

■ Division of Law (Law)

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(Current as of March 31, 2009)



Division of Law (Law)

Associate Professor **Hideaki Ashitate**

- Area and Subject Taught: Public Administration, Political Science
- Research Theme(s):
(1) Official Development Assistance (ODA) (2) Governance by network
- Academic Degrees:
M.A., Kyoto University; M.A., University of Pittsburgh
- Keywords for Research Field:
Public Administration, ODA, Comparative Inquiry, Governance
- Office Phone Number: 81-75-705-1719
- E-mail: ashitate@cc.kyoto-su.ac.jp

[Research Overview]

Focusing on Japanese foreign aid administration, or Official Development Assistance (ODA), one may find two trends since the 1990s, specifically two kinds of changes, which seem to contradict each other. One trend is "Participatory ODA," in which the Japanese government, including the Ministry of Foreign Affairs (MOFA), eagerly asks Non-governmental Organizations (NGOs) to participate in aid activities. The other is the increasing attempts of MOFA to "steer" Japanese ODA so as to gather more information on the needs of potential recipients and organize coherent aid strategies. It is difficult to examine these seemingly contradictory trends merely from conventional perspectives: governance by hierarchy and that by market. This is why I am using the framework of "governance by network," which is more attentive to the difference between policy implementation and policy coordination. One of my academic goals is to demonstrate similarities between ODA and other public policies.

[Notable Publications and Works]

Ashitate, H. (2008). Foreign aid policies in the presidential and parliamentary systems: Beyond the institutional differences. *Interdisciplinary Information Sciences*, 14(2), 145-153.

Ashitate, H. (2007). Foreign aid (ODA) as a public policy. *Interdisciplinary Information Sciences*, 13(1), 129-138.

Ashitate, H. (2003). Changing Japanese politico- economic structures in the 1990s and transformation of the paradigm in Japanese ODA (in Japanese). In M. Muramastu, and T. Shiraishi. (Eds.), *Nihon no seiji-keizai to Ajia shokoku: Seiji chitsujo hen* [Japanese political economy and Asian countries: Political orders](pp. 197-222). Kyoto: Nichibunken.



Division of Law (Law)

Associate Professor Eri Atarashi

- Area and Subject Taught: Legal Women's Study
- Research Theme(s):
Study on Supporting Policy for Crime Victims
- Academic Degrees: Ph.D.
- Keywords for Research Field:
Criminal Sociology, Victimology, Supporting Policy for Victims
- Office Phone Number: 81-75-705-1686
- E-mail: atarashi@cc.kyoto-su.ac.jp

[Research Overview]

My research includes the following:

Legislation and support for crime victims from the viewpoint of national policymaking.

Study on support for crime victims in forensic medicine (Grants-in-Aid for Scientific Research, 2006-2007).

Study on care systems for surviving families of crime victims-international comparison with Sweden (the 17th research grant by Pfizer Health Research Foundation).

[Notable Publications and Works]

「犯罪被害者支援—アメリカ最前線の支援システム」(単著) 2000年、径書房



Division of Law (Law)

*** Professor Ryoji Ichitaka**

- Area and Subject Taught: Tax Law
- Research Theme(s):
Issues in Tax Law and International Tax Law
- Academic Degrees:
Master of Laws, Kansai University;
Doctor of Business Administration, Kobe University
- Keywords for Research Field:
Tax Law, International Tax Law, Tax Accounting
- Office Phone Number: 81-75-705-1417
- E-mail: richitak@cc.kyoto-su.ac.jp

[Research Overview]

I am engaged in research on issues of taxation including income taxation, asset taxation, consumption taxation, and international taxation.

I am currently a member of Japan Tax Association's Basic Issues in International Taxation Research Group, Japan Tax Research Institute's Inheritance Tax and Gift Tax Research Group, and Nippon Keidanren the 21st Century Public Policy Institute's International Tax Research Group.

[Notable Publications and Works]

- 1) 「タックス・シェルターへの米国の規制と我が国への応用可能性」 *フィナンシャル・レビュー* 84号 63-83頁 (2006年7月)
- 2) 経済開発協力機構租税委員会／川端康之監訳『OECDモデル租税条約2005年版(所得と財産に対するモデル租税条約)』(分担訳267-307頁)(日本租税研究協会・2006年7月)
- 3) 「企業利益と課税のタイミングに関する具体的問題—日米の制度比較や裁判例の比較を通じて」 *租税研究* 682号 58-75頁 (2006年8月)
- 4) 「国際的レポ取引と所得区分—ある裁決例を素材に」 *税務弘報* 55巻1号 105-120頁 (2007年1月)
- 5) 「金融投資税制—実体的統制と立法記録」 *日税研論集* 58号 (政策税制の法的限界の検討) 37-84頁 (2008年1月)
- 6) 他に、岩崎政明ほか共編『七訂版 税法用語辞典』(分担執筆)(大蔵財務協会・2007年3月)、判例紹介・民商法雑誌136号1巻 63-76頁 (2007年4月) 等。



Division of Law (Law)

Instructor **Masaaki Iwanaga**

- Area and Subject Taught: Labor Law
- Research Theme(s):
Comparative Study on Matters on the Scope of Labor Law
- Academic Degrees: Master of Laws
- Keywords for Research Field:
Labor Law, Scope of Labor Law, Nature of Labor,
Nature of Subordination
- Office Phone Number: 81-75-701-0286

[Research Overview]

The purpose of the labor law is to protect "employees". It is generally thought that the "employees" referred to under these laws are people who work under orders and controls of other people, and get wage in exchange for doing so. This indicates that, while company employees are protected by labor laws, proprietors, housekeepers, and volunteers for NPOs are outside of the scope of labor law. Despite the fact that all of these people are working, they are treated very differently in a legal sense. Is it possible to apply labor laws to all working people? With an awareness of these problems, I am researching present-day issues of labor law: reconsideration of the scope of the concept of "workers," and the laws' legal scope.

[Notable Publications and Works]

岩永昌晃「イギリスにおける労働法の適用対象」日本労働法学会誌110号（2007年）192－205頁

岩永昌晃「裁判例にみるイギリスにおける偽装雇用と被用者性判断」季刊労働法218号（2007年）227-239頁

両論文ともに、イギリスにおける労働法の適用対象をめぐる議論動向を分析したものである。



Division of Law (Law)

*** Professor Seigo Iwamoto**

- Area and Subject Taught: International Law
- Research Theme(s):
International Law Concerning Military Affairs and Security
with an Emphasis on Humanitarian Law
- Academic Degrees:
Master of Jurisprudence, Hiroshima University
- Keywords for Research Field:
Humanitarian Law, International Security, Military Affairs
- Office Phone Number: 81-75-705-1697
- E-mail: siwamoto@cc.kyoto-su.ac.jp

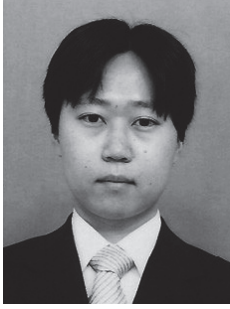
[Research Overview]

The principle of non-use of force has become established in contemporary international law, but in fact military conflicts break out frequently within the international community. When this happens, humanitarian law (law of armed conflicts) is applied to reduce unnecessary suffering and destruction. The study of humanitarian law declined in Japan for a time after the Second World War, but recently a new awareness of the necessity of humanitarian law has emerged due to the recent wars in Iraq and Afghanistan, and the debate in Japan over a legal framework for war contingencies. As a result, the study of humanitarian law has become a very active field.

Within the field of humanitarian law, I have recently been interested in legal issues concerning conventional weaponry, such as regulations covering antipersonnel land mines, which affect people indiscriminately; the movement to restrict cluster bombs that leave behind large numbers of unexploded bomblets; and cyber attacks carried out using computers, which exploit weaknesses in our information society. All of these issues are related to how advances in science and technology affect the development of international law, and how international law imposes restrictions on the advancement of science and technology. I think these are very compelling research themes.

[Notable Publications and Works]

- 1) *International Conflicts and International Law*, 2008
- 2) "International Legal Problems of ROE and It's Raison d'Être", in *Agenda for International Law in the 21st Century*, 2006
- 3) *Lecture: Introduction to International Law*, 2006
- 4) "Regulation on the Use of New Weapons", in *International Law of Armed Conflict*, 2004
- 5) *Concise Encyclopedia of Security Affairs*, 2004



Division of Law (Law)

Instructor Tatsuya Ueno

- Area and Subject Taught: Civil Law
- Research Theme(s):
Civil Law and Special Private Law
- Academic Degrees: Bachelor of Laws, Kyoto University
- Keywords for Research Field:
Civil Law, Special Private Law, Consumer Law
- Office Phone Number: 81-75-705-1667
- E-mail: uenot@cc.kyoto-su.ac.jp

[Research Overview]

Students pay large admission and tuition fees to enter universities. Some students pay admission fees to more than one school. Some people wondered why they paid so much money, even though they didn't actually enroll in each of the universities. This issue was tried in a lawsuit, and the court issued an order that the tuition fees be refunded to students on the grounds of the Consumer Contracts Law.

