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A Comparison Between Japan and Europe

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The Concept of Comparative Legal Culture

In recent years, a new field of study known as comparative legal culture has been proposed in the legal world. While it has not yet been recognized as an area of specialization, the idea of viewing and comparing legal phenomena from the perspective of legal culture is useful for understanding and analyzing such phenomena relating to animals.

It is, however, rather difficult to define the concept of legal culture in general, and there has been some controversy among legal scholars both in Japan and abroad regarding this abstract concept. In this article, I use the term "legal culture" as a concept including both aspects of "culture relating to law" (people's awareness of, and attitudes toward, law and court actions) and "culture appearing in law" (cultural characteristics emerging in specific legal rules and the legislative process).

This conception of legal culture is more or less fluid rather than fixed. In addition, various legal phenomena are not causally determined by legal culture alone. Thus, to speak of legal culture does not mean to support cultural fatalism.

At the same time, legal culture is a neutral concept. Discussing the differences between various legal cultures does not mean judging their relative development on a single scale ranging from barbarism to civilization.

With these thoughts in mind, I would like to investigate animal law in Japan from the perspective of comparative legal culture, focusing on the characteristics and modern problems of animal protection statutes.

Differences in the Level of Application of the Offense of Cruelty to Animals between Western Europe and Japan

To consider Japanese law from the perspective of comparison is no better than placing it in a certain axis coordinate or looking at it through a certain mirror of comparison. To do this, it is necessary to choose a foreign law that will serve as an axis or mirror. The characteristics of Japanese legal culture relating to animals show a different perspective depending on how one chooses the foreign law that will serve as

the axis or mirror of comparison. The job of comparing only brings "relative" characteristics into focus.

In reviewing issues of animal law and specifically animal protection statutes, West European nations (especially Britain) are attractive subjects. Modern animal protection statutes were first conceived in Britain in the first half of the nineteenth century and have continued to develop in other West European nations, including France and Germany.

Each of these three nations naturally has its own unique legal cultural characteristics. For example, Britain has, since enacting the Prevention of Cruelty to Animals Act in 1822, made many specific rules and regulations in each domain which have served to give legal protection to animal welfare as a whole, while Germany enacted a systematic and highly abstract animal protection statute in the first half of the nineteenth century. Also, French law provides that animals are "sensible beings" (être sensible), while German law emphasizes the responsibility of humans to protect the lives and peaceful existence of animals as their fellow living creatures (Verantwortung des Menschen für das Tier als Mitgeschöpf dessen Leben und Wohlbefinden zu schützen). The placement of the crime of animal cruelty also differs between nations. In Germany, it is an offense under an animal protection statute, while in France, provision is made for it in the Penal Code.

Although each of these three nations has its own characteristics, we can also see, when we consider them as a large axis or mirror to hold up to Japanese law, that they share many common traits. They have legislated from an early stage to create rules for animal protection (prevention of cruelty) and management and then actively applied and enhanced them. This unity has been strengthened in recent years through the harmonization of legal regulations within the EU.

Let us discuss the British situation in more detail. Table 1 shows the number of perpetrators of offenses relating to animal cruelty in Japan. The Law Relating to the Protection and Management of Animals was amended and its name changed to the Law Relating to the Humane Treatment and Management of Animals in December 2002. With this amendment, the maximum statutory penalties for crimes related to cruelty to animals were increased considerably (in the case of the killing of animals, from a fine of 30,000 yen to one year's imprisonment with hard labor), but the number of prosecutions remained small at least up until 2004 – not more than 20 cases annually.

Many people may believe that the number of prosecutions for cruelty to animals in Japan is not so problematic. However, if we compare it to the British experience we

can discover some surprising facts.

