[1] *- I. Special Lecture -*

This lecture was given on June 25, 2022 as a keynote speech at the 23rd Annual Conference on Technical Assistance in the Legal Field.

"Legal Technical Assistance and Juridical Science"

UCHIDA Takashi
University Professor, Waseda University
Professor Emeritus, the University of Tokyo

1. Difficulty of Legal Technical Assistance: Necessity for Juridical Science

Today, I would like to talk about "Technical Assistance in the Legal Field and Juridical Science."

Japan has been providing legal technical assistance for 28 years since 1994, when JICA's Vietnam Project was launched on a trial basis. During this time, many people involved poured their hearts and souls into giving assistance. I have had a strong interest in these activities and have wholeheartedly supported them. Although I have not directly contributed to these activities, I had the honor to be asked to deliver a keynote speech today. I would like to begin by explaining why.

I am originally a legal scholar specializing in the Civil Code; and in 2018 I wrote a book titled "*The Birth of Juridical Science*," a historical study of the early days of Japan's own legal development. According to the conventional understanding of the history of how modern Western-style law in Japan developed, Japan first received legal technical assistance from the so-called 'hired foreigners,' i.e., Westerners, and thus modern, in other words, Western-style basic codes were developed. Then, among these basic codes, for the Civil Code, which was essential for the establishment of the modern market economy in Japan, the elaborate interpretation theories of the articles of the Civil Code were introduced from Germany, and the system of elaborate interpretation theories of the Japanese Civil Code was created. The court practice of implementing the code was also developed based on this basis. I believe this is the common perception.

However, there is actually a large gap between creating a Western-style code with the assistance of Westerners and actually putting the code into practice, especially when developing the country's own interpretation theory for its implementation. I am sure that those of you who

[1] （当部注：本記事は、内田貴早稲田大学特命教授・東京大学名誉教授が、２０２２年６月２５日、第２３回法整備支援連絡会において「法整備支援と法学」と題して行った基調講演及びこれに引き続く質疑応答の全文を当部において英訳したものである。同講演及び質疑応答の原文は、ＩＣＤ ＮＥＷＳ第９３号８８－１１０ページを参照されたい。）

are actually involved in legal technical assistance understand this very well, but the fact that a code was drafted with the help of a foreign country does not mean that it can be implemented immediately. In order to implement modern codes, especially the ones that are highly abstract such as the Civil Code, we need an interpretation theory of the code. In order to develop an interpretation theory, we need a large number of legal concepts, and we need to share a certain 'intellectual world' in order to make legal arguments using those legal concepts. This intellectual world is what I call juridical science. I believe that Japan obtained its juridical science separately from the drafting and enactment of the codes, which is precisely why Japan was successful in the subsequent practice of the codes. However, for some reason, I think that the previous studies have forgotten these important steps between the development of the codes and their implementation.

In my book "*The Birth of Juridical Science*," I pointed out that it was only with the birth of juridical science in Japan that we were able to successfully implement Western-style codes, and I tried to clarify who contributed to the birth of this juridical science. To my honor, the International Cooperation Department (ICD) of the Research and Training Institute (RTI), which is involved in legal technical assistance, took an interest in my book and asked me to speak about Japan's experiences, described in the book, on the occasion of the visit of legal professionals from Laos to Japan in 2019. Following on from that, today, I was given the opportunity to speak at the Annual Conference on Technical Assistance in the Legal Field. The request this time was to 'talk about the role of juridical science in legal technical assistance.' Thus, the main theme of today is that the birth of juridical science in a country is necessary for the country to successfully implement the codes that were adopted with the assistance of a foreign country.

2. What is Juridical Science?

(1) Juridical Science as a Language

First of all, what is meant here by 'juridical science?' The word juridical science has multiple meanings, but I would like to explain a little more about what I mean when I mention 'the birth of juridical science.'

Students who study the Civil Code law for the first time in college are usually those who study a specialized subject of juridical science for the first time. That is why I always say in the first class of my civil code course, as an introduction to juridical science, that "Juridical science, metaphorically speaking, is like a language. Learning juridical science can be likened to learning a new language." When learning a foreign language, for example English, sometimes there is no one-to-one correlation between a Japanese word and its English equivalent. Words that exist in Japanese may not exist in English, and words that do not exist in Japanese may exist in English. Also, for example, when it comes to the names of colors, there are many detailed names for colors in Japanese, but some languages, not necessarily English, do not

have such names. In other words, the very structure of color perception differs from language to language, and I think this will make a difference in the way people think when discussing and thinking about colors.

As such, we can say that as a species, the way we think is defined by language, so learning a foreign language is not just a matter of changing the vocabulary, but actually switching to a different way of thinking. I often see bilingual Japanese-English speakers who seem to change their personalities the moment they switch from speaking Japanese to speaking English. I believe that this change is due to the change in the way of thinking, which also affects their personalities. Learning juridical science, even if it is expressed in the Japanese language, means learning a language system that is different from everyday Japanese, and you enter a world of thought that is different from that of everyday life. This is what I try to teach students in the beginning of their studies. Now, what kind of language is juridical science?

(2) Language of Law Formed in Ancient Rome

Western juridical science shares, at its core, concepts and principles formed in ancient Rome. The Civil Code itself is written in the language of their respective countries, such as French or German, but many of the concepts and principles used are derived from Latin concepts and principles that have been refined throughout European history since the ancient Roman law era. Even though they are ultimately expressed in the language of their respective countries, if we trace their etymology, we find that there is a common original language and that through it, a linguistic world that is like a universal language is formed.

However, in Japan, before the arrival of Western juridical science, there was no such thing as juridical science derived from ancient Roman law, so the basic concepts of Western juridical science did not exist in the Japanese language to begin with. For example, the word 'contract' has long existed in the Japanese language, but the abstract concept of contract as used in Western juridical science did not. Of course, there were no such concepts as claims or real rights, either. There was not even the concept of 'rights.' This seems a little strange, but the word for rights, '*ken*/*権*', did exist in Japanese. However, '*ken*' means power, as used in '*heiba no ken*/*兵馬の権*' (the power to unite the military). In contrast, the word 'right' in English has the connotation of being correct. The Japanese language has never had the concept of rights with this connotation. Furthermore, the concept of the English word 'society' did not exist in Japanese, either. There were words like '*yo*/*世*' or '*seken*/*世間*', but their nuances are slightly different. I think it is obviously impossible to think in the way of Western juridical science in a language that does not have the concepts of society or rights.

As a result, after the Meiji Restoration, Japan learned juridical science as a completely heterogeneous concept. There were very few extremely distinguished Japanese who learned it and reached a truly deep understanding. Surprisingly, these Japanese intellectuals, who had reached

an extremely deep understanding, mobilized their knowledge of Chinese studies to find the *kanji* (Chinese characters) corresponding to the Western concepts, and replaced the basic Western legal terms one by one with the Japanese *kanji*, thus creating a new vocabulary.

