

労したことだろうと思う。

なお、順序が逆になってしまったが、彼は定年後も学問的活動を全く止めてしまったわけではない。その後における法律学上の著作として、最終講義の内容をまとめた *Bevisbörda och beviskrav* (Lund: juridiska Föreningen i Lund), 1983) と証拠法・証明論の平易で水準の高い概説書である *Gar det att bevisa?* (Stockholm: Norstedts, 1989), などを発表している。この二つは彼の生涯の証拠法・証明論研究成果のエキスを語るものといってよい。前者については拙訳「証明責任と証明度」『竜崎喜助先生還暦記念 紛争処理と正義』(1986, 有斐閣出版サービス)がある。

以上のことを記して、心から彼の冥福を祈る次第である。(1997年7月)

* この後記を書いた後、私は8月20日から21日までの3日間ルンド大学で開催された北欧訴訟法学会の大会に参加し(最終日に「日本人法律家からみたスウェーデン訴訟法」という報告を行った)、その後スウェーデン北部の二つの高等裁判所—ウメオ(Umeå)およびスンスヴァル(Sundsvall)に所在—を訪問したのだが、大会でもこれらの裁判所を訪問したときにも同様の質問を受け、ウメオの裁判所のある判事からはこの原稿のコピーの送付を確約させられ、つい先日送ったような次第である。(1997年9月記)

juristroman (Lund: Juristförlaget i Lund, 1992) 『テニスコートの後ろの樹 法律家小説』という二つの小説を発表した。

前者はデンマークとドイツとの企業間の紛争を取り扱う国際商事仲裁人としてのスウェーデン・マルメの高裁部長判事の行動と生活を扱ったもので（スウェーデンでは裁判官が仲裁人になることはかなり一般的である）、彼の家族や仲裁事件について彼を補佐する判事補の私生活のリアルな描写も含む興味深い小説である。アド・ホックの国際商事仲裁の実際の一側面を理解するために有益な著作だと思われたので、邦訳を考えてノートを取りながら精読したことを思い出す。

後者はウプサラ大学で法学博士の学位論文を完成することに失敗し、また本来の職業活動においても成功できなかった弁護士の挫折の生涯を追求するもので、その時代、生育環境とも著者自身のそれに近く、自伝的色彩が濃厚に感じられる作品になっている（異なるのは、主人公は結局学位論文が書けなかったのに対し、著者は法学者として成功している点である。おそらく彼自身の内面の一部と彼の友人などを絡み合わせて主人公の造形がなされたのであろう）。当時のウプサラ大学の法学部の状況とくに北欧リアリズム法学（ウプサラ学派）においてヘーゲルストレーム（Axel Högerström）とともに双壁とされるルンステッド（Vilhelm Lundstedt）のユニークな講義風景などの叙述が興味を惹く。（ちなみに、ルンステッドはヘーゲルストレームと異なり、法哲学界ではあまり注目されていないが（学問的な著作も乏しい）、ボールディング自身が私に語ったところによれば、ルンステッドの極めて個性的な講義は満堂の学生たちを魅了し、終生忘れえぬほどの強烈な印象を与えたという。）

両書とも書評ではすこぶる好評だったので、彼は第三作に取り組んでいたようであるが、そのうちに病気でタイプが打てなくなり、ついに執筆を断念せざるをえなくなったらしく、以後は私のところに来る手紙も、彼の筆跡に馴れているはずの私にさえ判読不能の箇所が目立つようになった。彼は晩年独身生活を続けていたので、身辺のことなぞ随分苦

され、生前の彼の友情に対する謝意のささやかな表現として、この原稿のそのままの活字化を決意した次第である。

加えて、もう一つ副次的理由がある。私は裁判官生活15年の後、退官して退職金をはたいてスウェーデンに私費留学をしたのだが、これは日本人にはもちろん外国人にとっても物珍しく映ずるらしく、スウェーデンその他の外国でもその理由を聞かれることがしばしばである*。講演ではこの点についても多少詳しく語っているため、本稿を読んでもらえば、いちいち説明する労が省けるのではないかと考えたのである（拙著『裁判法の考え方』（1996、信山社）所収の「スウェーデンの法と社会」302—3頁参照。なお、同所に書かれている留学の理由は、本稿のそれとややニュアンスが異なるように思われるかもしれないが、それはこの文章を書いた当時、実は講演原稿が見当たらず（整理が悪いので）、その参照ができないまま執筆したことが影響している）。

