

MARK D. WEST,
Law in Everyday Japan: Sex, Sumo, Suicide, and Statutes

The University of Chicago Press, Chicago 2005, 256 p., US\$19.00, ISBN 0-226-89403-7

Its catchy subtitle notwithstanding, this book is a compilation of seven serious case studies, some of which are incredibly elaborated with numerous figures and tables. At the same time, the reader's expectations, evoked by the alliterative subtitle, of being presented with an entertaining reading are equally met.¹ Some of the case studies have been published previously in different law journals. From a European – in this case German – perspective, the book supplies a distinctly American analysis of Japanese law, opening a venue to comparative law that is refreshingly different from the approach usually chosen by the authors of the pertinent European works. Mark West, Nippon Life Professor of Law and Director of the Center for Japanese Studies at the University of Michigan, oscillates between – and even combines – the two dominant schools of legal scholarship in the U.S., “law and economics” and “law and society.” The author emphasizes that his work was driven by sheer curiosity rather than grand theory (p. 5). The richness of information that the book supplies is the obvious result of intense sociological fieldwork propelled by the author's deep intellectual curiosity. In spite of this presumed starting point, there is at least one overarching theoretical concept that prevails in all seven studies and has determined their order in the book: this is the (correct) assumption confirmed by all seven studies that “even” in Japan, law matters. To the uninformed reader – who would have no reason to question this – this result may sound rather trivial. But as the author himself very briefly indicates in his introduction, his research has to be seen against the background of four decades of discussion about the role of law in Japan. This discussion, triggered by Japan's notoriously low litigation rates, took place mostly between comparative lawyers in the U.S., or from the U.S., and from Japan herself.² To further his argument, West has avoided the “litigation rate” debate as well as “similarly ‘big’ topics such as corporate law and large-scale social issues” and has concentrated his research on the role of law in “everyday Japan” instead (p. 1).

Actually, in Germany there is a large body of literature dealing with legal issues in Japan that could be qualified as “everyday matters” – although their approach is quite different from that chosen by Mark West. A recently published 500-page study on consumer protection in Japan by Marc Dernauer that breaks down this rather general topic

1 This evaluation is shared by the otherwise rather critical review of the book by D.T. JOHNSON, cf. *The Journal of Japanese Studies* 32 (2006) 444 ff.

2 Cf. H. BAUM, *Rechtsdenken, Rechtssystem und Rechtswirklichkeit in Japan – Rechtsvergleichung mit Japan*, in: *RabelsZ* 59 (1995) 258 ff; slightly revised version in: *ZJapanR* No. 2 (1996) 86 ff.

in a multitude of sub-issues may serve as a representative example.³ Dernaue's study shows how Japanese law helps the average citizens in situations where they cannot, for whatever reasons, take care of their interests themselves, e.g., for reasons of information asymmetries. The underlying assumption is, of course, that law does matter in these issues. The aim of the study is to fathom how it works and whether there is an overarching coherent principle of protection of the average Japanese consumer, investor, and the like. Given the manifold conceptual similarities between Japanese and German law, this approach is likely to work and deliver interesting comparative insights, even if falling into a category that Mark West seems to dismiss, rather critically, as a "law-first perspective" (p. 4).

Mark West himself has chosen a couple of scenarios placed in the midst of ordinary Japanese life; most of these appear to be typically "Japanese." Chapter 2 of the book starts with an everyday occurrence: lost-and-found practices (pp. 9-55). The author undertakes to show why Japan is a loser's paradise by analyzing the institutional framework of Japan's lost-and-found system. This works as a carrot-and-stick mechanism provided by a well-balanced interplay of civil and criminal law. The latter is supplemented by well-functioning corresponding public institutions and, equally important, a socialization of these settings. The author's impressive fieldwork includes interviews and experiments as well as data analysis and surveys, and delivers convincing results by showing a functional mix of law and social control norms.

Chapter 3 deals with Sumo wrestling and the relation between law and norms in this centuries-old Japanese institution (pp. 57-88). The author gives an intriguing insight into the hidden world of Sumo and the way rules and norms interact to maintain control within the Japanese Sumo Association.

The next analysis discusses a more recent Japanese phenomenon, karaoke (pp. 89-124). The problem that the law has to deal with in this context is the noise pollution created by the ubiquitous karaoke machines installed in countless Japanese bars, and special boxes that are often situated in residential neighborhoods. The emphasis here is on the question of why people whose life at home is impaired by the noise rarely sue the owners of the karaoke bars. Though the author himself finds it difficult to blend his findings into a clear model that could explain the "function of a complex calculus of institutionally determined costs and social capital" (p. 124), this chapter constitutes one of the highlights of the book.

The ensuing fifth chapter is a fairly brief examination of the role of law in solving disputes between the owners of condominiums in Japan, with a focus on the difficulties the owners faced after the Kobe earthquake of 1995 (pp. 125-143). Chapter 6 casts light on a very Japanese phenomenon: the ubiquitous though not much-discussed "Love Hotels" (pp. 145-189), and is in fact the part that the pointedly used word "sex" in the

3 M. DERNAUER, *Verbraucherschutz und Vertragsfreiheit im japanischen Recht* (Tübingen 2006).

subtitle refers to. The business of supplying rooms for having (undisturbed) sex for married as well as unmarried couples has developed into quite an industry in Japan. The author shows how a legal reform in 1985 did not restrict this business but, quite contrary to the lawmakers' intent, substantially promoted the industry. This case study is a perfect example to prove that law in Japan works and does have an impact on daily life. It is also another highlight of the volume.

A more conventional topic is that of working hours in Japan (pp. 191-214). The author shows how strict, judicially created rules regarding the dismissal of employees have in effect contributed to extremely long working hours on the one hand, and how recent reforms of law regarding working hours and temporary employees are expected to reduce these on the other. In this context again, social norms play a powerful role, but legal institutions do still matter. In his last case study, the author takes up a rather depressing aspect of Japanese social life: the high rate of suicides, especially the so-called "debt-caused suicides" (pp. 215-265). Japan's prolonged economic crisis and the country's dysfunctional legal regime of handling excessive private debts has created a vast underground debt regime. This in turn has led to an intolerably high number of suicides when people see no way out of their indebtedness. Because in Japan the stigma of suicide is low and that of bankruptcy is high, people opt for the socially more "acceptable" solution. The author's ambitious attempt is to show that legal institutions can make a decisive difference in this setting, and to emphasize the positive effects that the new Civil Rehabilitation Act will probably have in this regard.

The book closes with some tentative, not overly elaborated conclusions (pp. 267-270).⁴ In general terms, they can be summarized as follows: In everyday Japan, law is as plentiful as social norms, and legal institutions do actually matter in the interplay between those rules and norms. Though these findings may not come as a surprise, they convincingly refute the widespread assumption that relationship and social customs in Japan prevail over legal rules (p. 268). One surely agrees with the author that the previous debate on Japanese law – focused on lawyers, the number of lawyers, and lawsuits in Japan – has been far too narrowly focused. However, as already mentioned, this aspect has never been emphasized (at least from a German perspective) to the degree that it obviously has in the U.S. comparison of law with Japan. The work of Mark West clearly shows how fruitful a broad methodological approach can be in comparative law. In sum, the book provides for very rewarding and most stimulating reading!

Harald Baum

4 This is the major critic of JOHNSON, *supra* note 1.