

## **Japanese Law in the Low Countries and France: A Brief Outline of Changing Perceptions in a Changing World**

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Many scholars in the low countries (the Netherlands and Belgium) and France have been interested in various aspects of Japanese law. Because interest involved both scholars and practitioners, and because of close links between the two groups, there has not always been a clear division between socio-legal work and black-letter law as the colloquium organizers have suggested exists in other “worlds” of Japanese legal studies.<sup>1</sup> The success of the Japanese economy in the 1960s spurred interest in Japanese law beyond the academic world, but initially, most observers had to rely on sources written in English. Gradually, however, articles and a few books were written in French and Dutch, and provided lawyers, businessmen and other people interested in Japanese law access to Japanese law in their own language. Various phases or periods can be seen in the perception of Japanese law in France and the low countries. The themes in and approaches to Japanese law developed over time along with the social environment and political and economic demands of French and Dutch societies. I will (over)generalize by dividing the views of Japanese law in France and the low countries into several phases.

The first phase of the perception of Japanese law in France can be situated at the end of the 19th century. Publications in French on Japanese law start very early, and by the end of the 19th century, there was a vivid interest in Japanese law in France due to the activities of French legal scholars in Japan. *Georges Bousquet* and *Gustave E. Boissonade* were doubtlessly the best known. Boissonade was charged with drafting the penal and civil code. Several other legal scholars spent time in Japan and used the opportunity to report about legal developments there.<sup>2</sup> After this initial interest, little more was published in French on Japanese law before the Second World War, and we have to wait until the early 1950s for new attention to Japanese law in France.

The second phase in the interest in Japanese law was motivated to a large extent by the interest in comparative law, which started in France well before the Second World War, but which did not focus on Japan until the work of *René David*.<sup>3</sup> David asserted

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1 See T. GINSBURG/L. NOTTAGE/H. SONO, The Worlds, Vicissitudes, and Futures of Japan’s Law, in: id. (eds.), *The Multiple Worlds of Japanese Law: Disjunctions and Conjunctions* (Victoria 2001) 1.

2 G. BOUSQUET, *Les mœurs, le droit public et privé du Japon: Revue des deux Mondes*, vol. 8 (1875).

3 R. DAVID, *Les grands systèmes du droit contemporains: Japon* (6th ed., Paris 1974).

that the Japanese legal system fitted into the Far Eastern legal family, in which rites played a dominant role and law was secondary.<sup>4</sup> Which were these rites? The first real monograph on Japanese law in French, *Yoshiyuki Noda's* "Introduction au droit japonais", attempted to provide an answer to this question, and thus reflected a cultural approach to the study of Japanese law rather than a focus on practical, black-letter concerns.<sup>5</sup> Although it has been criticized for its reliance on cultural explanations and its invocation of the "spirit" behind the law, Noda's study was an important step forward as an introduction of the study of Japanese law at French-speaking universities. Even today, it is a widely read and still highly relevant introduction to Japanese law. The cultural approach was also reflected in several important articles in the *Revue Internationale de Droit Comparé*, the leading comparative law journal published in France. These focused on the history of the legal consciousness of the Japanese and the influence of French law on the Meiji Japanese legal system.<sup>6</sup>

A second monograph on Japanese law appeared by the hand of *Dominique T.C. Wang*, a Chinese scholar of comparative law, who wrote an introduction to the sources of Japanese law.<sup>7</sup> Although very much in accord with Noda's book, Wang's main focus is black-letter law. This work is also useful because it lists primary and secondary references on Japanese law. It therefore aims at a readership consisting not so much of anthropologists or sociologists, but rather at the lawyer with a comparative interest and at the business person with an interest in the Japanese market. This reflected a shift in the 1970s from a general cultural interest in Japan towards a specific interest in doing business with Japan.

