

International Law and its Influence on Diplomacy in the Late Nineteenth Century Japan¹.

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1. Introduction

In 1853 United States warships led by Commodore Matthew Perry (1794-1858) came to Japan to negotiate a commercial treaty. This event had suddenly thrust late-nineteenth-century Japan into a web of relations with the Western nations, and as a result, European international law was a topic of particularly urgent concern including some normative philosophical questions: What is Civilization? What are the rules in international relations? What are the differences with the existing order in East Asia?

Under these circumstances, one of the most influential books about international law in Japan as well as in other East Asian countries was the Chinese translation by the American missionary William Alexander Parsons Martin (1827-1916) of *Elements of International Law* by Henry Wheaton (1785-1848), 『万国公法』 (Chinese, *Wanguo gongfa*; Japanese, *Bankoku kōhō*). Immediately after its publication in Beijing, it was reprinted in Japan in 1865. The Japanese readings of its Chinese title, *bankoku kōhō*, became the standard translation of “international law.”

Therefore, most of previous researches were mainly committed to the studies on this Wheaton's *Bankoku kōhō*.³ According to them, the translator Martin used Chinese terms to translate Wheaton's discussion of international law, such as 性法

¹ I researched the acceptance of European international law in early modern Japan in my book. Ōkubo Takeharu (大久保健晴) (2010) It was translated into English by the translator David Noble. Okubo Takeharu (2014) This article is based on these publications.

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³ For studies of the adoption of international law in Japan focusing on Martin's translation of Wheaton, see Osatake Takeki (2006); Yoshino Sakuzō (1995); Sumiyoshi Yoshihito (1969); Inoue Katsuo (1991); Zhang Jianing (1991) y Zhou Yuan (2011).

(Japanese, *seihō*; natural law) and 天理 (J., *tenri*; heavenly principles). These words are important concepts in Confucianism. Therefore, some Japanese Confucians understood international law as the universal law of nature in light of the Confucian concept of “the way” (道; J., *michi*).⁴

However, Japan’s relationship with the Western world actually pre-dates Perry’s arrival by some three hundred years, to the early trade with Portugal and Spain in the middle of the sixteenth century. Moreover, the Tokugawa regime kept a small window to the West open on the island of Dejima in Nagasaki harbor, where it continued to have trade and intercourse with the Netherlands, alone among Western nations. Thus, from the seventeenth to the nineteenth century a small but significant number of Japanese could encounter the texts of Western knowledge, and embarked on Dutch studies, *Rangaku*.

If we focus on the exchange with the Netherlands, we cannot overlook the existence of another book which had the same title “Bankoku kōhō” published in 1868: Nishi Amane (西周1829-1897)’s translation of the notes of Dutch professor Simon Vissering(1818-1888)’s lectures on international law.⁵ Nishi was sent to Leiden in the Netherlands with Tsuda Mamichi (津田真道1829-1903) in 1863 as the first students dispatched to Europe by the Tokugawa shogunate. This was a pioneering effort by the Japanese to attempt a systematic study of international law. In the Netherlands, Nishi and Tsuda studied European Jurisprudence, Statistics, and Economics for two years tutored by Simon Vissering, professor at the Faculty of Law of Leiden University. After returning to Japan, they played significant roles as government officials and intellectuals to introduce the knowledge of the European jurisprudence.

This paper elucidates what Nishi and Tsuda learned from Vissering’s lectures on international law, and then investigates the significant debate among Japanese intellectuals, and its influence on Fukuzawa Yukichi, Nakamura Masanao and the foreign policy of Meiji government.

2. Nishi and Tsuda’s study on European international law in Leiden

After the arrival of American Black ships in 1853, the Tokugawa shogunate realized that it would be necessary to study the Western laws to negotiate with Western powers, and sent two scholars, Nishi and Tsuda to the Netherlands. They were privately tutored for two years by Leiden University’s professor, Simon Vissering. Their study at Leiden was not just the last phases of the Dutch studies, *Rangaku*, in the Tokugawa Period, but also the first attempt to adopt western social sciences.

