Abstract for the Fourth East Asian Law and Society Conference

Session 1-15
(Paper Session) Governance and Democracy in the Changing World
Public Engagement in Biobanking—Why and How to Integrate We the People in Bioethical Discourses
Chao-Tien (Cindy) Chang, National Chiao Tung University

A biobank is a collection of biosamples and data, usually interlinked with other databases, that serves as a resource for wide-ranging future research. There have been large scale biobanks around the world, which have been considered as an infrastructure for the developments of biomedicine and biotechnology. Biobanking is now stretching the limits of traditional bioethics with regards to its regulatory and ethical controversies, and many reforms proposed to address these controversies point toward an increased role of public engagement in biobanking. This article analyzes why public engagement becomes necessary in the context of biobanking, and how the idea of public engagement could be put into practice.

Public engagement is necessary, as the current ethical and regulatory framework is ill-equipped to deal with the new challenges of biobanks’ technical, ethical, and social complexity. Among debates of the three major bioethical controversies of biobanking— informed consent, privacy and confidentiality, and ownership and benefits, many solutions embrace public engagement. Biobanking is also particularly in need of democratic legitimacy and requires public engagement, due to its too many grand and complicated socio-economic implications. Many initiatives of public engagement have been taking place to formulate ethics as well as to join in governance. This article summarizes six models of public engagement: group consent, community consultation, public consultation, shareholder or stakeholder participation, and patient-centered initiatives. These initiatives also face the challenges of participants’ competency, assurance of accountability, and the necessity of cost control. This article concludes that biobanking could be a significant example to support the idea of democratization of bioethical decision-making.

Bringing the Sunflower Movement into Perspective through Theories of Democratic Consolidation
Jimmy Chia-Shin Hsu, Academia Sinica

In March 2014, Taiwan experienced a massive student movement, the so-called “Sunflower Movement”, in which thousands of students occupied the Legislature for
three weeks in protest of the government’s trade/service agreement with China. The implications of this movement for Taiwan’s democracy continue to be subjects for debate. Some have positively regarded it as a triumph of people’s voice against an overweening presidency. Some have condemned it as lawless actions that left Taiwan’s democracy scarred. However, I think most commentators have not based their assessments on a competent theoretical framework. In this article I will do just that. I propose a theoretical framework deeply rooted in contemporary “transitology” or “consolidology” in democratization literature, in order to bring this movement into perspective. Moreover, I enlist the concept of “public sphere” made famous by Juergen Habermas, so as to fill a gap largely unaddressed by contemporary democratization literature. By public sphere I mean a network of social institutions which enable the public, the state, and the civil society to exchange information, deliberate and debate significant political issues. While this theoretical framework has a parochial purpose of illuminating Taiwan’s democratic development, it has universal implications, because it shows that contemporary transitology has largely failed to treat public sphere as a distinct field from the civil society. This confusion leads to inaccurate assessment of Taiwan’s democratic development.

I argue that the movement showcases the deep divide in Taiwan’s public sphere. Through Barry Weingast’s model of democratic consolidation, I argue that the movement played out the politics of fear and is the climax of a deeply polarized politics that has gathered momentum since the completion of transition to democracy. The political polarization has divided the political sphere so deeply, that rational dialogue and free exchange of information across political camps has become extremely difficult. A deeply divided public sphere coupled with an increasingly active civil society prompted by deep fear of Chinese annexation, all together contributed to the temporary breakdown of the political institutions. The future of Taiwan’s democracy requires all major actors to realize that though apparently Taiwan has consolidated the electoral side of democracy, it is still quite fragile in its political foundation, fractured by different attitudes toward China. Therefore, the future design of the constitution should build in mechanisms that avoid winner-takes-all type of political competition. And a lot more attention should be paid to constructing a robust public sphere in order to facilitate continued genuine dialogue across political camps.

Human Security Approach to Human Rights Due Diligence

Yasunobu Sato, The University of Tokyo
The United Nations' Guiding Principles on Business and Human Rights in 2011 provide for Human Rights Due Diligence (HRDD) to be conducted by business enterprises. HRDD was recommended to them to practice respect for human rights in their business activities. It is incorporated into their risk management in order to avoid accusation of complicit of human rights violation, which is committed by business partners in their supply or value chains. Although it was invented as an operational tool of global companies to respect human rights in developing countries, its effectiveness is yet known. Rather, given a case study in Cambodia, in which ANZ Bank funded a land grabbing company, which also allegedly used child labour, the local farmers are double victimised by such accusation by Oxfam Australia since ANZ Bank terminated business relationship with the company without compensation for them. So far the victimised farmers' access to remedy has not yet realized in this case. For addressing local reality of such vulnerable people for prevention of human rights violation and remediation for such violation, human security approach can be considered as value free comprehensive and holistic approach to compensate for limitation of human rights. It considers other relevant factors of labour rights, environment, governance and conflict sensitivity together. For such human security approach, human security index should be developed for assessing the local situation for better way of redress. It can be also developed for business enterprises to select better business partners for sustainable business.

Developing the Rule of Law in Authoritarian States: A China and Vietnam Comparison
Hualing Fu, The University of Hong Kong Faculty of Law  (Co-Author: Jason Bushi)
China and Vietnam are probably the best reference points for each other for comparative studies of legal reform in spite of their significant differences in size, population, and economic scale. First and foremost, their political systems are very similar. Both are socialist states under the leadership of a communist party whose role is entrenched in the national constitution. Both legal systems share common political (Soviet) and cultural (Confucian) origins. Both governments claim to be committed to building a socialist rule of law state that offers constitutional protection of human rights. And, significant legal developments in both countries are often overlooked or dismissed by foreign observers as mere rhetoric.
This article will begin by identifying common constitutional features in Vietnam and China, including the dominance of a communist party, commitment to developing socialist rule of law, and a need to respond to public unrest to maintain stability and legitimacy. After establishing that common baseline for reform, it is argued that Vietnam is presently doing a better job of managing its reform efforts because of deeper
normative commitments, a more open and cosmopolitan reform perspective and, most importantly, a political will to embrace deeper reform. For all of these reasons, constitutional reform, the development of the rule of law, and the legal protection of rights seems to be more meaningful in Vietnam than in China for the time being.

**Session 1-16**
(Paper Session) Children, Elders and Vulnerable People

**Child Welfare Law and the Children's Charter in Japan: Their Historical Origins and Significance**

Shinobu Odagiri, Seitoku University

The end of the Second World War, in 1945, marked the beginning of a new Japanese democracy and welfare state; however, each concept is rooted in its own origins. This paper discusses the latter, especially the origins of Japanese child welfare programs. The Children's Charter of 1951 and the Convention on the Rights of the Child of 1989 were epoch-making events because they showed, for the first time, that children are human beings, members of society and important people. Now, we must provide good surroundings for all children.

**Access to Justice for the 'Most Vulnerable' Person Facing Family Problems**

Teiko Tamaki, Faculty of Law, Niigata University

Besides general concern of access to justice theme, the importance of focusing on so-called vulnerable people has widely been pointed out as a practical issue that due to their 'vulnerability' they may have more difficulties and awkwardness than the other people. It has become common to see various bodies and organization of both official and private setting up supporting systems for those people categorised as 'vulnerable group'. Although there is no definition, various people are included within 'vulnerable group' e.g. the elderly, children, persons with any kind of impairment, people with low income. While an access to justice issue promotes ordinary citizens to find their own way to solve problems and find justice, those 'vulnerable group' have more opportunities to be assisted by professionals and intermediaries of both legal and non-legal. However, it would be challenging for those people who may yet to be seen as 'vulnerable' or whose problem may not be handled in the same way as others because the problem does not fit in the current legal framework. For instance 'sexual minority'/LGBTI people are not necessarily viewed as 'vulnerable' in Japanese society. Since the current social and legal systems relating to family are designed based on a traditional family norm, people in same-sex relationship and transgendered person face more serious problems.
upon constructing family relationship life. They may well behind from others in terms of making access to justice because their problems are not in the same legal arena. The paper therefore aims to clarify who can be the most ‘vulnerable’ in terms of access to justice in family matters and problems, how their ‘vulnerability’ may be measured, and that who or what kind of intermediaries and mutual groups may support their access to justice in Japan, in reference to practice and policies of other countries.

**Factors Underlying Japanese Elderly People’s Perceptions of The Legal System: Approach from Quantitative and Qualitative Survey**

Aya Yamaguchi, Japan Society for the Promotion of Science, The University of Tokyo

Most Asian countries including Japan have been rapidly aging in the 21st century. Many of elderly people are facing legal challenges such as adult guardianship, estate planning, and consumer troubles. Moreover, previous studies claimed that there are financial, physical, psychological, and informational barriers usually encountered by elderly people. However, the ways these barriers affect elderly people have not been clarified. This study focuses on Japanese elderly people's perceptions of legal system and individual differences. Two studies were conducted to identify the factors affecting the elderly's perceptions. The first study surveyed 949 participants in the capital area through the internet. Their age range was between 20 to 79 years old. The results revealed three underlying factors concerning perceptions on legal system: reliance on legal professionals, negative image for legal system, and avoidance from law. The first and most important factor was associated with annual family income, frequency of internet use, difficulty of going outside, and experience in legal consulting. Meanwhile, the second study interviewed ten elder participants living in the capital area. The respondents were composed of eight males and two females. Half of them had consulted with lawyers while the remaining had not. Some of the interviewees argued that legal resolution is affordable while those who had experienced legal consulting thought it should be avoided. In conclusion, financial status, information literacy, physical problems, and experience in legal consulting play an important role in the elderly’s perceptions of legal system. Although perceptions may not directly affect one’s behavior, the results suggest that legal service providers should develop specific and appropriate approaches in assisting elderly people.

**Bargaining in the Shadow of Children's Voices in Divorce Custody Disputes**
Comparative Analysis of Japan and the U.S.
Hiroharu Saito, Attorney / Harvard Law School (LL.M.)

This paper discusses the social impact of hearing children’s wishes in the judicial procedures for divorce custody disputes by comparing the different legal systems in Japan and the U.S. In particular, by employing the analytical framework of “Bargaining in the Shadow of the Law” originally suggested by Mnookin & Kohnhauser in 1979, this paper theoretically discusses the potential backlash on parents’ bargaining outside the court of empowering children’s rights to be heard inside the court.

There has been a child advocacy movement in Japan to empower children's participation right in the judicial procedures based on the UN Convention on the Rights of the Child, and the act for family court procedures was reformed in 2011 accordingly. However, this paper argues: (i) in general, the more the legal system empowers children's right to be heard in the judicial procedure, the less opportunity children might have to be heard outside the court in the society (i.e., during the parents’ negotiations outside the court); and (ii) particularly under the unique Japanese divorce system, the 2011 reform might rather hinder the social change to empower children in the society — children might rather lose their opportunity to be heard outside the court. In order to really empower children in the society, it might be an idea to grant children not only the procedural rights at the court but also the substantive rights regarding parents' divorce.

Session 1·17
(Paper Session) Victims in Criminal Law & Criminal Procedure
Trial and Error: A Restorative Justice Experience in Korea
Won Kyung Chang

The objective of this study is to examine the practices of a Korean criminal court in its attempts to employ principles of restorative justice in ten serious criminal cases in 2013. The theory of restorative justice seeks to create an alternative, dynamic, and on-going process through which society can react to crime. This process should be negotiated and agreed upon by the parties most directly involved in particular offenses—victims, offenders, supporters of both, and other valid stakeholders. Initially introduced by criminal justice scholars in the early 2000s, restorative justice theory became increasingly influential in criminal justice policy discussions in Korea. Since the late 2000s, several pilot programs employing restorative justice theory were implemented by criminal justice agencies, including the Seoul Metropolitan Police Agency, the Supreme Prosecutor’s Office, the Seoul Family Court, the Seoul Probation Office, and the Seoul
District Correctional Facility. Furthermore, the Supreme Prosecutor’s Office officially adopted criminal mediation in 2007 to achieve reconciliation between the victim and the alleged offender in criminal property crime cases and minor violence cases in the pre-indictment phase.

In spite of these active attempts to carry out restorative justice practices by criminal justice agencies, questions of whether such practices can be a viable alternative are still raised. The most frequent objection to the idea of restorative justice is that no restorative justice program would ever be able to attain its fundamental goals: healing individuals emotionally, deepening offenders’ accountability, and restoring relationships. Victims, still emotionally vulnerable, might be pressured to forgive the offender before they are psychologically ready to do so. Offenders are as psychologically vulnerable as victims and might suffer emotional harm if forced to publicly acknowledge responsibility for deep-seated character flaws. A brief encounter among victims, offenders, and other stakeholders may also be insufficient to effectively alter most offenders’ emotional and moral relations with victims and other members of society.

By addressing these criticisms of restorative justice, this study investigates to what extent and in what situation restorative justice practices can contribute to the recovery of victims’ and offenders’ emotional and moral relations. The practices of restorative justice analyzed by this study were implemented by the Bucheon Branch Office of Incheon District Court in Gyeonggi Province. In 2013, this office carried out a model restorative justice project, which was the first attempt in Korea to apply restorative justice principles to serious adult violence cases in the post-prosecution phase. Ten cases underwent the four different restorative justice models of practices conducted by six private restorative justice institutions. By analyzing the reports of these practices written by an organizing judge, facilitating restorative justice practitioners, and participating attorneys, this study shows the needs of each participant (namely, victims, offenders, supporters of both, and attorneys), the moments when participants’ needs are met, and the factors that contribute to the recovery of participants’ emotional and moral relations.

Victim Participation in Japan - When Therapeutic Jurisprudence Meets Prosecutors' Justice

Erik Herber, Leiden University

This paper examines the practical functioning of the system of victim participation in Japan, against the background of the goals that this system was aimed to achieve. It in addition addresses the interaction between the new “therapeutically oriented” system in practice, and “traditional characteristics” of Japanese criminal justice.
On the basis of legal reforms introduced in 2000 and 2008, victims contribute to courtroom proceedings by presenting their own information, perspectives and views, while teamed-up with public prosecutors. Victims’ new role brings about new therapeutic concerns for victims’ well-being, that translate into standards and expectations concerning courtroom participants’ appropriate behaviour. To the criteria in terms of which defendants are judged and evaluated a therapeutic criterion is added. As victim participation is put into the service of traditional criminal justice goals, public prosecutors’ position and “traditional” ways of judging defendants are reinforced.

Emotion, Proof and Prejudice in Victim Impact Videos/Photos

Satoshi Yamamoto, Kanagawa Institute of Technology

The current framework for sorting the probative from the prejudicial considers “emotion” to be the hallmark of unfair prejudice. Emotions elicited by evidence are thought to “inflame” the jury and “cause them to abandon their mental processes.” This inaccurate view of emotion as the enemy of rationality is problematic for evidence law. We argue for a more sophisticated and nuanced view of emotion’s role in evaluating proof and prejudice. The emotions elicited by evidence affect not only the decision maker’s appraisal of the evidence, but also the process of deliberation. For example, anger toward the defendant elicited by victim impact statements may result in an inability to remain open to evidence favoring the defense, to greater certainty about the verdict, and to a desire to punish. Other emotions, such as sadness or sympathy, have other effects on the deliberative process. Conversely, emotional responses to evidence play a role in assessing probative value, and this function of emotion receives little or no recognition in evidentiary discourse. For example, to determine whether a victim impact video/photo is unduly prejudicial, it is also necessary to consider whether the photo contributes any additional value to the deliberative process beyond the victim and his bereaved family’s testimony. Without accounting for the role of emotion in the reasoning process, it is difficult to examine how the medium affects the message. Without accounting for the role of emotion in the reasoning process, it is difficult to examine how the medium affects the message. The value added lies in the video/photo’s additional persuasive power, which is closely tied to its emotional impact. Whether the emotions evoked by evidence interfere with deliberation depends on what emotions the evidence evokes, how they affect the deliberative process, and what the deliberative process is meant to accomplish.

The Birth of "Women-children": Focused on Clause 360 of Criminal Law of The People
Republic of China

Zhou Xiao, University of Tsukuba

According to clause 360 of Criminal Law of China, “Those who visit young girl prostitutes under 14 years of age are be sentenced to five years or more in prison an addition to paying a fine.”

