

of maternal care and infant behaviour in Japan and the US, from which it emerges that Japanese mothers prefer their babies to grow up quiet and contented, whereas American mothers stimulate them to be active and boisterous. No doubt such differences of nurture are reflected in discrepancies of adult behaviour, but the great unanswered questions are surely 'how much?', and 'how certainly?'

Betty Lanham's thoughtful discussion of ethics courses in pre-war and post-war Japanese schools compared with moral instruction in the US suggests provocatively that the individual, in terms of freedom from control by others, may actually be freer in Japan than across the Pacific, because Japanese moral instruction reinforces *internal* control, and self-discipline.

The final section of the book, which includes an interesting chapter on the Gedatsukai by Takie Lebra, contains several chapters on psychotherapies, including those practised by various new religions. A common feature seems to be the attempt to make patients self-critically accept the world as it is and, indeed, one wonders whether Naikan therapy, examined by Takao Murase, really cures at all, as distinct from inducing in patients an acceptance of their symptoms, and more broadly, their lot. There are quite disturbing implications of Tsunetsugu Munakata's chapter on 'Japanese attitudes to mental health and mental health care'.

In general the editors appear to favour the more 'established' interpretations of Japanese personality and society, and well known pieces by Takeo Doi (1962) and Chie Nakane (1970) are reproduced once again. The editors rather coyly acknowledge in their Introduction that the 'group solidarity' notion of Japanese society has been under attack during the past decade, but curiously names such as Sugimoto and Mouer never appear, either in the bibliography or in the text itself. The one chapter which really comes to grips with the issues raised by these critics is 'Individual, group and seishin', by Brian Moeran, which repays careful reading. It is hardly fair, however, as the editors do on p. xii, to say that Moeran tacitly implies the controversy is a 'tempest in a teacup'. In his final paragraph he delivers a telling series of blows against the 'traditional' tendency to regard Japanese culture as somehow on its own, almost by definition incapable of being placed in an international comparative context. And that, in essence, is what the critics have been on about.

Happily, however, some, at least of the contributors to this collection appear to agree with them on this point.

J. A. A. STOCKWIN

FRANK K. UPHAM: *Law and social change in postwar Japan*. x, 262 pp. Cambridge, Mass. and London: Harvard University Press, 1987. £19.95.

The nature and role of the legal system in Japan has been the subject of considerable debate over the last decade. The classical view, espoused in English-language works most notably by Takeyoshi Kawashima (in Arthur T.

von Mehren (ed.). *Law in Japan*, Cambridge, Mass., 1963, 41-72) and Yosiyuki Noda (*Introduction to Japanese law*, Tokyo, 1976, 181-2) was that the Japanese were by nature non-litigious, disliked the black-and-white character of legal judgements, and preferred mediation and conciliation when disputes arose.

This view was challenged forcefully by John Haley in a seminal and much-cited 1978 article, 'The myth of the reluctant litigant' (*Journal of Japanese Studies*, 4, 1978, 359-90). Haley's article was essentially a rejection of cultural explanations of apparently low rates of litigation in favour of institutional ones. If Japanese do not litigate, he argued, it is probably for sound reasons that can readily be understood by any rational utility-maximizer: the cost of litigation is high and the expected return is low. For example, lawyers are expensive, trials can last for years, damage awards are small, and courts have no contempt power with which to enforce their judgements against recalcitrant defendants. Faced with a similar cost-benefit structure, even Americans (often seen by the Japanese as loving litigation second only to baseball) would think twice before filing suit.

Much of the best work done on Japanese law by Western scholars in the last decade has reflected Haley's dissatisfaction with the vague and ultimately unsatisfactory resort to 'culture' as the explanation for everything in which Japan differs from the West (usually understood in Japanese accounts to mean the United States). Frank Upham's *Law and social change in postwar Japan* is an important and stimulating contribution to the debate on the role of the legal system, but it is much more than that. Upham successfully demonstrates that no description of Japanese society or social change can be complete without an account of the role of legal rules and institutions in influencing conflict and directing change. For this reason alone, his book is obligatory reading for anyone interested in modern Japanese politics and society, and not just lawyers.

Upham builds on the culture/institutions debate but moves beyond it. Unlike previous contributors to the debate, he is concerned with the use of the legal system by *groups* involved in major conflicts, not by individuals suing one another over automobile accidents. The focus of the book is on 'how legal rules and institutions are manipulated to create and maintain a framework within which social conflict and change occur in Japan' (p. 3).

Upham examines the use of the legal system in group conflict through four case studies: pollution, women's rights, the Burakumin struggle, and industrial policy. Like other recent writers, he notes that the Japanese élite has taken deliberate steps to discourage litigation. One of his contributions, however, is to put flesh on the bones of generalizations like this by showing how the élite, although unable to prevent litigation from playing an important social and political role, has influenced the nature of that role. For example, pressure from court actions was a major factor in forcing the government to recognize the legitimacy of the claims of pollution victims and female workers. But in each case the government was able to head off judicial policy-making through case law by setting up mediation institutions that

would hear claims. Its goal was to maintain a style of policy formulation and implementation that relied on informal bureaucratic leadership.