いずれにせよ、上述のような主観的理由から活字化するものではあるが、スウェーデン法に関心を有する方々に少しでもお役に立つことができれば幸いである。

なお、英文のチェックについては、従前から英文について御指導を頂いている渉外法律事務所を経営される弁護士の伊藤和子先生および同事務所の英文ライティング・スタッフの太田武氏（カナダ生まれ）の御高配を賜った。記して深謝の意を表する。

ボールディングの経歴および業績については、本文中にも触れた *Två rättegångar* 拙訳『民事・刑事訴訟実務と弁護士』（日弁連弁護士倫理叢書+スウェーデン）（1985、ぎょうせい）の解説中に述べてあるので、その参照を乞いたいが、ここにその後のことについても紹介して彼を偲ぶよすがとしたい。

彼は定年退職後、主たる関心とエネルギーを彼のいう「法律小説」に注ぎ、*Skiljemannen Berättelsen om en jurist* (Stockholm: Norstedts, 1986) 『仲裁人 ある法律家の物語』、*Trädet bakom baslinien*

my study of Swedish procedural law has contributed in some measure to such perception.

I am happy to say that recently, the number of young scholars in Japan interested in Swedish law is gradually increasing and I firmly believe their efforts will bear fruit in the near future.

But now, I have used up all my time. Let me just mention here the names of three scholars who have been engaged in the study of Swedish law; namely, Professor Setsuko Sato of legal philosophy, Professor Shohachiro Hishiki of family law and Professor Jin Sakata of criminal law.

Finally, I should like to take this opportunity to express my profound gratitude to the many people in this country, some of whom are here today in this audience, who have kindly assisted me in a myriad of ways. Without their generous support my work would not have been possible. Thank you very much and “Tusen tack !”

後 記——一種の obituary として——

本稿は、私が1992年5月27日、スウェーデン・ルンド大学法学部から名誉法学博士号を授与されるのに因んで、その前日の26日に法学部講堂において行った記念講演の原稿である。

このように古いものを本誌に掲載していただく第一の理由は、かつてルンド大学法学部の訴訟法教授であり、スウェーデンにおける私の最も敬愛する長年の友人 P. O. ボールディング (Per Olof Bolding) が、今年(1997年)1月に逝去したことと関わる(享年78歳であった)。講演に同席した彼は、私にこの原稿を活字化して公表すべきだと力説し、彼自身そのために配慮してくれているようであった。私のほうはかなりプライベートな記述も含む原稿なので、これをそのまま発表することに躊躇を覚え、書き直しをしたうえで彼の好意に答えようか、などと考えているうちに今日に至ってしまったのであるが、没後しきりに彼の言葉が思い出

literature. This has resulted in providing them with a good background for understanding the published results of my studies. Swedish procedural law has now become quite familiar to not only scholars but also to the judiciary and legal profession in general. This can be evidenced by the following two occurrences.

In August this year, the International Symposium on Civil Justice commemorating the centennial anniversary of the enforcement of the Japanese Code of Civil Procedure will be held in Tokyo. The organizing committee, of which I am a member, has invited esteemed scholars from different countries around the world. Representative speakers invited, however, are only from England, Germany, Sweden, USA and Japan. I have the honour to inform you that Professor Gunnar Bergholtz has been invited to be the representative speaker from Sweden. This shows how highly Swedish procedural law is evaluated in Japan.

The other concerns legislative work. At present, Japan is facing the difficult task of making drastic changes in the Code of Civil Procedure. For this purpose, the Supreme Court has decided to dispatch judges to study the civil justice and procedural laws practised in several foreign countries. (In Japan, quite different to its Swedish counterpart, the Supreme Court has huge powers of judicial administration. See my paper in "Festschrift till P. O. Bolding".) Sweden has been included as one of the countries to be visited and a judge will be coming next month. Unfortunately, his stay in Sweden will be very limited so he will mostly be spending his time in Stockholm. It is certainly a great pity that he will not have enough time to visit Lund and Malmö.