The purpose of this paper is to demonstrate how the category that “Women· children” was defined and explained in the society of law by analyzing the clause 360 of Criminal Law of China.

The research method of this paper is Discourse analysis. And the objectives of analysis are articles, books, political documents and legislative proposals since 1949 which can show the process how the category of “Women·children” was birthed, and how to be used as “girl under the age of 14” self-evidently by the person who are in the society of law.

In this paper, the category that “Women·children” is created and used on purpose. The reason why this new category to be used is that by using this category we can have to distinguish it from “Girls”, “Minors”, “Children” etc. obviously. Those category was explained as the legal entity frequently while the person in the society of law were analyzing specific charges especially sex crimes such as clause 360.

Through analyzing the birth of “Women·children” historically, this paper is anticipated to show the inner definition of the category was changed by the person in the society of law, as well as to clarify the characteristic of “Women·children” that was strategically constructed by the person in the society of law.

Session 1-34

(Paper Session) Transformation of Legal Systems in East Asia

Mapping Human Rights Norms in Pluralistic Legal System in Indonesia: Issue of Child Marriage in West Java

Hoko Hori, Nagoya University

This paper disentangle the complicated situation of child marriage in Indonesia from the perspective of legal pluralism, based on the analysis of the court decisions and the interviews with judges. Indonesia is one of the countries where people favor customary laws over state laws regarding child marriage, which leads to violation of human rights norms. In order to understand who and how transplants abstract human rights norms into the vernacular of everyday life, this study tries to map norms on child marriage in the Indonesian legal order from the perspective of legal pluralism. Today, international human rights laws bear ethical, theoretical and practical challenges in their implementation in each society. As a legal order has multi dimensions, e.g. state law,
religious law, customary law, and so on, the difficulties of implementation arise at every
dimension of plural legal orders. Hence legal pluralism is the key analytical tool to
understand the mechanism of implementation of exogenous international human rights
laws. Some scholars argued that human rights norms would spread more effectively and
with greater legitimacy if they take into account other legal orders than state law, but
this was never theorized, and very few case studies have been done to strengthen this
claim. This multi-disciplinary methodology, combining law and sociology, or law and
anthropology, is inevitable to grasp the legal reality in the current situation of
fragmented human rights implementation, and truly functional proposals can be made
only when they are based on comprehensive and deep understanding of the situation.
On this score, this paper will be the first step for providing a practical way forward in
light of complex legal realities as it grapples with the challenges of international human
rights law through the lens of legal pluralism.

The Convergence of Private Law in East Asia: What Can We Learn from European
Example of Ius Commune?

Gang Luo, University of Paris 1 Panthéon-Sorbonne

At the regional and global levels, the convergence of the law, particularly of the
private law, is a topical issue, and generally there are two approaches, i.e. hard law
(international convention) approach and soft law approach. In this regard, European
legal civilization led and is leading the way, for modern law is to a large extent more
linked with European (western) values and less with Asian values. In fact, European
concept of ius commune has many different meanings. Historically, ius commune
normally refers to a common legal science (doctrine) mainly based on Roman Law
(Corpus Iuris Civilis) and Canon Law (Corpus Iuris Canonici). Today, ius commune is
often used to denote a set of legal rules shared by the various EU states, something of
the future, a goal to be achieved. Prior to the modernization of the law, Confucian
values were shared by legal traditions of East Asia, and China led the way. From the
mid 19th century, western values began to penetrate into the laws of East Asia, and
Japan led the way. In the field of private law, Germanization, to some extent,
contributed to convergence of private law in East Asia. For example, the 1911 Great
Qing draft civil code (China) was modeled after 1898 Meiji Civil Code (Japan) mainly
based on German model and Meiji Civil Code was also used in Korea from 1910 to 1945.
The aim of this article is to afford East Asia lessons that merit attention by exploring
the contributing factors to the emergence of European ius commune from the historical
(Romanization and Christianization of law) and geopolitical (across-the-continent and
across-the-sea divide) perspectives, and also to evaluate various approaches (hard law e.g. CISG, and soft law approaches, Confucianization and Germanization of law) to realization of convergence of private law in East Asia.

Environmental Democracy and Developments in East Asia

Noriko Okubo, Osaka University

This presentation discusses the legal developments of Principle 10 of the Rio Declaration (Participation Principle in environmental matters) in East Asian countries. This Principle could also contribute to ensuring the environmental rule of law. However, implementing Principle 10 depends on the social and cultural conditions of each country and region. Therefore, it is important to analyze the common characteristics and issues of each region, and to share good practices. In many developing countries in Asia, participation rights have been strengthened dramatically since 20 years. In contrast to this rights-based approach, it is a characteristic of Japan to adopt a kind of voluntary-based approach and to have many experiences in environmental education. It may be important to appropriately combine the rights-based approach and the voluntary-based approach in Asia. In this sense it would be useful to consider fostering Principle 10 by a regional instrument in Asia, such the Aarhus Convention in the UNECE region.

The Competence of Interpretation of Basic Law of the Macao Special Administrative Region of the People's Republic of China

Miyuki Sato, Kyorin University

Basic Law of the Macao Special Administrative Region of the People's Republic of China (Macao Basic Law) is the code that describes the fundamental principles of the government in Macao. In this presentation, I would like to seek the reality of the policy “One country, Two systems”, that is, in some means, a kind of the practice of legal pluralism. As the higher norms of Macao Basic Law, exist Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the question of Macao and Constitution of the People's Republic of China. On the Declaration, there is a view that this international accord does not have any effect as the norm on the material legal order.

On the contrary, there is a view that the Declaration has legal character as the international constitutional accord, different from normal international laws: Basic Law is under the Declaration and can not be against the declaration. This theory is insisted one of the Portuguese lawyers. On account of the Chinese Constitution, generally
speaking, we can see that, as legal source, the majority of Portuguese lawyers do not think the Chinese Constitution, but the Declaration. While many Chinese lawyers consider that the Chinese Constitution is the standard of interpretation of Basic Law in general. However, in the Chinese legal system, whose top is the Constitution, there are different opinions on where Basic Law takes its position. Roughly speaking, Basic Law is situated under the Chinese Constitution and above the usual legislations. Another theory puts Basic Law on the same level of the Chinese Constitution. The view, that considers Basic Law formally as special law of the Constitution and materially is above the Constitution, is presented critically. On the other hand, some Portuguese lawyers express the position that the Constitution does not be applied totally and the articles excluded by Article 31 of the Constitution should be realized by Basic Law. Consequently, the some provisions against the Constitution are allowed. With regard to the competence of interpretation of Basic Law by the Macao tribunals, there are two positions. One is that the competence of interpretation of Basic Law is delegated by the National People's Congress. This view is, in general, expressed by Chinese Lawyers. The other position is that it comes from originally from Basic Law itself.

In short, it is said that the policy “One County, Two Systems” is becoming a mere name. The equilibrium of the Macao's modern version of Legal Pluralism is found in the situation of allowance of the real power balance. Namely, the views expressed by Chinese Lawyers are more prevalent than those of Portuguese equivalents. that it comes from originally from Basic Law itself. In short, it is said that the policy “One County, Two Systems” is becoming a mere name. The equilibrium of the Macao's modern version of Legal Pluralism is found in the situation of allowance of the real power balance. Namely, the views expressed by Chinese Lawyers are more prevalent than those of Portuguese equivalents.

Fight Fire with Fire: Writing Down Legal Customs of Taiwan's Indigenous Peoples with the History of Medieval Western Law

Tzung-Mou Wu, Institutum Iurisprudentiae, Academia Sinica

This paper discusses what the history of medieval Western law and its historiography can contribute to the compilation of Taiwan's indigenous legal customs, as well as the possible challenges. Taiwan's case is of particular scholarly interest because of the union of three features, namely: (1) civil law jurisdiction, (2) settler's sovereignty, and (3) reception of a third-party normative system, which is the modern western law. Taking as example several issues relating to parts of the civil code, this paper evaluates whether some working concepts with which continental medievalists grasp normative
phenomena, such as "legal custom" instead of "customary law", and the experience of a
decentralized, multi-layered normative system pave the way to a systematized
compilation of indigenous customs.

Session 1·35
(Paper Session) Legal Terminology and Concept in Transition
Legal Referencing and Asian Legal Discourse
Frank Bennett, Nagoya University
Discourse is shaped to the contours of information access: this is as true of writing on
law and policy in Asia as it is of other disciplines and regions. With that proposition as a
starting point, this paper considers observed patterns of referencing in formal writing in
English on law and policy in selected Asian jurisdictions in the light of several factors:
the state of technology and publishing; the influence and interest of foreign audiences;
language constraints; and the distribution of power within systems in transition. The
article concludes by relating the state of legal research and publishing in Asian
jurisdictions to access-to-law developments in North America and Europe, and by
noting possible futures for development in the region.

Two Approaches to Simplify Japanese Civil Law Terminology
Mami Okawara, Takasaki City University of Economics
Legal terminology is often incomprehensible to lay people. In this presentation we
would like to introduce two approaches to plain civil law terms: a linguistic approach
and a legal approach.

In the linguistic approach we selected 98 Japanese civil law terms, using the Modern
Japanese Corpus analysis of those terms. The selected 98 words were divided into two
groups through analysis of the actual usage of those words in the corpus: ‘misunderstood’
terms and ‘difficult’ terms. ‘Misunderstood’ terms indicate where a single word has both a legal meaning and an ordinary meaning, so that lay people commonly misunderstand the word when it is used in its legal meaning. We have
concluded that the ‘misunderstood’ terms require more careful explanation than
‘difficult’ terms.

In the legal approach we have extracted four keywords of the Japanese civil code:
nouryoku (capacity), ishi (intention), kou (act, conduct), kouka (effect). These four
words represent the legal theory of the Japanese civil code and are also ‘misunderstood’
terms. We would like to present paraphrases of the four terms and their derived lexical
items. We would like to demonstrate that the legal approach is also effective at
Rule of Law in Theory and Discourse in Korea

Jonathan Kang, Yonsei Law School

The rule of law is a dominant norm and mode of discourse in the twenty-first century, but at the same time its meaning, scope and significance are all being heavily contested in both theory and practice. Definitions of the “rule of law,” both thick and thin, are legion, and the concept has also become the lens through which various political, legal and economics institutions are understood, evaluated and reformed. In legal and political philosophy, few concepts have received as much scholarly attention in recent years.

Despite the explosion of scholarly and professional interest in the rule of law, there is no consensus about what it means. The rule of law has been characterized by different scholars and policymakers as purely conceptual and essentially institutional, procedural and substantive, descriptive and normative, necessarily connected to democracy and easily divorced from it, a prerequisite of economic development and a redundant appendage, only achievable in liberal state and open to abuse by authoritarian states. Such is the deep dissonance surrounding the rule of law that some scholars have asked whether the idea of the rule of law is “essentially contested” and therefore impossible to define.

In this paper, I argue that any meaningful analysis of the rule of law must take into account the variability, normativity and contextual nature of the concept of the rule of law. Given the contested nature of the rule of law as a norm, evocations of the rule of law as a seemingly neutral principle of constitutional adjudication is problematic. To make sense of the rule of law, the focus must be on what particular purposes or values that norm is to serve in a particular time and place. I will argue that there is an inherent tension between the pressure and need to adopt “thick” conception(s) of the rule of law to go beyond the limitations of “mere” procedural justice, and the pressures of liberal neutrality in connection with most dominant conceptions of constitutionalism. Accordingly, there is a need for greater transparency and specificity with respect to invocations of the concept of the rule of law. There needs to be broad recognition of the fact that the norm cannot be applied consistently as a neutral “legal” conception, such that the purported distinctions between law, politics and morality cannot be maintained in the realms of constitutionalism and constitution justice.

Educational Law as Instrument or Framework: Who Interpret the Concept of “Rule of
Mentioning the concept of “Rule of Law,” there’s a gap between the perception of people and the modern theories of what ought to be practiced by the government in nowadays Taiwan. This lack of substantive understanding of the concept led to the alienation from laws, making Taiwanese unable to apply laws into their right-claiming activities. By comprehensively browsing Taiwan’s history of how the government affected people’s understanding toward laws through controlling the publication of educational laws, this article aims to analyze how governments and civil society wrest within the modern law system to interpret the concept of “Rule of Law.”

First, educational laws under both the Japan and KMT government functioned as instrument aiming at the governor’s interests. After Qing Dynasty ceded Taiwan to Japan in 1895, Japan had soon published modern educational laws, which were Emperor’s power exclusively, providing lessons aiming at making Taiwanese submit to the Emperor. Afterwards, the Two Chiangs took the same educational policy after R.O.C assumed its control of Taiwan in 1945, publishing numerous administrative orders about “the course standard” to provide lessons making people submitting to KMT.

Second, there’s a turning point in 1980s that educational laws started to function as framework. During the Lee Teng-Hui Era, under the stress of civil society and DPP, KMT partly opened the process of the deciding of the course standard. This turning point gave the educational system more possibilities of different versions of interpretation about the concept.

Last but not least, this article would take the controversy about “the fine adjustment” on the course outline in 2014, which happened after KMT came back to regime, for example, to indicate how this framework turned to play instrument for KMT.

This paper first gives an overview of the several types of lesser property interests allowed by the Taiwan Civil Code and provides statistics as to how often property owners in Taiwan utilize these forms. The Book of Things in Taiwan Civil Code was overhauled between 2007 and 2010. This article coded the amendments and found: (1) 97% of the proposals by the task force (composed of property scholars and judges) were accepted verbatim by the legislature; (2) property laws in Japan, Germany, and Switzerland heavily influenced this round of amendments. The (unconventional) story
behind the legal changes is that scholars and judges are the “interest group” that drives these amendments. The business world is generally uninterested in changing the abstract Taiwan Civil Code. Generally speaking, the new law, as proposed by this interest group, is more efficient than the old law, as, for instance, the new law decreases information costs for third parties in several aspects. The findings also have implications for the debate regarding the evolution of property rights and the long-term efficiency of the common law versus statutes.

Session 1·36
(Paper Session) Structure of Company and Employment
The International Legal Transplant of Labor and Employment Law from U.S. and Japan into Taiwan: the Law, the Society and the Agency
Bo-Shone Fu, University of Wisconsin Madison Law School

The different evolution paths of these laws revealed a typical theme about the vital role that local culture and legal systems play as foreign legislations are introduced into a local society. Close analysis reveals three main factors that can explain the disconnect and variation between the original law and the transplanted law: the difference between case law and civil law systems, the institutional alteration during the transplantation, and cultural differences between the two societies. Taiwan is a vivid example of such a legal transplant. In the past two decades, Taiwan has transplanted Title VII of the United States Civil Rights Act of 1964 with the purpose to change workplace behavior. Taiwan also transplanted part of the National Labor Relations Act from U.S and Japan with the intent to foster unions and improve labor relations. Its Congress enacted these laws in the hope to use institutions to alter inappropriate conduct and unbalanced societal structures. These laws did not seem to work as effectively as in the United States, however, as the Taiwanese society did not apply the transplanted labor and employment laws as the original law anticipated.

To reveal the cause of the ineffectiveness and incompliance, this article will begin by analyzing the legal history and policy behind United States labor and employment institutions in the past decades, to recognize whether the law being transmitted and started to change behaviors successfully. The regulatory analysis will also assess how the laws were promoted from law in books to law in action. Finally, theses compares the National Labor Relations Act and Title VII of the Civil Rights Act to Taiwan's transplanted laws to evaluate what obstacles appeared in Taiwan's transition, and possible strategies that Taiwan can adopt to move forward.
Japanese Labor Law: Between Social Stability and Economic Efficiency

Caslav Pejovic, Kyushu University

Japanese Labor Law: Between Social Stability and Economic Efficiency

The Japanese government is trying to revitalize its economy, and legal reform of employment law is among the top priorities. The goal is to enable a transition from the system of protection of employment toward a more liquid labor market with a greater mobility of the workforce.

The labor issues represent a serious challenge for the government and its ambition to restructure the economy. Reluctance of the government to take bolder steps in relaxing rules on dismissal indicates that something more important is at stake. Law and economics approach has some limitations here. The issue is not just matter of which way would be more economically efficient. Long-term employment became an integral part of the Japanese society and its existence is not tied merely to economic factors. One of the key issues in possible reforms of long-term employment is that any of the future solutions will have to consider both economic and social implications.

