

9. Comparative Law

1. *The Japan Society of Comparative Law* held its 47th general meeting on June 3 and 4, 1984, at Ritsumeikan University in Kyoto. The titles of the reports and the names of the reporters were as follows:

[The First Day]

1. Anglo-American Law Division

"Micronesian Comparative Constitutional Laws," by Prof. Mitsue Kobayashi of Ibaraki University.

The constitutional laws of the three Micronesian nations, the Federated States of Micronesia, the Republic of Belau and the Republic of Marshall Islands, were compared.

"Father of Judicial Review: The Constitutional Idea of Sir Edward Coke," by Prof. Yoshihide Sakai of Aichi University.

The meaning of Coke's views in Dr. Thomas Bonham's case, (1610) 8 Co. Rep. 114, was examined.

"The Background of and Prospects for the New Constitution Act of Canada," by Assoc. Prof. Nobuko Satoh of Ohgaki Women's Junior College.

The relationship between federal power and state power in the Constitution Act 1982 of Canada was investigated.

"Guarantee of the Rights and Freedoms under the New Constitution Act of Canada," by Prof. Yoshio Hagino of Nanzan University.

The system for guaranteeing human rights as adopted in the Constitution Act 1982 of Canada was studied.

2. Socialist Law Division

"The Role of People's Mediation in Communist China," by Nobuyuki Tanaka, China Research Institute.

The history of the transition of the people's mediation system in China since 1940, the present condition of the system, and its problems were reported.

“The Process of Policy Formation and Lawyers in the Soviet Union,” by Naoya Ichihashi, assistant of Nagoya University.

The influence of the Soviet “innovative group” of lawyers on the enactment of the Administrative Litigation Act and the trends in theory regarding the socialist state doctrine were reported.

3. Continental Law Division

“Valuation of Non-Nominated Warranty in Modern West Germany,” by Assoc. Prof. Takehiko Mikami of Yokohama Municipal University.

“Die AGB-Kontrolle in der Bundesrepublik Deutschland aus rechtsvergleichender Sicht,” by Yutaka Yamamoto, full-time lecturer of Sophia University.

The 1976 AGB-Gesetz of West Germany was examined in the light of comparative law, being compared particularly with the law of France.

“Esquisse des débats doctrinaux et jurisprudentiels sur la possession d'état dans le droit de la filiation en France depuis la loi du 3 janvier 1972 — The Circumference of the Re-Amendment by the Act of June 25, 1982,” by Prof. Shoji Itoh of Osaka Municipal University.

The developments in case law and academic theories in respect of the 1972 Act, regarding disputes about the parent and child relationship where a child is registered at birth as a legitimate child, and the contents of the 1982 amendment, were reported.

“On Defences for Particular Torts in France,” by Assoc. Prof. Kazuo Kunii of Osaka University.

[The Second Day]

Symposium: “A Comparative Legal Study of Organ Transplants”

Introduction 1 — “The Aim of the Reports, the Definition of the Subject, etc.,” by Prof. Koichi Bai of Tokyo Metropolitan

University.

Introduction 2 — “The History of the Subject — the History of Organ Transplants and Its Laws,” by Assoc. Prof. Eiji Maruyama of Kobe University.

Part I — A Survey of the Laws of Several Countries

I-1 United States, by Assoc. Prof. Eiji Maruyama.

I-2 France, by Assoc. Prof. Kazuo Shimada of Tokyo University of Economics.

I-3 West Germany, by Waichiro Iwashi, part-time lecturer at Waseda University.

I-4 Great Britain, by Prof. Koichi Bai.

I-5 Socialist Countries, by Prof. Nobuko Inako of Japan University of Social Welfare.

I-6 Other Countries, by Prof. Koichi Bai.

Part II — An Analysis of the Condition of Consent

II-1-1 From the Viewpoint of Criminal Law (1), by Assoc. Prof. Osamu Niikura of Kokugakuin University.

