

Studies on Chinese Law in Japan: Legends of Tokyo School

Osamu Takamizawa

Introduction

It's a pleasure of me to see you all even through Zoom. Today's theme is "Studies on Chinese Law in Japan, Legends of Tokyo School." I will end the class a bit early because I would like you to think about a question. The question is what kind of function Chinese legal system has for Japanese as a center, or a periphery. Definitely, this is the most important theme of today.

Today I have seven parts, including introduction and conclusion.

The history of Japanese legal system is that of studies and the introduction of foreign law or laws. Chinese law had been the main model in pre-modern Japan, and has been also one of the most important subjects of research since the Meiji era.

In the first, "what is law?" as a difficult question.

Tentatively, one of the social norms. I would like you to see your opinion or your own definition of law. Could you please, using the chat function, give me your own definition, image or prejudice of law?

I would like participants to give me your own definition, images, or prejudice.

Tentatively, we can define it as one of the social norms. And what is Chinese law? We can divide three major periods of long Chinese history. The first is ancient. Ancient means the Spring and Autumn period and before it. And then, Imperial period, including the kingdoms in the Warring period. The third and the last one is the modern and contemporary.

Ancient norms

Perhaps it is not law in the modern category. That happened a clan society in the city states. Upper class people had the same clan name and the network of city states have formed kingdom. But we do not have enough evidences to know it by some excavation of archaeological survey. And the kings of Shang or Zhou, represented lords and people, prayed Heaven, Earth and their Ancestors. This was basic norm of ancient norms.

Imperial period

Early Imperial Periods, that means Warring States period, though, warring states were kingdoms, not empire. But king had mostly same power as Emperor. And then, you know, Qin and Han Dynasty had come. Kings or Emperors enacted state law. This is a primitive stage of Lü Ling system [律令制]. That was the primitive stages of law. Lü and Ling still were general nouns for law or regulation.

And then, Three Kingdoms period. Jin Dynasty and the period of Northern and Southern Courts (220–589). They formed the prototype of Lü Ling system. Lü had been a kind of a penal code of today. And Ling had been administrative code.

And then, Sui Dynasty and the first half of the Tang Dynasty (589–756). They form the classics of the Lü Ling system and the system influenced other East Asian countries including Japan.

And the second half of Tang, Period of Five Dynasties, and Song Dynasty (756–1279). They developed secondary codes. Lü and Ling were basic codes, and they had secondary codes to adjust them to their own society.

Liao, Jin, Yuan and Western Xia. These are the dynasties of northern ethnic groups (916–1368) and they made their legal norms by Chinese legal system and their own rules or customs, but Yuan Dynasty did not have their Lü Ling code.

Ming and Qing Era (1368–1911). They had Lü as the basic code, and the secondary code for adjusting Lü to society. How about Ling? There had been Ling for administration in the early Ming era, but they abolished Ling as an administrative code, and made the encyclopedia or complete books on state system for administration. Qing inherited this book system: *huidian* [会典] in Chinese or *kaiten* in Japanese.

Modern Chinese Law

The third and last legal system is modern Chinese law, which is the fruit of reception or transplantation of modern Western law. The basic purpose is to keep independence as an independent state. China touched the western legal system (1) as treaties after 1842, or after the Opium War; (2) international law in 1864 or 1865; and (3) the formation of Western legal system for equal treaties just in the last ten years of Qing dynasty. This is the mainstream of modern Chinese law.

The other system is that the system as the colonies or puppet government. For example:

Hong Kong	since 1843
Macau	since 1557
Taiwan	1895–1945
Manchu-kuo	1931–1945

Contemporary Chinese law

That means the law of the People's Republic of China, but it has a prehistory: The bases of Chinese Communist Party between 1927 and 1949 had their legal system.

That was just a review or survey of Chinese legal system.

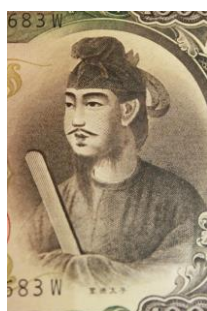
1. Why need to study foreign law(s)?