This is where the problem starts. You agreed to pay the money, so it doesn't seem logical that you can file for a return of the money. Is there even a need to honor agreements? Some would say that this is required by the law, but this is not the answer. The question is, why is it prescribed in the law? There is not a single, easy answer to this question.

I have been engaged in research activities with a view to clarifying the above issues and how they are addressed in by private law.

[Notable Publications and Works]

上野達也「特別私法論の展開と民法の再編(1)(2・完)

——1970年代、80年代のドイツにおける消費者法論争を手がかりとして」
法学論叢 159巻3号55-90頁、同5号30-58頁（2006年）



Division of Law (Law)

*** Professor Kazuhide Uemura**

- Area and Subject Taught: History of Political Ideas
- Research Theme(s):
Comparative Studies in Nationalism
- Academic Degrees: Doctor of Laws, Kyoto University
- Keywords for Research Field:
Study on Nationalism, Politics, History of Ideas
- Office Phone Number: 81-75-705-1881

[Research Overview]

I am doing research in nationalism. "Nationalism" is a concept/word that can be variously translated into Japanese as kokumin-shugi, kokusui-shugi, minzoku-shugi, and kokka-shugi.

The main regions my research addresses are Germany, Eastern Europe, and Japan. My current research themes are issues of German minority groups in Eastern Europe and the various aspects of the nationalism in Showa-Period Japan (1926-1989). I have been studying the fates of German minorities in Eastern Europe during the upheavals of the 20th century, and how that affected the national state of "Germany." During the course of my studies, I came to feel it was necessary to compare such issues with similar issues in Japan, and I have shifted the focus of my research. At present, I am focusing on the various aspects of the nationalism during the Showa Period in Japan in terms of the changes in the nation of "Japan". To aid my research, I often refer to the works of Masao Maruyama, Kiyoshi Hiraizumi, Muneki Minoda, and Kyoto-School scholars. I am trying to uncover specific characteristics of Japan's case in their analyses and proposals.

[Notable Publications and Works]

- 1) 植村和秀「[「日本」への問いをめぐる闘争—京都学派と原理日本社]」、柏書房、2007年。
- 2) 望田幸男編「近代日本とドイツ—比較と関係の歴史学」、ミネルヴァ書房、2007年。(共著)
- 3) 河原祐馬・植村和秀編「外国人参政権問題の国際比較」、昭和堂、2006年。(編著)
- 4) 玉田芳史・木村幹編「民主化とナショナリズムの現地点」、ミネルヴァ書房、2006年。(共著)
- 5) 竹内洋・佐藤卓己編「日本主義的教養の時代—大学批判の古層」、柏書房、2006年。(共著)
- 6) 植村和秀「丸山眞男と平泉澄—昭和期日本の政治主義」、柏書房、2004年。
- 7) 「蓑田胸喜全集」、全7巻、柏書房、2004年。(共編)
- 8) 木村雅昭・廣岡正久編「国家と民族を問いなおす」、ミネルヴァ書房、1999年。(共著)
- 9) 野田宣雄編「よみがえる帝国—ドイツ史とポスト国民国家」、ミネルヴァ書房、1998年。(共著)
- 10) ジョージ・モッセ「フェルキッシュ革命—ドイツ民族主義から反ユダヤ主義へ」、柏書房、1998年。(共訳)



Division of Law (Law)

* Professor **Masahiro Kawai**

- Area and Subject Taught: Western Political History
- Research Theme(s):
Political Culture in Modern Germany, History of German Political Thought
- Academic Degrees: Master of Laws, Kyoto University
- Keywords for Research Field:
Politics, History of Political Thought, Theory of Political Culture,
Theory of Nationalism
- Office Phone Number: 81-75-705-1689
- E-mail: mkawai@cc.kyoto-su.ac.jp

[Research Overview]

I have been conducting research under two themes. The first is a study of the history of thought related to German nationalism, mostly during the period from the First World War to the present. In particular, my research focuses on war memory, generational awareness and political ideas of the generation who fought on the front lines in the First World War, as well as the theory of nationalism of Ernst Jünger, renowned thinker of his generation. My second research theme is the study of the political culture in modern Germany, including the trend toward German national awareness following reunification. In the classroom, depending on the research themes students choose, I am carefully examining relevant European-language documents.

[Notable Publications and Works]

- 1) 現代ドイツにおけるアメリカニズムの受容——カール・ハインツ・ボーラーによるドイツ政治文化批評——、世界問題研究所紀要、第23巻、2007年。(最近のドイツにおける反アメリカニズムの動向に対するボーラーの批判を紹介した。)
- 2) エルンスト・ユンガー『追悼の政治——忘れえぬ人々／総動員／平和——』月曜社、2005年。(エルンスト・ユンガーの政治的エッセイ数篇を、「追悼の政治」のタイトルの下にまとめて邦訳し、巻末に解題を付した。)
- 3) 再統一ドイツのナショナリズム——西側結合と過去の克服をめぐって——、2003年、ミネルヴァ書房。(現代ドイツ政治文化の2本柱をなす西側結合と過去の克服とに対する批判的論議を中心に、再統一後のドイツ国民意識の展開を考察した。)
- 4) ドイツ・ユダヤ人の上昇と没落——フリッツ・スターン『金と鉄』について——、産大法学、33巻1・2号、1999年。(スターンの名著の理論的骨格を紹介した。)



Division of Law (Law)

*** Professor Yasuyuki Kawakita**

- Area and Subject Taught: Eastern Legal History
- Research Theme(s):
Basic Research on Comparison of the Legal Codes of Japan and Chinese Tang Dynasty
- Academic Degrees: Master of Law, Kokugakuin University;
Master of Literature, Kogakkan University
- Keywords for Research Field:
Legal Code, Japanese Law, Ancient Law, Tang Dynasty Law
- Office Phone Number: 81-75-705-1786
- E-mail: kawakita@cc.kyoto-su.ac.jp

[Research Overview]

Japan has learned a lot from China throughout recorded history. In the early 7th century, Prince Shotoku sent official diplomatic delegations to China in an attempt to adopt the products of civilization from the Sui dynasty. Such efforts continued for a century thereafter, and at the beginning of the 8th century, Japan was able to realize of excellent legal codes comparable to those of Tang Dynasty. In Japan, these are called Taiho Codes in Japan. Twenty years of further efforts led to the completion of the Yoro Codes, concluding a major chapter of large-scale compilation of legal codes in Japan. Compilation of legal codes in China after creation of six volumes of Hokei in Wei in the Warring States period led to the production many legal codes, which reached its peak with the compilation of the Tang legal system. The Japanese legal codes inherited the those of the Sui and Tang. I have been comparing the provisions of these legal codes of Japan and Tang. The purpose of the research is to clarify the similarities and differences between both countries.

[Notable Publications and Works]

- 1) 著書（共著）、平成12年、関西大学東西学術研究所叢刊14『令集解所引漢籍備考』（積名・文字集略などを分担執筆）、関西大学出版社。平安時代に成立した日本令の注釈書『令集解』に引用された漢籍に関する基礎的研究である。
- 2) 著書（共著）、昭和50年、『訳註日本律令二律本文編上巻』（名例律を分担執筆）東京堂出版。亡失した日本律の復原に関する基礎的研究である。



Division of Law (Law)

* Professor **Yumi Kimata**

- Area and Subject Taught: Commercial Law and Corporate Law
- Research Theme(s):
Rights of Shareholders and Protection of Minority Shareholders
- Academic Degrees: Master of Laws, Kyoto University
- Keywords for Research Field:
Corporate Governance, Shareholder Rights, Institutional Investors
- Office Phone Number: 81-75-705-1770
- E-mail: ykimata@cc.kyoto-su.ac.jp

[Research Overview]

While there are a variety of means to conduct corporate governance, particular attention should be paid to the decision-making of shareholders, the beneficial owners of a company. However, ownership and management today are separated to a great degree, and which produces adverse effects on the decisions by majorities based on capital stock. Under these circumstances, one of the most important issues is protection of minority shareholders, whose interests are often neglected. Corporate governance should highly value monitoring system by minority shareholders of the management. It is important to review the systems that give true meaning to shareholders' rights, as well as changes in the trends of recent institutional investors. For the time being, the goals of my research are to review shareholders' rights in order to collect information and make investigations, including the right to inspection of accounting books and records of shareholders. These are prerequisite rights for making shareholders rights more efficient. American Law, source of these rights, includes the Security Exchange Act, state statutes, and others that contain important systems and procedures. I intend to consider these systems, procedures and requirements and compare them to counterparts in Japanese company law. Furthermore, I plan to extend my research to include comparisons with the UK, Germany and Switzerland, and eventually to shareholders' rights of investigation.

