

From Athens to Edo: Virtue, Law and Christian Ethics in Comparative Context

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This paper suggests that we think of virtue not as one thing, but as two. By referring to “Two Virtues,” I do not mean two particular virtues, like courage or temperance, but two completely different traditions of understanding the meaning of virtue. I call one tradition the “Sophist Virtue,” and the other tradition, “the Socratic Virtue.” These two traditions of thinking about virtue are not limited to ancient Greece or even to the West, but still have a particular bearing on all societies, Japan as well as those in the West. I demonstrate the universality of these two traditions of thinking about virtue by exploring briefly the thinking of two leading Japanese neo-Confucianists of the late seventeenth century, Itō Jinsai and Ogyū Sorai, and the Edo period merchant academy called the Kaitokudō. I also show the relevance of these two systems of virtue for understanding the early 20th century book *Bushido* by Nitobe Inazō. I conclude by suggesting that the only possibility for reconciling these two traditions of understanding virtue lies in law, particularly because law embodies elements of both traditions of virtue within it.

I. Sophist Virtue

Firstly, we will examine “Sophist Virtue.” This sense of “Virtue” emerged with the Sophists in Greece around the 5th century B.C. For the Sophists, virtue (*aretē*) is merely a formal skill, particularly rhetoric, that is unconnected to any moral philosophy or principle of unchanging Truth. We find traces of this concept of virtue in the English language even today, for instance, in the idea of a virtuoso, someone who is good at something. That ‘something’ may be a morally indifferent act (athletics, music) or more rarely,

even something most of us would consider immoral (eg., a professional assassin). For example, Golgo 13, the hitman in the popular *anime* series of that name, is a “virtuoso” in this sense. But we would not consider him “virtuous” in the usual moral sense. This Sophist sense of virtue seems linked to certain historical, social and cultural conditions that are common among affluent countries. Tanaka Kōtarō, the Chief Justice of the Japanese Supreme Court during the 1950s, wrote in 1927 that he found parallels between 5th century B.C. Greece and Japan that was benefitting from the economic effects of its victory in the First World War. Tanaka found a Sophist approach to virtue among post-World War I Japanese intellectuals who turned from a traditional interest in philosophy as a search for Truth toward a journalism that sought only to satisfy the demands of the masses. Much of what he found in 1920s Japan applies today not only to Japan, but also to the United States and to much of Europe. Under the new-found affluence of post-World War I Japan, the traditional focus on natural philosophy was replaced by the Sophist interest in man himself, and in society and the State. We might think of this as a move from natural science to social science, or even from science itself to engineering. The key objective was not to know what is real, what is true, what is enduring, but rather how to best manipulate knowledge to achieve certain pre-ordained goals.

Like today’s postmodernists, the Sophists had envisioned themselves as proud carriers of a new form of knowledge that came from and was oriented towards populist culture. They sought to destroy the traditional Greek understanding that law and the State (*polis*) rested on the authority of the gods. They fancied themselves as a kind of new leadership class for the enlightened age of Pericles, but they were really just riding the waves of populist demands.¹⁾ So they flattered the Greek people with their concept

1) Tanaka addressed the claim that Socrates was a Sophist: “To say that Socrates merely was continuing the work of the Sophists is a cultural historical speculation. And it is off the mark to say Socrates essentially completed the work of the Sophists. It is merely to pour new life into a concept of culture that goes no deeper than an empty framework.” (田中耕太郎「ソフィストと我が国の現代思潮」『教養と文化と基礎』岩波書店、1937年、474頁。)

that “Man is the measure of all things,” which merely tried to replace the traditional gods with empirical Man—a concept of human nature limited by personal experience. The Sophist philosophy, such that it was, was not in the least inspired by a passion for the Truth. That is not to say that the Sophists intentionally told lies; rather, they were simply indifferent to the Truth. As skeptics and relativists, the Sophists accepted the Truth if and only if it had material value for them, that is, if it could pay the bills. If not, the Truth was of little use to them. Their “Virtue” was expressed in giving long, appealing speeches; they were intoxicated with their own rhetoric, and hoped to intoxicate their audiences with it. Their ultimate goal, their greatest virtue, was the art of rhetoric, no more, no less, and rhetoric was used mainly for power and pleasure, not to discover the Truth. They were, as Tanaka noted, “surely, the greatest dark spot on ancient Greek culture.”²⁾ However, this Sophist understanding of virtue was not limited to ancient Greece. It seems to still attract many, not only those with wealth, but also those with higher levels of education. As Tanaka pointed out, “When Man is in the process of being enlightened, he finds it most easy to succumb to subjectivism, relativism, and skepticism. And through the Sophists, his knowledge becomes populist, and a close relationship is forged in such a man’s thinking between rhetorical skills and the propagation of atheism.”³⁾

