

Activities

Visiting Professors at the ICCLP

Gérard Hertig, Professor, Swiss Federal Institute of Technology (ETH) Zurich

(June – July 2005)

Profile:

After having studied at the University of Geneva Law School, Professor Hertig obtained a M.A. from University of Texas at Austin in 1980 and J.D. from the University of Geneva Law School in 1983. He was appointed as an associate professor and a professor at the University of Geneva Law School in 1983 and in 1987 respectively. In 1995, he earned his current professorship of law and economics in Swiss Federal Institute of Technology (ETH) Zurich. He specialises in comparative business and competition law, and intellectual property law. During his stay at the ICCLP he gave a presentation entitled ‘Increasing Director Independence: The Flaws in Current Reforms and How to Address Them’ as part of a Comparative Law and Politics Symposium and lectured on ‘The Anatomy of Corporate Law’ at the summer school in Kazusa, Chiba, sponsored by the School of Law from 23 to 28 July.

Major Publications:

European Business Law: Legal and Economic Analysis on Integration and Harmonization, co-ed., de Gruyter, 1996 (First ed. 1991); ‘Corporate Governance in the United States as Seen from Europe’, *Columbia Business Law Review*, 1998; ‘Efficient Fostering of EU Regulatory Competition’, 76 *Schweizerische Zeitschrift für Wirtschaftsrecht*, 2004; *The Anatomy of Corporate Law: A Comparative and Functional Approach*, co-authored, Oxford University Press, 2004.

Harald Baum, Senior Research Fellow, Head of Japan Department, Max-Planck-Institute Hamburg

(September – October 2005)

Profile:

Dr. Baum was graduated from Freiburg University in 1977 and received a doctorate (J.D./PhD) and a *Habilitation* at the University of Hamburg in 1984 and 2004 respectively. In 1990-91 he was a visiting researcher at Kyoto University. He has been Senior Research Fellow and the Head of the Japan Law Department at the Max Planck Institute for Foreign Private Law and Private International Law, Hamburg, Germany since 1997. He teaches as a senior lecturer at the University of Hamburg and is a research associate at the European Corporate Governance Institute, Brussels. He specialises in business law, corporate governance, takeovers, and capital markets regulation in Germany, the EU, Japan, and the US. He is the Founding and Executive Editor of the *Zeitschrift für Japanisches Recht / Journal of Japanese Law* (since 1996). During his stay at the ICCLP, he gave a presentation in the Comparative Law and Politics Seminar entitled ‘Takeover Law in the EU and Germany: Comparative Analysis of a Regulatory Model’. He also contributed an article to the *University of Tokyo Journal of Law and Politics* Vol. 3.

Major Publications:

Japan: Economic Success and Legal System, Walter de Gruyter, 1997; ‘Der japanische “Big Band” 2001 und das tradierte Regulierungsmodell: ein regulatorischer Paradigmenwechsel?’, *RabelsZ* 64, 2000; ‘Saikin no kyōdōtai- hō no tenkai ni tomonau Doitsu shihon-shijō-hō oyobi kaisha-hō no kaisei’, *World Wide Business Review* 4, 2003; ‘Changes in Ownership, Governance, and Regulation of Stock Exchanges in Germany: Path Dependent Progress and an Unfinished Agenda’, *European Business Organization Law Review (EBOR)*, 2004; ‘Commercial Law and Corporate Law in Japan: Legal and Economic Developments After 1868’, co-authored, *A History of Law in Japan Since 1868*, Leiden, Boston, 2005; *Corporate Governance in Context: Corporations, State, and Markets in Europe, Japan, and the US*, co-ed., Oxford University Press, Oxford, 2005.

Mireille Delmas-Marty, Professor, Collège de France

(October – November 2005)

Profile:

After having studied at the University of Paris, Professor Delmas-Marty obtained a Ph.D. from the University of Paris I in 1969. She has been a professor at the University of Lille II, Paris XI and Paris I since 1992 and earned a current professorship at Collège de France in 2002. During her stay at the ICCLP, she gave a presentation in the Comparative Law and Politics Seminar entitled ‘Comparative Law and International Law: Methods for Ordering Pluralism’. She also contributed an article to the *University of Tokyo Journal of Law and Politics* Vol. 3.

Major Publications:

Pour un droit commun, Seuil, 1994, (English translation, Cambridge University Press, 2002); *Trois défis pour un droit mondial*, Seoul, 1998, (Chinese trans., éd. juridiques de chine, Beijing, 2000, Brazilian trans., Lumen Juris, English trans., Transnational publishers, 2003).

Masato Ninomiya, Professor, the University of São Paulo, Faculty of Law

(November 2005 – February 2006)

Profile: After studying at the Universities of São Paulo and Tokyo, Professor Ninomiya was appointed as an associate professor at the University of São Paulo and received his current professorship in 1986. He specialises in nationality law, private international law and problems related to *dekasegi*. During his stay at the ICCLP he has lectured on Ibero-American Law. He also contributed an article to the *University of Tokyo Journal of Law and Politics* Vol. 3.

Major Publications:

Burajiruhō-yōsetsu: Hōrei-hanrei e no Aprōchi, co-authored, Ajia-keizai Shuppankai, 1993; *Nippon-Brazil-ryōkoku ni okeru Nikkeijin no Rōdō to Seikatsu*, co-authored, Nikkan Rōdō Tsūshinsha, 1994; *Brazil Kaihatsuhō no Shosō*, co-editor and co-authored, Ajia-keizai Shuppankai, 1994;

Ponichi-Hōritsu-Yōgoshū: Glossario Portugues-Japones de termos juridicos, co-authored, Yūhikaku, 2000; ‘Zainichi gaikokujin ni taisuru hōjōhō teikyō’ in *Jurisuto*, 2005.

Cho Hong-Sik, Associate Professor, Seoul National University

(December 2005 – August 2006)

Profile:

Associate Professor Cho was a district judge from 1989 to 1991 and an associate attorney at Lee & Ko from 1991 to 1992 after graduating from Seoul National University. He completed his LL.M and J.S.D degree at the University of California, Berkeley in 1993 and in 1995 respectively. He was appointed as a lecturer in 1997 and then an assistant professor in 1999 at College of Law, Seoul National University. He earned his current associate professorship in 2003. He also worked with the Korean government as a member of Regulatory Reform Subcommittee of Ministry of Environment of Korea. He is a member of Seoul Bar and New York State Bar. He specialises in administrative law.

Major Publications:

‘An Overview of Korean Environmental Law’, *Environmental Law*, 1999; ‘Law and Politics in Environmental Protection: A Case Study on Korea’, *Journal of Korean Law*, 2002.

Visitors at the ICCLP

The ICCLP invited following professors and a judge from overseas this year. They gave presentations as part of Comparative Law and Politics Seminars during their stay at the ICCLP.

Richard M. Alderman, Professor, University of Houston Law Center

Term: 2–14 May 2005

Research Area: Consumer Law

Henry E. Smith, Professor, Yale Law School

Term : 26 May 2005–2 June 2005

Research Area: Commercial Law

Steven L. Schwarcz, Professor, Duke University School of Law

Term: 11–21 July 2005

Research Area: Civil Procedure

Florence Haegel, Research Director, Center for the Study of French Political Life (CEVIPOF)–FNPS

Term: 20–31 October 2005

Research Area: Politicization, Sociology of Political Party

Jack Jacobs, Justice, Delaware Supreme Court

Term: 12–15 November 2005

Comparative Law and Politics Symposiums

The 22nd Comparative Law and Politics Symposium 10–12 June 2005

International Symposium: A Celebration of the 200th Anniversary of Tocqueville's Birth

Two Democracies: The US and France?

10 June 2005

Opening

Moderator: Françoise Sabban, President, Maison Franco-Japonaise

Introductions: Bernard de Montferrand, French Ambassador to Japan

Kazuo Ogura, President, Japan Foundation

Takeshi Sasaki, Professor, Gakushuin University / Former President, University of Tokyo

Keynote Speech

Moderator: Nobutaka Miura, Professor, Chuo University

Speaker: Yoichi Higuchi, Emeritus Professor, University of Tokyo

Olivier Zunz, Professor, University of Virginia / President, Tocqueville Society

Session 1: How 'Tocqueville' Has Been Interpreted?

Moderator: Shigeki Uno, Associate Professor, University of Tokyo

Speaker: Françoise Mélonio, Professor, University of Paris-Sorbonne Paris IV

James T. Schleifer, Professor, College of New Rochelle

Discussant: Reiji Matsumoto, Professor, Waseda University

Venue: Sanjō Conference Hall

Language: Japanese, English and French

* Co-sponsored by the University of Tokyo 21st Century COE Program, 'Invention of Policy Systems in Advanced Countries'. Sessions on 11th and 12th was held at Maison Franco-Japonaise sponsored by Maison Franco-Japonaise.

The 23rd Comparative Law and Politics Symposium 1–2 July 2005

Soft Law and Social Norms: Theory and Practice

1 July 2005

Topic: Soft Law in Domestic and International Settings

Speaker: Eric A. Posner, Professor, University of Chicago

Topic: The Development of Trade Customs in International Sales

Speaker: Clayton P. Gillette, Professor, New York University

Topic: The State of Debate over the Incorporation Strategy in Commercial Law

Speaker: Steven D. Walt, Professor, University of Virginia

Topic: The Evolution of Social Norm: Economic Modeling
Speaker: Tomotaka Fujita, Professor, University of Tokyo
Toshihiro Matsumura, Associate Professor, University of Tokyo
Commentator: Robert C. Ellickson, Professor, Yale University
Moderator: Hideki Kanda, Professor, University of Tokyo
Venue: Tokyo International Forum Hall D
Language: Japanese and English
*Co-sponsored with the University of Tokyo 21st Century COE Program, 'Soft Law' and the State-Market Relationship. Sessions in Japanese on 2nd July was held at the same venue.

The 24th Comparative Law and Politics Symposium – 22 July 2005

Global Trends in Modern Corporate Law

Opening : Piano Concert by Go Nakajima

Chair: Yoshiaki Miyasako, Professor, the University of Tokyo
Topic: America's Law of Defensive Tactics: What Happened in Delaware and Will It Happen Elsewhere?
Speaker: Reinier Kraakman, Professor, Harvard Law School
Topic: Increasing Director Independence: The Flaws in Current Reforms and How to Address Them
Speaker: Gérard Hertig, Professor, Swiss Federal Institute of Technology Zurich
Topic: From Corporate Governance to Corporate Social Responsibility
Speaker: Jacques Buhart, Partner / Head of Corporate, Herbert Smith Paris
Commentators: Mark Ramseyer, Professor, Harvard Law School
Bruce Aronson, Assistant Professor, Creighton University School of Law

Questions from the Floor

Summary: Hideki Kanda, Professor, the University of Tokyo

Venue: Suntory Hall

Language: English and Japanese

Reception: ANA Hotel Tokyo

*Supported by the Tokyo Stock Exchange, Inc.

The 25th Comparative Law and Politics Symposium – 29 September 2005

The EU Constitutional Treaty and the Future of the European Project

Moderator: Kenji Hirashima, Professor, the University of Tokyo
Introduction: Susumu Takahashi, Professor, the University of Tokyo

<Session 1>

Topic: Federal and Democratic? Reflections on Democracy and the Constitution of the EU
Speaker: Arthur Benz, Professor, Fern Universität Hagen, Germany
Discussant: Ryosuke Amiya-Nakada, Professor, Kobe University

<Session 2>

Topic: Why the EU is Undemocratic, and What Should be Done About It"
Speaker: Simon Hix, Professor, the University of London, LSE
Discussant: Ariyoshi Ogawa, Professor, St. Paul's University (Rikkyo University)

<Session 3>

Panel Discussion

Moderator: Susumu Takahashi
Panelists: Kenji Hirashima; Arthur Benz; Ryosuke Amiya-Nakada; Simon Hix; Ariyoshi Ogawa; Toru Yoshida, Research fellow, the Japan Society for the Promotion of Science (University of Tokyo)
Venue: ANA Hotel Tokyo

*Co-sponsored by the University of Tokyo 21st Century COE Program, "Invention of Policy System in Advanced Countries" and Kobe University 21st Century COE Program (CDAMS)

*Supported by Asahi Shimbunsha (Endowed Chair of "Politics and Mass media")

Report

Naonori Kodate
COE Project Researcher

Propelled by the initiative of Professor Susumu Takahashi of the Graduate Schools for Law and Politics, University of Tokyo, EU politics experts from Japan, the UK and Germany convened to discuss contested issues such as democratic deficits in the current European Union and the future prospects of a European polity. The symposium was jointly sponsored by the International Center for Comparative Law and Politics (University of Tokyo), the 21st Century COE Programme Invention of Policy Systems in Advanced Countries, also at the University of Tokyo, and the 21st Century COE Programme Center for Legal Dynamics of Advanced Market Societies, Kobe University.

