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ICCLP Annual Report 2003

ISSN 1349-0680

Issued on 31 March 2004

Published by the International Center for Comparative Law and Politics (ICCLP),
Graduate School of Law and Politics, the University of Tokyo

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Editorial Note:

The *ICCLP Annual Report 2003* covers the research and educational activities of the ICCLP in the 2003 academic year (April 2003 to March 2004). However, to prevent a hiatus following the discontinuation of the *ICCLP Review* in October 2002 (Volume 5 Number 2), this issue also reports on symposiums, seminars and forums from the period November 2002 to March 2003.

Introduction

The Future of International Academic Exchange

Kazuo Sugeno

Dean of Graduate School of Law and Politics

The University of Tokyo and ICCLP Director

The International Center for Comparative Law and Politics (ICCLP) was established within the Graduate School of Law and Politics at the University of Tokyo on 1 April 1993 with the aim of promoting international academic exchange. Building upon a ten-year history of educational and research activities, it made a new start on 1 April 2003 with a renewed focus upon international academic exchange in twenty-first century.

Reflecting upon the past ten years of activities, the ICCLP's greatest achievement has been the creation of a human network of scholars. The centre has invited almost sixty scholars from thirteen countries other than Japan as visiting professors and twenty-six young scholars from twelve countries as visiting research scholars. As a result of our exchange programme with the University of Michigan Law School and Columbia Law School, approximately fifty researchers have come to Japan, and in return almost thirty of our staff have visited the US. In total, we have hosted 240 visiting research scholars.

These concrete figures constitute one way of measuring the fruits of international academic exchange. However, we have also worked towards qualitative exchange. As mentioned above, this is manifested in the construction of a deeply-rooted and solid human network but also in exchange projects with the Centre d' Étude de la Vie Politique Française (CEVIPOF) and our work towards the establishment of a similar

programme with Seoul National University. In addition, the mechanisms whereby support is extended to visiting professors and research scholars as part of our activities continue to develop. Building upon the foundations provided by this human network and in cooperation with the Universities of São Paulo and Sheffield, the Japan-Brazil Comparative Law Symposium was held in August 1998, the Anglo-Japanese Academy met for the first time in September 2001, and the International Symposium on Japan-Brazil Comparative Law and Brazilian Workers in Japan took place in August 2002.

As regards the dissemination of information, we have published *ICCLP Publications* (nos 1 to 8), *Comparative Law and Politics Research Series* (nos 1 to 4), *ICCLP Newsletter* (nos 1 to 6 in English and Japanese), and *ICCLP Review* (from March 1998 in English and Japanese). With our rebirth in April 2003 we discontinued *ICCLP Review* and in its place we are currently working towards the publication of a regular Annual Report like this one, in addition to an English journal.

There are a number of changes currently impacting upon both university education and the environment in which research is conducted. In the 2004 academic year, with the creation of a new professional Law School and School of Public Policy and in line with the incorporation of national universities, the activities of the ICCLP in international academic exchange are becoming all the more important. What is more, as part of this academic year's Twenty-first century Center of Excellence (COE) adopted programmes, entitled “‘Soft Law’ and the State-Market Relationship: Forming a Base for Strategic Research and Education in Business Law’, and ‘Invention of Policy Systems in Advanced Countries: Building a Synergy Core for Comparative Policy System Studies’, the ICCLP will play an increasingly central role in these new educational and research activities as a base for international exchange.

From this point in time onwards, we will endeavour to expand and develop the human network of international academic exchange constructed over the last ten years to

render it more robust, yet at the same time more flexible. We thank you for your support in the past and look forward to working with you towards this goal in the future.

[March 2004]

Greeting

On Taking up a Professorship at the ICCLP: from Private Corporation to University Life

Yoshiaki Miyasako
Professor at the ICCLP

I would like to take this opportunity for a personal introduction. My name is Yoshiaki Miyasako and since 1 April of last year I have taken up the post of Professor in the International Center for Comparative Law and Politics. I have succeeded in this post Professor Noboru Kashiwagi. Immediately prior to this appointment, I was responsible for corporate legal operations as the managing director of the Legal Group of Sumitomo Corporation. This involved supervising a broad range of legal tasks in Sumitomo Corporation. These tasks included drafting documents relating to general shareholder meetings, the board of directors, and industrial property rights; drafting contracts for domestic and overseas business deals; and resolving various legal problems and taking charge of legal actions in Japan and overseas.

I supervised corporate legal work for close to thirty years. In that time, the tasks that I found engaged me most deeply were the oversight of legal actions to revoke decisions of shareholder meetings and legal actions involving shareholder representatives; the conduct of corporate governance activities relating to the management of general shareholder meetings and the board of directors; and the creation of a system of legal compliance to ensure that the company was in conformity with the law. In this capacity I was able to experience in one place all the leading edge tasks of corporate legal affairs.

At the University of Tokyo, I am now engaged in one of the ICCLP's principal tasks of facilitating the international connections of the Faculty of Law. At the same time, I am conducting research centred on corporate and commercial law; as well as teaching

a seminar entitled 'Corporate Management and Legal Affairs', which is designed to communicate to students the type of legal problems that can occur on the frontline of today's corporate activities. In addition, I also offer a class on international business law.

Since arriving from a private company to work at a university I have encountered a number of surprises. But perhaps the most surprising matter of all has been that the faculty meeting which I attended on 10 April lasted from 1:15 in the afternoon until well past 8 in the evening. In a corporate environment, meetings are usually scheduled to finish within one hour, and the monthly board of directors meeting even at its longest is concluded within two hours. The faculty meeting takes such a long time because it has to decide the Faculty of Law's response to major changes including university incorporation, and the establishment of a Law School and a School of Public Policy. As a newcomer to the faculty meeting, I have to salute my colleagues for their long dedication in carefully listening to explanations and replying to questions right up to the end of the meeting. Subsequent faculty meetings have also tended to continue until 5 or 6 in the evening. By contrast, according to acquaintances from US universities, faculty meetings finish within an hour and a half, and, if they last longer, those attending simply leave the meeting.

Based on my experience of having supervised board meetings within a private corporation, it seems that faculty meetings face a range of similar problems. Firstly, the numbers of participants necessary to discuss and decide issues is too great. Up until a few years previously, it was not uncommon for a board meeting to be composed of more than fifty people. However, this gave rise to continual criticism that such numbers hampered substantive discussions, and thus it has become more common for companies to have meetings with between 3 and 12 participants. Second, the number of items for discussion is too great, and because many of them are regularly tabled items the actual range of deliberation necessary is unclear. It is really better to entrust many decisions to company executives, and to then to only hold

meetings to discuss the most important items. Board meetings have had a similar problem of too many items for discussion, and thus there is an increasing tendency to reduce these items in number, as well as entrusting many issues to the decision of executives.

Universities differ fundamentally from private corporations in that their objective is not to realise profits, and hence there is clearly no need for universities to imitate their practices. Nevertheless, it is possible to think of both as singular organisational bodies that have similar functional problems to deal with. It is of course important to respect the self-governing autonomy of the faculty meeting. But if one considers that in certain cases the composition of the faculty meeting may exceed 80 members, and that a committee composition of 30 members may actually facilitate improved decision-making, then it may be necessary to think about a general overhaul of the committee's organisation in order to truly maintain independent decision-making capabilities. Therefore, in my opinion, an effective step would be to provide the executive with greater authority to deliberate on those issues that are not directly relevant to the faculty meeting or its autonomy, and to organise the executive duties in such a way that they can be steered through a range of smaller committees. The government Cabinet system and its various subordinate agencies could be one organisational model to consult. Moreover, it might be possible to transfer many administrative tasks currently performed by academic staff to other general staff, or for these tasks to be jointly performed. The outcomes of these tasks could then be made known by a system of reporting at the faculty meeting. In this way, along with a clear division of decision-making and the executive, if executive tasks were reorganised, this would lead to more effective enactment of policy.

During the time that I spent in my previous employment, the corporate world faced a range of upheavals, including problems such as the dissolution of Yukijirushi Shokuhin, business scandals, and long term recession. The result was to press companies to rationalise management structures. The university world is now in the

middle of a similar period of upheaval, manifested in changes such incorporation of national universities, and the establishment of Law Schools and Graduate Schools of Public Policy. The corporate and university worlds have strong similarities in that they cannot preserve past practices, and in order to survive must embark on round-upon-round of fundamental reform. Hence, I hope that my past experience of working in the corporate sector will now prove of some use in tackling the challenges confronting the university sector.

[February 2004]

Activities

Visiting Professors at the ICCLP

David W. Faure, Lecturer, St. Antony's College of Law, University of Oxford
(June - August 2003)

Profile:

After having studied at the University of Hong Kong and Princeton University, Dr Faure was appointed as a lecturer in History at the Chinese University of Hong Kong in 1976. In 1990 he received a professorship in History and East Asian Languages and Culture at Indiana University. From 1990, he has been a lecturer in Modern Chinese History and a fellow of St Antony's College, University of Oxford. Dr Faure specialises in modern Chinese history. During his stay at the ICCLP, he gave a presentation as part of a Comparative Law and Politics Seminar entitled 'Emperor and Ancestor, State and Lineage in South China: the Relevance of Ritual to Property Rights and Political Ideology. He also contributed an article to *University of Tokyo Journal of Law and Politics* Vol.1.

Major Publications:

'The Heaven and Earth Society in the Nineteenth Century: an Interpretation,' in Kwang-ching Liu and Richard Shek, eds. *Heterodoxy in Late Imperial China*, Honolulu: University of Hawaii Press, 2004, pp. 365-392; 'The Chinese Emperor's Informal Empire: Religion and the Incorporation of Local Society in the Ming,' in Shu-min Huang and Cheng-kuang Hsu, eds. *Imagining China: Regional Division and National Unity*, Taipei: Institute of Ethnology, Academia Sinica, 1999, pp. 21-41; 'The Emperor in the Village, Representing the State in South China,' in Joseph McDermott, ed. *Court Ritual and Politics in China*, Cambridge: Cambridge University Press, 1999, pp. 267-298; *Colonialism and the Hong Kong Mentality*, Hong Kong: Centre of Asian Studies, University of Hong Kong, 2003; and *Town and Country in China: Identity and Perception*, (co-editor) Basingstoke: Palgrave, 2001.

Zhaojie Li, Professor, School of Law, Tsinghua University
(September 2003)

Profile:

After having studied at Peking University, the University of California at Berkeley and the University of Toronto, Professor Li was appointed as a junior lecturer at Peking University. In 1996, he received an associate professorship in the Department of Law at Peking University and his current professorship of international law in the School of Law at Tsinghua University. His particular field of research is public international law. During his one-month stay at the ICCLP, he gave a presentation in the Comparative Law and Politics Seminar entitled 'The Doctrine of Preemptive Self-defence as a Legal Justification for the War against Iraq?' as a joint speaker with Professor Vera Gowlland-Debbas. He also contributed an article to *University of Tokyo Journal of Law and Politics* Vol.1.

Major Publications:

‘The Effect of Treaties in Municipal Law: Practice and Problems of the People’s Republic of China, in *Asian Yearbook of International Law*, (1994); ‘Traditional Chinese World Order, in *Chinese Journal of International Law*, Vol.1, (2002).

Masato Ninomiya, Professor, University of São Paulo
(November 2003 - February 2004)

Profile:

After having studied at the Universities of São Paulo and Tokyo, Professor Ninomiya was appointed 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 lectured on Ibero-American Law and contributed an article to *University of Tokyo Journal of Law and Politics* Vol.1.

Major Publications:

Burajiruhō-yōsetsu: Hōrei-hanrei eno Aprōchi, co-authored, Ajia Keizai Shuppankai, 1993; *Nippon-Brazil-ryokoku niokeru 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 Português-Japonês de Termos Jurídicos*, co-authored, Yūhikaku, 2000.

ICCLP Researchers

Hiroki Yasui, ICCLP Researcher

After completing his studies in the Ph.D. course at the Graduate School of Law and Politics, the University of Tokyo, he was awarded a Special Research Fellowship by the Japan Society for the Promotion of Science (JSPS). His main areas of interest are European political history and contemporary German politics. Since he was appointed as an ICCLP Researcher in April 2003, he has continued his research on the transformation of German party politics in globalisation and European integration (b. 1971).

Simon Bezzina, ICCLP Research Scholar

After obtaining an LL.D. from the University of Malta in 1993, he studied Japanese commercial law at Chiba University till 1995. Upon returning to Malta, he obtained a qualification to practice as a lawyer. His previous posts include legal counsel to the Malta Development Corporation and secretary to the Minister of Foreign Affairs. In 1999 he entered the Ph.D. course at the Graduate School of Law and Politics, the University of Tokyo. His main areas of interest are commercial and financial law, and since he was appointed as an ICCLP Research Scholar in May 2003, he has continued his research on credit derivatives. His recent paper regarding Japanese law relating to credit derivatives appears in the *Journal of International Banking Law and Regulation* published by Sweet & Maxwell (b. 1967).