[Notable Publications and Works]

- 木俣由美 著 「VIRTUAL会社法<第3版>」悠々社
 同 著
 「楽しく使う会社法」自由国民社
 「判例講義 会社法」悠々社



Division of Law (Law)

*** Visiting Professor Masaaki Kimura**

- Area and Subject Taught: Comparative Politics
- Research Theme(s):
Comparative Research in Political Culture in Terms of Modernization
- Academic Degrees: Doctor of Laws, Kyoto University
- Keywords for Research Field:
Modernization, Political Culture, and Theory of State
- Office Phone Number: 81-75-705-1863

[Research Overview]

I carry out comparative research on the subject of modernization. My original focus was the caste system as the basic social structure of India; I studied the role the caste played in the traditional society and how that role changed under British rule. Based on the results, I extended my research to include the comparative study of modernization of Asia and Europe, and tried to clarify the role the state performs in the country's economic development, and the effects of the inherent political culture of each country on the country's modernization through historical and sociological methods. My research called for reconsideration of neoclassical economics, a widespread theory today that considers human to be "homo economics" and analyzes social development based mainly on economic elements. Because I have managed to reach conclusive results in this kind of research, I plan to resume my study of India in order to review British control of the country, emphasizing the encounter of the two distinct civilizations of India and Europe (Britain).

[Notable Publications and Works]

- 『帝国・国家・ナショナリズム—世界史を衝き動かすもの』 ミネルヴァ書房、2009年
- The State in India: Past and Present, Oxford University Press, 2006 (共編著)
- 『「大転換」の歴史社会学——経済・国家・文明システム』 ミネルヴァ書房、2002年
- 『インド現代政治——その光と影』、世界思想社、1996年
- 『ユートピア以後の政治——二一世紀への政治を読む』 有斐閣、1993年
- 『国家と文明システム』 ミネルヴァ書房、1993年
- 『インド史の社会構造——カースト制度をめぐる歴史社会学』、創文社、1981年



Division of Law (Law)

Instructor **Karyn Paula Kandell**

- Area and Subject Taught: American Law
- Research Theme(s):
International Business Transactions, American Law, Anglo-American Law
- Academic Degrees:
University of California at Berkeley
Doctor of Jurisprudence, UC Berkeley Boalt Hall School of Law
- Keywords for Research Field:
International Contracts, Jury System, Law and Culture
- Office Phone Number: 81-75-705-1693
- E-mail: karynkandell@ybb.ne.jp (ENGLISH ONLY)

[Research Overview]

As to International Business Transactions, I have been researching the law, legal systems, business practices and cultures of different jurisdictions and the relationships among them. I am also interested in the legal changes that have resulted from globalization and the recent changes in the world order, especially in the emerging market economies, the former emerging market economies and developing countries.

As to American Law and Anglo-American Law, my research tends to focus on practical and topical issues.

As to all three areas, I have also been studying dispute resolution.

Most importantly for prospective students, much of what I research depends on my students' particular interests. In many of my classes we study topics based on the students' interests and I conduct research accordingly.

[Notable Publications and Works]

The Japanese Product Liability Act (I) (co-author)

The Japanese Product Liability Act (II) (co-author)



Division of Law (Law)

*** Professor Masataka Kiyokawa**

■ Area and Subject Taught: Commercial Law

■ Research Theme(s):

1. Carriage of Goods by Sea Act : A Mixture of the Himalaya Clause and Paramount Clause - A New Trial of International Combined Transport Law
2. International Transaction Law : Assignability of Provisions for International Commercial Arbitration

■ Academic Degrees: Doctor of Laws, Kyoto University

■ Keywords for Research Field:

Marine Commercial Law, Carriage of Goods by Sea Act, Bills of Lading, International Transaction Law

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[Research Overview]

1. The Himalaya Clause is a provision for the purpose of utilizing the exemption clause for carriers, as provided in COGSA, for the benefit of servants of carriers. The Paramount Clause is a provision in bills of lading set out for the purpose of applying the Carriage of Goods by Sea Act (COGSA) to such matters as scope of goods and periods that are outside the application of COGSA. At present, there is no international treaty in effect for international combined transport, and the settlement of responsibility of carriers is left to each country. Therefore, a completely combination of factors of both provisions is used in the UK and the USA. My research uses analytical methods of case law and focuses on the appropriateness and availability of UK and US practices that try to settle issues matters by using provisions in bills of lading.
2. An arbitration clause is one type of ADR (alternative dispute resolution) used to settle contract-related disputes arising out of in international commercial agreements. The clause is severable and not affected if any other provision of the contract is held invalid or the contract is terminated. In case of assignment of the contract or debts or credits thereunder in whole or in part, one needs to clarify whether or not this severability interferes with the assignment of the arbitration clause or under what conditions the assignment of such clause is disallowed. Finding out these answers is the purpose of my research. I intend to describe in detail the conditions of assignment of arbitration clause, discuss the scope of such clauses, and bring the controlling principles to light.
3. Other issues concerning international transaction law

[Notable Publications and Works]

- 1) 「独資企業の設立と合弁会社の取締役の競業避止義務」 J C A ジャーナル 2009 (平成 21) 年 4 月号 42 頁～49 頁
- 2) 「中国上場会社の不実開示の法的規制」 J C A ジャーナル 2008 (平成 20) 年 5 月号 25 頁～35 頁
- 3) 「中国信用状紛争の審理に関する司法解釈とその説明 (上、下)」 J C A ジャーナル 2007 (平成 19) 年 8 月号 2 頁～13 頁、同 9 月号 32 頁～41 頁
- 4) 「日本における台湾人の国籍表記に関する法的問題」 産大法学 40 卷 3・4 号 157 頁～176 頁 (2007 (平成 19) 年 3 月)
- 5) 「中国における上場会社の不正な情報開示の民事責任 (1)」 産大法学 39 卷 3・4 号 70 頁～85 頁 (平成 18 (2006) 年 3 月)
- 6) 「船舶の衝突」 落合 = 江頭編『日本海法会創立百周年祝賀 海法体系』 425 頁～458 頁 (商事法務、平成 15 年 7 月)



Division of Law (Law)

* Associate Professor **Hiroshi Suga**

- Area and Subject Taught: Constitution
- Research Theme(s):
History of the Japanese Constitution in the Modern Age,
Religious Law in Germany
- Academic Degrees: Master of Laws, Kyoto University
- Keywords for Research Field:
History of the Japanese Constitution in the Modern Age, the
Constitution of the Empire of Japan, Religious Law in Germany
- Office Phone Number: 81-75-705-1752
- E-mail: suga@cc.kyoto-su.ac.jp

[Research Overview]

The ultimate purpose of my research is to illuminate the history of the Japanese Constitution in the modern age. Generally, the history of the constitution can be divided into three areas: the formation of the constitutional system, the operation of the constitutions, and the ideas and academic theories of the constitution. My research proceeds from the Meiji Era onward for operation of the Meiji-Constitution, and retroactively from the Showa Era for academic theories of the Constitution. For the former, I employ the empirical methods of historical science, referring to primary sources as much as possible. For the latter, I pay more attention to how the academic theories were inherited from the German jurisprudence, for which I will partly utilize the methodology of the comparative history of ideas.

In the area of religious law in Germany, there are many problems reflecting the unclear conditions after national reunification, and my research starts from present-day issues. In the future, I intend to study the historical development in this field and compare it with the relationship between State and religious bodies in modern Japan.

[Notable Publications and Works]

〈論文〉

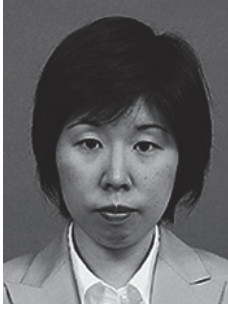
- 1) 「司法権を『法律ニ依リ』行うこと」佐藤幸治先生古稀記念『国民主権と法の支配 上巻』(成文堂・2008年)所収
- 2) 「大正天皇への『帝国憲法』御進講(1)」産大法学 38巻3=4号(2005年)
- 3) 「剰余金責任支出慣行の誕生」梧陰文庫研究会編『井上毅とその周辺』(木鐸社・2000年)所収

〈翻訳〉

- 1) 『原典対訳 連邦憲法裁判所法』(初宿正典教授と共編訳・成文堂・2003年)
- 2) アレクサンダー・ホラーバツハ「フライブルク法学部の公法学の歴史について」栗城壽夫先生古稀記念『日独憲法学の創造力 下巻』(信山社・2003年)所収

〈翻刻〉

- 1) 清水澄博士御進講「帝国憲法」(1)・(2)・(3) 藝林 57巻1号・2号・58巻1号(2008-09年)



Division of Law (Law)

Associate Professor **Junko Takahata**

■ Area and Subject Taught: Social Security Law and Labor Law

■ Research Theme(s):

A Comparative Study of the Japanese and German Unemployment Insurance Law

■ Academic Degrees:

Master's (Human and Environmental Studies), Kyoto University

■ Keywords for Research Field:

Unemployment Insurance, Welfare, Unemployment

[Research Overview]

My research focuses on life security during periods of unemployment. In Japan, many unemployed people receive basic benefits from unemployment insurance, while some unemployed people are not entitled to such benefits and must rely on the national welfare systems. However, many of the unemployed cannot obtain life security from unemployment insurance or welfare systems. Therefore, it is necessary to support them by providing adequate income security and opportunities for occupational training, as well as jobs for those who have ability to work, so that they can live without depending on benefits. I am interested in the reform of the labor market in Germany, which is proceeding in this direction.

