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Studying Japanese Law Because It's There

John Haley's essay offers a number of reasons why the study of Japanese law is as relevant as ever. This reply extends and, in part, challenges Haley's claims, focusing especially on the relevance of Japanese experience for questions of institutional development and change. The reply also emphasizes non-instrumental rationales for the study of foreign legal systems.

Comparativists are a defensive lot, accustomed to justifying our field to colleagues and students who do not fully understand what we do. The core question, "Why Compare?" is the starting point for many a course and many a casebook in comparative law. In his short but sweeping essay, John Haley re-asks the classic question in the context of Japan. As prominent scholars of Japanese law now reach out to study China and other neighboring countries, Haley's question seems particularly timely.¹ His answer is provocative and challenging, and with luck will advance a fresh set of work on issues for which Japan should be of great interest. It is hardly my place to disagree that the study of Japanese law is important and can help generate insights into questions of broader theoretical import. My purpose in this reply is to extend, supplement, and in some places challenge Haley's claims.

Before turning to Haley's essay in particular, I should state at the outset that I sometimes find the comparativist's handwringing to be overwrought. The study of law is a practical discipline, but it is also an academic one and academic inquiry by its nature involves a certain responsibility to follow one's interests regardless of "payoff." To say that Japanese, or German, or Chinese law are worth studying because those jurisdictions are large and important is to imply that

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1. See e.g., Frank Upham, *Who will Fine the Defendant if He stays with his Sheep? Justice in Rural China*, 114 YALE L. J. 1675 (2005); Benjamin Liebman & Curtis Milhaupt, *Reputational Sanctions in China's Securities Markets*, 108 COLUM. L. REV. 929 (2009); Veronica Taylor, *Contract and Contract Enforcement in Indonesia: An Institutional Assessment*, in *INDONESIAN LAW AND SOCIETY* (2d ed., Timothy Lindsey ed., 2008) (Indonesia); David Johnson, *The Prosecution of Corruption in Korea*, in *LEGAL REFORM IN KOREA* (Tom Ginsburg ed., 2004).

the study of, say, Tibet, Fiji or Mongolia is unimportant.² But knowledge, it has been said, is "capable of being its own end"³ and this is as true in law as in literature. One can unapologetically study a foreign legal system simply for its own sake. Even if one starts with a more instrumentalist premise, we cannot conceivably know whether any particular legal rule or institution will be of broader theoretical or practical interest until we know what it is we are looking at. And this requires a certain degree of local knowledge, of willingness to understand legal systems on their own terms. There is therefore virtue in having a group of scholars studying foreign legal systems for their own sake, independent of the need to resolve any particular theoretical or practical question.

I.

In the four decades since Charles Stevens' 1971 paper, Japan has gone from a rapidly re-industrializing nation to "Number One"; it then experienced a "lost decade" that brought it back to earth.⁴ When Japan was Number One, Haley's question might have seemed superfluous. Scholars flocked to the study of modern Japan to understand the keys to its success, eager to offer prescriptions to the rest of us. From political economy to policing to punishment, Japan had something to offer.⁵ Though law had been underemphasized in many of the studies on political economy, Haley and other lawyers had brought it to the fore.⁶

Today, Haley is certainly right that the dominant perception of Japan—both at home and abroad—is as a fading or stagnant society. The economy is flat. Tokyo's parks are now populated by homeless men, who sleep on cardboard and rely on public services. Unemployment is on the rise, but the limited lateral hiring market mentioned by Haley ensures that the newly unemployed have few options. The society is aging rapidly, and yet seems unable to contemplate the ex-

2. REBECCA REDWOOD FRENCH, *THE GOLDEN YOKE* (1995) (Tibet); Yash Ghai, *A Tale of Three Constitutions: Ethnicity and Politics in Fiji*, 5 INT'L J. CONST. L. 639 (2007); Tom Ginsburg, *The Transformation of Legal Institutions in Mongolia 1990-93*, 12 ISSUES AND STUDIES 77 (1994).

3. JOHN HENRY NEWMAN, *THE IDEA OF THE UNIVERSITY* (1858).

4. EZRA VOGEL, *JAPAN AS NUMBER ONE* (1979). Stevens' paper is Charles Stevens, *Modern Japanese Law as an Instrument of Comparison*, 19 AM. J. COMP. L. 665 (1971).

