My Research, My Subject
— Comparative Research on Religious Institution and Law —

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'マイ・リサーチ、マイ・サブジェクト
— 宗教制度と法に関する比較研究 —'
of Legal History (ELH) の出版記念セッションで知遇を得た、Oxford Brookes University の法律学科長 Meryll Dean 教授、本年 Queen’s Counsel (QC) に任命された Cardiff University の Mark Hill 名誉教授、University College London の判学科長の Andrew Lewis 教授、SOAS の Arts and Humanities 学部の Peter Flügel 博士、筆者が所属する SOAS の School of Law 学科の Werner F. Menski 教授等にも内容をお伝えした上で同エッセーをお渡しした。ELH で長文の「日本法」に関する項目を執筆された Dean 教授は、筆者の大学院時代の指導教授である石井良助先生の論文を参考文献として使われている。Mark Hill 名誉教授は筆者の SOAS における研究課題である英国国教会に関する著名な研究者であり、Andrew Lewis 教授は法史学の造詣が深いローマ法学者であり、Peter Flügel 博士はジャイナ教の研究者でジャイナ法の歴史に関する研究論文も執筆されており、Werner F. Menski 教授はヒンドゥー法をはじめとする南アジアの法と宗教に関する多くの業績を残されている。こうしたことから、日英の法史学研究に関する有意義なご教示をこれら各教員からいただくことができた。

なお、創価大学に留学された経験を持つクラーゲンフルト大学の Benjamin A. Heinz 氏は、祖国ドイツに帰国中であるにもかかわらず、メールで英語表現につき貴重な助言をくださった。記して感謝の意を表する。

Preface

I would like to shortly explain Senso-ji (浅草寺, “ji” meaning “Buddhist temple”) which I have researched on so far. Senso-ji is one of the oldest temples in East Japan. Nowadays a lot of foreign travelers visit Senso-ji. Therefore, it can be said that Senso-ji is one of the most famous Buddhist temple in Japan.

Since my specialty is legal history and religious history during the Edo period, I hope to describe Senso-ji during the Edo period. This period is a base of modern Japan. The famous anthropologist
John F. Embree described, "The two and a half centuries of peace and cultural consolidation under the Tokugawa regime produced the foundation on which modern Japanese social organization is based, and the roots of practically all modern Japanese cultural values and social attitudes can be traced back to the days of the daimyo." (*The Japanese Nation — A Social Survey —; Rinehart & Company, Inc., 1945, P.43)

Afterward, I would like to present my subject. I will describe my subject under four headings and the research that I am currently conducting. The table of contents is as follows.

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I . My research

I-1. The constitution of Tokugawa Japan (Shogunate)

Because Tokugawa Japan was not unified country, the Buddhist temple was able to exercise some power. For example, the Buddhist temple had the power of legislation, judiciary and administration though these were considerably limited. The big Buddhist temple was able to enact the Buddhist temple's law (寺法Jiho). Therefore, I have researched on the Buddhist temple's law.
It seems that this research enables the clarification of the constitution and the system of law in the Edo period.

In the Edo period the country was closed to foreign countries, so that we may think that it would had been easier to unify the state. However, the feudal state was not a unified country even in the Orient. In the Edo period, the Japanese state was a feudal state, so the unification of the state had not been accomplished yet. However, the centralization in the Edo period had advanced more than in the Middle Ages, so that it seems that the autonomous power which the Buddhist temple had was smaller than in the former age. The unification of the state was accomplished in the Meiji era.

Though there were limits for the big Buddhist temple, the temple in the Edo period was able to enact the law originally. The law enacted by the Buddhist temple is called the Buddhist temple’s law. The Buddhist temple’s law was composed by constitutional law, civil law, criminal law and so on. The Buddhist temple was able to appoint the clerical monk (僧侶, Bonze) and punish the monk (僧侶, Buddhist priest, bonze) who committed crimes. Of course, when the monk committed secular crimes, the Shogunate punished him. The Shogunate allowed the Buddhist temple to create laws as long as it didn’t affect the Shogunate’s interests.

I - 2. The history of Senso-ji

Senso-ji is one of the oldest temples in East Japan. It is told that Senso-ji was built in the year 628. Therefore, Senso-ji is older than Horyu-ji (法隆寺) which is the first World Heritage Site in Japan. However, actually, researchers are insisting that Senso-ji was built during the Nara era (奈良時代, 710～784 years). Still, we can say that Senso-ji is one of the oldest temple in Edo. This temple is
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dedicated to the Kannon (觀音 Avalokiteśvara, the Bodhisattva of Compassion) which was discovered in the Sumida-river (隅田川). The pronunciation of "Kannon" is heard just like the pronunciation of "canon". Senso-ji is a Buddhist temple of the Tendai sect of Buddhism (天台宗).

