

and that effective legal resolution be made.

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## 7. Legal History, Sociology of Law and Legal Philosophy

### A. Legal History

The 33rd general meeting of *the Japan Legal History Association* was held at Tokyo University from Apr. 1 through Apr. 3, 1981, and the 29th study meeting of the association at Ritsumeikan University for three days from Oct. 10 through 12. The programs of the two meetings were as follows:

#### *The 33rd General Meeting:*

The first day reports and reporters.

1. "Downfall of Numidia Kingdom," by Nobuko Kurita, LL.M., of Tokyo University.
2. "Phratia of Athens in the Classical Age — Centering on the Regulations of Entry in the Family Register," by Assoc. Prof. Sadao Ito of Tokyo University.
3. "Savigny's Allgemeine Landrecht," by Ryuichi Noda, LL. M., Kyushu University.
4. "Land · Landrecht · Landfriede — A Clue to Historical Reconstruction of O. Brunner's 'Land Theory,' " by Prof. Takeshi Ishikawa of Hokkaido University.
5. "Meaning of 'Subu'\* in the Japanese Legal History — in connection with Division into Periods and Collective Thought," by Prof. Ryosuke Ishii of Soka University.

The Second Day Reports and Reporters.

1. "Introduction of Extinguishment of the Headship of a House

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\* "Subu" literally means general control and jurisdiction in Japanese.

(ie) in the Outline of Revision of Civil Code and its Significance,” by Kayoko Kondo, LL.M., Osaka University.

2. “Act concerning Judicial Divorce System in the Early Meiji Era,” by Itaru Yamanaka, LL. M., Kyushu University.

3. “Urban Structure in Middle Age Kamakura,” by Prof. Susumu Ishii of Tokyo University.

4. “On Chang Sui of the Ch’ing Dynasity,” by Prof. Yuichi Saeki of Tokyo University.

5. “On ‘Kyogaku’ Education Rules and *Shodo* College—*Shodo* College Regulations in the 17th Century Li Dynasty,” by Prof. Manabu Watanabe of Musashi University.

On the third day, the participants went on an inspection tour.

### ***The 29th Study Meeting:***

The first day reports and reporters were as follows:

1. “Systematization of Ordinances and Laws concerning Administrative and Police Control in Early Meiji Era — From *‘Ishiki-Kaii Jorei’* to Offense Against Police Regulations in the Book IV of the Old Criminal Code,” by Makoto Uchida, LL.M., Waseda University.

2. “Significance of Reform of Legal Steps Involving Gold Affairs in the 14th Year of Tempo,” by Fumio Jinbo LL. M., Nagoya University.

3. “On Liber Augstalis,” by Prof. Masahata Kubo of Kokugakuin University.

Special Lecture by Karl Kroeschell of Freiburg University on “Germanisches Recht — Ein Forschungsproblem.”

The Second Day.

1. “The Position of a Female Head of the Family whose Husband Assumed her Family Name upon Marriage,” by Reiko Shiraishi, LL. M., Osaka University.

2. “On Gesamteigentum (Collective Ownership) of Farmland,” by Prof. Kaisaku Kumagai of Osaka University.

3. “Laws by Men of Learning, Scholars and Learned Jurists and ‘European Law,’ — As Introduction to Historical Sociology of Law,” by Assoc. Prof. Rinitsu Kawakami of Kyoto University.

4. "On Mommsen Edition of 'Digesta,' " by Assoc. Prof. Shigeo Nishimura of Tohoku University.
5. "On Study of Legal History in China Today," by Prof. Shuzo Shiga of Tokyo University and Lect. Makoto Okano of Meiji University.

On the third day, participants went out on an inspection tour.

As is evident from this schedule, the general meeting of the Japan Legal History Association was highlighted by individual reports in respective specialized fields, though there were no interdisciplinary connections among those reports. In relation to other fields of basic law studies, the lack of a uniformed theme was particularly conspicuous. There ought to be a place for discussion of various problems common to the study of legal history including the question of methodology.

