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A SPACE FOR EPIEIKEIA IN GREEK LAW[1]

κεῖτο δ' ἄρ' ἐν μέσσοισι δύω χρυσοῖο τάλαντα,
τῷ δόμεν ὃς μετὰ τοῖσι δίκην ἰθύντατα εἴποι.
(Homer, *Iliad*, Book 18,507-8)

I. The notion of ἐπιείκεια is widely known both in the civil and common law countries and rendered, for instance, as "equity" or "fairness" in English[2], as "équité" in French, and as "Billigkeit" in German. In Japan[3], the closest notion with which *epieikeia* can be compared is *Jori*, on which I shall discuss at the end of this essay.

In the study of law, except for the technical meaning and function of equity in common law, the notion of *epieikeia* is usually discussed in the context of sources of law, by which I mean the criteria of (primarily) judgments handed down by courts[4]. It is generally agreed, at least these days, that in both civil law and common law, the space which is allocated to *epieikeia* is extremely limited. The dominant sources of law are statutes, customs and precedents. From a historical perspective, in the western tradition, it is not likely that *epieikeia* played a major role as one of the sources of law, either.

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[1] The original paper, which was conceived as an (imaginary) response paper, was read at the Symposion 2009 at Graz on 27th August 2009. This is a significantly modified version of that paper. I should like to thank, firstly, Professor Gerhard Thür who invited me to the conference, and also all the other participants whose discussions both inside and outside the conference stimulated me greatly. Special thanks, especially for the improvement of my discussion on *Jori* and French law, are due to Professor E. Matsumoto, and also for the improvement of my English, to Dr. N. Henck.

[2] This word is traditionally translated 'equity'. See Cope (1870), 190-193; Cope and Sandys (1877), 255-259; Grimaldi (1990), 299-306. Kennedy (2007) recently chooses the term 'fairness' because '*epieikes* is a broader concept and applies to both public and private law' (p.99 at footnote 237). Kennedy seems to associate *epieikes* with the notion of equity in common law countries, which is, however, very unique in the western legal tradition. And the distinction between public and private law does not suit to Greek law. It is, I think, not appropriate to replace equity with fairness for this particular reason.

[3] Zweigert and Kötz (1996); English translation by Weir (1998), 63-73, 295-302; Oda (2009), 1-9; Kasai (2009).

[4] Thür (2007) has recently discussed the notion of fairness in Greek law from the procedural point of view.

What is the case with ancient Greek law, and Athenian law in particular? This question is a very important one in my opinion, because in Greek law, we cannot examine the sources of law in the same way as in the other western legal systems. As is well known, Aristotle in his *Rhetoric* (Book 1, Chapter 2) divides the means of persuasion into artistic techniques – the use of paradigms and enthymemes – and non-artistic ones that the orator uses but does not invent. The latter are five in number: laws, witnesses, contracts, tortures, and oaths (Book 1, Chapter 15).

Here it should be noted that there is a difference in the framework between the sources of law on the one hand, and Aristotle's πίστεις ("means of persuasion") and his division of persuasion into two categories on the other. I do not suggest that we should follow Aristotle's formulation, but no one can deny that Greek rhetoric, both in theory and practice, is one of the essentials which constitute Greek law.

The aim of this paper is to find a space for *epieikeia* in Greek law – Athenian in particular – by placing it within a wider context than that in which the former studies on *epieikeia* have tended to do, and to suggest a way in which Greek law can be compared with Japanese law.

II. Meyer-Laurin's work on *epieikeia* (1965), which is a classic text and offers us a starting point on this subject, can be summarised as follows.

In chapter I (Problemstellung und Ausgangssituation), Meyer-Laurin sets out the main purpose of his thesis as follows, whether or not, in the positive law of Athens, Billigkeit (*epieikeia*) was taken into account. There is a split between the positive and negative view, with the positive view (by Vinogradoff, Gernet, Jones, Paoli) being based, principally, on Plato and Aristotle (*Rhetoric* and *Nicomachean Ethics*), while the negative view, on the other hand, seen from the point of view of positive law, emphasizes a wide gap between Greek law and Greek philosophy. Recently, Wolff has commented: "Auch Aristoteles' Bestreben, eine Doktrin der *epieikeia* als Korrektiv des *ius strictum* aufzustellen, scheint im positiven Recht Athens ohne Widerhall geblieben zu sein."