The above will show you how highly Swedish procedural law is now evaluated by the Japanese judiciary, and I feel some pride in that

ambition to practice law in Tokyo.

Meeting these young students made me aware that the task of building a bridge between our two countries had already begun from the Swedish side and that I must commit myself to work harder as one of the aspirants on the Japanese side to achieve this common goal.

Phase 5 :

This phase will describe my aspirations for the future. One day in March, I was most surprised to be informed by the University of Lund that the juridisk institutionen had decided to confer on me the title of Honorary Doctor of Law. Although I felt highly pleased, the news was difficult to believe. It is true that I have studied Swedish law for over 20 years but I am not sure if I have done anything during that time to deserve such a great honour. In any event, one thing is now evident to me. I must work harder than ever so as not to betray the trust which has been placed upon me.

If I may be allowed to talk a bit about my future plans, after completing my monograph on evidence I would like to prepare a Japanese version of Rättegångsbalken with a commentary by myself included and also to produce a guidebook on Swedish law for Japanese readers. I know that neither will be an easy task but I shall do my best.

The above concludes the history of my study of Swedish law. I should now like to add a few words on the study of Swedish law by Japanese in general.

Some time before my papers and books on Swedish procedural law were published, some proceduralists in Japan had already been drawn to it and had to some degree studied it through German

at Sophia University in Tokyo.. As I am sure you all know, Professor Fahlbeck is a brilliant, energetic and outgoing person. We made friends with each other at our first meeting. However, I must confess that I did practically nothing for him during the several months he spent in Japan because he managed everything by himself marvellously well.

In April 1991, I was surprized to receive an invitation from the Student Unions at the University of Lund to give a lecture on "Internationella dagen: Öst-och Sydöstasien". This invitation was based on a recommendation by Professor Fhalbeck and he also kindly suggested the title of the lecture to be "The Role of Lawyers in Japanese Society Against the Background of Japanese Cultural Traditions". This was a good opportunity for me to re-think our own legal traditions and culture from a broader perspective. It was also useful for my study of Swedish law because it provided me with an opportunity to compare the two legal systems.

I think a few words would be appropriate here to describe how deeply impressed I was by the great interest in Japan held by the students here.

On my arrival at Copenhagen, I was met at the airport by two students waving Japanese flags who spoke to me in Japanese. These students, who were majoring in Japanese at the University of Lund, escorted me to my hotel in Lund.

Another student, a young lady, knew a great deal about Japan and later wrote a paper (student examens arbete) dealing with the Japanese style of negotiation. I might add that she was not only an excellent assistant but also a wonderful hostess who took very good care of me during my stay in Lund.

Then there was the young law student who talked to me of his

One of the aspects of Swedish court practice which impressed me greatly was the actual function of nämndemän. I had the privilege of observing at first hand a deliberation for judgement (överläggning) by judges and nämndemän and realized just how important nämndemän are under the Swedish judicial system.

Incidentally, a few years ago, a suggestion made by the Chief Justice of the Supreme Court in Japan on the importance of participation of citizens in the judicial process aroused a heated controversy. Some favoured a jury system while others favoured a nämnd-like system (namely Lay Assessors' participation). Long before this, I had already written a paper on Swedish nämndemän and, in the heat of the controversy, upon request of the Yokohama Bar Association I drafted a proposal for introducing a nämnd-like system which could be adopted in our judicial system.

After concluding my studies in Malmö in 1987, I have written some papers dealing with the Swedish Law of Evidence. I have also translated Professor Bolding's "Bevisbörda och beviskrav" into Japanese. (I am now working on a monograph on evidence based upon my papers which I hope to complete for publication by the end of next year).

