

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

### a. Legal History

The 36th general meeting of the *Japan Legal History Association* was held at Keio Gijuku University, Tokyo, on Apr. 3 and 4, 1984. The 32nd study meeting was held at Kobe Gakuin University on Oct. 13 and 14, 1984. The programmes of the two meetings were as follows:

#### [The 36th general meeting]

##### First Day

1. Amnesty in the *Ritsuryo* Period — Its Form and Its Validity, by Yoshitaka Shima (Lecturer, Kokugakuin University).
2. Security of Title in the Procedural Law of Medieval Japan, by Toichi Ashida (LL.M., Kansai University).
3. A New Draft of the Civil Code in the 12th to 13th Year of Meiji, by Ken Mukai (Professor, Keio University).
4. The Process of Community Formation in the Medieval City of Köln, by Takeshi Hayashi (Professor, Osaka University).
5. The Priority of Native Law in Application of Law and “*iura novit curia*”, by Aritsune Katsuta (Professor, Hitotsubashi University).

##### Second Day

1. Law Relating to Punishment in the Qin and Han Periods, by Tsuyoshi Hori (Lecturer, Tokai University).
2. The Forms of the Grant of Freedom in Tribal Codes of Ancient Italy, by Norihiko Tanaka (LL.M., Waseda University).
3. A Historical Survey of the Systematization of the Criminal Law System for Foreigners, by Kazuyoshi Shigematsu (Professor, Chuo Gakuin University).
4. The Dharma of the Futohkthai=Setchen=Khontaiji and

the Code of Alutan=Khan — Their Significance in Mongolian Legal History, by Masao Shimada (Professor, Meiji University).

*[The 32nd study meeting]*

First Day

1. “*Sengo Keiei*” or Post-War Management in the Period Following the Sino-Japanese War and the Establishment of the Bureau of Tax Management, by Toshimitsu Nakao (Lecturer, Kinki University).

2. A Framework of Ideas Concerning the Reform of *Ständerversammlung* or Estate in North Germany at the End of the 18th Century, by Tadabumi Kuroda (Professor, Konan University).

3. A System of *Intendant* in 17th Century France, by Kazuo Irie (Assistant, Nagoya University).

4. Attempted Crime and the Criminal Law of Tokugawa *Bakufu* or Tokugawa Shogunate, by Masahiro Mizota (Assistant, Kyushu University).

5. Adjudication in the Period of CCP-Controlled Shensi-Kansu-Ninghsia Government — Focusing upon the Yang-wu Ma Style of Trial, by Hiroshi Miyasaka (Professor, Senshu University).

Second Day

1. Landtag or State Congress of Rhein in the Period before the Märzrevolution (1815–48) and Bourgeoisie, by Kenji Mitsunari (Assistant, Osaka University).

2. “*Naisai*” or Private Settlement of Criminal Cases under the Nobeoka *Han* or *Daimyo* Domain, by Tsutomu Yamada (LL.M., Kobe University).

3. “*Otetsudai*” and “*Jonokin*” at the End of Tokugawa Regime, by Yuichi Ohira (Professor, Ritsumeikan University).

a) Legal History of Japan

Mr. Shima criticized prevailing opinions about amnesties, and asserted that there had existed three kinds of amnesty during the

*Ritsuryo* period. Mr. Ashida talked about the security of title which had been, in his opinion, peculiar to the medieval society. Mr. Mizota criticized the prevailing view that the *Han* or *Daimyo* domain had centralized the power of punishment and asserted that its power had been restrained by native power. Prof. Ohira, aiming at examining one of the characteristics of the *Bakufu-Han* Regime, pointed out that the system of *Otetsudai*, or obligations required by the *Bakufu*, had been a serious burden to the *Han*. Prof. Mukai examined the movement of codification of civil law from the eleventh year to the thirteenth year of the Meiji era, taking the relation with G.E. Boissonade into consideration. Mr. Nakao talked about the development and significance of the tax collecting system which had been the financial basis of “post-war management” in the period following the Sino-Japanese War. Prof. Shigematsu examined how the Japanese government had dealt with crimes committed by foreigners from ancient to modern times.

#### b) Legal History of the Orient

Mr. Hori talked about punishment in the Qin and Han periods, centering on an article written in the book of Hanjiuyi. Prof. Shimada examined the relationship between the Code of Alutan=Khan and the Edict of the Futohkthai=Setchen=Khontaiji, and emphasized the significance of the Alutan=Khan's Code in Mongolian legal history. Mr. Miyasaka analyzed the characteristics of the administration of justice under the Shen-Kan-Ning border government controlled by the Kuomintang, taking the Yang-wu Ma style of trial as an example.

#### c) Legal History of the West

Mr. Tanaka clarified the relationship between freedom and royal power, arguing the meaning of freedom as provided in the Langobard Code. Prof. Hayashi criticized a new interpretation about an article written in the chronicle of Köln, a typical medieval city, and reaffirmed the validity of the prevailing opinion as first expounded by H. Planitz. Prof. Katsuta examined a

theory concerning conflict of law between *ius proprium* and *ius commune*, and insisted that *ius commune* had been prior to *ius proprium*, and also discussed the relationship between *ius commune* and *iura novit curia*. Mr. Irie re-examined the function of *Intendant* system which had supposedly contributed to strengthening of royal power under the reign of Louis XIV, pointing to its significance in royal administration. Prof. Kuroda presented ideas concerning the reforms of Stände or Estates, analyzed the socio-historical structure which had determined those ideas, and defined the characteristic features of “political conservatism”. Mr. Mitsunari examined bourgeois activities in Landtag or state congress of Rhine in order to make clear its structure and role in the modernization of the whole of Preußen in the first half of the 19th century.

By Prof. HIKOTA KOGUCHI  
NORHIKO TANAKA

## b. Sociology of Law

*The Japanese Association of Sociology of Law* held its 1984 general meeting at Doshisha University, Kyoto, on May 12 and 13. The first day was devoted to individual reports, and the second day to a symposium on “Law-Consciousness of the Japanese”. The agenda were as follows:

### [First Day]

Division I: Field Research “Contemporary Issues of the Right to Water — Rationalization of Agricultural Water Use and Water Use Disputes”

(1) Preliminary Remarks, by Mitsue Kobayashi (Professor, Ibaragi University).

(2) The Present State of Rationalized Agricultural Water Use Projects — The Case of “Kasai Water Use” in Saitama Prefec-