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REPORT ON THE 4TH EAST ASIAN LAW & SOCIETY CONFERENCE – “THE ROLE OF LAW IN BRIDGING CHASMS IN AND AMONG ASIAN SOCIETIES”, TOKYO 2015

ABSTRAKT

SPRAWOZDANIE Z KONFERENCJI THE 4TH EAST ASIAN LAW & SOCIETY CONFERENCE – “THE ROLE OF LAW IN BRIDGING CHASMS IN AND AMONG ASIAN SOCIETIES, TOKIO 2015

Na Międzynarodowej Konferencji Naukowej: The 4th East Asian Law & Society Conference – “The Role of Law in Bridging Chasms In and Among Asian Societies”, która odbyła się w Tokio, stolicy Japonii, zebrało się ponad dwustu sześćdziesięciu prelegentów z całego świata. Przez trzy dni uczestniczyli oni w licznych panelach, na których dyskutowali o różnicach systemów prawnych występujących w krajach Azji. Głównym celem konferencji było skonfrontowanie tych różnic systemowych i rozwiązań, aby podjąć próbę zbudowania mostów pomiędzy nimi oraz podjąć dyskusję nad próbą zrozumienia i zbliżenia tych rozwiązań prawnych do siebie. Zakres tematyki był bardzo różnorodny i pokrywał prawie wszystkie gałęzie prawa: karnego, cywilnego, konstytucyjnego, pracy etc.

SŁOWA KLUCZE: prawo, konferencja międzynarodowa, Japonia, Azja, społeczeństwo
KEYWORDS: conference, international, Asian law, Japan, society

The 4th East Asian Law & Society Conference was held on 4–6 August 2015 in Tokyo, Japan. This international conference was organized by the Collaborative Research Network 33 (CRN33) on East Asian Law and the

Law & Society Association (LSA). The whole event took place at the Waseda University, which was a co-organizer of the conference. Over 260 participants registered for the conference and presented their papers in 52 sessions organized during the event. It is worth to point out, that the organizers prepared the whole event perfectly in details, also by offering participants to take the opportunity and participate in additional excursions. On 3 August, participants of the conference had an opportunity to visit the largest prison in Japan, the Fuchu Prison. On 7 August there were another two excursions: one to the Supreme Court and the Japan Federation of Bar Associations and the other to Namie-town in the Fukushima Prefecture.

The main theme of the conference was “The Role of Law in Bridging Chasms In and Among Asian Societies”. The aim was to gather scholars of the region and to share their research and opinion on the role of legal systems in Asia. The conference, however, was not addressed only to the habitants of Asia, but also to scholars from around the world, who wanted to share their knowledge in order to promote the peaceful co-existence.

The first day of the conference started at 9:00 a.m. with the registration, where participants of the conference could sign in for the event and collect the conference materials. At 10:00 a.m. the opening ceremony started with the speech of Professor Miyazawa Setsuo¹, the co-founder and chair of the CRN 33, who greeted all guests and officially opened the event. After his warm welcome, the time has come for the keynote speakers to present their research. For the 4th EALS Conference, the organizers invited 9 keynote speakers. The first of them was Professor Carroll Seron² from the University of California, the former President of the Law and Society Association, with her lecture on *The Two Faces of Law*

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- 1 Setsuo Miyazawa – the Professor of law at the Aoyama Gakuin University Law School in central Tokyo and at UC Hastings. He is a Vice President of the Asian Criminological Society and co-founded the Collaborative Research Network 33 in East Asian Law and Society. Professor Miyazawa has published eighteen books amongst which we can find: *Policing in Japan* (SUNY Press 1992) and *Justice System Reform and Citizens' Perspectives* (2001). He has also published over 200 articles in such scientific journals as: *Annual Review of Law and Social Science*, *Punishment and Society*, *Law & Social Inquiry*, and *the Law & Society Review*.
 - 2 Carroll Seron – Professor at the University of California, Irvine. The former President of the Law and Society Association and the Associate Dean of the School of Social Ecology. She published her papers in many scientific journals i.a. *Law & Society Review*, *Criminology*, *Work & Occupations*, *Annual Review of Law and Social Sciences*.

