

LawPack -- Koala's Gift for Comparative Law in Context

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Abstract. It is not easy to understand a legal rule in a foreign jurisdiction without knowing real social context of that jurisdiction. Consortia of legal experts with cultural diversity will be able to provide legal and contextual information of their own society. The LawPack is an idea to develop an environment to share the statutory text in a structured way with compact annotations provided by experts who know the society and the law. Sharing the statutory text through Bilingual KWIC will provide threshold questions to experts by showing curious similarities and differences of laws of different jurisdictions. The LawPack will be a new approach to conduct comparative study of law.

Keywords: LawPack, law in context, comparative law, international consortia of experts, responsive narratives, Bilingual KWIC.

1. Introduction

One of the first and paramount tasks in the world of contemporary democracy is to promote the rule of law. A core concept of the rule of law is that the power and authority must be kept under control by law in order to promote freedom and liberty of the people. If law becomes simple and plain, application and implementation of law will become easier even for ordinary citizens. In turn, easy access to plain laws will contribute to the ideal of the rule of law. There is an obvious correlation between informative law and the rule of law.

As authors will discuss in this paper, however, law is a body of diverse information and the black letter law is only part of law. Free access to law is not that simple. In order to understand law professionally, we need not only black-letter laws and court cases but also the contextual information about law. The contextual information is the data on economic,

¹ In February, 2009 authors participated in the conference sponsored by AsianLII. The conference took place in Sydney under the theme of "Building Capacity for Free Access to Law in Asia." The ideas of authors discussed in this paper (Koala's gift) were inspired very much by the discussion in this conference.

political, historical, cultural, social and other factors about law².

Despite uneven development in the information society which has caused digital divide obstacles, facilities of internet diffusion have shown a possibility of ubiquitous access to legal and non-legal data at national and transnational levels. In the ubiquitous world, impetuses are given to create on-line databases for the broad needs of all disciplines, civil groups, and the society. The information society has gradually changed the method of comparative study of law where accessibilities to pluralistic legal information with all socio-cultural variables are crucial.

The authors believe that comparative study of law from contextual perspectives will better clarify the meaning of laws in compared jurisdictions and provide key information to improve legal rules of each country. The comparative legal study is, however, time-consuming apart from substantive difficulties caused by language and culture barriers. This paper proposes the research by international joint efforts for the building of the “LawPack” where updated and local information from committed experts will be accumulated and shored in several languages.

2. The LawPack

We all recognize the difficulties to understand a legal rule in social realities of a foreign country. It is relatively easy to find relevant black letter laws (“law in books”) in a foreign jurisdiction. Without clear sense of social contexts, however, it is almost impossible to know “law in action” in a foreign country. Indeed, it is true that judges of the Continental legal tradition pay serious attention to black-letter law in a code and judges of the Common law legal tradition keep their focus of attention on facts of a case. In both traditions, however, we cannot read provisions of a code or case laws properly, without the knowledge of relevant social context.

The “LawPack” is a proposal to achieve a real sense of law against the social context in a foreign jurisdiction by using the fruits of the information technology. The LawPack has two major components: (1) consortia of cross-national and inter-disciplinary experts and (2) multi-lingual data-bases of legal information with annotations of contextual information.

2.1 Consortia of Cross-national and Inter-disciplinary Experts

² The approach of Patrick Atiyah is a good example. *See generally* P. S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford, 1979). R.C. van Caen, *Judge, Legislators and Professors: Chapters in European Legal History* (Cambridge, 1987) shares a similar perspective.

The starting point for contextual information seems to be the data-base which we call Bilingual KWIC³. Two figures on the next page are a shot of the Japanese Law Translation Database (Ministry of Justice)⁴ and a shot of Taiwan Law Bilingual KWIC (TaiwanLII)⁵. The search word is a Japanese word “親権” and the search result shows “parental authority” and all provisions that contain “parental authority.” If we search the TaiwanLII site with “parental authority,” there is no hit. This means that Taiwan law does not use the concept of “parental authority”, at least as English translation. It turns out that Article 1084 (2) of the Civil Code talks about parental rights and the duties rather than parental authority.



