

Okada Asataro and Abolishing Analogy in Late Qing Dynasty: Discussion on the influence of the Evolutionary Theory of Law in Modern China

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Abstract

Okada Asataro is an important person in legal institution reform during the last stage of Qing dynasty. Abolishing analogy invoked and establishing crime without law providing forit is the main point of the reform. Okada Asataro believed in the evolutionary theory of law, considered crime without law providing forit as an enlightened institution, while analogy invoked as an under-developed institution. His knowledge on analogy invoked is misunderstanding. He ignored the relation between analogy invoked and Imperial autocracy. He couldn't find the technical goodness of the institution in keeping the balance between the crime and the details of a case, limiting the power of justice. Because of the enormous influence of the evolutionary theory of law, most of the legalists and politicians accepted Okada Asataro's point. But the evolutionary theory of law ignored Chinese tradition and national conditions, so it brought up the negative effects in the legal institution reform.

Keywords: Okada Asataro, Analogy invoked, crime without law providing forit, The evolutionary theory of law