[Notable Publications and Works]

- 1) Junko Takahata, 2008, " Legal Significance of the Measures of Work Life Balance and the Effectiveness", Quarterly Labor Law, No.220 (in Japanese)
- 2) Junko Takahata, 2008," Leagal Issues about Application of Social Security Systems to Foreign Nationals", Jurist, No.1350 (in Japanese)
- 3) Junko Takahata, 2007," Effective Measures and Policies of Work Life Balance and the Problems", Sandai Law Review, Vol.40 No.3/4 (in Japanese)
- 4) Junko Takahata, 2005, "Judicial Separation of Pension Rights in the Divorce", Jurist, No.1282 (in Japanese)
- 5) Junko Takahata, 2004, "The Specialized Nature of the "Case Manager", and the Reform of Job Organization", Journal of Social Security Law, No.19 (in Japanese)
- 6) Junko Takahata, 2001, "Income Security under SGB 3 in Germany", SOCIALSYSTEMS: political, legal and economic studies, No.4 (in Japanese)



Division of Law (Law)

*** Professor Tomoko Terasawa**

- Area and Subject Taught: Civil Code
- Research Theme(s):
Civil Code and Medical Law
- Academic Degrees: Doctor of Laws, Osaka University
- Keywords for Research Field:
Civil Code, Medical Law, Medical Malpractice, Bioethics

[Research Overview]

I am doing research on issues relating to medical care from the standpoint of Civil Code. Issues about medical care and law extend to many areas, including medical malpractice due to technical errors or insufficient explanations, as well as bioethics related to organ transplants, assisted reproduction technologies, human cloning, and other advanced medical care. These issues require consideration not only from the viewpoints doctors and medical institutions, but also consideration of how medical care should be carried out in relation to patients and recipients of medical care. As a research theme, I consider the existence of a doctor-patient to be a prerequisite for the doctor's duty of care. I mainly engage issues concerning doctors' explanations to patients and agreements, known as "informed consent". Starting from considerations about what duty of care should be imposed on doctors and medical institutions who deal with recipients of medical care, I am researching what the contents and criteria of the duty of care, and toward whom that duty applies. In other words, I am researching how we should understand the relationship between doctors and the families of patients.

[Notable Publications and Works]

1. 「生体移植と医療過誤」法律時報79巻10号（2007年）25頁－29頁
2. 「医療行為に対する承諾の相対化と法的評価」新井誠編著『成年後見と医療行為』（日本評論社、2007年）107頁－135頁
3. 「『承諾能力』のない人への治療行為の決定と承諾」潮見佳男編『國井和郎先生還暦記念論文集 民事法学の軌跡と展望』453頁－473頁、（日本評論社、2002年）



Division of Law (Law)

*** Professor Isao Tokoro**

- Area and Subject Taught: History of Japanese Legal Systems
- Research Theme(s):
History of Imperial Court Political Culture during the Heian Period and from the Meiji Period Onward
- Academic Degrees:
Master of Arts, Nagoya University; Doctor of Laws, Keio University
- Keywords for Research Field:
History of the Heian Period, Imperial Court Political Culture, Ceremonies and Events
- Office Phone Number: 81-75-705-1790 (FAX 81-75-705-1495)
- Home FAX: 0585-22-1604

[Research Overview]

My interest in Kyoto started during my school days, and I have been studying the history of Heian-Period political culture for more than 40 years. At first, I focused on biographies of literary government officials (such as Michizane Sugawara and Kiyoyuki Miyoshi) who played active roles from the latter half of the 9th century to the beginning of the 10th century. During that time, I shifted my focus to bibliographical research about ceremonies and annual events held in the court (dairi, daidairi), which were the primary tasks of court nobles during the Heian Period. Through this research, I studied the history of the formation and changing process of ceremonial procedures and recording of events. My recent research extends to comparison with etiquette systems of the Tang dynasty in China, and to re-examination of festivities in the court and knowledge about precedents during the middle ages and modern periods.

I became also interested in court systems from the Meiji Period onward (especially imperial court festivities and ceremonies) while conducting the above-mentioned research. I verified that most of the systems were fusions of traditional elements from pre-modern Japan and modern elements from Western royal courts. I am also studying the successions and changes that occurred in these systems under the current postwar constitution. In the future, I want to clarify imperial house law and order systems in the Meiji Period as well as in the postwar period, including the recent controversial topic of female emperors, while making comparisons with Western court systems.

[Notable Publications and Works]

『歴代天皇の実像』(平21、モラロジー研究所) 『皇位継承—「女性・母系天皇」は可能か』(平18、PHP新書) 『あの道この径100話』(平16、モラロジー研究所) 『「国民の祝日」の由来がわかる小事典』(平15、PHP新書) 『菅原道真の実像』(平14、臨川書店) 『天皇の人生儀礼』(平14、小学館文庫) 『近現代の「女性天皇」論』(平13、展転社新書) 『宮廷儀式書成立史の再検討』(平13、国書刊行会) 『国旗・国歌と日本の教育』(平12、モラロジー研究所) 『皇位継承』(高橋紘共著、平10、文春新書) 『日本歴史再考』(平10、講談社学術文庫) 『皇室の伝統と日本文化』(平8、広池学園出版部) 『京都の三大祭』(平8、角川選書) 『伊勢神宮』(平5、講談社学術文庫) 『西宮記』 『北山抄』(校注、平5・平4、神道大系編纂会) 『国旗・国歌の常識』(平5、東京堂出版) 『年号の歴史—元号制度の史的研究—』(昭63、雄山閣出版) 『平安朝儀式書成立史の研究』(昭60、国書刊行会) 『三代御記逸文集成』(昭57、国書刊行会) 『日本の年号』(昭52、雄山閣出版) 『三善清行』(昭45、吉川弘文館、人物叢書)



Division of Law (Law)

*** Professor Goro Toda**

- Area and Subject Taught: International Law
- Research Theme(s):
Human Rights in Emergency Situations, Enforcement of Human Rights Treaties, Immigration Control and Asylum Policy in Europe
- Academic Degrees: Master of Laws, Kyoto University
- Keywords for Research Field:
International Human Rights Law, European Convention on Human Rights, Asylum Policy
- Office Phone Number: 81-75-705-1858
- E-mail: gtoda@cc.kyoto-su.ac.jp

[Research Overview]

Based on the derogation provisions (which are set out to suspend national obligations to secure human rights in emergencies) in human rights treaties, my research covers human rights protection issues in emergencies arising from confrontations between international human rights standards and national sovereignty. In addition, I have been reviewing the motives for policymaking existing behind the interpretation and application of international standards by organizations responsible for enforcement of human rights protection. Such review was primarily made based on the human rights cooperation in the framework of the European system for the protection of human rights. In recent years, I have also been researching the formation process of immigration control and asylum policies in Europe, which are now developing in parallel with the abolition of internal passport controls following the Maastricht Treaty.

[Notable Publications and Works]

- 1) 「非国家機関による迫害と難民の保護－英国判例と欧州人権条約を素材として－」、2006年、浅田正彦（編）『二一世紀国際法の課題』（有信堂）所収
：難民の国際的保護の中核をなす「送還禁止（ノン・ルフールマン）の原則」の適用について生じている今日の問題についての検討。
- 2) 「緊急事態と刑事手続の公正－人権条約の derogation 条項を主な素材として－」、2002年、産大法学35巻3・4号
：人権諸条約における、公正な裁判を受ける権利等手続的権利の国家緊急事態における保障可能性についての検討。
- 3) 『図説国際法』（共著）、1998年、有斐閣
：図表を用い視覚に訴えることを狙った教科書。
- 4) 「欧州の多国間人権政策に関する試論－少数者保護を抛り所として－」、1998年、姫路法学23・24合併号
：欧州審議会の少数者保護枠組み条約成立を巡る人権政策の検討。
- 5) 「ヨーロッパ人権条約とトルコの地位－ヨーロッパ人権条約第25条に基づくトルコの宣言及びその有効性に関するヨーロッパ人権委員会の判断を素材として－」、1992年、国際法外交雑誌91巻5号
：欧州人権条約当事国でありつつ特殊の地位を要求するトルコの立場の条約との整合性を検討。



Division of Law (Law)

Associate Professor Masanori Nakatani

■ Area and Subject Taught: Theory of Political System

■ Research Theme(s):

Public Policy and Political Culture under the French Fifth Republic

■ Academic Degrees: Master of Laws, Kyoto University

■ Keywords for Research Field:

France, Theory of Political Culture, Public Policy

■ Office Phone Number: 81-75-705-1804

[Research Overview]

Focusing on the French Fifth Republic, I have been doing research on its political traditions and changes. Just as people have defining characteristics, politics has a culture related to its country. Apart from commonly utilized approaches based on intellectual history, including thought and literature, I generally pursue underlying ideologies and cultures by referring to national policies. In order to understand the character of someone, we usually observe that person's behavior before analyzing the books the person is reading. Likewise, I believe that, to understand the political culture of a certain country, it is necessary to begin by analyzing the policy output and then consider what ideology has served to guide it to the political level.

