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Osaka University

The Reception of Roman Law Education in Japan

- on the First Lecture on the Roman Law at the Tokyo Kaisei-Gakko
in 1874

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Introduction

The first lecture on the Roman Law in Japan was given by an English lawyer, William Ebenezer Grigsby, at the Tokyo Kaisei-Gakko in 1874. In this presentation, I would like to focus on his lecture. So I first try to reconstruct his lectures and his mode of understanding the Roman Law through his examination and his essay. Then the career paths of the 9 students who attended his class for the first year are treated. As Nobushige Hozumi (1855-1926), an important scholar and statesman for the establishment of modern Japanese legal system, was among them, the influence of his lecture on his career and scholarship is treated. Grigsby's career after leaving Japan and Hozumi's deed after finishing his study in England and Germany is treated in turn. Then my presentation concludes with evaluating the significance of his lecture for the modern Japanese legal system.

I. The arrival of Grigsby

After the Meiji Restoration in 1868, the Japanese government was in keen need of introducing Western legal systems and nurture legal professionals with expertise in Western law. Which country's law should be adopted as a model had not been fixed and Ministry of Justice were running their own law school where French law was taught.^{*1} Ministry of Education (Monbu-shoh) decided to hire an English citizen as a professor of English law to establish a law course at the Tokyo Kaisei Gakko, a university level academic institution where

^{*1} It must be noted that the Tokyo Kaisei Gakko was not the sole educational institute to teach law.

The Ministry of Justice (Shihoh-Shoh) opened a law school in 1872 and began teaching French law by French professors. It was merged to the Tokyo Imperial University in 1885. It educated practical jurists to be, especially judges with French law expertise. So, the model legal system to be received from contemporary more advanced nations was not yet unified when Grigsby was teaching at Tokyo. On this, see Wada (2004), 59. Also there were several private institutes where English or French law was taught. Professors of national institutes often taught simultaneously as part time professor there. They later grew to be prestigious private universities in Japan.

Liberal Arts, Engineering, Chemistry and Mining were taught.

The research for an appropriate person for teaching through the minister residing at London was successful. A document addressed to the Ministry of Education reports the arrival and the appointment of W. E. Grigsby as a professor of law at the newly established Tokyo Kaisei Gakko.

^{*2} It was on 8th May, the 7th year of Meiji (1874, hereafter years are specified only by A.D.) and he was 27 years old. Though he was rather young, he already obtained a M.A. from Glasgow and B.C.L. from Balliol College Oxford. and a qualification for the barrister at law from the Inner Temple. ^{*3} The term of hire was 2 years beginning on that day and his monthly salary was 400 yen. The duty of teaching was within 6 hours a day. Though the working condition was demanding, the salary was surprisingly high. He was to stay in Japan to teach until July 1st 1878.^{*4}

When he began working, he was the only professor in charge of teaching law. He had to teach all subjects of law including International Law (Law of Nations in Time of Peace), General Outline of English Law (Constitutional and Criminal Law), Constitutional History and Latin to his first

^{*2} According to the document obtained online at the site of the Digital Archive, National Archives of Japan (hereafter NAJ) (<http://www.digital.archives.go.jp/>, Ref. " -2A-009-00・公 01192100"

^{*3} For his curriculum vitae, the following online sources and printed materials were consulted. Foster (1885), p. 191. "Grigsby, William Ebenezer, LL.D. London Univ. 1880, LL.B.1879, and a member of Convocation, B.C.L.Balliol Coll., Oxon, M.A. Glasgow, Vinerian law scholar Oxon 1873, equity draftsman and conveyancer, professor of international law at Jeddo Univ. 1874-8, editor of *Story's Equity Jurisprudence*, first English edition, a student of the Inner Temple 22 Nov., 1874, Barstow law scholarship and certificate of honour 1880, called to the bar 26 Jan., 1881 (2nd son of Rev. David Grigsby, of Henham, Essex, Independent minister); born 3 April, 1847; married 29 Jan., 1874, Katherine, dau. of late Thomas Savell, Esq., of Barley Herts. 69, Wilberforce Road, Finsbury Park, N.;49, Chancery Lane, W.C. " [Jeddo must mean "Edo" as the former name of Tokyo and so it might be read as Tokyo] ;Brother Anthony's Page.;The Inner Temple Admissions Database (<http://www.innertemple.org.uk/archive/itad/index.asp>); the London Wiki page (http://london.wikia.com/wiki/London_Wiki).