For your reference, NISHI Amane and TSUDA Mamichi of the late Edo period proposed a translation of the Western word 'society' as '*ai seiyou no michi*/*相生養の道*' (the way of mutual benefit). FUKUZAWA Yukichi proposed the translation '*jinkan kousai no michi*/*人間交際の道*' (the way of human interaction/socialization). In the end, however, neither of them took root, and the term '*shakai*/*社会*' was adopted for the translation. As a result, however, the original nuance of the English word 'society,' i.e., 'social interaction among people,' which NISHI, TSUDA, FUKUZAWA, and others had tried to include in the Japanese translation, was omitted. What I mean is, the characters '*sha*/*社*' and '*kai*/*会*' both merely mean a group of people, and thus have no meaning of association or socializing. Therefore, the English term 'social distance,' which came to be frequently used under the COVID-19 pandemic, when literally translated as '*shakai teki*/*社会的* (society-like) distance' did not convey its original nuance at all in Japan. If we had the flexibility to translate the English term 'social dance' into the proper Japanese term '*shakou*/*社交* (socializing) *dance*' instead of '*shakai teki*/*社会的* (society-like) dance,' I think 'social distance' should have been translated as 'distance of socializing' or 'distance of human interaction.' In any case, the Japanese term '*shakai*' (society)' has lost an important connotation contained in the original English word 'society.'

'*Kenri*/*権利*' (rights) in Japanese do not include the meaning of correctness contained in the original language it was derived from, either. FUKUZAWA Yukichi proposed the use of a *kanji* character for the second character '*ri*/*理*', with the same phonetics but used in conjunction with the word 'science/reason,' instead of the character '*ri*/*利*' used in conjunction with the word 'profit/benefit.' This conveys the nuance of the original language by using the concept of 'science/reason' in Neo-Confucianism. This other *kanji* character for '*ri*/*理*' in Neo-Confucianism means the principle or correctness inherent in things, and the English word 'physics' was translated as '*butsurigaku*/*物理学*' (physical science) because it is the study of the principles inherent in things. However, the translation for rights that used the *kanji* character used in 'science' did not become common in the end; and the character used in 'profit/benefit' is currently used. The result is that some of the connotation contained in the original language has been lost.

Next, I would like to talk about how the world of legal language, built on concepts and norms that date back to ancient Roman law, is involved in the implementation of the law.

3. Juridical Science to 'Create a Case'

To understand this, I think it would be useful to consider the thought process in the mind of a lawyer or judge faced with real-life dispute resolution. Real-life disputes are often very complex. I work as a visiting attorney at a large law firm, so I am often asked to consult on cases

the attorneys at the firm are handling. Many of these real-life disputes are very complicated, and the first step is to do some fact-finding to determine what the facts are. However, it is not uncommon for a case to be so complicated that even after the facts are determined based on the evidence brought in by the parties and the testimony of the people involved, it is still not clear what the cause of the dispute is or what the dispute is really about.

Attorneys in a civil case draw a picture of what the dispute is about by arranging the facts they hear from their clients or read from documentary evidence in a way that is as consistent with their clients' claims as possible. However, it is not uncommon for the attorneys of the plaintiff and the defendant to draw very different pictures of the case. In a trial, attorneys for both sides argue for their own respective pictures. The judge of the court of first instance, usually a district court, uses these arguments to evaluate the evidence in detail and to constitute what exactly the case is about. Note that I used the word 'constitute,' not 'discover.' It is not a matter of finding out what kind of case it is, but of creatively constituting it. Judges often describe this as 'creating a case.' When I temporarily worked at the Ministry of Justice, a co-worker judge told me that although he had worked for the Ministry of Justice for a long time, if possible, he would like to be a presiding judge at a district court again. When I asked him why, he told me because he enjoyed 'creating cases.' Now, what does this mean?

For example, if there is a fact that 'someone said something,' they evaluate whether or not it is a manifestation of intention. If there is a fact that 'someone was asked to do something,' they evaluate whether it is a contract for work, mandate, or employment. In making such evaluations, they replace the real relationships that exist between the parties involved with the relationships of rights and obligations. That is, they select the legally meaningful facts from a complex reality filled with various intricate facts and replace them with legal concepts, and then constitute the relationships between the parties involved into legal rights and obligations. This is what he meant by 'creating a case.'

The relationships of rights and obligations expressed in legal concepts do not represent reality. They are, so to speak, the transposition of raw facts into the "virtual space" of law. By doing so, disputes that would be difficult to handle by simply looking at the raw facts can be reduced in complexity and replaced by clear relationships of rights and obligations by transplanting them into the virtual space of the law. This is where lawyers show their skills. A good lawyer can constitute a case with clear rights and obligations where an ordinary lawyer would stumble. This is also where a judge's competence is demonstrated. Also, from the perspective of a party's attorney, if he or she can draw a picture of the case that convinces the judge to think "I see, so this is what this case is all about," then the attorney has as good as won the case. This is another situation where the skills of lawyers come into play. What lawyers use here, a certain kind of language system, is what I call juridical science.

As you can see from what I have explained, I think we can say that juridical science is a

language that transplants raw reality into the virtual space of law. And in this language, strictly defined concepts and norms are systematically accumulated, in other words, in layers according to the degree of abstraction, and when you enter this linguistic world, you will find that there is a unique way of thinking. A legal professional who has mastered this language of law to perfection may resemble a wonderful translator, to use an example from the literary world.

A translator who translates a foreign literary work into well-written Japanese has a deep understanding of the foreign language as well as the ability to express it in Japanese. Similarly, a good legal professional must have a deep understanding of the real world in which the dispute arises; for example, in a computer system development dispute, he or she must be able to understand, from the point of view of the parties involved, what the facts expressed in everyday or industry terms mean in the industry. At the same time, however, it is also necessary to have a thorough command of the language of law and to be able to express oneself well in that language.

This ability is quite similar to the ability to use a language, the level of which can vary greatly depending on one's proficiency. In this respect, it may be somewhat different from the natural sciences. The empirical natural sciences develop through the discovery of new facts and new laws that explain these facts. In contrast, juridical science is not a science that discovers new facts, but rather something that needs to be mastered like a language. In this sense, it may be more of an art or a craftsmanship than a science.

4. Legal Development and Juridical Science

(1) Legal Development and Juridical Science in Japan

How did the Japanese people come to acquire such juridical science? Let's explore this by looking back at history. For example, the French created the French Civil Code in 1804, and the Germans created the German Civil Code in 1896. In creating such codes for themselves, they first needed a mature juridical science to precede the creation of codes. In other words, juridical science must exist prior to the codes. However, this view may not be shared in Japan.

In Japan, some people may think that juridical science is the study of interpreting the codes, but originally, juridical science existed before the codes. For example, the concept of contracts and the concepts necessary to regulate various types of contracts, such as sales contracts, service contracts, and leases, existed first and made it possible to transplant the reality of commercial transactions at that time into the virtual space of law and create articles of law in this space. Also, the concept of ownership and various concepts regarding the use of land, which was important at the time when the Civil Code was created in Europe, especially that of agricultural land, already existed, owing to which it was possible to transplant the reality of the time regarding the use of agricultural land into the virtual space of law and write the customary norms there in the form of articles.

