The Multiple Worlds of "*Nihon-hô*"

Hiroo Sono[*]

I. INTRODUCTION

Among the three worlds of Japanese legal studies ("Japanese law", "Japanisches Recht", and "*Nihon-hô*") identified by *Luke Nottage*,[1] "*Nihon-hô*" stands out as having a distinct character: it is multi-layered. I will start out in Part II by explaining what I mean by this. This perspective is important in assessing whether "Japanese law" and "Japanisches Recht" have had limited impact on "*Nihon-hô*". Today, we all know better than to compare Japanese business people/business practices with U.S. lawyers/law when we compare attitudes toward contracts in the two countries.[2] *Veronica Taylor* and Nottage

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* I am grateful to the participants of the CAPI (Centre for Asia-Pacific Initiatives) Colloquium "The Multiple Worlds of Japanese Law: Disjunctions and Conjunctions" (University of Victoria, April 3, 2001) for the helpful comments I received at the colloquium and at the online discussion which took place before and after our face-to-face encounter. I would also like to note that I had only limited access to Japanese law materials (both in the Japanese and English language) during the preparation of this essay. Citations remain arbitrary.

1 L. NOTTAGE, Japanisches Recht, Japanese Law, and *Nihon-hô*: Towards New Transnational Collaboration in Research and Teaching (in this volume, *supra* at 17). He develops on V. TAYLOR, Spectres of Comparison: Japanese Law Through Multiple Lenses (in this volume, *supra* at 11). I suspect that the worlds of Japanese legal studies are not limited to these three. For instance, judging from the nationalities of foreign students studying law in Japan (and especially in the case of Korea and Taiwan, judging from the history of pre-WW2 colonization), I imagine that Korea, China, and Taiwan have substantial amount of literature on law in Japan.

2 W. GRAY, The Use and Non-Use of Contract Law in Japan: A Preliminary Study, in: 17 Law in Japan 98 (1984).

are both well aware of this.[3] But they seem to make a similar mistake by comparing wrong "worlds". After assessing the interaction of the "worlds" of Japanese legal studies (maybe too) optimistically in Part III, I will then cast a critical light on the autism that plagues "*Nihon-hô*" in Part IV. Nonetheless, I will try to end in an upbeat mood.

Before I proceed, I must mention my background. I live in the world of "*Nihon-hô*", and "*minpô*" [Civil Code] in particular. I have had several encounters with the world of "Japanese law", but mostly that produced in the United States. I also regretfully confess that the world of "Japanisches Recht" has been truly foreign to me. Thus, I must almost totally exclude reference to "Japanisches Recht" in the following comments.

II. THE ANATOMY OF "*NIHON-HÔ*"

1. Primary and Secondary "Nihon-hô"

When Taylor and Nottage mention the world of "*Nihon-hô*" they are referring to the body of academic literature on law in Japan written in the Japanese language. This is "academic" in the sense that it may have no immediate practical consequences. However, there is another layer of "*Nihon-hô*" which is the law as it is practiced in Japan. I use the term "practice" broadly. It encompasses the activities of actors such as legislatures, the legal profession, bureaucracy, and even private citizens in so far as they have practical legal consequences on people's lives. It includes both the formal and informal enforcement of law. This layer of "*Nihon-hô*" is the "primary *Nihon-hô*". The academic "*Nihon-hô*" is "secondary *Nihon-hô*" ("Primary" and "secondary" as used in, e.g., "cases are primary material and law reviews are secondary material.")