and Inequality: From Critique to the Promise of Fixable, Situated Policy. The second keynote speech was *Reconsidering the Article 9 of the Japanese Constitution (Renunciation of War) from Socio-legal Perspective*, presented by Professor Iwao Sato³ from the Tokyo University. The third keynote speaker was Professor Tay-Sheng Wang⁴ of National Taiwan University, who gave a short lecture about the localization of foreign laws in Taiwan. After this third presentation the organizers invited all participants for a lunch break. At 2:00 p.m. the second session of keynote speeches started with the presentation on *Democracy, Human Rights and the Rule of Law* by Professor Johannes Chan⁵. His speech was followed by the lecture of Professor Kazuko Ito⁶, who talked about the role that civil society plays in Asia in protection of human rights. As the last keynote speaker in this session, Professor Sung Suh⁷ focused on the human rights in East Asia. After the coffee break, the last session of keynote speeches started with the presentation on *Legal Feminism in Korea and 'Culture' Question* by Professor Hyunah Yang of The School of Law at the Seoul National University. Her lecture was followed by the presentation of Professor Fujiko Sakakibara⁸, who presented an interesting research on the lawsuit

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- 3 Iwao Sato – the Professor at the Institute of Social Science at the University of Tokyo and since 2014 he holds the function of the President of the Japanese Association of Sociology of Law.
 - 4 Tay-Sheng Wang – the Professor of the National Taiwan University and is one of the most famous legal historians in Eastern Asia. He has been a joint-researcher of the Academia Sinica, which is considered to be the most famous research institute in Taiwan. He has gained many awards, amongst which is Academic Award of Humanities and Social Science by the Ministry of Education of Taiwan and the Excellent Research Award of National Science Council of Taiwan, which he received three times. Professor Wang is the author of the book *Legal Reform in Taiwan under Japanese Colonial Rule*, which was published in English, Japanese and Chinese.
 - 5 Johannes M.M. Chan – Professor of Law and former Dean of the Faculty of Law at The University of Hong Kong. He is the author of many books including *Hong Kong Human Rights Bibliography* and *Halsbury's Laws of Hong Kong: Constitutional Law and Human Rights*.
 - 6 Ito Kazuko – Tokyo Bar Association Attorney at Law and the Chief of the Gender Equality Committee of the Japan Federation of Bar Associations. She is the author of several articles and books i.a. *Word Report of International Human Rights Law*.
 - 7 Suh Sung – Dean of Korea Research Center of Ritumeikan University.
 - 8 Fujiko Sakakibara – Attorney at Law, a trustee member for Association of Gender Law and Association of Family, Society and Law. In her research and practice as a lawyer, she focuses on gender and family law.

on surnames for married couples in Japan. And finally, the last keynote speech was devoted to the *Japanese Postwar Compensation Litigations and Korean and Chinese Postwar Compensation Litigations: Upon International Humanitarian Law* and presented by Yoshitaka Takagi⁹, who closed the first day of the conference.

On the second day of the conference twenty eight sessions were held at Waseda University, from 9 a.m. until 8 p.m. As it was not possible to participate in all of them at once, participants had to choose those sessions, which were in scope of their interests.