When the French Civil Code was created, there were voices in Germany: "A civil code was created in a neighboring country. We should make a civil code, too." A scholar named Thibault made such an argument, but a scholar named Savigny opposed it, saying, "The drafting of a code requires a mature juridical science, but German juridical science has not yet reached that point." This is the famous 'Thibault v. Savigny' controversy, known as the German Code Controversy. If this was the case, was neighboring France well prepared for juridical science? Savigny also harshly criticized France. Maybe he thought he had gone a little too far and explained himself later. Here is what he said. There was a famous French legal scholar in the 18th century named Pothier, who was called the father of the French Civil Code, and his name was known throughout Europe at that time. Savigny wrote about him as follows:

> I have not the slightest idea of underestimating Pothier; on the contrary, I rather consider the juridical science of the nation with many such men as he to be desirable. But the academic world of juridical science, in which there is no one but him, and in which he alone is respected and studied, almost as if he were the source of law, deserves sympathy.

This statement about France was pretty harsh. However, whether they were well prepared or not, France had accumulated a juridical science since ancient Roman law. And Germany, which enacted its Civil Code nearly a century later, had accumulated a sophisticated juridical science based on the Roman law as well. In other words, the systematic refinement of the language of law from ancient Roman law, and then the internalization of that language in the minds of legal professionals, made it possible for them to recognize their country's legal norms as legal norms and to express them in the form of articles. The people who have accomplished such legislation can, of course, use the juridical science they have used to create and implement their own codes. However, when a code is created through the reception of foreign law, it is possible to create a code even if the juridical science of the country is not necessarily mature, or even if there is no such thing as juridical science to begin with. However, in such a case, even if a code is created, it does not necessarily mean that the juridical science to implement the code is ready.

So, how was juridical science established in Japan? This is the subject of my book "The Birth of Juridical Science," and I would like to briefly introduce its main points.

(2) Legal Technical Assistance by Hired Foreigners

The era in which Japan developed its laws was the era of imperialism. At that time, if Japan had sought legal technical assistance from a particular foreign country, Japan would have come under the overwhelming influence of that country, or, in the worst case, would have become its colony. Therefore, the Japanese sought out promising foreign legal professionals, concluded individual contracts with them directly, and paid them large sums of money for their assistance. Looking back at the history of the Meiji era, the period that can be called the era of legal devel-

opment to make Japan a modern nation lasted about 30 years from the first year of the Meiji era (1868). During that time, they entrusted the teaching of law to hired foreigners, commissioned them to draft codes, and sought their advice on various legal matters. For example, the Frenchman Boissonade, who came to Japan with an offer of six times the salary he received in Paris, drafted the Penal Code, the Code of Criminal Procedure, and the Civil Code, and advised the government on international law. He first came to Japan in 1873 and stayed for about 22 years. Also, Roesler, a German who assisted ITO Hirobumi and others in drafting the Constitution and drafted the Commercial Code, came to Japan in 1878 and stayed for about 15 years. In other words, during the years of Japan's legal development, Japan relied on foreigners for the first 30 years or less.

During this period when Japan relied on hired foreigners, it also devoted its energies to cultivating its own human resources. Although Japanese people had been studying in the West since the end of the Edo period, it was not until 1875 that the state as a whole began to train and send its most talented human resources to the West, with the Ministry of Education sending Japanese students abroad. These students were recommended by clans from all over Japan, selected through a multi-step process, and then educated in foreign languages by foreign teachers in specialized fields. Because they were such brilliant students, they were sent to the most prestigious educational institutions in the West with no linguistic disadvantage or lack of specialized knowledge; they competed with the top elite of the institutions where they studied and achieved equal or even better results. The initial period of study for students sent by the Ministry of Education was five years, so the first students left in 1875 and began returning to Japan in 1880. In the summer of 1881, HOZUMI Nobushige, whom I consider to be Japan's first legal scholar, returned to Japan, and in the following year, 1882, he became a professor and dean of the Faculty of Law at the University of Tokyo and began to teach law in earnest.

However, even though legal education was conducted by the Japanese, at the beginning, there was no legal terminology in the Japanese language to discuss Western juridical science, so Japanese educators had to teach in English. Thanks to the efforts of HOZUMI and his colleagues, the development of translated languages progressed rapidly, and it is said that legal education in the Japanese language became possible to some extent by around 1887. Around this time, the number of Japanese professors in the faculty of the University of Tokyo (later Imperial University) gradually increased. This was also the time when hired foreigners were sent back to their home countries, and the degree of dependence on foreigners in education also decreased.

HOZUMI gave a course called "*Hougaku Tsuron*" (General Theory of Juridical Science) in Japanese, which would be considered an introduction to juridical science today. This course was based on lectures given at German universities for students who were beginning their first law studies, and the contents of the lectures can be found in the notes taken by ADACHI

Mineichiro, who took this course from 1888 to 1889. These notes are preserved in the Keio University Library. ADACHI was a leading pre-war Japanese diplomat who also served as the President of the Permanent International Court of Justice in The Hague, the Netherlands, the predecessor of the current International Court of Justice. In these lectures, the basic terms and concepts necessary for any legal discussion are systematically explained. It also includes an explanation of Western schools of juridical science, such as natural law jurisprudence, which holds that there are universally just laws, and historical law jurisprudence, which holds that laws are unique to each nation and are formed and developed historically. Such fundamental conflicts of thought about law were introduced in Europe at that time. Natural law jurisprudence and historical law jurisprudence are still mentioned in introductory juridical science courses today, but they are now simply taught as knowledge. At the time, Japan was faced with the choice of what kind of Western law to accept, and if Japan were to accept natural law jurisprudence, it would mean that copying the correct Western law was the right thing to do. In contrast, if Japan were to accept historical law jurisprudence, Japan should have its own unique laws that suit its people and history. The choice between the theories would lead to a completely different understanding of the law, and I believe that HOZUMI's class also posed this dilemma of judgment to its students.

In this way, we can say that the students were imbued with a perspective that enabled them to relativize any Western juridical science they encountered from a broad historical perspective. Through HOZUMI's education, the foundations of Japanese juridical science were instilled in the younger generation, thus creating human resources.

(3) Birth of Japanese Juridical Science

When the "old" Civil Code drafted by Boissonade and the "old" Commercial Code drafted by Roesler were about to be enacted, a movement arose to oppose them, and the Japanese version of the Code Controversy erupted from around 1889 to 1892. As a result of this controversy, the enactment of the Civil Code and the Commercial Code, which had been drafted by hired foreigners, was postponed. I think it can be said that, through this controversy, the Japanese people demonstrated the will that they could no longer accept the codes drafted by foreigners. I think it is safe to say that the reliance on foreigners to develop laws came to an end at that time.

