

Chairmen: Prof. Ken-ichi Hokao, Tohoku University
Prof. Tetsuo Yamato, Hokkaigakuen University

Reports:

1. Some Legal Problems of Dismissal for Redundancy, Centering on an Analysis and Study of Judicial Decisions.
Prof. Takashi Shimoi, Hokkaido University
2. Criteria for Dismissal of Workers in Manpower Adjustment and Problems Associated with Execution of Dismissal
Asst. Prof. Ken-ichi Ogawa, Senshu University Hokkaido Junior College
3. Regulations in Foreign Countries concerning Dismissal for Redundancy
Prof. Kishio Hobara, Hokkaido University

By Prof. KAZUHISA NAKAYAMA
KUNIYUKI MATSUO

7. Legal History, Sociology of Law and Legal Philosophy

Since information concerning the academic fields of legal history, sociology of law and legal philosophy is invariably limited to the trends of the respective fields, judging from the nature of studies conducted, presented here are objective data considered necessary regarding related documents, the situation surrounding respective academic societies, themes of reports submitted and outlines of the contents of the reports. Questions and answers as well as other related discussions on the reports are all omitted due to the limited space in this report.

A. Legal History

(Legal histories of Japan, the Orient and the West, and Roman Law)

Although five reports were announced on the common theme of "Fundamental Problems of Urban Legal History - Middle Ages and Modern Times" at the 26th study meeting of the Legal History Association (*Hōseishi Gakkai*) held at Kobe University in the fall of 1978, no specific unified theme was set up for the 1979 study meeting and reporters, as a result, picked free subjects.

The 31st general meeting of *the Legal History Association* was held for two days on April 2 and 3 in 1979 at the Kokugakuin University in Tokyo and the following reports were announced:

"The New Court System (*Kōkeshinsei*) and the Kamakura Shogunate," by Prof. Masao Mitobe (Kanto Gakuen College).

"*Enkiri* Temple* Law of Tokugawa Mantokuji Temple, in Comparison with That of Tokeiji Temple," by Asst. Prof. Akira Takagi (Kanto Junior College).

"The Criminal Code of Early Meiji Era and Chinese Law," by Mr. Masaru Nakayama (Kokugakuin University).

"Land Trial in Ching Dynasty," by Mr. Narimitsu Morita (Tokyo University).

"Pollock and Indian Law," by Prof. Toshio Yamazaki (Tokyo University).

"On *Diversorum Sententiae Patrum*," by Prof. Yoji Noguchi (Waseda University).

"Anti-Heretical Policy of Pope Innocentius III and 'Super Speculum' of Pope Honorius III" by Asst. Prof. Michihiko Fuchi (Tokyo Metropolitan University).

There was also a special lecture by Prof. Masajiro Takigawa (Kokugakuin University) on "Legal Significance of Various Ceremonies and Rites in connection with the Accession of a New Emperor (*Tennō*).” Takigawa made special note of the importance to delve into the various ceremonies to be solemnized on the oc-

* *Enkiri* temple, a Buddhist temple where, in feudal times, distressed wives sought refuge until divorce was obtained.

casion of the accession of a new emperor to the throne such as the enthronement ceremony (*Sokui-shiki*), *Ōnie-e*, *Niō-e* and the fete of *Yasoshima*, from the standpoint of the history of law in order to elucidate the legal character of the emperor during the dynastic period, especially during the early Heian Period.

The following reports were announced at the 27th study meeting of the Legal History Association held at the Osaka Municipal University for three days beginning October 13, 1979:

“On the Study of Ming Dynasty Laws during the Edo Period - Centering on Tsunanori Maeda and Yoshimune Tokugawa,” by Prof. Osamu Oba (Kansai University).

“An Examination on the Codification of the Japanese Codes (*Nihon-Ritsu*),” by Mr. Hiroshi Takashio (Kokugakuin University).

“On Clan Criminal Code in the Category of Official Command (*Osadamegaki*) of the Clan – Centering on the Official Command (*Okite*) of the Fukuyama Clan,” by Asst. Prof. Noriaki Hayashi (Shiga University).

“Legislative System in Connection with the Independence of the ‘Kommandogewalt’ (*Tōsuiken*),” by Mr. Shinpachiro Goto (Defence Research Institute).

“Vendetta in the Tang Age,” by Prof. Chofu Nunome (Osaka University).

