

NATURE, SOCIETY, LAW: THE FOUNDATION OF THE IDEA OF AN INTERNATIONAL WELFARE SOCIETY

Shinobu Odagiri, Waseda Institute of Technology, Shinjuku-ku, Tokyo

ABSTRACT

We citizens of the World face two serious crises: the environmental problem and the welfare problem. The former began when the western world conquered and controlled nature. Man exploited nature and established the modern socioeconomic system, but in the process brought about the exhaustion of natural resources and the destruction of the environment through his excessive pursuit of wealth and goods. We are now compelled to transform this system. For example, in Japan, the first victims of the pollution problem were the socially weak, that is to say, the children, the poor, the disabled and the aged. It is clear then, that the environment problem is at the origin of the welfare problem to which it is intrinsically linked. Therefore, in seeking to address the welfare problem, we must keep in mind its relationship to the environmental problem and treat both crises from a global point of view. Legally speaking, we must consider both environmental law, which protects nature, and welfare law, which protects the weak, not only as domestic but also as international issues. Based on these considerations, we come to the conclusion that we must transform the welfare state into an international welfare society.

RÉSUMÉ

Nous, les citoyens de la terre, faisons face à deux crises importantes: celle de l'environnement et celle de la sécurité sociale. La première débute avec la conquête et l'exploitation de la nature par l'Occident. L'homme a

utilisé l'environnement et établi le système socioéconomique moderne, mais par le fait même, par sa quête excessive de biens et de richesses, a épuisé les ressources naturelles et détruit l'environnement. Nous sommes maintenant obligés de transformer ce système. Par exemple, les premières victimes des effets de la pollution au Japon furent les gens des milieux sociaux défavorisés, c'est-à-dire, les enfants, les pauvres, les handicapés et les personnes âgées. La crise environnementale est donc à l'origine des problèmes socioéconomiques auxquels elle est intrinsèquement liée. Par conséquent, lorsque l'on s'attaque à résoudre la crise socioéconomique, on doit également réfléchir aux problèmes de la crise environnementale et examiner les deux de façon globale. Du point de vue juridique, on doit tenir compte, dans un même temps, des lois environnementales qui protègent la nature et des lois de la sécurité sociale qui protègent les gens défavorisés comme une problématique mondiale et non seulement nationale. Cela dit, on conclura que l'on doit transformer l'État providence en une Société providence internationale.

INTRODUCTION

The purpose of this paper is to discuss the foundations of an "international welfare society", that is, the relationship between nature, society and law from a sociocultural point of view. However, as everyone knows, this task is enormous. It seems that I cannot provide a complete answer within the limits of this paper. But I do wish, at least, to broach the subject from a Japanese point of view, ideas I hope will be my contribution to this academic gathering.

In our modern world, we are facing two serious crises: the environmental problem in nature and the welfare problem in society. The former began when the western world conquered and controlled nature. Man exploited nature and established the modern socioeconomic system, but in the process brought about the exhaustion of natural resources and the destruction of the environment. We are now compelled to transform this system. It must be noted that, in Japan, the first victims of the pollution problem were the socially weak, that is to say, the children, the poor, the disabled and the aged. In this sense, it is clear that the environmental problem is at the origin of the welfare problem to which it is intrinsically linked. In seeking to address the welfare problem, we must keep in mind its

relationship to the environmental problem and treat both from a more global point of view. Legally speaking, we must consider both environmental law, which protects the natural environment, and welfare law, which guarantees human rights, not only as domestic but also as international issues. Based on these considerations, I conclude that we must transform the modern welfare state into an international welfare society.

1. NATURE AND MAN

According to the theoretical philosophy of Aristotle (384 B.C.-322 B.C.), "nature" means: "(a) in one sense, the genesis of growing things and (b) in another, that immanent thing from which a growing thing first begins to grow and (c) the source from which the primary motion in every natural object is induced in that object as such". He goes on to say, "All things are said to grow which gain increase through something else by contact and organic unity (or adhesion, as in the case of embryos). Organic unity differs from contact; for in the latter case there need be nothing except contact, but in both the things which form an organic unity, there is some one and the same thing which produces, instead of mere contact, a unity which is organic, continuous and quantitative (but not qualitative)" (Aristotle, 1996, 1014b). Aristotle advanced the theory that nature was closely related to the genesis or the growth of things. He applied this theory to his practical philosophy. "Plants exist for the sake of animals and the other animals for the good of man, the domestic species both for his service and for his food, and if not all, at all events, most of the wild ones for the sake of his food and of his supplies of other kinds, in order that they may furnish him both with clothing and with other appliances. If, therefore, nature makes nothing without purpose or in vain, it follows that nature has made all the animals for the sake of man" (Aristotle, 1990, 1256b). Although Aristotle considered nature as the origin of all things, in his philosophy, nature and animals existed for the sake of man.

