

Part Two: Basic Problems of Nationality Law, chaired by Yoshiro Hayata (Professor, Toyo University).

(1) Equality of the Sexes in Nationality Law, by Akitaka Kaku (Professor, Fukuoka University).

(2) The Principle of a Single Nationality Reconsidered, by Kentaro Serita (Professor, Kobe University).

Part Three: Law and Politics in the Falkland (Malvinas) Islands Dispute, chaired by Satomi Hatano (Professor, Gaku-shuin University).

(1) Aspects of a Territorial Dispute, by Nisuke Ando (Professor, Kobe University).

(2) Process of Settlement of the Dispute, by Takekazu Kawamura (Chief, Law Department, Treaty Bureau, Ministry of Foreign Affairs).

(3) Its Significance in International Politics, by Masataka Kosaka (Professor, Kyoto University).

By Prof. TOKUSHIRO OHATA  
TADASHI IMAI

## 9. Comparative Law

1. The 46th Congress of the *Japan Society of Comparative Law* was held at Chuo University, Tokyo, on May 15 and 16, 1983.

### [First Day]

SYMPOSIUM: Comparative Legal Studies on "Planning and the Law in Metropolitan Areas."

1. Introductory Remarks: Topic and Problems of the Symposium, by Eiji Shimoyama (Professor, Tokyo Metropolitan University).

Although planning has been considered more as a matter of "policy" than as one of "law" in Japan, a legal character is

increasingly required of planning today. Since this phenomenon has not yet been analyzed in enough depth by lawyers, we are not able to discuss the matter in general terms. Thus, after a general report from an engineering point of view, we will hear national reports on specific legal problems concerning this question.

2. The Problems of Town Planning in Our Times, by Kazuo Hayakawa (Professor, Kobe University).

Planning in Japan has left urban zones in the hands of capital and authority without considering them as space for human living. European countries have developed planning first and foremost as part of their public health and housing policies. Japan's planning policies will be discussed in comparison with those of European countries, the United States, and the Soviet Union focusing specifically on the following aspects: the concept of planning, land use controls and public ownership of land, housing policy, participation of inhabitants in the planning process, and answers to megalopolitan problems.

3. West Germany, by Tokiyasu Fujita (Professor, Tohoku University).

City construction planning in West Germany is based on general restraint. With the exception of early developed urban zones, new development is generally prohibited unless it is carried out in accordance with a *qualifizierter Bebauungsplan* that municipal corporations have established. The municipal corporations, which actively carry out the plan, issue a construction order (*Baugebot*) to land owners, and lie under obligations to develop local facilities (*Erschließung*). The distribution of costs and benefits to the interested parties is somewhat, although perhaps not well enough, systematized in development charge (*Erschließungsbeitrag*), indemnifications, etc. Prussian law, which was the forerunner of the current system, may have made a distinction between developable and undevelopable lands in an attempt to protect the traditional social structure from the imposition of unreasonable costs on the part of older inhabitants and municipalities.

4. France, by Yonosuke Inamoto (Professor, Tokyo University).

One of the characteristics of planning in France is the dominance of the notion of public control over land ownership. It is seen in executive-led land regulations based on zoning such as *schéma directeur d'aménagement et d'urbanisme*, *plan d'occupation des sols*, and land expropriation by public bodies. This land expropriation paves the way to the kind of comprehensive and flexible planning as is realized in a *zone d'aménagement concerté*.

Another characteristic has been that the main planning authority consists of the national government rather than of municipal corporations. However, the redistribution of authorities (Law 8 of January 7, 1983), which followed the recent local government reform (Law 213 of March 2, 1982), radically changed the old structure of authority.

5. Great Britain, by Michiatsu Kaino (Associate Professor, Nagoya University).

British planning legislation has the following characteristics:

(1) The legal and administrative framework of the planning system has developed since the middle of the 19th century;

(2) Planning efforts have centered on the planned regulation of land use, and not on accomodation of urban facilities or city redevelopment;

(3) Complementary nature of various plans;

(4) Participation of inhabitants in the planning process;

(5) Strong initiatives by the public authorities as decision makers, and the lack of possibility of "public zones" due to the horizontal relationships between private citizens;

(6) Activities of the regulatory function in balancing urban and rural factors.

