



Creating New Corporate Legal Systems for Mature Civil Society  
- Restructuring Legal Systems of Corporation,  
Finance and Capital Market, and Asian Challenges -

## Corporation Law and Constitution

The Quarterly Review of Corporation Law and Society Vol.21 featuring "Constitution and Economic Order" is a collection of accomplishments of the research on economic order and corporate system by renowned scholars representing the academic society of constitutional law. It was such an honor for someone like me specializing in corporate law and capital market legislation to speak at their first workshop held on January 11, 2009 (coordinator: Professor Toru Nakajima) and I needed considerable courage to do such a brave work. However, this kind of research exchange between different fields must be the ultimate meaning of the Global COE Institute. As the leader of the Institute, I ventured to state what I was always having in my mind. Japan's vertically-segmented administrative system is strongly criticized. Extreme sectionalism is also found in the academic society of law. Joint symposia of civil law and commercial law are rarely held in the academic society of private law. In such circumstances, I believe that our daily efforts to promote exchange between corporate law / capital market law and different fields such as basic law, labor law or constitutional law have certain significance for defining how Japan's jurisprudence should be.

Last year, I had an opportunity to visit several places in West Germany with my colleague Professor Kurumisawa for the Global COE project. What a pro-Japanese constitutional law Professor at Berlin Free University told me is still in my head. He asked me why Japanese commercial law scholars did not discuss the Constitution. Because I had some awareness of that issue, I answered that we were thinking about it. However, I recently came to think of the meaning of their sense that takes it for granted. Publicly-held corporation law deals with abstract capital. If we image – especially in Japan - corporate shareholders as investors providing such capital, we need not be aware of an actual human being consistently. The theory of publicly-held corporation law

which deeply had soaked in such a world was only a tool for management and nothing but a means. It seemed that speedy decisions of bureaucrats and managers like enlightened tyrants were surely needed in the impoverished postwar society. However, apparently the way as such does not work now. I recall the words of a renowned manager who was described as enlightened. He clearly said that it did not really matter as long as corporation law did not get in the way of management.

Corporation law which is kept open to civil society integrated with capital market (I have described it as publicly-held corporation law) has a focus on an individual or citizen named investor. It is the law which handles with an actual human being such as laborer or consumer and is based on the spirit of respecting fundamental rights in the Constitution. The law is also related to phenomena caused by bubble economy burst such as bankruptcy, unemployment, social unrest, and crimes (eventually wars) because it fights against easy bubble economy which often emerges in capital markets. This is an attempt to define publicly-held corporation law as a basic law for corporate society and civil society in that sense. By revealing the character of corporation law (financing premised on capital markets and corporate governance focusing on shareholders) which at least have tried to have balance between market and democracy, this attempt evokes the fact that the perspective of democracy was forgotten in the phenomena such as derivative, securitization, and fund. Those phenomena could be the cause of the recent financial crisis. The lack of democracy in financial capital market caused the corruption of global financial market. A huge burden is left to the people, especially the poor, who have to live under the financial market whether they want to or not. Such a mechanism was brought to the light of day. It is necessary to discard many people in order to get back the sparkle of financial capital market in crisis. To make one part shine brightly, we must make its surrounding area dark extremely. That is the theory in this world.

Various discussions are ongoing concerning the relations between the Constitution and civil law. Civil law is considered to be public order in the relations with consumers, companies, and markets. From an old-fashioned commercial law theory

such as Kotaro Tanaka's commercial color theory, it is no wonder that we call a significant part of civil law "the law of commercial transaction". If the commercial transaction law, which has not been revised since 1899, was still used and frequently revised, a significant part discussed in civil law would be commercial law. Large-scale publicly-held corporation which is a leader of legal person originally has its domicile of origin in civil law. Stock market cannot stay within the framework of civil law due to massive transactions collectively handled at one place. Both large-scale publicly-held corporation and something like stock market stated above especially have strong nature of public order. For that reason, if we fail to control them, a lot of serious human-rights problems will occur. The reality is that failures of corporations integrated with the highest level of capital markets are deeply involved with the causes of corporate bankruptcy, unemployment, crimes, and wars. If so, the law for those fields would be a nest of constitutional issues. If the relations between the Constitution and civil law are discussed, it would be no wonder that the relations between the Constitution and corporation law or the relations between the Constitution and capital market law should be also discussed.

