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WHERE ARE WE NOW AND WHERE SHOULD WE HEAD FOR? A REFLECTION ON THE PLACE OF EAST ASIA ON THE MAP OF SOCIO-LEGAL STUDIES

Setsuo Miyazawa [†]

Abstract: Collaborative Research Networks (“CRNs”) developed to encourage and facilitate and collaboration between scholars with shared academic interests. CRN33 (East Asia) is fairly new. This article, which is based on a speech given by the author, examines the status of East Asia in socioeconomic literature, explores the growing prevalence of East Asia as a topic in general theory-building in socio-legal studies, and suggests methods for placing East Asia in a more central position for future socio-legal scholarship. The author emphasizes that scholars in the field of East Asian legal studies should work harder to introduce those outside the field to the work being done on East Asia, and that part of this can be accomplished by engaging in theory-building inside the field. Scholars in the East Asia field ought to present works in terms of concepts and theories not bound by regional boundaries so that outside scholars can better recognize the relevance of our works to theirs. Scholars in the field should also seek to present our works to non-area specialists and try to expand their own group.

I. INTRODUCTION

Collaborative Research Networks (“CRNs”) were originally developed by the Law and Society Association (“LSA”) to encourage collaborations between scholars who shared research interests at its annual meetings in Miami in 2000 and in Budapest in 2001 (a joint meeting with the Research Committee on Sociology of Law (“RCSL”)).¹ After those meetings, some CRNs decided to continue, and many CRNs were newly developed under LSA’s authorization. Many CRNs now organize several thematic sessions at each annual meeting.

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This paper is based on the author’s keynote speech given under the same title at the Second East Asian Law and Society Conference at Yonsei University in Seoul, Korea on September 30, 2011. Revisions are minimal.

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¹*Collaborative Research Networks*, THE LAW & SOCIETY ASSOCIATION, <http://www.lawandsociety.org/crn.html> (last visited Nov. 12, 2012).

As its title suggests, CRN33 on East Asian Law and Society is one of the newest CRNs. For the joint annual meeting with RCSL in Berlin in 2007, LSA developed International Research Collaboratives (“IRCs”) to encourage collaboration among scholars and facilitate attendance from different countries. One of the IRCs was titled “Legal Professionalism in East Asian Context,” organized by Yoshitaka Wada, Carol Jones, and Kay-Wah Chan. The Berlin conference attracted a large number of scholars with interests in East Asia. Yoshitaka Wada, Kay-Wah Chan, and I thought that it might be possible to establish a more permanent network of scholars with a wider range of research interests in East Asia under the scheme of CRNs. We submitted an application to LSA in the same year, and LSA quickly approved it as the thirty-third CRN.

CRN33 started its activities by organizing eleven sessions at the 2008 annual meeting of LSA in Montreal, and has organized eight to fifteen sessions at every LSA annual meeting since then. It also started biennial regional meetings, organizing the Inaugural East Asian Law and Society Conference in Hong Kong in 2010, which was followed by the Second East Asian Law and Society Conference in 2011 in Seoul. CRN33 will hold the Third Conference in Shanghai in 2013.²

CRN33 now has more than 280 names on its mailing list. In addition to sessions organized or co-organized by CRN33, there are also a large number of sessions at every LSA annual meeting with presenters from East Asia or presentations on East Asia. Socio-legal scholarship on East Asia appears to be thriving, at least in the context of LSA.

Should we want more? I think we should. Specifically, the issue I wish to raise is the contribution of insights and findings from East Asia to the development or refinement of general socio-legal theories that are applicable beyond the borders of East Asia.

This speech has the following four steps: 1) I will trace appearances of East Asia in the socio-legal literature since the late 1960s; 2) I will examine the status of East Asia in the current terrain of the socio-legal literature; 3) I will discuss a sample of the most recent publications, which show promising signs of treating East Asia as an integral part of general theory-building in socio-legal studies; and 4) I will conclude by discussing what extra efforts are required for us to give East Asia the central place it deserves in socio-legal scholarship.

This plan entails some clear risks. First, while I conducted extensive library and internet research, my review will inevitably be selective. I will

² *Collaborative Research Network 33 – East Asian Law and Society*, CRN33-EALS, <http://www.cm33-eals.org/Main.htm> (last visited June 13, 2012).

certainly be blamed for oversights or omissions. Second, I will review the field and present arguments from a perspective which is far more ambitious than my own achievements and abilities. I will certainly be blamed for arrogance. Nevertheless, I would like to move on, because it is my role here.

II. EAST ASIA IN THE SOCIO-LEGAL LITERATURE

A. *Selection of Law & Society Review for the Literature Review*

Research is usually published first as a journal article. The first step of my analysis is therefore to review articles published in a major socio-legal journal. I chose *Law & Society Review* (LSR), which has been published by LSA since 1966, for this purpose.

There are, of course, several other journals. For instance, law and economics is extremely influential in American legal scholarship, and the *Journal of Law & Economics* and the *Journal of Empirical Legal Studies* may be more widely read in law school communities than LSR, which publishes more articles based on sociology, political science, history, and other non-economic social science. Among the journals which share social scientific orientations with LSR, *Law & Social Inquiry* (previously the *American Bar Foundation Research Journal*) tends to publish longer articles.

I do not mean that every socio-legal scholar should prefer LSR over other journals. Furthermore, the content of a journal is not a random sample of a field; it inevitably reflects self-selection by authors as well as the editors' and referees' own preferences. Selection of any single journal risks these biases.

However, given the organizational relationship of CRN33 and LSA, I have chosen LSR as the sample for my initial literature review. Since LSR is the oldest English-language journal in socio-legal studies,³ it also allows us to trace trends over the last forty years.

B. *East Asia in LSR*

1. *Methodology*

I used the Hein Online database and Wiley Online Library, searching every text published until 2010, using names of East Asian countries as

³ In 2012, the *Law & Society Review* was in its 46th volume, the *Journal of Law & Society* was in its 39th volume, the *Law & Social Inquiry* was in its 37th volume, and the *Canadian Journal of Law & Society* was in its 25th volume.

keywords. The search was completely inclusive and covered every kind of publication in LSR, including articles, comments, notes, and reviews. I counted the number of pieces for each country and, hence, the same piece was counted more than once if more than one country appeared there.

I had the following three questions for this literature review:

- 1) When were East Asian countries mentioned for the first time?
- 2) How often did they appear in total?
- 3) How often did they appear most recently, from 2005 to early 2010?

2. *Summary of Statistics*

A statistical summary is presented below. Countries and territories are listed in the order of first appearance.

Country:	First Appearance	Total # of Pieces	2005-2010 # of Pieces
China:	1968	116	31
Indonesia:	1968	61	7
Japan:	1968	193	29
Taiwan:	1968	31	5
Vietnam:	1968	88	9
Malaysia:	1969	34	6
Philippines:	1969	58	7
Singapore:	1969	27	10
South Korea:	1969	33	6
Thailand:	1970	52	7
Hong Kong:	1972	36	11
Mongolia:	2002	2	2

In examining these data, it is remarkable that most East Asian countries and territories have been mentioned, discussed, or analyzed almost from the very

beginning of LSR. The LSA community appears to have held a strong interest in East Asia almost from its founding. However, examination of these “articles” will give us a different picture.

