HOKKAIDO UNIVERSITY

Title	The Importance of Comparative Law in Legal Education. -The Japanese Experiences,Yesterday and Today-
Author(s)	IGARASHI, Kiyoshi
Citation	北大法学論集, 25(1), 166-161
Issue Date	1974-08-10
Doc URL	https://hdl.handle.net/2115/16169
Type	departmental bulletin paper
File Information	25(1)_p166-161.pdf

Hokkaido University Collection of Scholarly and Academic Papers : HUSCAP

THE IMPORTANCE OF COMPARATIVE LAW IN LEGAL EDUCATION

— THE JAPANESE EXPERIENCES, YESTERDAY AND TODAY —*

Kiyoshi Igarashi**

I. Historical Survey

(1) The Japanese modern legal education can be traced back to the Meiji Restoration in 1868, at which time Japan had no modern legal system nor legal codes to support the system. The first task of the Meiji Government was, therefore, to train jurists as many as possible to create a basis for a modern legal system to operate. The Meiji Government did this by way of establishing two legal training institutes and by inviting eminent jurists as teachers from foreign countries. One of such institutes was a law school attached to the Ministry of Justice in 1872 where several French jurists such as Bousque, Boissonade and Appert lectured in French. The other was Tokyo Kaisei School established in 1873 where several lawyers from England and the United States were invited to give instruction on the Anglo-American law. The most notable among the latter was Professor Terry. These two schools were consolidated in 1885 into the Department of Law of Tokyo Imperial University (presently Tokyo University) which functioned as the central organ for training bureaucrats including judges and administrators in the Japanese modernization processes. Meanwhile, several private institutions to train attorneys had been established and these institutions also concentrated in lecturing the French and English laws (e.g., the former bodies of present Hosei and Meiji Universities under the French law and those of Chuo and Waseda Universities under the English law).

It is a peculiar characteristic of the Japanese legal education that it first started by way of teaching the foreign laws. It must be noted, in this connexion, that few comprehended at the outset the distinction between the Japanese law and the foreign laws; most conceived the rules of such foreign laws as those of the new Japanese law themselves. It is said that it was not until 1887 when legal training in Japan was conducted by Japanese

---

* This report has been prepared for submission to the XI Congress of Comparative Law to be held from 31 August to 7 September 1974 in Teheran, Iran, in connexion with its agenda on the importance of comparative law in legal education. This Congress is sponsored by the International Academy of Comparative Law.

** Professor of Comparative Law, Hokkaido University

and in Japanese. It would be noteworthy that in the same year a professorship chair of the German law was also added to Tokyo Imperial University. After that year, the influence of the French and English laws had started to show decline and the share of the German law in the Japanese legal education had become dominant.

(2) In the 1890's lectures on the Japanese law itself became for the first time the core of the instruction in the Japanese legal educational institutions as a result of a fruition of the Japanese codification effort in the Constitution, Civil Code, Commercial Code, Code of Civil Procedures, Criminal Code, and Code of Criminal Procedures. But, Tokyo Imperial University still required its law students to belong to one of the sections with major in English, German or French law and foreign jurists continued to give instructions on those subjects. It is probable that even the instruction given by Japanese scholars on the rules of the Japanese law had to rely heavily on the foreign legal theories due to the lack of the development of scholarly theories and judicial precedents in Japan. Thus, the importance of the study of foreign laws in the Japanese legal education remained vital in this period.

(3) From the end of the last century to the beginning of the World War I, the German law continued to flourish in the Japanese legal education. The reason for this phenomenon could be found in the followings: Many thought that the Japanese codification such as the Constitution and Civil Code was patterned after the German law; the German law was believed to be more suitable for the Japanese political situations of those days than the French law; many Japanese appraised the German law as the most advanced in the world; and, the national character of Germans had familiarity to that of Japanese. As a result, most of the studies abroad by Japanese jurists were in Germany and the German legal theories were imported. Law students also competed at home in enrolling as German law majors; they believed that they could not be men without German law. It may be told that the prosperity of German law in Japan in those days had assisted greatly to train bureaucratic jurists but questionable is how effective it was for the training of free and democratic lawyers. The method used in approaching the German law in those days is also debatable. Many scholars ignored the difference of social situations between the two countries and tried to transplant German legal theories into Japanese legal problems without any reflection. The basic of the comparative law study to observe any foreign law with certain distance was absent.