In the Kamakura era (鎌倉時代), the monks of Senso-ji went to Kamakura to pray for the souls of the dead. In the age of wars (戰国時代), Senso-ji was subject to the House of Hojo in Odawara (小田原北条氏). In the Edo period, Buddhist temple was subject to the rule of Ieyasu Tokugawa. The Shogunate's head monk Tenkai (天海) noticed the history of Senso-ji and he would eventually use Senso-ji to control Edo commoners who worshipped Kannon. Consequently, Senso-ji was put under Kan'ei-ji (兼永寺), which was built by the Shogunate. Tenkai served as the chief priest of Kan'ei-ji. However, Senso-ji was able to defend its tradition by then to some degree. For example, Senso-ji can retain the principal image (本尊 honzon), the religious observances, the Buddhist temple system and so on.

I -3. Senso-ji in the Edo period

First of all, the basic structure of Senso-ji was continuous from the earlier era. Additionally Senso-ji was enfeoffed with a domain by the Shogunate and was able to rule the branch temples. In the precincts of Senso-ji there were 34 small temples which were included in Senso-ji. In these small temples there were the chief priest who were subject to the chief priest of Senso-ji. But in 1740, the Shogunate appointed the priest of Kan'ei-ji to Senso-ji in order to control Senso-ji strongly. After that the priest of Kan'ei-ji served as the priest of Senso-ji concurrently. I think that the Shogunate used the Buddhist temple to strengthen its own power, because
the legitimacy of power was weak though the Shogunate had succeeded in the integration of the nation in military power.

A religious authority was able to be maintained generally in the Edo period though the Buddhist temple was under the rule of the Shogunate power. We can say that in this age the role of the religion was very large in ruling the people. For example, the Shogunate entrusted the management of family register to the Buddhist temple. Then, considerable autonomy was admitted by the Shogunate as long as the Buddhist temple played such roles.

I -4. The structure of Senso-ji and the Buddhist temple's law

Next, I would like to describe the case of Senso-ji concretely. The two deacon (役者 Yakusya) of the whole of the temple (三立 Issan) were chosen by elections from among the chief priest of 34 small temples. The chief priest of 34 small temples voted in the election. The chief priest of 34 small temples was chosen from among the monks in Senso-ji in many cases. Though Kan'ei-ji maintained a final appointing power, such intention of Senso-ji was valued. Senso-ji was able to hold monk's meetings and decide various matters concerning to the temple management. The deacon's election was done in the meeting, too.

As it was mentioned above, Senso-ji was able to enact the Buddhist temple's law. I will briefly describe it. At the latter term of Edo period, the monks were in debt to the wealthy merchants because they were generally poor by reason of the construction and maintenance of the Buddhist temple and so on. Sometimes they were not able to pay back their debts. As a result, they would come to trial. The Shogunate left such lawsuits to Senso-ji as much as possible though the Shogunate should have tried them primarily. Therefore, Senso-ji had to legislate the law of debt. In
The Diary of Senso-ji (『浅草寺日記』 Senso-ji-Nikki) such a law was recorded as “the Buddhist temple’s law of debt” (『蔵金銀寺法』 Shakkingin-Jiho).

The chief priest of 34 small temples were ordered not to owe a lot of money by the chief priest of Senso-ji. Moreover, only the debt that the deacon and the union of the Buddhist temple had witnessed was admitted. Because the Buddhist temple was a corporation, the debt of the Buddhist temple and the debt of the chief priest were distinguished. Therefore, the Buddhist temple was not able to inherit the personal debt of the chief priest. The union of the Buddhist temple had always to watch out each Buddhist temple.

The Buddhist temple’s law of punishment was not recorded in The Diary of Senso-ji. However, the articles to which the priest was punished were recorded in this Diary. Though it was not codified, there is a customary law concerning with punishment in Senso-ji. The monk was punished if he disturbed the peace, the religious observance, and the order in Senso-ji. The punishment of the monk was light generally. In many cases the monk was confined to his temple. A certain researcher treated that it was not so much the legal punishment as an administrative penalty. Therefore, Senso-ji could create the Buddhist temple’s law for both of civil and criminal sides.

II. My subject

I would like to describe my subject based on my research mentioned above.
II-1. Jurisdiction

I want to compare the Buddhist temple's law with the canon law. In Europe there are a lot of researches on the canon law. I hope to research the canon law of the Church of England in particular. Because the Church of England has built a unique relationship between the nation and the religion. It serves as a reference in thinking about the relation between the nation and the religion in Japan.

The ecclesiastical court could have ever tried not only religious suits but also secular suits, for example the divorce suits and the suits concerning contracts. In Japan the Buddhist temple couldn't try the secular suits. I hope to research why there was such a difference.

Furthermore, money was generally necessary for a trial in Europe, but this was not so in the former modern ages of Japan. I want to clarify the background of this difference.