3. *First Articles in LSR*

I searched the articles and comments (shorter versions of articles) that were first to analyze an East Asian country as their sole or major focus. The following is the list, arranged in their order of appearance in LSR:

- Japan (1968): Masaji Chiba, “Relations between the School District System and the Feudalistic Village Community in Nineteenth Century Japan: A Study of the Effect of Law upon Society,” Vol. 2, Issue 2, pp. 229-40.
- Philippines (1969): Albert S. Bacdayan, “Peace Pact Celebrations: The Realization of Kalinga Intervillage Law,” Vol. 4, Issue 1, pp. 61-78.
- Singapore (1971): Gloria Count-Van Manen, “A Deviant Case of Deviance: Singapore,” Vol. 5, Issue 3, 389-406.
- Indonesia (1973): Geert Van Den Steenhoven, “Musjawarah in Karo-Land,” Vol. 7, Issue 4, pp. 693-718.
- South Korea (1989): Kun Yang, “Law and Society Studies in Korea: Beyond the Hahm Theses,” Vol. 23, Issue 5, pp. 891-902.
- China (1989): Weidong Ji, “The Sociology of Law in China: Overview and Trends,” Vol. 23, Issue 5, pp. 903-14.
- Thailand (1990): David M. Engel, “Litigation across Space and Time: Courts, Conflict, and Social Change,” Vol. 24, Issue 2, pp. 333-44.
- Taiwan (1994): Jane Kaufman Winn, “Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan,” Vol. 28, Issue 2, pp. 193-232.
- Malaysia (1994): Mehrun Siraj, “Women and the Law: Significant Developments in Malaysia,” Vol. 28, Issue 3, pp. 561-72.

- Vietnam (1998): Carol V. Rose, "The New Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study," Vol. 32, Issue 1, pp. 93-140.
- Mongolia (2002): Shannon Shiyama Smithey & John Ishiyama, "Judicial Activism in Post-Communist Politics," Vol. 36, Issue 4, pp. 719-742.
- Hong Kong (2007): Lesley A. Jacobs, "Rights and Quarantine during the SARS Global Health Crisis: Differential Consciousness in Hong Kong, Shanghai, and Toronto," Vol. 41, Issue 3, pp. 511-52.

The list makes it clear that except for Japan and former colonies of western countries, substantive articles on East Asia are relatively new to LSR and, hence, to the LSA community. The formation of CRN33 in 2007 was indeed a necessary decision.

Has this situation changed recently?

4. *Recent Articles in LSR*

The following is the list of the most recent articles and comments with an East Asian country as the sole or major focus. I used Wiley Online Library as well as Hein Online for this search.

- China (2005): Xin He, "Why Do They Not Comply with the Law: Illegality and Semi-Legality among Rural-Urban Migrant Entrepreneurs in Beijing," Vol. 39, Issue 3, pp. 527-62.
- Japan (2005): Ken-ichiro Ohbuchi et al., "Procedural Justice and the Assessment of Civil Justice in Japan," Vol. 39, Issue 4, pp. 875-92.
- China (2006): Ethan Michelson, "The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work," Vol. 40, Issue 1, pp. 1-38.
- China (2006): Sida Liu, "Client Influence and the Contingency of Professionalism: The Work of Elite Corporate Lawyers in China," Vol. 40, Issue 4, pp. 751-82.
- China (2006): Mary E. Gallagher, "Mobilizing the Law in China: Informed Disenchantment and the

- Development of Legal Consciousness,” Vol. 40, Issue 4, pp. 783-816.
- China & Hong Kong (2007): Lesley A. Jacobs, “Rights and Quarantine during the SARS Global Health Crisis: Differential Consciousness in Hong Kong, Shanghai, and Toronto,” Vol. 41, Issue 3, pp. 511-52.
 - Taiwan (2007): Jeffrey Martin, “A Reasonable Balance of Law and Sentiment: Social Order in Democratic Taiwan from the Policeman’s Point of View,” Vol. 41, Issue 3, pp. 665-98.
 - China (2008): Sida Liu, “Globalization as Boundary-Blurring: International and Local Law Firms in China’s Corporate Law Market,” Vol. 42, Issue 4, pp. 771-804.
 - Hong Kong (2009): Kwai Hang Ng, “If I Lie, I Tell You, May Heaven and Earth Destroy Me: Language and Legal Consciousness in Hong Kong Bilingual Common Law,” Vol. 43, Issue 2, pp. 369-404.
 - East Timor (2010): Daniel Fitzpatrick & Susana Barnes, “The Relative Resilience of Property: First Possession and Order Without Law in East Timor,” Vol. 44, Issue 2, pp. 205-238.
 - China (2010): Yang Su & Xin He, “Street as Courtroom: State Accommodation of Labor Protest in South China,” Vol. 44, Issue 1, pp. 157-84.
 - Vietnam (2011): John Gillespie, “Exploring the Limits of the Judicialization of Urban Land Disputes in Vietnam,” Vol. 45, Issue 2, pp. 241-76.

It is welcome that a new country like East Timor has attracted a scholarly interest. However, “East Asia” virtually means China for the LSA community these days. There is nothing wrong with rapidly increasing interests in China and the productivity of Chinese scholars. Rather, the problem is the virtual disappearance of interest in other parts of East Asia.

Is this an artifact of my selection of LSR for my literature review? I decided to conduct further research to answer this question.

C. *East Asia in Annual Review of Law and Social Science*

The *Annual Review of Law and Social Science* (“Annual Review”) is literally an annual review of the socio-legal field and a very convenient source for finding out the current situation of socio-legal studies. According to my own count, Annual Review published approximately 120 papers on specific research subjects or general overviews between 2005 (Vol. 1) and 2010 (Vol. 6). I chose it to supplement my analysis based on the review of publications in LSR.

East Asia or East Asian countries and territories appeared in approximately forty papers. They appear most prominently in general overviews by Richard L. Abel,⁴ Lawrence M. Friedman,⁵ and Stuart A. Scheingold,⁶ and in papers on international financial institutions,⁷ corporate governance,⁸ jury systems,⁹ and social movements.¹⁰ One may get the impression that interest in East Asia among socio-legal scholars who are not usually considered East Asia specialists are more prevalent than commonly assumed.

However, papers with East Asia as the sole or major focus are still very limited. Their list is very short as indicated below:

- John K. M. Ohnesorge, “The Rule of Law,” Vol. 3, 2007, pp. 99-114.
- Setsuo Miyazawa, Kay-Wah Chan, & Ilhyung Lee, “The Reform of Legal Education in East Asia,” Vol. 4, 2008, pp. 333-60.
- Terence C. Halliday, “Recursivity of Global Normmaking: A Sociolegal Agenda,” Vol. 5, 2009, pp. 263-89.

⁴ Richard L. Abel, *Law and Society: Project and Practice*, 6 ANN. REV. L. SOC. SCI. 1, 1-23 (2010).

⁵ Lawrence M. Friedman, *Coming of Age: Law and Society Enters an Exclusive Club*, 1 ANN. REV. L. SOC. SCI. 1, 1-16 (2005).