Japan needs a solution that preserves social stability that protection of employees has provided, and also achieves flexibility of the labor market that can contribute to a more efficient economic model. These two goals are based on the same considerations that represent the basis of the bipolar approach to the explanation of the nature of long-term employment: socio-cultural and economic. These goals are not necessarily incompatible: the key point will be how to find a proper balance between them. This paper will attempt to identify what proper balance would be in the context of labor law.

Women's employment rights in Japan and Poland: a comparative approach

Urszula Muszalska, University of Wroclaw

To solve the problem of gender-based labor inequality and we can find various legal solutions proposed by the countries worldwide. Undoubtedly one of the most interesting are Japanese and Polish employment provisions providing protection of women in the employment law. The paper compares Japanese legal provisions of the Labor Standards Law, Equal Employment Opportunity Law and Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members with Polish provisions of the Labor Code. The author presents similar legal solutions in the protection of women’s rights in the employment law, as well as the differences. As an effect of the comparison, the author points out strengths, as well as the weaknesses. This research compares two different legal cultures, that can learn from each other to improve their employment legal provisions, and work on reducing
the gender gap as well as to minimize the discrimination in the working environment. The paper also presents data provided by the World Economic Forum in the Global Gender Gap Report 2014 for Japan and Poland, to present the differences in the Gap Index between those two countries in the working environment.

Corporation or GmbH? The choice and use of legal business forms in Japan

Takashi Shimizu, The University of Tokyo

The purpose of this paper is to investigate the relationship between economic and social changes and the choice and use of legal forms of business (such as corporations, partnerships, private limited liability companies etc.), and thus examine how legal business forms were actually used in business by using the case of Japan before and after World War II

The importance of legal business forms as a device to support economic development has already noted by scholars (e.g., Fogel, 1964; Guinnane et al. 2007). However, there have not been sufficient studies on how legal forms of business are actually used in business. This paper attempts to fill this research gap by analyzing the impact of social and economic changes before and after World War II on the choice of legal business forms empirically.

In 1940, Japan introduced a type of private limited liability company (PLLC) which was designed based on German GmbH. After that, the number of the PLLC increased rapidly. However, just after the defeat of WWII, there was an upsurge of the number of business corporations and it lasted until around 1950. After 1950, the increasing rate of PLLCs exceeded that of corporations again.

This paper tries to find out the reason why these changes occurred by investigating the difference between those two forms as well as functions of those forms in business, using reports by the central and local governments and related organizations, and newspaper articles. Especially, this paper focuses on two functions of legal business forms - finance and protection of internal organization - and how firms use those two functions in a specific context.

Function and Methodologies of Human Rights Indicators: Towards Elaboration of Indicators on Participation on the Environmental Matters

Yukari Takamura, Nagoya University

United Nations Human Rights Office of the High Commissioner (OHCHR) has initiated its attempt to elaborate human rights indicators. There has been a growing demand from various stakeholders, including national and international human rights
activists and policymakers, for indicators for use in human rights assessments and in furthering the implementation and realization of human rights: indicators are seen as useful for articulating and advancing claims on duty-bearers and for formulating public policies and programmes that facilitate the realization of human rights.

Such an attempt is very much interesting to look into when we elaborate indicators on participation: as the Aarhus Convention and Bali Guidelines show, some human rights, such as right to know, clearly have significant relevance, or even more they constitute a part of right to participation in policy making, including environmental decision making.

Human rights indicators adopt three step approach. First, we should identify characteristics/attributes of a right; as the second step, we should identify indicators, which would be categorized as structural, process and outcome indicators as well as cross-cutting indicator; and the last step is to make choice of appropriate data which represent each indicator. Structural-Process-Outcome indicators approach derives from the field of development, which has been more familiar and understandable to policy makers, especially in developing countries. This approach allows more careful and three-dimensional assessment on progress made by States, at the different dimensions, i.e. its intent/commitment, actual actions and measures, and the overall impact and effect.

In applying tentatively the methodologies for elaboration of indicators on participation on environmental matters, challenges are to find most representative/appropriate (preferably quantified/quantifiable) indicator(s); to capture the overall progress and achievements of participation principle through indicators; and how to reflect differences of the context, especially of governance.
process. Civil law systems traditionally use inquisitorial trial

Verification on results of civil justice reform through field survey for litigants and citizen

Ikuo Sugawara, Waseda Law School

In Japan, judicial reform has started from 2001 based on the recommendations of the justice system reform council and more than ten year has passed. The presenter has conducted 6 field surveys on civil litigation system from 2000 to 2013 to verify result of several reform on civil judicial system. Three of them are for litigants and other three of them are for ordinary citizen who has no experience of litigation. As all of them include same question on evaluation of several aspects of civil judicial system, the presenter can not only analyze the data from chronological perspective, also compare the result between litigants and ordinary citizen to find results of the reforms. The result of analysis show that the evaluation of the questions on “system is user-friendly” and “people are satisfied the system” are improved on one hand, on the other hand, “intention to use/reuse the system” and “intention to recommend other person to use the system” had decreased. Like this finding, in some aspects, there are good evidence that show the reforms have good results, but in some other aspects there are several evidence that show opposite direction. In the presentation, the presenter will discuss the reason why such contradict results has appeared.

The Role of Lawyer Experience in Tort Litigation: An Empirical Study

Yun-Chien Chang, Institutum Iurisprudentiae, Academia Sinica (Co: Author: Kong-Pin Chen, & Chang-Ching Lin)

Many empirical researches have investigated the effect of litigating with or without representation of attorneys, few have the data to tease out the effect of lawyers’ experience in litigation outcome. In this paper, we use the setting of pain and suffering damages for personal injury to test the effect of lawyer experience. The determination of pain and suffering damages in Taiwan is discretionary. We have coded 750 district court cases, in which at least one party is represented by attorneys, rendered between 2013 Sep. and 2014 Sep. The important facts of these cases, including the level of injury of the victims, their income and medical expenses, etc., are coded. We also coded the 225 high court cases during the same time frame, to control for the effect of high court decisions on district court decisions. The tortfeasor’s criminal judgments are also coded and controlled. To tease out the role of lawyer experience, we also control for the experience of the judges.
We acquire from Pinglu Web, a legal service provider in Taiwan, the data on judges’ and lawyers’ experience. We know from these data sets the number of litigated cases all lawyers in Taiwan have represented and led to court rulings. We also know how often a lawyer represents the government, business, or individuals; and the distribution of dispute types a lawyer handles, to measure her expertise in tort issues. The number of years on the bench and the number of signed legal opinions by all judges in Taiwan are also known to us.

With these rich data, we use a structural equation model to measure whether experienced lawyers can, when other things are equal, earn a higher pain and suffering damages for their clients than inexperienced lawyers.

Non-pecuniary Damages for Defamation, Personal Injury, and Wrongful Death: An Empirical Analysis of Court Cases in Taiwan

Jimmy Chia-Shin Hsu, Academia Sinica (Co-Author: Han-Wei Ho & Yun-Chien Chang)

In March 2014, Taiwan experienced a massive student movement, the so-called “Sunflower Movement”, in which thousands of students occupied the Legislature for three weeks in protest of the government’s trade/service agreement with China. The implications of this movement for Taiwan’s democracy continue to be subjects for debate. Some have positively regarded it as a triumph of people’s voice against an overweening presidency. Some have condemned it as lawless actions that left Taiwan’s democracy scarred. However, I think most commentators have not based their assessments on a competent theoretical framework. In this article I will do just that. I propose a theoretical framework deeply rooted in contemporary “transitology” or “consolidology” in democratization literature, in order to bring this movement into perspective.

Underlying the movement is Taiwan’s definitive political cleavage, the conflict between Taiwanese and Chinese national identities and visions toward Taiwan’s future relations with China. Through Barry Weingast’s model of democratic consolidation, I argue that the movement played out the politics of fear and is the climax of a deeply polarized politics that has gathered momentum since the completion of transition to democracy. The political polarization has divided the political sphere so deeply, that rational
dialogue and free exchange of information across political camps has become extremely
difficult. A deeply divided public sphere coupled with an increasingly active civil society
prompted by deep fear of Chinese annexation, all together contributed to the temporary
breakdown of the political institutions. The future of Taiwan’s democracy requires all
major actors to realize that though apparently Taiwan has consolidated the electoral
side of democracy, it is still quite fragile in its political foundation, fractured by
conflicting national identities. Therefore, the future design of the constitution should
build in mechanisms that avoid winner-takes-all type of political competition. And a lot
more attention should be paid to constructing a robust public sphere in order to
facilitate continued genuine dialogue across political camps.

Self help and self execution in cyberspace

Hironao Kaneko, Tokyo Institute of Technology

Social networking services, such as Facebook and Twitter make us easily to
communicate and express our opinions through the world. At the same time these
personal media can be used as enforcement of private right or prosecution of the other’s
activities. For example, a consumer claiming a piece of plastic mixed in food staff posts
photos on the SNS and request spreading message. Based on Judicial system, self
execution and self prosecution should be prohibited without exceptional circumstances.
In this paper, I would like to discuss about the meaning of self help in cyberspace.

Session 1-43

(Paper Session) Punishment: Effect and Limitation

Death Penalty Policy of Contemporary Asia

Ananta Rilo Pambudi Hutomo, Far Eastern Federal University

Death Penalty in the sentencing practices in the legal world is still debatable. The
attitude of agree and disagree between countries or international institutions which the
fundamental problems relevant whether the death penalty is still applied today. The
concept of the death penalty is still regarded as a deprivation of one’s life. The right to
life assessed non-derogable and cannot be excluded under any circumstances. Currently
there are some countries that still apply the death penalty as the maximum
punishment, to give a deterrent effect. Indonesia is one of the countries that still apply
the death penalty in the positive law. The threat of the death penalty is explicitly
affirmed in various laws and regulations in Indonesia. Indonesia still sees the need to apply the death penalty as a maximum punishment, but must be specified and selective. The problem arises when the presence of foreign nationals involved in the extraordinary crimes in Indonesia and sentenced to death by a court in Indonesia. Indonesia as a state of law has a jurisdiction of law and sovereignty that cannot be contested, while on the other hand the country of origin of the convicted person does not want the death penalty imposed by the Indonesian government. Using descriptive analytical approach, this paper describes and analyzes the legal regulation of the death penalty made by the Indonesian government and connecting with Asian region. This condition is very important to emphasize the function of a state law that must be respected by other countries. Applicable legislation is expected to not only be able to resolve national issues, but also become a bridge for internationals interests. Asian region has the potential to experience a variety of conflicts of criminal problems, by imposing the maximum sentence. Legal regulation becomes a tool for connecting a wide range of issues between countries with the right justice. Multilateral agreements for the countries in the Asian region became noteworthy things as a commitment to fight against the extraordinary crimes and not just debating the sentence. Integrity of the countries in the Asia region will be shown by the through an agreement respecting the legal jurisdiction of each country and is committed to fight against crime with a maximum penalty structured.

**Legal consciousness of the Japanese in the SNS**

**Shinya Komatsu, Recruit Administration Co., Ltd. (Co-Author: Shozo Ota, Natsuko Maruo & Tosiki Shimizu)**

In the current Japan, the Internet has spread rapidly. As a result, SNS has become an important communication tool. On the other hand, “behavior problems” in the SNS are frequently, and have been featured in the news. In addition, legislation has not kept enough pace with advances in web technology in Japan. Therefore, we conducted a survey of the web twice to reveal people’s awareness. As a result, “behavior problems” in the SNS is evaluated as "not allowed ". Furthermore, "punishment" for “behavior problems” was found to be missing at present. In particular, questions of law for "behavior problems" have been rated as extremely low. Also, liability for compensation of the "problem behavior" is also a low level. These results provide that it is required to more heavy “punishment” and more heavy “monetary compensation” in Japan.
Criminal Law in PR China and Japan

Jing Lin, Max Planck Institute for Foreign and International Criminal Law

Although Asia is a vast region with immense diversity, Asia countries do share some common features of legal culture: First, law was traditionally not the primary guiding principle of Asian society, and to some extent, still is not in many parts of Asia. This leads to the second remarkable feature: shame rather than guilt, so-called “face culture”, plays a significant role in maintaining social order and achieving security. Besides the traditional legal culture, Asia countries are exposed to influences from other parts of the world in the era of globalization, especially from the Western Europe and the USA. In the context of aforementioned Asian legal culture, this paper is to study the role of criminal law in controlling corporate crime in the era of globalization in PR. China and Japan. As a last resort control instrument, criminal law is perceived as a “benign big gun” by John Braithwaite in his theory of responsive regulation. That is, criminal law is a “gun” which forces a company to enforce self-control, which is however not necessarily to be pressed. Through a comparative observation in China and Japan, this study assumes that the “gun” works and only works in a social context where reputation cost of corporate crime is high, which is mirrored in the aforementioned “face culture”.

What do drug offenders require to re-integrate into society?

Soichiro Omiya, Center for Forensic Mental Health, Chiba University (Co-Author: Aika Tomoto, Yoshito Igarashi & Masaomi Iyo)

In Japan, 25.1% of the male inmates and 38.3% of the female offenders are incarcerated for abusing methamphetamine (MAP) and violating Stimulant Control Act. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees in 2005 stipulates that the inmates receive correctional relapse prevention programs as in-house treatments. In addition, the new Act for a Partial Stay of the Execution of Sentences to pass to persons who have committed offences of the use, etc. of drugs will be put into effect by June 2016, and based on the law, more smooth re-integration of the drug offenders into society is required.

Previous studies show that drug abusers need continuous support. If they are unlikely to have such support after being released, the relapse prevention program and other appropriate treatments they receive in prison can have little or no effect. The present research review studies on imprisoned drug offenders and discuss the problems relating to substance abusers’ transition from prison to community and their re-integration into society.
Lawyers as Cultural Holes: The Rise of Lawyers and the Fall of the State in Korea Circa 1895-1909

Chunwoong Park, University of Illinois at Urbana-Champaign

I argue that lawyers in Korea became professionals by playing the role of “cultural holes” during a period of political transformation from 1906 to 1909. By “cultural holes,” I mean social agency that links two different legal systems and practices and therefore empowers that originate from the brokerage role. After demonstrating the creation of a structural chasm between the traditional and the modern-yet-still-colonial legal systems during this transformation through archival research circa 1895 to 1909, I explain why lawyers, who did not become professionals until 1906, quickly became prominent through their role as cultural brokers who claimed both the need and legitimacy of legal knowledge. This study recommends the importance of understanding the rise of a profession in its proper historical context.

New Attorneys Career Trajectory and Their Self Perception - The 62nd Cohort of Attorneys in Japan

Akira Fujimoto, Graduate School of Law, Nagoya University

It has been just over 5 years since the 62nd cohort of new attorneys registering for the first time in late 2009. In this paper, I will show some results from the quantitative analysis of our survey and the text analysis of our interview data with the respondents, focusing on those who is registered in a small town with a few lawyers. Since the number of those attorneys is so small that we need to do so in addition to some multivariate quantitative analysis to explore the determinants of their career track. Half of our respondents have already changed his or her office. For those who started his or her career as an associate, the traditional career track, having their own law firm after being associates for a few years, is still the case for the 62nd apprenticeship cohort. It takes just less than 3 years until standing their own legs. We observed a trend from big city to small town as well as to the area with a few lawyers. There is a general trend from the bigger law firms to the smaller law firms. By our qualitative analysis of our interview data, we found the two types of career pattern for those in the small towns. One is those who were eager to serve in those areas since their very first stage of career. The other is those who decided to move to those areas after learning the reality of the job market while they worked as associates in relatively big cities. Even the former type of attorneys had once a job in bigger cities as associates for their on-the-job training as
same as the latter type. In addition to those two types, the small number of attorneys goes to those areas just because he or she could not find any job in bigger cities. Based on these findings, I will argue for the needs to support systematically the new attorneys, especially in the small town.

