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THE ROLES OF COMPARATIVE LAW: INAUGURAL LECTURE FOR THE DAN FENNO HENDERSON PROFESSORSHIP IN EAST ASIAN LEGAL STUDIES

Daniel H. Foote*

Being named to the Dan Fenno Henderson Professorship in East Asian Legal Studies is at one and the same time a proud and truly humbling moment. It is especially humbling to hold a professorship bearing the illustrious name of Dan Fenno Henderson. In the Japanese law field, Henderson is without peer. He created the field as we know it today, and his accomplishments are truly staggering.

When I was pondering what to say today, I first thought that I might give a better sense of the magnitude of Henderson's accomplishments by taking a brief retrospective tour through his works and then building upon some of the many themes he developed. I examined the section of the law school library that contains works by faculty authors. The collection of his works on file, while incomplete, still occupies several feet of shelf space. So I reconsidered, realizing that there is no such thing as a "brief retrospective" when it comes to Dan Henderson's accomplishments. Instead, in keeping with the designation of this professorship as one dedicated to East Asian Legal Studies, I decided to focus on the role—or, more precisely, the roles—played by comparative law.

In 1995, near the end of a year I spent as a visiting professor at Harvard Law School, a member of that faculty offered the following terse characterization of comparative law: "You comparativists just do whatever the hell you feel like, isn't that right?"

A different formulation—one that contains a similar sentiment, but that I greatly prefer—was offered nearly a half century ago by Ferdinand Stone, then-director of Tulane Law School's comparative law program. It goes as follows:

There is a story of the man who went from place to place upon the earth and wherever he went he would pick up bricks and compare them carefully one with another. His conduct excited comment. One man said, "he must be seeking the most perfect of all bricks."

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Another said, "he must be seeking to describe the qualities inherent in all bricks." Still another of a practical turn of mind said, "he is probably seeking a brick of just the right shape and color to fit into his wall." And still another said, "it is possible that he is not interested in the bricks as such but in their composition. Perhaps, he would set up a kiln of his own for making bricks." Finally, a man of action, impatient with the conjecturing, said, "let us ask him and have done with the questions." And so they approached the stranger and asked, "for what reason do you compare the bricks?" The man answered, "I have no reason other than that it pleases me to compare them."¹

Both characterizations reflect the sheer diversity of what routinely is grouped under the rubric "comparative law." Comparative law scholarship and the comparative law field cannot easily be summed up in a few short phrases. Rather, while the primary comparisons, at least within the Western law tradition, may have been with Roman law in the more distant past, and between the Continental and Anglo-American traditions in the more recent past, nowadays—as Henderson's work so aptly reflects—comparative law quite literally spans the globe. It also spans the ages. It extends to virtually all fields of law, from A—administrative law, for example—to Z (it took me a while, but how about zoning?). In orientation, it may be historical or sociological, anthropological or economic. It may be descriptive or prescriptive. Indeed, it may not be explicitly "comparative" at all. Much comparative law scholarship, including some of the best, on its face focuses entirely on a foreign law topic without directly comparing it to anything found in the author's home country. The comparative element is largely implicit, found both in the focus adopted by the author and in what the reader gleans.

Thus, on first glance comparative law may appear to be a large, disparate, and altogether amorphous mass. Yet I vastly prefer the latter of the two characterizations quoted earlier, not just for the elegance of the language, but for the interpretation it offers. The first characterization of comparative law as subject to the whims of the comparativist adopts a bleak interpretation. It suggests a field bereft of any clear dimensions, rather like a ship adrift at sea, moving about aimlessly, without fixed bearings and with no guiding principles upon which it might be moored. The latter quote offers a contrasting interpretation of the field—not as

1. Ferdinand F. Stone, *The End To Be Served by Comparative Law*, 25 Tul. L. Rev. 325, 325 (1951).

one serving no functions, but rather as one serving such a diverse array of functions that it is impossible to sum up concisely. Comparative law serves all of the roles alluded to in that quote—seeking the most perfect system, seeking to identify aspects inherent in all systems, seeking to identify an alternative that best fits one’s own system, seeking to learn more about the legal process itself. It serves all of those and many more.

