

**Pacific Rim Research Program
Precis of Funded Projects, 1986-2006**

*By Subject Matter
Alphabetically by Title*



LAW

PRRP funded projects, 1986-2006

Judicial Independence and Judicial Accountability: A Collaborative Empirical Study Between UCLA Law School and Beijing University Law School

Randall Peerenboom (School of Law, UCLA); Dingjian Cai (School of Law, Peking University); Bixin Jiang (The Supreme People's Court); Jun Pan (The Supreme People's Procuratory)

This project examines the development of rule of law, constitutionalism, and judicial independence by investigating and evaluating the recent practice of permitting external reviews and supervision of judicial decisions in China . It hopes to contribute to establishing objective standards for evaluating reforms in the emergent Chinese judicial system. The study hopes to demonstrate that increased supervision exacerbates the corruption problem by increasing the channels for corruption. It also produces negative unintended consequences of strained relations between the courts and other state organs, which undermines judicial independence. (Funded 2001-02)

*Collaborating Institutions:
Peking University
The Supreme People's Court
The Supreme People's Procuratory
Standing Committee of the National People's Congress*

Law and Society in Early Modern Viet Nam: Women and the Foundations of the Catholic Church

Nhung Tuyet Tran (History, UCLA)

Through a careful examination of Vietnamese legal texts, local records, missionary accounts, catechisms, and convert testimonials of faith, this project presents a social history of how and why Vietnamese women were able to mediate between the structure of their everyday lives and at the same time convert to and thereby lay the foundations of the Catholic Church in the seventeenth century. Investigation of the legal codes raises the theory that Vietnamese women in the seventeenth century did not hold property and inheritance rights, as earlier scholars have claimed. (Funded 2001-02)

*Collaborating Institutions:
Institute of Sino-Nom Studies
Institute of Vietnamese and Intercultural Studies
Institute of Social Science & Humanities*

Model Legal Framework for Regulating Access to Genetic Resources

Santiago Carrizosa (Genetic Resources Conservation Program, ANR/UCD)

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The Pacific Rim countries include 11 of the 17 so-called megadiversity countries or biologically wealthiest nations of world. These 11 countries cover only 6.7% of the world's continental surface but harbor about 47.7% of the world's biodiversity. In some cases, unrestricted access to genetic resources has been accompanied by the over-collection and extinction of species that are key for the survival of many local cultures and industries. On the other hand, restricted access has also affected communities and industries by excluding them from the benefits derived from biodiversity. A balance must be found. Since the signing of the Convention on Biological Diversity (CBD), several Pacific Rim countries such as the Philippines, Colombia, Ecuador, and Peru, inspired by the CBD, have been pioneers in the development of laws and policies to regulate access to their genetic resources. These nations have had difficulties and successes trying to design and implement these laws and these experiences might benefit other biodiversity-rich Pacific Rim countries that are still planning to develop access laws and policies. Therefore, the general objective of this project will be to develop a model legal access framework to facilitate research activities and the exchange of genetic resources. The purpose of this model framework will be to provide guidance to policy-makers of Pacific Rim countries who are engaged in the development of access laws and policies. The specific objectives of the workshop are: 1) to present the results of the project "*Comparative policy review for access and exchange of genetic resources among Pacific Rim countries (CPRPRC)*"; 2) to report on recent activities in the area of access laws and policies; 3) to analyze the access guidelines developed in the CPRPRC project; 4) to develop a model legal framework for regulating access to genetic resources. The main outcomes of this project are: 1) the model legal framework for regulating access to genetic resources and 2) the strengthening of the capacity of policy makers to develop legal access frameworks. The CPRPRC project will produce a comparative analysis of the status of genetic resources access legislation in Pacific Rim countries that includes detailed information about benefit-sharing strategies, IPR issues, and bioprospecting initiatives. (Funded 2002-03)

*Collaborating Institutions:
University of California, Berkeley*

Regional Cooperation Against Illegal Fishing in the Pacific Ocean: Policy Options and Implementation Strategies for Sustainable Use

Harry Scheiber (Law, UCB)

The problem of illegal fishing is far-reaching in its social and economic implications for nations, both industrial and developing, in the Pacific Rim. This project seeks to analyze and intensively investigate the role of a major type of international multilateral organization—specifically, the Regional Fishery Organizations (RFOs)—in responding to illegal marine fishing activities in the Pacific Rim ocean area. The subjects of fishery management regimes, illegal fishing control, and the regional “tuna economy” all involve legal/diplomatic interactions and flows among developed and developing states of the Pacific, between large commercial fleets and island states and the region's RFOs, and between the individual Pacific Rim RFO regimes and the requirements of global codes and instruments. This project will involve (1) a comparative study of the policies that have been adopted up to now, and the implementation of those policies, in RFOs generally; (2) intensive analysis of the threats to which selected Pacific Rim

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RFOs are required to respond within the varying terms of their basic agreements and in the larger juridical framework of international ocean law; and (3) development of a set of recommendations of optimal policies, of monitoring and enforcement techniques, and of types of sanctions that are suited to the unique situations of the selected Pacific Rim RFOs. The project will seek to formulate its recommendations so as to meet the general requirements of international law on sustainable use, biodiversity, and the precautionary principle. We anticipate producing an in depth history of several RFO efforts of long standing, with special attention to the Forum and IATTC agencies, and systematic comparison with RFO and national regimes elsewhere to provide essential background for the Pacific RFOs as to the range of methods adopted, as to their efficiency reflected in results claimed to have been achieved, and so far as possible as to the actual record of achievement or failure. (Funded 2003-2004)