II-1-2 From the Viewpoint of Criminal Law (2), by Prof. Akira Ishihara of Kobe Gakuin University.

II-2-1 From the Viewpoint of Civil Law (1), by Waichiro Iwashi.

II-2-2 From the Viewpoint of Civil Law (2), by Sumiko Hoshino.

II-3 An Outline of Various Legislations and an Overview of the Right to Give or Withhold Consent, by Assoc. Prof. Katsumasa Hirabayashi of Kokugakuin University.

Although the transplanting of organs is a subject which encompasses many areas of the law, this symposium concentrated upon topics such as ‘the donor’s consent to the removal of an organ from his living body’ and ‘the intent of the deceased and/or the consent of the deceased’s family in respect of the removal of an organ from his body after death, particularly the latter. In Part I of the symposium, attention was drawn to the history of special laws concerning organ transplants, and ‘the history of non-legislation’, of several countries. In Part II, the problems of the countries in question were rearranged into three separate

themes and were examined using the general law as a basis for discussion.

It became clear that the legislation either took the form of allowing the removal of an organ when consent to do so was obtained from the donor himself (or the donor himself and his family after the donor's death) or the form where removal was permitted in the absence of objections; that 'the Act on the Transplants of Cornea and Kidney' of our country was a manifestation of the first form; and that the legislation of foreign countries, whichever form might have been adopted, gave priority to the intent of the deceased himself while alive, but the legislation of our country was characteristic for preferring the intent of the deceased's family to that of the deceased himself.

[For reference, see *Hikakuhō Kenkyū* (Comparative Law Journal) Vol. 46 (1984), published by *Hikakuhō Gakkai* (the Japan Society of Comparative Law), Tokyo.]

2. *The Japanese American Society for Legal Studies* held its 21st general meeting on June 2, 1984, at Ritsumeikan University in Kyoto. The titles of the reports and their authors were as follows:

1. Reports:

"The System Mandamus in California," by Assoc. Prof. Masakazu Kurimoto of Nanzan University.

The Californian system of mandamus is unique. It was analysed and examined in the light of leading cases.

"Recent Developments in Public Law Litigation," by Assoc. Prof. Hideyuki Ohsawa of Keio Gijuku University.

Recent developments in a modern type of litigation where, beyond the traditional boundaries of the judicature, the American courts are playing quasi-legislative and quasi-administrative roles in realisation of certain policies, were reported.

2. Report:

"Societal Change and the Criminal Law in Late Twentieth-Century America," by Prof. Francis A. Allen of the University of Michigan.

The two recent trends in American criminal law were intro-

duced: the decline of support for the doctrine of correction of criminals, and the revival of capital punishment.

3. Case Study Meeting:

"Lehr v. Robertson," by Assoc. Prof. Setsu Kobayashi of Keio Gijuku University.

"Newport News Shipbuilding & Dry Dock Co. v. EEOC," by Prof. Taisuke Kamata of Doshisha University.

[For reference, see *Amerika Hō* (American Law Journal) [1984-2] and [1985-1], published by the Japanese American Society for Legal Studies, Tokyo.]

3. *Japanisch-Deutsche Gesellschaft für Rechtswissenschaft* held its 1984 general meeting at Deutsches Kulturzentrum in Tokyo on October 12. Prof. Wolfgang Fikentscher of Universität München delivered a lecture entitled "Die Bedeutung von Präjudizien im heutigen deutschen Privatrecht." In the lecture Prof. Fikentscher examined theoretical situations in relation to the binding force of judicial precedent in the present-day private law in West Germany. Through comparison and contrast of decided cases and the theories of Prof. Dr. Karl Larenz and Prof. Dr. Franz Bydlinski, Prof. Fikentscher also advanced his own theory.

