

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

Symposium: Transnational Market and Publicness

The international symposium: Transnational Market and Publicness was held at Okuma Hall, Waseda University, on June 22, 2012.

< The Ideal Shape of Japanese Corporate Society, Approached by Fundamental Theories >

With the globalization of market economy, transnational norms become a subject of analysis in the study of law and caused a lot of controversy. For example, these norms include multinational contracts, global agreements, model laws proposed by communities of countries, *lex mercatoria*, and good governance in the field of environment. In Japan, the issue of TPP also becomes a political challenge. In discussing these issues, it is an indispensable point of discussion to consider "how to perceive publicness or nationality at a transnational level in the globalization of market economy". There is a need for discussions to obtain fundamental perspectives on juristically perceiving the TPP issue while going back to the basic question, "what relations exist between market and state?" Also, discussing these issues will lead to questioning social structure and norms in Japan. With the theme of "Transnational Market and Publicness", the symposium invited Professor Tatsuo Uemura at Waseda University, Director of Waseda GCOE Institute, Professor Dr. h.c. Rolf Knieper at the University of Bremen, and Professor Jane Kelsey at the University of Auckland as speakers, and then, held a panel discussion.

First, Professor Yoshiki Kurumisawa at Waseda University first stated the intention and purpose of the symposium.



Next, Professor Tatsuo Uemura, Director of Waseda GCOE Institute, spoke on the theme of "the Logic of Market and the Logic of Democracy in Corporate Law System". In the speech, he stated that, when the ethics of democracy can not control the ethics of the market, runaway market can be a



means of destroying people's lives, for example, business failures, social unrest, and war. He pointed out that the ethics of democracy inherent in the stock company system scarcely existed in the global market. In the stock company system, limited liability belongs to a thing such as share of stock instead of people such as shareholders. Because of that, the world of things was separated from the corporation system which has the meanings of limiting people's liability. He concluded that, triggered by that, the overrun of the ethics of capital market started to be easily allowed and the global market also exists in the extension of such logic. In addition, the corporation system as a combination of the logic of market and the logic of democracy, which the Western civil society has spent a lot of time to create, holds the potential to be easily transformed to the combination of the logic of the market and the logic of dictatorship or the logic of anti-democracy in the global market. Professor Uemura pointed out that, especially in the non-Western states which lack the tradition of adhering to "individual", it was likely to be developed as something distant from the human world.

In the transnational market economy, wealth, which can be accumulated due to lack of democracy, is transformed to a means of sharp struggle for economic supremacy among nations (Max Weber / Exchange). Meanwhile, the original business objective of stock company is to maximize corporate goal and mission, instead of aiming to maximize wealth of shareholders or investors. Also, corporate governance is not a system to maximize shareholder's value but a discussion about where we should find the rationale of the legitimacy of management right. In each

nation, they should stick to the attitude of not accepting the authority of stock company system that does not have the rationale of the legitimacy of management right in that meaning. Professor Uemura concluded that, in the transnational market, the emphasis on nationality should be allowed in the point that the stock company system cannot be easily accepted when it lacks the governance system itself to secure the legitimacy of management right.



Next, Professor Dr. h.c. Rolf Knieper at the University of Bremen delivered a speech. He spoke on nations and markets, based on the thesis, which he had already mentioned in his book in 1976, “classical unification of nations and market economy

started to dissolve and it is necessary to reconsider the nation state system of law and economic regulation because it also started to have irreversible changes in terms of its traditional functions and effects”.

Historically, from the 80’s to the recent financial crisis, it is apparent that the world economy has been very fragile and interdependent, and a small matter in one region has a possibility to result in a world disaster. On the other hand, there is a complementary relationship between the market economy and nations. No market exists without legal frameworks or infrastructures by nations. Thus the speaker analyzed the relations between the market economy and states. In addition, he stated that nowadays when the market economy threw off national characteristic and also in the future, it was necessary for law systems, regulations, and infrastructures to get out of nation states. He also mentioned the concrete policies being conducted.

Next, with the theme of “Legal Issues of TPP from the Viewpoint of Transnational Public Governance”, Professor Jane Kelsey at the University of Auckland made a presentation. Professor Kelsey explained the background to the TPP and the current state of the negotiations, including Japan’s proposed participation. She stated that, in the background, there was the US strategy of isolating China and, in order to protect the interests of the US and its corporations, they aim to extend their Anglo-American

deregulation paradigm to the Pacific-rim region and make member states change their regulations to adapt to the paradigm.

