はしがき

誤解されると困るので，本書に関する私の立場を明確にしておきたい。

この本は，「アメリカ」から見た日本法ではない。それは，（私という）ある一人のアメリカ人の目から見た幾つかの日本の裁判例に関するエッセー集である。私は，アメリカの法学者の代表でもなければ，典型的な学者でもないし，通説を語ろうとしている者でもない。したがって，本書は，単に，一人の学者の個人的な解釈を集めたものである。

また，本書においては，日本法の全体的な評価も行われてはいない。少数の有名な判例に関する短いエッセーを集めたものであり，中には典型的な判例もあれば，変わっているからこそ有名な判例もある。また，判例は，私が選んだわけではない。著名な学者と出版社が相談して選択したものであり，私は，単に割り当てられた判例を私なりの考え方で解説しただけである。

どこの学界でも限られた課題に議論が集中することが多いし，この集中を通して重大な問題が正確に解決されることがよくある。しかし，議論が集中したために他の課題が無視されることも時々ある。これまで見逃されていた幾つかの問題が学界で取り上げられるようになれば，この本を書くことに意味があったということになろう。

私は，本書執筆に当たり次の三つの原則に基づいて書くことに努力した。第一，裁判官とは，ロボットでもなければ，電子計算機でもない。裁判所内で活動し，給料を貰い，出世を目指している，普通の人間である。もちろん，その勤務には，基本的なインセンティブ制度が付随している。最高裁の事務総局に高く評価されると年収が上がって都会のポストに任命され，低く評価されると年収が上がらず田舎の支部に任命されて 10 年の任期後にクビにされる可能性さえもある。これこそが，裁判官として書く判例に影響を及ぼすインセンティブ制度であり，裁判所におけるキャリアーを選択する研修生に影響を及す制度でもある。いくつかの章では，事件の解決法によって裁判官の経験する行政的影響を探ることにした。そこでは，重大な憲法事件で与党に逆らった判例を発表した裁判官が不利に扱われたことを説明し

ており，刑事事件の被告を無罪にする裁判官も不利に取り扱われると時々言われることもあるが，この現象がデータに現れないことをも説明している。

第二，事件の事実関係は，重要である。人間であるからこそ裁判官は，事件の解決に抽象的な法律を機械的に当てはめるよりも，当事者にふさわしい結果を導き出そうとすることが多い。確かに判例には，当該解決を正当化する事実が選択され，抽象的な法的原理が書き込まれたものが多いが，その事実と原理が実際に事件の解決に重要だったとは限らない。判例に書かれた事実は，裁判官の取り扱った事実の一部だけであるので，裁判官がなぜある事件をそのように解決したのかを理解するためには，（判例に書かれなかったことをも含む）全ての事実関係を理解しなければならない。もちろん，裁判に書かれていなければ調べようとしても確認できるとは限らない。しかし，調査が可能な事件もあり，判例に述べられなかった事実が重要だと思われるものを幾つか取り上げることにした。

第三，判例が裁判官の予想していた影響を及ぼすとは，限らない。法律や判例の影響とは，法学ではなく社会科学の分野にあたり，法学部を卒業した裁判官が十分に理解できるとは限らない。以下の判例の中には，裁判官が社会科学を理解しないで事件を解決したことを通して及ぼした哀れな現象を幾つか取り上げる。労働法と借地借家法の判例は，特に悲惨な結果を導いている。

この判例評論の執筆に当たり，楽しい時間を過ごすことができたが，これを読んで楽しんでくれる読者が数人でもいることを望んでいるところである。

2019 年 9 月

長野県野尻湖にて

J・マーク・ラムザイヤー

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CASE 1

Sakata v. Kuni

13 Saihan keishu 3225 (Sup. Ct. Dec. 16, 1959).

砂川事件

（最判昭和34年12月16日刑集13巻13号3225頁）

1 The facts

a. Introduction For several decades after World War II, the U.S. Air Force operated a base at the site of what is now Showa Kinen Koen in Tachikawa. From 1950 to 1953, it used the base to fight the Korean War. During the 1960s, it would use it to fight the war in Vietnam.

