

Washington International Law Journal

Volume 22

Number 3 *Law in Japan and Its Role in Asia: Between East and West. Festschrift Conference in Honor of Prof. John O. Haley*

6-1-2013

Reflections on the University of Washington's Asian Law Center

John O. Haley

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wilj>

Recommended Citation

John O. Haley, Remark, *Reflections on the University of Washington's Asian Law Center*, 22 Pac. Rim L & Pol'y J. 505 (2013).
Available at: <https://digitalcommons.law.uw.edu/wilj/vol22/iss3/3>

This Remark is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington International Law Journal by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

REFLECTIONS ON THE UNIVERSITY OF WASHINGTON'S ASIAN LAW CENTER

John O. Haley[†]

Abstract: In June 2012, Professor Haley was awarded The Order of the Rising Sun (3rd Class) from the Emperor of Japan for his contribution to the discipline of Japanese law and education to Japanese legal professionals and academics. In honor of this achievement, the University of Washington School of Law and the Asian Law Center brought together distinguished scholars and Asian Law Center alumni to discuss the judiciary's increased role in Japan and Asia in two conferences. The following is Professor Haley's address at the University of Washington School of Law, on October 19, 2012. In this speech, Professor Haley provides a history of the Asian Law Center (originally, the Asian Law Program).

I. INTRODUCTION

Needless to say, I'm deeply appreciative and overwhelmed by this opportunity to be back at the University of Washington School of Law and to talk about it and the Asian Law Center. I am very grateful to the Dean, John Eddy, and in particular to Toshiko Takenaka.

To be in one's eighth decade, I discover, has one enormous advantage. You have been around for a while. You have known a lot of people. You can look out at an audience like this and realize that you have been here at this law school longer than almost anyone else. There are one or two exceptions.

I knew so many of you when you were students. I knew many of you when you came as young faculty. And I knew many of you when you were just starting whatever you are now doing. As I look around, I am also happy to see that at least two people in the room were here, or had been here, when I first arrived in 1969 as an LL.M. student and then in 1974 as a new member of the faculty. One, Eugene Lee, is a J.D. as well as LL.M. graduate of the law school; the other, Marjorie Rombauer was a member of the faculty. Both know a lot about what I want to say because they were here before I was.

[†] Professor Haley is one of the nation's outstanding international and comparative law scholars and is widely credited with having popularized Japanese legal studies. In 1969, Haley received a fellowship from the University of Washington and was in one of the first classes to graduate from the Asian Law Program—now the Asian Law Center. After working for several years in law firms in Japan, he joined the law faculty at the University of Washington, where he remained for nearly twenty-six years during which time he directed the Asian and Comparative Law Program.

This conference is not about me; or, at least, it should not be about me. It is about the University, the Law School, and the Asian Law Center. Nearly everything that I have accomplished in my career as a scholar—every book and almost every other published work I have—was done here. Nor did or could I have achieved any of this alone. Just last week, I was sending emails to librarian Rob Britt asking for his help. The library here is fantastic; not just the collection, but the quality of the service and the quality of the people. Indeed, what is so important about this Asian Law Program and this law school is not a matter of numbers but rather the quality of those, both faculty and staff, who work here.

I also look around the room and see at least a half-dozen persons who are now teaching themselves. Not all are graduates of this law school, but all of whom, I am very proud to say, I taught. The number of graduates who have gone into teaching is, I believe, among the most important contributions of the Asian Law Center. I believe that the vast majority of University of Washington School of Law graduates now in teaching around the globe are in fact either graduates of or were otherwise connected with the Asian Law Center.

So rather than to honor me or the medal I have received, I hope that you will instead consider me, my career, and the decoration as products of this University, this Law School, and the Asian Law Center. The half-century anniversary of the Asian Law Program is truly what brings us together here today. And, with the exception of a couple of people here, I do not believe anybody else knows as fully the history of the Center and what, in retrospect, has made it so significant.