Then, a panel discussion took place, moderated by Professor Yoshiki Kurumisawa. As panelists, Professor Akio Shimizu at Waseda University and Professor Seigo Hirowatari at Senshu University joined the discussion. With Professor Tatsuo Uemura, Professor Rolf Knieper, and Professor Jane Kelsey, they summarized the presentations and exchanged opinions with the floor. Professor Shimizu made a comment on Professor Kelsey’s speech, taking a positive view of TPP. Professor Hirowatari presented the critical perspective concerning the state of “structural reform” and “neo-liberalism” in Japan and European countries since the 90’s and reviewed Professor Knieper’s speech and Professor Uemura’s speech from the viewpoint of economist’s capitalism.

The content of this symposium will be published in our periodical publication, *Corporate Law and Society*, vol.33.



Symposium & Seminar

■“Constitution and Economic Order” Workshop No.18 (2012/05/20)

The “Constitution and Economic Order” Workshop No.18 invited Professor Hajime Yamamoto at Keio University and Joji Shishido, Associate Professor at University of Tokyo as speakers.

First, Professor Yamamoto spoke on the theme of “The Restructuring of Public Law Study in the World of Globalization”. Traditionally, constitutional law and international law had been independently-developed. Professor Yamamoto stated that these two disciplines should be reunited under the study of public law in the world of globalization and, with this perspective we should attempt the restructuring of the public law study.

Next, Associate Professor Shishido discussed the theme of “Privacy of Communications” from the viewpoint of the Constitution and Economic Order. He introduced the understanding of privacy of communications under the theory of constitutional law as well as under Telecommunication Business Act. Then, he explained the circumstances surrounding this theme. Citing concrete examples, he explained the regulations and so forth concerning communication recordkeeping obligation, harmful information against juveniles, child porno, and cyber crimes. Then, he concluded that, from the constitutional perspective, we should reconsider the current Japan’s condition, which is different from the original purpose of privacy of communications.

■International Symposium on Audit Research 2012 (2012/06/16)

Waseda University Global COE Program, Waseda Institute for Corporation Law and Society (Project C-2: Changes of Corporate Activities and Disclosure, Accounting, Audit, and Internal Control) held the symposium on audit (especially on audit of financial statements by CPA) from June 15 to 17, co-hosted by International Symposium on Audit Research (ISAR).

It was the first time for ISAR to be held in Japan. ISAR was based on Audit Judgment Symposium, which was established in the 1980s mainly by Theodore J. Mock, Professor of accounting at the University of Southern

California. Since then, it has continued its activity. Among the symposia on auditing, it has the longest history and had been supported by audit researchers from all over the world.

<International Symposium on Audit Research 2012>

Symposium Welcome and ISAR Overview

Yoshihide Toba (Waseda University)

Tatsuo Uemura (GCOE and Waseda University)

Theodore J. Mock (Chair, ISAR Scientific Committee)

Plenary Session II: Audit Quality and Corporate Governance Systems

JICPA Activities regarding Audit Quality

Shozo Yamazaki (President of the JICPA)

Audit Firms as Gatekeepers in Corporate Governance Systems: The U.S. after Sarbanes-Oxley and Japan after Olympus

Bruce E. Aronson (Creighton University)

Plenary Session III: Professional Skepticism in Auditing
Refocusing the Professional Skepticism Discussion: Doubt versus Critical Thinking

Kathryn Kadous (Emory University)

Constructing a Conceptual Framework of Professional Skepticism in Auditing

Yoshihide Toba (Waseda University)

Professional Skepticism – Challenges for the Independent Auditors in Japan

Koichiro Kimura (Chief Executive Officer, PricewaterhouseCoopers Aarata)

Moderator: Robert Roussey (University of Southern California)

※Program of ISAR2012

<http://www.globalcoe-waseda-law-commerce.org/ISAR2012.pdf>

■“Global Environment and Corporate Responsibility”

Workshop No.1

(2012/06/22)

【Theme】 “Various intellectual Aspects Surrounding Nuclear Safety”

【Speaker】 Hisashi Koketsu, Professor of Graduate School of Public Policy, University of Tokyo

【Coordinator】 Tadashi Otsuka, Professor of Waseda University

“Global Environment and Corporate Responsibility” Workshop No.1 invited Professor Hisashi Koketsu, University of Tokyo, as a speaker. With the theme of “Various intellectual Aspects Surrounding Nuclear Safety”, he spoke on nuclear regulation in Japan, comparing to mainly Sweden.