(4) The outbreak of the World War I brought a turn to the flourishment of the German law study. Because Japan and Germany entered into a state of war, Japanese jurists who could no longer visit Germany went to the United States or to France. The outcome was a further expansion of the scope of the foreign law studies in Japan. The emergence of full-scale comparative law jurists in Japan corresponded to this period and also symbolic in this period was the change of professorship to Japanese even in the chairs of

foreign laws in Tokyo Imperial University. Notable among them were Naojiro Sugiyama, a world famous comparative law jurist, who occupied the chair of French law with interests not only in the French law but in the comparative law itself and Kenzo Takayanagi who became the leader of researches and education in the field of English law.

Meanwhile, the view had been advocated under the leadership of Itsutaro Suehiro after the end of the World War I that legal researches and education should be conducted on the basis of the unique social character peculiar to Japan. The view influenced Japanese jurists greatly to place more importance on the study of the then-accumulating judicial decisions (one may conclude that this also reflected the influence of the Anglo-American and French approaches). The necessity of sociological jurisprudence had also been voiced in those days. A more or less unique system of legal theories original to Japan was formulated particularly in the field of civil law; lectures were conducted on that basis. It must be noted, however, that in other fields of law, particularly in the fields of criminal law and law of civil procedures, legal researches and education still adhered to the German legal theories.

(5) After the end of the World War II, the Japanese education of foreign laws faced a new turning point. That is the expansion of the comparative law education. After the war, many universities, both national and private, newly established law departments thereby creating more opportunities for the comparative law education. The prevalence of lectures on the Anglo-American law throughout the Japanese universities being encouraged by the increased influence of the Anglo-American law after the war has contributed greatly to the popularization of that law. Some universities have also started to give lectures on soviet laws. But it must be noted that lectures on German law are still given in most of the universities despite the decrease of the weight of the German law in the Japanese legal researches from the pre-war level. Also noteworthy is that the new department of law established shortly after the war in Hokkaido University had from the beginning a chair of Comparative Law, to which the writer of this report has been assigned since the time of its creation.

It must be noted, however, that the increase of the opportunities for the comparative law education has not necessarily been accompanied by the improvement in its quality, as described below.

Ⅱ. The Present Situation in Japan and Its Problems

(I) Present Situation: Most of the law departments in Japanese universities presently maintain at least one professorship chair connected to a foreign law study. The most numerous is on the Anglo-American law followed by the German and French laws. Recently chairs in the names of comparative law or foreign law are becoming more popular. A few chairs on the laws of socialist

countries can be also observed.*** Even in those law departments which do not maintain chairs relating to comparative law, lectures on foreign laws are usually given to students either by faculty members whose specialities are in one of the Japanese laws or by part-time lecturers. In addition, most of the Japanese universities include in their curricula courses under the name of Readings of Foreign Books. Thus, foreign law books may also be read in this connexion. It may be concluded, therefore, that Japan appears at least on its face as one of the few countries in the world where the comparative law education is popular.

(2) Today's Problems: The present situation of comparative law education in Japan, however, conceives in itself many problems.

(a) It is true, as already mentioned, that lectures on foreign laws are in colorful swing in Japanese universities. But its relative weight in the legal education seems to be in the decline. For example, presently it is required for the law students at Tokyo University to elect a four-credit course (two classes a week for one semester) out of courses on Anglo-American, German and French laws each being divided into public and private law sectors. This requirement is similar in most of other universities. On the other hand, it must be noted that during pre-war days it was required at the Department of Law of Tokyo Imperial University for all law students to take courses over a continuous three-year period majoring either one of the English, German and French laws; this requirement could keep the quality of the instruction at a fairly high level. Seen from the students' side, therefore, the requirement for law degrees of courses relating to comparative law has become less burden than the pre-war days.