⁶ Stuart A. Scheingold, *Home Away from Home: Collaborative Research Networks and Interdisciplinary Socio-Legal Scholarship*, 4 ANN. REV. L. SOC. SCI. 1, 1-12 (2008).

⁷ Sarah L. Babb & Bruce G. Carruthers, *Conditionality: Forms, Function, and History*, 4 ANN. REV. L. SOC. SCI. 13, 13-29 (2008).

⁸ Neil Fligstein & Jennifer Choo, *Law and Corporate Governance*, 1 ANN. REV. L. SOC. SCI. 1, 61-84 (2005).

⁹ Valerie P. Hans, *Jury Systems Around the World*, 4 ANN. REV. L. SOC. SCI. 275, 275-97 (2008).

¹⁰ Michael McCann, *Law and Social Movements: Contemporary Perspectives*, 2 ANN. REV. L. SOC. SCI. 17, 17-38 (2006).

- David Leheny & Sida Liu, "The Politics of Crime, Punishment, and Social Order in East Asia," Vol. 6, 2010, pp. 239-58.

The conclusion from the examination of Annual Review seems to be the same as that from LSR. That is, increasingly more non-area specialists pay attention to findings from East Asia, and many non-area specialists pay some attention to East Asia. However, substantive articles which take East Asia as the sole or main focus are relatively new, and they appear to be increasing only lately, mainly from interest in China. The current situation with journal articles suggests that there is much room for us to increase and broaden interest among socio-legal scholars outside our own group.

Then, do books present a different picture? I will move to review recent books.

D. *East Asia in Recent Books*

I. *Books on East Asia*

I will first examine those books which were written about East Asia, either solely or in comparison with other countries and territories. I recognize three groups among them.

The first group consists of books which provide a comprehensive analysis of a single country; they are plenty. The following is a very limited list of examples:

- Daniel H. Foote (ed.), *Law in Japan: A Turning Point*, Univ. of Washington Press, 2007.
- Jongryn Mo & David W. Brady (eds.), *The Rule of Law in South Korea: Conference on Democracy, Market Economy, and the Rule of Law in Korea*, Hoover Institution Press, 2009.
- Randall Peerenboom (ed.), *Judicial Independence in China*, Cambridge Univ. Press, 2010.

The second group includes those books which compare several East Asian countries and territories in a comprehensive analysis of a selected topic. The following is a list of examples:

- William P. Alford (ed.), *Raising the Bar: The Emerging Legal Profession in East Asia*, Harvard Univ. Press, 2007.

- Andrew Harding & Penelope Nicholson (eds.), *New Courts in Asia*, Routledge, 2010.
- Stacey Steel & Kathryn Taylor (eds.), *Legal Education in Asia: Globalization, Change and Contexts*, Routledge, 2010.

The third group is books that compare East Asian countries and territories with those outside the region regarding a selected topic. This group includes the following books:

- Tom Ginsburg & Tamir Moustafa (ed.), *Rule by Law: The Politics of Courts in Authoritarian Regimes*, Cambridge Univ. Press, 2008.
- David M. Engel & Michael McCann (ed.), *Fault Lines: Tort Law as Cultural Practice*, Stanford Univ. Press, 2009.
- Robert J. Heckman et al. (eds.), *Global Perspectives on the Rule of Law*, Routledge, 2010.
- Yves Dezalay & Bryant G. Garth (eds.), *Lawyers and the Rule of Law in an Era of Globalization*, Routledge, 2011.

In sum, books seem to be more varied than journal articles in their coverage of countries and territories.¹¹ However, all of these books are edited collections of papers written by several authors. Editors usually try to provide a common framework of analysis, find common threads in those papers, or draw some general conclusions. But such conclusions may be inevitably eclectic or very broad.

Books written by a single author or genuinely co-authored by a small number of authors may be able to present a sharper analysis or a more coherent theory. The problem is whether such an author or authors draw on findings and insights from East Asia when they construct their theory. I will move on to examine this problem.

¹¹ Conspicuously missing are books on juries or other forms of citizen participation in the administration of criminal justice although they have been major topics at recent LSA annual meetings and our own regional meetings in Hong Kong and Seoul. However, based on our Inaugural East Asian Law and Society Conference in Hong Kong in 2010, special issues have been published in Vol. 12, Issue 1 of *Asian Pacific Law & Policy Journal* (2010) and Vol. 38, Issue 4 of the *International Journal of Law, Crime & Justice* (2010).

2. *Books on General Socio-Legal Issues*

Though journal articles tend to focus mostly on China, it is undeniable that our scholarly products have been rapidly accumulating. As we have seen above, however, scholars on East Asia are still relative late-comers in the socio-legal community. It may be fair to say that we have not yet constructed theories which are applicable to both East Asian and non-East Asian contexts drawing on our own findings and insights.

Given this situation, we have to examine books on general socio-legal issues which are written by scholars outside our own circle. Simply put, the problem is whether authors of such books know that our scholarship is relevant to them, whether they read our products, and whether they integrate our findings and insights into their works.

I would like to illustrate this problem by taking up an excellent book written about a socio-legal issue which is probably most commonly discussed by us, namely “rule of law.” I tried to find recent books on rule of law which include East Asian countries and territories in their indexes, but it turned out to be an unexpectedly difficult task. This fact itself warns us that scholars outside our own group do not pay much attention to East Asia or scholarship on East Asia.

The only book I found was Brian Tamanaha’s *On the Rule of Law: History, Politics, Theory*, published by Cambridge University Press in 2004. It has “Asian countries” and “China” in its index. Tamanaha states the objective of his book in the following manner:

The rule of law thus stands in the peculiar state of being the preeminent legitimating political ideal in the world today, without agreement upon precisely what it means. Bringing greater clarity to this ideal is the primary objective of this book . . .¹²

Tamanaha is certainly a major scholar on the rule of law, and he recognizes that something important is happening in East Asia regarding rule of law:

Support for the rule of law is not exclusive to the West. It has been endorsed by government heads from a range of societies, cultures, and economic and political systems . . . China recently signed a UN pact for cooperation and training to develop the rule of law . . . a commitment underscored by the highly

¹² BRIAN Z. TAMANAHA, *ON THE RULE OF LAW: HISTORY, POLITICS, THEORY* 4 (Cambridge Univ. Press 2004).

publicized attendance of [former] President Jiang Zemin at a seminar on the rule of law . . .¹³

Tamanaha frequently mentions China as a country governed using rule *by* law, not rule *of* law. However, a majority of his sources about China are newspaper articles.¹⁴

This may be due to the fact that Tamanaha's book was published in 2004, and its bibliography covers only up to 2003. He may have been unable to find many scholarly works on rule of law or rule by law in China simply because there were no scholarly works at the time of his writing.

However, if Tamanaha looked around more widely in East Asia, he may have found other cases of the rising interest in rule of law there. For instance, the Japanese government established the Justice System Reform Council ("JSRC") in July 1999, and JSRC quickly announced that it was their mission to realize rule of law.¹⁵ Two years later in June 2001, JSRC presented their recommendations by asking, "how must the various mechanisms comprising the justice system and the legal profession, which serves as the bearer of that system, be reformed so as to transform the spirit of the law and the rule of law into the 'flesh and blood' of Japan?"¹⁶ It seems reasonable to expect to find similar developments in other parts of East Asia as well.