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- 4 R. DAVID, *Traité centenaire de droit civil comparé* (1950) 388-389, cited in: H. ODA, *Japanese Law* (2nd ed., Oxford 2000).
  - 5 Y. NODA, *Introduction au droit japonais* (Paris 1966); ID., *Le droit japonais*, in: *Encyclopaedia Universalis*, vol. 9 (1968) 348; ID., *Le développement du droit comparé depuis 1869 et la situation actuelle des études comparatives du droit au Japon*, in: *Livre du Centenaire de la Société de législation comparé*, vol. 2 (1971) 411. Noda's pioneering textbook was also an early example of bridging the worlds of Japanese law. A New Zealand law professor studying in Strasbourg came across the French original, and translated it into English for publication in Japan: Y. NODA, *Introduction to Japanese Law* (Tokyo 1976) (transl. by A.H. Angelo). Appearing at a time when very little writing on Japanese law in English was available, this translation was widely read in the English-speaking world.
  - 6 T. AWAJI, *Les japonais et le droit: Revue Internationale de Droit Comparé* (hereafter RIDC), vol. 28 (1976) 235-250; T. TANIGUCHI, *La revision du Code civil japonais et les conceptions actuelles du mariage au Japon: RIDC* 67-76 and also I. KITAMURA, *Une esquisse psychoanalytique de l'homme juridique au Japon: RIDC*, vol. 39 (1987) 791-823. For some articles on the influence of French law on Japanese law see M. ISHIMOTO, *L'influence du Code civil français sur le droit civil japonais: RIDC*, vol. 6 (1954) 744-752; Y. NODA, *La reception du droit français au Japon: RIDC*, vol. 15 (1963) 543-556. These are just some of the many articles which appeared in the RIDC on Japanese law. Most of these articles were written by eminent Japanese scholars who studied in France.
  - 7 D.T.C. WANG, *Les sources du droit japonais* (Genève 1978).

From the beginning of the 1970s onwards, Japan was no longer considered a completely traditional society in which law played only a secondary role. Japan secured its place on the international scene as a complex industrialized society with the same problems and issues as were facing other industrialized countries such as France, the Netherlands or Belgium. Black-letter law played a primary role in economic and social ordering. The awareness that Japan was more than an exotic curiosum prompted a third phase in the perception of Japanese law. Articles on environmental law, commercial law and other specific fields became more common.<sup>8</sup> The time for mere admiration of the Japanese success story was over and a more critical perspective emerged. A case which had drawn attention of media all over the world, for example, was the environmental pollution by mercury which caused the deaths of many inhabitants of a fishing village in Minamata in southern Japan. How did a highly industrialised country such as Japan deal with pollution that occurred in a highly traditional place? This issue was of interest to scholars in Western countries, and publications followed.<sup>9</sup>

France was not the only European country outside Germany and England to develop academic activities concerning Japanese law. Japanese businesses increasingly attracted the attention of legal scholars in Belgium. In Belgium, at the Katholieke Universiteit Leuven (KUL), the research section of labour law headed by professor *Roger Blanpain* did much work in the field of Japanese labour law. This research group was motivated by the increasing presence of Japanese multinationals in Belgium and by the observation that labour relations in those firms were quite different from those in a Belgian company. For example, the position of the female employee in Japanese firms attracted interest in Belgium.<sup>10</sup> This interest was not limited to Belgium but has to be understood in the broader context of the ongoing unification of the EU. Comparison of European labour law and related topics was a high priority in the interaction between policy making and academic research. Relevant in this respect was an initiative at the Katholieke Universiteit Leuven where the cooperation between *Tadashi Hanami* (Sophia University, Tokyo) and Roger Blanpain gained momentum in 1989 with the creation of the Euro-Japan Institute for Law and Business (EJIB), and resulted in a 1992 confer-

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8 In the field of commercial law see for example: K. YAMAMOTO, Japon: Notice du droit privé: *Annuel de législation française et étrangère*, vol. 18 (1969) 407-410; G. AUCHTER, *Les transports maritimes en droit japonais: Le droit maritime français*, vol. 22 (1970) 500-508; B. GOLLNISCH-FLOURENS, *La Yûgen Kaisha, la société limitée*, in: *Travaux de l'institut de droit comparé de Paris, dirigés par R. Rodière* (1977).

9 K. KAWAI, *La situation actuelle de la pollution de l'environnement au Japon et les taches des juristes: Revue de droit comparé*, vol. 18 (1971) 50-56.

10 J. DUMORTIER/T.A. HANAMI, *Japanese Multinationals and Labour Relations in Belgium*, in: R. Blanpain (ed.), *European Conference on Labour Law and Industrial Relations*, *Bulletin* 10 (1979) 113-197; R. AKAMATSU, *The Legal Status of Female Labour in Japan*, in: *Bulletin of Comparative Labour Relations*, *Bulletin* 9 (1978) 249-269.

ence on industrial relations and human resource management in Japanese enterprises in Europe.<sup>11</sup>