(b) This phenomenon has also affected the method of instruction on foreign laws as well as their contents. In the pre-war days, the use of original texts in foreign languages had been the routine tool for instruction. But most of the lectures today are conducted on the basis of a Japanese text which is designed as introductory to a foreign law. Thus, what is accomplished at present throughout the overall educational process of comparative law in the Japanese universities is in most cases the attainment of only an introductory knowledge of a foreign law, which is far below the pre-war level.

(c) The recent university reform movements have also given impact on the carricula of Japanese universities. Now many universities classify courses relating to comparative law as electives (Several universities have even converted all law courses into electives fixing only the minimum credits

---

*** As to a list of chairs in the Japanese universities concerning comparative law studies, see Noda, *Le développement du droit comparé* depuis 1868 et la situation actuelle des études comparatives du droit au Japon, in Livre du Centenaire de la Société de législation comparée, t. II, p. 456. It may be noted that many of the professors who occupy those chairs under the names of comparative law or foreign laws are experts in either Anglo-American law or soviet laws and are not necessarily engaged in the study of comparative law per se.

required for degrees).This has brought a sharp decline in the number of students who study foreign laws. The reasons for this decline may probably be traced to the followings: Mastering of foreign law courses is relatively difficult particularly if texts in foreign languages are used; comparative law is conceived not to serve any pragmatic purposes; and, above all national examinations such as the bar examination and government examinations to employ governmental officials do not require comparative law.

Thus, it would not be exaggeration to conclude that the comparative law education in the Japanese legal educational process is presently in a crisis as in some other countries.

(3) The Importance of Comparative Law Education: As already mentioned, the study of foreign laws had played an important role in the modernization process of the Japanese legal system. Because of the reception by Japan of the modern codes and legal theories from the advanced nations in the western world, the researches of the laws of such countries had been indispensable. Thus, the jurists mastering the foreign laws could continue their work without any reflection on the purpose of their foreign law studies. However, in the light of the present-day critical situation, far due is the need to reflect on the real purpose of the foreign law studies.

(a) We can still learn a lot from the jurisprudence of the advanced nations in the western world. Their experiences and experiments on the current problems on the basis of their long tradition of jurisprudence would be educative and useful if the problems could be identified properly taking into due account of the social and cultural differences between the States.

(b) The scope of comparative law study should be widened to match with the development of the international community. To accomplish this, the traditional attitude of studying foreign laws to concentrate on the laws of advanced nations with similar economical and social systems should be reconsidered. To be emphasized is the need for Japanese jurists to study the laws of socialist countries such as the Soviet Union and China as well as the laws of other Asian countries and African States (which should include the Hindu and Islam laws). Today a few universities offer courses on the laws of socialist countries but none yet on Asian and African laws.

(c) What can we get through the studies of foreign laws? Little discussion has yet been found in Japan on the issue.

The study of foreign laws may fulfill pragmatic purposes since in the present-day society of international exchanges many law graduates would be called for the knowledge of foreign laws. It is doubtful, however, how effectively the undergraduate education in Japan can satisfy such need. The resort should probably be sought in the graduate level.

The emphasis of the comparative law education at the undergraduate level may well be placed on the theoretical aspects. Students with young and flexible minds should be encouraged to go beyond the restraint of the

traditional way of thinking prevalent in Japan by familiarizing themselves with other legal ways of thinking in foreign countries as well as foreign legal systems. This would also assist the promotion of urgently needed mutual understandings at the international level and consequently would contribute to the maintenance of the international peace. This approach is most effective when the instruction are given in connexion with the cultural and social backgrounds of the country whose law is the subject of examination; the comparison with the Japanese law should always be accompanied with the laws of other States whenever it is possible to do so. Desirable is for a student to take two or more courses on different foreign laws to establish a wider basis for the comparison. Also desirable for the attainment of the goal of the comparative law education would be for a university to offer an introductory course on the comparative law designed to give students the basic theories of comparative study of laws, its history and the major legal systems of the world. This is, of course, in addition to the traditional courses which offer instructions on individual foreign legal systems.