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### Abstract

This paper will be a part of the author's forthcoming book, a biography of Tameyuki Amano (1861–1938), which should be a complimentary to Eijiro Asakawa and Nagatoshi Nishida's authoritative biography *Tameyuki Amano* in Japanese (1950).

Amano, in his *Principles of Commercial Legislation* (1886), discussed the minimal roles of the government for the promotion of commerce. He argued that the universal and special business education was necessary to train human resources for international business and to conduct on the laissez-faire principle and that the patents and copyright systems were important to encourage invention and creative works. Reflecting his time, he thought that the protection of large enterprises (natural monopoly) and infant industries were necessary. He paid attention to Britain's regulatory policies and industrial standard.

**Keywords:** history of economics, commercial policies, economic roles of the government, patent and trademark systems

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## 1 The *Laissez-faire* Principle and Education

In 1886, Tameyuki Amano published two books in Japanese and named the English titles himself. We will discuss one of them, *The Principles of Commercial Legislation* (1886b), in this chapter and another, *The Theory of Political Economy* (1886a), in a later chapter.

In *Principles of Commercial Legislation* (1886b), Amano's research question was what the government should legislate for the promotion of commerce. He hoped that the book would serve as a useful reference for practitioners like policymakers, public officials, and businesspersons, whereas his other book (1886a) aimed to be a "textbook" targeted for professors of political economy.

According to his introduction, he stayed in Xinyang from July to August in 1886. Today, Xinyang is a city in China's Henan Province. He compared its natural beauty with famous Japanese locations such as Mt. Asama and Ariake, Suwa Lake, and Chikuma River.

I lodged at Xinyang in July and August. Xinyang is located in a higher, quiet place surrounded by peaks of mountains. It is an ideal spot for meditation, contemplation, and scholarly writing. I enjoyed strolling there. I spent a month in writing this book. When I was tired, I walked to an observatory to command a panorama view of graceful figures of mountains and waters. It soothed my nerves. I felt refreshed and resumed writing in solitude. I wrote the manuscript every day and almost finished it before leaving there. I thank Xinyang's natural beauty for helping me concentrate on this work. (My translation)

*Principles of Commercial Legislation* (1886b) was widely read and received a massive response by practitioners. Let us be thankful for the natural beauty of the mountains and waters that we cannot see in Japan.

In his "Explanatory Note," Amano showed the following list of references:

Principles of Political Economy, by Mill  
Principles of Political Economy, by Roscher  
Principles of Political Economy, by Sidgwick  
History of British Commerce, by Leon Levi  
Patent and Copyright Laws, by Newton  
American Patent System, by Howson  
Cyclopaedia of the Political Science, Political Economy and Political History  
of the United States, by Lalor

### Interventionist Arguments

Amano believed that the government should intervene in private economic activities and economic processes at the minimum level. He thought that universal education and special training for international business were in urgent need as Japan extremely lacked private human resources who could actively engage in commerce and industry (such as, trade, manufacturing, modern banking, and international business).

Amano summarized an archetype opposing the "*laissez-faire*" principle and made a critical assessment of interventionist arguments. It provides the heart of his economic thought.

An interventionist would state as follows: (1) Although it is too much to say that the government is an abode of wise persons, yet it is organized by those who have more knowledge and more moral-orientation than ordinary citizens. Therefore, the government must have a feast of reason and naturally guide the people in commerce. (2) Different from public officials, private merchants act solely on self-interest and never think of a nation's happiness at all. They make decisions by following their own interest and sacrificing general consumers' happiness. Therefore, the government should intervene and limit some merchants' freedom to attain national security and protect the nation.

Amano thought that this was a typical interventionist argument.

### Amano's "Laissez-faire" Principle

Amano believed in private citizens' consideration of "reputation" and its effectiveness on economic activities. He maintained that government intervention in economic process was unnecessary.

Ordinary consumers would make choices by following their own self-interest in the same way as merchants do. They would choose the merchant that could provide the best benefit in buying goods. Merchants who seek excessive profit will come down to lose "reputation" and end up incurring losses. Therefore, there is no need for government intervention.

Amano believed that merchants and manufacturers tended to contribute to their society by promoting inventions (innovations) from a longer-term consideration of their industry, business community, and consumers (customers) rather than just grabbing a temporary profit.

If merchants would improve in commerce, the accompanying profit would be attributable to those who have made such an improvement. Therefore, merchants would make greater efforts to improve their industry. It would be more effective than government plans to improve the industry for others.

Merchants and consumers share the benefit. On the one hand, merchants who make efforts in improving commerce and contribute to society would become prosperous. On the other, merchants seek a temporary profit and do not make efforts for improvement would struggle. Government intervention is unnecessary. The best policy is to leave private businesses in natural freedom and natural competition.