The corporation system enables concentration or centralization of huge amounts of capital when it is integrated with capital market. There exists a huge gap between the vast power of concentrated capital and the human power of an actual human being. Without supervision or involvement by actual human beings in the process of generating the vast power and the process of deciding the way of using the generated power, the gap between people and huge fortunes having less legitimacy must be a house of truly constitutional issues.

Economic democratization or securities democratization in the postwar reform emphasized that capital market should be a place to integrate corporate society and civil society. Behind it, there is normative consciousness of the society focusing on individuals and there exist capital market and corporations where individuals or citizens are investors as well as shareholders.

If there is no civil society integrated with the concept of individual in Japan and instead, there are a lot of corporate investors and shareholders, the issues of corporations integrated with securities market must be nothing less than constitutional issues. More than Western countries, Japan has to stick to the composition of law having the constitutional basic rights alive in every corner. Such an effort

would be a path of bringing in the establishment of Japanese civil society. In my personal view, the jurisprudence of publicly-held corporations means that the corporation law focuses investors who are pre-shareholders by suspecting excess legal persons and excess authority with which one could "buy" in capital market. By doing so, the corporation law focuses on citizens and squarely looks civil society in Japan. I would like to emphasize that it is certainly the constitutional issue.

\* After writing this article, Professor Syoujiro Sakaguchi answered to my questions in "The issues raised by the Study of Corporation Law and Answers from the Study of the Constitution" published in Houritsujihou featuring "Asking the Study of the Constitution" (Volume 81 Issue 5, May 2009). I would like to show my deep appreciation for him.

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Professor of Law, Waseda University  
Director of Waseda Global COE, Waseda Institute for Corporation Law and Society

(This article was published as a prefatory note of the Quarterly Review of Corporation Law and Society Vol.21 and slightly modified for this newsletter. The Quarterly Review Vol.21 was a gem of articles by leading constitutional scholars and had a great deal of response to it. It is also viewed at our website.)

## UPDATE

### 2010 TEPIA IP Academic Encouragement Award

Professor Ryu Takabayashi, Vice Director of Waseda GCOE, was awarded Grand Prize of the 2010 TEPIA Intellectual Property Academic Encouragement Award by TEPIA, the Machine Industry Memorial Foundation for the IP precedents database project.

This project aims at providing a useful measure for researchers and practitioners to have discussions over the common materials contributable to the development of Intellectual Property Law which was established based on international treaties and has a certain degree of universality among different countries. To this purpose, the project will select important judicial precedents of Asian IPR cases, which have not been shared due to language barriers, add summary and notes to the precedents, translate them into English, and develop an open database accessible to anyone in the world on the Internet. The project started in 2003 with the cooperation of practitioners, academics, and judges in each country (as of 2010, China, India, Indonesia, South Korea, Taiwan, Thailand, Vietnam, Germany, France, and Italy). In 2005, Institute of Intellectual Property established the similar English database of Japanese precedents with the help of the RCLIP of Waseda Global COE, the Supreme Court of Japan, CASRIP (Director: Professor Toshiko Takenaka) of University of Washington School of Law (the US). In addition, we have held international symposia with the theme of IP enforcement, legal systems or precedents in each country which we came to know through this project. We believe that such activities are highly valued for this prize.

<http://www.globalcoe-waseda-law-commerce.org/rclip/db/>



### Presentation for Global COE Interim Evaluation Ended

The hearing of GCOE interim evaluation was held in July. Our GCOE's presentation can be viewed at our website. <http://www.globalcoe-waseda-law-commerce.org/houkenGCOE.pdf>

### The Announcement of proposing the establishment of AIR-PSM and PSM-J

“Asian Debt Listing Study Group(co-chaired by Professor Shigehito Inukai and Visiting Senior Fellow and Professor Syuji Yanase(attorney at law), Waseda University)”, Asian Capital Market Legislation Research of Waseda Global COE, made an announcement of proposing the establishment of Asian Inter-Regional Professional Securities Market, AIR-PSM and Professional Securities Market-Japan, PSM-J on April 20, 2010.

