

REZENSIONEN / REVIEWS

DIMITRI VANOVERBEKE,
*Community and State in the Japanese Farm Village:
Farm Tenancy Conciliation (1924-1938)*

Leuven University Press (Leuven, Belgium, 2004) 200 pp.; ISBN 90 5867 307 3

This is a fascinating and detailed study, based on the author's doctoral thesis at Leuven University and some related articles published in journals which deserved the broader audience that this book will hopefully reach. The research focuses on the system for mediating disputes between farmer tenants and their landlords, which was developed in Japan between the two World Wars. Although the book ends with only a few brief allusions to developments in Japanese law and society more generally after World War 2, Vanoverbeke suggests parallels with the post-War "system unconsciously designed to contain social grievances and to alter the status quo, labeled 'Bureaucratic Informalism' by Frank Upham" (p. 168).¹ However, Vanoverbeke's analysis of pre-War farm tenancy dispute resolution identifies the multi-faceted character of systems, and offers historical insights relevant also for Japan's current wave of legal and social reforms.

Part 1 of the book (pp. 25-102), not revealed by the sub-title of the publication, sets the stage by examining "the growth and collapse of the farmer community, 1600-1917". Chapter 1 (pp. 27-48), supplemented by sections of the preceding Introduction (pp. 11-24), briefly provides an orthodox account of the Confucian order established in the Tokugawa period (1603-1868).² Tenant farmers benefited by having to pay levies to feudal lords, rather than being subjected directly to the authority of local landlords; but the system relied on paternalistic benevolence by social superiors rather than farmers' enforceable "rights". Land ownership and tax law reforms were introduced after the Meiji Restoration in 1868, but the Civil Code of 1898 ended up undermining traditions that had made

1 F.K. UPHAM, *Law and Social Change in Postwar Japan* (Cambridge 1987). See also F.K. UPHAM, *Weak Legal Consciousness as Invented Tradition*, in: Vlastos (ed.), *Mirror of Modernity: Invented Traditions of Modern Japan* (Berkeley 1998) 48. But cf. UPHAM, *Privatized Regulation: Japanese Regulatory Style in Comparative and International Perspective*, in: *Fordham International Law Journal* 20 (1996) 396, suggesting more industry dominance. Interestingly, moreover, Vanoverbeke reads the seminal work of *Takeyoshi Kawashima* in the 1950s as arguing already that "the lack of familiarity with formal law and litigation in modern Japan was not due to persisting cultural attitudes among citizens, but was rather the result of a conscious effort on the part of Japan's ruling elite to maintain an underdeveloped legal consciousness among the common people".

2 Cf. e.g. H. OOMS, *Tokugawa Village Practice: Class, Status, Power, Law* (Berkeley 1996), emphasising more contestation and variability in Tokugawa life.

farm tenancy bearable. For example, the Code limited the duration of tenancies to one year, unless a written contract was negotiated, in which case other terms could be drafted instead in the landlord's favour. Vanoverbeke ties such "legislative pro-landowner bias" to restricted suffrage, requiring for example minimum tax payments, and argues that the bias also discouraged tenants from bringing cases before the newly established courts. However, Chapter 2 (pp. 49-75) identifies growing "trouble in the village" over the first two decades of the 20th century, as the industrialisation intensified in Japan, resulting in absentee landlords and the emasculation of agricultural production needed to sustain the country's economic modernisation. As detailed in Chapter 3 (pp. 77-102), this ended up changing "models of conflict resolution in the farm village", with escalating tenancy disputes particularly over the 1920s. Absentee landlords lost authority to resolve these disputes and police involvement provided only a partial and repressive substitute, while farmers joined together in increasingly militant "unions".

Part 2 (pp. 105-170) explains the state's response to this crisis, arguing that the system involving Ministry of Agriculture bureaucrats dispatched to the villages "combined modernity with tradition" (p. 19). Chapter 4 (pp. 105-28) examines "the legal groundwork for a farm tenancy conciliation system. Although universal suffrage was achieved, the Civil Code provisions were not amended. Instead of relying on reform and application of substantive law reform, a new mediation procedure was introduced by the Farm Tenancy Conciliation Law of 1924 (translated at pp. 171-8). The procedure could be invoked by either party, suspending litigation, and involved a conciliation committee comprising a judge and two laypersons – often landowners. However, Chapter 5 (pp. 129-56) elaborates on the roles played by "tenancy officers", provided by the Law. Vanoverbeke emphasises how these bureaucrats could – and, increasingly, did – help farmers by making applications, representing them in conciliation proceedings (where union advocates and lawyers were excluded), providing reports to the conciliation committee, and even often serving as mediators in more informal pre-conciliation dispute resolution. Chapter 6 (pp. 157-170) concludes that the tenancy officer thus played a more general role as "mediator between tradition and modernity". The modern state was brought into often isolated villages. However, while this disrupted tradition, requiring traditions to be rethought and reworked given Japan's new national (and even international) imperatives, it did so less abruptly and more flexibly than substantive law reform. The conciliation system "simplified the legislative response to a highly sensitive problem in a rapidly changing society". It led to a new consensus culminating in the 1947 Land Reform initiative, preventing that "being a change so drastic it could have further undermined the social order" (p. 169).

The book ends rather abruptly here, but implies that such substantive law reform within Japan's "second wave" of modern law reform during the post-War Occupation era represented a further milestone in the march towards modernity. Following that

logic, is the final milestone – the “end of history” for Japan³ – going to be the combination of substantive law reforms and bolstering of the civil justice system unleashed by a new round of economic and political dislocation,⁴ not unlike the turmoil of the inter-War era sketched by Vanoverbeke? Or should we draw on a more basic insight from his analysis, uncovering a more perennial tension between tradition (or “community”) and modern law, in Japan but also other complex industrialised democracies?⁵ This book provides rich food for thought for those interested in such pivotal contemporary issues, and no doubt we can all look forward to answers from Vanoverbeke in his ongoing work.

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- 3 Cf. L. NOTTAGE / L. WOLFF, Corporate Governance and Law Reform in Japan: From the Lost Decade to the End of History?, in: Haak / Pudelko (eds.), Japanese Management: In Search of a New Balance between Continuity and Change (New York forthcoming).
 - 4 Cf. generally J. KINGSTON, Japan’s Quiet Revolution: Social Change and Civil Society in the Twenty-First Century (London 2004).
 - 5 Favouring the latter view, see e.g. T. TANASE, *Soshō riyō to kindai-ka kasetu* [Use of Litigation and the Modernisation Thesis], in: *Minji soshō-hō riron no arata na kōchiku* [New Constructions in Civil Procedure Law Theory] (Tokyo 2001). Compare e.g. T. GINSBURG / G. HOETKER, The Unreluctant Litigant? An Empirical Analysis of Japan’s Turn to Litigation, U. Illinois Law and Economic Research Paper No. LE04-009 (available via <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=608582>).