One of the morning sessions was devoted to the *Victims in Criminal Law and Criminal Procedure*. Won Kyung Chang, Assistant Professor from Ewha Womans University, presented a paper *Trial and Error: A Restorative Justice Experience in Korea*. She analyzed ten criminal cases in 2013, in which a Korean criminal court attempted to employ principles of restorative justice. The second speaker, Dr. Erik Herber¹⁰ from the Leiden University, chair of the session, presented his research on *Victim Participation in Japan – When Therapeutic Jurisprudence Meets Prosecutors’ Justice*. In his presentation, he emphasized the interaction that is in place between the new “therapeutically oriented” system of victim participation in practice and the “traditional characteristics” of criminal justice in Japan. Then, Zhou Xiao from the University of Tsukuba, presented the paper titled *The Birth of “Women-children”: Focused on Clause 360 of Criminal Law of The People Republic of China*. The last speaker of the session was Professor Carol Lawson¹¹ of Australian National University College of Law with her presentation *Civil Oversight in Japanese and Australian Prisons: Apples and Oranges?* She pointed out not only differences between both countries, but also underlined that both models have their own internal logic.

The second morning session’s theme was *Privatization and Public-Private Partnerships with Prisons and Corrections: Benefits, Concerns and*

⁹ Yoshitaka Takagi – lawyer, member of the Tokyo Bar Association and Chairman of “The Lawyers’ Association for Exchange between Japan and China”.

¹⁰ Erik Herber – a lecturer at the Leiden University – Institute of Area Studies and School of Asian Studies, and also at the Van Vollenhoven Institute for Law, Governance and Development.

¹¹ Carol Lawson – Associate Professor of the Leading Graduate Schools Program Yagumo Offices. She is also a member of the Australian Network for Japanese Law (ANJeL) and the Roppongi Bar Association.

Models, and it was coordinated by Paul Leighton¹², from Eastern Michigan University, who also had his presentation *Models of Privatization and Public-Private Partnerships with Prisons: An Incomplete Survey*. The second speaker was Mari Hirayama¹³, from Hakuoh University who in a very interesting and absorbing way discussed the function of the Prison Visitation Committee in her lecture *Transparency of Prisons in Japan?: Roles and Significance of Prison Visitation Committee*. Another speaker, Atsuko Otsuka who is a Freelance Journalist, presented her paper *The Benefits of Involving Private Organizations in PFI Prisons*. Finally Professor Malcolm Feeley¹⁴ of Berkeley Law School, presented an interesting paper titled *Entrepreneurs of Justice: How the Private Sector Made and is Remaking the Modern Criminal Justice System*, which closed the second morning session.

After those two sessions, organizers invited everyone to continue their discussions while enjoying the lunch break, while the CRN33 held its Planning Committee Meeting at that time.

At 2:15 p.m. the afternoon sessions began with the *Structure of Company and Employment* session coordinated by the Professor Matthew Wilson¹⁵ of The University of Akron School of Law. The first speaker, Bo-Shone Fu from the University of Wisconsin Madison Law School, presented his paper *The International Legal Transplant of Labor and Employment Law from U.S. and Japan into Taiwan: the Law, the Society and the Agency*. In his presentation he pointed out main factors that can explain the differences between the original U.S. and Japanese law, and the transplanted law into Taiwan. The next speaker was Professor Caslav Pejovic of Kyushu University, who presented *Japanese Labor Law: Between Social Stability and*

12 Paul Leighton – Professor in the Department of Sociology, Anthropology & Criminology at Eastern Michigan University. Co-author of books: *The Rich Get Richer and the Poor Get Prison; Class, Race, Gender & Crime*; and *Punishment for Sale: Private Prisons, Big Business and the Incarceration Binge*.

13 Mari Hirayama – Associate Professor of Criminal Procedure & Criminology, at Hakuoh University Faculty of Law, Tochigi, Japan. Member of the Law and Society Association. Author of many publications i.a. *Sentencing and Crime Policy for Sex Offenders in Japan – Possible Impacts of the Lay Judge System* and *The Wiley-Blackwell Handbook of Legal and Ethical Aspects of Sex Offender Treatment and Management*.

14 Malcolm Feeley – Professor of Berkeley Law School. Author of many books including: *The Process is the Punishment or Court Reform on Trial*.

15 Matthew Wilson – Dean and Professor of Law of The University of Akron, School of Law and an Executive Committee Member, East Asian Law & Society Section of AALS.

