

niversary of the founding of the Japan Labor Law Association, 12 volumes had been published as of December, 1983. The four volumes published in 1982 include:

Vol. 7: “Unfair Labor Practices I”

Vol. 8: “Unfair Labor Practices II”

Vol. 9: “Legal Principle on the Protection of Workers”

Vol. 10: “Labor Contracts and Work Rules”

By Prof. KAZUHISA NAKAYAMA

KUNIYUKI MATSUO

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

### a. Legal History

The 34th general meeting of *the Japan Legal History Association* was held at Tokyo Aoyama Kaikan Hall on Apr. 6 and 7, and the 30th Study Meeting of the association at Kansai University on Oct. 9 and 10, 1982. The programs of the two meetings were as follows:

The 34th General Meeting.

The first day reports and reporters:

“Compilation of the Criminal Law of the 15th Year of Meiji and Draft Criminal Code Reviewing Bureau,” by Hiroshi Asako, Lecturer at Waseda University.

“Characters of Ownership in Land Laws of the Ming and Qing Dynasties,” by Lect. Hiroaki Terada.

“Change in Industrial Promotion Policy and Local Industrial Promotion Law – in 1883 through 1886,” by Lect. Toshimitsu Nakao of Kinki University.

“Freedom and Self-Autonomy of Medieval Western Cities: Some Theoretical Problems concerning Medieval Western Cities,”

by Assoc. Prof. Takeshi Hayashi of Osaka University.

"Concerning Original Text of 'Second Volume of *Kujikata Osadamegaki*,'" by Toshikazu Yabu of Tohoku University.

The second day reports and reporters:

"A Study of '*Shiki*' of the Heian Period," by Lect. Kazuyoshi Ito of Miyagi Gakuin Women's College.

"Modernization of English Law and J. Bentham," by Assoc. Prof. Kozo Ishii of Ryukoku University.

"On Missing Part of '*Koki*' in Yasaka Temple Documents," by Prof. Mitsuo Riko of Keio Gijuku University.

"*Aequitas* and Roman Law," by Prof. Tokuji Sato of Waseda University.

The 30th Study Meeting.

The first day reports and reporters:

"On Inheritance of *Shiki*," by Norio Yoshida of Kansai University.

"Legal Structure of *Okibumi* of the Middle Ages," by Shujitsu Tanaka of the Prefectural History Compilation Room, the General Affairs Department, Okayama Prefectural Office.

"Die frühmittelalterlichen Stammesrechte als Quellen für die Sozialgeschichte des Frankenreiches," by Prof. Dr. Hans Kurt Schulze of Marburg University.

"Basic Nature of Troops under Sovereign Power of Merowinger in Early Stages," by Assoc. Prof. Shoichi Sato of Aichi University.

"A Study on *Immunität* - in Case of St. Gallen Monastery," by Assoc. Prof. Hideo Iwano of Doshisha University.

The second day reports and reporters:

"On Conflict Problem in Roman Law," by Assoc. Prof. Tooru Oka of Kansai University.

"On Formation of Regulations Preference Theory in Medieval Italy," by Assoc. Prof. Seiichi Mori of Keio Gijuku University.

"Possibility of History of Legal Theories in Study of Legal History," by Assoc. Prof. Minoru Nishimura of Okayama University.

"*Ryonoshuge*' as Seen in Books of Later Ages," by Prof.

Noriaki Hayashi of Kansei Gakuin University.

“Cultural Revolution in China — Seen from Standpoint of Legal History,” by Prof. Ikuzo Okumura of Kansai University.

On the third day, participants went on an inspection tour of Asuka Village in Nara Prefecture.

a) Legal History of Japan

The Riko report attempted to probe into the background that had led to the compilation of the “*Ryonoshuge*,” which had no direct reference material, by studying various historical reference material from the end of the Heian Period through the early kamakura Period, centering on documents in the possession of Yasaka Temple in Kyoto entitled “*Korei Koki*.” (“*Ryonoshuge*” is a 30 volume collection of interpretations and private theories on the Yoro Code of AD 718, five volumes of which were missing. “*Korei Koki* is the “Ancient Record of the Old Private Law.”)