The society also held a lecture meeting at Deutsches Kulturzentrum in Kyoto on October 1. A lecture entitled "Das Naturrechtsproblem in der heutigen deutschen Jurisprudenz" was delivered by Prof. Alexander Hollerbach of Universität Freiburg. In the lecture Prof. Hollerbach, after introducing post-war developments of arguments relating to natural law in West Germany, concluded that 'quaestio perennis' was essential to present-day natural law.

[For reference, see *Nichi-Doku Hōgaku* (Jahrbuch der Japanisch-Deutschen Gesellschaft für Rechtswissenschaft) No. 9 [1985], published by *Nichi-Doku Hōgaku-Kai* (Japanisch-Deutsche Gesellschaft für Rechtswissenschaft), Tokyo.]

4. *La Société franco-japonaise de Science juridique* held its 24th general meeting at Gakushi Kaikan in Tokyo on March 17, 1984,

where Prof. Nobuhisa Segawa of Hokkaido University made a report entitled “The Study of *raisonnement juridique* within French-Speaking Countries.” In the report Prof. Segawa examined Chaim Pereleman’s “*Traité de l’argumentation*” from the viewpoint of *Praktische Rechtswissenschaft* and *Rechtsdogmatik*, and discussed methods for developing Pereleman’s theory as methodology in *Rechtsdogmatik*.

The society also held an informal meeting at Kyodai Kaikan in Kyoto on June 2, where Prof. Toshio Yamaguchi of Tokyo University delivered a lecture entitled “The Latest Things French — Universities, Students, Students’ Lives and Opinions.” In addition, the society held the four lecture meetings noted below.

On October 11, a meeting was held at La maison franco-japonaise de Tokyo, under the joint sponsorship with La maison franco-japonaise.

“L’expérience socialiste française et les grandes réformes administratives,” was delivered by Prof. Benoit Jeanneau of Université de Paris II.

The administrative reforms carried out by the French socialist government since May 1981 were examined in three parts: the decentralization of power; the democratization of the public service; and the reinforcement of freedom.

On November 2, at La maison franco-japonaise de Tokyo, a meeting jointly sponsored by La maison franco-japonaise and La Société franco-japonaise de Science médicale took place.

A lecture entitled “La responsabilité médicale du droit français,” was given by Prof. Francois Chabas of Université de Paris XII.

Another meeting was held on November 6, at La maison franco-japonaise de Kansai in Kyoto, under the same sponsorship. Prof. François Chabas gave a lecture of the same topic.

On November 10, at Gakushi Kaikan in Tokyo, cosponsored by the Civil Law Society of Tokyo University, Prof. François Chabas delivered a lecture entitled “The Effect of Contributory Negligence on Tortious Liability.”

[For reference, see *Nichi-Futsu Hōgaku* (Franco-Japanese

Law Journal) No. 13 [1985], published by La Société franco-japonaise de Science juridique, Tokyo.]

5. *The Japan Association of EC Studies* held its 5th national study meeting at Waseda University, Tokyo, on November 10 and 11, 1984. The titles of the reports and their authors were as follows:

[The First Day Session]

— Free Themes —

“The Direct Investment Structure of West German Multinational Enterprises,” by Noboru Sasaki, lecturer of Ehime University.

“Economic Issues Concerning the Shortening of Working Hours — in Respect of the Claim for the Reduction of Hours to 35 per Week in West Germany,” by Prof. Takashi Matsugi of Nagoya University.

“A Study of European Political Cooperation — Based on the Bulletin of the EC,” by Mikio Takase, LL.M., Hitotsubashi University.

“On Thinking of EC Agriculture as a Good Model for Japanese Agriculture,” by Prof. Koichi Endoh of Nihon University.

— Special Lecture —

“EC-Japan Relations at a Turning Point,” by Gilles Anouil, publicity councilor of the Delegation of EC Commission in Japan.

[The Second Day Session]

— Free Theme —

“Some Problems on Negotiations for COMECON-EC Cooperation,” by Prof. Teruji Suzuki of Kagawa University.

