

Boissonade's Judicial Civil Code and the Law of *Preuve*

YE, Jingzhu

The first Japanese Civil Code, the so-called Old Civil Code of 1890, was based on a draft by French legal scholar Gustave-Emil Boissonade. The Code is divided into five books, and one of its remarkable features, as compared with the Meiji Civil Code of 1898, is the existence of the last book on *preuve* [evidence or proof]. That book, however, faced a storm of criticism during the codification debates. Its opponents argued that the drafter should not have mixed the law of evidence with substantive law and that the structure of the code was illogical. Such negative opinions have had a great impact on the study of Japanese civil law study since the debates in 1890.

This paper examines Boissonade's law of evidence as part of the process of reception of European civil law in Japan and identifies two important features in the structure of Boissonade's Code. First, the Code comprises not only the substantive rules of rights and obligations, but also the general rules of evidence, for civil actions. In this sense, Boissonade considered the civil law to be a judicial (procedural) code. Second, various *preuves*, based on the principle of legal evidence, are divided into three classes, namely direct proof, legal presumptions, and judicial presumptions. The admissibility and probative value of evidence in each class differ from those in other ones. Through a series of rules of evidence, the Code coordinates the process of fact-finding with the substantive rules of rights and obligations.

The structure of Boissonade's Code has its roots in the tradition of natural law inherited from French civil law. However, his plan for Japanese civil law was not accepted by the Meiji Government, who rushed to establish their own despotic government instead. At the same time, it was also believed that the French law of evidence could not accommodate the traditions of Japanese civil judgments.