Session	First	Middle	Last	Institution	Other author -First	Other author -	Other autho -Last	Institution	Title of paper	Abstract
E6	Hidehiko		Adachi	Faculty of Law, Kanazawa University					Radbruch and Fuller	The dispute between positivism and non-positivism is still the central subject of legal philosophy. Whereas positivism denies the necessary relationship between law and morality, non positivism affirms it. This presentation focuses on two important non-positivists of the last hundred years: Gustav Radbruch and Lon L. Fuller. Radbruch points out in his many works that law is different than bare arbitrary will of state, law is an attempt at justice. Moreover, he argues that the obligatory force of the law is grounded in morality. Fuller argues in his book 'The Morality of Law' that all systems of law contain an 'internal morality of law'. Both theorists affirm the necessary relationship between law and morality, but their theories that support it are different. This presentation intends to compare their theories about law, to point out similarities and differences between them and to explore what Radbruch's and Fuller's works could contribute to the dispute between positivism's and non-positivism's interpretation of law.
A5	Yukio		Adachi	Kyoto University					The votal need for non-reprentative measures for cvorrecting the short-sightedness of dmocracy	Although the phrase 'responsibility to future generations' has become firmly established in our vocabulary, by no means can we say that we have successfully translated this responsibility into a 'viable ethic' that amounts to more than mere words. Frankly, to what degree an ethics of responsibility to future generations has been achieved is extremely unclear. Nor is it clear to what extent it has been embodied in government policies that are adopted in parliament and implemented by the government either directly through governmental agencies or indirectly through private industry and non-profit or non-governmental organizations. Democracy does not necessarily guarantee sustainable development, to say nothing of viable environments for future generations, though it may probably be too much to say that it works systematically to the disadvantage of future generations. it is no simple task to embed an ethical responsibility to future generations in real public policy by way of the 'legitimate' political system and process of democracy because, in democracies, the political preference of the citizenry ultimately determines in what direction political society should move and the majority of citizens normally tend to take on a myopic mentality in their role as voters. Under democracy, the loudest tend to profit and those who do not fight for their rights or (as is the case with future generations) those who have no means to fight, are liable to be mistreated. Even with such apparent defects of democracy, does it follow that undemocratic—that is, authoritarian—systems should take the place of democratic political systems. Generally, for developed countries that have already achieved a series of mutually related processes of industrialization, urbanization and democratization, it makes no sense to construct a frame that tries to make across-the-board comparisons between democratic political systems and authoritarian political systems. What these countries should question, and what makes more sense in the first place, is not which of the two mutually conflicting political systems should be adopted; rather how we can monitor and correct the short-sightedness of democracy. In other words, how we can decrease the possibilities of such decisions that conflict with the long-term interest of society as a whole being adopted and implemented through legitimate democratic channels. Endeavoring to correct the short-sightedness of democratic political processes, first, in accordance with the internal logic of democracy itself—namely, by making democracy more substantive and engaging—and, second, by fostering and strengthening the public-mindedness of citizenry as well as that of major political actors, is undoubtedly an indispensable requisite for achieving sustainable development. This, however, is not enough. What is further required, lest democracy should degenerate into the sheer tyranny of myopic majority, is the introduction of a set of self-restraint—that is, non-representative—mechanisms (measures) built into democracy itself. Closely analyzing each of thus far advocated non-representative measures in terms of effectiveness, feasibility and ethical justifiability is the main purpose of my paper.
A2	Dobrochna	Maria	Bach-Golecka	University of Warsaw					Democracy and the right to good governance	The paper is going to analyze the notion of the right to good governance understood as the complementary element of the right to democratic governance. It will be based upon the theory of the right to democracy as was introduced by Prof. Thomas Franck in the seminal article "The emerging right to democratic governance" (American Journal of International Law 1992). Since then the idea of democracy in public international law had been widely discussed (Gregory Fox, Brad Roth, Georg Nolte, Susan Marks, Anne-Marie Slaughter, and others). It seems however, that one of the elements of governance, namely the notion of good governance, had been left aside from the debate. Nevertheless the substantive content of governance may be regarded as an important fulfillment of democratic governance. It may be understood as the quality standard set upon those in power and the requirement of minimum level of human rights protection for the governed. Within the European Union law the notion of good governance (art. 15 of the Treaty on the Functioning of the European Union) is connected to the right of participation of civil society in the public affairs as well as the principle of openness (transparency). Still one may ask whether in public international law the notion of good governance is also recognized? It seems that one possible way of identifying the requirement of good governance is to analyze human rights provisions, the other may be related to the interpretation of the principle of self-determination (within its external, internal and individual perspective). It may also prove important to examine the possible impact of the modifications of citizenship regulations delimitating the linkage between an individual and the state, within the legal theory of individualism. Hence the paper is going to provide the preliminary answers and proposal for debate concerning the following questions: what is the precise content of good governance? Is there a common standard within the public law? Is good governance connected to human rights provisions? Is it an individual or collective entitlement? May it be linked to the principle of self-determination?
E5	Malik		Bozzo-Rey	Lille Catholic University					Bentham and Managing Public Servants: Utility, Transparency and the Rule of Law	Jeremy Bentham (1748 – 1832), founder of classical utilitarianism, is probably the first to have systematized, or attempted to systematize, the application of the principle of utility to all fields of thought and action. The philosophical approach he develops is thus characterized by a desire and an attempt to develop a utilitarianism that could be applied beyond the ethical or moral sphere, in particular by developing an extremely strong legal and political thought. This presentation aims to study how Bentham thinks the State should be organized and structured under the governance of the principle of utility, notably by defining the role of civil servants and the objectives they must pursue to ensure the proper functioning of democracy. To fully understand the mechanics at work, I will start by defining precisely what Bentham means by civil servant, from his characteristics to his role, and then replace it in the general economy of his thought, in particular through the question of the link between motivation, maximization of aptitudes and minimization of expenses. I will then be able to grasp the dynamic of control that governs, at least in part, the managerial techniques advocated by Bentham and whose sole purpose is to guarantee the transparency of the state apparatus and its mechanisms to defend the interests of all citizens. Bentham builds his constitutional writings on the idea that the whole government apparatus should prevent sinister interests, i.e. interests opposed to the general interest. The question underlying my presentation will be that of the normative dimension that must be given to this requirement of transparency. I will not only observe that it applies to all the elements that constitute what could be called the Benthamian management of civil servants; but also that it operates in different ways when it is addressed to individuals, a class or an organization. Finally, I will be able to identify its normative force when, associated with the Public Opinion Tribunal, it takes part in the very functioning of the democracy as thought by Bentham.
B5	Vito		Breda	University of Souther Queensland					•The Invisible Rule of Law in Judicial Discretion	Judicial narratives have to be perceived as a direct manifestaiton of the rule of law and the existence of a pre-existing clear and specific rule provides the argument par excellence to support an the idea of nation ruled by law. However, in cases in which the court is asked to evaluate new legal dilemmas or cases that are seen as being within the so-called Hartian penumbra, the perception of a connection between judicial reasoning and the rule of law tends to be more difficult to defend. On the linear scale that connects hard cases with difficult cases, judicial discretion cases tend to be closer to the former than to the latter. For instance, in a judicial discretion case, the court might be asked to decide which administrative process, from among a number of equivalent processes that deliver the same objective, might better implement a government policy. This presentation discussed the range of epistemic methods that judges adopt in cases in which there is no predetermined explicit legal rule. I called these types of instances judicial discretion cases. The analysis relied on the cognitive textual analysis of a large sample of national cases. The textual narratives of these cases were analysed using Langacker's methodology that is adapted to a legal analysis. The nine legal systems that were considered include Brazil, Hungary, Italy, Lithuania, Romania, Spain, Slovakia, Slovenia and the UK. The analysis of the extract and its cognitive use shows that judges seek to deliver, in each case, the most plausible evaluation of factual and legal narratives that are perceived as acceptable by the national community of legal professionals. These accepted epistemological assumptions support Coleman and Leiter's idea of modest normativity in law. The study also shows how there are several national variations between judicial methodologies, which again confirms the existence of national pre-judices. In cases of judicial discretion, pre-judices are manifested in chosen epistemic practices which a national legal community of legal professionals perceived as being within the limits of a legitimated decision. These acpeted epistemic practices, which are often implicits, define a dinamic and culturaly dependan conception of the rule of law .
A4	Benedict	S. B.	Chan	Department of Religion and Philosophy, Hong Kong Baptist University					Democracy, Confucianism, and Consequential Evaluation	In September to December 2014, there was a protest in Hong Kong which is called "the Umbrella Movement." This is a pro-democracy political movement, a protest against the decision from the Hong Kong government and the Standing Committee of the National People's Congress of China, which decides that Hong Kong could not have real universal suffrage in 2017. Although this political protest does not aim at constructing any profound philosophical argument, it stimulates political theorists and philosophers to have many debates. One of them is the East and West debate on democracy. People always wonder whether China is suitable to have democracy. One direction of this debate is to figure out the relationship between Confucianism and democracy. On one hand, some contemporary Neo-Confucians, such as Junyi Tang and Zongsan Mou, argue that Confucianism is not only compatible with democracy, but should also endorse democracy. On the other hand, some scholars, such as Qing Jiang and Daniel Bell, believe that Confucianism may provide an alternative political institution other than democracy in China. Jiang believes that a tradition in Confucianism, which can be called Political Confucianism, can provide such as alternative political institution. He also argues that Tang and Mou focus only on the tradition of Mind Confucianism and do not take Political Confucianism serious enough. Based on such an idea, Jiang argues that Tang and Mou wrongly think that Confucianism is compatible with democracy. Daniel Bell also argues that Confucianism supports political meritocracy, which can be considered as an alternative to democracy. In summary, both Jiang and Bell argue that Confucianism and democracy are not compatible, and Confucianism should not endorse democracy. In this paper, I argue against the approaches from Jiang and Bell by the method of consequential evaluation. I argue that with proper development and modification, the approach from Tang and Mou is a better approach than the approaches from Jiang or Bell from the perspective of consequential evaluation. Mind Confucianism is comparatively a more important tradition in Confucianism. I discuss the ideas from contemporary Neo-Confucians on why Mind Confucianism should endorse democracy. I argue that such an approach is better than Political Confucianism (Jiang's approach) or political meritocracy (Bell's approach) in both the standards of Confucianism and political philosophy.
D5	Chao-ju		Chen	National Taiwan University College of Law					More than Same-sex Marriage - Marriage Equality as a Contested Site	Since the Netherlands became the first country in the world to recognize same-sex marriage in 2001, more than two dozen countries have joined the same-sex marriage club. The legalization of same-sex marriage has become a synonym for marriage equality in the public understanding and academic discussion. The conventional view that equates support of same-sex marriage to the endorsement of LGBT rights and opposition to same-sex marriage to an attack on them, however, has been challenged. Shedding light on the dark corners of the marriage equality movement, a growing amount of scholarship has come to emphasize the inequality of lives outside marriage, arguing the right to not marry, and criticizing marriage supremacy. This line of critique comprises positions including what Susanne Kim called "marriage skepticism" (viewing the pursuit of marriage right as an assimilationist and limiting position, and supporting pluralism) and "skeptical marriage equality" (skeptical of marriage privilege but also favoring marriage equality for same-sex couples). It rethinks the relationship between marriage and equality, refusing to take the inclusion of same-sex couples in the institution of marriage as the sole solution to inequality, and blurs the line between pro- and anti-LGBT positions. This view of marriage as an inequality and disapproval or skepticism of "marital supremacy" is deeply rooted in feminist scholarship, of which a critique of the institution of marriage as an arena of gender inequality, in particular women's oppression, is an essential part. Seen in this light, the marriage equality controversy is complicated by the tension between feminists, who refuse to set aside the feminist agenda of challenging inequality within and through marriage, and same-sex marriage proponents, who prioritize inclusion of same-sex couples into the institution of marriage. This tension can be further intensified by the counter-movement of marriage equality, which targets not only LGBT claims but also feminist critique of marriage. Examining the dynamics of the antigay, LGBT and feminist movements in Taiwan, this study will demonstrate how marriage equality serves as a site of contestation where different visions of marriage and equality compete and interact, resulting in unfortunate silencing and marginalization of feminist voices, as well as an overemphasis on love and the value of marriage. This line of inquiry will also be situated in the context of domestic and local-global relationships, showing how the interactive dynamics of antigay, LGBT and feminist arguments are embodied in local constitutional politics, and closely associated with the "migration" of the global movements for and against marriage equality, demonstrating the other dimension of marriage equality as a site of contestation where Western hegemony is at once affirmed and contested.
B7	Hung-Ju		Chen	Institutum Iurisprudentiae, Academia Sinica					On Political Obligation and Civil Disobedience	Members of society are supposed to have the duty to obey the law in a democratic regime. One reason for members to bear it is the fact that a democratic regime is legitimate when members of society participate in the collective decision-making process and their right of political participation is protected under the law. In that given circumstance, members should respect a collective decision produced from a democratic procedure. However, people also agree that, even members bear political obligation, a case of civil disobedience might be justified in some particular circumstance. Therefore, there is a question that to what extent the weight of duty to obey the law could be outweighed by substantial goals that civil disobedience aims at achieving. A more basic question relevant to disobedience is that what features make civil disobedience distinctive from ordinary law-breaking conduct. While both of the two types of actions are contrary to law, causing some harm on others, and bear the possibility of being prosecuted by political authorities, they are rarely classified as the same category. This paper takes up those questions by investigating the deep relation between civil disobedience and the duty to obey the law. It shows that actions of disobedience is morally distinctive from ordinary law-breaking conduct and by this moral distinctiveness I mean that disobedients (individuals who perform disobedience) would take the weight of the duty to obey the law into account when they consider whether it is necessary to perform disobedience. This moral significance of civil disobedience paves the way to have a better understanding of the relation between disobedience and democracy. This article adopts Mark Greenberg's theory, the moral impact theory of law, to address that the moral significance of civil disobedience comes from the fact that disobedients aim at shaping content of political obligation by breaking a law. They do not ignore the weight of political obligation but take it seriously in a sense that they are convinced that under the circumstances at the time, political obligation no longer constitutes a sufficient reason for them to obey a law. On the other words, its weight is outweighed by others substantial reasons. Followed by this feature disobedients have to justify disobedience and to invite the public into thinking why substantial goals held by disobedients should outweigh the duty to obey the law. Civil disobedience is a way to make this challenge salient and a way to address disobeidents' moral conviction. From the perspective I argue that the function of moral profile is the essential feature of civil disobedience. Explicating the function of moral profile in disobedience has several advantages. First, this function highlight the difference between ordinary law-breaking conduct and actions of disobedience despite their appearance might be similar. Secondly, it can also distinguish civil disobedience from other types of actions that individuals aims at breaking laws conscientiously and publicly such as revolutionary conducts. Revolutionary actions negate the weight of political obligation to obey the law, not take it as a relevant factor. Thirdly, this function makes the issue of conflict between disobedients and political authorities salient and provides a better understanding of how civil disobedience is compatible with democracy.
