PRESENTATION ABSTRACTS

The regulatory turn to 'Asia'

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One side-effect of COVID-19 is that we are all now regulators. Most of us have participated in a two-year social experiment in statistical modelling, digital surveillance, multinational pharmaceutical distribution, detention, border control and privatized enforcement. We have also seen how regulation in its broadest sense differs from – and sometimes overpowers -- formal law and legal institutions of law. This comes just as policy makers in the global North were refocussing on state regulatory capability – both to tackle 'wicked problems' and to constrain corporate, financial and technology actors whose regulatory and economic powers outflank those of governments (Sell, 2020). At the same time, Asian governments are actively experimenting with, and adapting, new regulatory techniques for managing social risks and challenges.

COVID-19 is a diagnostic test of national regulatory capacity, in ways that are unexpected and revealing. Earlier work by colleagues such as John Gillespie (2003), Michael Dowdle (2013) and Fiona Haines (2003) directed us to the importance of local regulatory worldviews, practices, pluralism and styles in Asia, showing how these are shaped by industrialization, foreign trade and investment and global networks. Gillespie (2010) also described the juridification of state regulation as formal law and legal institutions become more prominent within socialist legal systems in Asia.

The premise of this paper is that legal systems and legal actors do not displace regulation; they shape, are nested within, and compete with, domestic and transnational regulatory systems. Although they are each sometimes presented as 'technical' and apolitical domains, both regulation and law are inscribed with political, social and economic values. Which regulatory designs and styles emerge as influential tell us something important about the nature of a state and its society, the role of non-state regulatory actors and the influence of transnational

networks. Yet we lack well-developed conceptual and empirical tools for capturing and comparing the regulatory character of national systems. The now-discredited World Bank 'Ease of Doing Business' framework, the World Justice Project's regulatory indicators, and references to regulatory institutions in the SDGs offer only the faintest outline of 'regulation' in action. Much of the empirical literature on which core regulatory concepts are based European or Anglo-American, with a more recent wave of applied scholarship coming from China.

The normative question omitted from much of this work is, 'What kind and quality of regulation does a state owe its citizens - and its non-citizens?' We can see the beginnings of that debate within the OECD and in some arenas within Asia, in ways that recall and extend debates about rule of law in the 1990s. In this paper, I ask the preliminary question, 'What does the current regulatory social compact look like – in Australia and in our region?' I offer some examples of how this is currently articulated and performed, in Japan, in Taiwan, in Indonesia and in Australia. I link regulatory encounters between citizens and states to the socio-legal idea of 'everyday justice' and Selznick's concept of 'responsive law' and to 'law and the political economy' (Britton-Purdy et al. 2020); as well as in post-colonial concerns with subordination of first peoples and vulnerable groups.

The theoretical relevance of taking a regulatory turn lies in the potential to (a) unsettle classifications and taxonomies that have been based on the legal architecture or genealogies; (b) push beyond the single-dimension characterizations of states as being 'legally pluralist', 'regulatory' , 'post-regulatory', 'enabling', 'post-industrial', 'authoritarian rule of law', 'predatory' or some other kind of model; and (c) ask normative, as well as empirical, questions that highlight contestation about the design and effect of different types of regulatory models.

Lawyers as Transplants

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Existing scholarship on legal transplants is voluminous. Less, however, has been written about *lawyers* as transplants – that is, lawyers who practice law in jurisdictions other than their home jurisdiction. By virtue of the jurisdiction-specific nature of legal education and bar qualifications, with limited exceptions lawyers usually have expertise only in the legal regime of a single jurisdiction. However, in the past two decades, globalization and the demands of cross-border legal practice has created a class of lawyers with professional and educational qualifications from two or more jurisdictions. How do lawyers perform professional functions in jurisdictions other than the one(s) they were initially trained in?

Through a detailed survey of case studies on "lawyer-transplants" in Australia, the United Kingdom, North America, and Asia, we posit three models of lawyer-transplants. This Paper contributes to the comparative law literature by exploring an under-analysed site for comparative law: the practice of law by legal professionals. Further empirically driven studies

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on lawyer-transplants are likely to be fruitful avenues for research that may yield theoretical, methodological, and pedagogical contributions. First, lawyer-transplants may play roles in shaping legal culture and influencing a jurisdiction's receptiveness to foreign law transplants. Second, existing doctrinal and functional methods for comparative law analysis are likely to be insufficient to understand lawyer-transplants; proper study of these phenomena is likely to require application of qualitative empirical research methods. Third, the rise of lawyer-transplants is likely to have implications for content, instructional design, target audience, and value of comparative law courses in institutes of higher learning.

