



春風煦日論壇2018學術研討會

刑事法與憲法的對話

2018/04/20 (五)

地點：台北律師公會（台北市羅斯福路一段7號9樓）

研討會的緣起與宗旨

春風煦日學術信託基金自2017年開始，每年至少籌辦一次學術研討會。研討會的主題為刑事法與憲法的對話，議題內容包括刑事實體法、憲法、刑事程序法與憲法訴訟。

2018年訂於4月20日在台北律師公會舉行，規劃四個議題，實體法與程序法各兩場。議題的主軸兼顧基礎理論和實務應用，實務議題要落實到冤案救援。

實體法上嶄新的研究與實務上的困局

第一場關於實體法基礎理論議題的報告人，是德國柏林洪博大學刑事法學講座教授 **Luis Greco**。過去十年來，Greco教授是德國刑事法學術界最受矚目的年輕學者。他的博士論文「費爾巴哈刑法理論的生與死」，全面重新建構費爾巴哈的理論，而獲得巴伐利亞科學院的Max Weber獎。他在教授升等論文「刑事訴訟理論與裁判既判力」中，嘗試從個人主義者的自由主義觀點，開發出一種裁判既判力理論。Greco教授報告的主題「正當防衛與比例原則」，嘗試說明將憲法上的比例原則應用在正當防衛，會危及傳統刑法機制的內在邏輯，而且也根本是對憲法及其比例原則的錯誤解讀。

第二個議題是實務議題，由**高等法院錢建榮法官**以最高法院兩度決議「創設」出來的違憲爭議為例，探討最高法院決議對於審判實務無遠弗屆的拘束力，以及決議（包括判例）制度的合憲性，進而指出法官聲請最高法院決議及判例違憲審查的可行性，以期打破法官在審判實務上受到違憲決議及判例的桎梏。

程序法理論上的突破與冤案的平復

第三個議題是關於程序法的理論議題，由**黃致豪律師**從法定證據方法與科學證據的偏誤，討論證據法的正當法律程序。自我國法定證據方法觀之，無論是被告（如自白）、人證（如記憶與指認）、文書、鑑定或勘驗等，經常涉及科學證據的判斷與潛在的偏誤問題（biases）。這些法定證據方法，如果未受到以科學法則與證據法則為內涵的正當法律程序原則制衡，冤案的風險無論在何種案件幾乎均屬事前難以避免，事後無從審查。致豪律師將以鑑定為例，檢討現行證據方法在未受正當法律程序原則制衡之下，可能出現何等違憲風險。期待以科學法則與證據法則發展出來的基準，建立屬於證據法的正當法律程序基本架構。

最後一個議題是程序法的實務議題，以制定證據法典為目標，檢討證據法則，並在這個基礎之上，進行個案分析與冤案救援。由作家**張娟芬博士**報告「王信福案」，這是2011年三審定讞的死刑案件。這個報告檢視王信福案的判決，指出此案的幾個弱點，包括：事實認定未得到證據支持、過度依賴供述性證據或傳聞證據、關鍵證據在實質與程序上都有重大瑕疵等等。因為是運用社會科學的研究方法來分析個案，因此除了是個案分析以外，也針對冤案研究提出一個新的路徑。並由**中央大學法律與政府研究所助理教授蘇凱平**，針對傳聞法則的本質和冤案發生之間的關係，從刑事司法系統運作的整體觀點切入進行研討。



2018 Symposium of SBBS

Dialog between Criminal Justice and Constitution

2018/04/20 (Fri)

**Place: Taipei Bar Association
(9F., No.7, Sec. 1, Roosevelt Rd., Taipei City)**

Origin and Purpose of the symposium

Since 2017, Spring Breeze and Balmy Sun Trust Fund has initiated annual academic conference. The conference series has been primarily focusing on the dialogue between constitutional law and criminal justice. The topics cover criminal law, criminal procedure law, constitutional law, and constitutional litigation.

The conference in 2018 will be held on April 20 in Taipei Bar Association. Among the four panels, two will focus on issues of substantive law, the other two issues of procedural law. Each topic will be approached from perspectives of theories and practices, as well as their application to criminal injustice cases.