Ito, in his report, dealt with “*Shiki*” (manorial rights) having the nature of rights on real estate and property, and studied them from three angles regarding its origin, the relative system among *Shiki*, and its contents.

Yoshida in his report studied *Shiki* relating to landownership, especially from the standpoint of inheritance.

The Tanaka report studied the role of “*Okibumi*,” a document which listed matters to be observed into the future, in the administrative system of the Middle Ages.

The Hayashi report attempted to restore the “*Ryonoshuge*” to its original state by comparing the existing texts with the quotations from “*Ryonoshuge*” which appeared in various books and documents in later ages.

Dealing with “*Kujikata Osadamegaki*,” a two-volume penal code of the police and courts during the Edo Period, Yabu attempted to study the significance of restoration of the original text on the basis of “*Kajoruiten*,” a collection of classified regulations and laws.

Dealing with the course of compilation of the Criminal Code of the 15th year of Meiji (1882), the old, now-defunct, Japanese

criminal code, Asako clarified the background which had led to the establishment of the Draft Criminal Code Reviewing Bureau which had so far remained ambiguous as well as the process of reviewing by the Bureau.

Nakao, in his report, dealt with the influence local bureaucrats had exerted on the compilation and codification of the policies of industrial promotion of the Ministry of Agriculture and Commerce during the early period of the Meiji Era, while clarifying the characteristics of the local industrial promotion laws.

b) Legal History of the Orient

Terada, in his report, discussed the characteristics of landownership during the Ming and Qing dynasties in China.

Okumura probed into the Cultural Revolution for the purpose of analyzing the laws and society of contemporary China.

c) Legal History of the West

Probing into the influence of Aristotle's theory on legal practices in Rome, Tokuji Sato studied the significance of *aequitas* in the history of Roman Law.

Dealing with the question of conflicts in Roman Law, the discussion of which lasted for several hundred years, Oka, in his report, made a critical review of the study of E. Levy which was said to have settled the dispute.

Mori, in his report, discussed the formation of a theory which contended that in medieval Italy municipal regulations had taken precedence over Roman Law.

The Hayashi report discussed the characteristics of medieval cities in the Western world, especially from the standpoints of freedom and self-autonomy.

Ishii's report took up the theory of J. Bentham calling for law reform as an extension of the modernization of laws from about the middle of the 16th century in England, from the standpoint of the history of legal thought.

Limiting his material to the history of Western law, Nishimura

discussed the possibility of the history of legal theories in the study of legal history, taking into consideration discussions by H. Mitteis, H. Thieme, H. Coing, and F. Wieacker.

The following three reports also dealt with the early period of the Middle Ages.

In the first place the Schulze report discussed the material value of the clan codes in the course of his study of the law and state system of Frankenreich, and made a critical review of “*Königsfreietheorie*.”

Then Shoichi Sato, in his report, studied the basic nature of the 6th century Merowinger troops as a clue to understanding the society of Germanic clans during the Migration of Nations, concluding that the troops had a *Gefolgschaft* nature supported by economic interests.

Dealing with *Immunität* seen in the documents from the early 9th century to the early 10th century, Iwano, in his report, clarified the importance it had played in strengthening the authority of kings.

Prof. Schulze, at a symposium held in Tokyo on Oct. 7, 1982, delivered a lecture entitled “König und Heer im Frankischen Reich.” He also delivered a lecture at a meeting of the Tokyo Study Group of Comparative Urban History in Tokyo on Oct. 16 under the title “Territorialbildung und Stadtgründung in der Mark Brandenburg.” In Japan, discussions have been quite active centering on “*Königsfreietheorie*,” and consequently hot debate ensued over the report of Schulze who returned to the “*Klassische Theorie*” because of criticism directed toward the “*Königsfreie theorie*.” (The lecture “Die frühmittelalterlichen Stammesrechte als Quellen für die Sozialgeschichte des Frankenreiches” of Schulze at the 30th study meeting was translated into Japanese and carried in “Waseda Hogaku,” Vol. 58, No. 2.)

## B. Sociology of Law

The Japanese Association of Sociology of Law held its 1982 academic meeting at Hiroshima Shudo University on May 11 and 12. As in the past, the first day session was devoted to free reports

at subcommittee meetings and the second day to a symposium under a unified theme.