In 1957, the U.S. Air Force decided to expand its Tachikawa runway, and supporters of the Japanese left moved to oppose its plans. For those on left, the time was still one of hope. The Liberal Democratic Party (LDP) that would dominate the government for the next half-century had only formed itself two years earlier. Its opponents on the left could reasonably hope to take control of the government and restructure the country along socialist lines. After all, Kruschev had only disclosed Stalin's atrocities a year before; the mass murder and starvation under Mao's Great Leap Forward and Cultural Revolution were yet to come.

In these years of eager anticipation, left-leaning law graduates joined the courts in large numbers. Many who did so also joined the judge's division of the Young Jurists League (YJL; the Seinen horitsuka kyokai) loosely affiliated with the Japan Communist Party (JCP). Of the

judges hired from 1958 to 1969, 28 percent joined the League.

Among the judges on the left, Akio Date would in time become something of a folk hero. During the 1930s, as a judge in Manchuria he was said to have released a large number of Chinese prisoners. By the late 1960s, he had joined the private bar and would file at least one high-profile suit to let Japanese firms sell militarily sensitive equipment to mainland China.[1]

b. The District Court[2] In 1957, Date sat on the Tokyo District Court. There, he heard the case against several rioters arrested for trying to block the expansion of the Tachikawa runway. The government prosecuted them for criminal trespass under a special statute applicable to U.S. military bases. The statute exposed the protesters to a higher penalty than did the standard trespass statute.

Date acquitted the defendants. Article 9 of the Constitution banned military weapons, and the Tachikawa base was nothing if not military. If the government could not maintain its own military, neither could it rent military services from the U.S. by contract. After all, any such contract made Japan complicit in American military adventures —— of which the Korean War was but the first example. Vietnam would soon become the second. Accordingly, the security agreement with the U.S. was unconstitutional, and if the agreement violated Article 9 so did any statute designed to facilitate the U.S. presence under the agreement. Prosecuted under an unconstitutional statute, the rioters were not guilty.

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[1] 1969 Beijing-Shanghai-Japan Industrial Exposition v. Japan, 560 Hanrei jiho 6 (Tokyo D. Ct. July 8, 1969).

[2] Sakata v. Kuni, 180 Hanrei jiho 2 (Tokyo D. Ct. Mar. 30, 1959).

2 The decision

From the District Court, the government appealed directly to the Supreme Court. The Court reversed. It gave several reasons. First, Japan entered its security agreement with the U.S. to ensure its own defense, and Article 9 did not ban self-defense. Second, Article 9 banned a Japanese military force, but the U.S. military (even if under contract to Japan) was not a Japanese military force. Third, the entire question was politically charged, and courts should avoid such questions unless the conduct at stake was obviously unconstitutional.

3 Discussion

a. Preliminary observations The litigation under Article 9 illustrates several basic comparisions between U.S. and Japanese courts:

(i) Politically motivated litigation occurs in Japan. The point is obvious to anyone in Japan; it is not always obvious to American law students.

(ii) Japanese judges try to avoid politically sensitive decisions, and use some of the same tools as American judges. The "political question" doctrine is exactly such a tool.

(iii) If a trial court decides a case on constitutional grounds, the losing party may appeal directly to the Supreme Court.

(iv) Prosecutors may appeal an acquittal. Both the U.S. and Japanese constitutions ban "double jeopardy," but U.S. courts interpret the ban to foreclose any appeals from a criminal acquittal.

b. Framers' intent. Japanese judges rarely resort to "framer's intent" in constitutional law. In U.S. cases, justices routinely survey

other indices of what the drafters of the Constitution might have meant. For exactly that reason, for example, they routinely refer to the Federalist Papers.

