

LAW AND CULTURE IN JAPAN

SOCIOLOGY OF CRIME, LAW AND DEVIANCE

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SOCIOLOGY OF CRIME, LAW AND
DEVIANCE VOLUME 30

LAW AND CULTURE IN JAPAN: INSTITUTIONS, JUSTICE, AND MEDIA

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INVESTOR IN PEOPLE

Dedicated to the memory of our dear colleague and friend Kota Fukui

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INTRODUCTION: JAPANESE PERSPECTIVES ON LAW AND CULTURE

Mathieu Deflem

University of South Carolina, USA

The chapters in this book offer examinations of various aspects of the Japanese legal system, with a special attention for the role of culture. Whereas previously published edited volumes on law in Japan written from a social-science perspective have usually approached the subject matter in a more general manner in the context of a so-called law and society framework, this book is both more delineated and precise in its scope. This Introduction will accordingly situate and explain the objectives of this work as a whole as well as the individual chapters as its constituent parts.

LEGAL NORMS AND CULTURAL VALUES

The relationship between law and culture, as understood here, is more specific than that between law and (other dimensions of) society. Adopting a systems framework in a general sense, not in any specific way associated with a particular theoretical perspective, this perspective of properly situating the place and role of law to further research can be considered equivalent to the sociology of law as such. The framework opens up questions of law in relation to politics, economy, culture, and other normative frameworks. Culture is then conceptualized as the whole of a society's values and the practices associated therewith. Such values can be normative (ethics) but also esthetic (art) and truth-related (science). Needless to say, in the context of the study of law, the normative dimension will be of most significance.

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While culture relates to values, law refers to a system of legislated and enforced norms and its associated practices. The differences and relationship between values and norms are arguably the most distinctly sociological aspect of study in the broader field of the social and behavioral sciences studying law. The conceptualization of culture and law is, in this respect, not always properly understood, to the obvious detriment of an adequate understanding of law. Values can be defined as standards of desired behavior in the context of a society or part thereof, whereas norms seek to regulate interactions among the members of different groups. Whereas values are shared among the members of a group (to determine what to do), norms essentially pertain to regulatory frameworks among different people (to specify how to interact) irrespective of their more or less diverse cultural backgrounds. In modern society, the study of the role of norms, especially legal norms, to offer integration in view of increasing cultural diversity is synonymous with sociology.

The manner in which the relationship between law and culture has evolved in various societal settings, and how it should accordingly be studied, has occupied sociology since the classic era. For the study of law, I have outlined and examined this development in some detail in my book-length study on the history and systematics of the sociology of law (Deflem, 2008, pp. 199–202). Briefly, in the classical era, the association between norms and values was linked with the transition to modernity. Thus, Emile Durkheim specified the relationship between norms and values in terms of a transition from mechanical to organic society (Durkheim, 1984[1893]). The cultural nature of this change was, for Durkheim, most essential in that modern society was, unlike traditional society dominated by a coherent set of common values, marked by an essentially diverse plurality of cultural values. From a different perspective, Max Weber examined the transition to modernity in terms of a formal rationalization of the social order (Weber, 1978[1922]). In the context of his famous sociology of law, Weber thereby brought out various conditions of the rationalization of law, including the development of capitalism, bureaucratization, legal professionalization, and the secularization of the values embedded in law.

In modern sociology as it developed as an institutionalized science, especially after World War II, the relationship between values and norms remains a central concern. Talcott Parsons was perhaps the first to make this relationship explicit by means of his famous functional schema that differentiated economy, polity, societal community, and the fiduciary system. Parsons duly applied this general perspective to the study of law to argue that culture serves as the sub-constitutional stratum of law (Parsons, 1978).

Extending the focus toward the more contemporary conditions that have shaped societies from the late 20th century onwards, the relationship between law and culture has become more problematic, both societally and sociologically. Among the most consequential developments for scholarship on society and law, there is a sharp split between modernist and post-modernist (as well as anti-modernist) interpretations. For example, the work of Jürgen Habermas (1996[1992]) defends a modernist theory based on the continued need for societies to resolve conflict by means of law and other peaceful forms of conflict resolution.

This functional need for a modicum of integration and order cannot return to the cultural uniformity of old but requires law to respect and mediate among a plurality of differing cultural belief systems. From a post-modern perspective, the integrative aspirations by law are abandoned in favor of an attitude of incredulity toward any overarching functionality in favor of, presumably, a retreat from order. Despite or perhaps because of widespread modernization, anti-modern reactions are today also observed, such as in the case of societies that are marked by autocratic political structures and their unitary, often religiously framed, cultural orders. Examples of the latter include the Islamist theocracies that exist today and which at times also exert their effects on societies where such cultural frameworks are entirely alien and in conflict with achieved legal and other normative frameworks (Deflem, 2023). The variable forces of cohesion, conflict, stability, and change that shape these intellectual debates, we will see, also inform many of the contributions in this volume.

AN OVERVIEW OF THE BOOK

The focus of this work on the study of the relationship between law and culture in Japan is not the result of mere curiosity and could surely no longer be rationally justified only on the basis of an assumed uniqueness of Japan alone. Yet, as the chapters in this volume so clearly illustrate, it is also true that there is something distinct about Japan and its legal system and, as such, worthy of contemplation.

