Book Review. Civil Procedure in Japan by Takaaki Hattori and Dan Fenno Henderson

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rate study to that subject. As to the substantive point this reviewer feels that Louisiana’s civil-law heritage may withstand complete assimilation by the common law better than the authors posit, witness e.g. the renewed emphasis by the Supreme Court of Louisiana on some “civil law” rules in the torts field.

Overall, and in spite of these two minor caveats, Dean Hay and Prof. Rotunda’s book is a very valuable introduction to the federal system of the United States; it is well worth acquiring by libraries in the United States and in other countries that have an interest in problems of federalism or simply in the law of the United States.

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Civil Procedure in Japan will be of great use both to legal practitioners and to scholars interested in the Japanese legal system. It completes a Columbia University School of Law project which, recognizing that substantive rights can only be understood against the background of civil procedure, had already produced important scholarly publications in the 1960s on civil procedure in France, Italy, and Sweden. From a scholarly point of view, this volume may even be the most interesting of the series. Japan’s procedural system in several ways bridges eastern and western approaches, concepts from the traditional and developed worlds. In addition, while it was built on the pattern of late nineteenth century Germany, the Japanese system has been influenced greatly by the United States since the second world war. And, it should be noted from the perspective particularly of practitioners, this book has the additional virtue in that the looseleaf format will enable easy updating.

The book begins with a helpful summary of the history of the Japanese legal system, followed by discussions of the legal profession, defined not just to include lawyers, and the judicial system. The next six chapters discuss thoroughly questions of jurisdiction, parties and capacity to sue, the details of procedure in regular courts, and the availability and functioning of special proceedings. The useful information presented here and
throughout the book is difficult to obtain elsewhere, and the account here merits particular praise for several notable reasons. First, the authors use extreme care in defining the terms. Indeed, they work hard to find analogous concepts in the U.S. system, and they trace the ancestry and current relation of particular procedures to those set forth in the Code of Civil Procedure of the Federal Republic of Germany. Second, the authors convey the sense of how the procedures operate in practice. For example, while the Code of Procedure in Japan states that the judge may examine the parties to a dispute only if unable to reach a decision after examining all the other evidence, the authors note that, "in practice, judges rarely reject an application to examine a party even though not all other evidence is in." (section 7.05[01]) The book is completed by insightful chapters on litigation expenses, the enforcement of judgments, and international cooperation in litigation. Illuminating appendices provide, among other things, copies of relevant forms and judgments in translation.

From a scholarly point of view, as noted before, Japan is a fascinating mix of traditions and models. Modern commercial litigation coexists with a traditional emphasis on conciliation, which the authors describe in ample detail. Furthermore, the hybrids in technical procedural matters are quite unique. For example, after the second world war the German practice of judicial interrogation of witnesses was modified and the function assumed by lawyers. The result is a German or continental approach to the setting of hearings and the gathering of evidence mixed with the American style of direct and cross-examination of witnesses by adversary lawyers.

Finally, this reviewer cannot resist showing how the book can help to correct some stereotypes of law and procedure in Japan. For example, the authors show that the oft-noted statistic on the relatively few lawyers in Japan—11,042 in 1977—is somewhat misleading. The number of law students is in fact very large—about 27,500 graduates per year. Only a small percentage become practicing lawyers, but one reason is that only about two percent of candidates pass the national legal examination. Moreover, a fair appraisal of the number of "lawyers" in Japan should include "licensed non-lawyer specialists," who perform substantial amounts of legal work. Thus, "While in West Germany . . . there is one lawyer for every 2,300 people, in Japan the ratio is one to 10,000. This disparity is less striking when the non-lawyers are added; the ratio then becomes one to 1,200." (section 2.09) Similarly, while it may be that the Japanese are less "litigious" than others, the authors point out that Japan, too, is burdened by serious problems such as unreasonable court delay. Some of the causes sound familiar to an American: "increase in the number of novel and complicated cases such as environmental, consumer, and malpractice suits; inadequate preparation by lawyers. . . ." (section 1.03[4]) The important social forces that have affected legal practices recently in the United States can also be found in Japan.
In short, while certain sections of the book may be too scholarly for some practitioners, and some details about practice of limited interest to scholars, the authors have succeeded well in balancing their approach. It is an indispensable contribution to both audiences.

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A reviewer’s (or, at least, this reviewer’s) heart leaps upon the discovery that the first footnote in a legal work is to a book by P. G. Wodehouse. The fact that the title of the tome under review is The Effect on English Domestic Law of Membership of the European Communities and of Ratification of the European Convention on Human Rights does much to dampen this initial enthusiasm. However, this is a most interesting book, well-written, and throwing much light on to a rapid, fundamental, and strangely unforeseen change that is taking place in English law.

The authors, of the faculty of law at the University of Bristol, have produced twelve individual essays to commemorate the fiftieth anniversary of that faculty’s foundation. They, and Nijhoff, the publisher, are to be congratulated on an impressive publication.

The authors engagingly tell us in the preface that they are not specialists in European law, but rather English lawyers noting the interaction of English and the emerging European law as it comes to us from the E.E.C. and the European Convention on Human Rights. It should be noted that most of the authors seem well-disposed to the assertion of human rights stemming from those sources, even where this involves invalidation of existing English law, or prodding a (usually reluctant) British government into making appropriate amendments. A cautionary note should be sounded here for readers outside Britain: not all English lawyers would be so benevolent. As is evident from the book itself, some, possibly many, English lawyers, some British judges, and all British governments take a much more jaundiced view of these developments. The volume would present a more rounded picture of the English scene were it to contain some articles by representatives of this school of thought. In great part, we