Under these circumstances of conflicting views, Meyer-Laurin examines exclusively the forensic speeches to ascertain whether or not, the speakers justify themselves by employing "Billigkeitsargumente" and courts pay attention to the "Billigkeitsgründe".

In the following three chapters, based on the main sources for Meyer-Laurin's argument, which seem to me to comprise, among others, Hypereides' *Against Athenogenes* and Demosthenes 56 *Against Dionysodorus for Damages*, he draws a general conclusion that the notion of Billigkeit does not play a substantial role at court.

In chapter V (Gesetzesprinzip und Billigkeit in der Rechtsprechung), the following concepts such as δικαιότατη γνώμη ("most just understanding" according to the judges' oath) and interpretation of testament and contract are focused on and analyzed. As regards δικαιότατη γνώμη, Wolff states as follows: "ein subsidiäres

Mittel der Rechtsfindung, auf das man zurückgreifen durfte, wenn gesetzliche Bestimmungen fehlten" (Meyer-Laurin 29).

In this way, although the judges were bound to the law by the oath, nonetheless it has been testified that they exercised arbitrarily and unpredictably their power of jurisdiction. Also, some interpretation of the law was, as Aristotle suggests, necessary. This is also true of testaments and contracts. However, there can be found no example of an argument using Billigkeit in the interpretation exercises.

Meyer-Laurin does not neglect to make inquiries concerning Billigkeit occurring in the private arbitration. This is a very important topic but one which merits treatment in its own right and so must be left for another occasion[5].

In conclusion, Billigkeit played almost no part in Greek law and legal system. It was only in 237 BC that the Aristotelian theory of ἐπιεικές was introduced into the courts of the Ptolemaic period (Chapter VII).

Seen in this way, Meyer-Laurin's argument seems to be firmly based on the evidence and sources, both legal and oratorical. Here I should like to question his framework from which he is looking at Billigkeit. As he explicitly says in the Problemstellung, he is exclusively interested in the role of Billigkeit in the 'positive' law. What does he mean by the positive Greek law? Is it the same as the written law? If so, his framework does not work because, in order to testify the existence of *epieikeia*, he needs to find a positive, that is to say, written law, which explicitly mentions *epieikeia* and the judgment is given explicitly according to *epieikeia*. But of course, there is no such a case in ancient Greece. And it is, I suspect, extremely difficult to find such a case in any legal system.

Then, if the positive law is not the same as the written law, what does it mean? It will also lead to a difficult question. It is very likely that Meyer-Laurin means the sources of law by it. In other words, his Problemstellung can be formulated in such a way as, whether or not Billigkeit is one of the sources of law.

As stated at the beginning of this essay, legal historians in the western tradition tend to understand the notion of equity within the framework of legal sources. However, in Greek law or Greek legal system, this framework does not work in the same way as in the other western legal traditions. Now I suggest that if we make sense of Billigkeit in its original Greek context, it will be useful to start with the close examination of the context of Aristotle's accounts of *epieikeia*.

III. The notion of ἐπιείκεια is fully discussed by Aristotle in his *Rhetoric* and *Nicomachean Ethics*. I shall start with the former, which is, in its forensic part in particular, not only closely connected with Greek law, but also gives us more detailed accounts of *epieikeia* than the latter.

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[5] Scafuro (1997); Scafuro's splendid work will serve to guide those interested in this theme as well as many other topics on law and rhetoric in the ancient world.

Although it is well known that in the Book I, all the chapters from number 10 onwards are devoted to the forensic oratory, the fact that the theme on which Aristotle exclusively focuses is 'wrong-doing' (τὸ ἀδικεῖν) or 'wrongs' (τὰ ἄδικα, ἀδικία)[6] has not received much attention. Aristotle argues as follows:

> ἔστω δὴ τὸ ἀδικεῖν τὸ βλάπτειν ἑκόντα παρὰ τὸν νόμον. νόμος δ' ἐστὶν ὁ μὲν ἴδιος ὁ δὲ κοινός· λέγω δὲ ἴδιον μὲν καθ' ὃν γεγραμμένον πολιτεύονται, κοινὸν δὲ ὅσα ἄγραφα παρὰ πᾶσιν ὁμολογεῖσθαι δοκεῖ. (1368b6-9)

The famous passage of the division of law, namely, specific (ἴδιος) and common (κοινός), written (γεγραμμένος) and unwritten (ἄγραφος) is introduced here in the very context of defining 'wrong-doing' with reference to law. 'Wrong-doing is doing harm deliberately against the law'[7], Kennedy translates as follows: "Let wrongdoing [τὸ ἀδικεῖν] be [defined as] doing harm (βλάπτειν, βλάβη) willingly (ἑκόντα) in contravention of the law (παρὰ τὸν νόμον)."[8]

It seems to be extremely important that the definition of 'wrongs' is made with special reference to the law, namely 'wrongs' or 'wrong-doing' is a counter concept of the law, though it is accompanied by one also important qualification of intention or deliberation (ἑκών). Therefore the law in a general sense needs to cover all sorts of 'wrongs'. Then the division of the law is introduced. Is this possible? Can the law oversee all the cases of wrong-doing?