Still, scholars like Tamanaha outside our own group may have faced the problem that there were not many scholarly publications on the rule of law in East Asia. About Japan, for instance, there were several scholarly publications on the ongoing justice system reform as early as 2000, including the fairly detailed one subtitled "The Rule of Law at Last?"¹⁷ Yet, scholars like Tamanaha may have felt that such scholarly publications about rule of law in East Asia were not analytical or theoretical enough to be cited in theoretical analyses like his. It may be difficult for scholars like Tamanaha to recognize the theoretical significance of our scholarly works if we have not presented them by explicitly linking our findings and insights to

¹³ *Id.* at 2.

¹⁴ *Id.* Intro., n. 8-9, 17, ch. 7, n. 6 (to be fair, note 34 of chapter 8 and note 8 of chapter 11 are articles in scholarly journals).

¹⁵ THE POINTS AT ISSUE IN THE JUSTICE SYSTEM, THE JUSTICE SYSTEM REFORM COUNCIL (Dec. 21, 1999), http://www.kantei.go.jp/foreign/policy/sihou/singikai/991221_e.html.

¹⁶ RECOMMENDATIONS OF THE JUSTICE SYSTEM REFORM COUNCIL: FOR A JUSTICE SYSTEM TO SUPPORT JAPAN IN THE 21ST CENTURY, THE JUSTICE SYSTEM REFORM COUNCIL (June 12, 2001), http://www.kantei.go.jp/foreign/policy/sihou/singikai/990612_e.html.

¹⁷ Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 2 ASIAN-PAC. L. & POL'Y J. 89, 89-121 (Spring 2001).

concepts, frameworks, or theories developed outside East Asia, preferably in a challenging or critical manner.¹⁸

In conclusion of the foregoing examination, two problems should be mentioned. One is that we should not assume that scholars outside our own group will know our works; we need to work harder to let them know. The other is that we should not assume that scholars outside our own group will readily recognize the significance of our works, even when they have found our works. We need to work harder to present our works in such a way that will make visible the relevance of our works to outside scholars.

What is the best way to overcome these problems? I propose that we should seek to contribute to theory-building by ourselves. I would like to elaborate on this proposal in the rest of my speech.

III. SEEKING CONTRIBUTIONS TO THEORY-BUILDING

A. *Socio-Legal Studies and Area Studies*

In seeking contributions to theory-building, what kinds of theories should we aspire to contribute? Lawrence M. Friedman presented the following observation about socio-legal studies:

Law and society can be compared, in a way, to area studies. Russia or the Far East are not disciplines . . . What they have in common is an interest in a particular geographical area. They bring their own discipline to bear on issues relating to that area. Law and society studies have something of the same quality.¹⁹

What is, then, the intellectual value of socio-legal studies on a geographical area, which may be regarded doubly as a non-discipline? Friedman went on to say that “[t]he study of almost any foreign system of law . . . sheds a lot of light on one’s own legal system.”²⁰ Some may dismiss this statement as a truism. However, no one would deny that it is true.

The question is what kind of theory-building we should seek to contribute. Friedman’s statement suggests that we should seek to contribute to building theories which will be considered relevant by scholars who are

¹⁸ This problem may be found in my own works. See, for instance, Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 2 ASIAN-PAC. L. & POL’Y J. 89, 89-121. However, for my small effort to analyze Japan with a concept developed in Western countries, see Malcolm M. Feeley & Setsuo Miyazawa, *The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change*, in FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM 151-89 (Terence C. Halliday, Lucien Karpik, & Malcolm M. Feeley eds., Oxford: Hart Publ’g 2007).

¹⁹ Friedman, *supra* note 7, at 2.

²⁰ *Id.* at 2-3.

studying any legal system. The next question is whether we can aspire to such a theory with the ingredients in our hands right now.

Before moving on to discuss this problem, however, I would like to take this opportunity to make a small detour to answer three general criticisms of the types of scholarship I have been engaging in. I am making this detour because I suspect that these criticisms may apply to many other scholars in East Asia.

B. *Answering Three General Criticisms*

1. *“Gap” Studies*

Probably the most fundamental criticism is that I have been engaging in “gap” studies which try to explain the gap between the law on the books and law in action. An example may be my own research on police detectives in Japan because one of my research interests was to provide explanations for their violations of procedural rules.²¹ A well-known critic of this type of research is Richard A. Abel. He states,

I criticized such “gap” studies . . . for allowing law to define problems for social science. It was naïve to expect homology between legal prescriptions and behavior, unproductive to keep falsifying that assumption, and ethically unacceptable to uncritically adopt the norms of positive law.²²

This criticism is essentially that “gap” studies are too primitive. I wonder, however, whether I accepted uncritically the norms of positive law, which was, in the case of my detective research, part of the Japanese Code of Criminal Procedure. I decided to study violations of procedural rules because I was genuinely interested in studying them based on my own normative judgment. It is difficult to believe that any scholar will select a research subject without one’s own judgment. Furthermore, comparing the reality with the law on the books does not necessarily mean that the scholar supports the given law entirely. For instance, I was actually very critical about many aspects of the criminal justice system in Japan.²³

The same may be said when a scholar conducts research based on his or her perception of the gap between one’s own ideal and a reality. An

²¹ See SETSUO MIYAZAWA, *POLICING IN JAPAN: A STUDY ON MAKING CRIME* (Frank G. Bennett, Jr. & John O. Haley trans., 1992).

²² Abel, *supra* note 6, at 5.

²³ See, e.g., Setsuo Miyazawa, *Introduction: An Unbalanced Adversary System—Issues, Policies, and Practices in Japan, in Context and in Comparative Perspective*, in *THE JAPANESE ADVERSARY SYSTEM IN CONTEXT* 1, 1-11 (Malcolm M. Feeley & Setsuo Miyazawa eds., 2002).

excellent example may be David T. Johnson's and Franklin E. Zimring's *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*.²⁴ Johnson and Zimring are well-known abolitionists. It is hard to believe that they would engage in such a study if they did not see a gap between their ideal and the reality in some Asian countries, including of course, Japan. Should we criticize them because they were led by their normative position in selecting their research subject? I do not think so. No retentionist would conduct such a broad and deep study of the death penalty.

I suspect that East Asian scholars are very likely to face this problem: the law on the books may be more likely to be far from the reality; or an ideal may remain an ideal for a long time, without much possibility of realization. In other words, East Asian scholars may be more sensitive to such "gaps" than those in many other parts of the world.

However, I do not think that we should hesitate to be led by our own sensitivity, as long as our choice is to clearly present our own normative position based on our own independent judgment, and we are careful about methodological requirements for research.

2. *Policy Relevance and Activism*

A corollary of the first line of criticism may be that I have been engaging in research seeking some policy relevance, rather than theoretical or methodological contributions. In fact, Abel stated that judging from papers published in LSR, "policy relevance . . . triumphed" even in the American socio-legal scholarship, and criticized that the field "was surprisingly unselfconscious about theory and methodology . . ."²⁵ In other words, research with an interest in policy relevance is also considered a primitive form of socio-legal scholarship.