^{*4} His first contract was once prolonged till July 31st 1876 and then renewed from August 1st 1876 to July 31st 1878. His teaching duty was relieved to within 4 hours a day and his salary was reduced to 350 yen (accordingly?). He terminated his second contract on July 1st 1878 before the end of the term and left Japan for good in his life. (A record of "Oyatoi Gaikokujin" literally "hired foreigners" stored at the General Library of the University of Tokyo in the form of microfilm was consulted. Document ref. " 和MF 1 8 " Record No. 14) By the way, Nobushige Hozumi was paid 100 yen a month as salary when began working as a professor at the Tokyo University in 1881. For comparison, a policeman worked with 6 yen for a month in 1881 (Shigeyuki Hozumi (1988), p.261). So Grigsby's salary was really high.

students in the first year.^{*5} But he dared to begin teaching Roman law in a preparatory way despite his heavy burden. He presumably taught Justinian's Institutes up to chapter 10 to the first year students. There were 9 students of Shizoku class (more commonly Samurai) selected and recommended by their Han, the local lordship. They were roughly 19 years old and prepared English and other subjects for about 3 years previously. But the educational system had not been established and they had not been prepared amply. But the education was done in English and Latin was taught, too. Their hardships are imaginable. Anyhow, Roman Law was established as a selective subject for the 2nd year students.

II. The examination of Grigsby

Then, what was he teaching at the Roman Law course? No texts, no preparatory notebook by Grigsby is left and neither notebooks of students. So, at present, the clue to infer the content of his education is the examination recorded in the calendar of the school, which is often cited but not often commented. For example, the one done in 1876 is as follows.

Final Examination, 1876. Examination Questions (Calendar (1876), p.83ff.)

Equity 1. Is there any thing in Roman Law corresponding to the division of Common Law and Equity? (partly omitted)

5. Trace the rise of the power given to a wife over her separate property. (partly omitted)

7. What is meant by Election? How does the doctrine of election in Roman Law differ from that of English Law?

8. What is meant by putting oneself in Loco Parentis?

Roman Law 1. What is meant by Fidei-commissa? To what are they analogous in English law?

2. Translate and explain: (1) "Legari autem illis solis potest, cum quibus testamenti factio est." (2) "Falsa demonstratione legatum non perimi." (3) "Quantitas autem patrimonii ad quam ratio legis Falcidia redigitur mortis tempore spectatur."

3. What is meant by an impossible condition? What is the effect of it (1) in a Legacy, (2) in an Obligation?

4. Trace the gradual steps by which a mother was allowed to succeed to the property of her children?

5. What was the contract "verbis"? To what kind of contract does it correspond in English law?

6. Give the chief incidents of contract of sale.

7. Enumerate the obligations Quasi ex contractu, and show what is meant by the term.

8. Explain and comment on the phrase "Praetor non facit heredem."

^{*5} Calendar (1874), p.17 As to the activity of Grigsby, see also Wada (2004), 60f..

As they are rather tough, I am afraid if I could pass the exam if I were his student. But he may have demanded students not only to grasp the framework of Roman Law according to the Justinian's Institute but also to understand Roman law as a precursor of English law and to grasp both of them in a parallel context. By Q.1 of the "Equity" for example, he may have expected the development of *ius honorarium* (or legislation of the princeps?) against *ius civile*. Q.5 of the "Roman Law" would demand the comprehension of the 4 categories of *contractum* (Inst. 3,13) To Q.7 of the subject, one should mention *negotiorum gestio*, *tutela*, *communio*, *solutio per errorem*, *legatum per damnationem*. (Inst 3,27) And he should explain the lack of consensus of the parties which is indispensable to the *contractum*.

One step further, he would have in mind the formalities required to a stable operation of a legal system and concrete equity required as to extreme cases or drastic change of the social situations. Anyhow, it is surprising that youths without long preparation could stand such a demand successfully. ^{*6} As the order of the students was decided according to their examination achievements and their achievements affected the possibility to study abroad, the education and examination can be inferred to be done seriously.