It is in this very context that the division of the law is introduced:

> λέγω δὲ νόμον τὸν μὲν ἴδιον, τὸν δὲ κοινόν, ἴδιον μὲν τὸν ἑκάστοις ὡρισμένον πρὸς ἑαυτούς, καὶ τοῦτον τὸν μὲν ἄγραφον τὸν δὲ γεγραμμένον, κοινὸν δὲ τὸν κατὰ φύσιν. (1373b4-6)

Unlike the passage of 1368b6-9, here the specific law is further divided into the two categories, written and unwritten. What is the specific unwritten law?

Grimaldi makes the following comment on ἄγραφον (1373b5)[9]:

(1) particular, written law (i.e., positive law), 1373b18-1374a17;
(2) universal, unwritten law (i.e., natural law), 1373b6-18, 1374a21-25;
(3) particular, unwritten law which is either (i) customary law, 1373b5, or (ii) equity (or *epieikeia*), 1374a-1374b23.

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[6] A recent work is Descheemaeker (2009). The pioneering work in this field is Zimmermann (1996).

[7] Weir (2004), "deliberately, carelessly".

[8] Kennedy (2007 tr.), 84. Note that there is a difference in the definition of law here and below 1373b4-6. In the latter the specific law is sometimes written and sometimes unwritten, whereas in the former the specific law is always written.

[9] Grimaldi (1990), 287.

From 1374a18 onwards Aristotle focuses on the wrongs in unwritten laws, further dividing them into two sub-categories: the one being τὰ μὲν καθ' ὑπερβολὴν ἀρετῆς καὶ κακίας, (1374a21-22; Kennedy 2007: 'abundance of virtue and vice'); and the other being τὰ δὲ τοῦ ἰδίου νόμου καὶ γεγραμμένου ἔλλειμμα (1374a25-26; Kennedy 2007: 'things omitted by the specific and written law'), with the latter being labeled τὸ ἐπιεικές (1374a26)[10]:

> τὸ γὰρ ἐπιεικὲς δοκεῖ δίκαιον εἶναι, ἔστι δὲ ἐπιεικὲς τὸ παρὰ τὸν γεγραμμένον νόμον δίκαιον. συμβαίνει δὲ τοῦτο τὰ μὲν ἑκόντων τὰ δὲ ἀκόντων τῶν νομοθετῶν, ἀκόντων μὲν ὅταν λάθῃ, ἑκόντων δ' ὅταν μὴ δύνωνται διορίσαι, ἀλλ' ἀναγκαῖον μὲν ᾖ καθόλου εἰπεῖν, μὴ ᾖ δέ, ἀλλ' ὡς ἐπὶ τὸ πολύ. (1374a26-31)

Aristotle defines τὸ ἐπιεικές (=ἐπιείκεια) as follows; ἔστι δὲ ἐπιεικὲς τὸ παρὰ τὸν γεγραμμένον νόμον δίκαιον[11]. Then, he explains why τὸ ἐπιεικές (hereafter I use the word of ἐπιείκεια rather than τὸ ἐπιεικές for convenience) comes to play a role in law. *Epieikeia* comes from either lawgivers' intention (or deliberation, ἑκόν) or without their intention (or carelessly, ἄκων). Putting aside the case of ἄκων, why does *epieikeia* happen deliberately or intentionally? It is because lawgivers are quite aware that they are not able to define all the possible cases beforehand and so feel it is necessary to declare in general terms, while also adding the proviso ὡς ἐπὶ τὸ πολύ. The meaning of ὡς ἐπὶ τὸ πολύ is, 'in most cases', 'not necessarily' and the idea behind it is 'with allowance for exceptions'. This concept is, I think, the key to gaining an insight into Aristotle's understanding of written law, and put briefly, shows an awareness of the incompleteness of written law or rather an allowance for exceptions.

