
Program as of 04/01/2019

The Fifth Waseda and UC-Berkeley Joint Symposium on Professional Legal Education

Venue: University of California Berkeley School of Law, Berkeley, California

Room 170, Boalt Hall

Date: Thursday, April 4th, 2019

Time: 14:00-18:00

Theme: "Influence of American Legal Education in East Asia:

Japan, China, and South Korea"

Sponsored by the Sho Sato Program, University of California Berkeley School of Law, and

Waseda University Institute of Clinical Legal Education

Supported by Japan Clinical Legal Education Association (JCLEA),

Waseda Legal Commons, LPC, and

Waseda University Legal Clinic, LPC

Symposium Program

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14:00-14:20 Registration and Networking (refreshments provided)

14:20-14:30 Messages from Program Organizers

Shigeo Miyagawa, Professor of Law, Waseda University Law School, Tokyo; Chair of Clinical Legal Education Committee of Japan Association of Law Schools (JALS)

Charles D. Weisselberg, Shannon Cecil Turner Professor of Law, Director of the Sho Sato Program, University of California Berkeley School of Law

Views from East Asia

Moderator: Professor Weisselberg

14:30-14:55 Jaewan Moon, Dean & Professor of Law, Hankuk University of Foreign Studies School of Law in Seoul; President of the South Korea Association of Constitutional Law

“The Influence of U.S. Legal Education on South Korean Legal Education: Can American Style Law Schools Survive in a Highly Exam-Focused Society?”

14:55-15:20 Shigeo Miyagawa, Professor of Law, Waseda University

“Lofty Aims and Rock-hard Status Quo: Is American Pedagogy of Case-Method, Socratic Method, and Experiential Education Transferable to Japan”

15:20-15:45 Xiangshun Ding, Professor of Law, Director of the Comparative Law Program, Renmin University School of Law, Beijing

“The Influencing of American Legal Education in China: A Different Scenario Comparing to Japan and South Korea”

15:45-16:00 * * * * Break * * * *

Views from the Inside

Moderator: Professor Weisselberg

16:00-16:25 Catherine L. Fisk, Barbara Nachtrieb Armstrong Professor of Law, University of California Berkeley School of Law

“Designing the Ideal American Legal Education for the 21st Century: The Experience of Building a New Law School and Thoughts About Challenges in Transferring That Experience Elsewhere”

Views from the Younger Generation

Moderator: Professor Miyagawa

16:25-16:45 Namhee Kim, Esq., Licensed Attorney in South Korea and New York, Visiting Scholar, UC Berkeley School of Law

“Law Schools in South Korea - Past, Present and Future” [15 min. for speech + 5 min. Q&A]

16:45-17:05 Qin Xiang, Esq., Licensed Attorney in China, Visiting Student Researcher, UC Berkeley School of Law

“China's Legal Education Reform Based on the Relationship Between Supply and Demand in the Professional Market”

17:05-17:25 Atsushi Shiraki, Esq., Lecturer in Law, Waseda University Law School

“Designing Innovative Clinical Legal Programs to Respond to Changing Social Needs in Japan”

Panel Discussion

17:25-18:00

Moderator: Professor Weisselberg

Panelists: Professors Ding, Fisk, Moon, and Miyagawa

Wrap-up by Professor Miyagawa

Biographies

Xiangshun DING

Xiangshun Ding is Professor of Law at Renmin University of China Law School. Ding received his legal education in China, Japan, and the US. Ding's first language is Mandarin, but he is also fluent in English and Japanese. Ding obtained Bachelor and Master Degrees in law from Jilin University in 1992 and 1994, respectively, and a Ph.D. Degree in law from Renmin University of China Law School in 2000. Ding has been a visiting scholar at prestigious law schools in Japan and America, including Waseda University and Ritsumeikan University in Japan and at Harvard Law School, where he was a Fulbright Scholar. Ding's teaching at Renmin University includes courses on Comparative Law, Comparative Study on Foreign Legal Systems, East Asian Legal Studies (in English), and Introduction to Chinese Law (in English). He has also taught Chinese Law and Comparative Law in East Asia as visiting professor at Meiji University, Portuguese Catholic University Law School, University of Geneva Faculty of Law, Indiana University McKinney School of Law, and Nagoya University.

