

## INTRODUCTION: LAW & SOCIETY IN THE CONTEXT OF EAST ASIA

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Traditionally, U.S. legal education has focused quite deliberately on teaching *U.S.* law and what *U.S.* law faculty describe as an approach to analysis characterized as “thinking like a lawyer.”<sup>1</sup> Today, this does not go far enough. Rather, the lessons offered in U.S. law schools necessarily implicate conceptions of law and of the ways in which law matters outside of the United States.

The papers in this collection illustrate this broader vision both because of their substance but also because of the forum in which these articles initially were presented: the annual meeting of the Association of American Law Schools (AALS) in January 2017. The very name of AALS—the Association of *American* Law Schools—suggests a national focus. While that may have been the overwhelming interest of the organization initially, in the last decades the AALS gradually has transformed to include issues, faculty, and organizations from outside the United States.<sup>2</sup> As evidence of this

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<sup>1</sup> For a fascinating analysis of how law school teaches “thinking like a lawyer,” see generally ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* (2007).

<sup>2</sup> For an example of the interest within AALS in international matters, see, e.g., the discussion of international students in U.S. law schools described in a recent blog entry by Carole Silver, “*International Students in US Law Schools: AALS Discussions and the Need for Information*,” *FACULTY LOUNGE* (Jan. 10, 2017) <http://www.thefacultylounge.org/2017/01/international-students-in-us-law-schools-aals-discussions-and-the-need-for-information.html> [<https://perma.cc/N4VA-RNCT>].

[T]he topic of international students in US law schools was the focus of a number of sessions. These included a discussion about (i) fostering inclusion of international students enrolled in post-JD programs as well as encouraging their interaction with JD students, (ii) the ABA Section of Legal Education’s approach to gathering information and acquiescing in post-JD and non-JD programs that include international students and (iii) how law schools help international students in non-JD programs prepare for a US bar exam. The number of sessions that included some discussion of international students’ experiences in US law schools,

transformation, the AALS has sanctioned the development of various AALS groups interested in particular areas of the world. One of these, the Section on East Asian Law and Society, was organized several years ago by law faculty who sought to expand AALS's focus to include a forum for exploring issues related to East Asia through a Law & Society approach to research.<sup>3</sup>

The interests of the Section on East Asian Law & Society are well-reflected in the articles featured in this collection. Each paper examines a distinct substantive topic in the context of a particular national legal system and society. Anna High's article, "*It's Grace and Favor, It's Not Law*": *Extra-Legal Regulation of Foreign Foster Homes in China*, addresses the ways in which the legal status of foreign-run foster care homes in China influences the homes' interactions. Park Kyung Sin and You Jong-Sung's paper, *Criminal*

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coupled with the variety of participants in these sessions, is some evidence of the importance of this population to US law schools.

The history of this Journal, now known as the University of Pennsylvania Asian Law Review, suggests a similar development:

The journal was first published in 2004–2005 as the Chinese Law and Policy Review. Beginning with its 2007–2008 cycle, CLPR broadened its focus to include the larger East Asian region, and changed its name to the East Asia Law Review. The journal also ceased bilingual publication in English and Mandarin at this time and became an English language only publication. In 2016, the journal again decided to broaden its scope, primarily to add valuable perspectives about the South Asian subcontinent but also with a view towards the continent as a whole, and became the University of Pennsylvania Asian Law Review with Volume 11.

*About ALR*, U. PA. ASIAN L. REV., <https://www.law.upenn.edu/journals/alr/about.php> [<https://perma.cc/N45T-6P95>] (last visited Jan. 26, 2017).

<sup>3</sup> While there are many ways to characterize a Law & Society approach, a simple explanation was offered by Howard Erlanger in his Presidential Address to the Law & Society Association: Law & Society involves a belief that “empirical research [can] provide an understanding of how the legal system actually works, and of how law [can] become an effective agent of progressive social change.” Howard S. Erlanger, *Organizations, Institutions, and the Story of Shmuel: Reflections on the 40<sup>th</sup> Anniversary of the Law and Society Association*, 39 LAW & SOC’Y REV. 1, 2–3 (2005). See also *New Legal Realism Conversations: An Empirical Law & Society Blog*, NEW LEGAL REALISM, <https://newlegalrealism.wordpress.com/> (last visited Jan. 26, 2017) (describing an empirical approach to the study of Law & Society involving “bridg[ing] disciplines and methods in a systematic effort to develop translations of law and social science. This requires expertise in the language and categories of law, as well as expertise in interdisciplinary research on law.”).

*Prosecutions for Defamation and Insult in South Korea with a Leflarian Study in Election Contexts*, explores the abuse by political incumbents of prosecutions under Korea's candidate defamation and insult laws. Lastly, the article by Colin P.A. Jones, *From Great Writ to Tuning Fork: How Habeas Corpus Was Tamed in Japan*, considers the reshaping and constriction of habeas corpus in Japan. The papers are linked by a thread of Law & Society themes,<sup>4</sup> including, for example, the limits and formality of law,<sup>5</sup> law's relationship to social hierarchies,<sup>6</sup> and "law on the books" versus "law in action."<sup>7</sup>

This collection came about because of the willingness of the Review's Editor-in-Chief to answer an uninvited e-mail about the possibility of publishing the results of our Section's call-for-papers. My thanks to the members of the editorial staff for their work and curiosity. Their positive response illustrates the encouragement of U.S. law schools for learning about the ways in which law matters outside the United States and how this reflects on our understanding about the United States, as well.

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<sup>4</sup> On Law & Society themes generally, see LAW & SOCIETY READER (Richard L. Abel, ed., 1995); Michael McCann, "The Unbearable Lightness of Rights: On Sociolegal Inquiry in the Global Era," 48 LAW & SOC'Y REV. 245 (2014); Carroll Seron et al., "Is There a Canon of Law and Society?," 9 ANN. REV. L. & SOC. SCI. 287 (2013); Bryant Garth & Joyce Sterling, *From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State*, 32 LAW & SOC'Y REV. 409 (1998).

<sup>5</sup> See Anna High, "It's Grace and Favor, It's not Law": Extra-Legal Regulation of Foreign Foster Homes in China, 12 U. PA. ASIAN L. REV. 357, 400 (2017) (describing foreign-run foster homes in China as having "adapted to a system in which flexible norms, rather than formal laws, govern individualized, paternalistic relations with the local state, and in which social and political legitimacy carries more weight than legality.").

<sup>6</sup> See Park Kyung Sin & You Jong-Sung, *Criminal Prosecutions for Defamation and Insult in South Korea with a Leflarian Study in Election Contexts*, 12 U. PA. ASIAN L. REV. 463, 492 (2017) ("[W]hat matters is not whether the attacked candidate was an incumbent at the time of the attack but whether the attacked candidate wins the subsequent election.").

<sup>7</sup> See Colin P.A. Jones, *From Great Writ to Tuning Fork: How Habeas Corpus Was Tamed in Japan*, 12 U. PA. ASIAN L. REV. 407, 410 (2017) ("[H]abeas corpus does play a role in the Japanese legal system, albeit an obscure, largely unheroic one that is almost completely divorced from its original intent and the text used to formulate the remedy it purports to offer.").