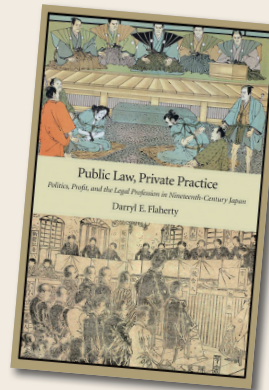


BOOK REVIEW

*Public Law, Private Practice:
Politics, Profit, and the Legal Profession
in Nineteenth-Century Japan*

Darryl E. Flaherty

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While the history of lawyers in Japan has attracted wide attention since the 1950s, very little scholarship has been published in languages other than Japanese. Professor Flaherty's work is ground-breaking as it contributes to the subject in at least four significant respects. First, it clearly outlines the broad history of legal practitioners in Japan spanning almost 300 years; second, it presents new findings which have previously been unknown to Japanese scholars; third, it makes successful use of original nineteenth century legal periodicals; and, finally, it sheds light on the activities of important Japanese lawyers such as Hoshi Tōru for the first time in English. Let me address each of these points in order here.

Flaherty's book offers readers an overarching description of both legal practices and the activities of legal practitioners in Japan from the 1600s (the Edo era) to the 1890s (the middle of the Meiji era). Interestingly, there is no precedent for this sort of broad coverage in Japanese. From a legal and historical perspective, Flaherty's work builds on earlier, more limited studies to make a significant contribution to the overall understanding of Japanese legal practice prior to the establishment of the *Kujigata osadamegaki*, which is a judicial code compiled by Shogun Yoshimune in 1742 (pp. 40–51). Although Dan Fenno Henderson published a monumental work on Edo era judicial systems, the activities of legal practitioners were not sufficiently clarified there. Flaherty's book thus makes an important contribution to this field.

Professor Flaherty also deserves credit for his novel insights into the field of legal history. For example, his work introduces Sono Tel, a female legal practitioner active during the transition from the Edo to the Meiji eras, who was previously quite unknown to Japanese scholars. In addition, he details the activities of legal and political study groups in early Meiji. Among these organizations, Hokushūsha, one of the earliest associations of legal advocates and scribes (known in Japanese as *daisho*, *daigen'nin*), played a particularly important role in the popular rights movement. Flaherty insightfully explores the group's activities and uses a wide variety of historical materials in his introduction of the president of the association, Shimamoto Nakamichi.

Flaherty's extensive investigation of legal periodicals from the early and middle Meiji period is also worth noting. He has furnished scholars not only with a valuable historical list of legal journals published but also an in-depth analysis of their contents. This is especially significant because these journals have not been the subject of thorough-

going research until this time.¹ After the Satsuma Rebellion in 1877, former samurai legal advocates turned to the political arena to express their opposition to the Meiji government. The legal debates of these men are recorded in the journals of the period, and their practical significance goes without saying. For example, the legal journal *Hōritsu zasshi* introduced contemporary legal discourse concerning public meeting regulations. It should be noted, however, that Flaherty's arguments in this area merit further embellishment. He states, for example, that "the impact of articles in legal journals extended beyond scholarship, officialdom, and the court" (p. 179). Given that most of these legal periodicals were published for less than a year, more information on how they were circulated is necessary to render his argument persuasive.

The most outstanding feature of this book is its focus on the specific activities of Meiji lawyers. One lawyer to whom Professor Flaherty devotes much space is Hoshi Tōru, who was called to the bar in England and engaged in legal practice in Japan from the late 1870s.² It is well known among English readers that Hoshi later became a prominent politician in the Japanese Liberal Party (Jiyūtō). However, his activities as a practicing lawyer have received very little attention thus far. Flaherty's description of the transformation of former samurai into legal advocates with strong inclinations toward democratic politics is also persuasive. He analyses brilliantly the relationship between legal advocates, liberal democracy, and their representation in court cases related to the popular rights movement.

Among the questions which occurred to this reviewer while reading this fine book were: What, after all, is a lawyer? How can we define a lawyer and other members of the legal profession in an historical context? As Professor Flaherty notes, legal practitioners existed in various forms throughout Japanese history, and those in the Edo and early Meiji periods resembled legal practitioners in early modern Europe in terms of the considerable overlap between individuals engaged in both legal practice and government business (pp. 33–35). Building on prior scholarship, Flaherty outlines this relationship. He explains for example how inn owners and suit solicitors, approved by the bakufu government in pre-Meiji Japan, gave legal advice concerning the laws and litigation in support of litigants (clients), drafted legal documents on their behalf, and negotiated settlements out of court. In addition, he notes how such "quasi lawyers" accompanied their clients to the court buildings, even though they were not allowed to represent them directly. According to Sakamoto 2007, however, suit inn owners were not used when commoners living inside Edo brought suit. In those cases, only town officials were expected to support the parties.³ It seems that further exploration into the role of suit inns (or *kujiyado*) in the Edo era judicial system is required.

This reviewer also wonders whether Meiji legal advocates were in fact the successors of the suit-inn owners, suit solicitors and legal practitioners, such as Sono Tel. Flaherty stresses the difference in social class between legal advocates recruited from the former samurai class and suit inn owners or suit solicitors who were generally commoners. When the former samurai legal advocates concentrated on political activities between 1874 and 1880, litigants presumably had no choice but to deal with the legal practitioners of the Meiji era

1 See Takahashi 2011.

2 The first Japanese barrister was not Hoshi Tōru, but Yoshiyama Gorōnosuke [Fukubara Yoshimichi (Yoshiyama)] who was called to the bar at Lincoln's Inn on 6 June 1874. See Hori 2012 and Fujita 2013.

3 See also Yoshida 2004 and 2005.

known as *dainin*. Although non-licensed, these individuals represented clients in court, and scholarship suggests that they enjoyed the right to represent clients as far as the Japanese Supreme Court (Daishin'in).⁴ Sono Tel was one of these non-licensed *dainin*, and it seems she may have continued her legal practice in court at least until 1893 and out of court until as late as 1933, as was the case with other non-licensed legal practitioners.

The early legal field in Japan included licensed lawyers, many of whom were former samurai who often focused their attention on politics and the political movements of the day, as well as non-licensed advocates who conducted the practical day to day representation of their clients. In my view, both of these groups helped craft the modern Japanese legal profession. This is something to which Professor Flaherty gives too little consideration. In addition, the role of the police in the settlement of private disputes during the early Meiji period should not be overlooked in further research.

In summary, Professor Flaherty's dynamic book on the Japanese legal profession has opened the door to many new areas of scholarship, and will no doubt become standard reading for both legal and political historians.

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⁴ See Hashimoto 2005 and 2010, and Misaka 2011, 2013a and 2013b.

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