※Please visit the website for the detail (in Japanese). [http://www.globalcoe-waseda-law-commerce.org/activity/debtlisting\\_6.html](http://www.globalcoe-waseda-law-commerce.org/activity/debtlisting_6.html)

This proposal was announced as an accomplishment of a study on “the establishment of an effective professional securities market in Japan and Asia”. Based on “the Findings and the Proposal -the Feasibility of Asian MTN (Medium Term Note) Program” which was the accomplishment of the first and second phases of the JBIC (Japan Bank for International Cooperation) funded research from 2008 to 2009, “Asian Debt Listing Study Group” (co-chaired by Syuji Yanase and Shigehito Inukai) was established as part of “Asian Capital Market Legislation Research” with the cooperation of Waseda Institute for Comparative Law and Jurisprudence (Director: Tatsuo Uemura) and conducted the study over three months from early February to mid-April of 2010.

### The Quarterly Review of Corporation Law and Society

The Quarterly Review of Corporation Law and Society Vol.23 was published. They are viewed at our webpage (in Japanese).

### Feature: Bankruptcy Legislation in the Next Generation (Vol.23)

Message

Tatsuo Uemura

Part I The Report on the Bankruptcy Legislation in the Next Generation	Issues from the Field of Auditing –	Kunimichi Gamo
The Overview of Research on the Bankruptcy Legislation in the Next Generation	Part III Takeover Rules in Europe	
	Round-table Talk	
The Report on the Bankruptcy Legislation in the Next Generation – Value Allocation among Stakeholders in a Company in Crisis	The Reality of Takeover Rules in UK and Germany and the Suggestion to Japan	Michael Burian James Robinson Hiroyuki Watanabe
Chapter 1 Dealing with Companies in Crisis after the Collapse of Bubble Economy	The Reality and Practice of Takeover Rules in France [Dialogue with French Attorneys]	Hubert Segain Alexandre Chanoux Hiroyuki Watanabe
Chapter 2 Roles Played by Industrial Revitalization Corporation of Japan	Part IV Individual Articles and Translated Articles	
	Boarder Control of IP Infringing Articles at Chinese Customs	Cui Shaoming
Chapter 3 Changes in the Postwar Corporate Bankruptcy Proceeding Legislation	Enforcement Rules of 2009 Revision of Chinese IP Custom Protection Ordinance	Translation: Cui Shaoming
Chapter 4 Reexamination of Chapter 11 of the US Federal Bankruptcy Law and Opposing Theories	"Trusts without Equity" and Prospects for the Introduction of Trusts into European Civil Law Systems	Hiroyuki Watanabe
Chapter 5 Governance in a Company in Crisis	GCOE Note Sho Ogata · Jin Jing · Takaya Sakurazawa · Xiong Jie	
Chapter 6 Secured Debts and the Possibility of Utilizing the System of Requesting the Extinguishment of Security Interests		
Part II Internal Control Symposium		
Internal Control and Corporate Management under the New Law System – The Current Condition and the Future Issues of Internal Control –		
I. Securities Market and Internal Control		
1. The First Year of Internal Control Auditing Practice and the Future Issues – The Significance of Conducting Financial Statement Audit and Internal Control Audit Integrally –		
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3. The Current Condition and Challenges of SOX Internal Control in the US		
II. Corporation Law and Financial Instruments and Exchange Law – the Nature of Regulations on Internal Control –		
1. Corporation Law/Financial Instruments and Exchange Law, Internal Control, and Auditing		
2. The Issues Concerning an Audit Report of Board of Auditors – the Description over Internal Control –		
3. Internal Control and Corporate Response – Raising		

