



NAGOYA
UNIVERSITY



**Nagoya University Center for Asian Legal Exchange (CALE)
and Graduate School of Law (GSL)
2022 CALE Annual Conference**

**The Identity and Dynamics of Contemporary Asian Constitutionalism
in the Context of Globalization
(Speakers' bio and abstracts)**

Day 2: February 15 (Tuesday) 2022, 18:00 – 21:00 (Japan)

Session on Wider Asian Perspective

1) Ikhyeon Rhee, Mokwon University

Bio:

Ikhyeon Rhee is a Vice-President and Professor in Mokwon University. Before joining Mokwon, he served as the President of Korea Legislation Research Institute (2016-2019), a Director-General of the Ministry of Government Legislation (2008-2016), an Assistant Advisor to the President of the Republic of Korea (2007-2008) and a Constitutional Researcher of the Constitutional Court of Korea (2006-2007). He studied political science at Sogang University (KOR), public administration at Syracuse University (USA), law at Sungkyungwan University (KOR) and Columbia University (USA). He is interested in legal exchange and cooperation, law and development, rule of law and constitutionalism.

Abstract:

(Discussion on the Amendment of the Constitution of Rep. of Korea and its Direction)

The 1987 is a significant year in terms of democracy and constitutionalism in Korea. The people became to directly elect the president in about 20 years, a new constitution was amended according to the aspiration of the people, and the Constitutional Court was established. Despite the skepticism of pundits, the Constitutional Court has successfully functioned and made a significant contribution to the development of constitutionalism in Korea. This constitution was able to end the authoritarianism that oppressed and tormented the people for the past 40 years, and was able to establish democracy in the true sense. The current constitution has survived for about 35 years. However, this constitution was amended in haste at the time, and is far from complete. In particular,

there are many elements that do not fit in the globalized and much more complex Korean society.

It may have accomplished the mission of the times of preventing the dictatorship and realizing democracy but it has long been pointed out that it is not suitable for modern society. Since the revision in 1987, there have been about three revision efforts so far. It has been pointed out that the concentration of power on the president, mainly represented by the imperial presidential system, the absence of provisions related to human rights protection suitable for modern society.

I would like to introduce the discussion on constitutionalism and constitution in Korea by introducing each of the Roh, Moo-hyun administrations, the Lee, Myung-bak administrations, and the Moon Jae-in administrations on constitutional amendment efforts.

2) Leigha Crout

Bio:

Leigha Crout is a scholar of modern developments in Chinese constitutional law. She is a Doctoral Candidate in Law at King's College London and Research Associate with Oxford University's China, Law and Development Project. Prior to pursuing doctoral studies, Leigha worked as a Senior C.V. Starr Lecturer of Transnational Law at Peking University, teaching a course on Transnational Law and a seminar on Comparative Constitutional Law. Her works have been published in various law journals as well as the popular press, and she has been invited to share her research as a Berger Panelist at Cornell Law School's Berger International Legal Studies Program and as a featured speaker at the Law and Society Association's Annual Conference in 2018, among other engagements. Leigha received her Master's in International Development from Cornell University and her J.D. and LL.M. with high honors from the University of Notre Dame.

Abstract:

(Constitutional Crossroads in the People's Republic of China: Past and Present)

What role does the Constitution serve in the People's Republic of China?) Prior to 2012, the world observed as the state embraced significant positive constitutional developments towards a more tolerant and democratic state. Institution building, a new emphasis on the authority and supremacy of law, and responsive social and economic initiatives were noted hallmarks of China's Reform and Opening Up period in the 1970s and 1980s. This general trend was dramatically and irreversibly shifted with the introduction of the 2018 constitutional amendments, which among other developments eradicated term limits for the highest offices of the state, instituted Party supervisory offices for governmental institutions, and placed the rule of the Communist Party of China as part of the nation's guiding ideology. While seemingly in contrast with the development of legal institutions, this modern revolution taking place in the PRC is

indeed placing the “rule of law” at the forefront of its new, highly legalistic method of governance. This paper will investigate several of the most poignant developments from the 2018 amendments and contribute essential information towards comprehending how and why the Party’s new investment in legalism took place, and underline what the role of constitutional law may play in the PRC in the years to come.