— Unified Theme “EC and Human Rights” —

1. “The ‘Guideline’ Approach of the EC Court to the European Human Rights Convention — In Comparison with the ‘Ac-

cession' Approach of the EC Commission," by Katsuhiro Shoji, M. Pol. Sci., Keio Gijuku University.

2. "Protection of Fundamental Rights in the Court of EC," by Prof. Yoshikazu Tamura of Ritsumeikan University.

3. "Apartheid in South Africa and the EC Code of Conduct — A Comparison with the Experiences of U.S.A. and Japan," by Assoc. Prof. Ken Sasaki of Osaka Municipal University.

[For reference, see *Nippon EC Gakkai Nempō* (Annual of EC Studies in Japan) No. 5 [1985], published by Yūhikaku, Tokyo.]

6. *The Japanese Association of Socialist Law Study* held several meetings in 1984. The names of the reports made at each meeting are listed below.

January 20, at Tokyo University:

"The Study of Japanese Laws in the Soviet Union and Its Tasks," by Prof. Vladislav V. Baturenko of the Institute of State and Law, USSR Academy of Sciences.

March 21, at Waseda University, Tokyo:

"Petty Crime and Its Treatment in Soviet Criminal Law," by Kazuhisa Hamaguchi, research staff member of Aichi University.

April 20, at Tokyo University:

"The System of People's Mediation in China from the Viewpoint of Legal Culture," by Osamu Takamizawa, LL.M., Tokyo University.

July 6, at Tokyo University:

"Political Reforms in the Soviet Union," by Assoc. Prof. Taiichiro Ohe of Shizuoka University.

December 14, at Tokyo University:

"The System of Representation in Yugoslavia," by Assoc. Prof. Masataka Takemori of Tokyo Metropolitan Junior College of Commerce.

The Third Japanese-Soviet Jurists Symposium was held in Moscow and Kiev in the Soviet Union between October 1 and October 10, 1984, under the unified theme of "the State, the

Family and the Individual.” The dates, the places for the various conferences, the titles of the reports and the names of the reporters were as follows:

[The First Conference, on the morning of October 1, at the Institute of State and Law, USSR Academy of Sciences]

At the opening ceremony, speeches were delivered by Prof. A.M. Vasil’ev, deputy director of the Institute of State and Law, USSR Academy of Sciences, and by Prof. Inejiro Numata, former president of Tokyo Metropolitan University.

“Socialization, Personalization and the Family,” by Prof. Isamu Fujita of Tokyo University.

The similarities and the common features of new family problems in the modern world and how these problems should be understood was the theme of this paper.

“The State, the Law and the Family in a Developed Socialist Society,” by Prof. V.P. Mozolin.

The discrepancies between families in a capitalist society and in a socialist society were emphasized.

[The Second Conference, on the afternoon of October 1, at the above venue]

“The Family and Social Security in the Constitution of Japan,” by Prof. Takanori Sumino of Senshu University.

The importance of constitutional law dealing with present-day family problems through the establishment of the citizen as an individual and the establishment of social security as a human right was mooted.

“Social Policy of the Soviet State and Constitutional Recognition,” by Prof. A.E. Kozlov.

The fact that the 1977 Soviet Constitution incorporated for the first time a chapter relating to social development and culture was analysed.

[The Third Conference, on October 2, at the above venue]

“The Present Law Relating to Divorce and Certain Problems in Legal Practice in Japan,” by Masao Ohkawa, attorney.

It was pointed out that the recent increases in divorce in Japan could not be discussed without reference to social factors,

and that there were certain aspects of the legal system out of keeping with reality.

“Fundamental Principle of Soviet Family Law,” by Prof. N.M. Ershova.

It was reported that, because of the liberation of women after the Revolution, marriage and the family had changed in content and in concept. The relationship between the sexes, however, is a problem which will always puzzle the human race.

