

Japanese Civilization (Part 10)

– International Law Based on the Global Reality of War –

By Kawakatsu Heita

From what perspective should we examine the world? Reality determines our world view and our world view in turn determines reality. At the beginning of the modern era, Europe saw the emergence of a world view based on war and peace. Consequently, Europe set out on the road of power politics that sought a balance of power based on the world view of war. On the other hand, Japan's world view at this time was founded on the concept of "civilization and barbarism." Taking civilization as the main pillar of their world view, the Japanese pursued the righteous path of moral politics. In a Europe whose world view centered around war, almost constant war became reality, while early modern Japan, whose world view was based on the concept of civilization, enjoyed the blessings of undisturbed peace. Let us take a closer look at this difference.

The international law that governs today's international community did not exist in medieval times, nor even in the age of great voyages from the end of the 15th century, when Europe's international relations were governed by the triumvirate of commerce, piracy and war. Until the European powers entered East India (Asia) aiming at trade backed by military force, unarmed ships went back and forth across the Indian Ocean peacefully conducting trade. But the Europeans were armed; for them war was part of everyday life. In 1625, during the Thirty Years War (1618-1648) fought throughout Europe, a Dutch jurist Hugo Grotius (1583-1645) wrote a treatise entitled *De Jure Belli ac Pacis* (On the law of war and peace).

Through this work, Grotius has become immortalized in the textbooks as the "father of international law." The argument put forward by Grotius in this treatise was essentially the doctrine

of power politics that the use of military force is one of the fundamental rights of nations. In short, it was a justification of war. Faced with the reality of the Thirty Years War, Grotius was deeply concerned as to why Christians were killing each other, and attempted to establish the principles governing war.

In academic circles, Grotius' views have become one of the main streams of discourse on this theme, but we should not overlook the fact that war was a basic premise of his political philosophy. Taking war as his premise, Grotius claimed that there is such a thing as legal war, which he called "public war" (or "just war"), and that public war conducted by a nation for the purpose of defense is right.

This argument is based on a world view that defines international relations in terms of war. In the "Prolegomena" of *De Jure Belli ac Pacis*, Grotius outlines his purpose: Fully convinced, by the considerations which I have advanced, that there is a common law among nations, which is valid alike for war and in war, I have had many and weighty reasons for understanding to write upon this subject. (*De jure belli ac pacis libri tres*, Latin Texts and Translation by Francis W. Kelsey et al. Oxford: 1925) Grotius's determination of a "common law among nations, which is valid alike for war and in war," led to the birth of international law that embraced war as a basic premise. In Chapter 1, "What is war? What is Law?," Grotius reiterates his objective of determining the justice of war: "In giving to our treatise the title – The Law of War –, we mean first of all, as already stated, to inquire whether any war can be just, and then, what is just in war." In Chapter 2, the author considers "Whether it is ever lawful to wage war," and in Chapter 3 he dis-

cusses the nature of sovereign power in terms of "Distinction between public war and private war," stating that "[public war] is waged under the authority of the one who holds the sovereign power in the state." Grotius thus recognized the right of sovereign states to wage war.

This theory of war was actually applied in the Treaty of Westphalia (1648) concluded at the end of the Thirty Years War, which is now viewed as the basis of modern international law. After the publication of *De Jure Belli ac Pacis*, Europeans came to gauge international relations in terms of a world view based on war, exercising their right to wage war in the name of self-defense.

Europe was involved in a total of 278 wars throughout the world from 1480 to 1940, and peace came to be defined simply as the state of not being at war. In so far as the balance of power among sovereign states possessing mechanisms for the use of force was regulated by this legal theory of war, the nations of Europe viewed military power as an essential element of their sovereignty and accordingly strove to strengthen their armies. This is the logic of power politics.

Through his victory at the Battle of Sekigahara (1600), Tokugawa Ieyasu gained authority over the whole of Japan, assuming the ancient title of *Seii Taishogun* (Barbarian-Subduing Generalissimo) in 1603. At this time, no international law had been established anywhere in the world, but the government (shogunate) that had achieved national unification had to maintain relationships with Japan's neighbors. It is not surprising, therefore, that the world view and international order through which Japan gauged foreign relations developed in a different direction from those of Europe.



The Treaty of Westphalia (1648) is now viewed as the basis of modern international law

Disarmament Based on Moral Politics Versus Expansion of Armaments Based on Power Politics

While the principle of war and peace underlying the European world view has its origins in the Islamic world view of *Dar al-harb* (home of war) and *Dar al-Islam* (home of peace), the world view of Tokugawa Japan undoubtedly originates from the Chinese concept of civilization and barbarism. One of the prisoners taken by Toyotomi Hideyoshi during his campaigns in Korea in the 1590s was a disciple of Zhu Xi Neo-Confucianism named Kyoko (Kang Hang), who lived in Fushimi in Kyoto from 1597 until his return to his country in 1600. While he was in Japan, Kyoko developed a close friendship with Fujiwara Seika, a Zen monk from Shokokuji temple, who converted to Zhu Xi Neo-Confucianism under Kyoko's influence. Seika is said to have written the famous treatise on statecraft, *Honsaroku* (also known as

Chiyo Shichijo or The Seven Essentials of Government), which outlines the seven principles essential for ruling a country. Under the heading of the "First Principle," the author reflected on the strife-ridden Sengoku (Warring States) period (1467-1568) in Japan: "We hear that in China the nation is governed without the use of force, and that the 400 provinces have been thus governed for many generations. Japan, however, has in recent years been completely ungovernable." Under the "Seventh Principle," the author concludes that Japan must follow the example of China and adopt Confucianism in order to govern the country without the use of armed force: "It is a difficult task to govern the realm with both pen and sword. First it is essential to pacify the country with the sword and then to govern the people benevolently with the pen so that they naturally learn the right way and conduct themselves in a reasonable manner. Provided that the present ruler

(Tokugawa Hidetada) maintains the principle of the Way of Heaven, unselfishly exerts himself for the realm and embodies the three virtues of wisdom, benevolence and courage, the country should prosper forever from generation to generation." Thus the author of *Honsaroku* argued that it was vital to rule the country through civil rather than military administration now that the turbulent Sengoku period had come to an end.

The reduction of armaments in Tokugawa Japan is surely related to the shogunate's recognition and adoption of Confucianism as its official doctrine. In 1605, Hayashi Razan, who had studied under Seika, entered the service of the retired shogun Tokugawa Ieyasu and served four shoguns as Confucian adviser, an office which became hereditary in the Hayashi family. In 1797, the Hayashi family academy was reorganized into the official shogunal academy, the *Shoheizaka Gakumonsho*. Based on this academy, similar academe-

Photo: THE HISTORIOGRAPHICAL INSTITUTE, THE UNIVERSITY OF TOKYO / Oedo mangekyo (Rural Culture Association)



Confucian lectures were given at the Shoheizaka Gakumonsho. The photo shows the school as it is today



This is moral politics as opposed to power politics. As reflected in the saying that the sword is the spirit of the samurai, the sword in Tokugawa Japan acquired a symbolic meaning that was more significant than its practical value as a weapon. Accordingly, samurai took up their pens and attended to their castles.

The Tokugawa government represented Japan in its relations with foreign countries at a time when no model for international law existed in the West. However, Japan's neighbors China and Korea essentially shared the same world view as that advocated by Razan, gauging international relations through the same moral touchstones of civilization and barbarism. This principle, based on the twin pillars of the imperial fiefdom system and tribute trade, underpinned the international relations of both Yi dynasty Korea and Ming dynasty China. The only model of international order was the system based on the dichotomy of civilization and barbarism that originated in China. Japan's "tycoon diplomacy" was developed in accordance with this model on the basis of a proposal formulated in 1635 by Razan, and "Tycoon of Japan" became the official title of the Tokugawa shogun overseas. Tycoon

diplomacy aimed at nothing less than a shift of the center of the civilization-barbarism world view from China to Japan. The conviction of early-modern Japanese that their country had become the center of civilization was based on the overthrow of the Ming dynasty in 1644 by the "northern barbarians," the Manchus, who became the new rulers of China. For example, in his autobiography *Haisho Zanpitsu* (1675), the leading Confucian scholar Yamaga Soko wrote: "It is said that the three essential virtues of the saint are wisdom, benevolence and courage. A man cannot be called a saint if he lacks any one of these virtues. When we compare this country with other countries in the light of these three virtues, we find this country to be clearly superior. Indeed it should be called the central country [the Chinese characters for China have this meaning]. This is not merely my personal opinion; it is universally recognized." The doctrine of expulsion of the barbarian towards the end of the Tokugawa shogunate was founded on a world view in which Japan was the center of civilization, and it conducted its relations with the Koreans, Ryukyans, Dutch and Chinese according to this order of civilization and barbarism.

While Grotius conceived a model for international law based on a war-oriented world view in Europe in the first half of the 17th century, Seika and Razan advocated moral politics founded on Zhu Xi Neo-Confucianism and established these principles as the basis of government in Japan. The Japanese civilization-based world view and the European war-based world view were thus established at around the same time at either end of the Eurasian continent. While the former set out on the path of disarmament based on moral politics, the latter took the course of expansion of armaments based on power politics.

The Meiji Restoration: Japan's Conversion from Moral Politics to Power Politics

After the diffusion of firearms in Europe and Japan at both ends of the

mies were set up in each domain and *terakoya*, popular schools teaching Confucian ethics, were set up over a wide area.

According to the precepts of the *Daigaku* (Great Learning), which places the strongest emphasis on Zhu Xi Neo-Confucianism of the four great bibles of Confucianism, "From the righteousness of the mind comes righteousness of the spirit. From the righteous spirit comes moral conduct. From moral conduct comes order in the family. From order in the family comes a peaceful country. From a peaceful country comes peace throughout the world." In other words, the justness of government does not spring from power but from morality. In this philosophy of government, moral virtue leads to correct conduct, to order within the family and thus to world peace. A virtuous ruler is a wise ruler; government by force will never take root.

Eurasian continent, two world orders founded on different world views were established almost simultaneously. Japan, viewing the world in terms of civilization and barbarism, took the path of reduction of armaments based on moral politics, while Europe, viewing the world in terms of war and peace, promoted the expansion of armaments. Consequently, when Europe and Japan encountered each other again a few centuries later, Japan was inferior in military strength.

First, China had been forced to acknowledge the West's military superiority through its defeats in the Opium War (1840-42) and the Arrow War (1856). Realizing that "to defeat the barbarian, we have to master the barbarian's superior techniques and strengthen our defenses," China embarked on a policy of modernization based on Western technology aimed at the improvement of its military preparedness.

In 1871-73 Japan dispatched the Iwakura Mission to strengthen relations with its allies and study Western learning. In the Mission's report *The Iwakura Embassy 1871-1873: A True Account of the Ambassador Extraordinary and Plenipotentiary's Journal of Observation Through the United States of America and Europe*, it alluded to the moral politics of China and Japan: "The people of China and Japan have since ancient times supported themselves through farming and adhered to the principle of morality in politics." Nevertheless, confronted with the military might of the West, it recognized that Japan had no choice but to strengthen its armaments and justified this course of action as follows: "The reason why civilized countries maintain an army may on the surface seem similar to the predilection of barbarian countries for the use of force, but in essence it is completely different. The predilection of barbarian countries for the use of force lies in their inclination to wage war against each other, while civilized countries maintain an army solely for the purpose of defending themselves against foreign invaders. In a world characterized by interaction

between various countries – large and small, strong and weak – the abolition of the armies that protect countries is unthinkable. For this reason, civilized countries must always keep armed forces."

In short, while espousing the world view of moral politics that saw bellicosity as "barbarian," the Japanese converted to power politics on the grounds that the maintenance of defensive capability was as an essential condition for a civilized country. In 1872, Japan adopted a conscription system for adult males of 20 or over, and in 1880 it commenced production of the Murata gun, which replaced imported guns. Having converted to power politics, Japan defeated China in the Sino-Japanese War (1894-1895) and, taking its place among the Great Powers, proceeded to expand its dominions.

Since the Meiji Restoration, Japan has even contributed to the extension of the international law based on the European world view of war and peace. Although Grotius's *De Jure Belli et Pacis* written in 1625 and the Constitution of Japan promulgated in 1946 differ in their mode of expression, they are essentially the same in that they view the world from the standpoint of war and its regulation. Phrases in the Japanese Constitution such as "desire peace for all time" and "renunciation of war" clearly express this European world view. The spirit of the first paragraph of Article 9, "...the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes," can also be found in Article 2 of the United Nations Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." This in turn is based on the Atlantic Charter of 1941 which stated that "... all of the nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force." Going back even fur-

ther, the Kellogg-Briand Pact of 1928 (signed by the United States, France and 63 other nations) also called for the renunciation of war and settlement of problems by peaceful means, and one of the clauses in Immanuel Kant's *Perpetual Peace* (1795), is titled "Standing Armies Shall in Time Be Totally Abolished."

Since the world view based on war took root and spread steadily in Europe from the publication of Grotius's treatise, achieving the status of an unquestioned assumption, this has tended to obscure its historical origins. Today it is commonly assumed that any country that does not observe international law is barbaric, but were the Japanese barbarians until they came to accept international law (referred to as *Bankoku Koho* or "universal law," in Meiji Japan) based on war and peace? On the contrary, they were steeped in a true awareness of civilization precisely because they did not have a world view founded on war. By adopting from Europe this image of the world as a mortal struggle in which only the fittest survive, the Japanese of the Meiji era themselves created a reality fitting this image.

The consequences were not only the victories of the Sino-Japanese War, Russo-Japanese War, annexation of Korea and World War I, but also the quagmire of the war with China and Japan's final crushing defeat in World War II. Even if this course was unavoidable, in view of its origin and the history of military expansion and war, it is doubtful whether this Western order brought about by firearms deserves the name of civilization. **UJI**

(Continued in Part 11)

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