B1	Miaofen		Chen	National Taiwan University College of Law					Rule of Law as Concept of Aesthetics of Law: An Overview of the Neo-Kantian and Hermeneutical Arguments	In philosophy of law the approach "aesthetics of law" is itself a movement toward discovering multiple forms of law, i.e. expressions of law in our social life world. Its main concern is indeed old enough to track back to the Platonic idea of arguing for the nature of law. With the "aesthetic" or "hermeneutic" turn in philosophical inquiry since the nineteenth century, the German neo-Kantian philosopher of law Gustav Radbruch invented the terminology "Ästhetik des Rechts" in his representative work "Rechtsphilosophie" (1914/1932) and put forward the demand for thinking law as realization of values. According to Radbruch the law is product of culture, and therefore has its very nature and value represented by cultural forms. His elaboration of aesthetics of law was short and need to be developed. Radbruch's idea of law was related to the neo-Kantian philosophy of culture and value, which also found the other approach in hermeneutics formulated by Paul Ricoeur and Hans-Georg Gadamer. In this paper I will argue that we should invoke the Kantian concept of "aesthetic judgment" (Urteilskraft) to explain the arguments shared by them for the conviction, why and which of our cultures and values are significant to legal reasoning and judgment. The arguments will also trace back to Kant's analytical concept of "Gesetzgebung" (legislative). So far as the law-giving act of the people is represented by the legislative, there could not be a logical conclusion of people's right to resist against their own will. The principle of "rule of law" (Rechtsstaat), as Kant argued, demonstrates the "free will" as higher value over the preference of any individuals and groups. The so-called "free will" deemed to be universal and general as well. It appeared to Kant incredible to think: how could a state become unjust if it consists of democratic government by the rule of law? The distinction of „ought" and „could" is central to understanding this argument of Kant. According to Kant there could be no legal right to resistance, for this right would be destructive to the legal system and therefore never recognised within it. By contrast, the right to resistance ought to be considered as morally justificiable not due to legal but moral reasons. In other words, the right to resistance is a moral right. I will call this Kantian argument against the legal status of the right to resistance „the rule of law argument" that have had enormous influences upon the positivist trend of thinking especially in the anglo-american analytical anti-natural law tradition. Key words: rule of law, aesthetics of law, neo-Kantianism, hermeneutics

D5	Shih-Tung		Chuang	College of Law, National Taiwan University					Hate Speech and Democracy: A Critique of Ronald Dworkin's Legitimacy Argument	Does hate speech hurt or strengthen democracy? This issue invites an intense debate in contemporary legal and political philosophy. Some argue that tolerating hate speech can entrench the fundamental values of democracy such as autonomy, equality, and dignity. Others argue that hate speech should be prohibited by the law because it deeply injures these basic democratic values. Both sides propose their sophisticated accounts of what a democratic self-government truly means and the values it ought to protect. Among them, Ronald Dworkin offers the legitimacy argument to defend the absolute protection of hate speech in a democratic society. This essay intends to critically examine his thesis by raising three challenging arguments. Like other free speech defenders, Dworkin claims that a government of liberal democracy must remain neutral to the content of any speech even though some speeches may express discriminatory or offensive or harmful thoughts to the disadvantaged groups of the society. The pivotal thesis underlying his claim maintains that a democratic government should treat each of its citizens with equal dignity. Equal dignity means the government has a fundamental political obligation to equally respect that each citizen is entitled to choose her/his own way of good life by undertaking the full responsibility of that choice. Since speech is the necessary way to express one's worldview and attitude of life, a government would violate the political obligation of equal dignity if its law constrains hate speakers to freely express their beliefs, convictions, or values. In addition, as the upstream intervention to hate speakers' free expression of their ethical convictions, hate speech legislation further destroys the political (democratic) legitimacy of those downstream laws which aim to prohibit discrimination or violence in education or employment. Namely, if the government intervenes in the upper stream, it will lose the only democratic justification to demand all citizens including the hate speakers to obey its downstream laws. I raise three arguments to challenge Dworkin's legitimacy thesis. The first argues that the upstream hate speech law need not be illegitimate if it is legislated by a fair democratic process which fully respects each citizen's opinion including the hate speaker's and gives her/him an equal voice in the forum of legislation. The second argues that the existence of upstream hate speech law does not necessarily weaken or even cancel the legitimacy of downstream anti-discrimination laws provided the hate speakers have an equal opportunity to express their values and opinions in an alternative way to participate the legislative process. The third argues that the absence of upstream laws cannot guarantee that all downstream laws will give each citizen with equal treatment because some unequal laws may be verified and claimed to be legitimate by a fair democratic procedure. Therefore, I conclude that Dworkin's legitimacy argument cannot justify that upstream hate speech legislation necessarily invalidate the legitimate status of downstream legislation.
E7	FANGHUA		CHUNG	FU JEN Catholic University					Democratic Legislator, Legal Pluralism, and the idea of the Justice of system: A critical Examination of Oliver Lepsius's theory of democratic law.	As many legal theorist (especially Carl schmitt) have already pointed out, that the idea of rule of law and the idea of democracy may be conflict with each other. How to solute this conflict is the important problem in the theory of public law, legal philosophy and political philosophy. In legal practices, the conflict and the reconciliation of idea of rule of law and the idea of democracy are also involved in the concerning the disputes about the competence and criteria of judicial review. The idea of the justice of system (Systemgerechtigkeit) is one of the most important principles of German type of the idea of rule of law (Rechtsstaat). It includes the principle of consequentiality or logical consistency (Folgerichtigkeit) and the doctrine of self-consistency (Widerspruchsfreiheit). According to the idea of the justice of system, the statutes which are enacted by democratic parliament should be consistency with other statutes, and therefore constitute a wholly coherent value system. The idea of the justice of system is also the most important ideal of legal methodology in German. Furthermore, the idea of the justice of system becomes the one of important criterion of judicial Review. In last decade, one of the outstanding German public jurists, Professor Oliver Lepsius develops a legal theory about democratic law. Professor Lepsius criticizes the idea of the justice of system, and argues for the democratic theory of legislation. He indicates that the idea of the justice of system can't be compatible with the nature of democracy. Lepsius uses Hans Kelsen's theory of democracy and parliamentarism to support his arguments. He argues, the nature of democratic process of legislation is compromise and discussion, and democratic statutes are only the product from political compromise. The idea of the justice of system makes the excessively demand on democratic legislator, and causes the disability of democratic legislation. The idea of the justice of system also gives the judicial review a reason to justify their wrongfully expanding power. Beside, according to Lepsius's theory, the idea of the justice of system can't be compatible with the phenomenon of legal pluralism. The idea of justice of system lays the foundation on the value coherence in national law system, but the so-called value coherence in national law system is considered as an illusion in the internationalization and privatization of law-making. This paper will try to point out, why the idea of the justice of system should be the important principle of rule of law, and to prove, the idea of the justice of system can be compatible with the phenomenon of legal pluralism. This paper will also try to criticize Professor Leoisus' arguments about democratic legislation. It will discuss the importance of the idea of the justice of system for the process of democratic legislation.
D7	Abraham	Pérez	Daza	National Autonomous University of Mexico					THE ROLE OF PROSECUTORS IN STRENGTHENING DEMOCRACY	Implementing diverse criminal systems in democratic countries encompasses an evident range of duties and powers for prosecutors to carry out their criminal investigations from an independent and impartial position as well as an important responsibility to keep an official accusation between the police force and the courts within a democratic rule of law. However, the performance of prosecutors in stabilizing democracy is particularly uncertain inasmuch as there is not identified the adequate role of prosecutors in a democracy; the implications borne in committing a prosecutor with the government exercising the power; the external obligations acquired by a prosecutor under the principle of universal jurisdiction, extradition proceedings and mutual legal assistance or in what manner prosecutors must respond on accepting or rejecting a case, choosing which crimes must be challenged and deciding the number of counts that must be charged. This is eminently owed to the plurality of the representative, legal, liberal and participatory democratic models which diversify the objectives of prosecutors in their criminal investigations, for example, for a negotiated or restorative justice. Therefore, my proposal is to level the role of prosecutors in strengthening democracy by way of the epistemic appraisal of Carlos Santiago Nino.
A4	Laÿna		Droz	Kyoto University					Environmental civil disobedience as catalyst for sustainable democracy	Civil disobedience is the non-violent violation of certain laws. Activists accept the punishment for breaking the law and aspire to educate the public and to convey a political message. This contrasts with militants who, by using sabotage, take a stronger stance to coerce the public. Civil disobedience plays a crucial role in environmental activism, from Greenpeace activists breaking into nuclear power plants to denounce their vulnerability and security failures, to blockades at Standing Rock in the US to prevent the construction of the Dakota Access Pipeline. In this paper I explore how an environmental activist can weigh up the pros and cons of taking an action while being aware of the social and legal risks. Breaching certain laws can be justified if they are considered immoral, or if they are or become in contradiction to other laws or principles of supposedly higher importance. In the first case, morality goes down to an individual ethical judgement on a specific situation, the same kind of judgement that orientates individuals' voting and consuming choices. On this level, the ethical justification of taking an environmental action can go down to the premise that environmental sustainability is a necessary condition for human existence. The second case refers to the coherence of the democratic system in which laws and decisions are collectively made for groups and are binding on all the members of the group. Anybody taking part in the process of elaborating the legal system or benefiting from it is also bound to it. By accepting the potential punishment, activists understand the consequences of their specific violation of the law and validate the general democratic system. Environmental civil disobedience can give a voice to underrepresented beings such as non-human living beings and ecosystems or even to not-yet-existent beings such as future generations. From this perspective, civil disobedience can strengthen democracy by improving the inclusion of beings that also endure the consequences of collective decisions. Laws are a changing system mirroring with a certain inertia the dynamic ethical consensual worldviews of the group. When democratic law-making mechanisms seem to be not quick or inclusive enough to cope efficiently with the urgency of the environmental crisis, environmental civil disobedience may be a catalyst for sustainable democracy.
A5	Ferry		Fathurokhman	Sultan Ageng Tirtayasa University	Firdaus			Sultan Ageng Tirtayasa University	The Election Organizers Ethics Council of Republic of Indonesia : New Chapter of Ethical Court and Democracy	In Indonesia, General Elections are conducted by the General Election Commission (KPU) and the Election Supervisory Agency (Bawaslu). Both institutions have the task for holding the election of president, parliamentary members, and regional head from governor to regent /mayor in all over Indonesia. A problem emerges when the Election organizers (KPU and Bawaslu) perform unprofessional conduct. For instances, what if they are partial, committing unequal treatment, breaching their code of ethics? In order to handle such problems, The Election Organizers Ethics Council of Republic of Indonesia (DKPP) then was formed independently in 2011 through an act to complete the electoral system, enforcing code of ethics, measuring the quality of democracy. Uniquely, the ethical court at DKPP is designed as a disclosure-trial. All parties are allowed to attend and observe the court session. Ethic has transformed in its modern and progressive form in Indonesia. Most of ethical courts are held in camera, yet since 2011 Indonesia makes a breakthrough in the field of general election particularly in terms of ethical court system. Up to February 2018, DKPP has been firing 458 election organizers due to ethical infringement. DKPP reassures that the election organizers should be credible and independent in order to hold a trustable general election. This paper will explain how the ethic works in practical level and a brief history of ethics development in Indonesia. In addition, this paper will also describe the implementation of restorative justice in regard to maximalist model in several verdicts of DKPP. The maximalist model is a different form of the common restorative justice. It needs no consent of all parties for dealing legal or ethical dispute. In sum, ethical court has become a new paradigm for elevating democracy to the next level and an example of the maximalist model that previously written in several books as a theory. Keywords: Ethical Court, General Election, Democracy
E6	Wei		Feng	China University of Political Science and Law					Legal Certainty as a Formal Principle - A Reconstruction of the Radbruch Formula	The Radbruch Formula requires the balancing over the threshold of injustice of law, i.e. the balancing between the idea of legal certainty and that of justice. The result of this balancing is a determination in favor of either side. In the first circumstance, if the legal certainty has had the prima facie-priority, then the law was already determined, in other words, some rule was existent. In the second circumstance, if the legal certainty collides with an intolerable, incorrect law, then the determined rule would lose its definitive character, although it would still be supported by the idea of legal certainty. It is to be construed as follows: the material principles from both sides are balanced with each other, and the legal certainty participates into one of the sides. Therefore, the pure formal-substantial model of balancing is not applied here. In the third circumstance, if a law happens to be extremely unjust, then the epistemic premise of this extreme injustice is also certain in such a high grade that the previous determined rule exceeds the threshold of extreme injustice. A new rule could be laid down here as the result of balancing, which says, "Extreme unjust law is not law". In all above three circumstances, there is always an argumentative burden in favor of the legal certainty. In the second circumstance, one can find a principle of argumentative burden which means a requirement of balancing between two sides, while in the first and the third circumstance, certain rules of argumentative burden exist, which are expressed through the results of balancing considerably. Therefore, the Radbruch Formula itself is a rule, or one could say, a rule with three-stages. At each stage, the principles as requirements of optimization always play a role. At the first stage, the law prima facie supported by the legal certainty has the definitive priority. This is exactly the requirement of the legal certainty, which has the prima facie priority here. To optimize this requirement of the legal certainty is what a requirement of optimization says. At the second stage, a requirement of balancing between two principles applies, i.e. between the principle of legal certainty and that of justice. At the third stage, the new rule, "extreme unjust law is not law", is valid. The frequently arising criticism of the absolute fundamentality and the relating assumption of inability to be balanced in respect to the legal certainty could be explicated through the three-stage rule of the Radbruch Formula. At the first stage, the legal certainty shows its character of fundamentality. At the second stage, however, the legal certainty is undoubtedly able and surely need to be balanced. Finally at the third stage, the legal certainty withdraws before the threshold of injustice. Nevertheless, the most important point is at the second stage. Moreover, the reconstruction problem of the balancing between formal and material principles also counts here.