After Professor Takahashi made his opening remarks, the chairman, Professor Kenji Hirashima (University of Tokyo), introduced guest speakers from Europe, Professor Arthur Benz (Fern Universität Hagen, Germany) and Professor Simon Hix (LSE, University of London, UK). The symposium consisted of three sessions. The first two sessions each consisted of a presentation by one of the guest speakers

followed by a talk by one of the discussants, namely Professor Ryosuke Amiya-Nakada (Kobe University) for the first session and Professor Ariyoshi Ogawa (St. Paul's University) for the second. The third and final session was a panel discussion chaired by Professor Takahashi, who was joined by Professor Hirashima and Mr Toru Yoshida (research fellow of the Japan Society for the Promotion of Science, University of Tokyo) as well as other presenters and discussants.

“EU in Crisis”, “Une triple crise en Europe” (triple crisis, i.e. crisis of identity, institution and finance), or “die Krise des Projekts Europa” (crisis of the European project). Such headlines in major broadsheet newspapers reveal the intensity of the shock and anxiety felt over the future of the European Union after the rejections of the Constitutional Treaty by the majority of voters in France and the Netherlands in May and June 2005. Although the European project for building a new type of polity has experienced ups and downs throughout its history spanning more than 50 years, this time the ‘non/nee’ votes were to be seen in a slightly different light. With a definite rebuff to the Constitution from two founding member states, the legitimacy and credibility of past developments were called into question, from strengthening the European Parliament to expanding the Union across Central and Eastern Europe. These ‘no’ votes are not only urging the European elite, policymakers and EU citizens to reconsider and reflect on the meaning of ‘democratic deficits’ but also driving scholars all over the world to analyse what, if anything, has gone wrong, and find possible solutions to the problems.

Given this saliency of the issue, and the potential implications for the world we live in, no time was wasted in holding a special seminar in early June this year for Japanese experts on European affairs (please see also the occasional paper: “Hencho suru Yoroppa Seiji (Variations on the theme of European Politics)” (2005)). Following on from this, two leading scholars from Europe were called in so that this time experts and students in Japan could exchange views with them face to face. With this aim in mind, this symposium was designed and structured to promote lively interaction among the participants.

The first speaker Professor Benz began his lecture entitled “Federal and Democratic? Reflections on Democracy and the Constitution of the EU” by mapping out different types of democracies in the multi-layered European polity. His emphasis was laid upon the centralising tendencies that EU integration has had, and the resulting effects. He pointed out that selective centralisation, which leaves most important functions (foreign policy, military, tax and spending) with the nation states, makes for a weak community at the European level. Thus, as long as the EU is a polity where competences are shared and participative democracy has no firm ground, the traditional concept of federal states cannot provide a cure for redressing the ‘unbalanced federalism’ of the current EU institutional setups. In order to overcome the seemingly incompatible idea of having both federal and democratic elements to the EU, new modes of governance and federation concept are hoped for. Following this presentation, Professor Amiya-Nakada

asked Professor Benz for his standpoint on the issue of the “joint-decision trap” and the concept of “loose-coupling”. Unlike the original argument put forward by Scharpf (1988), Professor Benz claims that the interlocking of competencies does not, of itself, lead one into the trap, advocating instead the mixed use of ‘loose’ and ‘tight’ coupling to monitor national governments without placing too many restrictions upon them. Professor Amiya went on to ask another question concerning changing roles that parliament can play in democratic states today and questioned its former effectiveness as a tool to activate participatory democracy in any substantial way. This is, without doubt, of high relevance not just to the EU member states, but also to any democratic polity.

The second speaker Professor Hix demonstrated a different slant on the issue, using the classical ‘democratic deficit’ arguments and the two counterarguments by Majone (1998) and Moravcsik (2002) as a basis for discussion. Majone claims that as a pareto-efficient ‘regulatory state’, the EU is not suffering from democratic deficits, but from a credibility crisis. On the other hand, Moravcsik comes to the same conclusion via a different path, underlining the fact that indirect democratic control is ensured by the EU’s intergovernmentalist approach and increasing powers of the European Parliament. Professor Hix criticised both of them for preferring ‘enlightened’ bureaucracy to ‘popular’ democracy. Instead, he and his co-author Andreas Føllesdal (University of Oslo) propose that the institutional design that allows for opposition can foster an environment where democratic competition for office and policy agenda is to be practiced. Constitutional reform is not necessary to implement all these changes, but rather political commitments for more open contest are required. Professor Ogawa, while agreeing with Professors Hix’s claim that there is no need for more ambitious constitutional reforms just for the sake of enhancing legitimacy, questioned the validity of two-dimensional left vs right party politics on the European level. In his view, other dimensions, territorial in particular, will remain highly important, for EU politics is not all about choices between regulation and distribution, made by the elite. It can also be said that the politicisation of the constitution is not necessarily conducive to the stability of the polity, nor leads to left-right contestation, as shown by Japanese post-war party politics. Furthermore, Professor Ogawa underscored the uniqueness of European integration which has been driven primarily by the development of legal, rather than political, systems (e.g. Weiler 1994), and compared different regional integration processes such as APEC, NAFTA and the EU in order to highlight non-political factors that can sustain and promote regional integration dynamics.

The third session (panel discussion) started off with the invited speakers responding to the comments made and questions posed by the two discussants. Members of the panel then asked each other questions, also taking up some questions from the audience. Professor Benz emphasised the variance between German-style cooperative federalism and EU-type federation, pointing to the fact that tight-coupling in Germany can lead to deadlock due to its strong link between competitive party and institutional politics.

He argued that the stakeholders in the arrangements of new multilevel governance in the EU could enhance best practice and sectoral negotiations which often compensate for the lack of legitimacy. Professor Hix likewise sees the danger of trying to fiddle with further constitutional reforms at this point. He also added, referring to multiple dimensions of politics, that contestation among political parties on the European level has been heightened to the extent that the territorial dimension could one day be integrated into two-party contests. On the issue of the judicial legitimacy of European integration, Professor Hix dismissed the validity of the argument in the current situation, given that public support for the EU is clearly declining and needs resuscitation.

To Professor Hirashima's question on what the future holds for the European welfare state, Professor Benz reiterated the likelihood that the redistributive power of welfare resources would stay at national level, thereby making it necessary that the balance of the institutional setup be carefully constructed. In reply to a question about further amendments or a new treaty, Professor Hix denied that they are necessary, noting that this Constitutional Treaty was the first ever attempt in the history of the EU to change purely institutional frameworks with no specific policy goals unlike all the other previous treaties. He considers this to be one of the main reasons why it failed miserably to procure consent from both the elites and the public. Professor Amiya-Nakada questioned the benefits of bringing more party competition into the Parliament or clearer leadership to the Commission on issues such as policy coherence or enhancement of public support. He restated the fact that party politics today do not matter so much when making policy choices but rather play a role in assessing government performance and punishing the leaders. However, Professor Hix refuted this critique, arguing that the impact of party politics does appear to be limited, partly because EU politics set the parameters. Nevertheless, political contest still matters a great deal in clearing the way for policy outcomes. In this regard, Professor Hix claimed, the Westminster vs Consensus charge against him is flawed and does not help us provide prescriptions for rectifying EU constitutional frameworks. Professor Ogawa asked questions about how to incorporate third-country nationals as European citizens and also on the personification of politics. Both Professors see immigration and asylum policy as an increasingly European issue, meaning that the EU started to tangibly affect the everyday lives of EU citizens. Answering the latter question, Professor Hix mentioned that the presidentialisation or even dramatisation of politics can be utilised in a positive manner to bring about more transparency or contest to legitimise the European venue (like in the days of Delors as Commission President). Mr Yoshida, as a scholar of French politics, commented that social partners in a highly centralised polity might not fit into the sort of European federation modelled upon the German or Dutch system, where corporatism operates under their types of democracies. While Professor Benz endorsed the idea, he added that there is no "European public" as yet, however there is an emergent European sectoral community. Building on this, we could still construct a European polity, balancing out democracy and federalism. To Professor Hix, Mr Yoshida reiterated the previous argument that there has been no single

incentive for a national political party to fight the EU elections on the European issue. Professor Hix again conceded this, but insisted on a tidal change, and the peculiarity of the Constitutional Treaty, which attempted to tip the balance inside the European institutions. There is an imminent need for contestation between political parties at the European level.

After this, three questions were taken from the floor. The first one from Ms Sumiko Iwasaki (International Christian University) touched upon the natural transformation of decision-making procedures into policy outcomes. It was asked whether two-party (EPP-PES) politics and centrist policies derive from the absolute majority voting requirement in the European Parliament. Professor Hix conceded the significance of decision-making rules but also emphasised that absolute majority voting is only applied to a second reading in the co-decision procedure today, and with a higher turnout of MEPs there is little variance between the absolute and simple majority. As a result of this, rather than the forced rule itself, a left-right coalition was formed on a number of issues such as environment and social legislation.

The second question from Professor Toshiro Tanaka (Keio University) was about the life of the Constitution Treaty in a practical sense. Professor Benz in his reply argued that the problem with this treaty was that such important issues as competency and subsidiarity should have their place in the text, and thus were left unresolved. As it stands, the only legitimate veto-player, i.e. national parliament, will remain strong and constitutional reform will not achieve what it is expected to do in his view.

Professor Klaus Goetz (Universität Potsdam) put forward some points questioning the foundation of the whole discussions. He spelled out the risk of compounding problems by discussing two different things at once: democratic deficits and legitimacy. In essence, fixing the legitimacy problem by inserting democratic elements does not seem to be the right answer. He also mentioned great differences in the perceptions of the EU among member states, for instance Spain on one hand and Denmark on the other. Responding to this last comment, Professor Benz restated that the concept of democracies has to be found at the European level. Professor Hix, on the other hand, postulated that in the process of building and integrating a market, the role of legitimacy based around an independent, non-majoritarian and quasi-judicial body was much more appropriate because the process was in fact very technical and generally pareto-enhancing. Now that the mode has changed and the winners/losers dichotomy becomes more evident, it is necessary to choose democratic processes in order to legitimise policy choice, e.g. de-regulation or re-regulation, and therefore the political entity. This is where legitimacy and democracy meet and overlap, he asserted.

As the negotiating table is now open to further enlargement of the EU to include Turkey, the effectiveness and practicability of any proposed prescriptive ideas remain to be seen. Nevertheless, there is no doubt

that this symposium has shed light on some vital points in the debate over the future of the European polity, and presented how we could all learn from European integration not only a set of working supranational institutions but also a new type of democracy. As the classic statement goes, 'politics matters'. This was the overarching message and resonates with anyone engaged with Japanese, European or international politics. Active interaction continued after the symposium between Japanese and European scholars, and it had surely exhibited the interests and agendas that we share in a globalised academic sphere. Just as European integration has continued to proceed, this symposium was a good showcase of an open-ended arena for inter-national dialogues.

