

Comparative Legal Cultures in Japanese Legal Philosophy

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<Key Words>

Max Weber's Rationalization of law and economy,. The Spirit of Capitalism,
The Reception of Roman Law in the East. Confucianism and Puritanism.

1 Max Weber's Theory of Rationalization

My aim in this paper is to examine the acculturation of law and philosophy in Japan since the Restoration of 1868. The political centralization was then completed.

But I am perplexed over Max Weber's theory of "rationalization" in only the Western countries.

He wrote "Only the Occident has witnessed the rise of the national economic system".

And he said; Asian countries lack "rational Jurisprudence" and "strict legal schemata and hypothesis of Roman Law and its school" (Religionssoziologie.I,1920).

Japan received the penal codes and administrative codes from the Imperial China since the seventh century. There was no civil code in the Pre-modern Japan.

2 The Spirit of Capitalism in the Pre-modern Japan

Firstly, I will examine Weber's concept of "the spirit of capitalism" which Weber found in Puritanism.

Weber defined capitalism as "a peaceful earning-chance through the full use of exchange-chance".

And Weber described Benjamin Franklin(1706-1790) as 'the ethos of capitalism'. Franklin's words were <time is money> <Do not delay to pay debts> etc.

But I should say that such ethos of capitalism is seen also among the Pre-modern Japanese common people in the same age of 18c. For example;

(1)Nakamoto Tominaga (1715-1746) who was born as a son of merchant in Osaka.

His words were <Do your duties> <Hold today's work> <Study available arts at leisure> etc.

(2)Sontoku Ninomiya(1787-1856) who was born as a son of poor peasant.His words were <Rich men work for tomorrow> <Save today's stock> <Production is good, destruction is wrong> etc.

Both of them learned at first Confucianism but refused it later.

I will support Weber's view that Old Roman,French and German law is suitable for the capitalistic commercial exchange. Japan before the Restoration of 1868 was closed to the international trade markets.

And most of Japanese peasants at that time were prohibited to sell their lands and their labors in the free markets.

3 Japanese Reception of French Civil Code

Secondly, I will recall Japanese reception of Old Roman, French and German law suitable for capitalism. Just after the Restoration, the first minister of Justice and his successor requested Boissonade de Fontarable (1825-1910) who was a professor at the University of Paris, to edit the first draft of Japanese civil code (except family law). And Prof. Boissonade in Tokyo prepared the preliminary draft of Japanese civil code.

Suddenly, however, the political and conservative reaction against the reception of French Civil Code appeared between 1890 and 1892 among some students of Tokyo University and some members of the Imperial Parliament. They were afraid of "too revolutionary trend" in the French Civil Code. They said "the civil code should destroy the traditional ethics of Confucianism". The Imperial Parliament of 1892 postponed the enforcement of Japanese civil code drafted mainly by Prof. Boissonade.

The three Japanese jurists were appointed to edit new draft of civil code. They tried to introduce the German element into the French element. Therefore the Japanese civil code of 1896 became a strange mixture of French law and German law. For example the style of new civil code was pandect system alike the draft of German Civil Code (BGB) but the transfer of property was alike French Civil Code.

4 The Acculturation in the Japanese Legal Philosophy

Thirdly, I will pay attention to Nobushige Hozumi (1856-1926) who was one of the compilers of Japanese new civil code and became soon the first professor of jurisprudence at the University of Tokyo. He wrote that he did not like the name of legal philosophy (Rechtsphilosophie) because the sound of philosophy reminded us "metaphysics". He believed that jurisprudence, different from legal philosophy, is open to comparative study of legal cultures.

After the World War II, Japan has imported Anglo-American Law and Philosophy.

So I suppose that the Japanese Legal Philosophy or jurisprudence until now is characterized as a mixture of German legal philosophy and Anglo-American jurisprudence. (Although I, myself, am interested in Hegel's Philosophy of Law).

5 Confucianism and Puritanism

Finally, I will examine Max Weber's view about the difference between Confucianism and Puritanism. Weber wrote as follows;

(1) Confucianism regards daily life as good, while Puritanism regards it as wrong.

(2) Confucianism hopes the building of personality through reading ,writing and self-control. As Puritanism is restrain to occupation (Beruf), the building of personality can not be without God.

(3) Confucianism is based on the family or the other traditional social groups. Puritanism as typical capitalism, however, is far from any blood relation.

Certainly, Confucianism influenced over Chinese, Korean and Japanese intellectual and upper class for a long period of time.

But I should point out that most of Japanese common people for example merchants and peasants who had the spirit of capitalism did not believe in Confucianism.

So I would say that Max Weber's great attempt to study the world-wide comparison of 'economic-ethics' (Wirtschaftsethik) is uncertain for us Japanese philosophers.