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NOTES ON RECENT STUDIES IN JAPAN ON LAW IN THE PEOPLE’S REPUBLIC OF CHINA

In the last few years, research and interest in law in the People’s Republic of China (PRC) has found particular impetus in Japan, feeding and widening a debate which until recently had been limited to a relatively limited number of academic circles and relating to only a few aspects and problems.

The introductory notes which follow aim at sketching a picture, however succinct, of the tendencies over the past few years concerning both the themes being researched and discussed as well as the principle instruments (periodicals, specialized reviews, etc.) through which such debate has evolved. In order to trace such a wide-ranging report, we shall use, in addition to the written sources that will be cited as we go along, data and news – which are extremely precious – furnished to us by various Japanese professors, researchers and graduates during meetings and conversations with them in autumn 1986 in Tōkyō.

1. Past Situation and New Tendencies

A fundamental pioneering role in initiating and developing Chinese law studies in Japan has been played, in the unanimous opinion of those Japanese professors and researchers conferred with, by the studies and research of Prof. Fukushima Masao, now in his eighties, and in particular by his Law and Politics in China, published for the first time in 1966 and reprinted several times.

Undoubtedly, Prof. Fukushima’s studies and writings have profoundly marked the research and debate which have developed in this field in the past, by decidedly favouring Imperial Chinese Law, especially during the

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1 In particular, we refer to meetings and interviews with Prof. Nishimura Kōjirō, from the Institute of Comparative Law of Waseda University, and Prof. Kugauchi Hikota, from the Institute of Law of Waseda University.

Qing dynasty, emphasizing themes linked to criminal and civil law. As for law in the PRC and more generally modern law, studies—though relatively numerous—have in the past touched on various problems, without producing particularly significant research tendencies.

The fundamental importance of constitutional law within this field of studies appears, however, to be confirmed by analyzing the tendencies over the last few years. One of the greatest scholars on this topic, with particular reference to constitutional law in the PRC since 1957, is Prof. Nishimura Kojiro, author of numerous, interesting essays in various journals and in particular in *Hikaku Hōgaku* (Comparative Law Review), published by the Institute of Comparative Law of Waseda University in Tokyo.

Other relevant contributions on the topic have come, among others, from the studies of Asai and Tanaka, as well as monographic outlines published in various issues of the journal *Jurisuto* (Jurist).

Even today, research on other aspects and problems of law in the PRC appears, despite progress made, decidedly scarcer compared with that regarding constitutional law. In the last years, however, studies on themes relating to civil and criminal law, as well as commercial law, have expanded, while more limited progress has marked research on labour law and administrative law.

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1 Interview with Prof. Nishimura on 10 Nov. 1986. According to data furnished by an excellent bibliographical work which appeared about a decade ago, during a three-decade period (1946-1974), nearly a thousand studies on Chinese communist law both before and after the foundation of the PRC were published in Japan (books, articles, translations, abstracts, notes, etc.). According to this same bibliography, publications more generally on modern Chinese law—excluding communist law—are rather scanty. See Sung Yoon Cho (compiled by), *Japanese Writings on Communist Chinese Law 1946-1974: A Selected Annotated Bibliography*, Washington, Library of Congress, 1977.

2 Interview with Prof. Nishimura on 11 Nov. 1986. Such a judgement is substantially confirmed by the bibliography cited.


5 Cfr. Sung Yoon Cho (compiled by), *Japanese Writings on Communist Chinese Law 1946-1974*, who maintains that the themes studied most during the 1946-1974 period regard (apart from constitutional law) the structure of the juridical system, and agricultural reform and its associated laws; the best studied are civil and criminal law, administrative law and labour law.

6 Interview with Prof. Nishimura on 10 Nov. 1986 and with Prof. Koguchi on 11 Nov. 1986. Among others, see Nishimura Kojiro, «Chūgokumi okeru hō no keishōsei» (On the Inheritability of Law in China), *Hikakuhō Kenkyū*, 44, 1982, pp. 173-189; the Japanese translation of some important Chinese documents regarding administrative law, «Saikin no Chūgo-
The same Prof. Nishimura is a specialist in matters inherent to the relationship between law and economics in China, while Prof. Koguchi Hikota has established himself as a scholar in criminal law and procedure in modern and Imperial China and the relationships between political power and judicial power in the PRC.