The 26th Comparative Law and Politics Symposium – 26 November 2005

The Second Reform of Decentralization

Speakers:

Oh Jaeyiel, Professor, Chonnam National University

Wataru Oomori, Emeritus Professor, University of Tokyo

Akira Morita, Professor / Dean, Graduate School of Public Policy, University of Tokyo

Panel Discussions A

Panelists:

Keiko Sakurai, Professor, Gakushuin University

Namiko Numao, Associate Professor, Nihon University

Takeru Doi, Associate Professor, Keio University

Toshiyuki Kanai Associate Professor, University of Tokyo

Panel Discussions B

Panelists:

Kang Jaeho, Associate Professor, Pusan National University

Lee Sang Jin, Secretary, the Office for Government / Visiting Research Scholars, University of Tokyo

Masatsugu Ito, Associate Professor, Tokyo Metropolitan University

Takeshi Shimamura, Associate Professor, Kobe University

Moderator: Kazuhiro Taguchi, COE Visiting Lecturer

Language: Japanese

*Co-sponsored by the University of Tokyo 21st Century COE Program, "Invention of Policy System in Advanced Countries", Graduate School of Public Policy, the University of Tokyo and Endowed Chair in 'Mass Media and Politics (Asahi Shimbun)'.

The 27th Comparative Law and Politics Symposium – 24 February 2005

Internal Control of Corporations

Introduction: Hideki Kanda, Professor, University of Tokyo

Speakers: Yoshiaki Miyasako; Hideki Kand; Kazuhiro Takei, Visiting Associate Professor, School of Law,
University of Tokyo

Guest Speakers: Toshiharu Kobayashi, Toshiba Corporation; Takatsugu Ochi, Sumitomo Corporation

Moderator: Yoshiaki Miyasako

Venue: Conference Square M Plus

Language: Japanese

*Supported by the Tokyo Stock Exchange, Inc. and the Commercial Law Center, Inc.

Comparative Law and Politics Seminars & Forum

[Seminars]

The 166th Comparative Law and Politics Seminar – 18 April 2005

Topic: Medical Accidents and Autopsy: U.K. experience

Speaker: Sebastian Lucas, Professor, University of London; Pathologist

Language: English (with summary in Japanese)

Moderator: Norio Higuchi

The 167th Comparative Law and Politics Seminar – 9 May 2005

Topic: The Development of American Consumer Law with a Special Look at Texas

Speaker: Richard M. Alderman, Professor, University of Houston Law Center

Language: English (with summary in Japanese)

Modelator: Hisakazu Hirose

【Report】

During the past century, American consumer law in general, and Texas consumer law in particular, has undergone great change. This change produced an initial sharp rise, followed by a recent decline, in the protection the law affords consumers.

Originally, consumers had little protection. The rule of ‘caveat emptor,’ or ‘buyer beware,’ controlled. General theories of contract and tort law were used to redress consumer problems, often with limited success.

In response to the difficulty of using traditional legal theories to protect consumers from false and deceptive practices and the sale of unsafe products, tort and contract law evolved, through the development of implied warranties in contract, and strict product liability in tort. These new doctrines offered much more substantial protection with respect to defective products.

The federal and state governments also enacted specific laws designed to protect consumers. For example, Federal laws were enacted to regulate credit and debt collection. At the same time, many states, such as Texas, enacted state consumer protection laws, prohibiting false, misleading and deceptive acts and practices. These state laws often provided comprehensive rights, coupled with broad remedies, including the award of attorney’s fees and punitive damages. Because most protection for consumers in American comes from private lawsuits, these remedies are needed to insure that there is an incentive for attorneys to bring suit, and substantial punishment to deter wrongful conduct. During the 1980s and into the 1990s,

these laws were used very successfully by consumers.

Recently, however, the pendulum has begun to swing back against consumer protection. Conservative judges are less receptive to consumers' claims, and juries, concerned about 'lawsuit abuse,' are less likely to award substantial damages. Also, many of the laws that were enacted in the 1970s have been scaled back by the legislature, and some protections have been limited. Special exemptions have also been created for groups with powerful legislative lobbies, such as the home building industry, which is often made exempt, from the general consumer protection laws.

[Richard M. Alderman]

The 168th Comparative Law and Politics Seminar – 27 May 2005

Topic: Self-Help and the Nature of Property

Speaker: Henry E. Smith, Professor, Yale Law School

Language: English (with summary in Japanese)

Modelator: Hideki Kanda

【Report】

Self-help and the law's response to it lie at the center of a system of property rights. This has become all the more apparent as questions of property – and whether to employ property law at all – have arisen in the digital world. I argue that self-help comes in different varieties corresponding to different strategies for delineating entitlements. Like property entitlements more generally, the law does not regulate self-help in as detailed a fashion as it could if delineation were costless. Both property entitlements and self-help show far less symmetry and a far lesser degree of tailoring than we would expect in a world in which we did not face delineation costs of devising, describing, communicating, and enforcing the content of rights and privileges to use resources.

First, I set the stage for an analysis of self-help by showing how the law-and-economics treatment of entitlements leads one to expect greater symmetry in entitlements than is to be found in the law. In the commentary, rights to be free from pollution are paired conceptually with so-called rights to pollute, but the law does not provide for free standing rights – as opposed to occasional privileges – to pollute. Second, I show how these apparent anomalies receive an explanation on a theory of entitlement delineation that accounts broadly for costs as well as benefits. Roughly speaking, the law faces a choice among strategies for delineating entitlements, and in the choice among these strategies, the benefits of multiple uses of resources must be traded off against the costs of delineation and enforcement. On the one hand, one can delineate entitlements using very rough signals that protect uses indirectly but do not refer to uses specifically, which I call an exclusion strategy. The right to exclude from Blackacre is the

prototypical example. Or one can tailor entitlements to important uses in order to capture the benefits of multiple uses, but at a higher delineation cost. This I call a governance strategy, and various off-the-rack nuisance rules and land use regulations as well as privately negotiated easements and covenants would be examples. Normatively, the law should provide off-the-rack governance schemes only when the stakes are high and more cost-effective tailored governance rules cannot be expected to emerge from private parties themselves. More positively, much of the costs of delineation identified here are internalized to those who are called upon to devise and enforce property entitlements. Third, I demonstrate that the law's approach to self-help is intertwined with and reflects the same cost-benefit considerations as the general system of entitlements. Finally, I turn to self-help in the digital arena and shows how controversies over trespass to websites, digital rights management, and copyright fair use reflect the place of self-help within a system of entitlement determination that mixes elements of exclusion and governance.

[Henry E. Smith]

The 169th Comparative Law and Politics Seminar – 2 June 2005

Topic: Clinical Legal Education in the U.S. Legal Academy: Past, Present and Future

Speaker: David A. Santacroce, Professor, University of Michigan Law School

Language: English (with summary in Japanese)

Modelator: Norio Higuchi

The 170th Comparative Law and Politics Seminar – 16 June 2005

Topic: Rulemaking in the Ages of Globalization and Information: What America Can Learn from Europe, and Vice Versa

Speaker: Peter L. Strauss, Professor, University of Columbia Law School

Language: English (with summary in Japanese)

Modelator: Norio Higuchi

The 171st Comparative Law and Politics Seminar – 16 June 2005

Topic: The Formation and Development of Taiwan's Labor Law

Speaker: Neng-Chun Wang, Assistant Professor, College of Law, National Taiwan University

Language: Japanese

Modelator: Paul Ch'en

The 172nd Comparative Law and Politics Seminar – 22 June 2005

Topic: Affordable Housing Development and the Role for the Attorney

Speaker: Rochelle E. Lento, Professor, University of Michigan Law School

Language: English (with summary in Japanese)

Modelator: Yoshiko Terao

The 173rd Comparative Law and Politics Seminar – 30 June 2005

Topic: The Success of Taiwan's Criminal Justice Reform-Adopting and Adapting Japanese Law

Speaker: Jaw-Perng Wang, Associate Professor, College of Law, National Taiwan University

Language: English

Modelator: Paul Ch'en

The 174th Comparative Law and Politics Seminar – 14 July 2005

Topic: Challenges of the Legal Education in Taiwan and the Need for a Reform

Speaker: Chang-fa Lo, Dean, College of Law, National Taiwan University

Language: English

Modelator: Paul Ch'en

The 175th Comparative Law and Politics Seminar – 15 July 2005

Topic: Conceptual Developments in Securitization and Structured Finance

Speaker: Steven L. Schwarcz, Professor, Duke University School of Law

Language: English (with summary in Japanese by Professor Hideki Kanda)

Modelator: Makoto Ito

(* The 176th Comparative Law and Politics Seminar was cancelled.)

The 177th Comparative Law and Politics Seminar – 6 October 2005

Topic: Comparative Law and Democratic Theory: New Developments

Speakers: 1) Bruce Ackerman, Sterling Professor of Law and Political Science, Yale Law School

“The New Separation of Powers”

Summary Briefing: Yasuo Hasebe

2) Suzan Rose-Ackerman, Henry R. Luce Professor of Jurisprudence, Law and Department of Political Science, Yale Law School

“From Elections to Democracy: Building Accountable Government in Countries in Transition”

Summary Briefing: Junko Kato

Language: English

Modelator: Yoshiko Terao

The 178th Comparative Law and Politics Seminar – 17 October 2005

Topic: Takeover Law in the EU and Germany: Comparative Analysis of a Regulatory Model

Speaker: Harald Baum, Senior Research Fellow, Max-Planck-Institute; ICCLP Visiting Professor

Language: English (with summary in Japanese by Professor Tomotaka Fujita)

Modelator: Hideki Kanda

【Report】

The search for an optimal regulatory model for takeovers keeps both academics and practitioners busy around the world. The U.K. and the U.S. were the first countries to introduce explicit regulations for takeovers in 1968. In spite of the fact that both economies are characterized by a market-oriented corporate governance model and a predominance of public companies with widely spread shareholdings, they followed opposing regulatory paths.

The British opted for the City Code, a self-regulatory regime of significant flexibility but at the same time of high regulatory intensity. It is characterized by a mandatory bid rule that guarantees an exit route for minority shareholders in case of a change of control, and by a strict neutrality principle that obliges the management of a target company to refrain from any action that might frustrate a bid without expressed up-to-date consent of the company's shareholders. Thus, decisions in the U.K. about a change in control have rested firmly since then with the shareholders as the residual risk takers. The Code's flexibility and the non-frustration rule that prohibits costly defense measures act as functional counterbalances to the regulatory intensity and the high costs associated with the mandatory bid rule. This institutional interplay has made the British takeover regime highly successful.

The United States, on the other hand, decided for a legislative approach in the Williams Act. The Williams Act is a piece of light regulation of purely procedural nature without a mandatory bid rule. Its aim is to guarantee equal treatment of all shareholders with respect to information and procedure so as to prevent a premature and under-priced selling of shares. Thus, rather than facilitating the exit of shareholders, the U.S. regulation in effect seems to encourage shareholders to stay invested in the target company. A second major difference to the British model lies in the fact that U.S. courts allow bid-frustrating defensive actions that effectively give management rather than shareholders a decisive influence on the decision about the change of control.

Japan and Germany followed with their takeover regulation some three decades later. Although both are characterized by corporatist and insider-based corporate governance models and concentrated ownership, including widespread cross-holding of shares, they decided on contrasting takeover regimes. Japan opted by and large for the U.S. approach. Its procedural rules are modeled on the Williams Act but are more refined after a major reform in 1990. Its new guidelines on defense measures issued in 2005 reflect the U.S. court decisions.

In contrast to Japan, German legislators focused on the U.K. approach when drafting the Takeover Law enacted 1 January 2002. A core element is its strict mandatory offer rule. Thus this law – like the City Code – is characterized by a high and costly regulatory intensity. However, the British functional counterbalances in the form of flexible procedures and a strict non-frustration rule are lacking. The German law is part of the public law area and is implemented by a government agency. All decisions can accordingly be and are challenged in the courts – there have already been five times as many law suits in four years as Britain saw in nearly four decades. Furthermore, as a result of intense lobbying by employed management and organized labor during the legislative proceedings, the originally proposed non-frustration rule was significantly watered down. Thus, in effect, the management of a German target has a fairly free hand to frustrate a hostile bid. This makes the new German Takeover Law strangely inconsistent with the British concept. Instead of following either the U.K. *or* the U.S. model, German legislators seem rather to have chosen in the end a combination of the most takeover-averse elements of both. Not surprisingly, the new law has been dubbed a piece of ‘anti-takeover legislation’.

