

with the Latest Trends in Austria, West Germany and Switzerland,” by Prof. Shoichi Kidana of Ritsumeikan University.

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## 9. Comparative Law

*The Japan Society of Comparative Law* held its 44th general meeting at Gakushuin University on May 9 and 10. The titles of reports and reporters are as follows:

### [The First Day Session and the Morning Session of the Second Day]

A symposium on “A Comparative Study of Privacy Protection Laws” was held on the first day, May 9, and on the morning of the second day, May 10.

1. General remarks by Prof. Masao Horibe of Hitotsubashi University.

Considerable attention has been focussed in Japan on the question of privacy from the political, social and academic standpoints. The government set up the Committee on the Protection of Privacy. Moves dealing with this issue have become very active, especially in connection with the proposed freedom of information act now under discussion, and it is socially significant that the Association has taken up the issue in its symposium entitled “A Comparative Study of Privacy Protection Laws.” The items of study common to various countries which were taken up in this symposium are summed up as follows:

I. Development of the legal concept of interests to be protected which are common to each country, its legal formulation, characteristics, etc.

II. Legislative process of protection statutes or questions under

discussion.

III. Provisions of statutes or questions under discussion.

1. Scope of Regulation.

(1) Regulations of (i) Public Sector and (ii) Private Sector, or (iii) Both.

(2) (i) Automatic Data Processing Only or (ii) Automatic and Manual System.

(3) (i) Data Relating to Individuals Only or (ii) Data Relating to Individuals, Bodies and Associations.

2. Licensing, Authorization or Registration of Systems.

3. Limitation of collecting and inputting certain kinds of data.

4. Disclosure limitation.

5. Maintenance and control of data — preservation of accuracy and data safeguards.

6. Publication of systems.

7. Individual's rights — (1) right of access to data, (2) right to challenge inaccurate, incomplete or outdated data, (3) exemptions, and (4) complaints.

8. Regulation of processing on commission.

9. Competent authorities.

10. Other matters — (1) regulation of processing abroad, (2) criminal sanctions, and (3) damages.

2. Sweden, by Prof. Shohachiro Hishiki of Senshu University.

Prof. Hishiki dealt with the legislative background of the Data Law (Datalagen 1973: 286) adopted in May 1973 in Sweden, and its process, composition and scope of application. In particular, he reported on the system of the data inspection agency (Datainspektionen) designed to supervise the implementation of the Data Law, the responsibility of those registering the data (registeransvarige), and violations and sanction concerning the Data Law and the principle of public access to official materials and computers.

3. The United States, by Assoc. Prof. Masanari Sakamoto of Hiroshima University.

Prof. Sakamoto discussed the legislative development of the protection of privacy in American law in recent years. He reported on (1) the Fair Credit Reporting Act of 1970, (2) the Federal Privacy Act of 1974, and (3) the Right to Financial Privacy Act of 1978.

In conclusion, he stated that those laws were by-products of compromise, resembling more or less a bamboo basket containing many loopholes, adding that if there is something we can learn from those American laws it is their shortcomings rather than their strong points.

4. West Germany (Bundesrepublik Deutschland), by Prof. Tomoyuki Ota of Tohoku University.

Since many persons had already introduced the legislative process and contents of the provisions of the West German Federal Information Protection Law (Bundesdatenschutzgesetz), Prof. Ota in his report devoted himself to (1) the changes in the discussions in West Germany on the subject of protection in the Federal Information Protection Law.

First, he took up the leading case, which decided on the permissible scope of data processing, that is, the decision of the Federal Constitutional Court (Bundesverfassungsgerichtshof) on July 16, 1969 (the Mikrozensus case) and the decision by the same court on Jan. 15, 1970 (the Scheidungsakten case), and then studied sociologist Dr. Müller's concept of Privatsphäre.

Prof. Ota said that the concept of Privatsphäre cannot be used as a starting point for making standards of the permissible scope of data processing and that what is important is to study in concrete terms what disadvantages an individual could suffer by data processing. Based on this standpoint, he introduced the opinion of Dr. Mallmann.

He then reported on his study of the meaning of the permissible requirements for data processing in the West German Information Protection Law, in particular, the transmission of information, dividing it into (a) data processing by government offices and other public bodies and (b) processing by non-official bodies.