“On Edictum Perpetuum in Roman Legal History,” by Asst. Prof. Tatsuya Yoshihara (Hiroshima University).

“Haus und Dorf Mitteleuropas in archäologischer Sicht,” by Prof. Sumio Miura (Kwansei Gakuin University).

“On the Concept of ‘Das gutes altes Recht’ and Problems relating to the Characters of the Mediaeval Law - As a Clue to the Study of F. Kern’s Theory,” by Asst. Prof. Hideo Iwano (Doshisha University).

In the field of the Legal History of Japan, Takashio in his report dealt with the ancient Japanese Codes, especially *Taihō-Ritsu* and *Yōrō-Ritsu*, he questioned whether the generally ac-

cepted evaluation of *Taihō-Ritsu* and *Yōrō-Ritsu* was appropriate, that the “*Ritsu*” law and “*Ryō*” law were different in their way of introduction, and that the “*Ritsu*” law was virtually a copy of the Tang Dynasty laws with the punitive sanctions mitigated by one or two degrees. While touching on the differences existing between *Taihō-Ritsu* and *Yōrō-Ritsu*, Takashio pointed out that the most outstanding features of the ancient Japanese Codes lie in the fact that the compilers took pains in making laws using the *Eikiritsusō*, an annotated edition of the Tang Dynasty, as a original text.

Mitobe in his report cited many instances that during the Kamakura period the imperial command (*Senji*), government messages (*Kansenji*), cabinet ordinances (*Dajōkanfu*), and message of ex-emperors (*Inzen*) promulgated by the imperial court were conveyed to the Kamakura Shogunate and that the Shogunate government had implemented these messages and ordinances among the immediate vassals of the Shogun. Of the new court laws, he pointed out, at least six were supposed to be transmitted to the Kamakura Shogunate and they were enforced among the vassals, thus exercising influence on the establishment of the laws for the Samurai classes. Mitobe's report also examined the implications that among the said provisions there were decrees issued to Yoritomo Minamoto, Yoritune Fujiwara and other generals of imperial blood to conduct “guard and arrest (*Tsuibu*).” Contending that there were some provisions in the new laws indicative of the position of the Shogunate in the administration of the state, Mitobe said he could agree with the theory of Dr. Ryosuke Ishii on the authorization of appointing the lords in the first year of *Bunji* (1185 AD), because judging from the provisions Yoritomo as the head of the Shogunate was granted the “right to guard the entire nation.” (Reference: “Study of New Court System during the Kamakura Period,” published by Sobunsha Publishing House in Tokyo).

Tagaki pointed out that the study of Mantokuji Temple in Joshu province, present Gunma Prefecture, as an *enkiri* (divorce) temple was far behind that of Tokeiji Temple of Kamakura, also

an *enkiri* temple. He described the actual situation involving the distressed wives seeking refuge at the temple and the temple-procedures for divorce on the basis of various historical documents. Takagi also referred to the unique character of Mantokuji Temple, instructions of Mantokuji Temple for negotiations, differences in the effect of the letters of divorce between the two temples, and the ways of protecting the two temples by the Samurai commissioner of shrines and temples.

Oba reported that the acceptance of the Ming laws during the Edo period was confined to academic studies in most cases. Of the two-volume “Private View on Various Ming Law Books” (*Minritsu Shōsho Shikō*), and another two-volume “Ming Law Reference and Quotation Books” (*Minritsu Shikō Inyō-shomoku*) authored by Lord of Kaga Clan Tsunanori Maeda, Oba referred to the *Minritsu Shōsho Shiko* which was a memorandum found in the course of collecting Ming law books. Oba also reported that Shogun Yoshimune Tokugawa’s interest in the Ming laws was aroused by Sashu Sakakibara, son of Koshu, Gakuzan Takase, Hokkei Ogyu and others, and that the “Japanese Interpretation of the Ming Laws” (*Minritsu Kokuji Kai*) by Sorai Ogyu could be meaningful when studied together with the “Ming Laws of Kyoho Edition,” (*Kyōho Kankō Minritsu*) by Hokkei. He also expressed his view that the “Some Thoughts on Ming Laws” (*Minritsu Ko*) was authored by Sorai as had been held before, and that the new theory holding Gakuzan Takase as its author was erroneous.