The Japanese Supreme Court seldom discusses "framer's intent." In the Sunagawa case, it interprets a document imposed on the country by the U.S. military. Yet in doing so, it never asks what Gen. Douglas MacArthur might have thought when he forced the Japanese government to adopt Article 9.

To pose the question, of course, is to answer it —— and demonstrates the preposterousness of Date's District Court opinion. MacArthur may or may not have intended to let the Japanese government maintain a modest force for self-defense. He did not intend to ban his own military bases.

4 The Naganuma sequel

a. Case assignment The Sunagawa and later Article 9 cases illustrate crucial aspects of the Japanese judiciary. Turn to the 1969 dispute over the Self-Defense Force's (SDF) Nike missile base in Naganuma, Hokkaido. To build this base, the SDF needed to redesignate a portion of a national forest. Those on the left opposed the base, and recruited neighboring farmers to contest the forest's redesignation.

The case went to a young (he became a judge in 1959) judge in the Sapporo District Court named Shigeo Fukushima. The chief judge on the court was one Kenta Hiraga, and when he discovered that the case had been assigned to Fukushima, he panicked. Fukushima was a member of the JCP-affiliated YJL, and the JCP opposed the SDF. By the terms of its own organizing document, the YJL was committed to fighting any amendment to the Constitution. Given that the LDP sought to amend the Constitution to delete Article 9, the YJL's

opposition to any amendment implied opposition to any military force (including the SDF) as well.

Worried what Fukushima might do, Hiraga sent him a memo. In it, he detailed several legal problems with the plaintiff's claims. Given that the Sunagawa case concerned the U.S. bases rather than the SDF, it did not apply straightforwardly. Yet if the "political question" doctrine suggested that a court should not hold the base unconstitutional in Sunakawa, it suggested the court should not void the redesignation of the forest here. Neither was it clear whether the plaintiffs had "standing" to contest the redesignation. Both factors would have raised problems for plaintiffs under U.S. law as well.

b. The crisis Outraged that his chief judge might suggest how he should decide the case, Fukushima mailed a copy of Hiraga's memo to his colleagues in the YJL. Those colleagues leaked the memo to the press, and the press declared itself shocked. The Diet launched impeachment proceedings against both Hiraga and Fukushima, and reprimanded both. In turn, the courts' administrative headquarters ordered all judges in the YJL to resign their membership.

Fukushima himself held the SDF unconstitutional.[3] The High Court reversed, partly for the standing reasons Hiraga had outlined.[4] On remand Fukushima again held the SDF unconstitutional —— this time in a long and militant diatribe.[5] The High Court again reversed,[6] and the Supreme Court affirmed the reversal.[7]

c. The denouement The interest, however, lies in what

[3] [Unnamed parties], 565 Hanrei jiho 23 (Sapporo D. Ct. Aug. 22, 1969).
[4] [Unnamed parties], 581 Hanrei jiho 5 (Sapporo High Ct. Jan. 23, 1970).
[5] [Unnamed parties], 712 Hanrei jiho 24 (Sapporo D. Ct. Sept. 7, 1973).
[6] [Unnamed parties], 821 Hanrei jiho 21 (Sapporo High Ct. Aug. 5, 1976).
[7] [Unnamed parties], 36 Saihan minshu 1679 (Sup. Ct. Sept. 9, 1982).

happened to Fukushima and to other judges who held either U.S. bases or the SDF unconstitutional. After declaring the SDF unconstitutional, Fukushima first found himself reassigned to Tokyo —— for the simple reason that the Supreme Court Secretariat (jimusokyoku) moves all Sapporo (Hokkaido) and Naha (Okinawa) judges back to Tokyo after their time there. In 1977, the Secretariat sent Fukushima to the Fukushima Family Court. By 1989, he had spent 12 continuous years in family courts.[8] He wrote an essay in a newspaper complaining of what he consideed mis-treatment, and abruptly quit.

