

**<Summary of the Presentation of Research Results>**

***A Contribution toward Discussion on “the Reception of Japanese Civil Code”  
in the Civil and Commercial Code of Thailand, Book I and II (1925)***

by  
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We will find a remarkable common feature between the Civil and Commercial Code of Thailand (1925) and the Japanese Civil Code (1896, 98) if we follow and compare the historical procedure of their enactment. In the both countries, the initial attempt of the codification was carried out by French legal advisors, and after they failed to achieve their goal, the second attempt of codification could be accomplished by the lawyers from the own nation in each country. It is also common to the both cases that the accomplished codification stood under strong influence of the German Civil Code (1900).

In the case of the Japanese Civil Code, however, the initial attempt by the French legal scholar **Prof. Gustave Emile Boissonade** (1825 – 1910), namely the so-called “**Old Civil Code of Japan (1890)**”, left its traces and vestiges in many articles of the current Civil Code of Japan. We call them “**Boissonade's Heritage**”.

In the case of the Civil and Commercial Code of Thailand, the initial attempt by the several French legal advisors could not be carried out completely. Soon after the first two books of the whole code were promulgated in 1923 (so-called “**Old Text**”), they had to be replaced with the new ones (so-called “**New Text**”). In the second attempt, the leading Person, พระยามานวราชเสวี, used the Japanese Civil Code as “*navigator*” for the reception of the German Civil Code according to the advice of a famous English lawyer and politician, **Sir John Allsebrook Simon** (1873 – 1954).

Due to these complicated circumstances, it was not clearly recognizable how intensive the Japanese influence upon the Thai Code was and in what kind of relation the Japanese element stood to the German one in the Thai Code. In order to clarify these points, we need an accurate translation of relevant codes of Thailand in both of German and Japanese language. In the last decade, I have pursued to establish a translation procedure especially for Thai legal text (so-called “Dependence Structure Analysis”). Until now, I translated following books:

1. ประมวลกฎหมายแพ่งและพาณิชย์ บรรพ ๑ และ ๒ พ.ศ. ๒๔๖๖ (ฉบับเก่า)
2. ประมวลกฎหมายแพ่งและพาณิชย์ บรรพ ๑ และ ๒ พ.ศ. ๒๔๖๘ (ฉบับเดิม)
3. ประมวลกฎหมายแพ่งและพาณิชย์ บรรพ ๑ และ ๒ (ฉบับปัจจุบัน)

These translation were an essential and inevitable material for my comparative study of Thai, German, and Japanese civil law. At the same time, พระยามานวราชเสวี left an important resource which let us gain an insight into the codification process of the Thai code, namely “ที่มาของกฎหมายในประมวลกฎหมายแพ่งและพาณิชย์ บรรพ ๑-๕”. พระยามานวราชเสวี himself called it often “*Index*” or “*Reference*”. However, I reached to an unsavory conclusion that this table needed a massive supplement when I carefully inquired its entries. For this reason, I decided to compile an own “*Index*” with my supplementary entries from “Old Text”, the German, Swiss, and Japanese Civil law.

Based on the “*Index*” with my supplementary entries, I tried to determine a supposedly decisive model article for each one of the Civil and Commercial Code, Book I and II (1925). Under 193 articles of Book I, I counted following numbers of articles which seemed to be based on “*Old Text*”, German, Swiss, French, and Japanese civil law:

### Number of Articles in Book I (1925) based on

Old Text	Japanese law	German law	Swiss law	French law	unknown
77	55	26	8	4	24

An overwhelming majority of the articles in Book I (1925) seems to be adopted from the “*Old Text*” which was compiled by the French advisors. The second large element was the articles which were adopted from the Japanese civil law. The German element in Book I was unexpectedly small, only the half of the Japanese one.

In the case of totally 259 articles in Book II, however, the result is quite different from the case of Book I:

### Number of Articles in Book II (1925) based on

Old Text	Japanese law	German law	Swiss law	French law	unknown
32	105	92	13	2	15

The Japanese and German elements were dominant (together almost 75 %) while the most articles from the “*Old Text*” (merely 12 %) could be found mainly in the parts of “Undue Enrichment” and “Unlawful Acts (Tort)”.