6. The United States, by Masao Horibe (Professor, Hitotsubashi University).

Plans concerning land use, which are the basis of planning in the U.S., are mainly based on state laws and county and municipal ordinances. Federal intervention often takes the form of financial assistance to local programs.

In California, Title 7 of the California Government Code, "Planning and Land Use" (Division 1; Planning and Zoning, Division 2; Subdivision, Division 3; Official Maps) provides precise regulations.

7. The Soviet Union, by Isamu Fujita (Professor, Tokyo University).

Plans concerning the cities in the Soviet Union may be classified as follows:

(1) Regional and District Plans, which include cities as their integral part, dealing with the distribution of forces of production and industrial development;

(2) Municipal Economy Development Plans as part of regional plans for the national economy;

(3) General Programs for City Development, which include town development planning in its traditional sense.

From the economic growth policies backed by improved labor productivity since 1960 arose new interest in the cities, and city planning has entered upon a new phase. The General Programs for Economic and Social Development have been laid down since the second half of the 1970's. They promoted the position of a particular planning authority, the municipal Soviet.

8. Cumulative Comment: Remaining Problems On "Planning and the Law in the Metropolitan Areas", by Eiji Shimoyama.

To sum up our discussions in the reports mentioned above, the following problems remain for further examination.

(1) Noticeable differences in attitudes toward town development policy prevalent in Japan and Western countries.

(2) Some substantive issues concerning "Planning and the Law", i.e.,

i. Dual structure of plans, e.g. basic and working plans, upper and lower plans, etc.

ii. The notion of private property and the public character of land ownership under planning regulation.

(3) Urban development bodies.

(4) Issues on planning procedure.

(5) Problems of assuring effective planning.

- (6) Planning and remedies for resulting losses.
- (7) Planning and financial measures.

*[Second Day]*

1. Anglo-American Law Division

(1) Private Acts — A Consideration of the Concept of Legislative Power in the United Kingdom and the United States —, by Hideo Tanaka (Professor, Tokyo University).

(2) Legitimacy of “PROSPECTIVE” Judicial Decisions, by Samuel Mermin, (Visiting Professor, Chuo University; Professor Emeritus, Wisconsin University Law School).

2. Socialist Law Division

(1) Trade Union and Trade Union Legislation of Socialist Countries in the Light of the Recent Situation in the USSR and Poland, by Akio Komorida (Associate Professor, Hokkaido University).

(2) A Comparative Approach to Chinese Law, by Atsushi Asai (Professor, Aichi University).

3. Continental Law Division

(1) Diskussionen über das Verhältnis der vertraglichen und außervertraglichen Haftung in den neuen Bestrebungen zur Reform des Schuldrechts in Bundesrepublik Deutschland, by Masamichi Okuda (Professor, Kyoto University).

(2) Conseil constitutionnel français et nationalisation, by Shozo Kondo (Professor, Kyushu University).

For further details of the meeting, see *Hikakuhō Kenkyū*(Comparative Law Journal) No. 45, Oct. 1983, Tokyo.

2. *The Japanese American Society for Legal Studies* held its 20th Congress at Tokyo University on May 14, 1983.

1. REPORTS

On the Freedom to Breach a Contract, by Norio Higuchi (Associate Professor, Gakushuin University).

Securing the Performance of Contractual Obligations under the American Law of Contracts — The Second Restatement of the Law of Contracts and Uniform Commercial Code —, by Eiji

Maruyama (Associate Professor, Kobe University).

## 2. REPORT

Recent Developments in Conflict of Laws in the United States —, by Arthur Taylor von Mehren (Story Professor of Law, Harvard Law School).

## 3. CASES

### Division 1:

New York v. Ferber, by Hiroshi Fujita (Lecturer, Hiroshima University of Economics).

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., by Nobuo Kumamoto (Professor, Hokkai Gakuen University).

### Division 2:

Adams v. Standard Knitting Mills, Inc., by Tetsuo Shimabukuro (Professor, Ryukyu University).

American Society of Mechanical Engineers, Inc. v. Hydrolevel Corporation, by Kenji Sanekata (Professor, Hokkaido University).

For details of the meeting, see *Amerika Hō* (American Law Journal), No. 2, 1983 and No. 1, 1984, Tokyo.