Vissering was considered as a well-known liberal economist.⁶ He was a student and successor of the famous Dutch jurists, Johan Rudolph Thorbecke (1798-1872), the leader of the liberals at the time. In March 1848, King Willem II was fearful of

⁴ Osatake T. “Bankoku kōhō...”, *op.cit.*, pp. 7–8; Yoshino S. “Wagakuni kindaiishi...”, *op.cit.*, pp. 264–267.

⁵ The great scholar of international law, Taoka Ryōichi, has already analyzed the in his article “Nishi Shūsuke ‘Bankoku kōhō,’” in *Kokusaihō gaikō zasshi*, vol. 71, no. 1 (1972). But his research did not consider Vissering’s perspective of his courses on international law in light of an examination of Vissering’s works and the nineteenth century Dutch intellectual world.

⁶ For Vissering’s biography, see Okubo (2014), Introduction and Chapter 1; H.F. Wijman (1974); and Watanabe Yōgorō (1985).

the influence of the February Revolution in France, and suddenly shifted from his conservative and absolutist stance. King Willem II formed a committee to revise the constitution, with Thorbecke as its head. In 1848, Thorbecke established the new constitution and a liberal political system. Since Thorbecke was appointed Minister of Home Affairs (*de facto* the first Prime Minister) in the new cabinet, Vissering became professor at Leiden University as Thorbecke's successor.

Vissering created a special curriculum for Nishi and Tsuda, which consisted of five courses: Natural Law, International Law, Constitutional law, Political Economy, and Statistics.⁷ Nishi's *Bankoku kōhō* is the Japanese translation of the notes of Vissering's lectures on international law, taken originally in Dutch.

Based on my research on Vissering's books and his Dutch manuscripts preserved at Leiden University Library, this paper points out three main characteristics of his lectures on international law to Nishi and Tsuda.

First, Vissering's lectures focused on contemporary European international law. For him, natural law developed by "Hugo de Groot (Hugo Grotius)" was the basis, but at the same time, European international law had been shaped by the historical process through the treaties and conventions among modern European states.⁸

Among the civilized nations of Europe, which are united in a system of nations, international law has gradually been developed to a great degree over the course of time and has increasingly acquired fixed rules.⁹

For instance, with regard to "the rights of self-preservation and independence", Vissering points out that these rights "have their origins in natural law." However, he goes on to state that "in practice, it becomes possible to bring them to realization only when they are adopted and established as rules of European international law."

Of course, international law now had expanded its scope beyond the framework of "the Christian nations in Europe." Vissering observes that "Turkey has been explicitly admitted to the community of European international law at the 1856 Congress of Paris."¹⁰ However, it means that the European nations were the agents acknowledging the participation of a non-Western nation in their community.

Second, Vissering explained the balance of power among European sovereign states. But he emphasized, this was not a simple logic of power. In European history, all nations competed against each other to expand their power, and during these processes, they deepened interaction and commerce. Eventually respect was established among each nation and cultivated the morality of good faith (Dutch., *goede trouw*). Nishi Amane translated the word "good faith" as 信実 (J., *shinjitsu*).¹¹

⁷ Nishi A. (1961), p. 142.

⁸ Simon Vissering, "Volkenregt," in Nichiran Gakkai, and Ōkubo Toshiaki, eds. (1982), p. 35; translated by Nishi Amane as *Bankoku kōhō*, in Nishi A. (1961), vol. 2, pp. 14-15. "Volkenregt," Tsuda Mamichi's manuscript notes in Dutch on Vissering's lectures on international law, has been typeset and printed in Nichiran Gakkai and Ōkubo Toshiaki, eds. (1982). I worked from a microfilm of the original manuscript, but for the purposes of citation will give page numbers keyed to this printed edition. The content conforms closely with Nishi's translation. However, the manuscript is missing from the beginning of the second book until midway through the second chapter, and the fourth chapter is also lost.

⁹ Vissering, "Volkenregt," Nichiran G. and Ōkubo T. eds. (1982) p. 42; *Bankoku kōhō*, Nishi A. (1961) pp. 19-20.