B4	Imer	B.	Flores	UNAM (Mexico)					Is Law an Artifact?	John Finnis opened an entry on "The Nature of Law" for the Cambridge Companion to Philosophy of Law by acknowledging that recent work in philosophy of law includes many discussions of law's 'nature or essence', understood as those properties of law that are necessary, or at least important and typical or characteristic of law as such, wherever it may be found; and summarized the debate: "Some hold that law has no nature; only natural objects have a nature, and law is artefactual, not natural. Others reply that there are kinds of artefacts: paper clips differ in nature from printer drivers". Speaking for myself, I take side with those that claim: (1) law is not a natural object but has an essence or nature; (2) law's essence or nature is not and cannot be (merely) "natural", and so it is and must be "artificial"; and (3) law's "artificial" nature, suggests that law is and can be constructed and reconstructed, imagined and reimagined, made and remade. Additionally, following Frederick Schauer, I have tried to move away from the strong tendency --perhaps even the obsession-- with the hunt for necessary and sufficient conditions, usually associated with "natural kinds" but that arguably can be applied to social artefacts and constructions, including "law"; and, hence, to shift the focus to the important and valuable features, which can prove to be profitable in explaining not only "natural kinds" but also "artificial kinds", including "social kinds", "functional kinds" and even "institutional kinds". However, if law is an artificial kind of what sub-kind it is: artefactual, social, functional, or even institutional? Clearly "paper clips" are different from "printer drivers", and most notably from "borders", "money" and "law"? Hence, in my paper, I aim to expand and explicit my responses, but let me restate my two main claims: (1) law is an human creation and as such it is created and even recreated; and, (2) law is not a matter of convention but of construction and reconstruction, evaluation and reevaluation, and interpretation and reinterpretation. For that purpose, I intend to reconsider the complex nature of law, and would like: to re-evaluate the general theory of artefacts; to re-examine the problem of the "artefactual" nature of law; to review an alternative: the "institutional" nature of law; and to reassess my claims re law as a human creation and as a matter not of convention but of construction, and as such not merely as an artefactual kind but as an institutional one.
E1	Akio		Fukuhara	Tsuda University (part-time lecturer)					Sufficientarian Libertarianism and Lockean Proviso, Through a Reinterpretation of Nozick	In this presentation, I would like to justify a new type of Lockean libertarianism. Libertarianism was regarded as an argument defending the theory of "small government" that promote individual freedom and disregard consideration of redistribution, which appeared as an alternative argument defending equality in the context of theory of justice. In the latter half of the 20th century, there were many consequentialist arguments including economic arguments among libertarian theories. However, this situation changed dramatically due to the development of theories by analytic philosophers, especially the left-libertarians, from the late 20th century to recent times. Now, the mainstream of libertarianism is regarded as the theories which recognize self-ownership as an initial right and consider distribution about the resources that exist in the external world by interpretation of "Lockean proviso". The trend of such libertarianism is based on the theory of Robert Nozick, the central figure of libertarian theory of justice. This presentation basically follows this trend, but I think that the argument of Nozick is not vacant enough to reject all of it, like egalitarian theorists, simply because of the inappropriateness of the baseline problem. The idea seen at the argument of Nozick suggests that admitting self-ownership to each person and Lockean proviso are not isolated elements simply separated from each other but linked in constructing the libertarian theory. I will take up some of his arguments that seems to derail from the mainline of libertarian theory of justice, such as the relationship between meaningful life and self-ownership or historical shadows of Lockean proviso (e.g. a case of water hole). This presentation also focuses on and deals with these aspects of Nozick's theory carefully. Following this process, I would like to insist on a sufficientarian position as a third way while criticizing right-libertarianism which strongly oppose to redistribution and left-libertarianism which advocate egalitarian redistribution. I would like to mention the difference between my argument and "The Sufficiency Proviso" by Fabian Wendt, which has been advocated at about the same time as mine and is similar to my argument, if I have enough time to argue.
D1	Masato		Fukuhara	Graduate School of Arts and Sciences The University of Tokyo					Public Reason and Killing in the War	This paper explores the relationship between two central topics in moral and political philosophy: the moral legitimacy of authority and moral justification for killing. Each of these has been extensively discussed in isolation, but there is relatively few works about the implication of legitimate authority for permissible killing in the war. In particular, reductivism, defended prominently by Jeff McMahan (2009) and Cécile Fabre (2012), has been the prevailing position in the field of the ethics of war. Accordingly, a combatant's killing should be justified on the basis of the interpersonal morality governing defensive killing between individuals. That is, the moral justification for killing in war is completely reductive to the authority-independent reasons. David Estlund (2007) and Jonathan Parry (2017) are welcome exceptions. For example, Parry focuses on Raz's account of authority to claim that his service account of legitimate authority can affect the moral status of combatants' acts of killing. While my paper mainly builds upon Parry's discussion, I point to the inadequacy of such an instrumental reason to justify authority in context of waging and fighting wars. After that, I defend two related arguments, explaining the public reason account of authority: (1) under certain conditions, the command of an authority can provide combatants with a moral justification for killing, even in cases where the killing both transgresses rights of others and fails to bring about goods sufficient to override those rights; and (2) a combatant's having an authority-based justification for killing does not, in itself, raise the justificatory burden on defensively killing this authorized combatant. In other words, on the public reason account of authority, authoritative command gives combatants a sufficient reason to commit an act of killing that would otherwise be unjustified on the basis of authority-independent reasons, but this justification is entirely separable from the moral status of opponent's defensive killing because of authority's scope. As my paper's originality, I finally suggest that the idea of public reason plays a special role in permissible killing in the war, responding to potential objections.

D6	Gen		Fukushima	Waseda University					Public Reason Liberalism and Self-Defeatingness Objection	When can coercive exercises of political power be legitimate, against the background of reasonable disagreement about the good life and the just order? This is an urgent question in contemporary liberal-democratic societies, which are characterized by the fact of reasonable pluralism on the one hand, and the necessity of order-maintaining political power on the other. Public Reason Liberalism, whose most well known advocate is John Rawls, attempts to provide an answer to this fundamental question. Its theoretical core is the Public Justification Principle (PJP), which claims that coercive exercises of political power can be legitimate, only if those are based on constitutions or laws that are justifiable to all reasonable citizens. PJP is the very answer, which Public Reason Liberalism gives to the fundamental question. However, Public Reason Liberalism has also brought a variety of sharp criticisms. In this paper, I will focus on "the self-defeatingness objection", which points out the internal incoherence of Public Reason Liberalism. In a nutshell, it claims that Public Reason Liberalism is self-defeating, because PJP cannot itself be publicly justified. In other words, PJP cannot meet the Reflexivity Requirement, which requires that PJP apply to itself, rendering itself justifiable to all reasonable citizens. But who are the reasonable citizens? Consider perfectionists who deny PJP as a necessary condition for legitimacy and instead claim that substantially just constitutions or laws can be legitimate without public justification. If those perfectionists are indeed reasonable (and it seems so, intuitively), then PJP fails to meet the Reflexivity Requirement. Failing to meet the Reflexivity Requirement, Public Reason Liberalism defeats itself. Recently, Public Reason Liberals have provided two different kinds of reply to the self-defeatingness objection. The first reply claims that the Reflexivity Requirement does not apply to PJP, at least in a problematic way (e.g. Gerald Gaus, Kevin Vallier). According to this reply, the self-defeatingness objection makes a category mistake, since PJP applies only to constitutions or laws, but PJP itself is neither a constitution nor a law. Contrarily, the second reply concedes that the Reflexivity Requirement applies to PJP, and tries to show that PJP can indeed meet it (e.g. David Estlund, Jonathan Quong). This latter reply adopts a strategy to idealize the citizens to whom political power owes justification, so that all "reasonable" citizens, narrowly understood, can endorse PJP. This paper will critically examine these replies. I will argue that the first kind of reply is ultimately implausible, because merely exempting PJP from the Reflexivity Requirement is question-begging. On the other hand, I will argue that the second kind of reply can successfully rebut the self-defeatingness objection. However, this reply takes a great risk of reducing the original theoretical appeal of Public Reason Liberalism, because it narrows the range of reasonable citizens through idealization. This could end up vanishing the original problem – the fact of reasonable pluralism – to which Public Reason Liberalism tries to provide a solution. Thus, the second reply has some difficulties, while it's more promising than the first reply.
B6	Zeguro		Garrigues	RPG学校					The State of Nature: War or Garden?	The debate about whether man was an uncultured barbarian or a noble savage when left alone to uncivilized Nature was quickly overshadowed during the proliferation of contractualism and Constitutionalism in post-Hobbesian political and legal thought. The question finds new urgency during the modern crisis of the Anthropocene. If legal theory is to retain legitimacy when facing the challenges of this era it seems likely that naturalism find resurgence among legal theorists. But how? The appreciation of nature by legal theorists has grown steadily in the past several decades, however, not much progress has been made in discerning the theoretical obstacles which cause it to remain, if not neglected, at least ineffective in steering modern statecraft and international politics. The question in present tense is possibly the relevant reentry into ascertaining what details remain obscure: "What comes of a human today when left alone to the elements and to "Nature" unaided by civilization?" Since the 17th century, much naivete in the English language has been conquered by sociocultural self-awareness, theory, and activism having already very noticeable effects: we use the word, human, to include the other half of the species and we use scare-quotes around Nature because we suspect the idea at least might be a brazen reification. With these sobrieties we try to sensitize ourselves to the realities (or illusions) surrounding us. In the midst of living in a time where the old Capitalist and Communist labels make little ecological and economic difference, theorists have increasingly sought new concepts and terms to leverage useful reconstruals of old concepts - such as "Homo sacer" by Giorgio Agamben. The concepts that might have lasting impact in the Anthropocene are those nearest to us and easiest to pass by undetected - much as the question: "who am I without society, without laws, without tools?" Questioning which reconvenes the foundations of legal theory prior to uncritically importing what become technical terms seems more urgent now than ever. Language and concepts are only part of the puzzle to legal theory - values and identity are a crucial part of its core as well. Reframing the urgency of man before "Nature" begs for our renewed attention.
B5	Mariusz	Jerzy	Golecki	University of Lodz					Judicial Activism and the Rule of Law	In legal theory and in practical legal discourse it is generally assumed that the judicial decision-making process should be evaluated against two benchmarks: rationality and accuracy of rulings. Both aspects seem to be controversial, but generally it is accepted that rationality of judicial decisions is strongly connected with the equivalence between justification and assumptions that were accepted because of the knowledge and preferences of decision-makers. I will argue that instead of predictive rational choice theory, the model of adjudication should rather be based on the more explanatory approach offered by the theory of bounded rationality. The main research question thus pertains to the conditions under which judge made law could expand, under the assumption that the quality of law is to be maximized, given the fact that judges cognitive capacities are strictly constrained. The contribution of this paper is thus twofold. Firstly, the paper critically examines the assumption according to which judicial lawmaking seems to be a more efficient alternative to legislation and thus discuses the fundamental weakness of the so called "efficiency of judge made law" hypothesis. Secondly, the paper offers an alternative theoretical model of lawmaking, where courts and legislature coexist and where the expansion of judge made law is limited by the potential cost of state liability for retroactive judge made law, leading to the increased precision of both statutes and judgments of the courts, and thus limiting judicial precedent to those cases where the judge made law is more efficient than the amendment of statutes, even if the cost of compensation for retroactive judicial precedent is to be taken into account. Borrowing from L. Fuller and G. Calabresi I endorse the need for efficient judge made amendments of statutory law. The difference between Calabresian account and the Fuller-based solution presented in this chapter is such that whereas Calabresi does not sketch specific external limits and constrains of judicial interventions, I propose the alternative approach. The solution adopted in this paper is based on the assumption that strict state liability for retroactive judge made law would provide higher quality of both judge made and legislative law under the assumption of bounded rationality and Rule of Law.
A4	Mariusz	Jerzy	Golecki	University of Lodz					FREEDOM OF SPEECH IN DEMOCRATIC STATE FROM THE PERSPECTIVE OF BEHAVIOURAL LAW AND ECONOMICS	The debate on media regulation reflects profound tensions between different interest and values. On the one hand freedom of speech seems to be an underpinning of any democratic state, whereas on the other the protection of individual's privacy and reputation may confine its scope to considerable extent. As J. Raz observes: "Freedom of expression is a liberal puzzle. Liberals are all convinced of its vital importance, yet why it deserves this importance is a mystery. The source of the problem is simple. While a person's right to freedom of expression is given high priority, and is protected to far greater degree than a person's interest (…) in not running a risk of an accident when driving along public roads, it is evident that most people value these interests, (…) much more than they value their right to free expression" (J. Raz 1991) The paper will thus concentrate on the evaluation of these changes in two aspects: the relation between a new British libel laws and the other legal systems, namely the American and European regulations, and the economic analysis of the libel law. Both topics seem relevant and strongly connected. Two issues require particular attention. Firstly, the optimisation of the liability rule for libel by; the introduction of the requirement of serious harm (Defamation Act 2012 sec. 1), specification of statutory defences (sec. 2-4) and the regulation of websites operators (sec.5). Secondly, the limitation of jurisdiction of English courts (sec. 9). Both issues could be usefully analysed from a broader perspective. It seems that the standard of liability for libel in particular and defamation in general varies across different jurisdictions. Two points of reference require particular attention however, namely the American solution adopted by the U.S. Supreme Court's decisions in New York Co. v. Sullivan (1964) and a subsequent rule adopted in Gertz v. Robert Welch (1974). In both decisions the constitutional context of the 1-st. Amendment to the U.S. Constitution played an important if not decisive role. The relationship between libel in British and American context seemed to play an important role given the fact that the application of the common law strict liability rule has been recently openly excluded in the U.S. (cf. Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act 2010). The other related issue concerns British libel laws in European context. Given the fact that Art. 10 of the European Convention on Human Rights constitutes a meta-rule for national laws, the question arises to what extend the present liability standard for libel complies with the jurisprudence of Strasbourg court (cf. eg. Bladet Tromso & Stensas v. Norway (1999)). The same regards the relationship between the Defamation Act 2013 and the recent evolution of the EU law (cf. joined cases eDate Advertising GmbH v. X & Olivier Martinez, Robert Martinez v. MGN Limited (2011) C 509/09 and C 161/10 and Google Spain, S.L., Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González C-131/12)
B1	Kumie		Hattori	Waseda University					Rethinking the Tautology of the Rule of Law: Personal Perspecti	1) The Tautology I will focus the ideal of the rule of law in a narrow sense; the government shall be ruled by the law and subject to it. It is often expressed by the phrase 'government by law and not by men'. But surely government must be both by law and by men; legal system needs officials and legal professionals to carry out its function. As Joseph Ras describes, it is "the Tautology of the Rule of Law". 2) Raz's Solution The solution to this riddle suggested by Raz is in the difference between the professional and the lay sense of 'law'. While for the lawyer anything is the law if it meets certain conditions of validity, the layman regards the law consisting only of subclass of the laws, for it is humanly inconceivable that law can consist only of general rules. Raz tries to draw the reason of the alleged importance of the principles L. Fuller provided; laws should be general, open, and relatively stable etc. through his tenet, "the law must be capable of guiding the behaviour of its subjects". In this sense of 'law', government by law and not by men is not a tautology for the law is capable of guiding by open and relatively stable general rules. 3. Tautology Again Does Raz's solution clear the Tautology? I think when he mentions "capable of guiding", he did focus logical (or rational) capability but not explicitly mention normative capability. But the layman who makes personal practical judgment is affected by normative considerations. Even though obeying, and being regulated or protected through the law, is rationally justified and efficient as well as epistemologically correct, it may be morally unacceptable if it is through a humiliated way like hitting or giving bone to a stray dog, where we may not say it is "capable of guiding".. So, we may need to consider another condition of the Rule of Law or the rule of the Ruled Men. But how? 4. Another Condition for The Rule of the Ruled Men We can get a hint from the basis of the Rule of Law. As deliberate disregard for the rule of law violates human dignity, one person's action may violate the autonomy of another in many ways. If the basis of the rule of law includes human dignity, the rule of the (ruled) men should also be conditioned as well. I call it the "decency condition", in a sense that prohibits insult, enslavement, manipulation of its subjects. While the concept of the rule of law leads to elimination of human arbitrariness from a legal system, the concept should not neglect the inevitable personal perspective of the rule of law. Conclusion. When we talk of the rule of the ruled men, the men are required to observe "the rule of law" whose condition may include decent perspective other than rational perspective, which are from the same normative root, the personal autonomy.