II. Socratic Virtue

What then of the Socratic tradition of virtue? How could it have been any different from the Sophist view of virtue? Did Socrates, the rational philosopher, actually worship the Greek gods? Was he not on trial for his “atheism”? Neo-Sophists, knowing that Socrates himself started off as a Sophist, have tried to spin Socrates into an atheist like themselves, but to do so they have had to overlook a few inconvenient facts. Firstly, the fact that Socrates, after taking the hemlock, asked Crito to offer a cock as a sacrifice to the god of healing. Secondly, the fact that Socrates “maintained that he

2) 同上、473頁。

3) 同上、473頁。

did believe in spirit and therefore, logically, in spiritual beings.” What he rejected was the gods of the poets which he contrasted to the gods of the philosophers.⁴⁾ “The gods of the poets” referred to a sense of power that rested in language as it was used to emotionally impact people—regardless of the truth content of that language. It was what the Sophists worshipped: rhetoric as a manipulative technique. More important for our exploration into virtue is that Socrates died for his witness to the Truth; his understanding of virtue was not a pandering to the masses but was grounded in his belief in universal principle. What is Socratic virtue, then? In the first place, it is deeply connected to philosophy which, in contrast to rhetoric, is centrally concerned with what is universally true. As James Schall has put it, Socrates’s point is that “nothing guarantees virtue but philosophy, the philosophy of *what is*. ...we are not safe until and unless we see and acknowledge the point of what is right.”⁵⁾

This “Socratic” Virtue has been further explained by Romano Guardini in his wonderful book, *Learning the Virtues*. For Guardini, virtue is fundamentally an attitude that sees order in the world. As Guardini notes, “He who has this disposition sees also the order in history, sees that profound laws prevail there, that everything has its cause and nothing is without effect. The Greeks expressed this by the concept of *themis*, according to which all human activity is regulated by divine law and justice. Consequently, this virtue signifies a relation to the whole of existence and enables us to discover aspects of it which never become clear to the one who lives in disorder.”⁶⁾ But it is perhaps, once again, Tanaka Kōtarō who has the clearest understanding of what is Socratic Virtue in contrast to Sophist Virtue. Tanaka cites the famous definition of virtue that Socrates offers in *Xenophon*, “Virtue is Knowledge,” as an important starting point. But it is

4) James V. Schall, *The Life of the Mind* (Wilmington, DE: ISI Books, 2006), pp. 83-84.

5) James V. Schall, *Roman Catholic Political Philosophy* (Lanham, MD: Lexington Books, 2004), pp. 37-38.

6) Romano Guardini, *Learning the Virtues That Lead You to God* (Manchester, N.H.: Sophia Institute Press, 1998), p. 7.

key to understand that this is a knowledge, unlike Sophist rhetoric, that takes reality as its subject matter.

As Tanaka put it, “the Sophists are not in the least concerned with what kind of influence their education may have on the future of the Athenian State (*polis*), whereas Socrates taught as though what he had to offer was of essential importance to Athens.”⁷⁾ He was an Athenian, faithful to Athenian tradition, not an itinerant teacher who would teach anyone for money, as the Sophists did. At the same time, in contrast to the skeptical individualism of the Sophists, Socrates taught timeless general principles and ideals that every person could use as the premise for his own conduct. These virtues—things like chastity, justice, wisdom—were not left to the choice of the individual, but were objective principles that could shape the direction of human behavior for the better. When Socrates said “Virtue is Knowledge,” he meant that an average person can look at his own life and see these virtues as relevant. He did not mean “knowledge” in a passive way: knowledge of the Good was not sufficient in itself. It had to be used, put into action, as an objective for one’s actual behavior. We see this emphasis on acting in Tanaka’s translation of the concept of virtue as “correct behavior” (*tadashii okonai*; 正しい行い).⁸⁾

Socrates balanced the particular and the universal, his local Athenian culture and universal truth, in his teaching that virtue had to be put into action. Virtue was not a mere abstraction but had practical value. However, in contrast to the Sophists, Socrates held that the virtuous life was good for Athens precisely because its goal was the completion of personhood or “character,” what Tanaka called in Japanese, *jinkaku no kansei* (人格の完成).

