

WAS THE MODERN LABOR LAW ACCEPTED IN POSTWAR JAPAN ?

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I. A RECENT SYMBOLIC INCIDENT IN JAPANESE POLITICS

In the spring of 2002, a series of political scandals took place. In these scandals, the fatal absence of sensitivity toward workers' legal rights among leading Japanese politicians was revealed. Each Parliamentary member is entitled to employ up to three secretaries on the public account (called "public secretaries," distinguished from "private secretaries" who are paid from a private source of politicians). One of them is a specially qualified professional called a "policy secretary" for whom qualifications such as lawyer or Ph.D. are required and provided with higher payment. However, often some politicians need more money than professional help. They pretend to employ qualified professionals, receive designated money, and misappropriate it to employ a number of non-qualified secretaries. In other cases, they simply receive money and use the money for other political activities.

In the case of the Social Democratic Party and the Communist Party, it was revealed that such arrangements were carried out as a system. Secretaries were often asked to "donate" certain parts of their salary provided from the public fund. Money "donated" by secretaries is used for general political activities. In the past, there were sporadic cases in which some Parliamentary members were punished as having committed fraud. However, the recent scandals revealed that some parties have had such practices established for a long period of time. In the case of the Communist Party, they had an official scheme to receive money from the public fund and pay only part of the received money to secretaries. The rest of the salaries swindled were delivered to the political funds of the party.

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When such practices became public, the Social Democrats tried to cover up while the Communists claimed that their system is legal because they allocate money for the official use of the party with required procedure under the law of fund of political party and not “misappropriate” the money, as in case of the Social Democrats who used the money in non-systematic way. The issue of “misappropriation” of salaries of public secretaries became a rather big scandal in politics in the spring of 2002. From the standpoint of the labor lawyer, it is interesting to observe that those politicians accused of their abuse of public money did not show any consideration of the legal rights of secretaries over their wage claims. Legally speaking, those politicians have exploited their secretaries by violating the labor law principle of wage payment directly in the full amount. In some cases, they kept and controlled secretaries’ bank accounts and misappropriated the money paid into these accounts. Throughout all the controversy over this matter, no single politician mentioned this point. Their total ignorance or negligence of this basic workers’ right of their secretaries was rather striking. They were probably never even aware of such legal issue at all. In this respect, the general public opinions expressed through the media also neglected to mention this point.

This incident has rather dramatically shown that, in Japanese society, the concept of workers’ basic rights has never been accepted in the genuine sense. This is probably a shocking disappointment for labor lawyers who have been working so hard to introduce and establish workers’ rights in Japanese society for more than half a century after the second world war.

II. WHY HAS THE WESTERN NOTION OF LABOR LAW NOT BEEN REALLY ACCEPTED IN JAPAN?

The present Japanese labor law system is basically, in major points, quite identical to that of most of the advanced countries in the West. But, as shown in this one particular incident, the succession of the Western laws in Japan is only in formality and never in reality. This is related to the lack of universalism as a basic way of thinking in general and particularly of social value in contemporary Japanese society. The lack of universalism perhaps has something to do with Buddhism or Confucianism in Japanese society and, for that matter, also in most countries in Asia. In other words, universalism is something that is unique to Christianity.

In non-Western, non-Christian societies, universalism is not established as a social value. Thus, in such a society, there is no social value and thus no social norm that is universally applicable to all the members of the society regardless of social status and the positions of the individual members. In such a society, different norms are applied to the different people depending on their particular social status and position and also depending on the particular relationship of the particular parties concerned.

Thus, in Japan, as a non-Western, non-Christian society, people never think that certain persons (secretaries of parliamentary members in the above-mentioned case) are not entitled to legal rights such as the rights to wage payment admitted under the Labor Standards Law, which is partly applied to such secretaries employed by politicians, although they are regarded as public employees. Secretaries are regarded as subordinates of their superiors, both as influential politicians in the case of conservatives, or as comrades in the case of socialists or communists. Politicians tend to neglect or ignore secretaries' workers rights because they are not regarded as employees.

Different norms are applied to different contexts. Different rights and obligations are admitted depending on the particular personal relationship of the persons are concerned.

III. DIVERSITY AND INTEGRATION UNDER GLOBALIZATION

When I started studying labor law and industrial relations more than 50 years ago, there were certain expectations that the gap between developed countries and undeveloped countries will be gradually reduced sooner or later. Thus, late-comers, including Japan, should one day overcome the gap as the economy developed. But even today the degree of acceptance of the Western norms is still, as above, described in, for example, Japan as being rather successful in economic development. Thus, integration between the West and the East still has a long way to go. It reminds us of the "great darkness of Asia," the well-known Hegelian diagnosis.¹

In spite of our heroic but desperate efforts to catch up and to reach the level of the great Western brothers during the past century,

1. GEORG WILHELM FRIEDRICH HEGEL, *PHILOSOPHY OF HISTORY* (trans. J. Sibree, 1956).

the reality is not very promising. As I have mentioned elsewhere,² the role of the international labor standards and the ways of their application to developing areas, including Asia, should be seriously reexamined. In the non-Western world, Western universalistic norms and ways of application will be never accepted.

As for legal education in Japan, at the moment, the government is trying to introduce a drastic reform of the judicial system including introduction of American-style law schools. However, such an attempt will probably never be effective unless the big gap between the West and the East is to be taken seriously into consideration.

2. Tadashi Hanami, International Labor Standards from Asian Perspective (paper submitted to the Asian Regional Conference of the IIRA, Manila, Philippines, Nov. 21-22, 2001).