

SEMINAR

Judicial Comparativism and Judicial Diplomacy

David Law

*Professor of Law and Professor of Political Science
Washington University in St. Louis***Friday, 2 May 2014, 12:30 pm - 1:30 pm
Room, 723, 7/F Cheng Yu Tung Tower
The University of Hong Kong**

Much has been said on the normative question of whether and in what ways courts ought to engage with foreign law. Rarely, however, do scholars broach the empirical question of why some courts make greater use of foreign law than others. This paper tackles the problem with an in-depth investigation of the Japanese Supreme Court, the Korean Constitutional Court, and the Taiwanese Constitutional Court. Evidence from interviews conducted with numerous justices, clerks, and senior administrators suggests that a combination of mutually reinforcing structural factors create the conditions necessary for comparativism to thrive. The first factor is institutional capacity: a court that lacks any institutional mechanisms for learning about foreign law is unlikely to make more than sporadic use of foreign law. The second factor is a supportive system of legal education: even the most elaborate of institutional mechanisms for facilitating comparativism is unlikely to be effective unless it is backed by a system of legal education that produces an adequate supply of lawyers with both an aptitude and appetite for comparativism.

Examination of the reasons for which courts engage in comparativism also reveals a hidden dimension of judicial behavior. Comparativism is not simply a means by which judges craft arguments or decide cases; it is also a form of diplomatic activity aimed at goals such as promoting the rule of law and judicial independence in other countries. The concept of judicial diplomacy helps to explain why constitutional courts engage in certain practices that are only tenuously related to the act of adjudication.

David Law is Professor of Law and Professor of Political Science at Washington University in St. Louis. His scholarship takes a comparative and empirical approach to such topics as the global evolution of constitutional law and the design and operation of courts. Born and raised in Canada, he is a native Mandarin speaker and holds a Ph.D. in political science from Stanford, a B.C.L. in European and Comparative Law from the University of Oxford, and a J.D. from Harvard Law School. He has served as a visiting professor at Georgetown University Law Center, National Taiwan University College of Law, Seoul National University School of Law, and Keio University Faculty of Law, and as a visiting scholar at the NYU School of Law. He has been a Fulbright Scholar in Taiwan and was awarded an International Affairs Fellowship in Japan (Hitachi Fellowship) by the Council on Foreign Relations. His recent work on constitutional globalization and the declining influence of the U.S. Constitution has been featured in a variety of media. His book *The Japanese Supreme Court and Judicial Review* was published last year in Japanese by Gendajinbunsha. In 2014-15, Professor Law will be the Crane Fellow in the Law and Public Affairs Program at Princeton University, where he will be working on his next book on the globalization of constitutionalism.

Access Professor Law's recent publication *Judicial Comparativism and Judicial Diplomacy* here: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2410074

REGISTER



PLEASE EMAIL JOYCE FUNG AT JOYCEF@HKU.HK
TO RESERVE A PLACE.