

## In Defense of the Self-ownership Thesis: A Reply to My Critics

MORIMURA, Susumu

In 2005, three Japanese writers (Fumihiko Takahashi, Shin'ya Tateiwa and Tsutomu Hashimoto) criticized on different grounds my version of libertarianism, which is based on the Lockean idea of self-ownership. In this article, I reply to each critic and further elaborate on my self-ownership thesis.

Takahashi's main target is my claim that a person has property in his or her person (body). According to Takahashi, to speak of one's ownership or property in one's body is morally wrong and against legal usage; one has an exclusive right to make use of one's own body, but not a right to dispose of it. My reply to him is that the idea of owning one's own body is legitimate on both moral and terminological grounds, for the exclusive right to control is tantamount to ownership. Here I also explain my view on methods of normative ethics and justify my explicit appeal to moral intuitions.

Tateiwa attacks my labor theory of property rights mainly for its alleged lack of justification. In response, I point out that I had already proposed such justifications in my books, and also take Tateiwa to task for his confused understanding of negative and positive liberties and his failure to derive egalitarianism. I conclude that libertarianism is more convincing and conducive to a prosperous, peaceful society than is distributive egalitarianism.

Hashimoto compares his own "growth-based liberalism" with my self-ownership libertarianism in favor of the former. While I appreciate some of his insightful remarks on my theory, I remain unconvinced of the superiority of his version of liberalism.

## The State's Criminal Law and Ethnic Minorities' Cultural Customs in China

WANG, Yunhai

As is common knowledge, China is a state composed of about 56 ethnic groups. The HAN Nation is the main ethnic group with the largest population and the other 55 are minority groups with very small populations. However, every ethnic minority group has its own cultural customs. So, when a crime occurs in a particular ethnic minority group's area, how to deal with such a crime often becomes a major problem; should we follow the state's criminal law or the ethnic minority's cultural customs? This paper focuses on this problem. By the discussion conducted herein, we find that ethnic minorities' cultural customs still reign supreme over the state's criminal law in every area where the same ethnic minority group's members are living together.

## Ein Beitrag zum Rechtsbegriff „Verwaltung“ –Anhand der deutschen Rechtstheorie um die „Organisationsgewalt“–

KIFUJI, Shigeru

Über den Rechtsbegriff „Verwaltung“ wird bereits seit der Meiji Ära unter japanischen Wissenschaftlern viel diskutiert. Inzwischen ist die Auffassung, nach der die Verwaltung lediglich negativ definiert werden könne, zur herrschenden Meinung der Verwaltungsrechtslehre geworden. Die Diskussion um diese Rechtsterminologie scheint jedoch bisher noch kein Endergebnis gefunden zu haben, wenn man einige aktuelle Auffassungen vor allem aus der Verfassungsrechtswissenschaft in Betracht zieht, nach denen dieser Begriff doch positiv definiert werden solle.

Dieser Beitrag behandelt im Kern die deutsche Rechtstheorie um die Organisationsgewalt, und zwar die des Bundeskanzlers, über die ich selber im Rahmen meines Aufbaustudiums in Deutschland eine Magisterarbeit geschrieben habe. Unter der Organisationsgewalt des Bundeskanzlers versteht man vor allem die ihm zugewiesene Befugnis, ohne förmliches Gesetz neue Bundesministerien errichten zu können. Wie kann diese Kompetenz in einem modernen Rechtsstaat legitimiert werden? Auf diese einfache Fragestellung ist meine Magisterarbeit zurückzuführen. Der vorliegende Aufsatz spiegelt einen Teil meiner Magisterarbeit wider.

Das Motiv für diesen Aufsatz liegt jedoch eher darin, der japanischen Rechtswissenschaft einen Ansatzpunkt anzubieten, indem ich die deutsche Rechtsdogmatik vorstelle. Unter diesem Gesichtspunkt bezweckt dieser Aufsatz, uns anhand des Verständnisses der Organisationsgewalt des Bundeskanzlers den deutschen Grundgedanken, nämlich die „Exekutive“ bzw. „vollziehende Gewalt“ in die beiden Bereiche von „Regierung“ und „Verwaltung“ zu untergliedern, erneut zur Kenntnis zu bringen. In diesem Kontext ist meines Erachtens die Organisationsgewalt des Bundeskanzlers nur dann richtig zu verstehen, wenn man sie als ein Element der sog. „Kanzlerdemokratie“ ansieht,

die sich nicht auf der Ebene der reinen Verwaltung befindet, sondern auf der Ebene der Regierung. Dort stößt die Anwendung der Theorie vom institutionellen Gesetzesvorbehalt auf ihre Grenzen.