This phrase also forms a crucial concept in the logical foundations of rhetoric which are discussed in the early chapters of rhetoric, especially in 1357a34: τὸ μὲν γὰρ εἰκός ἐστι ⟨τὸ⟩ ὡς ἐπὶ τὸ πολὺ γινόμενον.

Εἰκός is usually translated as 'probability' and it is not difficult to find a close connection between *eikos* and *epieikeia* both in the form (ἐπιείκεια is ἐπί plus εἰκός) and in the meaning which is represented by the very same phrase of ὡς ἐπὶ τὸ πολύ. This idea can be further traced back to Aristotle's understanding of human action (πρᾶγμα) at which his rhetoric is targeted. He analyzes πρᾶγμα as follows:

> (τὰ γὰρ πολλὰ περὶ ὧν αἱ κρίσεις καὶ αἱ σκέψεις, ἐνδέχεται καὶ ἄλλως ἔχειν·

[10] On τὸ ἐπιεικές (1374a26), see Grimaldi (1990), 299-300. Grimaldi contrasts the *sense* of the law with the *letter* of the law when he explains equity in contradiction to legality. But what he means by the sense of the law does not seem clear to me.

[11] Kennedy (2007), 99: fairness is justice beyond the written law; Rapp (2002), 486-493, esp. 490-492; Cope (1867), 190-193; Cope and Sandys (1877), 245-247.

> περὶ ὧν μὲν γὰρ πράττουσι βουλεύονται καὶ σκοποῦσι, τὰ δὲ πραττόμενα πάντα τοιούτου γένους ἐστί, καὶ οὐδὲν ὡς ἔπος εἰπεῖν ἐξ ἀνάγκης τούτων), τὰ δ' ὡς ἐπὶ τὸ πολὺ συμβαίνοντα καὶ ἐνδεχόμενα ἐκ τοιούτων ἀνάγκη ἑτέρων συλλογίζεσθαι, τὰ δ' ἀναγκαῖα ἐξ ἀναγκαίων (1357a23-29)[12]

The *pragma* (human action) concerning which we make a decision at court or assembly are those which could have been other than they are and that is why we can deliberate or judge on it. Therefore, the key word of the reasoning of justification of the deliberation or judgment is 'ὡς ἐπὶ τὸ πολύ' (for the most part). No deliberation or judgment by human beings can be completely right, but it can be in most cases.

The notion of *epieikeia* can only be justified using Aristotle's understanding of human actions (*pragma*) which itself can be justified by the notion of ὡς ἐπὶ τὸ πολύ.

Now it becomes, I think, clear why *epieikeia* is introduced in the *Rhetoric* and plays an important role there. Firstly, it originates from Aristotle's understanding of the essential condition of human action (*pragma*), which can be other way than the way it is. Then, the human action, needless to say, includes law as long as law is a product of human action (specific law). Therefore, it becomes apparent that *epieikeia* is common both in the human action and in law. We must think of *epieikeia* in a much wider aspect than it has been discussed before in the framework of the sources of law.

Then, it is also important that Aristotle introduces the discussion of law in order to define and face with 'wrong-doing' (ἀδικεῖν) or 'wrongs' (τὰ ἄδικα, ἀδικία) in the forensic oratory (*Rhetoric* Book 1, Chapter 10 onwards). The latter is, needless to say, a counter concept of justice or right (δίκη, τὸ δίκαιον). The range of these concepts appears to be much wider than law. Therefore if 'wrongs' and the negative form of law (παρὰ νόμον) are to be equalized with each other, other remaining 'wrongs' will come into being. The range of 'wrongs' must be narrowed. That is why he further introduces the notion of ἐκών in order to set a limit of 'wrongs'. That is to say, ἐκών is a sort of the qualificatory category.

Now it will become intelligible that it is difficult to equalize the range of 'wrongs' (or its counter concepts such as 'justice' or 'rights') and that of law. There always occur a various kinds of gap, where *epieikeia* is expected to exercise its function. The remaining wrongs which cannot be encompassed by law are those without ἐκών. And it is one of the spaces where *epieikeia* can play a part.

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[12] "Most of the matters with which judgment and examination are concerned can be other than they are; for people deliberate and examine what they are doing, and [human] actions are all of this kind, and none of them [are], so to speak, necessary. And since things that happen for the most part and are possible can only be reasoned on the basis of other such things." (Translation Kennedy, 2007, 42).