The simply arithmetic sums of these numbers would tempt us to say that the Japanese element (161/452) were the largest one in compare to the element from “*Old Text*” (109/452) and the German one (118/452). However, we must not forget the fact mentioned above, namely the fact that the Japanese Civil Code consisted mainly of the French element (“*Boissonade's Heritage*”) and the German element. We have therefore to separate “*Boissonade's Heritage*” and the German element inside of the Japanese element in the Book I and II.

### Number of Articles in Book I (1925) based on

Old Text	Japanese law			German	Swiss	French	unknown
	Boissonade	unknown	German				
77	21	10	24	26	8	4	23

### Number of Articles in Book II (1925) based on

Old Text	Japanese law			German	Swiss	French	unknown
	Boissonade	unknown	German				
32	60	16	29	92	13	2	15

Again, according to the simply arithmetic sums of the numbers above, the largest element in Book I and II would be the German one (171/452) while the element from “*Old Text*” (109/452) would have to steps back to the second place. Under the articles from the Japanese law (160), the “*Boissonade's Heritage*”(81/160) is superior to the German element (53/160). If we would be allowed to count the both of the articles from “*Old Text*” and “*Boissonade's Heritage*” to the French element and count the Swiss element to the German one, then the total French element (196/452) would exceed the German one (192/452).

ดร. ชาญชัย แสงศักดิ์ has closed his description of the codification process of ป.พ.พ. บรรพ ๑ และ ๒ with a following rather modest commentary:

“ถึงแม้ว่าตามคำบอกเล่าของพระยามานวราชเสวี ประมวลกฎหมายแพ่งและพาณิชย์ของไทยจะได้ลอกจากประมวลกฎหมายแพ่งของญี่ปุ่นเป็นหลัก และได้เอาบทบัญญัติบางตอน

มาจากประมวลกฎหมายแพ่งของฝรั่งเศสเพื่อไม่ให้เสียไมตรีก็ตาม แต่การที่นายเรอเน่ ก็  
ของ ชาวฝรั่งเศสได้มีส่วนร่วมร่างประมวลกฎหมายแพ่งและพาณิชย์ของไทยอยู่ด้วยมาโดย  
ตลอดนั้น ทำให้ประมวลกฎหมายแพ่งและพาณิชย์ของไทยได้รับอิทธิพลของฝรั่งเศสมาก  
บ้าง น้อยบ้างแล้วแต่เรื่อง ...”

(ดร. ชาญชัย แสงวงศ์, อิทธิพลของฝรั่งเศสในการปฏิรูปกฎหมายไทย, พ.ศ.๒๕๓๙, น.

๗๐)

At that time, ดร. ชาญชัย แสงศักดิ์ could not correctly recognize that hidden French element inside  
of the Japanese Civil Code, “*Boissonade's Heritage*”. In my sight, he has underestimated the French  
influence upon ป.พ.พ. บรรพ ๑ และ ๒.

On the other hand, we can clearly realize that we may not use the phrase “*Reception of the  
Japanese Civil Code*” in a similar way as the phrase “*Reception of the French or German Civil  
Code*”. The Japanese Civil Code is not any substantial unique civil law system like French or  
German civil law as well as Common law. The Japanese Civil Code did not play any same role as  
such European civil law systems, but it had its uniqueness as a seldom “*Precedent of Reception of  
European legal system*” in a non-European country, in other words, an unique procedure and  
technique to compile an adequate civil code which would be acceptable also for non-Western  
nations. In this sense, it should not be correct to speak of “[การ]ลอกจากประมวลกฎหมายแพ่งของ  
ญี่ปุ่น”. We would say, พระยามานวราชเสวี adopted not the “Japanese Civil Code”, but just  
the “*Japanese Way of Reception of Western Civil Codes*”.