We can read the same thought in the Bible, in Genesis. "God said, 'Let the earth bring forth living creatures, according to their kind: cattle, reptiles, and wild animals, all according to their kind'. So it was; God made wild animals, cattle, and all reptiles, each according to its kind; and he saw that it was good. Then God said, 'Let us make man in our image and likeness to rule the fish in the sea, the birds of heaven, the cattle, all wild animals on

earth, and all reptiles that crawl upon the earth'. So God created man in his own image; in the image of God he created him; male and female he created them. God blessed them and said to them, 'Be fruitful and increase, fill the earth and subdue it, rule over the fish in the sea, the birds of heaven, and every living thing that moves upon the earth'" (Genesis 1, 24). What is immediately apparent in this extract is that man was created, by God, to rule as a despot over nature and animals.

John Passmore (1914-) considers that both Greek tradition and Genesis, as mentioned above, are the "origin of the West's ecological troubles" and that Francis Bacon (1561-1626) is their philosophical inheritor. It is Bacon's philosophy which informs of "the ambition of restoring to man his original dominion over nature and restoring it through science" (Passmore 1980, p.19). Bacon proclaimed that "knowledge itself is power" and "learning should be referred to use and action". "The empire of man over things", as he elsewhere put it, "depends wholly on the arts and sciences". Moreover, "let the human race recover", he exhorted man, "that right over Nature which belongs to it by divine bequest" (Bacon 1620, Aphorism 129).

To sum up, Greek philosophy, Christian theology and Baconian science encouraged certain special attitudes to nature. That is to say, that nature existed primarily as a resource rather than as something to be contemplated with enjoyment, that man had the right to use nature as he wanted, that nature was not sacred and man's relationships with nature were not governed by moral principles. Although this attitude to nature was "the charter of the Industrial Revolution" (Passmore 1980, Part One, 1), it produced a serious crisis between nature and man. Namely, man conquered and consumed nature. At the expense of nature, he established the present socioeconomic system. In the process, his excessive pursuit of wealth and goods brought about the exhaustion of natural resources and the destruction of the environment in the West. Therefore, it is urgent that man be compelled to take a more global point of view to transform this system. He needs a new philosophy, a new institution and a new policy. For example, he needs to think about new theories on ecology, animal rights, legal institutions, policies and so on. It would appear, by the way, that the Eastern view of "nature" is different from the Western view and might break the modern bottleneck. The Eastern concept of "nature" first appeared in the book of Lao Tzu, the ancient Chinese philosopher. To quote him, "There is something that contains everything. Before heaven and earth it is. Oh, it is

still, unbodied, all on its own, unchanging, all-pervading, ever-moving. So it can act as the mother of all things. Not knowing its real name, we only call it the Way. If it must be named, let its name be Great. Greatness means going on, going on means going far, and going far means turning back. So they say: 'The Way is great, heaven is great, earth is great, and humankind is great; four greatness in the world, and humanity is one of them'. People follow earth, earth follows heaven, heaven follows the Way, the Way follows the Nature" (Lao Tzu 1998, Chapter 25). The purpose of this quotation is to show that Lao Tzu had respect for "nature" rather than "artificiality", that is, "human work". He went on to say: "the Way bears them" or "the Way is the hearth and home of the ten thousand things". This "Way" follows "Nature". After all, through his philosophy, we will understand that there is never a boundary between nature and man. This is the theme of the *Manyo-Syu*, probably compiled in the second half of the eighth century, the largest and oldest surviving collection of Japanese lyric poetry. The compilers are unknown, but it seems that Otomono Yakamochi (718-785) may have been a major contributor. When we read it, we learn about the mental make-up of the Japanese of the period, especially their preoccupation with nature and man. For example, there are many poems about natural phenomenon, the moon, flowers and birds. They loved the mountains and the sea and loved their friends, lamenting their death. They respected the Emperor and revered the gods. The Buddhist Shinran (1173-1262), who inherited and developed the teachings of Honen (1133-1212) and founded the Jodo-Shinshu or True Pure Land Sect, also discussed nature in *Matto-Sho*, (compiled in 1333). In Shinran's philosophy, the concept of nature is taken to mean that all things stem from nature which answers for itself. Hajime Nakamura (1912-), a modern Japanese thinker, says that "it is understood that man confronts nature and follows God in the Western thought. It is understood that man does not confront gods, nature or animals in the Indian thought."