Figure 1: Japanese Law Translation website

³ See Y. Ogawa and K. Toyama, “Bilingual KWIC – GUI Support Tool for Bilingual Dictionary Compilation,” 2⁶th Symposium on Natural Language Processing 77-84 (2005).

⁴ <http://www.japaneselawtranslation.go.jp/kwic/?re=02>

⁵ <http://kwic.law.nagoya-u.ac.jp/taiwan/>



Figure 2: TaiwanLII website

Given the fact that the Civil Code of 1931 of the Republic of China was drafted after the Japanese Civil Code, this difference arouses much academic interest. The first obvious question will be “Why did the drafters of the ROC Civil Code of 1931 decide to phrase the provision differently from that of the Japanese Civil Code?”

The provisions of two Civil Codes do not answer this question. In order to find an answer, we need to go beyond black letter law to the documents of the legislative history or to the record of contemporary social background when the code was drafted. Who is the better researcher on these matters? Of no doubt, Taiwanese lawyers are most likely to provide relevant and accurate information about laws of Taiwan. So are Japanese lawyers about laws of Japan. If a consortium of a Taiwan law expert and a Japanese law expert can work together by providing the relevant information and observations about a topic of their mutual interest, the consortium will be able to explicate both laws in context and to contribute to a better understanding of the topic. In this sense cross-boundary and cross-disciplinary consortia of experts are critically important for comparative study of law in context.

2.2 Multi-lingual Data-bases of Legal Information with Annotations of Contextual Information

The second element of the LawPack will consist of multi-lingual annotations to statutory

information and major legal concepts. An annotation is collections of socio-legal information about a particular provision of law. In case of the LawPack a legal expert of one jurisdiction will provide both legal and non-legal information of one's own jurisdiction in response to the request of peer experts of a different jurisdiction. An annotation may serve both local and cross-border needs for easy access to law in context. The annotation involves multi-lingual and cross-boundary studies despite differences or disparities in social contexts or legal systems. Interactive research and teaching platforms may also be designed to make use of on-line databases in connection to the LawPack.

The LawPack is to provide for condensed package and summary information of law in its living forms. In this way we can show a more productive work style for international comparative law. When professionals and the public find it convenient to refer to LawPack for needed legal information, this "easy access" for people's benefit will soon lead to demand for "free access" in various senses.

3. The LawPack in Action

A LawPack shall provide for a specific theme (system, principle, concept, etc.) with briefs (in English & agreed languages) and original texts of legislative history, laws, cases, judicial interpretations, academic works, empirical findings, news and other related information. A LawPack will grow over time through responsive communication in a consortium of experts with cultural diversity. This paper intends to demonstrate how a key concept of global law (for example, "the best interests of the child") will be more clarified through comparison and how we can find some inspirations to improve our current laws.

The communication begins with the first narrative by an expert in one jurisdiction. For example, a Taiwan lawyer may start the narrative on "the best interests of the child". The first narrative will refer to all the relevant provisions in the Taiwan Law Bilingual KWIC that include the key concept "the best interests of the child". The Taiwan lawyer will summarize those provisions briefly for a Japanese law. The first narrative will be informative but at the same time it will call for brief explanation of corresponding provisions of the Japanese law.

The second narrative from the Japanese lawyer will summarize the corresponding provisions in the Japanese Law Translation Database and, if necessary, add relevant provisions that are not included in the database. After these narratives, the experts in a consortium can share, though roughly, similarities and differences of laws of Taiwan and Japan about a particular topic.

The third narrative may come from the Japanese lawyer who is curious about how “the best interests of the child” came to Taiwan law and how Taiwan law assimilated it. Since Taiwan has never ratified the United Nations Convention on the Rights of the Child of 1989, the UN Convention does not seem to be the part of formal law of Taiwan. The responding narrative of the Taiwan lawyer will clarify the process of a transplant of “the best interests of the child” to the soil of Taiwan.

Then, the topic of communication may shift to the court cases on “the best interests of the child” in Taiwan and Japan. Since legal experts know how to research on the development of the doctrine of “the best interests of the child” through case analyses, each expert can come up with a brief summary of “the best interests of the child” in judicial decisions.