¹⁰ Vissering, "Volkenregt," Nichiran G. and Ōkubo T. eds. (1982) p. 43; *Bankoku kōhō*, Nishi A. (1961) p. 20.

¹¹ Vissering, "Volkenregt," Nichiran G. and Ōkubo T. eds. (1982) pp. 42-43, p. 74; *Bankoku kōhō*, Nishi A. (1961)

Exactly, the observance of this good faith is not something supported by a purely moral sensibility. According to Vissering, in their interaction with one another, nations judge from “experience” that it is far “wiser and more advantageous” to accept the law as principles of “honesty and good faith” rather than committing injustices and thus having to fear the retribution of other nations.¹² This is the morality of international politics. From this point of view, he insisted on the importance of mutual interaction and free trade. He taught that to close a country—“to refuse interaction with other nations”—is counter to the “principles of humanity and civilization.”¹³

The civilized countries observing European international law naturally have many common interests and a variety of mutual relations so that no nation may completely deny the mutual interaction with one or more countries.¹⁴

Third, Vissering taught that, based on these moralities and equal rights, modern civilized nations had created the law of war, contained prohibitions such as unnecessary killing and use of poison.¹⁵ For instance, in European international law, at the time of the conclusion of a peace treaty, the victorious nation should do nothing to violate the “personal liberty” or the “rights of property” of the people living in the defeated country.¹⁶ Namely, no state could become a member of the community of nations observing European international law if it had not already established the rule of law and a constitutional polity in order to protect the rights of its citizens.

As we have seen, Vissering taught to Nishi and Tsuda international law as the public law of the civilized world in Europe. These arguments have a strong connection with other lectures to them.¹⁷ Especially in the lectures on political economy, Vissering taught his liberal economic theory based on Adam Smith (1723-1790) and Frédéric Bastiat (1801-1850). Moreover, on constitutional law, he explained the system of constitutional monarchy modeled on the Dutch constitution founded by Thorbecke, and emphasized the importance of protecting the civil rights and the well-being of the nation. But for Japanese scholars, Nishi and Tsuda, the problem is; how did Vissering’s lectures on international law concern Japan and the other non-Western countries? This question was the most central concerns of Nishi and Tsuda.

It is most important that Vissering established the hierarchy running from “first-class nations” down to “third-class nations”,¹⁸ and clearly distinguished non-Western nations from Western nations. According to him, non-Western nations such as China and Japan had no jurisdiction to judge European peoples living there, because East Asian countries had not established the rule of law and a constitutional polity in order to protect the rights of its citizens. For Vissering, “this stems from the unavoidable circumstance that it remains completely impossible to regulate intercourse with

pp. 19-20, pp. 44-45.

¹² Vissering, “Volkenregt,” Nichiran G. and Okubo T. eds. (1982) pp. 41-42; *Bankoku kōhō*, Nishi A. (1961) p. 19.

¹³ Vissering, “Volkenregt,” Nichiran G. and Okubo T. eds. (1982) p. 49; *Bankoku kōhō*, Nishi A. (1961) p. 27.

¹⁴ Vissering, “Volkenregt,” Nichiran G. and Okubo T. eds. (1982) p. 50; *Bankoku kōhō*, Nishi A. (1961) p. 28.

¹⁵ Vissering, “Volkenregt,” Nichiran G. and Okubo T. eds. (1982) p. 91; *Bankoku kōhō*, Nishi A. (1961) p. 58.

¹⁶ Vissering, “Volkenregt,” Nichiran G. and Okubo T. eds. (1982) pp. 108-109; *Bankoku kōhō*, Nishi A. (1961) p. 69.

¹⁷ See Okubo T. (2014), Chapters 1-3.

¹⁸ *Bankoku kōhō*, Nishi A. (1961) pp. 22-23.

these nations on the foundation of European international law.”¹⁹ But, from the view of the non-Western nations, this was an unequal treaty. Even if a foreigner committed a crime in Japan, the Japanese court could not judge him.