One of Upham's surprising findings is that plaintiffs often cooperated in this strategy. Even where litigation was conducted against private actors using doctrines of private law, the main goal of the plaintiffs in his case studies was to get the government to change its behaviour. Plaintiffs were not, according to Upham, interested in achieving even incremental social change through setting legal precedents to be used by subsequent plaintiffs independent of government—a strategy often adopted by welfare rights and civil rights activists in the United States and Britain. The government was seen as responsible for the wrong—even if only through inaction—and it was up to the government to put it right. This focus on the government always let the government set the agenda.

Through his detailed study of litigation and elite response, Upham also weighs in against 'cultural' explanations of characteristic features of the Japanese legal system (although he seems to wish to remain outside of that particular dispute (p. 2)). Barrington Moore Jr. reminds us that 'to maintain and transmit a value system, human beings are punched, bullied, sent to jail, thrown into concentration camps, cajoled, bribed, made into heroes, encouraged to read newspapers, stood up against a wall and shot, and sometimes even taught sociology' (*Social origins of dictatorship and democracy*, Boston, 1967, 486). Similarly, the particularism and informality of Japanese law are not simply the result of the mysterious strength of traditional values. These values are created or maintained by legal rules and institutions that are the results of conscious choice.

Unfortunately, Upham is less convincing when it comes to accounting for features of American law by reference to the American individualist tradition. He posits an ideal-typical society built on individualism and competition where the paramount values are personal autonomy and choice, and suggests that 'in such a world . . . , the rules are likely to be procedural rather than substantive and the mode of interpreting and applying these rules formal and logical rather than informal and consensual.' But there is no simple relation between a stress on procedure and formality on the one hand and an ethic of individualism on the other. Sir Henry Maine noted long ago the tendency for procedure to dominate substance in ancient legal systems:

'So great is the ascendancy of the Law of Actions in the infancy of Courts of Justice, that substantive law has at first the look of being gradually secreted in the interstices of procedure; and the early lawyer can only see the law through the envelope of its technical forms.' Sir Henry Sumner Maine, *Early law and custom* (London, 1883, 389).

Pollock and Maitland in turn wrote of the 'sometimes complicated, always stiff and unbending' forms in the procedure of pre-Norman courts in England. (Sir Frederick Pollock and Frederic William Maitland, *The history of English law*, 2nd ed., 1, Cambridge, 1968, 38). Yet neither the Anglo-Saxons nor the

ancient Romans treasured 'personal autonomy and choice' as paramount values.

Whether or not Upham is correct about the relationship between an American individualist tradition and the legal system, the overall impact of his argument does not suffer. He shows convincingly that Japanese law does not stand apart from society; its significance extends to 'the stories it tells, the symbols it deploys, [and] the visions it projects' (p. 205), and the meaning these give to social life. And as in all good comparative social studies, there is a lesson for ourselves as well. The current calls heard especially in the United States for legal reform in the direction of less formality and more mediated settlements necessarily imply—and will, if heeded, promote—a particular vision of social life. What this vision is we would do well to contemplate before rushing to adopt Japanese legal institutions along with management techniques. I can do no better here than to finish with Upham's own thoughtful conclusion (p. 227):

'We must . . . ask ourselves whether and to what extent we wish to move toward a legal culture where the Minister of Justice, when asked why he opposed legislation to make Buraku discrimination illegal, responded that "discrimination is a matter of the heart, not the law".'

DONALD C. CLARKE

WILLIAM P. MALM: *Six hidden views of Japanese music*. xxii, 222 pp. Berkeley, Los Angeles and London: University of California Press, 1986. £27.25.

Professor Malm, explaining the title of his latest book, indicates that the word 'hidden' carries less an intimation of secrecy in the world of Japanese music but refers, rather, to 'sets of procedures within that tradition that are so "natural" that many excellent Japanese authors and musicians tend not to speak of them': and further, that the word 'views' was chosen 'in the spirit of those sets of Japanese wood-block prints that reveal different sides of the same scene, such as Mount Fuji'. The book then presents a series of six studies that focus mainly on lesser known aspects of theatre music for *noh* and *kabuki*, and of the common ground (textual and musical) shared between theatre music and the *nagauta* repertory (a genre of lyrical *shamisen* music that originated in the *kabuki* theatre). The studies are based on the lecture-series given by the author while Ernest Bloch Professor at the University of California at Berkeley in 1979–80, and are a masterly complement to his well-known earlier work on *nagauta*.

The first two Views are concerned with the relatively unknown world of construction, evaluation, and teaching of the *ko tsuzumi*, the small, hourglass-shaped hand drum used—as one in a trio of drums—in all three genres, *noh*, *kabuki* and *nagauta*. A brief historical account of the instrument in its East Asian context is followed by detailed descriptions (partly based on a collection of documentary sources published in Japan early this century) of the art