(1) Subcommittees

Following are the titles of reports and reporters:

"A Study on Consciousness Formation Process in Environmental Assessment System — in Connection with Large-Scale Industrial Development in East Tomakomai," by Naoki Kataoka, LL.M. of Waseda University.

"Problems concerning Reclamation of the Mizushima Littoral Industrial Belt," by Prof. Mitsue Kobayashi of Ibaraki University.

"Land Problems in Okinawa," by Osamu Tasato of Okinawa University.

"Farm Lands of Whole Village Communities," by Prof. Masami Takei of Shimane University and Prof. Kaisaku Kumagai of Osaka University.

"Military Bases in Okinawa," by Prof. Susumu Aragaki of Ryuky University.

"Vietnamese Law of Today and Law Consciousness of the Vietnamese," by Prof. Tsuneo Inako of Nagoya University and Masakuni Aikyo of Nagoya University.

"University Students' Understandings of the Constitution of Japan and the Positive Role of Education in the Constitutional Law," by Assoc. Prof. Kanta Ohwada of Kochi University and Toshiko Takeuchi of Kochi University.

"A Study of the Method of the Sociology of Law," by Manduku Ha of Korea University, Tokyo.

"Present State of the Special Law for Conservation of the Environment of the Seto Inland Sea," by Assoc. Prof. Moriya Itoh of Hiroshima University.

"Perspective of the Action Concerning Environmental Disruption as well as the Supreme Court Decision in the Osaka International Airport Case," by Toshiyasu Tomii of Hiroshima University.

"The Kaita Bay Case (Hiroshima) on the Reclamation Project and the Customary Right of Effluence," by Yoshiatsu Takamura and Nobuhiro Yamada, attorneys.

“Sea and Man - Living in the Over-Developed Seto Inland Sea,” by Prof. Hiroshi Kokubu of Kagawa University.

(2) Symposium: Unified Theme on “Law-Consciousness,”

“Problems in the Study of Law-Consciousness,” by Prof. Toshio Hironaka of Tohoku University.

“The Law-Consciousness of the Japanese,” by Prof. Kahei Rokumoto of Tokyo University.

“Historical Foundation of the Japanese Law-Consciousness,” by Assoc. Prof. Takeshi Mizubayashi of Tokyo Metropolitan University.

The symposium centered on the following problems:

(1) What is “law-consciousness?” In what aspect does it become a problem?

(2) How have “law-consciousness” studies been conducted? Wherein lies the problem?

(3) What historical features does the “law-consciousness” of the Japanese have?

a) The gist of Hironaka is as follows:

Takeyoshi Kawashima stated that the lack of a concept on rights was one of the characteristics of Japanese law-consciousness. A great many analyses of Japanese law-consciousness have been made from such a standpoint, but a number of problems still remain unsolved such as the concept of the principle of legality or the “principle of *nulla poena sine lege*.” The concept of “anything doubtful is in favor of the defendant” was not common among the Japanese. Hironaka believes that a study of confrontation and conflict of law-consciousness is necessary. In this regard, he said, there should be research and study of law-consciousness, with subject matters subdivided, and in connection with the functions of legal systems as well as the study of legal processes, that is, judicial, administrative and legislative processes.

b) Rokumoto, in his report, examined the achievements of Prof. Takeyoshi Kawashima reputed as a pioneer in this field of study. Kawashima, he said, started with his basic recognition that although modern law-consciousness, that is, the spirit of observing the law, was a prerequisite to enforcement of modern law, the Jap-

anese were lacking in it, and conducted a structural analysis of Japan's modern law system introduced to this country from the Western world, and then clarified the structure of modern law-consciousness contained in it.

According to Kawashima, he said, the Japanese have a special propensity toward avoiding the method of judgment by a third party or a suit as a means of settling disputes in civil affairs.

Kawashima believes that this is because the concept of "rights and duties" is either lacking or has not developed well in Japan. Kawashima's way of thinking, despite some criticism leveled at it, has been approved basically and is generally accepted.