As I turn to consider a few of these roles more closely, let me begin with the last one on Stone’s list—because it pleases me.² This may be the most important aspect of all: the sheer joy of discovery, the fascination of learning of other cultures and legal systems. I dare say that when Dan Henderson read his first village contract from Tokugawa Japan, his initial reaction was not to categorize it or analyze its significance. Rather, his very first reaction was undoubtedly delight at learning more about village life of that period. It is that very joy of discovery that impels much of the best comparative work.

Yet I submit that the rationale offered by Stone’s brick-o-phile is in another sense utterly unbelievable. For the process simply does not stop at the level of mere disinterested observation, the way it might for a traveler watching passing scenery out a train window. Rather, the human mind inevitably seeks to process and assimilate information. As the number of observations expands, the mind looks for patterns and seeks to draw parallels or contrasts.

On occasion, that may be as far as it goes, but frequently the mind goes further in the search for ordering principles. The form of that search may vary dramatically. When differences are noted, the searcher may seek to account for those differences by asking, for example, where a particular approach came from. The search may become a weighing of the strengths and weaknesses of different approaches. It may turn into an exploration of how a particular legal system relates to a particular society and thus lead to a richer understanding of that society. It might take that approach one step further and ponder how, or whether, that system might fit in some other society. It may become a search for universal values. Or it may turn into a reverie upon the role of law itself. Yet whatever form the inquiry takes, it is almost certain not to stop at the “Gee, isn’t that nice!” attitude of Stone’s protagonist.

And whatever the nature of that additional inquiry, the very act of undertaking the examination provides a reminder that ours is not the only legal system in the world and that legal systems are not preordained and

2. See *supra* text accompanying note 1.

immutable. Indeed, the single most important aspect of comparative law may not be what one learns about some other legal system, but rather what one learns about one's own legal system. Just as one returns from travel abroad with a newfound appreciation for many aspects of U.S. society, so too the study of a foreign legal system leads to a new awareness of many aspects of our own system that we all too often tend to take for granted.

I might offer an example from one of my own major areas of interest, criminal justice. In *Duncan v. Louisiana*, Justice White confidently asserted that "trial by jury in criminal cases is fundamental to the American scheme of justice."³ The jury is not, however, a universally-recognized institution, and I assume that most people in the United States today are well aware of the fact that the jury system does not exist in much of the world. Yet far fewer Americans have any inkling of how many other aspects of U.S. law—including evidentiary standards, the trial and appeals processes, retrial standards, and even attitudes toward the criminal justice system itself—are intimately tied to notions of the jury as ultimate finder of fact. These aspects readily become apparent when one reexamines the United States after studying a foreign non-jury criminal justice system.

Of course, in today's global economy, comparative law also plays a much more straightforward, practical role. According to the latest estimates, one in four jobs in Washington State is dependent on international trade.⁴ With that level of global interdependence, transnational issues frequently arise for practicing attorneys, often from unanticipated directions.

One of my favorite examples of unexpected international contacts relates to one of the last projects I worked on while practicing as an attorney in New York. That case involved the acquisition of a ranch in Dillon, Montana. Our local counsel on the matter, Bob Knight of Missoula, Montana, had spent most of his career handling ranch deals. He explained that in the 1970s, these were almost exclusively local affairs, with Montanans on both sides of the deal. By the early 1980s, New York and then Hollywood money had appeared on the scene, but he still had no contact with foreign investment. Then, in 1988, my firm retained Knight to handle Montana law aspects of an acquisition by a major Japanese beef packing company. (Parenthetically, but as a telling reminder that much domestic U.S. law also involves significant

3. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

4. Richard S. Conway, Jr., *Foreign Exports and the Washington State Economy* 11 (1997).

comparative elements, I am not sure whether Knight had more trouble explaining water law to the Japanese or to us East Coast attorneys.) He did such a good job on the case that the client introduced him to other investors, and I understand that he is now a trusted advisor to a number of foreign companies. So, like Bob Knight, even if you spend the first twenty years of your career handling nothing but local cases and think you will never have any connection to transnational matters, you may walk into work some day and discover that you, too, are now an international lawyer.