Table 1 The Number of Perpetrators Against the Law Relating to the Protection and Management of Animals (the old Act) and the Law Relating to the Humane Treatment and Management of Animals (which became effective in December 2000)

(Unit: person)

Year	Charged	Prosecuted	Not prosecuted	Year	Charged	Prosecuted	Not prosecuted
1974	13	8	4	1990	3	2	2
1975	6	4	1	1991	7	4	1
1976	6	4	9	1992	11	4	0
1977	9	3	4	1993	9	4	4
1978	5	4	3	1994	11	2	9
1979	6	3	3	1995	2	3	1
1980	4	2	1	1996	12	1	11
1981	10	5	1	1997	12	5	7
1982	5	2	5	1998	8	4	4
1983	6	3	1	1999	3	0	3
1984	6	3	3	2000	14	4	11
1985	3	2	2	2001	18	7	10
1986	5	3	0	2002	39	18	22
1987	5	2	4	2003	12	3	9
1988	3	0	3	2004	27	8	21
1989	7	3	3				

(Source: Annual Statistics of Prosecutions)

Note: For some years the total number of prosecuted and non-prosecuted persons did not match the number charged since some cases were carried over to the following year.

(Source: Society for the Study of Animal Protection and Management Laws (ed.), "Must-have Item for the Animal Protection and Management Business", Taisei Shuppansha, 2006, p. 347)

Table 2 shows data for the operations of Britain's RSPCA (The Royal Society for the Prevention of Cruelty to Animals) in 1995 and 1996.

Before we look at this table, I should explain something about the RSPCA. This society is an animal protection group with a long history and was established only two years after the enactment of the first Prevention of Cruelty to Animals Act (the so-called Martin Law) in 1822. The name of the society includes the adjective "royal", but it is not a government entity as such. Since the activities of this group, which

began without the adjective of "royal", had become highly regarded by 1840, Queen Victoria permitted the society to add "Royal" to its name. In other words, it is more appropriate to interpret it as "a private body which became patronized by the Crown, was given permission to use 'Royal' in its name, and has conducted its activities with the prestige of its association with the Royal Family." The RSPCA in fact operates exclusively by voluntary donations and bequests and does not receive any subsidies (tax money) from the government.

Table 2 Statistics of the Activities of the RSPCA

Workload	1996	1995
Phone calls received	1,303,481	1,223,828
Complaints investigated	101,751	110,175
Rescues	6,982	6.265
Inspections	18,293	20,294
Cruelty statistics		
Prosecutions	790	812
Convictions	2,282	2,201
Defendants	971	981
Penalties for cruelty		
Prison sentences	55	23
Banning orders	681	650
Defendants who could have been banned but were not	222	225
Up to two defendants and four convictions can be included per prosecution.		

Based on RSPCA, The Trustees' Report & Accounts 1996

(Source: Hitoshi AOKI, "Comparative Legal Culture of Animals – A Comparison of Animal Protection Laws in Japan and Europe", Yuhikaku, 2002, p. 244, revised in part)

The RSPCA has played an extremely important role in prosecuting animal abusers. The number of prosecuted cases was 812 in 1995 and 790 in 1996, the number of cases where the accused was found guilty exceeded 2,200, and the number of defendants amounted to approximately 1,000. Considering that the population of Britain is about half the size of that of Japan, there is a significant difference between Britain and Japan in terms of the enforcement of laws relating to animal abuse.

How can this fact be explained?

There are at least two extreme arguments which should be avoided. One argument is that the British love animals, whereas Japanese do not. This argument encourages enthusiasm for a crackdown on cruelty to animals and may lead to the claim that that is why Japan is lagging behind. The other argument is the British abuse animals because they do not love them, whereas Japanese do not because they love them. This argument assumes there is a correlation between the actual number of offenses committed and the number of prosecutions, and therefore implies that the British abuse animals more frequently than Japanese do. This view may lead to the claim that Japan is advanced, contrary to the first extreme argument. Neither of these arguments is valid.

Two Views of Animal Law Issues

It is necessary to view the actual situation from two separate perspectives collectively in order to explain properly why there is such a large gap in the level of application of animal laws (particularly provisions relating to cruelty to animals) between Britain and Japan.

The first view defines animal law as a law of "animals". As long as animal law is law "relating to animals", cultural factors, such as the difference between British and Japanese awareness of animals, will surely be reflected. However, this perspective alone will not provide an adequate explanation because we know that the two extreme arguments mentioned previously are explanations that exaggerate only this view.

The second view, which supplements this, defines animal law as a "law" for animals. In other words, the difference in the level of application of laws as a whole, which deal with the concrete matter of animals in an abstract way, naturally affects the difference in the operation of animal "law". This fact is often overlooked.