Hayashi reported that concerning clan criminal codes which belong to the category of “legal decrees by official in charge of suits” (*Kujikata Osadamegaki*), there have been the *Kujikata Osadamegaki* of the Fukui Clan, *Giteisho* (decrees) of the Kamayama Clan, *Bunka-Ritsu* (laws of the Bunka era) of the Morioka Clan, the laws (*Ritsu*) of the Tottori Clan, and the punishment decrees (*Oshioki Onkitei*) of the Matsushiro Clan, and that he had just discovered a criminal code of similar nature among documents relating to the Fukuyama Clan. The documents, owned by the Nakai Family Library, were found at the Archives attached

to the Fukuyama Municipal Castle Museum. The *Giteisho* of the Fukuyama Clan was made up of 43 articles in the first part and 44 articles in the second part, plus 22 additional articles. The first and second parts were overwhelmingly influenced by the second part of "*Kujikata Osadamegaki*". Through analyzing the position of the first part to be a criminal code, he pointed out the relationship between the law of the clan and the law of the Shogunate government.

Nakayama reported that many studies have been conducted on the relations between the clan laws under the Tokugawa Shogunate and the early Meiji Criminal Code, and between the Chinese laws centering on the Ming laws. Contending that the Ching law precedents, together with the Ming laws, exerted great influence on legislation and its implementation during the period under review, Nakayama referred to the relations between the judicial precedents of the Ching Dynasty and the early Meiji Criminal Code, such as the temporary criminal law, the outline of new laws, and revised judicial precedents on the basis of the Ching Dynasty Judicial Precedents Collection (*Shin Ritsu-Rei Isan*).

Goto attempted to elucidate the process of invoking the military command as part of the state law, while clarifying that the invocation of "Kommandogewalt" (*Tōsuiken*) of the emperor was carried out by military order issued by the special legislative system based on the independence of the "Kommandogewalt." He reported that according to the Meiji Constitution, the "Kommandogewalt," namely, the function of the emperor to command the military forces, was described as the Imperial authority of the emperor.

In the field of Oriental legal history, Nunome delved into the problem of vendettas during the Tang Dynasty, with *Hansandō* of Pai Ju-yi (*Hakkyoi*) dealing with the subject of vendettas. The Confucian scholars acknowledged and praised vendettas in a way, but the praise resulted in the approval of murder on the other hand, giving rise to a contradiction between morality (*Rei*) and penalty (*Kei*). There were no specific provisions in the Tang

laws distinguishing murder by vendetta from that for other reasons. Only in the Ming laws were there provisions aimed at reducing the sentences for those who had committed murder by vendetta was handled differently from ordinary murders. Against such a background, successive emperors of the Tang Dynasty found themselves in an embarrassing situation in dealing with vendetta murder cases. Taking up the problem of vendettas in the Tang Dynasty, Nunome attempted to throw an objective light on the judicial manner of handling vendetta cases.

Morita in his report attempted to probe into the principles of land applied to land ownership problems and legal procedures to solve land disputes by studying the judicial precedents in historical documents while touching on the state laws of the Ching Dynasty. He also took up cases of compromising verdicts where land laws were not applied, and tried to verify how and when such compromises were drawn. As a result of his study of land trials at that time, Morita concluded that in the field of legal procedures, the “Prinzip der Parteigleichheit” was not fully established.

Yamazaki dealt with Pollock, one of the renowned scholars who contributed toward establishing the English law of the latter part of the 19th century. In India at that time, laws were being codified in connection with the reorganization of colonial power in the aftermath of the Sepoy revolt, and it influenced English law. Yamazaki studied how the Indian law had come to give impetus to the formation of Pollock’s legal theory. He also studied what Pollock had thought of the Indian law. (Reference: An article in “Modern English Law” published in celebration of the 70th birthday of Prof. Rikizo Uchida, 1979, Seibundo Publishing Co., Tokyo).

In the field of Roman Law, Yoshihara held that the positioning of the edict system is necessary in studying the formation of Roman Law. In this respect, he followed the existing academic studies on the restructuring of “Edictum Perpetuum” edited by order of *Imperator* Hadrianus in the 2nd century.

