

Hanron", is a monograph on constitutional law and comparative constitutions in which the author, having in mind the desirability of creating a modern national structure, consistently endeavours to apply, as suitably as possible, European legal thought to his own nation as it was at that time. In doing so, he tries to restate their most important principles in the systematic way shown in the present work.

The work, divided into two books, consists of seven chapters. Chapter I deals with the core meaning of the constitutional law, chapter II with underlying principles of all modern states, relying mainly on Bentham's ideas. In chapter III the author compares different types of government discussing their advantages and disadvantages, and advocates a kind of representative government that would harmonize with the supremacy of the Emperor, and he unequivocally opposed both feudalistic and republican governmental systems. Chapter IV deals with the problem of sovereignty. According to him, the people at large should wield the full power of government, and sovereignty should lie in the people and the monarch together (i.e. Joint-Government by the People and the Monarch). This notion of dual government does not accord with the provisions of the later Constitution of the Empire of Japan (1889) whose central aim was that of a single government by "the Sacred and Holy Emperor". Government by the people at large means, *inter alia*, election by the people of their representatives, and a recall system, and it also means a government run not on the basis of separating the three powers of administration, legislation, and judiciary, but rather by a system of four grades: "Seihon" (supreme authority of government), "Gisei" (legislation), "Shisei" (administration) and "Saiban" (judiciary). Chapter V, which also treats municipal autonomy, deals with the Diet and parliamentary franchise. He maintains that the Diet should consist of one House, and that more than two thirds of the total population should have the vote in general election. Chapter VI deals with religions, in

which he strongly opposes the established religion. Chapter VII discusses rewards and punishments. As mentioned before, the studies begun by him in the present work came to fruition in his lifework "Kokken Hanron".

(b) "Doshô Yoron".

This is the work which the author wrote for the "Kyôzon Zasshi" in a series of three discourses, taking the unique opportunity provided by the promulgation of the Imperial Order for the Establishment of the Diet (1875) issued in April 1875. This is the first treatise written after his return from Europe, and includes some important statements which were developed later in the major works of "Kokken Ronkô" and "Kokken Hanron".

In the present work he advocates a single chamber system, and opposes the proposed Upper House in which would sit members appointed by the government. As to the electoral system, he makes a detailed proposal for the acquisition of civil rights not only by the military-origin and the upper farmer classes, but also by commoners. It is to be noted, however, that what he suggested was not universal suffrage on the French model, but a system peculiar to this country—that is, that qualifications for franchise should be determined according to age (over 21 years old), property and education so that more than two thirds of the whole population could vote.

With regard to the relationship between central and local governments, a threefold pattern of administration is offered as a system of internal administration. In other words, there should be three administrative categories. The first is a system under which both powers of enactment and administration of law are left to the central government. Under the second category, the central government assumes the power to enact the law, but the Local Commissioner ("Chihô-Kan") acts as a law enforcement officer. Under the third category, both enactment and administration of by-laws

fall within the authority of the Local Commissioner.

In summary, this is an unusual work for those times when a flood of literature on civil rights was produced, because it is almost the only one which puts forward concretely a plan for “Tenpu Jinken” (natural right of man).

(c) “Rôma Ritsuyô”, Books I to III.

“Rôma Ritsuyô” is an abridged translation\*\* from the English translation\* of “Pandektensysteem, I” written in Dutch by Prof. J. E. Goudsmit of Leiden University.

\* R. de Tracy Gould, *The Pandects: A Treatise on the Roman Law, and upon its Connection with Modern Legislation*, Translated from the Dutch (1873).

\*\* Chapter I to Chapter V, Section 1.

Ono received the book as a farewell present when parting from England. Though the work takes the form of translation, it describes his own opinions more fully in addition to Bentham's, in the interpretation notes to the original work. Having written this work, he took a post in the Ministry of Justice in 1876, but the work was never published though a clean copy had been prepared for printing, presumably because it aroused the hostility of the clan government of the day.

The aim of the translation was to provide materials of Roman law which was, according to him, essential to a correct understanding of English and French laws and statutes in force which were taught then in Japan.

The law stated in the book is that of “Pandektensysteem”, and so we may truthfully say that what it provided was a novelty in contemporary Japanese jurisprudence. Also the major descriptive part in the work considers, partly under Bentham's influence, the suitability of various legal systems for Japan, as well as explanatory notes on Roman law.

In the present work, he omits the introductory part of the

original work, which outlines the history of jurisprudence in Europe, as well as Goudsmit's quotations from the Roman sources of law, because it was not relevant to Japan, and adds his own explanatory note on how the Romans worked out their legal system. Giving practical consideration to the codification of civil code in Japan, he makes the most of comparative statements of law given in the original work.