[The Fourth Conference, on October 3, at the same venue]

“The Family in Japanese Social Security Law,” by Prof. Michio Nishihara of Kobe University.

The relevance and contact-point of social security to the family in Japan was introduced.

“The Right to Draw Pensions and the Legal Position of Those Who Draw Old-Age Pensions in the Soviet Union,” by Prof. E.G. Azarova.

The outline of the present pension system in the Soviet Union, focusing on the right to draw a pension, was given.

[The Fifth Conference, on October 4, at the same venue]

“The Roles of the Sexes and the Status of Women in Japan and the Soviet Union,” by Prof. Kiyoko Kinjo of Tokyo University of Home Economics.

It was pointed out that in Japan the division by sex of labour was utilized to the utmost to achieve efficient operation for the establishment, and that in the Soviet Union the burden of household chores was imposed on women more than in capitalist countries.

“National and Legal Protection of Mothers and Children in the Soviet Union,” by Prof. A.M. Nechaeva.

Various national means including the Constitution, by which a woman in U.S.S.R. can combine her role as a mother and her role as a labourer, were introduced.

At the closing ceremony of the Moscow symposium, speeches were given by Prof. A.M. Vasil’ev and by Prof. Inejiro Numata.

[The Sixth Conference, on October 9, at the Institute of State and Law, Ukraine SSR Academy of Sciences]

At the opening ceremony for the symposium in Kiev, speeches were delivered by Prof. B.M. Babii, director of the Institute of State and Law, Ukraine SSR Academy of Sciences, and by Prof. Inejiro Numata.

"The Doctrine of and the Campaign for Human Rights — A Bill on Equal Employment for Both Sexes as a Clue," by Prof. Inejiro Numata.

Japanese legislation on equality of the sexes came into force under the influence of the United Nations' campaign in the International Women's Year. The way in which various human rights are viewed reflects the characteristics of a nation, it was felt. However, the reporter emphasized the importance of how the state's policies should be formed.

"The Constitutional Principle of Equal Rights for Each Sex and Its Development in the Branches and Systems of Existing Law," by Prof. Ia.N. Shevchenko.

The situation regarding the materialization of the constitutional principle of equal rights for each sex in labour law, family law, education law, etc. was outlined, using the laws of the Republic of Ukraine as an example.

[The Seventh Conference, on October 10, at the above venue]

"The Organization and Role of Japanese Family Courts," by Prof. Daishi Usami of Aichi Gakuin University.

The characteristics of Japanese family courts in dealing with family and juvenile cases using procedures different from ordinary adjudications and the problems facing the courts were introduced.

"The Role and Significance of Republican Legislation in the Soviet Legal System (Family Law) — With an Example of the Case of the Republic of Ukraine," by Prof. Z.K. Simorot.

The relationship in the Soviet Union between the laws of the Union and the laws of the member Republics of the Union was presented.

"Common Features and Peculiarities in the Marriage and Family Codes of the Member Republics of the Soviet Union," by Prof. S.V. Palenina.

The Union's fundamental laws regarding the marriage and family and the laws of the respective Republics were compared.

At the closing ceremony for the symposium, speeches were delivered by Prof. G.A. Murashin, deputy director of the Institute of State and Law, Ukraine SSR Academy of Sciences, and by Prof. Inejiro Numata.

[For reference, see "State, Family and Individual — A Report on the Moscow and Kiev Symposia of Japanese-Soviet Jurists," by Japanese participants in the Japanese-Soviet jurist symposium, 57 *Hōritsu Jihō*, No. 5, published by Nihon Hyōron-sha Co., Ltd.; "Family and Law in Modern Society — A Record of the Third Japanese-Soviet Legal Symposium," compiled by Inejiro Numata and Isamu Fujita, [1986] Nihon Hyōron-sha Co., Ltd., Tokyo.]

By Prof. MICHITARO URAKAWA
HITOSHI TERAOKA
ISAO MORIKAWA