Aristotle lists the examples of *epieikeia* (1374b4-22), of which the followings should be remarked upon; συγγνώμη (excuse), divisions of ἁμαρτήματα (negligence), ἀδικήματα (wrongs, delicts), ἀτυχήματα (misfortune), δίαιτα (arbitration) or διαιτητής (arbitrator). From what I am discussing, it is not difficult to see why those are introduced here.

Before we move on to discuss forensic oratory, we should look at the passage in the *Nicomachean Ethics* where we can find *epieikeia*:

> ποιεῖ δὲ τὴν ἀπορίαν ὅτι τὸ ἐπιεικὲς δίκαιον μέν ἐστιν, οὐ τὸ κατὰ νόμον δέ, ἀλλ' ἐπανόρθωμα νομίμου δικαίου. αἴτιον δ' ὅτι ὁ μὲν νόμος καθόλου πᾶς, περὶ ἐνίων δ' οὐχ οἷόν τε ὀρθῶς εἰπεῖν καθόλου. ἐν οἷς οὖν ἀνάγκη μὲν εἰπεῖν καθόλου, μὴ οἷόν τε δὲ ὀρθῶς, τὸ ὡς ἐπὶ τὸ πλέον λαμβάνει ὁ νόμος, οὐκ ἀγνοῶν τὸ ἁμαρτανόμενον. καὶ ἔστιν οὐδὲν ἧττον ὀρθός· τὸ γὰρ ἁμάρτημα οὐκ ἐν τῷ νόμῳ οὐδ' ἐν τῷ νομοθέτῃ ἀλλ' ἐν τῇ φύσει τοῦ πράγματός ἐστιν· εὐθὺς γὰρ τοιαύτη ἡ τῶν πρακτῶν ὕλη ἐστίν. (1137b11-19)[13]

Here we find the notion of *epieikeia*, which appears again in the discussion of law which is accompanied with τὸ ὡς ἐπὶ τὸ πλέον (for the most part, in most cases). This qualification of law (τὸ ὡς ἐπὶ τὸ πλέον) comes not from any failure of law or lawgivers, but from the nature of human action (πράγματος)[14].

It is not difficult to find common features of *epieikeia* both in *Rhetoric* and *Nicomachean Ethics.*

IV. I shall look at the two forensic speeches which have been most frequently discussed in the previous studies on *epieikeia* including Meyer-Laurin's work. The question here is whether or not the notion of *epieikeia* is called for to reach the court decision. The one is Demosthenes 56 (*Against Dionysodorus*) and the other Hypereides *Against Athenogenes*. The reason why both speeches are most important amongst others is that the law concerning the validity of the contracts or wills is being discussed there.

Firstly, at Dem. 56,2: "We have you, gentlemen of the jury, and your laws, which require that whatever agreements one man voluntarily (ἑκών) makes with another be binding. But I think that there is no value in the laws or any contract if the man who takes the money is not very honest and does not either fear you or feel ashamed before the man who lent him the money."[15] Also, at Dem. 56,42-43: "And many things make it clear that they did this of their own free will (ἑκόντες), not

[13] Broadie and Rowe (2002), 174.

[14] However, it is, I think, more important that 'law chooses what holds for the most part, in full knowledge of the error it is making. Nor is it for that reason any less correct; for the sphere of action consists of this sort of material from the start.' (Broadie and Rowe, 2002, 174).

[15] Bers (2003), 95; also see Gernet (1951), clxxx. Aristotle *Athenaion Politeia* 35.

because they are forced (ἐξ ἀνάγκης) to do. (43) After all, if this was truly an unintended (ἀκούσιον) misfortune …"[16]

It should be remarked that the distinction in the notions between *hekon* and not *hekon* such as *ex anankes* and *akousion* can also be seen in the discussion of wrongs and wrongdoing (*adika*, *adikein*). And it is only the behavior with intention, *hekon*, that the concept of wrongs encompasses. It does not include the behavior without intention. Indeed, throughout the speech of Dem. 56, the references to the wrongs and related words appear quite frequently: ἀδικεῖσθαι (56,4; 56,37); συνηδικημένους (56,44); ἠδικηκότων (56,47; 56,50).

Secondly, at *Against Athenogenes* (17): "Then again there is the law concerning wills, closely comparable with these. It prescribes that men may dispose of their own possessions as they please unless too old or sick or mad or influenced by a woman or imprisoned or otherwise constrained."[17] Also (13): "Yet Athenogenes will soon be telling you that, in law, whatever one man agrees with another is binding. Yes, my friend – *fair agreements* (τά τε δίκαια), that is. With unfair ones it is just the opposite: they shall not, the law says, be binding."[18]

It should be also noted that in Hypereides 17 there can be found a considerable number of references, though in the fragments, to the wrongs: τὰ ἄ[δικήμ]ατα (22), ἀ]δικημάτων (25), ἀ]δικήσαντα (28).