Was für konkrete Einflüsse dieses Verständnis auf die japanische Rechtswissenschaft ausüben könnte, lasse ich hierbei noch offen. Jedoch bin ich davon überzeugt, daß es in der heutigen Zeit, in der die Verwaltung bzw. die Exekutive immer stärker gefordert sind, auch rechtswissenschaftlich sehr bedeutsam ist, über ihre heutige Rolle und Reichweite unter verschiedenen Aspekten neu nachzudenken.

## An Introduction to Unfair Labor Practices in Taiwan: The Proposed Amendment to Major Labor Laws in 2002

HOU, Yueh-hung

The issue of labor disputes, particularly unfair labor practices, has become a real challenge to the government of Taiwan. Under the Labor Union Act, employers are prohibited from refusing to hire, dismiss, or otherwise unfairly treat workers because they are labor union members. However, employers have in practice sometimes dismissed labor union leaders without reasonable cause or laid them off under the guise of employee cutbacks, and observers have pointed out that the law has no specific penalties for such violations. In addition, the Collective Agreement Act provides for collective bargaining, but does not make it mandatory.

In 2002, the Executive Yuan pushed for amendments to the major labor laws, including the Labor Union Act, the Collective Agreement Act, and the Settlement of Labor Disputes Act, which would encourage cooperative and collective bargaining and deter unfair employer and union labor practices. These amendments establish an administrative agency to regulate unfair labor practices.

This article analyzes various aspects of unfair labor practices and the problems associated with relief for unfair labor practices in Taiwan.

L'orientation sexuelle et les droits de l'homme :  
la différence des sexes peut-elle continuer à être  
une condition *sine qua non* du mariage ?

SAITO, Emiko

La question du mariage entre personnes de même sexe, très présente dans les actualités des pays occidentaux, se pose de plus en plus en termes de l'égalité des droits. Ce phénomène est intrinsèquement lié à l'ascension remarquable du statut des droits de l'homme dans le domaine intime, pouvant bouleverser le paradigme de la théorie du droit moderne, qui fait échapper la sphère familiale à l'exigence d'égalité.

Au cœur du problème, se pose la question du *genre*. L'institution matrimoniale symbolise la dualité des *genres* où l'hétérosexisme ne cesse de s'affirmer. C'est pourquoi le mariage homosexuel, dont la potentialité est susceptible d'affecter cette dualité, suscite des réactions fortes.

Nous allons tenter de savoir si le refus de l'accès au mariage par les couples de même sexe ne consitue pas une discrimination fondée sur l'orientation sexuelle. Notre objet de réflexion sera basé sur le droit français, où l'union homosexuelle attire toutes les attentions de la doctrine. Or cette dernière paraît éminemment hostile à la consécration des couples homosexuels, en leur opposant le postulat de la procréation. Mais la reproduction biologique ou sociale conditionne-t-elle juridiquement le mariage ? Nous allons examiner ce point à la lumière d'une description positiviste du droit matrimonial français.

## The United Nations and Global Governance –The Transition of the Sub-concepts of Managerial Accountability in the United Nations–

HASUO, Ikuyo

This article belongs to a series of articles under the same theme which questions what should be done in order for the United Nations(UN) to be accountable as a principal actor in Global Governance. This particular article focuses on analyzing a conceptual development of the sub-concepts of managerial accountability in the Secretariat of the United Nations Organization.

First, a hypothesis called “a ladder of accountability” elaborated by J.D. Stewart is introduced, which explains the transition of the sub-concepts of managerial accountability in the public sector. The hypothesis is verified by a case study on the transition of the sub-concepts of managerial accountability in the federal government in the US administration.

Secondly, the historical development of the sub-concepts of managerial accountability in the UN is analyzed by applying Stewart’s hypothesis. Based on such analysis, the history of the UN administration is classified into three different time periods from the perspective of the transition of the sub-concepts of managerial accountability in the UN.

Thirdly, New Public Management (NPM), which largely influenced the present sub-concept of managerial accountability in the UN, a performance-based accountability, is discussed. The characteristics of the NPM in the UN are identified by referring to the result of the research on the typology of the NPM in industrialized countries conducted by the OECD.

In conclusion, the transition of the sub-concepts of managerial accountability in the UN is identified. Reference is also made as to what still needs to be achieved in order for the UN to be more accountable as a principal actor in Global Governance.

## Japan's Position in the Postwar World

TAKASE Hirofumi

This paper examines Japanese exports to the United States in the early postwar years to demonstrate how postwar Japanese leaders redefined the position and the role of the state in the postwar world.

At a result of Japan's defeat in the Second World War in 1945, Japan had destroyed its relations with the United States and Asian countries, exhausted national resources, and lost credibility in the world. Therefore, to achieve economic and trade recovery of postwar Japan, Japanese leaders had to make an all out effort to redefine the position and the role of Japan in the postwar world that they recognized was dominated by the United States. By focusing on Japanese exports to the United States in this important era that Japanese leaders had emphasized as being one of economic recovery, this study shows one of the patterns of Japanese diplomacy to the United States in the postwar world.