2. Secondary "Nihon-hô" with an Internal Standpoint

The ultimate objective of "secondary *Nihon-hô*" as a collective is to influence the actors in the world of "primary *Nihon-hô*". However, individual works may not necessarily be intended to affect the actors. For example, the extensive comparative law articles written by virtually every Japanese legal academic are rarely intended to be used by practitioners. (If they are, they have problems with their presentation.) They are mostly intended to serve as building blocks and to give insights for further studies, which in

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3 For example, see, V. TAYLOR, Continuing Transactions and Persistent Myths: Contracts in Contemporary Japan, in: 19 Melb.U.L.Rev. 352 (1993); L. NOTTAGE, Economic Dislocation and Contract Renegotiation in New Zealand and Japan: A Preliminary Empirical Study, in: 27 Victoria U. Wellington L.Rev. 59 (1997); ID., Planning and Renegotiating Long-Term Contracts in New Zealand and Japan: An Interim Report on an Empirical Research Project, in: New Zealand L.Rev. 482 (1997); ID., Bargaining in the Shadow of the Law and Law in the Light of Bargaining: Contract Planning and Renegotiation in the US, New Zealand, and Japan, in: J. Feest/V. Gessner (eds.), Interaction of Legal Cultures: Pre-publications of the Workshop on Changing Legal Cultures 113 (Oñati International Institute for the Sociology of Law, 1998).

turn will affect the actors.[4] In this sense, it is useful to distinguish two sub-layers of "secondary *Nihon-hô*".

A typical example of the first sub-layer is the bulk of *kaishaku-ron* papers. They are characterized by their immediate concern of influencing "primary *Nihon-hô*". In other words, they have "internal standpoints".[5] These are addressed directly towards the legislators, judges, attorneys, prosecutors and other legal professionals. This can be attested by the fact that academics do not hold a monopoly in this field of writing. Contributors to this sub-layer include many practitioners (judges, attorneys, prosecutors, corporate legal department (*hômubu*) staff members, etc.). This sub-layer may be named "applied legal studies", or "*jitsuyô hôgaku*",[6] but in this paper, I will simply refer to it as "secondary-internal *Nihon-hô*".

Many residents of the "world of Japanese law" will consider this literature boring. To some degree, I share that sentiment. However, subjective tastes aside, there are many jobs out there that are boring but indispensable. Somebody must do this. If lawyers don't, who will?

3. Secondary "Nihon-hô" with an External Standpoint

In contrast to applied legal studies ("secondary-internal *Nihon-hô*"), the second sub-layer can be named "basic legal studies". Although the final goal of basic legal studies is also to affect various actors of "primary *Nihon-hô*", these studies do so only indirectly. Rather, this sub-layer intends to exert direct influence on "applied legal studies", which in turn will influence "primary *Nihon-hô*". A typical example, but not the only one, is the so-called *kiso hôgaku*. It consists of traditional interdisciplinary subjects such as legal philosophy, legal history, legal sociology/law and society, comparative law, and the new "Law-and" areas such as Law and Economics, Law and Negotiation, Law and Feminism, etc. Another example of basic legal studies is the descriptive analysis of case law, which tries to identify the state of specific areas of law (e.g., *Ichiryûsha*'s "*Sôgo Hanrei Kenkyû*" [Comprehensive Case Studies] series).[7] These studies are all philo-

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4 The conventional and increasingly contemporary criticism against Japanese universities as being "ivory towers" has little appreciation of this division of labour or the collective and multi-layered nature of academic research, and its autopoietic nature (cf. G. TEUBNER, Law as an Autopoietic System [Blackwell 1993]). Legal studies, in particular, are often naively denounced as being "useless for practice" (*jitsumu no yaku ni tatanai*). However, those studies that have immediate impact on "primary *Nihon-hô*" are only tips of icebergs. Of course, I do not mean to give the academic community license to do whatever they please. I personally believe that even when a research has no immediate practical consequence, researchers should always be conscious of its relevance to real life situations, no matter how remote the relevance may be. Otherwise, scholarship will remain a self-satisfactory project.

5 I do not know if this is the same as *H.L.A. Hart*'s terminology.

6 Jurisuto, presumably the largest commercial legal journal in Japan, proclaims itself to be a "*jitsuyô hôgaku zasshi*" [applied legal studies journal].

7 Yûhikaku's "*Minpo Kôza*" series published in the 1980s (E. HOSHINO ET AL. [eds.]) has a

sophical or empirical in approach. The boundary between the basic and the applied may be blurred at times (just in the way the American "Restatements" of various areas of US law are not always mere restatements), but their immediate concern is to understand, interpret, and explain the function of law. In that sense, they have an "external standpoint". For them, law is a subject of observation. Hence I will refer to this sub-layer as "secondary-external *Nihon-hô*".