Exchange Projects

The Michigan-Columbia Exchange Project

As part of the Michigan-Columbia Project, the Center has hosted professors from the University of Michigan Law School and Columbia Law School who participated in the postgraduate lecture series entitled “An Introduction to American Law”. Visitors this spring included Assistant Professors Richard Primus and Michael Barr from Michigan Law School, and Professors Jeffrey Fagan and Susan Sturm from Columbia Law School. In addition, Professor Yasuaki Onuma of the University of Tokyo visited Michigan Law School in March 2004.

Richard Primus, Assistant Professor of Law, Michigan Law School

Research Area: Constitutional Law, Employment Discrimination

Major Publications: *The American Language of Rights*, Cambridge University Press, 1999; ‘The Canon Has a History’, *Yale J.L. & Human.* 14, no. 1 (2002): 221-4.

Michael S. Barr, Assistant Professor of Law, Michigan Law School

Research Area: Transnational Law, Jurisdiction and Choice of Law, Financial Institutions

Major Publications: ‘Banking for the Unbanked’, *Law Quad. Notes* 45, no. 2 (2002): 60-3; ‘Banking the Poor’, *Yale J. on Reg.* 21, no. 1. Forthcoming.

Jeffrey A. Fagan, Professor of Law, Columbia Law School

Research Area: Criminal Law, Criminology

Major Publications: *The Changing Borders of Juvenile Justice: Waiver of Adolescents to the Criminal Court*, co-edited with F.E. Zimring, University of Chicago Press, 2000; *Workin' Hard for the Money: The Social and Economic Lives of Women Drug Sellers*, co-authored with D.

Baskin and I. Sommers, Huntington NY: Nova Science Pub., 2000.

Susan Sturm, Professor of Law, Columbia Law School

Research Area: Employment Discrimination, Workplace Regulation

Major Publications: ‘Rethinking Race, Gender and the Law in the Twenty-first Century Workplace’, 12 *Performance Improvement Quarterly* 20, 1999; *Who’s Qualified?*, co-authored with Lani Guinier, Beacon Press, 2001.

Visitor from CEVIPOF

As a part of the CEVIPOF project, Dr Janine Mossuz-Lavau, a research director of the Centre d’Étude de la Vie Politique Française (CEVIPOF), visited the faculty in November. During her two-week stay in Tokyo, she gave a lecture as part of the ICCLP seminar entitled ‘Gender and Politics: Political Parity between Women and Men in France’. This seminar was co-sponsored with the COE project ‘Invention of Policy Systems in Advanced Countries’. In addition, Professor Yoichi Ito visited CEVIPOF in October for a one-month stay.

Janine Mossuz-Lavau, Research Director, Centre d’Étude de la Vie Politique Française (CEVIPOF)

Research Area: Literature and Politics, Political Behaviours, Gender and Politics

Major Publication: *André Malraux et le gaullisme* [André Malraux and Gaullism], Paris, Armand Colin, 1970 (compact edition, 1982) ; *Les Lois de l’amour : les politiques de la sexualité en France, 1950-1990*, [The Laws of Love: The Politics of Sexuality in France, 1950-1990], Paris, Payot, 1991 (compact and updated edition, 2002) ; *Femmes/Hommes: pour la parité* (Women/Men Towards Parity), Paris, Presses de Sciences Po, 1998 ; *La Vie Sexuelle en France* (Sexual Life in France), Paris, Éditions de la Martinière,

2002.

Comparative Law and Politics Symposiums

8th Comparative Law and Politics Symposium – 7 February 2003

A Celebration of the 10th Anniversary of the ICCLP: The Role of Courts in Modern Society

Topic:	The Religion Clauses of the First Amendment : As an Example of Interpretive Methodology
Speaker:	Antonin Scalia, Associate Justice, Supreme Court of the United States
Topic:	Judicial Politics in Japan?
Speaker:	Masaki Taniguchi, Associate Professor, University of Tokyo
Q&A	
Moderator:	Yoshiko Terao, Professor, University of Tokyo
Place:	Gakushikaikan

【Report】

This symposium was held to commemorate the 10th Anniversary of the establishment of the ICCLP by inviting Justice Antonin Scalia of the United States Supreme Court as guest speaker and Professor Masaki Taniguchi of the University of Tokyo as commentator.

Justice Scalia's address was entitled "Realism and the Religion Clauses" and discussed the principles that ought to be applied to the interpretation of constitutional texts by using examples taken from Supreme Court cases on the religion clauses of the First Amendment to the Constitution of the United States. He set forth what he regards to be the four supporting pillars of constitutional construction: (1) Text—The Constitution says what it says, and does not say what it does not say; (2) Original Meaning—Text is to be given the same meaning and the same application to facts that it had when it was adopted, not some new meaning or application favored by later times; (3) Tradition—Where the original meaning or application of the text cannot be

determined, it should be interpreted and applied as it is reflected in the traditional practices of the people; and (4) Immutability—We have an enduring Constitution, not a living one. If social conditions require that its dispositions be changed, there is an amendment process prescribed for that purpose.

The Lemon test, which derives its name from the first case in which it was used, says that a state law does not run afoul of the Establishment Clause only if: (1) it has a secular purpose; (2) its primary effect is not to assist religion; and (3) it does not entangle the state in the management of religious institutions. The Supreme Court case that distressed Justice Scalia the most was a 1989 case that held unconstitutional, under the Establishment Clause, a state's granting of a sales-tax exemption for sales of religious publications promulgating teachings of the faith. The case was decided not by considering the long-accepted practices of the people, but by a mechanical application of the Lemon test. When a judicially crafted abstraction comes up against a longstanding tradition that contradicts it, it is the abstraction and not the tradition that must yield. The Court did not sweep aside real estate tax exemptions for property used exclusively for religious worship, but let them stand without adjusting its rule of Establishment Clause adjudication to take account of them. It is equally wrong, because it is a matter of adjusting the premises of these syllogisms so that they comport with the society's historic understanding of the Constitution, and not with a purely academic construct derived from philosophy treatises in splendid isolation from society. It is by no means a phenomenon reserved to First Amendment jurisprudence. Under the Fourth Amendment, the Supreme Court continues to insist that the general rule is that a search and seizure is unconstitutional unless a warrant is first obtained, but there are so many "exceptions" to this supposed rule made up by the Court itself without any historical justification.

In a 1990 case the rule that the government cannot stop a person from acting pursuant to his religious beliefs unless there is compelling reason to do so was finally and happily abandoned. The notion that all laws are subject to a religious-conscience

exception, not by the consent of the majority reflected in the law itself, or in the Executive's discretionary administration of the law, but by constitutional prescription to be applied through the courts was a boast or an imagining rather than a reality. From the earliest of the Court's freedom-of-religion cases, its decisions had rejected such an approach. It is fair to say that even under the old rule the constitutional practice did not change. If the Court's most recently expressed abstraction happens to contradict tradition and historical practice, it is the abstraction that must yield—the Court must have got the principle wrong.

Professor Taniguchi's commentary was entitled "Judicial Politics in Japan?" and discussed the analysis of political dynamics surrounding the judiciary from the perspective of political science, mainly based on studies in the United States. He analyzed deductively the political dynamics: (1) in the nomination of the Supreme Court Justices' (2) between the judiciary and the Congress; and (3) between the Supreme Court and lower courts, by using a "Market model" approach.

First, the President cannot always nominate a Justice who shares an identical ideology with him, and he has to act strategically by taking the Senate confirmation into consideration. Professor Taniguchi showed that the nomination of the Supreme Court justice is not just a matter of the ideology or personality of the nominee, but a result of the interaction of political actors: the President, the Senate, and the judiciary. Second, the same approach can be applied to relations between the judiciary on the one hand, and the Administration and the Congress on the other. Each policy should be understood as the result of each party's prediction of the other parties' "next moves". Third, when the same approach is applied to relations between the Supreme Court and lower courts, the lower courts are trying to maximize their own preferences by taking advantage of the fact that not all cases are appealed to the Supreme Court, even though they are supposed to follow the Supreme Court precedents and policies as loyal agents.

The actual data support this view. Even as regards the judiciary in Japan, Professor Mark Ramseyer has proved statistically the influence of political considerations on the careers of judges. Professor Taniguchi concluded that although this analysis showed that the democratic control of political players including the judiciary is imperative in a modern society, it is doubtful that the democratic control of the judiciary in Japan is working effectively.

During the question-and-answer session, Justice Scalia's methodology of constitutional interpretation was quizzed from a variety of legal and political science perspectives. Justice Scalia explained that he would follow the clear command of a constitutional text; that the same methodology could be applied to the Constitution of another country so long as the Constitution was adopted democratically with the citizens' intent to follow their own tradition; that the original meanings of the United States Constitution are relatively clear because it was intended to secure the "Englishman's rights"; that the comparative study of law is irrelevant to constitutional interpretation, even though it is useful when legislating; that he would follow precedents that could not be supported by text, original meaning and tradition because lawyers are bound by *stare decisis*; but that since elitist judges began to read the "living Constitution" as they like, thereby ignoring the democratic process, the appointment process of judges has become politicized.

Among nine Justices of the United States Supreme Court, Justice Scalia is a leading figure, and his straight and sharp opinions often stimulate discussion, although his methodology of constitutional interpretation is not commanding the majority of the Court. He minimizes the role of the Constitution, emphasizes the democratic process for accommodating the changing society, and that the federal system is beneficial for reflecting majority's opinion in each locality. Furthermore, Justice Scalia does not deny that the original meaning of the constitutional text is unclear in some cases, but he claims that it is clear in many cases and that, in any event, it is much more reliable than the "living Constitution" approach which gives judges total discretion without

any guiding standards. Moreover, he sees the current politicization of judicial appointments as a deplorable but understandable result of the “living Constitution” approach because judges volunteer to assume the roles that they cannot perform as lawyers. Although more time for discussion would have been welcome, I believe this symposium offered a good opportunity for Justice Scalia and professors of law and political science to exchange opinions.

[Kichimoto Asaka]

9th Comparative Law and Politics Symposium – 13 March 2003

Ethics and Law in the Contemporary Society

<Session 1>

Topic: Corporate Ethics
 Speaker: Noboru Kashiwagi, Professor, University of Tokyo
 Commentator: Kenichi Osugi, Associate Professor, Tokyo Metropolitan University

<Session2>

Topic: Bioethics
 Speaker: Norman Fost, Professor, University of Wisconsin
 Commentator: Yasuyoshi Ouchi, Professor, University of Tokyo

<Session3>

Topic: Intellectual Property Law and Ethics
 Speaker: Nobuhiro Nakayama, Professor, University of Tokyo
 Commentator: Hidetaka Aizawa, Associate Professor, Waseda University
 Institute of Asia-Pacific Studies

<Summary > Linking the Three Sessions

Speakers: Noboru Kashiwagi, Professor, University of Tokyo
 Norio Higuchi, Professor, University of Tokyo
 Moderator: Makoto Ito, Professor, University of Tokyo
 Place: Marubiru Hall, Marunouchi Building

* Co-sponsored with A Grant-in-Aid Creative Scientific Research Funded by the

MEXT, “Law and Policy on Bioethics and Biotechnology”.

10th Comparative Law and Politics Symposium – 24 May 2003

A Comparative Look at Assisted Reproduction and Autonomy in Bioethics

- Topic: Assisted Reproduction and the Law in Australia
- Speakers: Tomoko Mise, Graduate Student, University of Tokyo
Norio Higuchi, Professor, University of Tokyo
- Topic: Status of a Child Born through Assisted Reproduction in Sweden
- Speaker: Michiyo Morozumi, Associate Professor, Meiji Gakuin University
- Topic: Choice of Law Issues on the Status of a Child Born through Assisted Reproduction
- Speaker: Yayoi Sato, Professor, Kansai University
- Lecture: Marsha Garrison, Professor, Brooklyn Law School
- Summary: Norio Higuchi, Professor, University of Tokyo
- Topic: Organ Transplantation and Autonomy: A Report from the Munich Conference
- Speakers: Keisuke Abe, Associate Professor, Seikei University
Shigeto Yonemura, Graduate Student, University of Tokyo
- Topic: PAS and Autonomy: Oregon Death with Dignity Act
- Speakers: Futoshi Iwata, Associate Professor, Sophia University
Ayako Kuyama, Trainee, the Legal Training and Research Institute
- Moderator: Norio Higuchi, Professor, University of Tokyo
- Place: Law Faculty Building No. 4, University of Tokyo

* Co-sponsored with A Grant-in-Aid Creative Scientific Research Funded by the MEXT, “Law and Policy on Bioethics and Biotechnology”.

