

Perspectives on Japanese Law in a Changing Global Context

The University of Tōkyō Winter School, 4–9 February 2025

In the first week of February 2025, the Faculty of Law and Politics at the University of Tōkyō held its first Winter School on “Perspectives on Japanese Law in a Changing Global Context.”

Though styled as a “Winter School”, it was held in February, primarily because more pleasant weather could be expected—and although a winter atmosphere, including snow, was indeed to be found in other prefectures of Japan, the sun was shining bright at the University of Tōkyō’s historic Hongō Campus. The University of Tōkyō had generated a lot of excitement through a series of kind updates and communications in advance, and the 55 participants arrived looking forward to a varied program for the next six days.

On the morning of 4 February students from the University of Tōkyō who would also be attending the Winter School picked up the rest of the participants at their hotel near the university and took them to campus. After a short campus tour, which included two of the university’s famous landmarks, the Red Gate (赤門 *Akamon*) and Sanshirō Pond (三四郎池 *Sanshirō ike*), the participants were warmly welcomed at the law school building by Professor Tomohiko TATSUMI, Associate Professor at the University of Tōkyō’s Faculty of Law, who had co-organized the Winter School.

This was followed by the opening lecture, “Rule of Law: Perspectives in Japan and East Asia in a Changing Global Context.” In a panel discussion, Professor Dimitri VANOVERBEKE, Professor at the Faculty of Law with special expertise in sociology, together with Professor Ken ENDO, Professor at the Faculty of Law and Chair of International Politics, and Professor Kentarō MATSUBARA, Professor at the Faculty of Law and a legal historian, explained the sociological, political, and historical aspects of the rule of law. Developments regarding the rule of law in Japan were also presented, with a particular focus on reforms such as the introduction of law schools in 2004 and the introduction of the lay judge system (裁判員制度 *saiban-in seido*) in 2009. According to the lecturers, both reforms were intended to improve the rule of law in Japan but are only slowly leading to improvements. There was also discussion of the compatibility of a Western-style interpretation of the rule of law with other traditions—for example, of the combination of the rule of law and the rule of virtue in China. There were also interesting remarks on the “backsliding” of the rule of law based on data from the Rule of Law Index.¹

After a lively lunchtime exchange in the modern cafeteria of the University of Tōkyō, Professor Kōji TERAYA, Professor at the Faculty of Law specializing in international law and human rights, held the second lecture about “Exploring the Intersection of International Law and the Japanese Legal Order: With a Specific Focus on Human Rights.” Professor TERAYA began by giving a general overview of the historical context and implementation of international law under Article 98(2) of the Constitution of Japan² (the “Kenpō”), which he illustrated based on three cases. In the 1999 *Hamamatsu Jewelry Store Refusal* case,³ Article 2(1)(d) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was required to be considered in the interpretation of Article 709 of the Civil Code⁴ in disputes between private individuals. In the 2002 *Otaru Onsen Refusal* case,⁵ Article 14(1) of the Kenpō was interpreted in accordance with the ICERD, but no direct obligation of the state (in this case the city of Otaru) to end and prevent discrimination resulted; instead, the court found that the obligation was political. In the third case, the *Kyoto Hate Speech* case of 2013,⁶ the supremacy of international treaties over ordinary law was established, and Japanese courts were required to interpret these treaties in accordance with the constitution. Professor TERAYA also looked ahead to current and future developments, particularly in reference to the 2016 Act on Countering Hate Speech.⁷

The first day ended with a reception at the traditional Kadoya restaurant on campus. Vice Dean and Professor Shūsuke KAKIUCHI spoke, welcoming participants and setting the tone for the next few days of Winter School, which would be full of learning and interactions from and with one another. His speech was followed by lively conversation among the participants, lecturers, and a few guests and practitioners.

1 <https://worldjusticeproject.org/rule-of-law-index/global>.

2 日本国憲法 *Nihon-koku kenpō*, adopted on 3 November 1946.

3 Shizuoka District Court, 12 October 1999, 判例タイムズ Hanrei Taimuzu 1045, 216, English translation in: The Japanese Annual of International Law 43 (2000) 194.

4 民法 *Minpō*, Act No. 89/1896.

5 Sapporo District Court, 11 November 2002, 判例タイムズ Hanrei Taimuzu 1150, 185, English translation in The Japanese Annual of International Law 46 (2003) 163.

6 Kyōto District Court, 7 October 2013, 判例時報 Hanrei Jihō 2208 (2014) 74, English translation in Japanese Yearbook of International Law 57 (2014) 503.

7 本邦外出身者に対する不当な差別的言動の解消に向けた取組の推進に関する法律 *Honpō gai-shusshin-sha ni tai suru futō na sabetsu-teki gendō no kaishō ni muketa torikumi no suishin ni kansuru hōritsu* [Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons with Countries of Origin other than Japan], Act No. 68/ 2016.