3) **Dinesha Samararatne**

Bio:

Dr. Dinesha Samararatne is a Senior Lecturer at the Department of Public & International Law at the Faculty of Law of the University of Colombo, Sri Lanka. Dinesha is a Senior Research Associate, Laureate Program in Comparative Constitutional Law and Co-Convenor of Constitution Transformation Network (CTN) of the Melbourne Law School, Australia. She is a member of the Editorial Board of the Indian Law Review and has served as a Co-Editor of the IACL Blog (2019-2021). At the Melbourne Law School, she has been Postdoctoral Fellow (2019-2020) and Kathleen Fitzpatrick Visiting Fellow (April – May 2018). Her recent research work has been in relation to public participation in constitution-making, constitutional resilience, women and constitutional law, fourth branch institutions and the relevance of the global south in comparative constitutional law. Dinesha has published in the Asian Journal of Comparative Law, Journal of Law and Society, Indian Law Review, Asian Journal of Law and Society, the Modern Law Review and the Journal of Asian Studies.

Abstract:

(Constitutionalism, Comparison and Colonialism: Insights from Sri Lanka)

I focus on two challenges that scholars face when studying constitutionalism in Sri Lanka. One is the challenge of accounting for the enduring impact of colonialism in constitutional governance. The other is challenge of comparison in studying constitutionalism – what jurisdictions should Sri Lanka be compared with, how, and why? I argue here that constitutional law scholars can and ought to deal with these challenges in specific ways. Doing so would allow us to deepen our knowledge on the prospects for constitutionalism in Sri Lanka. I raise the following questions in this regard. Emerging debates about the global south reflect a renewed academic commitment to studying the global south on its own terms and in building theory from the global south. In this context, how should we best understand constitutional proximity of jurisdictions? What are the opportunities and limits to new forms of comparison? What does building theory from the global south mean for those who study Sri Lanka? What specific insights can we obtain by accounting for colonialism in constitutional law? To answer these questions, I draw insights from my on my ongoing research about Sri Lanka: on the evolution of the fourth branch, on women’s enjoyment of constitutional guarantees and on public participation. The insights I obtain, might resonate with experiences and

challenges in other contexts with enduring legacies of colonialism and where scholars are considering comparison with jurisdictions beyond the usual suspects in comparative constitutional law.

4) **Benjamin Lawrence**

Bio:

Ben Lawrence is a Postdoctoral Fellow at the Centre for Asian Legal Studies (CALs), National University of Singapore. His research applies socio-legal concepts and ethnographic methodologies to the study of constitutionalism in Asia, with a particular focus on Cambodia. Ben's work has been published in the *Asian Journal of Comparative Law*, *Contemporary Southeast Asia*, and the *Journal of Law and Religion* (forthcoming). His monograph, provisionally titled *In the Shadow of the Constitution*, is currently under contract with Cambridge University Press. Ben has worked with a variety of international organisations, including the Centre for Humanitarian Dialogue, the European Union External Action Service, and Amnesty International. He earned a Ph.D. in *Law & Society* from the University of Victoria (British Columbia) in 2019, as well as a Masters Degree from the School of Oriental and African Studies (University of London) in 2012 and a B.A. from the University of Leicester in 2008.

Abstract:

(In the Shadow of the Constitution: the Micropolitics of Constitutional Contestation in Cambodia)

Written at the height of a U.N.-sponsored peace- and democracy-building process, Cambodia's 1993 Constitution is ostensibly guided by principles – outlined in advance by the Paris Peace Accords – of liberal democracy, human rights and rule of law. By contrast, recent academic accounts of Cambodian politics are primarily concerned with understanding the country's transition from a competitive-authoritarian system to one characterised by hegemonic, single-party rule. While it would be easy to assume from this dichotomy that constitutional contestation in Cambodia is “muted” or non-existent, with that the Constitution a mere “sham,” this paper argues that constitutional contestations are in fact rife in Cambodia at an everyday level. Drawing on two years of ethnographic fieldwork in Cambodia, this paper looks at the way in which not only political actors, lawyers and nongovernmental organisations but also Buddhist monks, artists, community leaders and other lay actors do in fact mobilise constitutional ideas and language in their everyday practice, shaping constitutional meaning in the process. Approaching constitutionalism from an ethnographic perspective and acknowledging the significance of constitutional law beyond the courts, I suggest, brings to light an otherwise overshadowed story of constitutionalism in Cambodia. Here, largely imposed principles of liberal democracy are translated into everyday practice not just by a small

group of political leaders and institutions, but also by a diverse array of actors who are rarely attributed constitutional agency by conventional approaches to constitutional law.