The Rokumoto report based on Kawashima's theory maintained that it was the task of sociology of law to conduct further conceptual and theoretical readjustment, and promote a systematic collection of empirical materials and hold further detailed discussions on the basis of such materials.

c) The Mizubayashi report started its study with the belief that the historical origin of "Japanese law-consciousness" lay in the laws of the Tokugawa period and resultant law-consciousness.

The report was aimed at probing into the historical characteristics of society and state in modern times, laws and law-consciousness of medieval times in contrast to modern law and law-consciousness and subsequent non-orthodox law-consciousness in modern times.

Mizubayashi stated that, while the orthodox norm-consciousness of modern times continued to exist even today, medieval law-consciousness and the non-orthodox law-consciousness of modern times were still persistently maintained today, and that the history and the present state of affairs of "Japanese law-consciousness" could be interpreted as a dynamic process of confrontation and movement of such inconsistencies.

### C. Legal Philosophy

*The Japan Association of Legal Philosophy* held its annual academic meeting on Nov. 11 and 12, 1982, at Nara Prefectural Cultural Hall under the unified theme of "Law and Coercion."

Reporters and the titles of their reports were as follows:

“The Notion of Consent in John Locke – Consent as a Basis of Political Power,” by Assoc. Prof. Hideya Saito of Ehime University.

“Coercion and Consensus in Law,” by Prof. Shigeki Tanaka of Kansei Gakuin University.

“Law and Paternalism,” by Assoc. Prof. Naomi Nakamura of Kumamoto University.

“Law and Coercion in the Command Theory of Law,” by Prof. Tetsuo Yagi of Doshisha University.

“Historical Jurisprudence of Jacob Grimm,” by Assoc. Prof. Takeshi Katada of Dokkyo University.

“Coercion and International Law,” by Prof. Shigeyoshi Ozaki of Niigata University.

The Saito report, dealing with the consent on which J. Locke based political authority, clarified that it contained a reasonable character and that security for such a character was the trust of the people.

Tanaka, in his report, dealt with the discussion on whether or not to recognize coercion as the essence of law, probing into the “coercion theory” and “anti-coercion theory,” and criticized the latter from the standpoint of the former.

Nakamura, in his report, took up formalized paternalism that “even if it is not the case when a certain person (S) causes a certain infringement upon another (A), can an individual or an organization (I) such as the state conduct an act of interference on S for the reason that it is good for S himself.” His report centered on which cases paternalism can be justified, and attempted to offer a clue to discussions on coercion and consent.

Dealing with the legal order theory of J. Austin, Yagi, in his report, took up the problems of coercion, the meaning of punishment, power and authority, and the question of “law and morals” and punishment.

Katada, in his report, compared J. Grimm and C.F.v. Savigny who were both recognized as students of historical jurisprudence. He stated that while Savigny had put emphasis on the concept of law,

Grimm had pursued the symbolism of law and, as a result, structured historical jurisprudence in the true sense of the term on the basis of the triad of law, language and history.

Ozaki's report discussed international law from the standpoint that coercion was not necessarily essential as the essence of law. In international law, power does not transform into legal coercion in reflection of the special nature of international society, and that it functions in most cases outside of the law in the form of natural power not very well tamed, so to speak. According to Ozaki, the present stage of international law is in a defective state, and the function inherent in law does not work because of the special nature of the social foundation on which it rests.

By Prof. TOKUJI SATO  
NORIIKO TANAKA

## 8. International Law

The spring congress of *the Japanese Association of International Law* was held at Fukuoka University on May 16. The following reports were made on the respective subjects.

On the joint theme of "Modern Science and Technology and International Law," chaired by Prof. Eiichi Fukatsu of Nihon University.

—"Limitations on the Control over Weather Modification Activities by International Law," by Assoc. Prof. Tomiki Saeki of Aichi Prefectural University.

—"Space Technologies as Factors Causing Changes in International Law," by Assoc. Prof. Toshio Kosuge of Telecommunications University.

—"Significance of Universal Jurisdiction to International Crimes," by Assoc. Prof. Masahiro Nishii of Kyoto University. Chairman: Prof. Shigeki Miyazaki of Meiji University.

—"Theories of International Politics in Mainland China," by