In the field of European Legal History, Miura held in his report that modern archaeology plays the role of verifying written history in cooperation with the science of history, and that on the basis of his belief he attempted to grasp the changes evidenced in the houses and villages north of the Alps in analogical patterns by means of archaeological methods. In the case of dwelling houses, he said the extraordinary long and narrow strip housing structures had changed into smaller square houses of several square meters from about 3,000 BC, indicating a change from a large family pattern to a small family pattern. With regard to villages, he concluded that there were changes from the densely built-up village pattern to the Hof congregation-type village and then to the Esch-type village.

Iwano stated that it was quite doubtful whether disputes on the character of the western mediaeval law arose through common premises. Contending that clarification of the framework of theories of the respective contenders was necessary to effectively conduct discussions in the future, he attempted to arrange the general premises of respective disputants, especially the meaning of F. Kern's concept of "Das gutes altes Recht."

Noguchi said that the reform period of St. Gregorius VII in the latter part of the 11th century marked a turning point in the history of law, pointing out the fact that progressive collections of ecclesiastical laws were newly edited and compiled during this period. Taking up the first collection, *Diversorum Sententiae Patrum*, he referred to the period of its compilation and the question of compilers, and attempted to analyze the intent of the compilation, its transitory character, and its historical significance by studying its contents and comparing it with other collections which existed before and after.

Fuchi pointed out in his report that opinions were divided among scholars in their interpretation of the legislative background of *Super Speculum* (1219) of Pope Honorius III which banned Roman Law studies in Paris, and he arranged the varied views systematically. He also made it clear what meaning theological education and Roman Law education had for Pope Honorius III

in connection with the basic concept couched in the anti-pagan policy of Pope Innocentius III.

B. Sociology of Law

In commemoration of the 30th anniversary of the establishment of the *Japan Association of Sociology of Law*, the association held an academic convention in 1979 under the unified theme of "Thirty Years of the Sociology of Law in Japan."

Acknowledging that the debates on the *raison d'être* of this field of science and its systematic nature indicated its nature as a late comer and a young, developing science, the meeting engaged in an overall discussion on its future while looking back over the 30 years of postwar progress of the sociology of law in Japan.

The achievements of the meeting were rounded up in "Japan's Sociology of Law, in Commemoration of the 30th Anniversary of the Founding of the Japan Association of the Sociology of Law," edited by the Japan Association of the Sociology of Law and published by the Yuhikaku Publishing Co., Tokyo, 1979. It is made up of Part I, "The Sociology of Law, Part I," a record of the public lectures by three scholars, Prof. Takeyoshi Kawashima (Tokyo University), Prof. Tetsu Isomura (Kobe Gakuin University), and Prof. Inejiro Numata (Tokyo Metropolitan University), and Part II, Symposium on "Thirty Years of the Sociology of Law," consisting of a bird's eye view of the trends in this field by Prof. Nobuyoshi Toshitani (Tokyo University) entitled "Major Trends of Interest in the Field of Postwar Sociology of Law," and records of eight reports and related discussions on the relations of the sociology of law with various other fields.

Also included in it are nine essays dealing with various fields of the sociology of law which were not taken up in the meeting and other articles dealing with the relations between the sociology of law and other specific fields (sociology, social anthropology, cultural anthropology, economics, modern politics and science of history).

The academic convention of the society for 1979 was held at Rikkyo University in Tokyo on May 12 and 13. A total of 11 reports were read at three sub-committee meetings held on the first day, while the second-day session was devoted to the symposium entitled "Children and Law, from the Standpoints of Their Rights."

The First Subcommittee

"Division of Labor and Social Science," by Prof. Toshiro Fukushima (Tokyo Institute of Technology).

"On Modernization of Islamic Family Law - in the Case of Pakistan," by Prof. Michio Yuasa (Aichi Gakuin University).

"Basic Concept of Sociology of Law," by Prof. Kahei Rokumoto (Tokyo University).

"Structure of Legal System - Toward Establishment of Sociology of Law," by Prof. Zensuke Ishimura (Tokyo Metropolitan University).

1. At this time, when the growing division of labor in the academic field permeates the realm of social science, Fukushima in his report took up the question of what method we should depend on to develop the science of law, from a system of dogmas to that based on social pathology. He emphasized the need to study the theories on human behaviorism which belong to the basic theoretical field of social science and the point of contact between natural science and social science, adding that monadism is very important as a means to analyze human behavior. He also said that one clue to understanding the mechanism of court technology and the process of reaching a judgment can be obtained by studying such a monad.