The Program, as many of you do know, began in 1962 with a major grant from the Ford Foundation of around \$600,000 that was later supplemented with a second grant of about the same amount. The Ford Foundation grants were obtained primarily through the efforts of Ralph Johnson, who, joined by Neil Peck and Arval Morris, had initially conceived of an Asian Law Program. None had apparently given much thought to the problem of how to achieve any degree of substantive coherence. After all, Asia encompasses the majority of the world's population, two of the world's axial civilizations, all of the world's religions, diverse historical experience, and multiple and equally diverse legal systems. As Dan Henderson used to say, there is little that, say, the Philippines and Japan have in common, except that they're both surrounded by water. They have very different historical experiences, very different cultures, and very different legal systems. Thus, at the outset, the new Program was challenged by the question of how one could develop a coherent program in Asian law.

This was 1962, and the first step that needed to be taken was to find a director. The faculty chose Dan Fenno Henderson, a relatively young but experienced lawyer, a Harvard Law School graduate with a Ph.D. in political science from Berkeley. Henderson was among the last U.S. lawyers to be licensed to practice in Japan, and he had for several years headed the Japan office of Graham & James, a San Francisco-based law firm with a significant presence in Japan. Raised in Chelan, Washington, he was a Phi Beta Kappa graduate of Whitman College in Walla Walla. He joined the army during the war and was sent to the University of Michigan for Japanese language study. His first encounter with Japan occurred during the Occupation. Assigned as a censor, he spent most of his time watching movies. His time in Japan was short. Henderson returned to the United States and entered the Harvard Law School. Graduating in 1949, he joined the Washington bar and began to practice law in Seattle. A love for Japan as well as an emerging interest in scholarship lead him to San Francisco and the University of California at Berkeley, where he earned a doctorate, writing his dissertation on Tokugawa law and conciliation. In doing so, he spent considerable time in Japan for research and teaching. In 1955, shortly before repeal of the foreign lawyers licensing provision of the 1949 Lawyers Law, Henderson had taken the opportunity to become one of the sixty plus foreign lawyers to be licensed to practice in postwar Japan.

When appointed director of the new Asian Law Program, Henderson was deeply involved in the practice of law in Japan. His focus was Northeast Asia. He had little if any concern for Malaysia or Thailand or indeed any country in Asia except Japan and, to some extent, China and Japan's two former colonies, Korea and Taiwan. Whatever his interest in China might have been, its pursuit in 1962 was foreclosed. Henderson's real interest was Japan: Japanese was his second language, Japanese legal history was his primary scholarly pursuit, and Japanese law was the core of his legal experience. It was this perspective he brought to the law school and the Asian Law Program.

I emphasize Dan's contribution because it was so important. I joined the faculty in 1974, but I did not become director of the Program until 1991, when Dan Henderson retired; he was the Program's director for essentially thirty years. The Program was his program.

There is one very important feature of the Program that Dan strongly and successfully encouraged—and as I think about it today, I realize that I was never as successful as he was. In terms of faculty, the Asian Law Program was not just Dan Henderson and John Haley and later Donald Clarke, and Dan Foote. It was Warren Shattuck, who taught comparative

contracts; Jack Huston, who taught comparative tax; Dick Kummert, who taught comparative corporate relations. In fact, from the point of view of any Asian student, the most important faculty member was Marjorie Rombauer, who taught the students how to solve and analyze problems in U.S. law. Her course on Legal Writing and Analysis for LL.M. students, which has become a common feature of nearly all LL.M. curricula in U.S. law schools, may have been the first course of its kind ever offered anywhere.

As far as I know, Marjorie Rombauer did not have a significant background in Japan, China, Korea, or any other Asian country before Dan Henderson somehow persuaded her to agree to work with Asian students in the Program. And, as you can see, she became one of the Program's most important contributors. Her contribution was huge. I will come back momentarily to explain why I believe she was so important.