E5	Mitsuki		Hirai	The University of Tokyo Graduate Schools for Law and Politics					Hartian Legal Positivism and the elimination of arbitrary private judgments	In my presentation, I want to show that one of the theoretical motivations of the legal positivistic position that H. L. A. Hart and (probably) his theoretical predecessor Jeremy Bentham took is eliminating two kinds of arbitrary private judgments, which seemingly is also one of the points of the rule of law ideal, and that if we take the position, we have to support 'methodological positivism', which is the second order theoretical position that requires legal theories to be separated from moral evaluation, as well as 'substantive positivism', which is the first order theoretical position that requires laws to be separated from morality. And then I introduce famous methodological criticism by Ronald Dworkin and John Finnis that every legal theorists, including Hartian legal positivists, unavoidably have to make some moral evaluation whenever they construct a legal theory, so methodological positivism is theoretically impossible, and then point out that even if it was the case that some way of theory-construction can be separated from moral evaluation, there would be another problem for Hartian legal positivists still remained. At this point, we are forced into a kind of trilemma consisted of three theses which apparently cannot stand simultaneously: (1)necessity of eliminating arbitrary private judgments, (2)necessary commitment to substantive/methodological positivism in need of (1), (3)impossibility of substantive/methodological positivism. According to Hartian legal positivism, we have to commit substantive/methodological legal positivism to eliminate arbitrary private judgments, but as I already mentioned above, Dworkin and Finnis tell us substantive/methodological legal positivism is impossible. So if you want to eliminate arbitrary private judgments to elude anarchism and reactionism, you have to abandon or at least modify thesis (2) or (3), or give up the idea of thesis (1) at all. In the final section, I examine briefly the way out of this trilemma, and try to show a tentative remedy.
D1	Iwao		Hirose	McGill University					From aggregation to measurement (not vice versa)	How can and should we measure the badness of nonfatal disease and injury (as distinguished from the badness of death)? I will attempt to defend the person trade off method, which has been used by the Global Burden of Disease Study. My argument takes three steps. First, I will identify the morally important difference between the person trade off method and other similar methods (the standard gamble and time trade off methods). Second, I will argue that interpersonal aggregation necessarily requires some appeal to intuition. Third, such an appeal to intuition is warranted only in the case of the person trade off method, not the other two methods. The result of my analysis would undermine two important arguments in the recent literature of moral philosophy: One is Daniel Hausman's argument against the preference-based measurement of the value of health; and the other is Scanlon's contractualism (and morality of what we owe to each other).
A1	Kun-lung		Hsieh	National Chengchi University School of Law					The new textualism and Democracy	Due to Justice Scalia's new textualism, the legal profession is aware of the internal relation between statutory interpretation and democracy. No matter what method a court adopts to interpret law, the choice reflects the court' s knowledge of legislation and the roles of the legal resources. It also affects the interaction of branches. By identifying the legislators' intents or purposes, intentionalism and purposivism try to maintain the priority of representative democracy and the elasticity of adapting laws under different circumstances. By contrast, the new textualism contests that both of intent and purpose are indeterminate since there is no reasonable and one single intent or purpose in the process of legislation. Therefore, intentionalism and purposivism are flawed. The new textualism insists that the text is the crystal of legislation and the core requirement of the bicameralism and presentment clause provided by the Constitution. In exclusively using the text to interpret law, a court not only restrains itself from being a legislator and guarantees the predictability of law but also urges the legislature to enact law more cautious. However, the new textualism is flawed, too. First, exclusively focusing on the text cannot avoid indeterminacy. The text is often ambiguous. Second, exclusively focusing on the text does not bring the result of retaining and fostering the competences of branches. The arbitrary of interpreting law undermines the efforts of the legislature, jeopardizes the representative democracy, and cripples the predictability of law. Third, the new textualism sets aside the core idea of the text, weakening the function of a court to calibrate the meaning of a law. The meaning of a word varies from time to time, such as discrimination, fairness, feasibility. In addition to point out the difficulties of the new textualism, I contend that the new textualism brings a precious possibility for improving democracy. First, the new textualism highlights the importance of the text, demanding courts to cautiously treat all materials for interpretation. Second, the new textualism successfully discloses the correlation between statutory interpretation and democracy. The correlation was ignored by the legal profession for a long time. Third, the intense competition among the new textualism, intentionalism and purposivism forces courts to provide persuasive and compelling reasons for their decisions, facilitating the reasonableness and legitimacy of the judiciary. Last but not least, the new textualism and its struggle with others show that statutory interpretation is not merely a mechanical deduction but a creative task to deeply review the complicacy of democracy and hence to improve democracy accurately. Keywords: statutory interpretation, textualism, intentionalism, purposivism, democracy

D1	Jimmy	Chia-Shin	Hsu	Academia Sinica					The Right to Life in Asia	In this paper, I survey the right to life as a constitutional right in Japan, South Korea, Taiwan, Hong Kong, the Philippines, Indonesia, Malaysia, and Singapore. I begin with a recount of the history of the right to life. I argue that the right to life before WWII is typically formulated in the "due process model", such as in the Fifth and Fourteenth Amendments to the US Constitution. This model has the following typical features: First, life is not given a unique status. It is protected alongside such fundamental interests of personal security as liberty and property; second, it presumes the right to life is less than absolute. In principle it is deprivable, or subject to balancing by the state. Third, it is given special protection in the sense that it can only be deprived through law. After WWII, to respond to the brutal disdain of human life of the Nazi regime, the second generation of the right to life was adopted in various national constitutions and major international human rights instruments and, despite variety in formulation, exhibited the following features: First, it breaks from the due process model and becomes a right in its own right; second, it is asserted in the positive; third, it has an elevated status among human rights; fourth, it involves strong substantive limits in addition to legal procedural safeguards. In recent decades, there have been two major developments of the second generation of the right to life in some parts of the world. One is "the right to life absolutism", which means that the right to life has been elevated to a supreme status, to the extent that it cannot be subject to any balancing except when it conflicts with itself, such as self-defense, necessity, and other occasions where taking a life is strictly necessary to preserve another life in an imminent timeframe. The direct effect of this development is the decline of death penalty. The other development is seen in such domestic constitution as India, where the right to life has acquired social and economic content, beyond the traditional core of prohibition of arbitrary taking of life by the state. Situated in different historical contexts, most post-war Asian constitution-making were primarily concerned with state-building and expression of nationalistic aspirations. Further, the state and nation-building projects had to be managed over highly ethnically and religiously diverse populations (as in Southeast Asia), alongside the cold-war struggle between communism and anti-communism, and the need for transforming under-developed economies and lifting up the population from poverty. These pressures suppressed the importance of human rights protection in most early postwar Asian constitutions. If the right to life was incorporated at all, it was adopted in the first-generation formulation rather than the second, such as the Philippines, Japan, Taiwan (Republic of China), Singapore, and Malaysia. It was only along the tide of the Third-wave Democratization that the spirit of the second-generation right to life began to infiltrate into some Asian constitutions, either through constitutional amendment, such as the post-Suharto Indonesia, or through judicial interpretation, such as South Korea. The prevalence of the first-generation formulation and understanding of the right to life sets Asia apart from the latest trend of right-to-life-absolutism in the West on the issue of death penalty. The death penalty is retained not only in harbingers of "Asian Values" such as Singapore and Malaysia, but also in liberal democracies such as Japan, Taiwan, and South Korea (though placed under indefinite moratorium in South Korea). All the apex courts in these countries delivered decisions upholding the death penalty per se. The Indonesian Constitutional Court did the same despite constitutional texts affording absolute protection of the right to life. Among the jurisdictions surveyed, only the Philippines and Hong Kong abolished it through legislative actions. On the right to life of the unborn, this region is divided roughly along cultural or religious line. East Asian societies are generally permissive of abortion. In contrast, Southeast Asian societies with dominant monotheistic religions, such as the Philippines(Catholicism), Indonesia, and Malaysia (Islam) are more restrictive of abortion, with the Philippines having the most restrictive law in this region.
B2	Shu-Perng		Hwang	Institutum Iurisprudentiae, Academia Sinica					American Exceptionalism? Critical Remarks on the Democratic Arguments Against the Use of Foreign Law in American Constitutional Interpretation	In the age of globalization, democracy is usually used as an important argument against the excessive influence of international and foreign law on domestic legal order and especially on domestic constitutional law. For example, in reaction to the increasing use of international and foreign law in the constitutional interpretation of the Supreme Court of the United States, some if not most American constitutional law scholars insist that no foreign resources should affect the interpretation of the American Constitution, since the American Constitution could and should only reflect the democratic will of the American People. Notably, in arguing against international and foreign law, those who explicitly or implicitly embrace the so-called idea of "American exceptionalism" have emphatically highlighted the uniqueness of American democracy in order to justify the resistance against the use of foreign resources in American constitutional adjudication. This paper purports to critically examine the democratic arguments that rely on the idea of American exceptionalism both from a rule-of-law and from a democratic perspective. Through a comparison with the contemporary developments in German constitutional law which is characteristic of its materialization, it intends to argue that the insistence on American exceptionalism not only runs counter to the rule of law, but can also do harm to (American) democracy.
B7	Kevin		Ip	Hong Kong Baptist University					Political Violence, Legitimacy, and Consent: Must Resistance Movements Obtain Popular Support?	Individuals who bear the brunt of domestic or global injustice could sometimes justifiably resort to violent acts in order to secure their own, or other people's entitlements. These permissible acts of resistance include destruction of property, forceful disruption of economic activities, or even a revolution. It is perhaps tempting to think that forceful resistance undertaken by the victims themselves is simply self-defense, but in fact it often involves other-protection. In almost every case of injustice, some victims would choose not to actively resist and there are profound disagreements among the population about the proper means of resistance or even whether to resist in the first place. Leaders and activists of resistance movements typically claim to be acting as the agents of the oppressed. More importantly, in order to justify their resistance, they often have to invoke the legitimate interests of those other victims who do not directly participate in the resistance movement. Thus, the conventional distinction between domestic resistance and foreign intervention is inadequate and there is a question of whether it is legitimate to use force in resisting injustice without the consent of the other victims or the intended beneficiaries of such actions. Several theorists have argued that consent or authorization of the victims are part of the condition under which use of force in other-protection could be morally justified. A stronger version of this requirement states that forceful resistance is morally justified only if it enjoys the consent of the victims. A weaker version states that the absence of such consent simply means that the interests of those victims cannot be invoked in the objective justification of forceful resistance. This paper rejects both of these claims and argues that consent has no independent role in justifying forceful resistance. I start by considering the reasons why consent of the intended beneficiaries might be thought to be important for the justification of forceful resistance. I then argue that none of these arguments provides a convincing case for the consent requirement. In particular, this paper examines the agent-relative dimension of the right of resistance to injustice, and argues that rebels could legitimately use force without being authorized to do so by the other victims on whose behalf resistance is undertaken because in some cases unauthorized other-protection is consistent with respecting the autonomy of the victims especially when the victims themselves also have a moral duty to resist oppression. Next, I defend a set of conditions under which non-state actors would have the moral authority to use force in their efforts to resist injustice. These conditions include: (i) those who engage in resistance should act on their conscientious moral convictions; (ii) there should be a fair distribution of burdens associated with resistance; (iii) leaders or activists of resistance should refrain from coercing other victims to participate. To conclude, substantial support from the affected popular will significantly improve the chance of successfully promoting justice. However, the legitimacy of resistance should not depend on the consent of the intended beneficiaries.
D2	Kevin		Ip	Hong Kong Baptist University					The Self-determination Argument against Open Borders	This article asks whether political self-determination entitles a state to exclude prospective immigrants. A number of political theorists such as David Miller (2016), and Margret Moore (2015), and Christopher Wellman (2008, 2009, 2011, 2016), have defended a politically self-determining state's right to exclude unwanted immigrants. According to their arguments, a state's right to decide who could enter its territory and become its member is an integral part of its political self-determination.