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## Symposium & Seminar

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### ■ Social Law Workshop No.1 – Job Insecurity and Finance and Tax System in Social Security Measure

(2010/5/8)

This workshop was held aiming at having theoretical and practical suggestions on the issues of job crisis and poverty which Social Law Research Group has been studying on. We invited Associate Professor Yuki Sekine of Kobe University and Professor Hiroshi Miyajima of Waseda University as speakers. Associate Professor Sekine talked on the issue of non-regular employment in Japan and the world ("Social Protection for Workers of Non-regular or Unstable Employment"). Professor Miyajima talked on "Employment/Social Security and Finance/Tax System"

Associate Professor Sekine explained about the scope and overview of workers of non-regular or unstable employment, adoption and problems of the basic social security services (public medical insurance, public pension, income compensation when losing job or taking leave, and public assistance). As the policy proposal for the future, she raised the issues including the overall expansion of the

social security system: expansion of the coverage employee's health insurance, intensifying promotion of national health insurance and public pension, measures for insurance premium burden to low-income earners. She also mentioned the establishment of transition period from the loss of jobs to public assistance.

After taking a broad view of finance and social security, Professor Miyajima outlined the significance of employment in social security and the employment measures of finance, the relations between workfare and basic-income and its institutional development using various data. It was pointed out that Japan had a significantly high population aging rate among major developed countries but a significantly lower tax burden ratio and spent low social expenditure when compared internationally. In addition, he pointed out administrative disruption between the existing policy of income security (cash benefit) and the policy of employment and welfare and concluded that cooperation and consistency was needed between two policies. Also, he introduced "refundable tax credit" adopted in the US as a hybrid tax policy of employment and welfare and evaluated the adoption of the policy in Japan.

#### ■ "Constitution and Economic Order" Workshop No.8 (2010/5/16)

This workshop invited Professor Asaho Mizushima of Waseda University and Associate Professor Mayuko Kasai of Daito Bunka University as speakers. First, with the theme of "Considering 'Privatization' of National Military Functions – Private Military and Security Companies (PMSCs) and 'External Constitution' (Aussenverfassungsrecht) –", Professor Mizushima discussed "external constitution" could impose restrictions in the midst of "fluctuation" of state monopoly of violence and "privatization" of authority. In the US and Europe, while PMSCs are taking a main role of national military functions, their legal positions are ambiguous. Professor Mizushima pointed out that the method of pursuing responsibility and controlling of their illegal acts was still primitive and lacks effectiveness. In addition, he discussed how pacifistic order in the Constitution of Japan confronts privatization of such military activities. Then, Associate Professor Kasai talked on "The Right to Exist and The Principle of Prohibiting Institutional Retrogression – Reviewing 'Freedom Right Effect' of the Right to Exist –". First, he introduced the discussions about the healthcare law reform and the conditions surrounding institutional retrogression the US. Then, he briefly

described arguments on "freedom right effect" of the right to exist in Japan (the right to receive benefits which is once embodied by law cannot be taken away in principle. It is against the Constitution to take away the right without legitimate reason). In addition, the proposal of the doctrine of institutional retrogression in academic theories and criticisms were introduced. He also introduced the proposal of the doctrine of institutional retrogression in a lawsuit of abolishment of age addition. He pointed out that in order for institutional retrogression to function, it was necessary to clarify what and how we should refer to in Article 25 of the Constitution when handling institutional retrogression. Many questionnaires were raised and vigorous discussions took place after the speech.