The new tendencies which have characterized studies in this field in recent years are further confirmed by the positive development registered in the relations and exchanges between Japanese and Chinese scholars. Among the most important initiatives, we would like to point out: the visit to Tōkyō in 1982 of a delegation from the Chinese Academy of Social Sciences, guided by Prof. Yu Guangyuan; the conference held in Japan in 1983 by Prof. Wu Xiaying, from Beijing Daxue (Peking University), on law studies in the PRC; the conferences held in Japan in 1983 by Prof. Zhang Jingtu, from Zhongguo Zhengfa Daxue (Chinese University of Law and Politics), on the history of the judicial system in the PRC; the conferences held at Waseda University, again in 1983, by Prof. Han Yutong, Vice-Director of the Institute for Law Studies at the Chinese Academy of Social Sciences, on the situation of law studies and education in the PRC; the visit in 1984 of a delegation of Japanese professors in the PRC in order to conduct research and initiate contacts with Chinese scholars regarding the project «Scholars of Civil Code and Environmental Protection Law».

Positive indications can be noted also in the field of teaching Chinese Law in Japan. Among others, we would like to acknowledge the short but precious guide for students of Chinese Law prepared by Prof. Asai.

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kuni okeru gyōsei kanri-gaku no kenkyū to jissen» (Recent Studies and Practice of Public Administration in China), Hō to Seijyū (The Journal of Law and Politics), 37, 1, 1986, pp. 191-200. MUKAIYAMA H., 'Chūgoku rōdō no kenkyū' (Studies on Labour Law in China), Chuō Keizai Kenkyūsho kan, 1968, is still one of the most important works on labour law published in the last two decades in Japan.


See ASAI A., «Hōgaku» (Law), Tenkan suru Chūgoku (China is changing over), I, 1983, pp. 53-77.
2. *The Journals: a Brief Review*

Within the situation described above, it would seem useful to outline a concise picture of the presently existing situation in Japan with regard to the major journals of juridic studies which, regularly or occasionally, deal with problems having to do with Chinese law.

First of all, it should be pointed out that even today, extremely few specialized journals exist, and that the main studies on the subject often appear in periodicals that treat Chinese Law as a part of a larger subject (socialist law, international law, etc.).

Among the most important specialized reviews is undoubtedly *Ajia Hōgaku* (Asia University Law Review), published semestrially by the Institute of Law of Asia University in Tōkyō, which explores the new tendencies which emerge in various Asian countries and, in this setting, in China.

An important role is also played by the comparative law reviews, among which we would like to indicate: *Hikakuho Kenkyū* (Comparative Law Journal), published by *Hikakuho Gakkai* (Japan Society of Comparative Law), which dedicates a specific section of each issue to the study of law in socialist countries; *Hikakuho Zasshi* (Comparative Law Review), published by the Institute of Comparative Law in Japan at Chūō University of Tōkyō, in which reviews and news relating to Chinese Law and exchanges of scholars from the two countries often appear; *Hikaku Hōgaku*, already quoted, and *Waseda Bulletin of Comparative Law*, both published by the Institute of Comparative Law of Waseda University.

The same Waseda University also publishes other journals of juridic and non-juridic studies in which one can find articles on and news about Chinese Law: such is the case for *Waseda Hōgaku* (Waseda Law Review), *Hōkan Zenshu* (Collection of Studies on Law), and the *Waseda Journal of Asian Studies*.

A complementary, but not neglectible, function is played by Japanese journals specializing in studies on international law. Such is the case, among others, of *Kokusaiho Gaiho Zasshi* (The Journal of International Law and Diplomacy), published by *Kokusaiho Gakkai* (Japan Association of International Law), in which a precious bibliography of Japanese studies in the field appears periodically, and of *Gaikoku no Rippō* (Foreign Legislation), published by the Legislative Research Department of the National Diet Library, in which each issue has a review of materials and documentation available in Japan on legislation in foreign countries.

Rather valuable news and information on the tendencies in law in the PRC, in Taiwan and in Hong Kong can be found by consulting *Hōgaku Kenkyū* (Juridical Studies), a journal published by Hokkai Gakuin University in Sapporo, Hokkaido, in which comments on juridic studies in China and translations of articles in Chinese frequently appear; other valuable sources are sinological periodicals, such as *Chūgoku Kenkyū Geppō* (Sinological Studies Monthly).

To complete the panorama described above, those journals which, while not generally dealing with Chinese Law, sporadically include analyses and data on the subject should be mentioned. Two such journals are, among
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3. Conclusions

The brief picture outlined above seems to indicate a tendency towards a development, however gradual, and a qualitative growth of studies on Chinese Law in Japan. Naturally, such considerations cannot let us forget the neglect accumulated in past and the problems which are still open today.

We can see, in any case, that the vitality of the field is undeniable; the intense activity and numerous initiatives of the juridic studies associations testify to that. These associations, like the *Japan Society of Comparative Law* and the *Association of Socialist Law Study*, continually promote these initiatives in order to reinforce knowledge about the situation of law in China and to consolidate relationships between scholars from the two countries.