The potential for unanticipated international work poses a potential dilemma for legal education. How should one go about preparing students for possible, but by no means certain, transnational work?

In my view, every student's exposure to comparative law should go beyond what Dan Henderson has aptly labeled to class after class of LL.M. students at the University of Washington as "parallel exposition": merely setting out descriptions of two approaches side by side, with no further analysis. To give a better sense of what that means, let me tell you about a classic example of "parallel exposition" with which I recently came face to face. I was asked to review a book. The book contained a two-page preface and a five-page afterword; the remaining 750 pages consisted exclusively of the provisions in Japan's Civil Procedure Code, along with the closest corresponding provisions from the laws of the United States, Germany, Italy, France, Austria, and South Korea (all translated into Japanese).⁵ I understand that the materials were originally prepared by an advisory council that was drafting a thorough revision of Japan's Civil Procedure Code, and in that context it was undoubtedly valuable to consider how other nations have approached similar issues.⁶ From the standpoint of legal practice, though, I fear that in certain hands a work such as this, containing nothing but the bare language of the statutes, may do more harm than good. If a practitioner, book in hand, reads a particular provision—let us say on service of process—and believes that tells the whole story, he or she may be doing a grave disservice to a client (and perhaps engaging in malpractice in the process).

My own experience with a somewhat similar project highlights this concern. Several years ago I edited a set of English translations of

5. *Kakkoku minji soshōhō sanshō jōbun* [*Comparative Provisions of Each Nation's Civil Procedure Code*] (Minji soshōhō gendaigoka kenkyūkai [Study Group for Placing the Civil Procedure Code into Modern Language] ed., Shinzansha 1995).

6. Mikazuki Akira, *Preface to Kakkoku minji soshōhō sanshō jōbun*, *supra* note 5, at v–vi.

Japan's major labor laws.⁷ I dutifully cleaned up the translation of Article 20 of the Labor Standards Law, which reads in part: "In the event that an employer wishes to dismiss a worker, the employer shall provide at least 30 days advance notice. An employer who does not give 30 days advance notice shall pay the average wages for a period of not less than 30 days."⁸ On its face, the statute appears to permit employers to discharge workers without cause, so long as the specified notice or wages in lieu of notice are provided. From my own study, I knew that the courts had largely written that language out of the statute through a series of decisions that effectively required employers to show just cause for discharging employees, regardless of whether the employer had provided notice or paid the additional wages referred to in the statute.⁹ But the project was only a translation of the statutes themselves, without annotations, so such a warning never appeared in the book.

A few years later, a judge in Tokyo District Court showed me a discharge letter that a foreign company had issued. That letter directly quoted the statute and went on to say that, to show the company's good faith, it would pay the worker sixty days' wages—"which represents," I quote from memory, "twice what you are entitled to under the Labor Standards Law." According to the judge, this letter had displayed such utter obliviousness to the standards actually applied by the courts that it had simply served to infuriate the worker, thus making it even more difficult to reach a settlement.

As that incident shows, a little learning may indeed be a dangerous thing. It is not enough just to examine the language of the statute. Obviously, one also needs to know how the statute has been interpreted. But is that enough? What about enforcement mechanisms? Can one get access to the courts? Are attorneys available? How much do they cost? And are there alternatives to litigation? What, for example, is the role of unions? Or of the Ministry of Labor? Taking it a step further, what impact do attitudes toward one's company, or litigation, or reputation have on the outcome? Does it matter whether one is dealing with a foreign company? What have the historical trends been and what does the future hold?

