

## NACHRUF / OBITUARY

### Looking Back on the Accomplishments of Professor Zentaro Kitagawa

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Professor Zentaro Kitagawa was born on 5 April 1932 in Kyoto Prefecture. In 1951, after entering Kyoto University's Faculty of Science, he transferred to the Faculty of Law as a third year student and upon graduating in 1956 he enrolled in the graduate school at Kyoto University. In 1961, he completed his doctoral program and became an assistant in the Kyoto University Faculty of Law before being promoted to associate professor in 1962. In the same year, he was awarded his doctoral degree in the Faculty of Law. From 1963 to 1966, he attended the University of Munich in Germany as an Alexander von Humboldt Scholar. Following his return to Japan, in 1970 he was promoted to professor in the Faculty of Law at Kyoto University. Professor Kitagawa also worked hard in university administration, including serving as Dean of the Faculty of Law for two years from 1989. In 1995, he received the Medal of the Purple Ribbon from the Government of Japan for academic accomplishment. In 1996, he retired from Kyoto University and became professor emeritus, after which he transferred to Meijo University where he worked in the Faculty of Law and in the Law School until 2006. In addition, he worked as a Vice Director of the International Institute for Advanced Studies from the time of his retirement from Kyoto University until 2009. Even after retiring from these public appointments, he continued his tireless efforts both in Japan and abroad, until immediately prior to his passing away on 25 January this year.

Professor Kitagawa had a great many academic achievements during his career, and it is impossible to mention all of them. On this occasion, I once again looked back over the list of Professor Kitagawa's achievements, and even beyond my feelings of respect, I was reminded of my feelings of awe. Even in sheer numbers, he published 33 books (including revised editions) as sole author in Japanese, as well as one book he wrote in German and two books that were translated into Chinese. He was the editor of 26 books in Japanese, 8 in German and 13 in English. He authored 250 articles in Japanese and 210 other publications. He wrote 24 articles in German and 64 in English. He had 5 articles translated into Korean and 7 into Chinese. Altogether, this totals a list of 643 publications. Between 1960 and 2013, he published an average of 12 publications each year – in other words, one publication per month. His most prolific year was 1972, with 40

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\* Introduction at Professor Zentaro Kitagawa's Remembrance Function, of 23 June 2013.

publications in a single year. This was before the era of e-mail, computers and fax machines. How was it possible for him to produce such a number of works? Even in the years when he served as Dean of the Faculty of Law he published between 13 and 15 publications, and this included between four and six in foreign languages. I do not know what more to say other than this is unbelievable.

Nevertheless, it goes without saying, that what was most impressive about Professor Kitagawa's achievements was not quantity, but quality. His first book, *A Study on Contractual Liability* published in 1963, was above all visionary in its discussion of 'contract'. In post-War civil law jurisprudence in Japan, mainstream legal sociological studies focused on field studies of pre-modern social norms in family law and rural villages. In that context, even his highlighting of contractual breach in transactions was something new. Furthermore, he recognised a set of interests beyond those directly associated with the contract itself, instead spanning the pre-contractual, contractual and post-contractual phases of the parties' relationship. Professor Kitagawa proposed reconceptualising these broader interests as the basis for an expanded 'contractual liability' with respect to breach of contract. This vision set the direction for subsequent contract law theory in Japan. The book's approach has had tremendous meaning, becoming the starting point for today's influential trend of taking the contract as the foundation for dealing with these sorts of problems.

Following this publication, Professor Kitagawa went to study in Germany, as I mentioned earlier. According to what I heard from him, he initially planned to deepen his research on contract obligations. However, shortly afterwards he asked himself 'why is a Japanese legal scholar, who specialises in Japanese civil law, researching German law in Germany, far from Japan?'. He found himself caught up in fundamental doubts of this kind and ultimately shifted the direction of his research to focus on the relationship between Japanese and German law in an academic sense – that is, historically and methodologically. As a result, he found that although Japan's Civil Code was originally influenced by French civil law, German law had had a massive effect from the Meiji era to the Taisho era, and through this theory he identified that Japan's civil law had been transformed into a German legal-style system. This significance of this realisation was obvious in explaining this theoretically as 'doctrinal reception' (*Theorierezeption*) as opposed to 'black letter reception' (*Kodifikationsrezeption*). *History and Theory of Japanese Jurisprudence*, published in 1968, summed up these results, as did *Reception and Development of European Private Law in Japan*, published in 1970 in German.<sup>1</sup> These have come to form part of the shared heritage of academia both within and outside Japan, determining the direction of subsequent Japanese civil law scholarship.