On the other hand, the academic circle in this field has provided young researchers with opportunities to report their academic achievements.

#### a) Legal History of Japan

Ryosuke Ishii in his report covering the entire periods of the Japanese legal history attempted to systematize the legal history of Japan from ancient to modern times with the concept of "Subu," and ascertain the Japanese group ideology.

In the field of the medieval age, Susumu Ishii in his report re-structured the actual state of the neighboring areas of medieval Kamakura, which he regarded as a kind of fort city, and made clear their relationship with the central part of Kamakura.

In the field of the modern ages, the Kumagai report illustrated cases in which arable land such as paddy fields was the subject of Gesamteigentum (collective ownership), investigating into the background leading to the collective ownership of farming land.

The Jinbo report tackled the contents of the revised law on gold affairs in May in the 14th year of Tempo (1843), clarifying the significance of the Tempo reform while taking into account its background on the basis of political history.

In the field of the Meiji era and after, the Uchida report traced

out the course of change from the Ishiki Kaii Jorei to the Offense Against Police Regulations in the old Criminal Code in the establishment of the police system.

The Yamanaka report presented a case study based on an original document — a civil decision by the Kumamoto district court in connection with the divorce requested by the side of a wife which was admitted under the judicial divorce system announced by a cabinet decree in the sixth year of Meiji (1873).

The Kondo report dealt with various processes from the abolition of the “Extinguishment of the Headship of a House (*ie*)” (denial of homestead) to the introduction of the “Extinguishment of the Headship of a House (*ie*)” (adoption of homestead) under the revised outline of the Civil Code, in connection with the development of capitalism and the call for maintenance of the house (*ie*) system.

The Shiraishi report studied the changes of the position of a female head of the family whose husband assumed her family name upon marriage from the old Civil Code of 1890 through the Meiji Civil Code and the Family Register Act of 1914, and delved into the causes of those changes from the standpoint of property problems involving husband and wife.

#### b) Legal History of the Orient

Reports by Saheki and Watanabe dealt with individual problems, while the report by Shiga and Okano analyzed the situation in present-day China of the study of legal history on the basis of recent publications.

#### c) Legal History of the West

There were three reports dealing with ancient times.

The Ito report, dealing with the entry into the family register of the quasi blood-tie group *Phratia* in Athens, studied its regulations and implementation, and tried to analyze the inner change in the Greek Polis of the fifth century B.C.

With regard to Rome, the Kurita report contended that the collapse of the Numidia Kingdom initiated by Caesar was due to the emergence of various contradictions inherent in the overseas

rule pattern of the Republican Period in the process of changing from republican to imperial rule, and delved into the attempt to overcome those contradictions emerging from the downfall of the Numidia Kingdom.

The Nishimura report studied, in concrete terms with legal texts, the different reading in the popular edition entered in the Gebauer edition, which introduced the academic trends concerning the *Digesta* of the Mommsen edition based on the Florence manuscript.

The Kubo report delved into the significance of the legal history of the Legal Code *Die Konstitutionen von Melfi* — *Liber Augustalis* proclaimed by Emperor Friedrich II of the Holy Roman Empire in 1131.

The Ishikawa report reconstructed O. Brunner's "Land Theory" which occupied an important position in western academic circles involved in medieval history in the present century and which has recently become the subject of criticism, and made a critical study of the theories of Terushiro Sera and Junichi Murakami through the work of reconstructing Brunner's land theory.

The Kawakami report dealt with the formation, course of progress and significance of the laws by men of learning from the standpoint of the roles played by universities and the classes of learned men and jurists.

The Noda report is one of the individual studies which have become the subject of special attention recently in Japan's academic circles involved in the legal history of the West. On the basis of a note by a student about the Savigny *Allgemeine Landrecht* (ALR) in the summer term of 1924, Noda outlined the purpose, method and subject as well as arrangement of the lecture and established Savigny's evaluation of ALR, and then elucidated the relationship between Savigny's legal theory and the actual legal state of affairs in those days.