Let us start by considering the first view.

The development of Western animal protection statutes in the modern era dates back to Britain in the first half of the nineteenth century. It was 184 years – roughly about two centuries – ago than the first Prevention of Cruelty to Animals Act (the so-called Martin Law) was enacted in 1822. Furthermore, the animal species which the legislators sought to protect at that time were work animals or industrial animals, largely represented by horses. This proposition is supported by the contents of the legislation and Hansard. (See "Comparative Legal Culture of Animals – A Comparison of Animal Protection Statutes in Japan and Europe" by Hitoshi AOKI, Yuhikaku, 2002 for further details.)

These are noteworthy. It is only natural that there should be a difference between

what is regarded as normal in Britain, where legislation prohibiting cruelty to animals was enacted as early as 184 years ago and has since been operating as a social rule, and Japan, which does not share such a long history of animal protection. Moreover, the original law enacted in Britain to protect work animals and industrial animals is still meaningful today.

In fact, statistics from recent years reveal that not only dogs and cats, but also animals such as bears, cattle, sheep, and pigs have been the subjects of prosecutions for animal cruelty in Britain. Details of the species of the animals in cases where the RSPCA secured convictions in 1996 were as follows: dogs (892), cats (235), cattle (186), sheep (188), horses/donkeys (128), and pigs (65).

Let us now look at the history of laws prohibiting cruelty to animals in Japan. Although there exists a very interesting law in modern history entitled the Edict Forbidding Cruelty to Living Things, I will, for the convenience of comparing modern laws, leave the problems of the pre-Meiji eras to historians and describe the history after the Meiji Restoration. It was in 1880 (Meiji 13) that the former Penal Code was enacted and prohibitions against cruelty to animals were deliberated for the first time.

Gustave E. Boissonade, a Frenchman employed by the Japanese Government, played a leading role in drafting the former Penal Code. He attempted to introduce the offense of shedding blood while working with cattle, horses, donkeys, and sheep into Japanese criminal law in light of the Animal Cruelty Prohibition Act established in his homeland, France, in 1850 (the so-called loi Grammont). Through his deliberations with the Japanese committee members, an offense of shedding the blood of cattle and horses, excluding donkeys and sheep, was finally created. In the minutes of one particular meeting, it was recorded that a Japanese committee member expressed that the view that "a law for the offense of killing beasts is not particularly important." This type of crime was later gradually transformed into the Police Punishment Ordinance for Crimes and the Minor Offenses Act, but there is little evidence of these being applied.

It was not until 1973 (Showa 48) that Japan finally enacted a comprehensive animal protection statute, the Law Relating to the Protection and Management of Animals. In addition, the offense of cruelty to cattle and horses was incorporated into this law as a new provision. This law provided that any person who is found to have cruelly treated or abandoned a protected animal shall be liable to a fine not exceeding 30,000 yen. It defined protected animals as "cattle, horses, pigs, sheep, goats, dogs, cats, domestic rabbits, chickens, domestic pigeons and domestic ducks" and "mammals or birds which are in the possession of a person." However, at that time, legislators

mainly had the protection of pets such as dogs and cats in mind.

After December 2000, the name of this law was changed to the Law Relating to the Humane Treatment and Management of Animals. The current sections relating to offenses of cruelty to animals provide that "any person who is found to have killed or harmed a protected animal without good reason" shall "be sentenced to a prison term not exceeding one year and liable to a fine not exceeding 1 million yen" and that "any person who is found to have cruelly treated a protected animal without good reason in such a way as to weaken its health such as through withholding food or water" or "who has abandoned a protected animal" shall "be liable to a fine not exceeding 500,000 yen." Here, a "protected animal" means "cattle, horses, pigs, sheep, goats, dogs, cats, domestic rabbits, chickens, domestic pigeons and domestic ducks" and "mammals, birds, and reptiles which are in the possession of a person." "Reptiles which are in the possession of a person" had not previously been included in the definition of "protected animals", so represented a new addition.