■ “Corporation and Criminal Sanction” Workshop No.17

(2012/07/07)

We invited Associate Professor Lv Yanbin at Chinese Academy of Social Sciences to speak on the implementation status of compliance program in the People’s Republic of China. Then, he had a discussion with the workshop’s participants, concerning the comparison with Japanese law.

【Speaker】 Lv Yanbin , Chinese Academy of Social Sciences

【Theme】 CSR and Compliance in China— Research Report and Analysis by Chinese Researcher

■“Constitution and Economic Order” Workshop No.19

(2012/07/08)

“Constitution and Economic Order” Workshop No.19 invited Professor Kenji Ishikawa at University of Tokyo and Professor Hidenori Moto at Nagoya University as speakers.

First, Professor Moto spoke on “The Constitution and Capitalism — Science to Fiction?: (Comparison) Memorandum on the Way to Describe the Constitution and 『the Method of the Constitution』”. First, he covered Yasuo Sugihara’s articles on “the Constitution and Capitalism” and explained its outline and characteristics. As to the issue of describing the history of the Constitution, he discussed how the “modern crisis” should be positioned and concluded that whether to consider it as the extension of the “modern

age” or as retranslation becomes an important issue.

Next, Professor Kenji Ishikawa delivered a speech on the theme of “the Constitution, Economy, and Order”. In his speech, he covered the relations between constitutional order and economy and the relations between economic order and the Constitution. Then, he explained that in Japan, the Supreme Court conducted the constitutional choice of economic order and pointed out that pluralism of social order or a convoy system became the constitutional choice. Also, he raised an issue: how we should consider the fact that the court becomes the most important bearer of economic regulation.

■Social Law Workshop No.2, FY2012

(2012/06/23)



As speakers, we invited Professor Kosuke Marutani at Saga University, who is a leading expert on the laws to support job seekers, and Associate Professor Mayuko Kasai at Tohoku-gakuin University, who is a leading expert on the study of the right to exist.

First, with the theme of “Theoretical Trends of Social Rights in the Constitutional Law Study”, Associate Professor Mayuko Kasai introduced the development of arguments concerning Article 25 of the Constitution, and then, she discussed the limitation which arises because the social right is abstract under the Constitution and does not have the nature of judicial norm.

Next, with the theme of “the Issues of Jobseeker Support Law in the Welfare Reform Act of the UK”, Professor Kosuke Marutani introduced the historical shift of welfare policies in the UK and the development of jobseeker support law based on the policies and explained the current movements. After that, the QA session took place and vigorous discussions were conducted on the significance in uniting labor law and social security law.

■ Global Patent Strategy Conference

The Impact of the US Patent Law Revision and EU Directive on IP Enforcement and Strategic Trend of Japanese Corporations

(2012/06/30)



In this seminar, we invited Professor Mark Lemley, Professor of Law at Stanford Law School, who developed the database of various information concerning patent litigation in the US, as a keynote speaker, to speak on the statistical analysis of patent litigation system under the Patent Act prior to the revision and the impact by the revision.

Then, through a panel discussion with the US and German lawyers who have a lot of experiences in litigation and Japanese patent attorney who experienced international lawsuits, we examined the advantages and disadvantages in exercising rights in the US and German courts and considered the offensive and defensive strategies in patent infringement lawsuits for Japanese corporations such as global forum shopping and so forth.



< Part I >

【Keynote Speaker】

Mark Lemley, Professor of Law, Stanford Law School
“Patent Enforcement in the United States”

【Panel Discussion】

“Pre-filing Issues”

(Warning letter, discover, forum shopping, and etc.)

【Moderator】

Christoph Rademacher, Assistant Professor of Waseda University

【Panelists】

Paul Meiklejohn, Partner, Dorsey & Whitney, Seattle, USA
Tilman Müller-Stoy, Partner, Bardehle Pagenberg, Munich, Germany

Felix R. Einsel, Partner, Sonderhoff & Einsel, Tokyo

Mark Lemley, Professor of Law, Stanford Law School

< Part II >

【Keynote Speaker】

Yoshihiro Endo, Intellectual Property Dept. at Honda Motor Co., Ltd.

“Trends in Global Strategies of Japanese Corporations”

【Panel Discussion】

“Allegation and Defense of Patent Invalidation”

【Moderator】

Toshiko Takenaka, Professor of Law, University of Washington Law School

【Panelists】

Jan Krauss, Partner, Boehmert & Boehmert, Munich, Germany

Christof Karl, Partner, Bardehle Pagenberg, Munich, Germany

Douglas F. Stewart, Partner, Dorsey & Whitney LLP

Hiroyuki Hagiwara, Partner, Ropes & Gray, Tokyo

Yoshihiro Endo, IPDept. at Honda Motor Co., Ltd.