To many of us who are not fortunate to live in Japan, there is a special fascination about Japanese society. This interest is soundly comparative and transnational when it concerns the interrelations that exist between Japan and other nations as they have developed over the years. The recent popularity of various expressions of Japanese popular culture, such as anime, manga, and J-pop, has further stimulated this interest. Yet, in order to avoid an orientalizing of Japanese society despite the best of our attention, we must turn to the growing body of academic work that has made serious pathways to develop an adequate understanding of Japanese society and its constituent parts, including law. Fortunately, many works on Japan in the social and behavioral sciences are now available (Takeda & Williams, 2021), and some of these, indeed, include anthologies on various aspects in the socio-legal study of law (e.g., Foote, 2007; Steinhoff, 2014; Vanoverbeke et al., 2014).

It is no coincidence that the authors of the chapters in this book work in Japan, not merely do work about Japan. To further avoid the pitfalls of an invalid external gazing, my own task as lead editor to make the findings of my esteemed colleagues available to a broad international audience is therefore also complemented by the efforts of co-editors Takahashi, Vanoverbeke, and Karlin, each of whom both oversee and contribute to a thematic part of this book. Communicating the insights about Japanese law and culture developed from within Japan to a wider audience not versed in the Japanese language is the most obvious aim of this work. To ease accessibility, all Japanese terms and bibliographical references are written in Romanized form. Japanese terms discussed in the chapters are also translated.

The chapters in this book are presented over three thematic parts. The chapters in Part I discuss various institutions of Japanese law, such as the constitution, legislative bodies, and courts. Part II engages with issues of legal and criminal justice in Japan, including chapters on COVID-19 policies, drug legislation, criminal trials, and victimization. In Part III, finally, the focus turns to media and popular culture, with contributions about entertainment law, visual pop culture, and regulatory aspects of news media. The introductions to each part that are written by co-editors Takahashi, Vanoverbeke, and Karlin, respectively, further clarify the relevance of the specified themes and the objectives of each chapter.

In closing, the chapters in this book should make it acceptable to understand that the attention to culture in the sociological and broader socio-legal study of law is no triviality. For it is an essential characteristic of modern society, in Japan as much albeit differently than elsewhere, that cultural values have become increasingly complex and diverse and that, as a result, the role of law to secure normative integration has become more difficult and at once more pressing to achieve. Given the increasing contemporary relevance of cultural processes, in addition to the long-standing influences of economic and political developments, the study of culture in relation to law is more than ever needed.

* * *

This volume is respectfully dedicated to our colleague and friend Kota Fukui, who passed away on October 2, 2024. At the time of his untimely passing following a period of illness, Fukui was Professor in the Graduate School of Law and Politics Department of Law and Political Science at Osaka University. He had also kindly agreed to be a contributor to this volume and was planning to write a chapter entitled, “Japan’s Response to the COVID-19 Outbreak: The Dangers of Using Human Relational Pressure as a Policy Tool.” Professor Fukui was among Japan’s leading sociology of law experts, whose work had exceptionally wide range given his more than usually extensive involvement in international conferences beyond the borders of Japan. Some of his writings are therefore also available in English (e.g., [Fukui, 2014, 2019](#); [Fukui & Nishimoto, 2021](#)). Fukui-sensei was especially well versed in theoretical developments in the sociology of law and in the social sciences more broadly. His specific research areas included the legal profession, access to justice, alternative dispute resolution, and social and legal systems theory and research. The work of Niklas Luhmann was a special stimulation for his thinking and research. We testify to the great influence and meaning of Kota-san’s work and life for all those who knew him and who learned from his wisdom and gentle nature.

REFERENCES

- Deflem, M. (2008). *Sociology of law: Visions of a scholarly tradition*. Cambridge University Press.
- Deflem, M. (2023). The cancer of the law in the Islamic Republic of Iran: Reflections on the Iranian Anti-Israel Law of 2020. In H. Hydén, R. Cotterrell, D. Nelken, & U. Schultz (Eds.), *Combining the legal and the social in sociology of law: An homage to Reza Banakar* (pp. 319–329). Hart Publishing.

- Durkheim, E. (1984[1893]). *The division of labor in society*. The Free Press.
- Foote, D. H. (Ed.). (2007). *Law in Japan: A turning point*. University of Washington Press.
- Fukui, K. (2014). Internationalising legal education in Japan as discourse and practice. In J. Breaden, S. Steele, & C. Stevens (Eds.), *Internationalising Japan: Discourse and practice* (pp. 32–52). Routledge.
- Fukui, K. (2019). The transforming market for legal and law-related practitioners in Japan. *Asian Journal of Law and Society*, 6, 347–358.
- Fukui, K., & Nishimoto, M. (2021). On the professional activities of the labor and social security attorney (*shaōshi*) and competition within the legal profession in Japan. *Zeitschrift für Japanisches Recht/Journal of Japanese Law*, 26, 171–189.
- Habermas, J. (1996[1992]). *Between facts and norms: Contributions to a discourse theory of law and democracy*. MIT Press.
- Parsons, T. (1978). Law as an intellectual stepchild. In H. M. Johnson (Ed.), *Social system and legal process* (pp. 11–58). Jossey-Bass.
- Steinhoff, P. G. (Ed.). (2014). *Going to court to change Japan: Social movements and the law in contemporary Japan*. University of Michigan Press.
- Takeda, H., & Williams, M. (Eds.). (2021). *Routledge handbook of contemporary Japan*. Routledge.
- Vanoverbeke, D., Maesschalck, J., Nelken, D., & Parmentier, S. (Eds.). (2014). *The changing role of law in Japan: Empirical studies in culture, society and policy making*. Edward Elgar Publishing.
- Weber, M. (1978[1922]). *Economy and society: An outline of interpretive sociology*. University of California Press.

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PART I

INSTITUTIONS