#### ■ Law and Society in Current/Former Socialist Countries – A Comparative Legal Analysis on the Present Situations No.2 "Socialist System and Law in China and Vietnam" (2010/5/21)

This project aims at inquiring into "the issues of socialism" from the perspective of comparative law. We will pursue this research goal through theoretical overviews of the idea of "socialism as a system" that was established in the 20th century and through analyses of the present situations in current/former socialist countries that are in the process of transformation and development in the 21st century. The second workshop was held with the theme of "Socialist System and Law in China and Vietnam", inviting Professor Nobuyuki Tanaka, University of Tokyo, and Professor Masanori Aikyou, Nagoya University. First, with the theme of "Emerging Market Economy and the Political Regime in China", Professor Tanaka talked about the leading role of Chinese Communist Party (CCP) which was questioned in the midst of economic reform. By verifying the typical issues concerning the state of fundamental organization of the CCP and clarifying the reality of changing organization, the lecture examined the capability of the political reform that the current regime was driving. Next, in his lecture titled "the Regime of 'Socialist Rule of Law State' in Vietnam", Professor Aikyou examined what this image of the state meant to Vietnam announcing that it should be a "socialist country ruled by law" in 1992 Constitution (revised in 2001). He briefly described the development of the theory of law-abiding country in Vietnam and also referred to the important topics such as the concept of establishing the Constitutional Court as well as the ongoing

constitutional revision.

【Commentator】 Professor Makoto Tajimi, Assistant Professor of Waseda University

【Organizer】 Waseda University Institute of Comparative Law

【Co-organizer】 Global COE, Waseda Institute for Corporation Law and Society (The Research Group in Fundamental Legal Studies)

**■ Law and Society in Current/Former Socialist Countries – A Comparative Legal Analysis on the Present Situations No.3 "Political/Social Change and Law in Latin American Countries" (2010/6/18)**

The third workshop of this project invited Professor Minoru Yoshida, Himeji Dokkyo University, and Mr. Michihiro Shindou, Lecturer of Josai University with the theme of "Political/Social Changes and Law in Latin American Countries". First, Professor Yoshida talked on "an Analysis on the Trend of Constitutional Issues in Latin American Countries". He reviewed the Constitution of the Republic of Cuba (1976) and its revisions as well as the recent new Constitutions in Latin America and then, examined the common problems in Latin America and the characteristics of the Constitution. Next, Mr. Shindo talked on "Actual Situations of the New Socialist Movement in Latin American Countries". He introduced the discussions over socialism of the 21<sup>st</sup> century in Latin American countries which aim to be the modern socialism (Venezuela, Bolivia, and Ecuador). Any of these discussions rejects the state of "socialist country" in the 20<sup>th</sup> century. Then, he went over the characteristics of these socialism theories.

【Commentator】 Prof. Kenjiro Iwamura, Assistant Professor of Waseda University

【Organizer】 Waseda University Institute of Comparative Law

【Co-organizer】 Global COE, Waseda Institute for Corporation Law and Society (The Research Group in Fundamental Legal Studies)

**■ International Symposium: Legal Issues Surrounding Medical Practice /Pharmaceutical Innovation: Update in US and Europe (2010/6/26)**

Part I "Legal Issues Surrounding Clinical Trial"

【Moderator】 Prof. Toshiko Takenaka, Univ. of Washington School of Law, Visiting Professor of Waseda University

【Speakers】

Prof. Masatoshi Hagiwara School of Biomedical Science,

Tokyo Medical and Dental University

Prof. Beth Rivin, Director, Global Health & Justice Project University of Washington School of Law

Prof. Patricia Kuszler, Director, Health Law Program, Professor of Law University of Washington School of Law Part II "Comparative Study of Patentability of Medical Methods: Impact on Life Science Ventures from Bilski Supreme Court Decision and Ariad Federal Circuit en banc Decision"

【Moderator】 Prof. Ryu Takabayashi, Waseda University

【Speakers】

Dr. Andrew Serafini, Fenwick & West LLP, Seattle, U.S.A.

Dr. Jan Krauss, Boehmert & Boehmert, Munich, Germany

Mr. Ryo Kubota, Chairman, President & CEO, Acucela Inc.

