# **Washington International Law Journal**

Volume 2 | Number 1

6-1-1993

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## **Recommended Citation**

John O. Haley, Lessons from a Changing Japan, 2 Pac. Rim L & Pol'y J. 1 (1993). Available at: https://digitalcommons.law.uw.edu/wilj/vol2/iss1/3

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### LESSONS FROM A CHANGING JAPAN<sup>†</sup>

### John Owen Haley#

As suggested by the title, these comments center on three propositions: that Japan is changing; that somehow Japan in the process of such change has something to teach us; and finally, that we have something to learn from Japan.

Living in Japan over the past six months—the longest period during which I have continuously lived in Japan since the early 1970's—I have been startled by the extent of intellectual and material changes. Although some may belittle the Japanese slogan *kokusaika*, I am deeply impressed by the profound "internationalization" of Japanese attitudes and understanding. As goods, services, and ideas flow in, Tokyo has become a contemporary Rome without the empire. It is perhaps the world's most important economic, political, and intellectual center, combining as no other single city so many diverse centers of the highest international rank and profile.

Today more Japanese live and travel abroad than Americans, or indeed, than citizens of any other country. As they return to all parts of Japan, they bring with them new insights about themselves as well as other cultures. Museums in regions far removed from Tokyo or Osaka routinely bring exhibitions ranging from the best of contemporary Afro-American art to Paul Klee. By simply reading Japanese newspapers and watching Japanese television over the past six months, I have learned more about contemporary and ancient China, the history, culture, and politics of the Middle East, European civilization, and Africa, than I could possibly have gleaned from the mass media in the United States in twice that period of time. As a result of networking by Japan's public broadcast company, average Japanese have access to daily news broadcasts from the principal national television networks in New York, London, Frankfurt, Paris, Moscow, and at least once a week from Manila and Madrid. While we depend on our own network news, the Japanese are exposed to daily analysis of international events from at least five or six national perspectives a day.

The material aspects of Japan's "internationalization" require little

<sup>†</sup> Text of acceptance speech given by Professor John Owen Haley at his investiture as the Garvey, Schubert & Barer Professor of Law at the University of Washington School of Law, February 2, 1993.

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explanation. Suffice it to say that, for a price, there is hardly any good or service available outside of Japan that cannot be obtained within Japan. In cities like Sendai, which is about the size of Portland, even neighborhood convenience stores carry an assortment of foreign wares that rival the best of our supermarkets and general merchandisers.

These changes are, needless to say, the products of the wealth created by a generation of enormously productive Japanese. With Japan's industrial success, however, has come the myriad of social, political, and economic problems faced by every major industrial nation. Indeed, I can think of no issue in contemporary America, from the environment to race relations, political corruption to teenage crime, that Japan today does not also face. To be sure some are more malignant for us than for Japan—and others are far less serious for us than for the Japanese—but these are differences of degree, not kind. Despite Japan's general ethnic homogeneity, for example, they too must deal with issues of historical ethnic, status, and gender-based They also confront serious problems of immigrant discrimination. assimilation as the number of workers from other parts of Asia and the Middle East increases. In a country the size of Montana, only 20 percent of which is arable. Japan must provide space for a population half as large as the entire United States and an industrial base almost as large as ours. problems of pollution, urban life, and housing are obviously more extreme.

Many things about Japan have not changed. The Japanese have long seen the world as an intellectual oyster and sought the pearls it has to offer. They surpass perhaps any other nationality in their capacity to absorb ideas, to learn from the successes and failures of others, to refashion, to adapt, and to improve what they find in ways that add value, solve problems, and generally contribute to the wealth and happiness of Japan. They have been able to find analogies in the rich diversity of their own historical experience and culture, thereby discovering how best to adapt new institutions and ideas. While the Japanese may have been peculiarly weak in giving back to the world anything other than the refashioned models they borrowed—from military imperialism a century ago to integrated circuits today—their capacity to use to the fullest the best the rest of the world has to give is not in doubt.

Herein lies the first lesson that we can learn from Japan. If Japan's weakness (in giving something other than simply what they have learned from abroad) has been our strength, at least in recent years their strength in learning from others has been our weakness. For much of our history we prospered with investment capital, technological innovations, and intellectual

contributions from abroad—often but not exclusively the product of a continuing stream of immigrants who contributed new ideas in the making of our variegated culture. Yet for most of this century we have viewed our role more as a creditor than a debtor nation in terms of ideas and ideals. Especially during the last three decades we have turned inward, increasingly doubtful that we have any more to give and or to learn from abroad. The imports we accept tend, like the trade in automobiles, to be the value-added versions of what we already make. With an intellectual smugness that approaches self-satisfied conceit, we are considerably less willing to consider ideas that fundamentally challenge our political and social beliefs. Thus the first lesson I believe we have to learn from the Japanese is the need and willingness to consider fundamentally different ideas about society and social behavior.

