Editor’s Note

The Asian-Pacific Law & Policy and Journal is proud to announce the third and final volume of its 20th year as a journal. In this third issue, we have published three articles and two comments with discussion and analysis centered in the Pacific Islands and Asia.

The first article is by Rung-Guang Lin and is entitled, Religion as a Problem: Three Legislative Regulations that Form the Basis of the Relationship Between the State and Religious Organizations in Taiwan. Lin is a Doctor Candidate of Civil Law at McGill University in Quebec, Canada. Lin engages the reader with a timely topic on religious communities in Taiwan. According to Lin, Taiwan currently enjoys an unprecedented level of religious freedom and autonomy. Lin highlights that there is a reason to be cautious in celebrating religious freedom in Taiwan. One reason for caution is the ever-present discourse of “religion as a problem” in Taiwanese society. For instance, Lin notes that Taiwan’s recent public debate on same-sex marriage may have provided an occasion for the “religion as a problem” discourse to re-enter into the public conversation. Lin also explores three of Taiwan’s legislative regulations that were primarily informed by viewing religion as a problem.

The second article is Current State, Developments, and Trends of Chinese Family Law From Recent Cases Reported by the Supreme People’s Court by Rong T. Kohtz. Kohtz is currently a practicing attorney at Law Offices of Rong T. Kohtz and a graduate of Columbia University School of Law. Kohtz discusses the tension between China’s family and customary marriage norms against its formalized legal process. The evolution of Chinese family law and the trends and developments in China’s recent family law reform bring forth compelling conclusions in Kohtz’s article. Kohtz finds that the revision of Chinese law is partially in response to the demands for more excellent protection of women and children’s rights demonstrating that the Chinese courts’ have a willingness to accommodate customs, traditions, and everyday social practices through the flexible application of formal laws are powerful. Kohtz notes, however, that there are two disconcerting developments in China’s family law reform: complexities with the expansion of judicial power and the state’s invasion of private life. Given the disconcerting developments in Chinese family law, Kohtz concludes that it is a policy failure to neglect the vast differences that exist in Chinese families today.

The third article is by Allan Chester B. Nadate and is called Moving Forward from the Historically Incongruous Treatment of Mens Rea in Philippine Criminal Law. Nadate is a human rights advocate who received their law degree from the University of the Philippines. Nadate’s article attempts to correct the divergence in Philippine penal jurisprudence from the original holding in United States v. Go Chico, where the defendant was convicted for displaying medallions crime regardless of the defendant’s intent or mens rea. Nadate states that the divergence in interpreting mens rea in Go Chico was an erroneous adoption of an opinion that by stare decisis has been serially reproduced to what it is today. Contrasting the Philippine principle with American criminal law, Nadate argues that the necessity of reading the element omens rea or scienter should be construed as requisite in the statutory definitions of offenses. Essentially, the article asserts that the treatment of mens rea by the court became distorted and Nadate calls on the court to be vigilant in its justifications for its decisions so that further distortions do not occur.
The first Comment is by our William S. Richardson School of Law (“WSRSL”) classmate, Lydia M.S. Fuatagavi, entitled An Analysis of the Rights of Children in Foster Care in Hawai`i. Fuatagavi explores the rights of children in the Hawai`i foster care system, highlighting various concerns, particularly reports of child abuse arising from systematic failures. In reviewing amendments to Hawai`i Revised Statute Section 587A-3, Fuatagavi suggests additional amendments to better educate and equip foster children with the necessary safeguards to ensure their protection. Fuatagavi notes that while this major issue may not be simply resolved, it is critical for various stakeholders in the foster care system to collaborate and establish monitoring policies as a means of spotting and preventing issues leading to child abuse within the foster care system.

Finally, we are proud to present a Comment by our WSRSL classmate, Eddie Iosinto Yeichy. In A Failed Relationship: Micronesia and the United States of America, Yeichy critiques the unique relationship between the United States of America and Micronesia pursuant to Compact of Free Association (“COFA”) and offers a framework for reparatory justice. In his analysis, Yeichy argues that the United States continues to perpetuate a history of social injustice as it fails to fulfill its duties and obligations towards Micronesia. To truly provide social healing for Micronesians, Yeichy proposes that COFA migrants should be provided a clearer and recognized legal status, granting them access to promised amenities and services that would ultimately promote their integration in the United States.

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Sincerely,

Jenifer Jenkins
Co-Editor-in-Chief
2018-2019

Melody L. Kaohu
Co-Editor-in-Chief
2018-2019