III. INTERACTION

1. "Japanese Law" as Secondary-External

When we compare the multiple worlds of "*Nihon-hô*" classified above with the world of "Japanese law" posited by Taylor and Nottage, it is apparent that "Japanese law" in most cases has no intention to influence "primary *Nihon-hô*". It is secondary in nature and external in standpoint. Given this characteristic, it is understandable that "Japanese law" delivers very little "*kaishaku-ron*",[8] which is essentially internal in its standpoint.[9]

Of course, "Japanese law" may have its own practical agenda: i.e., to influence, for example, "primary U.S. law" or to provide practical legal advice to Americans interacting with Japan. Titles such as "Doing Business in Japan"[10] and "Law and Investment

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standpoint that is even external to "secondary-external *Nihon-hô*". They are collections of works that analyze the history and state of "*minpô gakusetsu* [academic commentary on civil law]".

8 However, there are examples of "Japanese law" literature containing case analyses from external standpoints. Among those with some flavor of black-letter-law are, for example, M. RAMSEYER, Japanese Antitrust Enforcement After the Oil Embargo, in: 31 Am.J.Comp.L. 395 (1983); M. RAMSEYER, Odd Markets in Japanese History (Cambridge University Press, 1996); F. BENNETT, JR., Legal Protection of Solar Access under Japanese Law, in: 5 UCLA Pac. Basin L.Rev. 107 (1986); ID., Clash of the Titles: Japan's Secured Lenders Meet Civil Code Section 395, in: Netherlands Int.L.Rev. 281 (1991); ID., Procedure, Precedent, and Business Practice under the Japanese Civil Code, paper presented to the August 1995 meeting of the Research Committee on the Sociology of Law (Tokyo); M. WEST, The Pricing of Shareholder Derivative Actions in Japan and the United States, in: 88 Nw.U.L.Rev. 1436 (1994); and C. MILHAUPT, A Relational Theory of Japanese Corporate Governance: Contract, Culture, and the Rule of Law, in: 37 Harv.Int.L.J. 41 (1996). Frank Bennett's articles cited above may even have internal standpoints, though. So does L. NOTTAGE, Form and Substance in US, English, New Zealand, and Japanese Law: A Framework for Better Comparisons in the Law of Unfair Contracts, in: 27 Victoria U. Wellington L.Rev. 247 (1996).

9 T. GINSBURG, In Defense of "Japanese Law" (in this volume, *supra* at 27) offers an alternative (and not mutually exclusive) explanation. His explanation covers the reason why one U.S. variant of "Japanese law" literature is more theoretical than "Japanisches Recht" scholarship. My explanation doesn't. However, to me, it rather suggests not a flaw in my theory but the rather puzzling purpose of "Japanisches Recht" world, as I understand it from NOTTAGE, *supra* note 1. I must leave this for further exploration in the future.

10 Z. KITAGAWA (ed.), Doing Business in Japan (Matthew Bender, 1980).

in Japan"[11] tailor also to this market, which flourished in the 1980s. Also, many "Japanese law" writings, although driven by their general interest in Japan,[12] are written in a fashion to affect the "primary U.S. law". However, their practical message portion is not directed to the world of "*Nihon-hô*".[13] Thus, "Japanese law" intersects with "secondary *Nihon-hô*" only to the extent that they share the external standpoint. And even then, they do not completely overlap because they have different purposes.

2. Little Impact?

If so, the question of what impact "Japanese law" has had on "*Nihon-hô*" should be asked primarily with regard to "secondary-external *Nihon-hô*". The contention by Taylor and Nottage that "Japanese law" has had little impact on "*Nihon-hô*" does not distinguish the multiple worlds of "*Nihon-hô*". When the right question is asked, a whole new picture emerges.[14]

First of all, works of "Japanese law", especially those that are translated into Japanese, have been extensively quoted in "secondary-external *Nihon-hô*". Mark West's work on *sôkaiya* [corporate racketeers][15] takes up substantial time in Kyûshû University's corporation law lectures. *Haley* and *Ramseyer*'s work on litigation rates are standard references, profiled for instance in a popular textbook on the Japanese judicial system.[16] As a result, they presumably have influence over "secondary-internal *Nihon-hô*", and may eventually have impact on "primary *Nihon-hô*", too.