**The Characteristics and Structure of the Lawyers' Work in Japan: A Data Analysis of the 2010 Bar Survey**

*Atsushi Bushimata, Fukuoka University, Faculty of Law*

Japanese legal profession is currently in transition. The new entrants into the profession have surged in a recent decade. What is the effect of this change on the social structure of the bar? I approach this fundamental question by investigating the characteristics of lawyers' work. First, I will describe some major aspects of lawyers' work by using the survey data collected by Japan Federation of Bar Association in 2010. Then, I will explore changing patterns of work in terms of practice fields. Finally, I would like to clarify the change and continuity of work patterns and discuss the implication of findings.

**Income, Job Satisfaction, and Concern for the Future of New Lawyers in Japan**

*Keiichi Ageishi, Otemon Gakuin University*

What factors affect Japanese new attorneys' income, job satisfaction, and concern for the future? According to "Chicago Lawyers", lawyers' educational background, their race, and other individual background of them affect firm sizes they belong to, it affects their practical settings, and it affects their income in the US. How about Japanese lawyers? Who earn higher income, and why? And what lawyers feel satisfied with their job and concern for the future? Based on our surveys on young attorneys in Japan, this presentation will explore factors which determine their income, satisfaction, and concern for the future.

**Session 1-54**

*(Paper Session)* Socio-Legal Theory in Legal Practice

*Why Should Jurists Care about Empirical Legal Studies? The Empirical Foundation of Normative Arguments*  

*Peng-Hsiang Wang, Institutum Iurisprudentiae, Academia Sinica*

Empirical legal studies thrive in the U.S. but not so much elsewhere. Yet even in the U.S., in what way empirical work is useful for legal arguments, which are normative, remains an unanswered question. This article first points out the junction between
empirical facts and normative arguments. Both teleological and consequentialist arguments, in one of the premises, require “difference-making facts,” which point out causal relations. Many empirical researches make causal inferences and thus constitute an essential part in teleological and consequentialist arguments, which are normative. Then this article offers a descriptive theory of legal reasoning. Some empirical researches do not make causal inference, but they still fall within the domain of legal scholarship, because describing valid laws is a core function of doctrinal studies of law, and sometimes only sophisticated empirical researches can aptly describe laws.

**UPL rules in USA vs. related professionals in Japan—Formal Legality & Substantive Legality**

**Naoya Endo, Fairness Law Firm**

1. Japan vs. USA

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<tr>
<th></th>
<th>Japan</th>
<th>USA</th>
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<tbody>
<tr>
<td>Population</td>
<td>125,000,000</td>
<td>310,383,948</td>
</tr>
<tr>
<td>Lawyers</td>
<td>35,000</td>
<td>1,268,011</td>
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<tr>
<td>Per one lawyers</td>
<td>3,571</td>
<td>245</td>
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<tr>
<td>Related pros.</td>
<td>185,000</td>
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<tr>
<td>Lawyer &amp; pro.</td>
<td>2,200,000</td>
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<tr>
<td>Per lawyer &amp; Repro.</td>
<td>568</td>
<td></td>
</tr>
<tr>
<td>Others</td>
<td>many</td>
<td></td>
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</tbody>
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II. UPL rules (Unauthorized practice of Law)

1. Client Protection
2. Effective Administration of Justice
3. Professional Discipline
4. Minimizing Competitive Practices

III. Unified lawyers system

In Europe, lawyers system has been unified after following USA. But lawyers in Europe are fewer than in USA because of no UPL rules.

It is difficult for Europe and Japan to adopt UPL rules, but it is possible for Japan to adopt unified lawyers systems. The reason or merit of this system has not been obvious theoretically. By my result from jurisprudence, the integration of formal Legality and substantive legality is the most important concept to understand the legal system.
IV.2 Dimension in Rule of Law

1. The natural law and legal positivism.

Formal legality
Obedience to law and order, prospective, certainty, generality, uniformity, abstract,

Substantive Legality
Natural law, humanity, human right, liberty, equality, peace, welfare, justice, flexibility,
changeability, diversity, tentativeness, equity, urgency concrete.

V. Hard Law & Soft Law

1. Hard Law

Major element of hard law is formal legality, and minor element is substantive legality.

2. Soft Law

The first important element of soft law is formal legality. But, major element is substantive legality.

VI. Out-of-court legal work

Up to 19 century, lawyers work in court incorporated substantive legality with formal legality, but related profession obeyed formal legality.

From 20 century, out-of-court legal work have developed, and needed substantive legality. As a result, unified lawyer system in Europe and Japan should be inevitable.

VII. Incremental dynamic legal reformation

The Dialectical Process: the Chinese Lawyers’ Structured Struggle in Corporate Bankruptcy Law Practice

Zhizhou Wang, University of Wisconsin-Madison

In China, the legal profession is playing an increasingly important role in the field of corporate bankruptcies. Those expecting that the establishment of a market-oriented and professional-steering system of bankruptcy nevertheless witnessed a rising paradox. On the one hand, the Chinese bankruptcy lawyers are still struggling in bankruptcy law practice and in particular have encountered considerable difficulties in administrating bankruptcy proceedings. On the other, the institutionalization of corporate bankruptcies in China has increasingly endorsed and facilitated the importance and prominence of the legal profession, drawing mounting number of lawyers to bankruptcy
administration and other areas of bankruptcy law practice. To understand this paradox, this article draws on Bourdieu’s field theory and proposes a dialectical approach to examine the Chinese lawyers’ bankruptcy practice. This article argues that (1) the Chinese lawyers’ involvement in bankruptcy practice and their role in the bankruptcy proceeding are both structured by a symbolic force of the field which is in turn rooted in the power relations between the dominant actors in the field of corporate bankruptcy; and that (2) the increasing prominence of the legal profession in the field of bankruptcy is a result of the lawyers’ symbolic struggle in promoting their desired vision of the bankruptcy institution. It is in this dialectical structuring/struggling mechanism that the behavioral modes and practice strategies of bankruptcy lawyers can be comprehensively understood. Bridging the “force” of the field that grows out of the power relations among in-field actors and the struggle of active social groups that aims to reshape the field, this dialectical social process reveals the functioning and transformation of the field.

Global Restructuring: The Transnational State-ness of Four Courts of Global Jurisdiction

Joseph Conti, University of Wisconsin-Madison

The proliferation of international courts and tribunals poses questions about the forms, modalities, and territorialities of state power. Global governance is the dominant paradigm for understanding international order, emphasizing “horizontal” volunteerism and cooperation, while retaining the inter-state system as its basic framework. This approach fails to fully account for the internationalization and de-territorialization of power. Recent efforts to move beyond the emphasis on cooperation and address the authoritative capacities of international organizations also only partially addresses emergent processes of restructuring of state power. The authority of international courts and tribunals is simultaneously associated with changes in what national states are, where their boundaries lay, and the specific state powers claimed and realized in practice. The concept of state-ness provides analytic leverage over these changing formations of state power resulting from the juridification of international affairs. State-ness refers to variation in the degree to which there are superordinate institutions of domination in society that possess the superordinate authority to make binding rules and superordinate coercive capacity to enforce them. It is derived from the social science literature on state formation and sensitized to ongoing changes in the modalities of state power and rule.

This article derives several indicators of state-ness and uses Boolean techniques of
qualitative comparison for small samples to examine four courts of global jurisdiction: the dispute settlement body of the World Trade Organization, the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and the International Criminal Court (ICC). The analysis demonstrates variation on each of the measures for state-ness for each court. The ICC and WTO — two courts outside of the United Nations system — exhibit relatively stronger forms state-ness in how they mediate the power of national states but also assert superordinate authority in ways previously reserved by national states.

Session 1·55
(Paper Session) Regulation on Corporate Activities
A Comparative Study of the Australian Immunity Program and the Chinese Leniency Program
Vai Lo Lo, Bond University, (Co-Author: Jinheng Feng, & Xiaomin Fang)
Since 1978, the cartel leniency program has existed for over three decades. The first fifteen years seemed to be a dormant period, but since 1993, the past two decades witnessed a swift surge in instituting leniency programs in more than sixty jurisdictions. Over the years, there has been plenty of theoretical support for the cartel leniency program. However, with regard to the effectiveness of the leniency program in practice, inconsistent views exist among different jurisdictions and stakeholders. In evaluating new leniency programs, scholars and commentators have often made references to the US and the EU models, but little attention has been paid to the question of whether it is desirable to apply the orthodox cartel leniency program in designing various leniency programs in different jurisdictions and societies. Given that Australia has recently revised its cartel immunity program for the third time and China’s competition authorities has proactively relied on the leniency program to combat cartels, this paper presents an apple-versus-pear comparison by first examining these two immunity/leniency programs and then providing socio-legal reasons for a deviation from the orthodox model when instituting leniency programs in different jurisdictions.

Industry help enforcement? The case of European RoHS directive
Mizue Kama, Tohoku University
In early 1970s, many developed country faced some kind or another environmental issue such as air pollution, water or soil contamination and/or health hazard by chemical substances. Of course, our government set many environmental regulations to solve environmental issues. Nevertheless, our planet still has various environmental issues, and we feel the need for extra environmental regulation. It means that past
environmental regulations have not solved environmental issues.
In this situation, EU set new type of environmental regulation and it aim to improve environmental performance of products such as battery, vehicle and electrical and electronic equipment. This “new” regulations had began to be set in early 2000s. These regulations aim to accomplish the EU’s goal – high level of environmental protection – and harmonize member states regulations. Of course, EU regulations effect only in EU. However, they have spread around the world. Nowadays, the “new” regulations have affect among member states in many ways. How the regulations have been influenced?

It is sticky to make clear the difference or similarity because of the lack of dependable information. And so, in this study, collect information on the basis of an interview with responsible person of enforcement agency. This investigation has revealed that enforcement stage among member states has various implementation methods, and they are problematic from the standpoint of equality. However, many major manufactures comply with “new” regulations and almost of industry success to observe too.

Industrial partnership and implementation is the key of “new” regulations have been become widespread among the world.

Regulatory Framework for Virtual Currency, focusing on Bitcoin, in Asian Countries

Jenweeranon Pawee, Nagoya University

Because the increasing number of using Bitcoin in this decade and there is no legal framework that provides clear-cut definition of Bitcoin or supports unique function of this type of digital currency, the appropriate legal and regulatory framework should be considered. This paper will analyze this legal and regulatory framework for Asian countries for regulating Bitcoin payment.

From aforementioned statement, legal issues that will be discussed in this paper can be separated into two groups as follows:

(1) Regarding money laundering issue, using of Bitcoin makes it more difficult for government organizations and financial institutions to investigate sources of money and lead to money laundering problem. Even there is preventing mechanism, for instance “Know Your Customer” system which is created by financial institutions in many countries, but it still has many practical problems.

In Australia, even there is Australia’s Anti-Money Laundering and Counter-Terrorism Financial Act 2006 and the Australian Transaction Reports and Analysis Centre but there are no regulations which can capture Bitcoin payment.
In China, from the Notice on Precautions Against the Risks of Bitcoins issued by the central bank of China and four other central government ministries and commissions, it required strengthening the oversight of Internet websites providing Bitcoin registration, trading, and other services but there is still no efficient mechanism to prevent using of Bitcoin for money laundering. Due to this reason, China has restricted banks for using Bitcoin and started drafting new law for regulating Bitcoin payment.

(2) Regarding tax issue, there are no laws and regulations for tax in Bitcoin payment in Asian countries. The lesson from German that the government has recognized Bitcoin as money taxable should be considered as a model for Asian countries for drafting their own laws.

Consumer Product Safety Measures Bridging Chasms between Businesses and Consumers

Midori Tani, Ministry of Economy, Trade and Industry

When measures for product safety are discussed from legal perspectives, product liability laws are focused often. This tendency emphasizes chasms between businesses and consumers. Since product liability lawsuits start from confrontation, interests of businesses are regarded to be the opposite to those of consumers. However, there are different measures to ensure product safety for consumers, many of which bridge chasms between businesses and consumers, based on an understanding that businesses and consumers have a common interest to prevent accidents.

In order to find effective measures to ensure product safety, this paper classifies various measures and compares them in order to grasp the constellation of measures that functions as the optimal infrastructure for efficient consumer product markets, which are beneficial to both businesses and consumers.

The paper introduces two sets of axis for classification of product safety measures. The first set focuses on the methods to create norms and to ensure compliance with them. The second set focuses on “actors” and “targets” of measures. Then, key measures for consumer product safety, including but not limited to product liability laws, are classified. Among them, certain category of measures, such as standardization and sharing information of accidents associated with products, are pointed out to bridge chasms between businesses and consumers, because they are effective for ensuring product safety by promoting common interests between businesses and consumers, such as reduction of information costs for preventing accidents. When actors act in markets in order to maximize their interest, measures to
promote their common interest create an infrastructure in which actors gain by cooperating with each other.

My analysis are based upon my experiences in consumer policy at Ministry of Economy, Trade and Industry (METI), in a study group in Research Institute of Economy, Trade and Industry (RIETI), and studies conducted by the Japanese government.

The Enforcement of Competition Law and the Establishment of a National Competition Committee in China

Weidong Ji, Koguan Law School of Shanghai Jiao Tong University

Given the achievements and limits of the legislation and practice of Chinese competition law, further reforms and measures are needed. For the purpose of promoting market competition and reinforcing the execution of competition law, this article urges the establishment of a national completion committee with following contents:

1. Reasons for More Competition in China
   1.1. The Economic Focus Had to Shift towards Productivity and Added Values
   1.2. A Compulsory Reflection on the Development Model and Industrial Policies with Chinese Characteristics

2. The Process of Competition Policy-Making in Contemporary China
   2.1. The Introduction of Bankruptcy and Hard Budget Restraints on Enterprises
   2.2. The WTO Promises and the External Pressure of Market Reform
   2.3. The Legal Development of Anti-Monopoly and Anti-Unfair Competition
   2.4. Institutional Innovation of the China (Shanghai) Free Trade Zone

3. The Enforcement of the Competition Law
   3.1. The Power of the Competition Law Enforcers
   3.2. Civil Lawsuits of Competition Law
   3.3. Punishments on Commercial Bribery

4. Several Opinions by the State Council on Promoting Fair Competition and Maintaining Law and Order in the Market
   4.1. The Rationale of Greater Emphasis on Competition Policy and Its Principles
   4.2. More Efforts on Penalising Monopoly and Unfair Competition
   4.3. The Problem of a Multi-agency, Multi-layer Enforcement and Its Solution

5. The Rule-of-Law Routemap and Competition Policy by the Fourth Plenary Session of the Eighteenth CPC Central Committee
   5.1. To Renew Our Understanding of Government from the Perspective of Public
Management

5.2. Renewed Efforts of Market-Friendly Legislation

5.3. The (De)Merits of Laissez-Faire towards Market Competition

6. Restructuring the Competition Law System

6.1. The Existing Competition-Law Regulatory Agencies Lack Authority and Consistency

6.2. The Establishment of a National Competition Committee: A Preliminary Conception

6.3. Revising the Competition Law and the Quick-Response Solutions

Session 1-56
(Paper Session) Policing & Prosecution in East Asia

The causes of "cracked trials" in Hong Kong

Kevin Kwok Yin Cheng, Faculty of Law, The Chinese University of Hong Kong

Guilty pleas are the primary mode of case dispositions both in Hong Kong and in other common law jurisdictions. Guilty pleas are thought to provide the defendant with an opportunity to demonstrate his or her remorse and thus secure a sentence discount. For the state, guilty pleas alleviate court resources which would otherwise be needed for lengthy trials, allow prosecutors to devote attention to other matters, and spare witnesses from having to testify and be reimbursed from the public purse. However, when a defendant pleads guilty immediately before the start of his or her trial, it has the ironical effect of squandering an even greater amount of public resources. This occurs where the defendant has elected for trial during initial plea arraignment (when the plea was first taken) and changed his or her plea to guilty before the start of the trial. This contributes to the phenomenon called “cracked trials” because the trial has been rendered obsolete.