5 Article 9 and judicial careers

Fukushima's experience was not unusual: the Secretariat regularly punished judges who held that either U.S. bases or the SDF violated Article 9. To investigate this issue, Prof. Eric Rasmusen and I studied all 47 lower court judges who had published an opinion on Article 9 by the late 20th century. Of these judges, 5 had held the bases or the SDF unconstitutional; 42 had held them constitutional.[9]

We then used other aspects of a judge's background to predict his likely success within the courts —— to ask whether judges who held the bases or the SDF unconstitutional did worse in their careers. More specifically, we ran "tobit regressions" with a dependent variable equal to the fraction of time during the decade after the opinion in which the judge held prestigious administrative appointments. Because smart and hardworking judges have more successful careers than those who are less bright and industrious, we included several control variables: (a) whether the judge attended one

[8] Nihon minshu horitsuka kyokai, ed. 2010. Zen saibankan keireki soran [Career Data on All Judges]. Tokyo: Nihon minshu horitsuka kyokai, 5th ed. (ZSKS).

[9] J. Mark Ramseyer & Eric B. Rasmusen, Why Are Japanese Judges so Conservative in Politically Charged Cases?, 95 Am. Pol. Sci. Rev. 331 (2001).

of the top national universities (the University of Tokyo or the University of Kyoto), (b) the estimated number of times he failed the entrance exam (the shiho shiken) to the Legal Research & Training Institute (LRTI; the shiho kenshu jo), (c) whether the Secretariat identified the judge as particularly promising and started him at the Tokyo District Court, (d) whether the judge was a member of the YJL, and (e) the fraction of time the judge spent in prestigious administrative appointments during the decade before the Article 9 opinion. The results appear in **Table 1**.

Preliminarily, note several observations.[10] First, judges who attended either Tokyo or Kyoto University have more successful careers than other judges. This result appears in a large number of regressions that Prof. Rasmusen and I report elsewhere. Second,

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[10] These are observations that Prof. Rasmusen, Prof. Frances Rosenbluth, and I have collectively developed over a long range of publications. See generally J. Mark Ramseyer & Eric B. Rasmusen, Measuring Judicial Independence: The Political Economy of Judging in Japan (Chicago: University of Chicago Press, 2003); J. Mark Ramseyer & Frances McCall Rosenbluth, Japan's Political Marketplace (Cambridge: Harvard University Press, 1993); J. Mark Ramseyer & Eric B. Rasmusen, Political Uncertainty's Effect on Judicial Recruitment and Retention: Japan in the 1990s, 35 J. Comp. Econ. 329 (2007); J. Mark Ramseyer & Eric B. Rasmusen, The Case for Managed Judges: Learning from Japan after the Political Upheaval of 1993, 154 Univ. Penn. L. Rev. 1879 (2006); supra note 9; J. Mark Ramseyer & Eric B. Rasmusen, Why Is the Japanese Conviction Rate so High?, 30 J. Legal Stud. 53 (2001); J. Mark Ramseyer & Eric B. Rasmusen, Why the Japanese Taxpayer Always Loses, 72 S. Cal. L. Rev. 571 (1999); J. Mark Ramseyer & Eric B. Rasmusen, Judicial Independence in a Civil Law Regime: The Evidence from Japan, 13 J. Law, Econ. & Org. 259 (1997); J. Mark Ramseyer, Who Hangs Whom for What? The Death Penalty in Japan, 4 J. Legal Analysis 365 (2012); J. Mark Ramseyer, Talent Matters: Judicial Productivity and Speed in Japan, 32 Int'l Rev. Law & Econ. 38 (2012); J. Mark Ramseyer, Do School Cliques Dominate Japanese Bureaucracies? Evidence from Supreme Court Appointments, 88 Wash. U. L. Rev. 1681 (2011); J. Mark Ramseyer, Predicting Court Outcomes through Political Preferences: The Japanese Supreme Court and the Chaos of 1993, 58 Duke L.J. 1557 (2009); J. Mark Ramseyer, Judicial Independence, in The New Palgrave Dictionary of Economics and the Law (London: Macmillan, 1998); J. Mark Ramseyer, The Puzzling (In)dependence of Courts: A Comparative Approach, 23 J. Legal Stud. 721 (1994).