France has developed unique policies in terms of separation of politics and religion, and unification of immigrants. It has also maintained its unique status in the field of diplomacy, as witnessed in France's confrontation with the United States over the war in Iraq. These kinds of policies are supported by French political ideologies based on understanding of themselves, even though such ideologies are very different between right-wing and left-wing thinkers. Whatever the case may be, I want to further explore the identity of the political culture and ideology of France through research on the history of typical public policies.

[Notable Publications and Works]

- 1) 共著『市民社会と市場のはざま—公共理念の再生に向けて』晃洋書房、平成16年
：「市民像」と「信頼」の観点から現代における公共性を考察。後半分の章を執筆。
- 2) 拙論「米国に対抗するフランスの論理」、『産大法学』、第38巻第2号、平成16年
：A・ジョクスらの議論を手がかりに、フランスの対米反抗の論理を考察したもの。
- 3) 共著『シティズンシップの教育学』晃洋書房、平成18年
：第7章「宗教教育—フランスにおける非宗教性原理と公民教育」を執筆。
- 4) 共著『外国人参政権問題の国際比較』昭和堂（河原祐馬・植村和秀編）、平成18年
：第2章「フランスにおける移民の社会統合と共和国理念」を執筆。
- 5) 拙論（資料）「暴動の裏側—フランス二〇〇五～二〇〇六年」、『産大法学』、第41巻第1号、平成19年
：法学会秋季講演を下敷きとして、フランスの移民暴動事件を考察したもの。
- 6) 拙論「フランスの移民政策とそのディスカール」、『産大法学』、第42巻第2号、平成20年
：フランスの移民政策をめぐる議論のあり方を考察したもの。



Division of Law (Law)

*** Professor Hideki Narita**

- Area and Subject Taught: Code of Criminal Procedure
- Research Theme(s):
Investigation and Security of Privacy
- Academic Degrees: Master of Laws
- Keywords for Research Field:
Searches and Seizures, Administrative searches and seizures,
Inspection of Vessels, Privacy, Electronic Investigation
- Office Phone Number: 81-75-705-1885

[Research Overview]

Article 33 and 35 of the Constitution of Japan provides that the right of all persons to be secure in their persons, homes, papers and effects against entries, searches and seizures shall not be impaired. As persons, homes, papers and effects are tangible, the act of physically taking and removing tangible personal property is traditionally a seizure. Under this traditional approach, eavesdropping or recording of conversations may not constitute a seizure of conversation, because it is intangibles.

But now that we have developed new technology like telephone, email and computers, we should provide the new approach that there is a twofold requirement, first that a person have exhibited an subjective(actual) expectation of privacy, second, that the expectation be one that society is prepared to recognize as "objective"(reasonable). In my research, I am pursuing the jurisprudence and the rules that strike a balance between the right to privacy and the public interests of investigating the offences.

[Notable Publications and Works]

- 1) 椎橋隆幸編『プライマリー刑事訴訟法（第2版）』（平成20年 不磨書房）
- 2) 椎橋隆幸編『基本問題刑事訴訟法』（平成12年 酒井書店）
- 3) 渥美東洋編『刑事訴訟法基本判例解説』（平成8年 三嶺書房）
- 4) 渥美東洋編『米国刑事判例の動向・』（平成1年 中央大学出版部）
- 5) Entry for inspection in ships in terms of Privacy and Border Search, 47-3 KEIHO ZASSHI (JOURNAL OF CRIMINAL LAW) 13 (2008)(in Japanese)
- 6) Border Searches of Vehicles and the Expectation of Privacy, 40-3・4 SANDAI HOGAKU (SANDAI LAW REVIEW) 112 (2007) (in Japanese)
- 7) Border Searches and Privacy, 112-1・2 HOGAKU SHIMPO(THE CHUO LAW REVIEW) 163 (2005) (in Japanese)
- 8) Electronic Investigation and Privacy, 45-1 KEIHO ZASSHI (JOURNAL OF CRIMINAL LAW) 142 (2005) (in Japanese)
- 9) Investigation and Protection of Privacy, 6-4 GENDAI KEIJIHO (MODERN CRIMINAL LAW REVIEW) 34 (2004) (in Japanese)
- 10) Inspection under Fishing Law and Article35 of the Constitution of Japan, 1 KAIJYOHOAN TO GYOGYO (MARITIME SAFTY AND FISHING) 233 (2000) (in Japanese)
- 11) Administrative Search and Objective Expectation of Privacy - Development of Case Law in the United States and Analysis, 70 KAIJYOHOAN DAIGAKKO KENKYU KIYO (REPORT OF JAPAN MARITIME SAFETY ACADEMY) 53 (1999) (in Japanese)



Division of Law (Law)

*** Professor Minehiro Nishimura**

- Area and Subject Taught: Civil Law
- Research Theme(s):
 1. Chinese Civil Law
 2. Assignment of Accounts Receivable
- Academic Degrees: Master of Laws, Kobe University
- Keywords for Research Field:
International Transaction Law, Chinese Civil Law, Civil Law, Intellectual Property Law
- Office Phone Number: 81-75-705-1692

[Research Overview]

1. The Chinese government have been doing their best to organize civil laws in order to create a unified civil code. They recently enacted the law of real rights and are expected to make additional laws in other areas. I will investigate those laws in my research.

China is a person-governed society more than a law-governed one. Therefore, in researching Chinese society, one needs a wide range of knowledge about their politics, economy, military affairs, culture, and so forth. I intend to further analyze their society in detail. Because China already has an advanced market economy, one needs a thorough understanding of the political backgrounds in order to discuss the meaning of their socialistic public ownership systems.

2. I am pursuing a systematic study of general corporate law.

[Notable Publications and Works]

- 1) 『中国物権法条文釈義 (1)～(3)』(平成20～21年) 産大法学 Vol.42、No.1、2、4
- 2) 『民法法人規定の改廃と非営利法人法の検討 (1)～(12)』(平成18～平成19年) ビジネス法務 Vol.6、No.10～Vol.7、No.3 Vol.7、No.5～No.10
- 3) 『中国対公益事業出損法の研究』(平成16年) 国際商事法務 Vol.32、No.8
概要：中国の公益事業に寄贈する場合の法律関係を解説し、その問題点を分析
- 4) 『中国契約法の実務』(平成16年) 中央経済社
概要：総則の5ヶ条と売買、贈与、寄託、倉庫保管の計、約90ヶ条余の共著、分担執筆
- 5) 『コモンセンス民法 I、II』(いずれも平成18年改訂、Iは平成21年第3版改訂) 中央経済社
概要：我が国民法総則編、担保物権を除く物権編について記述 共著



Division of Law (Law)

Associate Professor **Takanobu Nihonyanagi**

- Area and Subject Taught: Constitutions
- Research Theme(s):
Legislation and Legislature
- Academic Degrees: Master of Laws, Tokyo Metropolitan University
- Keywords for Research Field:
Constitutional Law, Governmental Structure, Legislation
- Office Phone Number: 81-75-705-1869
- E-mail: nihonyan@cc.kyoto-su.ac.jp

[Research Overview]

I study the legislative power and legislatures from a constitutional point of view. The constitutional theories in Japan have analyzed the parliamentary system in detail. However, the recent development in the interdisciplinary study of democratic decision (public choice theory) seems to suggest that legislative power and legislatures must be reconsidered in constitutional study. I aim at the functional analysis of legislatures based on discussions in the United States, the home land of public choice theory. As is usual with legal concept, "legislation" is a product of history. So I also examine the histories of legislative function and legislative theory in the United States.