Another outstanding event featuring the trends of the academic circles under review was the special lecture by guest speaker Prof. K. Kroeschell of Freiburg University at the 29th Study Meeting of the Association. The professor delivered lectures entitled "Justie-

sachen und Polizeisachen" in Tokyo, Sapporo and Kyoto. The lecture was translated into Japanese by Prof. Junichi Murakami of Tokyo University and carried in the Journal of the Jurisprudence Association, Vol. 99, No. 9.

## B. Sociology of Law

*Japanese Association of Sociology of Law* held its 1981 academic meeting on May 16 and 17 at Kanagawa University. The first day session was devoted to reports at subcommittee meetings and the second day to a symposium under a unified theme.

(1) Symposium: Unified Theme on "Some Problems of Budgetary Process."

The symposium was made up of major reports, supplementary reports and discussions.

### I. Major reports.

"Budgetary Process and Government Structure, " by Prof. Naoki Kobayashi of Tokyo University.

"The Characteristic Features of National Grant," by Prof. Ken-ichi Miyamoto of Osaka Municipal University.

"Treasury Loans and Investment," by Prof. Tatsuo Ozawa of Musashi University.

"Legal Control of Government Fiscal Activities," by Prof. Hirohisa Kitano of Nihon University.

### II. Supplementary reports.

"Local Finance," by Prof. Kenji Yamashita of Ritsumeikan University.

"Über die Rechtliche Probleme der Beiträge," by Assoc. Prof. Yoshikazu Miki of Shizuoka University.

General roundup by Assoc. Prof. Toshiro Fuke of Nagoya University.

### III. Discussions

Kobayashi in his report pointed out that the most important mission of the Japanese government was to correct the fiscal imbalance, but national spending has been increasing, especially in the field of defense. To overcome this situation, he said, it is nec-

essary for the nation to adopt an independent posture, that is, to realize fiscal democracy.

The Miyamoto report pointed out that state subsidies, as a means of political stability, lead to “fertilizing favorable voting constituencies,” illustrating the actual state of political corruption and central control. He then offered concrete reform plans aimed at realizing self-autonomy by the people to settle the present state of affairs.

The Kitano report stated that increased defense spending constitutes a violation of the people’s right to live, and that the people as taxpayers must watch national finances using legal methods for the purpose of defending their basic rights. Under the present Constitution, he said, taxes should not be divided into the two phases of tax collection and tax spending, and should the government put the taxes collected to use in an illegal way the nation as tax payers can sue the state on the grounds that their basic rights are being violated.

## (2) Subcommittee Meetings

Reports and question and answer sessions were conducted at four subcommittee meetings. The outline of the reports and the questions and answers carried in “Finance and Law — Sociology of Law” edited by the Japan Association of Sociology of Law, No. 34, pp 175–184.

Following are the titles of reports and reporters:

### I. The first subcommittee

“Necessity of a Study Standing on the Forensic Human Engineering, centering on Negligence in Labor Practices”

Introductory Remarks by Prof. Hiroshi Nozawa of Kanagawa University.

“Human Information Processing in Ship Manoeuvring Work,” by Nobuo Ohashi, member of Maritime Labor Research Institute.

“Liability for Negligence Viewed from Human Engineering,” by Sadao Horino of Kanagawa University.

“Theories between Criminal Negligence and Forensic Human Factors,” by Assoc. Prof. Madoka Nagai of Kanagawa University.

## II. The Second Subcommittee

“Three Types of Asian Law,” by Nobuyuki Yasuda of the Asian Economy Research Institute.

“Afghanistan Revolution and Land Reform Act,” by Prof. Mitsue Kobayashi of Ibaraki University.

## III. The Third Subcommittee

“Succession of Farming Households in Europe – Actual Surveys in France and West Germany”

Introductory Remarks by Prof. Yozo Watanabe of Tokyo University.

“Succession of Farming Houses in France,” by Prof. Yonosuke Inamoto of Tokyo University, Assoc. Prof. Sumitaka Harada of Tokyo University of Economics and Assoc. Prof. Kaoru Kamata of Waseda University.