7. Ministry of Labour (Japan), *Labour Laws of Japan* (Institute of Labour Admin. 1990).

8. *Id.* at 65.

9. See Daniel H. Foote, *Judicial Creation of Norms in Japanese Labor Law: Activism in the Service of—Stability?*, 43 UCLA L. Rev. 635, 639–65 (1996) (discussing case law and judicially-created standards governing dismissal).

Suddenly one finds that, to truly understand the ramifications of even a single issue such as dismissal, one needs to know a tremendous amount about how law operates in that society. Yet how on earth can we expect any U.S. practitioner to familiarize him or herself with all of these aspects, even of a single field such as labor law? Not to mention multiplying it by other fields of law, or by other nations? Obviously, we cannot expect anyone to study all of this.

Still, this example shows why, at least for students with a truly focused interest in a specific nation, it is valuable to undertake a comprehensive study of some particular field of law, rather than just the broad overview that survey courses often provide. The field chosen is not so important. Rather, what is important is the sharpened focus provided by a careful inquiry into a given field and the inherent complexities such an inquiry will reveal.

But what of the student who has no particular interest in foreign law or transnational issues? Given the increasing importance of international issues and the unanticipated manner in which such issues may arise, I believe that all students should be exposed to comparative law in a meaningful way. This does not mean that all students must become experts in foreign law. Rather, what is vital is developing an awareness of certain broad differences between the major legal systems; a sensitivity to differences, to complexities of the sort I just referred to, and to the misunderstandings that often result; and, most important of all, a recognition of one's own limitations—of when one should seek out additional expertise.

Let me now turn to two other roles of comparative law: learning from other legal systems and, its corollary, offering lessons to other systems. The former of these traditionally has received far more attention than the latter, but I would like to reverse the order.

It may seem presumptuous to speak of teaching other systems. Indeed, at a conference on Japanese law held in Berlin in late 1995,¹⁰ which both Dan Henderson and I attended, two German scholars strongly questioned what right foreigners have to lecture Japan on what its legal system should provide.¹¹ Dr. Guntram Rahn noted that Japan has a sophisticated

10. Japan: Economic Success and Legal System, Berlin, Germany (Nov. 22–24, 1995) [hereinafter Berlin Conference]. Papers presented at the conference, along with a summary of the conference proceedings, appear in *Japan: Economic Success and Legal System* (Harold Baum ed., 1997).

11. See Dörte Liebrecht, *Informality, Flexibility, and the Rule of Law: A Report of the Discussion*, in *Japan: Economic Success and Legal System*, *supra* note 10, at 373, 377 (remarks of Matthias K. Scheer), 389 (remarks of Guntram Rahn).

legal system of its own; he argued that the criteria for evaluating that legal system and societal norms should only be the principles of that system itself.¹²

My first response is that, at least for those of us who regularly teach foreign students, offering lessons to other nations is something that I hope goes on all the time, albeit often indirectly and rather vicariously. Providing lessons to other nations occurs through the impact that we have on our students and later through their contributions once they have returned to their home countries.

My second, more pragmatic, answer is that, at least in the case of Japan, we frequently are asked to give advice. There is a grand tradition in Japan of calling upon foreign "legal experts" to offer their opinions on a wide range of issues. One of the most well-known examples of this phenomenon occurred over a century ago, when leading scholars from the major Western nations (including James Bradley Thayer and Oliver Wendell Holmes, Jr.) were asked their views on the Meiji Constitution of 1889.¹³ But the pattern has deeper historical roots, and it continues to this day. Sometimes this is borne out of a genuine desire to learn; other times it is part of a conscious law reform campaign, in an effort to give the imprimatur of foreign approval to a particular cause.¹⁴ This does not mean that the advice is always followed—far from it; still, one of the gratifying aspects of Japanese law is the sense that one's views often are given serious consideration.