E5	Michihiro		Kaino	Doshisha University					On Bentham's Theories of the Rule of law and the Universal Interest	I would like to focus on those two chapters of Professor Postema's forthcoming book, Utility, Publicity, and Law, which are 'The Soul of Justice: Bentham on Publicity, Law and the Rule of Law' (ch.13)and 'Interests: Universal and Particular'(ch.6). Professor Postema's point that Bentham was analyzing 'the conditions of law's ruling in a political community' is new and very convincing. And I think Professor Postema's point would help to put Bentham's theory of law in the English tradition of the rule of law. For example, when Dicey was arguing that the purpose of the 'constitutional convention' was to 'secure harmony between the action of legal sovereign and the wishes of political sovereign', he was following Bentham, who, as Professor Postema describes, 'integrated his account of the jurisprudentially necessary constraints on legally authorized officials, ……into his account of the foundations of law'. However, it is difficult to assume that the majority, who are motivated by self-interests, would exercise the moral sanctions of public opinion tribunal when the interests of minority, which have relatively little effect on those of majority, are violated by some legislations. Professor Postema seems to respond to this problem by arguing that the interests in Bentham were 'considered and deliberated with motivationally off-line' and points out the importance of 'the deontologist'. This is very convincing as well, but I would like to argue that Bentham was in a sense a precursor of those modern theorists who try to device some architectures for deliberative democracy and also that this aspect of Bentham would strengthen his theories of the rule of law and the universal interest .
D4	Takayuki		Kawase	Chiba University					Liberal Justification of Nationalism	In this presentation, I insist nationalism which aims to integrate modern nation-states is not only compatible with but also promotes the ideal of egalitarian liberalism. For the sake of that, I propose a conception of egalitarian liberalism which aims to equalize the 'context of choice' of private conceptions of good which people have. And I also propose a conception of nationalism which aims to integrate any humans as potential co-nationals regardless of race, religion and any private conceptions of good. And I claim that it is national communities that can provide liberal egalitarian context of choice most comprehensively in the modern world. For achieving the ideal of egalitarian liberalism, nation-state is much more suitable than international organizations or local governments. If we could achieve liberal policies in the international level, people must move to other country as long as there remain illiberal nation-states. And the cost of crossing national borders would be prohibitively expensive for many people because of poverty or difference of language, culture and so on. If we could achieve liberal policies in the local level, the cost of crossing local borders is so cheap that local governments could not pursue their own policies especially about welfare because of the effect of welfare magnet. Therefore, the policies of egalitarian liberalism must be standardized at the national level. And I insist this conception of liberal nationalism should employ a series of policies of multiculturalism. Many nation-states need to accept certain amount of immigrants to keep economic power and social, cultural diversity for maintaining liberal policies and society. Flow of immigrants is not good for the prosperity of the nation-state if their number is too small or too big. Recruiting newcomers can be the foundation of development of the country. But, on the other hand, too many immigrants might cause social instability and racist backlash. Integrating immigrants in the reasonable number and speed is the best way to keep liberal society in the nation-state. Finally, I mention to the future prospect of liberal nationalism in Japan and other countries.
B6	Ryo		Kikuchi	Kyoto University Graduate School of Global Environmental Studies					The Theory of Coercion by Robert Lee Hale	This paper discusses the change in the concept of law during the first half of the 20th century. American legal realism seems closely related with the idea that law is a means, or legal instrumentalism, and that law is just a part of democracy itself, though in classical legal thought, law was rather understood as the natural law and maybe the antecedent of democracy. This study was performed to reveal this change using a specific example. In the 1920s and 1930s, or New Deal era, many lawyers and scholars, perhaps called as legal realists later, engaged in struggling with the traditional legal theory. In this paper, I report the work of an important figure in this American legal realist movement, Robert Lee Hale (1884-1969), who was a professor of law and economics at University of Columbia from 1919 through to the 1950s. He presented the theory of legal and economic coercion which has become the foundation of American critical legal studies. Hale's work was highly evaluated by many of his contemporaries in not only law but also economics, and this transdisciplinarity has made it difficult to conduct the comprehensive study about him. On one hand, Hale's writings of the 1920s adopts the paradigmatic framework of Wesley Newcomb Hohfeld (1879-1918), which consists of jural opposites and correlatives, to explain some legal points of argumentation. Hale's writing was also influenced by Oliver Wendel Holmes Jr. (1841-1935), so Hale supported Holmes' dissent in Lochner v New York for instance. On the other hand, Hale was regarded as one of the most important figure in institutional and progressive economists. Hale adopted the critique of classical economic theory of natural liberty and freedom of contract that is given by Thorstein Bunde Veblen (1857-1929), who is called as one of the founders of institutional economics. Hale was also confident about the extension of private property rights under the system of political democracy, so that he accepted progressivism and democratic socialism. In addition, Hale strongly believed that some understanding of economics was essential to law, and that the field of law and economics might come properly within the range of the learning of lawyers. In this way, Hale's background is rather complex, and so this paper tries to untangle his theory of coercion, based on both legal and economic background partly mentioned above. In short, the theory of coercion refers to a general situation in which one's behavior is controlled by another, and is often used as the reinforcement for legal instrumentalism, when advocated by legal realists and subsequent scholars of critical legal studies. This paper describes and assesses his theory of coercion from the standpoint of both law and economics, and places it in the broad history of economic and legal thought in the first half of the 20th century, to express how it has changed.
E1	Sho		Kosuda	Waseda University					Social Equality through Democracy: Constituting the Equal Relationship as Author-of-Law	This presentation examines some attempts to justify democracy and defend social equality argument of non-instrumental justification of democracy. In recent years, there has been a rapidly increasing interest in the philosophical justification of democracy and the main controversy has been over the value of democratic process between instrumentalists and proceduralists. On one hand, instrumentalists, like Donald Dworkin and Richard Arneson, see the democratic process as a mere instrument. According to them, democracy is justifiable only when it is a more reliable procedure to bring about better results than any other decision-making procedures. On the other hand, proceduralists, like Thomas Christiano and Christopher Griffin, evaluate it by looking the features of the process alone. For them, democracy is justifiable only when it distributes political power fairly or expresses the equal concern and respect among citizens. I argue that these two types of arguments fail and show this through two questions: what is the value of democracy and what kind of reasons does each position provide for citizens to obey the democratically produced law? In this debate, the classification of instrumentalist and proceduralists arguments is following the value distinction between "instrumental" and "intrinsic." The proceduralists' argument is criticized by the instrumentalists for the democratic procedure not being able to have an intrinsic value, because, according to Arneson, no one has a right to rule over others unless that right brings better effects on those who are ruled. The arguments of instrumentalists also fail to justify the democratic process because it cannot explain the reasons to obey the law, which needs non-instrumental reasons in a situation where disagreements prevail. The failure of these two arguments show that there is a problem for justification of democracy. If the value of democracy is either intrinsic or instrumental, we cannot justify democracy. Social equality argument can solve this problem and defend non-instrumental justification of democracy. The democratic procedure is valuable because it constitutes the equal relationship between the citizens. This presentation contributes this social equality argument by rejecting the instrumental and intrinsic dichotomy of value and by focusing on the two aspects of the citizens that previous literature likely ignore: citizens as author-of-law and as subject-of-law. On democratic process, citizens relate each other on equal status as author-of-law and have obligations to produce better results to citizens as subject-of-law. Any form of the decision-making process which distributes political power unequally among citizens constitutes the hierarchy between them as author-of-law and this hierarchy contradicts to the ideal of social equality.
A1	Win-chiat		Lee	Wake Forest University					Democracy and Dworkin's Protestantism About Law	Democracy is typically discussed in relation to the legislative, i.e., the making of law. How to think of democracy in relation of the judiciary, i.e. the interpretation of law, is seldom discussed. In Law's Empire, Ronald Dworkin argues for what he calls "Protestantism about Law." On this view, a citizen is to interpret the law for herself in discharging her political obligation, i.e., her obligation to obey the law. I dub this view "the judgeship of all citizens." While this view may pose challenge for legal authority essential to the rule of law, it clearly has great potential as a democratic conception of the enterprise of the interpretation of law. However, it can also come into conflict with the democratic exercise of legislative power somewhat similar to the way judicial review does, except perhaps even more pervasively. This paper examines Protestantism about Law and its complex relation to democracy.
E2	Christoph		Luetge	Technical University of Munich, Peter Löscher Chair of Business Ethics, Germany					The German Ethics Code for Automated and Connected Driving: Ethical and Legal Implications	The ethics of autonomous cars and automated driving have been a subject of ethical and legal research and public discussion for a number of years. While automated and autonomous cars have a chance of being much safer than human-driven cars in many regards, situations will arise in which accidents cannot be completely avoided. Such situations will have to be dealt with when programming the software of these vehicles. In 2017, an ethics committee for automated and connected driving, appointed by the German Federal Minister of Transport and Digital Infrastructure, presented the world's first code of ethics for autonomous cars. Having been a member of this ethics committee, I will present the main ethical topics of these guidelines and the discussions that lay behind them, as well as pointing to legal implications.
D7	Chi	Middle	Ma	Tianjin University of Commerce					John Chipman Gray on Concept of Legal Sources	John Chipman Gray distinguishes law and legal sources, which implies his conception of law. Gray believes law is a general rule created by the courts, not the sovereign or congress. The conception, however, does not means law is juridical decision, or "living law" as Eugen Ehrlich called, or judicial rules as Hans Kelsen called. Indeed, the conception is a kind of legal positivism, which contends the law and its validity roots on people 'real will', not its morality. But in contrast to Austin's Command Theory and his Separability Thesis. Gray insists on it is not sovereign, but judges or courts create the law. There are three reasons for Gray's position. Firstly, the conception of sovereign is obscure. Secondly, the conception of sovereign is superfluous, if we admit states consist of legislation branch, juridical branch, administrative branch and so on. Finally, and most importantly, sovereign does not determine the content of law. As Bishop Hoadly says, "whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the Law-giver to all intents and purposes, and not the person who first wrote or spoke them." So Gray concludes the legal materials, made up from legislation branch or juridical branch (as juridical precedents), are not law but the legal source. The idea should be criticized by his definition of legal sources is ambiguous on the topic of legal binding force of legal sources. In weak sense, legal sources are so soft that cannot determine the juridical decisions at all. In strong sense, legal sources do impose restrictions on juridical decisions. Apparently, Gray's position hovers between two different senses, which have caused his conception to be inconsistent. To solve the problem, I suggest the concept of law should be extended to legal sources. As Kelsen points, legal sources are law, too. Within legal norms systems, legal sources are legal norms, exactly, while general rule created by the courts, as Gray called law, also are legal norms locating different stages of legal systems. And the fact of judge's discretion concerned by Gray and Hoadly would be explained by the conception of competence from Kelsen, and the conception of open texture from H. L. A. Hart. In my opinion, legal sources are not independent entities, but special stages in legal reasoning, limiting grounds of juridical decision.

B7	Celia	Ferreira	Matias	The University of Hong Kong					Is it OK to dox a nazi? The concept and ethics of digital resistance	With its strange mix of anachronist and postmodern, the question "is it ok to dox a Nazi?" could have been, circa 2007, the title of a cyberpunk film. A mere decade later, the political and social landscape have turned it into a real concern. Doxing, in the title to this work, stands for a set of online behaviors - possibly but not necessarily involving the use of intrusive or fraudulent means - that encroach upon another person's rights and interests (one's juridical sphere), namely their privacy and reputation, for purposes of enforcing certain values or principles subscribed by the perpetrator. These practices differ from other forms of online collective action, namely the mobilization and organisation of protests through social media platforms. The latter can typically be protected by freedom of expression, and the resulting protests by freedom of association, so long as they remain peaceful. In contrast, practices such as doxing and hacktivism appear less likely to have a peaceful character, as, by intruding into the sphere of those they target, they may be deemed to imply a certain level of violence. Emulating the worried online vigilantes of the title, this article seeks to determine in what circumstances can such practices be "ok". The concept of resistance, often invoked by the perpetrators of such acts, is here used as criterion. Given the diversity of theoretical and constitutional formulations of resistance and the right to resist, an enquiry on the essence and limits of such concepts is necessary. Does resistance presuppose violence? Does the right to resist require a crisis in the constitutional order, or can it be summoned to situations in which that order still remains intact? Is it a defense of the State, against the State, or can it be invoked horizontally, among equals? A starting point and fundamental part of this analysis is the identification of possible grounds for resistance. Whereas trivial reasons are obviously excluded, the identification of values and principles worthy of being protected by acts of resistance requires careful consideration. The concepts of resistance against oppression and defense of the constitutional order, extracted, respectively, from the French and German texts, are significant, albeit in need of clarification. They lead us to the ideas of freedom, democracy, constitutional principles and fundamental rights, which, themselves, summon extensive theoretical discussion. But how can a practice such as doxing - with its ease of execution and negligible risk - be deemed a form of resistance and justified by the right to resist? Can small acts protect high values? The character of ultima ratio that is usually ascribed to the right to resist seems at odds with such hypothesis. In an attempt to overcome this objection, the final part of this study analyses the concept of "small scale right to resist", coined by Arthur Kaufman, and his compelling argument that tyrannies should be fought before they come to be.
E2	Marco		Mazzocca	University of Padua	Paolo		Sommaggio	University of Trento	Neuroscience, Law and Democracy	Legal systems have always been considered by societies as an instrument to regulate the behaviors of citizens. Observed carefully, indeed, the obligations and prohibitions laid down by legal rules seem to be designed even to affect the will and motivation of their addressees, in addition to demand the performance of a specific conduct. In recent years, however, the rapid expansion of neuroscientific researches seems to suggest that neurosciences might substantially change, and perhaps will even revolutionize, the law and its concrete practice, since the use of neuroscientific tools appears to be consistent with the purpose of every rule of law: to operate a delicate mediation between the goals of the society and the complexity of factors that influence the behavior of individuals. Nevertheless, it is necessary to consider how, if the scientific progress seems to allow an increase in legal possibilities, then it should be also note how this progress cannot fail to consider the processes of democratic production of law. The purpose of this paper, thus, is to find out whether it is possible to democratically build legal standards able to reflect the progress achieved in neuroscience in the legal field. In this work, therefore, we will focus on the delicate relationship between, on the one hand, the rule of law and its democratic rules and, on the other hand, scientific progress (particularly in the neuroscientific field) which seems to be indifferent to democratic debate. To do this we will focus on three features of legal rules: The subjects that enact them (that is the active subjects of a rule), the subjects to which they are directed (i.e. passive subjects of a rule), and the conduct that they imposed (that is the object of a rule). Subsequently, we will pay attention on two types of criminal rule: those concerning criminal responsibility and those concerning punishment in order to demonstrate how even the most common result achieved by neuroscience can raise huge questions on the political and legal level.
