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Freedom of Expression in Japan: A Study in Comparative Law, Politics, and Society by Lawrence Ward Beer

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BOOK REVIEW

FRANK K. UPHAM* & PETER S. MICHAELS**

FREEDOM OF EXPRESSION IN JAPAN: A STUDY IN COMPARATIVE LAW, POLITICS, AND SOCIETY. By LAWRENCE WARD BEER, Tokyo, Kodansha, Int'l, Ltd., 1985, pp.415, Index.

As American academic interest in things Japanese increases, so does interest in the Japanese legal system. Unfortunately, the literature remains extremely limited, and what exists is too often superficial or stereotypical. In this context, it is particularly noteworthy that Lawrence Beer, a respected expert on Japanese constitutional law within Japan as well as in the West, has written a book that accurately, clearly, and insightfully presents one entire field of Japanese law to English readers for the first time. While one may quibble with some of Beer's interpretations and emphases, several more books of this scale would greatly advance the field of Japanese law and perhaps give Westerners the necessary information to make more reasoned judgments concerning the role of law in Japanese society.

In the first chapter, "Comparative Understanding of Freedom and Law", Beer sets the stage for what follows. Identifying and subsequently rejecting what he calls five "interrelated problems confronting comparative law studies",¹ Beer erects instead a "transcultural framework for analysis,"² where "the object is to clarify the concrete 'ecology' of each issue studied."³ He then notes the seven factors that must be considered to understand the ecology of freedom in a foreign system:⁴ (1) the author's theoretical root presuppositions regarding freedom of expression, (2) the legal history of the issue, (3) the patterns and rules of social thought and behavior that notably affect the exercise of freedom, (4) official systems regulating freedom of expression, (5) laws regulating the freedom of expression, (6) judicial doctrine, and (7) social science studies concerning the issue.⁵

In the next three chapters, constituting Part One of the book, Beer discusses what he terms "The Ecology of Freedom of Expression in Japan." Chapter 2, "Law on Liberty in Modern History," gives the reader a thorough, though concise, historical study from the early Meiji era to the present and sets the stage for Chapter 3, "Social Patterns and Freedom of Expression."

In this chapter, Beer expands the historical analysis to a sociocultural one. Chapter 2 discussed "what" happened; Chapter 3 is concerned with the "how" and the "why" of freedom of expression in Japan. As he notes, "present cultural patterns bear traces of

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¹ L. BEER, FREEDOM OF EXPRESSION IN JAPAN, 23-24 (1985). It is important to note at the outset that this book review appears in the BOSTON COLLEGE THIRD WORLD LAW JOURNAL because of the human and civil rights issues that Beer's book raises.

² *Id.* at 24.

³ *Id.* Beer adds that "[e]cology here, then, means the empirical status of an issue resulting from the interplay of legal and non-legal factors directly affecting and affected by the rule in question."
Id.

⁴ *Id.*

⁵ *Id.* at 25.

the historical past.”⁶ Beer, who believes that social rules and patterns limit the freedom of expression, describes characteristics of Japanese society that affect not only freedom of expression but all legal behavior in Japan:

Radical social, constitutional, and economic adjustments have not eliminated the perennial importance of sociality and group-orientation as opposed to autonomy and individualism, a stress on duty and loyalty rather than on rights and a right to change, a preference for consensual rather than majoritarian decision-making, and respect for hierarchy, seniority, and family.⁷

Beer goes on to identify and discuss the closely related concepts of *makoto*, a single-minded and often exaggerated show of sincerity, of *giri* and *on*, types of duty and obligation,⁸ of *oyabun-kobun* or quasi-parental relationships,⁹ and of *amae*, or dependency.¹⁰ Although now familiar to all who study Japanese society, Beer is correct that the interaction among these values is very important to the way law works in Japan. He is also correct to point out, however, the less frequently acknowledged truth that “[l]aw and legal procedures affect social practice” as well as reflect them. It is thus not only that *giri*, *on*, etc., influence legal behavior, but also that legal behavior “tends to become reflected over time in the way people think about, act out, and settle disputes.”¹¹