The next day, Professor Carol LAWSON, Associate Professor at the Faculty of Law with a special focus on comparative criminal law, introduced the Japanese criminal justice system in her lecture “Evaluating Japan’s Approach to Criminal Justice: Paragraph or Pariah?” The aim of the lecture was to encourage participants to set aside their natural biases and question legal systems—especially their own. First, she discussed the *Ghosn* case, which gained international attention after former Nissan CEO Carlos GHOSN was detained on various charges and denied access to his lawyer. Reading various essays on this topic and its treatment in other legal systems, the participants engaged in an active group discussion to develop a more nuanced view of Japan’s as well as their own criminal justice systems. She followed this with an introduction to Japan’s parole system and a discussion on the special role of voluntary parole officers (VPOs) in Japan and their benefits to society.

After a group photo in front of the University of Tōkyō’s impressive historic main building, the participants visited the law firms TMI Associates, Nagashima Ohno & Tsunematsu, Mori Hamada & Matsumoto, Anderson Mori & Tomotsune, and Nishimura & Asahi in groups. This was a great opportunity for the participants to gain exciting insights into practicing law at Japanese firms and have interesting conversations with lawyers.

The third day of Winter School began with a fascinating lecture by Professor Simon VANDE WALLE, professor at the Faculty of Law specializing in competition law, on “Keeping Japanese Capitalism Fair: Insights into Competition Law”.

Professor VANDE WALLE began with a brief introduction to Japanese competition law and its four basic principles: no unreasonable trade restrictions (不当な取引制限の禁止 *futō na torihiki seigen no kinshi*), no private monopolization (私的独占の禁止 *shiteki dokusen no kinshi*), no unfair trade practices (不公正な取引方法の禁止 *fu-kōsei na torihiki hōhō no kinshi*), and supervision of mergers (企業結合規制 *kigyō kestugō kisei*).

Following this, the participants worked through three short competition law cases according to the rules of their own legal system and presented their results. This resulted in interesting insights into similarities, but also mainly into some significant differences between the various legal systems, which enabled a differentiated view not only of Japanese but also of the other represented legal systems’ competition law regimes.

In the following lecture, “Entertainment Law: Things You Need to Know about Japanese Entertainment Law,” Professor Takehiro KANEKO, Associate Professor at the Faculty of Law specializing in copyright, media, and sports law, gave an introduction to Japanese media law in which he referenced popular Japanese media such as manga, anime, and J-Pop, which are very popular worldwide as well as among the participants. In

addition to the basics of copyright law, Professor Takehiro KANEKO also brought up the tragic *Sexy Tanaka-san* case⁸ and the *Candy Candy*-case⁹ as examples of legal disputes that have arisen in these industries. In the former case, the author of the popular manga *Sexy-Tanaka* was found dead after expressing her dissatisfaction about the television adaptation of manga differing from the original. This sparked a discussion about the moral rights of authors and their right to integrity. The *Candy Candy* case dealt with the extent of the original author's copyright in a serialized manga—specifically, whether the artist's work is derivative of the work of the creator of the story. He also shed light on production contracts, the special features of the production committee system (製作委員会, *seisaku i'in-kai*), and prospective developments in media law.

The fourth day of Winter School began with a lecture on AI law by Professor Hiroki HABUKA, research professor at Kyōto University and visiting professor at the University of Tōkyō. He is also representative director of Japan's AI Governance Association and a licensed attorney in Japan and New York. The novelty of the subject matter, still quite unfamiliar to some participants, was already evident in the difficulty of establishing a uniform definition of AI. Drawing on the OECD's definition, Professor HABUKA guided students in compiling the various risks of AI and the objectives of AI governance. He gave an overview of the various regulatory frameworks developed so far, from the OECD's AI Principles of 2019 and the AI Guidelines for Business in Japan of 2021¹⁰ (updated in 2024)¹¹ to the EU's AI Act of 2024. Participants then discussed whether the rapid developments in AI required approaches other than often time-consuming legislation and whether corporate governance or a principles-based approach would be more effective in this regard.

After a short lunch break, participants toured the Japanese Supreme Court. The tour showcased the impressive building and explained the architecture and what it is meant to communicate. The participants were particu-

8 T.-H. HA, The internet goes in search of blame after the death of Hinako Ashihara, *The Japan Times*, 31 January 2024, <https://www.japantimes.co.jp/culture/2024/01/31/manga-artist-tv-drama/>.

