

## ABSTRACTS

### On Machiavelli ( 3 )

—— Who was the Model Prince for his “*Il Principe*” ?

Hideo SASAKURA

This study aims to present five new aspects concerning Machiavelli's political thought. First, the influence of the classical authors Xenophon, Livius, Frontinus and Vegetius upon Machiavelli's military and political ideas. Second, the fact that the major model prince for his “*Il principe*” was not Cesare Borgia, but Cyrus the Great, Scipio and other ancient military and political leaders. Third, comparison of the fifteen essential messages of Machiavelli's political thought found in both “*Il principe*” and “*Discourses*”, to show close relationship between both works. Fourth, analysis of Machiavelli's four works, “*Arte della Guerra*,” “*La Mandragola*,” “*Belfagor arcidiavolo*,” and “*Castruccio Castracani*” to show his deep interest in military strategies. Finally, comparison between Christine de Pisan's and Machiavelli's political thoughts to show de Pisan (1365–1430) as an important forerunner of Machiavelli.

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### The Recommendation for intensive Trial in Civil Procedure

—— Use of Preparatory Proceedings  
by Means of Documents ——

Hajime NISHIGUCHI

1 The history of the reform of civil procedure in Japan

In Japan, the reforms of civil procedure have been carried out so far. However, the reforms failed after a while. New Code of Civil Procedure was enforced in 1998. The purposes of new Code of Civil Procedure are the realization of arrangement of issues and the intensive examination of evidence. The intensive examination of evidence has been realized to some degree so far. However, the oral discussions are not enough in the issue-arranging of civil procedure.

## 2 The actual situation of civil procedure

The actual situation of average civil procedure of Japan is as follows.

The period from the submission of a complaint to a judgment is 19 months.

The number of dates is 11 in total.

The period has become four months shorter than the period in the old Code of Civil Procedure. The realization of the intensive examination of evidence has made the period shorter. However, the intermittent trials are not changed at all.

## 3 The bad effects of the intermittent trials and the cause

The bad effects of the intermittent trials are as follows.

low labor productivity, secret trials in a substantial sense and the difficulty of truth-finding.

The lack of critical mind of legal profession, the bureaucratic constitution of judges and the burden of oral proceedings have caused the bad effects.

## 4 The basis of the reform of civil procedure

The fair and quick trial, the cost cuts of civil procedure and the satisfaction of the users are important in the reform of civil procedure.

## 5 The use of Preparatory Proceedings by Means of Documents

The Japanese Code of Civil Procedure prescribes Preparatory Proceedings by Means of Documents.

In this proceedings, the parties exchange preparatory documents for

issue-arranging outside a court. This proceedings match the constitution of Japanese legal profession and can realize intensive trials.

We will be able to realize substantial trials if we use this proceedings. If using this proceedings, the trial period will become 12 months and the number of dates will become 3 in total.

#### 6 The problems of civil procedure in Japan

The problems of civil procedure of Japan are as follows.

the effective measures against low birthrate and aging, the interchange of researchers and practitioners and the utilization of IT and AI.

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## A Legal Cross-disciplinary Research on Problems that may Arise upon Discrepancy of One's Fertility and Registered Gender — Possible Method to Amend the Japanese “Gender Identity Disorder Act” ( 1 )

Mai ISHIJIMA

This paper examines the requirements set out in Japanese Gender Identity Disorder (GID) Act to change one's legal gender. Focusing especially on physical requirements, namely sterilization and specific physical modifications, this paper observes specific influences which may arise after the abolishment of these requirements. A cross-disciplinary search of gender-related terms is conducted on the government legal search engine (e-Gov). Based on the search results, the provisions are screened those that will be affected in case of elimination of the requirements of ( 1 ) sterilization and ( 2 ) external appearance. The provisions related to reproductive capacity are further divided into three

subcategories: (a) those that are applicable when pregnancy/childbirth occurs, (b) those that are applicable to circumstances in which pregnancy/childbirth is not confirmed but one's reproductive capacity must still be considered, and (c) those related to male reproductive capacity.

In the legal areas other than family law, the problems after the abolishment of physical requirements may arise in cases in which an FtM<sup>(1)</sup> gives birth by himself, or in which an MtF<sup>(2)</sup> recognizes a child and establishes a father-child relationship. This paper examines each category and shows possible countermeasures against expected problems, and eventually suggests an ideal method to amend the GID Act. This paper is concluded by presenting further challenges concerning gender registration system itself as a future task.

(1) In this paper, FtM refers to a person who changed or intends to change his legal gender from female to male.

(2) In this paper, MtF refers to a person who changed or intends to change her legal gender from male to female.

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## Protection of Possessors in Classical Roman Law —— From the Viewpoint of Buyer Protection ——

Yu SHIMIZU

This paper is only a part of the study that is an attempt to explicate the institutional function of USUCAPIO PRO EMPTORE in classical Roman law.

In this paper, I examine considerable means that protect possessors except for USUCAPIO itself, thereby I reveal functions and territories of

each protective system. The purpose of that is to confirm the meaning of USUCAPIO's existence from behind.

In particular, as a result of examining ACTIO PUBLICIANA, the following fact becomes clear. USUCAPIO functions originally, only when the other party is the true owner who is not the seller. Other studies emphasize that there is still room for fulfilling its function in this category. However, it should be marked that USUCAPIO functions only in the extremely limited case.

USUCAPIO restricted the acquisition and transfer of ownership, and then it was detrimental to trading and the acquisition of ownership itself. To redress negative effects of USUCAPIO, ACTIO PUBLICIANA was introduced. The restrictive effect of USUCAPIO is obvious from each requirement. Moreover, this ACTIO had an effect to abolish a periodic requirement.

Other than this effect, ACTIO PUBLICIANA caused a reform in the situation of subsequent acquirer protection. To be accurate, it was the conversion from *absolute concept* to *relative concept*. Furthermore, there was an additional note that did not exist in the situation of USUCAPIO.

As above, although there were reforms by Praetors or jurists, it was impossible to duly assert against the true owner who was not seller himself by means of ACTIO PUBLICIANA. This was the limit of reforms to redress restrictions on the acquisition and transfer of ownership caused by USUCAPIO system. This limit was due to "weight" of Roman ownership (*Dominium ex iure Quiritium*).