In addition, Vissering, Nishi and Tsuda talked about the national seclusion or isolation policy. If Western powers compelled non-Western nations to make the treaties including this kind of unequal articles, could the non-Western nations refuse relation with them and take the national isolation policy? Vissering answered that was not a realistic idea. From the perspective of the “good faith,” ethic and the economic interests among civilized nations should not be ignored.²⁰ Rather, by participating in international relations and commerce and sharing in European international law, the non-Western nations could be recognized as sovereign states. Then, the unequal articles such as consular courts would be eliminated.

Furthermore, Vissering, Nishi and Tsuda also discussed the following incident. If a strong nation forced the unfair treaty with threats of military power, and once it was signed, would there later be any opportunity to be abrogated? Vissering’s response was that such an argument was “scarcely acceptable.” “According to the principles of European international law,” even treaties concluded under threat of military force, once signed, are judged to have been signed “with free will” among sovereign states.²¹

The observance of this rule is necessary, because otherwise the principle of equality of rights and the principle of independence of the states would be lost. Moreover, if one alleges deception or force as an excuse for abrogating the fulfillment of an agreement, this goes against good faith which above all must rule interaction among nations.²²

This was the meaning of the morality in European international law. In fact, in those days, Japan had to face just this situation.

For non-Western countries, it looks unfair and irrational. However, for Nishi and Tsuda, this issue is not simple, because it also embodied certain universal moral and political values. The first is that it encouraged the defense of individual civil rights, rule of law, liberal economy, and prohibitions barbaric tactics in wartime. Secondly, it was predicated on liberal economic theory. Therefore, if one appreciates these moral values and liberal economy, one has no other option than to accept European international law. These were the difficult political issues which Nishi and Tsuda faced after returning to Japan.

¹⁹ *Bankoku kōhō*, Nishi A. (1961) pp. 94–95.

²⁰ Vissering, “Volkenregt,” Nichiran Gakkai, and Ōkubo Toshiaki, eds. (1982) pp. 49–50; *Bankoku kōhō*, Nishi A. (1961) pp. 27–28.

²¹ Vissering, “Volkenregt,” Nichiran Gakkai, and Ōkubo Toshiaki, eds. (1982) p. 75; *Bankoku kōhō*, Nishi A. (1961) pp. 45–46.

²² Vissering, “Volkenregt,” Nichiran Gakkai, and Ōkubo Toshiaki, eds. (1982) pp. 75–76; *Bankoku kōhō*, Nishi A. (1961) p. 46.

3. Two Views of International Law: Vissering and Wheaton

Now we examine the difference between Vissering's lectures of *Bankoku kōhō* and the Chinese translation of Wheaton's *Bankoku kōhō*. Then it is noteworthy to point out the translation problem of Wheaton's *Bankoku kōhō*. As mentioned above, Wheaton's *Bankoku kōhō* was the Chinese translation by the American missionary W. Martin of *Elements of International Law* by American Jurist Henry Wheaton. If we compare Vissering's lectures with the original English text of Wheaton's *Elements of International Law*, we realize that the two are quite similar in their essential character. Wheaton's *Elements of International Law* as well as in Vissering's lectures, regards international law as the product of the advance of European civilization. Because of this, Wheaton also saw the sovereign state as the subject of contemporary European international law, and makes a distinction among sovereign states, semi-sovereign states, and vassal states.²³

However, if we turn to the W. Martin's Chinese translation of Wheaton's *Elements of International Law*, we can find shades of difference in meaning from the original English book. In fact, Martin's Chinese translation uses several Confucian terminologies which evoke the notion of universal law of nature. He makes heavy use of terms such as 性法 (J., *seihō*; natural law), 天法 (J., *tenpō*; heavenly law), 天理 (J., *tenri*; heavenly principles), and 自然之法 (J., *shizen no hō*; law of nature). Behind these Martin's translation, we can find his missionary impulse to spread the Christian universal spirit and its eternal justice.

Then, this Martin's Chinese translation of Wheaton's *Bankoku kōhō* was imported to Japan and some Japanese scholars read it from a perspective shaped by the Confucian worldview that sought the existence in international society of universal norms. For instance, the Japanese edition of Martin's Chinese translation, *Bankoku kōhō reikan*, was published in 1876, its foreword was written by the leading Japanese Confucian scholar, Nakamura Masanao (1832-1891). In it, Nakamura emphasized the international law is an instrument for using public judgment and justice of all the world under heaven. Then he said as follows.