This paper will present some preliminary findings of a large-scale study funded by the Research Grants Council of the Hong Kong Special Administrative Region. Courtroom observations are used to track a large sample of criminal cases in a Hong Kong Magistrates’ Courts from initial appearance to trial. These observations will allow quantitative data to be collected for a series of legal and extra-legal variables that will likely affect plea decisions. This study will help to identify which variables are most likely to influence the defendants’ decisions to change their pleas. Based on these findings, this study will offer policy recommendations to balance the efficient operation of Hong Kong’s justice system whilst assuring that innocent defendants are protected.
The changing face of public area surveillance in Japan
Benjamin Goold, Faculty of Law, University of British Columbia

This paper provides a critical overview of recent developments in the use of electronic surveillance technologies – most notably closed circuit television cameras (CCTV) – by the police and private organisations in Japan. In particular, it considers the extent to which these developments have mirrored recent changes in the use of such technologies in countries like the UK and the US, and whether Japan can be said to have developed a distinct approach to the development of public area surveillance. The paper also examines the role of Japanese privacy law in the regulation of technologies like CCTV, and whether a new approach to privacy protection is needed in the face of the spread of mass surveillance in Japan.

The Faces of Prosecutorial Independence: European and American-style Prosecutorial Personnel Policy, Decisionmaking, and Reform Discourse in Japan, Korea, and Taiwan
Neil Chisholm, Academia Sinica, Institutum Iurisprudentiae

The systems of criminal prosecution in Japan, Korea, and Taiwan share a common heritage and history of politicization. In these systems, prosecutors have traditionally been selected according to their performance on examinations, trained within the prosecution system, and promoted according to merit. Not only have these personnel policies been used to influence prosecutors, as similar personnel policies influence judges, but prosecutors experience an independence threat not faced by judges – hierarchical decision-making. Prosecutors can be directed by their superiors in investigations, charging decisions, and more, and their cases can be reassigned to other prosecutors relatively easily. This paper traces the concept of prosecutorial independence from Europe, particularly Germany, to Japan to Korea and Taiwan. It then analyzes how the concept has historically been expressed in East Asia and how prosecutorial behavior has compared to the ideal of at least limited independence. In particular, the paper examines prosecutors’ treatment of high-profile cases, especially those involving the “Special Investigation Bureau,” an institution which was invented in Japan and spread to Korea and Taiwan and has been used to centralize politically sensitive cases for political manipulation. The paper then examines how these East Asian jurisdictions have debated and adopted reforms that represent the introduction of American-style democratic accountability for prosecutors. These institutions include the grand jury, elections or political appointments for prosecutors, decentralized offices, and independent counsels. The entirely different historical development process of the Anglo-American prosecutors, compared to their European counterparts, has shaped its
prosecutors in ways that now make them attractive to reformers in Japan, Korea, and Taiwan. Critics of prosecutors in these places have grown distrustful of their German-derived and bureaucratically-accountable prosecutorial institutions. This interview-based paper theorizes the existence of two distinct styles of prosecutorial independence from politics and examines their clash in modern East Asia.

**Chinese Criminal Procedure Law in Action: Unbalanced Power Relations between Public and Private Participants**

**Li Li, Sun Yat-Sen University School of Law**

The enforcement of the Criminal Procedure Law (CPL) in China is politically embedded in the power relations between various procedural participants. The structural configurations of these powers are shaped by formal laws as well as dynamic negotiations conducted in daily practice. The newly revised CPL has amended the criminal proceedings in many areas but not addressed the fundamental power relations in the “iron triangle”, i.e., the police, prosecutors and courts. The “iron triangle” is supposed to operate in the old fashioned way of functional division, mutual checks, and cooperation, thus resulting in a strong procedural authority and comparatively weak social participation. In this paper, it is argued that strong authorities together with weak social involvement have led to the appearance of several trends in the enforcement of the 2012 CPL.

First, although the CPL encourages witnesses to testify in open courts, it is still rare for witnesses to do so because judges have wide discretion to exempt them from testifying and the accused does not have the opportunity to contest the exemption decisions. Another trend is the occasional exclusion of illegally procured evidence, which is partly because judges have broad discretion to manipulate the standards that comprise “doubt”, and defense lawyers have difficulties in adducing relevant clues or materials to initiate the exclusion procedure. Third, although the current CPL intends to reduce the use of arrests, the arrest rate still remains high. The reasons for the high rate of arrests include the substantial discretionary power held by the authorities in the decisions to arrest and the poor application of the surveillance of residence, a socially enforced compulsory measure and an alternative to arrests. Finally, this article reflects on the unbalanced power relationships between public and private participants in the criminal proceedings, and some legislative recommendations are offered.

**Session 2·13**

(Paper Session) Environmental Law
The feasibility of establishing standalone environmental courts in China - challenges and prospects

Patricia Blazey, Macquarie University Sydney

Industrialization and economic development in western countries caused substantial harm to the environment which ultimately resulted in a massive and expensive clean-up programme lasting many decades. China’s rapid industrialization programme over the past forty years is no different resulting in similar environmental degradation. As many countries have invoked a judicial remedy to address this problem it is argued that China would benefit from the introduction of a standalone system of environmental courts in order to address its serious air, water and land pollution problems. However given the size of China’s population and the current state of the environment there are many challenges involved. This paper identifies those challenges and assesses the prospect of the successful implementation of standalone environmental courts.

What Are Environmental and Social Safeguards and Why Are They Necessary for the Asian Infrastructure Investment Bank?

Laura Henry, Sungkyunkwan University School of Law

While countries line up to secure infrastructure investment opportunities for their champions in the Asian Infrastructure Investment Bank, the details of the bank’s governance structure assuring the welfare of affected populations in the borrowing countries are under threat of being overlooked. The World Bank and the Asian Development Bank have historically employed their own independent semi-judicial process initiated by citizens and NGOs to supervise compliance with their environmental and social policies called Accountability Mechanisms, which have been strengthened by inter-bank cooperation to harmonize accountability procedures among the development banks. However their experiences in investigations in projects located in Asia demonstrates regional resistance and even outright hostility to this institutional form of accountability governance as a political interference and infringement on borrowing countries’ sovereignty. This article discusses the evolution of the Accountability Mechanisms and their record of implementation in Asia by the ADB and the IBRD. Given the differences in governance values, the restrictions on NGO activities in China and other Asian countries, and the legal vulnerability of many Asian populations near large scale infrastructure projects, it concludes that prospective founding members should from the outset demand credible accountability mechanisms as a condition of participation in the AIIB, since post fact introduction is likely to be difficult or impossible.
Safety Management of Radioactive Materials released to the Air from Fi and the Rights of Residents

Yayoi Isono, Tokyo Keizai University

Decontamination was carried out in large areas from Iwate prefecture to Tokyo in Fukushima nuclear power plant disaster case. It produced large amount of the soils and wastes polluted by radioactive materials. Polluted waste such as bed logs for mushroom, rice straw, ash from waste incinerators, sewerage slug have been piled up in the field and storage facilities by government orders since the accident.

The central government made their disposal plans. But these plans did not implement well, because of strong objection by residents who lived within or near the designated disposal sites. The central government’s attitude toward local people caused such strong objection. The act concerning measures of those disposal gives broad discretion to the government about the waste disposal. The government nominally heard opinions and complaints from the local people in the implement process, not in the policy making one. It emphasize that professionals discuss about the policy and safety of the measure which would be taken and that disclose informations through internet. However, local people insist that professionals who the government designated were grossly one-sided, and that information disclosed is not adequate. They claim to change current waste disposal policy and plan.

This report will make it clear that those waste disposal policy and plans should be established on the basis of the right to live in safe environment. Adequate public participation is necessary in policy and plan making through the Fukushima disaster case. Especially, Miyagi prefecture and Tochigi prefecture cases will be focused in it.

Japan’s Acceptation of the CSC and the (Dark) Future of Nuclear Damage Compensation Law

Eri Osaka, Toyo University Faculty of Law

On April 15, 2015, the Convention of Supplementary Compensation for Nuclear Damage went into force with its acceptance by Japan. The convention provides the definition of nuclear damage, sets the statute of limitation, grants jurisdiction over damages from a nuclear incident to the courts of the member country of the nuclear installation involved in the incident, and possibly make the member country to cap the liability. My presentation consists of three parts: (i) the background of Japan’s acceptance of the convention; (ii) the possible change of the current nuclear damage compensation law; and (iii) how such changes may affect both current and potential
victims of nuclear incidents.

Recent Developments of Drinking Water Source Conservation in Japan

Hitoshi Ushijima, Chuo University

This paper addresses and explores challenging tasks of drinking water source conservation in Japan. First, this paper will explain such current situation as follows. 38% of Japan’s forest (66% of whole national territory) is owned by private parties, 88% of Japan’s private owned forest are less than 10ha per owner, and governments sometimes do not know the ownership of forests.

Second, this paper will address two major challenging tasks of Japan’s drinking water source typically in forests: 1) abandoned forest due to loss of competitiveness against imported lumber, 2) increasing foreign ownership in the areas of drinking water source.

Third, this paper will examine current public policies, describing governmental efforts in proper water circulation including drinking water source such as 1) 2014 Basic Law on Water Circulation to protect water source, 2) recent local ordinances regulating drinking water source areas.

As conclusion, this paper will argue Japan needs well-maintained forest properly regulated, being a part of drinking water source. However, Japan’s challenge is not only within the scope of drinking water source, but it extends to the promotion of forest conservation through competitive lumber industry and contribution to the climate change prevention.

Session 2-14
(Paper Session) Changing Legal Education and Institutions
Gaming-law-related-education

Rikiya Kuboyama, Tashkent University of Law

The target of this presentation is how we can realize "law-related-education" and what the goal is? Normally we say just the education is important even for citizens. But, it is very difficult to achieve it actually. So we suggest new style of education of legal issues in this presentation. The key is "Gaming". More concretely, we discuss the possibility of "gaming law-related education" we call. Also we discuss the concept, method, effect of it this time. Some practices are also introduced. This kinds of education is proceeded in USA and S.Korea. We discuss it too.
Building on the socio-legal critique of legal education reforms in Japan: Comparative Law in question (from teaching experiments to paradigm shifts)

Isabelle Juliette Giraudou, Nagoya University Graduate School of Law

To what extent does the so-called ‘Globalization of legal education’ (and its relation to ‘global law’ as a new field of research) relate to a polycentric vision and understanding of legal knowledge, according to which legal expertise is not monopolized by the legal profession but is available to a wider range of actors? Building on the socio-legal critique of legal education reforms in Japan, this paper questions more specifically the new role comparative legal education can play in the ‘global turn’ of Japanese schools of law. Drawing on various experiments (conducted either domestically or through legal education assistance activities in Asia), this paper focuses on the question to know if a wider distribution of comparative legal knowledge -- not just as a set of tools but as an engaged way of thinking in context -- may create an opportunity to bridge the divide between the ‘universal’ aspects of legal expertise and its ‘local’ integration with institutional practices. In so doing, this paper also puts light on how innovation in the field of legal education both reflects on and stimulates a paradigm shift, from ‘comparison’ to ‘collaboration’ as a new overarching motif for legal research and practice.

A Comparative and Empirical Study of Law Students’ Perceptions of Their Values in Hong Kong, Beijing and Taipei: Source of Their Values and Implications for Legal Education in Greater China Region

Wai Sang, Richard Wu, University of Hong Kong (Co-Author: Grace Leung)

This paper derives from a research project comparing the ethical values of law students in Greater China Region. This project is the first empirical legal research project undertaken in the Greater China Region on the values of law students and lawyers. It will make original contribution to the academic discourse on value system of lawyers and law students. It will also contribute to the teaching of legal ethics and professionalism as well as the reform of law school curriculum in this fast developing area of the world. This project attempts to answer four research questions. Firstly, what values are empirically important in determining the behaviors and ethical decision-making of law students in Hong Kong, Mainland China and Taiwan? Secondly, whether there is a common core of values shared by law students in these three Chinese places? Thirdly, whether there are differences in value orientations of law students in these three areas? Finally, whether there is a gender difference in the value hierarchies of law students
in the Greater China Region? This paper will focus on the findings of the source of the students’ values and their implications on legal education in Greater China Region.

Session 2.15
(Paper Session) Judicial Independence in East Asia
Comparative Study of Judicial Independence in Japan, Korea and Myanmar

Zayar Aye Cho, Nagoya University, Graduate School of Law

This paper will try to answer why judicial independence is essential for democracy and how Myanmar should construct independent judiciary. In order to answer these questions judicial reforms of Japan and Korea carried out will be comparatively studied together with the current issues and challenges of Myanmar judiciary. Myanmar had been under authoritarian rule for 50 years and it started its democratization in 2011. Although some provisions of the current constitution are highly controversial and many of political elites and high ranking government officers are retired military men, from 2011 to 2015, opposition leader Daw Aung San Su Kyi became parliamentarian, political prisoners are released, protests can be made against the government, press censorship had been abolished and media can enjoy much freedom than before. However, the independence of the judiciary is still facing problems. Myanmar Judges are poorly paid. The Executive branch is intervening the judiciary. The Legislatures also are trying to supervise judiciary strictly trough parliamentary committee in the name of anti-corruption and debating final decision of the courts in the parliament and voting to alter these decisions. In 2012, Parliamentarians impeached all members of the Constitutional Tribunal on the mere ground that they do not agree with the decision of the tribunal. Using impeachment as a tool to eliminate their enemy-judge had a negative impact on judicial independence. Democratization is not only the transforming of government type, but also the changing of political and social tradition that people familiarized for generations, the authoritarian tradition, to the new tradition called democratic tradition. Changes in political and social tradition have affected on all members of the society including bureaucrat, judges and parliamentarian. Therefore, this comparative study of these countries will focus on the relationship between sociological effects of national democratization and judicial independence in the period of transition.

Independence of the Judiciary and Judges in Japan
Yuichiro Tsuji, University of Tsukuba

As officials working in the executive branch and as stated under Article 15 of the Japanese Constitution, judges in the judiciary are public servants for the people. Their mission is to interpret the text of the Constitution and statutes when hearing court cases.

Sixty years ago, the Japanese Constitution was drafted by both the American and Japanese people. It is important, though not critical, to interpret the records and intent of the drafters. We are not bound to the hand of the dead. Extreme textualist and originalist approaches are not adopted. By examining these arguments, however, we gain insight that can be used when reviewing the system and text carefully, and thus come to a more thorough understanding of the purpose.

The Kojima, Naganuma, and Teranishi cases suggest that both the judiciary and judges should be independent. Under the current Constitution, we examined one questionable case of Judge Teranishi. Although we understand the mission of the judges is to work neutrally and fairly, as written by the Supreme Court, it is still questionable as to independence of judge.

The judges’ salaries are guaranteed by the Constitution and regulated by the law. The salary is based on those of private sector workers. It is against the Constitution to reduce only the salaries of certain classes of judges, but it is not against the Constitution to reduce all of the salaries in the judiciary.

The review of Supreme Court judges by the people was conducted at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten years, and in the same manner thereafter. This system is questionable because many Japanese people are unaware of the judges’ names and of the Supreme Court cases.

The only way to remove a judge is through impeachment. The Japanese Constitution stipulates impeachment in the parliament; therefore, the Diet organizes impeachment committees in cases where judges are being sued. The politicians decide if the judge should be impeached. To date, several judges have been sued and impeached. Some reasons for this were political, and others were not.

In Japan, we need to be vigilant against measurements that infringe on the independence of judges. The independence of the judiciary and judges is required for the formation of the legal mind to occur. Their duties can be fully exercised only after their positions become independent of the political powers of the executive and legislative powers.
Home Town Judgeship in Korea · A Short History

Kuk Woon Lee, Handong University

This paper is about a short history of so-called Home Town Judgeship in Korea. In the process of rapid industrialization and urbanization, Korean society became highly centralized and Korean judiciary as well. The home town judgeship was started as an informal incentive system for some judges who yield chances to move into the court’s branches in Seoul area to others. By virtue of it, those judges were allowed to stay at local courts around their hometowns. In early 2000's, Korean supreme court made a formal rule in order to institutionalize the hometown judgeship. However, after 10 years, Korean supreme court abolished it, because there have been a number of schandals related to the hometown judges. This paper is going to review this short history or story in the perspective of LOCALITY of LAW.