Amano was a liberal, opposing government intervention in economic processes in principle, and optimistic about free enterprises operated by learned merchants and industrialists. Let us quote from Chapter 2 "On Practical Education" in Part I-5 "Interventionists Explained and My Remarks."

Naturally, relevant education is necessary for any human being before joining free competition. Therefore, it should be naturally approved that merchants who have appropriately educated and made his/her outstanding talent recognized could act on his/her business talent without public intervention.

Those who plan to engage in enterprises in agriculture, manufacturing, or commerce need relevant education beforehand. I believe that the government should resort to the "*laissez-faire*" principle after it provides full education services. Any human being needs to receive education and merchants need it most.

For Amano, those who plan to embark on free enterprises need education beforehand. After that, government interventions are unnecessary.

The government should spread universal education and provide reading, writing, and arithmetic. Then it should establish secondary and higher schools for commerce and technology and (science and industrial) museums to nourish business minds and appetites for science and technology. It needs to give no further education in commerce. It does not need to give any directions or any commends to real enterprises. Or it would be harmful. It might feel hard to see free citizens failing many times. Yet they would gradually make progress and surprise the government their success beyond the government's expectation. Then we should be able to witness the advent of prosperous commercial society. (pp.164-5)

Amano quoted a popular saying "*Seiran Hyousui*" (stated by Xunzi), meaning that students are given education by their teacher and they surpass their teacher in knowledge and expertise.

## **2 The Patent and Copyright System**

We reconstruct Tameyuki Amano's discussion on the minimal roles of the government for the promotion of commerce in the rest of this chapter. Amano

was stuck to taking a pragmatic approach to every issue in *Principles of Commercial Legislation* (1886b). He wondered what the economic roles of the government would be.

### The Promotion of Invention

First, Amano emphasized the importance of patents and copyright systems in encouraging invention and creative works. In Chapter 1 (Part 4) entitled “The Reasons of Government Intervention needed for Inventions,” alongside discussed the importance of domestic patents and copyright systems, Amano discussed Japan’s participation in the international patent and copyright convention.

He argued for the case of invention in which individual interest should take precedence over public interest as there was a conflict of interest between an individual and the public. He supported the idea of granting an exclusive right on the inventor even if it might conflict with commercial freedom. Some of his arguments uttered during the Meiji era took hold in Japanese economic thought and can be found in present-day in Japan. Let us abridge his powerful and purposeful arguments (pp.103–115):

Industrial improvements are necessary for a nation’s economic progress. A patent right should be granted to a scientist when he/she applies an idea or a theory in practical use of chemistry, physics, or engineering, and successfully improves instruments, machines, or production process or produce entirely new articles. In other words, when a person newly creates a useful article or invents a useful method of production, he/she could obtain a patent right or an exclusive right to use or sell the invention.

In Britain, those who argued for “industrial freedom” and “social happiness” made lawsuits to oppose the idea of industrial property. In the United States (US), some advocated the abolition of the patent system. The system might indeed appear to put a priority on few individual interests and sacrifice social interest. The system might bring a fortune to few inventors and cause inequality in society.

Nonetheless, Amano buttressed the patent system, namely special monopoly rights granted on inventions as follows:

A person needs to work with untiring zeal to invent something. If the government does nothing to protect inventors by resorting to the “*laissez-faire*” principle, others might hear about the invention and easily imitate it or use it at once. In that case, the inventor’s efforts could not be rewarded. First, it would depress the enthusiasm for invention and dissuade industrial improvements with no material progress in society. After all, the policy of “no rewards for inventors” would cause serious disadvantages for the public. Second, it would make inventors keep their own invention a secret. If the invention is a type that no one but the inventor seems able to make and not enough reward is expected when it is open to the public, the inventor would keep the knowledge about the production method under lock and key. Then the inventor could enjoy enormous profit as long as the information related to the invention is closed to the public. An inventor would hide the information of production method in the case that he/she invents a new article.

Amano maintained that inventors should be rewarded to contribute to material progress in society.

#### Rewards for Inventors

Amano discussed how inventors could be rewarded.

There are two ways to reward inventions. First, inventors receive compensations or bonuses in exchange for the invention being made open to the public and everyone is allowed to utilize it free of charge. Yet in that case, we cannot find the criteria of the price or reward to be paid for each invention. It should be natural to set a higher price on an invention that could bring a larger benefit to society and vice versa. However, *the government is never able to determine how much benefit an invention would bring to society when the invention*

*becomes available.*

The phrase in italic comes from the phrase in Japanese emphasized by putting dots. Amano continues to state:

The second solution is given by the patent system. Under this system, an invention does not necessarily get rewarded. Namely, no reward is given to the inventor when there is no public demand for the invention. In contrast, if an invention is very useful and finds a large demand, it would receive a large return thanks to the exclusive right. Rewards for inventions become larger, the more the public benefits.