3. *The Japanisch-Deutsche Gesellschaft für Rechtswissenschaft* held the 1983 Congress at Deutsches Kulturzentrum in Tokyo on Oct. 17. Dr. Martin Bullinger (Professor, Freiburg University) gave a lecture on “Offentliches Recht und Privatrecht in Geschichte und Gegenwart”. For details, see *Nichi-Doku Hōgaku* (Jahrbuch der Japanisch-Deutschen Gesellschaft für Rechtswissenschaft), No. 8, 1984, Tokyo.

4. The 23rd Congress of *La Société franco-japonaise de Science juridique* was held at *Gakushi Kaikan* Hall in Tokyo on Mar. 12, 1983. Kazuyuki Takahashi (Professor, Hosei University) gave a lecture on “‘Essence’ and ‘Existence’ of ‘The Gaullist Constitution’”.

The Society also held a lecture meeting at *Maison franco-japonaise de Tokyo* on May 23. Dr. Yoshiyuki Noda (Professor

Emeritus, Tokyo University, Honorary President of the Society), spoke on "Birth and Growth of *la Société franco-japonaise de Science juridique*". It sponsored another lecture meeting jointly with the aforementioned *Maison* on Nov. 11. Jacques Robert (President, Université de Paris II; Ex-Director of France, Institut franco-japonaise de Tokyo) spoke on "Transition of the Constitutional Situation in France since May, 1981."

For details, see *Nichi-Futsu Hōgaku* (Franco-Japanese Law Journal) No. 12, 1983, Tokyo.

5. *The Japan Association of EC Studies* held its 4th Congress on Nov. 12 and 13, 1983, at Seijo University, Tokyo.

**[First Day]**

SPECIAL REPORT: Relationship between Community Law and National Law in the European Communities, by H.E. Laurens Jan Brinkhorst (EC Representative to Japan).

SYMPOSIUM: External Relations of EC.

1. The Mediterranean Policy of EC — The Failure of Its Global Approach —, by Yasunobu Tanaïke (Associate Professor, Fukuyama University).

2. Basic Problems of the European Communities Development Cooperation Policy, by Hiroshi Okuma (Associate Professor, Seijo University).

3. The External Relations of the European Parliament, by Kiichiro Nakahara (Professor, Tokai University).

**[Second Day]**

REPORTS

1. Labor Relations in the Workplace — Case of the Metal Industry in Italy —, by Jun Iwamoto (Waseda University).

2. The So-Called Vredeling Directive: Its Economic and Social Implications, by Margarete Sawada (Lecturer, Tsukuba University).

3. Basic Problems in the Complaints Based on EC Anti-Dumping Regulation against Japanese Firms, by Kazuyuki Kita (Manager, Foreign Sales Section, Toyo Telecommunications Co.).

4. A Comparative Study of Distribution Systems for Electric Appliances in Major EC Countries and Japan, by Akira Kaneko (Professor, Keio University).

For details, see *Nippon EC Gakkai Nempō* (Annual of EC Studies in Japan), No. 4, 1984, Tokyo.

6. *The Japanese Association of Socialist Law Study* held a series of study meetings as follows (all at Tokyo University).

Jan. 21

The Present Situation and the New Constitution of China, by Seikichi Hariu (Professor, Tokyo Metropolitan University).

Some Historical Characteristics of the New Chinese Constitution of 1982, by Hideki Nozawa (Student, Doctoral Program, Waseda University).

March 3

Role of Attorneys-at-law in the Process of Realization of Socialist Fundamental Rights, by Mutsuo Okawa (Associate professor, Nagoya University).

April 15

Judicial Independence in China, by Nobuyuki Tanaka (Researcher, Institute of Chinese Studies).

June 24

Freedom of Speech in the Soviet Union, by Yasuo Nonaka (Student, Doctoral Program, Meiji University).

Nov. 19

Problems of Socialism Today — From Experiences in a Conference in Yugoslavia —, by Isamu Fujita (Professor, Tokyo University).

Yugoslavia as I Saw It, by Yoshiyuki Amiya (Professor, Kagoshima Women's Junior College).