Judicial Independence and Individual Legal Case Supervision in China

Ying Yan, Shanxi University

The necessity of the individual legal case supervision in China is a well-debated yet un-concluded topic. Urawa Mitsuko incident is a classic case of defending judicial independ-ence and rejecting the individual legal case supervision in Japanese history. It caused people to concentrate on use of census right in judicial field and formed a consensus that it should be restricted by many factors. The case has three inspirations to judicial independence of China: National People’s Congress is the organ of supreme power, but it does not absolutely right for it to use the individual legal case supervision, the surveillance of National People’s Congress to Law Courts should not and must not be the real supervision to individual legal cases, judging right and wrong by National People’s Congress will lead to violate the finality principle of judicature.

Session 2-24

(Paper Session) Law and Culture in East and Central Asia

Public participation and community empowerment in heritage protection in East Asia

Stefan Gruber, Kyoto University

Culture is a binding force within all societies. It is one of the elements that most clearly distinguish communities from each other at international, national and local levels. Cultures provide individuals and groups with cultural identities and influence to a great extent who we are and shapes our future development as a society.
heritage can be seen as a synchronised relationship involving society, norms and values. Fostering cultural harmony, mutual respect and participation in various and distinctive heritage discourses within every nation can contribute to the long-term continuation of cultural and political stability within states. 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. In addition, sufficient public participation is also essential for the protection of human rights and intergenerational justice. As present decisions regarding the conservation or abolishment of cultural heritage and diversity will be made on behalf of future generations without their consultation, they must be made with the utmost care and consideration. In this context, the presentation stresses the importance of cultural heritage discourses, enhanced public participation in heritage identification and protection, and the assessment of development projects that affect cultural heritage assets. The presentation will also include several relevant case studies from China, Japan and other East Asian countries.

From Assimilation to Multiculturalism? The Ethnic Relations under Heritage Preservation System in Taiwan

Shih-an Wang, National Taiwan University

Heritage preservation has become crucial in recent Taiwan, but, how the ethnic relations showed/influenced by the system lacks systematical analyses. This article aims to illustrate how preservation system was taken by Japanese and ROC government to assimilate Taiwanese society, and challenged by democratization movements. It will be proceeded under an understanding of Taiwan’s multi-ethnic origins.

Not just about inclusion, assimilation also contains exclusion. In 1895, Japan started to govern Taiwan, and it strengthened the assimilation policy around the 1920s. In 1919, the “Historical Site, Scenic Beauty and Natural Monument Preservation Law” was effective in Japan, but not until 1930 did the colonial government effectuate it in Taiwan, which can be seen as a “postponed inclusion.” Led by Japanese intellectuals, the system preserved sites and monuments manifesting academic importance and
collective royalty to the empire. Taiwanese were localized and subordinated to Japanese, not to mention the Aboriginal people who were totally excluded from the modern law. After 1945, KMT government imported the Antiquities Preservation Act of 1930 into Taiwan but without further practice. Under Chinese nationalism, Taiwanese and the Aboriginal people were assimilated as Chinese, but inferior to Mainlanders. Two decades later, faced with non-governmental forces and the legitimacy crisis of Mainlander-dominated ruling, Chiang Ching-Kuo locally recognized Taiwanese culture in the framework of Chinese nationalism by enforcing the Culture Heritage Preservation Law in 1982.

Following the wave of democratization and “Four Main Ethic Groups Theory,” Taiwanese nationalism was officially recognized in 2000. Influenced by international conventions, 2005’s amendment of Culture Heritage Preservation Law confirmed “multiple culture” as its main purpose. In the designation, different characteristics were gradually showed, but the uniqueness of Aboriginal groups still remained neglected, which can be considered a result of elite-led operations. Therefore, how to bring the spirit of discursive democracy into practice should be taken seriously.

Institutionalized Indigenous Courts in Villages (Gram Nyayalayas): Conceptualizing Access to Justice to the Poor?

Gigimon Vidyadharan Sujatha, National Law School of India University (Co-Author: Amrithnath S B)

Access to Justice is a long term goal in a country as huge as India and the respective machineries for achieving the same have been trying for long time to achieve the same. It is certainly clear from a number of studies made in the past that it is the poorer sections in a society who is denied the access to justice. One of the main reasons for the failure of the same is the lack of courts in the country. With a view to mitigate this the Parliament enacted the Grama Nyayalayas Act, 2000. The object of the Act is to establish courts in every village in the country which will be devoid of the strict procedures laid down under Civil Procedure Code and Criminal Procedure Code. The question to be considered in such a regard is whether it will be a replacement for Tribal Courts or Village Panchayats which exist in various parts of the country and whether the Grama Nyayalayas bring in better access to justice.

Whether the physical presence of these courts improve access to justice where the members of bar may be reluctant to cooperate. Can these courts bring in the desired changes with the non-application of procedure laws which is otherwise followed in normal courts? Are the Grama Nyayalayas a boon or simply going to boost the
ever-increasing pending cases?

**Legal Institutional Changes in Asian Transition Countries**

**Naoko Kuwahara, Fukuyama City University**

Assuming that law serves a purpose in benefitting a nation's economic and social prospects, scholars of law and development study have developed some theories, and representatives of donors (e.g., the World Bank, the United Nations Development Programme (UNDP), the United States Agency for International Development (USAID), etc.) have tried to formulate related global models. However, due to the fact that they have not paid sufficient attention to date to “informal law” in targeted countries, and have sometimes ignored the local contexts or their settings, many projects relating to the law and development have not achieved the purposes attempted or for which they were designed, over the last two decades. In this sense, so-called second-generation law and development did not much learn from the experiences of the first-generation law and development of the 1960s and 1970s.

This paper focuses on legal institutional changes in post-communist Central Asia, taking “informal law” and local context seriously. Following the collapse of the Soviet Union, the newly independent Central Asian countries set out on a path of “transformation into a market-oriented economy” and “transition to democracy.” Many donors have carried out legal reform projects targeted at democratization, enhancement of rule of law, improvement of business environment, and so on, for the last two decades. Most of the Central Asian countries, however, have settled into a post-communist authoritarianism, and the Soviet legal legacy has remained.

For adaptation of foreign law or legal institutions to local circumstances, in other words, to customize laws that are tailored to the local culture and society, it is crucial to take into account “path dependency,” which regards how history affects institutional change. In the context of Central Asia, the former Soviet Union’s legal institutions – including the people’s attitude towards law, or the so-called “legal nihilism” under which people are skeptical to the social value of law and consider it to be the least perfect means of regulating social relations – is one of the most powerful initial conditions to be taken into account in designing legal institutional changes.

This paper explores what works and does not work in legal institutional changes in the post-communist authoritarian countries, examining the legal reform projects targeted
at Information and Communication Technology (ICT), business law, and administrative law reforms in Central Asia as a case study. The presenter has approximately eight years of experience in legal reform projects in Central Asia, and draws on these insights for the paper.

Session 2-25
(Paper Session) Medical Law

Japan's New System of Medical Peer Review

Robert Leflar, University of Arkansas School of Law

Since a series of highly publicized mishaps at major Japanese hospitals in the early years of the 21st century drew public attention to the problem of medical error, Japanese physicians, hospitals, and health officials have puzzled over how to improve the review of injury-causing health care practices. Such reviews were traditionally conducted in secretive fashion if at all, but that style of operation could not be maintained in the face of public and media pressure, augmented by a mounting number of civil malpractice suits as well as occasional criminal prosecutions. Beginning in 2008, the health ministry carried out a “Model Project for the Investigation and Analysis of Medical-Practiced-Associated Deaths” in selected metropolitan prefectures, but that project was limited in scope and beset by various practical problems.

After years of debate and political maneuvering, the Diet enacted a new law in June 2014 which will have the effect of setting up medical peer review systems nationwide. The health ministry is in the process of implementing that law. This presentation will explain the law and the issues raised in its implementation, and will offer an initial assessment and some comparative observations.

An Exploratory Attempt to Theorize the Concept of Legal Boundary: The Trend in Medical Malpractice Regulation in Taiwan as an Example

Chih-Ming Liang, Graduate Institute of Health and Biotechnology Law, Taipei Medical University

In Taiwan, medical malpractice law is increasingly viewed as an interdisciplinary field. Medical and legal experts both participate in this dialogue, with the shared goal to alleviate the strained physician-patient relationship. An essential challenge of this interdisciplinary dialogue, however, is that insufficient scholarly attention has been dedicated to theorizing the concept of legal boundary. Law and medicine are epistemic systems based on fundamentally different assumptions and logics. For information to
actually pass from one system to another, information needs to be processed and transformed so that it can pass the boundary and become accessible/interpretable/comprehensible to actors on the other side. Better understanding of how such processing and transformation is actually taking place, therefore, plays a key and constructive role in developing sustainable policy mechanisms for maintaining a functional physician-patient-lawyer relationship.

New Approach to Medical Malpractice Death Case Investigation in Japan: Transparency or Confidentiality?

Yoshitaka Wada, Waseda Law School

In last decades perspective on medical malpractice has radically changed in Japan. After big malpractice cases in 1999, media severely criticized physicians and hospitals and it causes a variety of malfunctions in health care system. Among them interpretation of a clause of Healthcare Act, that is all medical accident death should be reported to police by the physician, made physicians take defensive attitude. Following this situation, Government began to examine the possibility of establishment of new medical accident death investigation system. This paper examine the nature of power struggle found concerning this legislation process in which we can find two different ideas on investigation system: transparent investigation for accountability for patient’s family and confidential investigation to find problems and prevent future accidents like airplane accidents.

Session 2-26

(Paper Session) Gender Issues in East Asia

Feminist Legal Theory and Sexual Crime in Japan

Hiroko Goto, Chiba University Law School

After feminist movement in 70’s, many counties have started to reform of rape statutes.

Many feminist legal theories, like liberal feminist theory, socialist feminist theory and dominance theory by Catherine Mackinnon had a great impact to these reforms. Rape has been considered as dominant crime rather than sexual crime after these theories. Many counties started to have more female-friendly rape statues because of them. However, in Japan these impacts have been limited and Japan still uses 100 hundred years old rape statues in 21 century. Japanese criminal code enacted in 1907 and there were no Diet members in Japan because women had not right to vote. Even after the introduction of women’s right to vote in 1946 under the Japanese Constitution,
Japanese rape statues did not changed at all. In 1990’s victims movement has started in Japan and small changes had happened on rape statutes, like abolishment of the period of complaint. In courtroom, witnesses started to be protected physically by shield measures or remote testimony system. However, Japanese criminal procedure law did not been introduced rape shield law. In 2014, a special adversary committee for rape law has reform started and now it became final stage for reform proposals.

In this presentation, I will review the discussion on rape reforms in this committee from feminist legal theory perspectives. Though this, I will make sure that the reason why feminist legal theories had no impact to criminal law or criminal procedural law in Japan.

The Glass Ceiling for Japanese Female Lawyers

Kyoko Ishida, Waseda Law School

In this paper, I will present the current status of Japanese female lawyers. Although the Gender Equality Bureau of the Cabinet Office proposed that women should dominate at least 30 percent of all decision-making positions in society by 2020 (this policy is called “202030”), the ratio of female lawyers in Japan is only 18 percent as of 2015. We imagine that achieving the target number in the legal profession would be extremely difficult. Why not so many women become a lawyer? There is a structural problem behind this issue. The first half of my presentation shows the history of Japanese female lawyers and how the education system has barred women from entering into the legal profession. The second half shows empirical data on female lawyers’ status. I have participated in several research projects on Japanese lawyers. Analysis of these data from gender perspective shows the fact that there is a thick ceiling even today for female lawyers to pursue their carrier. In conclusion, I propose several policies that may improve Japanese female lawyers' status.

Women Legal Professionals In Lucknow: A Study of Gender Discourse In Courts Of India

Saurabh Kumar Mishra,

There are one hundred eighty one women legal professionals registered as advocates in Central Bar Association of Lucknow in list of valid voters 2012 as against around 3531 male counter parts. Her population of one against twenty not only creates a kind of psyche of minority, segregated from main stream but also promotes innumerable kinds of dimensions of their victimization. The post-colonial industrialization, urbanization, modernization of traditions forced her to acquire
degrees first for marriage market then for acquiring professional degrees to cope with the rising standard of living without having required transformation of mind set predominantly dominated by gender inequality since antiquity. After a prolonged legal battle ultimately also entered into a male dominated bastion of legal profession. The gender discourse of men and women legal professional of Lucknow district court revolving around her own individual perception, family problems and discouragement, vicious atmosphere in the court, discrimination on the parts of clients and judges, veiled sexual behaviorism of male professionals and in spite of all such negativities her determination on for survival among male bastion was the fore most objective of collecting empirical data in the single court of Lucknow. The present research paper based upon interviews of around 73 women practitioners attempts to study her overall conditions for survival and determination of struggle for continuity and existence.

Gender Budgeting in Urban Administration in India

Abhishek Kumar Srivastav, University of Lucknow (Co-Author: Manoj Dixit)

Gender equality is central to the realization of a civilized society. Gender equality, leading to increased work opportunities, enhanced capacities for livelihood developments, enhanced social protection and overall increasing voice may enable women to participate equally in productive employment, contributing to women’s development leading to economic growth of the nation. No nation can afford development without considering women who constitute about half of the stock of human resources. Thus, engendering growth has been internationally recognized instrument of development by incorporating gender perspective and concerns at all levels and stages of development planning, policy, programmes and delivery mechanisms. The issue of engendering development and women empowerment has been in the central stage with the shifting of paradigm of development and governance at the global level and particularly in India. Gender budgeting has emerged as an important instrument for gender mainstream and women empowerment across the globe. It has been well recognized by the policy makers and feminist economists that gender budgeting are imperative for gender equality and empowering the better and important half of the society. The present paper makes attempt at explaining India’s approach to Gender Budgeting, particularly in the urban sector, and the institutional mechanisms that have been put into place. It also attempts to analyse the success (or lack of it) of the Scheme. The paper would conclude with workable corrections that need to be done in order to achieve Gender mainstreaming in a country like India with its vast population and understanding socio-cultural reasons of gender inequality.
Adoption and the Best Interests of the Child

Jin-Sook Yun, Soongsil University, College of Law

Traditionally, adoption was usually practiced in Korea when there was a special reason such as continuing the family line, and when a family adopted a child, it was done privately with the fact of adoption often not open to third parties. When overseas adoptions took place, it has continued without abatement. In such circumstances, the Special Adoption Act, established by completely overhauling the special law on adoption promotion and procedure in August 2011 and in effect since August 2012, was enacted with the goal of enhancing the rights, interests and welfare of adopted children, as stipulated by Article 1 of the Act. This paper investigated the details of the Special Adoption Act and the Uniform Adoption Act of the USA and examined the status of single mothers that can be directly affected by the current Special Adoption Act. With the goal of enhancing the rights, interests and welfare of adopted children, the Special Adoption Act emphasizes reinforcing the state’s administration and supervision through local governments, and in eschewing overseas adoptions, places priority on promoting domestic adoptions. But due to socially unfeasible regulations, many women faced difficulties in the process of adoption.

Most of those who desire for adoption are single mothers, but single mothers encounter in their lives much economic and social suffering and discrimination. A child of married parents is considered to be normal, while a single mom and her child are still social minorities. Under these circumstances, this law has to encompass the specific difficulties of a single mothers and their children through the adoption procedure in the court as well as sufficient psychological, social and economic protection.

To achieve its effectiveness of this law, a harmonious administration of the law that reflects the specific validity and the spirit of balance will be needed while maintaining the rigor of the law.

Session 2-35
(Paper Session) Popular and Regional Justice

Making Popular Justice in Early 20th Century Japan

Darryl Flaherty, University of Delaware

With an air of inexorability, there was a meaningful expansion of participation in Japanese politics at the end of the teens and through the mid-1920s. In part, this reform reflected the agenda of lawyers and their predecessors since the unruly 1880s, when legal activists launched newspapers, private universities, political parties in opposition
to the Meiji state, and law firms. Just twenty years later, lawyers led by Hatoyama Kazuo, Hara Yoshimichi, and Egi Makoto cemented law's utility as a lingua franca for mass education, politics, and commerce. The legal profession's standouts had scaled the heights of governance, legal scholarship, politics, and business. At the same time, there was a contest over what law meant and who could wield it, contested on the terrain of disputes over land tenancy and labor conflict, as well as questions of who would constitute the layperson in juries. In other words, how to complete the project of modernity by popularizing law? This paper explores the contest over popular justice—what it was, and how it changed ideas of law and legal culture in Japan in the remainder of the twentieth century.