However, in order to move away from relying on foreigners to develop laws, it was not enough to simply reject the codes drafted by foreigners and send the foreigners back to their home countries; it was necessary to have legal discussions and legal education in the Japanese language by Japanese teachers. As I mentioned earlier, it is said that legal education in the Japanese language became possible at the University of Tokyo around 1887, which is about six years after HOZUMI returned to Japan. About six years after the central figure returned to Japan and began teaching law, it became possible to teach law to some extent in the Japanese

language. Subsequently, deliberations began in the Investigation Committee of Codes to enact the Meiji Civil Code by amending the "old" Civil Code. Full-scale deliberations began in earnest in the fall of 1893, and by that time, I think it is safe to say that the basic terminology related to the Civil Code or private law at that time, had been developed.

In other words, it took only about six years, less than a decade, for legal education in the Japanese language to reach a level where the Japanese people could deliberate on a draft of the Civil Code on their own. The Meiji Civil Code drafted by HOZUMI and his colleagues was discussed at a meeting of the Investigation Committee of Codes, the minutes of which are widely known. The minutes of this meeting reveal some fairly sophisticated legal discussions. Such things were already possible at that time. Thus, we can say that Japanese juridical science was almost complete with regard to the Civil Code, or private law at that time, within about 10 to 15 years after HOZUMI's return to Japan. I would like to show you one piece of evidence to prove this.

The Meiji Civil Code was enacted in 1898. Seven years later, in 1905, during the Russo-Japanese War, a new law called the Secured Bond Trust Law was enacted with the expectation of raising funds for the war effort. It used a 'trust' system that did not exist in the Japanese Civil Code and Commercial Code, both of which were based on civil law. In essence, this law was intended to create a mechanism for issuing bonds to raise funds from foreign companies and investors. Bonds are debts and must be repaid. Therefore, it was necessary to provide collateral to ensure repayment. However, the Meiji Civil Code only allowed collateral to be attached to individual items. Westerners would not trust a collateral to be attached to Japanese land, for example. Therefore, at the same time that the bond trust system was created, they tried to issue bonds by mortgaging businesses so that these bonds could be secured by businesses. Laws for mortgaging businesses are a topic that is currently being discussed at the Legislative Council, and at that time the Railway Mortgage Act, the Mining Mortgage Act, and the Factory Mortgage Act were enacted as laws for mortgaging businesses. These new types of collateral were not at all conceived as collateral under the Meiji Civil Code. Not only that, a system of bonds with trusts using businesses as collateral was created from scratch.

These laws were enacted without any foreign assistance. The Counselor of the Ministry of Justice who was in charge of these laws was HIRANUMA Kiichiro. HIRANUMA was a student of HOZUMI. He later became the Prosecutor-General and President of the former Supreme Court before becoming the Prime Minister of Japan. HIRANUMA is known as someone from the field of public prosecution, and the post he held immediately before drafting the Secured Bond Trust Law as the Counselor was the Deputy Chief Prosecutor of the Tokyo Appeals Court. He went from being the Deputy Chief Prosecutor at an Appeals Court to being the Counselor of the Ministry of Justice, and suddenly he was drafting the law on corporate bonds using trusts. The law was enacted in 1905, but in order to draft it, HIRANUMA worked with a young

man named IKEDA Torajiro, who had just graduated from Tokyo Imperial University in 1903 with a degree in English law to become an assistant judicial officer, which would be today's legal apprentice. HIRANUMA himself was also a graduate of the Department of English Law at Tokyo Imperial University and a student of HOZUMI, so he learned the English law and knew about trusts. HIRANUMA also took sole responsibility for answering questions about trusts in the Diet. He was able to draft such unprecedented legislation on his own, not long after the enactment of the Civil Code. He had that much juridical science at his disposal. What is even more surprising is that this law is still alive today through revisions. IKEDA himself was also brilliant and later became the President of the former Supreme Court.

Also, in the field of public law, after the enactment of the Meiji Constitution in 1889, HOZUMI Yatsuka, the younger brother of HOZUMI Nobushige, and others wrote articles on constitutional interpretation with great vigor, leading to the rapid establishment of public law studies.

I would also like to show you an example of how rapidly the standard of court practices rose as well. In the Civil Code, there is a very difficult system called the right to request avoidance of fraudulent act. The Meiji Civil Code contained only three articles on this system. It is hard to imagine that such a system, completely foreign to the Japanese, was created this way. At that time, under the premise that even if detailed articles were to be drafted, it was not clear whether they would fit well into the Japanese society, the drafting of the code was done irresponsibly, with only the principles and essence being written down in three articles, leaving the rest to be implemented somehow later on. The details of the requirements and effects were left entirely to interpretation. There is a decision of the United Division of the former Supreme Court issued on March 24, 1911, which for the first time presented a detailed theory on this point and remained in force as case law for over a century until it was completely revised in the 2017 amendment of the Law of Obligations. In other words, 13 years after the Civil Code was enacted, Japanese judges were able to develop a case theory about a difficult French-derived system that was well-reasoned and would be maintained for more than 100 years. The text of this decision is easy to read, and I am sure you will agree when you read it that it is a very well presented argument. I would say that it is well presented to a surprisingly remarkable level.

Later, during the Taisho period, a large number of German doctrines were received, and an elaborate interpretation theory of the Civil Code was constructed. During the Taisho period, a scholar named HATOYAMA Hideo led the construction of the German style of interpretation, which is called the 'reception of legal theory' in contrast to the reception of the law. It has been said that Japanese interpretation theories became more sophisticated because of the reception of these theories or under the German influence, but it is not possible to immediately receive legal theories. In my opinion, it was possible because of the juridical science that served as the foundation.

5. Factors for the Birth of Juridical Science

How was it possible for Japanese juridical science to be born in such a short period of time? We can think of a number of factors, but I would like to point out three of them today.

The first is the knowledge of Chinese studies. In the latter half of the Edo period, Chinese studies, which was mainly Neo-Confucianism, flourished and produced excellent scholars such as OGYU Sorai. His Chinese studies were at such a high level that they could not be surpassed even in China, the country of origin. Chinese studies were also actively taught in the clan schools that were established by various clans during the Edo period, and talented students read the works of Japanese scholars such as OGYU Sorai. Neo-Confucianism is a highly abstract, logical, and systematic philosophy, so we can say that the brilliant students who studied Chinese studies were familiar with abstract and systematic thinking. In the Meiji period, such people who had acquired Eastern culture tried to understand Western civilization. As FUKUZAWA Yukichi wrote: 'It is as if one person has lived two lives in one body, and one person has two bodies' in his "*An Outline of a Theory of Civilization*," two people coexisted in one person, one who was fully equipped with Eastern culture and one who had learned Western civilization, and they learned Western civilization in the light of each other. And those people learned Western studies thinking "How can this concept be expressed in Eastern studies?" The period was very short, and only few Japanese were able to experience this. However, during this period, thanks to these human resources, juridical science was adopted in Japan, and in the process, the rich vocabulary of Chinese studies enabled the creation of legal terms in *kanji* characters based on a deep understanding of the concepts of Western juridical science. Whether or not they captured 100% of the meaning of the original language, they were able to create technical terms that conveyed some degree of the meaning of the original language.