Ah, the study of international law gains vigor with each passing day and month, and when it is fully established, what a heavenly paradise it will make of our world.²⁴

Even so, it would be a mistake to conclude that Nakamura was in ignorance of the realities of international politics. In 1866, he was sent to Great Britain by the Tokugawa shogunate and he studied in London for two years. During his stay in London, he tried to search for the universal ethical principles that were common to both Christianity and Confucianism. After his return to Japan, he translated some Western philosophical works, including John Stuart Mill (1806-1873)'s *On Liberty*. It is interesting to note that Nakamura had deep knowledge about the Chinese classics. So when he stopped in Shanghai and Hong Kong on his way to England, he engaged

²³ Wheaton, Henry (1857) Part I, Chapter 2.

²⁴ Wheaton, Henry (1876). *Elements of International Law*, (based on Chinese translation by W.A.P. Martin, Wanguo gongfa), edited with explanatory notes by Takatani Ryūshū and Nakamura Masanao, *Bankoku kōhō reikan* (Seibiko zōhan), vol.1, 21.

in written dialogues with Chinese officials. In Hong Kong, he also made friendship with the famous English scholar of the Chinese classics, James Legge (1815-1897). Moreover, after his arrival in England, Nakamura also became acquainted with John Francis Davis (1795-1890), the second governor of Hong Kong and the distinguished Sinologist in Great Britain.²⁵ Thus Nakamura had a cross-cultural experience of both the Western world and China, that gave very real foundations to his quest for moral principles common to all the nations of the world. Here we see an experience of foreign study quite different from that of Nishi Amane and Tsuda Mamichi.

4. Debates on the International Law and Free Trade

On their return to Japan, Nishi Amane and Tsuda Mamichi played significant roles both as government officials and as intellectuals. After the Meiji Restoration, the new Meiji government continued to expand diplomatic relations with other countries. In November 1868, Japan and Spain officially established diplomatic relations with the signing of the Treaty of Friendship, Commerce and Navigation. But at the same time the Japanese government faced the difficult problem of the “unequal treaties” with the Western nations. The revision of unequal treaties was the most important foreign policy goals of the Japanese government.

In these political circumstances, Nishi and Tsuda were regarded as the authority of international law. Their knowledge was highly respected in the new government. In fact, Tsuda was appointed to be a member of the commission for issue of the treaty revision.

Moreover, Nishi and Tsuda joined the Meirokusha, a voluntary association of scholars. The Meirokusha was created in 1873 by the prominent intellectuals such as Nishi, Tsuda, Nakamura Masanao, Fukuzawa Yukichi and so on. They published the journal *Meiroku Zasshi*, and engaged in debate in order to promote civilization in Japan.

In those days, Japanese society was confronted with the problem of unequal treaties and a serious economic crisis caused by an extreme imbalance between imports and exports. But on the other hand, Western powers demanded for greater freedom of travel outside the foreign concessions, using the logic of free trade.

Nishi and Tsuda wrote several articles in *Meiroku zasshi*, the Journal of Meirokusha.²⁶ In them, they insisted on the importance of free trade and internal travel by foreigners in accordance with European international law. They defended the liberal economic principles. According to them, Japan has not reached the stage of the revision of the unequal treaties. Tsuda said, “According to my estimate of the matter, in resolutely opening the country to travel by foreigners lies the achievement for the empire of a position of unrestricted independence in the world through the acquisition of the two rights of fiscal and judicial independence that, of course, we deeply desire.”²⁷

²⁵ For details of Nakamura Masanao’s study abroad in Britain and experience in China, see Matsuzawa Hiroaki (1993), Chapter 2.

²⁶ Nishi Amane, “Naichi ryokō” (内地旅行), Tsuda Mamichi (津田真道) “Hogozei o hi to suru ron” (保護税を非とする説), “Naichi ryokō ron” (内地旅行論) in *Meiroku zasshi* (明六雑誌), vol.1-3. Edited by Yamamuro Shin’ichi and Nakanome Tōru (1999-2009); translated into English by William R. Braisted (1976), assisted by Adachi Yasushi, and Kikuchi Yūji.