In this way, the crimes which had previously been lumped together under the offense of cruelty to animals were divided into the offense of killing and wounding animals and the offense of cruelty to animals, the range of protected animals was extended, and the statutory penalty was increased considerably, but the number of prosecutions for violations of these provisions in Japan is still extremely small compared to Britain.

I will limit my explanation here to the above, but suffice it to say that judged from the first perspective that animal law is a law of "animals", Japan's animal protection legislation is quite poor in comparison with the West especially. We cannot make value judgments as to whether this is appropriate or not, but it is possible to infer that there is a significant difference between Japanese and Western societies in either the level of interest in animal protection or in the priority given animal protection issues among social problems in general.

In addition, I would like to discuss another two points, which I have mentioned before. One is that in West European society, there are laws providing for both animal protection and management so that animal abusers are dealt with strictly and the legal liability of those managing animals is strictly enforced. In other words, it can be said that West European societies have more "enthusiasm for animal issues (both protection and control)" than "enthusiasm for animal protection". The second point is that work animals and industrial animals have consistently remained at the center (or at least remained an important part) of the concept of protected animals in West European laws since the birth of modern animal protection statutes. This may

explain why the protection of industrial animals and animals used in experiments, which are close to work animals in the broad sense, is so weak in Japan, a country where the humane treatment of animals (mostly pets) is advocated.

However, the Law Relating to the Protection and Management of Animals in Japan must gradually be improved in more ways than just in relation to the imposition of heavy punishments for crimes related to cruelty to animals.

For instance, the latest revision in June 2006 (Heisei 18) provided for the creation of basic guidelines and plans to promote animal protection, a move from the current notification system to a stricter registration system in animal handling businesses, the promotion of individual identification devices for animals using microchips and the like, the transfer of the rearing and keeping of listed animals (dangerous animals) to a uniform national licensing system, and the promotion of animal welfare awareness in schools, the community, and homes. With respect to animals used in experiments, the so-called "Three-R Principles" (replacement of methods, reduction of the number to be used, and refinement (lessening) of pain), which are internationally accepted ethical principles for animal experiments, were also provided.

This Act currently comprises 50 sections. The Law Relating to the Protection and Control of Animals (1973), which was a model for the present Act, had only 13 sections. However, it was expanded to 31 sections in the amendment enacted in 2000 and then to 50 sections in the latest amendment enacted in 2006. This change shows that Japanese animal law began to move rapidly at the turn of the century.

Bearing this in mind, there is a good chance that the differences between Japan and Europe in the level of priority given animal issues and the protection of industrial animals and animals used in experiments will lessen gradually over time.

Let us turn next to the second view that defines animal law as a "law" for animals. There is also a significant difference between Japan and Britain in the extent to which law and court actions are used positively. To give an example from the news: in November 2004, Princess Anne's dog bit someone while she was walking it in a public park and she was ordered to pay, under the Dangerous Dogs Act 1991, a fine of 500 pounds (about 98,000 yen) and compensation of 250 pounds to the victim. Needless to say, the level of enforcement of laws is completely different between British society, where even a princess can be held liable as a dog owner, put on a trial, and ordered to pay a fine or compensation, and Japanese society, where one will rarely be sued or prosecuted.

Although some may try to explain such differences in terms of people's mentality, such arguments are not very convincing. It is better to regard such differences as

being derived from institutional factors, such as the cost of trials and the number of legal professionals (judges, prosecutors, and lawyers) on a per capita basis available to support the bringing of such lawsuits.

In fact, the legal infrastructure provided in Britain differs markedly from that in Japan. For instance, the number of legal professionals (judges, prosecutors, and lawyers) per 100,000 people in England and Wales is 155 (2000), while Japan has no more than 18 (1999). Moreover, the amount of legal aid (a social system assisting people unable to protect their rights because they cannot afford to pay attorneys' fees and other legal costs due to poverty and such) provided in civil cases is very different, with Britain spending 161 billion yen in 1994, while Japan spent 1.3 billion yen in 1996. As a result, the number of applications for civil trials at first instance per 100,000 people in Britain in 2000 was 3,602, while it was no more than 373 in Japan in 1999 (source: Seigo Hirowatari (ed.), "Comparative Sociology of the Legal Profession", University of Tokyo Press, 2003).

