

und beschleunigte marktwirtschaftliche Durchdringung dörflicher Regionen vor dem Hintergrund einer zwischen Stadt und Land noch verschiedenen Immobiliorordnung legen nahe, daß das Grundstücksrecht in der VRCh ein juristischer Brennpunkt der Rechts- und Gesellschaftsentwicklung bleiben wird. Zugleich werden durch die Umwertung im städtischen Immobiliensektor – wie auch z.B. im Bereich der von der kommunistischen Führung auf stillem Weg verfügten faktischen (Teil-)Arbeitslosigkeit in vielen Staatsunternehmen, durch Arbeitspause bei stark gesenktem Lohn (*xiagang*) – volkswirtschaftlich kostspielige gesellschaftliche Nivelierungen der Vergangenheit unter künftig möglicherweise nicht geringeren politischen Kosten wieder in die Vertikale gerückt: Die Arbeiter (im noch herrschenden Jargon die "Herren" im Staate – *zhurenweng*) zurück in Massenquartiere "jwd", die Neu-Reichen und geldschwere Landsleute aus Taiwan und Hongkong wieder in die aufgeputzten Villen der vor-kommunistischen Epoche. Fortschreitende marktwirtschaftliche Reformen im Bodensektor der VRCh werden politischen Rückhalt unter den "Massen" brauchen, der erst zu schaffen ist.

Wolfgang Kessler

Harald Baum (ed.)

Japan: Economic Success and Legal System

Walter de Gruyter, Berlin / New York, 1997, 401 pp., DM 228,-

Annette Kaffsack

Die Stellung des Rechtsanwalts und der Rechtsanwaltschaft in Japan

Münsteraner Studien zur Rechtsvergleichung, Band 15

Lit Verlag, Münster, 1996, 228 S., DM 58,80

When Japan was pressed by the industrialised Western powers for commercial intercourse with this country which, by the political design of the *Tokugawa* rulers, had basically shut out all strangers from its shores for several hundred years, the Japanese responded swiftly and with a singular political effort, to strengthen their country so as to avoid falling prey to the designs of the foreign barbarians who were just then in the process of reducing neighbouring *Qing* China to "semi-colonial" subservience.

The *Meiji Restoration* of the imperial house in 1868 unseated the *Tokugawa shoguns* (military rulers) and, with the help of systematic borrowing from the advanced states of the West, inaugurated industrialisation and across-the-board modernisation which enabled the first non-Western society's leap into the league of world powers during the former half of the twentieth century. After her catastrophic adventures in the last war, Japan ranks today as the world's second-largest economy and an industrial leader on many fronts. Clearly, the country holds lessons for those interested in what it takes to be a success.

The rule of law, instead of the rule of men, and the stability and individual autonomy that this impersonal dispensation afforded were an important ingredient in the growth and sustained functioning of market economies in the West. Have law and legal processes, perhaps some uniquely Japanese variety of either, similarly contributed to the rise of modern Japan? Do Japan's ways of dealing with conflicts offer examples to be followed elsewhere? How does Western law relate to Japan's in international commerce, where common norms, or lack of them, on trade and intellectual property substantially impinge on practical business?

Experts on such matters and thorough study of the contemporary Japanese legal system remained lamentably scarce in Germany long after Japan's economic eminence had ceased to warrant continued lack of attention in this field. The collection of papers from the conference on "Japan: Economic Success and Legal System", held in late November 1995 in Berlin under the joint auspices of the *Japanese-German Center Berlin* and the Hamburg *Max Planck Institute for Foreign and Private International Law (Max-Planck-Institut für ausländisches und internationales Privatrecht)*, therefore marks a welcome new beginning of comparativist activity. Japanese law on the books and in action is described in four main chapters, on "Lawyers, Mediators, and Legal Culture", "Law and Contract in Japanese Business", "Aspects of the Japanese Enterprise", and "The Bureaucracy in Japanese Economic and Legal Affairs", followed by a summary of discussions at the conference and an index. The fifteen papers (five of them by authors from the United States) in these four main chapters offer well-researched introductory essays on facets of Japanese law, not least those setting it apart from what Western readers may be familiar with from their own legal environments. *Dan Fenno Henderson's* "The Role of Lawyers", *Toshiyuki Kono's* "Judges and Mediators in Japan: The Administration as Motionless Mediator?", *Guntram Rahn's* "Law, Contract, and Society in Japan: A Personal View", *Masaru Jayakawa's* "Shareholders in Japan: Attitudes, Conduct, Legal Rights, and their Enforcement" and *Ulrike Schaeede's* "The 'Old Boy' Network and Government-Business Relationships in Japan" in particular stand out as lucid descriptions of elements of conciliation, flexibility, and institutional interpenetration in Japanese law and business.

Do small numbers in the legal profession or low, albeit increasing, incidence of litigation signal a less conflictual society? The conferees' papers would suggest not: Mediation, lengthy consultative processes or semi-official administrative guidance serve to regulate contentious issue without allowing them to develop into confrontations to be fought out in the ritualised contest of pleadings and judgment in courts of law. Flexibility mostly aids the stronger parties, and rising numbers of cases brought before the Japanese courts since 1949 indicate that informal modes of settlement are considered unsatisfactory by more and more people. Has less formal and less rule-oriented conflict resolution, with an emphasis on personal relationships, proved better at preventing, or righting, abuse? Probably not, as endless reports on financial scandals in highest places seem to reveal month after month. Has Japan's legal system been an important catalyst of the country's spectacular economic achievement? The search for an answer seems largely to have dissipated in the course of the

authors' able and elegant efforts to portray the workings of Japanese law itself. The question of whose benefits should be considered may not be easy to formulate. Consumers paying exorbitant prices for anything from food to housing, pondering the ludicrously meagre long-term interest rates offered by banks to prospective savers, or travelling to some South Pacific islands for a fortnight because similar holidays at home are unaffordable, may hold different views on the definition of success than economists crunching aggregate figures. Employees unable to take their full contractual holidays as informal intra-company pressure decrees that exhausting one's entitlement is just not the done thing may similarly doubt the benign effects of the primacy of the informal over brandishing the rule book. For the national economy as a whole, Japanese law has certainly demonstrated that global success is wholly compatible with an autochthonous legal tradition. The need to reconcile Japanese specificities with demand for international interaction of legal rules and their enforcement is likely, however, to continue to require further change towards patterns of enhanced clarity and accountability.