III. Sophist Virtue and Socratic Virtue in Japanese History

It would be too easy, perhaps, to limit Socratic and Sophist Virtues to a mere expression of Greek, or perhaps Western, culture. Doing so, however, would merely reduce Socrates’ universal virtue to Athenian culture or

7) 田中耕太郎『教育基本法の理論』有斐閣、1961年、318頁。

8) 同上、330頁。

else recapitulate the Sophist theory that there is no universal truth. But in fact, Japan has maintained something like Socratic Virtue throughout the centuries. Even as a Christian, Tanaka Kōtarō recognized Japan's non-Christian traditional virtues as "sincere mores and beautiful customs" (*Junpū bizoku*; 醇風美俗) and he praised their moral integrity. He gave particular credit to Confucianism for strengthening the virtue of the Japanese people, saying that;

The arrival of Confucianism had a profound influence on the politics and morals of our country and thus it came to have a great significance on education also. ...Its influence in the area of morality was particularly great. ...It gave a rich and concrete substance to the concept of morality (*dōtoku* = lit., "the way of virtue") through its basic principles of the Five Cardinal Virtues (Benevolence, Righteousness, Etiquette, Wisdom, and Faith), that is through the moral precepts of the Natural Law. And by correctly explaining human ethics, Confucianism gave us the ability to correct our ancient evil customs like marriages between a son and his mother-in-law, between half-siblings, and between a son and his step-mother. Confucianism emphasized human ethics, but that was really no more than concepts based on the Natural Law. Confucianism is a secular, especially political, philosophy that doesn't discuss the afterlife. And so Confucianism has been the basic ideal that has consistently dominated our educational philosophy since its arrival in Japan.⁹⁾

9) 「儒教の伝来は、我が国の政治や道徳に深甚な影響を及ぼし、従って教育上も重大な意義を持つようになった。(中略) また道徳の方面における影響も偉大であった。(中略) しかるに仁義礼智信(すなわち五常)と云うような人倫の大本、すなわち自然法的道徳律によって、道徳観念に豊富な具体的内容を与え、人倫を正しくすることによって例えば上古における姑姨(いましゅうとめ)、異母兄弟姉妹、継母子の相婚の弊風を改めるに力があった。(中略) 儒教は人倫を強調するが、それは自然法的の観念である。儒教は来世を論ぜず世俗的であり、特に政治的である。従って儒教はその伝来以来一貫して我が教育思想を支配したところの基本理念であった。」(同上、237-238頁。)

We will take a closer look at virtue discourse in Japanese history. The discourse on virtue (*toku*; 徳) is broad-ranging in Japanese spiritual history, and involves Daoist, Confucian, Buddhist, Shinto and other sources. Here, I will restrict myself to a few comments about 17th and 18th century Japanese Neo-Confucianism, with a brief look at Nitobe Inazō's early 20th century study on Bushido. During the Tokugawa period (1603-1867), Neo-Confucianism reached its apogee of influence in Japan. And during this period, we can identify two influential Neo-Confucian philosophers each of whom represented the Socratic or Sophist approach to virtue: I will offer Itō Jinsai (1627-1705) as the exemplar of Socratic virtue and Ogyū Sorai as the representative of the Sophist virtue.

Beginning with Itō Jinsai, we find an explicit discourse on virtue (*toku*) that is based on an eclectic approach to moral philosophy, drawing on Neo-Confucianism to be sure, but going beyond the confines of Confucian thought to look closely at Japanese cultural practices through language. According to Tetsuo Najita, "Itō emphasized the horizontality of universal human value rather than the conventional distinctions between 'high' and 'low,' between those who governed and those who were governed. ...For Itō, the potential of acting out goodness thus replaced the necessity of change as the ontological basis for articulating human 'equality'." ¹⁰⁾ Government officials kept a close eye on Itō Jinsai. Although he was not forced to drink hemlock as Socrates was, he was required to submit written materials for inspection in 1683 because he was suspected of violating certain government proscriptions. ¹¹⁾ What was the government worried about? Given that only two years later the government established in Nagasaki a new office to examine imported Chinese books for any potential reference to Christianity, and in light of Itō's dangerous idea of equality across social classes, we cannot rule out that the government suspected Itō of harboring dangerous Christian ideas. William

10) Tetsuo Najita, *Visions of Virtue in Tokugawa Japan: The Kaitokudō Merchant Academy of Osaka* (Chicago: The University of Chicago Press, 1987), p. 28.

