




The Cultural (Re)Turn in
Japanese Law vs Challenges to
Japanese Language Literacy:

The Kyoto/Tokyo Seminars as a
Partial Response

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Japanese Law / Studies

- Five paradigms, evolving with the times:
 - Culturalist (60s): Japanese don't like law
 - Institutional barriers (70s): can't like law
 - Elite management (80s): made not to like law
 - Economic rationalist (90s): DO like law
 - Eg settle accident disputes in its (predicable) shadow
 - Hybrid (2000s): sometimes do, sometimes don't
 - Quantitative, qualittative, black-letter law methods

The cultural (re-)turn?

- Disciplinary reaction abroad, also in Japan
- Concerns about variable impact of judicial system reform since 2001 (albeit predictable!)
 - Eg post-grad “Law Schools” / new “Bar exam” since ‘04
 - Eg ltd (organisational) changes in J gov’t litigation services [*shomu kenji* etc: separate talk this afternoon]
- Economic revival
 - Belatedly, but 2002-7
 - Now struggling again, but ‘American neoliberalism’ itself (more) tarnished




Eg Takao Tanase (Nottage/Wolff Trans) ‘Law and Community’ (Elgar ‘09)

- ‘Facts’ can’t be sharply distinguished from ‘norms’
-> hermeneutic approach
- Society refilters law (and vice versa), eg:
 - Lawyers’ ethics (beyond: ‘hired gun’)
 - Family law (post-divorce visitation rights)
 - Tort law (individual-> total -> relational justice)
 - Constitutionalism
 - Civil litigation patterns (steady but slow / concentrated increases in contested cases, related to local culture eg rural communities’ promise-keeping -> debt collection)

Eg now various commentators in English

- Mark West
 - eg karaoke disputes: use local gov't DR 'cos cheaper, settle if closer communities or 'social capital')
- Curtis Milhaupt
 - eg how legal/social norms emerge: incl. 'cultural' influences? [cf Dan Puchniak: 'main banks' etc as 'given']
- David Johnson
 - eg 'predictability' as organisational norm for prosecutors
 - but cf recent (co-authored) book on death penalty in Asia
- Eric Feldman
 - Eg tobacco policy: 'follow global standard' norm [and/or more global but differentiated 'risk society'?]



- Tony Cole

- Eg arbitration: Kawashima -> Ehrlich [?]

- Souichirou Kozuka

- (with me) consumer credit:

- Mkt growth: partly due to ‘culture’ (revisited: ‘keep promises’ ie repay even loansharks!) & ‘behavioural economics’ (more universal: eg over-optimism bias)

- Re-reg from ‘06: more pluralist politics (cf.elite)

- Corporate governance changes

- Concluding our ‘08 book



Implications for teaching Japanese law?

- Simply: to appreciate ‘culture’ better, we need language - offering
 - its own insights into culture (socio-linguistics)
 - more instrumental ‘tool’ to access (broader spectrum) Japanese people / literature
- Hence:
 - Ideally, teach Japanese language AND law [Kent, Stacey’s talks]
 - BUT also: alternative means of engagement?



Eg: The Kyoto and now Tokyo Seminars!

- Teaching “Japanese Law” and now “Japanese Law & the Economy” on site:
 - ‘Seeing is believing’, ie broader ‘culture’
 - Field studies and panel discussions
 - AND with Japan-based co-teachers (in-class)
 - AND with Japanese (Law School) students
 - Revisiting their detailed knowledge through readings in English by foreigners (& a few in Japanese)
 - Sharing this with students (and teachers)

Conclusions

- These unique Seminars are resource-intensive but worthwhile for all
 - Financially viable, yet pedagogically sound
 - Linking into research events or networking
- We need to develop such initiatives, and others more directly engaging Japanese language, to meet the Cultural Re(Turn)!

Further information

- www.kyoto-seminar.jp
 - UG students can take the Kyoto Seminar plus (half of) the Tokyo Seminar as one USyd unit
 - PG students can take either Kyoto or Tokyo Seminar week as one USyd unit (or the Kyoto Seminar as one ANU unit)
- ‘Translating Tanase’:
<http://ssrn.com/abstract=921932>
(expanded in 39(4) VUWLR 755)
- www.law.usyd.edu.au/anjel