11th Comparative Law and Politics Symposium – 18 July 2003

A Celebration of the ICCLP’s Renewal: Reflections on Contemporary

Governance

<Session 1>

Topic: Companies and Governance: Global and Japanese Corporate Governance

Speaker: Hideki Kanda, Professor, University of Tokyo

Commentators: Malcolm Smith, Professor, University of Melbourne
Kon-Sik Kim, Professor, Seoul National University

Moderator: Yoshiaki Miyasako, Professor, University of Tokyo

<Session2>

Topic: Medicine and Governance: The Example of the Governance of Non-Profit Organizations

Speaker: Norio Higuchi, Professor, University of Tokyo

Commentators: Robert Leflar, Professor, University of Arkansas School of Law
Hiroyuki Kansaku, Professor, Gakushuin University

Moderator: Yoshiaki Miyasako, Professor, University of Tokyo

<Session3>

Topic: The Meaning of Law In Governance: The Legalization of International Relations

Speaker: Kiichi Fujiwara, Professor, University of Tokyo

Commentators: Shinichi Kitaoka, Professor, University of Tokyo
Hideaki Shiroyama, Associate Professor, University of Tokyo

Moderator: Ikuo Kabashima, Professor, University of Tokyo

Place: Roppongi Academy Hills Auditorium

* Co-sponsored with A Grant-in-Aid Creative Scientific Research Funded by the MEXT, "Law and Policy on Bioethics and Biotechnology".

【Report】

To celebrate the reorganisation of the ICCLP, a public symposium was held at Roppongi Academy Hills on 22 July 2003. This symposium included reports and commentary that investigated the increasingly important topic of governance, which

accompanies the advancement, complexity and globalisation of society, in three areas: the corporate world, non-profit organisations and international relations.

In his presentation as part of the first session entitled “Corporate Governance”, Professor Hideki Kanda explored how corporate governance creates mechanisms within corporations to oversee their operations from the perspective of preventing the reoccurrence of scandals (soundness) and strengthening corporate competitiveness (efficiency). In addition, he examined why corporate governance has become fashionable recently, introduced the debates on corporate governance in organisations such as the OECD and with reference to the 2003 Evian Summit, compared these debates with those taking place in Japan, and pointed to the confusion surrounding these debates. As regards the modality of corporate governance, although profit-making corporations seek to increase profits, transparency and fairness become necessary within this process. In reaction to Professor Kanda’s presentation, Professor Malcolm Smith emphasised principles rather than rules in the provision of corporate governance in Australia, and, citing Professor Lynn Turner’s idea of a ‘light touch’, suggested that Australian corporate governance is probably more traditionally Japanese. In addition, Professor Kon-Sik Kim introduced the changes in Korean corporate governance and pointed to the impact of the economic situation.

The second session tackled the issue of governance in the field of medicine. Professor Norio Higuchi’s approach focussed on the example of the governance of non-profit-making organisations. Governance is important for the prevention of medical accidents and guided by the questions of “who is governance for?”, “in reality, what kind of institution is governance?” and “can soundness and efficiency be attained through governance?”, he explored whether an examination of governance in medicine could be extended to the examination of governance of other profit- and non-profit-making organisations with reference to three points highlighted in Japan: 1) the role of the criminal justice law (the police); 2) proposals for the establishment of a third-party agency to collect and analysis information related to medical

accidents; and 3) the creation of a law for the protection of personal information. Professor Robert Leflar pointed to the complexity of governance in the medical field through reference to common issues in the US and Japan, and Professor Hiroyuki Kansaku commented on the comparison between the governance of profit-making and non-profit-making organisations.

In the third session Professor Kiichi Fujiwara spoke about governance in international relations. He discussed whether international relations based on informal mutual consent could evolve into a system based on official rules. Alternatively, asking whether informal mutual consent could in itself be effective and from the perspectives of the various issues surrounding the legal institutionalisation of international relations (whether the law and institutions are unconnected to international relations, how will the legalisation and institutionalisation of international relations develop from now on, and whether they are phenomena limited to particular regions), Professor Fujiwara explored the meaning of the law in governance in regard to two debates and the peculiar problems they create: 1) the legalists who propose the increase in legalised restrictions; and 2) international cooperation based on softer non-legal restrictions. Responding to this presentation, Associate Professor Hideaki Shiroyama commented from the perspective of public international administration. Governance has existed previously but displays inherent problems, as seen in concrete examples such as inequality amongst units, accountability, and problems in the WTO. He pointed to a form of governance in international relations, the associated problems and the limits that exist in its legalisation. Taking a diplomatic historian's point of view, Professor Shinichi Kitaoka cited Harold Nicholson's book *Diplomacy*: "the origins of diplomacy lie in finding common benefits" and pointed to the fact that mutual benefits in trade are comparatively easy to find, but finding them in the field of security is currently more problematic. The pursuit of mutual benefits opens up the possibility of legislation but is conditional upon two factors, which cannot be decided systemically: the broad maintenance of peace and the continuance of economic development. In addition to these conditions, he also pointed to the need for a

common identity amongst peoples and commented that institutionalisation would proceed slowly but not completely.

Finally, Professor Ikuo Kabashima summarised the three areas of governance explored in the symposium and noted that: 1) governance of the state had not been explored; 2) although the keywords in governance were soundness and efficiency, it was important to go beyond them and 3) it is necessary to realise transparency through practical experience, rather than through punitive measures.

Applications to attend the sessions outstretched the 150-seat capacity of the venue and on the day we had to make use of a number of spare seats. What is more, the results of a questionnaire after the symposium praised highly this attempt at interdisciplinary collaboration between the fields of politics and law. After the conclusion of the symposium, over one hundred people attended a reception at which Professor Kazuo Sugeno reflected on the last ten years of the ICCLP and looked ahead to its future. In his speech, Professor Takeshi Sasaki, the President of Tokyo University, referred to the adoption of the two 21st Century Centre of Excellence (COE) Programs announced the same day: “Soft Law” and the State-Market Relationship: Forming a Base for Strategic Research and Education in Business and Invention of Policy System in Advanced Countries: Building a Synergy Core for Comparative Policy System Studies. He then emphasised the increasingly important role of the ICCLP in the future promotion of international academic exchange. In addition, Mr Akira Ishikawa of the Ministry of Education, Culture, Sports, Science and Technology and Professor Masato Ninomiya of São Paulo University’s Law Faculty gave congratulatory speeches and Emeritus Professor and former Head of Faculty Shiro Ishii made the toast to end a successful meeting. The many people who attended the symposium represented the human network created by the ICCLP over the last ten years.

[Keiko Wada, translated by Hugo Dobson]

12th Comparative Law and Politics Symposium – 16 September 2003

Assisted Reproduction and the Law: the UK, Australia and Japan

<Session1>

Topic: Assisted Reproduction in the UK
Speaker: Derek Morgan, Professor, Cardiff University Law School
Topic: Assisted Reproduction in Australia
Speaker: Loane Skene, Professor, University of Melbourne School of Law
Topic: Assisted Reproduction in Japan
Speaker: Noboru Ienaga, Associate Professor, Senshu University
Summary: Norio Higuchi, Professor, University of Tokyo

<Session2>

Q&A The Right to Know One's Origins
 The Donation of Relatives' Ova
 The Use of Frozen Spermatozoa and Embryo after the Death of a
 Husband
Moderator: Norio Higuchi, Professor, University of Tokyo
Place: Law Faculty Building No. 4, University of Tokyo
* Co-sponsored with A Grant-in-Aid Creative Scientific Research Funded by the
MEXT, "Law and Policy on Bioethics and Biotechnology".

13th Comparative Law and Politics Symposium – 7 December 2003

Topic: The Rise and Decline of the Realization Principle
Speaker: Chang-Hee Lee, Professor, Seoul National University
Commentator: Mitsuaki Usui, Professor, University of Tokyo
Topic: The Japanese People and Bureaucracy from the Perspective of
 Tax Law
Speaker: Yoshihiro Masui, Professor, University of Tokyo
Commentator: Hideki Kanda, Professor, University of Tokyo
Panel Discussion
Summary: Kenjiro Egashira, Professor, University of Tokyo
Moderator: Yoshihiro Masui, Professor, University of Tokyo

Place: Sanjō Conference Hall

* Co-sponsored with A Grant-in-Aid Creative Scientific Research Funded by the MEXT, “International Symposium on Transboundary Issues of Law and Politics”.

14th Comparative Law and Politics Symposium – 13 January 2004

Towards a New, Globalised Society, Part 1

<Session1>

Topic: Japan and the Iraq War

Speaker: Christopher Hughes, Senior Research Fellow, University of Warwick

Commentator: Hideki Kan, Professor, Kyushu University

Q&A

<Session 2>

Topic: Regionalism and Transnational Civil Society: The Case of the EU

Speaker: Ryosuke Amiya-Nakada, Associate Professor, Kobe University

Commentator: Hugo Dobson, Lecturer, University of Sheffield

Q&A

Summary: Glenn D.Hook, Professor, University of Sheffield; COE

Visiting Professor

Susumu Takahashi, Professor, University of Tokyo; COE
Program Leader

Moderator: Yoshiaki Miyasako, Professor, University of Tokyo

Place: The Faculty COE Conference Room, Hongotsuna Building

* Co-sponsored with the University of Tokyo 21st Century COE Program, “Invention of Policy Systems in Advanced Countries”.

【Report】

<Session1>

Presentation: ‘The US-Japan Alliance and the False Promises, Premises and Pretences of Multilateralism in East Asia’

At present there is an emerging 'orthodox' view that regards the existence of strong bilateral relationships as the foundation for the expansion of multilateral frameworks for cooperation in East Asia. However, this 'orthodox' view is inaccurate. In the economic dimension, the conclusion of bilateral free trade agreements (FTA) simply reinforces a 'hub and spokes' system centred on the US. In the security dimension, the recent growth of multilateral frameworks has similar implications. Instead of 'open dialogue' or 'concert type' multilateral cooperation, the most likely direction of multilateralism is towards US-led frameworks of 'guided dialogue' and 'hegemonic cooperation'. The case of the US-Japan alliance encapsulates these trends. Japan has arrived at new options for collective security cooperation via the UN, and participation in PKO. Nevertheless, Japan has not chosen to exercise these options to any great degree, and the real function of these frameworks is to strengthen the basis of US-Japan bilateral alliance cooperation. Japan's despatch of the SDF to Iraq is, therefore, simply a further example of Japan's attempt to strengthen the solidarity of the bilateral alliance.

Discussion: The discussant agreed with the overall conclusions of the paper, but there were offered a number of comments that might adjust its arguments. Firstly, there was raised the question of the true ability of the US to exercise 'hegemony' and 'guidance' in multilateral economic frameworks. Secondly, it is important to ask whether FTAs are a manifestation in another form of the trend towards multilateralism because ultimately they represent the increasing integration of states into a US-inspired liberal and global economic order. In relation also to this point, it might be the case that the failure of multilateral frameworks to develop is less attributable to the bilateralism of the US-Japan alliance, and simply more to the unilateralism of the administration of George W. Bush. Thirdly, it is important to note that Japan's argument that the foundations of multilateralism are provided by the bilateral alliance has the political objective of assuaging the concerns of neighbouring states about the expansion of Japanese security activities. Fourthly, it should be considered whether there is

necessarily such a degree of crossover in the trends in the economic and security dimensions. Fifthly, the current Bush administration may assume a position that is hegemonic, but this is not always the stance of the US, and it has to be remembered that the Clinton administration sought to further its policy through the promotion of genuine multilateral frameworks that it could dominate.

In the question and answer session a variety of points were raised, including interpretations of the North Korean issue. The presenter responded to a number of the discussant's comments. Firstly, in response to the question concerning the degree of US influence in multilateral frameworks, the argument was put forward that, while the US may not be able to set the entire agenda, the relative weight of its influence in shaping these frameworks' priorities had undoubtedly increased to a potentially decisive degree. Secondly, in regard to North Korea, the point was made that the norm of territorial sovereignty is strong enough in the subregion to ensure that even in the event of Korean reunification no fundamental change in the sovereign state regional order was likely to occur. Thirdly, in response to the question of whether the Bush administration's unilateralism was the key factor accounting for the failure of multilateralism, it was noted that US policy is influenced by various strains of unilateral, multilateral, idealist and realist thinking. At present, though, unilateralism and idealism are prevalent, which makes for a US disinclination to support multilateral frameworks other than those types outlined in the paper.