III. "The Legacy of Iyeyasu"

Grigsby had a vivid academic curiosity concerning the Japanese legal system including its historical background. It can be shown through introducing "The Legacy of Iyeyasu.", which is probably the sole article he produced during his sojourn at Tokyo. ^{*7} In this, he analyses the legacy of Ieyasu Tokugawa, the founder of Edo government from the viewpoint of comparative law. The treated topics are the family (including the head of the family, adoption, marriage, clan system), the feudalism which is structured over the families, the character of codes. and the relationship between Shogun and Mikado. What characterizes his argument is the frequent reference to Roman law and institutions of classical antiquity as an object of comparison. *Paterfamilias*, Roman adoption, *emancipatio*, 12 tables etc. Though institution of other ages and areas, for example feudalism in Western Europe, Egyptian society, the laws of Solon and Lycurgus, the Mosaic etc. are also mentioned, the predominance of the Roman ones is obvious. From this, we can see an attitude to put Japanese legal institutions in a comparative context and make a comparison in a horizontal and relativistic measure as well as the attitude to pose Roman law as a primary object for comparison. Lastly, his statement that "Every legal system tells us much of the past life of the nation for which it was framed, since laws are a natural product and not an artificial creation" ^{*8} deserves full quotation. We might conclude with some probability that

^{*6} For example, Hozumi had a Chinese philology as his intellectual background up to 16 years old and the education at this school was rather new for him. See Shigeyuki Hozumi (1988), p.6ff.

^{*7} Grigsby (1875) In this essay, his title is "W. E. Grigsby, Esq., B.A., Of Balliol College, Oxford, and of the Inner Temple; Professor of Law in the Imperial University of Tokio"

^{*8} Grigsby (1875), 119

he got influence from the theory of Henry Sumner Maine.^{*9} One Step further, the echo of Analytical Jurisprudence and Savigny? In this essay, Grigsby points out the strong notion of perpetuity of the family in Japan and the importance of ancestor worship.^{*10} If we could connect this with the ancestor worship studies of Hozumi, who attended his class, it would result in a curious succession of interest.

IV. 9 boys and their career paths

How about the 9 boys who presumably attended his Roman Law course since the beginning of Grigsby's activity in Japan? His students were surely the best and brightest in those days.² ^{*11} They also had an open attitude to shift to the English scholarship from the conventional Chinese and Japanese one. Among them Nobushige Hozumi is by far the most important person for the historian of law by making the grand design of modern Japanese legal system and legal science. I treat him later separately as such. Hozumi mentions 8 persons as his classmates.^{*12} That is, Kazuo Hatoyama, Jutaro Komura, Shuichiro Saito, Takeo Kikuchi, Teruhiko Okamura, Naoshi Sagisaka, Kanrokuro Nakayama, Tinkichi Nomura.^{*13} While Grigsby was at his chair, the Ministry of Education decided to dispatch the well achieving students abroad for further study. In 1875, 4 students, Hatoyama, Komura, Kikuchi, Saito were sent to the U.S.A. They studied at the major universities like Harvard, Yale, Columbia and Boston. In 1876, Hozumi, Sagisaki, Okamura were

^{*9} The influence of Maine's theory on the lectures of Grigsby can be found from the following question imposed on the first year students in 1875 in the subject "General Jurisprudence". "2. What is meant by the statement that 'the progress of society is from status to contract?'" On this see Shigeyuki Hozumi (1988), p.326

^{*10} Grigsby (1875), 119f.

²^{*11} Notes should be taken that the graduates of Tokyo Kaisei Gakko were not sole legal elites in this period. Those of the law school run by the Ministry of Justice later became high class judges and bureaucrats.

^{*12} Hozumi (1932-1934), 3, P.253; 4, P.85

^{*13} Shigeyuki Hozumi (1988), p. 124. Most of the 9 boys are the leading figures of modern Japan and one can reconstruct their curriculum vitae by just consulting major historical encyclopedias. So I just note on 2 persons. Naoshi Sagisaka died a premature death at the age of 28 when he was still in Europe after getting the qualification of barrister at bar. The following article in Japanese which is available online follows his life course minutely.