[Notable Publications and Works]

- 1) 二本柳高信「ログローリング・立法府・デモクラシー」産大法学38巻3・4号(2005年)
〔概要：合衆国の公法学におけるログローリングに対する評価の研究〕
- 2) 二本柳高信「合衆国憲法第一修正の請願権の形成」都法43巻2号(2003年)〔概要：
合衆国憲法に請願権規定が盛り込まれるまでの沿革の研究〕
- 3) 二本柳高信「利益集団と立法(一)～(三・完)」都法41巻1号～42巻1号(2000～2001
年)〔概要：合衆国の公法学における利益集団立法に対する評価の研究〕



Division of Law (Law)

*** Professor Masahisa Hirooka**

- Area and Subject Taught: Political Science
- Research Theme(s):
National Groups and Religions in the Regions of the Former Soviet Union
- Academic Degrees:
Master of Laws, Keio University; Doctor of Laws, Kyoto University
- Keywords for Research Field:
Russia, Nationalism, Political Culture, Religion
- Office Phone Number: 81-75-705-1857

[Research Overview]

My initial interests as a researcher were the politics and social ideas of Russia in the 19th century, when the Slav and Western schools of thought were in opposition. After that, my concern shifted to the topic of "Russian" acceptance of the Marxism, involving, in particular, the study of Georgij Plekhanov, considered to be the "Father of Russian Marxism". When I had the opportunity to study in Moscow from 1970 to 1972, I became concerned through my research with religion as an issue of politics or ideology. The result of this research was two books, *Soviet Politics and Religions* (published by Miraisha, 1988) and *A Millennium of the Russian Orthodox Church-Between Sacred and Secular* (published by NHK Books, 1993).

Subsequently, I have been engaged in the study of the Russian nationalism that emerged in the 1960s, extending the scope of my research to the National-Bolshevism and Eurasianism, that makes up the Eurasian and Russian Orthodox Church civilization, which is in opposition to Western-European Christian civilization. I have been also researching nationalism and nationalist movements by Russian intellectuals who broke down the barriers of 19th-century Slavism and sought better solutions, as well as Russian nationalism as a political culture defining the national image of modern Russia.

[Notable Publications and Works]

- 1) 『ロシア・ナショナリズムの政治文化—双頭の鷲とイコン』、2000年、創文社
：ロシアの歴史を貫くナショナリズムの流れとその政治文化的特質を解明したものである。
- 2) 『国家と民族を問いなおす』(共編著)、1999年、ミネルヴァ書房
：冷戦体制崩壊後の国家と民族の意味と位相を今日的視点から問い直し、現代世界が直面している問題状況を浮き彫りにしたものである。
- 3) 『ロシアを読み解く』、1995年、講談社
：ソヴィエト共産主義体制崩壊後のロシアのアイデンティティ危機と政治文化を論じたものである。



Division of Law (Law)

Associate Professor **Norio Hiwatashi**

- Area and Subject Taught: Code of Civil Procedure
- Research Theme(s):
Trial Procedure Theory
- Academic Degrees: Master of Law, Kyoto University
- Keywords for Research Field:
Trial Schedule, Degree of Clarification, Discretionary Control

[Research Overview]

The trial, an important part of a lawsuit, has been regarded as a black box representing the unknown thoughts produced inside the head of the judge. However, assuming that the trial procedure is a process in which the judge forms its judicial impressions, it would be mainly composed of assertions and verifications by the parties. If so, the judge's mental condition (impressions) and the parties' activities (induction of allegations and evidence) should move in tandem. This means that the induction of more allegations and evidence would make the vacillation of judicial impressions smaller. I have been analyzing this combination by using the idea of "degree of clarification" to show the progress of trials.

In my conventional research, I have attempted to demonstrate the utility of the "degree of clarification" as follows: First, I verified the necessity to make the maturity of actions recognizable for the parties based on the conclusion of oral proceedings. Second, I verified the necessity to seek a balance between quality and promptness while avoiding rough-and-ready proceedings by examining the protective-order-issuing procedure. Further, I verified the necessity to control the judge's discretion based on the process of planning the trial schedule. My future plan is to verify the utility of the "degree of clarification" and improve clarification based on new materials.

[Notable Publications and Works]

- 1) 『民事訴訟法』2007年、法学書院、手続の進行・訴訟の審理
- 2) 『現代民事司法の諸相』谷口安平先生古稀祝賀、2005年、成文堂、「裁判所の裁量の統制方法について」：審理計画を素材として
- 3) 民事訴訟法雑誌49号、2003年、法律文化社、「審理計画と解明度」
：審理計画の作成における裁量統制の契機としての解明度



Division of Law (Law)

Associate Professor Masaki Fukao

■ Area and Subject Taught: Criminal Procedure

■ Research Theme(s):

Study on Exercise of Prosecutorial Power in Criminal Procedure

■ Academic Degrees: Doctor of Laws, Kobe University

■ Keywords for Research Field:

Prosecutors, Prosecutorial Power,

Procedure for Committing the Case to a Court for Trial

■ Office Phone Number: 81-75-705-1586

■ E-mail: fukao@cc.kyoto-su.ac.jp

[Research Overview]

Most conventional discussions about issues in exercise of prosecutorial power by prosecutors have covered discussions concerning the very extensive discretion on the right to suspension of prosecution given to prosecutors by the Code of Criminal Procedure. On the other hand, it has been pointed out that the criteria by which prosecutors decide whether the case will be prosecuted or not (except suspension of prosecution) require very strong suspicion for prosecution, especially in today's practice. Some sectors have already started to discuss effects of it on criminal procedure as a whole. However, there are still questions to be clarified about the actual criteria for exercising the prosecutorial power, including suspicion for indictment. Through my research, I will try to clarify such criteria, compare it with situations in foreign countries, and pursue the question of how prosecutorial power should be exercised.

[Notable Publications and Works]

- 1) 拙稿「刑法上の職権濫用罪について (一)~(五・完)」産大法学35巻3=4号(2002年)、同37巻1号、2号(以上、2003年)、3号、4号(以上、2004年)
* 刑法上の職権濫用罪について、その法的性質および成立範囲の確定を試みた。
- 2) 拙稿「公設弁護士」ほか13項目、三井誠・町野朔・曾根威彦・中森義彦・吉岡一男・西田典之編『刑事法辞典』(信山社、2003年)所収
* 総合的な刑事法辞典において、刑事手続法に関する14項目について執筆したもの。
- 3) 拙稿「公務員職権濫用罪規定(刑法一九三条)の沿革」神戸法学雑誌46巻1号(1996年)
* 立法関係資料を材料に公務員職権濫用罪規定に関する立法者意思の解明を試みた。



Division of Law (Law)

*** Professor Ichiro Fujioka**

- Area and Subject Taught: Criminal Law, Criminology, Juvenile Law
- Research Theme(s):
 - Interdisciplinary Issues on Theory of Responsibility under Criminal Law and Criminology
 - Avoidance of Becoming an Assailant/Victim and Creation of Standards of Behavior
- Academic Background: Master of Laws, Doshisha University
- Keywords for Research Field:
 - Prevention of Crimes, Crime Victims, Creation of Standards of Behavior, Cooperation of Different Organizations
- Office Phone Number: 81-75-705-1885
- E-mail: ichifuji@cc.kyoto-su.ac.jp

[Research Overview]

There are many issues related to the theory of responsibility in criminal law, but my focus of interest is currently shifting from retrospective responsibility to prospective responsibility. It has been pointed out by some that the 1990s was an age of crime prevention in Japan as in other countries; however, there were many areas related to the effectiveness of the crime prevention function of criminal sanctions that remained unclarified in the academic reports of the mid-1980s. In particular, debate over the appropriateness of the death penalty continues. In this case as well, the necessity for proactive prevention so that crimes do not occur, based on a viewpoint that measures are not limited to reactive sanctions, has been discussed in the context of the general crime prevention theory. In contrast to the theory of active general prevention in Germany, which shows a tendency toward idealism on the whole, the discussion of this issue in Britain and the United States has placed the emphasis on effectiveness and proceeded along conventional empirical lines. For prevention to be effective, solidly grounded preventative measures and stricter empirical measure of effectiveness are required. I am conducting research, including fieldwork, to verify the effectiveness of prevention in concrete terms.

[Notable Publications and Works]

- 1) A Case of the Proactive Crime Prevention in the Community; in "The 70th Memorial Articles of Prof. T. ATSUMI" (2006) Yuhikaku: in Japanese
- 2) The Meanings on Juvenile Law, s.25-2; 56 Doshisha L.R.6 (2005): in Japanese
- 3) Community and Crime Prevention; 34 Sandai L.R.3 (2000): in Japanese



Division of Law (Law)

*** Professor Marcure-Raidl, Elisabeth**

- Area and Subject Taught: Comparative Law
- Research Theme(s):
Comparative Studies in Civil Law (contracts & torts) and Business Law with Emphasis on EU/EC Competition Law (procedural law inclusive)
- Academic Degrees: Master of Law; Doctor of Jurisprudence (Salzburg University)
- Keywords for Research Field:
Comparative Law, EU/EC Law, Competition Law, International Transactions
- Office Phone Number: 81-75-705-1695

[Research Overview]

Since I specialize in comparative legal studies, my research covers by necessity a relatively broad area. At present I am concentrating on EU/EC competition law (corresponding approximately to Japan's Antimonopoly Law) which has recently undergone major revisions in both substantive as well as procedural areas. My research focuses on, among other things, the radical reforms of the EC block exemption regulations, in particular the Block Exemption Regulation for Vertical Agreements, and of the hitherto applied system of individual exemptions under the exclusive jurisdiction of the European Commission. The exemption system is immensely important because EU/EC competition law prohibits and voids any agreement and other actions between undertakings which may restrict competition within EC territory.

