Editor’s Note

The Asian-Pacific Law & Policy Journal specializes in the legal issues of East Asia and the Pacific islands. We aim to advance academic scholarship for both our specialist and non-specialist audience. Non-specialists, in particular, benefit from our case and statute translations which are otherwise unavailable in English. Our electronic journal reaches readership and authorship across the globe and provides a rich array of legal perspectives on a variety of regional issues.

This upcoming spring, we look forward to our bi-annual academic symposium, tentatively titled, “Indigenous Women’s Rights: Conflicts and Challenges for Today’s Indigenous Women.” We hope to bring together scholars, lawyers, and activists of different indigenous groups who will speak on the nexus between gender rights and indigenous rights, current legal, social, and political issues facing indigenous women, and possible routes for resolution of such issues. Stay tuned for more information as our plans progress.

Our new and improved website, due to the tireless efforts of former Editor in Chief John Donovan, has received positive feedback from authors and readers alike. The submission procedures and iterative editorial process, instituted by last year’s board, have resulted in successful collaborative relationships between editors and authors. The Journal extends special thanks to all authors who have worked with us throughout the editing process.

Our winter 2008 edition features a wide array of legal issues and scholars. Lowell Bautista, Ph.D. candidate at the Australian National Centre for Ocean Resources and Security at the University of Wollongong, examines the historical context, extent, and basis of the delimitation of the Philippine territorial sea. In particular, he discusses Philippines’ delimitation claims of historical title by treaty, explains the juridical function of these lines from a municipal point of view, and clarifies historic rights in international law. Bautista concludes that the Philippines must prove that its delimitation claims are defensible under international law.

Zhengxin Huo, Professor of Law at the China University of Political Science and Law, assesses China’s first antitrust law, which was adopted in August of 2007. While the law represents a benchmark in China’s legal reform, there are still problems and ambiguities in the law which reflect present complexities and imperfections in China’s ever-changing legal system. Professor Huo concludes that the law is, symbolically, a major achievement in monopolies regulation, but still requires additional legislation to address substantive and enforcement problems.

Jonghyun Park, LL.M. candidate at Harvard Law School, discusses the Constitutional Court in Korea. Park posits that the Court’s decisions
on political matters have inextricably linked adjudication with politics in Korea. He asserts that the judicialization of politics is a natural phenomenon and that the Court should be free to rule on political questions, eschewing the division between law and politics. Park concludes by proposing an ideal model for the judicialization of politics which recognizes public opinion and legitimates decisions of a political nature.

Jessica Yeh explores the impact of human rights education in China. Her empirical study focuses on Chinese students’ perspectives and asks whether human rights education in China actually produces key players in human rights reform. By assessing one particular human rights program, Yeh evaluates the overall validity of the law and development movement in China. She concludes that human rights education has positively impacted students’ attitudes and perspectives, but institutional barriers limit the extent to which such mental change translates into action. Yeh then offers a host of methods by which human rights education in China may be improved.

Jordon Kimura, J.D. candidate at the William S. Richardson School of Law at the University of Hawai‘i at Mānoa, analyzes the Hawai‘i Environmental Protection Act (HEPA). Kimura asserts that HEPA currently does not require an environmental assessment for certain actions that may significantly affect Hawai‘i’s environment. These exclusions ultimately undermine the purposes of HEPA to protect the quality of the environment, support public participation in project planning, and raise environmental consciousness. He concludes by advocating for the expansion of the definition of “action” to comply with the purposes of HEPA and ensure the protection of Hawai‘i’s environment.

Douglas Levin, J.D. candidate at the University of San Diego School of Law, analyzes Japan’s Lay Assessor Act, which comes into force in 2009. Specifically, Levin investigates the source of power underlying the lay assessor system by contrasting the Japanese lay assessor system, which exists as a legislative privilege, with the American jury system, which exists as a right of the people. While some provisions of the Act may undermine the promotion of democracy, other provisions may even promote democracy better than the American system. He also proposes fundamentally changing Japan’s criminal justice system for its lay assessor system to promote democracy. Levin concludes with an examination of the lay assessor’s system’s likelihood of success.

Wayne Tanaka, J.D. candidate at the William S. Richardson School of Law at the University of Hawai‘i at Mānoa, applies Garrett Hardin’s concept of the “tragedy of the commons” to the condition of Hawai‘i’s nearshore fisheries. Tanaka posits that despite Hawai‘i’s constitutional responsibility to conserve its natural resources, its ability to protect the nearshore fisheries falls far short. Consequently, the tragedy of the commons poses a serious and lethal threat to Hawai‘i’s nearshore
fisheries. Tanaka then proposes the means to avert the tragedy of the commons and save the nearshore fisheries of Hawai`i, namely through user-based community management.

Last but not least, Virginia Tice, J.D. candidate at the William S. Richardson School of Law at the University of Hawai`i at Mānoa, presents a cross-cultural comparison of climate change injury cases in the U.S. and Australia. By comparing and contrasting each country’s environment assessment procedures, cases, and climate change approaches, Tice evaluates the impact and role of litigation as a strategy to force polluters to curb emissions. Tice concludes that the advent of two landmark cases will drive a positive trend toward more climate change lawsuits because they give plaintiffs a firmer foundation for standing and for asserting their rights to ecologically sustainable development.

Finally, I extend special thanks to our board members, staff editors, and staff writers for their invaluable assistance, time, and dedication. Our faculty advisors Professor Ron Brown, Professor Melody MacKenzie, Professor Mark Levin, and Professor Lawrence Foster also deserve thanks for their unending support and advice.

Doris Tam
Editor in Chief (2008-2009)