**Popular Culture in Japan: A New Approach to Comparative Sociolegal Research**

*Leon Wolff, Queensland University of Technology*

Friedman has argued that popular culture is an “important source and witness” of a legal culture. If so, what does Japanese popular culture—especially, law-themed television shows—reveal about Japanese attitudes to law and justice? This paper explores changing attitudes towards law, lawyers and legal institutions in Japan through the lens of popular culture. By analysing a corpus of popular single-series television programs since the 1980s, this paper argues that media messages about law are evolving. Although law has only occasionally featured in television shows prior to the 1990s, there has been an explosion in law-themed television dramas and comedies over the past decade. However, this paper rejects easy conclusions that Japan is "Americanising" in its more ready embrace of law, lawyers and legal institutions in its popular culture. Instead, it contends that media images are showing the power of law in building communities and relationships, but is held in contempt—or even ridicule—when it serves to settle rights following relationship breakdown.

**Why do people consult question and answer sites about their legal problems?**

*Ayumu Arakawa, Musashino Art University*

In each Asian country, several companies offer question and answer sites (cf. Yahoo! Knowledge in Korea, Taiwan, and China, Yahoo! Answers in Philippines). Despite the answers on these sites are not from legal professionals and are sometimes wrong, many people consult these sites about their legal problems. Is there any reason why people consult these sites by reason of other than that it's free and easy to access? To investigate the reasons, we conducted qualitative research. We used the Yahoo! Chiebukuro log files which were provided by National Institute for Informatics in Japan.
Firstly, the first author picked up all questions including words like "law" or "legal" in each question from May 2006 to June 2006. After that, the first author clustered these 1012 questions by KJ method, and provided labels. To make their labels intersubjective, a double checker individually categorized same questions based on the label and definition the first author had provided. When the category was different between the first author and double checker, they discussed about the category, and if necessary, they developed new category or modified the definition, but the double checker's opinions were given priority over the first author. Throughout this procedure, we identified 72 labels. The labels included "Teach me common sense of this problem," "Why is it lawful?" "Can I have a right to claim?" "What will happen after my trouble" and "Is what I want to do illegal?" and so on. We also clustered the Best Answers to understand what kind of answer the questioner had been looking for. The result implies that some people consult these sites for their legal problems when they are not sure whether the problem they have is a legal problem or not. The analysis of The Best Answer shows that they hope to get not only legal advice but also the advice from people who have experienced similar situation before.

Session 2-36
(Paper Session) Corporate Governance
Soft Law Comes to Japan: What is the Likely Impact on Corporate Governance Practices?
Bruce Aronson, Hitotsubashi University

This study considers the likely impact of the enactment in Japan of a Stewardship Code (Feb. 2014) and a Corporate Governance Code (effective June 1, 2015) on corporate governance practices. The adoption of such a soft law approach that utilizes a comply or explain mechanism to voluntarily spread best practices represents a significant departure from the past. Japan’s incorporation of soft law reflects a change in the most influential global model of good corporate governance from a U.S. model to a multipolar model (with a new emphasis on U.K. practices) following the 2008 financial crisis. It also reflects a global trend in which the main thrust of corporate governance regulation has migrated from corporate law to a more market-oriented securities law. However, the impact and effectiveness of soft law in Japan remains to be seen. Under a positive scenario, Japan’s institutional investors become more active shareholders and engage in “constructive dialogue” with their portfolio companies (Stewardship Code), while listed companies reconsider the governance model and practices most appropriate to their needs and improve their governance practices (Corporate Governance Code).
In a negative scenario, in both cases there is only formal compliance (including, under the Corporate Governance Code, boilerplate explanations for not complying with code provisions) and best practices are not widely spread, particularly to smaller listed companies. The case for each scenario is examined based on the preliminary evidence that is currently available.

**What Japanese Shareholders Say about Pay**

Sean McGinty, Nagoya University Graduate School of Law

In recent years a number of countries have introduced “say on pay” (SOP) provisions to their corporate laws in reaction to perceived deficiencies in corporate compensation practices. While there is considerable variation in the legislation across jurisdictions, the general approach they share is to require executive compensation packages be put before the general meeting of shareholders for approval in the hope that this additional check will discourage excessively generous packages.

Most studies of such legislation trace its roots to 2002 when the United Kingdom introduced its first SOP provisions. Japanese corporate law, however, has required corporate directors to obtain shareholder approval for their pay since as far back as the 1938 revision of the Commercial Code which introduced such a requirement. Today the issue is primarily governed by Articles 361 and 371 of the Companies Act, which require shareholder approval for the compensation of corporate directors and auditors.

Japan’s SOP rules are of interest in part owing to the discrepancy between compensation at Japanese companies and those in jurisdictions which have recently introduced SOP like the United Kingdom and United States. While executive pay at the latter have increased significantly in recent decades relative to the incomes of average workers, the same trend has not been observed in Japan where compensation levels generally remain more down to earth. Recent studies have looked to corporate governance practices and social norms against greed as possible explanations for this, but none have considered what role, if any, SOP rules may have played. This paper seeks to fill lacunae in both the literature on executive pay in Japan and the comparative literature on SOP provisions through a quantitative examination of the results of compensation related proposals put to the 2014 shareholders meetings at firms listed on the first section of the Tokyo Stock Exchange.

**Return to Basics: An Empirical Legal Study on Directors’ and Officers’ (DO) Liability Insurance and Litigation Risk in Taiwan**

Chun-Yuan Chen, National Chiao Tung University
This paper empirically analyzes the functions of directors’ and officers’ (D&O) liability insurance in corporate governance in Taiwan, also reexamining the fundamental issue—litigation risk of directors and officers. In addition to indemnification, D&O insurance may serve the function to monitor the governance of companies. When underwriting is in progress, insurers may examine the status of insured companies, and then they even may help the insured to improve the governance quality to decrease possible loss. This function has been believed to be an important part of corporate governance, especially after the experience of Enron, WorldCom and various financial crises.

This research argues that the demand and functions of D&O insurance are influenced by directors’ and officers’ litigation risk. The monitoring hypothesis suggests that firms with weak corporate governance have a greater incentive to purchase D&O insurance. Intuitively, firms with higher litigation risks are intended to purchase more insurance. Meanwhile, D&O insurance and other monitoring mechanisms are substitutes for each other. Firms which have better corporate governance have less demand for D&O insurance. However, after empirically examining D&O insurance purchases and relevant litigations in Taiwan from 2008 to 2013, it is found that the monitoring hypothesis is not supported. Also, the litigation risk is significantly and negatively associated with D&O insurance coverage, implying firms with less liability risk purchase more insurances. More analyses about relevant laws and regulations are provided to demonstrate the very limited litigation risk of directors and officers in Taiwan, which is significantly different from the U.S. and worth more attentions while considering legal transplant. Based on these findings, the paper further argues that it is not necessary to mandate D&O insurance in Taiwan. The findings of this paper are also helpful for other Asian countries, where the issue about D&O insurance and liability risk is emerging.

An Unsettled Matter: Employee Mobility and the Trend to Criminalize Trade Secret Violation

Chih-Chieh, Carol Lin, School of Law, National Chiao Tung University

The increasing complexity in the international business competition leads to incorporate criminal liability into trade secret protection in many jurisdictions. Cross-country headhunting often raises the issue on stealing or leaking trade secrets. In addition, economic espionage cases catch worldwide attentions from time to time. Trade secret violation jeopardizes research accomplishments, disrupts fair competitions, and even threatens national security. However, imposing criminal sanction against trade
secret violation causes serious concerns on making unreasonable obstructions to the international flow of talents as well as the freedom of working right.

Beginning with a brief introduction to Taiwan's hot case TSMC v. Liang, this paper first reviews the theory and the practice of non-competition agreement, and then analyzes the trend to criminalize trade secret violation in several countries. This paper compares Taiwan's amended Trade Secret Act to the U.S. Economic Espionage Act (EEA) and proposes a new amendment to Taiwan’s law. Incorporating diversified perspectives on the trend of trade secret laws, this paper wants to balance the interests between trade secret and labor's mobility, and to facilitate legal professionals to manage this issue properly.

Session 2-37
(Paper Session) Crime on Human Rights and Human Rights in Criminal Process
Trafficking in Persons and South Korea's Legal Responses
Tae-Ung Baik, William S. Richardson School of Law, University of Hawaii at Manoa

South Korea is currently listed as a tier 1 country under the State Department of the United States Trafficking in Persons (TIP) Report. In light of the first TIP Report in 2001, which ranked South Korea as a Tier 3 country classifying it as a source and transit country for human trafficking, some significant legal changes have been made. In addition to several domestic measures to improve the image of South Korea, the National Assembly finally amended the Criminal Act in 2013 to broaden the definition of human trafficking making it as a crime punishable with an imprisonment up to fifteen years. The ratification bill for the Palermo Protocol was submitted by the Government on July 10, 2014, and is pending in the National Assembly for adoption. The legal system to fight against human trafficking in South Korea is challenged in many ways. The definition of South Korea's human trafficking and its legal regime to protect the victims are still very narrow, and the legal system has not fully incorporated the recent development in international human rights norms concerning trafficking in persons. Furthermore, the Act on the Punishment of Acts of Arranging Sexual Traffic is currently under the Constitutional Court's review. This paper examines the South Korea's legal structure to fight against human trafficking including trafficking for sexual exploitation purposes, and asserts that more changes are in demand to strengthen its domestic legal system in line with international human rights principles.

The Prospect for Transitional Justice in Myanmar: Experimental Evidence
Roman David, Lingnan University (Co-Author: Ian Holliday)

Nowadays, most countries undertaking transitions from authoritarian rules to democracy seek to overcome historical divisions and build a more inclusive society based on reconciliation and trust. They adopt some of transitional justice measures, such as prosecution, amnesty, and truth-telling, to deal with the past. In many countries, the debate on transitional justice has been shaped by the influence of international NGOs, which campaign for particular measures of justice.

In Myanmar, currently in the early stages of democratic reforms, issues of transitional justice would soon also arise. Given that the military retains considerable political power, the key questions are whether and how to deal with an abusive past without compromising prospects for political change. At this moment, however, the general public has not been influenced by imported discourses of international justice. This provides us with a unique opportunity to examine the potential of transitional justice at the onset of political transition.

The paper examines the possible effects of transitional justice in Myanmar. It is based on the experimental design, which manipulated four transitional justice interventions against their absence in a 2x2x2x2 factorial design. The experiment was embedded in a representative survey of 1600 members of the general public in two major provinces and three ethnic states in Myanmar. The paper will provide us with the analysis of results about one of the most important topics of transitional justice in general and in the Myanmar's democratization in particular.

Combatting Police Brutality: A Solution from Japan?
Michael Fox, Hyogo University

In the U.S., acts of violence by police against criminal suspects and innocent citizens continue nearly unabated. Prosecutors, often reluctantly, can file charges against police officers in front of a grand jury. But as seen in the case of Eric Garner, this is a masquerade of justice, and the prosecutors actually work to defend the police suspects whom they pretend to charge.

Japan might be able to offer a solution to the eternal dilemma of how to curb and combat the crimes of power. It has a "prosecution inquest system" in which regular attorneys stand in for prosecutors and bring evidence of crimes committed by police and other government officials to a committee of citizens.

This presentation will evaluate Japan's "prosecution inquest system" and explore the
Civil Oversight in Japanese and Australian Prisons: Apples and Oranges?

Carol Lawson, Australian National University College of Law

Japan introduced a civil oversight system for Japanese prisons, Penal Institution Visiting Committees (PIVC) for the first time a decade ago, as part of the first substantive reforms to the Japanese corrections system in 97 years. The design of the PIVC system is unusual, and at first glance appears wanting in independence and effectiveness. Japan did not follow the model for civil oversight of prisons commonly found in other developed countries. The Australian Official Visitor systems for prisons are only around 30 years old, but follow a more traditional model. Although the distance between the Japanese and Australian models appears considerable, each has its own internal logic. Each strives to leverage the common sense of ordinary members of society to implement international human rights norms in the challenging prison context, beginning with the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners.

This paper draws on recent works published in Japanese by Visiting Committee members (Kawai, 2014; Sawanobori, 2015), and interviews with Official Visitors from the Australian Capital Territory to highlight unexpected commonalities and divergences between the two regimes. This in turn sheds light on the possibility of legitimate diversity in the implementation of international human rights norms, and the shape of the rule of law itself.


Wui Ling Cheah, National University of Singapore

This paper is part of a larger project, entitled Justice for Strangers: The Singapore War Crimes Trials, 1946 – 1948, which is an in-depth historical and socio-legal analysis of 131 war crimes trials conducted by the British in Singapore after the Second World War (the Singapore trials). These trials involved diverse participants who spoke different languages and hailed from different legal systems and cultures: British and Allied judges and prosecutors; Japanese, Taiwanese and Korean accused; Japanese defence counsel; and hundreds of Asian witnesses from as far afield as the Andaman and Nicobar Islands in the Indian Ocean. By examining culturally related communication problems encountered by participants in these trials, my project sheds light on the challenges of organising war crimes trials that involve multicultural
participants—challenges that international courts continue to face today.

In this paper, I examine the problems encountered by Japanese defence counsel when participating in the British-run adversarial common law trials. The majority of accused were represented by Japanese defence counsel who were unfamiliar with British law, courtroom procedure, the adversarial system or Western legal culture. This paper analyses how Japanese defence counsel demonstrated a lack of basic legal knowledge, poor strategic choices, and failures to adopt an adversarial stance. It assesses how judges responded to Japanese defence counsel’s overt unfamiliarity with British law, and whether this addressed or exacerbated the power imbalance between the prosecution and the defence. I will conclude by highlighting the lessons of my historical study for war crimes courts of today.

Session 2-44
(Paper Session) Constitutional Law
Foreign Nationals in Japan: Social Welfare, Discrimination and Constitutional Rights
James Fisher, The University of Tokyo (Faculty of Law & Graduate Schools for Law and Politics)

My proposed paper discusses the right of foreign nationals in Japan to receive social welfare, specifically public assistance. The Public Assistance Act 1950 requires local authorities to distribute public assistance to "kokumin" (citizens) in financial need. Recently, the Japanese Supreme Court ruled that the term “kokumin” necessarily excludes foreigners in Japan, who therefore have no legal right to public assistance. Nevertheless, following a 1954 administrative decree from the government, local authorities provide de facto public assistance to foreigners. This is an interesting example of foreigners receiving equal treatment despite the law, not because of it. Worldwide, it is common to see legal guarantees of equality undermined by discrimination by the executive. Here, however, the law is discriminatory, but that discrimination is being remedied by executive action, which achieves de facto equality. The Supreme Court decision has additional importance for foreigners in Japan. It has shown that foreigners have only fragile entitlement to most Constitutional rights, since the Constitution gives rights only to “kokumin”. The situation shows that Japanese law must adapt to protect the rights of foreigners, particularly because needs immigrant labour due to its ageing population. This paper would address the role of the law and public administration in bridging the divide between citizens and foreign nationals in Japan. It would demonstrate the different stances of the legislative and executive branches of government in supporting those from under-privileged sections of society,
and the extent to which this approach is dependent on the citizenship of the poverty-stricken. It has relevance also for the relationship between East Asian states. Since the largest foreign populations in Japan are Korean and Chinese, countries with whom Japan already has an unfortunately complex relationship, the exclusion of foreigners from Public Assistance will have implications for Japan’s image in the region.

The ‘Reinterpretation’ of Article 9 of the Constitution and the Rule of Law in Japan

Craig Martin, Washburn University School of Law

This article examines the recent efforts by the government to engage in a “reinterpretation” of the war-renouncing provision of the Constitution of Japan, critiquing the legitimacy of the process and assessing the dangers that it poses to the rule of law in Japan.

The article examines the process by which the Abe government purported to “reinterpret” Article 9 of the Constitution in the summer of 2014, and how it relaxes the prohibition on the use of force, making possible the Japanese exercise of a right to collective self-defense. It explains how the process was inconsistent with the constitutional amendment procedure and principles of constitutionalism in a democracy more generally.