Of course, as Dr. Rahn would undoubtedly point out, there is a big difference between responding to requests and proffering unsolicited advice. As he himself observed, though, there is one category of issue where most agree it is proper for the comparativist to offer his or her views: the category of fundamental, universal values.¹⁵ Defining which values qualify may lead to considerable disagreement—whether to include participatory democracy, for example. Yet, the protestations of

12. *Id.* at 389.

13. See, e.g., Kenzo Takayanagi, *A Century of Innovation: The Development of Japanese Law, 1868–1961*, in *Law in Japan: The Legal Order in a Changing Society* 5, 7–9 (Arthur Taylor von Mehren ed., 1963).

14. This point was brought home to me vividly a few years ago. An LL.M. candidate who was active in the *karōshi* (death from overwork) movement in Japan stopped by my office at the start of the year, shortly after he arrived in the United States. Instead of the typical inquiries about course selection and program requirements, all of his questions that day concerned how to achieve maximum publicity about *karōshi* in the United States—how, for example, to get articles about *karōshi* in newspapers such as the *New York Times*.

15. Guntram Rahn, Remarks at Berlin Conference, *supra* note 10.

China and other nations notwithstanding, it is entirely fitting for comparativists to challenge abuses of basic human rights and to seek the achievement of fundamental values.

In the Japanese context, one aspect that I have found troubling ever since my first visit in 1974 is equality, both of gender and race. At a symposium on immigration issues held in Osaka in 1993,¹⁶ I argued that certain aspects of Japan's immigration policies were racially biased (and misguided in other respects, as well).¹⁷ These observations elicited an immediate and rather vociferous response. To much applause, one questioner asked what right I, a citizen of the United States, with all of its racial problems, had to comment on the racial preferences contained in Japanese law. My answer is simple. Despite the United States' legacy of racism (a legacy that, I probably need not point out, includes many aspects of immigration law), the United States truly does have experience that may be instructive for other nations; and comparativists not only can comment on such matters, but should speak out and not stand idly by.

In the context of trade and regulatory matters, which was the setting in which this topic arose at the Berlin conference, the values involved typically are not so fundamental in nature, and the situation is more complex. To the extent that the standards in question are being applied to foreign parties or substantially affect foreign interests, foreign observers clearly have a legitimate interest in commenting on those standards. Moreover, standards favored by the ruling elite in a given nation may harm other segments of that society. Nevertheless, comparativists from other nations may be in a better position to challenge the standards because of the improved power of observation a broader perspective often provides, or because the insiders may face formal or informal constraints on their ability to speak out, or because the foreign views may carry more clout. In the Japanese case, a reminder that foreign observers may be better able than domestic parties to challenge the existing order is provided by the fact that the United States' push for greater deregulation of Japan's economy was widely welcomed by many Japanese consumer groups (which lacked much clout) and many business

16. Foreign Workers Problems: Japan and the U.S., Osaka, Japan (Mar. 23, 1993). Papers presented at the symposium appear in *Foreign Workers Problems: Japan and the U.S.* (Shigenori Matsui & Susumu Noda eds., 1993).

17. Daniel H. Foote, *Immigration Law and Foreign Workers: A U.S. Perspective*, in *Foreign Workers Problems*, *supra* note 16, at 28, 53–56.

leaders as well (whose ability to speak out was hampered by concerns over their relationships with regulators).¹⁸

At the same time, this does not mean that one should feel free to offer unfettered comments and advice without reflecting on differences between legal systems and societies. In some of the U.S. government's recent demands for change, I have sensed a troubling assumption that the legal standards followed in the United States—or even worse, some idealized version of the U.S. standards found only in books—represent the only true and proper approach. This attitude is often coupled with a seeming lack of recognition that other legal systems might be pursuing other legitimate aims, or that the United States itself might be the outlier, rather than the norm.

Moreover, in commenting on foreign legal systems, one must bear in mind that even when two systems purport to espouse the same values, those values may be conceptualized quite differently, and countervailing values may be involved as well. Both the United States and Japan, for example, espouse the value of competition. However, while competition often seems to be regarded as the be-all and end-all in the United States—the ultimate trump card, as it were—in Japan it frequently is treated as but one among many interrelated societal values.