It would have been quite difficult to translate Western juridical science into the Japanese language without a background knowledge of Chinese studies. For example, a scholar named TSUDA Mamichi, who studied in the Netherlands at the end of the Edo period and translated the word 'society' as 'Ai seiyou no michi' was the first person to translate the word 'jurisprudence' into '*hougaku*,' but he felt it was not fully accurate, as the meaning of 'law' in Chinese and English are different. How could it be translated accurately? TSUDA, being a man with a deep background in the study of Japanese classical literature, said it would be good to translate it as "*suji no manabi*." This may not be clear to us today, but if you are familiar with the study of classical literature, you can understand the meaning of 'jurisprudence' by '*suji no manabi*.' It must have been quite a painstaking task to translate every single highly abstract legal term into this kind of Yamato-style terminology. In short, it would have been difficult for juridical science to be born in such a short period of time unless the language system of the recipient side of juridical science had a certain degree of aptitude. Without the enormous vocabulary from ancient Chinese Confucianism, it would have been impossible to adopt juridical science

in such a short period of time.

The second factor is experience in the implementation of law. Japan had roughly 1,200 years of experience in the implementation of law, albeit not Western-style law, since it received the Tang Dynasty's Ritsuryo system. In particular, during the Edo period, there were codified laws since the "*Kujikata Osadamegaki*" (Basic Codes of Edo Shogunate) by TOKUGAWA Yoshimune, and there was an accumulation of decisions at the magistrate's office under these laws. To give you an idea of the standard of precedent-based legal decision-making, or the accumulation of decisions, there was a young American legal professional named John Henry Wigmore who came to Japan in 1889 at the invitation of FUKUZAWA Yukichi and stayed at Keio University. He thought, unusually for a hired foreigner, that since Japan was a country with such a long history, there must be laws, so he tried to research Japanese laws. He found that there were many court decisions from the Edo period, so he had a Japanese who could speak English translate them into English and studied them. As a result, Wigmore said that England and Japan were the only countries in the world where case law was formed by professional judges. This may be too much of a compliment, but that was the standard of Japanese law at the time.

For your reference, Wigmore spent about three years in Japan, and after returning to the US, he became a professor at Northwestern University and later a major authority on the law of evidence, and is well known to anyone who has studied American law as one of the leading American scholars of the 20th century. Such a great scholar was in Japan in his youth and made the aforementioned assessment of Japanese law.

While ancient Roman law was centered on private law, Japanese law since the Ritsuryo period has been centered on criminal and administrative law. Despite this difference, making legal judgments in the light of precedent was a familiar concept to the Japanese. I believe that this experience had implications for the implementation of modern Western law. The principle of precedent in law is, in essence, the idea that similar cases should be handled in the same way. This means that one of the core principles of Western legal thinking, that there should be no conflict between the norms to be applied, already existed in Japan.

The third factor is the concentration of human resources. Political leaders in the early Meiji period believed that if anything was the key to understanding Western societies, institutions, and nations, it was juridical science. As a result, the best human resources of the period turned to law. Since human resources are not inexhaustible, attracting the best and brightest to the field is a major factor in the advancement of an academic field. The best people gathered, and they went to the West to study law and acquired legal knowledge, which they used to teach law in the Japanese language. This is where people with talent gathered, and many people gained knowledge of juridical science.

The judicial officials (judges and public prosecutors) who actually implemented the codes re-

ceived from the West were also born from among these personnel. Judicial officials and judges in the early Meiji period, before Japan had such learned personnel, were not necessarily educated in Western-style juridical science, as people with political achievements were sometimes suddenly promoted to senior positions in judicial institutions. However, one of the reasons for the rapid penetration of Western-style juridical science into court practice and the improvement of the standard of court decisions is that around 1898 a personnel change was executed to weed out the 'elderly (and deteriorated) judges' who had not received Western-style juridical science education. This personnel change caused severe friction. YOKOTA Kuniomi and others led the change, and YOKOTA was temporarily dismissed for disciplinary grounds in retaliation for this personnel change. However, I think it can be said that the modernization and westernization of the judiciary was accelerated by this drastic personnel change.

6. Conclusion

This is my understanding of the role of Japanese juridical science in the reception of Western law. Finally, I would like to discuss what this piece of Japanese history may suggest for Japan's legal technical assistance today.

Japan's strong orientation toward growing out of foreign assistance has perhaps contributed greatly to the adoption of juridical science and to the successful implementation of the received laws. This is partly due to its historical background. In this sense, one can say, at least from Japan's experience, that it is desirable to promote the establishment of juridical science in the country receiving assistance so that they can say: "We don't need legal technical assistance by foreign countries." This may seem like a contradictory approach, but the characteristic of Japan's legal technical assistance is said to be a 'stand-by' style, respecting the 'ownership' of the country receiving assistance; accordingly, I do not think that this is contradictory to the principles of legal technical assistance by Japan.

Furthermore, based on Japan's experience, I believe that legal development is ultimately a question of having capable personnel. It seems to me that the key is how to grow leaders and outstanding legal professionals who can create their own juridical science, lead legal education, and then lead the development of their own laws, as well as the practice of the laws that have been developed. I believe that the birth of a juridical science is necessary for the successful implementation of the received law, but the crucial point is how to grow juridical science leaders who can lead the way in this process. In my opinion, what is necessary, even if I am exaggerating, is not producing 100 average practitioners, although 100 average practitioners are also necessary, but the emergence of outstanding individuals, even if they are few in number. Giving these people a place to play an active role is a necessary next step after the establishment of the code. I believe providing support in this would be of great significance.

Thank you very much for your kind attention.

CHINONE Koichi, ICD Professor:

Thank you very much, Professor UCHIDA. Now, I would like to ask Professor UCHIDA to answer the questions we have received as long as time permits. If you are in the audience, please raise your hand, and if you are participating online, please write your questions in the Q&A section. Does anyone have a question? I see ICD Professor SOGA has a question from the audience, so please go ahead.

SOGA Manabu, ICD Professor:

My name is SOGA, and I'm an ICD professor. Thank you very much for your valuable lecture today. ICD provides legal technical assistance to Asian countries, and I feel that the current emphasis is more on improving court practices and growing legal human resources than on assisting in the drafting of laws and regulations. In your lecture, you mentioned that in Japan, 13 years after the enactment of the Civil Code, the former Supreme Court presented a detailed theory on the right to request avoidance of fraudulent act, which has remained in force as a leading and persuasive precedent. You also mentioned that what is needed is not 100 average practitioners, but outstanding individuals, even if they are few in number, who, from the examples you mentioned in Japan, I thought would be someone like YOKOTA Kuniomi, then the Chief Justice of the former Supreme Court. What kind of approach do you think is desirable for Japan's legal technical assistance to create such outstanding individuals in Asian countries? Also, you mentioned that the desirable legal technical assistance is to promote the establishment of juridical science in the country receiving assistance so that foreign legal technical assistance eventually becomes unnecessary. I would like to hear from you in this regard as well. Thank you very much.