Probing into New Research in Substantive law with a view to solving Difficult Questions in Practice

The first panel will discuss the “self-defense and the proportionality principle,” presented by **Professor Luis Greco**. During the past 10 years, Prof. Greco is quickly establishing himself the rising star in German criminal law. His outstanding Ph.D. thesis, “the life and death of Feuerbach's theory of punishment” is an extensive reconstruction of Feuerbach's theory, which was awarded the Max Weber Prize by Bavarian Academy of Sciences. His Habilitation thesis (“Criminal procedure theory and res judicata”) is an attempt to develop a theory of res judicata from an individualistic-liberal perspective. Prof. Greco will attempt to show that the opening of self-defense to the constitutional principle of proportionality threatens the inner logic of this traditional institute of criminal law; at the same time, it depends on a wrong reading of the constitution and its proportionality principle.

The second panel will address the binding effects of resolutions made by joint conference of the civil-criminal divisions of Taiwan’s Supreme Court (hereinafter “resolutions”). **Judge Chien Chien-Jung** is serving in Taiwan High Court. He will be giving two examples of resolutions and debating the standards governing judicial reviewability of the resolutions and precedents.

In search of Theoretical Breakthrough in Procedural Law with a view to Remedy Miscarriage of Justice

The third topic is about the theoretical issues in the procedural law. All statutory methods of evidence, including the defendant (e.g., the confession he/she makes), witness (memory and identification), expert opinions, or inspection of evidence, typically involving scientific assessment and potential biases. Before and until the said statutory methods of evidence are subject to review and the control of the due process principle (which should have incorporated the fundamental rules of science and evidence), the risk of wrongful conviction becomes unavoidable and unreviewable.

The article of **Attorney Leon Huang** will use expert opinion as an example to examine its risk of unconstitutionality when the methods of evidence go unchecked by the due process principle. Through this article, he hopes to establish the framework of the due process of evidentiary methods, based on the fundamental rules of evidence and science.

In the last panel, a practical topic will be treated. The death sentence of Wang Hsin-Fu is finalized in 2011 in Taiwan. **Dr. Chuan Fen Chang** puts the judgment of the case of Wang under scrutiny and argues that it suffers from the following weaknesses: the lack of evidence in the truth-claim, overdependence on the testimonial, sometimes hearsay evidence, and substantive and procedural flaws in key evidence. This report uses research methods widely applied in social sciences, hence it offers not only a case study, but also a proposition to a new approach in the research of miscarriage of justice. **Kai-Ping Su is an assistant professor of law at Institute of Law and Government, National Central University**. His paper will discuss how admissible exceptions to the hearsay rule may lead to the occurrence of wrongful conviction, by exploring the nature of oral evidence and its contribution to court decisions.



