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TEACHING CONSTITUTIONAL LAW IN FRANCE AND JAPAN

*Allen N. Sultan**

Teaching constitutional law in these two countries was an experience in academic contrasts. Not surprisingly, the difference between the organic law of France and Japan reflects radical distinctions in history and in cultural anthropology. Perhaps the key word that most aptly describes the French is "individualism," whereas the best term to describe Japanese society is "harmony."¹

As you know, the constitutional foundations of France and the United States overlap to a significant degree, both structurally and philosophically. An American constitutional law professor can establish an immediate rapport with French students by beginning the first lecture with the statement that one feels honored to be teaching this subject in the land of Voltaire, Diderot, Condorcet, and Rousseau.²

The French system of government had completely embraced John Locke through succeeding past republics—as have the English to this day. Then, in 1958, the French decided to move halfway toward our system, which is based upon the teachings of their countryman, Charles Montesquieu, the author of the "separation of powers." Indeed, propitious mention of James Madison's recognition of this fact in his *Federalist* No. 47 added to the bond between the American teacher and the French student.

The basic law degree in most foreign countries (including France and Japan) is earned in what we in the United States consider an undergraduate program. Consequently, the graduate with this first law degree is often only twenty-two or twenty-three years old, the age when most American law students are just beginning their studies. As may be expected, the study of law at this stage of

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1. Economy of time does not permit discussion of the extra-legal ramifications of the numerous experiences that my wife and I had in these two most unique nations. Suffice it to say that a chance to live and to serve in either nation is a professional and cultural opportunity of the highest order.

2. Although Rousseau was born in Geneva, and lived in Italy for a while, his productive period occurred in France; and since he also was of the French culture, many there claim him as their own.

one's education is often undertaken for its general academic or informational value; fewer students either plan to or eventually work in the law. In France, this general education approach to the study of law has been maintained, if not strengthened, due to a relatively recent change in the French academic program. The *Licence* is now awarded after successful completion of only three years of law school, with a *Maitrise* for those who remain to complete the full four years. This relatively new approach was made to accommodate students who wish to register for the nationwide civil service examination, which requires a university degree reflecting at least three years of study.

In the French tradition of equality, anyone with the necessary preparatory education has the right to study law. Thus, all those who have the secondary school diploma (the *Baccalaureate*) and who apply to law school are admitted notwithstanding their grades.³ The government provides excellent financial support. Tuition is very low, and ample subsistence scholarships are available to those who can demonstrate serious need. Consequently, the problem is not getting into law school but rather staying in. The attrition rate is very high, with graduating classes averaging a mere 20 percent of their original sizes. As you can imagine, under this system the classes are often quite large, even by our standards.⁴ Instruction is undertaken predominantly by the lecture method, and examinations are a combination of both written and oral questions; both procedures reflect the customary methods in French universities.

Space does not permit me to describe in detail the history and functioning of the Center for the Study of English and American Law at the University of Clermont where I taught,⁵ other than to say that it offers a three-year program to law students and awards a diploma in English and American law to its graduates. It is a diploma of the University of Clermont and not a national degree. Thus, it marks the holder as one who has successfully completed the program of the Center as well as the regular law degree.

Turning to Japan, the constitutional tradition of this fascinating nation reflects the fact that, in modern times, the most signifi-

3. Changes in university standards, such as entrance examinations, are often very difficult to effect in France, as periodic student protests in Paris suggest. An interesting discussion of this topic can be found in Carreau, *Toward Student Power in France?*, 17 AM. J. COMP. L. 359 (1969).

4. Indeed, one writer states that "in basic courses, in Paris, class size may exceed 1000." Herzog, *Education and Training of Lawyers in France*, in COMPARATIVE LAW 147, 149 n.8 (R. Schlesinger ed. 1980).

5. For those who may be interested in my report on that institution, see Sultan, *Teaching American Law to French Law Students—In English*, 29 J. OF LEGAL EDUC. 577 (1978).

cant experience of the East has been the impact of the West. July 8, 1853, is the beginning of modern Japanese history: It is the date on which United States Commodore Matthew Perry anchored his armed squadron of ships in the mouth of Tokyo Bay. Thus, we were the western nation that ended Japan's insular, self-contained existence.

The ensuing *Meiji* Restoration, which replaced the *Tokugawa* Shogun in 1868, holds a place in Japanese history that parallels our early independence. For at that propitious point in its history, Japan also was favored with a highly qualified and dedicated group of men who with great prescience established a new system for society and took a prominent part in its early implementation. Also, like our Founding Fathers, the *Meiji* leaders continue to enjoy a position of respect that borders on reverence among the entire population. Their portraits appear on the currency. They have locations and institutions named after them. And, the motivations for their vital actions are studied just as carefully as we study the writings and actions of our founders.

With respect to the choice of their organic law, the *Meiji* fathers were divided between the French and the Prussian approach. Ultimately, they chose the latter in the year 1889, influenced by the fact that they also had a tradition of military aristocracy, the *samurai*, and undoubtedly by the victory of Prussia over France following the Battle of Sedan in 1870. German legal traditions have also influenced most of the municipal law of Japan, including the legislation establishing its universities.