5. CHALMERS JOHNSON ET AL., *POLITICS AND PRODUCTIVITY* (1991) (industrial policy); DAVID H. BAYLEY, *FORCES OF ORDER* (1991) (policing); JOHN BRAITHWAITE, *CRIME, SHAME AND REINTEGRATION* (1989) (punishment); Derek Bok, *The President's Report to the Board of Overseers of Harvard University for 1981-1982*, reprinted in 33 J. LEGAL EDUC. 570 (1983) (arguing that the United States allocates too much talent to law rather than engineering, in contrast with Japan).

6. JOHN O. HALEY, *AUTHORITY WITHOUT POWER* (1991); Frank Upham, *The Place of Japanese Legal Studies in American Comparative Law*, 1997 UTAH L. REV. 639 (1997).

pansion in immigration needed to deal with its demographic decline. A long malaise seems to have set in, both in reality and in academic perception.

And yet Japan is still—and will remain—a highly successful society by virtually any measure. It remains the world's second largest economy in nominal terms. Haley argues that we have much to learn from the experience of Japan, for it has much to offer on core questions of economic and social policy.

I want to elaborate on some of the issues raised by Haley, focusing particularly on what Japan has to tell us about questions of institutional change and development. The real innovations of Japanese law, in my view, are institutional and organizational rather than substantive. The fact is that most advanced industrial societies have fairly similar rules with regard to the economy. Where they differ is in organizational structure. In the final section of the paper, I consider other reasons for the study of Japanese law, including those that are decidedly non-instrumental. We ought to study Japan, I conclude, because it is there.

II.

The Meiji era remains distinctive in world-historical perspective, and Haley is surely right to suggest that a comprehensive examination from the perspective of law and development would be most interesting. The three decades after the Meiji Restoration of 1868 provide the single greatest story of rapid industrialization and institutional transformation that we know of, with only the postwar rise of Northeast Asia and the ongoing transformation of post-Deng China to compare. Historians have long debated the role of prior conditions, policy choices, and institutions in the Meiji story, and many of the questions remain controversial. Revisiting these issues would be worthwhile. To be sure, we have a number of excellent legal histories of Meiji Japan.⁷ What is missing, however, is a sustained examination of Meiji legal institutions—and their predecessors in the Edo era—from the perspective of modern institutional theory. What were the relative roles of political stability, quality legal institutions, and substantive law in underpinning the Meiji transformation? Is there anything to learn from the sequencing of the Meiji reforms, in which legal institutions were created first, followed by a constitution and

7. KICHISABURO NAKAMURA, *THE FORMATION OF MODERN JAPAN: AS VIEWED FROM LEGAL HISTORY* (1962); JAPANESE LEGISLATION IN THE MEIJI ERA 13 (William Chambliss trans., Ryosuke Ishii ed., 1958); PAUL HENG-CHAO CH'EN, *THE FORMATION OF THE EARLY MEIJI LEGAL ORDER* (1981); Kenzo Takayanagi, *A Century of Innovation: The Development of Japanese Law 1868-1961*, in *LAW IN JAPAN: THE LEGAL ORDER IN A CHANGING SOCIETY* (Arthur T. von Mehren ed., 1963); YOSHIHIKO KAWAGUCHI, *NIHON KINDAI HÔ SEISHI* [A HISTORY OF MODERN JAPANESE LAW] (1998); EINOSUKE YAMANAKA, *SHIN-KINDAI HÔRON* [NEW DISCOURSE ON LAW IN MODERN JAPAN] (2002).

then codes? In contemporary state-building it is the constitution that comes first, but it is not clear that this is everywhere and always the most sound strategy.

In terms of the role of law in development, contemporary theory emphasizes the role of property rights and contract enforcement. Haley asserts that property rights and systems of enforcing contracts were in place in Japan by the middle of the nineteenth century.⁸ More detail about the evolution of these systems, including the interaction of formal and informal mechanisms, would help inform contemporary debates.⁹ Some have argued that the essential role for the state may be the delineation of property, for informal institutions can substitute for state enforcement of contracts,¹⁰ including those about the relative importance of property and contract. But we also know that the Meiji reforms involved a process of overturning some prior entitlements, namely those of the regional rulers known as *daimyô*. The government converted these entitlements into government bonds, and also removed class privileges associated with the samurai status entirely. This implies that reform was a dynamic story and not merely a matter of stabilizing property rights and then letting the market do all the work. Interference with both property rights and social class was an important precondition for the Meiji transformation.