In another example, one from the criminal justice field, when I first investigated the Japanese interrogation system, I was appalled at what I found. The Constitution and Criminal Procedure Code, which were both heavily influenced by the Occupation, contain a number of provisions recognizing the privilege against self-incrimination and the right to silence.¹⁹ They do so in seemingly unambiguous terms. Yet the courts have consistently accepted the prosecutors' position that, following arrest, suspects are subject to questioning, without any attorney present, for up to twenty-three days before charges must be filed.²⁰ Under this interpretation, which is based upon a narrow reading of another statutory provision,²¹ suspects do not have to answer any questions, but they have a "duty to submit to questioning."²²

18. Presumably because of the concerns over their relations with regulators, until recently the business leaders typically voiced their support behind closed doors.

19. See Daniel H. Foote, *Confessions and the Right to Silence in Japan*, 21 Ga. J. Int'l & Comp. L. 415, 426 n.65 (1991) (citing provisions).

20. *Id.* at 429–35.

21. Keiji soshōhō [Code of Criminal Procedure], Law No. 131 of 1948, art. 198(1) (Japan) ("[E]xcept in cases where the suspect is under arrest or in detention, the suspect may refuse to appear [for questioning] or, having appeared, may leave at any time.").

22. See Foote, *supra* note 19, at 435–36.

This is very far indeed from what I would regard as a true right to silence. But a comprehensive examination of the entire Japanese criminal justice system persuades me that other factors must also be taken into consideration. One such factor is a greater trust in the authorities. Even more importantly, I see a different prevailing ethos for the Japanese criminal justice system than for that in the United States. The Japanese ethos (which I have dubbed “benevolent paternalism”²³) places a much greater emphasis upon individualized justice and so-called specific prevention. In it, criminal justice authorities place great effort into “converting” offenders—getting them to recognize the error of their ways and to turn over a new leaf. Then, if persuaded that the offenders are unlikely to reoffend, the authorities often seek to return the offenders to the community rather than send them to prison.

To achieve success in a criminal justice system such as Japan’s, claim prosecutors, it is essential that they conduct intensive questioning aimed not only at proving the elements of the crime but also at ultimately seeking the moral catharsis of the offender. At times, as critics of my articles have been quick to point out, this is undoubtedly simply a self-serving justification for the nearly total discretion that prosecutors desire;²⁴ and, as I myself have written, it may be possible to introduce greater safeguards against abuse without undermining the beneficial aspects of the system.²⁵ Nonetheless, when viewed from the perspective of the overall criminal justice system, Japan’s approach to questioning makes far more sense than it might at first appear to someone expecting the *Miranda*-style²⁶ regime that the language of Japan’s Constitution and Criminal Procedure Code imply.

Reflecting on the Japanese system also forces one to ponder whether the U.S. criminal justice system, when taken as a whole, with its seemingly ever-escalating resort to harsher and harsher penalties and more and more prisons, represents a preferable approach. Indeed, one is even left with the question whether the United States’ vaunted due process protections, as they apply in practice to the vast majority of suspects, provide that much more in the way of safeguards than do Japan’s standards.

23. See Daniel H. Foote, *The Benevolent Paternalism of Japanese Criminal Justice*, 80 Cal. L. Rev. 317 (1992).

24. See, e.g., Antonie A. G. Peters, *Some Comparative Observations on the Criminal Process in Holland and Japan*, in *Proceedings of the Symposium: Dutch and Japanese Laws Compared* 259, 267–68 n.6 (International Ctr. for Comp. L. & Pol. 1993).

25. See, e.g., Foote, *supra* note 23, at 382–84; Foote, *supra* note 19, at 477–82.

26. *Miranda v. Arizona*, 384 U.S. 436 (1966).