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1 ZENTARO KITAGAWA, *Rezeption und Fortbildung des europäischen Zivilrechts in Japan* (Frankfurt am Main 1970).

In the 1970s, Professor Kitagawa developed research relating to the realities of contractual transactions by setting his sights on the relationship between law and social realities. This field of transactions continued to give rise to a variety of issues during Japan's period of high economic growth. Until that point there had not been much done in the way of practical research and it was an untouched field. In this context, Professor Kitagawa published a series of papers in the *NBL* journal, which was first produced by the Commercial Law Center, touching upon the realities of contractual transactions and surveying its theorisation. These were published in 1973 and 1976 in book form, as *Modern Contract Law (Volumes 1 & 2)*. These volumes were ground breaking in responding to a vacuum in the practising legal profession at the time, and in making contracts in practice a matter of academic interest.

Professor Kitagawa's interest in the topic continued to change over time and ultimately broadened to include standard terms and conditions, 'system contracts' and product liability among others, going beyond the framework of conventional civil law jurisprudence. For example, he was very quick to recognise the significance of consumer issues, and contributed as a pioneer to the establishment of the legal field of 'consumer law'. This resulted in *The Consumer Law System*, published in 1980, which he cultivated not only in view of private law but also public law, and this publication remains highly valued for conceptualising a comprehensive system of consumer law which encompassed regulation by both the courts and the administration. In addition, Professor Kitagawa proposed an original theory of intellectual property law, which, while it was based on the insights found in civil law jurisprudence, was also in tune with the times and based on acute insights into society and finance. His participation in the development of legislation and his active role in international conferences is especially worthy of mention, particularly within this field. This kind of pragmatic interest led to the creation of the 'Copymart' concept in connection with how intellectual property should be treated legally.

The Kyoto Comparative Law Center, established in 1981, became a supporting institution for his research promoted through his abovementioned connections to law in practice. Professor Kitagawa worked hard to push for forward-looking collaborative research activities among industry, government and academia during his time as director of the Center until 2005, and then as special advisor. This Center has come to play a major role as a hub between the worlds of academia and legal practice.

As I have mentioned, Professor Kitagawa's activities developed broadly, but I think that his interests were centered on a systematic understanding of civil law. Applying the traditional abstract and conceptual system of civil law, it is not possible to respond to various problems which arise as a result of the changing times and various social realities. To overcome this problem, we need to take civil law as a functional 'open system' that can provide a legal response to those problems and their solutions. This concept was illustrated in *Theory and Systems of Civil Law*, published in 1987. Professor Kitagawa's

concept was refined in the volumes *Outline of Civil Law (Volumes 1-6)*, published by Yuhikaku from 1995 to 1997.

However, to take it one step further, I would say that Professor Kitagawa's interest was not just in the solution of a problem, but in the comprehension of a problem itself. According to his conception it is possible to consider and appropriately position not only existing problems, but also any problems that may arise in the future. By securing a place for each matter related to civil law, a civil law system can be constructed on a meta-level which could subsume civil law as positive law even if its content will be somehow transformed. In this way, the world of civil law can be grasped in its entirety. What he aimed for was the academic implementation of this idea, and he continued to be a scholar, straight down the line, in the truest sense of the word. This is what I felt once more when I read his final article, 'The Basic Framework of Business Law', published in the *Civil and Commercial Law Journal (Minshoho Zasshi)* at the end of last year.