One might say that these are exceptions and that most "Japanese law" literature is ignored. Maybe so. But then, secondly, how many "secondary-external *Nihon-hô*" have significant impact on "secondary-internal *Nihon-hô*" or "primary *Nihon-hô*"? I am not

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11 Y. YANAGIDA ET AL. (eds.), Law and Investment in Japan: Cases and Materials (Harvard University Press, 1994).

12 A typical example that shows the author's joy is M. WEST, Legal Rules and Social Norms in Japan's Secret World of Sumo, in: 26 J. Legal Stud. 165 (1997).

13 I will leave this as "your problem" for the time being, but will revisit it in Part IV to conclude that it is "our problem" after all.

14 It would also depend upon how one defines "impact" or "influence". In my definition, a view has "impact" or "influence" if it is considered to be relevant in the academic discourse. Whether people agree or not is a different matter.

15 M. WEST, Information, Institutions, and Extortion in Japan and the United States: Making Sense of *Sôkaiya* Racketeers, in: 93 Nw.U.L.Rev. 767 (1999), translated as *Naze sôkaiya wa nakunaranainoka – yusuri to kabunushi sôkai no hô to keizai-gaku* [Why Don't *Sôkaiya* Go Away? The Law and Economics of Blackmail and Shareholders' Meetings] (transl. by K. Osugi): 1145 Jurisuto 60; 1146 Jurisuto 114; 1147 Jurisuto 97 (1998).

16 S. MIYAZAWA ET AL., *Tekisuto bukku gendai shihô* [A Textbook on Contemporary Judicial System], (4th ed., Nihon Hyôron-sha, 2000). Haley and Ramseyer's works are available in Japanese. A translation of J.O. HALEY, The Myth of the Reluctant Litigant, in: 4 J.Japan.Stud. 359 (1978) appears in: 902 Hanrei Jihô 14 (1978); 907 Hanrei Jihô 13 (1979) (transl. by S. Kato) and Mark Ramseyer has his own *Hô to keizai-gaku: Nihon-hô no keizai bunseki* [Law and Economics: Economic Analysis of Japanese Law] (*Kobundô*, 1990).

proud about this, but my "secondary *Nihon-hô*" writings have had little impact on any other sub-world of "*Nihon-hô*".[17] I would also say that very few Japanese scholars have had or will have a direct impact on "primary *Nihon-hô*" in their lives. With regard to the limited impact "secondary *Nihon-hô*" actually has had on "primary *Nihon-hô*" in particular, *Makoto Ibusuki* attributes this to the tendency among many Japanese scholars to write about the "ideal" with little regard to actual practice.[18] However, writing about the "ideal" may have been true in the 19th century and up until 1960s, when an important role of legal scholars was to guide the courts. In those days, arguably, Japan adhered closely to the civil law tradition of "professorial law".[19] However, since then, the courts and the bar have grown strong and their expertise has expanded. Accordingly, the role of professors has diminished. Even their presence in various government councils (*shingi-kai*) is largely symbolic, and they are no longer power players in the field of policy-making or law-making.[20] (I hereby sadly report the death of professorial law tradition in Japan!) Today, no scholar in good conscience can write about law disregarding its practice. (However, I admit that Ibusuki's point may hold true to the field of criminal law in which he specializes as a criminal procedure professor.) Thus, I speculate that the reason that we have little influence is not in our attitude, but in the strength and resources that legal practitioners have already gained. In other words, the world of "primary *Nihon-hô*" is becoming increasingly independent. The relative qualitative dilution of Japanese scholars may be an additional reason.