D5	Yuichiro		Mori	University of Tokyo Graduate Schools for Law and Politics					Statistical Discrimination and Treatment as an Individual	In contemporary liberal democratic societies, the requirement that every person be treated as an individual is considered to be a fundamental value. As a matter of fact, the requirement that everyone be treated as an individual, or the principle of individualism, has been raised against many instances of (at least in a descriptive sense) discriminatory practice, from racial profiling in the U.S. to so called "women only trains" in Japan. Notwithstanding its initial appeal, the principle of individualism has been severely challenged recently in the field of legal and moral philosophy. For instance, in his influential book Profiles, Probabilities, and Stereotypes, Professor Frederick Schauer argues that almost all instances of seemingly individual-based assessment and reliance on direct evidence are ultimately based on generalizations or probability judgments. Hence he argues that the requirement that we avoid all the non-individual-based judgments is a matter of both impossible and undesirable. In this paper, I will argue that those objections raised by Schauer and his followers against the principle of individualism are misplaced mainly because they fail to understand the point of that principle, and that the principle of individualism properly understood can provide one of the important grounds for explaining why some (statistical) discriminatory acts are morally wrong. First, I will examine some objections against the principle raised by Schauer and Kasper Lippert-Rasmussen respectively. After demonstrating that their arguments are unsuccessful, I will examine Benjamin Eidelson's recent defense of the respect for one's individuality, which construes the principle of individualism as the requirement that (1) in forming judgments about Y, X give reasonable weight to evidence of the ways Y has exercised her autonomy in giving shape to her life, where this evidence is reasonably available and relevant to the determination at hand; and (2) if X's judgments concern Y's choices, these judgments be not made in a way that disparages Y's capacity to make those choices as an autonomous agent. I will conclude that with some refinement and amendments, Eidelson's version of the principle of individualism has promising potential for providing one (though not exhaustive) explanation as to why discrimination is morally wrong, and distinguishing some morally wrongful discriminatory acts from differential treatments based on statistical information generally.
B2	Susumu		Morimura	Hitotsubashi University					Just Taxation	In this paper, I endeavor to determine the rationale of taxation in the context of property theory by examining two opposite contemporary views in this field. One of them was developed by libertarian or classical liberal legal theorist Richard Epstein in his book Takings and his later writings. It argues that since taxation can be regarded as another kind of taking or eminent domain, it also requires just compensation, which, according to Epstein, ought to be proportionate to the amount a taxpayer is taxed. The other view was developed by philosophers Liam Murphy and Thomas Nagel in their influential work The Myth of Ownership. They claim there is no such thing as a morally legitimate right to pretax property and that taxation never infringes upon property rights because they are created by governmental decree. I focus on these two views because they make explicit the basic, usually unspoken beliefs many people have concerning taxation. My view is somewhere between them, but closer to Epstein's. I conclude by arguing that estate tax is the least objectionable tax and superior to income tax, which many tax theorists take for granted.
E4	Tim		Murphy	Universidad Carlos III de Madrid					Natural Law and Natural Justice: A Thomistic Perspective	In modern English-language jurisprudence, the term 'natural law' is usually understood as a synonym for revealed divine law or as a set of unassailable or infallible propositions or axioms from which appropriate moral or legal rules may be deduced. In this jurisprudence, the term 'natural justice' usually denotes the core rules of constitutional or procedural justice (nemo iudex in causa sua and audi alteram partem). Although this image of natural law in particular is often associated with St Thomas Aquinas this paper advances accounts of Thomist natural law and natural justice that are different to these dominant views. The accounts presented in this paper are an interpretation of the the Aristotelian-Thomist tradition that draws on the ideas originally developed by Aristotle concerning law and justice in the Nicomachean Ethics and which were later expressed, and sometimes revised and expanded upon, by the Roman jurists in the Corpus Iuris Civilis and by Aquinas in the Summa Theologiae. The Roman Law definition of justice—that justice is the rendering to each what is due—was presupposed by Aristotle and adopted by Aquinas and it is central to this paper's argument, as is the essentially sociological understanding of the concept of law in classical thought. It is argued that neither Thomist natural law nor natural justice have a 'higher law' quality, that is, that neither involve standards in the sense of sets of propositions or axioms that are 'unassailable' or 'infallible'. Instead, whereas natural justice has a broadly political orientation that focuses on communal life, natural law is more properly understood as an ethical matter that pertains to the question of how we, as humans, live our individual lives. In very broad terms, the intrinsic demand on individuals to act reasonably and responsibly gives rise to the 'natural law', and that which is intrinsic to the social order is the 'naturally just'.
D6	Hiroki		Narita	Waseda University					The Rawls-Habermas Debate Revisited: Two Conceptions of Immanent Critique	The Rawls-Habermas debate includes many issues in political philosophy. According to previous studies, the debate has focused on the issues of "substantialism or proceduralism" (Lafont 2004; Griedhil 2012), the relationship between human rights and popular sovereignty (Forst 2007), and the problem of justification and legitimacy (Laden 2012; Pedersen 2012). In this paper, I discuss a relatively uninvestigated issue in the Rawls-Habermas debate and propose a possible cooperation between their theories. The issue is about the methodology of social critique and the theretician-participant relationship. I first analyze and compare two conceptions of "immanent critique": the constructive immanent critique in Rawls and the reconstructive immanent critique in Habermas. Immanent critique shows the discrepancy between norms implicitly shared in the practice of participants within a society and the reality of injustices preventing the norms from being realized and thus motivates the participants to eliminate injustices of the society (Stahl 2013). The constructive form of immanent critique is carried out through the method of "practice-dependent" constructive interpretation, that formulates the principles of justice that can serve as criteria of critique by interpreting fundamental ideals implicit in the public political culture of liberal democratic societies (James 2005; Erman and Möller 2015). The reconstructive immanent critique, on the other hand, is carried out through the method of "rational reconstruction" that identifies the norms of speech acts which participants of communicative action must necessarily presuppose in redeeming a validity claim (Gaus 2013; Pattberg 2014). The point of the debate is whether the two conceptions of immanent critique could avoid the problem of authoritarianism (cf. Cooke 2005) for which Rawls and Habermas mutually reproached each other. Both claimed that because the theory of the opponent gives theoreticians superior authority, the criteria of critique they propose are not accessible to participants, nor can they motivate participants to change the society. Rawls accused Habermas of his comprehensive discussion of formal pragmatics that assumes theoretician's expertise. Habermas accused Rawls of constructing the principles of justice through a procedure that lies beyond the perspective of participants, thus cannot be the place to express their political autonomy. I scrutinize their argument about the relationship between theoreticians and participants and elucidate that to avoid the problem of authoritarianism they both suppose temporary authority of theoreticians, and suppose that the authority is in political action dissolved with the acceptance of critique by participants. From the analysis of the theoretician-participant relationship, I propose the possibility of a cooperation between the two conceptions of immanent critique. Rawls's constructive immanent critique can target injustices of the basic structure of society which is not addressed by Habermas's theory of law and democracy, without going beyond the perspective of participants. Habermas's reconstructive immanent critique can target the distortion in public sphere which is not addressed by Rawls's theory of justice, without being based on comprehensive expertise of theoreticians. I argue that because of the temporary authority of theoreticians, the two immanent critiques can avoid the problem of authoritarianism and build a division of labor without methodological conflict.
B6	Jorge	Emilio	Núñez	Manchester Law School					Sovereignty conflicts and international law and politics: A distributive justice issue	Sovereignty conflicts such as Falklands/Malvinas, Crimea, Jerusalem, and many others have their own peculiarities. However, they all share a particular feature: their solution seems to require a mutually exclusive relation amongst the agents because it is thought that the sovereignty over the third territory can be granted to only one of them. Indeed, sovereignty is often regarded as an absolute concept—i.e. exclusive, and not shareable. This article maintains that the challenge is to present these agents with a solution that can acknowledge their individual claims without disregarding those of their competing parties. Therein, I propose to see these conflicts from a different yet broad perspective: I view the problem as a distributive justice issue following the work of Rawls and explore the applicability of its outcome—i.e. the egalitarian shared sovereignty. More precisely, the article applies the Rawlsian method to determine how States should conceive the issue—i.e. sovereignty conflicts—as a matter of first principle. To put this in another way, the article is in effect an exercise in ideal theory. The article only claims that it would be unreasonable to reject its outcome—i.e. the egalitarian shared sovereignty—should all ideal and assumed conditions be present. I follow Rawls by introducing an abstract model in which the claimants in a sovereignty conflict leave aside reasons that may work against a final and peaceful solution. I explore if it is possible to adapt the model created by John Rawls in his Theory of Justice to sovereignty conflicts. The idea is to present an argument for hypothetical agreement by coming up with principles that cannot be reasonably refused. Therefore, this is a theoretical exercise to focus on what factors cause bias in sovereignty disputes. I will explore a hypothetical agreement amongst the claimants. If such an agreement is reached, it must be one that people could not reasonably reject later on, and so to do this we must eliminate bias. Thereby, I aim to examine if the general principles of the egalitarian shared sovereignty can be extended to workable institutions with regard to government and law, and explore how the egalitarian shared sovereignty could be best realised.
E1	Dai		Oba	Waseda University					Equality through rule of pure procedural justice: property-owning democracy and predistribution	Recently, John Rawls's idea of property-owning democracy has received much attention in political philosophy. It is Rawls's vision of the just socioeconomic institution that is distinguished both from welfare-state capitalism and socialism. It seems to appeal to many who are not faithful follower of Rawls. Theorists of various positions ranging from Basic Income advocates and republicans to libertarians attempt to present their favored vision of institutional arrangement as one version of property-owning democracy. The question I address is this: Why do theorists from a broad political spectrum find property-owning democracy to be an attractive model to work on (aside from superficial reasons like "it is fashionable to do so")? The reason, I contend, lies in the mechanism to ensure equality of citizens through pure procedural justice. The approach of pure procedural justice regards any outcome to be just if it came about through a fair procedure. This paper shows that the approach of pure procedural justice characterizes the mechanism of Rawls's property-owning democracy. Applied to the matter of distribution, it aims to set up fair rules and fair background conditions under which any private enterprise can be considered just. More specifically, it involves ex-ante interventions to realize fair access to essential services and assets as well as fair workings of the market, rather than ex-post adjustments of income distributions. Sometimes such a mechanism is also called "predistribution" as opposed to redistribution. The structure of this paper is as follows. In section one, Rawls's idea of property-owning democracy is explained with the focus on its pure procedural mechanism. Property-owning democracy has four major functions: protection of the fair value of political liberties; dispersion of ownership of productive and human capitals; provision of substantial opportunities for participation in social cooperation; and prevention of excessive concentrations of wealth. These functions together aim to set up the fair basic structure for a society of free and equal citizens. In section two, the notion of "equality through rule of pure procedural justice" is elaborated. Using the related idea of predistribution, I will explain how the approach differs from redistribution that is typical of traditional welfare states. To state the point crudely, the difference lies in the shift of focus from income to assets and work in distributive policies. One important attraction of such an approach is that it can accommodate values of liberty and efficiency, which are often claimed to be sacrificed under egalitarian policies. In property-owning democracy, what rules people's conducts are the fair procedures rather than interests in realizing certain patterns of outcome. Section three surveys several theorists who build on Rawls's idea of property-owning democracy in various ways: some Rawlsian liberals (Freeman, O'Neil, Fukuma), republicans (Thomas), and libertarians (Tomasi, Kerr). It is shown that, despite their disagreements on values, they all capitalize on the pure procedural nature of property-owning democracy. Their apparent convergence on the rule of pure procedural justice suggests a potential for a wide agreement on a desirable institutional arrangement that is latent in the idea of property-owning democracy.
B4	Nadire		Özdemir	Ankara University Faculty of Law					Marital Norms and the Rule of Law	This presentation is about family law and the rule of law. It specifically stresses on the marital duty of spousal fidelity. It asks whether the use of legal tools to shape of moral and sexual behaviour within marriage undermine the concept of the rule of law. I will emphasize on fidelity which is a spousal duty found in many civil codes. 'Fidelity' as an abstract concept needs an interpretation in legal application. However, the more a legal rule is abstract the more its interpretation is open to value judgements. I will use the example of the Turkish Civil Code, which imposes a duty to fidelity for spouses. I will evaluate how this rule is described in legal cases and which acts constitute the breach of this duty in different legal interpretations. I claim that coexisting multiple legal interpretations can undermine legal certainty and the principle of the rule of law. Besides being a problem for legal certainty, and difficulty for enforceability, these gender-neutral abstract rules can pave the way for sexists value judgements in legal practice if the given culture is suitable for this. Consequently, not only the vague, uncertain legal concept, but also its inegalitarian application may undermine the rule of law. In my evaluation, I will use Brian Z. Tamanaha's alternative rule of law formulations (from thinner to thicker accounts and from formal versions to substantive versions). As concluding remarks, I will propose a different framework on the relationship between marital norms and legal obligations regarding the concept of rule of law.

A1	Jorge Alexander		Portocarrero Quispe	Heidelberg University					Practical reasoning and practical discourse in legal interpretation	Practical reasoning and practical discourse are two expressions which stand for a reflective process on practical issues and therefore are meant to be equivalent or at least convergent in current discussions on rationality and correctness in legal interpretation. In deed, at first glance, both expressions seem to be convergent, since both of them address the questions of what is to be done and what can be considered as good or correct. However, once the focus of analysis is put on the particularities of each of these accounts, their convergence tends to fade, and it becomes clear that there are some assumptions behind of them which are not necessarily shared. Practical reasoning appears to be more related with the general process of reflection concerning the explanation or justification of an action, whereas practical discourse seems to be more concerned with the correctness of practical judgements as outcomes of deliberation. The aim of this paper is to shed some light, from an analytical and comparative perspective, on the question about the compatibility of the account of practical reasoning with the account of practical discourse in the context of legal interpretation. In order to explain the convergences and divergences between practical reasoning and practical discourse at the level of practical philosophy and at the level of legal interpretation, I'll address the basic tenets of theories proposed by Jürgen Habermas, Robert Alexy, John Finnis and Joseph Raz. It will be argued that at the level of practical philosophy, practical reasoning and practical discourse are convergent as far as moral reasons are considered as justificatory reasons for actions, and both accounts diverge when justifying the material correctness of moral reasons. However, once both accounts get contextualised in the framework of the debate on legal interpretation, the relationship between legal reasoning and legal discourse becomes more difficult to trace, since further key contested factors arise due to the question on the inclusion or exclusion of moral reasons as justificatory reasons in legal interpretation, and due to the role of discursive morality in evaluating the correctness of moral reasons.
