Preface

Leon Wolff, Luke Nottage and Kent Anderson

This book owes its origins to a small workshop held in a hired meeting room at the International House Japan, in Tokyo, several years ago. The theme of the workshop was ‘who judges Japanese law?’ – a legal twist on the political science question of ‘who governs Japan?’. This ‘who governs’ debate, led by Chalmers Johnson (1982, 1995), interrogated the extent to which powerful bureaucrats controlled public policy, especially in economic and trade policy, and thereby subverted the democratic principle of public sovereignty. Our workshop theme of ‘who judges’, by contrast, was designed to elicit critical reflections on the extent to which justice reforms proposed by the Justice System Reform Council in 2001¹ had been successful in strengthening civic engagement in the Japanese legal system and reducing the role of *ex ante* bureaucratic regulation of economic and social rights. The two questions shared common ground to the extent they both concerned the relative influence of bureaucrats and regulation in Japan. They departed insofar as the former debate addressed the quality of Japanese democracy whereas the latter evaluated the broader socio-legal significance of law in Japanese society.

The workshop was unconventional for an international academic meeting. There were no paper presentations. No power-point slides. No audience questions. No worried time-keepers trying to keep loquacious speakers in check. It was a free-form brainstorming session – a ‘conference’ in the true sense in that the objective was to explore, test and flesh out ideas within a coherent theme in a collaborative dialogue among colleagues with different areas of legal expertise.

This project – both the workshop and the ensuing book – is typical of the open nature of the Australian Network for Japanese Law (ANJeL). The contributing authors to the book – some who participated in the International House workshop; others later invited to join the project –

¹ ‘Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century, the Justice System Reform Council’ (<http://japan.kantei.go.jp/judiciary/2001/0612report.html>).

are a mix of the broad-based membership that makes ANJeL what it is today. The co-editors are the founding co-directors of the network. Japanese academics, such as Soucihirou Kozuka and Takashi Araki, are long-time supporters of ANJeL's teaching or research activities. Former Australian students of Japanese law courses supported by ANJeL, Carol Lawson and Trevor Ryan, have gone on to forge their own careers in Japanese law teaching and research. Rounding out the contributors are an American sociologist with a socio-legal research focus (David Johnson), a Japanese lawyer cum jury expert (Satoru Shinomiya) and a former Australian government lawyer who teaches and researches in Japan (Stephen Green).

Unless applying the test of six degrees of separation, there is little distinctly 'Australian' about this group of contributing authors (see also Anderson, 2001). To be sure, ANJeL's core institutions – the law faculties of the Australian National University (ANU) in Canberra, Bond University on the Gold Coast, and the University of Sydney – are east-coast Australian institutions. However, founding co-director Kent Anderson was born and raised in Alaska; his successor as ANU co-director since 2012, Hitoshi Nasu, was born and raised in Japan; and co-director Luke Nottage was raised mainly in New Zealand (all are Australian citizens). Co-director Leon Wolff was born in Australia but is a third-generation German and Russian immigrant on the paternal side and received his education on Japanese law under Professors John Haley and Daniel Foote at the University of Washington in Seattle. Of the three other Australian contributors, two (Stephen Green and Carol Lawson) work in Japan. The other four contributing authors are Japanese or American.

Nationality is unimportant to ANJeL. It is a deliberately open network. With a membership that numbers over 400, ANJeL comprises academics, students, judges, lawyers and other professionals from across the globe, including Australia, Japan, the United States, Canada, Europe and the rest of Asia.² Its events are global. In addition to hosting conferences in Australia (Sydney in 2002, 2003, 2004, 2005, 2006, 2012; Canberra, 2007; the Gold Coast, 2010; and Cairns, 2014) and in Japan (Kyoto in 2008 and 2015; Tokyo in 2009), it supports events further afield (Lyon in 2012, Berlin in 2014). Presentations have evolved into special issues or individual works in a plethora of academic journals and books (eg Nottage et al, 2008; Butt et al, 2014), and ANJeL supports the leading Japanese Law periodical in Western languages – the *Journal of Japanese*

² Further details about the Network can be found via <http://sydney.edu.au/law/anjel/>.

Law/Zeitschrift für Japanisches Recht. On the pedagogical side, the Network runs two-week intensive courses annually for Japanese students in Canberra and the Gold Coast; and since 2005 has collaborated with Ritsumeikan University to run an intensive programme on Japanese law in comparative perspective for Japanese, Australian and other international students in Kyoto and Tokyo. ANJeL also supports 'Team Australia' students participating in the Inter-Collegiate Negotiation and Arbitration competition, held in English and Japanese in Tokyo each December. For broader community outreach, since 2004 Japanese judges and court officials respectively have pursued year-long research programmes at the University of Sydney³ and ANU.

The cosmopolitan nature of ANJeL is unsurprising. Nationality, after all, has never mattered to Japanese Studies in Australia. As Jain (1998, p. 3) noted nearly two decades ago, '[n]ationality is irrelevant since Japanese studies in Australia ... have attracted scholars from around the world'. In Jain's view, scholars from abroad have not only enriched the scholarly debates about Japan in Australia but also have had their own scholarly experiences enriched by finding a new institutional home in Australia. This observation applies with equal force to the sub-discipline of Japanese law.