Catherine L. FISK

Catherine L. Fisk is the Barbara Nachtrieb Armstrong Professor of Law at the University of California, Berkeley Law School. She was a member of the founding faculty of the University of California, Irvine School of Law from 2008 to 2017. At Irvine, she collaborated in creating an innovative course on the legal profession. She is a scholar of labor and employment law and the legal profession, and is a co-author, with Ann Southworth, of an innovative casebook on the legal profession, now in its second edition, *The Legal Profession: Ethics in the Contemporary Workplace* (West, 2d ed. 2019).

Namhee KIM

Namhee Kim is an attorney at law admitted to the Korean Bar (2003) and the State Bar of New York (2012). She is specialized in policy advocacy in social welfare and socio-economic rights. She is involved in public advocacy as a lawyer and social activist in People's Solidarity for Participatory Democracy (PSPD) since 2011. She is currently a visiting scholar at the University of California Berkeley School of Law. She was an adjunct professor at Korea University Law School (2012-2014), and formerly worked as a corporate lawyer at BKL LLC (2003-2011). She graduated from

Seoul National University, College of Law in Korea and earned an LL.M. degree from Temple University in Philadelphia.

Shigeo MIYAGAWA

Shigeo Miyagawa is a professor of law at Waseda University Law School in Tokyo. He teaches Anglo-American law and a clinical course on rights of non-citizens at Waseda Law School. He is currently a visiting scholar at the University of California Berkeley School of Law and a visiting professor of law at the Renmin University of China in Beijing. He was the first president of the Japan Clinical Legal Education Association (2008-2011) and continues to serve on the board of trustees. Before joining Waseda in 1999, he held teaching positions at Doshisha Women's College, Doshisha University, and Kyoto University in Japan. He was a research fellow of the American Council of Learned Societies at The University of Michigan Law School (1989-90). He received his LL.M. degrees from Doshisha in Kyoto and Yale in New Haven, as well as his B.A. from Amherst College in Massachusetts and the LL.B. from Doshisha.

Jaewan MOON

Jaewan Moon is a professor of law and the dean at Hankuk University of Foreign Studies in Seoul. He teaches constitutional law and media law. He is currently the president of Korean Constitutional Law Association and served as the president of Korean Society for Media Law (2015-2016). He was deeply involved in adopting law school system in Korea while he had worked as an advisory professor to Presidential Committee on Judicial Reform (2006-2007). He was a member of the special committee for enacting Foreign Lawyers Act in the Ministry of Justice (2005-2006). Professor Moon graduated from Seoul National University, College of Law in Korea and earned an LL.M. and a S.J.D. degrees from Indiana University.

Atsushi SHIRAKI

Atsushi Shiraki is an attorney at law admitted in Japan, and a partner of Waseda University Legal Clinic, LPC. He teaches “Civil Law in Japan” as a part-time lecturer at Waseda Law School and “Japanese Constitution” at Tokyo Online University. He earned LL.B. from the Faculty of Law, Waseda University in 2009 and J.D. from Waseda Law School in 2011. His professional interest lies in international family cases, including cross-border inheritances, divorces and child custody cases. He took part in an internship program from JFBA at Lee Wong & Co., Solicitors (a solicitor firm) and Parkside Chambers (a barrister chamber) in Hong Kong in 2018. He is a member of the “Lawyers Network for Foreigners (LNF)” which produces researches particularly on the law and practice relating to family laws in foreign countries. He is also actively engaging himself to assist indigent people including single parents and homeless people for six years.

Charles D. WEISSELBERG

Charles D. Weisselberg is the Shannon C. Turner Professor of Law at the University of California, Berkeley, where he also directs the Sho Sato Program. Professor Weisselberg has degrees from The

Johns Hopkins University and the University of Chicago. He came to Berkeley in 1998 to found the law school's in-house clinical program, which he directed until 2006. Professor Weisselberg currently teaches criminal law courses, and recently served as associate dean. He is a past chair of the Association of American Law School's Section on Clinical Legal Education. In 2013 and 2014, he was a member of the California State Bar's Task Force on Admissions Regulation Reform. Professor Weisselberg previously taught at the University of Southern California and the University of Chicago, and practiced in a private law firm and as a federal public defender.