D2	Elena		Prats	Uppsala University http://katalog.uu.se/profile/?id=N17-78					Citizenship by investment programs: suggesting a theory to assess the legitimacy of the programs.	A new phenomenon has been rising worldwide since 1980', that is, the establishment of Citizenship by Investment Programs (CIPs). CIPs are programs granting citizenship in exchange for economic transactions, which come in several forms (investment in bonds, buying real state, 'donations,' etc.). In most cases, the acquisition of citizenship in exchange for money implies the bestowing of the franchise, what has been compared by some authors as the selling of political rights to the ultra-rich. How are these practices affecting democracy? Do they represent a corruption of democracy? In the case of the programs established by European state members, the granting of national citizenship also implies the European citizenship, rising additional democratic questions: should the acquisition of citizenship by money in Malta grant the right to vote to the municipal elections of a third country, and to the European Parliament? Although some scholars have shallowly addressed these questions, no one has proposed yet a theory to assess the legitimacy of the programs. This presentation will fill this gap by providing a method to evaluate the legitimacy of the programs, which uses legal theory --particularly constitutionalism- as its central theory. The intention is to assess the legitimacy by measuring the degree in which the specific program is coherent with constitutionalism by the creation of a regulative ideal model. This presentation will be in charge of introducing the phenomenon, the state of the art, and the assessment method.
E4	Alessio		Sardo	Bocconi University					Alexy, Schauer and the 'Positivist' Theses	Across the XX Century, we have witnessed many shifts between positivism and non-positivism, and between interpretivism and non-interpretivism: from the intentional-based interpretivism of Justice Peckham, to Roscoe Pound and Felix Cohen's functionalism; from the Warren Court's realism, to Antonin Scalia's public meaning originalism; from Kelsen's pure theory, to Smend's Staat als Integration, and then back again to the so-called 'exclusive" legal positivism, notably defended by Joseph Raz. Now, after constant fluctuations, both sides of the Pond are gradually moving toward more hybrid approaches, which seem to be the only plausible models for the new, global, paradigm of constitutionalized legal orders, and for the effective protection of human rights. In the age of new constitutionalism, the concept of law includes the values of justice, and legal argumentation is not confined to interpretivism. The centrality of this idea is confirmed by the fact that two leading figures in constitutional law and legal theory, coming from different traditions and distant backgrounds, have started to develop hybrid models. On the one hand, Frederick Schauer, former First Amendment Professor at Harvard, and acclaimed proponent of inclusive legal positivism and 'soft' interpretivism, developed what he calls presumptive positivism. According to this model, duly enacted positive laws have only presumptive validity, and the "entrenched" canon of the plain meaning rule is softened by an under- /over- inclusiveness test. Every rule pursues several underlying reasons, and judges shall check if rules are consistent with the underlying justifications. If there is a "recalcitrant experience" (namely, a deep tension between the norm's plain meaning and the end that justifies the norm), then the justification shall prevail. This does not count as a particularistic reasoning, for positive law and strict constructionism prevail in ordinary cases. The notion of 'underlying reasons' has a moral character. On the other hand, Robert Alexy (Kiel University), the leading figure in legal non-positivism and non-interpretivism, also conceived a hybrid model. Following Radbruch, Alexy considers that positive law should be deemed valid if it does not produce extreme injustice. However, if positive legal norms are deeply unjust, then legal principles prevail. Legal principles have a double nature, for they belong both to the positive and to the ideal dimension. The proportionality test (which might be regarded, very roughly, as the European counterpart of the under- and over- inclusiveness test) is the right method for resolving the tension between justice, authority and social efficacy. Robert Alexy introduces in the proportionality analysis the "weight formula", in order to make explicit the values ascribed to the principles in conflict – the formula relies on a cardinal scale. The two models display striking similarities. The analysis of these similarities shall be the object of the present essay.
A5	Adrien	Vincent	Schifano	Hitotsubashi University, Graduate School of Law, Adjunct Assistant Professor (Junior Fellow)					The Concept of Hierarchy Within International Organizations: An Inquiry into the Principle of Legality	This paper contends that proper features of hierarchies in international organizations constitute an inherent obstacle to a proper implementation of the standards of the rule of law. Although it has often been argued that international organizations contribute to democracy and the rule of law at a global scale, concerns recently arose concerning the functioning of these entities. Focusing on hierarchical features in international organizations designs, the present inquiry aims at ascertaining the significance and characteristic of the idea of hierarchy at this level of governance, assuming that this depends on how the principle of legality is implemented therein. Based on a survey of a panel of international organizations, this study analyzes patterns in their design and functioning that allows to identify specifics traits in hierarchies within international organizations the conformity of which with requirements of the principle of legality can then be assessed. Hierarchy within international organizations is observed to follow two techniques that are both characterized by supervision, direction and control: it is organized primarily by attributing components of the function of an organization to its organs, which thus allows the use of certain powers by their recipients, and secondarily by the token of delegations, when subsidiary bodies are created. While the latter does not give rise to particular issues, the former is found to not ensure a sound regulation of powers. Distributing components of an organization's function among several organs entails no limitations over powers of each of these organs, in particular since like organizations their organs benefit from the doctrine of implied powers and can thus exercise powers that are necessary for performing their missions. Such context fulfills only a partially the requirements of the principle of legality: powers are framed with regard to the aim they are used for but not with regard to the means employed. A second issue affecting hierarchy within international organizations results from a quantitative reality: structures of organizations are quite often made off less subordinates than superiors. This gives rise to procedural problems in the way competing authorities of the superior bodies involved are coordinated and exercised over their subordinates. This issue fully demonstrate its confusing potential when superior bodies entertain, albeit partially, hierarchical relations among themselves. This is found to often result in one of these bodies depriving the other of its powers in connection with the subordinate organ, which arguably disrupts the original structure design. Such modifications in practice of written institutional law, in particular forms and procedures, suggest that the principle of legality has a very little role in the legal operation of international organizations. It is concluded that hierarchies in international organizations finds limited support in the principle of legality, which implies their greater flexibility in comparison with State law but also a greater legal uncertainty.
B2	Jun		Shimizu	Hakuoh University					The Rise of the Horizontal Effect Problem in the US and Japan	This paper examines historical origins of the horizontal effect problem in the U.S. and Japan. The research reveals that the horizontal effect problem is not inherent in the nature of a constitution, but a product of historical contingency. In the United States, from the founding era to the nineteenth century, jurists considered common law rights and constitutional rights were identical. Lawyers in the nineteenth century considered that the Due Process Clauses protected common law rights, which originally developed in private litigations. For example, private parties as well as the government shall not infringe liberty of contract. However, this circumstance changed when modernized constitutional problems arose. Common law could not provide African Americans with the equal protection. The Cold War situation required more rigorous protection of free speech than the common law. The concept of constitutional rights, distinct from common law rights, needed to be established. The problem of horizontality appears because of the historical fact that the constitutional rights and common law rights diverged at that time. In 1946, Japanese scholars took it for granted that the Constitution directly applied to private spheres. At that time, scholars expected the government to enforce the Constitution throughout the all legal areas, including private relations. This is because just after World War II, Japan experienced various liberal and progressive reforms. However, Japanese politics turned to be conservative in the end. The conservative Liberal Democratic Party had been always the ruling party. Japanese liberal scholars could no longer expect the government to impose liberal ideologies upon society. Therefore, they needed an intellectual weapon to combat against the government. The scholars re-build a theory that constitutional rights are bulwarks of individual liberties against the government, and the rights only apply to governmental actions. From then on, Japanese lawyers have to tackle the horizontality problem.
B5	Marek		Smolak		Teresa		Chirkowska-Smolak		The rationalization of judicial decision: on the relation between moral reasoning of judges and the rule of law.	What is the relation between moral reasoning of judges and the rule of law? Why are they conjoined in our understanding of proper judicial decisions? And yet, there seems to be some mutual reinforcement—perhaps even interdependence— between them. Based on the distinctions of two legal cultures, namely the culture of authority and the culture of justification, as formulated by David Dyzenhaus, in our empirical surveys we try to give the most common explanation for moral reasoning of judges and the rule of law: the idea that both moral reasoning of judges and the rule of law are responsible for, and complement each other in the rationalization of judicial decisions, is at least doubtfull. In general, with the culture of authority, justification of the actions of an authority is necessary only when it is being established, and once its authority has been established, the authority sees no further need to justify its decisions. Whereas in the culture of justification, after an authority has already been established, the rules of the culture of justification require that the authority continue to justify all its decisions. This consideration leads directly into two questions. First: do judges posses special moral competences in justifying decisions, and the second: whether the rule of law is the rule of moral principle? According to Dyzenhaus, the concept of the rule of law should not be identified either with the morality of social justice or with the will of the sovereign, even if this is legitimized by the outcome of democratic and free elections. This concept is best understood as the 'ethics of civility', which is expressed in the requirement that the state take care of all individuals. Based on our the latest empirical data concerning how Polish judges understand "ethics of civility", we argue that when formulating moral judgments, judges are not equipped with any special cognitive competence for settling moral dilemmas. We are of the view that since people are usually unaware of the factors affecting their moral judgment, we argue that judges are similarly unaware of what drives their moral judgments about ethics of civility, and thus the assumption that their decisions are fully rational is mistaken. In consequence, there seems not to be significant mutual reinforcement between moral reasoning of judges and the rule of law in the process of rationalization of judicial decisions.
E7	Po-Jung		Su	Heidelberg University Faculty of Law					Reflections on Jürgen Habermas's Internal Relation between Human Rights and Democracy	Nowadays human rights and democracy are two main undeniable values in the world that every government should bear in mind, or at least they won't deliberately claim that these values are not desirable. However, these two values are often seen as a conflict with each other and the relation between them is still vague not only among ordinary men but also among the researchers of the relevant fields. Habermas tries to answer this essential question by reconstructing the system of rights and the principles of the constitutional state in his book Between Facts and Norms and some following articles. From his point of view the relation between human rights and democracy is not different from the relation between the private and public autonomy, human rights and popular sovereignty, the rule of law and democracy, and liberalism and republicanism. After examining the paradigms of modern formal and materialized law Habermas comes to the conclusion, or rather, the argument that the relation between human rights and democracy is internal and reciprocal. Therefore, he, like John Rawls, proposes a proceduralist understanding of law, which means that "the democratic process must secure private and public autonomy at the same time." The private autonomy of citizens can be secured only when they exercise their public autonomy. Is this conclusion reasonable? Can human rights and democracy really be mediated through his proceduralist understanding of law? Is this conception of law really based on pure proceduralist approach? These are the central issues in this paper. It is not possible to present Habermas's whole legal system here, nor is it possible to comment on all its arguments. I shall concentrate on this fundamental argument in Habermas's theory of legal discourse. In the end of this paper I will argue that Habermas's conception of law fails to achieve his goal for the lack of justification of majority rule through his own theory. Without the support of majority rule human rights and democracy can hardly unite in a harmony way.
A2	Shinichi		Tabata	Waseda university					Deliberative democracy and rightness: beyond pure procedural justice	This paper explores how deliberative democracy tracks rightness. I clarify the place of rightness in deliberative democracy through the interpretation of Habermas's deliberative democracy. David Estlund criticizes that deliberative democracy never guarantees the right outcomes, because it is pure procedural justice, which has no procedural-independent standard. The problem is that without procedural-independent standards, we cannot evaluate whether the outcome produced through the deliberation is right or not. As a result, rightness is understood merely as a construction of the procedure. The point is whether deliberative democracy is actually pure procedural justice. At least for Habermas, deliberative democracy doesn't completely satisfy pure procedural justice. He defines his own conception as quasi-pure procedural justice, which is between pure procedural justice and imperfect procedural justice. Imperfect procedural justice has procedural-independent standards, but, at the same time, is fallible. For Habermas, while deliberative democracy is pure procedural justice in the sense that there is no procedural-independent standard, it is imperfect procedural justice in the sense that its outcome is fallible. If this qualification would be correct, deliberative democracy should hold no procedural-independent standard, but should hold procedural-dependent standards. Stefan Rummens interprets the system of rights, derived from the co-originality of private and public autonomy, as Habermas's procedural-dependent standards. The co-originality thesis isn't understood as procedural-independent standards, because this thesis results from the reconstruction of citizen's practices of democratic self-legislation. With these standards, we can substantively evaluate whether the outcome produced through the deliberation is right. I basically consider Rummens's interpretation as correct, but two problems remain. First, the co-originality thesis depends on the commitment to citizen's practices of self-legislation. Why are citizen's practices regarded as the basis of political theory? If those are merely presupposed, Habermas's conception isn't different from John Rawls's political constructivism, which he once criticized. Second, Rummens obscures the difference between politics and morality. Universalizability principle only applies to the latter. These two problems are caused by Rummens's understanding that Habermas's political theory has no procedural-independent standards. Habermas also may argue so. However, I present a different reading of Habermas's conception against his own understanding. According to my reading, his political theory has procedural-independent 'moral' standards in the sense that the moral standards are independent from citizen's practices. His political procedure has an external reference point. In most cases, we don't refer to moral standards directly, but only to political standards which are procedural-dependent, because political standards should embody moral standards. However, in some exceptional cases like civil disobedience, we must refer to moral standards. The point is that moral standards are procedural-dependent standard from the person's standpoint, but are procedural-independent standards from the citizen's standpoint. Of course, Habermas says, moral standards are weakly motivating, but still they are reference points, because a citizen is also a person. Only after deliberative democracy recognizes procedural-independent moral standards can it be placed between pure procedural justice and imperfect procedural justice. Rightness should be evaluated according to both political and moral standards.
D2	Hirohide		Takikawa	Rikkyo University					Defending Drawing Borders	Suppose a god were to examine the best arrangement for global governance. Would he draw borders? I argue that he ought to. To explain why, I firstly examine the assigned responsibility model of national borders suggested by Robert Goodin, which claims that the boundaries around people, not the boundaries around territories, that really matter morally. Then, I defend a revised version of the assigned responsibility model against the three objections made by Michael Blake, David Miller, Andrew Mason. I argue that to meet the principle of Mutually Exclusive and Collectively Exhaustive (MECE), we have reason to draw borders geographically, not personally, because we are humans with bodies. I also argue that to achieve better global governance, we must draw another border for citizenry. Citizens are those who are responsible for governance; they select and monitor governors. I examine a controversy over the brain drain and then conclude that some constraints on emigration is required for better global governance, current restrictions on immigration cannot be justified.