5) **Kartika Paramita**

Bio:

Kartika Paramita is a faculty member in International Business Law Program, Universitas Prasetiya Mulya, Indonesia. She obtained her Bachelor of Law (LL.B.) degree from Universitas Gadjah Mada Indonesia and her Master of Commercial Law degree (LL.M.) from Erasmus University Rotterdam, the Netherlands. Kartika is a member of the Indonesian Bar Association. Her areas of interest include international commercial law, private law, and civil rights law.

Abstract:

(Rethinking Sex under Indonesian Constitution)

In Indonesian context and culture, a sexual activity is only legal for those who are married. This view is strongly inspired by religious beliefs which are mostly practices by Indonesian people. Because of such reason, it is always challenging to address issues related to premarital sex, let alone passing a law which covers the topic.

In the last two years, many Indonesian women activists have been fighting for the issuance of Sexual Violence Eradication bill. This bill is aimed to fill the gap that is currently failed to be filled by Indonesia prevailing laws, such as the definition and form of sexual violence and harassment. However, the bill has been the subject of heated controversy – and cannot pass the legislative body of the House of Representative as it is objected by multiple conservative religious political parties and groups. They believe that the bill has encouraged consensual premarital sex, as well as the legalization of adultery and LGBTQ sexual orientations.

In light of that, it is the aim of the present report to address the issue on how and to what extent Indonesian laws and constitution has encompassed the issue of premarital sexual consent. The study is projected to be a desk-based literature review which employs systematic approach, covering both academic literature and grey literature. The contribution of the systematic report could be, a map of a field of research, the syntheses the state of knowledge, an agenda for further research, or a historical overview or timeline of the chosen topic.

6) **Marcus Brand**

Bio:

Marcus Brand has led the Myanmar Programme of International IDEA since September 2020 and throughout the November 2020 elections and the February 2021 coup. He leads IDEA's programme that is currently implemented only from outside the country and

focuses on technical assistance and expert advisory services in areas related to democracy, elections, constitutional reform and participation. He has an extensive background working on democratic governance, constitutional and rule of law reform in Myanmar and other countries in democratic transition. He has more than 20 years of experience working with the United Nations, the OSCE, the EU and other entities, and has lived and worked in Thailand, Nepal, Poland, Sweden, Kosovo, the United States, and Ukraine, where Brand led UNDP's work on democratic reform for five years prior to his assignment with IDEA. Brand has a doctoral degree in international and constitutional law and has authored and published a number of articles and studies on constitutional change, international conflict and sustainable development.

Abstract:

(Myanmar's constitutional moment – The unconstitutionality of Myanmar's 2021 coup and the transition towards a federal democratic constitution)

Since the coup conducted by the Myanmar military on 1 February 2021, the military regime has tried to portray itself as the legitimate government of Myanmar by arguing that it is following the 2008 Constitution. Although constitutional authority is only one dimension of the current struggle to restore democratic governance in Myanmar, it is important to demonstrate why the seizure of power by the military was unconstitutional, and consequently why the military regime and its actions and decisions have no constitutional authority.

My presentation will provide a constitutional analysis of the military regime's claim that it is following the 2008 Constitution and explain why the military's declaration of a state of emergency and seizure of power were and remain unconstitutional. I will also describe the subsequent actions taken by the military regime since the coup in an attempt to consolidate power and explain why the military regime and its decisions have no constitutional authority. I will conclude by focusing on the current constitutional vacuum and ongoing efforts undertaken by the legitimate interim institutions and the people of Myanmar to overcome the military regime and restore democratic governance and constitutionalism under a new federal constitution.