2. From the standpoint of the modernization of Asian and African laws, the Yuasa's report investigated various problems related to the modernization of Islam marriage laws with Pakistan-Muslim family laws and judicial precedents as material. He then concluded that the modernization of the Pakistani marriage law

had proceeded against a background in which the western concept of values had already been established on the Indian sub-continent under the influence of English law, as evidenced by comparison with that of other countries, and that its progressive contents were due to this fact.

3. On the premise that clarification of the legal concept is an essential condition to ensure sociology of law as an empirical science and to promote its study effectively, and from the standpoint aimed at grasping something inherently legal, Rokumoto in his report divided the law into the control of human behavior and the maintenance of the norm. Rokumoto himself took the stand centering on the norm and advocated his own legal concept that theorization should include three elements, namely, “confirmation” that the norm is self-evident, “consistency” that the norm is appropriate empirically, and “applicability” that makes human deeds and relations realistic.

4. Ishimura in his report defined the system as a working unit, while establishing models of law from the standpoint of the “system theory” He then attempted to ascertain the inherent realm of sociology of law with these models.

The Second Subcommittee

“Support of Family and Inheritance Awareness, in the Case of Shimo Tateko District, Imada Town, Hyogo Prefecture,” by Prof. Shin Oikawa and Mr. Takashi Maruta (Kwansei Gakuin University).

“Actual Situation concerning Divorce Suits in England,” by Prof. Seiichi Isono (Kanagawa University).

“Japan’s Sociology of Law and Investigation into Agricultural Village Practices in China,” by Asst. Prof. Hikota Koguchi (Waseda University).

1. Oikawa and Maruta conducted an investigation in Shimo Tateko District Villages, Imada Town, villagers in the district are engaged in farming on the side and are dependent in large

measure on the ceramic industry for their household income. The reporters interviewed villagers about their way of supporting their families and their awareness of inheritance. On the basis of their findings, they attempted to analyze the legal awareness of the villagers in connection with the government policy concerning the "Third Overall National Development Program," which attaches importance to the concept of so-called permanent settlements.

2. Isono, in his report, emphasized that he had studied the report of the Bristol University staff, who had interviewed 60 "undefended divorce petitioners" as well as the report on the study of 81 registrars conducted by the Center for Socio-Legal Studies of Oxford University. (The investigation of Bristol University in question later resulted in the introduction of the special procedure leading to the overall realization of the number of undefended divorce suits since April, 1977). With these reports as material, Isono studied the problems relating to British divorce suits, the revision of the divorce law and the "special procedure" as well as related welfare services in England. He also referred to the significance this material has for this country.

3. Koguchi, in his report, attempted to clarify the present-day importance of the study conducted by Izutaro Suehiro in the 1940s on the farming village practices in Hua Bei district (north China). He sought to elucidate the significance of Suehiro's study in connection with the postwar discussions in the field of sociology of law. He analyzed the various achievements gained as a result of the investigation, as well as the special characters of the old Chinese society, adding that the "discontinuity theory" of sociology of law advocated by Suehiro in relation to the study of Chinese law still remains effective today viewed from the methodological standpoint.

The Third Subcommittee

"Study of Nursery Administration from the Viewpoint of Sociology of Law" by Mr. Hiroshi Oyama (Hosei University).

“Study of Physical Accident Cases involving Handicapped Children,” by Ms. Sayo Kuraoka (Seitoku Gakuen Junior College).

“The Right of Children to Claim Meeting and Contact with Their Parents,” by Prof. Nobuko Inako (Nihon Welfare (*Fukushi*) University).

“Children’s Allowance System and Their Rights — in Connection with the Horiki Suit,” by Mr. Masateru Kono (Okayama University).

1. A series of reports were submitted at the third subcommittee on nursery administration. As a result of his study on the actual situation and judicial precedents, Oyama advocated the need to introduce a new concept, that is, the right to claim “upbringing” in order to cope with various problems that have actually surfaced in connection with their admittance to nurseries.

In spite of the increasing dependence on unlicensed nurseries by those who have been denied entrance to public nurseries, it is generally maintained that the state is not liable for accidents that occur in unlicensed nurseries. To counter such a view, Oyama, in his report, asserted that the concept of the right in question, called the right to claim upbringing, can be an effective weapon in the way of clarifying where the responsibility lies in such a case.