This leads to the corollary role for comparative law: learning from the experiences of other nations. Just as it is dangerous for us to assume that U.S. standards will apply in other societies in the same way that they do in ours, so too it is risky, without first carefully considering other aspects of U.S. society that may affect the equation, to counsel the United States to adopt an approach that works well elsewhere. In the criminal justice context, for example, I fear that broad-scale borrowing from Japan would be dangerous; I worry that we would end up with the worst aspects of the Japanese system, without the benefits.

Still, there is a tendency in the United States to reject comparative lessons out of hand, based on the perception that U.S. society is unique and, in the process, underestimate the similarities between nations. One example relates to the role of community. As with just about everyone else who has looked at Japan very closely, I agree that a key feature of Japanese society and the Japanese legal system is a strong communitarian orientation. In addition to that orientation's great strengths, a close examination of the Japanese experience also reveals some serious shortcomings,²⁷ so I would not advocate uncritically adopting all the communitarian features one finds. Yet there is little fear of reaching that point, for I have seen a marked tendency among many Americans to reject any thought of emulating Japan, on the basis of an often-unarticulated perception that Japan's "community-oriented" society and the United States' "individual-oriented" society are diametric opposites.

That perception of course is not true. Consider police practices. There is a widespread belief that, in Japan, community cooperation with police occurs naturally and almost effortlessly. This simply is not so. Particularly with Japan's rampant urbanization and increasing mobility, the police put tremendous effort into fostering and maintaining community involvement through, for example, a broad network of neighborhood watch groups and traffic safety groups. And it seems as though every three or four years the official White Paper on Police calls for yet another wave of rededication by the police, at all levels, to the goal of maintaining community involvement. As these steps reflect, even in Japan it takes great effort to make community policing work. At the same time, the success that many U.S. cities—Seattle included—have had with community policing suggests that the two societies are not so dissimilar as is often assumed. This common experience should counsel a

27. See, e.g., Tatsuo Inoue, *The Poverty of Rights-Blind Communitarianism: Looking Through the Window of Japan*, 1993 BYU L. Rev. 517.

greater willingness to consider whether other communitarian aspects of Japan's legal system might not fit well in the United States as well.

Perhaps the single greatest lesson from Japan for the United States lies in attitudes toward comparative law itself. Throughout much of its history, Japan has shown a tremendous receptivity to foreign law. Although now largely forgotten, there was such a period in the United States as well—during much of the country's formative period through the Civil War. Yet, with isolated exceptions, in recent times the United States has paid relatively little attention to foreign models. Even when they are discussed, foreign examples often are treated only as evidence to support positions that have already been determined, rather than as part of a systematic effort to consider available alternatives.

Japan provides a striking contrast. In the civil procedure situation I mentioned earlier, the advisory council did indeed recommend a major revision to the Civil Procedure Code, informed in significant part by the council's extensive investigation of the systems of a half-dozen foreign nations.²⁸ That set of revisions was enacted by the Diet in mid-1996.²⁹ In Japan, considering comparative models is the norm rather than the exception.

The same attitude extends to legal education. I first became aware of the extent of the comparative focus in 1983, when I was selecting seminars to attend at the University of Tokyo. Because I was there to study Japanese law, I naturally wanted to choose seminars focused on Japanese law rather than foreign law. The task turned out to be far more difficult than I had expected. There were many seminar offerings. For at least two-thirds of them, however, the written description made clear that the primary focus was either foreign or comparative law. Even when the description did not mention such a focus, I could not assume that the focus would be Japan. For example, alternative dispute resolution (ADR) was still a relatively new field in the United States, and there was much discussion here in the United States about the possibility of learning from Japan. Thus, I was excited to discover a seminar devoted to the resolution of minor disputes, with no hint in either the title or written description that the focus was on anything but Japan. When I called the professor to ask if I might attend, he said I was more than welcome, but that I should realize that the sole focus of the seminar would be on recent U.S. innovations in ADR, rather than on any Japanese approaches.