II-2. Religious and Secular

We should consider the difference between the religious matter and the secular matter. Moreover, we should consider the relationship between the church trials and the secular trials. I think that we should research on the history of the Roman law to clarify such problems. I want to research them profoundly in the future.

We should say that the matter concerning the doctrine would be the religious matter or the event in the Buddhist temple would be the religious matter. But actually, the difference between the religious matter and the secular matter is ambiguous. Especially, before the separation of religion and politics was established, this difference was very complicated. For example, we can't clearly
separate the commandments of the Buddhism and the secular punishment to a monk. Concretely, the prohibition against Nyobon (女犯)—a monk's sin of having relations with a woman—was the commandments of the Buddhism and also the secular punishment in the Edo period. This is a result of the intervention of the secular power in the Buddhist temple.

On the other hand, it is said that the public discussion in the Buddhist temple became the prototype of one in the village in the Middle Ages Japan. I would like to research the relationship between the religious matter and the secular matter.

II-3. Sources of the law

I want to contemplate the sources of the Buddhist temple's law. In ancient times of Japan, the Imperial Court enacted the Buddhist temple's law as the law of the Court Nobles (公家法 Kugeho, 律令法 Ritsuryoho). However, the system of punishment for the monk was different from the system of punishment for the layman. Moreover, the Buddhist temple was able to enact the Buddhist temple's law concerning to the misdemeanor. The germ of the autonomy of the Buddhist temple has appeared here.

The Buddhist temple's law was provided for based on the commandments of the Buddhism. Therefore, we should research on the commandments of the Buddhism to clarify the Buddhist temple's law deeply. It is the Islamic law (شريعة Shari'a) that I am interested in when thinking about the relationship between the law and the religious commandments, because Shari'a is a system of law based on the religion in Islam. In this relation, the law and the religious commandments are unified in Shari'a. Shari'a is still not widely researched in Japan, but it would appear that Shari'a is important when considering the sources of the law because in
Shari'a the Qur'an is assumed to be the most important source of the law.

II-4. The Church of England
Firstly, Conrad D. Tatman compared Henry VII with Tokugawa Ieyasu and described the difference in the constitutional system between the Tudor period and the Edo period before (Politics in the Tokugawa Bakufu; Harvard University Press, 1967, PP. 239-241). I want to compare the reign of Henry VIII with the reign of Tokugawa Ieyasu from the viewpoint of control on religion by the power of the state.

Secondly, I want to research the transition in the relationship between the secular courts and the ecclesiastical courts from sixteenth to seventeenth century in terms of the change in the constitutional system.

In finding books that describe the English ecclesiastical courts in the Senate House Library, University of London (in recent researches: Ecclesiastical Law, 3rd ed., Mark Hill, Oxford University Press, 2001. The Rise and Fall of the English Ecclesiastical Courts, 1500 - 1860; R. B. Outhwaite, Cambridge University Press, 2006, etc), I will start with the research in these books. I will take care to point out novel points taken from these books.

III. Research that I am currently conducting

There are numerous western language works on Japan in the SOAS Library. In particular, I have been listing the books describing the legal and religious history in the Edo period written in English in these works. Moreover, I have commented and referred to these books as much as possible. I have checked the
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chapters to which these books correspond clearly, and compiled a list in chronological order. I am convinced that this list will be useful for future research on the Edo period at the SOAS.

Epilogue

Although the comparison of the history and culture of foreign countries is indispensable to clarify the characteristics of the history and culture of Japan, such research is not necessarily conducted in Japan as much as it might be. Therefore, I would like to research on how the history and culture of Japan is understood in the U.K. In the U.K. and Japan, there are shared features such as a history of monarchism and the status of the island nation. Moreover, it is said that the construction of the modern state of Japan has been influenced by the U.K. I am convinced that the comparative research of Japan and the U.K. is very worthy subject. Firstly, I investigated the political history of the U.K. during my master's course in graduate school. I became interested in parliamentary politics that values discussion and gradual reform of institutions. As a result, I felt that Japan where those traditions were lacking would learn by following the U.K.

It was the great writer Soseki Natsume (夏目漱石) who, during the Meiji Era journeyed alone to study in the University of London, so insightfully pointed this out. Through his novel Sanshiro (三四郎), he laid forth a criticism, saying that “The thoughts of the Meiji era repeat the activity of 300 years that appeared to the history of the West in 40 years” (「明治の思想は西洋の歴史にあらわれた三百年の活動を四十年で繰り返してゐる」). Influenced by Soseki's novels and essays, I began to consider the meaning and problems of the modern age in Japan. I investigated the history of the former modern ages of
Japan by centering on the law and the religion in my doctoral course in graduate school. I further researched these problems at The Institute of Oriental Philosophy (東洋哲学研究所) where I am currently serving as the trust researcher. Hereafter, I would like to do a formal research on the U.K. and deepen understanding of Japan through British eyes.

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