2. Analyzing cases involving infringements on the lives of handicapped children, Kuraoka, in her report, pointed out that both the legal and administrative branches have been making light of the lives of these children. In order to overcome such a situation, she advocated a thorough structuring of a theory that would transcend the theory of fixed damages and would be endorsed by the development security theory. At the same time, she deployed a legal view on welfare facilities in which she advocated that the state and local public entities should be regarded as those obligated to supply services of facilities, nursery children being the recipients of such services, and the heads of the facilities as performers of the obligations based on the contract with those obligated.

3. Inako reported, on the basis of her years of study on the Soviet legal system, that the right to meet and contact (children), which has hitherto been held by divorced parents, should be regarded as a right on the part of the children in consideration of their growth and development. The proposal was designed to secure the (divorced) parents for the children, since the parents are essential to the growth and development of the children. She stated that the concrete execution of the right including its method of execution, etc. should be decided in accordance with the standard of the children's growth.

4. On the basis of his probe into actual situations requiring security, Kono criticized the adjustment of joint payments handed down in the judgement on the Horiki suit in the Osaka High Court. Children's allowance system in Japan is the "national minimum" for parents with many children, thus failing to meet the needs to support the children. He insisted that it is necessary to shift the existing system to a social minimum, which calls for allowances sufficient to match the needs of the family, and a new system for social support of the children.

Regarding the second-day session of the symposium, listing of the themes of the various reports is sufficient to summarize the contents. The reports were carried in the "Children and Law, from the Standpoint of their Rights," edited by the Japan Association of Sociology of Law and published by Yuhikaku Publishing Co., Tokyo, 1980.

"Introduction — Purpose of the Symposium," by Prof. Seiryō Ogawa (Nihon Social Enterprise (*Shakai Jigyō*) University).

"From Social Security Law," by Prof. Susumu Sato (Nihon Women's College).

"From Family Law," by Mrs. Taeko Nakamura (Tokyo Family Court).

"From Education Law," by Prof. Kenichi Nagai (Hosei University).

"From Juvenile Law," by Prof. Shinji Araki (Rikkyo University).

“From Labor Law,” by Mrs. Mutsuko Asakura (Tokyo Metropolitan University).

“From Tax and Finance Laws,” by Prof. Hirohisa Kitano (Nihon University).

“From an On-the-spot Standpoint: the Child Welfare Station,” by Mr. Masao Suzuki (Child Welfare Official).

“From an On-the-spot Standpoint: Juvenile Delinquency and Judicial Welfare,” by Mr. Tadayuki Akaba (Tokyo Family Court)

“From an On-the-spot Standpoint: Association to Protect Children,” by Shigero Kaneda (Executive Director of the Association to Protect Children).

This symposium was held in response to the United Nations declaration designating the year 1979 “The International Year of Children” on the 20th anniversary of the adoption of the Declaration of Children’s Rights at the United Nations General Assembly in 1959. Moves responding to the United Nations declaration were also seen in the ninth annual convention of the Japan Education Law Society held from March 31 through April 1 at Kanagawa University, and at the meeting of the Japan Education Society held at Kyushu University from August 28 through 30.

[Reference: Gist of Reports at the Academic Society, Sociology of Law, No. 31]

C. Legal Philosophy

The Japan Association of Legal Philosophy, in commemoration of the 30th anniversary of its founding, took up the unified theme of “Legal Philosophy in Japan” in its two academic meetings.

Academic circles, in Japan, concerned with the study of legal philosophy and the history of legal thoughts have so far mainly shown an interest in those of the western world, and have been rather in arrears in taking up such studies about this country. Against such a background, the Japan Association of Legal Philosophy took up the theme mentioned above.

More interest should have been taken in the study of legal thoughts inherent in this country in order that Japan’s study of such history might be further expanded, also Japan’s legal

philosophy should stand on its own feet departing from its general character of offering documentary interpretations of the western legal philosophy.

In accordance with the unified theme, an academic meeting was held at the Kyoto Prefectural Labor Hall on December 7 and 8, where the following reports were made.

"Systematic Nature of Modern Civil Law in the Kako's Legal Philosophy", by Prof. Shigeki Tanaka (Kwansei Gakuin University) His essay was renamed "Ontologische Dialektik und Rechtssystem bei Yujiro Kako."

