

REZENSIONEN / REVIEWS

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The Japanese Legal System

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The publication by an American academic press of a new general text on the Japanese legal system is encouraging news for scholars of Japanese law in European languages. It suggests some success in efforts to defend our discipline against the disciplinary hand of market ideology in intellectual life, which is in so many areas seeing the scope of permissible enquiry contract around a nucleus of 'practical' content. The news gets better still on learning that the new market entrant – Professors JONES and RAVITCH's *The Japanese Legal System* – is an excellent book, careful study of which will make our students better jurists, and better thinkers. Presented as a 'hornbook', the text's primary audience is presumably students in US law schools studying Japanese law as comparatists. It aims to 'provide primarily western readers with an overview of the Japanese legal system'. It does so admirably, and is a worthy acquisition also for advanced students and scholars.

Chapter 1 comprises an Introduction in which the authors lay out the methodological and jurisprudential orientation of their work, alongside guidance through the challenges encountered in the study of Japan as a foreign legal system. In short, the authors' approach is contextual rather than abstractly doctrinal, setting out to explain 'who is able to accomplish what through the legal system in Japan and why' – and also avowedly sceptical of the explanatory power of 'culture'. Chapter 2 applies this orientation to a survey of Japanese legal history. JONES and RAVITCH present the law's evolution alongside political, economic and social change in the ancient, medieval, Edo, Meiji and Occupation eras. Chapter 3 describes Japan's governmental structures and the interactions between lawmaking and political life, alongside detailed cartography of various executive and legislative organs, including many often-overlooked parts of Japan's regulatory framework. Chapter 4 extends this institutional analysis to the judiciary, describing its development, internal organisation, operation and characteristic features. Chapter 5 outlines the sources of law in the Japanese legal system and corresponding law-making processes, including the status of precedent and legal scholarship. Chapter 6 concerns substantive constitu-

tional law, focussing on key areas of constitutional concern – the separation of powers, human rights, equality, and pacifism – as well as judicial constitutionality review. Chapter 7 relates to the legal professions, including the many kinds of legal professional operative in Japan, their respective qualification and licensing, and the relationships between them and with the wider system of law and government. Chapter 8's account of Japanese criminal justice surveys the institutions tasked with enforcing the law and charts the journey from investigation to conviction. While containing comparatively little substantive doctrinal criminal law, it devotes attention to police powers of investigation, pre-trial detention, and punishment. Chapter 9 is devoted to the Civil Code's provisions on family law and property rights, including succession, as well as the workings of the *koseki* system and its interaction with private family law. It also discusses access to Japanese citizenship and concludes with a description of private actions in tort. Chapter 10 deals with dispute resolution, both in general and in the context of a range of specific actions. It also covers civil enforcement, appeals, and alternative dispute resolution. The text concludes with Chapter 11's attention to the law most relevant to business: the law of contract and its application in commercial life, company law, market control and competition law, intellectual property, consumer protection, and select elements of employment law. The book's broad scope is complemented by its engaging style, making for an ideal student text. Throughout, information is permeated with reflection and critique in an accessible fashion. The authors moreover dedicate commendable effort to the disambiguation of terms and functions liable to confuse early entrants into the study of Japanese law.

Particularly valuable is the book's structural and systemic focus. It clearly aspires to introduce and analyse the Japanese legal system *as a system*, attentive to its various substantive areas and their relationships with other areas of the law and with extra-legal social factors. The authors succeed in presenting the Japanese legal system as an organised and formally rational order without overlooking its internal contradictions and practical shortcomings. This is a difficult fulcrum on which to alight, perhaps especially in comparative introductions to foreign jurisdictions. Many such works succumb to one of two competing dangers, either (i) presenting the target jurisdiction's law as a normatively arbitrary miscellany of practices, or (ii) implying a Panglossian belief in its coherence and intelligently designed, unitary *telos*.

More concrete points of particular quality include Chapter 2's account of Japanese legal history. Such chapters are often little more than a decorative curio to be dutifully included before the real work of comparative law begins. JONES and RAVITCH's chapter, in contrast, justifies its presence and integrates itself thematically into subsequent material. The historical work

here is less exoticised – and for that reason more engaging – than in many generalist accounts of Japanese law. The parallels, for instance, between medieval Japanese law and the common law/pre-Codification *ius commune* become more visible than in some other ‘summary’ treatments, which on scrutiny betray an assumed dichotomy between pre- and post-legality in Japanese society. JONES and RAVITCH show even at these early stages that ‘legality’ is socially contingent, non-linear, and understandable only in relationship with Japan’s political economy. In these and other discussions, some subjective authorial perspective is detectable, on topics where a plurality of reasonable opinions is possible. Inevitably this will not suit readers of all persuasions, but this reviewer at least welcomes such transparency in legal critique.

The book would be further strengthened by more thorough engagement with academic literature. Select references to favoured authors and materials are included in places, but footnote citations to scholarly discussions more generally would make the book useful as a point of departure for specific research. It is already an excellent roadmap with respect to primary materials (especially statutes) but less so for existing secondary literature, attention to which will of course become essential to students advancing to independent enquiry into Japanese law. That said, the book already has value to existing scholars beyond its utility as a student text. It is an excellent compendium for reference on specific points of Japanese governance which can indeed be – to use a word of which the authors are fond – ‘byzantine’. The book’s emphasis on dissection, taxonomy and classification will doubtless be valuable to many.

As noted, the authors consider Japanese culture ‘the last explanation [to be] looked to rather than the first.’ While this reviewer strongly agrees with such agnosticism, there may be a place for some enquiry into what (legal) culture should be taken to mean, and what exactly distinguishes it from social, political and economic phenomena. The book declines to consider in detail what the content of Japanese ‘legal culture’ may be. This is a refreshing omission in an introductory work on Japanese law. There are now whole books dedicated to the meaning and importance of ‘legal culture’ which do not yield answers helpful for the student beginning their studies of other systems of law. Because the matter has for so long bedevilled foreign (and domestic) account of Japanese law, it is easy to assume that any work on Japanese law must grapple with what is essentially a primordial question of legal theory and the sociology of law, beyond resolution from the perspective of any single jurisdiction. It is empowering and validating to see the authors reject the pressure to attend to this issue in an introductory comparative law textbook, simply because it happens to be on the law of Japan rather than (for instance) a European jurisdiction.

As a ‘hornbook’, the text is a physically handsome tome of robust cloth and gilt, and comes with a price tag to match: \$121 in hardcover, and a hardly less painful \$90.75 in ebook. In light of its considerable expense to the consumer, it is particularly aggravating that the book has a far higher than ordinary number of typographical, formatting and grammatical errors, some quite significant. More generally, the prose sometimes feels meandering and loose, implying a lack of dispassionate editorial attention. These features suggest a text hurried to press. What, one wonders, accounts for the significant purchase price, if the publisher is under-investing in the curation and presentation of the authors’ intellectual labour?

This book deserves to be the standard set text for English-medium instruction in Japanese law, but this requires publication in a format accessible to student budgets. Happily, it is now also available as *The Japanese Legal System in a Nutshell* – a counter-intuitive title for what comes, in paperback, to around 800 pages – also from West Academic Publishing, for \$50.00 or as a \$37.50 ebook.

Future editions of this textbook are anxiously awaited, and should see ‘Jones and Ravitch’ become a – if not *the* – central instructional text in the field. It is already the best single book of its kind on the market, and one that every teacher, scholar and student of Japanese law should own.

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