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研究課題名(和文) Paradoxes of the National Family Law in East Asia: The Reconstruction of Legal Order in Colonial Taiwan

研究課題名(英文) Paradoxes of the National Family Law in East Asia: The Reconstruction of Legal Order in Colonial Taiwan

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研究成果の概要(和文)：ヨーロッパ植民経験に関する先行研究は、被植民者が植民者に抵抗するために、家族法が民族文化の宝庫だとし、現代国民国家(nation-state)を立ち上げる、と主張している。そのゆえ、ナショナリストたちは常に保守的な家庭法を主張する。

この研究は、植民期台湾を中心に、長い間に無視されていた東アジア諸国の植民地経験を提起し、先行研究が主張しているナショナリズムと家族法との関係を挑戦する。この中、植民地政府、政治家、法学者、そして台湾ナショナリストなどの行為者たちがどのように家族法を改革してきたかを明らかにする。

研究成果の概要(英文)：This research challenges the seemingly invariable relationship between nations and family laws by presenting a complex narrative description of the modernization of family law in East Asia, including the experience in late 19th- and early 20th- century Japan and colonial Taiwan (1895-1945). Through careful analysis of archives, the way in which how different actors, including government, jurists, and ordinary people constructed and participated into family law reform is elucidated.

This project tries to overcome the tension between national identity and liberal family law in contemporary legal reforms by providing an alternative narrative on how modernization of family laws have been debated, fulfilled and understood in East Asian societies. Ultimately, this project argues that family law does not necessary plays a reactionary role in developing nationalism and encourages nationalists to formulate and advocate for family laws which could be unique and liberal.

研究分野：legal history

キーワード：law history China family east asia nationalism

1. 研究開始当初の背景

Existing View on Family Law and Nationalism based on Western Colonies: The Hopeless Conservative Anti-Colonial Nationalist Family Law

The legal treatment of the family is - and has long been - a crucial element of (post-) colonial legal orders. Mainly based on the experience in the colonies governed by Westerners, such as India and the Middle East, the existing literatures on globalization of law show that, as law globalized in the Age of the Empire, the colonizers' family law encountered great resistance. In the anti-colonial struggle, nationalists deemed family laws repositories of legal consciousness in colonies-turning-into-nation-states, while they accepted western notions of the market and its legal mechanism as an essential way to strengthen the post-colonial nation. Thus, the family becomes the last bastion of conservatives and neo-traditionalists. Nationalists who advocated for "liberal" family law, whether that meant modern, progressive or egalitarian, often found themselves trapped in the identity debate. In associating family law with conservative values, nationalists and religious sects typically understand themselves as defending their identity from the encroachment of Western imperialism and its liberal tendency.

2. 研究の目的

Despite the richness of East Asian law, the East Asian legal studies remain marginal in the discussion of globalization of law. By utilizing the rich historical archives in Taiwan and Japan and incorporating the recent scholarship of comparative law, one major goal of this project is to bring the often-missing East Asian experience and perspective to the broader discussion on family law in (post-) colonial societies and globalization of law.

3. 研究の方法

1. Personal Archival in Waseda University/Tokyo - Okamatsu Santarō Archive (Waseda University, Special Collection)

Okamatsu Santarō (1871-1921), a prestigious Japanese legal scholar

trained in Berlin and one of the earliest law professors in Kyoto University, advised the Governor-General of Taiwan in establishing the colonial legal system. Okamatsu designed a pluralistic colonial legal structure and strove for codification of customs in Taiwan. This project aims at gaining better understanding of the Old-Custom enterprise by investigating Okamatsu's personal archive.

2. Judicial Archives: Dan-Xin Archives (1789-1895), Judicial Archives of Government-General (1896-1945) and the Taiwan Colonial Court Archives (1896-1945)

This research also utilizes two sets of judicial archives respectively in the pre-colonial and colonial era. First is the Dan-Xin Archives (1789-1895), which records the traditional Chinese administration of justice in the local Taiwanese courts. The second set includes the Judicial Archives of Government-General (1896-1945) and the newly-discovered the Taiwan Colonial Court Archives (1896-1945).