Economic Efficiency, where he raised the ageing of Japanese society issue and underlined its importance and impact on the employment law and culture in Japan. After this absorbing presentation, it was my turn to take the floor, and introduce to the audience the presentation titled *Women's employment rights in Japan and Poland: a comparative approach*. In this short speech, I emphasized the main differences between Polish and Japanese Labor Law regulations in relation to the women's employment rights. After my presentation, Professor Takashi Shimizu of The University of Tokyo presented *Corporation or GmbH? The choice and use of legal business forms in Japan*. In a very expressive and absorbing way, he analyzed the relationship between the use of legal form of business and the economic and social changes. The last presenter was Professor Yukari Takamura of Nagoya University with her paper on *Function and Methodologies of Human Rights Indicators: Towards Elaboration of Indicators on Participation on the Environmental Matters*, which closed the session.

The second afternoon session was devoted to the problem of *Remedies for Sexual Harassment in the Workplace and the Role of Law in Korea, Japan and Taiwan*. Professor Hiroko Hayashi¹⁶, from the Miyazaki Municipal University, was assigned as the Chair of the session. The first speaker was Shino Naito¹⁷, researcher at the Japan Institute for Labour Policy and Training (JILPT), with her paper *Have Damages from Sexual Harassment Been Remedied by Law in Japan? The second presentation After 20 years of Sexual Harassment Law in Korea* was presented by Miyoung Gu from Korean Women's Development Institute, and was an analysis and summary of the twenty-years' time since the law was introduced in Korea. Finally, Chih-Chieh and Carol Lin, of National Chiao Tung University School of Law, gave a lecture on *Glass Ceiling and Sexual Harassment Law in Workplace – A Comparative Perspective*.

Finally, at 6 p.m. the last sessions of the second day of conference began. One of them concentrated on *Policing and Prosecution in East Asia*. The

16 Hiroko Hayashi – Professor of the Miyazaki Municipal University. She is the specialist and researcher in the field of Labor Law. Author of many publications including: *Equal Pay for Men and Women and Gender, Labor Law and Single Parents and Social Security*.

17 Shino Naito – a Researcher in the Department of Labour Law and Industrial Relations in the Japan Institute for Labour Policy and Training (JILPT) since 2006. Author of many reports and publications, and a specialist in the field of employment discrimination, workplace bullying & harassment, work & family policy.

first speaker of this session was Kevin Kwok Yin Cheng, from the Faculty of Law of The Chinese University of Hong Kong, with his paper presentation *The causes of “cracked trials” in Hong Kong*. Then, Professor Benjamin Goold, from Faculty of Law at the University of British Columbia, gave a short lecture on *The changing face of public area surveillance in Japan*. He drew the audience’s attention to the practice of usage of electronic surveillance technologies by private organizations and police in Japan. The next was the presentation of Neil Chisholm from Academia Sinica – Institutum Iurisprudentiae, titled *The Faces of Prosecutorial Independence: European and American-style Prosecutorial Personnel Policy, Decision-making, and Reform Discourse in Japan Korea, and Taiwan*. The last presentation in this session was devoted to the Chinese Criminal Procedure Law. Li Li from Sun Yat-Sen University School of Law, introduced the subject of the unbalanced power relations between public and private participants in Chinese Criminal Procedure Law, and closed the session with this absorbing topic.

The last, third day of the conference started at 9 a.m. Twenty four sessions were held that day, and similarly, as there were around 4–5 sessions held at the same time, participants had to choose only one at a time accordingly to their interests.

The second day started with the *Judicial Independence in East Asia* session, coordinated by Takeshi Akiba from Akita International University. The first speaker, Aye Cho Zayar from the Nagoya University, presented a comparative study of judicial independence in Japan, Korea and Myanmar. As the second speaker, Professor Yuichiro Tsuji from University of Tsukuba, talked about the *Independence of the Judiciary and Judges in Japan*. He underlined that there are no clear measures for the judges to be sued and impeached, and that this is dependent on the political powers. After this absorbing lecture, Kuk Woon Lee from Handong University introduced a short history of the Korean home town judgeship. And finally, Ying Yan from the Shanxi University, the last speaker of the session, presented the paper on *Judicial Independence and Individual Legal Case Supervision in China*.