5. France, by Assoc. Prof. Kazuteru Tagaya of Chiba University.

Prof. Tagaya introduced the S.A.F.A.R.I. plan which promoted the legislation of the law of Jan. 6, 1978 concerning informatique, fichiers, and libertés, called 1978 Law for short (Loi No. 78-17, Journal Officiel de la République Française 7 janvier p. 227), and the decision made by Conseil d'État on Feb. 13, 1976.

In particular, he introduced the contents of the regulations of the law. He also probed into the Commission Nationale de l'Informatique et des Libertés, a regulatory organ relating to the establishment of the 'informations nominatives' processing system under the said law. He also made a study of the provisions concerning the management of the information processing system.

He concluded that what position the 1978 Law would assume as a privacy protection law would be decided in the future by the Commission Nationale de l'Informatique et des Libertés.

6. United Kingdom, by Assoc. Prof. Kazuyuki Iitsuka of Otaru University of Commerce.

As of May, 1981, there was no law that could be called a privacy act. In this regard, his report studied the development in the United Kingdom of legal concepts concerning the object of legal protection in the doctrine of privacy, its legal composition and characteristics. He then introduced legislative efforts in the U.K. for a data protection law.

He dealt with (1) bills proposed by Members of Parliament including (a) the Data Surveillance Bill of 1969, and (b) the Control of Personal Information Bill 1971, and (2) the Report of the Committee on Privacy, 1972, (the Younger Commission), (3) the Government's White Paper Computers and Privacy, and its supplement Computers: Safeguards for Privacy, and (4) the Report of the Committee on Data Protection 1978.

Regarding the Report of the Committee on Data Protection as an important document winding up the discussions on data protection in England, he probed into the structure of the Data Protection Act contemplated in this report, dividing it into 1) basic concepts, 2) purpose, principle and standard of the statute law, 3) scope of the subjects of the regulations, 4) establishment

of a system, 5) management code, 6) supervisory organ, and others.

7. The Soviet Union, by Prof. Tsuneo Inako of Nagoya University.

From about the middle of the 1970s the need for protecting privacy has been studied in the Soviet Union in line with the progress of computers, but no legislation has yet been made. The question of the protection of privacy has come into limelight as the number of laws providing for protecting privacy has increased.

In the Soviet Union it has been pointed out since 1970s that there is need to restrict infringements on privacy likely to occur from the automatic management system "Residents" designed to offer social and dynamic demographical data. A.B. Vengerov, the foremost authority in this field, insists that strict regulations be imposed on the System "Residents" by law.

With the popularity of computers, those handling the terminals have access to information about individuals. Under the present laws they are obligated to protect privacy, but since there are no provisions calling for punishment, V.N. Belov has proposed that provisions be added to the Criminal Code to punish, criminally, "the disclosure of an individual's information recorded in a computer."

8. Japan, by Prof. Masao Horibe of Hitotsubashi University.

An overall law calling for the protection of privacy has not yet been legislated in Japan. It was by a decision made in the Tokyo District Court, Sept. 28, 1964, that the right of privacy was actually recognized in Japan. In the so-called "After the Banquet" case, it was considered that the right of privacy is subject to protection by the law of tort.

In response to the request of the Director-General of the Administrative Management Agency, the Commission for Administrative Management and Inspection submitted an interim report on Apr. 9, 1975, concerning "the measure to be taken to protect privacy in relation to the utilization of computers in government agencies." The following concluding part of the report is particu-

larly important.

“The Commission subsequently deliberated on the matter, but found it difficult to reach an immediate conclusion, as (i) the question involved a wide range of related issues requiring further study, (ii) little information was available on the practices under the privacy laws enacted in Sweden and the United States, neither of which had been implemented on a full scale, and (iii) further observation of the trends in public opinion with respect to the balancing of the individual’s interest against that of the society was deemed necessary. Accordingly, the Commission decided to submit an interim report in lieu of final recommendations, clarifying the issues and examining possible measures to be taken.”

#### [The Afternoon Session of the Second Day]

##### —*Anglo-American Law Division*—

1. “The Canadian System of Human Rights Protection,” by Prof. Satoru Osanai of Chuo University.
2. “The Modern Bill of Rights in the United Kingdom,” by Lect. Makitaro Hotta of Kyoritsu Women’s College.

##### —*Socialist Law Division*—

1. “The Legal Status of Trade Union in Poland After the Gransk Agreement of 1980,” by Teruji Suzuki, member of the Soviet East Europe Trade Association.
2. “On the Legal Situation of Trade Union in U.S.S.R.,” by Prof. Kenjiro Nakamura of Kagawa University.