28. See *supra* text accompanying notes 5–6.

29. Minji soshōhō [Code of Civil Procedure], Law No. 109 of 1996 (Japan).

The emphasis on foreign and comparative law in Japanese legal education has, if anything, intensified since then. A friend on the law faculty at a major Japanese university recently told me that the position of the so-called Anglo-American law professors, who specialize in comparative law rather than in any single substantive field, has become somewhat ambiguous in recent years. This is not because they find themselves with too much to cover, but with too little. Today, most Japanese faculty members who specialize in substantive courses have studied abroad themselves. They regularly engage in comparative research and incorporate comparative elements into their teaching. In the process, these substantive law specialists have steadily encroached on the niche that comparative law professors previously occupied.

As I once observed in a leading Japanese law journal, the two-to-one ratio of foreign and comparative law seminars to domestic law seminars, which I found when I studied at the University of Tokyo, places too much emphasis on foreign and comparative law.³⁰ Nevertheless, the blurring of the distinction between comparative law and substantive law comes close to my ideal for the position that comparative law should occupy in legal education. In my view, the most desirable approach is not to treat comparative law as an isolated specialty, but rather to incorporate significant comparative law aspects into each of the first year and most upper level substantive courses. This would, in one fell swoop, achieve nearly all of the objectives I have referred to above. Moreover, in a law school such as ours at the University of Washington, with a very strong group of foreign graduate students each year, it would more fully integrate those students, and the broad perspectives they bring, into the learning and teaching process.

While some other law schools may do more in the way of trumpeting their global connections—or at least their global aspirations—I take great pride in the fact that the University of Washington School of Law comes closer to this ideal than any other U.S. law school of which I am aware. By 1976, when I began to consider applying to law school, I was well aware of the achievements of Dan Henderson and John Haley; they, and this law school, already had established a reputation as leaders in Japanese law. Until I joined the faculty in 1988, however, I had no inkling of the breadth and depth of the rest of the faculty's comparative work. As a comparativist, I truly feel a part of the fiber of this institution in a way that is rare at other law schools in the United States.

30. Daniel H. Foote, *Nihon no hōgaku kyōiku inshōki* [Impressions of Japanese Legal Education], 863 *Jurisuto* 53, 60 (1986).

At a meeting of the American Society of Comparative Law a few years ago, a leading comparative law scholar bemoaned the isolation of comparative law and the deep divide between comparativists and substantive law scholars at U.S. law schools.³¹ Virtually every head in the room bobbed up and down in vigorous agreement. I, seemingly alone, could only look around a bit sheepishly and beam in inward delight at this visual reminder of how exceptional the University of Washington is. This, I have no doubt, is in large part just one more aspect of Dan Henderson's great legacy. Even so, this law school is far from fully achieving the ideal I just set forth, in which comparative law perspectives will become an integral feature of most substantive law courses; I do not foresee us fully achieving it anytime soon.

Nor do I anticipate a convergence in views on the precise contours of this thing we call "comparative law." Quite the contrary, I anticipate even greater expansion in the scope of comparative law. Just as Dan Henderson opened people's eyes to the richness and importance of Japanese law, so too are others now undertaking pathbreaking work in the legal systems of what are sometimes called "radically different cultures" (including socialist, Muslim, Hindu, and African legal systems). This work at times reveals new and different ways of conceptualizing legal issues. Still other scholars are applying relatively new theoretical approaches to the comparative setting—approaches such as feminist jurisprudence and law and economics. These efforts often reveal previously undetected commonalities among legal systems.

Rather than bring neatness and tidiness to the comparative law field, these trends seem certain to result in an even more disheveled, amorphous appearance for the field. Yet far from being a reason to decry comparative law, these exciting new directions represent even more reason to embrace it and all that it has to offer.

31. Mary Ann Glendon, Remarks at the Joint Conference of the International Association of Legal Science and the American Society of Comparative Law, Provo, Utah (Sept. 10–12, 1992).