11) William J. Farge, S.J., *A Christian Samurai: The Trials of Baba Bunkō* (Washington D.C.: The Catholic University of America, 2016), p. 91.

Farge has recently traced a similarly exceptional embrace of the universality of human value, regardless of class, by Baba Bunkō (1718-59), discovering that Baba's values did come from Catholic missionaries in Japan. Conclusive evidence for a similar discovery of Itō Jinsai as a hidden Christian is unlikely ever to be found. However, we cannot rule out influence from ancient Greek notions of moral virtue that appears to have reached Itō through writings and ideas disseminated by Christians in late 17th century Japan. Kagawa Toyohiko wrote that "it is a real possibility that Itō received his insight into the Christian idea of love from the Dutch traders who frequented Japan at that time. According to the tradition of his family, Itō hid himself in a warehouse for two weeks and studied Christianity with Dutch Christians as his teachers."¹²⁾

Without going so far as to conclude that Itō Jinsai was himself Christian, we can easily think of him as a moral philosopher akin to Plato for whom "God" was "the Good" (Agathon).¹³⁾ Plato, like his mentor Socrates, also saw virtue as more than a mere technical skill: it was inherently tied up with doing moral good. In his terms, Agathon (the Good) was aretē (virtue), and virtue was the Good. Likewise, for Itō, who was drawing from Mencius, the fundamental truth of virtue rests on the conviction that Man's nature is good. And, like Plato and Socrates, Itō believed that knowing the good was not enough: one can, and should, do good.

If Itō Jinsai represents the Socratic tradition of virtue in Japan, Ogyū Sorai (1666-1728) looks like a Sophist. Sorai was born several decades after Jinsai, which means that he spent much of his adulthood in the Genroku Period (1688-1704). The Genroku Period witnessed rapid economic growth and the rise of a vibrant urban culture that was based in Edo, Kyoto and particularly in Osaka. It created social and economic conditions remarkably similar to Greece in the 5th century B.C. which saw the rise of the Sophists. But the

12) Toyohiko Kagawa, *Christ and Japan* (1934), excerpted and reprinted as "The Religious Life of the Japanese," *Japan Christian Review* 62 (1996), pp. 67-73, at p. 72.

13) Guardini, *Learning the Virtues*, p. 9.

similarities between Sorai and the Sophists were not merely historical, social or economic. His thinking on virtue (*toku*) bears remarkable similarities to that of the Sophists on *aretē*. “For Ogyū Sorai, society had no need of ethical norms, because there was in fact no such thing as any absolute principle. ...Virtue in Tokugawa Neo-Confucianism could be spoken about only in reference to the samurai class. ...When Sorai later became an advisor to Shogun Tokugawa Yoshimune (1684-1751), he encouraged practicality and leniency in dealing with the commoner population. ...In the end, however, Sorai concluded that the Neo-Confucianists could not understand or teach the real meaning of virtue because they interpreted the ancient words and expressions using contemporary definitions.”¹⁴ Truth was lost behind language, or as the Sophists would say, “rhetoric,” or as today’s postmodernists would say, “discourse.”

Nonetheless, Sorai did teach that each person should polish his own “little virtue” (*shōtoku*) that had been implanted in him at birth. However, these innumerable “little virtues” were cut off from any ontological foundation in the Great Virtue which was exclusive to the ancient kings and not graspable by human beings in later times.¹⁵ The late nineteenth century Japanese political activist Nakae Chōmin found a strain of utilitarianism in Ogyū Sorai’s thought similar to that in Jeremy Bentham¹⁶. For our purposes here, we might say that both Bentham and Sorai were thinking of virtue in the utilitarian manner of the Sophists. Virtue was merely a measure of the skill with which one dealt with the tasks society had given one.

In light of Sorai’s official position as a government ideologue and the general presumption that Japanese philosophy was, if it is not still, largely utilitarian in substance, it might be tempting to think that Itō’s Socratic virtue was a minor exception to Sorai who provided the norm for Japanese discourse on virtue as technique. But before leaping to that hasty conclusion, we should pause and consider the remarkable school called the Kaitokudō

14) Farge, S.J., *A Christian Samurai*, pp. 125-127.

15) Najita, *Visions of Virtue*, p. 33.

16) *Ibid.*, p. 35.

