1-1-2018

Book Review: Legal Scholarship in Japan

Daniel H. Foote
University of Washington School of Law, footedh@uw.edu

Asian Journal of Law and Society, 5 (2018), pp. 205–219

Book Reviews

Legal Scholarship in Japan

Keiichi Ageishi, Hiroshi Ōtsuka, Katsuhiro Musashi, & Mari Hirayama, eds., *The Legal Process in Contemporary Japan: A Festschrift in Honor of Professor Setsuo Miyazawa's 70th Birthday* (Tokyo: Shinzansha, 2017) pp 832. Hardcover: $310.00.
doi:10.1017/als.2018.2
First published online 30 January 2018

『宮澤節生先生古希記念：現代日本の法過程』 *The Legal Process in Contemporary Japan: A Festschrift in Honor of Professor Setsuo Miyazawa's 70th Birthday* (Shinzansha 2017) is a great achievement. As its subtitle reflects, this set of essays is a *festschrift* in honour of Professor Setsuo Miyazawa. It is a fitting tribute that bears several important parallels to his outstanding career.

The first such parallel is its sheer size. Throughout his career, Miyazawa has been a prolific researcher and scholar. The bibliography of his works, included at the back of the *festschrift*, runs to 25 pages in small type, with many books and articles in English. As befits Miyazawa's own tremendous output, the *festschrift* runs to well over 1,500 pages, with essays by 71 contributors, housed in two large volumes. While 53 of the essays are in Japanese, 18 (just over a quarter of the essays) are in English.

A second parallel is the breadth and scope of the topics addressed. Over the course of his career, Miyazawa has made path-breaking contributions in numerous fields, and he also has contributed greatly to methodology. The essays in the *festschrift* well reflect the scope of his scholarship. Part 1 (with eight essays) focuses on the legislative and administrative processes; Part 2 (seven essays) focuses on legal education and legal training; Part 3 (12 essays) on the legal profession; Part 4 (five essays) on the judiciary; Part 5 (three essays) on the civil dispute resolution process; Part 6 (18 essays) on criminal justice and criminal policy; Part 7 (three essays) on legal change and social movements; Part 8 (four essays) on disasters and law; Part 9 (four essays) on theory and perspectives; Part 10 (four essays) on a topic of special significance to the Asian Law and Society Association, "Setsuo Miyazawa and Socio-Legal Studies in East Asia"; Part 11 (a special contribution essay) on competition law in China; and Part 12 (two essays) on "Setsuo Miyazawa as a Friend and a Scholar." (For those considering purchasing only one of the two volumes, Parts 1 through 4 appear in Volume 1, Parts 5 through 12 in Volume 2.)

Third, and most importantly, the *festschrift* stands as a testament to Miyazawa's great impact in a wide range of realms. These include his deep commitment to law-reform activities, with strong collaborations with practising lawyers; his deep commitment to mentoring students and younger (along with some older) scholars, including organizing and involving them in countless research projects covering extensive empirical research; his dedication to spreading knowledge about Japanese and Asian law; and his dedication to building

worldwide networks and fostering collaborations with scholars around the world. The *festschrift* reflects Miyazawa's impact in all of these realms. Contributors include practitioners, scholars whom Miyazawa has mentored over the years, and leading scholars from Japan, the US, Europe, and Asia. A number of the essays are framed expressly as tributes to Miyazawa and his influence; many more honour his influence by building on earlier research or exploring new aspects of related themes, often utilizing new empirical data or developing new theoretical insights.

Given the scope of this collection, preferences among the essays inevitably will depend heavily on the personal interests of each reader. In my own case, my research and teaching have touched on various aspects of nearly all the fields covered, and I find much of interest throughout the *festschrift*. To provide a more concrete sense of the breadth of coverage, I might mention a few of the essays I found especially valuable or thought-provoking.

