

# 東亞法治發展與民主化 Law, Democracy and Development in East Asia

此頁課程資訊與臺大課程網為同步更新

## 課程基本資訊

項目	內容
課程名稱	東亞法治發展與民主化
開課學期	111-2
授課對象	法律研究所
授課教師	陳維曾
課號	LAW 7810
課程辨識碼	A21 M27A0
班次	
學分	1
全/半年	半年
必/選修	選修
上課時間	星期二 10,A,B(17:30~20:10)星期三 10,A,B(17:30~20:10)星期四 10,A,B(17:30~20:10)
上課地點	霖1304
備註	本課程以英語授課。密集課程。10AB on MAY 23.24.25.30.31@Room1502.

## 課程大綱

項目	內容
課程概述	<p>This course explores the development patterns of the rule of law and democracy in East Asia states, particularly South Korea and Taiwan, during their rapid economic development. I will also compare them with China and other Chinese culture influenced-countries. It touches upon different schools of literature on law and development, law and politics, and law and society.</p> <p>Theories of democracy commonly hold that the acceptance of rule of law in non-democratic countries would likely lead to democratization, especially after a certain level of economic growth. Several developmental states in East Asia are often referred as typical examples as their legal reforms started in the authoritarian era, progressed along with economic prosperity, and triggered democratic and political reforms in the end. The policy implications of this conventional thesis are manifested by numerous rule of law promotion programs supported by international organizations worldwide. However, this optimistic thesis seems to have met challenges in light of recent developments around the world.</p> <p>In this course, the lecturer scrutinizes this linear, optimistic thesis by examining the rich history of the rule of law development in South Korea and Taiwan that are often cited by advocates of the thesis. As opposed to this linear thesis, this module offers a pluralist understanding of the rule of law and democratic development, unveiling its diverse trajectories and dynamics in East Asian context. The course revisits the assumptions of the linear thesis; for example, the presumptions that authoritarian legality is merely transitional, that legalization is equal to the rule of law, or that legal reforms give rise to political openness. In specific, this course examines traditional legal philosophy in the region (e.g. Confucianism and Legalism), narratives about legal reforms developed by developmental states, the role of legal professionals, international</p>

	<p>factors such as the Cold War and the influence of the United States, civil law traditions, Prussian/German law influence, colonial legacy and post-colonial nationalism.</p> <p>Notice: There has been a course title change. This course is identical to SEARCH FOR CHINA MODEL: LAW AND DEVELOPMENT IN CHINA AND EAST ASIA.</p> <p>TA: Wei-Hsu Huang (r09a21011@ntu.edu.tw)</p>
課程目標	待補
課程要求	
預期每週課後學習時數	
參考書目	
指定閱讀	

## 課程進度

週次	日期	單元主題
第14週	5/23	<p>LECTURE ONE: INTRODUCTION—THE NARROW CORRIDOR BETWEEN STATE AND SOCIETY</p> <ul style="list-style-type: none"> <li>• Youngjoon Kwon, Bridging the Gap between Korean Substance and Western Form, in Law and Legal Institutions of Asia, Ann Black and Gary Bell (eds) (Cambridge University Press, 2011)</li> <li>• Hahm Chaibong, China's Future is South Korea's Present: Why Liberalization will Follow Stagnation, Foreign Affairs 177 (Sept-Oct. 2018)</li> <li>• Mirjan Damaska, The Faces of Justice and State Authority: A comparative approach to the legal process, Chapter III, 71-96 (1986)</li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>• Tay-sheng Wang, Translation, Codification, and Transplantation of Foreign Laws in Taiwan, 25 Wash. Int'l L.J. 307 (2016) (pp. 316-322)</li> <li>• Daron Acemoglu and James A. Robinson, The Narrow Corridor: States, Societies, and the Fate of Liberty (2019) [Chapters 1-2]</li> </ul>
第14週	5/24	<p>LECTURE TWO: GUIDED DEMOCRACY AND STATE CAPITALISM</p> <ul style="list-style-type: none"> <li>• Min-Hua Huang, Cognitive Involvement and Democratic Understanding, in Routledge Handbook of Democratization in East Asia, 219-313(2017)</li> <li>• Thomas B. Gold, Taiwan: Still Defying The Odds, in Larry Diamond et al (eds), Consolidating the Third Wave Democracies: Regional Challenges (1997)</li> <li>• Lee Teng-Hui, Chinese Culture and Political Renewal, in Larry Diamond et al (eds), Consolidating the Third Wave Democracies: Regional Challenges (1997)</li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>• Jiunn-Rong Yeh &amp; Wen-Chen Chang, Emergence of East</li> </ul>