Leaving Orientalist Regulatory Ideas Behind: Lessons from an empirical study of prison oversight in Japan and Australia

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Prisons are the hardest of all criminal justice institutions to regulate. As isolated 'total institutions' (Goffman) they pose severe information asymmetry problems. One regulatory mechanism that is thought to 'open prisons up' to society scrutiny is civil prison oversight. Civilian overseers are sent in to visit prisons, speak with prisoners and report what they find.

When both Japan and the Australian Capital Territory (ACT) faced either the reality or risk of prison abuses and chose to establish civil prison oversight systems the models selected could not have been more different. Japan chose a 19th century design from Imperial Germany, pre-dating international human rights instruments. Meanwhile ACT designed a model in step with contemporary European norms and expressly referring to the *International Covenant on Civil and Political Rights* (ICCPR).

It seemed clear that an iterative, mixed methods empirical study investigating the nature and impact of both these systems through the lived experience of 2500 corrections officers, overseers and prisoners at 50 prisons would find the Japanese civil prison oversight system wanting. The Japanese system would be inadequate in terms of day-to-day operations and weak in impact. Conversely, the richly featured, well-resourced ACT system – modelled on best practice –was expected to shine.

However, the tale of these two regulatory mechanisms that emerges from the data cuts unexpectedly across Orientalist assumptions about western regulatory ideas and Asian jurisdictions. The data reveal disturbingly similar trends in the lived experiences of staff, overseers, and prisoners in both jurisdictions, and point to the need for deeper analysis. Evaluating both systems using pyramidal enforcement theory, and in particular Valerie Braithwaite's 'wheel of social alignments', brings their common flaws into sharp relief. Meanwhile the apparently radical design differences that commanded attention at the beginning of the project are shown to be inconsequential. Moreover, reported outcomes were not neutral. Both mechanisms took a heavy toll on the regulatee staff and other actors, with sunk costs displacing the possibility of better regulation.

These findings suggest that efforts to embed European-origin regulatory mechanisms into global contexts can be an exercise in hubris, rather than valor. In this case, the fact that the mechanism had largely escaped rigorous empirical scrutiny 'at home' before its promotion abroad exacerbated that risk. Japan's cautious approach to the mechanism emerges as prudent, while the same cannot be said of ACT's enthusiastic embrace. They also raise questions about how regulators – and scholars – can avoid the pitfalls of Orientalist regulatory design.

Reactive vs. Responsive Regulation – Unveiling the Embracement of Developmental State in Vietnam

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Arising from long-existing command economy and running through years of transformation (which was instigated by the 1990s' national comprehensive reforms), Vietnam continues to show its commitment to support the the private sector and accelerate the country's economic development by indicating that it pursues the building of development state. Noticeably, this building was signaled while the model of development state, orignating and flourishing in Japan and some other East Asian economies in the second half of the 20th century (Johnson, 1982), has reached its maturity and been facing the pressure to change in increasing globalisation (Wang, 2000). The embracement of development state in Vietnam, thus, raised several questions, such as: whether the developmental state can adapt and continue to proliferate in an East Asian socialist-market oriented market economy; what implications that the building of developmental state in Vietnam suggests for other developing countries who emphasise the role of the state in boosting the national economic development; and what implications it may have for the developmental state in general in the face of rapid technological changes.

Relying on a regulatory theory and by using a comparative analysis, this research shows that rather than running responsive regulation pertaining to East Asian development states, the economic regulation in Vietnam can be better described as reactive. Looking into case studies illustrates that this type of regulation has been produced under the impact of globalisation and digital transformation, and in combination with the leaders' efforts to be more accountable but without the system readiness. The research demonstrates that absent drastic regulatory reforms, development state in the region's less developed countries such as Vietnam remains inspration than true, let alone the desire to clothe a new appearance for the traditional development state model.

Chinese Investment in Malaysia through Covid-19 and Beyond

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The state, politics and corporations are inextricably linked in Malaysia. While the Chinese government's involvement in corporations has been viewed with suspicion in some western countries, to many Malaysians, the merger of state and business is ubiquitous. Malaysia has actively engaged in various investment schemes initiated by the Chinese government and its firms since its inception, resulting in the proliferation of infrastructure joint ventures. In the wake of the Covid-19 outbreak, the appetite for Chinese investment and cooperation between governments reached unprecedented heights. In recognition of the 'very close relations and friendship' between the countries, Malaysia was given priority in receiving Covid-19 aid from China. Malaysia turned to China to mitigate the economic impact of the pandemic and to meet the need for technological innovation. In April 2021, the governments of China and Malaysia signed a Memorandum of Understanding, establishing a High-Level Committee to promote cooperation in the post Covid-19 era on matters such as pandemic preparedness, food security, technology and mutual recognition of Covid-19 health certifications.