<http://www.lib.yamanashi.ac.jp/igaku/mokuji/kiyou/kiyou17/image/kiyou17--010to019.pdf>

Chinkichi Nomura became a bureaucrat just after graduation and worked for the Ministry of Finance, then public prosecutor and attorney at law subsequently. One of the Founders of Kansai Horitsu Gakko (Kansai Law School) and made lectures on economics. Cf.

<http://www.kansai-u.ac.jp/nenshi/history/detail.php?cd=60&nm=2>

sent to England. The latter three got a qualification of barrister at law at the Middle Temple. Hozumi with a scholarship. Though Sagisaka passed away in 1881 at the age of 28, the others of the 9 boys had a brilliant career as judges, professors of law, bureaucrats, attorneys at law and statesmen.

V. Grigsby and Hozumi

Hozumi is renowned as the first Japanese professor of the Tokyo Imperial University and the proposer of civil code codification. He worked for a long time as a scholar and statesman domestically and internationally. For example, he experienced the judge of the Permanent International Court of Justice, President of the Imperial Academy and the President of the Privy Council.

But my main concern is not in describing his *cursus honorum* but in the role of Grigsby's Roman law education in the formation of his scholarship. Hozumi clearly writes in 1913 that he studied the Roman Law at the Middle Temple in 1878 and 1879 but he does not mention the lecture of Grigsby.^{*14} However, in the recommendation letter on August 19th, 1876, Grigsby clearly states that he completed the course of Roman Law as well as Latin at the Tokio Kaisei Gakko.^{*15} This discrepancy is surely a problem. But it is at least undoubted that he got a preparatory course or orientation at Tokyo to deepen his knowledge on common law and Roman law at London. Grigsby deserves to be noted.

He surely had a well balanced view over the development of Western law and the importance of Roman law underlying it. He made a lecture not only on jurisprudence but also on Roman law as a professor of Tokyo Imperial University later. For example, he once made a lecture to Emperor Taisho (Taisho Tenno) on the codification of Justinian in 1917.^{*16} He shows a moderate overview on the development of Roman law from the foundation of Rome to the modern age. Almost all major points were not omitted (but Byzantine law etc.). Naturally, minute research was conceded to the posterior generation Romanists and they developed study based on primary sources, he himself gave correct and deliberate orientation to the juniors who succeeded to the Roman law studies in Japan.

He once showed his great praise for Henry Sumner Maine in the necrology addressed to him.^{*17} The influence of Maine's Theory on the modern Japanese legal theory is great and it is in itself a field to be researched. Hozumi's scholarship was also profoundly influenced by this theory. Hozumi is well known for situating Western legal system in a global context and

^{*14} Hozumi (1932-1934), 3, p.678

^{*15} Shigeyuki Hozumi (1988), p.143f. The other letter shows Grigsby's title as "Professor of Law, The Imperial University of Tokyo.

^{*16} Hozumi (1932-1934), 1, pp.18-40

^{*17} Hozumi (1932-1934), 2, pp.18-20 I know this is a bit illogical as he got no education directly from Maine.

observed it from some distance. His viewpoint may have been obtained in part from his Chinese and Japanese scholarships he got until 15 of age but in part by the theory of Maine. Grigsby might have given a hint toward receiving Maine's theory as he gave a question in the examination "2. What is meant by the statement that 'the progress of society is from status to contract'?" I think his contribution is meaningful in this point, too.^{*18}

VI. Grigsby after leaving Japan

After leaving Japan, he worked as a scholar, a local statesman (London County Councilor 1889-1898), and judge.^{*19} Until he passed away as a judge in Cyprus in 1st August 1899, his life course seems not to have crossed Japan. But so far as I observe his list of publications shown below, I can imagine a vivid interest in equity and international private law as well as in other society and civilization.

**Commentaries on Equity Jurisprudence/ by Justice Story; 1st English edition (London, 1884)*

** The Medjellè, or Ottoman Civil Law. Translated into English by W. E. Grigsby(London, 1895)*

** "Cyprus Law and its Administration," The Law Quarterly Review 45 (1896), 67-75*

** "The Mixed Courts of Egypt," The Law Quarterly Review 47 (1898), 252-259;*

VII. Hozumi after returning to Japan

After finishing his study and practice in England, Hozumi goes to the Berlin University in 1880 and makes some study there.^{*3} He returns to Japan and begins his career as scholar and statesman in 1881. He writes *Hohten-ron [On the codes]* (Tokyo, 1890) and proposes the codification of laws to the government. He really acquired the great influence on the general structure of legal system in modern Japan. As a result, he decided not to adopt the English legal system and legal education, including the selection and training of legal professionals, as institutions. But his scholarship obtained at Tokyo and London formed the basis for his career as a scholar. From which modern country, Germany or France or any other, Japanese modern law were received is a crucial object of controversy still now as it cannot be said to be a product of monolithic reception. But arguing this is beyond the scope of my presentation.