Professor UCHIDA Takashi:

Thank you very much for your very important question. Regarding the creation of outstanding legal professionals, I would like to explain how the Japanese experience has been in this regard. You mentioned YOKOTA Kuniomi as an outstanding legal professional. He was given the opportunity to study in Germany when he was in his mid-30s, and after returning to Japan, he showed great ability and played an active role in legislation and administration. However, he does not seem to have achieved as much as a legal practitioner, such as a judge or prosecutor. Among the people I have mentioned today, I would like to mention HIRANUMA Kiichiro and IKEDA Torajiro as outstanding legal practitioners. How were they educated to become who they were? They were all graduates of the Imperial Universities or Tokyo Imperial University. Of course, that may be one of the reasons, but I think the most important factor was that the best young people were concentrated in the fields of law at the Imperial Universities or Tokyo Imperial University at that time. I think it can be said that by educating people with such high-quality

talent led to the emergence of outstanding legal professionals. In other words, excellent human resources were concentrated in the population of people receiving legal education.

As to the question of how HOZUMI Nobushige, who provided legal education to these people, was educated, he was selected in 1870 under a system called '*koushinsei*' (human resource education system of the Meiji period). The Meiji government was aware that Japan was facing a crisis of national survival, a critical situation on the brink of whether Japan could survive as a state without becoming a colony of the West, and gathered human resources from all over Japan to support the state. Feudal estates were abolished in the following year, so clans still existed, and each clan sent out one to three young men in their late teens, depending on the size of the clan. They were the best "youth" from each region, although at that time, they were composed only of men and the warrior class (samurai). In any case, the best talent was gathered, and about 300 were selected nationwide. After several rounds of selection and narrowing down, the remaining candidates were finally sent to study abroad. Thus, efforts were made to gather the best possible human resources. If this had not been the case, if the feudal system of human resource development had remained in place, what would have happened to HOZUMI Nobushige? He belonged to the upper class of the warrior class, the *joshi* of the Uwajima clan. The HOZUMI family was called SUZUKI and not HOZUMI during the Edo period. Nobushige was the second son of the SUZUKI family and was adopted by a samurai named IRIE, who was a colleague of his father. Therefore, he was called IRIE Nobushige, and both his father and Mr. IRIE were the heads of the Uwajima clan's gun corps. If things had remained as they were in the feudal system, HOZUMI Nobushige might have ended up training with guns at Uwajima Castle for the rest of his life. The fact that they were able to take him out of that situation, bring him to Tokyo and turn him into a world-renowned scholar is, I believe, due to their efforts to gather the best human resources.

That is why, in the case of legal technical assistance, while legal education through assistance is very important, I feel it is also important to encourage the country to create a system that will attract excellent human resources. This may be insufficient, but this is my answer. Thank you.

CHINONE:

Thank you very much, Professor UCHIDA. Now, does anyone have any questions? ICD Professor SAKAMOTO, please.

SAKAMOTO Tatsuya, ICD Professor:

I am SAKAMOTO Tatsuya, an ICD professor. Thank you very much for your valuable lecture today. In your lecture, you mentioned that Japan at that time had excellent leaders such as HOZUMI Nobushige and others, and that the existence of such excellent leaders was important for the creation and development of juridical science. On the other hand, when we look at the

current situation in countries receiving assistance, we see that the codes had first been received from foreign countries, and that many average legal practitioners then use the codes to the best of their ability. In such a situation, and my question is rather opposite of the previous one asked by Professor SOGA, what do you think is the best approach to raise the overall standard of the average legal practitioner? Thank you very much.

Professor UCHIDA:

Thank you for your question on this also very important point. This is true not only for legal practitioners, but also for researchers. I think that an effective way to train good legal professionals highly capable of jurisprudential thinking and making argument on real disputes by transposing them into the virtual space of law, is to train them through discussions/debates. I think this is very beneficial as judicial science is a discipline that is closely related to debate and argumentation in European history.

I believe that all the excellent Japanese legal professionals who are here today have received such training at one time or another. The 'debate' is not the kind of debate where you ask a question and if you get the right answer, you get a pat on the back, but the kind of debate where you make the right argument, then a counterargument comes along that knocks it down and forces the other party to argue again. This requires dense and sometimes intense debate, and I think that is how we learn what a good legal argument is.

The problem, however, is that this would probably only be possible in one's native language. I think it would be very difficult to have a heated discussion, through an interpreter or through a non-native language, to corner the other party and make them argue back.

In order to raise the standard of the 100 average legal practitioners, I think it is necessary to educate them through such discussions/debates, which means that it is necessary to develop outstanding teachers who can teach in their native language and teach juridical science.

Naturally, the teacher will be asked various questions by the people receiving the education, such as why such discussions are necessary and what this concept means. The answer to these questions cannot be "I don't know." Only when you can answer "This is how the concept is taught in Japan, but in European history, it is like this," a discussion will be possible. Therefore, it is necessary to have a deep knowledge of juridical science and to be someone who has received such training him/herself. Based on Japan's experience, one possible method is to train such outstanding human resources with the help of Japan, and place these people who are capable of such education in their home country's legal education institutions.

Since I do not have much experience in legal technical assistance, I can only speak from Japan's history. And I am sure that there are naturally appropriate methods for each of the countries receiving assistance, depending on their own circumstances. The above is what I have learned from Japan's experience.

CHINONE:

Thank you very much. We will now move on to an online question. We have received the following question from Mr. YAMASHITA Terutoshi:

"I think it would make sense to think that, in the Japanese society where the concept of the English word 'right' or the German word 'Recht' did not exist, if the *kanji* character for science/reason were used for '*kenri* (right),' it would emphasize the correctness of that time, or social pressures and obligations etc., so the character for profit/benefit was used intentionally. What do you think about this line of reasoning? And, if Japanese society has since changed and if the character meaning science/reason is now more suitable, I think we could consider changing the character and use the one meaning science/reason. Do you think this idea would not be possible? Having said that, considering that Japanese society is still strongly influenced by peer pressure, this idea may not be possible and we have to leave it with the existing character."

Professor UCHIDA, what is your answer to this question?

Professor UCHIDA:

Thank you for your very interesting question. *Kenri* using the *kanji* character meaning profit/benefit is actually not a translation that originated in Japan, but was first translated in China and came to Japan. However, FUKUZAWA Yukichi thought that the original important nuance was lost in using the *kanji* character for profit/benefit, and instead used the *kanji* character for science/reason, but in the end, it did not become the general practice. Among those who know this history, many think that FUKUZAWA's translation is better. Therefore, I am in favor of switching at this time, but in this case, we have to start by changing the text of the law, which is a matter of what the Cabinet Legislation Bureau wants to call it. I think this is quite a difficult hurdle to overcome. However, it is very important to be aware of the fact that the use of the *kanji* character for profit/benefit does not fully express the meaning of the original word, and it is necessary to conduct various educational activities for this purpose, or to properly communicate the limitations of the translation of the Japanese word 'right' in legal education and in legal technical assistance. If Mr. YAMASHITA is going to campaign for a change in the terminology, I would definitely like to support it. Thank you very much.