The communication by narratives may go beyond the legal domain. The authors’ view is that law in action becomes comprehensible only when we understand the social and cultural context of a foreign jurisdiction and that cross-cultural communication will help native experts see their own social and cultural context even clearer.

The concept of “the best interests of the child” floats in the air of both Taiwan and Japan law but the concept seems to work more powerful in Taiwan. If so, an obvious question is why this concept is so influential in Taiwan. A narrative answering this question will cover social, political, economic, and cultural aspects of Taiwan. If this narrative is informative and persuasive, the Japanese lawyer will see the need to explain why this concept is not so influential in Japan by focusing on the various contexts the Taiwanese colleague has identified.

The narratives will accumulate through communication in a cross-cultural consortium. In the LawPack projects, experts in one jurisdiction are responsible to keep the record of the narratives they offered to professionals in the other jurisdiction. Through the communication, they may realize the “most relevant” part of their own narratives that will help professionals in another jurisdiction understand law of their jurisdiction in context.

The LawPack will include as annotation the “most relevant” information in one jurisdiction identified by native experts. The professionals will draw up a compact summary in their own language as an annotation to a statutory text. Annotations in a native language will be translated into other languages for wider sharing. The following two figures are taken from

the Global Legal Information Network of the Library of Congress (GLIN)⁶. GLIN is a project to share the information of laws, judicial decisions, legislative records and legal literature. As such, it provides compact information on a new law in Taiwan. This piece of information will become part of annotation. Authors believe that annotations must be brief to be effective. Therefore, an annotation in a LawPack may be a combination of a short summary of a law like one given by GLIN and a brief explanation of an economic and political context of these amendments developed by a consortium expert.

The screenshot displays the GLIN search interface. At the top, there is a navigation bar with the GLIN logo and links for 'Log In', 'Search', 'Subject Term Index', 'Help Center', and 'About GLIN'. Below this is a 'Search GLIN' section with a 'Welcome to GLIN' message and a brief description of the database. The main search area includes a search bar, a 'Find results with' dropdown set to 'All of the word', and a 'Search' button. The search criteria are organized into several sections: 'Search In' (with checkboxes for All Fields, Title, Summary, Name, and Source number), 'Categories' (with checkboxes for All Categories, Laws, Judicial Decisions, Legislative Records, and Legal Literature), 'Languages' (with a dropdown for 'Summary written in' set to 'English'), 'Jurisdictions & Dates' (with a dropdown menu showing 'Spain', 'Studies in Latin American Constitutional Law', 'Tunisia', 'United Kingdom', and 'United Nations', and radio buttons for 'Include' and 'Exclude'), 'Subject Terms' (with a text input field containing 'company' and buttons for 'Add' and 'Find Subject Terms'), and 'Display' (with a 'Sort by' dropdown set to 'Jurisdiction_Category_Publicatic', a '10 results per page' dropdown, and a 'Show Summary?' checkbox). The 'Selected Subject Terms' section is highlighted in green and contains the text 'No subject terms currently selected'. At the bottom of the search area are 'Search' and 'Clear' buttons.

⁶ For a brief description of GLIN, see <https://www.glin.gov/helpTopic.action?topic=aboutGlin>.

Results 1 - 10 of 14		[Next >] [Last >>]
Title	Amendment to Statute For Developing Small And Medium Sized Enterprises [修正中小企業發展條例] (GLIN ID 225305)	
Jurisdiction	Taiwan	
Category	Law	
Publication	The Gazette of the Office of the President	
Published	25/11/2009; Traditional Chinese	
Instrument Class	Law	
Subject Terms	Administrative law; Commerce and industry; Development	
Summary (English)	The amendment of 25 November 2009 applies to the Statute For Developing Small And Medium Sized Enterprises. Article 24-1 specifies that in order to assist in developing local enterprises so as to boosting economic prosperity in the region, the government may set up a fund.(1 provision, p.6)	
<hr/>		
Title	Amendment to Statute For Labor Insurance [修正勞工保險條例] (GLIN ID 225304)	
Jurisdiction	Taiwan	
Category	Law	
Publication	The Gazette of the Office of the President	
Published	25/11/2009; Traditional Chinese	
Instrument Class	Law	
Subject Terms	Administrative law; Debtor and creditor; Insurance; Labor; Loans	
Summary (English)	The amendment of 25 November 2009 applies to the Statute For Labor Insurance. Article 29 specifies that the provisions of the Statute for Consumers' Debt Settlement and Bankruptcy Law shall be inapplicable, provided the insured person has failed to pay back the loan's principal and interest as stipulated under Subparagraph 4, Paragraph 1 of Article 67.(1 provision, p.5-6)	