【Closing Remarks】

Ryu Takabayashi, Waseda University

※For the detail, please see the Newsletter by Research Center for the Legal System of Intellectual Property.

■ ASEAN+3 Bond Market Forum(ABMF)
(2012/07/13)

ADR research team, which was led by Mr. Matthias Schmidt, visited Japan in July. On this occasion, at the ASEAN+3 Bond Market Forum, we asked them to show the research result conducted in Malaysia, Vietnam, Thailand, Singapore, and Korea, from June to July. In addition, opinions were exchanged concerning how to connect Tokyo Professional Bond Market with professional markets in Asian region and the issues and future visions were examined.

【Opening Remarks】

Prof. Tatsuo Uemura, Waseda University, Director of Waseda Institute for Corporation Law and Society
Mr. Tetsutaro Muraki, Tokyo Stock Exchange Group (CEO of TOKYO AIM) +ABMF SF1 Chair

【Part I: The Present Conditions in Each Country】

“The Present Conditions in Each Country”

Prof. Shigehito Inukai, Waseda University, ADB Consultant

“Status quo and details of each market visited- Malaysia, Vietnam, Thai, Singapore, Korea and Japan”

Mr. Matthias Schmidt ADB Consultant

“Follow up Comment”

Mr. Shinji Kawai ADB

【Part II: Free discussion with ABMF-J Members】

“Practical comments for the success of ABMIP”

Mr. Hiro Suzuki Barclays Japan

“Comment from the point of SF2”

Dr. Taiji Inui NTT Data, ADB Consultant

ABMF-J+ADB Free discussion and Q&A

【Organizers】

Waseda University Global COE, Waseda Institute for Corporation Law and Society
Tokyo Stock Exchange Group

【Cooperators】

Asian Development Bank (ADB), ABMF-J members

■ Japan-China Maritime Law Joint Workshop/Lecture**(2012/07/21)****【Opening Remarks】**

Koji Tsubaki, Director of Institute of Maritime Law, Professor of Waseda University

Shan Hongjun, Professor of Dalian Marine University

【Theme and Speaker】

Lecture (1): Recent Trends in Chinese Maritime Law

Speaker (1): Zhang Yongjian, Professor of Dalian Marine University

Comment: Norio Nakamura, Attorney at law, member of Institute of Maritime Law

Lecture (2) International Multimodal Transport in China

Speaker (2): Shan Hongjun, Professor of Dalian Marine University

Comment: Teruyuki Sago, Attorney at law, member of Institute of Maritime Law

Lecture (3): Marine Insurance in China

Speaker (3): Zhang Jinlei, Full-time Lecturer at Dalian Marine University

Comment: Miyuki Fukuda, Attorney at law, member of Institute of Maritime Law

 ※The following section introduces other major regulatory workshops(Feb-Apr). Please visit our website for the future schedule of workshops and registration information.

■ Consumer Law Precedents Workshop

2012/05/18

【Speaker】 Kazuko Kobayashi, Tsukuba University

【Theme】 Decision by the Third Petty Bench of the Supreme Court on October 25, 2011, Hanrei Times, no.1360, p. 88

2012/06/22

【Speaker】 Masakazu Harada, Rikkyo University

【Theme】 Decision by the Supreme Court on March 16, 2012, Financial Law Journal, no.1943, p. 76

2012/07/13

【Speaker】 Hiroyuki Kawachi, Meiji University

【Theme】 Suitability Rule and Accountability in the Internet Securities Dealing (Decision by the Osaka High Court on September 8, 2011, Financial Law Journal, no.1937, p. 124

■ Financial Instruments and Exchange Law / the US Capital Market Legislation Workshop

2012/05/25

【Speaker】 Izuimi Kawashima, Professor of Waseda University

【Theme】 Civil Liability Concerning Disclosure of False Corporate Information Under the UK Law—Development of Case Law—

2012/06/29

【Speaker】 Kenjiro Egashira, Professor of Waseda University

【Theme】 The Actual Condition of Shareholders at Listed Companies

2012/07/27

【Speaker】 Yasuhiko Kubota, Associate Professor of Osaka University

【Theme】 Squeeze-outs of Minority Shareholders and the Trend of Continuous Disclosure Duty under the Financial Instruments and Exchange Act — Asymmetry of Regulations on Continuous Disclosure Duty