However, I am willing to admit that I have published many articles and some books to criticize prevailing policies in Japan, even if my writings would not have much impact in actually changing or producing policies in the real politics of Japan. Frank Munger mentioned me even as an activist in his LSA presidential address.²⁶ I am willing to admit that characterization, too. For instance, during the height of the national debate over justice system reform, I was heavily involved in it as a member of the editorial board and constant contributor for *Gekkan Shiho Kaikaku* (*Monthly Judicial*

²⁴ DAVID T. JOHNSON & FRANKLIN E. ZIMRING, *THE NEXT FRONTIER: NATIONAL DEVELOPMENT, POLITICAL CHANGE, AND THE DEATH PENALTY IN ASIA* (Oxford Univ. Press 2009).

²⁵ Abel, *supra* note 6.

²⁶ Frank Munger, *Inquiry and Activism in Law and Society*, 35 LAW & SOC'Y REV. 7 (2001). I should add that Munger mentioned me affirmatively. *Id.* at 13-19.

Reform), a monthly journal published from October 1999 to September 2001, and *Kausa (Causa)*, a bimonthly journal published from June 2002 to April 2004. Both of these journals were consecutively published as watchdogs of the policy-making process from a more radical viewpoint than that adopted by JSRC and its offspring. More recently, I have returned to criminal justice and started to criticize prevailing policies as a form of penal populism.²⁷

Do these interests in policy relevance and activism invalidate my research? I do not think so. What is needed, again, is that I clearly present my own normative or political position, and that I am careful about methodological requirements for my research. I suspect that many East Asian scholars may choose to engage in policy debates and take some form of activism because legal systems in many parts of East Asia are changing rapidly and widely, and such changes require informed decision based on a wide range of perspectives. Those policies are too important to be left for the government or those who are working for it.²⁸

3. *Scope of Analysis*

The third line of criticism I wish to mention here concerns a specific area of research, namely, the politics of criminal justice in East Asia. In the article mentioned earlier,²⁹ David Leheny and Sida Liu conducted an extensive literature survey on the subject including my own work³⁰ and presented the following criticism:

[R]ecent trends in research on the [politics of criminal justice in both Japan and China] have been far narrower than corresponding studies . . . in North America and Europe [which] has gained much of its intellectual vitality from its relationship to research on urban development, symbolic representations of order and disorder, and critical race studies . . . [L]aw and society scholars of East Asia will risk focusing only on the technical and the institutional in criminal practice, thereby

²⁷ See, e.g., Setsuo Miyazawa, *The Politics of Increasing Punitiveness and the Rising Populism in Japanese Criminal Justice*, 10 PUNISHMENT & SOC'Y 47 (2008).

²⁸ David T. Johnson recently published an article about the lack of special procedure for capital cases in Japan in a monthly journal aimed at general readership. See David T. Johnson, *Shikei wa Tokubetsu ka?: Amerika no Shippai kara Erareru Kyokun [Is the Death Penalty Special?: Lessons from the Failure in the US]*, SEKAI [WORLD] (2011) (Masanori Iwasa, trans). I consider publications like this as a form of activism.

²⁹ David Leheny & Sida Liu, *The Politics of Crime, Punishment, and Social Order in East Asia*, 6 ANN. REV. L. SOC. SCI. 239 (2010).

³⁰ Miyazawa, *supra* note 29.

depriving themselves of the opportunity to speak more broadly to the social and cultural.³¹

This criticism from within our own group should be taken seriously, as it may apply to other areas of East Asian socio-legal scholarship. This is probably because we tend to pay much attention to details, on the assumption that most readers outside the given country are likely to lack knowledge necessary as a background for understanding the issue.

However, how broad our analysis should be and what variables we should consider may ultimately be an empirical question. I still believe, for instance, that the level of punitiveness of punishments in Japan has increased sharply in the last decade, while the crime situation and social factors behind it have not changed much in the same period. In such a situation, we may justifiably focus on the political process that has produced policy changes in spite of the fairly stable crime situation. I do not think it productive to cast a wider net or provide a fancier coat for the sake of itself.

Nevertheless, as Leheny and Liu instigate, we should be more ambitious in our theoretical quest when it is empirically justifiable. As I have repeated several times already, that is exactly what I am going to try in the rest of my speech.

I would therefore like to leave the detour and return to the main route.

IV. TOWARD A THEORY OF LEGAL CHANGE

A. *Which Kind of Theory?*

It is possible to distinguish two kinds of theories in social science. One is quantitative; the other is qualitative. We have to decide which type of theory should we try to construct.

A quantitative theory consists of a set of propositions which specify causal relationship between variables. The best-known example in socio-legal studies has been presented by Donald Black.³² His first proposition is that “[l]aw varies directly with stratification.”³³ This means that “the more stratification a society has, the more law it has.”³⁴ His second proposition is that “[l]aw varies directly with rank.”³⁵ This means that “all else constant,

³¹ Leheny & Liu, *supra* note 31, at 253.

³² See DONALD BLACK, *THE BEHAVIOR OF LAW* (Emerald Grp. Publ'g Ltd. 1976).

³³ *Id.* at 13.

³⁴ *Id.* at 13.

³⁵ *Id.* at 17.

the lower ranks have less law than the higher ranks, and the higher or lower they are, the more or less they have.”³⁶

Such propositions are valuable as abstractions and syntheses of a large amount of research findings collected from a broad range of research settings. However, it seems difficult to use them as a heuristic device when we are at a very early stage of designing a research project and are unsure even about which variables to examine. A quantitative theory may be constructed after completing a project, but it is not what we can have at the beginning of our project.

A qualitative theory is a conceptual framework that links various “sensitizing concepts,” which suggest to researchers directions along which to look at empirical instances. Herbert Blumer presented the concept of “sensitizing concept” more than fifty years ago.³⁷ Blumer criticized social theory for its “grave shortcomings.” One of the shortcomings was its “divorcement from the empirical world.”³⁸ The other shortcomings are that “social theory is conspicuously defective in its guidance of research inquiry,” and that “it benefits little from the vast and ever growing accumulation of ‘facts’ that come from empirical observation and research inquiry.”³⁹ In sum, he criticized the insufficient grounding of theory-building on natural empirical worlds. Blumer argued that “thoughtful study shows conclusively that the concepts of our discipline are fundamentally sensitizing instruments,”⁴⁰ and explained the functions of sensitizing concepts:

A sensitizing concept . . . gives the user a general sense of reference and guidance in approaching empirical instances . . . [S]ensitizing concepts merely suggest directions along which to look. The hundreds of our concepts—like culture, institutions, social structure, mores, and personality—are . . . sensitizing in nature. They lack precise reference and have no bench marks which allow a clean-cut identification of a specific instance and of its content. Instead, they rest on a general sense of what is relevant.⁴¹

Following Blumer, I would like to propose the making of a solid start with constructing a theory in terms of an analytical framework consisting of

³⁶ *Id.* at 17.

³⁷ Herbert Blumer, *What Is Wrong with Social Theory?*, 19 AM. SOC. REV. 3, 3-10 (1954) (No. 1).

³⁸ *Id.* at 3.

