

Ehebruch als Verbrechen Der europäische Beitrag zur Frauendiskriminierung in Japan

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Fragestellung: Recht und Gleichberechtigung in Japan

Begriffsklärungen des Ehebruchs

- I. Aufrechterhaltung der Ständeordnung in der Edo-Zeit
 - II. Moderne patriarchalische Hausherrschaft im Strafrecht der Meiji-Zeit
 1. Die Strafgesetze der frühen Meiji-Zeit unter japanischem und chinesischem Einfluß
 2. Strafgesetze der späteren Meiji-Zeit unter europäischem Einfluß
 3. Ausländische Juristen verteidigen die sexuelle Doppelmoral im japanischen Recht
 4. Japanische Kontroversen der Meiji-Zeit zum Ehebruchsparagraphen
 - III. Ehebruch als Problem der männlichen Moral im 20. Jahrhundert
 1. Liberale Rechtsprechung und Gesetzesreformvorschläge seit der Taishō-Zeit
 2. Reformdiskussion japanischer Rechtswissenschaftler in den 1930er Jahren
 3. Abschaffung des Ehebruchsparagraphen in der amerikanischen Besatzungszeit
- Abschließende Bewertung des europäischen Beitrags zur Frauendiskriminierung in Japan

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SUMMARY

State and society in Japan have punished, sanctioned, or tolerated adultery in various ways. One can argue that legal discrimination against wives at least somewhat lessened after the opening of the country in the nineteenth century before adultery was completely abolished as a crime about one hundred years later. It is natural to assume a positive impact of Western ideas in shaping Japanese laws toward gender equality, and the reforms of the American occupation period seem to be the best example for such a Whiggish interpretation of legal history. A closer look at adultery legislation, however, reveals a more differentiated picture of European influence, not only because of the survival of traditional Japanese customs and practices or lingering Chinese models but also because the "West" was less homogenous and progressive than is often assumed.

The Tokugawa period (1600–1868) is generally known for enforcing a hierarchical status society based on Confucian principles subjugating wives to husbands. So it comes as no surprise that adulterous wives faced death penalties while husbands could kill adulterous wives with impunity. In different ways, a double legal standard was maintained in the Meiji period (1868–1912) penal codes of the years 1871, 1873, 1882 and

1908, which sentenced only adulterous wives to penal servitude. Influential foreign advisors such as the French legal expert Boissonade advocated such a sex-differentiated legislation on adultery since it also existed in the Napoleonic Code. Japanese lawmakers deliberately avoided the adoption of provisions on adultery found in European codes that would have provided a greater degree of legal gender equality. The ambivalence of the West toward adultery, however, protected Japan from international criticism, so the government could safely ignore domestic calls for reform.

Since the Taishô period (1912–1926) until 1945, the penal code was not amended again. There were multiple proposals for revisions, and jurisdiction and public discourse questioned more frequently the need to maintain a sexual double standard in adultery. Europe was often invoked as a model of progress that backward Japan should follow. The criminal code of 1908, which had been inspired by German penal reform philosophy, enabled a wider range of terms of penal servitude as well as sentencing on probation, and in the longer term this served to decriminalize adultery. Despite some revival of conservative ideas in the prewar Shôwa period (1926–1945), no fundamental reversal in the trend towards progressive jurisdiction occurred. Reforms during the American occupation period (1945–1952) finally abolished all adultery-related discrimination between the spouses in criminal and civil legislation.