Why is there a need to study foreign law for Japanese people? The first is for

legislation or interpretation of law. For example, traditional Chinese law had been a Japanese most important model between Asuka era (sixth century) and Meiji, or early stage of Meiji until 1885. And then, Western laws [became a model] for Japan since the end of Edo era, especially in 1854. The second purpose of study foreign laws is for a solution of foreign affairs, especially diplomacy, business, and family. The third is for studying a foreign society or kind of social sciences.

2. Chinese Law as a Contemporary Foreign law

For pre-modern Japanese elites, the study of the Chinese law was a contemporary law, not the history between Asuka era and Nara era. The Imperial Court of Japan studied Sui-Tang Lü Ling system for forming Japanese ruling system. Since Heian era to Muromachi era, the Imperial Court and the Shogunate (*bakufu*) studied Lü Ling system for interpretation of Japanese Lü Ling codes. The specialists were called *Myoboka* in Japanese. One of the most representative persons is maybe *Shotoku taishi* (Prince *Shotoku*, or Prince *Umayado*:(574-622?)). This image is the old bill of the 10000 yen. He studied the Chinese legal system, or political system, and tried to introduce them to Japan.



Shotoku-taishi

In Edo era, Confucian scholars, as advisers for *Shogun* or *Daimyo* lords, studied Chinese law, especially Ming-Qing legal system. And even in early days in Meiji era, a government still used Japanese Lü Ling system and the books by Edo Confucian scholars until 1885. In 1885, Japan established cabinet system, which was not the old Chinese ancient one, but the modern British one. Since then Chinese legal system had not been a model for Japanese legal system.

In Edo era, one of the most famous confusions who studied Chinese legal system was Ogyu Sorai (1666–1728). Tokugawa Yoshimune had been the eighth Shogun of Edo era and he ordered Ogyu Sorai and other scholars to study Chinese legal system.



Ogyu Sorai



Tokugawa Yoshimune

Studying Chinese law for colonial government is another situation. Since 1895, Japan studied customs, made *Customary Survey in Taiwan* [台湾旧慣調査] (1895–1945) and then began to make *Customary Survey in South Manchuria* [南滿洲旧慣調査] (1905–1945). In these surveys, the most famous persons were Goto Shimpei (1857–1929) and Okamatsu Santato (1871–1921). Goto was a Secretary of Civil Affairs of the Taiwan Governorate and then he became President of the South Manchuria Railway. Under his government, Okamatsu, who was a professor of Law Faculty, Kyoto Imperial University was responsible for these two surveys. He graduated from the Imperial University of Tokyo and is one of the legends here today. The left picture is Goto, and the right one is Okamatsu.



Goto Shimpei



Okamatsu Santaro

In 1930s and the 40s, besides colonial governance, there was for studies of living law or *lebendes Recht* in German by Eugen Ehrlich as an academic activity. *Customary Survey of Northern Chinese Rural Area* [中国農村慣行調査] has established in 1940s under the Japanese army occupations.

3. Studies on Traditional Chinese Law in Japan

The year of 1911 is very important. In 1911, Nakada Kaoru came back from Europe and became a professor at the Imperial University of Tokyo. Before him, the specialists studied Chinese and Japanese legal history for Yusokukojitsu [有職故実], which means the studies of government organizations, ceremonies, and the customs

based on ancient precedents. They explained how to deal with the original history. Prof. Nakada Kaoru, one of the most important legends, studied the legal history as comparative studies of government or governance system, referring to culture through historical materials and sources. And he had two major students: One is Ishii Ryosuke, who studied the Japanese history, and the other is Niida Noboru, who studied Chinese legal history.