The new system of competition procedural law was introduced in connection with the sudden increase in the number of EU/EC member states to its present 27 and was aimed at further rationalizing and enhancing the efficiency of administering EU/EC competition law. To accomplish this, the system of notification of agreements set up for applications for individual exemptions (which involved a huge administrative burden for the Commission) was abolished. In addition, the European Commission's Directorate General for Competition (DG COMP) and the competition authorities of all the member states together established a competition network system. These local authorities as well as the courts of the member states have become newly empowered to directly apply Article 81 (3) of the EC Treaty that sets forth the constituent elements regarding exemption. The introduction of this principle of direct application raised various new legal issues. Moreover, as a result of the new system, the legal nature of Article 81 (3) itself changed. That is to say, under the old system it was merely a provision setting forth the criteria to be met for an exemption to be granted, whereas under the new system the provision is deemed to accord automatic exemption if and when the criteria are met. Thus, the exemption procedure based on a centralized authorization system was replaced by a system of legal exception under a decentralized enforcement system. I endeavor in my studies to analyze the differences between the former and present systems from both theoretical and practical viewpoints.

Additionally, I am currently doing joint research with a doctoral candidate on selected issues involving the application of EU/EC competition law in the insurance sector.

Among my competition law research activities, I have spent time studying at the Directorate General for Competition of the European Commission in Brussels and at the University of Salzburg.

[Notable Publications and Works]

- 1) The Protection of Personal Rights from Defamation and Invasion of Privacy by Mass Media in Japan, co-authorship, in: Helmut Koziol/ Alexander Warzilek(eds.) *Persoenlichkeitsschutz gegenueber Massenmedien*, 2005, Springer Wien/ New York.
- 2) 1873年ウィーン国際特許会議平成14年知的財産法の系譜小野昌延先生古稀記念論文集
- 3) 『The Japanese Product Liability Act』 共著 平成11年産大法学第32巻2、3号
- 4) Produkthaftung, Laenderbericht Japan, in: Graf von Westphalen (ed.), *Produkthaftungshandbuch*, 1999 C.H. Beck Muenchen.



Division of Law (Law)

Associate Professor **Atsushi Masui**

- Area and Subject Taught: Criminal Law
- Research Theme(s):
Theory of Criminal Responsibility for Collective Action
- Academic Degrees: Master of Laws, Kyoto University
- Keywords for Research Field:
Criminal Law, Complicity, Collective Responsibility
- Office Phone Number: 81-75-705-2942
- E-mail: ats3495@nifty.com

[Research Overview]

A point of departure of my research is recognition that conventional theories of criminal law which target only an individual action has failed to understand criminal responsibility for collective action. I consider what an appropriate theory of criminal responsibility for collective action is. Concretely, I ask the reason why a participant in a cooperated crime is responsible for the result of which he or she is not the immediate cause, and to what extent such responsibility is applicable. I focus on ideas of relational individuals and relational responsibility to approach those questions.

Through my research, I aim to achieve the following: (1) to deepen understanding of the structure of collective actions, as a factual base for normative argument, while referring to the results of empirical sciences; (2) to draw more attention to the idea of relational responsibility to define criminal responsibility of individuals based on facts; and (3) to demonstrate that the theory of relational responsibility is effective in settling interpretative problems of criminal substantive law, especially about a crime by mob of rioters or an organized crime.

[Notable Publications and Works]

「集合的行為の刑事責任に関する予備的考察 (1)～(2・完)」法学論叢157巻1号55－84頁、2005年、法学論叢157巻2号、48－73頁、2005年。(概要：集合的行為は、集団自体あるいは集団を構成する個人には還元し尽くせない社会的事象であること、その刑事責任は、集団と個人の関係、とりわけ、集合的行為における自己概念の変容という事実的基礎をもとに論じられるべきことを明らかにした。)



Division of Law (Law)

*** Professor Hideaki Mizobe**

- Area and Subject Taught: Japanese Political History
- Research Theme(s):
Japanese Nation-State
- Academic Degrees: Master of Laws, Kyoto University
- Keywords for Research Field:
Japanese History, Nation-States, Comparative Political Science
- Office Phone Number: 81-75-705-1698
- E-mail: mizobe@cc.kyoto-su.ac.jp

[Research Overview]

Has the political system in Japan firmly taken root? Have the Japanese successfully created order by themselves without depending on traditions and religions? In order to answer these questions, I am studying the history of formation of the Japanese nation-state in respect to the following questions.

- (1) When was the starting point of Japanese political history? How did Japan become independent of Chinese cultural influence in ancient and medieval times?
- (2) What was the meaning of Japan's unification in the early modern times? Why did a system of centralization under a single ruler shift to decentralization in the form of a shogunate system?
- (3) One of the issues for countries in the 19th century was to abolish social class systems. What then were the characteristics of the Meiji Restoration? Why was the Meiji Period's new ruling class, a new middle class, able to obtain public leadership authority?
- (4) One of the challenges for Japan in the 20th century was to unify the populace as the members of a nation-state. How did Japan overcome this challenge through wars with China and the United States?
- (5) The postwar history of Japan seems to be divided from its prewar history. What are the historical roots of this view? This is an example of the kinds of questions I hope to answer through my research.

[Notable Publications and Works]

- 1) Cooperation with the West versus "Asianism"— Two Conflicting Alternatives for Determining the Direction of Japan's International Relations —(1) Sandai Law Review, Vol.40 No.3 · 4 March 2007. (in Japanese)
- 2) The Machiavellian Moment in the Japanese Political History(1) Sandai Law Review, Vol.39 No.3 · 4 March 2006. (in Japanese)
- 3) The Politics of <the eternal triangle> between Japan, China and the US in the historical perspective.(1) The Bulletin of The Institute for World Affairs Kyoto Sangyo University, No.21 2005. (in Japanese)



Division of Law (Law)

*** Professor Kenji Mimino**

- Area and Subject Taught: Philosophy of Law
- Research Theme(s):
Historical and Philosophical Research on Legal Theory and
Legal Thought in Civil Society
- Academic Degrees: Doctor of Laws, Kyoto University
- Keywords for Research Field:
Historical Jurisprudence, Friedrich Carl von Savigny, Legal Theory
- Office Phone Number: 81-75-705-1880
- E-mail: mimino@cc.kyoto-su.ac.jp

[Research Overview]

While I primarily focus on the history and theory of German law in the modern age, I am also doing research in social, cultural, and philosophical history, with particular attention paid to relations between directly neighboring regions.

In terms of concrete issues in my research, it is necessary to first analyze and restructure legal theory of German law in the 19th century and its historical development, from the viewpoint of European legal history. German law in the modern age, including Friedrich Carl von Savigny's theory, promoted systematization of the law, and expanded on and completed rational legal theory to support structures of national states. This is an example of the universal historical rationalization present throughout European history, as M. Weber said. By trying to do historical, philosophical analyses of German law in this way, we can find clues to help solve fundamental problems in modern society.

Second, I am interested in fundamental problems of legal philosophy, including relationships between law and morals, characteristics of legal thought, and relationships between positive and natural laws, based on the results obtained from the first issue mentioned above.

At any rate, the aim of my research is to obtain a better understanding of our society and lifestyles, which are going through transitional stages, by taking legal systems as one of the basic cultural components of the modern society.

[Notable Publications and Works]

著書

- 1) 耳野健二 (1998). サヴィニーの法思考—ドイツ近代法学における体系の概念—. 東京: 未来社. 349+Xiii (博士論文)
- 2) 河上倫逸編 (1997). ゆらぎの法律学. 東京: 風行社 (共著)

論文

- 1) 耳野健二 (2003). 十九世紀ドイツ法学における Rechtsverhältnis の概念. *Historia Juris*, 比較法史研究, 11, 96-158.
- 2) 耳野健二 (2005). 思想の再構成としての解釈—サヴィニーにおける解釈の概念. *Historia Juris*, 比較法史研究, 13, 178-230.
- 3) 耳野健二 (2006). <関係>を基礎とする法秩序—サヴィニー法体系論における法関係の意義. *Historia Juris*, 比較法史研究, 14, 146-216.
- 4) 耳野健二 (2007). 学問によるパンデクテン体系の成立——一九世紀前半のドイツにおける法律学の近代化の一側面 (一), 産大法学, 第40巻3・4号, 156-194.
- 5) 耳野健二 (2007). 学問によるパンデクテン体系の成立——一九世紀前半のドイツにおける法律学の近代化の一側面 (二), 産大法学41巻1号, 81-121.
- 6) 耳野健二 (2007). 学問によるパンデクテン体系の成立——一九世紀前半のドイツにおける法律学の近代化の一側面 (三), 産大法学41巻2号, 28-67.
- 7) (翻訳) ヨアヒム＝リュッケルト著/耳野健二訳 (2008). 「それは彼がバラを摘むことのできる野ではなかった……」のか? ——1789年以後の法律学的—哲学的基礎論へのグスタフ＝フーゴの寄与. *Historia Juris* 比較法史研究, 16, 47-108.