Chapter 4, “Official Regulations and Promotion of Freedom”, takes an in-depth look at the “officially sponsored systems and the general law affecting freedom of expression.”¹² This section is particularly valuable. In it Beer discusses not only present, postwar laws affecting free speech, but also the older laws and political structures that gave rise to modern law. Beer even discusses the system of legal education and courts in Japan, making the book accessible to an audience that may be unfamiliar with those aspects of the Japanese legal system. This chapter is a happy medium between too much and too little information.

With the framework provided by the earlier chapters firmly in place, Beer moves on to examine various aspects of freedom of expression in Japan in the balance of the book. These include the freedoms of assembly and association (Chapter 5), workers’ freedom of expression (Chapter 6), freedom of expression in education (Chapter 7), freedom of expression in the mass media (Chapter 8), press freedom and defamation (Chapter 9), and obscenity (Chapter 10). Chapter 11 touches briefly on a predictable miscellany of freedom of expression issues, including advertising, prisoners’ rights, the rights of candidates for public office, and those of foreigners, but it also introduces the Western reader to the less predictable topic of private restrictions on freedom of expression in Japan. In each chapter, Beer carefully describes the historical background and socio-political milieu of the aspect of freedom of expression in question. In addition, he discusses the present state of the law, both case law and statutes, the government’s role in regulating the conduct, and the future implications for Japanese society.

Beer’s book is an excellent comparative analysis, and he is to be commended for it. As Supreme Court Justice Ito Masami notes in his Foreward, “this book fills a serious

⁶ *Id.* at 101.

⁷ *Id.*

⁸ *Id.* at 102.

⁹ *Id.* at 106.

¹⁰ *Id.* at 108.

¹¹ *Id.* at 110.

¹² *Id.* at 129.

gap in English-language research of freedom of expression in Japan."¹³ Moreover, Beer's analysis and discussion of so many aspects of Japanese society and the Japanese legal system makes the book valuable not only to scholars of Japanese law, but also to anyone interested in learning more about freedom of expression in Japan. However, the book is not without its shortcomings.

First, in his attempts in Part One to set the stage for those unfamiliar with Japan, Beer occasionally lapses into broad generalities about the Japanese legal system or legal culture that might have been better avoided. For example, he notes in Chapter 4:

In light of Japan's modern history, it is precisely the politically active who should be most meticulously protected with procedural safeguards at all stages of investigation and prosecution of a case. And the individual Japanese, under interrogation without the support of allies or legal counsel, seems particularly vulnerable to pressures to confess.¹⁴

While undoubtedly correct, Beer might have been better off here sticking more closely to freedom of expression, though he may argue that this is "ecology".

A second criticism is that Beer often presents a body of law or line of cases without the critical analysis that would make it more meaningful to the reader. For example, in his discussion of the courts' treatment of various municipal ordinances requiring permits for public demonstrations, an area of law both complex and ambiguous, Beer presents the line of cases without the critique and political background that perhaps only he is capable of giving us.¹⁵ This reticence reappears in the Conclusion, a brief seven pages that do not address the many fundamental questions about the interaction of law, culture, and politics so provocatively raised in the text.¹⁶ Given Prof. Beer's unequalled qualifications and the foundation laid by the data in the book, this was an opportunity that should not have been missed.

These two observations notwithstanding, *Freedom of Expression in Japan* is an important introduction to Japanese law in general, and more specifically the issue of freedom of expression in Japan. Specialists in Japanese law, general legal comparativists, constitutional law scholars, and those with an interest in civil or human rights will find it useful and informative. One hopes that it will be followed by many books of similar quality on other areas of Japanese law.

¹³ *Id.* at 12–13.

¹⁴ *Id.* at 146.

¹⁵ *Id.* at 175–88.

¹⁶ *Id.* at 393–99.