Nakada Kaoru

Niida Noboru's activity should be divided into two parts. The first is before 1945. Tentatively, I called it "Niida A." He made proof studies. For example, *Restoration work for lost text of Ling code in Tang*, or *Toreishui* [唐令拾遺]. People knew that Tang Dynasty had a basic code of Ling, but it had been lost. So he restored the Ling code. Afterward, he made *Studies on legal documents of Tang and Song* [唐宋法律文書の研究]. And he had been a professor at this institute for Advanced Studies of a on Asia, or *Tobunken* [東文研]. Niida after 1945. I called it "Niida B." He started theoretical studies, especially of materialism or kind of Marxist view.



Niida Noboru

He had two kinds of students, not official students but his followers. A student of Niida A is Ikeda On (1931–). One of the representative works is *Studies on Chinese historical archives of family register* [中国古代籍帳研究]. A student of Niida B is Fukushima Masao (1906–1989). His works were *Studies on People's commune* (of China) [人民公社の研究] and *Studies on land tax reform* (of Meiji Japan) [地租改正の研究].

The picture below is Prof. Ikeda and, sorry, I do not have any picture of Prof. Fukushima. They are also professors at the *Tobunken*.



Ikeda On

In addition, I should introduce Professor Shiga Shuzo (1921–2008). In 1943, he became a special research student at the Imperial University of Tokyo, which means that he is also one of the legends of this university. What is special research student? The system of special research student was just only one good thing done by Prime Minister Tojo Hideki administration in wartime. They enjoyed the privilege of exemption from military service, so they could survive even in wartime.



Shiga Shuzo

His representative works are *Principles of Chinese family law* [中国家族法の原理], and *Law and suite in Qing China* [清代中国の法と裁判]. In other works, *Codes and criminal punishment in Chinese legal history* [中国法制史論集 法典と刑罰] and *Law and suite in Qing China vol.2* [続・清代中国の法と裁判].

He explained the Chinese legal principles by Western legal discourse and ordinary Japanese words through historical archives. This method made Chineseness stand out.

He has good students, who we can call them all legends. Nakamura Shigeo (1925–2012), Harro von Senger (1944–) from Switzerland, Morita Shigemitsu (1945–), and Terada Hiroaki (1953–).

We go to the next section, “Study on modern Chinese law in Japan.”

4. Studies on Modern Chinese Law in Japan

Modern Chinese law means the legal system between 1842 and 1949. In those days, they studied to Chinese law as contemporary law. The first group were the specialists invited by Qing dynasty : Okada Asataro (1868–1936), Matsuoka Yoshimasa (1870–1939), Ogawa Shigejiro (1864–1925), and Shida Kotaro (1868–1951). They also graduate from the University of Tokyo. Okada was a professor of criminal law and criminal procedure law. Matsuoka was a Judge, and his specialty was civil law and the civil procedure law. Ogawa worked for Ministry of Justice. Shida was a specialist of commercial law.

In 1930s and 40s, some scholars, especially professors at the University of Tokyo, formed Society for study of legal system in the Republic of China [中華民國法制研究会]. They were legends of law faculty or lawyers who were interested in and respected the modern legal system of the newly built China. On the member list, Murakami Sadayoshi (1874–1940) and Otani Masakatsu (??–??), but I do not have enough information on them. Wada Sei (1890–1963) was a historian. Miyazawa Toshiyoshi (1899–1976) was a specialist on constitutional laws. Tanaka Jiro (1906–1982) was a specialist on administrative law. Wagatsuma Sakae (1897–1973), Kawashima Takeyoshi (1906–1992), and Hirose Takefumi (1903–1970?) were specialists on civil law. Tanaka Kotaro (1890–1974), Suzuki Takeo (1905–1955), and Ishii Teruhisa (1906–1973) were specialists on commercial law. Kikui Tsunahiro (1899–1991) and Kaneko Hajime (1906–1973) were specialists on civil procedure code. Ono Seiichiro (1891–1986) and Dando Shigemitsu (1913–2012) were specialists on the criminal law and criminal procedure law. Egawa Hidefumi (1898–1966) was a specialist on conflict of laws. They are legends not only in Chinese law but in Japanese legal system, so they are representatives of scholars on legal sciences.

