

the word “measure” *itself* to a more ethical interpretation—one rescued by its poetic origins and imaginative possibility (p. 174). *The Humanities and Public Life* thus stands as both a “model of” and a “model for” ethical reading (Geertz 1973). And invites us to respond to misreadings with rereadings.

## References

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*Public Law, Private Practice: Politics, Profit, and the Legal Profession in Nineteenth Century Japan*. By Darryl E. Flaherty. Cambridge, MA: Harvard Univ. Asia Center, 2013. 335 pp. \$35.38 hardcover.

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Darryl Flaherty’s *Public Law, Private Practice* is an elegantly written, exhaustively researched, and profoundly insightful study of Japan’s legal profession as it evolved through the nineteenth century. Anyone with serious interest in comparative perspectives on legal profession and law and development—not to mention those simply interested in Japan’s legal transformation from the late Tokugawa period to the end of the Meiji era—will discover new, provocative insights.

A few readers of this review may wonder how a study on the Japanese legal profession in the nineteenth century could possibly have much significance or attract any interest beyond a handful of legal historians concerned with a culturally distinctive and therefore largely irrelevant country on the fringe of continental Asia. Keep in mind, however, that the same might have been said for the United Kingdom and the relevance of the English or North American legal professions in the nineteenth century. The United Kingdom and its North American colonies uniquely benefited from a combination of factors, not the least of which was the advent of a handful of immigrants to remote and largely inhospitable locations north of the extraordinarily wealthy and culturally advanced Castilian domains to the south.

Flaherty's study is significant because he tells, in elegant prose and great detail, the story of continuity, correspondence, and change in the exemplary political and economic transformation of this small archipelago theretofore in self-imposed isolation. In the middle of the century, Japan had been long ruled by warrior elites within a legal order based on an even more ancient—but, by almost any contemporary measure, highly advanced—public law order derived from the imperial Chinese tradition. Its continental neighbors included two of the world's three oldest and wealthiest bureaucratic empires—the Russians to the north and the Chinese to the west and south. And like them, it had withstood for three centuries the sequential threats of cultural if not military conquest in turn by upstart, empire-building kingdoms in Western Europe. In sequence, they included Spain and Portugal in the sixteenth and seventeenth centuries, the Netherlands in the eighteenth, and now, as the nineteenth century and the industrial revolution dawned, France and England, the most powerful, expansive, and, in this new era, "enlightened" of all. At the end of the century, Japan remained not only one of only a handful of independent states that had not been either absorbed by an imperial neighbor or colonized or even subdued by any West European kingdom. Instead, it had itself become an industrial, military, and even colonial power, defeating neighboring empires in war as had almost simultaneously the United States, also a newly arrived member of club of world powers and rival in the Pacific.

The story of Japan's transformation is especially a story of law. By the end of the century, Japan had not only independently established the most advanced Western legal system outside of the West but, like its Western colonial counterparts, was in the process of reforming in like measure the legal systems of Taiwan and Korea, its two colonial territories. It would also become the model for legal reforms undertaken by the only other remaining independent polities in East Asia—China and Siam.

Today, in terms of nominal GNP, China and Japan have the second and third largest national economies in the world and in terms of per capita income as well as equal distribution of that wealth, the first of Japan's two colonies, Taiwan, rivals Germany, and the second, South Korea, rivals France. Japan itself rivals the greatest imperial power of the nineteenth century, the United Kingdom. All three are today stable and functioning constitutional democracies in which transfers of political authority without violence or any significant social disruption has become the norm. All three have low crime rates and even less political corruption. In nearly every respect, they are all global models. If comparative perspectives on the legal profession are meaningful, if the legal transplants and the reception of Western law have any significance,

if law and lawyers have anything to do with political and economic well-being, then Flaherty's story of nineteenth century Japan really does matter.

