

FREEDOM OF EXPRESSION IN JAPAN: A STUDY IN COMPARATIVE LAW, POLITICS, AND SOCIETY. By Lawrence Ward Beer.¹ Tokyo: Kodansha International. 1984. Pp. 415. \$50.00.

*Samuel Krislov*²

Lawrence Ward Beer has given us a splendid volume. In his preface Justice Ito Masai of the Japanese Supreme Court writes that "there is nothing written in Japanese that equals the synthetic and comprehensive approach of this book." I know of no work in any language with so broad-gauged a treatment of freedom of expression, including engrossing descriptions of the history as well as the practical, institutional operations of the law.

Professor Beer has a talent for making Japanese culture and law comprehensible to outsiders. The remarkable sense of balance by which he presents a mixture of historical background, transcultural analysis, major problems in key areas, and yet focuses on *both* individual cases and trends and generalizations is perhaps the most admirable feature of this fine book.

The introductory chapter is not the strongest part of the work. Relatively useful comments on comparative method are followed by comments on human rights analyses that reflect the weak underpinnings of that field of inquiry. Chapter two, however, is a compact and rich summary of Japanese history and the emergence of a tradition of liberty. In this chapter and the succeeding one on social structure and freedom, Beer provides a palpable sense of the shock that was experienced, and still reverberates, when Western claims of self-expression collided with the deeply ingrained ways of a society built upon identification through group, affiliation, place, obligation, and interrelations. At times the tough pattern of relationships supports the law so often borrowed from other cultures. Often, however, they are orthogonal or even clashing.

Chapter four is a brief sketch of the legal system and these twenty-four pages could in my judgment have been expanded slightly, enabling both more graceful writing and more detail. For example, the exact function of the Civil Liberties commissioners and other lay participants, who serve "to lend a hand," is not described well—an unfortunate weakness, since this is one of the more novel approaches developed in postwar Japan. Similarly, the

1. Fred Morgan Kirby Professor of Civil Rights, Lafayette College, Easton, Pennsylvania.

2. Professor of Political Science, University of Minnesota.

spheres of influence of police and prosecutor might have been more clearly set forth. Still, the inclusion of this outline of how the law actually operates is helpful and even crucial in understanding the subsequent substantive chapters.

In keeping with his description of the society as group-structured, Professor Beer emphasizes rights of group expression, though Western-style individual rights of tolerance and expression also are described at length. These include (1) freedom of association and participation, including demonstrations; (2) the right of the labor movement to express both economic and political demands, and the problems raised by the basically Marxist matrix of that movement; (3) tolerance (including freedom of religion) and the attempt to expand horizons in school textbooks (including the issue of national ministry power over textbook selection and content); (4) the law of mass media (including a brief and illuminating sketch of publishing and media in Japan); and (5) issues of defamation, privacy, and obscenity.

Fascinating themes emerge. Powerful administrative regulations, relics of older and more repressive regimes, often have much more decisive influence than Western-inspired generalizations embedded in the Constitution. Still, the courts have created doctrines that are by Japanese standards remarkably permissive, even as they generally sustain administrative actions. Building especially upon American doctrine in the free expression area, the judges have produced distinctively Japanese results. In defamation law, for example, with verdicts for sums we would regard as negligible, they also utilize compulsory public apology as an alternative remedy.

The society itself is a fascinating combination of cooperation and hostility. Cooperation: it is an unusual and severe breach of etiquette to make a film of a historic event without approval of the principals at an early stage of the process. Hostility: close to ninety percent of Japanese companies, according to one study, hired professionals to dominate their stockholders' meetings and prevent embarrassing questions from arising. The book is studded with fascinating insights such as a list of the range of tactics available to and employed by unions in Japan.

The strongest part of the book is its analysis of selected cases in each area described. These analyses are pithy, written with verve, and though full of Japanese legal terminology surprisingly accessible. In addition, these cases are presented with enough background to illustrate the major themes of the book.

Some of the Japanese law might make sense in America. With respect to media film, for example, the police, taking cues from the

courts, generally limit requests for evidence to material that has already been exhibited. If a court decision is required—in most instances various forms of accommodation make it unnecessary—the court will balance the uniqueness and need for the evidence against a presumption that the media need to preserve their news-gathering role.

In other areas Japanese law reflects features of their culture that differ from ours. Thus Japan, probably uniquely among democratic societies, forbids political canvassing. This is partly because of a tradition of repression of popular mobilization, but it is also due to the fact that a visit by strangers to a house has quite different connotations—sometimes of threat, sometimes of obligation—in that society. Similarly, the serious Japanese attitude toward affiliations and the obligations they entail makes associational democracy complex and different; even assassination of those attempting to leave a party remains a familiar event in recent history.

What is striking is the extent to which there has emerged in Japan a societal impulse toward liberty, building upon historic foundations such as media efforts to be free and independent even under the repression that once prevailed. Trickier, but already partly successful, has been the taming and legitimization of older traditions of resistance—violent demonstrations and strikes—into more limited forms of approved behavior. The process by which so much has occurred in four decades has been complex. We are most fortunate to have so sensitive and careful a chronicler and analyst as Professor Beer. His admirable book will be valued for a long time. It may also help to strengthen the trends it so trenchantly describes.

SOCIAL RESEARCH IN THE JUDICIAL PROCESS: CASES, READINGS, AND TEXT. By Wallace D. Loh.¹ New York: Russell Sage Foundation. 1984. Pp. xxix, 778. \$37.50.

*Robert L. Nelson*²

This book is an impressive contribution to the study of constitutional change. It can be recommended both as a source book for scholars of constitutional history and as a text for courses in law

1. Professor of Law, Adjunct Appointment with the Department of Psychology, University of Washington.

2. Project Director, American Bar Foundation; Research Sociologist, Northwestern University School of Law.