[Harald Baum]

The 179th Comparative Law and Politics Seminar – 18 October 2005

Topic: Actual legal developments in EU financial markets law with a focus on the financial markets infrastructure

Speaker: Klaus Löber, Principal Legal Counsel, European Central Bank and the EU Commission

Language: English (with summary in Japanese)

Modelator: Hideki Kanda

The 180th Comparative Law and Politics Seminar – 27 October 2005

Topic: New Qualitative Approaches of Politicization

Speaker: Florence Haegel, Research Director, CEVIPOF (Center for the Study of French Political Life) - FNSP(France)

Language: English

Modelator: Susumu Takahashi

【Report】

The aim of the conference is to give insights on the contribution of new qualitative methods to the understanding of the ways citizens are involved in politics. To revivify this field, qualitative methods are likely to be the more relevant because they give opportunity to analyze the mechanisms. Quantitative methods are irreplaceable to asses and gauge a phenomenon, a relationship; qualitative ones are relevant to find how it works.

As far as we want to analyze politicization, not all qualitative are relevant. Politicization is a process, so we need a method suitable for taking in account a process. Politicization occurs in an interactive and even contradictory or conflictive context, the reason why we need a method which creates this type of context. According to these demands, focus group appears to be more relevant. It gives the opportunity to study the process of discussion in an interactive and conflictive frame.

The first experiments, which will be followed in an international perspective, have been carried out in France with French political scientist Sophie Duchesne in year 2002. These focus groups were organized according to a well tried method. They gather people with fairly similar social profiles in order to reduce the effects of the unequal relation to public discourse. People were asked to talk about delinquency; the subject was not revealed beforehand.

From a theoretical point of view, both specialization and conflict are at stake in the way citizen's deal with politics. Politics involves a form of specialization, and according to sociological surveys, individual political competence and knowledge are at the core of the relation towards politics. But, theorists and anthropologists remind us that politics has to do with conflicts. This conception makes manifest how in complex pluralistic unequal societies, the political is a mode of expression as well as a way to addressing conflict.

The first findings attest the following points: As far as citizen's relations to politics are concerned, specialization and conflict are not systematically connected. The more politically competent are not automatically the more involved in the discussion. They take aside to the discussion, observing. They are reluctant to simplify what is at stake. In these groups, participants avoid openly expressing disagreements with one another and open conflict happens rarely. Avoiding politics and depoliticization are the social norms. Conflict emerges clearly when politicization implies a collective dimension and the making of alliance or of solidarity.

Disagreeing with the others participants suppose to take risk, this point explains why people don't take this risk in a lot of issue. They do so when it is a crucial one, at least for them. More over, we can asses that it requires a kind of hierarchical organization of belongings and identifications.

Sociological research has laid stress on the multiple identifications of each individual, resulting from the fact that he belongs to different groups and that group affiliations overlap. Indeed, if today's *homo sociologicus* is characterized by the multiplicity of roles and groups of reference, as well as of identifications and values , our experiment would seem to demonstrate that *homo politicus* for his part,

can emerge only if a certain integration, or failing that, a hierarchical organization of identifications is achieved.

At last, two issues from our findings are interesting to discuss: the debate about deliberative democracy and the challenge of cultural comparison.

Recently, the theoretical debate about deliberative democracy has re-emphasized the role of political discussion in the democratic system and argues that informal political discussion tends to be credited with virtues as deliberation, i.e. improving the ability of individual citizen managing the political complexity and intensifying sense of community. But our experiment assess that political discussion is far from being a rational argumentation. It involves personal risk and collective alliance and solidarity. Second, our experiment was carried out only in France; we have left aside the question of the political and cultural specificity of our findings. France is by no means unique; however the French political system is characterized by a high degree of polarization and by the existence of political parties at the far ends of the political spectrum. Thus, the next step of the research program has to test in other societies where society is not characterized as contentious. In this respect, I guess that a discussion with Japanese political scientists will be highly enlightening.

Discussion

The discussion with the floor has intensively focused on the research design of the method, and how the program has been conducted in details, as well as the implication of the findings in an institutional perspective. The answers were that the focus group method is conducted in a very experimental way and the framework was a suppositional one, not findings. The method is designed to trace process of politicization and not the results, as it is the case in certain applied science in the United States or in developmental-aid programs. The design would be examined by enlarging social groups and country. In a broad institutional perspective, it was stressed that the function of the conflicts is not only negative, but is an important momentum for social integration, but the question in comparative context remain large.

[Toru Yoshida]

The 181st Comparative Law and Politics Seminar – 1 November 2005

Topic: The current UNCITRAL work in the field of security interests law

Speaker: Spyridon Bazinas, Senior Legal Officer, UNCITRAL

Language: English

Modelator: Hideki Kanda

The 182nd Comparative Law and Politics Seminar – 12 November 2005

Topic: Comparative Law and International Law: Methods for Ordering Pluralism

Speaker: Mireille Delmas-Marty, Professor, Collège de France; ICCLP Visiting Professor

Language: English

Modelator: Yuji Iwasawa

The 183rd Comparative Law and Politics Seminar – 14 November 2005

Topic: Implementing Japan's New Antitakeover Defense Guidelines: The Utility of Courts in Defining the “Rules of the Game” and Monitoring Their Proper Observance

Speaker: Jack Jacobs, Justice, Delaware Supreme Court

Language: English (with summary in Japanese by Professor Tomotaka Fujita)

Modelator: Hideki Kanda

The 184th Comparative Law and Politics Seminar – 28 November 2005

Speakers: 1) Frances McCall Rosenbluth, Professor of Political Science, Yale University

“Gender Socialization: How Bargaining Power Shapes Social Norms and Political Attitudes”

2) Ian Shapiro, Sterling Professor of Political Science/ Henry R. Luce Director, Yale Center for International and Area Studies

“The Constitutional Politics of Abortion”

Language: English

Modelator: Junko Kato

185th Comparative Law and Politics Seminar – 8 February 2006

Topic: Resolution of clash between freedom of speech and defamation in the U.S. and Korea

Speaker: Sun-Je Sung, Professor and Vice Dean of College of Law, Youngsan University

Language: English (with summary in Japanese)

Moderator: Norio Higuchi

186th Comparative Law and Politics Seminar – 22 February 2006

Topic: Health Insurance System and Assisted Reproduction: Germany and Japan Compared

Opening Remarks: Makoto Ito

Speakers: 1) Volker Neumann, Professor, Berlin Humboldt University

“Public Health Insurance System: Principles and Practice in Germany”

Summary: Masahiko Ota

Commentator: Kenji Shimazaki, Japanese Visiting Professor

2) Christiane Wendehorst, Professor, Göttingen University

“Assisted Reproduction: The Law and Practice in Germany”

Summary:Yoko Hashimoto, Associate Professor, Gakushuin University

Commentator:Toyohiro Nomura, Professor, Gakushuin University

Closing Remarks:Norio Higuchi

Language:Germany (with summary in Japanese)

[Forum]

The 128th Comparative Law and Politics Form – 12 July 2005

Topic: Self-determination and Constitution Making of Tokelau in Progress

Speaker:Kichimoto Asaka

Language: Japanese

Modelator: Norio Higuchi

【Report】

Tokelau consists of three coral atolls equidistant between New Zealand and Hawaii. It is a non-self-governing territory of New Zealand, but it is now moving towards self-government under the United Nations decolonization policy and New Zealand's support. Professor Anthony Angelo, who visited the faculty as an ICCLP visiting professor in 1994, is advising Tokelau on its Constitution. Tokelau is expected to have a vote on self-determination in February 2006. However, it is deprived of resources because of the lack of soil, cannot afford an airfield because of the small population and narrow land, and is exposed at high tide of cyclones because of its low-lying position. In short, it is not self-sustainable and is remote from the outside world. In fact, the three atolls themselves are separated from each other; only when a Samoan cargo ship comes to this part of the Pacific can the residents of one atoll visit another atoll. In this environment, even after self-determination, close ties with New Zealand by guarantee of New Zealand citizenship and financial aids are indispensable, and the residents hope to maintain them. Therefore, the Constitution and the Treaty of Free Association with New Zealand are being drafted as one package.

Although Tokelau has a compulsory education system similar to that in New Zealand, Tokelauans have to learn why they are moving towards self-determination, as well as what the Constitution and the Treaty are. The people are uneasy about the term "decolonization", because it connotes slavery and exploitation in Africa and they believe that they have been neither slaves nor exploited. They consider New Zealand as a big brother or a protector, and so they wonder why New Zealand wants them to self-determine and worry if New Zealand abandons them. In fact, two former New Zealand territories, the Cook Islands and Niue, experienced financial difficulties and the flow of emigration after the self-determination because of the defects of financial aids mechanism under the treaties with New Zealand, and caused controversies by establishing tax havens in order to sustain their economies.

Still, Tokelau is moving towards self-government with a solid guarantee of financial support from New Zealand. However, a full-fledged Constitution is not appropriate for this small tradition-bound community, so it will be a minimalist Constitution with provisions for the needs of national self-government.

[Kichimoto Asaka]

The Second Anglo-Japanese Academy

Date: 7 – 11 January 2006

Venue: Conference Centre Scarman House, the University of Warwick

Title: ‘Globalisation, Regionalisation and National Policy Systems’

Programme

Saturday, 7 January

9:30– Orientation for Japanese AJA Fellows (Lecture Room 9)

11:00– Excursion for Japanese AJA Fellows to Coventry Cathedral

12:30– Arrival and Registration of UK AJA Fellows

14:00– Film ‘Bushido’ 1926 Japan / Germany (Tiered Lecture Theatre)

M.C.: Keiko Wada, Co-ordinator & Editor, ICCLP, the University of Tokyo

16:00– UK and Japanese AJA Fellows’ Introductions (Lecture Room 9)

Chairs: Christopher W. Hughes, Principal Research Fellow / Deputy Director, Centre for the Study of Globalisation and Regionalisation (CSGR); Reader, the University of Warwick; Masaki Taniguchi, Associate Professor / COE Project Member, the University of Tokyo

17:00– Keynote Speeches (Tiered Lecture Theatre)

‘Basil Hall Chamberlain and Inazo Nitobe: A Confrontation over Bushido’

Keynote Speaker: Shiro Ishii, Emeritus Professor, the University of Tokyo / Deputy Director, the Research Center for Science Systems, Japan Society for the Promotion of Science

Chair: Susumu Takahashi, Japan Chair AJA / Professor / COE Project Leader, the University of Tokyo

‘Anglo-Japanese Relations in 1906, 1956 and 2006’

Keynote Speaker: Ian Nish, Emeritus Professor, London School of Economics and Political Science (LSE)

Chair: Glenn Hook, UK Chair AJA / Professor, the University of Sheffield

19:00– Drinks Reception and Welcome Dinner (Lounge and Dining Room)

Words of welcome from Jan Aart Scholte, Professor / Co-Director, CSGR, the University of Warwick; Jon Inegbedion, Senior International Liaison Officer, the University of Warwick; Glenn Hook; Susumu Takahashi; and Words of thanks from Yoshiaki Miyasako, Professor, the University of Tokyo

Sunday, 8 January

Symposium ‘Globalisation, Regionalisation and National Policy Systems’ (Tiered Lecture Theatre)

Session 1

‘New Policy Systems in East Asia and Europe: Domestic and International Dimensions’

9:30-12:00

Part I Presentations and Comments

Speakers:

Ken Endo, Associate Professor, Hokkaido University / Director of Trans-university Project in Japan on 'Reconfiguring Knowledge in the Age of Global Governance'; Andrew Gamble, Professor, the University of Sheffield; Christopher W. Hughes

Commentators:

Hugo Dobson, Senior Lecturer, the University of Sheffield; Toru Yoshida, Japan Society for the Promotion of Science (JSPS) Research Fellow, the University of Tokyo

Chair: Hideki Kan, Emeritus Professor, Kyushu University / Professor, Seinan Jo Gakuin University

13:30-15:30

Part II Roundtable Discussion:

Panelists: Hideki Kan; Ken Endo; Andrew Gamble; Christopher W. Hughes; Hugo Dobson, Toru Yoshida