CHINONE:

Thank you very much. The following is another online question. We have received the following question from Ms. ITO Mizuki, a JICA long-term expert dispatched in Cambodia. Her question is: "When I am working in the field, I find that the judiciary is not attracting the best and brightest. I feel that there is not enough awareness of this. How did Japan reach this awareness in the first place?"

Professor UCHIDA:

Thank you very much. How can we attract the best and the brightest? This is a question I would also like to know the answer to. The reason for the concentration of human resources in the Meiji era is, as I mentioned today, that Japan would not be able to stand on its feet if it did not know about the West, and when we thought about what Western civilization was, we first learned, through negotiations with the United States under the Japan-US Treaty of Amity and Commerce, etc., that Western society was based on laws, such as international law and the laws of trade. The U.S. side told us to open our ports and allow free trade. When the Japanese told them that foreign trade in Japan was a country-to-country transaction, and that was how we were doing it in Nagasaki, they said, "No way, trade is done between private parties." Surprised, the Japanese asked how such trade could take place between private citizens of foreign countries and was told that it was because of the laws of trade. Through such experiences, Japan felt a sense of crisis that without knowing the law, they had no way of understanding the Western world, and so the awareness that the key to modernizing Japan was to know Western law, was shared between many people at the time. I think that is why human resources were attracted to law all at once.

However, this was only at that time. After that, the era continued for a while when one could attain a high position by graduating from a faculty of law of the university and becoming a bureaucrat. This attracted human resources, but this is not the case at all in Japan today. Therefore, Japan today is in a situation where it needs to be taught how to attract the best people to its faculties of law. It just so happened that the Meiji era had such a background of international relations that attracted human resources, but this is not always the case, and I think it is no exaggeration to say that legal education in Japan today is in a rather critical situation.

So, what should we do for the countries receiving our assistance? I believe that one of the factors that attracts human resources is the longing for the profession. If we can give young people the dream that they can do such work by becoming a legal professional, people will be attracted. I think the same is true in Japan today. It should not be just a passing, temporary thing, such as gaining popularity by being featured in a popular TV drama series or something like that. I think it is very important to show young people that they can do this kind of work in order to help them make better career choices in the future. I think it is necessary for those who are actively practicing to be more proactive in communicating this information. I think the same can be said for Japan and the countries we are assisting.

I don't have a full answer to this question myself, but that is what I can think of for the time being.

CHINONE:

Thank you very much. We have a question from Ms. HARA Wakaba, an attorney who is join-

ing us online. Her question is: “Speaking in Japanese was important for the development of Japanese juridical science. If so, does that mean it is also important to speak the local language when providing legal technical assistance?”

Professor UCHIDA:
That is true, of course. However, as I mentioned earlier, what is needed for training in juridical science is debate, and debate requires the ability to engage in heated discussion, so I think it would be quite a challenge for the people providing legal assistance to be that proficient in the local language. If it is necessary to use native languages in legal education, I personally feel that the key is to train as many people as possible who can be involved in such education from among those who speak the local language as a native language. While it is important for the providers of legal technical assistance to educate local practitioners, I think it is also important to find outstanding local people and develop them as leaders in their own legal practice education.

CHINONE:
Thank you very much. I see Mr. MORINAGA, Director of UNAFEI in the audience has a question.

MORINAGA Taro, Director of UNAFEI:
My name is MORINAGA, Director of UNAFEI. Thank you very much, Professor UCHIDA, for your very thought-provoking and excellent lecture. My question relates to something you can say is a personal interest of mine. In my experience of legal technical assistance in various developing countries, I often feel that in some places, there are quite a few people who think of the law as being a command of the state, not as what we imagine it to be, for example, a law that is allowed to be interpreted, or is to be developed through interpretation. Especially in my early days of legal technical assistance, I once received an explanation from a local person, that interpreting the law was first of all conceived as a matter of questioning the instructions of the state, and I imagined them as a kind of military order, which if you do not obey, you will die, and the situation in the said country was that a person would die if he or she did not obey the order while debating the basis on which the order was issued and what room for understanding there was. The environment being such, they said they could not understand the act of interpreting the law as I had explained it. I have heard this several times. From our non-academic point of view, I imagine that it is a kind of marvel that Japan, at a time when the country had to push forward with the slogan “enrich the country, strengthen the military,” was able to give birth to such liberal juridical science. Is it due to historical factors, such as the existence of the legal scholars you mentioned in the Edo period, and the existence of the *myobo* (ancient study of the law), that the Japanese people have not moved in this direction, that is, to understand the

law as orders, something that must be obeyed absolutely and that is not open to interpretation? Or were there some other special factors? I would like to know your opinion on this out of my personal interest. Thank you very much.

Professor UCHIDA:

Thank you. This is a difficult question. First of all, the idea that law is an order of the state and not open to interpretation is not an uncommon idea. In China, such a concept has existed historically since the days of the Chinese legal scholars in B.C. The same is true of the French Civil Code, which does not allow interpretation, although it is not an order of the state; it is natural law, and since Napoleon established all the 'correct' laws, they issued orders that judges should not interpret them. The very idea of not allowing that kind of interpretation, the idea that it's all written down and what's left is just to follow it, is an idea that is common historically, regionally, and culturally, I think.

However, try as one might to enforce this idea, as society is moving faster and faster, legislation cannot keep up with it. This is why, from the end of the 19th century to the beginning of the 20th century, a movement called 'Freirechtslehre' emerged in Europe, which argued that no matter how well the laws were written, society was moving faster, and that the only way to fill the gap was through interpretation.

Therefore, this argument has been repeated throughout history, and when a well-developed code is created, it restricts interpretation as much as possible. However, as time goes by, interpretation is allowed again, so I think it comes in waves. In this context, how did Japan develop such freedom of interpretation? First of all, since my specialty is the Civil Code, I would like to use the example from the code. Unlike the European Civil Codes, the Japanese Civil Code does not contain detailed information. Japan faced a request to create a Civil Code in a very short period of time in order to revise the unequal treaties. If they tried to write detailed articles like those in European Civil Codes, they would have to study the actual situation in Japan at the time as well. Unable to spare such time, only the principles were included, and a simple code was created, leaving out all the branches and leaves and leaving the rest to be interpreted and implemented. Some Japanese people believe that the Civil Code should be simple like that. When I was involved in the revision of the Law of Obligations, there were objections from practitioners that the Civil Code should be simple and that such detailed clauses should not be added. However, this just happened to be the case with the Japanese Civil Code, and Europe has more detailed provisions in its civil codes. Since the Japanese Civil Code only describes the principles, it was left to interpretation from the beginning. Consequently, there was a lot of room for interpretation, but since there were no clues for interpretation, I think that is why the interpretation theory was brought over from Germany. That is how the interpretation theory developed in Japan.