<Session 2>

Presentation: The role of transnational civil society is often seen as a crucial to compensate for deficiencies in democracy that can occur in the process of regional integration; and in certain policy areas of the EU there are increasing moves to incorporate civil society organisations into the decision-making process. The expectation has been that this will result in enhanced governance capabilities and the promotion of 'bottom up' European integration. However, it is not the case that there is such a direct linkage between the role of civil society and a resolution of

democratic deficits. For instance, if the aim is to upgrade capacities for governance, then this calls for specialist capabilities on the part of civil society organisations, and thus a tendency to enable the participation of only a limited and thus not necessarily representative number of groups. Moreover, the number of civil society organisations with the flexibility and skills to participate in these governance structures are limited and cannot fulfil this role across the entire EU. In addition, theories of deliberate democracy present serious questions for these problems identified in governance, and these apply not only to problems in the policy arena, but also to the entire project of European integration.

Discussion: The discussant's comments were formulated by way of a comparative discussion centred on the issue of the G-8 Summit and global civil society. The observation was offered that interest civil society's role became heightened following the end of the Cold War. The G-8 is often criticised as an exclusivist organisation, and in its search for legitimisation has thus begun to make approaches to civil society. The G-8 first made reference to civil society in its declaration at the Halifax summit in 1995, and the G-8 leaders conducted a dialogue with representatives of civil society at the Birmingham summit in 1998. Civil society groups that had previously been critical of and opposed to the G-8 also now for the first time initiated lobby activities at summits. At the Okinawa summit in 2000 there were enhanced opportunities for civil society participation, including dialogue with Prime Minister Mori and the establishment of an NGO centre. However, one clear characteristic of Japan's response to NGOs was an attempt to control their influence. Hence, the response of other G-8 governments to civil society, and especially the US government in hosting the 2004 summit, will continue to be a focus of attention.

In the open discussion a large number of issues were raised. These included questions relating to the legitimacy of the EU; the impossibilities of attempting to apply standards of governance to regional integration that had originally been nurtured in nation states; and questions about the analytical utility of the term 'civil society'. The

presenter and discussant responded that the EU is indeed a weak construct and that it is dependent on its performance for attaining legitimacy, and that it is certainly necessary to debate its degree of legitimacy. There was also agreement about the difficulties of translating national governmental practices to the regional level. Nonetheless, if cases such as management-labour relations are examined and the fact is accepted that there are agreements that bypass normal legislative processes, then it can be seen that governance beyond the level of the nation state is emerging. Finally, in relation to the analytical utility of 'civil society', it was agreed that, even though the term is usually supported by the assertion that it describes governance that is not fully within the capabilities of the state, market and other vested interests, fundamentally there is no difference between civil society groups and corporatism.

[Hiroki Yasui, translated by Christopher Hughes]

15th Comparative Law and Politics Symposium – 12 March 2004

Contemporary Ethics/Social Norms and the Law: Future Prospects for Research into Soft Law

<Session 1: Companies and Ethics/Social Norms>

- Topic: The Social Responsibility of Companies: The Examples of the OECD Guidelines on the Behaviour of Multinational Corporations and the Charter of the Japanese Federation of Economic Organizations on Company Behaviour
- Speaker: Hideki Kanda, Professor, University of Tokyo; COE Program Leader on Market Transactions
- Commentators: Yoshiaki Miyasako, Professor, University of Tokyo
Motohiko Kato, Director, Economic Affairs Bureau, Ministry of Foreign Affairs

<Session 2: Ethics/Social Norms in the Field of Medicine>

- Topic: Norms and Soft Law in Medicine
- Speaker: Norio Higuchi, Professor, University of Tokyo
- Commentator: Tatsuo Kuroyanagi, Lawyer, Kaneko and Iwamatsu Law Firm

<Session 3: The Theoretical Basis of Research into Ethics and Social Norms>

Topic: The Law of Social Norms and Economics: Theoretical Prospects

Speakers: Toshihiro Matsumura, Associate Professor, University of Tokyo
Tomotaka Fujita, Associate Professor, University of Tokyo

Commentator: Noriyuki Yanagawa, Associate Professor, University of Tokyo

Summary: Minoru Nakazato, Professor, University of Tokyo; COE Program
Leader on Government Regulations

Moderator: Nobuhiro Nakayama, Professor, University of Tokyo; COE
Program Leader on Information Property

Place: Roppongi Academy Hills Auditorium

* Co-sponsored by the University of Tokyo 21st Century COE Program “Soft Law”, Business Law Center, and A Grant-in-Aid Creative Scientific Research Funded by the MEXT, “Law and Policy on Bioethics and Biotechnology”.

Comparative Law and Politics Seminars & Forums

[Seminars]

The 136th Comparative Law and Politics Seminar – 6 November 2002

Topic: French Elections:What next? (Les élections en France:quelles perspectives pour le nouveau pouvoir?)

Speaker: Jacques Capdevielle, Research Director, CEVIPOF (Center for the Study of French Political Life); ICCLP Visiting Professor

Language: English

Moderator: Professor Yoichi Ito

* Co-sponsored with the Franco-Japanese Society of Political Science

The 137th Comparative Law and Politics Seminar – 19 November 2002

Topic: UNCITRAL and its Recent Work: Convention for the Assignment of Receivables and Project on Secured Transactions

Speaker: Spiros V. Bazinas, Senior Legal Officer, United Nations Commission on International Trade Law(UNCITRAL)

Language: English

Moderator: Professor Hideki Kanda

The 138th Comparative Law and Politics Seminar – 13 December 2002

Topic: Law and Taxation of Corporate Merger and Division in Korea

Speaker: Chang-Hee Lee, Professor, Seoul National University

Language: English

Moderator: Professor Noboru Kashiwagi

The 139th Comparative Law and Politics Seminar – 16 December 2002

Topic: Is the Japanese Bureaucracy Hollowing Out?:The Impact of Structural Reforms on the Allocation of Talent

Speaker: Curtis Milhaupt, Professor, Columbia Law School; Visiting

Research Scholar, Graduate School of Law and Politics,
University of Tokyo

Language: English

Moderator: Professor Norio Higuchi

* Co-sponsored with the Anglo-American Common Law Study Meeting

The 140th Comparative Law and Politics Seminar – 28 January 2003

Topic: Proprietary Remedies in a Commercial Context: The North
America Experience

Speaker: David Wright, Senior Lecturer, University of Adelaide Law
School; ICCLP Visiting Associate Professor

Language: English

Moderator: Professor Norio Higuchi

* Co-sponsored with the Anglo-American Common Law Study Meeting

【Report】

In a seminar held at the University of Tokyo on January 28th 2003 David Wright, a senior lecturer at the University of Adelaide in Australia, presented a paper on proprietary remedies. Using property as a remedy is very contentious and it involves a deep understanding of the law of property. It is vital to remember that the law of property is a construct. Property is generally a stable concept but at the margins it demonstrates instability. The view of the law of property as a construct is most strongly pushed by American legal realism movement, most recently advocated in the UK by Dr Craig Rotherham of Cambridge University in his 2002 book. To confuse matters with regard to proprietary remedies even further traditionally such remedies were considered to be equitable in nature. But recently they have started to be referred to as restitutionary.

This talk focused on the most contentious proprietary remedy, the constructive trust (CT). There are three varieties of trusts; the express, resulting and constructive. The

express trust is based upon actual intention. The resulting trust is based upon presumed intention. The CT disregards intention. And this talk largely focused upon the most contentious of all commercial contexts, bankruptcy/insolvency. The reason for this being so contentious is that the application of the CT can greatly reduce the size of the bankrupt's estate; that is, it can reduce the amount of money that the unsecured (or general) creditors receive. This issue was looked at in Canada and the US.

In Canada, although reluctance to use constructive trust in commercial contexts, Paciocco, in his article "The Remedial Constructive Trust: A Principled Basis for Priorities over Creditors " (1989), did recognise that it was possible and placed most importance upon gaining a constructive trust on the a "acceptance of risk" by the unsecured creditors. In *Soulos* (1997) there was a breach of fiduciary duty in a commercial context but no unjust enrichment. The Supreme Court awarded a CT. In the only reported case of bankruptcy and the CT in Canada *Ellingsen v Hallmark* (2002) the Court of Appeal of British Columbia did find that a CT should be awarded.

In the United States, the Federal Bankruptcy Code is NOT exhaustive and s541(d) excludes from the bankrupts' estate property held on trust. Sherwin's article "Constructive Trusts in Bankruptcy" [1989] *University of Illinois Law Review* 297 is the starting point of examining this issue in America. She describes the CT as a remedy against unjust enrichment. In *Re Omegas Group* (1994) many of Sherwin's concerns were judicially articulated by the 6th Circuit when the Court of Appeals reversed the decision of the bankruptcy court to award a CT. The Datacomp claimed that the Omegas defrauded it and that money paid to the debtor in the course of business was held in constructive trust since the debtor knew that the bankruptcy was imminent but assured the creditor otherwise. On the other hand, Omegas argued that Datacomp was no different to any other creditor. The Court held that the Bankruptcy Code removes the CT. That is, you can't have a constructive trust in a commercial context. Kull argues in his article "Restitution in Bankruptcy: Reclamation and Constructive

Trust” (1998) that because the subject of restitution is not addressed by the Bankruptcy Code, the topic has become confused and haphazard, leading to the poor decision in *Re Omegas*. Kull suggests that the Bankruptcy Code and constructive trusts are not at odds with one another because of the element of ownership involved in the CT. Fundamentally, this is where Kull’s perspective differs from that of Sherwin. Kull argues emphatically that while the CT is a remedy, it is not merely a remedy. For Kull, the constructive trust is still a trust.

After denying the CT any role in bankruptcy, the 6th Circuit retreated a little and allowed a limited role for CT in bankruptcy in *Re Morris* (2001). In *Re Foster* (2001) the 10th Cir refused a CT because of other creditors being present. This reluctance was confirmed by 2th Circuit in *Securities Exchange Commission v Loewenson* (a Ponzi case) in 2002, where other similarly situated creditors would have been disadvantaged by the CT.

In conclusion, it can be said that:

1. both Canada and the US use CTs in commercial settings, including bankruptcy
2. but courts are reluctant to allow CTs in commercial contexts
3. in both jurisdictions it seems to involve a balancing of the interests of the CT claimant and the unsecured creditors

[David Wright]

The 141st Comparative Law and Politics Seminar – 18 February 2003

Topic:	Swinging on the Pendulum: The Continuing Evolution of US Policies Protecting Human Subjects
Speaker:	Anna Mastroianni, Professor, University of Washington School of Law
Language:	English
Moderator:	Futoshi Iwata, Associate Professor, Sophia University

* Co-sponsored with the Anglo-American Common Law Study Meeting

The 142nd Comparative Law and Politics Seminar – 19 February 2003

Topic: Little Cells, Big Issues: Ethics of Embryonic Stem Cell Research

Speaker: Anna Mastroianni, Professor, University of Washington School
of Law

Language: English

Moderator: Futoshi Iwata, Associate Professor, Sophia University

* Co-sponsored with the Anglo-American Common Law Study Meeting

【Report】

After spending some years in private practice, Professor Anna Mastroianni, a graduate of the University of Pennsylvania's Law School, received her M.P.H. from the University of Washington's School of Public Health and Community Medicine and joined the faculty of University of Washington School of law in 1998. She has published numerous articles including four books, and she is well known for serving as the Associate Director of the White House Advisory Committee on Human Radiation Experiments, and as the Study Director of the Institute of Medicine. In 2002, Professor Mastroianni was named as the Greenwall Faculty Scholar in Bioethics, which allows her to dedicate half of her time to research for the proceeding three years. Her major research interests, and the topics for the two lectures she delivered, are issues surrounding stem cells, human embryos and reproductive technologies.

I. Swinging on the Pendulum: The Continuing Evolution of US Policies Protecting Human Subjects

US policies protecting human subjects have evolved during the last twenty-five years. Around twenty years ago, the policy was basically to exclude the socially deprived people from clinical research. This was in order to protect them in response to the public exposure of several scandals where certain researchers had experimented upon

racial minorities or mentally disabled people without obtaining either any meaningful informed consent or any medical benefits, and resulting in rather harmful results for the subjects. But after the general public began to realize that there were medical benefits to be obtained from some experimental medicine, people began to argue for equal access to the benefits of research. However, there were inherent dangers involved in experimental medicine, and patients who participated in clinical research were sometimes exposed to severe injuries and even death. As a result, the policy transformed again to focus more on the protection of patients rather than on equal access to the benefits of research. In other words, US policy has moved from the protection of human subjects to equal access and then back to protection during the last twenty-five years.

In a sense, the US has implemented several policies that are on occasion diametrically opposed to each other. However, even after these experiences, it is impossible to say that the protection of human subjects is sufficiently rigorous. US policy tends to focus especially on the procedural, rather than substantive, aspects, and therefore it tends to produce more paperwork without even marginal benefits in terms of the protection of human subjects. In conclusion, it is particularly important for every researcher to acquire the public's understanding and support when obtaining both research funds and a sufficient number of human subjects. There is no easy answer but to conduct clinical research in an ethical fashion.