(“The Hall That Yearns for Virtue”) that taught virtue ethics to the merchant class in Osaka between the years 1724 and 1869. Two things stand out about the Kaitokudō: one, that it had the audacity to teach merchants at a time when knowledge was presumed to be reserved for the samurai class; and two, the school was highly critical of Sorai. Tetsuo Najita has articulated the grounds of the Kaitokudō’s opposition to Sorai’s approach to virtue: “one of the key intellectual themes in the Kaitokudō,” he notes, “was the confirmation that the human mind could know objective things and deal with them without being arbitrary. Thus in contrast for example to Ogyū Sorai who insisted that natural objects could not be known as their ultimate secrets were infinite, the tendency at the Kaitokudō was to see external nature as less mystical, to consider it as provisionally knowable, and to calculate in ways that were within reason. Nature, in other words, was not simply an emotive external object but a measurable set of things.”¹⁷⁾ The Kaitokudō’s anti-Sorai thinking reached its zenith in the late 18th century under Nakai Chikuzan (1730-1804), but enduring elements continued down to the end of the school in 1869. It should come as no surprise that Nakai Tsugumaro (1855-1943), the eldest son of Nakai Tōen (1822-81) the last head of the Kaitokudō, not only worked hard in the early twentieth century to re-open the Kaitokudō but was baptized “Paul” in the Christian faith. He also worked closely with Archbishop Nikolai Kasatkin in translating Orthodox Christian works into Japanese. He was merely following the mainstream line laid out two hundred years earlier in the Kaitokudō by the virtue ethics of Itō Jinsai who had studied with Christians and incorporated their idea of the equality of men and the knowability of virtue into his ideas.

Finally, a brief examination in this context of Nitobe Inazō’s *Bushido: the Soul of Japan*. This remarkable book was written in English in 1899, right around the time that Paul Nakai was trying to re-establish the Kaitokudō from his Christian sense of virtue. Nitobe’s book, still in print today, has often been interpreted as an instance of the Sophist line of virtue as *aretē*, mere techniques that shaped the warrior ethos of the samurai. This is a gross

17) *Ibid.*, pp. 89-90.

mis-reading of the book. Nitobe, one of modern Japan's most important Christian educators, expressly wrote the book to provide a Japanese form of the Christian chivalry that had characterized medieval Europe. It was written to show English readers that Japan was not a barbaric culture devoid of moral principles. And while Nitobe characterized his Bushido as "the noblesse oblige of the warrior class," he also asserted that Bushido was not limited to the military class but had "its influence among the masses."¹⁸⁾ Rather than technical skills with the sword, his Bushido was composed of familiar sounding Socratic moral virtues such as "Justice," "Courage," "Benevolence," "Politeness," "Veracity," "Honour," "the Duty of Loyalty," and "Self-Control." In short, what Nitobe achieved in his eloquent book is nothing less than a synthesis of Sophist virtue and Socratic virtue: virtue as amoral technique is there, especially in "Chapter XIII The Sword, the Soul of the Samurai."

However, it is Socratic virtue that runs throughout the volume and defines Nitobe's main argument on Bushido. Thus, Nitobe concludes that "Bushido as an independent code of ethics may vanish, but its power will not perish from the earth; its schools of martial prowess or civic honour may be demolished, but its light and its glory will long survive their ruins."¹⁹⁾ He then closes his book on Bushido with a quote from a Quaker—reinforcing the long relationship of Socratic virtue with Universalist articulations of virtue as a moral code premised on recognition of what is real. In short, Nitobe, the Christian educator, was prophesying that the universal virtues implicit in Bushido and developed over the centuries in Japanese culture will remain, even as the technical skill with the sword declines. He believed that even in Japan Socratic virtue would eventually triumph over Sophist virtue.

IV. Law as Reconciling the Competing Virtues

The competition between Sophist virtue and Socratic virtue throughout

18) Inazō Nitobe, *Bushido: the Soul of Japan* (Rutland VT: Charles E. Tuttle Company, 1969), p. 3.