The second lesson is as basic as the first. The cause of Japan's success is really quite simple to identify—although perhaps not to explain. Japan's only real resource is its people, but it has evolved a cultural and institutional environment in which this single resource has been able to achieve wonders. Japan is not simply a country of disciplined, hard-working, highly literate, team-playing, competitive achievers. It is rather a nation in which large numbers of average, everyday people strive to practice self-discipline, to work hard, to learn as much as they can, to work cooperatively together, and to compete effectively with each other and the rest of the world. They could and would not make this effort, I believe, without the belief that in the end they gain, and that what they gain in comparison to others is fair. This belief is sustained through a recognition that all have a stake, that all belong, that no person is fully independent from the rest. In a word, they recognize that they form a community.

The communitarian orientation of industrial Japan cannot be explained simply as a natural extension of traditional village or familial values and patterns of social behavior. Although embedded values and habits of village life have provided a supportive cultural context, Japan's contemporary economic and political organizations have themselves acquired characteristic features of village communities as a result of trial, error, and conscious choices to achieve effective teamwork and control. Japan's economic success and its political achievement as a stable democracy rest in large measure on the adaptation of traditional village patterns of economic and political life to Western institutions and organizations. We have thus much to learn about the creation of communities from the Japanese experience.

To begin with the basics, what does the Japanese experience teach

about the fundamental elements of a community? First and foremost, Japan shows us that communities are best maintained by sharing power as well as gains. At least in Japan, the sense of community, in both the nation and the firm, has required that power be widely shared. Despite a hierarchy of leadership, Japan's modern communities involve a significant degree of participatory equality. Labor does have a voice in what we often regard as exclusively managerial decisions. American corporate reformers attempting to replicate Japanese managerial practices often ignore the features that effectively empower labor. The power-sharing aspects of labor-management relations is a telling example of Japan's reliance on consensus, rather than majoritarian decision-making, in nearly all organizations and contexts.

Consensus empowers by giving each participant a voice in decisions. Everyone at least has a say, and those with the greatest interests or most at stake have to find ways to accommodate other interests and preferences. Majoritarian rule, in contrast, empowers only those who hold the voting balance. By the same token, majoritarian rule effectively excludes all minority interests except by majority grace.

To be sure, consensus is a cumbersome and often impossible mechanism for decision-making in any community, Japan included. The Japanese solution is something akin to what happens when a consensus-based faculty or partnership finds itself split: delegation to committees. In this sense, Japan has evolved into a community of communities, each claiming a degree of autonomy and decision-making authority. Japan's virulent variety of bureaucratic rivalry, for example, can be viewed in these terms as a species of a broader social phenomenon. Conflict over meaningful political participation in Japan takes the form of access and membership to the communities that have the authority to decide. Whether it is membership in the trade association that gets to participate in decisions related to industrial policy, or the less formal community of insiders whose opinion determines the consensus of some other group, what counts is getting a seat at the table. Getting the seat means sharing the decisional powers of the consensual process.

Leadership becomes secondary. Almost anyone—usually the most senior in age or other status—will do. However, to remain legitimate and effective, leaders must accept responsibility for the well-being of the community as a whole and must be vigilant that at least the sense of fairness is maintained. As the price for their position leaders must set the example, and they must lead effectively through persuasion to achieve consensus. Command without community consensus does not work, but legitimate

authority itself is a source of often forceful influence.

To be sure, Japan is not perfect. Everyday questions of fairness, participation, and the legitimacy of leadership arise out of the ever-present inequities Japan shares with all societies. The Japanese tend to respond, however, in keeping with their fundamental beliefs and orientations. Exposure of unfairness is usually sufficient to provoke corrective measures. Wrongdoing by those in authority is especially serious, challenging the foundations of the system. As a result, the response to political or bureaucratic scandal is usually swift and telling: removal of the offender from the position of authority by others in authority whose own legitimacy is thereby tainted. In the case of individual misconduct, the Japanese generally react as the communitarians they are—disapproving what they consider to be unfair, condemning the wrong, but nearly always reinforcing the community by reintegrating and re-embracing the corrected wrongdoers.

These corrective measures in effect reinforce and strengthen the communitarian bias of the system itself. As the many communities that comprise Japan exercise greater control they become more durable and more cohesive. Functioning together, they contribute to the stability and cohesion of Japan as a whole. The dynamics of Japan's communities thus help to hold the system together.

I realize it is asking a great deal to suggest that we need to learn and borrow something from these aspects of the Japanese reality. Many of the communitarian aspects of Japanese life run counter to deeply held American beliefs and preconceptions. I would like to suggest, however, that some are more apposite than at first they may seem.