This symposium was held co-organized by IP Division, Tokyo Medical and Dental University, CASRIP of University of Washington School of Law, Waseda University Institute for Interdisciplinary Intellectual Property Study Forum (IIIPS Forum), and the RCLIP. It aimed at seeking the ideal IP system contributable to the development of medical services and drug discovery based on various problems in this field. In the Part I, the ideal state of justice and ethics in medical care and drug discovery were introduced. It was also explained that what kind of rights are owned by the related parties: donors of human tissues, cells, and genes, researchers using those materials, and universities paying for such a research. In the panel discussion, the panelists discussed the relations between justice, equity and charity and pointed out the necessity of profit return to trial subjects. The importance of redistributing information, access, and medical care instead of redistributing wealth was also mentioned. In the Part II, practitioners in the US and Europe explained about the description requirement and Mr. Kubota outlined drug development and venture alliances. In the panel discussion, there were various opinions. One said that patentable invention in the US was too broad comparing to Japan or Europe and the CAFC's decision on Bilski would be meant to have a certain restriction on that. Other said that from the viewpoint of benefiting the society, granting patent to machines should be the source of protection and the medical method itself should not be the subject of patent.

(Report made with the support of Motoki Kato)

**■ Professor Theodore Mock – International Auditing Symposium (2010/6/28)**

**[Speaker]** Professor Theodore Mock, Univ. of California, Riverside

With the theme of “Empirical Studies on Auditors’ Judgments”, Professor Mock made a presentation titled “Introduction to Audit Judgment & Decision Making Research”. Specifically, he made a detailed explanation on the methodology of empirical research. Then, using examples concerning audit judgment, a two-way seminar was held with the participants. The participants were separated into five groups. Each group made a presentation on the problems in the example in terms of auditing and had a discussion. Various participants included students, CPAs, business practitioners, and academics and fruitful discussions took place.

**■ Criminal Law Research Group Workshop No.10 (2010/7/3)**

Professor Yasuhiro Kanrei of Okayama University made a presentation titled “Regulations and Sanctions against Economic Crimes”. First, he analyzed the current condition of regulations on economic crime in Japan. Then, he examined the possible sanction models. Analyzing the problems concerning sanctions against corporations or legal person in Japan from the perspective of corporate punishment or compliance program, he insisted that regulations and sanctions must be intended for natural person. There were questions from the participants including what framework of sanctions is feasible in Japan which has various administrative organs, how different it is between criminal sanctions and administrative sanctions from a “quantitative” viewpoint, and why he excluded “legal person” from the subject of regulations and sanctions. An active discussion took place.

(Report made with the support of Shinya Onogami)

**■ RCLIP International IP Strategic Seminar  
The Latest Trend of US Patent Lawsuits:  
An Impact of the Supreme Court’s Decision on Bilski  
and En Banc Hearing on Inequitable Conduct (2010/7/9)**

**[Overall host]** Prof. Ryu Takabayashi, Waseda University

**[Moderator]** Prof. Toshiko Takenaka, University of Washington School of Law, Visiting Professor of Waseda University

**[Speaker]** Douglas F. Stewart, US Patent Attorney, Dorsey & Whitney LLP, Seattle

The seminar was held having two topics of ① “Recent Development in the Patentability of Software and Business method” and ② “Recent Developments in the Inequitable Conduct Defense Both in Courts and in Congress”. The first topic focused on the impact on the future practice of patent law by the Supreme Court decision on Bilski case ruled on June 28 just before the seminar. The second topic introduced the issues which have probable major impact on the prosecution, focusing on the Therasence case which is currently at the CAFC en banc and is expected to have a decision to clarify the standard on the that issue.



**■ Social Law Workshop No.2 (2010/7/10)**

Since last year, “Corporation, Civil Society and New Social Law” Group has held workshops having the theme of economic globalization and poverty of workers. Especially to consider the jobless problem of young people and to have theoretical suggestion, this workshop invited Professor Yuji Genda of University of Tokyo, who specialized in economics but was at the forefront of studying the employment issue of young people. In his speech titled “Toward Establishing ‘Lifetime Growth Employment System’”, he compared various data of six depression periods from the oil shock to the world recession of 2007-2009. He made an analysis of the characteristics since the end of the 90’s such as the trend of job creation and disappearance as well as the condition of non-regular employment. In addition, he discussed the policy of promoting “quasi-employees”.