II. Little Cells, Big Issues: Ethics of Embryonic Stem Cell Research

People disagree with whether it is ethical to use embryonic stem cells in research. This is mainly because embryonic stem cells are either left over in spermatovum produced in the process of assisted reproduction, or are left over from abortions, and in a sense embryonic stem cells could arguably be seen as persons subject to be regarded as human life. Yet, there are great expectations for therapeutic cloning based upon the development of embryonic stem cell research, especially as a panacea for the chronic shortage of transplant organs.

In addition, since the US federal government has limited power to regulate research because of the structure of the constitution, it is more difficult to strike the appropriate balance between regulating embryonic stem cell research and stimulating research for the development of promising technologies. For example, in 2001 the Bush administration decided to fund only seventy-two existing cell lines, and, as a result of new regulations, federal funds cannot be used for any other embryonic stem cell research beyond these seventy-two projects. However, it is possible to conduct embryonic stem cell research as long as it is not funded by the federal government. So, there is virtually no federal government's oversight on researches by private fund.

Because federally-funded embryonic stem cell research is heavily regulated both qualitatively and quantitatively, it is doubtful whether the current federal regulation can sufficiently provide for the development of basic medical research and clinical medicine. Privately-funded research often cannot overcome any deficiencies in the development of basic scientific research since the private companies that provide funding are generally indifferent to research that cannot produce any material benefits especially in the short term. In these circumstances, Prof. Mastroianni argues, it is vital for the federal government to change its strict restrictions on federally-funded research. That is, the federal government should expand permissible research on embryonic stem cell research, and then the federal government's oversight can be reached much wider arena on embryonic stem cell research. As a result, a more appropriate balance can be struck between oversight and stimulus on those researches.

* * *

Through these two lectures, we were able to acquire a sound overview of issues surrounding research on human subjects and embryonic stem cells in the US. Although the discussion was somewhat limited in scope by focussing only on the US federal system, we had the opportunity to learn how difficult it is to strike a good

balance between the protection of human subjects and the advancement of medicine, even including the most basic scientific knowledge. One of the most interesting arguments posited by Professor Mastroianni was that in order to maintain the integrity of research regulation cannot be focused merely on the procedural aspects since procedural regulation might produce merely more paperwork without any substantive benefits for the protection of human subjects. It is very interesting to know that arguments also exist in the US that focus on the substantive aspects and importance of internalizing the ethical thinking amongst researchers themselves.

[Futoshi Iwata]

The 143rd Comparative Law and Politics Seminar – 20 March 2003

Topic: On Medical Care
Speaker: Wataru Mori, President, Japanese Association of Medical Sciences; Emeritus Professor, University of Tokyo
Language: Japanese
Moderator: Professor Paul Ch'en

The 144th Comparative Law and Politics Seminar – 26 March 2003

Topic: Hobbes's Theory of Political Obligation
Speaker: Kinch Hoekstra, Lecturer, Balliol College, University of Oxford
Language: English
Moderator: Associate Professor Arihiro Fukuda

The 145th Comparative Law and Politics Seminar – 2 July 2003

Topic: Advance Directives in Terminally Ill Cases: Ethical/Practical Problems and Its Alternatives
Speaker: Rebecca Dresser, Professor, Washington University Law School
Language: English
Moderator: Professor Norio Higuchi

* Co-sponsored with the Anglo-American Common Law Study Meeting

The 146th Comparative Law and Politics Seminar – 2 July 2003

Topic: Problem Solving Approaches to Employment Discrimination

Speaker: Susan Sturm, Professor, Columbia Law School

Language: English

Moderator: Professor Yoshiko Terao

* Co-sponsored with the Anglo-American Common Law Study Meeting

The 147th Comparative Law and Politics Seminar – 11 July 2003

Topic: Emperor and Ancestor, State and Lineage in South China: The
Relevance of Ritual to Property Rights and Political Ideology

Speaker: David Faure, Lecturer, St Antony's College, University of
Oxford; ICCLP Visiting Professor

Language: English

Moderator: Associate Professor Kentaro Matsubara

The 148th Comparative Law and Politics Seminar – 6 September 2003

Topics & Speakers: The Use of Force against Iraq and Its Aftermath: Legal Problems

- 1) Zhaojie Li, Professor, School of Law, Tsinghua University;
ICCLP Visiting Professor

“The Doctrine of Preemptive Self-Defense as a Legal
Justification for the War against Iraq? ”

- 2) Vera Gowlland-Debbas, Professor, Graduate Institute of
International Studies, Geneva

“The United Nations and Unilateral Claims to Enforce
Collective Decisions: Issues of Legality, Legitimization and
Community Interests ”

Language: English

Moderator: Professor Kazuhiro Nakatani

* Co-sponsored with the University of Tokyo International Law Study Meeting

The 149th Comparative Law and Politics Seminar – 27 November 2003

Topic: Gender and Politics: Political Parity between Women and Men in France

Speaker: Janine Mossuz-Lavau, Research Director, CEVIPOF (Center for the Study of French Political Life)

Language: English

Moderator: Associate Professor Hideaki Shiroyama

* Co-sponsored by the Franco-Japanese Society of Political Science and the University of Tokyo 21st Century COE Program, “Invention of Policy Systems in Advanced Countries”

The 150th Comparative Law and Politics Seminar – 16 March 2004

Topic: Protection of Personal Honor in Europe and America

Speaker: James Q. Whitman, Professor, Yale Law School

Language: English

Moderator: Professor Norio Higuchi

* Co-sponsored with the Anglo-American Common Law Study Meeting

[Forums]

The 120th Comparative Law and Politics Forum – 16 April 2003

Topic: Missile Defence in East Asia: Implications and Potential Risks

Speaker: Masako Ikegami, Associate Professor & Director, Center for Pacific Asia Studies (CPAS), Stockholm University

Language: English

Moderator: Professor Kiichi Fujiwara

The 121st Comparative Law and Politics Forum – 14 May 2003

Topic: Race-Based Affirmative Action in American University Admissions

Speaker: Richard Primus, Assistant Professor, Michigan Law School

Language: English

Moderator: Professor Yoshiko Terao

* Co-sponsored with the Anglo-American Common Law Study Meeting

The 122nd Comparative Law and Politics Forum – 4 June 2003

Topic: Judicial Review of Constitutional Questions: United States and Japan Supreme Court Approaches Compared

Speaker: Carl F. Goodman, Lawyer; Adjunct Professor, Georgetown University Law Center; Visiting Research Scholar, Graduate School of Law and Politics, University of Tokyo

Language: English

Moderator: Associate Professor Kichimoto Asaka

* Co-sponsored with the Anglo-American Common Law Study Meeting

Report

The American concept of Judicial Review, under which the judicial system determines whether acts of government, both executive and legislative, are in conformity with the Constitution, was established in *Marbury v. Madison*, 200 years ago. The *Marbury* decision came at a time of heightened political tension soon after the creation of America's two-party political system. Chief Justice Marshall's decision is the basis for the American Rule of Law system in that it holds that the Constitution is the Supreme Law; that it is the function of the Court system to interpret and apply law (including the Constitution since it is law) to cases or controversies; and therefore the Court ultimately decides whether a legislative or executive Act is lawful. Legislation inconsistent with the Constitution is unlawful and therefore void and of no effect.

Like the American Constitution, the Constitution of Japan provides that the Constitution is Supreme Law. In addition the Courts in Japan are given the power of

Judicial Review. Yet, in a single year the modern Supreme Court of the United States holds more federal and State laws unconstitutional than the Supreme Court of Japan has held Japanese laws to be unconstitutional since adoption of the Constitution. And, with the exception of the Voting Rights/Apportionment cases, none of the other cases involved laws supported by the post-war political elite of Japan or the ruling party. The Patricide Law, the Forest Division Law and the portions of the Post Office Law found to be unconstitutional were all Pre-War laws. The Hiroshima Pharmacy case involved a private members bill not a cabinet bill and has, in any event, not been built on by the Court.

The Voting Rights/Apportionment cases do involve post-war government sponsored laws and the Court's decisions finding the laws unconstitutional was courageous and important. However, by using the " Circumstance Decision " mechanism the Court failed to provide any relief in the Apportionment cases. Indeed, after the cases, an unlawfully (as held by the Court) elected legislative branch continued in office for the full term of its unlawfully elected life. The Court failed to unseat even the most grievously elected member of the Diet and did not hinge continuation of the elected Diet on the enactment of a Constitutionally permitted election law within a stated period of time. From a Rule of Law perspective the Court's decision allowing an unlawfully elected body to continue to make laws raises serious questions.

Japan's history of Judicial Review is actually not that different from the US history if the two are viewed in historical prospective. That is, during the first 50 years of America's Constitutional history the Supreme Court of the United States rarely applied Marbury to strike down a law. The Court's expanded use of its Judicial Review power is relatively recent. Moreover, President Jackson failed to carry out a Court decision he disapproved of that gave rights to American Indian Tribes and the Supreme Court's Japanese Exclusion cases of WWII raise serious Rule of Law questions.

What Japan's Supreme Court has done is lay the foundation for use of its Judicial Review powers in the future and therefore the Court has retained its potential for an active Rule of Law guardianship of the Constitution in the future. Still, recent acts of the judiciary, such as supporting a Budget Law that reduces judges' salaries raise serious questions. [Carl F. Goodman]

The 123rd Comparative Law and Politics Forum – 18 June 2003

Topic: A Broken System: The Extent and Causes of Sentencing Errors
in Death Sentences in the United States

Speaker: Jeffrey Fagan, Professor, Columbia Law School

Language: English

Moderator: Associate Professor Kichimoto Asaka

* Co-sponsored with the Anglo-American Common Law Study Meeting

The 124th Comparative Law and Politics Forum – 22 October 2003

Topic: The Rule of Law and the Eleventh Amendment

Speaker: Thomas K. Gilhool, Chief Counsel, Public Interest Law Center
of Philadelphia

Language: English

Moderator: Associate Professor Kichimoto Asaka

* Co-sponsored with the Anglo-American Common Law Study Meeting

The 125th Comparative Law and Politics Forum – 5 December 2003

Topic: Reforming Law Transnationally: The American Law Institute
and Its Efforts to Participate in Global Law Reform

Speaker: Lance Liebman, Professor, Columbia Law School

Language: English

Moderator: Professor Yoshiaki Miyasako

Supporting the 21st Century COE Program of the University of Tokyo

In 2002, the Ministry of Education, Sports, Science and Technology (MEXT) introduced the 21st Century Center of Excellence (COE) program to which Japanese universities apply on a competitive basis. The Faculty submitted two projects to the COE Program for this academic year, and both were successful. Subsequently, the Center has supported these two projects entitled “*Soft Law*” and *the State-Market Relationship: Forming a Base for Strategic Research and Education in Business Law and Invention of Policy System in Advanced Countries: Building a Synergy Core for Comparative Policy System Studies*. We have established two offices to promote the off-campus educational and research activities of these projects and have sought to strengthen their international exchange activities such as organising symposia, seminars and workshops, inviting scholars from inside and outside Japan, and producing publications. In particular, the Center assisted in holding the first symposium of the COE project “*Soft Law*” and *the State-Market Relationship* entitled “Contemporary Ethics/Social Norms and the Law: Future Prospects for Research into Soft Law” on 12 March 2004. (See the 15th ICCLP symposium, p.32).

Moreover, the Anglo-Japanese Academy (AJA) Follow-up Meeting was held on 12 January co-organised with the COE project *Invention of Policy System in Advanced Countries*. This provided participants in the AJA meeting held in Sheffield in September 2001 an opportunity to report on their present research and discuss their future activities. The ICCLP symposium entitled “Towards a New, Globalised Society” was held the following day, 13 January, and included several members of the AJA as speakers and commentators (See the 14th ICCLP symposium, p.28).

In this way, the Center is engaged in various new activities to promote international academic exchange and provide the foundations for global education and research through these two COE projects.

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.

