahman:** "Access to Knowledge in the Age of Digital Copyright: Developing Country Perspective"

The transformation from the industrial economy into the knowledge economy has converted Knowledge into a commodity. Privatization of knowledge is considered as the key to economic development. The Digital copyright law is developing in the developed country following this myth. Though the traditional copyright law created a buffer zone for the public to access the knowledge in the name of fair use or exceptions to copyright, it is diminishing in the digital laws and initiatives. Consequently, access to knowledge is getting limited in legitimate
digital contents. In this context, this paper explores the questions: (1) Which is important between control and openness of knowledge for economic, social and cultural development?, and (2) Is it optimal for developing country to frame the digital copyright law restricting access to knowledge? Based on the literature review, the paper argues that the knowledge is the purest form of public good in which access is required for securing the economic, social and cultural development of a nation. However, the privatisation is required in limited terms to provide an incentive to the creators for their creation. Though the developed countries to benefit from the digital economy is restricting the access to digital knowledge, the developing country, like Bangladesh, is not in a critical circumstance to include such measures in their law. Rather, the digital copyright law in developing country needs to balance the interests of the owner and the public keeping the flow of knowledge and mitigate their development needs.

Asanka Perera: “Navigating the Road to Development through Intellectual Property: A Sri Lankan Case Study”

Intellectual property laws are seen and promoted as a vehicle for economic development of a country, particularly in the global south. These laws are shaped by global scripts such as TRIPS and transferred to relevant member states with such promises of development. Although such transfers and their implementation at local level are assumed to be straightforward, this legalistic framework of law making process includes interaction with various global and local actors that may be more complicated than initially assumed or anticipated.

The systems theory is helpful in understanding the transfer of global scripts and its influence over the law-making process in a particular jurisdiction. According to the systems theory, the society is fragmented into different communicative social subsystems, which interpret the law based on their own criteria and languages. Accordingly, once a global script like TRIPS is transferred to a recipient state, their legal systems are open to external knowledge from other subsystems such as political, economic and social discourses that impact on the construction and reinterpretation of the meaning of the global script on their own terms and needs. This paper will rely on the systems theory to explore the patterning of social connections among individuals and groups in Sri Lanka to understand the effectiveness of her patents and music copyright laws and their ability to foster economic development in this Asian nation.

Chair

Mauro Zamboni
Professor, Faculty of Law, Stockholm University

Speakers

Muhammed Atiqur Rahman
PhD Candidate, Law School, Macquarie University

Asanka Perera
Assistant Lecturer, Monash University

5:15pm

Concluding Keynote
5:15pm - 6:00pm, Dec 1
Lynette Chua: "Legal Mobilization and Authoritarianism"

Studies based on authoritarianism build the foundation of legal mobilization scholarship and continue to advance this area of law and society research. The contributions of these studies, which include research based on Asian settings, become apparent when we take the view that authoritarianism is all over. That is, authoritarian regimes are found in all societies— as nation states and as enclaves, such as subnational territories, institutions, and social spaces. Scholars who examine whether and how people use the law in such diverse authoritarian settings, in Asia and elsewhere, bring out the malleable, situational, and plural nature of legal power. They find that law, in collaboration or complicity with other sources of power, can impede legal mobilization. They also detail how individuals and groups, nevertheless, can use the law to challenge authoritarianism, by carrying out formal, quasi-formal, or non-formal actions that encompass more than courtroom litigation. Although legal mobilization outcomes are mixed and often paradoxical, studies based on authoritarianism show that law can sometimes benefit disadvantaged populations, and offer keen reflections on legal power. Viewing authoritarianism as a phenomenon in varied sites is a step forward for law and society scholarship, as the field increasingly attracts scholars from around the world, including Asia. This view expands the possibilities for studying legal mobilization, especially for conducting robust comparative analyses. Furthermore, taking this view exposes the precariousness of liberalism, and explicitly acknowledges that most people around the world live under domination and subjugation of one form or another.
Kota Fukui / Yuka Kaneko: Report on ASLA2019 in Japan
Leon Wolff and Setsuo Miyazawa: Closing Comments

ALSA2018 Commemorative Photograph

 Speakers

Leon Wolff
Associate Professor, QUT (Queensland University of Technology)

Yuka Kaneko
Kobe University

Setsuo Miyazawa
Professor Emeritus (Kobe) & Senior Visiting Professor (UC Hastings), Kobe University & UC Hastings College of the Law

Kota Fukui
Professor, Osaka University