

## Kyoto Seminar & Tokyo Seminar: “Japanese Law in the Global Era”

### Impressions of an Italian Researcher in Kyoto

A few years ago I learned about the Kyoto Seminar and Tokyo Seminar,<sup>1</sup> two intensive courses on Japanese law (and the economy) organized by Ritsumeikan University in cooperation with the Australian Network for Japanese Law (ANJeL).<sup>2</sup> For the 2012 Seminars five days in Kyoto and two days in Tokyo were designed.

The program and structure of the courses, at a first glance, seems to be specifically conceived for Australian law students: the overview on Japanese legal system is carried out by presenting some selected topics, basically with a perspective of comparison between Japan and Australia. But the first glance may be deceiving, as I will explain later.

The intensive program of Kyoto Seminar included many subjects. First of all, a general introduction of Japanese legal system, presented in a historical-comparative fashion: the evolution of Japanese law and its peculiar setting in the framework of the so-called “legal families”. After that, a class on gender & the law was carried out, with special attention on equal opportunities and fair treatment at the workplace, both in terms of career and task-assignment and of sexual harassment prevention. In the class about criminal law and procedure a number of contemporary issues were dealt with, such as the contested topics of the mixed jury system (*saiban'in seido*), the guarantees for the suspect during preliminary investigations and pre-indictment arrest, and the attendance of the victims (or the victims' relatives) of the process. The following class on civil procedure and litigation was focused on the comparison between the Japanese and Australian (and US) models, considering the outset of the process and the different approach to the duty to disclose, the powers of judge and the duties of the parties in providing evidence.

A presentation devoted to legal professions, with a strong focus on the role of foreign lawyers qualified to work full-time in Japan, the *gaikokuhō jimu bengoshi*, was conducted as a “double duet”: the lecture was held by a Japanese attorney, an American *gaikokuhō jimu bengoshi*, and two Australian professors.

The following class, about law and consumers, gave the students a general outline of the historical evolution of consumer protection in Japan, and many details about the

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1 <http://www.kyoto-seminar.jp>

2 [http://sydney.edu.au/law/anjel/content/anjel\\_teaching\\_pro.html](http://sydney.edu.au/law/anjel/content/anjel_teaching_pro.html)

present legislation on the complex system of administrative authorities competent to deal with consumer-related issues (such as defective products). After that, a detailed scheme of the state-citizen relationship, in the light of access official information was presented. The duties of the state and local offices and the symmetrical rights of the citizens were outlined. Some practical cases were presented to clarify the legislative framework. The Kyoto Seminar closed with a lecture on some key issues of Japanese constitutional law: from the historical analysis of the present Constitution's complex birth to the well-known debate about constitutional pacifism.

A Japanese and an Australian lecturer jointly conducted each class: this, as I will elaborate below, is particularly clever and interesting. The Seminar was enriched by some field experiences and social events. In the first category, there was a truly eye-opening visit to the Osaka District Court, where students had the occasion to attend a criminal hearing (and discovered that "criminals" in Japan, despite the collective imaginary of tattooed gangsters, appears to be mostly low income old men). In the same day, Osaka-based law firm Kitahama & Partners kindly opened its offices to participants, to allow them getting a first-hand experience of an internationally oriented Japanese law firm. As for social events, the first day of the Seminar was concluded by a welcome party, attended by students, speakers and organizational staff – and some other "spontaneous" occasions were later organized by participants during the week.

Tokyo Seminar on "Japanese Law and Economy", this year in a "compact" two-day version, was opened by a general introduction on the Japanese economic system, followed by a detailed explanation given by a METI officer about possible future trade agreements (both bilateral and multilateral) between Japan and other countries especially in the Asia-Pacific region.

The following class on corporate governance focused on the famous (or infamous) Olympus case, and in particular on the reasons why the internal control mechanisms failed to prevent the fraud and hindered the discovery of hidden losses. Students had been asked to read the preliminary report by the investigators as preparatory reading to stimulate debate during the class.

A lecture on recent developments of labor law followed. Great attention was given to the fact that the almost legendary "long-life employment", celebrated in previous decades as an (alleged) distinctive feature of Japanese employment system, is now being quickly eroded by frequent temporary and unstable working contracts.