Figure 3. Summary of New Laws in GLIN <http://www.glin.gov/search.action>

Annotations developed by native experts of a consortium in a native language will be translated into English or other languages. Our experience of developing Bilingual KWICs tells that the original text and its translation (e.g. English translation) should be aligned and kept in a data-base. Because any aligned bilingual corpuses work as a good tool to assist quality translation. For example, the Bilingual KWIC of the Japanese Law Translation Database System is frequently used by professional translators who engage in English translation of Japanese law. If we can develop a standard format to provide annotations such as found in GLIN and keep sentence samples used to draft annotations in a database, translation of informative annotations in other languages will become easier and standardized⁷.

Annotations do not have to be in the form of written sentences. One picture of social issues such as destruction of the natural environment in one region may work more powerful annotation than a long written annotation. The LawPack will welcome brief and compact annotations utilizing multi-media. The LawPack, encourages, therefore, extensive corroboration with information scientists.

⁷ The European Union has achieved a remarkable multi-lingual translation environment. See for example, http://ec.europa.eu/translation/index_en.htm.

4. Legal Research and the LawPack

The success of the LawPack will depend not only on the briefing skills of consortia experts but also on their research skills. The information provided in the form of the LawPack is simply the result of efficient research in broad resources. When asked by a consortium lawyer of a different jurisdiction, consortium lawyers in a relevant jurisdiction will engage in legal research. They know how to find relevant statutory text, critical cases, legislative history, various research reports, and journal articles. They will be able to report to the inquirer the result of research in a compact brief.

It is, however, not always obvious to foreign lawyers how lawyers in one jurisdiction conduct legal research. We do not know in what sequence they conduct their research. Do they look at statutory provisions first or cases first? Then, what do they look into? In this sense, legal research itself will become a target of the LawPack. The knowledge of how legal research is conducted and for what reasons will be important information to understand how black-letter law is practiced in one jurisdiction. It will tell how legal information of various sorts is integrated into professional knowledge of legal experts.

When we try to understand law in context, non-legal information is no less important than legal information. In fact, the information we use to identify “the best interest of the child” seems to be mostly non-legal information. For example, we need much information concerning the growth of children as well as contemporary family setting.

In order to understand how “the best interest of the child” is determined in a foreign jurisdiction, we wish to know what sort of information is taken into consideration in that jurisdiction for what reasons. The first narrative of a foreign expert asking for a list of major considerations to decide “the best interest of the child” will generate the second and responding narrative asking for major considerations in the inquirer’s own jurisdiction. Those narratives call for comparative study of the list of major considerations to decide “the best interest of the child.”

The LawPack encourages the use of non-legal information and, in turn, invite participation of experts from non-legal domains. Law in context is a good ideal but it is not easy to achieve this goal. The most difficult challenge is to clarify what considerations and thus what sort of information is essential to understand the “context.” There is no way to know it *a priori*. Authors believe that continuous communication among experts in consortia of cultural diversity will gradually reveal the way to know the context. The collective efforts of the LawPack will

be able to relate non-legal resources (including databases) to the legal information. Eventually, we may be able to know how legal knowledge of one jurisdiction is structured into more broad contextual information.

Leading Legal Information Institutes have been advocating “Free Access to Law” and the “Rule of Law” with cross-border joint efforts. The major focus of this movement is that people are entitled to know “what the law is” through easy access to updated information. So far the movement has succeeded in collecting considerable amount of legal data and to create on-line environments that allow free-of-charge access to the information so collected. Yet, to promote free access to law, there are distinctive obstacles in different jurisdictions, which may involve not only economic but also political, historical, cultural, social, structural or a mixture of contextual factors. Therefore, local strategies must be geared to meet challenges and move barriers with ongoing aims.