Table 1 Job Quality by Article 9

Dependent variable:	Good jobs afterward
Unconstitutional	−.397*
Good jobs before	.729*
Seniority	.019*
Flunks	−.018
Elite university	.201*
Tokyo D.C. start	.231
Opinions/year	−.023
YJL	.099

Notes: regression is tobit. * ——statistically significant at 5 percent level, one-tailed test. n=50. For details, see J. Mark Ramseyer & Eric B. Rasmusen, Why Are Japanese Judges so Conservative in Politically Charged Cases?, 95 Am. Pol. Sci. Rev. 331 (2001).

this phenomenon does not reflect any bias within the courts in favor of elite graduates. As I show elsewhere, instead it is because these judges accomplish more work.[11] Third, judges who pass the entrance exam to the LRTI most quickly have more successful careers than others (this result appears in other regressions, but not in **Table 1**). Note that an analogous phenomenon appears among the private bar as well: lawyers who passed the exam most quickly earn higher incomes than others.[12]

Fourth, in other regressions Prof. Rasmusen and I find that an initial appointment to the Tokyo District Court correlates with success throughout a judge's career (this result does not appear in **Table 1**). The Secretariat apparently identifies those judges most likely to

11 Ramseyer, Do School Cliques, supra note 10.

12 Minoru Nakazato, J. Mark Ramseyer & Eric Rasmusen, The Industrial Organization of the Japanese Bar, 7 J. Empirical Legal Stud. 460 (2010).

succeed and starts them at the Tokyo District Court. For the most part, these judges do indeed have the most successful careers.

Fifth, judges who were members of the YJL in the 1960s had less successful careers thereafter. Although the phenomenon does not appear in **Table 1**, it appears in a wide variety of regressions I performed with Prof. Rasmusen. These judges spent more time in provincial branch offices and family courts. They spent less time in prestigious administrative offices. They climbed the pay scale more slowly. And they continued to suffer career penalities even as late as the 1990s.

Turn then to **Table 1**: to the regressions on those 47 judges who published an opinion regarding Article 9. The negative coefficient on "Unconstitutional" indicates that those judges who held either American bases or the SDF unconstitutional spent fewer years in prestigious administrative posts in the decade after their Article 9 opinion. The effect is statistically significantly different from zero at the 5 percent level.

The other results are consistent with the effect that Prof. Rasmusen and I find elsewhere. The positive coefficient on elite university attendance indicates that Tokyo and Kyoto University graduates spent more time in prestigious appointments during the decade after the Article 9 opinion. The coefficient is statistically significantly different from zero. And the positive coefficient on "Good Jobs Earlier" indicates that those judges who spent more time in prestigious posts during the decade before the opinion spent more years in such posts after the opinion. The effect is again statistically significant.

The Secretariat punishes judges who take positions that run contrary to those of the ruling LDP. The point has obvious consequences for the character of the court. Most obviously, it makes it less likely that judges will take positions contrary to the LDP.

Table 2 ● Time to sokatsu

Dependent variable:	Good jobs afterward
YJL	.919*
Tokyo D.C. start	−1.383
Flunks	.014
Elite university	.086

Notes: regression is OLS. * statistically significant at 5 percent level, one-tailed test. n=501. For details, see J. Mark Ramseyer & Eric B. Rasmusen, Why Are Japanese Judges so Conservative in Politically Charged Cases?, 95 Am. Pol. Sci. Rev. 331 (2001).