As Western parties have increasingly criticised Malaysian exports for their apparent lack of environmental or social responsibility, Malaysia has turned to China. This article examines commonalities in the conceptualisations of legality that have ostensibly contributed to the strength of Chinese investment in Malaysia. Malaysia is described as a soft authoritarian state in which collective good and economic development are commonly preferred over individual rights. These traits allow Chinese ideas of legality, rights, and legitimacy to easily find audience in Malaysia, especially at a time when Covid has hit the country's economy badly.

This paper draws on existing studies on authoritarian legality in East Asian countries to shed light on similarities in notions of legality that have contributed to the growth of collaborations between Malaysia and China and their diffusion in the region amid the Covid pandemic. These relate to perspectives of rights protection or environmental concerns, tacit understandings of the nexus between the state and business and the use of informal and extra-legal mechanisms to resolve disputes. By exploring the ramifications for marginalised communities in Malaysia, this paper also aims to grasp the potential implications for other Southeast Asian countries which share similar notions of legality and political legitimacy.

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The institutional dynamics of cyber laws and regulations in Vietnam
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The arrival of Information Technology has brought seminal changes to regulatory regimes from all around the world. Vietnam is not an exception. Since the internet first arrived in 1997, the Vietnamese government have made majorly adapted its regulatory institutions to include the burgeoning cyberspace. The regulation of cyberspace in Vietnam is gaining scholarly interest. Yet, much research about Vietnamese cyber regulation focuses on examining interests of the state and non-state actors in regulating cyberspace. They fail to consider the wider dynamics of the regulatory regime that shape cyber laws and regulations in Vietnam. This paper argues that cyber laws, regulations, and regulatory approaches in Vietnam have been shaped by the institutional dynamics constituted by domestic state and non-state actors. The analysis using regulatory space theory and discourse analysis found three regulatory approaches that have been shaped by the institutional dynamics of three different periods. This article concludes that the institutional dynamic constituted by domestic actors played a crucial role in shaping cyber laws and regulations in Vietnam.

Lao PDR: Mining Law, Regulation and Taxation Changes: Company Taxpayer Behaviour
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The Lao PDR is economically dependent on natural resources, particularly gold and copper mining. Taxation generated from mining activities remains an important source of government revenue for the Lao PDR, particularly during the Covid 19 pandemic and the associated economic downturn. The paper presents a case study of mining law and taxation changes implemented in the Lao PDR since 1986, when the Lao PDR opened its economy to foreign investment and the impact of globalisation. The research method involved a survey followed up by interviews with mining executives who were experienced in working in the Lao PDR over that period. The results were analysed using Grounded Theory, an inductive approach where a theory emerges from the data. The case study examines the effectiveness of investment incentives as well as the effect of a series of tax increases and rolling moratoriums on new exploration leases on company behaviour. The paper presents new insights into company behaviour that may inform mining, law regulations and policy development in mineral dependent economies in the 21st Century.

Regulatory Pluralism and the Resolution of Collective Labour Disputes in Southeast Asia

John Howe, Ingrid Landau, Petra Mahy, Carolyn Sutherland and Trang Tran

Collective labour disputes are widely accepted as an inevitable feature of market economies, and the existence of an effective system for their prevention and settlement is seen as a critical element of an effective industrial relations system. Yet in many countries, formal collective labour dispute systems have only limited impact. Rather than being resolved in accordance with statutory and administrative procedures, collective labour disputes are often regulated by actors, institutions, and processes outside the formal system. Despite longstanding recognition within a range of disciplines of this legal or regulatory pluralism in labour dispute resolution, there has been little consideration of how non-state and state regulatory orders interact, or the implications of these interactions for the design and operation of formal systems.

This paper seeks to broaden and advance labour law scholarship by proposing an analytical framework that enables the investigation of both the formal and informal regulation of collective labour dispute resolution and their interaction. While the analytical framework proposed is capable of being applied to any labour law system that provides for the formal regulation of collective labour disputes, this paper focuses on plural regulation of collective labour dispute resolution in Southeast Asia. This sub-region offers fertile terrain for analysis of the interaction of formal and informal forms of labour regulation due to the limited regulatory impact of formal labour law systems and the sub-region's 'nomic din' (Harding 2001).

The paper begins with an overview of how labour law and industrial relations scholarship has approached the subject of collective labour dispute regulation and why, we believe, a broader perspective is useful. We then explain the theoretical underpinnings of our approach, drawing on insights from socio-legal and regulatory literatures. Finally, we present our tentative analytical framework, disaggregating the dispute settlement process into five categories and proposing analytical questions for each. We elaborate on this framework with examples from Indonesia, the Philippines and Vietnam.