The final day of the Seminar was opened by a morning lecture devoted to Japanese financial system, with a specific focus on regulation of investments and financial services. In the afternoon, and insightful lecture on arbitration (both in historical and contemporary perspective) was given. The class was made particularly captivating by presenting to the students a number of practical cases. The last presentation, offered by the inhouse counsels of one of the major Japanese corporation group, showed the complex

problems, not only strictly legal, that an in-house lawyer has to face when working in an internationally-focused corporation based in Japan.

In Tokyo there were some social events too: at the end of the first day, speakers and students met for a pleasant *nomikai* exchanging ideas and impressions on the Seminar – and drank together a good glass of wine!

As stated before, at first glance the Seminars seem to be specifically, if not solely, conceived for Australian law students. But this must not mislead you: I am a student only in a broad sense (and I am not Australian even in the broadest sense!) but I found the experience exceptionally interesting. And I feel like recommending attendance to all the (young and less young) colleagues interested in Japanese law, for a number of reasons.

First of all, speakers were among the leading experts in their respective fields. It was a unique occasion to meet, in the same place, some of the most representative scholars of contemporary Japanese law. Social events were the occasions to have conversations with people you usually just read articles of in specialized law reviews. Even expert scholars may benefit a lot from such conversations.

Moreover, a Japanese and an Australian speaker carried out almost all lectures jointly: a nice occasion to see comparative law in action. From my European point of view (being myself a civil lawyer trained in a Continental European legal system) I never paid great attention to some features of Japanese law that the eye of a lawyer trained in a common law system immediately sees as peculiar. Are they really peculiar, or is just a matter of Kantian “blue lenses”? Just reflecting about the question is fascinating.

The composition of the participants, too, reflects a comparative approach. Of course most of the students come from Australian universities, but there are also Japanese students from the Ritsumeikan Law School (and even some European “aliens”: for example, myself). The interaction between an Anglo-Saxon and a Japanese approach generates a fruitful and interesting debate (although I noticed some difficulties – or maybe some embarrassment – in Japanese students, some not very comfortable in communicating in English). While the number of students was quite large (more than sixty in Kyoto and about thirty-five in Tokyo), the class was divided in smaller groups, specifically conceived to alternate nationalities and training level. During each lecture, at least twenty minutes were devoted to a debate within each group to discuss the topics dealt with. To me, used to interact with students mostly as a lecturer, this was also a useful experience.

When enrolling in the Seminars, you are allowed to access an Internet-based “moodle” with a number of readings (in English) on each topic dealt with in the course. While most materials are well-known to specialists, some documents (like newspaper articles, ministerial reports, etc.) are quite difficult to find. Also, having all the readings grouped under each topic provides you a complete set of information for each class – and even a quite complete update on the subject.

On a general level, I think that attending the Seminars is a wonderful experience for students interested in Japanese law. Of course, there are factors to be considered: the

enrolling fee is not high, but neither just a token payment. Students also have to bear transportation and accommodation costs for the travel to Japan. Nevertheless, it is almost impossible to find such a complete and intensive course – in English! – on Japanese law. After just one week and a half a student may have a complete (although of course introductory) overview of the Japanese legal system. Other universities should think about the solution adopted by the Australian universities, *i.e.* granting home institution course credit for attendance, to further encourage students may to come to Japan (I underline, however, that – credits or not – the experience is without doubt worth, both for the information provided and as a life experience).

For older participants, the Seminars offer of course less from the perspective of gaining new information. Those studying Japanese law professionally know most of what is presented during the lectures (but of course nobody is a specialist in every field, and even the most expert scholar still has the occasion to learn something in the Seminars. As Russians say, *век живи век учись* – there is no end to learning!). However, I still feel like suggesting attendance to fellow researchers and professors. As mentioned before, there is the possibility to meet some leading experts of the field; while it is still possible to meet professors also at seminars and conferences, it is more complicated to meet in-house counsels, practicing attorneys and ministerial officers (without planning specific meetings). Moreover, the Seminars are really useful in terms of learning how to teach Japanese law. Before moving to Japan I was teaching Japanese law to Japanese language students at the “Ca’ Foscari” University in Venice: the Seminars gave me a substantive number of hints and suggestions for future teachings.

Furthermore, almost everybody who studies Japanese law loves Japan and likes to spend time in Japan. It is a very good occasion for a two-week visit to both Kyoto and Tokyo. I would like to close my short report using the words of Curtis J. Milhaupt, J. Mark Ramseyer and Michael K. Young on Japanese law: “We find it fun”. And, during Kyoto and Tokyo Seminars, I had fun, too!

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