**■ “Constitution and Economic Order” Workshop No. 9 (2010/7/11)**

This workshop invited Professor Noriyuki Inoue of Kobe University and Associate Professor Satoshi Yokodaido of Kagoshima University. Professor Inoue presented on “Competitive Restriction / State Monopoly and Consistency of Regulations —Regulations on Economic Activities and

Principle of Proportionality — ". Associate Professor Yokodaido presented on "Constitutional Law Study of Charity — Focusing on Tax Exemption to 'Charity' Organizations". First, Professor Inoue raised an issue of how we apprehend the meaning of "competitive order" constitutionally. Then, he outlined two decisions by the Federal Constitutional Court of Germany on competitive order. He examined the "consistency of regulations" raised in this two decisions and pointed out the similarities and differences. He concluded that consistency must be required for disciplines although legislative discretion should be admitted for the laws concerning competitive order. Next, Associate Professor Yokodaido described tax exemption as a representative example of governmental economic assistance to public-interest activities by private organizations and raised an issue of what regulations should be set to "tax exemption" to charity organizations constitutionally (especially an interpretation of Article 89 of the Constitution). He also outlined the definition of charity and the theoretical ground of exemption. After analyzing public benefit of charity organizations and constitutional norms, he insisted that it would be possible to read the requirement of following the constitutional value in "public control" (Article 89).

**■ Law and Society in Current/Former Socialist Countries – A Comparative Legal Analysis on the Present Situations No.4 "System Transformation and Law in the Former Eastern European Countries"**

(2010/7/16)

The fourth workshop of this research project invited Professor Akio Komorida, Kanagawa University as a speaker to deliver a lecture titled "Characteristics of the Process of Systemic Transformation and Law in Poland". Reviewing the year of "1989" when Poland started the "round-table conference" between the government and the other side, the lecture confirmed how political changes had occurred during the year. In addition, it examined the role of law for about 20 years to 1989 with the keyword of "social contract" and considered the goal of democracy in Poland for 20 years after that.

**【Commentator】** Mr. Fumito Satou, Part-Time Lecturer of Waseda University

**【Moderator】** Prof. Hiromichi Hayakawa, Waseda University

**【Organizer】** Waseda University Institute of Comparative Law

**【 Co-organizer 】** Global COE, Waseda Institute for

Corporation Law and Society (The Research Group in Fundamental Legal Studies)

**■Seminar: "Skepticism in Auditing" No.8**

(2010/7/24-25)

The workshop focused on the reality of judgments by auditors who appear in various aspects of balance sheets audit. Speakers talked from the perspectives of "fitness for purpose in finance and auditing", "a window-dressing case in the US which has officially taken up the ideal audit judgment in balance sheets audit for the first time", and "viewpoint of accounting auditor who engages in corporate law auditing".

Speakers:

Professor Yasuhiro Okunishi, Sensyu University

Professor Shinji Akizuki, Saitama University

Professor Kei Okajima, Takusyoku University

Professor Takatoshi Yahashi, Kansai Gakuin University

Associate Professor Tanori Suzuki, Waseda University

Associate Professor Hironori Fukukawa, Hitotsubashi University

Professor Yoshihide Toba, Waseda University



Column

**Companies' Entry to Agricultural Business**Kohei Kameoka  
Waseda Global COE · RA

In the research activities of this Global COE, various research groups have raised many issues and discussions. Among them, the fundamental law research group has worked to redefine basic concepts which are the premise of advanced study of law by conducting historical research as well as comparative law research and has been trying to make even firmer the entire research activity. Shedding light on the aspects in modern corporate activities, which are not generally taken up from the perspective of jurisprudence, could be also a beneficial issue raised by the fundamental law research group. This time I would like to go over companies' entry to agricultural business.

