

Missouri Law Review

Volume 30
Issue 3 *Summer 1965*

Article 9

Summer 1965

Book Review

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Recommended Citation

Book Review, 30 MO. L. REV. (1965)

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Book Review

COURT AND CONSTITUTION IN JAPAN: SELECTED SUPREME COURT DECISIONS, 1948-60. By John M. Maki. Translations by Ikeda Masaaki, David C. S. Sissons, and Kurt Steiner. Seattle: University of Washington Press, 1964. Pp. xlvi, 445. \$9.50.

It would be difficult for anyone who has not struggled with the problem of obtaining reliable translations of Japanese judicial opinions to appreciate fully how indebted we are to Professor Maki for having brought to successful fruition this ambitious and exacting task. Examination of these opinions of the Supreme Court of Japan under the new Constitution, translated into excellent and readable, though occasionally exasperating, English should be a rewarding experience for those interested in comparative constitutional law in general, or Japanese law in particular. They will find not only revelations of the Japanese judicial process in operation, but also reflections of the pangs endured by post-war Japanese society in adjusting to its somewhat artificially induced constitutional and political reformation. Especially interesting in this latter connection are, for example: "Obscenity and Freedom of Expression (The *Lady Chatterley's Lover* Decision)"; "Licensing of Public Gatherings"; "Filial Piety, Patricide, and Equality under the Law"; "'Just Compensation' in Article 29 and the Land Reform"; and "The Constitutionality under Article 9 of United States Bases in Japan."

I have indicated that the English translations, although for the most part readable and comprehensible, are occasionally exasperating. It is hard to know, however, whether it is fair to hold the translators accountable for the exasperation. Japanese judicial opinions are apparently seldom limpid in style. The sentences are frequently extremely complex and sometimes achieve triumphs of ambiguity. Doubtless, the translators often had a hard choice to make between striking out on their own in relatively straightforward English, which might miss some nuance in the original, and faithfully reproducing the tortured complexities of the Japanese sentence structure. There are times when it seemed to me that Professor Maki and his associates need not have adhered quite so closely to the original construction and might have presented in simple English the same meaning which may ultimately be deduced from the complexities of the more literal translation. On the other hand, there were obviously many instances when simplicity could only have been achieved by tearing aside the deliberate ambiguities of the original. So at least the non-Japanese reader, such as this reviewer, may deduce when a dissenting opinion attacks a majority opinion for internal inconsistencies or unresolved ambiguities.

It should also be said that were it not for the dissenting and concurring opinions, this would be a much less interesting and revealing book. Much too often the opinion for the Court gives us only conclusions, with scarcely anything by way of supporting argument or explanation. It is left to the dissenting or concurring opinions to supply a measure of analysis and, creativity. Apparently the

Court as a whole found it much easier to agree on opinions limited to the barest propositions. It is also noteworthy that not once in this entire collection does the Court sustain a claim of unconstitutionality with respect to legislation.¹ Indeed the only successful contention of constitutional significance is with respect to admission of a coerced confession—a contention which turned upon a disputed question of fact. Whether this indicates that the Court has not been sufficiently hospitable to constitutional claims is scarcely susceptible to objective judgment. My own purely subjective reaction is one of disappointment that at least one or two of the more meritorious claims were not sustained. In this category I would be especially inclined to place the *Lady Chatterley's Lover* decision, and the *Public Apology* case. In *Lady Chatterley's Lover* the Court unanimously held the book obscene on the basis of particular objectionable passages, without regard to the artistic merit of the work as a whole. In the *Public Apology* case the Court held, over two dissents, that a court order requiring the unsuccessful defendant in a libel case to publish an apology did not violate the defendant's asserted "freedom of conscience," even though he continued to adhere to his belief in the original charges which gave rise to the libel action. Apparently ancient ways do not yield easily to constitutional innovations.

Finally, it should be noted that the book as a whole is made all the more valuable by an excellent introduction explaining the judicial system of Japan, by clear and concise statements of the facts involved in each case, by reproduction of the relevant statutory and constitutional provisions in connection with each case, and by appendices containing the entire Constitution and biographies of the Justices of the Supreme Court.

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1. The only case I am familiar with in which the Court did sustain such a constitutional claim is the so-called *Red Flag Case*, involving prosecution for violation of a directive issued by SCAP during the Occupation. See Nathanson, *Constitutional Adjudication in Japan*, 7 A.J.COMP.L. 195, 202 (1958).

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