Report on the Seminar, "Socialism in Its Principle and Practice in Yugoslavia", by Seizo Tadakawa (Professor, Waseda University).

The twelve member delegation to China of Japanese scholars of civil law and environment protection law headed by Dr. Ichiro



Kato (President, Seijo Gakuen; Attorney-at-law) visited Beijin, Guilin, Kunming, Chengdu, Shanghai from Oct. 12 to 24. They held discussions with Chinese scholars and lawyers from the Chinese Academy of Social Sciences, People's University, Xenan School of Politics and Law, Shanghai Academy of Social Sciences and the judiciary and the Government on legislation, enforcement, academic situations, textbooks, etc. in the areas of civil law, environmental protection law and marriage law as well as on economic legislation, minority protection policies, and the actual conditions of the court.

The delegation met jointly with the Chinese Association of Environmental Sciences in a "China-Japan Forum on 'Environmental Law'" on Oct. 14 and 15 at Beijing University. The agenda was as follows:

**[First Day]**

(1) Present Situation and Prospects of Environmental Legislation and Policies of Japan, by Ichiro Kato.

(2) Environmental Legislation of China, by Jin Ruilin (Associate professor, Beijing University) and Cheng Zhengkang (Beijing University).

(3) Triplex Environment Control System in Basic Construction Programs, by Zhou Fuxiang (Assistant Director, Working Office, Chinese Association of Environment Sciences) and Zhao Minkua (Environment Protection Bureau, Department of Environment Protection for Urban and Rural Construction).

(4) Environmental Assessment in Japan, by Naoto Asano (Professor, Fukuoka University).

(5) Environmental Assessment in China, by Guo Zhenyun (Environment Protection Bureau, Department of Environment Protection for Urban and Rural Construction).

**[Second Day]**

(1) Economic Regulation Measures, by Akio Morishima (Professor, Nagoya University).

(2) Principle and Practice of Collection of Pollutant Discharge Penalties in China, by Liu Wen (Beijing Institute of Environment Protection Sciences).

(3) System of Conservation and Care of the Forest in Japan, by Yoshihiro Nomura (Professor, Tokyo Metropolitan University).

(4) Conservation of Nature and Its Legal Coordination in China, by Ma Xiangcong (Law Institute, Chinese Academy of Social Sciences).

For further details, see Yoshihiro Nomura, "Environmental Law in China — Report from the China-Japan Forum on 'Environmental Law'", *Juristo* No. 806 (1984), Tokyo.

7. *The Japan-Canada Conference of Lawyers* held its 1st Congress on Oct. 23 and 24, 1983 at Chukyo University in Aichi Prefecture under the following agenda:

**[First Day]**

**REPORTS**

(1) Tax Legislation in Canada, by Michael J. O'Keefe (Professor, University of British Columbia).

(2) Canadian Property Law and Settlement of Landlord and Tenant Disputes, by George B. Klippert (Associate Professor, University of British Columbia).

(3) Environmental Assessment in Canada, by Robert R. Franson (Associate Professor, University of British Columbia).

(4) Legal Regulation of Natural Resources Development Planning in Canada, by Andrew R. Thompson (Director, West Water Research Center, University of British Columbia).

**[Second Day]**

**REPORTS**

(1) Recent Canadian Initiatives in the International Law Area, by Donald McNary (Professor, University of British Columbia).

(2) Regulation of Anti-Competition Activities in Canada — In Comparison with the United States —, by Marilyn T. MacCrimmon (Associate Professor, University of British Columbia).

(3) New Constitution of Canada, by Kenneth M. Lysyk

(Judge, Supreme Court of the Province of British Columbia).

### SYMPOSIUM

Part 1 "Canadian Law and Japan: The Academic Perspective"

(1) Overview, by Malcolm Smith (Professor, University of British Columbia).

(2) Philosophy of Law, by Joseph Smith (Professor, University of British Columbia).

(3) Labor Law, by Joseph Weiler (Professor, University of British Columbia).

Part 2 "Canadian Law and Japan: Practical Perspective", by Erick Lafraiche (Attorney-at-law), Wilfred Wakely (Attorney-at-law), and Michael J. O'Keefe.

**By Prof. MICHITARO URAKAWA**

**HITOSHI TERAOKA**

**NARUMI HASEGAWA**