19) *Ibid.*, p. 192.

human history could, if left unchecked, lead to anarchy or worse. These rival understandings of virtue are mutually incompatible. In the Sophist tradition of virtue we find a valorization of skill, pure and simple: the good is whatever is done well, and whatever is done well is by definition “the good.” There is in this Sophist tradition of virtue no room for the mediocre man, the clumsy person, as having any “good” in himself. We have seen over time how this Sophist tradition of virtue has led to things like eugenics and euthanasia—the “mercy killing” of those deemed unfit for society’s needs. On the other hand, we have the Socratic tradition that upholds the universality of Truth and moral principles founded on Truth. This Socratic virtue has emphasized “what is real,” and finds this reality in all cultures and historical periods. Left unchecked, however, the Socratic tradition of virtue is open to use by extremists whose over-confidence in their own understanding of moral universals has led to imperialism, religious fanaticism and terrorism. Less dramatically, Socratic moral virtue can simply lead to social disintegration, as healthy economic, social and political institutions are undermined by a moralism that can be quite indifferent to institutions and how well they do or do not function. Think of the “British Disease” of the 1970s or, in certain respects, many of the social problems the United States faces today, problems that are often exacerbated by moralist discourse that appropriates the Socratic language of virtue on “universal Truth,” “equality” and “the dignity of the person” with little consideration for the dignity and rights of those who don’t agree with their novel moral conclusions. So, we must recognize that the differences between the Sophist understanding of virtue and the Socratic understanding of virtue are profound, serious, and irreconcilable. And we also need to recognize that both traditions of virtue have elements that can be destructive to individuals, societies and traditions.

Precisely because these differences between Sophist and Socratic virtue are so serious, today we need to make a renewed commitment to the rule of law. Law is the only institution capable of reconciling these tensions between the Sophist and Socratic concepts of virtue—or if not reconciling them, at least establishing a *modus vivendi* between them. Why law? Because the law itself uniquely encompasses elements of both the Sophist and the Socratic

understandings of virtue: it has room for both traditions of virtue within it. Like the Sophists, the law places a premium on technicality and even on the effects of rhetoric. The technical nature of the law is most apparent in areas of private law (corporate law, property law, etc.) which are also those areas of law most free from local traditions. Also like the Sophists, the law as we have it today does not seek its legitimacy in divine origins or sacred kingship but in fact generally treats all people as equal. Yet, like the Socratic understanding of virtue, the law is not merely reducible to technique: without moorings in a sense of justice—a cardinal virtue—the law is not recognizable as law. Also, like the Socratic sense of virtue, the law presumes it is dealing with reality, a recognition of “what is,” without which it loses its own *raison d’être* which is to establish order and to do so by minimizing violence.

Here we are reminded of Guardini’s point that virtue is an attitude that sees order in the world. The alternative to law is of course to resort to violence to resolve conflict, and violence has shown itself to be a poor tool for establishing and maintaining order in society. These Socratic aspects of the law are most apparent in public law (esp. constitutional law and criminal law) where the particular traditions of a given society have more weight, just as Athens meant so much to Socrates. So we see even in the structure of law itself elements in common with the Sophists (e.g., technicality, social equality, atheism, cultural deracination) and with the Socratics (e.g., realism, substantivity, justice, respect for local traditions). This commonality means that whether Sophist or Socratic, everyone should be able to find a means of appreciating the law and its relation to virtue—however understood.

It is law’s relationship to virtue that reminds us that law is not merely an institutional form of conflict resolution. It is also a form of education, even education in morality. Of course, in teaching virtue, law differs from religious education in several respects. Firstly, religious education sets high standards that few, if anyone, can attain. Only a “saint” or a “holy man” can achieve all the standards of religious education—and even then, often not in this life. By the same token, this demanding religious education in society is left to the freedom of the individual’s choice and conscience—at least in

those societies where the rule of law prevails. In contrast, law, in its capacity as moral education, takes “the average man” as its standard. This is an important point, given the coercive powers of law. Religion does not have the coercive powers of the law. Disobey your priest or minister and you remain free—free perhaps to join another church or religion, but free. Disobey the law and you can be imprisoned and/or fined. This is why it is essential that law does not maintain a standard that most people cannot meet. Indeed, the law expects, on average, everyone to uphold all its standards.

These standards can be technical rather than moral: the law determines which side of the road you may drive your car on, what forms contracts must adopt to be valid, which pieces of paper constitute valid currency or forms of payment, etc. In all these cases, the law teaches the virtue of technical skill. But the law also adopts standards that are moral: you may not kill, steal, defraud, etc.—no matter how skillful you are at such things! In these cases, the law teaches the virtue of doing good and avoiding evil. Note that these moral standards in the law are derived from the Natural Law. They are not the property of a particular religion but are moral principles that are accessible by reason—but which, by the way, most religions also recognize. Without such Natural Law moral principles, the law would indeed be reduced to a technical game, and there would be no room in it for the Socratic tradition of virtue. However, an equally important, if frequently overlooked, fact is that without the amoral, technical nature of the law, anarchy would result—just imagine if the law were silent on matters like which side of the road you must drive your car on! Both the technical side of law and the moral side of law converge on the key point that order lies at the heart of true virtue.