"Legal thoughts of Amane Nishi", by Prof. Ryuichi Nagao (Tokyo University). The title was later changed to "AMANE NISHI on Man and Society."

"Azusa Ono", by Prof. Tomonosuke Ohashi (Hosei University). His essay title was changed to "A Dimension of AZUSA ONO's Legal Thought."

"Shigeru Nakajima and his Legal Philosophy of Social Solidarity", by Prof. Kuniyasu Take (Doshisha Women's University). Essay: Shigeru Nakajima, On his Social Christian Philosophy of Jurisprudence.

"Toshiyoshi Miyasawa," by Prof. Hideo Hara (Rissho University), Essay: Toshiyoshi Miyasawa – Theory and Practice.

"The Late Professor Kyo Tsunetō's Legal Philosophy, especially on the Essence of Law," by Prof. Tetsuo Yagi (Doshisha University).

Their reports were carried in the "Legal Philosophy in Japan," edited by the Japan Association of Legal Philosophy, published by Yuhikaku Publishing Co., Tokyo, 1979.

The academic rally of 1979 also took up the same theme, "Philosophy of Law in Japan," for two days on November 5 and 6 in Tokyo with the following reports:

"Legal Philosophy and Theory of Criminal Law of Dr. Kameji Kimura," by Prof. Heikichi Ono (Hiroshima University).

"Legal Philosophy of Kojiro Wada," by Prof. Tokuji Sato (Waseda University).

"Legal Philosophy of Amane Nishi", by Asst. Prof. Keisuke

Hasunuma (Kobe University).

“A Memorandum on Nobushige Hozumi’s Jurisprudence”, by Prof. Jun’ichi Aomi (Tokyo University).

“Legal Philosophy of Tomoo Odaka,” by Prof. Mitsukuni Yazaki (Osaka University).

In addition to the reports on the uniformed theme, there was a report by Lect. Isamu Yoshida (Kumamoto University) on “An Aspect of Max Weber’s Notion of ‘Rationalität’ in his Theory of Modern Law.” All these reports are expected to be carried in the “Philosophy of Law in Japan II,” to be edited by the Japan Association of Legal Philosophy.

Tanaka Report: Yujiro Kako (1905–1937) was a scholar of legal philosophy who studied under Kyo Tsuneto. His academic achievement as embodied in the “Basic Structure of Modern Law,” (published by Nihon Hyoron Publishing Co., Tokyo, 1964), is still alive today and taken up as a actual subject. Through Kako in the 1930s, one can fathom the permeation of idealism in Japan into the Marxism of those days. His academic achievement can be also regarded as a sort of meeting point of idealism and materialism, and as material for an analysis of academic philosophy, including legal philosophy which became firmly established in the Taisho Era. After analyzing his philosophy from the methodological position of ontological dialectics, Tanaka analyzed Kako’s system theory of modern civil law. Like Kiyoshi Miki (1897–1945) and Jun Tosaka (1900–1945), what Kako had learned from Marxism was after all the Marxist proposition that “consciousness is regulated by existence.” Tanaka then highly evaluated the view of Tadashi Kato (1906–1949) declaring that the philosophy of Kako and others was to abstract various ideas by twisting this Marxist proposition. In the light of the present situation concerning legal philosophy in Japan, which is unable to build up a legal system capable of overcoming the concept of a legal system Kako-like in quality, one cannot simply regard his stand as “valueless,” Tanaka concluded.

Nagao Report: According to Nagao, Amane Nishi (1829–1897) attempted to illustrate the outline of social theories on ethics, law, economy and military affairs while correlating the humanism of Confucianism with that of western philosophy. Nagao also maintained that Nishi endeavored to connect the idea affirming human desire, as in the thoughts of Sorai Ogyu or Bentham, with that asserting natural order, as seen in the thoughts of Chu-tzu or Grotius, and that he tried to compare and bridge the social thoughts of the east and the west. The reporter then termed Nishi representative of the enlightenment moves regarding “interest” as new justice. Picking up passages indicative of Nishi’s basic thoughts from some of his major works such as “*Seihō Rya-ku*”, “*Hyakuichi Shinron*”, “*Seisei Hatsuun*”, “*Jinsei Sanpō Setsu*”, “*Toei Mondō*”, “*Hyōbu Ron*”, and “*Genpo Teikō*”, Nagao attempted to trace Nishi’s ideological background. His ideological concept was based on his extensive observation of men obtained through his study of documents and his own experience. Nishi correlated various aspects of human nature thus recognized – (which, he maintained, was made up of four mental aptitudes, namely, sympathetic altruism, productive self-interest, competitive self-interest and competitive desire for fame) – with various areas of social life – (which he held was made up of Gemeinschaft-like families, a Gesellschaft-like bourgeois society, a constitutional state such as the thought of the ancient Chinese school Hoka (legalists), and an international society in the natural state of affairs). In this regard, Nagao concluded that it is not too much to regard Nishi as a humanist in many respects.