This most welcome book is to be recommended to a wide readership, beyond the circles of legal experts, as it sheds light, through glimpses of the law, on many larger aspects of present-day Japan. Better proof-reading might have avoided occasional slips (e.g. *Wall-street Journal* [p. 3], *retroactive look back* [p. 19], *House Councel* [p. 35]). The hefty price will unfortunately be a hindrance to its circulation beyond institutional libraries.

The doctoral dissertation by Ms. *Kaffsack* describes the modern legal profession in Japan since the *Meiji Restoration*. Emphasis is given to the post-War period and the development of professional training and professional organisations as well as inclusion of numerous data on age structure of the legal profession, incidence of attorneys' representation of parties in civil proceedings, distribution and duration of cases in the judicial system, and a discussion of recent developments in the rules applicable to the activities of foreign lawyers practising in Japan.

Mandatory representation in court by professional lawyers in civil cases is unknown in Japan, and the lack of this requirement regularly prevents the winning party from recovering its own attorney's fees as these are not deemed to be necessary expenses under the relevant laws. Legal advice is also offered by a number of professionals with more limited qualification, such as "judicial scriveners" (*sihou shosi*) [not "scrivers", p. 125 et seq.], "tax agents" (*zeiri shi*), "administrative scriveners" (*gyousei shosi*) and "notaries" (*koushou nin*). Despite recent progress in facilitating advice by foreign lawyers on the law of their home jurisdiction, conditions for their admission to this specialised practice are still onerous, and co-operation with local Japanese colleagues on a permanent organisational footing remains difficult, thereby impeding the efficient provision of comprehensive advice spanning several jurisdictions.

Readers should not be deterred by the dutifully doctoral exposition of background and theoretical considerations in the opening chapter ("Ordnungsmentalität und Rechtsentwicklung in Japan") where sweeping generalisation often beclouds more than it illuminates. The

subsequent chapters provide a very helpful overview on the Japanese legal profession which has so far been lacking in the German-language literature on the subject.

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Lateinamerika-Jahrbuch 1996

Vervuert Verlag, Frankfurt a.M., 1996, 352 S., DM 35,--

Wie schon seine vier Vorgänger verfolgt auch das Lateinamerika-Jahrbuch 1996 den Ansatz, dem Leser einerseits komprimiertes Faktenwissen über die Staaten und die Region zu vermitteln, ihn andererseits aber auch durch tiefer schürfende Analyse in bestimmte Themen einzuführen. Dementsprechend gliedert es sich in einen dokumentarischen und in einen literarischen Teil. Der dokumentarische Teil besteht zum einen aus einer Reihe von synoptisch aufbereiteten Darstellungen der regionalen Integrationsbündnisse wie etwa dem Mercosur oder der OAS, die über Mitgliedsländer, Ziele und Entstehung des jeweiligen Bündnisses sowie über die wesentlichen Ereignisse des Jahres 1995 informieren. Zum anderen enthält er Informationen zu allen (also auch den nicht spanischsprachigen) Staaten Lateinamerikas und der Karibik, geordnet nach geographischen Räumen (z.B. Andenregion, Zentralamerika) und dort wiederum alphabetisch nach Staaten sortiert. Zu jedem Land werden zunächst einige Basisdaten (amtlicher Name, Staatsoberhaupt, Sitzverteilung im Parlament, Parteien) vorangestellt, um dem eine Chronologie der wichtigsten Ereignisse des Jahres 1995 folgen zu lassen. Den Abschluß jedes Länderkapitels bilden demographische (Einwohnerzahl etc.), soziale (z.B. Säuglingssterblichkeit, Alphabetisierungsquote) und wirtschaftliche (z.B. Bruttosozialprodukt, Auslandsverschuldung) Kennziffern des betreffenden Staates, die für die Jahre 1980, 1990, 1993 und 1994 tabellarisch aufgearbeitet werden. Diese Kennziffern stammen aus der Datenbank IBEROSTAT, die vom Institut für international vergleichende Wirtschafts- und Sozialstatistik der Universität Heidelberg in Zusammenarbeit mit dem Institut für Iberoamerikakunde in Hamburg entwickelt worden ist; die zugrundeliegenden Daten sind ganz überwiegend aus Statistiken internationaler Organisationen zusammengestellt.

Schon wegen dieses dokumentarischen Teils ist das Jahrbuch von erheblichem praktischen Wert. Läßt sich das statistische Material teilweise auch noch anderen einschlägigen Werken (etwa dem Fischer Weltalmanach) entnehmen, so enthalten die Jahresrückblicke 1995 Informationen, die aus den öffentlich zugänglichen deutschsprachigen Publikationen nicht ohne weiteres hervorgehen, insbesondere wegen des derzeit zu beklagenden relativen Desinteresses deutscher Medien gegenüber Lateinamerika. Wer schnell einen Überblick über die politische, wirtschaftliche und soziale Situation bestimmter lateinamerikanischer