In addition to the achievements I have already outlined, Professor Kitagawa also played a leading role in international exchange. In particular there was his relationship with Germany, and following his initial studies abroad, this included visiting professorships at the University of Munich in 1974 and 1995, as well as at the University of Marburg in 1988 and 1994. In 1989, he received an honorary doctorate from the University of Marburg. He was also celebrated for his contribution to international exchange over many years. He was awarded the Philipp Franz von Siebold Award in 1984, and in 1991, he was awarded the Order of Merit of the Federal Republic of Germany (Merit Cross 1st Class) in addition to having a *Festschrift* published in honour of his 60<sup>th</sup> birthday. This project was planned by Professor Kitagawa's friend, University of Marburg Professor Hans Georg Leser, with Professor Tamotsu Isomura who was also a visiting professor at the University of Marburg, and most of the 59 authors who contributed manuscripts were German researchers. Professor Kitagawa also worked hard to promote international exchange with English-speaking countries – in 1969 he was a visiting professor at Harvard, and again at the University of Washington in 1973. In particular, *Doing Business in Japan*, which he edited and contributed to from 1980 and spanned a total of 10 volumes, is still well-regarded today as an important source of information regarding contemporary Japanese law, which can be accessed in English.

These activities in international exchange would not have been possible without Professor Kitagawa's excellent linguistic abilities. When I became his assistant, I observed him at a conference attended by Germans, Americans and Japanese, speaking in different languages as was needed – German to the right, English to the left and Japanese to the front – a recollection which had a significant impact on me. But it goes without saying that it is not language ability alone which makes international exchange work. More than anything else, I imagine the biggest contributing factor was the fact that his approach to problem-solving had such universality. The creative vision which he spoke of was much respected, often especially overseas. This speaks of the way in which Professor Kitagawa had a presence that went far beyond Japan as a country.

Undoubtedly, he would be unhappy for me to emphasise only his research activities, and rightly so. This is because Professor Kitagawa took pride in having put extraordinary efforts not only into research, but into education as well. In fact, he had over 600 seminar students, and this group has produced a large number of talented people in various fields. Even considering just the academics that I know personally, from among his former students there are over 10 Japanese alone, as well as countless former exchange students from Korea, China, the US, Germany and elsewhere, all of them leaders in their fields. This is the result of his educational abilities. However, this does not mean that he spoon-fed his students. Rather, in Professor Kitagawa's case, instead of teaching students something, his basic policy was to give each their freedom. This approach was well suited to the Kyoto University tradition. However, Professor Kitagawa added one further, very important point, which was that he only looked for each person's good points. Usually, if you are yourself skilled at something, you tend to find yourself looking at others in a negative light. But even if someone had a number of negative characteristics, Professor Kitagawa's habit was to say 'he does this well' or 'she is working on something interesting'. His pedagogy was to use those positive characteristics as the foundation on which to extend a person's abilities. Professor Kitagawa was not necessarily conscious of the fact that he did this in practice. I think that it came perfectly natural to him to view people positively. I am sure that people tried to go beyond themselves, precisely because they expected Professor Kitagawa to look at them in this way. For this, too, I am grateful to him from the bottom of my heart.

Lastly, please allow me to add a few personal remarks. The first time I received guidance from Professor Kitagawa was in a one-year seminar from the end of 1982. When I think back to it now, it was a great privilege to be a part of that seminar. Afterwards, I stayed on at Kyoto University at Professor Kitagawa's invitation and I was able to be mentored by him for close to 15 years until his retirement. Unfortunately, in recent times I have only seen him occasionally, at editorial meetings for the *Civil and Commercial Law Journal*, and he left us before I had the opportunity to talk to him properly. I regret that I could not tell him directly the kinds of things that I have said here. However I did hear from Professor Kitagawa's wife that on seeing his former students, including myself, having developed our careers, he had remarked 'I am proud'. If we look back at what he accomplished there is no match for him, even compared to the success that all of his former students had achieved in the aggregate. Typically, Professor Kitagawa sought to guide us with praise. The only way to repay our debt to such a teacher is by striving to do work that he would be truly proud of, and to do so in a way that bears even a little fruit from the seeds sown by him.