A2	Makoto		Usami	Kyoto University					Epistemic Democracy: An Examination	In the last few decades, the epistemic conception of democracy has attracted wide interest among political philosophers. Primary epistemic justifications for democracy include the generalization of the Condorcet Jury Theorem and an argument based on the Diversity Trumps Ability Theorem. In her recent paper, Melissa Schwartzberg offers a new argument--what she calls judgement democracy. On the premise that citizens should be regarded as judges rather than brute preference bearers, this argument stresses the significance of treating citizens equally and allegedly retains epistemic democracy's respect for individual judgments and concern with institutional design. While the first two views have been examined in the recent literature, there have been few attempts to scrutinize the last one. The current paper aims to fill this gap in the literature by examining how pertinent the judgement democracy is. The paper begins with the brief review of major arguments for the epistemic value of democracy, which have been presented since Joshua Cohen's seminal article was published. Next, it notes the limitations that epistemic views invoking the Condorcet Jury Theorem and the Diversity Trumps Ability Theorem respectively have, with reference to recent objections raised against these views. Then, it turns to a close examination of judgement democracy, showing that it does not successfully provide solid grounds for epistemic values. The paper concludes by saying that the question of justifiability of epistemic democracy still remains open.

D4	Shih-An		Wang	University of Chicago Law School (autumn class), US					The Challenge of Democracy on Immigration Laws: A Jurisprudence Perspective	Whether immigrants harm a democratic polity is a popular topic, especially after the abolishment of the Deferred Action for Children Arrivals (DACA) policy in the United States. Conversely, whether democracy affects immigration is another issue that requires academic attention. In this article, I argue that the concept of democracy contests immigration law because it makes it difficult to realize the immigrants' rights. Democracy includes two groups of ideas. First, the protection of human rights and equality, which derives from a commitment to the rule of law. Since democracy may aim to realize fundamental rights, scholars embrace a strong immigrant protection reasoning the importance of the rule of law. For example, "the right to stay," a resonating concept argued by Carens Joseph and the idea of "full incorporation" suggested by Ruth Rubio-Martin. They both argue, that democratic countries should afford substantial citizenship, including the right to reside or vote, to the immigrants with long residence in their new land. However, democracy has other angles. Sarah Song's recent insights on Carens Joseph's works mentioned above help us realize that democracy is, whether empirically or theoretically, a model to exercise sovereignty. People in a democratic country are fully entitled to determine every aspect of their lives, including with whom they want to live. In a democratic polity, people may control the border in the name of national security, economic interests, or protection of domestic labors. All these interests concern the right of the citizens. Therefore, a country may set strict barriers against "outsiders" without infringing the belief in its own citizens' right to collective self-determination. In a sense, the view of immigration protection may unconsciously accept the framework of a democratic polity collectively owned by its members. It restrains the application of protection to the immigrants "with long residence," which means that the democratic society has already socially and economically incorporated the immigrants into the new land. Except a mere fact of being born overseas, their lives are not obviously different from the citizens of their new country. Nevertheless, other types of immigrants, such as the migrant workers who seek foreign employment opportunities, the political refugees fleeing from tyrannies or wars, and any other illegal immigrants, may find it more difficult incorporate into their dreamland. Currently, the immigration protection of the categories other than long-term residents lacks a strong legal argument. This lack may have its root in international law or political morals; however, these arguments may not be solid enough to constrain the exercise of sovereignty in the manner of democracy currently. As a result, efforts to introduce and legalize the ideal of the open border should be necessary.
B4	Yachiko		YAMADA	Chuo University					"Contract Law" beyond States and the Rule of Law	My presentation aims to grasp the relationship between "Contract Law" beyond States and the rule of law. How the rule of law has been situated in "Contract Law" beyond States? We have own national contract law. Strictly speaking, there might be no such things as Contract Law beyond States like a uniformed contract law. On the other hand there is a close connection between the economic order and contract law. According to prevailing opinions among legal academics in private law, a single market would not be possible without having a more or less uniform contract law regime. For example, as such uniformed law, it would be pointed that the Commission on European Contract law which comprised lawyer from every European jurisdiction, published "the Principle of European Contract Law (PECL)". There rules or principles are never had any force of law. But this does not means that contract parties don't conclude an agreement that allows for contractual conflicts to be settled on the basis on such rules or principles. The use of PECL is also open to courts when the contract parties have conclude a contract to be governed by general principle of law or the lex mercatoria(merchant law) customary in commercial trading. The principles beyond state as PECL also may provide guidance for courts in a State. Although the PECL deal with European contract law, they are not substantially different from the principle of International Commercial Contracts (PICC), drawn by the International Institute for the Unification of Private Law (UNIDOROIT). Should be such principles of uniformed contract law legitimated on the rule of law? The rule of law has been used in various meanings. One of them would be the rule of law as a political ideal which relates to legal system. Then there are two conceptions about the rule of law as a political idea. They are formal one and substantive one. One of formal conceptions is formal legality. It was insisted by Lon L. Fuller and J. Raz etc. I wish to focus the rule of law as formal legality and try to make not only descriptive analysis but also theoretical analysis of the relationship between "Contract Law" beyond States from this perspective.
E6	Chueh-an	Andrew	Yen	College of Law, National Taiwan University					Some Remarks on Radbruch's Conception of Law	It is believed among some scholars that Radbruch's essay of 1946, 'Statutory Lawlessness and Supra-Statutory Law' (Lawlessness) may be the most cited legal essay of 20th century. I hold that 'Lawlessness' surely being one of the most important jurisprudential articles from the past century, but in this paper I will show that there are still much to be explored in Radbruch's works in order to grasp his conception of law more comprehensively. For this purpose the 'Lawlessness' article may play only a small role in his whole opus. I will argue first, although interconnected with each other, Radbruch's conception of law is not all the same business with his philosophy of law. Very much like Dworkin's theory, the conception of law concerns about the justification of legal coercion and the consistency of legal decision. To this extent we may say that the 'Lawlessness' article is more about the conception of law than the philosophy of law. Second, one crucial aspect of Radbruch's legal philosophy, which sometimes overlooked by 'Lawlessness' interpretations, is that for Radbruch law is a cultural reality. The objects of cultural reality are value-related, but this value-relativeness can be realized only through the agent-centered or subjective validity-form. Put it in another way, the value-related reality cannot emerge unless the agent is going to pursuit by means of certain value in its proper form of value, for example the justice. Therefore third, the value-pursuing activity, capacity and forms of agents, in our case especially the jurists, are the key for shaping the law in its general as well as concrete reality, which is the practicing of the conception of law, and is also the necessary way to make law effective. But if the value-pursuing practicing is going wrong, wicked or evil things can be done in the name of law. With the cultural reality aspect we can look into the internal structure of Radbruch's overall jurisprudential thoughts. Perhaps the most important message from Radbruch is not about legal positivism, pro or con, or about the relation between law and moral, but about Law and Person.
D4	Tatsuya		Yokohama	Shizuoka University					Immigration Justice and Political Obligation	How should we (especially people and governments of developed countries) accept immigrants? Recently, this question has become very urgent and politically contested. Open Border theories, for which Joseph Carens argues, claims that recent immigration policies of most developed countries are unjust, and should be more unrestrictive. The reasons for Open Border theories are as follows. (1) Freedom of movement is one of universal human rights. It is also the prerequisite of many other freedoms, especially an equal freedom to pursue everyone's own conception of good, i.e., goal of life. Moral justification of restricts of immigration must take into account the interests of those who are excluded as well as the interests of those who are already inside. (2) Chances for employments, residences, educations, and social benefits should be distributed equally between insiders and outsiders (especially between citizens of developed countries and those of developing countries). On the other hand, opponents of Open Border theories such as David Miller argues as follows. (1) The states' discretionary power to determine their own conditions for membership is a necessary condition for political autonomy and self-determination. (2) Limited political membership and fraternity (or solidarity) between members are the basic motivation of respect and deference to public decisions. In my paper, I will examine critically arguments for and against Open Border theories and present an alternative view. The points are as follows. (1) Miller's case for arguing against Open Border theory, which is based on political self-determination, is not sufficiently successful. For many (or most) immigrants, moving to developed countries is an indispensable and inevitable choice for escaping their poverty and distress. Therefore, political self-determination based on political membership of states is not enough an excuse for not accepting and rescuing poor immigrants. (2) We should consider seriously that the costs of immigrants' social securities, education, and other supporting schemes in order to distribute indispensable goods(incomes, employments, skills for jobs, etc.), and also the costs of immigrants' establishing necessary social relationships i.e., the costs of solving immigrants' social exclusion, are considerably high. Even so, does justice require people of developed countries to bear these costs? This is one of crucial questions to Open Border theories. (3) To face with these issues, we should reconsider whether there are cases of political membership of states, and the essential clue to answer this question exists in examining political obligation theories, because in order to justify political obligation, we should make clear whether and what the nature and moral values of limited political ties between compatriots are.
D6	Kotaro		Yonemura	Yokohama National University					Reviving Neutrality and Its Implication	States shall be neutral between conceptions of the good. Such a requirement of neutrality once has been recognized as the locus of liberalism. However, as is well known, various problems already have been raised against the neutrality requirement. Firstly, some people doubts that neutrality is conceptually incoherent and impossible at all. Secondly, some claims that neutrality is absurd since they reject evidently plausible policies, like ban on homicide. Others urge that it is useless since they deny almost nothing. The idea of neutrality has been so much criticized that most liberal philosophers now accept these criticisms and seems to abandon the idea. However, recently, Allan Patten tries to a new conception of neutrality in his book, Equal Recognition. According to him, although he admits that conceptions of neutrality which most theorists endorse are vulnerable to these attacks, his version of neutrality, neutrality of treatment can evade these problems. He also insists that cultural minority rights, such as language rights are more nicely defended based on that conception. Therefore, the ideal of neutrality is not incoherent nor impractical. Neutrality of treatment succeeds to revive the significance of the ideal of neutrality for liberal thoughts as Patten claims? Although Patten's argument is very stimulating, he only consider on particular policy issue: cultural minority rights. To fully evaluate patten's claim, we need to explore its implication in wider contexts. In this paper, firstly I will briefly summarize the debates on neutrality. After that, I will outline how neutrality of treatment deals with the difficulties raised by the opponents. Then, I will consider what policy implication neutrality of treatment has on the other normative issue. In particular, I will pick up paternalistic intervention on health and separation of church and state. I will conclude that neutrality of treatment also has plausible implications on these problems.
B1	Mauro		Zamboni	Faculty of Law, Stockholm University, Sweden					THE NEED FOR A MIDDLE-RANGE THEORY OF LEGISLATION IN A GLOBALIZING WORLD	It is a common truth that legislation, despite being the source of most of modern law, has never been the subject of deeper reflection on the part of the legal world. As already pointed out by Jeremy Waldron in the late 1990s, legal scholars - regardless of stance - tend to focus mostly on the final product (the law) and its relations to the surrounding environment (morals, economy, society and culture). In other words, attention has been given mostly to the life of law (What is valid law? What is a good law?) and its death (when a certain law is invalid or ineffective), but not so much to the birth of law - that is, law-making processes. In recent decades, many such institutional conditions have changed; for instance, legal positivism (still the ideology shared by the majority of the legal community in terms of defining what law is) has become more open to investigation of the making of the law (due to the increased importance of critical and socio-legal approaches). Moreover, the idea of democracy as considered from a legal perspective has opened its doors to investigation of law-making processes (e.g. with Jürgen Habermas' procedural democracy). However, legislative studies have come up against another significant barrier that is becoming a central topic for legal scholarship and practices: the globalization of the law. The circulation of legal models around the world, applied as valid law (regardless of whether these are formally inserted in the various legal systems), has given birth to three interconnected institutional phenomena which have kept law-making (in particular in its legislative forms) distant from the focus of legal scholarship. First of all, the globalization of law has widened the gap between the process of creation of laws and their concrete implementation by the legal actors. Nowadays, the legal models valid in a certain legal system are often produced in legislative (and law-making) processes taking place in foreign and distant countries and/or supranational entities. Therefore, and now more than ever, the focus of legal scholarship - also under pressure from surrounding legal practitioners - is on the "validity" (or invalidity) of such foreign legal models in a certain system, and not on their creation in a galaxy far, far away. Secondly, the globalization of the law has contributed to the fading of the nation state as primary regulator and thus a weakening of the nation state's major regulatory tool, legislative law-making. The creation of regulatory models for vital areas has shifted (to a considerable extent) to non-state actors (e.g. NGOs for environmental law or conglomerates of transnational corporations for business law). Therefore, it seems almost natural that now, when it comes to law-making, the attention of legal scholarship has been focused primarily on non-legislative law-making, such as soft law-making or the creation of codes of conduct. Finally, due to the progressive specialization of law and (even more importantly) the globalization of law (and the consequent weakening of the traditional dogmas of "democratic" and national parliament-based law-making), there has been a process of increasing the distance between actors operating at the macro-level (e.g. political actors and political thinkers) and actors working at the micro-level (e.g. legislative drafters and legislative studies scholars). The purpose of this paper is to offer a way to establish a link between these two levels (macro/politics and micro/drafters): a middle-range theory of legislation. The goal of this theory is to offer a structure capable of channeling the messages coming from the political world (e.g. as expressed in national and/or international assemblies) into viable and concrete legislative products (e.g. functioning legislative provisions).
E5	xiaobo		zhai	university of macau					Bentham and Postema on the Rule of Law: a Comparison	In a series of recent papers, Bentham scholar and legal philosopher Postema has developed a theory of the rule of law, which focuses on the fidelity to law or the conditions of its realization, instead of legality. The rule of law, Postema states, is the normative ideal that law provides 'protection and recourse' against arbitrary power through 'the distinctive offices and powers of law'. Contrasted with other (such as Razian) theories of the rule of law, Postema's theory is much richer, and consists of a system of theories regarding the following issues: legality and the fidelity to law (or its opposite, the alienation from law); the nature of law, power, and authority; the foundation or deeper values of the rule of law; the relation between arbitrariness, accountability, and public deliberation; the institutional and ethical infrastructure of the rule of law; the role of public spheres and courts, and legal reasoning; and the balance between deference and defiance. Postema is an admirer of Bentham: he claims that Bentham's writings offer resources for 'a robust notion of the rule of law', and that 'no philosopher has thought more extensively or in greater detail [than Bentham] about the necessary institutional infrastructure of law's rule'. However, he is equally a critic of Bentham, and his theory of the rule of law differs from Bentham's in some vital respects. Bentham may also disagree with him on some key issues of the rule of law. This paper will compare Bentham and Postema's theories of the rule of law, show and explain the similarities and differences between them.