Tanaka Kōtarō, an expert on both the law and on religion, has laid out, in compelling terms, the difference between religion and law as forms of moral education and as types of law. Building on a distinction between religious law (*rippō*; 律法) and secular law (*hōritsu*; 法律), he wrote that:

When compared with the noble religious law (*rippō*), the secular law is quite base. If the secular law (*hōritsu*) were something that Man could

not implement in ordinary circumstances, we would have to say that is not an appropriate kind of law. This is because secular law (*hōritsu*) is satisfied with the standard of those external acts required for the maintenance of social order. However, religious law (*rippō*) enters into one's motives and demands the highest standards of purity. What it seeks is what is right from God's perspective, regardless of whether that is a standard for maintaining social order.²⁰⁾

Tanaka highlights the distinctive missions that the law and religion have, without sacrificing the good of either. Their relationship—and their potential for good—is more apparent when we see law and religion within organized social life.

Here, Tanaka invites us to think of the State and Church as modes of organizing law and religion socially. It should be noted that neither law nor religion are fully equivalent to the State or the Church. Law precedes the state, as the Natural Law attests; and there are plenty of examples today of people who practice a kind of “spiritual religion” without joining a church. They often describe themselves as “spiritual” but not religious. But when we consider the function of law and religion within the institutions of the State and the Church, the basic attribute of Socratic virtue—a sense of order as essential to the flourishing of Man—becomes apparent. This is why both the State and the Church can be seen as perfect societies (*societas perfecta*): the one, providing order to Man's secular life, and the other as providing order to Man's spiritual life; neither is a mere functional society (*shokunō-teki shakai*) that exists merely to achieve a particular end.²¹⁾ Both are agents that maintain

20) 「此の世の法律の如き此の高貴なる律法と比較していかに低い所にあるであらうか。此の世の法律は通常人の実現し得べからざるものであるならば、其れは法たるに適當せざるものと言はなければならぬ。是れ蓋し此の世の法律は社会の秩序を維持するに足るだけの外部的行為の準則を以て満足しているからである。然るに宗教上の律法は行為の動機に立ち入って最も純潔なるべきことを求むる。其の求むる所は社会の秩序維持が標準となり非ずして、神の目より見て正しきことである。」(田中耕太郎『法と宗教と社会生活』改造社、1927年、33頁。)

21) 同上、191-192頁。

moral order and in doing so serve the general end of Man.²²⁾

Today, we are too quick to think that the law is inextricably linked to the State, and we are too slow to see that the law has a legitimate role within the Church. Many of us have been influenced, willy-nilly, by Rudolph Sohm's rejection of canon law. "Ecclesiastical law," he maintained, "stands in contradiction to the nature of the Ecclesia." In accepting this claim, we have perhaps done an injustice to the Sophist tradition of virtue as technique. Tanaka was quick to see the problem, arguing that Sohm's rejection of canon law came from his one-sided emphasis on law as the imposition of justice. Sohm overlooked the other side of law that is technical. Church law, like secular law, combines both technical and moral law, and we should not dismiss the value of technical law even within religious organizations, for that is where law functions to maintain order, as it does in all social organizations.²³⁾ This more technical side of law also reminds us that law takes Man as he is and does not ask the impossible of him. This is what jurists have called, in a positive sense, "the compromising nature of law" (*Kompromissnatur des Rechts*).²⁴⁾ It is because of this compromising nature of law that the State, even with its powers of coercion, can be seen as instructing people under its authority to live more virtuous lives. And this effort to live more virtuous lives cannot be restricted to individual moral ideals, as Sohm would have it. Virtue also requires a social context for action, and both Church and State in their respective ways, provide that social order for virtuous action.

The mission of the State, as Tanaka noted, is to help us realize the Biblical injunction to "be perfect, as your Heavenly Father is perfect" (Matt 5:48). Of course, Tanaka also understood that the State alone cannot improve either society or the individual. He called that idea "rank utopianism." He recognized that the majority of states in history, at best, were merely groping their way in the darkness with no sense of an ideal. It is the job of society—

22) 同上、194頁。

23) 同上、195頁。

24) 同上、196頁。

yes, including the Church—to remind the State that its basic mission is to set down the conditions for the realization of the ideal of Man. These basic conditions are visible in Georg Jellinek's idea that "law is nothing more than the minimum morality." Those minimum standards of morality are obligatory, enforced by the State through the law. But, as individuals, we need to go beyond the minimum and seek higher religious standards as we see fit, through our freedom of conscience.