The article proceeds to examine the process by which “reinterpretation” itself was developed, and the role of an extra-constitutional “panel of experts” appointed by the Prime Minister to facilitate the process. It explores the recommendations of this panel of experts, and critiques the result-oriented arguments developed to support those recommendations. The arguments contained significant errors in their characterization of the relevant international law principles, and provided little in the way of constitutional law analysis. The substance of the resulting “reinterpretation” is impossible to reconcile with the established understanding of Article 9, the plain meaning of the text, or the purpose and intent animating the provision. Moreover, the “reinterpretation” creates significant ambiguity regarding the meaning and scope of the resulting permissible use of force.

The article explains how the entire process was inconsistent with fundamental principles of constitutionalism, and the rule of law, and put at risk the normative power of all provisions of the Constitution.
Constitutional Revision in Japan: The Risks for Freedom of Religion and Freedom of Speech

Frank S. Ravitch, Michigan State University College of Law

Prime Minister Shinzo Abe and some of his political allies have worked hard to begin a process of Constitutional Revision that endangers not only Japan’s post-war pacifist legacy, but also the fundamental freedoms of the Japanese people. Much of the attention has focused on Abe’s attempts to amend Article 9, often referred to as the Pacifist provision of the Constitution. Many Japanese people and politicians have strongly opposed any change to Article 9. Yet, like a shell game, while people try to follow the fate of Article 9, other risks are missed. The Abe administration has realized that its attempts to directly Amend Article 9 are not supported by the public and therefore has sought to amend Article 96, which governs the process for amending the Constitution. If this move is successful it would become easier to amend the Constitution. This would endanger protections for freedom of speech, which has already reached a postwar low in recent years, and Seiji to Shuukyou no Bunri (separation of politics and religion). I have argued elsewhere that the Prime Minister’s visits to the Yasukuni Shrine violate Articles 20 and 89 of the Japanese Constitution, but with Constitutional revision such visits might become ordinary and in fact, it would be possible for the government to fund these shrines to appease nationalists. With constitutional revision free speech and a free press may be further limited. But there is hope, and this hope should serve to build bridges between Japan and other nations in Asia. The Japanese people have repeatedly been shown in polls and surveys to oppose changing the Constitution to weaken Article 9 or the freedoms they have come to value, and which they have used in ways that benefit the entire world with Japanese creativity and insight. As Prime Minister Abe’s policies relating to education and Japan’s wartime past have increased controversy with some of Japan’s neighbors, the consistent and often vocal response of the people—who are often silent on major issues—should serve as a different point of connection between Japan and its neighbors. Law can be used to build bridges, but sometimes it is the response by the people to laws that can serve to build bridges.

Amendment of the Japanese Constitution—A Comparative Law Approach

Yuichiro Tsuji, University of Tsukuba

It has been argued that it is more difficult to amend the Japanese Constitution than the U.S. Constitution. To effect a recent change in the Japanese Constitution, on July 1, 2014, Prime Minister Shinzo Abe announced a modification of the interpretation of Article 9 of the Constitution by way of a cabinet decision. Other imminent plans to
revise the Constitution are Abe’s planned amendments to revise sections related to defense powers in 2015.

Using a comparative law approach, this article examines these two efforts to revise the Japanese Constitution in a broad review of whether now is the time to amend the Constitution. It is said that the interpretation of the Japanese Constitution is too complicated for the general public to understand. A Japanese Constitutional scholar’s duty is to solve this difficult question and bridge the gap between ordinary life and texts of legal statutes, and the Japanese Constitution.

It is incorrect to say that it is difficult to amend the Japanese Constitution, and easy to amend the U.S. Constitution, as the current comparative review shows.

The U.S. President has veto power over the Congress for statutes, but not for the Constitutional amendment. The federal and state legislature are exclusively engaged; and the U.S. president cannot dissolve the legislative bodies.

It is not simple to compare these two different systems. One common characteristic is that election by the people is the base of democracy, and people vote to show their wills. Does Japan struggle with the amendment of its Constitution, compared with the U.S.? The Japanese Constitution lists fundamental rights in Articles 10 to 40 and is understood to limit and protect against the arbitrary and capricious exercise of power, creating a system of government called Constitutionalism. The people’s sovereignty is the principle that the people decide and accept their governing decisions, even though they may be found to be wrong in the long run, bound by Constitution. The decisions rendered by the courts are also a part of law, binding the judges as case law, as the rule of law.

The supreme power to interpret the Constitution is not with the Cabinet, but with the Japanese Supreme Court. Public announcements by the CBL must work objectively in the long term and are not subject to political power. The Japanese Supreme Court is expected to send messages through its decisions to gain the confidence of the people, bridging the gap between the judiciary and the general public.

Japanese Constitutional scholars have often been asked if they have cultivated discussions on amendments to the Constitution. This is something that only Japanese Constitutional scholars can do in order to bridge the gap between the public and the Constitution.


The Regulation of Religious Schools under Anti-Discrimination Legislation

Greg Bede Walsh, Curtin University
The presentation addresses the appropriate approach that should be adopted to regulating the employment decisions of religious schools under anti-discrimination legislation. The main focus of the presentation is on the right to religious liberty and the right to equality considering the central role these rights play in debates concerning how religious schools should be regulated under anti-discrimination legislation. The article specifically evaluates the merits of the current approach adopted in the Australian State of New South Wales and considers whether this approach is inconsistent with these two central rights, and if so, what alternative approaches could be implemented to more appropriately regulate religious schools.

Session 2-43
(Paper Session) Global Economic Activities from East Asia
Global Economic Constellation Indonesia for Asia 2015-2020
Agnes Harvelian, Far Eastern Federal University

Each state policy based on the constitution which is the main law of life of the nation. Every policy, how each country to achieve the goals set out in the establishment of a state goal. Welfare into the development of the modern state of the current goal, to achieve the welfare of the main problems to be solved by each country is a matter of economics. The basis of the problem is economic countries in the world, which became the main needs of each community.

Countries that managed to achieve economic independence generally have dominance in any international economic regulation. Characteristics of each country's economic policies reflected in the governance system adopted in each country. Economic development must also be adapted to the social characteristics of the country that was born from a system of government. It can be known through the state constitution adapted to the underlying laws and social facts that occurred. Indonesia is located the Southeast Asian Region and will begin to integrate with ASEAN in ASEAN Economic Community (AEC) at the end of 2015. At the same time, Indonesia providing an opportunity for countries in Asia also performed with the same concept as the AEC. Indonesia is among the developing countries with abundant natural resources. Has a lot of foreign investors who turns to invest in Indonesia, which became the focus of development increase by Indonesia will be a force to provide the best service to investors.

The approach used in this paper is a descriptive analysis that describes and analyzes of the law as a rule made by the Indonesian government to the economic order of 2015-2020. Government policy by issuing rules will be a bridge to countries in Asia cooperation with Indonesia. This paper will analyze policies and regulations issued by
the government in the perspective of the global economy. Describe the idea to stabilize about the legal regulation issued with countries in Asia.

Transforming Shanghai into an International Financial Center: Mechanism and Benefits

Yingying Hu, University of Wisconsin Law School

In 2009, China’s State Council formally stated its intention to establish Shanghai as an IFC. Four years later, China’s economic reform strategy explicitly supports its decision to build Shanghai into an IFC. However, the reasons behind this decision have not been expressed clearly. Based on the policies stated during the recent Third Plenary Session of the 18th Communist Party of China Central Committee – specifically, “Economic Reform” and “Let the Market Play a Decisive Role” – this paper aims to analyze the costs and benefits of building Shanghai into an IFC. Additionally, by analyzing the multifaceted natures of the four existing IFCs, namely London, New York, Hong Kong and Singapore, this paper critically appraises China’s efforts to create an IFC in Shanghai.

It is inevitable for China to open its financial markets for it to play a bigger role in global commerce and finance. However, resistance from some State-Owned Enterprises is preventing the Chinese economy from moving in this direction. For example, on one hand, State-Owned Enterprises can easily borrow money from banks at low rates. But, on the other hand, due to the absence of a sophisticated capital market, private sector businesses have difficulty acquiring loans. Thus, even though Chinese private entrepreneurs might have promising ideas, many leave China for the United States to find better financing opportunities. The paper argues that developing Shanghai into an IFC would serve to accelerate domestic financial reform, establish a sophisticated capital market, and improve the overall economic condition of China. Lastly, I offer concrete suggestions as to how China can turn Shanghai into a successful IFC.

Assessing the Korea-China Free Trade Agreement: Beginning of Another Chasm between Korea and China?

Younsik Kim, Sungshin Women's University

The Korea-China FTA soon will be formally effective, since Korea and China have made efforts in establishing the treaty. Compared with the process of establishing the Korea-US FTA, it looks interesting that the Korea-China FTA will be passed without serious objections from civil society or the Korean National Assembly. However, this
paper expects that Korea-China FTA could face the unexpected risk of causing serious political upheaval in the future due to current constitutional settings for treaty-making in Korea, which is vulnerable to this kind of political crisis. To be specific, this paper points out an uncomfortable reality, which is created by lack of democratic participation in the decision-making process for FTA negotiation. The current system gets rid of opportunities for the public to assess possible benefits and risks within a reasonable time limit by allowing the executive branch to hide possible risks of the treaty. Therefore, FTAs only come to public attention suddenly in the political context when unexpected risks of treaty are realized; in this context, the treaty languages of the investor-state arbitration in the Korea-China FTA will be one of the most dangerous elements, which could dismantle stable operations of Korea-China FTA in the future. For example, the Korea-China FTA will be politically discussed as a serious problem if Chinese investors would cripple Korean public policies by suing the Korea government on the grounds of breach of FTA. In this context, after assessing deficiency of current constitutional framework for treaty-making, this paper will assess the possible risks of the current Korea-China FTA. In addition, the research will make several constitutional suggestions for avoiding possible risks and ensuring the successful establishment and smooth implementation of the Korea-China FTA.

Crowdfunding and its recent development in Asia

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Crowdfunding is a mechanism of fundraising on the Internet without a conventional stock market, especially for small and middle enterprises (SMEs). This is an intermediary system for people raising funding much more easily and efficiently. The difficulties for SMEs to raise funding from capital market are universal problems in the world. Without the certain scale of business and enough real-estate as collateral, it is difficult for SMEs to raise fund from the bank or stock market to enhance their cash flow. As a result, with the development of technology, there is an increasing number of crowdfunding platforms in the world to supply for strong demand of capital market, especially for SMEs.

The business scale of crowdfunding in the United States and European countries are prosperous since they already amended their security law to exempt the crowdfunding industry as a new financial channel. Recently, the issue of crowdfunding also becomes debated in Asian countries. On the one hand, crowdfunding is one of solutions to solve the problems of difficulties of fundraising for SMEs. On the other hand, the
practical experiences of crowdfunding also show there are many fraud of platforms and funding raisers. Under consideration of investor protection and efficient fundraising, China and Malaysia are already provided regulation toward crowdfunding. The financial authority of Singapore, Thailand and Taiwan, are also drafting the bill of crowdfunding in early 2015.

The regulation of crowdfunding is still at initial stage. There are still many instabilities. As a result, to establish new fundraising channel for SMEs to raise fund and protect investor benefits, it is an urgent issue for Asian countries to provide regulation, which includes (1) Excluding those platforms, which don't have enough ability to operate the business; (2) The liability of funding raiser; and (3) Alternative Dispute Resolution for investors of crowdfunding.

Session 2-46
(Paper Session) Lay Participation in Criminal Process
The Attempts to Introduce the Jury System in Japan's Colonial Possessions
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This paper discusses the attempts to introduce the institution of jury service in the colonial possessions of the Japanese Empire. Its primary focus is on two of Japan's colonies—Taiwan and Karafuto, the Japanese name for Sakhalin. The paper starts off by providing an overview of Japan’s imperial conquests and of the country’s efforts to develop an effective strategy for administering its colonies. It then turns to discussing the case of Taiwan where the possibility of introducing the jury system was discussed in the late 1920s-early 1930s. The section devoted to Taiwan describes the political and legal developments during the years of Japanese rule and outlines the proposals to introduce the jury system that were made by the members of the Taiwanese elite. The analysis of the reasons behind the failure of these proposals to lead to reform in Taiwan is followed by the discussion of the case of Karafuto and of the factors that lay behind the government's decision to extend the application of the pre-war Jury Act to this and not to any of Japan's other colonial territories. The paper then turns to examining the position of the colonial peoples in courts in mainland Japan. It notes that the nationals of Japan’s colonial territories found themselves in the position of criminal defendants in trials that were adjudicated with the participation of jurors in mainland Japan and describes the details of one such trial. The concluding section is devoted to the analysis of the successful and failed attempts to introduce the jury system in Japan's colonies and summarizes the findings of this paper.
Five-year lookback on Saiban-in system (mixed jury system in Japan)

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Trials by the lay participation system in Japan, saiban-in system, have started in 2009. We have more than five years' experience after the initiation of new lay participation system. In this presentation, the author looks back the implementation of the saiban-in system with statistics issued by the Supreme Court of Japan. The statistics include the numbers of cases tried by this system, the numbers of lay people who involved this system, how may lay people involved since implementation, and questionnaire surveys conducted by the Court that were answered by the real lay participants. On those statistics, the author draws the picture of the system implementation, and how do the people who served as saiban-in's thought about the justice system. And the author will discuss whether the system implementation has accomplished the goal of the system; that is to promote popular base of justice system.

Partisan Politics and the Introduction of Lay Judge Systems in East Asia

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This paper examines the political determinants of new lay judge systems in East Asia. Why did Japan, South Korea, and Taiwan, countries with criminal trials that have been dominated by professional judges, decide to introduce lay judge systems during the last decade?

From the perspective of state actors, greater public input into criminal proceedings may help to enhance the legitimacy of the justice system. But it also entails a considerable amount of risk. For instance, lay and professional judges may have different bases for deciding whether the accused may be guilty or not guilty or what sentences might be appropriate, thus undermining the practices and norms that professional judges have created and adhered to for decades. Second, while studies of the American jury find that serving on juries often enhances the civic-mindedness of citizens, making them more aware of various social and political issues, a more civic-minded citizenry may also cause headaches for policymakers. Indeed, since the introduction of the lay judge system in Japan, some of the ex-lay judges have formed a movement to oppose the death penalty. Why, despite the risks, did these three East Asian states decide to introduce a lay judge system?

There also exist important differences in the jury systems in the three countries. For instance, while defendants in Japan cannot opt out of a jury trial if they are accused of a certain class of cases, defendants in South Korea may choose whether or not to be tried by a jury. What factors account for the cross-national differences in the configuration of new jury institutions? The present study conducts detailed process-tracing from Japan, South Korea, and Taiwan to argue that partisan dynamics, especially the relative influence of left-libertarian parties, crucially shaped both the timing and the configuration of jury systems in the three countries.
How professional judges demonstrate the ‘facts’ during mixed jury deliberation: a multi-modal analysis of the embodied actions of professional judges in the Saiban-in criminal court

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In my previous analysis of mixed jury deliberations in the ‘Saiban-in’ criminal court, based on the analysis of video recorded data, it was noted that the professional associate judges are found to characteristically speak in sequentially posterior positions, in relation to utterances by the lay judges. In other words, professional associate judges often refer to what the lay judges said in their preceding comments, such that they implicitly reformulate and transform the lay judges’ opinions into more legally accountable speech. This characteristic style of speaking, I found, may be understood as the resolution of an interactional dilemma that the professional judges face during Saiban-in deliberations, that is, how to reconcile conflicting interests between controlling and not-controlling the deliberations, namely, reaching a legally accountable verdict while still facilitating the lay judges to express their views freely.

The present study seeks to develop these previous findings further by examining the way in which professional judges physically act in participating in embodied demonstrations shown during deliberations, by implicitly instructing the lay judges with a ‘professional vision’ (C. Goodwin), for example, as in a case where a professional judge demonstrated how to technically ‘see’ the dangerousness of a particular knife wound site. I will argue that the way they demonstrate the ‘facts’ in their embodied actions are essentially consistent with my previous findings as to how and why they talk in a sequentially posterior position in relation to the lay judges’ speech, thereby transforming the meaning of the lay judges’ speech.