If this is so, the impact that "Japanese law" has had on "*Nihon-hô*" is quite remarkable. Also consider the quantity of "Japanese law" in comparison to that of "secondary *Nihon-hô*". "Japanese law" has a much higher batting average.[21] So my point here is: patience, please!

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17 One modest exception is a piece I wrote on the relationship between private law and competition law: H. SONO, *'Dokkin-hô ihan kôi no shihô-jo no kôryoku-ron' oboegaki: keshôhin hanbai toku-yakuten keiyaku no kaiyaku jirei wo sozai ni* [A Memorandum on "The Validity of Contracts in Violation of Antimonopoly Law": With Reference to Cosmetic Distributorship Cancellation Cases]: 38 Kanazawa Hôgaku 263 (1996).

18 M. IBUSUKI, Why Do We Miss the Wood for the Trees: A Response from a *Nihon-hô* Scholar (in this volume, *supra* at 43).

19 As outlined in GINSBURG, *supra* note 9.

20 See, e.g., T. GINSBURG, System Change? A New Perspective on Japan's Administrative Procedure Law, in: T. Ginsburg/L. Nottage/H. Sono (eds.), The Multiple World of Japanese Law: Disjunctions and Conjunctions (Victoria BC 2001) 107; forthcoming also in the next issue of ZJapanR (*the editors*). The "*Hôsei Shingi-kai*" [Legislative Council], which dates back to the "*Hôten Chôsa-kai*" [Code Research Commission] in the late 19th century, and the current "*Shihô Seido Kaikaku Shingi-kai*" [Judicial Reform Council] may be exceptions. On the former, see generally, E. HOSHINO, *Hôsei Shingi-kai*: 9 Minpô Ronshû [Essays on Civil Law] (*Yûhikaku*, 1999). On the latter, see briefly L. NOTTAGE, Reformist Conservatism and Failures of Imagination in Japanese Legal Education, in: T. Ginsburg/L. Nottage/H. Sono (eds.), *supra*, at 132; and N. KASHIWAGI, New Graduate Law Schools in Japan and Practical Legal Education (in this volume, *supra* at 60).

21 Then, why is it that "Japanese law" scores better? It probably is because they make more

IV. THE AUTISTIC "*NIHON-HÔ*"

1. Globalization and the "Worlds"

So far, I have proceeded on a very conservative assumption that "primary *Nihon-hô*" is the main concern and problem for Japan. To put my assumption in general terms, primary laws are matters of each jurisdiction, and each sovereign nation state. Yet this view is increasingly obsolete in the age of globalization. The problem of "*gaikoku-hô jimu bengoshi*" [foreign law solicitors] has attracted a lot of attention from non-Japanese, for example, and many "Japanese law" articles were written to influence "primary *Nihon-hô*" on this issue. There, the standpoint of "Japanese law" no longer remained external.

Moreover, there is a growing body of "primary global/transnational law". In that world, we all share "internal standpoints", and legal studies (secondary law) of various countries start to converge[22]. At a regional level, this is most vividly seen in Europe today.

2. Autistic "Nihon-hô"

The question I pose at this point is whether "*Nihon-hô*" is ready for this. I must answer in the negative. But I believe early diagnosis will lead to cure. I will give one symbolic example, although I should mention that my expertise limits my analysis to the area of private law.

In November 1998, two major symposia were held consecutively in Tokyo and Kyoto commemorating the 100th anniversary of the Japanese Civil Code [*Minpô-ten*]. These centennial symposia were entitled "Legislation and Private Law in the 21st Cen-

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interesting and provocative points. Why Japanese don't write that way is a question Ibusuki eloquently answers using the metaphor of "the wood and the trees" (*supra* note 18).
Luke Nottage prefers another: "Foxes and Hedgehogs",
(<*http://www.iue.it/LAW/res/nottage/Foxes2new.html*>, forthcoming in Council Brief, the newsletter of the Wellington District Law Society), abridged as *Kitsune to harinezumi* [Foxes and Hedgehogs]: 1636 Toki no Hôrei 4 (2001). This probably is what I mean when I say "secondary-internal *Nihon-hô*" builds up the bulk of secondary *Nihon-hô*. In addition, the "*tatewari*" mentality (or territorial protectionism) of scholars maybe another cause. It takes certain amount of courage to cross boundaries. Two prominent exceptions among civil law scholars are *Zentaro Kitagawa* and *Masanobu Kato*. Kato even has a book on *Ten'nô-sei!* M. KATO, *Ten'nô* [The Emperor] (Ministry of Finance Printing Bureau, 1994).