Chair: Glenn Hook

Session 2

16:00-17:00

'The Role of the Old Media and the New Media in the Relationship between China and Japan in 2005'

Speaker: Hidetoshi Sotooka, European Editor, the Asahi Shimbun European General Bureau

'Changing Media, Changing Politics in Japan'

Speaker: Masaki Taniguchi

Chair: Glenn Hook

Monday, 9 January

Workshop I (Training Day) (Lecture Room 9)

9:30-10:30 Higher Education

'Key Developments in Japanese Higher Education'

Taro Tsukimura, Professor / COE Project Member, Kobe University

'Key Developments in UK Higher Education'

Michael Whitby, Professor / Pro-Vice Chancellor, the University of Warwick

11:00-12:00 Presentation

'Presenting a Research Paper in a UK Academic Context'

Andrew Castley, Instructor, Center for Academic Practice, the University of Warwick

12:00-12:30 Ethics

'Ethical Dimensions of Research'

Zig Layton-Henry, Professor, the University of Warwick

14:00-15:00 Publication

'Getting Your Research Published'

Christopher W. Hughes; Hugo Dobson

15:30-16:30 Supervising

'Supervising Research: Case Examples'

Andrew Castley

Tuesday, 10 January

Workshop II (AJA Fellows Presentations) (Lecture Room 9)

9:00–10:00

‘The “Agenda 2010” Reform Under the Schröder Government: German Governance in Transition?’ –

Hiroki Yasui (the University of Tokyo)

‘The Transformation of the State’s Role Through EU Cohesion Policy: Evidence from Greece’ –

Kyriakos Stergiou Hatzaras (LSE)

Chair: Yuka Motoda, COE Project Lecturer, the University of Tokyo

10:00–11:00

‘In Search of Common Interests: Romanian-Japanese Relations in the Interwar Period’ – Jeffrey

Pennington (Kobe University)

‘Discourse on Humanitarian Intervention in Nineteenth-Century Britain’ – Satoshi Kawai (the

University of Tokyo)

Chair: Tetsuki Tamura, Associate Professor, Nagoya University

11:30–12:30

‘Minimum Pension and Independence in Retirement: The First Universal State Pension Plan in

Britain, 1891-1908’ – Taku Yamamoto (Rikkyo University)

‘Separation of Prescribing and Dispensing Policies in Japan and South Korea: From the Angle of the Impact of Civil Societies’ – Naoko Tomita (London School of Hygiene and Tropical Medicine)

Chair: Kaoru Iokibe, Associate Professor, Tokyo Metropolitan University

14:00–15:00

‘Paradox of Privatisation: The Case of Railway Policy’ – Junya Takamatsu (Kobe University)

‘The Public Interest: Understanding the State and City Planning in Japan’ – Kuniko Shibata (LSE)

Chair: Naonori Kodate, COE Project Researcher, the University of Tokyo

15:30–16:30

‘Agenda Setter and Reforms of Local Public Finance in Japan’ – Hajime Kidera (the University of Tokyo)

‘The Administrative Power of the Open Ports in Meiji Japan: Japan’s Sovereignty and Universal Rule’ – Akira Inayoshi (Tokyo Metropolitan University)

Chair: Hugo Dobson

16:30–17:30

‘The Chinese Economic Security Debate 1997-2004’ – Ben Yeung (the University of Warwick)

‘Identity Transformation and Japan’s UN Security Policy: The Participation in the Gulf Crisis and the Cambodian Peace Process’ – Nopraenu S. Dhirathiti (the University of Warwick)

Chair: Ryosuke Amiya-Nakada, Professor, Kobe University

Wednesday, 11 January

Workshop III (AJA Fellows' Presentations) (Lecture Room 9)

9:00–10:00

‘How Politicians Use the Internet: The Case of Japanese Diet Members’ –Hideaki Uenohara (the University of Tokyo)

‘A New Challenge to Traditional Models of “State Sovereignty”? The Regulation of Foreign Students’ Visas in Britain and France’ – Anneliese Jane Dodds (LSE)

Chair: Tetsuki Tamura

10:00–11:00

‘Willy Brandt’s *Ostpolitik* and West European Integration: Egon Bahr’s Concepts and the Western Allies’ – Tetsuji Senoo (Kobe University)

‘Harold Wilson Government and the Vietnam War, 1964-1968’ – Satoru Mori (the University of Tokyo)

Chair: Kaoru Iokibe

11:30–12:30

‘South Korea’s Challenge for the New Title: Regional Balancer’ –Soon-Ok Shin (the University of Warwick)

‘Japan’s Security Identity Transformation: Form a “Peace-State” to “International-State”’ – Bhubhinder Singh (the University of Sheffield)

Chair: Ryosuke Amiya-Nakada

14:00–18:00

Excursion to Oxford

19:00–

Farewell Dinner (Dining Room)

Words from Christopher W. Hughes; Glenn Hook; Susumu Takahashi

Five Years On : The Second Meeting of the Anglo-Japanese Academy

Keiko Wada

When I sat down to begin the editorial work for the proceedings of the second meeting of Anglo-Japanese Academy (AJA), I was reminded of the original starting point of this unique project.

After the establishment of the ICCLP in April 1993, ICCLP Professor Noboru Kashiwagi (now a Professor at Chuo University) always stressed the term 'human network' as the core aim of international exchange at the centre. At that time, the scale of the centre's activities was small; for instance, there were neither symposia outside the campus nor ICCLP publications. We conducted *ad hoc* international exchange with scholars from overseas in a friendly and intimate atmosphere. The first ICCLP visiting professor I met after I was appointed as a member of the ICCLP staff in the summer of 1994 was Professor Glenn Hook from the University of Sheffield. I was shocked when he came to my office and said 'I'm Glenn Hook. Nice to meet you' in fluent Japanese accompanied by a bow in the Japanese style! Before his arrival in Tokyo I had never guessed that he spoke Japanese since we had always communicated in English in our fax messages.

We have had plenty of opportunities to talk about his experiences in Japan and the differences between Japanese and UK academics during his stay in Tokyo in 1994, and then the next year, and the next year after that.... One day, the topic of conversation turned to the need to train young scholars. Professor Hook believed that senior scholars should give young scholars the opportunity to learn the style of presenting in English at international conferences outside of Japan as well as the experience of running the secretariat for an international conference. He was serious about his idea and discussed it with Professor Susumu Takahashi, his host professor at the University of Tokyo. They proceeded to realise this project based on their own experiences. They placed a particular emphasis upon 'place', which meant that they wanted to conduct the training outside of Japan.

They continued to discuss their scheme and ultimately came up with a concrete project, namely, the Anglo-Japanese Academy. In the summer of 2000, a preparatory meeting was held at the University of Sheffield and then the first meeting of Anglo-Japanese Academy in September 2001.

You can find out all about the first AJA by reading the articles in *ICCLP Review* Vol. 4, No. 2 and Vol. 5, No. 1. There were only four of us - Professors Susumu Takahashi, Glenn Hook, Dr Hugo Dobson, and myself - actually in charge of all the preparations for the first AJA. This meant that the project still owed a great deal to individual effort and at that time it was a new and challenging attempt at international exchange.

The 21st Century COE Programme of the University of Tokyo 'Invention of Policy Systems in Advanced Countries' was adopted by the Ministry of Education, Culture, Sports and Science (MEXT) in July 2003. As a part of their activities concerning 'education and training of young scholars', they decided to hold a

second meeting of the AJA. As part of this plan, we had a follow-up meeting in January 2004 in Tokyo that included a number of guests and committee members of the first AJA. Based upon the discussions at this follow-up meeting, we then organised a committee meeting including new members from the COE programme, Associate Professor Masaki Taniguchi and COE Lecturer Yuka Motoda. Thereafter, Japanese and UK committee members held a preparatory meeting in August 2004 at the University of Warwick, where we decided the venue of the second AJA. As part of the preparations this time around, Professor Susumu Takahashi emphasised 'the next generation' who would 'inherit' the project. In response to his expectations, the junior scholars, who had gained experience at the first AJA, played leading roles in the organisation of the second AJA. He also encouraged Dr Christopher Hughes and me to take the role of responsibility for the secretariat this time.

I was in touch with Chris everyday by e-mail, as I was with Hugo for the first AJA. We discussed the programme and the keynote speakers, the symposium, the training schedule, the order of presentations by UK and Japanese fellows, the chairs at the workshop, and, moreover, the menus for the numerous dinners. However, I was able to consult not only with Professor Takahashi but also Professor Taro Tsukimura, Professor Ryosuke Amiya and Ms Motoda whenever I encountered problems and difficulties and they always helped me greatly. In the case of the first AJA, Professor Takahashi asked professors to recommend young scholars to become AJA fellows, but this time we asked Ph.D. students in Japan to apply for the honour of becoming AJA fellows and were also able to have an introduction and orientation meeting with the selected Japanese fellows and committee members in Tokyo in July 2005. The steering committee then requested ICCLP Researcher Hiroki Yasui to participate in the AJA as both a special fellow and the organizer of junior fellows. The committee also decided to invite three former fellows, Professor Ryosuke Amiya from Kobe University, Associate Professors Tetsuki Tamura from Nagoya University, Kaoru Iokibe from Tokyo Metropolitan University, and Naonori Kodate from the COE to the second AJA meeting as senior fellows. We also held several steering committee meetings and I would especially like to thank Professor Tsukimura for coming from Kobe and attending every meeting.

In addition, we held meetings with members of staff responsible for the conference and then asked for advice from Norio Miura and Manabu Omoto who are the heads of administrative sections at our faculty, which ensured that administrative procedures could be confirmed smoothly. There are lots of unexpected and complicated procedures when organising a conference overseas. I would also like to thank Naoko Chiba and all the other staff of the general section and accounts section in our faculty for cooperating so helpfully and effectively with us. The second AJA could not have happened without them.

One difficulty we did encounter was that the administrative staff working on the conference at the University of Warwick moved their offices in the midst of preparation for the second AJA; however, we were able ultimately to deal with this unexpected event. It was also difficult to confirm the final programme of the international symposium owing to changes in the speakers and their themes. By including Associate Professor Ken Endo from Hokkaido University as a speaker and JSPS Researcher Toru Yoshida as a commentator, we were able to produce the final programme by the end of November.

In the process of preparing for the second AJA, my belief that the secretariat was key to the project's success was reconfirmed. During the conference, the efforts of Chris, Hugo, Yuka and Naonori deeply impressed me every minute I worked with them. I would also like to thank Rebecca Gibbs and Daniel Harris of the Centre for the Study of Globalisation and Regionalisation for their hard work.

Scarman House is the largest conference centre on the campus of the University Warwick and it provides complete conference facilities for major blue chip companies. I had heard that it was not suitable for students, however, Emeritus Professor Shiro Ishii emphasised that young scholars need to have the experience of being in a professional conference venue such as Scarman House. In fact, it turned out that once you were there it was clear that Professor Ishii was right.

It would have been impossible to hold a conference such as the AJA without the cooperation of many people located far from the actual venue. I would like to thank Yasuyo Sugimoto, Kyoko Hiraga, Kaoru Ajisaka and all the other staff in both the UK and Japan who worked in the background of the conference. It was almost as if they were here in Scarman House with us. They can rest assured that their hard work resulted in a fruitful conference.

During the conference, I noticed that the expressions on the faces of the Japanese fellows turned from nerve-wracked to relaxed. After returning to Tokyo, they sent me messages expressing their relief and confirming the success of the second meeting of the AJA. Professor Hideki Kan, who participated in the meeting as a supervisor, sent me a letter in which he wrote:

When listening to the fellows' presentations it was clear to me that they had reflected on the previous day's training session. In addition, one fellow impressed me when he prepared his own presentation with additional photos after the first day's workshop, which meant that he had learned from other fellows' presentations. Moreover, senior fellows who participated in the first AJA in 2001 as fellows helped the junior fellows this time by advising them, playing the roles of chairs and commentators. After all, this was the most important goal of the AJA. I was deeply impressed by the extent to which they had developed as academic professionals and had a wonderful time in an ideal conference venue. I believe that this unique project chiefly organised by Professor Susumu Takahashi is worth continuing by the next generation in the near future.