It should be noted that both cases are suits for damages (δίκη βλάβης) and we can see a strong connection between the ἀδικία and ἑκόν / ἄκον distinction. All these notions and their close relationships are, as already mentioned, found in Aristotle's accounts of *epieikeia*.

Therefore, in this respect it is not unreasonable to say that there is a connection between the theory and the practice of rhetoric.

V. Conclusion: *Jori* and *epieikeia*. Japan's modern judicial system was, albeit preliminarily, established in 1875 when the discussion over the codification of major parts such as civil, commercial and criminal law just started to grow. This meant that the modern Japanese legal history from the Meiji Restoration in 1868 began without the codification. Indeed, the codification was completed around 1900. This suggested that during approximately quarter a century Japan was a sort of non-codified countries. It does not mean that Japan was a common law country. However, one of the long-neglected facts was that the modern Japanese courts made decisions without the codified laws[19].

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[16] Bers (2003), 104.
[17] Whitehead (2000), 275.
[18] Whitehead (2000), 274.
[19] Studies on Civil Judgment Files, which contain civil cases during this non-codified era, have been recently developed, e.g. by Aoyama, Ishii and Hayashiya (2003). Please visit the website, http://www.nichibun.ac.jp/graphicversion/dbase/minji_e.html

The government ordinance on the administration of justice was issued in 1875 stating: "The judge should decide the case, firstly according to the written law, secondly to the customary law, if neither of them can be found, thirdly and lastly, to *Jori*." The word of *Jori*, which comes from Chinese penal codes, originated even before the modern period.

But the concept of *Jori* mentioned in this ordinance seems to be the one taught and explained by a French Professor, Gustave Emile Boissonade (1825-1910), who was invited from Paris and stayed in Japan for over twenty years (1873-1895) and contributed much to the codifications of modern Japanese law. He was an illegitimate son of Jean Francois Boissonade de Fontarabie (1774-1857), Professor of Greek at the Collège de France[20].

In the Japanese civil code, there cannot be found any reference to it. However, similar concepts to *epieikeia* can be detected in articles 1 and 90 of the Japanese civil code; the former contains the notions of *bona fides* and public welfare, the latter the notion of public order and good morals.

Another example for *Jori* is drawn from the area of criminal law. This is the one of the articles of *Shinritu-Koryo*, which was enacted in 1870 soon after the Meiji Restoration. The article states that even if no relevant article exists, but if the act of the criminal can nonetheless be seen as wrong according to *Jori*, the culprit must be punished with 30 lashes of the whip, and if he is seriously wrong, with 70 lashes. Since the 8th century AD, the Japanese penal codes had always been modelled on the Chinese ones. But Japan's modernization stopped this tradition and replaced it with European codes. This resulted in the modern Japanese penal code which came into force in 1880. This modern penal code was made under the strong influence of French law through Boissonade's draft. The above mentioned code, *Shinristu-Koryo*, was transitional and did not respond to the modern principle of criminal law, *nulla poena sine lege*.

Both examples for *Jori* which range over civil and criminal law appeared in the time of transition from traditional to modern. Also, there was not a clear distinction between civil and criminal justice. A gap between law and 'wrongs' was, I think, extremely wide when Japan, being faced with the modernization of legal system, decided to take a step towards the codification in the late 19th century.

As we have seen above, in Greek law the idea of *epieikeia* is deeply rooted in the understanding of human action which includes the law. The relationship between *epieikeia* and law is analyzed and discussed in the context of wrongs, both in the theory of Aristotle and the practice of forensic oratory. And the discussion over *epieikeia* reaches beyond the framework of the sources of law.

[20] French civil code articles referring to l'équité are now as follows, 565, 1135 (original articles) as well as 270, 815-13, 1579 (modified articles). The classic work on French influence upon *Jori* was done by Professor Noda (1983).

In Japanese law the ideas of *Jori* come from a variety of backgrounds both traditional and modern. The discussion over *Jori* is also found in the context of wrongs.

I only hope that a comparative study between Japanese law and Greek law, both of which are seen 'unique' from the western legal tradition, will help in finding a way in which both might look less 'unique' than before[21].

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