22 TAYLOR, *supra* note 1, argues that Japanese law will increasingly be linked to other jurisdictions and cross-border transactions (e.g., in areas such as e-commerce; the activities of multinationals; the rise of multilateral and international law, and the regional transfer of law through legal aid development). Thus, she maintains that Japan is no longer legally insulated, and that Japanese legal studies can occur both inside and outside national boundaries. See also generally L. NOTTAGE, Practical and Theoretical Implications of the Lex Mercatoria for Japan: CENTRAL's Empirical Study on the Use of Transnational Law, in: 4/2 Vindobona L.J. 132 (2000); forthcoming also in Revue Juridique Polynesienne and (translated in) Kokusai Shôji Hômu.

tury: Private Law in the Age of Internationalization". Four panelists were invited from France, Germany, the United States (*Richard Hyland*), and the Netherlands (or rather E.U.: *Ewoud Hondius*). Incidentally, there were no Japanese. Further, both in Tokyo and Kyoto, time ran out with questions directed almost exclusively to the French and German panelists, who come from countries that had tremendous historical influence on all sub-worlds of "*Nihon-hô*". (Some were really "boring" microscopic black-letter-law questions, such as "tell me about the concept of property damages".) Admittedly, this was at an occasion of the 100th anniversary of the Civil Code, and black-letter-law questions may have been welcomed, but my impression is that "secondary *Nihon-hô*" (or secondary *minpô*) is taking the Code approach too seriously.[23] The panelists from E.U. and the United States, who were there to offer to look to the future,[24] were virtually ignored.

In addition to this backward looking mentality, the frustration I felt with the symposium was its autistic nature. It strikes me as odd that in a symposium dealing with the "Private Law in the Age of Internationalization", the topic of international unification or harmonization of law, or topics dealing with lex mercatoria, were not included. The most important instrument in this context is, of course, the UN Convention on Contracts for the International Sales of Goods (Vienna Sales Convention or CISG). It took effect in January 1988, and as of March 2001, nearly 60 countries are parties to it. CISG is starting to serve not only as a positive law applicable to international sales contracts, but also as a common framework of dialogue for lawyers who come from different legal traditions. The UNIDROIT Principles of International Commercial Contracts (1994) are also serving similar functions. They are a set of legal principles to be used in international commercial contracts in arbitration and possibly in courts. On the legal education front, the Willem C. Vis International Commercial Arbitration Moot, which takes place in Vienna every spring, has become an important vehicle in educating future lawyers in this field.[25] We are therefore witnessing an emergence of a supranational

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23 E. HOSHINO, *Minpô no susume* [A Recommendation of Civil Law] (*Iwanami Shoten*, 1999) is exemplary of this trend.

24 When Japan was commemorating the passing of one century, EU was looking into the new millennium. *Ewoud Hondius*' paper was entitled "Finding the Law in a New Millennium: Prospects for the Development of Civil Law in the European Union". Richard Hyland was also forward looking. He prepared an excellent paper entitled "Perspectives on Private Law Codification in America in the 21st Century" which he was not given time to present, even in part.

25 H. SONO/L. NOTTAGE, *Uin Baibai Jôyaku* (CISG) *to hôgaku kyôiku: dai-nanakai Willem C. Vis Mogi Kokusai Shôji Chûsai Taikai Sankaki* [The Vienna Sales Convention (CISG) and Legal Education: Chronicle of Participation in the Seventh Annual Willem C Vis Commercial Arbitration Moot Competition]: 67 Hôsei Kenkyû 745 (2001); *Uin Baibai Jôyaku* (CISG) *to hôgaku kyôiku* [The Vienna Sales Convention (CISG) and Legal Education]: 1186 Jurisuto 24 (September 2000). See also L. NOTTAGE, Educating Transnational Commercial Lawyers for the 21st Century: Towards the Vis Arbitration Moot in 2000: 66-1 Hôsei Kenkyû F1-30, 66-2 Hôsei Kenkyû F1-32 (available through <*http://www.law.*

legal community. But when we look at Japan, we find that it is one of the only two major trading nations that have not even ratified CISG (the other being the U.K.). So "primary *Nihon-hô*" is not at all ready to take on the challenges of globalization.