Other participants also encouraged us in the same vein as Professor Kan.

I was struck by the passing of time: five years since the first AJA. During these five years, Professor Noboru Kashiwagi, ICCLP Professor, retired and left the centre in March 2003. Professor Yoshiaki Miyasako, his successor, was asked to support the increasing number and range of international exchanges activities after the incorporation of national universities in Japan, the adoption of the 21st century COE programme, and the establishment of the Law School and School of Public Policy at the University of Tokyo. What is more, three centres including the ICCLP in the graduate school will be unified into one centre in the next academic year. As the structure changes, Professor Hideki Kanda who

succeeded Professor Seiichi Ochiai as Director of the ICCLP Steering Committee and served for seven years from 1999 April to now, will step down after the amalgamation. However, the common belief in the 'human network as the most important aim of the centre' shared between Professors Kashiwagi, Miyasako and Kanda does not change. The second AJA provided us with proof of this 'human network' as the main outcome of the project. One example of this 'human network' is Professor Ishii who has given us advice since the follow-up meeting and in the process of preparing his keynote speech also introduced ICCLP staff to his deeply held academic interests, informing us of the first ever Japanese-German film and the discovery of missing pages in Chamberlain's book, *Things Japanese*, published in Japan.

In addition, Professor Ian Nish kindly accepted the invitation to act as a keynote speaker even though he was given very short notice. The result was a witty and informative presentation that linked the Anglo-Japanese Academy with the Anglo-Japanese Alliance. Professor Andrew Gamble, who was a speaker at the first AJA, again participated in the second AJA as a speaker at the symposium. Mr Hidetoshi Sotooka, European Editor of the Asahi Shimubun, spoke at the symposium even though it was his last weekend before leaving London for Tokyo. Associate Professor Ken Endo cancelled his research trip and managed to come to Warwick in order to play an important role as a speaker at the symposium. Although his main research interest is French politics, Toru Yoshida, who will be appointed as an associate professor at Hokkaido University in April 2006, accepted the role of commentator alongside Dr Hugo Dobson at the symposium. They stimulated and encouraged the fellows by giving their unique points of views.

'Wisdom' and 'skill' mean little without success. No doubt, in the near future we will find the second AJA fellows actively engaging in their own field in addition to the first AJA fellows continuing to take an active part in their professional studies.

I would like to conclude by relating an episode when I met Daisuke Ikemoto, Ph.D. Candidate at the graduate school, in Oxford on the final day of the schedule. He is studying at Oxford University and helped us to find the missing pages in Chamberlain's original book, *Things Japanese*, 6th edition. He told me that it was kept in Bodleian Library as Professor Ishii had expected. Daisuke was surprised and at the same time felt honoured when the library staff cut the pages of the book with a paper knife. He said to me 'Professor Ishii is the first scholar to open these unseen pages of an old book published 180 years ago over the sea in Japan!'

[March 2006]

The Medusa Project

Preparation for the Medusa Conference in Sapporo

ICCLP has set up the Medusa Project in Japan co-sponsored by the endowed chair in "Politics and Mass Media" established on 1st April 2004 with the support of the Asahi Shimubn, at the graduate school. We will have the Security Conference in Sapporo in the summer of 2006. For this preparation, we invited three researchers from UK, US and Germany, who are the core members of this project, to Japan and had preparatory meeting at Hokkaido University in Sapporo from 30 August to 1 September 2005 with cooperation of Associate Professor Ken Endo, Hokkaido University. Overview of this project and participants of the meeting are as follows:

Title:

Managing the American Medusa in Global and Regional Security and Political Economy: The US-Japan Alliance in Comparative Perspective

Overview:

The US-centred system of regional alliances in the post-war period has been crucial to the international security order. After the Cold War, under the influence of globalisation and regionalisation, and in the new environment of growing international terrorism, these alliance relationships remain of importance for governing the enhanced complexities of the regional and global security orders. At the same time, new challenges to these alliances have arisen, including the response to terrorism, weapons of mass destruction (WMD), or wars in the Middle East. While domestic actors in the US and elsewhere criticise actions of alliance partners and sometimes even raise doubts about the salience of these alliance relationships, it is notable that the emphasis in the discourse is not on evading alliance commitments but on how to better manage these relationships in order to preserve bilateral ties and enhance global and regional frameworks for multilateral cooperation while at the same time limiting US unilateralism. To better understand the present international system and to predict the future challenges for globalisation and regionalisation, it is important to analyse comparatively the dilemmas and resources of American allies in the management of their relationship with the US. Studies so far have addressed theories of alliances in terms of security and military issues, or empirically investigated individual multilateral alliance institutions or one bilateral dyad of the US alliance system.

This project goes beyond existing scholarship by providing a systematic and integrated comparative study of the US's key security and economic relationships, their commonalities or differences, and the military and economic strategies of each of the US's key partners in Asia and Europe, especially after 9/11. It focuses in particular on domestic institutions and their effect on alliance relationships. The project seeks to examine the 'core' case of Japan, in comparison with other selected alliance cases in order to understand the dynamics of the bilateral alliance relationship in security, political economy, and global

governance issues. The key question of the project is how have foreign policy elites in Japan and other US allies managed their relationship with the US and the alliance dilemma, i.e. the risks of military entrapment and abandonment, and dependence and protectionism in economic relations? Furthermore, what is the effect of each alliance partner's distinctive institutional configuration on issues and responses in the context of the alliance with the US? Finally, how have changed international regional environments transformed the issue agendas, party systems and relationships among domestic institutions? What are the consequences of changing US alliance relations for major and minor powers in Asia and Europe? How does the enlargement of regional economic and security organisations, such as ASEAN and the EU, affect alliance relationships in both regions? What are the specific challenges for the alliance partners of the US in their relations with other countries in the region (i.e. Japan and South Korea in the context of China's rise)?

The proposed conference will be the first in a series of three international conferences and will focus on security relations. The conference will involve a two-stage process. First the U.S.-Japan relationship will be systematically compared with cases of specific issues with that of the U.S.'s other two key allies in the world: the U.K. and Germany. After this initial stage, the U.S.-Japan relationship will be compared to other relations in the Asia-Pacific region, for example, to South Korea, Thailand, Indonesia, the Philippines, and Australia, on similar issues. Also, we can explore the implications of the U.S.-Japan's changing relations (for e.g., enhanced Japanese initiatives in security during the last few years) on Japan's Asian trading partners. Using this two-stage method, we will be able to develop not only a comparison of how the U.S.' major allies in the Atlantic and the Pacific 'handle' the relationship, but also be able to compare those with the U.S.'s relations with less core but nonetheless important strategic actors in the Asia-Pacific region. Through both of these comparisons we will thus be able to place the US-Japan security alliance into its broader context and draw out conclusions for how unique or similar Japan is to the U.S.'s other relationships, and why.

[Christopher Hughes, Ellis S. Krauss and Verena Blechinger-Talcott]

Participants

Verena Blechinger-Talcott, Professor, Institute of East Asian Studies, Berlin Free University

Ken Endo, Associate Professor, Graduate School of Law, Hokkaido University

Christopher Hughes, Reader, Centre for the Study of Globalisation and Regionalisation (CSGR), University of Warwick

Ellis S. Krauss, Professor, Graduate School of International Relations and Pacific Studies, University of California, San Diego

Yoshiaki Miyasako, ICCLP Professor

Yuka Motoda, COE Project Lecturer

Teruyoshi Shibata, University-Industry Cooperative Fellow, Japan Society for Promotion of Science, Hokkaido University

Susumu Takahashi, Professor / COE Project Leader

Keiko Wada, ICCLP Coordinator

Supporting the 21st century COE Programs of the University of Tokyo

The ICCLP has continued to provide support for all aspects of the two 21st Century Centre of Excellence (COE) programs – “‘Soft law’ and the State-Market Relationship’ and ‘Invention of Policy Systems in Advanced Countries’ – based in the Graduate School of Law and Politics. As regards the former program, the centre cooperated in holding the special lecture entitled ‘Implementing Japan's New Anti-takeover Defense Guidelines: Some Lessons From Delaware’s in Deciding What Defense are “Fair”’ and the symposium ‘Soft Law vs. Hard Law’ held on 14 November 2005 and 27 February 2006 respectively. As regards the latter project, the centre contributes by acting as the coordinating centre for the program’s research and educational activities co-organising the Second Anglo-Japanese Academy (See pp. 25-32), holding a number of symposiums (See pp. 5-13), and producing a number of publications, as seen below.

Publications

1. *Yōroppa Seiji Kenkyū-sōsho* (Japanese)

No.1 *Konmei no Doitsu* (Germany in Deadlock), Hiroki Yasui, 31 July 2005

No.2 *Kaihatsu Enryo ni okeru Naizaiteki Genkai* (The Inherent Limitations of Development Aid), Yuka Motoda, 15 September 2005

2. *Occasional Papers* (2005)

‘Henchō-suru Yōroppa-seiji’ Susumu Takahashi, Yuka Motoda (ed.), (Japanese).

‘Seiken-kōtai no seijigaku’ Susumu Takahashi, Hiroki Yasui (ed.), (Japanese).

‘Seisaku-hyōka-seido ankēto chōsa kekka’ Kuniaki Tanabe and Naoko Masuda, (Japanese).

‘EU Symposium “The EU Constitutional Treaty and the Future of the European Project”’, co-ed with Susumu Takahashi and Kenji Hirashima (English with Japanese overview).

‘Gender and Politics’ Junko Kato (ed.), (English).

“‘Yōroppa ka’ no Paradaimu fransu setsubi/ unyu/ zyūtaku-syō o jirei toshite’, Toru Yoshida (Japanese).

3. *Working Papers* (2005)

Five papers in Japanese and the following two papers in English:

‘Rational Choice or the New Institutionalism?: The Approach of Robert Bates Toward African Development’, Yuka Motoda and ‘What are they fighting about?: *Souverainistes* Parties in French party system’, Toru Yoshida.

Supporting the School of Law

The ICCLP has continued to provide support for the ‘Transnational Law Programme’ at the School of Law as follows.

The Michigan–Columbia Exchange Project

Visitors this spring included Professors David A. Santacroce, and Rochelle E. Lent from Michigan Law School, and Professor Peter L. Strauss from Columbia Law School.

In Addition, in March 2006, University of Tokyo Professor Yoshiaki Nomi and Minoru Nakazato visited Columbia Law School, and Professor Osamu Morita visited Michigan Law School.

David A. Santacroce, Professor, University of Michigan Law School

Research Area: Clinical Law

Major Publication: ‘Litigator’s Thumbnail Guide to the WARN Act’, *Employee Rts. Q.*3, no.3, 2003:40-6.

Rochelle E. Lent, Professor, University of Michigan Law School

Research Area: Real Estate, Environmental Matters

Major Publication: ‘Unique Partnership Builds Senior Housing in Historic District Area’, *Affordable Housing Finance Magazine*, Forthcoming.

Peter L. Strauss, Professor, Columbia Law School

Research Area: Administrative Law

Major Publication: *Legal Methods: Understanding and Using Cases and Statutes*, Foundation Press, 2005.

School of Law Summer School – 23 to 28 July 2005

The ICCLP cooperated in a number of areas including visits to the American law schools, arranging schedules and invitations, recruiting students, accounting, support for staff and participants during the summer school and conducting surveys.

Number of participants: 56 students include three students from Korea and 3 practitioners

Teaching Staff: Reinier Kraakman (Harvard Law School), Curtis Milhaupt (Columbia Law School), Mark Ramseyer (Harvard Law School), Bruce Aronson (Creighton University School of Law), Gérard Hertig (Swiss Federal Institute of Technology (EZH) Zurich), Jacques Buhart (Herbert Smith Paris), Hideki Kanda.

Participants from the School of Law: Tomonobu Yamashita (Dean of the School of Law), Atsushi

Yamaguchi (Vice Dean of the School of Law), Yoshiaki Miyasako (ICCLP).