Liu, Yuling, Section Chief, People's Bank of China

Term: April 2003 - March 2004
Research Area: The Legal Study on Deposit Insurance System
Host: Masato Dogauchi

Carl F. Goodman, Lawyer, Adjunct Professor, Georgetown University Law Center

Term: April 2003 - July 2003
Research Area: Civil Procedure Code of Japan
Host: Kichimoto Asaka

Marsha Garrison, Professor, Brooklyn Law School

Term: May 2003 - June 2003
Research Area: Bioethics and Law
Host: Norio Higuchi

Rebecca S. Dresser, Professor, Washington University School of Law

Term: June 2003 - July 2003
Research Area: Research Ethics in Bioscience
Host: Norio Higuchi

Robert B. Leflar, Professor, University of Arkansas

Term: June 2003 - August 2003
Research Area: Comparison of Japanese and US Strategies to Reduce Medical Error
Host: Norio Higuchi

Qi, Jian-Min, Assistant Professor, Nankai University

Term: June 2003 - May 2004
Research Area: The Mongol Administration and Japan: The Clash between 'Pan-Mongoliamism' and 'Far East Regionalism'

Host: Shinichi Kitaoka

Kim, Soung-Chul, Research Fellow, Sejong Institute (Korea)

Term: August 2003 - July 2004

Research Area: Japan's Foreign Policy in Northeast Asia

Host: Shinichi Kitaoka

Cheng, Wei-Li, Judge, Taiwan High Court

Term: September 2003 - December 2003

Research Area: The Operation of Legal Aid System & Its Financial Management

Host: Hiroshi Takahashi

Glenn D. Hook, Professor, University of Sheffield

Term: October 2003 - January 2004

Research Area: Japan's Political Response to Terrorism

Host: Susumu Takahashi

Gill Steel, Academic Coordinator, Tokyo International University

Term: October 2003 - September 2004

Research Area: Voting Behavior and Public Opinion

Host: Ikuo Kabashima

Hu, Peng, Researcher, China Academy of Social Science Institute of Japanese Studies

Term: November, 2003 - January 2004

Research Area: Japanese Women's Political Participation Post the World War II

Host: Hiroshi Watanabe

Pierre Etienne Will, Professor, Collège de France

Term: November 2003 - December 2003

Research Area: Late Imperial Bureaucracy and Administration

Host: Kentaro Matsubara

Bérénice Jallais, Assistant Professor, Université de Poitiers

Term: November 2003 - November 2004

Research Area: French Legislation Concerning Nuclear Security & Food Safety

Host: Atsushi Omura

Park, Jeong-Hum, Lecturer, Kyung Hee University
Term: December 2003 - February 2004
Research Area: A Research of Intelligence Laws
Host: Mitsuo Kobayakawa

Georgios Mousourakis, Senior Lecturer, University of Auckland
Term: January 2004 - February 2004
Research Area: Methodology of Comparative Law
Host: Hitoshi Saeki

Zhou, Yong-Sheng, Lecturer, Shanghai Institute University of Foreign Trade
Term: January 2004 - January 2005
Research Area: The Theory of Commercial Trust and Application
Host: Yoshihisa Nomi

Chen, Wen-Fu, Patent Attorney, Intellectual Property Office of Qing Hai Province
Term: January 2004 - January 2005
Research Area: Patent Litigation Action of a Patent
Host: Tetsuya Obuchi

Wu, Hua, Associate Professor, Chinese People's Armed Police Force Academy
Term: January 2004 - January 2005
Research Area: Comparison Research of the Administration on Immigration Control
Host: Mitsuo Kobayakawa

Zhang, Yan-Li, Lecturer, Beijing Center for Japanese Studies
Term: February 2004 - June 2004
Research Area: The Neokantianism in Japan
Host: Tadashi Karube

Choi, Keon-Ho, Judge, Eastern Branch, Seoul District Court
Term: March 2004 - February 2005
Research Area: Multi-Party Litigation
Host: Makoto Ito

Interview with Emeritus Professor Shiro Ishii

The Beginnings of International Exchange: The Personal Experiences of One Japanese Scholar

Keiko Wada
ICCLP Co-ordinator

*Knowledge is a noble treasure.
By its nature, if any man tries to hold it close,
it will seep away from him day by day.¹*

Profile of Emeritus Professor Shiro Ishii: ² Upon graduation from the Faculty of Law of the University of Tokyo in 1959, Professor Ishii became an

¹ Masahata Kubo, Takeshi Ishikawa and Jun Naoi (trans.), *Zakusenshupūgeru Ranto-hō* [*Sachsenspiegel* (Mirror of Saxony): *Landrecht* (municipal law)] (Sōbunsha, 1977), 15.

² 1935 - . Publications include: *Nihon kokuseishi kenkyū I: Kenryoku to tochi shoyū* [Studies in Japanese constitutional history, part 1: Power and land ownership] (University of Tokyo Press, 1966); *Nihon kindai hōshi kōgi* [Lectures in Japanese modern legal history] (Seirin Shobō 1972) (editor); *Nihon shisō taikai 27: Kinsei buke shisō* [Outline of Japanese thought, vol. 27: Samurai thought in the Tokugawa period] (Iwanami Shoten, 1974) (editor); *Nihon kokuseishi kenkyū II: Nihonjin no kokka seikatsu* [Studies in Japanese constitutional history, part 2: *The Staatsleben* (state-related life) of the Japanese] (University of Tokyo Press, 1986); *Sotokara mita Nihon-hō* [Japanese law in an international perspective] (University of Tokyo Press, 1995) (co-editor); *Fast wie mein eigen Vaterland : Briefe aus Japan 1886-1889 / Albert und Lina Mosse* [Almost as if my own fatherland: letters from Japan 1886-1889 by Albert and Lina Mosse] (Iudicium, 1995) (co-editor); *Tenkanki no daigakuin kyōiku* [A turning point in postgraduate education] (Daigaku Kijun Kyōkai, 1996); *Zusetsu hanketsu genpon no isan* [The

Assistant within the Faculty, then an Associate Professor (1962) and Professor (1972). From April 1990 to March 1992 he was the Dean of the Faculty. From April 1993 to March 1995 he served as the Vice President of the University. After his retirement from the University of Tokyo in 1995, he became a Professor of the International Research Center for Japanese Studies. Following a period as Commissioner for the Council for Science and Technology Policy, he is currently the Deputy Director at the Research Center for Science Systems of the Japan Society for the Promotion of Science (JSPS). In 1980 he was awarded the Philip Franz von Siebold Prize, and in 1997 Bundesverdienstkreuz 1. grade of the Federal Republic of Germany.

In the preparations for this interview, Professor Ishii came to collect a list of his overseas visits during his tenure at the University of Tokyo. He said this was “to help recall the history of my personal experience of international academic exchange”. As he went through the list converting dates from the Japanese calendar to the Western, he underlined certain events, commenting “This one was important” ...

Keiko Wada: Professor Ishii, you went to study in Germany in 1965, but when was it that you first became conscious of “the foreign”? Of course, that is leaving aside the historical events of the Second World War.

Shiro Ishii: When I completed my undergraduate degree and got my own office at the University upon being appointed as a Research Associate in 1959, it did occur to me that one day I would probably study abroad. That is because it was a policy of the Faculty of Law at the University of Tokyo to send its staff to study overseas. Indeed,

legacy of civil judgement files: Illustrated with photos] (Shinzansha, 1998) (co-editor); *Meiji zenki no hō to saiban* [Law and litigation in the early Meiji period] (Shinzansha, 2003) (co-editor).

as I was starting the third year of my degree, Professor Teruo Kataoka, who taught Roman law, was freshly returned from overseas study and told us various tales of his experiences during two years in Italy. Leaving aside the War years, sending young staff members abroad was a longstanding tradition of the Faculty of Law. From that time, I had a vague notion that my destination might be Germany.

Wada: Just a vague notion?

Ishii: That's right. First of all, I had studied German at high school so I felt some affinity, and German words always came up in law lectures. Secondly, the field of Japanese legal history has its context within the historical flow of German law. Following the line of scholars in this area, the first generation was a Japanese classical scholar so falls in a separate category, but then there was Professor Michisaburo Miyazaki³ as the second generation, Professor Kaoru Nakada⁴ as the third generation, Professor Ryosuke Ishii⁵ as the fourth generation, and then myself. The three professors I named all studied in Germany. This was a tradition of the Faculty of Law at the University of Tokyo. I don't believe that specialists in Japanese legal history at the University of Kyoto, for instance, had this tradition of overseas study. In addition, once I became a Research Associate I got to know scholars in other faculties and from other universities, and thus came to deepen my contact with German academic

³ 1855–1928. Publications include: *Miyazaki sensei hōseishi ronshū* [Collection of Professor Miyazaki's writings on legal history] (Iwanami Shoten, 1929) (Kaoru Nakada, ed.).

⁴ 1877–1967. See Publications include: *Hōseishi ronshū* [Collected writings on legal history] (Iwanami Shoten, 1926–1964); *Tokugawa jidai no bungaku ni mietaru shihō* [Private law as appearing in Tokugawa period literature] (Iwanami Shoten, 1984).

⁵ 1907–1993. Publications include: *Ryakusetsu Nihon kokka shi* [A brief history of the Japanese state] (University of Tokyo Press, 1972); *Hōseishi ronshū* [Collected writings on legal history] (Sōbunsha, 1972–1986); *A History of Political Institutions in Japan* (University of Tokyo Press, 1980).

thought. At the time, Professor Masahata Kubo⁶—together with Takeshi Ishikawa,⁷ who had come from Hokkaido University to specially study with Professor Kubo, and Jun Naoi,⁸ who was then a postgraduate student in Western history—embarked on a translation of the early thirteenth century legal text called the *Sachsenspiegel* (Mirror of Saxony). And then, of course there were also many scholars in the faculty, but amongst them I was influenced by the decision of Jun’ichi Murakami⁹ one year before me to go to Germany to study.

Wada: You transferred from Hamburg University to the Berlin Free University, didn’t you?

⁶ 1911– . Publications include: *Seiyō hōseishi kenkyū: Furanku jidai ni okeru Geruman-hō to Rōma-hō* [Researches in European legal history: Germanic law and Roman law in the time of the Franks] (Iwanami Shoten 1952); *Yōroppa-hō no rekishi to rinen* [The history and ideology of European law] (Iwanami Shoten 1978) (supervising translator of German original by Hans Thieme).

⁷ 1927– . Publications include: *Josetsu chūsei shoki no jiyū to kokka: Kokuō jiyūjin gakusetsu to sono mondaiten* [Introduction to early medieval liberty and the state: Theories of *Königsfreiheit* (the king’s freedom) and problems therewith] (Sōbunsha, 1983). See also <http://www.hokudai.ac.jp/bureau/news/jihou9901/538_7.htm>.

⁸ 1933–1967. Jun Naoi died in November 1967 after a career as Research Associate and Associate Professor at Hokkaido University’s Faculty of Letters. Publications include: “Kokuō jiyūjin to wa nani ka: Karoringā jidai no shiryōteki shoken kara” [What is meant by *Königsfreiheit* (the king’s freedom)?: From the perspective of historical materials of the Karolinger period] in Masahata Kubo (ed.), *Chūsei no jiyū to kokka: Seiyō chūsei zenki kokuseishi no kisoteki shomondai* [Liberty and the state in the middle ages: Fundamental issues in Western early medieval constitutional history] (Sōbunsha, 1963-1969); *Zakusenshupīgeru Ranto-hō* [*Sachsenspiegel* (Mirror of Saxony): *Land-recht* (municipal law)] (Sōbunsha, 1977) (joint translator).

⁹ 1933 - . Emeritus Professor of the University of Tokyo; Professor of the Faculty of Law at Toin University of Yokohama.

Ishii: The norm for students of legal history going to study in Germany was to go to Freiburg University, under the guidance of Professor Hans Thieme who had links with Professor Kubo. However, I wanted to study under Professor Otto Brunner in the history department, rather than in the faculty of law, so I asked Professor Yozo Horigome¹⁰ of our department of Western history to write me a letter of introduction. Although there was no personal connection, I had read many of Professor Brunner's publications and later even translated one of them.¹¹ Murakami-san had at first been at the Max Planck Institute in Hamburg, but wasn't satisfied there and so, remembering my repetitions of the Brunner name, wrote to Professor Brunner and asked to transfer to study with him. By the time I arrived at Professor Brunner's office, Murakami-san was already there as a vanguard. He also paved the way in terms of accommodation; he had stayed at the student dormitory for his first six months and recommended I do the same to improve my German. I learnt from his experience.

Wada: So you lived in the student dormitory too?

Ishii: Yes. The greatest benefit was that I learnt to speak using the familiar *du*, whereas in the German I studied at school I could normally only use the formal *Sie*. Thus I came to be able to use casual and familiar speech.

¹⁰ 1913–1975. Publications include: *Chūsei kokka no kōzō* [The structure of the medieval state], volume within the series *Shakai kōseishi taikei* [Systematic history of social organisation], Part III *Sekaishiteki hatten no hōsoku* [Rules of world historical development] (Nihon Hyōron Sha, 1949); *Seiyō chūsei sekai no hōkai* [The collapse of the Western medieval world] (Iwanami Zensho, 1958); *Chūsei no hikari to kage* [Light and shadow of the middle ages], volume 7 of the series *Daiseikaishi* [Giant history of the world] (Bungei Shunju, 1967; republished Kōdansha, 1978).

¹¹ Otto Brunner (Shiro Ishii, trans.), *Yōroppa: Sono rekishi to seishin* [Europe: Its history and spirit] (Iwanami Shoten, 1974) (original title: *Neue Wege der Verfassungs und Sozialgeschichte*).

Wada: Did you have your own room at the dormitory?

