

REZENSIONEN / REVIEWS

KŌICHI TANIGUCHI/SUNAKKU KENKYŪ-KAI (eds.)
Nihon no yoru no kōkyō-ken: Sunakku kenkyū josetsu
[The Public Sphere at Night-time in Japan:
An Introduction to the Study of *Sunakku*]

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1. This is not a book on law in the narrow sense, though law professors have contributed a third of its chapters. This is a serious book, though its subject belongs to a somewhat informal sector of the economy. And this is a book that introduces readers to a world that they usually do not experience and gives insights into the law and society of Japan.

The subject of this book is “*sunakku*”, apparently coming from the English word “snack.” It is a category of the restaurant industry where inexpensive drinks and light food are served. The closest equivalents in Western society may be the pub in commonwealth countries or bars in Mediterranean countries. The conspicuous differences are that most *sunakku*'s are equipped with a Karaoke system available to the customers and that the manager (and often owner) of most *sunakku*'s is a woman, referred to as “Mama” (p. 11). Further, it must be emphasised that *sunakku* never offer sexual services (p. 119). The *sunakku* is without exception a small business, with only a couple of employees, if any (p. 108). The customers, mostly local residents, both male and female, enjoy conversation with each other as well as with the Mama, who is seldom below forty (p. 12).

The book is composed of an introduction and eight chapters, including also an interview of a journalist that is split into two and inserted in the beginning and the middle of the book. Three of the eight chapters deal with the legal and regulatory aspects of *sunakku*: covering issues regarding administrative regulations (Itō), criminal law (Kamei) and constitutional law (Shishido). Three other chapters offer historical insights into the subject, covering the pre-history of a similar dining service (Ida), discussing the history of political thought (Kōno) and providing a description of *sunakku* in news articles, essays and novels (Karube). The remaining chapters are the first, situating *sunakku* in the philosophical context of Japan and particularly in the tradition of Confucianism and native studies (*kokugaku*) (Takayama), and the last, which examines the social function of *sunakku* with reference to some data analysis (Arai).

The authors are all highly renowned professors. The leader of the project and editor of the book, Taniguchi, is a legal philosopher. There are two other law professors among the authors, namely, Kamei and Shishido, who are professors of criminal law and constitutional law, respectively. Two other authors, Itō and Arai, are political scientists, while four others are historians: Takayama is professor of Chinese literature in Japan, Ida is professor in Japanese art history, and Kōno and Karube are professors of political history.

2. Most Japanese law specialists (and Japanese studies experts) find it important to consider the social background of Japanese law, examining topics such as collectivist behaviour, peer pressure within communities, the contrast between thriving mega cities and struggling local areas, aging population demographics, and the (declining) practice of lifetime employment. However, it is not easy to identify the realities of Japanese society, even to a Japanese individual like the present reviewer, given the limited scope of experiences that a single person can have. This book can provide readers with insights on these social realities through an exploration of the history of *sunakku*.

While not precisely identified by records, the authors speculate that *sunakku* originated as a dining place offering snacks to US soldiers after the Second World War (p. 175). The economy's general dependence on the US military that was occupying Japan was a commonplace phenomenon in Japan until the early 1950s. Subsequently, as recounted in some newspaper articles and in a few reported court decisions from the 1960s, *sunakku*s appeared as fashionable places in Tōkyō for drinking and dancing, being typically populated by young people (pp. 83–84, 177–178). The Japanese society that was quickly recovering from the painful memories of war witnessed a mass of youngsters cavorting in downtown areas late at night. By the 1980s, as the Japanese society matured, the *sunakku* had penetrated into smaller and local cities, transforming into a more popular place for a gathering of local residents. Reflecting a society having little disparity, customers of various ages, professions and backgrounds enjoyed conversations with each other in a *sunakku* (p. 121).

The authors argue that *sunakku* have served as a communication forum in society. Reference to the *Öffentlichkeit* (public sphere), a famous concept coined by the German sociologist Jürgen Habermas, illustrates this point (p. 20). However, this public sphere in Japan, contrary to the public sphere in Habermas' writing, does not expect substantive discourse to take place. Rather, it is a forum for people wishing to socialize, a location where the customers learn to live elegantly, arguably retaining the tradition of "*mono no aware*" as described by the native studies theorist, Motoori Norinaga (p. 33). Kōno argues that this may reflect the informal aspect of the modern Japanese society, which remained unaffected even after Japan's encounter with West-

ern civilization in the Meiji era (pp. 162–165). Interestingly, Arai’s empirical analysis of data shows that the number of such informal public spheres correlates negatively with the identified number of crimes (p. 199). This outcome, which might remind the reader of the previous research on the role of social capital on neighbourhood disputes,¹ might imply that socialisation over drinks and karaoke at *sunakku* – as the Japanese version of the public sphere – effectively contributes to the better governance of local communities.