I should refer to some collections of books and archives. Oki Kan'ichi (1881–1966) was a lawyer at Tianjin and Beijing (or Beiping) and he was a collector of books and archives there. In *Tobunken*, we have Oki Collection (or Oki bunko). Niida also collected a lot of books and archives in China, and it became Niida Collection (or Niida bunko) in *Tobunken*.

As historical studies, here is Shimada Masao (1915–2009). He also graduated from University of Tokyo, studying traditional Chinese law and northern Asian law. He worked for modern Chinese law as well. Shiga's lecture at University of Tokyo also included modern Chinese legal history.

5. Studies on Contemporary Chinese Law in Japan

This is the last part: studies on contemporary Chinese law in Japan, including the bases of the Chinese Communist Party (1927–1949). The first stage is the gathering

of information for diplomacy. And then the old generation, like Niiida and Fukushima, also studied a legal system of basss and the People's Republic of China, and they have a student, Miyasaka Hiroshi. He is graduated from Waseda University and worked for Senshu University. Both universities are in Tokyo region. I shouldn't forget Fukushima's activity in Waseda University between 1967 and 1971, after his retirement at University of Tokyo. That time was the first tide for people in Japan to be interested in China, because of its restoration of lawful rights at the United Nations in 1971 and the normalization of the diplomatic relations between China and Japan in 1972. People are starting to be interested in China.

At that time, Fukushima had several students at Waseda University, including Nishimura Kojiro (1942–), Nozawa Hideki (1948–), Toki Shigeru (1949–), and Kuniya Satoshi (1953–). Surrounding Waseda University and the University of Tokyo, I should refer to two scholars: Konoma Masamichi (1944–) and Tanaka Nobuyuki (1947–). In Konoma's case, his undergraduate and master courses were at Waseda and the doctor course at University of Tokyo. He got a Doctor of Law at Hokkaido University. Tanaka was an undergraduate student at Waseda and went to graduate school at the Tokyo Metropolitan University. Afterward, he became associate professor and later professor at University of Tokyo between 1991 and 2012. They are also legends of the Tokyo school.

From the point of view of the constitution studies and socialist law. They themselves are a kind of socialists and are interested in Chinese legal system. The first example is Haryu Seikichi (1927–). He had been a student of Kiyomiya Shiro, who was a famous specialist on constitution at the Tohoku University. Haryu also graduated from Tohoku University, and then had been a researcher at Institute of Social Science at the University of Tokyo. Later he worked for Tokyo Metropolitan University. The other example is Asai Atsushi (1931–2012), who had been a student of Suzuki Yasuzo, another famous specialist on constitution at Aichi University. Asai had been an assistant professor at Institute of Social Science at University of Tokyo. Asai had been a part-time lecturer at the University of Tokyo. I joined his classes fortunately.

Today we saw some legends of Chinese legal studies. I introduced you a lot of scholars in Tokyo school who studied Chinese law. If you're interested in them and can read Japanese, please take a look at a book in the reference.

Conclusion

I would like to summarize three approaches to Chinese law which Japanese scholars had. The first is toward an aspect as a contemporary law, including the practical purpose for lawyers, officials, and advisors, as well as the academic purposes. The second approach was a historical one. In the third one, the Japanese scholars have a style of comparative studies with Western and Japanese law.

Japanese scholars have studied the Chinese legal system as a most important subject or a model. There remains, however, some blanks of the studies. They are future tasks for Japanese scholars. The first one was comparative studies of East Asian law. Japanese scholars never had a comparative view amongst China, Japan, Korea and Vietnam.

The second blank is a “colonial legal system and then” in the case of Taiwan, Hong Kong, or Macau. The third is studies on the imperial system, for example, Mongolian Empire, or Turkic (not Turkish) Imperial system, the Tibet and Islamic legal system in East Asia. So, Japanese scholars are facing these research blanks or lacks.

So that's all I prepared for today. Thank you very much.

October 22, 2020