³⁹ *Id.* at 4.

⁴⁰ *Id.* at 7.

⁴¹ *Id.*

sensitizing concepts to capture the complexities of reality. However, I would like to emphasize the point I have already repeated several times: that framework should be applicable beyond East Asia and relevant to socio-legal scholars who study any parts of the world.

B. Legal Change as a Common Theme in Major Socio-Legal Works on East Asia

We have already examined several recent studies on legal education, legal profession, corporate governance, judiciary, lay adjudication, death penalty, and, of course, rule of law in East Asia. What is the common theme in such a wide range of literature? I believe that many of them may be considered studies on “legal change.” Then, it would be most constructive to use the ingredients we have in our hands to build a theory of legal change.

C. Four Books on Legal Change in East Asia

In order to reinforce my claim that legal change is a common theme of the recent literature on East Asia, I would like to discuss four more books here, including one piece which I have already mentioned. I will start with a single-country research and end with a multiple-country analysis.

The first book is Sally Engle Merry’s *Human Rights & Gender Violence: Translating International Law into Local Justice*.⁴² The author conducted fieldwork in China and Hong Kong, and tried to understand the interface of global and local cultures about gender violence. One of the main findings is the critical role of local intermediaries in a domestic legal change with some influences of international law. In conclusion, Merry stated that “[i]ntermediaries play a critical role in translating human rights concepts to make them relevant to local situations.”⁴³

The second book is Curtis J. Milhaupt’s and Katharina Pistor’s *Law & Capitalism: What Corporate Crises Reveal About Legal Systems and Economic Development Around the World*.⁴⁴ They collected data about six recent corporate controversies in Japan, Korea, and China, and tried to understand the way law supports markets at a moment of stress by looking at lawmaking and law enforcement, the demand for law by market actors, and

⁴² SALLY ENGLE MERRY, *HUMAN RIGHTS & GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (Univ. of Chicago Press 2006).

⁴³ *Id.* at 229.

⁴⁴ CURTIS J. MILHAUPT & KATHARINA PISTOR, *LAW & CAPITALISM: WHAT CORPORATE CRISES REVEAL ABOUT LEGAL SYSTEMS AND ECONOMIC DEVELOPMENT AROUND THE WORLD* (Univ. of Chicago Press 2008).

the mechanism by which law changes perpetually.⁴⁵ They argue that no single type of legal system is uniquely associated with economic success, substitutes for legal institutions may be supplied, and that a legal system is contestable and is able to adapt to new market realities in all successful economies. They conclude that a major topic for future research is the way globalization affects lawmaking and law enforcement.

The third book is Yves Dezalay's and Bryant T. Garth's *Asian Legal Revivals: Lawyers in the Shadow of Empire*.⁴⁶ They conducted fieldwork in Indonesia, South Korea, the Philippines, Singapore, and Malaysia, and tried to understand the recent rise of elite lawyers (legal revival) in those Asian countries which started from different colonial backgrounds (path dependency). They found a quasi-cyclical process that begins with an initial accumulation of legal capital as a mix of imported material and converted local social capital, which is followed by a consolidation and valorization of the market for legal expertise through investment in institutions and knowledge. Lawyers serving power may also lose their credibility, which then opens up new space to invest in legal idealism and the reform of the state.⁴⁷

The fourth and last book has been already mentioned above. That is David T. Johnson's and Franklin E. Zimring's *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*.⁴⁸ The authors collected data about the death penalty in twenty-nine Asian countries, and tried to find examples of abolition, *de facto* abolition or moratorium, and retention of death penalty. They summarize common characters of retentionist countries in Asia in the following statement:

Three features of contemporary Asia distinguish capital punishment policies there from those in the West and other parts of the world. First, national control over death penalty policy persists, with weakness of international involvement. Second, long-term single-party rule is prevalent. Third, hardline authoritarian regimes endure, especially in three of the world's last remaining communist nations—China, Vietnam, and North Korea.⁴⁹

⁴⁵ *Id.* at 12-13.

⁴⁶ YVES DEZALAY & BRYANT T. GARTH, *ASIAN LEGAL REVIVALS: LAWYERS IN THE SHADOW OF EMPIRE* (Univ. of Chicago Press 2010).

⁴⁷ *Id.* at 260.

⁴⁸ JOHNSON & ZIMRING, *supra* note 26.

⁴⁹ *Id.* at 315.

For the retention of death penalty in Japan, they mention the second point, and argue that it “is at least partly a function of the Liberal Democratic Party’s (“LDP”) right-of-center hegemony for the past half century.”⁵⁰

Then, what is the common factor of Asian countries? They argue that “it is not public opinion about the appropriate punishment for murder” because public opinion overwhelmingly supported death penalty everywhere, including the time of abolition in Hong Kong, as was the case at the time of abolition in Western countries.⁵¹ Instead they argue:

In all of these democratic settings, the political momentum for reform was achieved through what has been called “the leadership from the front” . . . The difference that fuels the gap in execution rates between Singapore and Malaysia is not between the opinions of the average “man on the street,” unless that man in Singapore happens to be Lee Kwan Yew⁵² . . . Whatever the governmental system, the most likely proximate cause of substantive change in death penalty is the leadership of political elites.⁵³

Johnson and Zimring add that “[p]olitical leadership from the front is a two-way street in contemporary Asia because government elites also provide the major impetus to maintain high rates of execution or even increase them.”⁵⁴ Japan is currently a leading case. One may wish to know the factors which will make political elites to exercise their leadership differently. Johnson and Zimring emphasize the recent political history of democratization and the personal experience of Kim Dae Jung with regard to

⁵⁰ *Id.* at 325.

⁵¹ *Id.* at 301.

⁵² *Id.* Therefore, Johnson criticizes the explanation of the recent increase of punitiveness in Japan in terms of penal populism. See David T. Johnson, *Japanese Punishment in Comparative Perspective*, 33 JAPANESE J. OF SOC. CRIMINOLOGY 46, 56-59 (2008). I have replied that while it is true that conservative elites including prosecutors and Justice Ministry officials wanted to increase punitiveness for a long time, they have not succeeded until early 2000s when crime has become a major subject of public discourse and a highly punitive crime victim movement has seized the policy-making process, so that we may still apply the concept of penal populism unless such public discourse and crime victim movement were created by those conservative elites. See Setsuo Miyazawa, *Will Penal Populism in Japan Decline?: A Discussion*, 33 JAPANESE J. OF SOC. CRIMINOLOGY 122, 122-135 (2008). However, Koichi Hamai and Tom Ellis have presented a view which gives a much stronger emphasis on the role played by prosecutors. See Koichi Hamai & Tom Ellis, *Genbatsuka: Growing Penal Populism and the Changing Role of Public Prosecutors in Japan?*, 33 JAPANESE J. OF SOC. CRIMINOLOGY 67, 67-91 (2008).

⁵³ JOHNSON & ZIMRING, *supra* note 26, at 303. Would Leheny and Sida criticize their focus on a “proximate cause” as too narrow? See Leheny & Liu, *supra* note 31.

⁵⁴ JOHNSON & ZIMRING, *supra* note 26, at 301.

Korea.⁵⁵ Then, one may further wish to know the factors that would trigger such political changes.