It could be argued that it is not appropriate to cite figures for civil actions directly as prosecutions for cruelty to animals are criminal cases. However, it is worth referring to the figures at least to show the differences in familiarity with courts and their level of use because it is possible in Britain for private organizations to take cases of animal cruelty to prosecutors.

In short, legal proceedings are not yet sufficiently easy to use as a means of settling disputes in Japanese society. Therefore, they are seldom used.

As this problem is a long-standing defect in the administration of justice in Japan, large-scale reforms of the judicial system, symbolized by the establishment of graduate law schools and the introduction of the lay judge system by 2009, have been promoted for the last several years in order to promote the "legalization" of our society and realize a legal system which is trusted by its citizens. We cannot expect these efforts to bear fruit in a short time; rather, it will take some time for Japan to become a "court case society" to the same extent as Britain.

Another important issue relates to this point. That is that animal protection organizations such as the RSPCA, classified not as "public" but as "private", carry out the "public" function of a prosecutor in Britain in practice. This is very different from Japan where all criminal prosecutions are conducted by "public" prosecutors. In more general terms, the difference between Britain and Japan is striking with respect to issues relating to the basis of the social structure, such as how much public authority private bodies should be given as legal actors.

As mentioned above, it can be inferred that the enormous differences between

Japanese and British societies (more generally, Japan and Europe) regarding both views of a law of "animals" (legal culture as a "culture appearing in law") and a "law" for animals (legal culture as a "culture relating to laws") work together to generate the differences in the figures shown in Tables 1 and 2.

Challenges Facing Animal Law in Japan

In conclusion, I would like to discuss my views on animal law in Japan.

First, the relationship with the first view: At present, Japanese society regards animal rights issues as peripheral to the problems faced by society in general, but there is high level of latent concern. For example, while I have been writing this article in August 2006, a Japanese writer living in Tahiti has provoked a bitter controversy by confessing in a newspaper article that she kills newborn kittens by throwing them over a cliff. This issue illustrates the fact that latent concern about animal protection issues is high in Japanese society. With further improvements to our late-appearing animal protection laws, we can expect the situation of animals in Japan will be more and more "Europeanized" in the future.

The concept of animal protection is one of the classic ideas of the modern world that has developed since the nineteenth century. However, we are drawing very close to the time when we should reconsider it in a modern context. In contemporary society, it has become possible to remove internal organs and embryos from humans and use them independently (the corporealization of human beings). On the other hand, animals have been afforded cordial protection because they have a close connection with us (the hominization of things). In this manner, two movements that have opposite vectors have progressed simultaneously.

The world of jurisprudence has traditionally adopted a dichotomy, defining a "person" as the subject of rights and a "thing" as the object of rights, and classified animals as "things". However, such a classic dichotomy is less effective in situations where human beings become things and things are humanized. It is necessary for us to reconsider issues of animal protection from a broader perspective, such as one of the issues of the ethics of life as to how we should deal with an ambiguous being halfway between a person and a thing.

Next, I will focus on the second view. It can definitely be said that Japanese society's "legalization" will advance with the passage of time. The importance of the functions that the law and courts play in animal issues will gradually increase. Amid this large swell, we need to consider how to use and improve the current animal protection laws.

In this respect, the use of legal theory and bringing of test cases in the courts by animal protection groups can be a driving force advancing legal theory and the practice of law in the future. However, it is true that no animal protection group exists in Japan that is as powerful or reliable as Britain's RSPCA. In this sense, the ability of animal protection groups in Japan may be called into question.

Can animal protection groups develop to the extent that they are widely approved and trusted as conveyers of a "public" function, which is neither "private" nor "bureaucratic", in Japanese society? Comparing the legal cultures of Western Europe and Japan can be quite disconcerting. If Japanese animal protection groups could begin to make some progress, then the transfer of legal authority to them, as seen in West European systems, could be considered. In addition, this problem is not limited to animal protection groups, and the place and function of citizens' groups in Japanese society needs generally to be reconsidered. Animal protection issues may be a comparatively small problem, but they provide a glimpse of the larger issue of social governance as to how we should design the Japanese society of the future.

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