²⁷ Tsuda M. “Naichi ryokō ron”, Yamamuro S. and Nakanome T. (1999-2009), “Meiroku zasshi”, *op. cit.*, vol. 2,

Based on Vissering's lectures, Nishi and Tsuda insisted that the extension of the free trade and interaction with Western nations would lead to the establishment of "good faith" in international society. Only when Japan is recognized as a fully independent sovereign state in accordance with European international law, it will be possible to seek revision of the unequal treaties. However, their arguments were related with the logic that led them to conclude that Japan should, for the time being, shelve the idea of attempting to regain unequal treaties as an aspect of its sovereignty.

After Nishi and Tsuda published their articles, a heated debate over the issues of internal travel and free trade ensued in the pages of the *Journal of Meirokusha*.

In these debates in *Mei roku zasshi*, Nakamura Masanao was, along with Nishi and Tsuda, a consistent advocate for free trade. In a foreword to Hayashi Masaaki's translation of French Economist, Frédéric Bastiat's work (*Sophismes économiques*), Nakamura had proclaimed that "the way of economics is determined by the forces of nature, like water," and emphasized on the importance of the free trade.²⁸ However, the view of "nature" underlying Nakamura's free trade argument was based on an understanding of international law as natural law grounded in universal norms and justice. Here, we see a huge difference in the perceptions of free trade and international law held by Nakamura on the one hand and Nishi and Tsuda on the other.

On the contrary, it was Fukuzawa Yukichi (福沢諭吉 1835-1901) who mounted a more fundamental critique of Nishi and Tsuda's views. Fukuzawa was also well known as a pioneer who tried to introduce the Western political thought to Japan. According to him, the acceptance of Western science was indispensable to Japan's progress, but the expansion of free trade was harmful to Japan under the condition of unequal treaties.²⁹ Especially the consular jurisdiction system had serious problems. "If foreign interaction becomes more vexing as the area opens to foreign travel," the number of cases in which Japanese sustained loss in litigation with foreigners would increase tenfold. In this regard, Fukuzawa says, "what I regret is not limited only to injury of persons. I am also anxious regarding injury to the independence of the country."³⁰ For him, it was too early to permit free trade and interior travel by foreigners. Then, he argues against Nishi and Tsuda that international relations are ruled by the logic of "Might makes Right."³¹ For Fukuzawa, the discourses of free trade and international law were no more than ideological expressions of the power of the West.

In his masterwork, *Bunmeiron no gairyaku* (Outline of a Theory of Civilization), Fukuzawa looked at the realities of Western colonial domination of the non-Western world and alarmed, "China too will certainly become nothing but a garden for Europeans."³² According to him, ideally, international relations should be predicated on the general principle that "regardless of power or wealth, everyone's rights are

pp. 288–289; Braisted, W. (1976), "Mei roku zasshi", *op. cit.*, pp. 300–301.

²⁸ Nakamura Masanao (1903), pp. 2-3.

²⁹ Fukuzawa Yukichi (1971), pp. 518-521.

³⁰ Fukuzawa Yukichi, "Naichi ryokō Nishi sensei no setsu o bakusu" (内地旅行西先生の説を駁す) in Yamamuro S. and Nakanome T. (1999-2009), "Mei roku zasshi", *op. cit.*, vol. 2, 336; Braisted, W. (1976), "Mei roku zasshi", *op. cit.*, pp. 322–323.

³¹ Fukuzawa, "Naichi ryokō," Yamamuro S. and Nakanome T. (1999-2009), "Mei roku zasshi", *op. cit.*, vol. 2, pp. 336–337; Braisted, W. (1976), "Mei roku zasshi", *op. cit.*, p. 324.

