

## Abstracts

### The Evolution of the Concept of an “Employee” in Japanese Labour Law, in Comparison with the English and German Labour Law

**Koichi Kamata** (Toyo University)

This article will seek to trace the evolution of the concept of an Employee in Japanese Labour Law, in comparison with English and German Labour Law. English courts of common law defined an “Employee” as a person who performs exclusive service under a contract of service in the second half of the nineteenth century. German labour courts defined an employee to whom the Labour Law was applied as a person who has a duty to work subordinate to an employer. Despite differences between the two legal systems, the notion of an Employee implied the subordination of the individual to the employer under a contract of service. Before the Second World War, the competent authorities defined a worker to whom the Japanese Factory Act 1899 was applied as a worker who provided service for a factory owner, whether under a contract of service or another contract. But in discussions on the proposed Trade Union Act 1926 in Parliament, the proposer of the government explained that a worker meant an employee who was employed under a contract of service. After the war, the Trade Union Law 1945 and the Labor Standards Law 1947 defined a worker as a person who was employed subordinate to an employer, whether under a contract of service or another contract. The concept of an Employee was completed by Prof. Wagatuma, when he identified the individual employed under a contract of service with the worker to whom the Labour Law shall be applied.

### Current Issues on the Legal Notion of Workers

**Hiroyuki Minagawa** (Chiba University)

Recently, concerns over the problem of how to determine the existence of an employment relationship linked to protection of labor and employment law has been growing in many countries. Regarding the problem, this article discusses current issues related to the notion of “worker” in Japanese labor and employment law. Firstly, by outlining the ILO Employment Relationship Recommendation (2006), we can recognize that the main point of the problems with employment relationships is how and to what extent to expand protection of labor and employment law for subordinate employees to dependent self-employed workers. By surveying issues of the scope of Japanese labor and employment law, which is determined based on the legal definition of “worker” in the legislation, we can find similar problems and remarkable responses to them in Japan. According to the judicature, while the notion of “worker” in the Labor Standards Law is decided based on the criteria of subordination, the notion of “worker” in the Labor Union Law can include types of quasi-subordinate workers, as well as typical subordinate employees. As an outcome of surveying these issues, it is possible to say that Japanese collective labor law has a relatively wider scope for self-employed workers.

### Protections of Non-employed “Workers” in Social Law

**Mari Fujimoto** (Mie University)

The field of social law is so wide that no one can live outside of it. However, some social systems distinguish the laborers from others (independents, housekeepers, children, etc.), and the former enjoy specially fortified protections which are not available to the latter. In fact, it becomes more and more difficult to distinguish between laborers and independent workers. In some cases, independents, or even the housekeepers and the children, need the same protection as the laborer. To respond to their needs, various approaches are suggested. One of them, proposed in the report to the European Commission 1999, is that the protection by social law should be decided according to features of activity and the objectives of social law. In this approach, all obligatory activities are “work”. There should be common law for “work”, and special laws appropriate to each “work” (employment, profession). In light of this idea, our research examines some questions in Japanese social law, and shows possible solutions as well as the problems that exist.

### The Certification System and Its Functions in Italy

**Yasuyuki Konishi** (Meiji University)

This paper studies the certification system in Italy, which certifies labor contracts, clarifies the tendencies of the Italian labor law system and the problems it copes with, and tries to consider how to regulate the employer-employee relationship in Japan. The Italian certification system begins on a voluntary basis, and certification committees are set up in the bipartisan organizations, prefectures, universities, and so on. This certification system has two functions. The first is the function of qualification of the employer-employee relationship. This function plays the primary role of the certification system and contributes to pre-determination of the content to regulate the labor relationship to an extent, though the committees cannot settle the content definitely, because the parties can bring a case against the certification. The second is the function of guarantee of the agreement between employer and employee, increased by the reform of 2010, which has had a close relationship with the flexibility of the content of labor contracts. While these two functions may be opposing, they share the same direction in the sense that they could convince the parties of the regulation in the relationship. Also in Japan, it seems to be important to envisage labor law policy making a point to increase satisfaction of the parties.