Communities require above all else recognition of the mutual dependence of all members. Interdependence has remarkable centripetal pull. Whether in a marriage or in the workplace, the belief that one gains more within the partnership or the team than alone gives each participant a stake in keeping the group together. It becomes difficult to ignore the needs and wishes of others when you need them. Recognition of mutual need thus has a more empowering dynamic than any law can bestow. A genuine and deep appreciation that we all need each other, that we all belong irrespective of differences in what we think or do, our beliefs and disbeliefs, our deeds or misdeeds, is the starting point. From this recognition comes community and the adhering commitment to consent, cooperation, and compromise.

The extent to which we are able and willing to learn this lesson ultimately depends upon how captured we are by many of our own myths. A cursory review of the self-images we project in both our popular culture as

well as more scholarly self-assessments reveals a pre-occupation with individualism, majoritarian democracy, and adversarial conflict as primary elements of American success. As a result we may belittle or ignore altogether the contributions of community, consensus, and cooperation. Yet many if not most of our greatest achievements have resulted not from individual effort or political and social conflict, but rather from community efforts motivated by persuasive appeals to shared moral values. important conflicts have been catalysts of social and political change, the greatest transformations in American social and political life were ultimately the result of persuasion and consensus. The American West was won by the wagon train not the cowboy—it was the cooperative efforts of migrating people which created new communities in the territories they settled. Even our technological achievements have been more the result of organization and cooperation than individual innovation. Neither Bell nor Edison would have become household names were it not for the organizations that realized the fullest potential of their inventions. Our intellectual imprisonment has also kept us from learning—unlike the Japanese—from our own treasure-trove of historical and cultural experience. The integrative processes of community and consensus are hardly novel to our Native American traditions or to many of the religious communities of our European tradition.

And what of law? What role or function do the rules and processes of law have in this? I believe law has two aspects: it serves both as a statement of state-approved norms and an instrument of state coercion. Whether legal rules also reflect community values depends, of course, on the nature of the state and democratic processes. Assuming that democratic processes enable greater consensus than simple parliamentary majoritarianism, legislated rules and principles should in most instances reflect broad community agreement. However, legal rules do have limits. Unless we wish to have the state define our morals and ethics, we cannot allow all of our values to be expressed as rules and principles of law. Thus whatever our legal rights, we are not free from shared moral duties toward the community and each other.

The enforcement of legal rules is another matter. Obedience can be the product of either persuasion or coercion. However subtle at times, there is a difference. Once we begin to think that all legal rules have to be enforced by the state, we obscure that difference and make law a matter of command and coercion rather than principle and persuasion.

We are too apt to ignore the persuasive force of law and too quick to demand its coercive application. If, after all, our legal rules are valid because they reflect the community's judgment of what is correct and proper conduct and behavior, then we should be able to relax coercive state enforcement and allow the informal processes of community control to work to assure compliance. It may take longer and it may mean that not all will ever agree or even comply, but the processes of consensus and community persuasion are usually more effective in the long run and certainly more respectful of the basic dignity and worth of each member of the community.

Of all of our anti-communitarian tendencies, the increasing reliance on criminal sanctions is the most dangerously self-destructive. As we criminalize more and more forms of misconduct and punish by isolation more and more offenders, we waste more and more of our material and human resources. We get little if any return from prisons. Isolation from the community rarely corrects, and the collective isolation of offenders generally produces new and more lethal outcasts. Imprisonment also contributes to the destruction of the single most essential intermediary of any society, the family. Large numbers of the inmates of our prisons are married. Over half of them have dependent children. They all have parents and friends. Expelling offenders from the community thus ruptures the most effective of all social units for correction and control. As a consequence, our system of criminal justice has become a factory for the creation of outcast communities and crime.

We also need to be reminded that human rights and due process protections are not a substitute for genuine community respect for the worth of all human beings. We may lead the world in legal protections for individual human rights, but our constitutional guarantees have not prevented us from also leading the world with the largest per capita prison population. With one out of every four black males between the ages of 18 and 24 behind bars, we can hardly claim that we truly uphold the basic dignity of all individuals.

In the end the test of the goodness of any society is how it treats its least favored members. For all of Japan's imperfections—and there are many—Japan is, I submit, a better society than the one we are now creating. Japan's material progress and safe streets are more than coincidental consequences. They are both the products of deeply embedded belief in community and mutual interdependence that tends—albeit imperfectly—to give most members the sense that they share a stake in what Japan is and becomes. It is this belief that enables Japanese to work hard, cooperatively and competitively, and to strive to improve themselves and their neighbors.

Like Japan confronting Western capitalism in the mid-19th century, we face a choice between clinging to our preconceptions and myths, isolated and

refusing to learn, or to seek in cultures at home and abroad the underlying causes of their success and, after avoiding their imperfections, to adapt by trial and error those features that work for us. We cannot and should not try to become Japan. There are worms in their apples too. To say that we should begin to try to grow their apples without worms would be to fall prey to that even more globally threatening paradigm in which communitarian values themselves become a catalyst of division and self-destruction; better to try, together with the Japanese, mutually to learn how to grow each other's apples without worms.