Therefore, the explanation by “the leadership from the front” seems to be inconclusive and to invite further questions.⁵⁶ It is clear, however, that they tried to provide explanations of changes or lack of changes in an important area of law in an extremely large number of Asian countries.

I have discussed four books on legal change in a wide range of areas such as law on domestic violence, law on corporations and markets, legal profession, and law on punishment. I have found that in spite of differences in their subjects, those studies partly overlapped each other by paying attention to some of the following factors:

- 1) About actors: lawyers, policy-makers, political elites, local intermediaries, market actors;
- 2) About economic, political, and international contexts: level of economic development, governmental structure, non-legal institutions, lawmaking process, law enforcement process;
- 3) About the nature of relevant legal norms: contestability of law, global and international legal norms; and
- 4) About the nature of the process of legal change: cyclicity.

Then, how should we start constructing a general theory of legal change adopting it? When I started to contemplate this question, I was struck by the similarities of those factors and the concepts in the “recursivity” model of “normmaking” developed by Terence C. Halliday and collaborators.⁵⁷ I thought that “normmaking” may be seen as another term for “legal change” and that their model could become a basis for constructing a general theory of legal change which utilizes much of the findings and insights from socio-legal studies on East Asia. I will explain why I thought so.

⁵⁵ See *id.* at 147-190.

⁵⁶ To be fair, I should mention that they discuss factors that would influence different paces of abolition at the end of their book. See *id.* at 327-355.

⁵⁷ Terence C. Halliday, *Recursivity of Global Normmaking: A Sociolegal Agenda*, 5 ANN. REV. L. & SOC. SCI. 263, 263-89 (2009); TERENCE C. HALLIDAY & BRUCE G. CARRUTHERS, *BANKRUPT: GLOBAL LAWMAKING AND SYSTEMATIC FINANCIAL CRISIS* 17 (Stanford Univ. Press 2009); Sida Liu & Terence C. Halliday, *Recursivity in Legal Change: Lawyers and Reforms of China's Criminal Procedure Law*, 34 L. & SOC. INQUIRY 911, (2009).

V. THE RECURSIVITY MODEL OF LEGAL CHANGE

A. *An Outline of the Model and a Sample of Its Applications*

Terence C. Halliday and his colleagues have presented their recursivity model of legal change in several publications.⁵⁸ Halliday's article in Volume 5 of the *Annual Review*⁵⁹ may be an appropriate place to start, because it provides a synthesis of various studies on specific subjects. Appendix 1 was taken from that article.⁶⁰

The model consists of the three interacting cycles: 1) interactions of normmaking among global actors, 2) cycles of lawmaking within nation-state (both "formal law" and "law in practice"), and 3) cycles of national lawmaking and global normmaking (role of intermediaries). The model identifies the four mechanisms in both domestic and global lawmaking that can trigger normmaking: 1) actor mismatch, 2) diagnostic struggle; 3) contradictions, and 4) indeterminacy (contestability of law). The model posits that each mechanism can involve a tension, and failure to resolve tensions may drive forward the cycles of normmaking.

An example of the application of this model to a concrete case of legal change is summarized in Appendix 2, which is taken from Halliday's and Carruthers' study on the bankruptcy law reforms in Indonesia, South Korea, and China after the 1997-98 financial crises.⁶¹ Halliday and Carruthers chose these countries because these countries gave them useful variation in domestic situations.⁶² They identified two dimensions that affected the global/local interactions: 1) balance of power between the national and global, and 2) the cultural and social "distance" between the local and global. They argued that their case studies challenge the assumption made by international financial institutions and many scholars that law will be the principal market-ordering mechanism because none of the three countries reached their economic takeoff by giving law much countenance and their startling rates of economic success occurred despite the substantial marginalization of law, so that convergence of law has its limits.⁶³

The recursivity model has also been applied to domestic legal change in Liu's and Halliday's study of changes in the Chinese law of criminal

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 270.

⁶¹ BANKRUPT: GLOBAL LAWMAKING AND SYSTEMIC FINANCIAL CRISIS, *supra* note 59.

⁶² *Id.* at xvii.

⁶³ *Id.* at 35-36.

procedure between 1979 and 2008,⁶⁴ where weaker parties appealed to global norms. They collected archival data of written discussions on the Internet and conducted interviews with sixty-six law professors, lawyers, judges, and procurators.⁶⁵ They describe struggles among police, procurators, judges, and practicing attorneys behind each phase of reform. This paper makes it easier for us to understand how each concept about the mechanisms of recursivity (indeterminacy, contradictions, diagnostic struggles, and actor mismatch) is applied. This paper clearly indicates how the model works as a heuristic device to direct us in a wide range of research on legal change.

B. Lessons of the Recursivity Model of Legal Change

I believe that we can draw at least two lessons from the above examination of the recursivity model of legal change.

One is that while the model was originally developed through a study of bankruptcy law reforms in the US and UK, it has been expanded and refined by its applications to East Asia and non-financial areas such as criminal procedure. The model is an excellent example of theory-building which makes us aware of the possibility for socio-legal studies on East Asia to contribute to theory-building outside of East Asia.

The other lesson is that many scholars may be working with similar ideas and concepts without knowing similarities among them and, hence, the possibility to develop a common theory. Presentations at conferences like this provide us with an opportunity to facilitate mutual learning, and the existence of a theoretical framework like the recursivity model may give us a heuristic device to integrate our findings and insights into a general theory.

What is, then, the challenge for us to give our own findings and insights from East Asia a place in theory-building they deserve? I would like to conclude by discussing it.

VI. CHALLENGE FOR EAST ASIAN SOCIO-LEGAL STUDIES AS A SCHOLARLY MOVEMENT: A CONCLUSION

First of all, I would like to propose that we consider ourselves members of a scholarly movement which tries to change the current state of socio-legal studies in general by letting scholars outside our group know our studies. Then, we can learn from the sociology of social movement in constructing our own strategy.

⁶⁴ *Recursivity in Legal Change: Lawyers and Reforms of China's Criminal Procedure Law*, *supra* note 59.

⁶⁵ *Id.* at 916-17.

The sociology of social movement has identified three elements of successful social movements, as summarized in my paper on legal change in East Asia.⁶⁶ They are: 1) resource mobilization, 2) framing, and 3) political opportunities.

“Resource mobilization” means mobilization of members, money, labor, expertise, media, and other resources in order to form, sustain, and grow the movement. Resources for East Asian socio-legal studies are, of course, ourselves, as well as our own works on every aspect of East Asian law. The strategy should be simple: we should add more members to our group and produce and publish more in a wider variety of places.

“Framing” means framing proposals in such a way that will effectively mobilize potential adherents, garner bystanders, and demobilize antagonists. As I have repeated several times already, the necessary framing for us is to present works in terms of concepts and theories which are not bound by national or regional boundaries, so that potential collaborators outside our group will understand the relevance of our works to theirs.