Ohashi Report: Ohashi took a stand that for all his outstanding activities in many fields and the important position he held in the history of political science, Azusa Ono (1852–1886) had not accomplished academic work worthy of the name of legal philosophy in Japan. The reporter dealt with the posture of Ono toward academism, that is, his manner of learning instead of dealing with the theoretical framework of his thought relating to legal concepts, views on law and ethics and legalism.

Take Report: Shigeru Nakajima (1888–1946) was one of the leading scholars in the field of legal philosophy from the Taisho Era (1912–1926) through the early Showa Era (1926–). He was a scholar belonging to the school of Kant, an advocate of legal socialization, an institutional theory of a multi-lateral state, and a devotee of social christianity. (major works: “Social Philosophical Jurisprudence” (*Shakai Tetsugaku-teki Hōrigaku*), published by Iwanami Shoten Publishing Co., 1933, and “Jurisprudence (*Hōrigaku*)” published by Risosha Publishing House in Tokyo, 1941). The reporter maintained that the legal philosophy and jurisprudence are called upon to determine the standards on the basis of which the state and mankind in international society realize the combination and solidarity to perfect intrinsic human characters, while the law is commissioned with the task of contributing toward a realization of the will to help the state execute its functions. From such a standpoint, Take analyzed the ideological background and structure of the legal philosophy of Shigeru Nakajima.

Hara Report: Toshiyoshi Miyasawa (1899–1976) was both a scholar of the constitution and an excellent philosopher of law. Contending that Miyasawa of all scholars in Japan had best understood the theory of Kelsen, Hara attempted to abstract his schizophrenic expressions as witnessed in his ideologically opportunist attitude.

Yagi Report: Kyo Tsuneto (1888–1967) contributed a great deal toward the development of philosophy of law in Japan since the end of the Taisho Era, and also played an important part in postwar years as a leader in the academic circles of legal philosophy. Yagi pointed out that it is not an easy task to follow his theory of legal philosophy since he had not published works indicative of his own systems of learning. On the understanding that his legal philosophy had always been based on the theories of essence and values of law, Yagi tried to probe into the principles of the essence of law of Tsuneto before World War II, centering on the two theses “The Essence of Law and How to Grasp It,” (1932) and “The

Essence of Law" (1935–1936). The key to solve the essence of Tsuneto's legal philosophy, he said, is to untie the knot binding his theory on values and essence of law. Yagi concluded that any attempt to probe his theory on essence of law would be lopsided, calling for further study on it in relation to the theory of values of law.

[Reference: "Japan's Legal Philosophy I," 1980]

By Prof. TOKUJI SATO
TAKAYOSHI NISHIMURA

8. International Law and Comparative Law

a. International Law, Public and Private

The Spring Congress of *the International Law Association* was held at Tsudajuku University on May 1, 1979.

The following reports were made on the respective subjects.

"Disarmament and Security of Non-Nuclear-Weapon States," by Asst. Prof. Mitsuru Kurosawa of Niigata University.

"Economic Coercion and International Law," by Prof. Eiichi Fukatsu of Nihon University.

"International Problems Arising from Unilateral Cancellation of Concession Agreements," by Prof. Shigeo Kawagishi of Kobe Gakuin University.

"Theory of Private International Law of Friedrich Karl von Savigny," by Asst. Prof. Yoshiaki Sakurada of Hokkaido University.

The Autumn Congress of *the International Law Association* was held at Kyoto University from October 20 through 21.

The First Day. Unified Theme – "Law and Politics surrounding Japan - U.S. Trade Relations."

Reports were made as follows: