

論中村茂夫的東洋法制史研究*

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中村茂夫是日本東洋法制史學界的第五代學者。其研究以清代刑法為主要對象，廣泛利用刑案與判語等判例文獻，嘗試在與唐律的比較中解讀清代的法意變化，並展現司法實踐對於法條的適用機理，藉此反駁既往研究所持「傳統中國法＝模型」、缺乏實效性等觀點。而在援用近代西方法律術語與制度說明傳統中國法時，他又秉持極為謹慎的學術態度，往往能在細微之處抽繹出中西法律之別。

關鍵詞：中村茂夫、東洋法制史、清代刑法、法＝模型

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Comments on NAKAMURA Shigeo's Study on Chinese Legal History

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NAKAMURA Shigeo was part of the fifth generation of Japanese scholars studying Chinese legal history. He paid attention in particular to the criminal law of the Qing Dynasty, extensively making use of judicial documents such as those from criminal cases and judgments. He attempted to show the differences between the Tang Code and the Qing Code and the mechanisms by which legal clauses were applied in judicial practice. He thereby refuted the argument that traditional Chinese law was a 'model' without effect. In using modern Western legal terms and institutions to explain traditional Chinese law, he maintained a very cautious scholarly attitude, and often discovered in small details the nuanced differences between Chinese and Western law.

Keywords: NAKAMURA Shigeo, Chinese legal history, criminal law of the Qing Dynasty, law as model

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