The second dominant influence on Japanese constitutionalism can be illustrated by the following distinction: While our framers superimposed the governmental structure of Charles Montesquieu on the political principles of John Locke and the Enlightenment, at the end of World War II we imposed our Enlightenment precepts upon the preexisting governmental structure of Japan. Since institutions serve values, and not vice versa, the Japanese adjustment was psychologically much greater than ours. Fortunately for both nations, our actions appear to have taken firm root. For example, one day I was walking to lunch with one of my Japanese colleagues when suddenly he observed, "The best thing America has given us is our Constitution." Additional evidence of our success in transmitting our Enlightenment values can be found in Japanese concern for our contribution surviving a serious social or political crisis, given the fact that they were imposed from above. While this anxiety is understandable, both time and experience support the contin-

uing viability of Japanese democracy, as does the pervasiveness of this concern among Japanese opinion makers.

As we have seen, the Japanese constitution rests upon the two legs of Roman and common law, a fact that often has created problems of political perception. Yet, as a result of our judicial influence, Japan has also adopted many of our basic constitutional doctrines, including judicial review. They even have embraced some of the niceties, like "ripeness," "standing," and "political questions." Thus, there was great interest among legal academicians during my visit in both the history (or sources) and the implementation of the American Constitution.

In my first semester on the Faculty of Law of Hiroshima University, I taught the foundations and selected problems of our Constitution to a class of ten faculty members and three graduate students. Each week, I met with my "closest colleague" and discussed the material I would cover in the next class. As I answered any substantive questions that he may have had at that time, his subsequent translations appeared flawless. It proved to be an excellent arrangement. The group expressed a particular interest in our system of federalism and in our exclusionary rule. By the way, this process of translation was repeated in the second semester when a younger faculty member and a student, who had studied at the University of Michigan, translated my constitutional law class to undergraduate students.

In Japan, where the first law degree is called the *Hogakushi*,⁶ college is looked upon to some degree as a reward for surviving the rigorous, intensive instruction and difficult examinations that remove many aspiring youths from the leadership roles that await those who succeed. Thus, there is a relaxed atmosphere on campus, and extra-curricular activities abound.

Another difference I observed in Japan was that a professor is given even more leeway with respect to subject matter than in France or the United States. This academic freedom results in an enhanced personal relationship between the Japanese professor and student, and permits greater flexibility in the classroom. It also may be the reason why Japanese students seemed to be less reluctant to speak individually with a professor than their French counterparts, even though their respective cultural traditions would suggest otherwise.

One final, important point must be made about the Japanese legal system. The Japanese tradition of social harmony and group

6. Ho means law and Gakushi means bachelor.

assertion has the effect of stifling litigation. Most controversies are resolved by processes we cumulatively refer to as "alternative dispute resolution." That is why there are very few practicing attorneys in Japan. Indeed, the Japanese bar examination is considered the most difficult in the country, with only a very small percentage of successful applicants.⁷ For these reasons, general academic or informational objectives predominate legal study in Japan, perhaps more than in any other country.

In conclusion, I would like to refer briefly to a few matters that were common to both experiences. First, I taught in English at both Clermont University in France and at the American Studies Program of the Faculty of Integrated Arts and Sciences of Hiroshima University.⁸ Although these students in both countries were expected to know English, their fluency was limited at the beginning of the class. This problem was increasingly mitigated over time and was tempered by the fact that almost all who ventured into such instruction were highly motivated individuals.

Second, the majority of the students in both countries were keenly aware that they were living in what may be labeled "the American century" or at least the American half-century. As they were very proud of their own history and culture, one had to approach certain subjects with sensitivity as well as candor. The Allied liberation of France and our use of the atom bomb in Japan are the two most obvious examples of topics that demanded considerable tact.

Third, their predominant use of the lecture method permitted me considerable coverage of material, despite the need to speak slowly when instructing in English. Upon my arrival in France, I was asked to prepare outlines of my lectures (consistent with the general lecture method in that country). Consequently, I prepared separate outlines for each area discussed: federal judicial supremacy, separation of powers, due process, equal protection, and so on. They were distributed prior to the discussion so that the students had time to look them over and reflect upon the subject matter. Since the practice appeared to have positive results, I repeated it four years later in Japan. As I had brought over hand-sized copies of the Constitution to distribute to the students in both countries and had reviewed its structure and content at the outset of

7. Most of the practicing attorneys are involved in litigation. Legal counsel is also given by judicial scribes, tax agents, administrative agents, and others who have not had formal legal education and are not members of the bar.

8. I had a dual appointment to both that faculty and the Faculty of Law at Hiroshima University.

the courses, the students were able to relate my subsequent lectures to our basic organic law.

Fourth, written examinations were favored in my situation as they improved the students' English language skills. I used them in both countries as a means of confirming my impressions of student performance throughout the semester. The great flexibility that I was allowed with respect to student grading made this method permissible.

Fifth, students in both countries possessed a deep interest in things they identified as uniquely American, both good and bad: from our two-party system and our ethnic diversity on one side to McCarthyism, our fixation with guns, and our organized crime on the other.

Let me close these remarks by expressing the deep personal satisfaction I gained from teaching in these two nations. Both countries possess the highest degree of respect for our academic institutions and for our constitutional traditions and system of government. As both a representative as well as an expositor of our institutions, should you decide to undertake the adventure, you almost certainly will enjoy similar intellectual and emotional rewards.