I regret to say, and I regret even more to say to those on the faculty today, that after I joined the faculty in 1974 not a single member of the faculty joined this group to perform the role of teachers and co-teachers of a comparative course in his or her field of U.S. law. I ask myself today "How did Dan Henderson manage to recruit so many of his colleagues to participate in the Program, how did he achieve this, and you, John Haley, couldn't?"

Dan was so key to the Program! His ability to bring people into the Program was important, but he made another equally significant contribution. He insisted from the start that the Program had to be comparative. He envisioned a community of bi- or even multi-lingual students studying together and learning from each other. For me, this feature was pivotal. I would never have received the Order of the Rising Sun or any similar honor but for one of my classmates. Judge Iseki is among the two or three closest friends I have in Japan. Indeed he is more than just a close friend. He has been my teacher as well. While working in a Tokyo law office after graduating from the Asian Law Program but before joining its faculty, I once got into an argument with the founding partner of the firm, Tom Blakemore. Blakemore had first come to Japan in the late 1930s. He had played a central role in the Occupation legal reforms and had remained in Japan to practice law. By 1970 he had become the dean of the American legal community in Japan. Our dispute related to something he had written in a memo to a client. He had asked me to review the memo, and I said in response, "With due respect, on one point I think you are wrong." We argued about the point, and, finally, in desperation, I picked up the phone and called Judge Iseki, who was then working in the Supreme Court, and I

asked him, “Am I right?” As I recall, he replied, “Well...John, you are almost right.” The point in the memo related to an issue about which I have subsequently written extensively, and the only other person who has also told me that I’m wrong is here in the room. I refer, of course, to Mark Ramseyer. The issue relates to contempt in Japan and substitutes for contempt. But let us not go further into that subject here.

Something else besides Dan Henderson and the Asian Law Program was happening in East Asian law in the early 1960s. Something seemed to be in the air. Two legal scholars, one just coming into the academic profession and the other already teaching, both decided they were interested in China and both decided to learn Chinese. One went to Taiwan; the other went to Hong Kong.

One was the late Bill Jones of Washington University in St. Louis, who like Henderson had graduated from the Harvard Law School in 1949. Bill Jones taught Chinese law at Washington University in St. Louis for over three decades. He was responsible for the development of one of the country’s premier collections of Chinese law as well as a Japan Foundation grant that enabled the law school’s addition of a Japanese law specialist, Curtis Milhaupt, in the early 1990s. Coincidentally, the circle resulting from the departure of a leading Japanese law scholar from Columbia that created the vacancy that enabled Milhaupt’s return to his law school alma mater and that in turn resulted in my move to St. Louis has now been closed. The Japanese law scholar who left Columbia is Michael Young, the University of Washington’s new President.

The other scholar who decided to study Chinese law and language was, of course, Jerry Cohen, who now teaches at N.Y.U. After returning from Hong Kong, Cohen left Berkeley for Harvard to found in 1964 the East Asian Legal Studies Program. Although in the late 1950s Harvard had taken the lead in the development of cooperative programs involving Japan, Harvard turned to China upon Cohen’s arrival. That decision left Dan Henderson as the sole U.S. legal scholar and the Asian Law Program the only center with a focus on Japan. Soon the American Branch of the Japanese American Society for Legal Studies and its periodical, *Law in Japan: An Annual*, which had both begun at Harvard, moved to the University of Washington and the Asian Law Program. And by the mid-1960s, Harvard’s East Asian Legal Studies Program and the University of Washington Law School’s Asian Law Program on opposite coasts of the country had become the two national centers for the study of East Asian law. It was terribly important for the development of both for each to have a bit of competition from the other.