Neither is "secondary *Nihon-hô*" ready. It is still obsessed with what we can "learn" from other countries. Little is done to jointly build primary global law.[26] This is all the more shocking when we consider that Japan, with its scarce resources, cannot survive without international trade. The closing talk at the symposium given by an eminent Japanese civil law scholar, who is now a Supreme Court Justice, did mention CISG but in a very shocking way. He referred to CISG as an example of "Development of European Contract Law". Then he maintained that as such, it should be given more attention as a subject of comparative law, together with Lando Commission's "European Principles of Contract Law" and the UNIDROIT Principles. However, CISG, as well as the UNIDROIT Principles are not "European" developments; they are attempts in harmonization of (primary) international contract law. It is not "their" problem; it is "our" problem. Hopefully, things have improved in the two or three years since the incident, but the perception within "secondary *Nihon-hô*" may remain seriously distorted.

3. Demystification and Globalization

I conclude with a brief note about the impact "Japanese law" may have on the self-image of "*Nihon-hô*" in the age of globalization. The greatest contribution of the recent "Japanese law" literature is the message of "demystification" (as in the works by John Haley, *Frank Upham*, Mark Ramseyer and the younger generation).[27] If Japan is no longer a mysterious society, "*Nihon-hô*" can no longer be excused from the responsibility to contribute towards building primary global law. I have a dream that one day the worlds of "*Nihon-hô*" will converge not only with "Japanese law" or "Japanisches Recht", but also with the world of the global legal community.

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kyushu-u.ac.jp/~luke/visteam.html>).

26 *Takashi Uchida* has been making this point for quite a while. I vividly recall his breath-taking "stirring" at the 1998 *Nihon Shihô Gakkai* [Japan Association of Private Law] Symposium on "Obligation Law Reform" which took place a few weeks before the Centennial Symposium mentioned in the text. Most recently, see, T. UCHIDA, *Keiyaku no jidai* [The Age of Contract] 277-279 (*Iwanami Shoten*, 2000).

27 I have quoted Haley and Ramseyer's work elsewhere in this essay. Accordingly, I will cite one work by Upham here: F. UPHAM, Law and Social Change in Postwar Japan (Harvard University Press, 1987).

ZUSAMMENFASSUNG

Der Autor weist zunächst darauf hin, daß Nihon-hô aus drei Sub-Welten besteht: (1) Nihon-hô, wie es formell und informell durch verschiedene Akteure in der japanischen Gesellschaft praktiziert wird („primäres Nihon-hô"), (2) akademisches Nihon-hô, das auf die direkte Beeinflussung des primären Nihon-hô abzielt („sekundär-internes Nihon-hô") und (3) akademisches Nihon-hô, dessen unmittelbarer Zweck es ist, die Funktionen des Rechts zu verstehen, zu interpretieren und zu erläutern, anstatt direkten Einfluß auf primäres Nihon-hô auszuüben („sekundär-externes Nihon-hô"). Das englischsprachige Japanese Law teilt seinen Zweck einzig mit dem sekundär-externen Nihon-hô, und kreuzt sich mit diesem auf dieser Ebene. Auf diese Weise hatte Japanese Law, im Gegensatz zu Nottages pessimistischer Beobachtung, einen angemessenen Einfluß auf Nihon-hô. Der Autor vertritt zudem die Auffassung, daß es an der Zeit ist, daß das "sekundäre Nihon-hô" sich der Beeinflussung des aufkommenden "primären globalen transnationalen Rechtes" zuwendet.