Although gods are better than man, they do not transcend him there. Buddhist thought is very similar to Indian thought in general. According to the former, man will be gods, animals and insects. That is to say that all things are the equal one" (Nakamura 1978, p.101). It is in Buddhist thought that man is identified with nature and there is never a boundary between the two.

I think here, we must pay attention to the following points about nature in Japan: (1) Japan is situated in a the typhoon zone, (2) there are many volcanos in Japan, (3) earthquakes are frequent in Japan, and (4) some

parts of Japan have heavy snowfall. Therefore, the Japanese did and still do live in a very hard climate, they struggle against nature and survive. In this sense, nature and man coexist in Japan.

Nevertheless, it was not only men from the West but also the Japanese who conquered and exhausted nature. It must be noted that there are some pollution problems in Japan. Let us consider this question next.

2. MODERNIZATION AND POLLUTION

When Commodore Matthew Calbraith Perry's fleet arrived in 1853, Japan had already been shut off from the rest of the world for more than two hundred years in self-imposed isolation. The fact that in 1858, Townsend Harris (1804-1878), consul general of the United States, was able to persuade Japan to sign a treaty of amity and commerce did not mean that there had been a complete reversal in Japanese thinking. In fact, strong opposition to the establishment of international relations still existed within the country. Nevertheless, there was a steady shift toward the opinion that Japan should throw open its doors and actively encourage the introduction of advanced foreign ideas. In this way, it was hoped that Japan would be able to enrich itself and, eventually, be able to stand as an equal with the countries of the West.

The need to replace the Tokugawa Bakufu with some form of government more capable of absorbing Western ideas was felt more acutely with each passing day. The wisdom of the leaders of both the pro- and anti-Bakufu forces is apparent in the final peaceful solution: the Shogun returned his powers to the Emperor in what is known as the Meiji Restoration of 1867. The basic policy of the Meiji government was to preserve Japan's independence by opening up the country and building up the nation's military power through relations with the rest of the world. This plan was in fact carried out by the progressive political leaders of the time. The government of the period gave farmers the right to buy and sell land. Industrial development was promoted. State-operated railway, telephone and postal systems were initiated. The government actively encouraged private enterprise by setting up and managing model production facilities (for example, a shipbuilding yard in Nagasaki and a silk mill in Tomioka) and by providing financial assistance. Spearheaded by the government, so began the

Japanese Industrial Revolution, that is, Japan's rapid modernization. This meant the beginning of the destruction of nature, that is, environmental problems such as air, water and noise pollution. Before the Meiji Restoration of 1867, man had lived in and with nature and felt in harmony. Following the Meiji Restoration no philosophy of ecology was established in the face of environmental problems.

Why was there no native ecological movement in Japan? In order to answer the question, I must refer to the following two points: the native view of nature and the native character of the social system. Although man loved nature, it seems that it was not a love based on intellect, but a love based on sensibility. Therefore, I think we must reconsider the meaning of nature from an intellectual standpoint. To put it another way, we must understand the real nature (or true character) of nature and make it clear by our language. As to the second point, one of the patients suffering from Minamata disease (a type of poisoning caused by industrial mercury pollution) writes that "there is the responsibility that nobody takes, or it may be nearer the truth to say that the responsibility exists deeply. I am wondering myself about this problem: the responsibility of the state or the nitrogen? I was wrong to blame only the state. After all, the Minamata disease is human guilt and the true responsibility exists in the human being. Man must have the other Minamata disease if he cannot consider the human being as a human being". The patients were compensated for their disease with a large sum of money. However, nobody apologized to them and nobody assumed responsibility. The payment of money destroyed not only the relationship between man and man, but also the relationship between man and nature. Thinking this fact over, we must realize the nature of the environmental problems in the native social system of Japan and solve them. Rachel Carson (1907-1964) says that "through all these new, imaginative, and creative approaches to the problem of sharing our earth with other creatures there runs a constant theme, the awareness that we are dealing with life S with living populations and all their pressures and counterpressures, their surges and recessions" (Carson 1991, p.256).

3. WELFARE AND LAW

It is important to bear in mind that the first victims of the pollution problem in Japan were the socially weak. In this sense, the environmental

problem is at the origin of the welfare problem and both are intrinsically linked. Therefore, in seeking to address the welfare problem, we must keep in mind its relationship to the environment problem and treat both crises from a global point of view. Once again, I wish to say that we must consider both environmental law and welfare law not only as domestic but also as international problems. At this point, I regard the dignity of all living things as important and advance the theory of an international welfare society.