Secretariat: Yasuyo Sugimoto (ICCLP), Tomoko Niinaka, Makiko Matsumura, Kanako Sugawara

Venue: The Conference Center Kazusa Arc

Title: The Global Trends in Modern Corporate Law

Topics: The Global Trends in Modern Corporate Law (Kanda); The Anatomy of Corporate Law (Kraakman); Mergers and Acquisitions (Milhaupt); Securities Regulation (Ramseyer); The Role of Shareholder Suits in Corporate Governance (Aronson); The Anatomy of Corporate Law (Hertig); Corporate Law of Finance, European Tunnel Case, and Major Issues in France and Europe (Buhart)

Visiting Research Scholars of the Graduate School of Law and Politics

The faculty members of the Graduate School of Law and Politics host a number of visiting research scholars each year. The Center helped to administer the visits of the following researchers this academic year.

Masashi Kishita, Associate Professor, Kochi Junior College
Term: April 2005 – March 2006
Research Area: Japanese Politics and Political Science after the World War II
Host: Masaki Taniguchi

Chung, Ho-Yul, Professor, College of Law, Sungkyunkwan University
Term: May 2005 – August 2005
Research Area: Finance Unification in Japan and Bank Assurance Studies
Host: Tomonobu Yamashita

Suh, Chung-Hwa, Chief Director, Sookmyung Women's University
Term: May 2005 – January 2006
Research Area: Korean Japanese Relations
Host: Susumu Takahashi

Kang, Jung-In, Professor, Sogang University
Term: June 2005 – February 2006
Research Area: Political Thought of Masao Maruyama
Host: Hiroshi Watanabe

Lin, Chao-Chun, Assistant Professor, National University of Kaohsiung
Term: June 2005 – July 2005
Research Area: Japanese Nationality Acquisition
Host: Katsuya Uga

Wu, Yuht-Zong, Associate Professor, Shih Hsin University
Term: July 2005 – September 2005
Research Area: Studies of the Diet in Japan
Host: Kazuyuki Takahashi

Yoo, Jin-Sik, Associate Professor, Chonbuk National University

Term: July 2005 – August 2005
Research Area: Legislation for the Disaster Prevention in Japan
Host: Mitsuo Kobayakawa

Mahfuzul Hoque Chowdhury, Professor, University of Chittagong

Term: August 2005 – July 2006
Research Area: Comparative Politics / Democratization and Political Development
Host: Masaki Taniguchi

Robert B. Leflar, Professor, University of Arkansas

Term: August 2005 – August 2006
Research Area: Comparative Research into U.S. and Japan
Host: Norio Higuchi

Brian W. Semkow, Associate Professor, Hong Kong University of Science and Technology

Term: October 2005 – May 2006
Research Area: Foreign Financial Institutions in Japan
Host: Kenjiro Egashira

Patrick Köllner, Senior Research Fellow, Institute of Asian Affairs

Term: October 2005
Research Area: Party Organization and Intra-party Politics in Japan
Host: Ikuo Kabashima

Fu, Li-Qing, Associate Researcher, Peking Law School

Term: October 2005 – September 2006
Research Area: ‘Mens rea’ in Criminal Law
Host: Atsushi Yamaguchi

Miriam C. Ferrer, Associate Professor, University of the Philippines Diliman

Term: October 2005 – November 2005
Research Area: Philippine Politics
Host: Kiichi Fujiwara

Akiko Imai, Visiting Scholar at the Reischauer Center for East Asian Studies

Term: January 2006 – July 2006

Research Area: Comparative Studies in Policy P.R. anti-China between Japan and the US
Host: Ikuo Kabashima

Fan, Jui-Hua, Lecturar, Tamkang University; Lawyer
Term: February 2006 – March 2006
Research Area: Legislation of Intellectual Property Rights Trust in Japan
Host: Yoshihisa Nomi

Son, Byeong-Jun, Judge, Seoul Northern District Court
Term: February 2006 – February 2007
Research Area: New Civil Procedure Law and the Law of Civil Execution in Japan
Host: Hiroshi Takahashi

Yim, Sang-gee, Judge, Daegu District Court
Term: March 2006 – August 2006
Research Area: New Judicial System of Criminal Procedure
Host: Masahito Inouye

Lee, Jae-Seog, Director, Namdong Registry, Incheon District Court
Term: March 2006 – March 2007
Research Area: Law of Civil Execution
Host: Hiroshige Takata

An, Sung-po, Professor, Dankook University
Term: March 2006 – February 2007
Research Area: Law of Trusts in the US and Japan
Host: Kenjiro Egashira

Report

A Visit to the Court of First Instance of the European Communities

Yoshiaki Miyasako
Professor at the ICCLP

1. Introduction

After participating in the Second Anglo-Japanese Academy (please refer to pages 25-32 for details of this project) held at Warwick University in January 2006, I visited the Court of First Instance of the European Communities (CFI) located in Luxembourg. The purpose of the visit was to invite one of the judges of the CFI to the University of Tokyo Law School as a lecturer for a course in our summer school program.

I departed London for Findel Airport. When I arrived there at 3 p.m., dusk was already setting in and I realized that it was much colder than London. The next day, Mr. Jacques Buhart from the Paris office of Herbert Smith Law Firm kindly accompanied me to the CFI at 10 a.m.

The European Community has four components – the Council, the Commission, the Court of Justice of the European Communities (CJEC), and the Parliament stand as the legislative, the executive, the judicial, and the advisory bodies, respectively. CJEC was established in 1957 as a result of the reorganization of the European Coal and Steel Community Court that was founded in 1952. Its function is twofold – first, to provide interpretations of the EC Treaty when domestic courts of member countries require a definite interpretation of the Treaty as a basis for applying domestic law, and second, to judge cases in which private companies file suit against the Commission which imposes compulsory exclusion measures and fines to those companies that allegedly violated the EC Treaty. With a view to dealing with lawsuits between private companies and the Commission, CFI was established in 1989, and it became the primary venue thereafter.

Upon arriving at the CFI, we were immediately guided to the office of Judge Maria Eugénia Martins de Nazaré Ribeiro, and she gave us an overview of the administration of the CFI. Judge Martins is a Portuguese who was born in Lisbon in 1956, and is a member of the Bar both in Portugal and Brussels. After working as an independent researcher at the Institute of European Studies, Free University of Brussels, she worked as the Legal Secretary for Judge Moitinho de Almeida from Portugal at the Court of Justice between 1986 and 2000, and then also for the President of the Court of First Instance, Mr. Vesterdorf, between 2000 and 2003. She has been the Judge at the CFI since 1 April 2003. According to Mr. Buhart, it is extremely rare for a Legal Secretary to be appointed as a Judge. Judge Martins introduced her legal secretary to us while offering us tea.

2. Judges of the CFI

Judge Martins first explained to us about the composition of the Judges at the CFI. Currently, there are 25 Judges at the CFI and their term is 6 years (renewable for another 6 years). There were originally 12 Judges but consequent to the EU expansion in 2004 which added 10 more member countries, each of the 25 EU countries elected one Judge and therefore the number of Judges was expanded significantly. Since 31 August 2004, the number of Chambers was increased to 5, and the number of Judges who compose each Chamber was also increased from 3 to 5. 3 Judges preside over a case in each court. Each Chamber elects by vote a President for a term of 3 years accordingly with Article 5 of the Rules of Procedure of the Court of First Instance – it is based on Article 50 of the Protocol on the Statute of the Court of Justice that came into force on 1 February 2003. 3 Legal Secretaries are assigned to a single Judge, and therefore, there are a total of 15 Legal Secretaries for one Chamber. Legal Secretaries are chosen from among the best of judges, lawyers and scholars who possess qualifications of legal practice in their own country. Also, exclusively at the Supreme Court level, there are Advocate Generals who draft opinion memoranda regarding complex and important cases. The Court can refer to these opinions but they are not bound by them. Now there are 60 to 70 Advocate Generals.

3. Processing Cases

Annually, 500 cases are brought before the CFI. Each case is assigned to one of the Chambers by the President of the CFI, and the President of the Chamber designates a Judge for each individual case. Since there are 25 Judges, one Judge deals with approximately 20 cases on average every year, but since the CFI President presides over important cases only, each Judge in fact deals with more than 20 cases. Each Judge has approximately 50 cases on average. The length of time it takes from the filing of the suit to the sentence varies – shorter cases take 1 to 1.5 years, longer ones take 3 to 4 years. When the Judge in charge of a case is designated, each Judge examines the case individually, followed by a Discussion chaired by the Judge in charge, and then the Judges further examine the case individually in light of the results from the Discussion. Subsequently, oral pleadings are heard only once, usually 2 to 3 weeks after an Inquiry had been sent to both parties. Examination of a Tribunal Witness is held in exceptional cases, but it takes place on the same day as the oral pleadings. Oral defense begins at 9:30 a.m. to 1 p.m., and in some cases takes the entire afternoon. Pleadings by the respective parties are limited to 15 minutes each, and the Judges make inquiries thereafter. The defense attorney is required to respond to the Judges' question on the spot, and since oral pleadings are heard only once, the quality of performance in the oral pleadings has a considerable bearing on the Judges' determination of a case. Sentences are decided by 3 Judges with equal footing, and are then signed. Dissenting opinions are not drafted.

4. Languages used in the Court

The Language used in the Court is French. French is used for official records, internal documents, and in the proceedings. Sentences are published in 20 different languages, excluding those that are not published due to their immaterial nature and lack of value as precedents. Since a vast amount of translation is necessary, there are approximately 500 Translators, all of whom are lawyers. Interpreters of the courts are experts of language, not law. The plaintiff may choose the language to be used in court. Language other than the one selected by the plaintiff, except for French, cannot be used. There is no limit to the number of defense attorneys. In normal cases, it is customary to have just one defense attorney, but there may be quite a lot of defense attorneys in big cases or cases that involve multiple parties. Sentencing takes place inside the court, and it is given in written form after the text of the sentence is stated orally. The sentence is also placed on a shelf in the corridor of the building, and made available for the public – it is prepared in the chosen language by the parties and also in French and English. Translated versions are made available at a later date.

Later, a lady from Greece, Ms. Margarita Peristerakis who is the Legal Secretary to the Judge from Greece, Mihalis Vilaras, gave me a tour of the CFI. She is in her mid-30s, and told me that after working as a lawyer in the U.K., she had also worked in Brussels as a lawyer, and became a Legal Secretary at the CFI about 1.5 years ago. She first showed me the Main Chamber. There were two rows of seats facing the room for all the 25 Judges, and it had 200 seats for the gallery, but the seats for the plaintiff and the defendant were removed that day for some event. Ms. Peristerakis explained to me that this room is used for ceremonies and for big cases that involve many individuals. We then went into a regular-size courtroom and found that a trial was in progress. 3 Judges were seated at the front of the room, to their right were court clerks, and to their left was a Legal Secretary. Seen from a position facing the Judges, on the right side of the Judges 4 people were seated on the plaintiff side, and on the left side of the Judges 4 people were seated on the defendant side. The seating positions of the plaintiff and the defendant were opposite of those in a Japanese courtroom. There were also seats for the Interpreters on both sides of the courtroom separated by panels of glass. The plaintiff in this case was an Italian firm that was filing suit against the Commission, and thus the language used in the court was Italian. Since we arrived there at 11 a.m., an hour and a half had already passed, and so the attorney for the plaintiff and the Agent of the Commission were responding to questions from the Judges. The President of the court was a German, the associate Judges to the right and to the left were from Britain and Cyprus, respectively; Judges asked questions in French, and the plaintiff and the defendant were replying in Italian. According to Mr. Buhart who accompanied me, on the plaintiff side, only one of them was an attorney and the other three were assistants, and also on the defendant side, only one of them was a lawyer and the rest were assistants. The Judges wore different robes – they wore the same robes as the judges in their own country. Simultaneous interpretation was provided in English, Greek, French and Italian, and the gallery could use the receiver placed under the armrest of the gallery seats by selecting a channel of their preferred language. 2

Interpreters were handling a single language, and there were a total of 8 interpreters seated in booths on both sides of the courtroom. All of the Interpreters were women. When I listened in to the receiver, I heard the English interpretation which sounded as if the actual parties were speaking by themselves. When I saw the lady who was interpreting, she was using her arms and she seemed to have put herself into the position of the parties, and it was almost hard to believe that an interpreter was in fact speaking. They told me that the contents of the interpretation are transcribed but are never published for external use.