##### —*Continental Law Division*—

1. “Die Entwicklung des Konsumentenkreditrechts in der Bundesrepublik Deutschland,” by Assoc. Prof. Satoshi Ueki of Shiga University.
2. “The French Civil Code and Agricultural Land Leasing,” by Assoc. Prof. Sumitaka Harada of Tokyo College of Economics.

*The Japanese American Society for Legal Studies* held its 18th general meeting at Seijo University in Tokyo on May 8,

1981. The titles of the reports and the reporters are as follows:

1. "On the Scope of Autonomous Legislation," by Prof. Hiroshi Shiono of Tokyo University.

2. "Local Autonomy in the United States," by Prof. Sho Sato of University of California.

3. "Sex Discrimination and the United States Constitution," by Prof. Leo Kanowitz of University of California.

4. "Trends of the Discussions on the So-called 'Right to Die,'" by Prof. Koichi Bai of Tokyo Metropolitan University.

5. "Principle of Equal Protection and Standards of Review – Trends in Decisions at Burger Court," by Lect. Hidenori Tomatsu of Seijo University.

6. "Present Legal Theories Concerning Political Problems in the U.S.," by Lect. Setsu Kobayashi of Keio University.

7. "The Trend of American Cases Concerning the 1958 New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958)," by Assoc. Prof. Kazuo Iwasaki of Ehime University.

8. "Conflicts between Japanese and American Nationality Acts," by Prof. Yoshio Hagino of Nanzan University.

*The Franco-Japanese Law Association (La Société franco-japonaise de Science juridique)* held its 20th annual general meeting at Hongo Gakushi Kaikan Hall, Tokyo, on Mar. 13, 1981. Following a business meeting, Assoc. Prof. Mitsuo Kobayakawa of Tokyo University made a report entitled "Administrative Law Reform by Barre Government."

The association also held its 21st regular general meeting at Gakushi Kaikan Hall in Tokyo on Oct. 23, 1981. Following a business meeting, Prof. Takayasu Okushima of Waseda University made a report on "Latest Trends of French Law of Enterprise."

*The Nichi-Doku-Hogaku-Kai (Japanisch-Deutsche Gesellschaft für Rechtswissenschaft)* held its 1981 general meeting at Deutsches Kulturzentrum in Tokyo on Sept. 30, 1981. Prof. Karl Kroeschell of Freiburg University delivered a lecture entitled "Die Deutsche

Rechtswissenschaft und der Nationalsozialismus.”

*The Japan Association of EC Studies* held its second annual meeting at Gakushuin University on Nov. 7 and 8, 1981. Reports were as follows:

**[The First Day Session]**

1. “The European Community and the Eurosociqlism under the Influence of French Political Change,” by Assoc. Prof. Masanori Maeda of Tohoku Social Welfare University.

2. “The First Ten Years of Political Co-operation by the Member States of the European Communities,” by Assoc. Prof. Toshiro Tanaka of Keio University.

3. “EC Anti-Dumping Rules — the EEC Regulation 3017/79,” by Prof. Takeshi Saito of Ritsumeikan University.

4. “Interpretation of Brussels Convention on International Civil Procedure,” by Prof. Masaru Nishi of Kobe University.

Edmund Wellenstein, special adviser to the EC Commission, delivered a special lecture entitled “Japan-EC Relations and the Framework of the EC External Policy.”

5. “Comparison of Automobile Industry Cities in Japan and West Germany,” by Assoc. Prof. Takashi Matsugi of Nagoya University.

**[The Second Day Session]**

A symposium on “Labor Mobility in EC” was held, participated in by the following reporters:

1. “EC Legislations of Freedom of Movement for Workers,” by Lect. Tsuyoshi Ogi of Saitama University.

2. “Political and Social Problems of Migrant Workers — The Case of the Federal Republic of Germany,” by Margarete Sawada of Tsukuba University.

3. “Economic Aspects of European Labor Problem — centering on West Germany,” by Assoc. Prof. Haruo Oba of Kokushikan University.

4. “Socio-Economic Effects of Manpower Emigration of



Developing Countries on Their National Economy – The Case of Maghrebin Workers in the EEC,” by Lect. Makoto Katsumata of Trade Training Center.

By Assoc. Prof. MICHITARO URAKAWA  
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