



Law and Social Change in Postwar Japan.

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a representative conservative intellectual to applaud his intent to envision a radically different society and order of scholarship. Nor can we afford to ignore his swipe at Western scholars for their exoticizing culture-blindness. This critic's work is part of a generational project shared with Fujita Shōzō, Hashikawa Bunzō, Kuno Osamu, and other thinkers we have barely begun to study. Time and place separate us from that venture, but Tsurumi's explorations should incite us to reengage with our own intellectual legacy in order to rethink the Western language about Japanese consciousness and culture.

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Law and Social Change in Postwar Japan. By FRANK K. UPHAM. Cambridge, Mass.: Harvard University Press, 1987. viii, 262 pp. \$25.00.

One of the more hackneyed characterizations of "Japanese" behavior stresses the preference to avoid conflict and litigation and to rely instead on compromise and conciliation. This survives despite evidence, from John Henry Wigmore through Dan Fenno Henderson and John O. Haley, that elaborate, long-standing procedures for resolving disputes suggest a propensity to contest and that the wellsprings of conciliation are not cultural proclivities but state pressures. Frank Upham's fine study is yet another, and one hopes final, nail in the coffin of nonlitigiousness. His is a fresh perspective on the ways in which change and conflict in postwar Japan have been both expressed in and constrained by legal practices and ideologies. This is a book by a legal scholar about legal matters, but the implications of his well-crafted argument make it indispensable for any student of contemporary Japanese society.

Upham characterizes legal culture in postwar Japan as one of "bureaucratic informality." This is shorthand for the bureaucracy's orchestration of social change and its containment of social conflict by discretionary and enlightened (re)action. That is, there is nothing informal about the central state; rather, Upham's point is that the state bureaucrats fear litigation (justice) and legislation (laws) that might create rights and forums for adjudication that are beyond their ken. Their hostility to litigation has not eliminated this option for pursuing interests, but they have consistently and successfully manipulated the legal framework for litigation in ways that preserve their role as society's managers. The book is structured around expositions of four major public issues whose dispositions illuminate an ideology in which the law serves the state and the state serves the nation.

Upham's first example is the famous series of actions by pollution victims from the 1950s through the 1970s. These ran a gamut of tactics—formal mediation, and when that failed to satisfy plaintiffs a combination of violent confrontation, direct negotiations, and litigation. He details the "Big Four" cases, which resulted in a total court victory for the plaintiffs and the hasty enactment of strict environmental control laws. The real significance of the legislation, however, was that it mandated a government-run system for certifying and resolving pollution disputes. The state used the law to preempt further legislation and litigation.

Upham then turns to two antidiscrimination struggles. The first, by the *burakumin* minority, focuses on the Buraku Liberation League. This major *buraku* organization has eschewed litigation in favor of "denunciation struggle" (*kyūdan tōsō*). The second is that of women for equal treatment in the workplace. Women's groups since the 1960s have adopted the reverse tack of bringing court cases against specific

employers. These court decisions have led to some incremental improvements but no radical reforms, yet they did provoke the government to respond in 1985 with a comprehensive Equal Employment Opportunity Act (EEOA). Like the legislative responses to pollution victims and *burakumin* discrimination, the EEOA is “aspirational” (p. 86); it has thus been much criticized as a statute without teeth—even a management take-back of existing legal guarantees. Upham puts the EEOA in a somewhat different light as the attempt by the state, especially the Ministry of Labor, to recover the initiative from the courts to define the pace and nature of further reforms. This will not necessarily be detrimental to women’s working conditions, but once again bureaucratic remedies replace legal rights.

Upham’s final case is no doubt the purest form of bureaucratic informality—the efforts of the ministries, especially MITI, to engineer private-sector growth by administrative guidance and other forms of industrial policy. This does not mean that a ministry attempts to monopolize decision making; indeed it constantly consults and communicates with concerned parties. However, their participation is carefully controlled, particularly by means of the *shingikai*, or deliberative councils. Here too enabling legislation aims to preclude legal challenges. The several cases Upham reviews are in effect the exceptions that prove the rule.

One is struck throughout both by the defensiveness and the effectiveness of elite response. In each case, the government is reacting—begrudgingly although eventually decisively—to reclaim its “ability to set the social agenda” (p. 76). This sounds very much like Harold Macmillan’s definition of political leadership—“I must follow them, I’m their leader.” At the same time, when it does respond, the government is remarkably successful in containing such threats to its hegemony by forcing claimants to argue for fair treatment rather than legally binding rights.

Bureaucratic informality is thus described as the common outcome of collective agitation in postwar Japan. Yet one must remember that it does not wholly characterize the course of the agitations; by Upham’s own fulsome evidence, litigation and an activist judiciary were critical in all four cases. The result may have been to reassert bureaucratic prerogatives, but the process in each case revealed contending premises about the role of law in sanctioning change. Bureaucrats may prevail over law and judges, but as Upham’s book so richly describes, postwar Japan is marked as much by the process as by the result. This is a book that deserves wide reading.

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The Political Economy of Japan. Vol. 1: *The Domestic Transformation*. Edited by KOZO YAMAMURA and YASUKICHI YASUBA. Stanford: Stanford University Press, 1987. xxvi, 595 pp. \$37.50 (cloth); \$12.95 (paper).

The best and most comprehensive English-language work on the contemporary Japanese economy for many years was *Asia’s New Giant: How the Japanese Economy Works* (ed. Hugh Patrick and Henry Rosovsky [Washington, D.C.: The Brookings Institution, 1976]). More recently the need has developed for a similar work that extends the analysis to the late 1970s and 1980s. *The Political Economy of Japan*, a three-volume work, fills this need admirably, to judge from the first volume, *The Domestic Transformation*, which focuses on the domestic postwar political economy.

This volume represents a unique and valuable contribution in several respects. It includes comparisons with the other developed countries, especially the United