Comparative Analysis of Civic Legal Participation in Japan and the US: Japanese Judicial Reforms and the Establishment of the Saiban-in Seido (Quasi-jury System) in Japan

Hiroshi Fukurai, (Sociology, UCSC)

This is a unique and important moment in the history of the Japanese legal system, as the Japanese government is currently drafting a bill to create a new legal system called the “Saiban-in Seido (Quasi-Jury)” and revise the Code of Japanese Criminal Procedure. Modeling after the popular jury system currently used in more than 20 countries in the world, this new judicial system is designed to allow ordinary citizens to directly participate in the legal decision making process in Japanese criminal courts.[1]

So far, no sociologist or legal scholar is doing comparative and critical analyses of civic legal participation in the legal system of Japan and the U.S. My close working relations and collaboration with a progressive group of Japanese legal scholars and attorneys from the Japanese Federation of Bar Association (equivalent to the American Bar Association) enables me to do the research that will become a first of its kind to examine the comparative importance of civic legal participation and the possible establishment of checks and balances mechanisms between the public and the judiciary in Japan. (Funded 2005-2006)

The Death Penalty in East Asia

Franklin E. Zimring (Earl Warren Legal Institute, UCB)

Capital punishment divides the world in the same way it divides America (Zimring 2003; Sarat and Boulanger, forthcoming). There are frequent users of death as a criminal sanction (China and Texas), there are occasional users (Japan and Washington), and there are non-users *de jure* (Nepal and Michigan) and *de facto* (Sri Lanka and New Hampshire). Over the last 35 years, however, there has been a remarkable movement towards the abolition of capital punishment in many parts of the world. Indeed, the number of non-using countries has more than tripled since

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1970 (Hood 2001:334). There remain three major exceptions to this trend: the United States, the Islamic World, and, most importantly, Asia, which is home to 60 percent of the world's population. At present, nearly 95 percent of Asians reside in states that still use capital punishment.

We focus our attention on the death penalty in Asia for the same reason that volcanologists study Hawaii and Japan – because that is where the action is. More than 95 percent of all executions are performed on the Asian continent, and the vast majority of those are done in the Pacific Rim countries of “East Asia” (Hood 2002). Though there is a large scholarly literature on capital punishment, almost none of it concerns the region of the world where most of the world's executions occur (Hodgkinson and Schabas 2004). (Funded 2005-2006)

Catalysts of Contention? Cause Lawyers and Environmental Litigation in China

Rachel Stern (Political Science, UCB)

Environmental civil litigation is taking off in China. Citizens are suing polluters and, in some cases, winning damages. My dissertation looks at the creation and impact of Chinese environmental “cause lawyers,” lawyers motivated by a cause rather than cash (Scheingold 2001). It examines the following questions: Will environmental litigation led by Chinese “cause lawyers” spark an American-style rights revolution? Will it improve environmental quality? How did cause lawyers come to exist in an authoritarian state and how do they operate? (Funded 2005-2006)

Digitizing Traditional Practices: Transnational Yoga and Intellectual Property Disputes in Hong Kong

Allison Fish (Anthropology, UCI)

This research examines legal disputes between two yoga studios in Hong Kong that are affected by the creation of a digital library of yoga. The library is being created by the Indian government in response to and is intended to prevent what India argues is the international piracy of its national heritage. This research draws upon and contributes to academic debates in the disciplines of law and society, anthropology, and informatics. (Funded 2005-2006)

Allison Fish * (Anthropology, UCI)

Digitizing Traditional Practices: Transnational Yoga and Intellectual Property Disputes in the US and Hong Kong

This project explores the generation, protection and exploitation of traditional knowledge practices in this present era of increasing international harmonization of intellectual property (IP) law. Specifically, the project explores how legal claims and disputes in the US and Hong Kong are linked to the creation of a digital yoga library. This library is currently being created by the Indian government in response to what it perceives as the continued international piracy of its cultural heritage by dominant countries, particularly the United States. Digital libraries are being promoted as a new

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legal tool that will allow groups to retain control over cultural properties. This research is invested in debates in the disciplines of anthropology, law, law and society, informatics, and public policy. Methods: Multi-sited ethnographic research will take place in the United States, Hong Kong, and India. Data will be collected through legal and archival research, participant-observation, and interviews. Significance: This study provides data useful for the formation of IP law with respect to cultural practices, especially those related to alternative health modalities and bodily knowledge. The research forms part of the PI's dissertation leading to the Ph.D. and will inform her teaching of the anthropology of law and socio-legal studies. (Funded 2006-2007)

Integrating the Self-defense Forces into Postwar Japanese Society: Its Ideology and Activities, and Citizen's Responses

Tomoyuki Sasaki * (History, UCSD)

My project will explore the integration of the postwar Japanese military, namely the Self-Defense Forces (SDF), into society between the 1950s and 1970s. My major hypothesis is that the SDF has tried to define itself as an essential component of society by working as a welfare institution in economically disadvantaged areas. I will test this hypothesis from three perspectives: government and SDF leaders' efforts to invoke the need for a military at the ideological level, local SDF divisions' activities to help citizens, and citizens' responses. This project will offer a critical insight into the ways that postwar Japan maintained a military-protected peace, insulating itself from the unstable political conditions of Cold War Asia through collaboration with the United States. It will also address the possibility of civic contestations of the military's presence in such circumstance. (Funded 2006-2007)