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主 論 文 の 要 旨

論文題目

Political Development and the Rule of Law in Hungary from Comparative Perspective : Developmental Patterns in Western Europe, Northeast Asia, and Central Eastern Europe

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論 文 内 容 の 要 旨

This dissertation examines the relationship of political development and rule of law in Western Europe, Northeast Asia and Central Eastern Europe, with an in-depth study of Hungary. In the case of the first two regions, the argument only covers the last seventy years, while in the third region it is mostly about the post-1990 period.

After reviewing the literature on the concepts of political development and the rule of law, the author *conceptualizes* both of them. In the case of political development, it is argued that it is best to regard it as the development of collective action (cooperation) of the political elites for development purposes. Rule of law, in connection with politics, is defined as the importance of the liberal elements of democracy, or constitutional rules, enforced by an independent judiciary.

The two concepts are *operationalized* as follows. *Political development* or collective action means a consensual unification of elites, which leads to a strong state power after the formation of a regime. This can appear in diverse forms, but it is argued that simple rule-making or agreement on procedural rules is not sufficient to reach it. Also, several factors correlate with it or help its formation. These factors include long term, serious external threat; popular support or opposition; incentives by formal institutions; discontinuity in the foundation of the new regime; and equality. The *rule of law* is defined as the importance of judicial review of political action.

The relationship of political development and rule of law is examined in four countries in Western Europe (Germany, Austria, France, and Italy) and three countries in Northeast Asia (Japan, South-Korea, Republic of China in Taiwan) before analyzing the situation of Hungary, with an outlook of other Central Eastern European countries.

It is pointed out that rule of law, understood as the importance of judges and judicial enforcement of constitutional and public law rules became important only from the 1970's in Europe, and the 1990's in Northeast Asia. Hence, rule of law did not play significant role in the first periods of these political systems.

It is argued that both Western European and Northeast Asian countries relied more on political collective action before giving importance to rule of law. This led to strong state power in these societies. The methods of collective action, however, were different. In Western Europe, political collective action was reached with more peaceful means, in a democratic form. Still, this did not mean that formal constitutional institutions were primarily important. In the first period after the foundation of their new political regime Germany, Austria and Italy relied on broad coalitions, while France relied on the personal legitimacy of Charles de Gaulle and a centrist party supporting him. Japanese postwar political history was similar to Europe in creating a grand hegemonic party.

In the other two Northeast Asian countries, coercion was more important in the creation of political collective action leading to strong state power for developmental purposes. In Taiwan, martial law and military dictatorship was kept until the 1990's, but the leading Nationalist Party incorporated the local population to the government. In South-Korea, political conflicts remained harsh, but the external threat was also the greatest among the countries in the region. This helped to build and consolidate a strong state.

Possible helping factors of political collective action are briefly reviewed. The factors are long term, serious external threat, revolutionary foundation of political systems, institutional incentives, equality, and popular support or opposition. It is pointed out that while the relative importance of these factors were different in every country, a certain combination of these were present everywhere.

On the other hand, in the Central Eastern European region, one can observe the complete absence of these factors. It is argued that in Central Eastern Europe, countries after the 1990's tried to rely on international standards and good formal institutions of liberal democracy, more than any substantial agreement of political actors.

In the case of Hungary, reliance on the rule of law was extremely important. It is possible to point out that constitutional institutions pointed to the direction of consensual democracy, but political polarization and deepening conflict led the dysfunctional operation of these institutions. Also, rule of law was one catchword of the democratic transition of the 1990's. Therefore, in

connection with Hungary, two issues are analyzed: first, the perception and treatment of the rule of law by the political elites, and second, the perception of the rule of law by the general public. This later one is important because it may contribute to the understanding of the legitimacy of Hungary's post-1990 democracy. Also, if the general public feels the importance of democratic institutions, they may protect them or enforce them; if not, they would let the political elite abuse liberal democracy.

Concerning the relationship of the political elites and the rule of law, it is pointed out that the understanding of rule of law by the Hungarian politicians corresponds to the general Western understanding of the rule of law as the limits of the governing party's power. Hence, the two most important checks and balances are analyzed: the two-third majority laws and the Constitutional Court. In the case of the first one, it was found that although the declared function of the qualified majority rule is the provision of broad consensus among parties, less qualified majority legislation was accepted by time. Concerning the Constitutional Court, the analysis of legislative inactivity review showed that politicians cared less about the Constitutional Court's demands by time. Since no other factor changed, it is possible to interpret that the growing political polarization correlated with the declining acceptance of the rule of law by the elites.

Concerning the relationship of the general public and the rule of law, the chapter analyzed the 2398 constitutional petitions filed to the Hungarian Constitutional Court which refer to the rule of law clause of the Constitution. It was found that petitioners care about fairness and equity more than formal legal certainty or limits on the state, while the Court's concept is exactly the opposite. Second, the chapter analyzed all constitutional cases (5247 decisions) of the Court. It was found that the largest portion of petitions asks for equity or fair distribution of welfare. Despite the emphasis legal scholars put on human dignity and human rights, human right claims are marginal. Combined with numerical indicators, this shows the dissatisfaction of citizens and the difference of their values from those of the legal elites. This inconsistency may indicate the weak legitimacy of the new "democratic rule of law" in Hungary. Also, this shows the lack of popular support for the new system of rule of law.

As a conclusion, it can be stated that while in successful cases of political development, first, political collective action was created by means other than formal liberal and democratic institutions. In both Western Europe and Northeast Asia, strong states were built in the first periods after the establishment of their political systems. After the accommodation of collective action, in subsequent periods, more political conflicts appeared. However, by this time, political institutions got enough legitimacy to keep conflicts in lower level. In the case of Northeast Asia, democratization and liberal institutions gain importance later, but similarly to the West, strong

state power based on political collective action was the first. Unlike these two models, Central and Eastern Europe tried to rely more on liberal democratic procedures instead of consensus-seeking. This led a weakly integrated state power and lower level of development.