Qin XIANG

Qin Xiang is an attorney at law admitted in China and a Ph.D. candidate majoring in civil and commercial law at Shanghai Jiaotong University. Her research focuses on data protection in the area of big data and AI as well as the securities market. She is currently a visiting student researcher at the University of California Berkeley School of Law. She was formerly an associate counsel at Ernst & Young's law firm in Shanghai, China (2015-2017). She received her LL.M. & LL.B. degrees from Southwest University of Political Science and Law in mainland China and was a visiting student at Soochow University in Taiwan.

Abstracts of Presentations

Xiangshun DING

“The Influencing of American Legal Education in China: A Different Scenario Comparing to Japan and South Korea”

Under Chinese legal education system, legal knowledge is taught to undergraduate and graduate students rather than providing professional skills education, and there is no institutional connection between legal education and the legal profession. But since the end of the 20th century, influenced by the American professional education model and motivated by the demand for cultivating high-level legal talents in the development of a global market economy, legal education in China started to change fundamentally, both institutionally and pedagogically. In 1995, China introduced several elements from American professional legal education and set up a new Juris Master program at the graduate study level. The emerging reform of professional legal education in China is dramatically significant because legal education institutes started to be involved in the process of educating legal professionals, in the way of selecting junior legal professionals, and in the structure of bar, which has been reformed gradually. During the transition from a legal knowledge-oriented model to a professional-oriented model, some elements of American professional legal education have been introduced institutionally and pedagogically. The speaker will explore the possibilities and experiences relating to transplanting a professional legal education model from America to a country like China which has been influenced by the civil law tradition. Also the speaker will make a comparison on the recent reforms of legal education to find out different approaches to professional legal education in China, Japan and South Korea. Based on the comparison, the speaker will

conclude that the acceptance of professional legal education in China has proved that it is possible for the American model of training future lawyers by universities to be adopted in East Asia, although the effectiveness is quite subject to different institutional arrangements and allocation of resources, including human resource.

Namhee KIM

“Law Schools in South Korea - Past, Present and Future”

South Korea adopted law school system to reform old Korean judicial system and legal profession community. Introduction of law school system is rather the reform of judicial system than the reform of legal education. After the establishment of law schools in 2008, legal education in Korea improves in some ways (emphasized legal education, diversity and development of legal education, increase of number of lawyers and formation of lawyers' group for public interest). However, continuous drop of bar exam passing rate is making law schools another exam preparation centers. Also, specialized education in law schools is not working well and insufficient practical training and remaining academic elitism are criticized as well.

Shigeo MIYAGAWA

“Lofty Aims and Rock-hard Status Quo: Is American Pedagogy of Case-Method, Socratic Method and Experiential Education Transferable to Japan?”

In 2004 Japan started 72 law schools and 2 more in the following year. They are professional graduate law schools modeled after the American law school system, but now only 40 schools survive to exist. With a strong guild of existing bars, the annual number of bar-exam passers remains at the same level of 1,500 as before introducing the law school system. It is not only the volume of lawyers but also the pedagogy of educating lawyers in Japan that remains the same. The case-method, Socratic method, and experiential education have been introduced in Japan, but they have been against the headwind to take off. The case method is not used as finding a line of precedents to formulate law. It is used as a tool to know a concrete example of interpreting a particular statutory provision. There is no concept of “case law” in Japanese jurisprudence. The Socratic method is considered as a way to make question & answer dialogue between the teacher and students. It is not conducted in the manner to make students aware of their erroneous understanding and lead them to reach a proper understanding by themselves. It is considered an inefficient way of teaching because it takes time and does not convey sufficient knowledge to students. Clinical legal education was introduced in Japan when 74 law schools started its instruction of skills-related courses. It started as a method of teaching skills without the mission of “advocating fundamental human rights and realizing social justice.” The speaker will explore the reasons why American pedagogy of legal education has not taken root in Japan.