I am often asked why and how I got into the Japanese law field. My reply is always the same: it was because of Dan Henderson. I entered law school after spending two years in Japan teaching at the International Christian University (I.C.U.) on a Princeton-in-Asia fellowship. I soon realized that I liked Japan just as much, if not more, than law. Very early in my first year I became interested in combining the two. During the second semester of my first year I audited a Japanese language course. At the end of the semester, I approached a Yale Japanese language specialist, Roy Miller, whom I had once met at I.C.U. and asked if it was worthwhile for me to study Japanese further. Miller—who incidentally subsequently moved to the U.W. and ultimately became a colleague and close personal friend—said that he did not know but suggested that I speak to someone else on the Yale faculty, a well-known historian. So I went to the historian and he gave me the worst advice I’ve ever received, telling me:

Why would you ever want to study Japanese to become a Japanese law specialist? It would take you at least five years of intensive language study and then what would you do? There is no future in the field. You can’t practice in Japan and you surely can’t teach Japanese law here...

This was 1967. And for the next two years I followed this advice. I abandoned Japanese language study and anything to do with Japan. Then in my third year, I happened to take a seminar in law and development taught by David Trubek. Without understanding Japan’s experience, I thought, how can anyone make any generalizations about law and development? After all, Japan was the first and most successful independent country to westernize. Why Japan was so successful is the question to ask. I still ask myself that question and it is still for me an important topic for discussion. The next semester I continued the quest and took a related course on law in developing societies, this time from Robert Smith. Toward the end of the semester, Smith handed me a letter from Dan Henderson inviting any student who might be interested in Japanese law to meet with him while he was in New Haven to give a lecture. Henderson happened to be teaching at Harvard that year. I contacted him and met with him and Carol over breakfast. I had two questions. I expressed concern that my Japanese language ability was not adequate. He replied, “Don’t worry about that, the U.W. has a year-long intensive Japanese language course that will be sufficient for you to begin serious research on Japanese law.” So much for the five years! I then confessed that I had no money. I was leaving law school in debt. Again, he

replied, “Don’t worry. We have fellowship funds that cover tuition plus a living allowance.” What could I say? I applied, was accepted, and entered the Asian Law Program that fall. The rest is history.

In conclusion, let me address what I have come to realize was for me as student and teacher the most significant feature of the Asian Law Program: the comparative law approach of our principal courses and the related materials that were developed. The University of Washington is the only law school that has ever developed comparative materials for contracts, for corporations, for criminal law, for tax law, and for transnational litigation. After I left the University of Washington School of Law I taught for over ten years at Washington University. I currently teach at Vanderbilt. They both have relatively new LL.M. Programs. Of sixty or so LL.M. students at Washington University and forty or so at Vanderbilt, over two thirds are from East Asia. Vanderbilt Law School has more Japanese students today than the University of Washington School of Law. In both schools, over half of the LL.M. candidates are from China. That said, except for a course on transnational litigation, which I teach and which was initially developed and taught by Dan Henderson and Yasuhiro Fujita, not one course is comparative. Not one. Neither school has ever offered a course in which Chinese students, Japanese students, or students from Europe, Latin America, or any other parts of the world can study U.S. law with U.S. students and the related fields of law of their own country. No course is offered in which international students can study our law and at the same time in the same course use their knowledge of their own legal system to help U.S. students understand their law. The U.S., East Asian, and other international students at Washington University, Vanderbilt, and, I surmise, every other U.S. law school miss all of the fun, all of the excitement, all of the learning that took place while I was a student here in discussions among classmates in and outside of class. They also miss opportunities to make life-long friends like Masahiro Iseki and Chan Jin Kim. Looking to the future, I believe that the University of Washington School of Law should be exporting the methodology, the sense of community, and other core features of a comparative program that was so successful and continues to be so successful here at the University of Washington.

And so, again, I come back to Dan Fenno Henderson, who is really the person we honor today. Dan was sometimes rather critical of Japan. And he used to tell me “John, I’ll never get a *kunsho*.” But in fact he did. What I received is really his.