It is worth noticing that, in the form of additional notes, he makes a detailed study of Bentham's views, and gives his fair and full opinion on related subjects. These notes developed into the common foundation of "Kokken Ronkô, Kokken Hanron and Minpô no Hone". For example, he criticizes the ancient patriarchal family system in Japan when discussing a matter of state, and forms his own conclusion that the "Shizoku" (the ruling class of military origin) is like a system of slavery subordinate to the "Daimyô", feudal lords. He is much opposed to making "Shintô", one of the dominant religions of Japan, a state religion, and opposes governmental interference in education. With respect to the law of succession, he claims equality between the sexes. It should be noted that, in the present work, he conveys the idea of the modern family by illustrating diagrams of degree based upon *jus civile* and canon law. This idea was all the more important, because the "Shinritsukôryô (1870)" contained the "Gotôshinzu" (a feudal system of degree calculation) in the form of criminal law. He, however, could not understand the true nature of "corporation" which was the intellectual product of capitalism in European countries. According to him, the profits gained by a corporation through profit-making activities should be distributed among its members or "Stifter", and should not be possessed by the corporation. What the idea of making the profits into assets means is no more than a control by a corporation over illiterate and uneducated people. The idea is contrary to Ono's view. Because

the government was then taking initiative in national industrialization, and the actions and associations against the government were made offence punishable by law, it was apprehended that the profits might fall to the State as a corporation, that is, the clan government of the day.

In summary, while making reference to Roman law, he tries to consider the people's rights in an early Meiji period when a matter of rights was not yet discussed concretely. He was much influenced by Bentham, and we could say that "Rôma Ritsuyô" filled bottles of the "Pandects" with Bentham's wine.

### 3. Biographic sketch, etc.

#### (1) Chronological personal history.

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| 1852 Feb. 20 | Born to a shizoku-family, in Kôchi prefecture, Japan. Later, studied Chinese classics.   |
| 1869         | Educated at Shôheikô, in Tokyo. Changed his legal status from Shizoku (the class of military origin) to Heimin (the class of commoners or plebeians).  |
| 1870 July    | Visited Shanghai and continental China.  |
| 1871 Feb.    | Received personal instruction in legal science from Dr. Johnson, at Brooklyn, New York.  |
| 1872         | Ordered by the Ministry of Finance to study the banking system and finance in London.  |
| 1874 May     | Returned from study abroad.  |
| 1874 Sept.   | Organized a society, "Kyôzon Dôshû" and held several public lectures and meetings for the study of politics, economics and law. Worked for the enlightenment of nation by publishing a journal, "Kyôzon Zasshi". |
| 1875         | Wrote "Doshô Yoron" for "the Kyôzon Zasshi".   |
| 1876 April   | Wrote "Rôma Ritsuyô".  |
| Aug.         | Obtained an office in the Ministry of Justice, and was appointed a member of the Committee on the  |

- codification of Civil Code. Wrote “Kokken Ronkô”.
- 1878 Held the office responsible for the Second National Meeting of Local Commissioners.
- 1880 April Appointed an Inspector of the Board of Audit. Wrote “Minpô no Hone”.
- 1881 Resigned offices, with Shigenobu Ohkuma, being unable to agree with the government of the day.
- 1882 April Participated in the Kaishin Party which was organized by Ohkuma.
- 1882 Oct. 21 The establishment of Tokyo Senmon Gakkô (now Waseda University).
- 1883 Aug. Laid the foundation of “Tôyôkan-Shoten” (Asian Bookseller) with the purpose of publishing academic books and of importing and selling foreign books. Published “Kokken Hanron” (3 vols.). Completed “Minpô no Hone” and presented it to the “Meiji Kyôkai Zasshi” (The Journal of Meiji Association).
- 1884 Published the first part of “Minpô no Hone”.
- 1886 Jan. 11 Died.

(2) Notes on other writings.

As mentioned before, Azusa Ono was and is widely known for his various activities. His publications include not only legal works but also many other writings. Such works as “Nihon Zaisei Ron” (On Japanese Finance ; given as lectures at Tokyo Senmon Gakkô), “Rigakû Nyûmon” (An Introduction to the Study of Utility), “Jôyaku Kaitei” (The Revision of the Treaties) and “Ohkuma-kô Seiryaku Ki” (The Political Tactics of Marquis Ohkuma) are good examples of his industry, to which are added many other treatises on politics and economics, as well as diaries and letters.

(Translation, Makitaro Hotter)