Furthermore, if the terms of protection for patented works are limited to a certain period and patented works are to be public, an increasing number of inventors would apply for patents to secure the returns for the term. After the term of protection lapses, everyone is allowed to use the invention, either a product or a process, free of charge. Then the price of article which utilizes the invention will decline under free competition. Thus the invention will contribute to industrial development and a nation's economic prosperity.

Those who work hard for inventions guided by private interest would produce superb results incomparable with those who don't mind private interest. Those who oppose the patent system see inventors receiving a temporary fortune and find sacrificing society for some time do not know genuine economy (the source of economic progress).

Amano firmly believed that the patent system is necessary to stimulate invention leading to economic progress in society.

### Copyright Protection

Amano wrote a chapter on copyright (Chapter 2, Part 4) and argued that the copyright of authors and artists for their creative works should be protected by the government. No "*laissez-faire*" principle should be applied for their copyright like the case of inventions. He expounded on points intensively debated in Britain

and the US such as the length of time a copyright can be protected after an author's death.

*Principles of Commercial Legislation* was published in 1886, when the Berne Convention on the protection of copyright of authors was held. The Paris Convention on the protection of industrial property rights became effective in 1883. According to "History of Copyright Systems in Japan" (JCO 2020), the Publishing Ordinance (on the protection of copyright and the regulation on publishers) was enacted in 1869. In 1887, by decoupling the copyright part from the Ordinance, the Copyright Ordinance was authorized as the first copyright legislation in Japan. In 1899, after a new set of provisions and revisions, the Copyright Law was passed, and Japan acceded to both the Paris and Berne Conventions. According to Ministry of Education and Culture's *A Hundred Year History of Education System* (1981), its accession to the Berne Convention was a necessary condition for Japan to terminate the unequal treaties which it concluded with the United States and several European states at the end of the Tokugawa Era.<sup>1</sup> Korekiyo Takahashi, who taught English to Amano, contributed to the legal preparation for Japan's patent and trademark systems.

### Korekiyo Takahashi on Intellectual Property Right

We can only learn about the first four decades of the Patent Office activities from *The Autobiography of Korekiyo Takahashi* (1936) and his posthumous notes and memorandum donated by his surviving family because the Great Kanto Earthquake and the subsequent fires of September 1923 destroyed the Patent Office and burned its documents. Amano wrote the chapter on the patent system in Xinyang after Takahashi left Japan for a one-year inspection tour.<sup>2</sup>

In 1881, after getting a position in the Ministry of Education, Takahashi was transferred to the Civil Engineering Section of the newly established

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<sup>1</sup> Ministry of Education and Culture's *A Hundred Year History of Education System in Japan* (1981) 3 "Copyright System," Section 3 "Culture," Chapter 5 "Academics and Culture," Part 1 "The Establishment and Expansion of Modern Education System."

<sup>2</sup> Takahashi's *Autobiography of Korekiyo Takahashi* (1936) Chapter 7 "Bureaucrat, Again." J. Richard Smethurst's *From Foot Soldier to Finance Minister* (2007) Chapter 4 "Japan's First Trademark and Patent Laws, 1881-89."

Ministry of Agriculture and Commerce and was engaged in the making of rules for trademark legislation and patent granting. He had heard about the importance of protection of intellectual property right from James Curtis Hepburn (1815–1911) and David Murray (1830–1905), who helped Japan's open-up and modernization process in the early Meiji era. Although the rule of the exclusive rights on inventions became effective around 1871, it was suspended in 1872 because there were no Japanese officials who could investigate patent applications (foreigners were considered too expensive to employ) and there were some objections to the patent system.

With the advice and collaboration of Arinori Mori, Takahashi managed to pass through parliament the Ordinance of Patent Right in April 1885, and he was appointed the first Director of the Patent Office alongside holding the first Director of the Trademark Office (from 1884). He was told to visit the US and Europe to inspect their systems. There was an increasing interest in the patent system in Japan. Takahashi departed from Yokohama seaport for the US in November 1885. He stayed in the US, Britain, Germany, and France to inspect their patent systems and their operations by hearing from the officials in charge and reading their compiled documents. He had secured the patent documents made during the past five years in each country at fee charge in exchange for the Japanese documents to be made during the next five years.

Upon arriving in Japan and learning that the government made money by selling land, Takahashi immediately proposed construction of a new Patent Office building while he completed his business trip report in early 1887. He drafted the Legislations in Trademark, Design, and Patent, and successfully campaigned for the separation of the Patent Office from other departments. The Patent Office was constructed in Tsukiji and used until the earthquake of 1923.

### **3 Commercial Legislations**

We will discuss the government policies from *Principles of Commercial Legislation* (1886b), which reflect Amano's time.