Ishii: Yes, I had my own room, although the bathroom and kitchen were shared. I learnt to cook for myself.¹²

Wada: Did life at the dormitory go smoothly from the start?

Ishii: There was one event which was absolutely decisive for my stay in Germany. It was the month or so from April 1965, just before I left for Germany. That was when three German scholars—the great historians Professor Theodor Mayer,¹³ then 80 years old, Professor Karl Bosl¹⁴ and Professor Herbert Helbig¹⁵—came to Japan on German funding. Professor Helbig had in fact visited Japan in 1963, on the

¹² See Shiro Ishii, “My Studies in Germany in the 1960s” (1999) 2(2) *ICCLP Review* 40.

¹³ 1883–1972. Publications include: *Der auswärtige Handel des Herzogtums Österreich im Mittelalter* [Foreign trade of the Duchy of Austria in the middle ages] (Verlag der Wagner’schen Univ.-Buchh., 1909); *Doitsu kinsei keizaishi* [German modern economic history] (Keiō Shobō, 1943) (Sakunosuke Ueda, trans.); *Fürsten und Staat: Studien zur Verfassungsgeschichte des deutschen Mittelalters* [Rulers and the State: Studies on the constitutional history of the German middle ages] (Bohlau Verlag, 1969).

¹⁴ 1908–1993. Publications include: *Mensch und Gesellschaft in der Geschichte Europas* [Man and society in European history] (List, 1972); *Yōroppa shakai no seiritsu* [The formation of European society] (Tōyō Shorin, 2001) (Shosuke Hiraki, Kingo Yamada and Tatsuru Miyake, eds). See also <<http://www.lib.meiji.ac.jp/serials/kiyou/no2/Emiyake/node2.html>> and <<http://www.lib.meiji.ac.jp/serials/kiyou/no2/Emiyake/Emiyake.html>>.

¹⁵ Publications include: *Yōroppa no keisei: Chūseishi no kihonteki shomondai* [The formation of Europe: Fundamental issues in medieval history] (Iwanami Shoten, 1970) (Takeshi Ishikawa and Osamu Naruse, trans.).

invitation of his acquaintance Professor Toshio Kurokawa,¹⁶ the President of Tohoku University. However, there was no-one at Tohoku University with sufficient German up their sleeve, so a request came to the University of Tokyo. The duties fell upon Ishikawa-san and Naoi-san. In those days the big names were Professor Shiro Masuda of Hitotsubashi University, Professor Horigome and Professor Terushiro Sera. Together with younger scholars such as Ishikawa-san, Naoi-san and Shozaburo Kimura, they conducted seminars on the topic of the German theories of *Königsfreiheit* (the king's freedom). These seminars were later published in three volumes.¹⁷ Professor Helbig was invited to these seminars, and he was utterly surprised and filled with admiration at the level of discussion by the participants. He was amazed to hear that most major Japanese universities had chairs in Western history, which caused him to reflect on the complete indifference of German historians towards the orient and Japan in particular. This was the background to the visit by the three great historians the following year. It was because he thought that German historians should have contact with their counterparts in Japan. At first the plan was for 10 scholars to come to Japan, but this ended up as three for budgetary reasons. In any event the result was that we got three great historians. They let it be known that they wished to speak with scholars of Japanese history as well as scholars of Western history. And so it was that scholars of Japanese history were invited to the seminar on Western history, as I was describing before. Eminent professors of Japanese history such as Ryosuke Ishii, Sho Ishimoda, Keiji Nagahara and Mitsusada Inoue came together with Western historians to engage in the debate of comparative national systems. I was invited along too, together with Ishikawa-san, Naoi-san and

¹⁶ 1897–1988, Tenth President of Tohoku University (1957–1963). Professor Kurokawa was a leader in cancer research.

¹⁷ Masahata Kubo (ed.), *Chūsei no jiyū to kokka: Seiyō chūsei zenki kokuseishi no kisoteki shomondai* [Liberty and the state in the middle ages: Fundamental issues in Western early medieval constitutional history] (Sōbunsha, 1963-1969).

Susumu Ishii from the Japanese history department, who died unexpectedly recently, and the four of us formed a secretariat.

Wada: So that is the origin of your secretariat building.

Ishii: That's right. We went through all sorts of ups and downs. At times we needed to go in search of financial support.

Wada: Did you yourself go seeking funds?

Ishii: Yes, once it was decided that we needed to engage in fund raising, we went cap in hand to all sorts of places.

Wada: It really is the origin of the system of secretariats for international exchange, isn't it?

Ishii: Ishikawa-san was the Secretary General. Naoi-san was the natural choice for Secretary of State because of his German ability. I was the Treasurer. Susumu Ishii had the task of coordinating the suddenly collected Japanese history contingent, so we could call him the Home Secretary. I managed all the money, writing every item of income and expenditure into a notebook so as to be accountable later. Our German guests traveled around various parts of Japan during their month here, and I accompanied them for about half of that time. The Secretary of State couldn't be there all the time, so in his absence I acted as their guide with my halting German. In this way I developed a close bond with these German historians. This was the extraordinary event preceding my own trip to Germany.

Another factor arose from Professor Helbig's reflections on the paucity of attention given in German universities to the teaching and research of Japanese history. He negotiated with his own institution, the Berlin Free University, and had them create a teaching position for a young Japanese researcher to be invited to lecture in German

on Japanese history. Further, he had them put in place a funding arrangement whereby every second year he would travel to Japan to lecture on Western history.

Wada: Did individual professors have the power to conduct negotiations in that way?

Ishii: In Germany, professors can impose their own conditions when there are approaches to recruit them to a new university. They might ask for a higher salary or a greater number of research assistants, for example. They can make similar demands of the university where they are already working. The message is, “If you don’t satisfy my demands, I will go to the other university”. Professor Helbig asked for things which did not advantage him individually, but which permitted him to create a bridge between historians in Japan and Germany.

Once the post was created, the next question was who would fill it. The obvious person was our Secretary of State, Naoi-san. At the time, in 1965, Osamu Naruse¹⁸ from Hokkaido University, whose field was Western medieval history, was due to go to Germany to study. It was decided that Naoi-san would also go to Germany to lecture. At the time this was totally unprecedented, and the arrangement somehow lasted for one year. However, there were difficulties in having two out of three staff members from the Western history seminar of Hokkaido University abroad for two years, so the order went out for one of them to return. Naoi-san cut short his planned stay of two years down to one, and I got to go in his place as the pinch hitter.

Wada: And that led to your transfer from the University of Hamburg to the Berlin Free University.

Ishii: For my first two months, from August 1965, I studied German language at the Goethe Institute, from November 1965 to September 1966 I was at the University of

¹⁸ 1928–. Publications include: *Sekaishi no ishiki to riron* [The consciousness and theory of world history] (Iwanami Shoten, 1977); *Doitsu-shi* [German history] (Yamakawa Shuppansha, 1996–1997) (joint editor).

Hamburg, and from October 1966 I transferred to the Berlin Free University, staying as a lecturer until August 1967. I remember watching the final of the 1966 FIFA World Cup on the television in the lobby of a hotel in Munich. It's still a case of: "I can't forget that goal!"¹⁹ The sense of indignation amongst the German population was palpable, which was understandable enough. I happened to be in Munich to visit Professor Bosl and to talk to Naoi-san about taking over his lectures.

I had initially traveled on a Humboldt Scholarship, but once I became an invited lecturer I had to give up the scholarship. In this way, my situation progressed through a concatenation of coincidences, and differed from the normal study trip abroad. This was the origin of my many connections with the Berlin Free University, which eventually even awarded me an honorary doctorate.

Wada: That was in December 1998,²⁰ wasn't it? Has the system initiated through Professor Helbig's efforts continued to the present day?

Ishii: In the end, the program ran into financial difficulties and was wound up in March 1987 after the winter term of 1986-87. My trip to Germany in May 1987, which I was referring to before when I said "This one was important", was to draw the final curtain on the program. I was asked to deliver three lectures to draw that curtain.

Wada: And was there no "resurrection"?

Ishii: The program did revive for a short while. Nishikawa-san²¹ was able to go to Germany on this program, but it didn't last. It was partly a matter of funding, but also

¹⁹ The so-called "Wembley goal". See <<http://fifaworldcup.yahoo.com/02/en/pf/h/pwc/1966.html>>.

²⁰ Awarded on 5 December 1998.

²¹ 1954 - . Professor Yoichi Nishikawa of the Graduate School of Law and Politics, the University of Tokyo.

due to the absence of anyone to take over the mantle from Professor Helbig in Berlin. Once Professor Helbig's pupil, Professor Knut Schulz,²² retired, there was no professor at the university or departmental level to actively support the program. After Nishikawa-san there was one more participant sent from the Japanese side, and then that was the end. What this story goes to show in retrospect is the amount of effort and energy which Professor Helbig, and later his pupil Professor Schulz, had put into the program.

Wada: In recent times there is much talk of universities in England and Germany cutting back their programs in Japanese studies. Many of these were established in the heyday of Japanese economic power, and there is a sense of inevitability in their being closed when Japan's economy has reached the depths it has today.

Ishii: I guess the situation is just returning to where it once was.

Wada: What do you mean by that?

Ishii: There is a return to the amount of attention on Japanese studies that is considered truly necessary. Academic study has nothing to do with economic power. That is its nature. It may be the case that at one stage many Japanese studies programs sprang up on the strength of the Japanese economy, but that in itself was unnatural.

²² 1937-. Publications include: *Beiträge zur Wirtschafts- und Sozialgeschichte des Mittelalters: Festschrift für Herbert Helbig zum 65. Geburtstag* [Contributions to the economic and social history of the middle ages: Festschrift for Herbert Helbig on the occasion of his 65th birthday] (Bohlau, 1976) (editor); *Handwerksgesellen und Lohnarbeiter: Untersuchungen zur oberrheinischen und oberdeutschen Stadtgeschichte des 14. bis 17. Jahrhunderts* [*Handwerksgesellen und Lohnarbeiter* workers: Investigations of the history of the Upper Rhineland and Upper German cities in the 14th to 17th centuries] (J. Thorbecke, 1985). See also Franz J. Felten (ed.), *Ein gefüllter Willkomm: Festschrift für Knut Schulz zum 65. Geburtstag* [A filled congratulatory cup: Festschrift for Knut Schulz on the occasion of his 65th birthday] (Shaker, 2002).

What is happening now is a return to its former state. As long as the academic world is Western-centric, that will be the fate of intercultural studies.

Wada: As I have been talking with you, I find the year 1965 quite intriguing. I was trying with some difficulty to establish when the expression *kokusai kōryū* (international exchange) came into usage. I tried searching the University of Tokyo's online catalogues for the use of the word in the titles of academic books and articles. The earliest record seemed to be 1965.²³

Ishii: Is that so?

Wada: Once we get to the mid-1970s there are many references, but there are almost none before that.²⁴ The watershed seems to be the establishment of the *Kokusai Kōryū Kikin* (Japan Foundation).²⁵

Ishii: That sounds right. Up to that time, there was no such thing as international exchange. It was an age of unilateral relationships, with Japanese students going to study in foreign countries.

Wada: And it was in an age like that that the Berlin Free University thought to establish an exchange program.

²³ Hitoshi Misonou (ed.), “Kokusai kōryū” [International exchange], volume 4 in the series Noriyoshi Imai (ed.), *Gendai Nihon no dokusen shihon* [Monopolistic capital in contemporary Japan] (Shiseidō, 1965).

²⁴ Sekai keizai hakusho keizai kikaku chō [Economic Planning Bureau for the World Economic White Paper] (ed.), *Kokusai kōryū no kōdoka to 1970 nendai no kadai* [The increase in international exchange and issues for the 1970s] (Ministry of Finance, 1970).

²⁵ Literally, “the foundation for international exchange”.

Ishii: That's correct. They established an academic exchange program of real substance. And that was because the German academics grasped the high level of the work being done here. The high academic standards in this country were conveyed to them.

Wada: That is due exclusively to Professor Kurokawa, isn't it?

Ishii: Yes. By whatever route, a professor of medicine happened to make the acquaintance of a German historian and invite him to Japan. Add to that coincidence the coincidence that a group to study *Königsfreiheit* (the king's freedom) happened to be active at the time, and you can see the beginnings of what would develop into a network of academic exchange between historians in Japan and Germany. These things happen sometimes.

However, the "coincidence" of the activity of the study group on *Königsfreiheit* was based on certain foundations. Returning the story to Theodor Mayer, he had established a research group, the Konstanzer Arbeitskreis, with the assistance of a small town called Konstanz on the shores of Lake Bodensee. The Konstanzer Arbeitskreis became a magnet for those studying the theories of *Königsfreiheit* and other new theories in historiography. It was for the very reason that the duo of Ishikawa and Naoi were participants in the Konstanzer Arbeitskreis that the Japanese research group also emerged. And the reason they were able to participate in the Konstanzer Arbeitskreis in the first place was due to the assistance of Professor Hans Thieme, whom I mentioned before. If we retrace things further, we can point to the history of Professor Masahata Kubo exchanging correspondence with Professor Thieme and his teacher Professor Franz Bayerle before the Second World War, and then going to Freiburg to visit both professors when he went to study in Germany after the War.