Given my own strong interest in mass media and freedom of the press, from Part 1, on the legislative and administrative processes, I would first highlight Chapter 7, the essay by Yoshiharu Kawabata, a leading lawyer, entitled "放送法の番組編集準則及びその解釈の変遷と表現の自由" ("The Rules on Program Editing under the Broadcasting Act, the Shifts in Their Interpretation, and Freedom of Expression"). The essay places regulation of broadcasting in historical perspective, beginning with the pre-war system for regulation of radio broadcasting, which included a progressively strengthened censorship regime, followed by examination of the postwar and subsequent reforms. Kawabata provides a thought-provoking discussion of government meddling with programme content through administrative guidance, along with reflections on the significance of the shifts in interpretation, the legal status of the rules, and debates relating to constitutional issues. In the sole English-language essay in Part 1, Chapter 8, "Laws without Sanctions: Hate Speech Laws and the Balancing of Rights in Japan," Craig Martin offers a thoughtful analysis of the contrasting normative implications drawn by Miyazawa and John O. Haley (a leading American scholar of Japanese law, as most readers undoubtedly know) regarding the relative lack of enforceable sanctions in Japanese law, by reference to an examination of a relatively new development: hate speech laws.

Given the struggles Japan's law school system has experienced since its introduction in 2004, it is not surprising to find that theme reflected in a number of the essays in Part 2, on legal education and legal training. To place those struggles in perspective, though, it is refreshing to find that the first essay in this part, Chapter 9, "司法改革がもたらしたもの" ("What Justice Reform Has Brought About"), by Mitsumasa Sakurai, focuses primarily on the positive impact of the reforms that followed from the 2001 recommendations of the Justice System Reform Council. The positive developments highlighted by Sakurai, many of which are now taken for granted with little recognition of their origin, include establishment of specialized court panels for intellectual property matters, a new labour tribunal system and various other alternative dispute-resolution bodies, establishment of a system for government-provided defence counsel for indigents from the *suspect* stage (as opposed to the prior system, under which lawyers were appointed only upon indictment, after the investigation had been completed), and a major expansion in access to legal service through establishment of the nationwide Japan Legal Support Center and other measures.

Given my own experiences on advisory councils and bar association councils involved in the issue, I found especially interesting the essay by Takao Suami (Chapter 13) on the system

for providing stipends to "legal apprentices" during the one-year training term following passage of the bar exam that is required for admission to the legal profession. In part to avoid potential opposition to expansion in the number of bar passers (and, hence, the number of apprentices) by the Ministry of Finance on fiscal grounds, the key advisory councils had recommended a shift from the prior system, in which all apprentices were provided with stipends from the government budget during the training period, to an interest-free loan system. Within a few years after the shift, the Japan Federation of Bar Associations (JFBA) undertook a vigorous campaign to restore the stipends, ultimately achieving success in 2017. As Suami points out, if funds were unlimited, there would be little reason to object to the shift back, and the issue has not received much public attention; yet, as he also observes, this episode holds important implications regarding the role of the JFBA in seeking to limit competition and serves as a reminder not to place great faith in the bar's commitment to reforms, especially those that might represent an economic threat to the profession.

Turning to a few of the later sections, a number of the essays in Part 3 (on the legal profession) address changing trends in the profession, including major increases in the number of in-house lawyers; other essays address the very concept of "profession" and relations between lawyers and so-called quasi-legal professionals (such as patent agents, tax agents, and labour and social security agents); and two more essays, including a thoughtful and well-researched essay in English by Kay-Wah Chan, discuss trends in disciplinary actions against Japanese lawyers. Among the essays in Part 3, I would call especial attention to the essay by Kyōko Ishida (Chapter 26) on the gender gap that still persists in the Japanese legal profession. As she notes, overall, women comprise only 18.3% of the Japanese bar. Strikingly, the percentage is hardly going up; even in recent years, women have comprised only 21–23% of the newly registered lawyers. An especially telling reflection of the lack of attention this topic has received within Japan is that Ishida felt compelled to present her essay as an explanation for why the gender gap is a problem.