3. It is noted above that *sunakku* do not offer sexual services. However, it would be incorrect to see this as being explained by cultural factors, such as the morality of the Japanese people. In fact, Ida found that similar dining services existing before the Second World War, known as “cafés”, seem to have offered such indecent services. “Cafés” bloomed from the 1910s, probably inspired by the cafés in France, but the owners of the Japanese cafés employed young girls instead of garçons. The girls depended exclusively on tips from the customers and thus were prone to providing sexual services (p. 139). Such indecent practice can be seen in the *Café girl* case decided by the Great Court of Judicature in 1935.² The case is known as the leading case on *obligatio naturalis* in Japan, but the facts appear to involve a girl employed by a café in Ōsaka who had been cheated and exploited by a customer that apparently promised a certain amount of money to her as funds to start her own shop, most probably in return for her “service” (p. 140).

The sudden transformation of post-war *sunakku* into sound businesses can be attributed to regulations. The *sunakku* have been regulated by the Law to Regulate the Pleasure Business and to Introduce Rules on its Operations (*Fūzoku eigyō-hō*, hereinafter “the Law”). The Law distinguishes sexual pleasure businesses from non-sexual pleasure businesses offering “entertainment” to customers, and it requires both to apply for licenses from the National Police Agency in accordance with this distinction (p. 52). If the non-sexual business does not offer “entertainment” to the customers, it is not subject to the Law, being regulated instead only by the Food Sanitation Act (*Shokuhin eisei-hō*) administered by the Ministry of Health, Welfare and Labour. The meaning of “entertainment” (*settai*) of the customer is vaguely defined as “entertaining the customers by creating a hedonistic atmosphere” (Art. 2 (3) of the Law). In practice, the administrative notice issued by the National Police Agency elaborates on the term by stating that if an employee sits beside the customer and offers food or drink, or claps or applauds the (karaoke) singing by the customer, the business is “entertain-

1 M. WEST, The Resolution of Karaoke Disputes: The calculus of institutions and social capital, *Journal of Japanese Studies* 28 (2) (2002) 301.

2 Great Court of Judicature, 25 April 1935, *Hōritsu Shinbun*, no. 3835, 5.

ing” the latter (pp. 70–71). The interpretation implies that a *sunakku* is not entertaining the customer if the Mama stands face-to-face with the customer and offers drinks to the latter over a counter, which is usually the case. Inspections for compliance with these regulations are to be conducted by the police, but are in fact replaced by self-regulation through the Association to Improve the Pleasure-Environment. Itō does not fail to mention that the employees of the Association are often retired police personnel, implying the widespread existence of *amakudari*³ (p.60).

The fact that the regulation is implemented through an elaborate interpretation by the administrative authority and by self-regulation gives rise to questions as to the rule of law. Shishido recounts that on the occasion of the Law’s amendment in 1984, a member of the Japan Communist Party raised this point in the Diet and warned against the use of excessive police power (pp. 103–109). Thus, it was duly recognised that the government’s good faith efforts to eliminate indecent practices through regulation may nevertheless be prone to an abuse of regulatory power unless monitored by the democratic process. The seemingly informal sector is, in fact, a touchstone for the rule of law in Japan.

4. The book is well-researched, but there nonetheless remains the impression that the authors struggled with the subject. Ultimately, the authors have been unable to identify with precision just when and how *sunakku* transformed into contemporary casual drinking places in local cities. The role of *sunakku* as representing the public sphere is an interesting argument, but the supporting materials are anecdotal, other than some empirical analysis by Arai. The difficulties are apparently due to the paucity of documented records, this being attributable to the informal nature of the business category of *sunakku*. Interestingly for lawyers, the facts of court cases serve to supply records on even such an informal business sector and are useful to researchers. It is a blessing that the numerous court cases are now available for search within a database (p.84).

This being said, the difficulties that the authors struggled with are exactly the source of attractiveness of this book. It reveals aspects of Japanese law and society that can hardly be learned from ordinary (academic) materials. If one is interested in Japanese society and can read Japanese, the book will prove an excellent invitation into the unexplored realities of Japanese society.

*Souichirou Kozuka**

3 *Amakudari* (literally, “descent from heaven”) refers to an institutional – and often criticised – practice whereby retired bureaucrats are assigned cushy tasks in the public or private sector (*The Editors*).

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