9 Supreme Court, 25 October 2001, 判例タイムズ Hanrei Taimuzu 1077, 174.

10 我が国の AI ガバナンスの在り方 ver. 1.1 *Wagakuni no AI gabanansu no arikata ver 1.1* [AI Governance in Japan Ver. 1.1] https://www.meti.go.jp/shingikai/mono_info_service/ai_shakai_jisso/pdf/20210709_1.pdf; English translation https://www.meti.go.jp/shingikai/mono_info_service/ai_shakai_jisso/pdf/20210709_8.pdf.

11 AI 事業者ガイドライン (第 1.0 版) *AI jigyō-sha gaidorain* [AI Guidelines for Business Ver 1.0 Compiled], available at <https://www.meti.go.jp/press/2024/04/20240419004/20240419004-1.pdf>, English translation https://www.meti.go.jp/shingikai/mono_info_service/ai_shakai_jisso/pdf/20240419_9.pdf.

larly impressed by the airy courtroom, above which is a domed ceiling designed to allow judges to hear cases “under the sun.” The tour concluded in a meeting with Justice Katsuya UGA, who gave a vivid overview of the Japanese court system and then answered a few questions.

The last official day of Winter School began with another competition law lecture on “Corporate Law and Practice: Who Are Stakeholders and How Can They Make Corporate Activity Sustainable?” by Professor Tomoyo MATSUI, professor specializing in corporate and commercial law at the Faculty of Law. First, he explained the historical development and current role of stakeholders in Japan, followed by a discussion of the relationship between stakeholders and shareholders. Their interests can diverge to the point that initially, the question was whether shareholders should even be allowed to consider the interests of stakeholders. There are different approaches to this divergence; one is embodied in the U.S. Department of Labor’s “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights”, which permit various objectives as long as their pursuit does not jeopardize investments. One of the potential advantages that came up during discussion was the focus of externalities: in Japan, for instance, closures of theaters and museums, illegal waste disposal, and dilapidated roads. But consideration of stakeholder interests could also lead to politically motivated agendas and misguided investments. Activist hedge funds, which invest in companies in pursuit of interests of their own—for instance, climate protection—were also discussed, as was the effectiveness of litigation initiated by stakeholders (NGOs, governments, and consumers) as well as by shareholders (when the company fails to meet its targets).

Professor Masayuki TAMARUYA, professor at the Faculty of Law, specializing in Anglo-American law, comparative law, trust law, civil procedure law, constitutional law, and sports law, gave the Winter School’s final lecture, which was also a summary. The title was, “Wrap-Up—Why Study Japanese Law?”

Referring to the essay “Japan: The Harbinger State”,¹² he explained the advantages of comparative law from a Japanese perspective and went into Japan’s role as a “harbinger state”. One example was the development of the jury system around the world and specifically in the U.S., Japan, and Germany; while the composition of the jury is the same in Germany and Japan, German “jurors” serve significantly longer terms than they do in the U.S. or Japan, and the proportion of jurors required to reach a verdict differs in all three systems. Tort claims over environmental disasters in India, Japan, Russia, and the US were also compared in terms of liability limits, damages, and expenses.

12 P. Y. LIPSCY, Japan: the harbinger state, *Japanese Journal of Political Science* 24 (2023) 80.

Next to be discussed in a comparative law analysis were trusts and their various forms and history, with an outlook on Japan being a potential harbinger in trust law as well.

Finally, the participants shared their views on the topic and explained the added value of Japanese law (from a comparative perspective) for them. There was particular agreement that staying in one's own legal system invites a lack of foresight, and that Winter School had been eye-opening in this regard. Participants learned a lot not only about the Japanese legal system but from the many and diverse participants and from discussions in and outside the lectures.

The Winter School came to an official close that evening, with a farewell party at the Capo Pellicano Hongo restaurant, which offers a beautiful view of the campus. Professor Ryūji YAMAMOTO'S farewell speech also made it clear that the Winter School, as an opportunity for international exchange and learning, had been a complete success and will certainly not be the last event of its kind.

The participants, lecturers, and organizers spent the rest of the evening talking in a convivial atmosphere. Winter School had passed far too quickly, but much had been learned in a short time.

All the more wonderful, then, that a special excursion to Kamakura had been planned to take place before the participants' departure. Kamakura's historical significance had been known to the participants at least since the first lecture of this Winter School. In small groups, local guides showed Hase-dera Temple (長谷寺) and the Great Buddha of Kamakura (鎌倉大仏 *Kamakura daibutsu*) to participants even as the first plum blossoms were already blooming.

The participants ate lunch together and then had time to explore the city and marvel at a couple of wedding ceremonies that were taking place at the shrine of Tsurugaoka hachiman-gū (鶴岡八幡宮).

As they returned to Tōkyō in the evening sunset, the participants reminisced about the past few days and looked back on a week full of new insights and interesting perspectives. Whether through the informative lectures, the numerous activities, or their interactions with participants and lecturers, this Winter School was an absolute enrichment that hopefully—and probably—will not be the last of its kind.

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