Conclusion

Anyhow, the notion that "Roman law is an indispensable element underlying the modern Western legal system regardless of the nation" was received from the very beginning of the

^{*18} See Shigeyuki Hozumi (1988), pp.113f.,326

^{*19} I owe a lot to the online pages and databases listed in the above footnote no. 3. and I didn't confirm my argument by paper documents.

^{*20} Shigeyuki Hozumi (1988), p.225ff.

Western legal education in Japan. Since then, despite some ups and downs, Roman law courses have been maintained as a part of legal education curriculum at major law faculties in Japan. The institution of Roman law education was received and came to function in modern Japan like the well functioning transplanted organ. And the first chance for it was given by a young English scholar and lawyer, alumnus of the Balliol College Oxford, with an open attitude towards other civilizations. When Japan encountered the Roman Law, the age of *usus modernus pandectarum* had been over long ago as a global trend and it was in fact at the age of codification. So it was received in the form of educational curriculum and theory.

((Select bibliography and abbreviation list for quotation))

(in Japanese)

*Calendar (1874-1876) = 「東京開成学校年報 自第二至第四 自明治7年至全? 九年 [The Calendar of Tokyo Kaisei-Gakko from the second to the fourth, Meiji 7th(1874) to 9th(1876)] obtained online at the Digital Archive, National Archives of Japan (<http://www.digital.archives.go.jp/>) -2A-035-05・記 01537100

*Hozumi (1932-1934) = Nobushige Hozumi, ed. Hozumi Shohgaku-zaidan [Hozumi Scholarship Foundation], *Hozumi Nobushige Ibunshuh [The Posthumous writings of Nobushige*

*Shigeyuki Hozumi (1988) = Shigeyuki Hozumi, *Meiji Ichi Hohgakusha no Shuppatsu - Hozumi Nobushige wo megutte* (Tokyo, 1988) (J) (Hereafter, Shigeyuki Hozumi (1988)) is useful. The author is a grandson of Hozumi and a scholar majoring in modern British history. He has the viewpoint of a scholar and can make use of the documents stored by the Hozumis and get witness by the family members. This is really a comprehensive and rigid work and is useful as a reliable guide to comprehend his curriculum vitae and scholarship.)

(in English)

*Brother Anthony's Page = <http://hompi.sogang.ac.kr/anthony/GrigsbyFamilyTree.htm> (For the family history of the Grigsbys and the life path of Grigsy himself, this page written by Brother Anthony of Taize', an emeritus professor at the Sogang University is very useful. (E)

*Calendar (1876) = "The Calendar of the Tokio Kaisei-Gakko or Imperial University of Tokio. For the Year 1876 (Published by the Director. 1876) (E) 「東京開成学校年報横文」, obtained online at the site of the Japan Center for Asian Historical Records, National Archives of Japan, hereafter JASCAR (<http://www.jacar.go.jp/english/index.html> Ref. " -2A-009-00・公 01192100") 国立公文書館アジア歴史研究センター) (E)

*Foster (1885) = Joseph Foster, *Men-at-the-bar: a biographical hand-list of the members of the various Inns of Court, including Her Majesty's judges, etc.* (London, 1885) p. 191 (Cornell Univ. Library)

*Grigsby (1875) = The Legacy of Iyeyasu," *Transactions of The Asiatic Society of Japan* Vol.3

Part 2 (1875), 118-125

*Wada (2004) = Keiko Wada, "From O-yatoi Gaikokujin in the Meiji Era to the American Law Programme of Summer 2004", ICCLP Annual Report 2004 (2004), 55-69 (This article is available online (<http://www.j.u-tokyo.ac.jp/ibc/en/publications/annual.html>) and is useful to understand the educational activity of the "Oyatoi Gaikokujin (hired foreigners) ")