### Protection of New Large Enterprises

First, Amano argued that government intervention was necessary in the case of new large enterprises, in which “the large efforts generated large rewards too much later.” Taking international trade as an example, he used the Dutch and British East India Companies, which were given monopoly over international trade by their governments. By expanding the image of large enterprises from the example, Amano tried to develop a general discussion.

He thought that the government should give them monopoly rights and let them seek their own interest for a few years after starting-up and then leave them in natural competition. Amano said, “The government should choose those who confidently believed that they were the fittest to the enterprise, and then the company should work hard to succeed in the enterprise.”

If a company fails, the government should rescind the monopoly right and give it to another company. Amano said, “It is important that a company unfitted to the enterprise should not keep the monopoly status for a long time.” This might suggest the disposition of state-owned enterprises by sale to a private company with a few cases having taken place in the Meiji era.

### Infant Industry Protection

Second is the case for protectionist policy. Amano wondered and said, “Is it a government role to protect a domestic industry from the competition with foreign companies?” Amano admitted a variety of opinions related to the case. He understood that the international and domestic markets were separated from each other and so dual markets existed. He expounded the benefit of international trade as follows:

Each country has different natural features. If each country chooses an enterprise which has an advantage in its talent and climate and produces goods, then each country spends less effort and gets better result by exchanging goods with other countries. Each country must have some advantages in its people and climate. Therefore, if each country chooses an enterprise favorable to it and produces articles, and exchanges such articles with other countries, the

productive power (productivity) of capital and labor would necessarily increase.

Amano identified the differences in natural features in each country and his trade theory might be close to the Swedish economists, Heckscher and Ohlin.

Amano listed three measures of protectionist policy, namely export tariff, import tariff, and furnishing with goods (such as rental machines). He thought that import tariff was the best measure. He did not think of the protection of domestic consumers by levying import tariffs.

Infant industry protection could be called “educational intervention by the government” (by Roscher). Amano said,

In the case of an industry which is not developed enough but could be expected to grow and become a major producer after its learning period, the government could levy tariffs on the import to protect the industry from foreign company competition and then switch the policy to “*laissez-faire*” at an appropriate time.

### Protection of Trademarks

Third, Amano supported the establishment of trademark systems. He disagreed with the opinion that government intervention of conducting quality inspection and sealing or stamping of approval was inevitable to guarantee the quality of articles.

The government assumes many responsibilities in the procedure of quality inspection and sealing of approval. It will have to conduct meticulous inspection to avoid any errors and to spend too many hours for a company to miss business opportunities. Moreover, it will prevent from increasing a variety of articles. Therefore, the trademark system is favorable in guaranteeing the quality of goods. If a merchant’s trademark is protected by the government, it could sell articles at a premium. Then the trademark could tell consumers about “good articles,” and then consumers’ benefit would be protected and sincere merchants’ well-being would be fostered.

It is certain that Korekiyo Takahashi, stimulated Amano in his book to think over the significance of trademarks for assurance of quality in commercial society.

#### Britain's Commercial Policies

Fourth, Amano illustrated economic policies, institutions, and regulations in detail from a practical perspective. He focused on Britain's cases because its commerce and industry were the most developed globally and its government policies seemed to be meticulously and completely stipulated.

Amano stated that the government should provide national defense, police, and judicial services in the way as explained in present economics textbooks.

He said, "The government must determine the monetary standard or legal tender and keep its stability." At the time, three monetary standards (the gold standard, the silver standard, and the bimetallic standard) were adopted in countries. Amano illustrated how each standard related to domestic banknote system. He paid special attention to Britain's Peel Act (1844) and discussed the relationship between the Bank of England and the British government. At the time, the Bank of England was a private institution and started to shift more focus on the operation of central banking.

Amano stated that the government must determine the system of weights and measures, and he discussed the metric system proposed by France instead of the British system.

Concerning government policies related to "public hygiene and security," Amano reported the British regulations and standard requirements. Britain had meticulously stipulated regulations and standard requirements in ships, railways, carriage-drives, (horse-drawn) carriage, harmful commerce, gas, electric lamps, chemical enterprises, smoke, explosives, houses, hotels, noodle-making factory, public houses (public buildings), theaters, livestock, etc.

Amano expounded the British trademark system and commercial law, and called attention to its bankruptcy law.

He discussed the monopoly enterprises run by the government or public

entities exhaustively and pragmatically referring to Britain's cases in the way that they could apply to Japan. The cases discussed in detail included railway enterprises, the transport of mails and parcels, maritime transport, communication enterprises (the delivery of letters and small parcels, telegraph, telephone, postal deposit, postal order, and money order), and gas supply. Amano paid attention to the fact that a private entity could keep the "secret in communication" in the transport and delivery of letters.

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