Last year, Japan revised the Agricultural Land Act. The revised topics include broad areas as the following. Traditionally, to obtain ownership and lease of agricultural lands, main requirements included: ①cultivation must be conducted in all the agricultural lands, ②the agricultural lands must be effectively used for cultivation, ③if an owner is a company, it must be agricultural production legal person and ④if an owner is a person, he/she must be engaged in agricultural work on a full-time basis (Article 3-2, each clause, the Agricultural Land Act prior to revision). While these requirements are almost maintained as they are (Article 3, Section 2, Clause 1, 2, and 4, the revised Agricultural Land Act), the revision added a new requirement such as ⑤having no impact on the use of surrounding agricultural lands (Clause 7). Having the above-mentioned requirements in principle, especially in the case of the right to lease, ③ and ④ are not required when the following three requirements are fulfilled; a. the contract includes the condition to terminate lease when the agricultural land is properly used (Article 3, Section 3, Clause 1), b. continuous and stable agricultural business must be done based on the proper role-sharing with other local farmers (Clause 2), and c. in a company, more than one operating officer must be engaged in agricultural work on a full-time basis (Clause 3). Concerning this revision loosening regulations, the collateral measure are prepared such as ⑤ which requires local harmonization. The measure include advice by agricultural committee and so forth in the case where an adverse effect takes place to the agriculture in the surrounding area after setting the rights (Article 3, Section 2, each clause), and the revocation of permission by agricultural committee and so forth in the case where the use is not canceled despite

improper use (Article 3-2, Section 2, each clause).

This revision could be considered as a goal of a series of deregulatory policies in order to promote Japanese agriculture having various problems including slumping food self-sufficiency and increasing abandonment of cultivation. Concretely speaking, this revision is expected to revitalize activities such as lease of agricultural land by companies other than agricultural production company ( for example, non-agricultural joint-stock corporations) as well as by organizations including non-farmers and NPOs which are based on agricultural settlement but aim to integrate tourism and agriculture.

While there are expectations for this revision, some criticisms have been raised. One is the criticism that has been made of companies' entry to agricultural business. In other words, especially when an urban company which has no relationship to agricultural settlement of the agricultural land is entering into agriculture by lease of agricultural land, there is a criticism whether the company could be continuously engaged in agriculture which has many natural constraints and is difficult to become profitable.

Furthermore, there is a criticism from the perspective of the future legal development. This revision accepted relaxation of regulations on the acquisition of the right to lease agricultural lands by non-agricultural companies such as joint-stock corporations. The criticism is whether relaxation of regulations is eventually demanded for obtaining agricultural land ownership also in the future. If the acquisition of agricultural land ownership is also allowed, companies will own lands for not production purposes but speculation or diversion purposes. There is a concern that it would rather impede the development of agriculture. On this point, there are some discussions. For example, it is said that such a concern could be removed by tightening regulations on diversion while opening the door for new comers by relaxation of regulations. The separation of regulations between the case of ownership and the case of lease in this revision seems unstable because it lacks a solid reason to be maintained as it is. It is highly possible that there could be movements of clearing double regulations through relaxation of regulations on ownership.

This revision caused a certain amount of changes in the lease market of agricultural lands. In addition, changes in the environment of agricultural settlement are expected. The above-mentioned discussions about expectations and concerns on companies' entry can be considered to be describing the current harsh collision condition between the logic of companies seeking profit and efficiency and

the logic of agriculture which should concern local harmonization and cannot ensure continuity only for profit, having the background that they have to seek the chance to survive in non-agriculture.

However, along with such a traditional way of thinking, we cannot miss the changes in the logics of both companies and agriculture. Under the current development of globalization occurring mainly in multinational corporations, the concept of nation-states is being relativized and the presence of corporations as bearer of public nature has increased. Also, it seems that characteristic changes of companies from the subject of mere economic activities have been occurring. On the other hand, in the side of agriculture, new management bodies of the existing settlement farming based on farm producers is seeking to adopt the concepts such as market or efficiency in order to maintain local agriculture (village). Such concerns must be huge in the issue of companies' entry to agriculture. However, separately from the theory of normative value of questioning what choice will be desirable for Japanese agriculture, it is necessary to observe what changes will occur in regulations in the form of laws from the perspective of jurisprudence, looking at internal and external changes of both companies and agriculture.

<Reference>

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