Phase 4 :

One day in 1990, I received a letter from a person who was totally unknown to me. That person was Professor Reinhold Fahlbeck. The letter stated that he was coming to Japan to study Japanese labour law and labour relations and that he was recommended to me by Professor Bolding who tutored him for his dissertation. I immediately wrote back that I would be happy to do anything in my power to assist him. When he arrived in Japan, we met at his temporary office

Bolding on many occasions and we discussed not only legal problems but also a wide range of other subjects and I soon came to feel as though we were old friends. Since that time, I have continued to enjoy a very close relationship with Professor Bolding. Just a few days ago, a ceremony was held at the Grand Hotel here to dedicate to him the book "Festskrift till Per Olof Bolding". Although I was not able to attend the ceremony, I was fortunate enough to be able to dedicate to him in the book my paper "Conciliation Procedure in Japanese and Swedish Courts".

My Japanese translation of "Två rättegångar" was published in 1985 and my book entitled "Sueden no Shiho" (Justice in Sweden), a 400 page volume, came out in 1986. I dare say that these two books made Japanese lawyers widely aware of the unique concept of Swedish law and in particular aroused great interest in its procedural law.

Phase 3:

After completing my above books, one of my main remaining scholastic concerns was law of evidence, especially evidential theory under the Swedish and other Scandinavian legal system.

For my study of the fact finding procedure followed in Swedish trials I had an opportunity to observe, among other things, practice in the hovrätten and thingsrätten in Malmö for three months in 1987. President Tore Landahl, with whom I had become acquainted during my first visit to Lund, was kind enough to give me unlimited assistance for my studies. I was provided with an office in hovrätten, like a judge, and received valuable advice and assistance from Dr. Gunnar Bergholtz who was serving as a judge there at the time. (He is now professor of procedural law at the University of Lund.)

procedural law. These papers were noticed by some leading scholars and in 1976, I was offered a professorship in the Law of Civil Procedure at Kanagawa University. By that time, violent student activities had relatively calmed down so I accepted the position.

Since returning to Japan in 1972, I often made short visits to Sweden to obtain legal literature and do research work. In spite of this, I was not able to cultivate any close relationships with lawyers and/or members of the faculty of law. Metaphorically speaking, my study of Swedish law then was like a one-sided love affair.

This situation took a favourable turn when I had the good fortune to meet Professor Per Olof Bolding in 1981. At that time I had read his book "Två rättegångar" with great interest and wanted to translate it into Japanese. My idea was to produce an interesting guidebook on Swedish law for Japanese readers by adding some commentary to his brilliant description of Swedish civil and criminal procedure. I also had an ambition to write a book on the Swedish judicial system which was inspired by SOU 1974 : 96 "Öppnare domarbana" and heated discussions related to it. (In Japan we had had a similar discussion called "Hoso-ichigen-ron" (Unification of Legal Profession) since a long time ago.) I wrote to Professor Bolding requesting his assistance and immediately received a reply from him in which he kindly consented to assist me in every way. And so I made my first visit to Lund in 1981 and had the great pleasure of meeting Professor Bolding. Every person I came into contact with was very kind and helpful and soon I became fascinated with the unique warmhearted atmosphere in Skåne. I stayed and enjoyed an extremely pleasant and fruitful three months attending classes by Professor Bolding and Professor Elwing and observing court procedure in Lunds tingsrätt. During that time, I met with Professor

procedures. These unique characteristics aroused in me considerable intellectual excitement. I realized that it was essential for me to study these laws and that for this purpose it was absolutely necessary to learn the Swedish language. The course "Diploma of Comparative Law" was in itself not very useful for me but this was not a problem. It gave me enough time to concentrate on learning the Swedish language and reading Swedish legal literature.

After completing the course, my Odyssey began. I travelled through Germany, England, Denmark, Norway and Finland studying civil justice and procedural law in those countries and then returned again to Sweden. These travels which altogether consumed over a year served to reconfirm to me the importance of studying Swedish law, especially procedural law, and provided me with a firm basis from which to look at it from a broader perspective. It was then that I decided the study of Swedish law would be my life work. Time flies fast and already more than two decades have elapsed since I returned to Japan in April 1972 from my first visit to Sweden.

Phase 2 :

After returning to Japan in April 1972, I continued my study of Swedish law while practising as an attorney. Since at that time radical student activities were prevalent at almost all universities in Japan and coping with this was an exhausting chore for the professors (some unfortunate professors were even beaten up by radical students), I considered it more prudent to be a sort of "Sunday Scholar of Swedish Law" while practising as an attorney rather than taking up a position at a university.

