

Japan Academy Prize to:

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 for *Roman Origins of the Law of Possession*

***Outline of the work:***

Roman Origins of the Law of Possession by Professor Akira Koba (2009), is a work that reconstructs how the formation of the political system in Ancient Rome eventually led to the establishment of a legal order that was a system of various rights including ownership, and the key role played by the notion of *possessio* in this process.

The Roman institution of possessory actions, which protects *de facto* control of an object regardless of whether the possessor has the relevant title such as ownership or leasehold, has been inherited by various civil legal systems. These systems include those of France, Germany and of course Japan.

Professor Koba starts his oeuvre by constructing his own methodology in Chapter 1, through a comprehensive re-evaluation of the fruits of the intellectual procedure of “critique”, the latter being an integral part of early modern humanism. Thus having articulated his methodological approach, from Chapter 2 onwards he proceeds to analyse ancient sources.

His analysis centres on the Tale of Verginia. The events described in this tale are said to have taken place in the latter half of 5th Century BC, but the sources relating this tale come from much later, written by Roman historian Livy and the Greek Dionysius, both from the Augustan era, after the establishment of the Imperial regime. Koba subjects these texts to detailed analysis and cross-examination, and reconstructs the Tale in the form it would have taken shortly after the actual events. On the strength of this reconstruction, he then deduces the social relations that led to the formation of this Tale. This method, both scrupulous and meticulous, allows his arguments to be uniquely convincing. This with his analyses which take account of related disciplines as structuralist anthropology, semiotics and mythology, make his work a major contribution to the study of Roman legal history.

In effect, the author succeeds in painting a detailed picture of the prehistory of possessory actions by applying his own critical method on the (reconstructed) original form of the Tale of Verginia. The author argues that the procedure followed in the social environment that gave birth to the Tale was already a developed “civil action” in the technical sense.

According to the author, the formation of such “civil actions” relied on the prior establishment of a “political” system, in which important decisions are reached not through authority or brute force, but through the accumulation of rational argumentation in which justification is demanded for each assertion. Such a political system was first established in Greece, and in Rome around 500 BC, with the Republican Revolution. The institutional expression of this system is the well-known Roman constitution, with such features as the dualism and deliberative system involving the Senate and the people of Rome, alongside with the executive consul who had a term of one year and was entirely subject to the Senate’s decrees. The most important institution in sustaining this “political” system was the judicial system, and this affinity would require the judiciary to assume a form that replicated that of the political system. Thus the trilateral system was strictly adhered to, where the prosecution and the defendant – or his counsel – would argue on an equal footing, with the jury hearing arguments from both sides and reaching a judgment.

Having explored the establishment of these “political” and “judicial” systems, the author argues that “law” in the Roman republic was formed at the juncture where this political-judicial arrangement was put into place. This “law” was none other than the Twelve Tables, created through the struggle of the *plebs*, half a century after the Republican Revolution. Moreover, he argues that in addition to the criminal justice system, which could be defined as a system designed to protect the political organisation as a whole, the civil justice system, a system to protect the human and material resources, i.e. the property, of the political class, was created over this same period. This civil justice system took the form of the aforementioned institution of possessory actions.

In Chapters 3 and 4, the author develops a rich historical narrative against the backdrop of status struggle, the reforms of the Gracchi and their ultimate failure, the Social War, Sulla’s reforms and ultimately Caesar’s dictatorship. This narrative, centring on the analysis of Cicero’s texts and based on a meticulous reading of material ranging from philosophy, history, literature to orations, focuses on what forms Possession (*possessio*) and Ownership (*dominium*) would take in the period following their creation, and what interactions they would have with the Roman politics, society and economy.

Professor Koba’s *Roman Origins of the Law of Possession* is thus not only a magnum opus of Roman legal history, but it is also a groundbreaking contribution that enables a reconstruction of how political and legal order developed over the history of the western world – from Classical Antiquity to Medieval times and then to the Early and Late Modern Periods, focusing on the idea of Possession. At the same time, it opens a wide vista that allows a comparative-historical enquiry on the ideas of Right and Law in the West and Japan, and was judged to be worthy of the Japan Academy Prize.