More subtly, this phenomenon implies that LRTI graduates who share the LDP's policy preferences will self-select into judicial careers. Of the judges hired from 1958 to 1969, 28 percent were members of the communist-affiliated YJL. In **Table 2**, Prof. Rasmusen and I asked how long they spent in the courts before reaching "sokatsu" status. Because that posting correlates with their progress along the pay scale, it also measures how fast their salary increased. The coefficient of 0.919 on YJL membership indicates that they reached that status about one year later than other judges with comparable credentials.

In turn, this bias against left-leaning judges in judicial administration will bias the group of LRTI graduates who choose to join the courts. Put most bluntly, after learning what the courts do to leftist judges, left-leaning LRTI graduates will have much less incentive to join the courts. For a communist (or socialist) who takes his Marxism seriously, a career in the courts is simply not much fun. If he writes opinions that indulge his far-left preferences, he will spend his career in provincial branch offices and family courts. Much better to skip the courts and work in private practice.

Finally, note the structural reason for this effect. The effect

is distinctly partisan —— but that partisanship follows from the institutional organization of the courts. First, the Prime Minister appoints the justices of the Supreme Court. What is more, he appoints them late enough in life (about age 63 or 64) that they will not change their political preferences before hitting mandatory retirement at age 70.

Second, the Chief Justice of the Supreme Court supervises the Secretary General of the Secretariat. Almost always, he himself worked as Secretary General before joining the Supreme Court. He knows, in other words, how the Secretariat works.

Third, the Secretary General supervises the judges in the Secretariat. And the judges in the Secretariat, in turn, monitor the judges in the lower courts. They evaluate their performance, reward those they favor, and punish those they oppose.

解説 COMMENT 憲法解釈の方法

憲法の解釈方法論はさまざまである。条文の日常言語上の意味を尊重すべきだとか，積み重ねられてきた判例を整合的に説明し正当化できる理論に基づくべきだ，あるいは憲法全体の構造を重視すべきだ等と言われる。アメリカ合衆国に特徴的なのは，制憲者意思説というアプローチで，憲法典の意味が不確定である場合は，制憲者がどのように考えたかが手がかりになるというものである。そのため，フィラデルフィアの憲法制定会議の議事録や各州での憲法案の承認の際に影響を与えたと言われる『ザ・フェデラリスト』が参照される。日本を含めて他の国には，ここまで憲法の起草や制定にかかわった個々の人物の発言や著作を参照する風習はない。

憲法案を審議・決定した会議にしろ，各州で案を承認した議会にしろ，本来的に意思を有する個人ではなく多数人からなる会議体であって，その「意思」とされるのは，最終的に会議体としての議決の対象となった文書のみのはずで

ある。審議過程での個々の議員の発言や，ましてや会議外で刊行された文書が，憲法の理解にあたって確かな手がかりになるという発想には，不思議なところがある（ジェレミー・ウォルドロン〔長谷部恭男ほか訳〕『立法の復権』〔岩波書店，2003〕29−32 頁参照）。

日本国憲法の当初の起草には，マッカーサー将軍と占領軍総司令部のスタッフがあたった。起草当時のマッカーサーが，将来，日本に米軍が駐留し続けるべきだと考えていたか否かは不明である。沖縄に基地が確保されている以上（沖縄の施政権が日本に返還されたのは 1972 年 5 月である），日本本土に米軍が駐留する必要はないと考えていたとの観察もある（Geoffrey Perret, Old Soldiers Never Die: The Life of Douglas MacArthur〔Random House, 1996〕, p. 535）。当時，アメリカが唯一の核兵器保有国であったことからすれば，あながち非合理な態度とは言えない。

日本の司法部，とくに最高裁判所が政治部門との対立を避ける傾向があるとの指摘はしばしばなされる。それは，最高裁判所が違憲判断を示すことがきわめて稀であることに典型的に現れていると言われる。その原因については，さまざまな見方がある。国会で成立する法律のほとんどがいわゆる閣法（法案を内閣が提出したもの）であって，事前に内閣法制局によって綿密な審査を経ており，違憲の疑いのある法律案が提出されることが考えにくいとの観察もある（いわゆる安保関連法については，このことはあてはまらない）。また，最高裁は個別の事件における当事者の救済こそが自身の核心的任務だと心得ており，そのため，当事者の救済のために必須と言い得る場合にのみ憲法判断を示すのだとの観察もある（最高裁判事であった藤田宙靖教授による『最高裁回想録』〔有斐閣，2012〕115 頁以下参照）。