It was amidst the combination of these various exchanges that I took on my position as "Treasurer". It was due to that fact that I was invited by Professor Mayer

immediately upon my arrival in Germany and was able to attend the Konstanzer Arbeitskreis three times while I was in the country. Through attending seminars such as these, I learnt various aspects of presenting a report, developing an argument and expressing thanks or apologies in Western style. The seminars still continue today, although their focus has changed.

Wada: Moving on to your period as a visiting researcher at Harvard University from May 1972, what was the Japanese studies scene at Harvard like at the time?

Ishii: Professor Reischauer²⁶ was still at Harvard in those days. Today his contribution is commemorated in the name of the Reischauer Center, but back then it was called the East Asian Research Center. It was there that I got to know certain American researchers who are now at Sophia University or the International Christian University in Tokyo. I did not keep in contact with them all after I returned to Japan, and it was only after I became a professor at the International Research Center for Japanese Studies that my own exchanges with America really started.

Wada: If we return to your trip in May 1987, which you earlier said was important, you also went to Spain on that trip.

Ishii: I went to participate in a convention on the comparative history of crime and criminal penalties in Barcelona, organised by the Société Jean Bodin pour l'Histoire Comparative du Droit et des Institutions. There had been a Japanese link with the Société since 1960, when Professor Ryosuke Ishii attended a conference, but this was the first time that I attended and gave a paper. However, there was a bolt from the

²⁶ 1910-1990 Edwin O. Reischauer. 1961-1966, an ambassador to Japan. Publications include: *My life between Japan and America* (Harper & Row, 1986); *The Japanese Today : Change and Continuity* (co-authored with Marius B. Jansen, Belknap Press of Harvard University Press, 1995).

blue when the chairman of the organising committee suddenly asked me to join the committee.

Wada: Was there no notice of the request?

Ishii: No. It happened on the third or fourth day, on a tour bus. The chairman asked me to sit next to him, so I changed seats and was taken aback when he asked me. My first dubious thought was the request was directed at obtaining “Japanese money”, so I probed him about the Société’s finances. But I realised that I had over-analysed the situation and decided to accept the post.

Wada: It seems that your own personal experiences led on to the conception of a more integrated system of international academic exchange.

Ishii: Membership of the organising committee of the Société Jean Bodin overlapped substantially with that of the Association Internationale d’Histoire du Droit et des Institutions, as did the topics discussed, so that you could barely tell which committee you were attending. Each year when there was no convention organised by the Société, there would be a committee meeting in Brussels. It was quite hard to make it to every meeting all the way from Japan, but I attended as often as possible. Here too, I learnt about how an international committee of that type was run, the proprieties of debate in such a forum, and matters of etiquette and preparation. The official language of the Société was French; I did not speak any French, and the other committee members obliged me by explaining the vital points of discussions to me in English or German and—except for the French members—by responding to my statements in the language in which I made them. Thanks to this considerateness, I was eventually able to speak to some members of the committee using the familiar *du*. The seed sown in the student dormitory in Hamburg had finally borne fruit.

Time flew by as I immersed myself in this and that. In the early 1980s, I looked around and realised that I, whose field was inherently domestic, was one of the people within the Faculty of Law who was relatively involved in international exchange.

There was a problem implicit there, in that all the initiative and burden was left to individuals. No help was to be had, not even in writing a single letter. I began to feel that there was a limit to what an individual professor could do to promote international exchange.

Wada: I guess that at the time it was unknown to establish an international centre within a particular faculty or department. I think it was really your foresight that started the ball rolling towards the creation of the International Center for Comparative Law and Politics as it is today.

Ishii: At first the Ministry of Education was not at all interested in the concept of an international centre. They thought, “Once there is an international center at the Faculty of Law at the University of Tokyo, we’ll have to establish similar centers in all the other universities and faculties around the country”. In response, I stressed that our discipline was not a scientific one but rather a language-based discipline of the humanities, where the departure point must be that the concepts of *hō*, *Recht* and *droit* were all different; in that sense, the difficulties inherent in international exchange in this area were very great indeed. The other point I stressed was that the endeavour was to be not “*inter*-national” but “*trans*-national”. By this I wished to avoid any implication of “*inter*-national” that the exchange would occur merely when it suited us, whereas the age was clearly a “*trans*-national” one where interaction was unavoidable.

Wada: Of course, there was a special research section dedicated to comparative law and comparative politics before the ICCLP was established.

Ishii: Yes, there was, although there was nothing systematic in the promotion of international exchange activities and the role of the staff was quite different back then. However, the existence of some sort of precursor was very important during subsequent discussions within the faculty in convincing them to establish the ICCLP.

Of course, it is very difficult to build something where there was nothing. It was useful to have *any* structure which could be expanded.

Wada: In 1989 a Preparatory Committee for an International Center of Comparative Law and Comparative Politics was established and, just before your tenure as Dean of the Faculty of Law, on 1 January 1990 the ICCLP was inaugurated with the objective of promoting international research and teaching.

Ishii: During my period as Dean and then Vice President, a total of five years from April 1990, the record shows that I myself did not go abroad at all. For those five years I became a member of the “non-international” faction. I was, of course, still inviting researchers from overseas.

Wada: Yes, your trip to Hong Kong in March 1990²⁷ seems to have been your last one before that period. The slate is blank for five years until your retirement and subsequent appointment as a professor of the International Research Center for Japanese Studies in April 1995. It was during that five year period, in April 1993, that the ICCLP was formally established. Within the borders of Japan, you played a great role for international exchange.

Ishii: As I wrote in volume 11 of the Faculty of Law’s biennial report²⁸ on the topic of movements within the Faculty, the origin of the concept of the ICCLP went back not only to the planning stages when Professor Shindo²⁹ was Dean, but further back

²⁷ This was a joint project with Professor Paul Ch’en, requiring examination of Hong Kong governmental documents.

²⁸ (1991) 11 *Tokyo daigaku hōgakubu kenkyū · kyōiku nenpō* 9.

²⁹ 1931 - . Emeritus Professor Koji Shindo, Dean of the Faculty of Law from April 1988 to March 1990.

to the serious discussions under the leadership of Professor Matsuo³⁰ and Professor Shiono.³¹

Wada: So it was basically from the time you became conscious of the fact that you were deeply involved in international exchange that the Faculty of Law began to take the course of setting up a facility within the Faculty to promote international exchange.

Ishii: Now that I look back, that certainly seems to be the case.

Wada: One aspect of the ICCLP's international exchange activities is the Michigan-Columbia Exchange Project. The records show that an exchange project with the University of Michigan Law School started in 1992, and a project with Columbia Law School followed in 1994.

Ishii: Yes, I think discussions for the exchange projects with Michigan and Columbia began during my term as Dean. The initiative came from the other side.

Wada: I had previously heard that Professor Fujikura³² and Professor Sugeno³³ had responsibility for these projects.

³⁰ 1928 - . Emeritus Professor Koya Matsuo, Dean of the Faculty of Law from April 1984 to March 1986. Professor Matsuo wrote: "It is the fact that the university exists with the waves of societal change washing against it. The university must consider, for example, how to respond to internationalisation and the information age. It is possible to see etched into this report the Faculty's own attempts at progress in dealing with such issues." (1985) 8 *Tokyo daigaku hōgakubu kenkyū · kyōiku nenpō*, foreword.

³¹ 1931 - . Emeritus Professor Hiroshi Shiono, Dean of the Faculty of Law from April 1986 to March 1988.

³² 1934 - . Emeritus Professor Koichiro Fujikura.

Ishii: The way it happened was that those two professors started the projects on a trial basis, and then the ICCLP inherited them once they were up and running. This is hard to trace exactly in the biennial reports of the Faculty.

Wada: I tried looking at the biennial reports, actually. In volume 11 there is no mention of the University of Michigan or Columbia University, although it is stated that Professor Donald L. Horowitz of Duke Law School was invited to a research seminar in January 1991. Then in volume 12 it is reported that the Assistant Dean of the University of Michigan Law School, Ms Virginia Gordon, came to Japan in June 1992 and a research seminar was held on the topic of “The selections of foreign students from US law schools”.³⁴ In October of that year, Emeritus Professor Walter Gellhorn of Columbia Law School came to Japan and a Comparative Law and Politics Forum was held,³⁵ chaired by Professor Fujikura. This was about the time, during your term as Dean, that things really began to move on the exchange projects that had been proposed to you. The exchange projects with those two law schools have continued for over 10 years.

Ishii: During my term as Dean, we were having vigorous discussions with Michigan, including budgeting issues. For instance, we discussed that if the funds for inviting foreign academics ran out at our end, they would make up the difference. For several years before the project actually started, there were inconspicuous preparatory discussions.

Wada: In the biennial report, you said in relation to the extreme funding shortage for the national budget for education: “To try to conduct teaching and research at an

³³ Professor Kazuo Sugeno, current Dean of the Faculty of Law and the Graduate School of Law and Politics.

³⁴ (1993) 12 *Tokyo daigaku hōgakubu kenkyū · kyōiku nenpō* 74.

³⁵ “Compensating the Accidentally Injured: Litigation, Personal Insurance or Public administration?” (1993) 12 *Tokyo daigaku hōgakubu kenkyū · kyōiku nenpō* 75.

internationally competitive standard with these paltry facilities and resources is like conducting warfare with a bamboo spear”, and stressed that “The international center has been established within the Faculty, but the fundamental question of its ongoing funding remains an issue for the future”.³⁶

Ishii: The ICCLP was formally established during my time as Vice President. When I look back now, I think Ministry of Education (the Research Institutes Division of the Science and International Affairs Bureau) actually did rather a good job. I am afraid it would be out of the question to expect the same of the current Ministry of Education, which is unable to stand up to the Ministry of Finance. They no longer have the personnel with the passion to make an effort for international academic exchange and the ability to put plans into effect. That is the greatest downfall. It is important for the Faculty of Law at the University of Tokyo and the ICCLP to train staff and to maintain and develop international networks. Please try your hardest.

Wada: Yes, we shall. If we nurture the networks which have already been built and implement every possible measure at both individual and organisational levels to expand them, I think international exchange must become more and more lively. You have generously contributed to international exchange at an individual level, by setting aside part of your retirement benefits to establish the Ishii Scholarship at the ICCLP for young scholars from abroad and even offering accommodation to visiting professors. I remember you laughing, saying that you were merely reciprocating the kindness you had received, whereby you had been enabled to study abroad with scholarships offered by other countries. I have heard from Professor Masato Ninomiya of the University of São Paulo University too that he has invited Japanese students to Brazil out of his own pocket. And we have received great support and cooperation from former visiting professors and researchers after they have left Japan. I think that what has sustained the shift in international exchange from the personal to

³⁶ (1991) 11 *Tokyo daigaku hōgakubu kenkyū · kyōiku nenpō* 11.

the organisational level has been a vast number of individuals. In a published dialogue with Ryotaro Shiba, you said that in Europe the individual was perceived not merely as a “private” person—although that aspect must be firmly established—, but also as a member of the “public”. The individual must be a person communicating in the public sphere, and not remain in isolation³⁷. I think international exchange is the same; it is no good being a mere “private” person withdrawn in bed and mumbling to himself.

Ishii: The reason I was able to go to Germany to study was, as I mentioned before, due to a scholarship provided by the Humboldt Foundation. There is an alumni association for Humboldt scholarship holders, and when I was the president of that association as part of our tenth anniversary activities we collected funds to create a scholarship for young German Japanologists. The bubble economy had burst so we did not turn our thoughts to industry, accepting that our contribution might be pitiful, a proverbial “widow's mite”. To our surprise, however, we managed to scrape together 200,000 marks (€100,000). This began from a wish to make a small repayment of kindness, and many alumni had the same wish. This concept of “returning the favour” is very important. I think amicable personal relations are sustained by the reciprocity of such links of “returning past favours”.

There are many people throughout the world who have benefited from the kindness of yourself and the other ICCLP staff. This creates a tremendous resource, both for yourselves personally and for the Faculty of Law at the University of Tokyo. There will always be someone to help in your hour of need. In that sense, I want to sincerely thank you for your hard work and ask you to continue to make every effort to build up this asset for the Faculty.

³⁷ Ryotaro Shiba, *Tochi to Nihonjin* [The land and the Japanese people] (Chūo Kōron Shuppanhsa, 1976; republished 2002), 84-103.

Wada: Thank you for your encouragement. The ICCLP looks forward to receiving your continuing advice and support into the future.

[February 2004, translated by Peter Neustupný]