The concept of “political opportunities” has been developed because a social movement must find and seize access to policy-making process and form an alliance with significant members of the process to realize its purpose. Scholarship is not politics in a usual sense, but we may still use this concept by analogy. We should seek opportunities to present our works among non-area specialists and create opportunities for collaboration. In fact, the works I have mentioned in my speech – like those by Merry,⁶⁷ Johnson and Zimring,⁶⁸ Dezalay and Garth,⁶⁹ Milhaupt and Pistor,⁷⁰ and Liu and Halliday⁷¹ – are all collaborative works, even when East Asia specialists are not listed as authors.⁷² What we need to do is just to go out and entice scholars outside our circle by showing off our stuff.

In summary, after showing thirty-four slides and talking for more than forty minutes, my prescriptions are quite simple: 1) we should add more

⁶⁶ Setsuo Miyazawa, *How Does Culture Count in Legal Change?: A Review with a Proposal from a Social Movement Perspective*, 27 MICH. J. OF INT'L L. 917, 928-931 (2006). In this paper, I proposed from a social movement perspective to study how cultural resources can be mobilized, challenged, and modified in the struggle over legal change by local reformers, rather than taking them static and monolithic.

⁶⁷ MERRY, *supra* note 44.

⁶⁸ JOHNSON & ZIMRING, *supra* note 26.

⁶⁹ DEZALAY & GARTH, *supra* note 48.

⁷⁰ MILHAUPT & PISTOR, *supra* note 46.

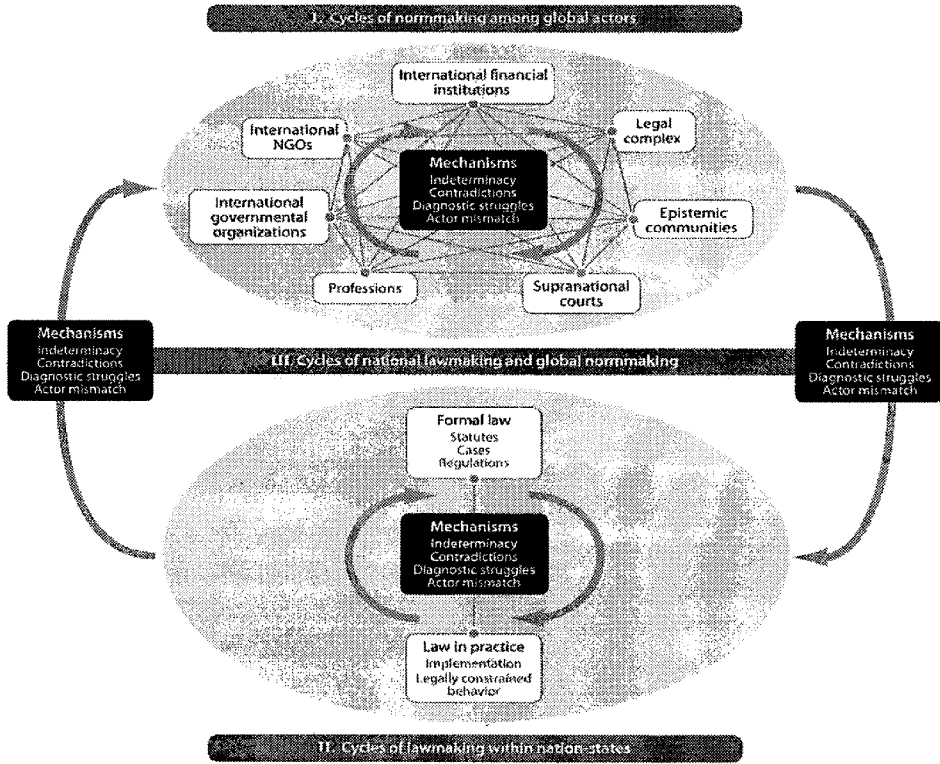
⁷¹ Liu & Halliday, *supra* note 59.

⁷² Malcolm M. Feeley and I offer a few examples. See Miyazawa, *supra* note 29; Malcolm M. Feeley & Setsuo Miyazawa, *The State, Civil Society, and the Legal Complex in Modern Japan: Continuity and Change*, in FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM, 151-189 (Terence C. Halliday, Lucien Karpik, & Malcolm M. Feeley eds., Hart Publ'g 2007).

members to our group in order to produce and publish more in a wider variety of places, 2) we should be able to present works in concepts that are not bound by national or regional boundaries, so that potential collaborators outside our group will understand the relevance of our works to theirs, and 3) we should seek opportunities to present our works among non-area specialists and create opportunities for collaboration.

Let us continue to work together for the advancement of socio-legal studies on East Asia and our contribution to the improvement of socio-legal studies in general!

Appendix 1



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Figure 1
Recursive cycles of global normmaking and national lawmaking.

Appendix 2

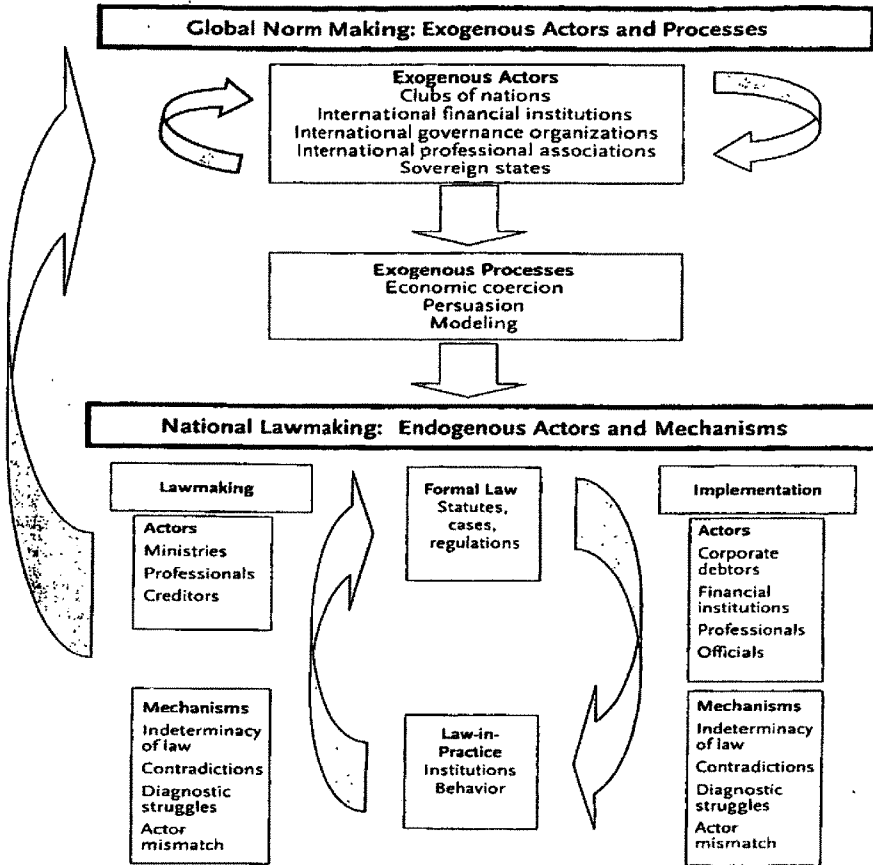


FIGURE 1.1 Recursive Cycles of Bankruptcy Lawmaking in Global Contexts
SOURCE: Adapted from Halliday and Carruthers (2007b).