More complex is whether ANJeL brings a uniquely Australian style or perspective to Japanese law scholarship. Others have posed the same question more broadly about Japanese Studies (eg, Burgess, 2001; Jain, 1998; Stockwin, 1998; Low, 1997) or Asian law (eg, Smith, 1997). All warn about the dangers of over-generalisation (eg, Stockwin, 1998, p. 15), acknowledge the shared methodological traditions that constitute accepted research practice (eg, Smith, 1997, p. 7), and accept the topical, theoretical and methodological diversity of Australian research projects (eg, Jain, 1998, p. 8). Similar caveats operate for Japanese law scholarship in Australia. A quick scan of the chapters of this book reveals the diverse fields of law that the contributing authors have used to reflect on popular participation in the Japanese legal system: criminal justice, prison policy, employment dispute resolution, social security and welfare law, administrative law, competition law, and litigiousness. A deeper reading reveals plural approaches to data and method: regulatory theory in social security law; mixed empirical methods in analysing public law and practice; functional accounts of lay systems of justice in criminal

³ A Japanese judge also visits Melbourne Law School each year as part of this ANJeL programme, which also supports broader initiatives bringing together the judiciaries in Japan and Australia (Spigelman, 2006).

trials and labour disputes; policy analysis in the reform of prison policy and competition law; and the relevance of popular culture in explaining litigiousness. This tends to support Smith's thesis (1997, especially pp. 7–12) that there is little by way of an Australian 'identity' – such as its geographical closeness to Japan, multiculturalism, fading links to Europe or cultural assumptions of egalitarianism – that carves out an Australian 'perspective' on Japanese law.

Australian experience, however, does play a role in shaping the research agenda on Japan. This is also the case with Japanese law scholarship. As Smith notes (1997, p. 7), Australian law, practice and process is often closer to the Japanese model on the spectrum of comparative legal systems than the United States. This allows Australian research projects to question models or theories – and propose alternative frameworks – when seeking to explain Japanese legal phenomena that diverge more dramatically when compared to the American legal system. Consider Kozuka's chapter on Japanese competition law, for example, which directly addresses – and criticises – the hypothesis that Japanese law reform epitomises the 'Americanisation' of Japanese law.⁴ Ryan's analysis of welfare law, drawing on Australian regulatory theory, demonstrates that Japanese law remains a mix of private and public influences. Green and Nottage compare government lawyers in Japan and Australia to reflect on the future of Japanese government involvement in administrative lawsuits.⁵

This experience might explain why Australian scholarship on Japan generally (Stockwin, 1998, p. 20; Burgess, 2001) – and Japanese law specifically – tends to be sceptical of grand theories. Scholars debate whether this is a good thing. For Burgess (2001, p. 61 fn. 1), it is a constraint on Japanese Studies in Australia because it is locked into various social scientific 'paradigms' dictated by others, rather than freed by the interdisciplinary intellectual traditions of postmodernism, post-colonialism and cultural studies. For Stockwin (1998, p. 20), despite the important insights theory-building can bring to Japanese Studies, it can

⁴ Contrasting also American with Japanese, Australian and European product liability law and practice, see Nottage (2004). However, offering multiple points of comparison can sometimes also highlight strong affinities between American and Japanese legal systems, which scholars focusing just on those two jurisdictions may underestimate. Institutionally, see, eg, Nottage (2010); for contract law, see, eg, Nottage (2013).

⁵ See also 'Government Lawyers in Korea, Japan and Australia' (14 March 2012), http://blogs.usyd.edu.au/japaneselaw/2012/03/government_lawyers_in_korea.html.

also be a 'straight-jacket', squeezing phenomena into a single model, blinding observations of aspects of Japan that do not 'fit' a particular theory, masquerading ideological concerns as objective science, and impeding alternative lines of inquiry. Australian law researchers, unlike some of their American counterparts, are not strongly linked to any particular theoretical school. Contrast Americans such as J Mark Ramseyer (rational choice theory) and John Haley (institutional theory), for example. This is not to suggest Australian scholarship is a-theoretical. Quite the opposite. As this book demonstrates, different authors have drawn on a range of theoretical tools to ground their analyses, such as Ryan's reliance on regulatory theory, Lawson's engagement with models of socio-legal change, and Wolff's theoretical moves to give social-scientific significance to popular culture.

Ultimately, nationality is not what determines ANJeL's identity nor what drives its activities. Put differently, it is less the *Australian Network for Japanese Law* and more the *Australian Network* for Japanese Law. It is the web of relationships – originating in Australia but spanning the globe – that has provided the sources of ANJeL's success. The Australian higher education sector is marked by particularly intense competition – for students, research income, even reputational 'points' by governmental or other rating agencies. The traditional approach to build research is the single-institution research centre; there are many, too numerous to individually name, in Japanese Studies, Japanese Law or Asian Law across Australia and the world. ANJeL, as a cross-institutional network, has bucked that trend. This book is an outcome of the energy that comes from this alternative arrangement.

As in research networks, so too in personal relationships – this book would not have been possible without the support and cooperation of family, friends and colleagues. The co-editors, in particular, thank the publisher, Edward Elgar, for patience and professionalism in bringing this project to fruition. Leon Wolff dedicates this book to his nephew, Nikolai Wolff, who was his inspiration for persevering despite the vicissitudes of life. Luke Nottage dedicates this work to Miah and her three siblings. Kent Anderson thanks Hiroko Yamanaka.

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