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地點：台北律師公會（台北市羅斯福路一段7號9樓）

9:00 主持人：許玉秀（前司法院大法官）

主題 1 正當防衛與比例原則

報告人：Prof. Dr. Luís Greco
（德國柏林洪堡大學刑事法學教授）

與談人：李建良（中研院法律所研究員）

9:50 ● 10:10 ● 10:40

提問與討論

10:50 主持人：李念祖（律師／臺灣大學政治系暨東吳法學院兼任教授）

主題 2 違憲的毒品三振犯決議－ 兼論法官聲請判例決議違憲審查的可行性

報告人：錢建榮（臺灣高等法院法官）

與談人：張震（高雄地方法院法官）
謝煜偉（臺灣大學法學院副教授）
鍾宏彬（法務部司法官學院副研究員）

11:30 ● 12:15 ● 12:45

提問與討論

14:00 主持人：周宇修（台北律師公會憲法委員會主任委員）

主題 3 從法定證據方法與科學證據偏誤談證據法的正當法律程序

報告人：黃致豪（律師）

與談人：李念祖（律師／臺灣大學政治系暨東吳法學院兼任教授）
蘇凱平（中央大學法律與政府研究所助理教授）

14:40 ● 15:10 ● 15:40

提問與討論

15:50 主持人：王怡婷（台北律師公會刑事法委員會主任委員）

主題 4 王信福冤案報告

報告人：張娟芬博士

16:15 主持人：王怡婷（台北律師公會刑事法委員會主任委員）

主題 5 傳聞證據的價值與缺陷： 以刑事司法系統運作的複雜性為研究取徑

報告人：蘇凱平（中央大學法律與政府研究所助理教授）

與談人：黃致豪（律師）
錢建榮（臺灣高等法院法官）
薛智仁（臺灣大學法學院副教授）

16:40 ● 17:25 ● 18:00

提問與討論

散會

主辦單位：公益信託春風煦日學術基金
台北律師公會憲法委員會及刑事法委員會
台灣廢除死刑推動聯盟

協辦單位：臺灣大學法學院刑事法中心
中央大學法律與政府研究所
台灣刑事辯護律師協會



2018 Symposium of SBBS

Dialog between Criminal Justice and Constitution

2018/04/20 (Fri)

**Place: Taipei Bar Association
(9F., No.7, Sec. 1, Roosevelt Rd., Taipei City)**

9:00 — Moderator: **Yu-Hsiu Hsu** (former Grand Justice of the Constitutional Court)

Topic 1 — **Self-defense and Proportionality.**

Speaker: Prof. Dr. Luís Greco (Faculty of Law, Humboldt University of Berlin, Germany)

9:50 — Commentators: **Chien-Liang Lee** (Research Professor of Institutum Iurisprudentiae, Academia Sinica)

10:10 — **10:40** — Q & A

10:50 — Moderator: **Nigel N. T. Li** (Attorney, Adjunct Professor of Department of Political Science, National Taiwan University, and Adjunct Professor of School of Law, Soochow University)

Topic 2 — **The Constitutionality of Judgments concerning "Three Strikes" Sentencing for Drug Users – in the Context of Application for Judicial Review.**

Speaker: Chien-Jung Chien (Judge of Taiwan High Court)

11:30 — Commentators: **Chen Chang** (Judge of Kaohsiung District Court)
Yu-Wei Hsieh (Associate Professor, College of Law, National Taiwan University)

Hung-Ping Chung (Associate Research Fellow, Academy for the Judiciary, Ministry of Justice)

12:15 — **12:45** — Q & A

14:00 — Moderator: **Clarence Chou** (Chairman of Consttl. Com. of TBA)

Topic 3 — **The Constitutional Value within the Rules of Evidence**

Speaker: Leon Huang (Attorney)

14:40 — Commentators: **Nigel N. T. Li** (Attorney, Adjunct Professor of Department of Political Science, National Taiwan University, and Adjunct Professor of School of Law, Soochow University)

Kai-Ping Su (Assistant Professor of Institute of Law and Government, National Central University)

15:10 — **15:40** — Q & A

15:50 — Moderator: **Yi-Ting Wang** (Chairwoman of Criminl. Com. of TBA)

Topic 4 — **Wang Hsin-Fu Case: An Injustice Report**

Speaker: Dr. Chuan-Feng Chang

16:15 — **Topic 5** — **The Value and Flaws of Hearsay Evidence: A Complexity Approach to Functions of the Criminal Justice System.**

Speaker: Kai-Ping Su (Assistant Professor of Institute of Law and Government, National Central University)

16:40 — Commentators: **Leon Huang** (Attorney)
Chien-Jung Chien (Judge of Taiwan High Court)
Chih-Jen Hsueh (Associate Professor of College of Law, National Taiwan University)

17:25 — **18:00** — Q & A — **END**

Organizer:
Spring Breeze and Balmy Sun Academic Trust Fund
TBA Constitution Committee & Criminal Law Committee
Taiwan Alliance to End the Death Penalty

Coorganizer:
Center of Criminal Justice, National Taiwan University
Institute of Law and Government, National Central University
Taiwan Criminal Defense Attorney Association



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(former Grand Justice of
the Constitutional Court)

9:00

主持人：許玉秀
(前司法院大法官)

Self-defense and Proportionality.