³² Fukuzawa Yukichi (1995) p. 291; translated into English by David A. Dilworth and G. Cameron Hurst III, (2008) p. 248.

exactly equal.”³³ But reality is totally different from this empty ideal. If the Western nations are going to conduct international relations based on their own “self-interest,” then Japan too should maintain the internal market and encourage the spirit of “patriotism” among its people.³⁴ Later, Fukuzawa remarked that “a few cannons are more important than a hundred volumes of international law.”³⁵

How should we understand and interpret the debate outlined in the preceding pages? As we have seen, Fukuzawa criticized the scholars who advocate the free trade and international law. From his point of view, the scholars could have included Nakamura as well as Nishi and Tsuda. However, we could find the difference between Nakamura’s idealistic interpretation of international law based on Martin’s translation of Wheaton, and Nishi and Tsuda’s conception of European international law that they had learned from Vissering. Of course, Nakamura was not a mere optimist. He was keenly aware of international problems. But therefore, as a moral philosopher, Nakamura tried to seek a universal international justice rooted in *Bankoku kōhō*.

On the contrary, Nishi, Tsuda and Fukuzawa, these three men faced up to the real power in the international relations. Fukuzawa criticized Nishi and Tsuda for not understanding that “Power is right (Might makes right)” in international politics. But, through Vissering’s lectures, Nishi and Tsuda also realized that European international law was the historical product of such power. Even so, Nishi and Tsuda had been taught that the origins of this power were to be found in a liberal economic theory and in a constitutionalism that protected the rights of every individual. For them, although international society was a world of “Power is right (Might is right)” centered upon European international law, it also embodied economic, political, and moral values. Therefore, Nishi and Tsuda accepted European international law and believed that there was no path open to Japan other than expanding its foreign relations and thus establishing the modern law system of a civilized society. By so doing, Japan would win the “good faith” of the West and ensure its own survival as an independent sovereign state.

In contrast, Fukuzawa feared that Japan would be entirely swallowed by the power of the Western nations, and found the dilemma between national independence and civilization. In order to resist this, he sought to place limits on interaction with them and to strengthen the internal cohesion for national independence, fostering the energies of the general populace and encouraging “patriotism.”

We can understand this debate embodies significant problems of political thought in the non-western world.

Conclusion

Nishi Amane’s translation of Vissering’s lectures on international law commanded a wide audience, and the new Meiji government highly valued Nishi’s and Tsuda’s knowledge. Tsuda was appointed as a superior government official of the foreign ministry and got involved in the negotiation of the China-Japanese Treaty of Amity

³³ Fukuzawa Y. (1995) p. 293; Dilworth, D. and Hurst, G.C. (2008) p. 250.

³⁴ Fukuzawa Y. (1995) pp. 274–275; Dilworth, D. and Hurst, G.C. (2008), p. 235.

³⁵ Fukuzawa Yukichi, “Tsūzoku kokken ron” (通俗国権論) in Fukuzawa Y.(1971), vol. 4, p. 637.

of 1871. Nishi also played a significant role as a superior government official at the Army Ministry.

The Meiji government devoted itself to revise the unequal treaties with the Western nations by accepting the Western law system and international law. On the other hand, the Japanese government also used European international law and treaty diplomacy as significant practical tools for reconfiguration of the traditional East Asian order based on the Chinese tribute system.

In 1875, an exchange of fire between Korean shore batteries and a Japanese gunboat broke out and it provided the opportunity for Japan to sign the Treaty of Amity with Korea (1876). This was an unequal treaty, full of conditions favorable to Japan, including Korea's ceding of tariff autonomy and accepting Japan's demand for unilateral consular jurisdiction.

Then, in 1894, the Japanese government signed the Anglo-Japanese Treaty of Commerce and Navigation with Great Britain, and succeeded in the treaty revision. Then after that, Japan started the war with China. It is noteworthy that the Japanese government emphasized the observation of the international law in the declaration of war. This new stage of Japan's entry into the league of European international law would also create a new periphery in East Asia.

Thus, for modern Japan, from the late Tokugawa period through the defeat in World War II, and in the post-war period down to the present, the issue of how to interpret international law has been a serious theme of political thought in East Asia and Japan. Nishi and Tsuda's study still stands at the starting point of this journey.

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