Skipping forward, Part 6, on criminal justice and criminal policy, is the longest section, spanning more than 350 pages. Given the importance of the lay judge (*saiban'in*) system, which went into operation in 2009 after a five-year preparation period, and the great attention that system has received, it should come as little surprise that eight of the 18 essays in Part 6 focus specifically on various aspects of the lay judge system, and several more essays touch on that system in discussing other facets of the criminal justice system. Collectively, these essays, which include essays by Japanese lawyers and scholars who have been heavily involved in the reform process and essays by scholars from the US and Belgium, shed light on the broad ramifications that introduction of the lay judge system has had for a wide range of aspects of Japan's criminal justice system. Three other essays in Part 6 focus on another important recent reform: the move to introduce audiotaping or videotaping of interrogation sessions, scheduled to go into effect by 2019 for a range of serious cases, pursuant to legislation passed in 2016 after a very long struggle; and a fourth essay, Chapter 46, written in Japanese by Taiwanese scholar Yun-Tsai Chen, provides a thought-provoking contrast with a comparative analysis of the situation in Taiwan, where taping of interrogation sessions was made mandatory by legislation *enacted in 1998*.

Before closing, I might mention two more essays that especially caught my eye, both from Part 9, Theory and Perspectives. Having long had an interest in linguistic issues and many years ago having reviewed a few Japanese-English law dictionaries, I found myself

intrigued by Mami Hiraike Okawara's discussion of research on Japanese legal terminology (Chapter 63), in which she explores the linguistic origins of a number of legal terms and discusses the barriers legal terminology presents for understanding by ordinary Japanese. And I imagine anyone who has sought to teach Japanese law to non-Japanese (or, for that matter, anyone who has sought to teach US law to non-Americans, or even, to which I can attest from many years of experience, many of those who have sought to teach Japanese law to *Japanese* students) can sympathize with the central issue addressed by Bruce Aronson in his essay (Chapter 64): the enduring power of stereotypes and the difficulties involved in trying to overcome those stereotypes. As Aronson frames the issue in the very first sentence of his essay, "We all too often still encounter efforts by legal generalists and the general public to find the 'essence' of law in Japan and other Asian countries, and to rely on popular stereotypes rather than careful analysis" (p. 653). Based on his own careful analysis, and by reference to the unceasing efforts of Miyazawa himself, Aronson offers the following prescription: "As illustrated by Miyazawa's research, the best way to avoid such harmful stereotypes is to treat Japan as a 'normal' country – that is, use the same research and analytical methodologies that are utilized for any country without resorting to essentialist cultural arguments" (p. 655).

I hope and trust the above examples provide a sense of the richness and variety of the essays. In sum, this *festschrift* represents an important contribution to the fields of Japanese and Asian law and to socio-legal research. I would be remiss, however, not to mention two additional important considerations for potential purchasers. First, as alluded to earlier, virtually three-quarters of the essays (53 out of 71) are in Japanese, making them inaccessible to those who do not read Japanese. This trait is especially pronounced for Volume 1, in which only four of the 32 essays are in English. A second important consideration is the price. Each of the two volumes bears the list price of $155, meaning the two-volume set costs over US $300. Given the size of the *festschrift* and the great care that went into its production, the price is understandable. Nonetheless, the combination of these two considerations is likely to represent a significant obstacle to purchase by many potential individual buyers, especially those who do not read Japanese. That said, this is such a rich and valuable collection of essays, dealing with a wide range of fields and issues, that I would hope it finds a place in the library collection at every institution with a genuine interest in Japanese law.

Daniel H. FOOTE
University of Tokyo

Rule of Law in China

Weidong, Ji, *Building the Rule of Law in China: Procedure, Discourse and Hermeneutic Community*, Vol. I (Abingdon/New York: Routledge, 2017) pp 202. Hardcover: £130.00.

Weidong, Ji, *Building the Rule of Law in China: Ideas, Praxis and Institutional Design*, Vol. II (Abingdon/New York: Routledge, 2017) pp 207. Hardcover: £130.00.

doi:10.1017/als.2018.8
First published online 27 March 2018