		<p>Asian Constitutionalism: Features in Comparison, 9 Am. J. Comp. L. 805 (2011) (pp. 816-833)</p> <ul style="list-style-type: none"> <li>• Neil Chisholm, The Faces of Judicial Independence: Democratic versus Bureaucratic Accountability in Judicial Selection, Training, and Promotion in South Korea and Taiwan, 62 American Journal of Comparative Law 893 (2014) (pp. 934-949)</li> </ul>
第14週	5/25	<p>LECTURE THREE: AUTHORITARIAN LEGALITY</p> <ul style="list-style-type: none"> <li>• Weitseng Chen, Asian Hybrid Regime, in David Law et al. (eds), The Oxford Handbook of Constitutional Law in Asia (OUP, forthcoming 2023). Downloadable at SSRN: <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3434171">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3434171</a></li> <li>• Chaihark Hahm, Beyond "Law vs. Politics" in Constitutional Adjudication: Lessons from South Korea, 10 (1) Int J Constitutional Law 6 (2012)</li> <li>• Tom Ginsburg, Administrative Law and the Judicial Control of Agents in Authoritarian Regimes, in Ginsburg and Mustafa (eds), Rule by Law (2008)</li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>• Chien-Chih Lin, The Judicialization of Politics in Taiwan, 3 Asian J. L. S. 299 (2016) (pp. 314-323)</li> <li>• Jenn Meierhenrich, Rechtsstaat versus the Rule of Law, in Meierhenrich &amp; Loughlin (eds.), The Cambridge Companion to the Rule of Law (2021)</li> <li>• Nick Cheesman, Law and Order as Asymmetrical Opposite to the Rule of Law, 6 Hague J Rule Law 96 (2014)</li> </ul>
第15週	5/30	<p>LECTURE FOUR: LEGAL ACTORS AS THE DEMOCRATIC OR CONSERVATIVE AGENT?</p> <ul style="list-style-type: none"> <li>• Celeste L. Arrington, Hansen's Disease Survivors' Rights, in Accidental Activists: Victim Movements and Government Accountability in Japan and S. Korea (2016) [Ch. 3]</li> <li>• Patricia Goedde, Lawyers for a Democratic Society (Minbyeon): The Evolution of Its Legal Mobilization Process since 1988, in South Korean Social Movements: From Democracy to Civil Society, Gi-Wook Shin and Paul Y. Chang (eds) (2011) (pp. 224-227 and 236-242)</li> <li>• Zhu Han, Law-Oriented lawyering vs Political lawyering: A comparative study of China, Taiwan and South Korea</li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>• Yves Dezalay and Bryant Garth, Indonesia and South Korea: Marginalizing Legal Elites and Empowering Economists, in Asian Legal Revivals (2010) [Ch 8]</li> <li>• Kieran McEvoy, Louise Mallinder, and Anna Bryson, Government Lawyers in Conflict and Transition, chapter 5 (CUP, 2022).</li> <li>• Chaihark Hahm, Law, Culture, and the Politics of Confucianism, 16 Columbia J. of Asian Law 253 (2002) [read pp.280-301]</li> </ul>
第15週	5/31	<p>LECTURE FIVE: REVISIT THE LIBERAL MODERNIZATION THEORY</p>

	<ul style="list-style-type: none"> <li>• Weitseng Chen, Twins of Opposites—Why China Will Not Follow Taiwan's Model of Rule of Law Transition toward Democracy, 66 (8) American Journal of Comparative Law 481 (2018) [read pp. 516-523] Downloadable at SSRN: <a href="https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2922458">https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2922458</a></li> <li>• Francis Fukuyama, Democracy's Past and Future: Transitions to the Rule of Law, 21 (1) Journal of Democracy 33 (2010)</li> <li>• Fareed Zakaria: The Future of Freedom: illiberal democracy at home and abroad (2003), Ch. 3 (pp. 89-118)</li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>• Francis Fukuyama, The End of History and the Last Man, Chapter 3-4 (1992)</li> </ul>
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## 成績評量方式

編號	項目	百分比	說明
1	Class Participation/Reaction Paper	20%	You will be required to write one 500-word reaction paper (about one-page) after the first three lectures and before the fourth lecture. With respect to reaction papers, I am ONLY interested in your personal views on assigned reading, not summaries of assigned readings, literature or my lecture.
2	Research Paper	80%	You will be required to write a paper after the end of all lectures. You can choose any topic to reflect your learning from this course. For example, how and what these lectures and readings have help advanced your research and thesis writing. Alternatively, you can address and respond to the main question the teacher addresses in this course: why the linear theory of the rule of law leading to democracy is wrong. With evidences, you can support or oppose to this thesis. Further instructions will be provided during the lecture.