At Dutch universities, some interest in Japanese law can be seen before the Second World War. This was due to the privileged position that the Netherlands held in Nagasaki during the Tokugawa era as the only western nation to be granted access to Japan and, more important for the Dutch, to the Japanese market. In the present century, some early interest in development in international law between the two countries can be seen.<sup>12</sup> Since the 1960s, there has been newfound interest at Dutch universities in Japanese penal and civil law. At the law faculty of the university of Utrecht and the Japanese studies section at the University of Leiden, the actual study of Japanese law was initiated by the legal scholar *Antonie Peters*.<sup>13</sup> His main interest was in penal law in Japan, but gradually his interest grew into broader issues of law and society in Japan.<sup>14</sup> He also motivated many scholars and practitioners to compare civil law in Japan and in the Netherlands.<sup>15</sup> Several of his students took up interest in other aspects of positive law, and combined that interest with a broader sociological perspective.<sup>16</sup> Most of the students obtaining a degree in Japanese law in the Netherlands and Belgium are doing so in Japanese studies sections; but, after a thorough education in law at the law faculty, these scholars have access to primary material in Japanese. The abundance of sources in English, nevertheless makes it possible for people educated in the law faculties without Japanese linguistic knowledge to access topics related to Japanese law in a thorough way.<sup>17</sup>

In sum, the cooperation of law faculties and sections of Japanese studies in their different approaches to Japanese law makes it very hard to draw a clear distinction between the emphasis on black-letter law or in socio-legal studies. In France as well as

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- 11 R. BLANPAIN/T. HANAMI, *Industrial Relations and Human Resource Management in Japanese Enterprises in Europe* (Belgium, France, Germany, Italy, The Netherlands and the United Kingdom) (Baden-Baden 1993).
  - 12 E.N. VAN KLEFFENS, *De internationalrechterlijke betrekkingen tusschen Nederland en Japan (1605-heden)*, Uitgave van de Japansche Commissie der Vereeniging tot verbreiding van kennis over Nederland in den vreemde, number 5 (1919).
  - 13 A.A.G. PETERS, *Comparative Survey of Juvenile Delinquency in Asia and the Far East*, (Tokyo, UNAFE Institute, 1968).
  - 14 A.A.G. PETERS, *Recht en samenleving in Japan* (Arnhem 1993).
  - 15 *Publications of the International Center for Comparative Law and Politics, Dutch and Japanese Laws Compared*, University of Tokyo, International Center for Comparative Law and Politics, Proceedings of the symposium 9-10 November 1992.
  - 16 F.B. VERWALJEN, *Early Reception of Western Legal Thought in Japan, 1841-1868* (Ph.D. at Leiden University 1996); W.M. VISSER 'T HOOFT, *Japanese Contract Law and Anti-trust Law and the Unilateral Termination of Distribution Agreements* (Ph.D. at Leiden University 2000).
  - 17 See for example the thorough study on employment termination law, relying heavily on English sources, by H.J.J. VAN VOSS, *Ontslagrecht in Nederland en Japan: de spanning tussen zekerheid van de dienstbetrekking en flexibiliteit van de onderneming* (Deventer 1992).

in Belgium and the Netherlands both sides of the coin can be seen, and thus both “worlds” are mixed and most often considered complementary. The cultural approach based on *Takeyoshi Kawashima*’s widely read article on dispute resolution in Japan<sup>18</sup> and Yoshiyuki Noda’s introduction into the “spirit” of Japanese law<sup>19</sup> seems to have persisted to a certain extent, but a more rational approach to Japanese law and society is probably what most researchers in Japanese law nowadays are aiming for. The interest in Japanese law at this period enters a new phase, focussing on problems related to the unification of Europe. The importance, for example, of competition law for Japanese companies in the EU has drawn the attention of some scholars. The above-mentioned initiatives in labour law have also been recently reactivated, and in various other fields there are important interactions and comparisons to be drawn between European and Japanese law. The future is bright for Japanese legal studies in the low countries and France.

#### ZUSAMMENFASSUNG

*Diese Abhandlung beschreibt die Entwicklungsphasen der Auffassungen zum japanischen Rechts in Belgien, den Niederlanden und in Frankreich. In den fünfziger und sechziger Jahren hatten Rechtswissenschaft und Landeskunde einander ähnliche, auf einem aus der Rechtsvergleichung kommenden starken kulturellen Interesse basierende Ansätze zum japanischen Recht. In den siebziger und achtziger Jahren hingegen führten die zunehmend wechselseitigen Wirtschaftsbeziehungen zwischen Europa und Japan zu einem Anstieg des Interesses an spezifischen Aspekten japanischen Wirtschaftsrechts, allerdings ohne Verringerung des Interesses an Gesellschaft und Kultur. Heute vereinen Rechtswissenschaften und Landeskunde ihre Stärken und werden dies im Hinblick auf ein erneutes Interesse am japanischen Recht in einem vereinten Europa auch weiterhin tun.*

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18 T. KAWASHIMA, Dispute Resolution in Contemporary Japan, in: A.T. von Mehren (ed.), *Law in Japan: The Legal Order in a Changing Society* (Harvard 1963) 41-48.

19 See *supra* note 5.