5. Documents of the Court

After witnessing a trial, Ms. Peristerakis showed me the document storage quarters. There were two storage rooms – one for public use, and the other exclusively for Judges and Legal Secretaries who would retrieve court documents. Thanks to Ms. Peristerakis, I was permitted to see the latter storage room. All the space from the first basement to the second floor was singularly used for storage, and presumably there were twice as many books and documents as those in the library of University of Tokyo's Faculty of Law. Documents of EC were categorized according to different member countries and functional areas. Japan seems to have been categorized as "Other Countries" and did not show up as an individual country category.

6. Concluding Remarks

The CFI is a court that has assembled elites of elites who are experts on the laws of 25 EU member countries, and there is nothing that resembles its awesomeness. It deals with a wide variety of fields. Out of 509 cases that have been closed by 2004, there were 67 cases on the environment and consumer problems, 60 cases on agriculture, 44 cases on social policy, 29 cases on competition policy, 28 cases on taxation, 23 cases on freedom to provide services, 17 cases on freedom of movement for persons, 17 cases on freedom of movement for goods – more than 30 areas have been dealt with by the CFI. The number of new cases that were filed in 2004 counted 531, and the number of cases in progress is 840. The diversity of languages and legal systems within the EU area is an obstacle to processing these cases. The legal meaning of a term (with exactly the same spelling) may differ in various countries, so translation must be conducted by lawyers – 500 lawyers are engaged in translation just for the CFI. As in the case of the EU, the CJEC and the CFI spend a large amount of their budget for translation purposes. For individual lawyers, they are required to have not only legal expertise but also proficiency in multiple languages. The problem of language is a major task that would require attention in legal education of a country like Japan that is inextricably woven into international exchange.

[March 2006, translated by Satoru Mori]

Article

Mitterrand's *Mémoires*: The Archives and the Archivists

Toru Yoshida

Research Fellow, Japan Society for Promotion of Science, University of Tokyo*

A decade has passed since François Mitterrand died and during that time the retrospective study of Mitterrand's era as immediate history has developed rapidly. According to *Le Monde*, public opinion polls conducted at the beginning of 2006 showed that Mitterrand is considered to have been the best president of the Fifth Republic, ahead of General De Gaulle (*Le Monde*, 2 January 2006). Even a movie about Mitterrand was made in 2004; a rare event in the French film industry that tends not to portray politicians (Guédiguian, 2005).

Mitterrand's life-long colleagues began to publish voluminous memoirs at the end of their political careers. These include Pierre Mauroy, the first prime minister of the presidency (Mauroy, 2003), Jacques Delors, finance minister and then president of the European Commission (Delors, 2004), Jean-Pierre Chevènement, who was once industry minister, then education minister and defence minister (Chevènement, 2004), and most recently ex-prime minister Michel Rocard, who was the most biting political rival of Mitterrand and ardent critic of the anachronism of socialist party (Rocard, 2005). Jacques Attali, the President's Special Advisor who shadowed Mitterrand until 1991 and authored *Verbatim*, the most detailed chronicle of the presidency, recently published a new book (Attali, 1993-1998; 2005). Including other memoirs and journalistic critiques, it is said that over 30 books have been published since 2005. The number of books and writings dealing with Mitterrand – from the perspective of his bodyguard to that of his pet dog *Baltique* (!) – has already reached 400 and the “Mitterrand Industry” is still growing.

This not only reflects the fact that Mitterrand was the first and so far only left-wing President of the Fifth Republic, or that he was one of the initiators of European integration on the one hand, and a politician plagued by scandal and sometime tragic consequences on the other hand. There are two more reasons that explain the phenomenon. First, as argued as *The Victory of Contradiction* (Patoz, 2005) or *The Phoenix* (Yonnet, 2003), he was the most controversial and versatile French politician since the Third Republic regarded as being humane than a politician or a statesman. Second, as he stated himself, “I am the last French President; in the age of globalization and European integration, the French presidency will never be the same” (cited in Benamou, 2005). During the 1980s and 1990s, when France began to be considered as a “normal state”, Mitterrand managed to embody the *grandeur* of the Republic. Remembering the Mitterrand Era is quite literally an act of nostalgia.

* Associate Professor, Hokkaido University from 1st April 2006

The Mitterrand Era as History

Retrospection is also infiltrating the academic world. The Institut François Mitterrand and the Fondation Nationales de Sciences Politiques jointly organized a large conference on Mitterrand in January 1999. Former prime minister Fabius, ex-ministers such as Delors and Lang, and notably more than 40 social scientists of different disciplines (history, diplomatic history, comparative politics, economics) participated in the symposium and provided different points of view (see Bernstein *et al.*, 2001). Thereafter, academic efforts to assess the Mitterrand era based on primary sources have intensified. Two differently styled and recently published books by a French and a German scholar that focus on Mitterrand's diplomacy toward German reunification are worth noting (Bozo, 2005a; Schabert, 2005).

Frédéric Bozo, a historian of international relations, notes that it is necessary to pass through three phases before academic writing can contribute to history. The first phase is the very moment when history occurs and this is when the assessment of political commentators and critics dominates; the second phase is the time of "immediate history" when journalists take part; and finally, the third phase is when the period of "re-readings and re-confirmation of criticism" emerges, in other words the historical domain. Both quantitatively and qualitatively, the Mitterrand era is heading towards this third phase. As De Gaulle has claimed, "time is accelerating" (cited in Peyreffite, 1994).

Until recently, the records of the Mitterrand era considered to be primary sources have been limited to Attali's voluminous chronicle and the books published by two AFP journalists who were permitted access to internal documents (Favier & Martin-Rolland, 1995).¹ However, at the beginning of the 21st century, the Presidential Archive of François Mitterrand (Series 5AG4), kept by the Archive Nationale (hereafter AN), became partly available to the public and has contributed to the academic literature exploring Mitterrand's different policies. The archive includes "the documents held by individuals and the president's colleagues during the two terms of the presidency" and "the documents produced or received by the presidential office in an official capacity", conforming to the agreement made between the outgoing president and the AN in 1995. An AN officer has been assigned to the presidential office since 1974, and after the 1995 arrangement presidential staff were all supposed to deposit relevant documents "as a matter of honor". The AN retains more than 1,000 boxes of documents related to Pompidou's presidency, 4,500 related to Giscard d'Estaing's, and more than 14,000 boxes on Mitterrand's, which is enormous even when considering that his presidency lasted 14 years. The AN is now classifying all the documents by keywords and at the time of writing they have completed only one-third of the work.

According to French law, public records are restricted to the "30-year rule" as in other countries.

¹ However, the author agrees with Védérine: "it is possible for historians to do honest work by using documents that everyone can access" (Védérine, 1996).

Presidential and prime ministerial records are subject to the “60-year rule” since they have the “potential to affect individual lives, the security or defence of the state”. This means that documents produced in 1981 will only be accessible in 2041; the French law and the way it is applied are considered to be very strict, even compared to other countries (Bermond, 1997).² However, like other countries or institutions, it is also possible to apply special provisions (*dérogation*). This is one of the reasons why all the academic writings mentioned above could be completed. Including this author, 461 special provisions and permissions were given from 2002 to 2004.

The archivists in charge have categorized the documents in the 5AG4 Series into four parts (Bos & Vaisse, 2005):

- 1- documents produced by the president and deposited by his personal secretariats;
- 2- records of cabinet meetings and the documents of the ministers, deposited by the presidential office secretariats;
- 3- documents of the president’s advisors and cabinets;
- 4- documents of permanent divisions, such as the armed forces and public relations.

(General correspondence is deposited in the AN’s contemporary history division in Fontainebleau)

But as two archivists of AN have it, “The greatest feature of Mitterrand’s archive is that the documents were duplicated and widely distributed”.

The Guardians of Mitterrand’s Reputation and it’s Deviance

The Institut François Mitterrand (hereafter IFM) claims to be a “place for the understanding of contemporary issues” for “scientific objectives”. Putting the rhetoric to one side, it functions substantively as a guardian of Mitterrand’s memoirs (Darfeuil, 2003). It is not like an institute closely associated with a political party as we might see in Great Britain or Germany (the Socialist Party’s institute already exists independently), nor is it a think tank as in the United States (the think tank culture has only recently emerged in France). It is more of a sanctuary created by the president’s personal authority and devoted to maintaining this authority. The IFM was established in 1996 and in addition to state subsidies it benefited from donations made by Mitterrand’s personal friends in the business community. Pierre Bergé, who was the co-founder of fashion house Yves Saint-Laurent, currently oversees membership of the institute.

Dominique Bertinotti, former secretary general of the IFM, is the one who holds the right to give permission to access the records. It is said that before ex-Presidential Office secretary general (and then

² Documents including personal medical information are submitted to the 150-year rule.

Foreign Minister) Hubert Védrine took the head of the Institute, she was extremely reluctant to allow the opening of the archive to the public. Bertinotti was a lecturer in history at the University of Paris VII and stood as a Socialist Party candidate on two occasions. She was personally recruited by Mitterrand in 1991 for the historical records in Elysée Palace. Her exclusionary attitude can be seen in the fact that well-known names such as Jean Lacouture, a well established historian, and Pierre Péan, who has brought to light the young Mitterrand's relationship with the Vichy Government, were refused access to the archive (*Le Monde*, 10 May 2000). Amongst researchers of Mitterrand, she is described as the maiden of the pantheon. The IFM convenes an academic committee in which eminent scholars participate, but they do not have any rights concerning the archive. The first president of the IFM was ex-foreign minister Roland Dumas who was a close confidante throughout Mitterrand's career, and Mazarine Pinget, Mitterrand's child born out-of-wedlock, is in the list of the board members. Mitterrand is still protected by his nearest and dearest.

From an academic point of view, the problem is that it is possible that the availability of internal documents is limited *a priori*, since the screening of the documents was completed in the years when Mitterrand was still in office. As both the IFM and the AN have yet to complete the inventory it is difficult to even verify this. In particular, this could be the case as regards numerous affairs, such as the sinking of Greenpeace's Rainbow Warrior or the wiretapping of the mass media. What is more, secret documents were once found in the backyard of the home of one of Mitterrand's drivers, so documents could easily have vanished from the desks of the Elysée Palace. Indeed, there is great variety in the contents and volume of documents sorted into boxes on the basis of colleagues' names. One of the Presidential archivists has noted that she could never find the documents upon which Attali's chronicle was partly based (Carle, 1998).³ Moreover, in addition to Bertinotti, we know that three other archivists worked for Mitterrand. Since many people have accessed and are involved in the archives, we do not know and will probably never know the entire picture: what kind of documents existed and where they are; we only know why.

It is officially stated that the archives held by the IFM are Mitterrand's only documents prior to 1981. However, this statement is reasoning false as an archivist employed during Mitterrand's second term is collaborating with the Institute, and the presidential archives partly overlap with the documents in the AN.

Françoise Carle said once: "Mitterrand liked the fact different people wrote about him and about different aspects of his life". She continued, "So, even if I gave copies of documents to those who were worthy of

³ This does not mean that what Attali wrote is entirely false. It could be the case that he has not yet deposited the documents in his possession. However, the ex-Defence Minister Pierre Joxe claims that his chronicle is "full of falsification" (in Cohen, 1998).

them, he wouldn't blame me for it". She even gave this young Japanese scholar the necessary documents; many scholars, not only the French scholars mentioned above, owe a lot to her⁴

Mitterrand liked to play with people. He used to manipulate them by assigning a single task to more than one group and then ensuring that he would be the sole holder of complete information. This art of manipulation lay even at the core of his governing style. Until the last days of his life, he worked in his home with archivists to decide what kind of *mémoires* should remain for the future. Giscard d'Estaing, who had never thought that history belonged to men, visited him to warn against this attempt. When researching Mitterrand, the historian senses not only admiration but also a blend of love and hatred.

⁴ In addition to the author, Lacouture, 1998; Joxe, 2005; Bozo, 2005; and Schabert, 2005 have all benefitted from Carle's duplicated documents.

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