My legal practise lasted for nearly four years. During that time, apart from my studies abroad, I have written several papers on

limitations due to the neutral role of a court judge. However, I could not help being tormented by a feeling that I was not dispensing justice but rather serving as a vehicle to do injustice to good citizens. Thus my pride in the judgeship gradually waned and the passing of my father of cancer at that time no doubt accelerated my depression.

I imagined that a country with such a highly developed social welfare system as Sweden must also have a very advanced legal aid system, and I could no longer suppress my desire to visit Sweden to observe with my own eyes the actual conditions of civil justice practised in that country. I was convinced that such an experience would provide me with a basis for re-considering my future career. The fact that I had no family of my own to support no doubt made it much more easier for me to arrive at this decision.

I must also confess that Sweden had an exotic appeal for me as the motherland of August Strindberg, Selma Lagerlöf and other great writers. (Many works of Scandinavian literature have been translated into Japanese, mostly from their English or German counterparts, and have since long ago enjoyed high popularity among Japanese readers.)

And so I arrived in Sweden in September 1969. At that time, I knew almost nothing about Swedish law and it was not my intention to learn the Swedish language as it appeared to me tremendously difficult. Soon after my arrival, however, I learned that the Scandinavian law, which includes Swedish law, holds a unique position as intermediary between the Continental law (civil law) system and the Anglo-American common law system and that the Swedish judicial procedure on the whole is the same in criminal and civil cases. Rättegångsbalken enforced in 1948 is considered to be a great legislative product and the fusion of Continental and Anglo-American

the University of Stockholm. (I am not aware whether this course still exists.) Several months before this first visit and the beginning of my study of Swedish law, I had left the judiciary after serving for 15 years as a judge.

I have been asked this same question by many people at home and abroad: Why did you leave the judgeship to study in Sweden? The question comes quite naturally to a Japanese because in Japan it is most unusual for one to make such a change in the middle of one's career and also, until quite recently, apart from the country's famous highly developed social welfare system, the Japanese knew very little about Sweden. As to people of other countries, I suspect the question was posed just as a matter of curiosity. It is extremely difficult to give a specific answer to this question as there are normally various factors which influence the making of an important decision in anyone's lifetime. However, I shall attempt to give you an idea of what my feelings were at the time.

I can definitely say that one of my reasons for coming to Sweden was to study the Swedish legal aid system as this was something sorely lacking in Japan. In the latter part of my judicial career, I served as the Chief Judge of a branch of a district court in a small country town (similar to Lunds tingsrätt in size). The position could be considered equivalent to a lagman in a small tingsrätt. There, day after day, I experienced the sorry state of the Japanese legal aid system. (Unfortunately, the situation still has not changed. See my paper in SvJT 1992.) The majority of civil cases were not represented by lawyers and, in such cases, honest but naive parties lost their cases to loan sharks and other cunning opposition parties who were well versed in the relevant laws and court procedures. Needless to say, we judges tried to help the former as much as possible within the

論 說

Swedish Law and I

Kaneyoshi Hagiwara

Ladies and Gentlemen.

It is a great honour and pleasure to have conferred upon me the esteemed title of Honorary Doctor of Law at the University of Lund and a privilege to be allowed to speak before such a distinguished audience.

I regret not being able to make this presentation in the Swedish language. Although I have made it an almost daily routine to peruse Swedish legal literature, I'm afraid I have very little opportunity in Japan to speak the Swedish language and, for this reason, I find it most difficult to speak the language in public.

"Swedish Law and I". You will no doubt have the impression that I have chosen a very personal subject for my speech. However, my intention is not only to give you an introduction to the history of my study of Swedish law but also to give you an insight into the study of Swedish law by Japanese in general. My present discourse will show you that the two are closely interrelated. Allow me to start with the history of my study of Swedish law, which I have divided into five phases for convenience of narration.

Phase 1 :

In September 1969, at the age of 38 years, I first came to Sweden as a student to enroll in the course "Diploma of Comparative Law", a one year graduate course for English speaking foreign lawyers at