3. Presentation in Conference and Academic Network in Japan and and Abroad

The researcher presented the research result in international conferences/workshops. The goal is two-folded: the research hopes not only to engage in the conversation on globalization of law but also to cultivate herself to better explain the East Asian experience on legal modernization and nationalism to scholars who are experts at this sphere but might have rather limited knowledge in East Asia.

4. 研究成果

(1) Challenging the Seemingly Invariable Relationship between the Nation and the Family: this research challenges the seemingly invariable relationship between the nation and the family by presenting a complex narrative description of the modernization of family law in East Asia, including the experience in late 19th- and early 20th- century Japan and colonial Taiwan (1895-1945).

(2) Presenting the possibility of a "unique" yet "liberal" family law: by bringing often-missing East Asian

experience and perspective to the broader discussion on family law in (post-) colonial societies and globalization of law, this project argues that family law does not necessarily play a reactionary role in developing nationalism and encourages the nationalists to formulate and advocate for family laws which could be unique and liberal. The alternative narrative on how modernization of family laws have been debated, fulfilled and understood in East Asian societies is only an important historical finding but can also serve as helpful resource in the contemporary legal reforms. In showing the possibilities of constructing a national family law which is compatible with liberal thinking, the project suggests that we should overcome the tension between national identity and liberal family law and be more open with the idea of **constructing liberal East Asian family laws**.

(3) Going beyond “Law in Books” to “Law in Action”: Through careful analysis of archives, the way in which how different actors, including government, jurists, and ordinary people constructed and participated into family law reform is elucidated. The research helps us go beyond the “law in books” and see how Taiwanese family affairs were administered and adjudicated under the so-called “legal pluralism” and Taiwanese customary regime.

(4) Anti-Colonial Taiwanese Nationalists’ Liberal Tendency on Nation and its Family: this research finds out that in the case of Anti-Colonial Taiwanese nationalists under the Japanese rule, exemplified by Lin Cheng-Lu(1886-1968), the nationalists in fact adopt a rather cosmopolitan and liberal approach toward family law, an approach which went hand in hand with their agenda for political reforms.

For example, Lin rejected the primogenital household (*iyē*) system, which had been adopted in the Japanese Civil Code. Interestingly enough, it was rather the liberal and modern idea of family, rather than tradition, Lin drew upon in disputing against the introduction of Japanese “House” into Taiwanese legal system. He stated that the Japanese inheritance system resembled ancient

China’s succession of family line. Both of these, Lin asserted, could no longer survive social evolution. In contrast, he praised the Taiwanese inheritance system, which entitled every son an equal share, for being in accordance with the “most modern trends of thought.” In other words, Lin adopted a cosmopolitan and progressive approach to defend its family tradition, a widely-shared stance among anti-colonial Taiwanese elites.

(5) Revealing Various Relations Between Nation and Family Law in East Asia: based on archival research, the project suggests that ideas about nations and families at stake were far from homogeneous in the colonial encounter. Ranging along an ideological spectrum from neo-traditionalist to liberal and progressive, and often freely combined with Japanese, Chinese, or Taiwanese nationalism, highly charged and inconsistent notions about family interplay and compete with one another.

5. 主な発表論文等

(研究代表者、研究分担者及び連携研究者には下線)

[雑誌論文](計 2 件)

Yun-Ru Chen, Family Law in Action: The Transformation of Adultery and its Law in Modern Taiwan. In Asian Comparative Family Law. Mika Yokoyama ed., Kyoto University Press. Forthcoming, 2016 [Book Chapter]

Yun-Ru Chen, Taiwanese Divorce Law: Past, Present and Future. In Asian Comparative Family Law. Mika Yokoyama ed., Kyoto University Press. Forthcoming, 2016 [Book Chapter; Translated into Japanese]

[学会発表](計 1 件)

Is Cosmopolitan Nationalist a Oxymoron?: The Anti-Colonial Legal Discourse in Japan-Colonized Taiwan, Conference on “Narrative and Justice,” Department of Law, National Cheng-Chi University, Taipei/Taiwan September, 2015 (Panelists)

[図書](計 0 件)

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出願状況(計 0 件)

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6. 研究組織

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