他方，日本の司法部は，社会生活の各方面で男女の差別の抑止や雇用の保護のために積極的な役割を果たしてきたのであり，その際，「社会通念」が根拠としてしばしば援用されてはいるが，実際には裁判所があるべき社会通念を想定しつつ民法 90 条等の一般条項を利用し，社会規範の積極的創造を行ってきたとの観察もある（フランク・アッパム〔岸野薫訳〕「日米における政治と司法の機能」土井真一ほか著『岩波講座　憲法 4』〔岩波書店, 2007〕）。判例に現れる「社会通念」が事実上のものではなく，最高裁が想定するあるべき社会通念であることは，最高裁自身も指摘している（例：最大判昭和 32・3・13 刑集 11 巻 3 号 997 頁《チャタ

レー事件》)。

本件判決が，正調の統治行為論にのっとった苫米地事件判決（最大判昭和35・6・8民集14巻7号1206頁）とは異なり，「一見極めて明白に違憲無効」である場合には，高度の政治性を有する問題についても憲法判断に踏み込むとの姿勢を示した背景については，長谷部恭男「砂川事件判決における『統治行為』論」同『憲法の論理』〔有斐閣，2017〕第13章参照。そこでも描いたように，一国の軍事戦略と憲法の基本原理との間には深い連関がある。

なお，本件判決は，集団的自衛権の行使を認める根拠となると言われることがあるが，本件では日本による集団的自衛権の行使は全く論点となっていない。片言隻句を文脈から切り離して捉えた暴論と言うしかない主張である（長谷部恭男編『検証・安保法案』〔有斐閣，2015〕4−5頁参照）。

あとがき

本書執筆の過程において，私達日本人専門家は，それぞれの専攻する分野の重要判例を選び，それらについての日本法の観点からのコメントを日本語で書いた。しかし，判例に関する英語での分析・解説に関しては，すべて，ラムザイヤー教授ご自身のお考えが述べられており，私達日本人専門家の考えは含まれていない。

むしろ，本書ができていく中で，私達日本人専門家は，私達がそれぞれの分野における重要判例として選んだものについて，ラムザイヤー教授により，一体どのような分析・解説がなされるかを大いに楽しみに待っていた。その結果，ラムザイヤー教授と私達の間の考え方の差異にびっくりした場合も少なくない。

以上のような次第であるために，判例を選択した日本人専門家の一人として，誤解を避けるために，ここで再度，以下の点を確認しておきたい。

- 本書における英文の分析・解説の内容がアメリカの研究者の一般的な考え方というわけでは決してなく，あくまでもラムザイヤー教授個人のお考えであること。
- 本書における英語の分析・解説について，私達日本人専門家の考えは反映されておらず，もっぱらラムザイヤー教授のお考えが述べられていること
- 個人のブログやウェブサイト等は，通常の学術論文等においては引用されることはあまりないが，本書では「議論のきっかけ」として引用されていること。

このような点をご理解の上，読者の皆様には，各法分野における日本の重要判例について，ラムザイヤー教授が果たしてどのように分析するかという点をお読みになられて，同じ判例でも実に様々なとらえ方があるという点を，実感していただければ幸いである。

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中里　実

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An American Perspective on Japanese Law

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著　者　J.マーク・ラムザイヤー
長谷部恭男
宇賀克也
中里実
川出敏裕
大村敦志
松下淳一
神田秀樹
荒木尚志
白石忠志

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東京都千代田区神田神保町2-17
電話(03) 3264-1314〔編集〕
(03) 3265-6811〔営業〕
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