We will be able to see the following characteristics in the recent Japanese welfare reform: (1) "universalization", to expand the sphere of clients in the aged society; (2) "pluralization", to add to social services a non-profit organization or a non-government organization to act in an administrative capacity; (3) "decentralization", to leave social services to the discretion of local government; (4) "liberalization", to accept the concept of "contract" in social welfare law and to establish it as one of the fundamental human rights; (5) "planning", to draw up a plan according to the actual conditions of the aged; (6) "synthesis", to synthesize many of the needs in the aged society; (7) "professionalism", to ensure the presence of talented people who will bear a responsibility in the aged society; (8) "self-help", to emphasize a self-help principle in order to rebuild the financial policy of social welfare; (9) "subjectivism", to provide the aged with the social services they need; (10) "localization", to transform institutional care into home or community care.

We must develop a new philosophy based on the dignity of all living things, one which will be able to alleviate crises, especially of an economic and financial nature. This philosophy must have an intellectual understanding of nature, must be against its destruction and must help establish a national consensus for an international welfare society. That will be the philosophy behind "originality" of law as an eleventh characteristic of the welfare reform. It is Shigeru Inoue (1916-), the Japanese legal philosopher, who proposes the possibility of this philosophy.

Inoue goes to the the first positive law in Japan, the *Constitutional Law in Seventeen Clauses* (604), written by Syotoku Taishi (574-622), and determines the "originality" of law from it (Inoue, 1989). Inoue's philosophy is useful in understanding the essence of the Constitution of Japan (1946) and in establishing the philosophy for a national consensus which would solve not only the welfare problem but also the environmental problem. Inoue makes his own interpretation of the Constitution of Japan. According

to him, the present constitution is the manifestation of unity between law and morality concerning human rights. "The high ideals controlling the human relationship", as stated in the preamble to this constitution, are connected with *Grundgesetz der reinen praktischen Vernunft*, which Emmanuel Kant (1724-1804) postulated. Therefore, all people must be treated not only as the means, but also as the end. If all people were conscious of the "laws of morality" and were ready to observe them, "one systematic union" could be realized, that is, "a national consensus". At the foundation of this "union", is the concept of human beings "living together". Thus, Inoue says that "unity" for man is realized and developed as a "society". According to Inoue's legal philosophy, law is in "existence to serve human beings living together". However, it only "serves" human beings. Law remains a "framework" to teach man, as a legal subject, the method of autonomy. Human beings realize the idea of law and law is realized in society. Therefore, law appears in human society and its function is to serve human beings passively living together. According to Inoue, that is "the truth with special reference to the originality of law".

I think this function of law gives us the opportunity to live together in harmony with nature and society. Therefore, we must guarantee the right of all living things through environmental "law" and guarantee the right of the socially weak through social welfare "law".

In the first place, Ernst Friedrich Schumacher (1911-1977), who explained "Buddhist Economics", reported that "the teaching of the Buddha, on the other hand, enjoins a reverent and non-violent attitude not only to all sentient beings but also, with great emphasis, to trees. Every follower of the Buddha ought to plant a tree every few years and look after it until it is safely established, and the Buddhist economist can demonstrate without difficulty that the universal observation of this rule would result in a high rate of genuine economic development independent of any foreign aid" (Schumacher 1983, p.49). In the second place, Stephen Jay Gould (1941-), a paleontologist and an evolutionary biologist, states that the argument that "all species eventually die (at geological scales) makes about as much sense as arguing that we shouldn't treat an easily curable childhood infection because all humans are ultimately and inevitably mortal" (Gould, 1993, p.48). Furthermore, the environmental ethicist supports the following three points: (1) The ecosystem (Golley, 1993) is a limited space, man acts with the possibility of harm to the other and his action is controlled by ethical rules. (2) The present generation has the responsibility to guarantee the right

to life of the future generation. (3) Man has the obligation to conserve, at any cost, species, natural resources, the environment and the ecosystem for the sake of the future generation.

Where environmental problems were once part of domestic issues, they have now become international issues, just as, in a shrinking world, welfare problems have become international in scope. Therefore, we must think of both problems from a global point of view. In my opinion, nature should also be the subject of welfare considerations. That is to say, man must guarantee not only the rights of welfare but also the rights of nature. The world is no longer just a union of many states but rather one big system that I want to call an "international welfare society". It is the dignity of all living things and the originality of law that support this new society and gives us the possibility of solidarity.

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