### Labor Protection: for Whom, Why and How?

**Munetomo Ando** (Nihon University)

The labor law exists to protect employees from danger, low wages, long hours, or unrestricted firing. The classification of a worker as either an employee or an independent contractor is important, because it affects the employer's legal responsibilities. In this paper we study the role of labor law and the scope of protection. The Coase Theorem tells us that if property rights over the relevant resources are well-defined, economic efficiency is achieved. However, this result is based on some preconditions: the transaction costs are zero, the parties interested can make a rational decision, and so on. If a precondition failed, restrictions on the labor contract (e.g., limited working hours) can be justified on the basis of the efficiency criterion. Moreover, these kinds of restrictions are required not only for employees but also independent contractors, if there is no difference in their situations.

### Self-employed Persons' "Dependency" and Choice of Work: Attitudes of Independent Contractors on Employment Types and Training Opportunities

**Yoshihide Sano** (Hosei University), **Hiroki Sato** (The University of Tokyo), **Eiichi Ohki** (The University of Tokyo)

In this paper, we analyze self-employed workers' preference in employment types and the availability of skills training opportunities, using a survey questionnaire administered to those who are self-employed. The analysis showed that a proportion of self-employed workers engage in work in a similar way to 'employees' in terms of their dependency to their contracting organizations. Furthermore, self-employed workers who are less dependent on contracting organizations tend to express more positive views about being self-employed, are more satisfied with how they work, and want to carry on being self-employed. However, independent self-employed workers – as opposed to dependent self-employed workers – are less likely to have skill training opportunities. Based on these findings, we point out the importance of the government initiatives to promote training opportunities to self-employed workers for their career development.

### Restructuring of Job-specific Competency-based System: A Case Study of HRM Reform at Mitsubishi Electric Corporation in 1978

**Makoto Suzuki** (The Japan Institute for Labour Policy and Training)

This paper examines the restructuring of the competency-based system in the Japanese firms in 1970s, through a case study of reform in HRM at Mitsubishi Electric Corporation in 1978. Three points became clear from the case: (1) HRM of Mitsubishi Electric Corporation changed from "shokunoutekishikakuseido" to "shin-shokunoushikakuseido",

not “nouryokutekishikakuseido”, by HRM reform in 1978. “Shin-shokunoushikakuseido” was what the Japan Federation of Employers’ Associations (Nikkeiren) recommended as new HRM. The premise of the competency-based system required the existence of a job. Mitsubishi Electric Corporation maintained the principle on this point. (2) The reform performed an important reorganization. On the other hand, we are not able to confirm a surge of the reflection as a result of employee performance evaluation in the reform. At Mitsubishi Electric Corporation, the shift to “shin-shokunoushikakuseido” in the 1970s reformed “shokunoutekishikakuseido” to a more functional system, rather than reinforcement of the competition principle through the employee performance evaluation. (3) In the late 1970s, transfers increased, and it caused many job-based wage decreases at Mitsubishi Electric Corporation. The job-based wages were upset, but the reform was kept as a partial one, and job-based wages did not shift to competency-based wages. In conclusion, the reform in 1978 at Mitsubishi Electric Corporation was an important reorganization corresponding to various problems. But Mitsubishi Electric Corporation did not abandon the principle of a job-specific competency-based system. It maintained the job-specific competency-based system with some modifications, while other companies in the face of a similar problem did a shift of the system that was said to be “from job to competency” and abandoned the idea of the evaluation relative to the job that originally was included in the competency-based system. Through this paper, such significance of the HRM reform in Mitsubishi Electric Corporation in 1978 was made clear.

[補足記事]

2012年2・3月合併号「労働経済学研究の現在——2009～11年の業績を通じて」学界展望・座談会において、タイムユースサーベイにおける生活時間の一日合計が24時間とならない回答が多数ある旨の発言がありました。この発言に関し、読者より編集委員会に総務省「社会生活基本調査」について言及したものかとの質問が寄せられました。編集委員会より発言者に確認したところ、社会生活基本調査など特定の調査について言及したものではないとの回答がありました。また、社会生活基本調査を実施している総務省統計局に問い合わせたところ、同調査のデータについて、一日の生活時間の集計はすべて24時間となっているとの回答をいただきました。この点について情報を追記します。

[訂正]

2012年6月号の論文「日本企業におけるグローバル人材育成システムの構築に向けて」の注1)の記述に誤りがありました。下記のとおり訂正いたします。

(誤) 一般財団法人ビジネスコミュニケーション協会

(正) 一般財団法人国際ビジネスコミュニケーション協会