The second session was devoted to the *Gender Issues in East Asia*. The Chair of that session was Dr. Kyoko Ishida¹⁸ from Waseda University,

¹⁸ Kyoko Ishida – Dr. of the Waseda University. Her specialization is Sociology of Law. In her research she focuses on the attorney ethics and the legal profession system. She is a member of the Executive Office of the Asian Law and Society Association.

who also gave a lecture on *The Glass Ceiling for Japanese Female Lawyers*. She underlined the problem of the gender-based discrimination in Japan, and highlighted that even though the Gender Equality Bureau of the Cabinet Office proposed that by the end of 2020 over 30% of decision making positions in Japan should be dominated by women, the percentage of it hits merely 18. The next speaker, Professor Hiroko Goto¹⁹ of Chiba University Law School, presented her paper devoted to the *Feminist Legal Theory and Sexual Crime in Japan*. Her presentation was followed by the lecture of Saurabh Kumar Mishra titled *Women Legal Professionals In Lucknow: A Study of Gender Discourse In Courts Of India* and Abhishek Kumar Srivastav's presentation on *Gender Budgeting in Urban Administration in India*. The last short presentation was *Adoption and the Best Interests of the Child* by Jin-Sook Yun from Soongsil University, who closed the session.

After two morning sessions all participants were invited to take a lunch break, and were welcomed to participate in afternoon and evening sessions. At 2:15 p.m. everyone came back from their lunch break to gather and take part in discussions for the afternoon sessions. The first one: *Fairness and Due Process of the Death Penalty in East Asia* was a special session supported by The Japanese Association of Sociological Criminology, and was held in two parts. In the first part, participants of the conference could enjoy the paper presentation of Professor Shiniichi Ishizuka from the Ryukoku University, who presented an interesting overview of the Japanese death penalty system. Another lecture was devoted to the *Law enforcement, identifications and interrogations, Collection, preservation, and testing of DNA and other types of evidence; Crime laboratories and medical examiner offices* and given by Professor Kana Sakakura of Kounan University. Finally, the last speaker, Akiko Kogawara of the Ryukoku University, introduced the audience into the subject of *Defense services*.

The second part of the mentioned session was held right after the first one, as a second afternoon session, and was dominated mostly by representatives of different Japanese Bar Associations. The first one to present a paper was Tomohiro Kurohara, a member of Miyazaki Bar Association, with research on *Prosecutions*. The second speaker, Yukihiro Masaki

¹⁹ Hiroko Goto – Professor of Law at the Chiba University Law School. A Vice-President of the Human Rights Now organization.

a member of the Osaka Bar Association, gave lecture on *Direct appeal process and proportionality review; State habeas corpus proceedings; Clemency*. The next was Kazuyuki Hori from Kyoto Bar Association, with *Capital jury instructions; Judicial independence and vigilance* presentation. Yoshiyuki Imamura of the Nagano Bar Association, talked about *Racial and ethnic minorities*. The last speaker of the evening was Yuki Takahashi of the Fukushima University, who prepared a presentation on mental retardation & mental illness.

On the third, and at the same – the last day of the conference, there were no evening sessions held. At 6 p.m. the CRN 33 had a business meeting, where the Constitution of the Asian Law & Society Association was adopted. After the meeting, around 6:30 p.m. Professor Setsuo Miyazawa invited everyone to the conference room and officially closed the ceremony. Everyone thanked the organizers and the university employees and students for their great work, devotion and support during the whole event. The whole conference was followed by the farewell party at the Faculty Lounge “Nantei” where everyone could have the pleasure to involve themselves into private and scientific discussion for the last time.