■ Commercial Law Workshop

2012/05/07

【Speaker】 Nobuo Nakamura, Professor of Waseda

University

【Theme】 Decision by Tokyo District Court on September 29, 2011, Hanrei Jiho vol.2138, p.134

The Existence of Director's Duty of Diligence Concerning an Agreement about Stock Transfer Ratio

【Speaker】 Masahiro Yamashita, Professor emeritus of Osaka University

【Theme】 Decision by Fukuoka High Court on October 27, 2011, Kin-yu Hanrei vol.1384, p.49 (the case of Orix)

The Case of Incorporation-type Company Split Where the Doctrine of Piercing the Corporate Veil Was Denied and the Right to Request Avoidance of Fraudulent Act Was Allowed

2012/05/31

【Speaker】 Kandai Ukegawa, Professor, Komazawa University

【Theme】 Decision by the Third Petty Bench of the Supreme Court on April 24, 2012, Court HP LEX/DB 25444482

The Effect of Changing Conditions of Exercising Share Option and the Effect of Issuing Shares by the Exercise Violating the Conditions

【Speaker】 Keisuke Matsuoka, Professor, Sensyu University

【Theme】 Decision by the Third Petty Bench of the Supreme Court on March 13, 2012, Saibansho Jiho vol.1551, p.6, LEX/DB 25444376

Liability of the Person Who Submitted Annual Securities Report Contained False Statements (A Judgment at the Appeal Hearings on the Case of Institutional Investors of Livedoor)

2012/06/21

【Speaker】 Eiji Takahashi, Professor of Osaka City University

【Theme】 Decision by the Third Petty Bench of the Supreme Court on April 19, 2012, Kin-yu Hanrei vol. 1375, p.16 (Rakuten vs. TBS)

The Request of Purchasing Shares by Shareholders of the Company in Absorption-type Company Split and Reference Date of "Fair Value"

【Speaker】 Masayuki Yoshida, Professor of Niigata University

【Theme】 Tokyo District Court's Decision on March 30, 2011, Kin-yu Hanrei vol.1370, p.19 (the case of double click) Determining the Price of Shares Based on the Request of Purchasing Shares in the Cases Where There Is Synergy by Share Exchange

2012/07/09

【Speaker】 Seiichi Kosuga, Professor of Kaetsu University

【Theme】 Tokyo District Court's Decision on July 7, 2010,

Hanrei Times vol.1354, p.176

Headhunting of Employees and Director's Tort Liability

【Speaker】 Makoto Oshida, Professor of Surugadai

University

【Theme】 Osaka District Court's Decision on February 24, 2012, LEX/DB 25480533

Accountability Concerning Cancellation Fee of A Securities Firm Which Conducted Solicitation of Derivatives Transaction To An Incorporated Educational Institution

University

【Theme】 The Trend of M&A of Railway Services in Prewar Japan

【Speaker】 Toru Imajou, Associate Professor, Hannan University

【Theme】 Capturing Corporate Finance in Prewar Japan by the Accumulated Data: Its Structure and Historical Changes

■ Organizational and Financial Economics Seminar

2012/05/14

【Speaker】 Yoshiaki Ogura, Associate Professor, Waseda University

【Theme】 An Estimation of the Inside Bank Premium

2012/05/28

【Speaker】 Daisuke Miyakawa, Associate Senior Economist, Development Bank of Japan, Research Institute of Capital Formation

【Theme】 Time to IPO: Measuring the Contribution of Heterogeneous Venture Capital Syndications

2012/06/25

【Speaker】 Kazunori Suzuki, Professor, Waseda University

【Theme】 The impact of changes in Japanese tender offer regulations on bidder behavior and shareholder gains

2012/06/11

【Speaker】 Yuan Yuan, Associate Professor, Waseda Institute for Advanced Study

【Theme】 Effect of privatization on export through changes in Productivity and financial factors

2012/07/16

【Speaker】 Hidetomo Takahashi, Associate Professor, Hosei University

【Theme】 Does tax-loss selling affect turn-of-the-year returns? Evidence from the 2003 Capital gain tax regime change in Japan

Prewar Corporate Finance and Corporate Governance

2012/05/25

【Speaker】 Hideaki Miyajima, Professor, Waseda University

【Speaker】 Nao Saito, Associate Professor, Ferris University

【Theme】 The Significance of Analyzing Corporate Finance in Prewar Japan and the Direction of Summarizing the Research Outcomes

2012/07/13

【Speaker】 Hisataka Tanaka, Graduate Student, Waseda

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