Division of Law (Law)

*** Professor Ryoko Yamaguchi**

- Area and Subject Taught: Civil Code
- Research Theme(s):
Family Law in Japan and the United States, Child Abuse Prevention Law
- Academic Degrees: Master of Laws, Kumamoto University
- Keywords for Research Field:
Family Law, Children's Rights, Parental Rights
- Office Phone Number: 81-75-705-1668
- E-mail: ryoko@cc.kyoto-su.ac.jp

[Research Overview]

My research mainly covers parent-child laws in the realm of family law. To be concrete, I focus on the comparison between Japan and the United States relating to (1) disputes to retain custody over children and the visitation rights after divorce, and (2) legal procedures in cases of child abuse and parent-child relationships during such procedures. My research is based on consideration of the relationship between state and family, or the three-sided relationship between state, parents and children. In the past, the state has not, in principle, intervened in family problems, in order to respect privacy. However, as seen in the abovementioned matters, it is very difficult to protect interests of family members without state intervention. In the United States, families are one of the major interests of the state, and because the nation tends to become too involved in family problems, active research is being done to find a balance between privacy and the state intervention. Referring to American law, I will explore the meaning of parental authority and how the rights of children should be recognized and claimed, forming a theory to clarify the grounds and necessities for the state to intervene in family problems.

[Notable Publications and Works]

- 1) Recent Developments in Parent-Child Relationships, Parental Rights, and Child Custody in Japan, The International Survey of Family Law 2008 edition, Jordan Pub 2008.
- 2) 「アメリカ法における親の権利と監護権—親の権利をめぐる立法と司法の政策」民商法雑誌136巻4・5号(2007年)561-594頁
- 3) 「アメリカにおける子どもの代理人制度—監護権訴訟と子どもの保護手続の場合—」判例タイムズ1208号(2006年)33-39頁
- 4) 「親の権利について—アメリカにおける家族のプライバシー議論からの一考察—」上智法学論集第48巻第3・4号(2005年)103-139頁
- 5) 「ドメスティック・バイオレンスと離婚後の子どもの監護に関する取り決め」民商法雑誌第129巻4・5号(2004年)534-559頁
- 6) 「アメリカの児童虐待法制度と日本の課題」吉田恒雄編著『児童虐待防止法制度—改正の課題と方向性—』(尚学社、2003年)188-224頁



Division of Law (Law)

*** Professor Hiromi Yamada**

- Area and Subject Taught:
Corporation Law, Securities and Exchange Act
- Research Theme(s):
Companies Law, Regulations on Securities and Futures Trading
- Academic Degrees: Master of Laws, Kanazawa University
- Keywords for Research Field:
Companies Act, Commercial Code, Securities Exchange,
Commodities Exchange
- Office Phone Number: 81-75-705-1691

[Research Overview]

I have been analyzing and doing research in legal problems relating to enterprises, especially stock corporations, by studying Commercial Code, Companies Act, Securities and Exchange Act, and Tax Acts. I attempt to clarify legal problems arising from the analysis of organizations and activities of stock corporations, trading of stocks and debentures, and the effects of corporation tax systems on corporate organizations and activities.

[Notable Publications and Works]

- 1) 「判例評釈」 表見支配人と営業所の実質（最判昭37・5・1）
『商法（総則・商行為）判例百選』別冊ジュリストNo.194（有斐閣）（平成20年12月）
- 2) 「判例評釈」 ジャスダック証券取引所の上場株式の上場廃止処分の適否（東京地決平18・7・7）
『私法判例リマークス』（日評）No.36（平成20年2月）
- 3) 「判例評釈」 証券取引における適合性原則違反と不法行為の成否（最一小判平17・7・14）
『私法判例リマークス』（日評）No.33（平成18年8月）
- 4) 「判例評釈」 取締役会決議を経ない取引の効力 最高裁昭和40年9月22日第3小法廷判決
『会社判例百選』71（有斐閣）（平成18年4月）
- 5) 「現代の商法・会社法」
『現代の法学入門4版』（中央経済社）169～208頁（平成18年4月）
- 6) 「商品先物取引の勧誘－最近の判例－」
『商品取引所論体系12』（全商連）36頁（平成16年3月）
- 7) 「英国の裁判所と社会福祉－司法と社会福祉のための覚え書き－」
『21世紀の法・福祉・医療』（中央経済社）331頁（平成14年6月）
- 8) 「判例評釈」 説明義務違反と証取法15条違反の責任 東京地裁平成12年4月26日判決
『私法判例リマークス』No.23（平成13年7月）
- 9) 「内部者取引と取締役の責任」
『企業の健全性と取締役の責任』438頁（有斐閣）所収（平成9年4月）
- 10) 「米国商品取引所法における詐欺禁止規制」産大法学30巻3・4号（平成9年2月）



Division of Law (Law)

Associate Professor **Kazuyuki Yoshinaga**

■ Area and Subject Taught: Civil Law

■ Research Theme(s):

Comparison between Principles of Contract Law and Trust Law with a Focus on the Effects of Bankruptcy Remoteness

■ Academic Degrees: Master of Laws, Kyoto University

■ Keywords for Research Field:

Mandate, Trusts, Account of Profits, Bankruptcy Remoteness, Property Management, German Law

[Research Overview]

There is no need to mention the importance of entrusting one's property to another person in modern society. Protecting the interests of entrusting persons through safe legal systems is quite beneficial for the whole social economy.

Among different themes discussed in this field (property management law), I am particularly interested in and researching account of profits and bankruptcy remoteness. The former raises the question: Where a party has entrusted its property to the other party, and the latter obtains unjust profits by misappropriating the property, will the entrusting party be entitled to claims beyond actual damages? (This topic is addressed in the first and second of my works listed below.)

The latter raises the question: Where a party who was entrusted a property by the other party has gone bankrupt, will the property constitute the bankruptcy estate? In what case will the property not so constitute? (This topic is addressed in the third of my works listed below.)

The long-term (10-20-year) objective of my research is to define contract law theory and private law systems in a larger sense through my research of the above-mentioned individual topics.

[Notable Publications and Works]

1. 「委任契約における利益の吐き出し請求権 (1) (2・完)―ドイツ法における受任者の引渡義務についての議論を手がかりとして―」民商法雑誌126巻4=5合併号613-653頁、同6号828-861頁 (2002年)
2. 「忠実義務論に残された課題に関する一考察―法制審議会信託法部会における議論の整理と分析を通じて」米倉明編『信託法の新展開―その第一歩をめざして』125-152頁 (2008年・商事法務)
3. 「ドイツ判例法における信託成立要件としての『直接性原則』―わが国における信託法理の射程についての研究序説」産大法学40巻3=4合併号177-247頁 (2007年)



Division of Law (Law)

Associate Professor **Aiko Wakasa**

■ Area and Subject Taught: Administrative Law

■ Research Theme(s):

Discretionary Function Exception in State Compensation Act

■ Academic Degrees: Master of Laws, Kansai University

■ Keywords for Research Field:

Immunity, Discretion, Remedy, Governmental Tort

■ E-mail: wakasa@cc.kyoto-su.ac.jp

[Research Overview]

Activities of administrative agency, including national or local government, must help the nation operate smoothly or improve citizens' lives. For that purpose, administrative agencies make and implement various plans based upon the law. To put it simply, activities of administrative agency are conducted under the law so that the citizen can lead peaceful and happy lives. But such activities may sometimes injure the rights and interest of certain groups of citizen or specific citizen. These injuries can be divided into two broad categories: intended and unintended in the law.

Administrative agencies were not held liable for such unintended injuries until the middle of the 20th century. However, the establishment of citizen's rights and interests has made it possible to pursue administrative liability as well as claim compensation. Unfortunately, all injured rights and interests are not entirely compensated; some administrative agencies are immune from damages even today. Through my research, I seek to indicate cases where activities of administrative agency are held legitimately immune.

[Notable Publications and Works]

- 1) 「裁量免責 (discretionary function exception) についての一考察—アメリカ連邦不法行為請求権法 (Federal Tort Claims Act) の判例より—」法学論集第51巻6号 (関西大学法学会, 2002)
- 2) 「アメリカ諸州における政府免責についての一考察—フロリダ州の判例より—」産大法学40巻第2号 (2006年11月)
- 3) 「アメリカ諸州における政府免責についての一考察—ミシシッピ州の判例より—」産大法学第41巻第4号 (2008年2月)