On the other hand, I believe that one of the reasons why there has been no discomfort with such an interpretation theory is that Japan has historically had a tradition of interpretation. Since the era of the Ritsuryo system, laws received from foreign countries have been something magnificent to be enshrined on an altar, and something that cannot be easily revised. The Meiji Civil Code is no exception, and I have been scolded for revising the Civil Code which was of foreign origin and written by the three eminent drafters. One of the reasons for this is that since the time of the Ritsuryo system, there has been a culture in Japan where the text of the code is regarded as something like the Bible, and the text itself was not to be changed, leaving the rest to interpretation and implementation.

However, also in Japan, special laws for implementing detailed policies are written in great detail, and there are laws that are written in such a way so as to leave no room for interpretation and that are implemented in such a way so as to leave no room for interpretation contrary to the wording of the provisions, so what you say is possible in reality in some specific areas. When the level of abstraction is a little higher as in the case of the Civil Code, interpretation must still be allowed, and it is necessary, when providing assistance, to properly explain the rationalities of the culture and way of thinking that allow such interpretation.

CHINONE:
Thank you very much. Next, Mr. EDAGAWA of JICA, who is in the audience, please.

EDAGAWA Mitsushi, JICA International Cooperation Specialist/Attorney:
My name is EDAGAWA and I am in charge of legal technical assistance at JICA. Thank you very much for your valuable lecture today. I have learned a lot from it. I know that time is limited, so I would like to be brief in my questions.

I think your lecture is premised on the Japanese experience. You said that after drafting and enacting the law, juridical science is necessary for successful implementation of the law. In other words, it could be said that the implementation of the law would not succeed without juridical science. According to you, juridical science is a language that transfers raw reality into a virtual space. I think it would be rude to call the definition of juridical science abstract, but it seems to me that it is difficult to get a concrete picture of what each country perceives as an ideal juridical science.

Also, I would like to know what kind of cooperation is possible when foreigners are involved in the formation and birth of juridical science. In other words, while saying that the implementation of the law is important, the existence of juridical science is indispensable to the implementation of the law; I believe this is based on Japan's experience, but if this is the case, if we don't fill in that part of the gap, then the implementation of the law will not be successful. If this is the case, I would like to know, for example, how foreign countries can be involved in the

formation of juridical science when providing assistance.

My question may be abstract and incoherent, but I would be grateful if you could answer. Thank you very much.

Professor UCHIDA:

I am not sure if I understand your question properly, but to answer it as I understand it, I believe there is no such thing as the universal content of juridical science, this can differ from culture to culture. As I used the terms such as Western juridical science and the birth of Japanese juridical science in my talk today, French juridical science and Japanese juridical science are not equal. German juridical science and French juridical science are actually not equal, either. Although the core concept of private law has existed since ancient Roman law, and everybody shares this concept. Still, how the concept of contract is defined, for example, is different among France, Germany and the United Kingdom, and even between the United Kingdom and the United States. Each country has its own practice, real-life practice, and there are subtle differences among them. Therefore, when discussing contracts, the concept of 'cause' is used in France, while the concept of 'consideration' is used in the United Kingdom and so on.

In this regard, a juridical science must be created for each country. And I think it is impossible for a country to give birth to its own juridical science unless you are a native speaker of the language of that country. In this case, we have to develop legal professionals who can give birth to the juridical science of their country. I think it is probably impossible for foreigners to say that a specific kind of juridical science is good for your country. What Japanese people can say is that this is the kind of juridical science Japan has; having learned from Europe, Japan has this kind of juridical science. After learning such an example, they will start thinking about their own cases. Such a process is necessary, I think.

Therefore, I think it would be beneficial for Japanese people to show when engaging in legal discussions, that they are not discussing European juridical science itself, but Japanese juridical science that grew up in Asian soil, as one way to make people aware of the need for their own juridical science.

EDAGAWA:

That was very helpful. Thank you very much.

CHINONE:

Thank you very much. The next question will be the last one. We have the following question online from Professor ICHIHASHI Katsuya of Nagoya University of Economics. "This question is about when the day will come when legal technical assistance is no longer needed. Here is one anecdote. A foreign student from one of the countries receiving assistance returns to his

country and translates a textbook on Japanese law. Unlike ones which Japanese students at the dawn of the Meiji era translated, who were familiar with the classics and the juridical science of that era, the textbook he translated was the one used at a Japanese bar exam preparatory school. Consequently, this textbook has been popularized as a typical Japanese textbook in that country. When I heard this, although it is an educational problem of ours, too, I was stunned by the huge difference from the anecdotes of the Japanese students in the Meiji period. The foreign student is an elite of their country, but is unable to understand the meaning of what they are introducing by translating bar-exam reference books from other countries, instead of the well-established textbooks of the country's top scholars. I always wonder when the day will come when we will learn about this situation and get out of it. Excuse me for sharing such a disappointing anecdote that does not come near to what you have told us today. But I hope you can teach me something in relation to this."

Professor UCHIDA:

I am not sure how to answer your question, but when I used to teach at the University of Tokyo, I was very shocked to find that some of the students in my seminars, who were supposed to research and report on various papers and literature, began to cite textbooks from the bar-exam preparatory schools in their reports. I think it may be true that foreign students, when talking with Japanese students, heard them say, "This book is much clearer to understand than the difficult books written by academics," and the foreign students found it to be true.

Certainly, if we are only talking about obtaining the minimum information about a certain law, perhaps there are textbooks from the bar exam preparatory schools that can efficiently convey such information. However, I think it would make sense, as a way of providing assistance to countries that do not yet have juridical science, to properly communicate that for the implementation of the law, it is necessary to learn not that kind of law-specific information, but to dig deep into the 'juridical science' part necessary for making laws. Since Japan already has a juridical science and an established system of implementation of the law, interest may inevitably be focused on the details of the implementation of the law, and students may tend to focus on those details. However, behind such implementation, there is actually a larger language system of juridical science, which is shared among legal practitioners in full, which makes such implementation possible. Hearing what you told me, I feel it is important to communicate that in future legal technical assistance. Thank you very much.

CHINONE:

Professor UCHIDA, thank you so much for your detailed answers to all of the questions. Finally, I would like to introduce the following comment from Professor Emeritus MORISHIMA of Nagoya University. "What cannot be ignored in the birth of Japanese juridical science is

the fact that it was based on a high level of public awareness due to the education in *terakoya* (private elementary schools) during the Edo period. We should pay attention to the discrepancy in the population (difference in human resources) of the countries receiving legal technical assistance."

Thank you very much, Professor MORISHIMA.

Professor UCHIDA:

Professor MORISHIMA, I appreciate your comment. Thank you very much.