The story is also one of remarkable continuity with change and equally remarkable correspondence with the West. Flaherty commences with continuity. His most significant contribution is the account of the legal practitioners and suit inns in the first half of the century. Long neglected by Japanese scholars and almost completely ignored as insignificant by most Western accounts, Flaherty makes a convincing case as to their foundational importance in the transition to a Western-based system of law defined in terms of private law and litigation. His narrative provides context for the extraordinary development of private law rules documented in detail in John Henry Wigmore's (1967–1986) multi-volume collection of Tokugawa precedents.

He also argues for correspondence with developments in Western Europe. In law at least, Japan can hardly be described as a "follower" state, but rather was developing in parallel fashion multiple educational institutions providing comprehensive legal education and publications enabling broad dissemination of legal knowledge, as well as law codes. We are apt to neglect the fact that the first three books of current Japanese Civil Code were enacted four years before the German Civil Code on the basis of its final draft. In Japan as in Western Europe, the nineteenth century was an era of legal change and fluidity. My one quibble is his repeated inclusion of the United States along with France and England as an instrumental influence on Japan's legal reforms. The United States, to my knowledge, played no significant role. Wigmore is the only American mentioned, but he could hardly have had much influence at that time. He was only 26 years old when he arrived in 1889, and he stayed for only three years. What was profound was Japan's influence on Wigmore.

Interwoven in the narrative are the disparate stories of three lawyers who began practice in the 1870s and whose subsequent careers reflected the changing landscape of opportunities and mobility. They included one woman, Sono Tel, and two men, Kodama Jun'ichirō and Hoshi Tōru. The first, Sono Tel, turned to law as a career following divorce. As the rules and regulations for the legal profession developed, women were excluded, and Sono left for the United States. There she became a Christian and returned as a leader in the emerging temperance movement. Kodama Jun'ichirō, a former samurai, also went to the United States and converted to Christianity. Upon his return, however, he briefly joined the Ministry of Justice at a lower than anticipated position and, equally briefly, began to practice law. By the end of the century, he had lost much of his newly found religious

enthusiasm and had joined the judiciary, eventually serving on the *Daishin'in*, Japan's highest court, and receiving imperial appointment as a peer. The most notable of the three was Hoshi Tōru, commoner, legal advocate, and political activist. He too left Japan in the 1870s but for England, where in 1875, he was admitted to Middle Temple as Japan's first barrister. Upon his return two years later, he entered private practice. He tirelessly promoted the status of the bar and served very briefly Japan's first and last Counsel-Designate (*fuzoku daigenin*), a post modeled on the British Queen's Counsel that he had persuaded Itō Hirobumi and Minister of Justice Ōki Takatō to establish. A notoriously flamboyant and financially successful lawyer, he became an equally ardent and activist member of the Liberal Party. Imprisoned for defamation of public officials in 1885, by the early 1890s, he was serving as Speaker of the Lower House of the Diet. In that role, Hoshi was instrumental in the adoption of new regulations in 1893 that recognized (and licensed) the lawyers, newly designated as *bengoshi*. He was at the pinnacle of a political career. By 1900, he was caught up in a corruption scandal, had been removed from the House leadership, and reduced to a seat in the Tokyo Metropolitan legislature. Hoshi was assassinated in 1901.

Hoshi's career, as recounted by Flaherty, not only illustrates the development of the legal profession but also heralded the expanding political role of lawyers in the decades that followed his death. By 1936, the year of prewar, Japan's last political party election, lawyers constituted the largest occupational category, outnumbering landowners by a substantial margin. Although hardly represented in postwar elections in the radically changed political environment of postwar Japan, progressive lawyers continued to play an instrumental role in political and social reform movements. As Flaherty notes, the foundations of Taishō Democracy (1912–1926) as well as the contemporary legal profession had been well-established by the end of the nineteenth century.

## Reference

- Wigmore, John Henry (1967–1986) *Law and Justice in Tokugawa Japan: Materials for the History of Japanese Law and Justice under the Tokugawa Shogunate 1603–1867*, 9 parts in 26 volumes. Tokyo: Univ. of Tokyo Press.