Jaewan MOON

“The Influence of U.S. Legal Education on South Korean Legal Education: Can American Style Law Schools Survive in a Highly Exam-Focused Society?”

Korean legal education was traditionally affected by those of Continental law countries such as Japan and Germany. However, the influence of U.S. legal education model has increased rapidly since 1990s when judicial reform became a social issue. The influence of the U.S. model reached its peak when American style law schools were established in March 2009. Total enrollment in all 25 law schools nationwide is 2,000 per year. The first new bar exam was held in 2012. As the total number of bar passers is limited to around 1,600 per year, the bar passing rate has dropped from 87% in 2012 to 49% in 2018. Can American law school format survive in Korea when students' minds are overwhelmed by the weight of lowering bar passing rate? The speaker will present how American law school system became an ideal model of legal education in Korea and forecast the survival of American style law schools in a highly exam-focused society.

Atsushi SHIRAKI

“Designing Innovative Clinical Legal Programs to Respond to Changing Social Needs in Japan”

This presentation directs a spotlight on the social justice aspect of future clinical legal education in Japan. It has relatively focused on the educational part rather than its social justice part. In fact, Waseda Legal Clinic does not require its clients to pass a means test. Faculty members and directors have been trying to seek pedagogy of experiential programs suitable to Japanese law students. However, even after fifteen years has passed since its berth, clinical legal education in Japan was not still able to occupy a position as a social infrastructure. Now, it comes to the next stage to show off its social roles to our community. By doing so, this unique education will be more attractive to Japanese law students.

In Japan, we have a national legal aid program called "Ho-Terasu." However, this legal aid system does not cover all areas of law. For example, although arbitration is an effective dispute resolution measure, clients who use "Ho-Terasu" cannot choose it as a dispute resolution procedure. Victims of some international human rights cases do not also have a qualification to use this legal aid. Furthermore, this legal aid program cannot flexibly respond to urgent social needs because amendments of law are required to expand the targeted fields. The speaker believes that in the era of globalization, clinical legal education as a key resource to improve access to justice has the potential to fill the gaps in the legal aid program in Japan. Now, legal clinics are required to design and implement innovative clinical legal programs that respond to changing social needs. The speaker will explain that clinical legal education has the potential to improve access to justice for socially vulnerable people dramatically.

Qin XIANG

“China's Legal Education Reform Based on the Relationship Between Supply and Demand in the Professional Market”

The legal education reform of 2018 aims to build a better connection between legal education and legal profession through the national unified legal professional qualification examination. For this purpose, we need to ask three questions. Firstly, what is China's labor demand in the legal sector? From the viewpoint of the legal profession structure in China, there is a need to increase the

number of non-litigation lawyers who mainly provide legal services for companies and deal with business transactions in addition to traditional litigation lawyers. China particularly lacks legal professionals who are well trained to handle negotiations in the international market, such as WTO lawyers and lawyers in transnational trade.

Secondly, how do we educate legal professionals to meet this labor demand? At present, China's legal education is mainly composed of the bachelor degree program, two different master degree programs, namely one master of law and the other juris master, and the doctor degree program in law. The master of law degree program is designed to focus on academic research while the juris master degree program provides practical skills training. However, in practice many schools have a confusion about different goals of the academic degree and the professional degree. Therefore, it is necessary to have a proper structuring of teaching resources, contents and methods for both the two master programs and bachelor program. This will lead to a clear distinction between the master of law that focuses on academic research and the juris master that focuses on practice.

Finally, what opportunities and challenges does the national unified legal professional qualification examination bring about? As far as opportunities are concerned, there are a few aspects: For example, the scope of the legal profession has significantly expanded. Also, the legal education reform reveals China's shifting demand in the labor market for legal professionals, and the current legal education should be positioned for the vocational education. At the same time, the reform brings about three main challenges: (1) The content of traditional legal education does not match the content of the unified legal professional qualification examination. (2) The legal education has long attached great importance to the imparting of theoretical knowledge and ignored the students' legal practice skills. (3) Beyond developing a solid theoretical foundation and strong practical skills, we cannot neglect the professional ethics dimension.