Law then can and should work to reconcile the oppositions between a Sophist understanding of virtue as technique freed from a particular moral content and a Socratic understanding of virtue as based on a specific claim about what is true and real. It will achieve this reconciliation through the State which will not impose the fullness of morality on its citizens (to the delight of the Sophists) but will not be indifferent to claims of justice and morality (to the delight of the Socratics). But for Law to succeed in reconciling the relativism of the neo-Sophists and the objectivism of the Socratics, there is one particular virtue that is required from both sides: the virtue of tolerance. Tanaka claims that this virtue of "tolerance" is an essential virtue for any democracy to function, and I think he is right. However, we also need to understand that by "tolerance" he does not mean the kind of tolerance that we hear so much about these days, often an attack on traditional morals and virtue under the cover of rhetoric about "tolerating difference."

Tanaka uses the Japanese word *kan'yō* (寛容) which might be better translated as "generosity" or "magnanimity." The component characters for *kan'yō* mean "broad, relaxed" and "to behave, to take in." It does not convey the same degree of passivity one finds in the sense of "tolerance" common in current public discourse—to put up with something unpleasant or even toxic. Fortunately, both the Sophists and Socratics accept this kind of broad-minded tolerance within their systems of virtue. The neo-Sophists cannot object to the virtue of tolerance, since without a specific substantive moral claim of their own, they have to tolerate all sorts of different moral claims—even as they use them when beneficial to their own arguments. And the Socratics usually hold a substantive system of virtues that, as Guardini notes, lead to a God or gods who overlooks all—tolerance for

them is an inherent part of their moral philosophy in which God, not Man, holds the monopoly on vengeance. If we can enhance social attitudes of true “tolerance” (*kan'yō*), along with a renewed respect for the rule of law and the State as its instrument, then perhaps we may be able to avoid the doomsday scenarios frequently intoned today and maintain a vibrant, moral, global democratic culture.

Finally, we leave you with the words of Tanaka Kōtarō who in 1927 faced the same problems we are still facing today. He said:

We are truly now in a period when we must understand the character of Socrates and once again take up the study of his philosophy [which] ...breathed a soul into the superficial culture of the Sophists through his pious faith and insight into the essence of that which is moral.²⁵⁾

25) 「我々は正に、道徳的なるものの本質に対する洞察、及び敬虔なる信仰に依ってソフィストの外面的文化に魂を吹き込んだ、希臘人には珍しい牧神に似て不細工な、然も善良さと朗らかさが其れより溢れているソクラテスの童顔を想起しながら、彼の人格を知り、彼の哲学を学び直さなければならぬ時期にある。」(田中耕太郎「ソフィストと我が国の現代思潮」『教養と文化と基礎』、479頁。)

Abstract

This article identifies two different traditions of understanding what virtue is, both of which originated in ancient Greece but became global in reach. One tradition is the Socratic understanding of virtue and the other tradition is the Sophist understanding of virtue. After outlining the distinguishing features of these different traditions and their historical, philosophical and economic conditions, the article then turns to 17th century Japan, finding advocates of these understandings of virtue in neo-Confucian philosophers Itō Jinsai (1627-1705) and Ogyū Sorai (1666-1728). Arguing that Jinsai's understanding of virtue was akin to the Socratic tradition and Ogyū's was in line with the Sophist tradition, the article then raises the possibility of Christian influences on Jinsai and shows how his understanding of virtue was continued on for nearly two centuries in the Osaka merchant academy, the Kaitokudō (1724-1869). This long tradition of privileging Socratic virtue within the Kaitokudō helps explain the conversion of the son of the last head of the Kaitokudō, Nakai Tsugumaro (1855-1943) to Christianity. In a similar vein, one finds both the Socratic and Sophist understandings of virtue in the Christian intellectual Nitobe Inazō's early 20th century writing on bushido. Finally, the article notes that without some mechanism for reconciling these two opposing understandings of virtue, societies run the risk of disintegration. The author concludes that the best hope for such reconciliation lies in the field of law, since law by its very nature embodies elements of both the Socratic and the Sophist understanding of virtue.