主題 1 Topic 1

正當防衛與比例原則

Speaker: **Prof. Dr. Luís Greco**
(Faculty of Law, Humboldt
University of Berlin, Germany)

報告人：Prof. Dr. Luís Greco
(德國柏林洪堡大學刑事法學教授)

Commentators: **Chien-Liang Lee**
(Research Professor of
Institutum Iurisprudentiae,
Academia Sinica)

9:50

與談人：李建良
(中研院法律所研究員)

Q & A

10:10

提問與討論

10:40

Moderator: **Nigel N. T. Li**
(Attorney, Adjunct Professor of Department of
Political Science, National Taiwan University,
and Adjunct Professor of School of Law,
Soochow University)

10:50

主持人：李念祖
(律師／臺灣大學政治系暨
東吳大學法學院兼任教授)

The Constitutionality of Judgments concerning "Three Strikes" Sentencing for Drug Users – in the Context of Application for Judicial Review.

主題 2 Topic 2

違憲的毒品三振犯決議－ 兼論法官聲請判例決議違憲審查的 可行性

Speaker: **Chien-Jung Chien**
(Judge of Taiwan High Court)

報告人：錢建榮
(臺灣高等法院法官)

Commentators: **Chen Chang**
(Judge of Kaohsiung District Court)

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與談人：張震
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(Associate Professor, College of Law,
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Hung-Ping Chung
(Associate Research Fellow,
Academy for the Judiciary,
Ministry of Justice)

鍾宏彬
(法務部司法官學院副研究員)

Q & A

12:15

提問與討論

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Moderator: **Clarence Chou**
(Chairman of Constitl. Com. of TBA)

14:00 主持人：周宇修
(台北律師公會憲法委員會主任委員)

**The Constitutional Value within
the Rules of Evidence**

**主題 3
Topic 3**

**從法定證據方法與科學證據偏誤談
證據法的正當法律程序**

Speaker: **Leon Huang**
(Attorney)

Commentators: **Nigel N. T. Li**
(Attorney, Adjunct Professor of Department
of Political Science, National Taiwan
University, and Adjunct Professor of School
of Law, Soochow University)

Kai-Ping Su
(Assistant Professor of Institute of Law and
Government, National Central University)

Q & A

14:40

報告人：黃致豪
(律師)

與談人：李念祖
(律師／臺灣大學政治系暨
東吳大學法學院兼任教授)

15:10

蘇凱平
(中央大學法律與政府研究所
助理教授)

提問與討論

15:40

Moderator: **Yi-Ting Wang**
(Chairwoman of Crimlnl. Com. of TBA)

15:50 主持人：王怡婷
(台北律師公會刑事法委員會主任委員)

**Wang Hsin-Fu Case:
An Injustice Report**

**主題 4
Topic 4**

王信福冤案

Speaker: **Dr. Chuan-Feng Chang**

16:15

報告人：張娟芬博士

**The Value and Flaws of
Hearsay Evidence: A Complexity
Approach to Functions of the
Criminal Justice System.**

**主題 5
Topic 5**

**傳聞證據的價值與缺陷：
以刑事司法系統運作的複雜性為研
究取徑**

Speaker: **Kai-Ping Su**
(Assistant Professor of Institute of Law and
Government, National Central University)

Commentators: **Leon Huang**
(Attorney)

Chien-Jung Chien
(Judge of Taiwan High Court)

Chih-Jen Hsueh
(Associate Professor of College of Law,
National Taiwan University)

Q & A

16:40

報告人：蘇凱平
(中央大學法律與政府研究所
助理教授)

與談人：黃致豪
(律師)

錢建榮
(臺灣高等法院法官)

薛智仁
(臺灣大學法學院副教授)

17:25

提問與討論

18:00

主辦單位/ Organizer :

公益信託春風煦日學術基金/ Spring Breeze and Balmy Sun Academic Trust Fund
台北律師公會憲法委員會及刑事法委員會/ TBA Constitution Committee & Criminal Law Committee
台灣廢除死刑推動聯盟/ Taiwan Alliance to End the Death Penalty

協辦單位/ Coorganizer :

臺灣大學法學院刑事法中心/ Center of Criminal Justice, National Taiwan University
中央大學法律與政府研究所/ Institute of Law and Government, National Central University
台灣刑事辯護律師協會/ Taiwan Criminal Defense Attorney Association