“Succession of Farming Households in West Germany,” by Prof. Teruaki Tayama of Waseda University, Jungnickel, instructor of Tokyo University, and Prof. Nobuyoshi Toshitani of Tokyo University.

“Comparison Between Succession of West German Farming Households and That of French Farming Households,” by Prof. Nobuyoshi Toshitani of Tokyo University.

## IV. The Fourth Subcommittee

“Planning and Law”

“Japan,” by Prof. Keiji Nagara of Ryukoku University.

“Federal Republic of Germany,” by Lect. Hiroshi Murakami of Kagoshima University.

“France,” by Assoc. Prof. Takahiro Mikami.

“United States,” by Assoc. Prof. Isao Kaminaga of Aoyama Gakuin University.

“United Kingdom,” by Assoc. Prof. Michiatsu Kaino of Nagoya University.

“Soviet Union,” by Prof. Tsuneo Inako of Nagoya University.

## C. Legal Philosophy

*The Japan Association of Legal Philosophy* held its 1980 an-



nual academic meeting at Fukuoka University on Nov. 15 and 16 under the unified theme of "Law and Language."

#### I. The First Day Session

"On J. Bentham's Criticism of the Common Law," by Assoc. Prof. Kozo Ishii of Ryukoku University.

"Wille und Sprache in Kelsen," by Lect. Keiichiro Tsuchiya of Meiji University.

"Some Linguistic Aspects of the Principle: 'Nulla Poena Sine Lege,'" by Prof. Hideo Uematsu of Okayama University.

"Recht und Sprache in der Informationsgesellschaft," by Prof. Yuji Furubayashi of Fukuoka University.

#### II. The Second Day Session

"Law and Speech Act," by Assoc. Prof. Yasutomo Morigiwa of Nagoya University.

"Law, Language Systems and Life Styles," by Prof. Masamichi Mori of Hokkaido University.

"Law and Natural Language," by Prof. Yujiro Nakamura of Meiji University.

The gists of some of the reports are as follows:

In the place, the report of Prof. Kozo Ishii was outside the realm of the unified theme.

Tsuchiya in his report stated that the legal norm is one of the multilateral decision relationships in the system context called language after studying the legal histories of Hegel, Hume and Pascal, beginning with the study of the "Meaning Production Theory," based on law norm in the Kelsen legal philosophy and studying the speech acts theory of Searl.

Uematsu in his report introduced the contention of Viehweg from the standpoints of the concepts of rhetoric language and non-rhetoric language and pointed out that opinions concerning the principle of legality (the principle of *nulla poena sine lege*) and the concept of language behind it are based on what Viehweg called the concept of non-rhetoric language.

The Morigiwa report touched on the speech act of Austin who exerted influence on the theoretical concept of Hart, and stated that Hart's theory on the speech system was one answer to the

question of the possibility of legal speech acts. From this standpoint, he explained the characteristics of Hart's legal theory.

Moriya in his report covered the Hart theory on the effect of law, Wittgenstein's theory on life styles, the legal way of thinking and the legal systems.

[Reference: "Law and Language — Annual Bulletin of the Japan Association of Legal Philosophy, 1980]

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## 8. International Law

The Spring Congress of *the Japanese Association of International Law* was held at the International Christian University on May 17, 1981. The following reports were made on respective subjects:

"General Most-Favored-Nation Clause of the General Agreement on Tariffs and Trade and the North-South Problem," by Assoc. Prof. Haruo Sawake of Nagoya University.

"The Interest Analysis in American Conflicts Law," by Prof. Keishin Sunakawa of Ryukyu University.

"Problems on Succession of States Relating to Concession — Formation and Development of the Principle of Respecting Vested Rights," by Assoc. Prof. Toshitaka Morikawa of Yamagata University.

"Vienna Convention on Succession of States in respect of Treaties — Its Significance and an Appraisal," by Prof. Yoshihiko Ogawa of Kwansei Gakuin University.

The Autumn Congress of the *Japanese Association of International Law* was held at Hiroshima University on Oct. 17 and 18. The reports presented at the Congress under the unified theme of