Japan's nineteenth century transformation is also relevant to understanding the role of authoritarian rule in development, and might provide insights understanding some of the dynamics of contemporary China.¹¹ The development of judicial independence in Japan provides an example. Despite billions of dollars spent on law and development activity in recent decades in both dictatorships and democracies, we have relatively little understanding of the dynamics of developing judicial independence. Japan's experience in this regard is remarkable in comparative terms. Japan is the *only* case of genuine judicial autonomy being manufactured, without colonialism, in such a short time.

A word is in order on this point, given the substantial debate on judicial independence in postwar Japan, pitting Haley against Harvard Professor J. Mark Ramseyer.¹² Haley has argued that "the Japanese judiciary enjoys a greater degree of independence from political intrusion than in any other industrial democracy, both with

8. John O. Haley, *Why Study Japanese Law?*, 58 AM. J. COMP. L. 1 (2010).

9. Perhaps the only work grappling with these questions from an institutional perspective may be J. MARK RAMSEYER, *ODD MARKETS IN JAPANESE HISTORY* (1996).

10. See e.g., Donald Clarke, *Economic Development and the Rights Hypothesis: The China Problem*, 51 AM. J. COMP. L. 89 (2003).

11. Peter R. Moody, Jr., *Genro Rule in China and Japan: A Comparative Perspective*, 12 JOURNAL OF CHINESE POLITICAL SCIENCE 29 (2007).

12. Frank Upham, *Political Lackeys or Faithful Public Servants? Two Views of the Japanese Judiciary*, 30 L. SOC. INQUIRY 421 (2005).

respect to individual cases as well as the composition of the judiciary.”¹³ He has pointed out that Japanese judges are seen as being free from corruption so prevalent elsewhere in the region.¹⁴ Ramseyer, with various co-authors, has demonstrated that the Japanese Supreme Court Secretariat manipulates career incentives to punish judges with radical views, or who oppose policies central to the regime.¹⁵ Both scholars have provided convincing evidence, but the debate concerns what might be called the right tail of the distribution of cases. That is, the vast majority of ordinary cases do not involve political matters or issues salient to the governing elite. For these ordinary cases, both scholars agree that justice in the postwar era was fairly uniform and of high quality. It was likely true in the pre-war Meiji period, though we do not have the same depth of evidence. In both periods, judicial quality and autonomy over some cases was a desirable policy outcome for Japan’s rulers, for it allowed them to make credible commitments and thereby underpinned the market economy. How this came to be is an important and under-studied question.

Before Shimpei Eto’s reforms of 1872, the notion of a distinct branch of government for judicial affairs seemed, to use the most appropriate term, foreign. The development of the modern judiciary began as a signal to foreigners that Japan was a “modern” nation, so as to revise the Unequal Treaties that had been imposed on Japan. Within two and a half decades, a judicial profession had been created and judges had developed enough sense of professional autonomy to resist executive pressure from an authoritarian government in the famed incident at Ôtsu in 1891. This occurred when a policeman attempted to kill the Russian crown prince. Ordinarily, attempted murder was punishable only by life in prison, but the government sought the death penalty, by analogy to offenses against the Japa-

13. John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy, and the Public Trust*, in *LAW IN JAPAN: A TURNING POINT* 99, 114 (Daniel H. Foote ed., 2007). See also John O. Haley, *Litigation in Japan: A New Look at Old Problems*, 10 WILLAMETTE J. INT’L L. D. R. 121, 139 (2002) (“By nearly all accounts, Japan’s judges are collectively the most politically autonomous and individually the most honest in the world, as well as among the most trusted.”).

14. John O. Haley, *Litigation in Japan: A New Look at Old Problems*, *supra* note 13 (two judges disciplined for minor infractions).

15. J. Mark Ramseyer & Eric B. Rasmusen, *Why Are Japanese Judges So Conservative in Politically Charged Cases?*, 95 AM. POL. SCI. REV. 331, 331 (2001); J. MARK RAMSEYER & ERIC B. RASMUSEN, *MEASURING JUDICIAL INDEPENDENCE: THE POLITICAL ECONOMY OF JUDGING IN JAPAN* 126 (2003); J. MARK RAMSEYER & FRANCIS MCCALL ROSENBLUTH, *JAPAN’S POLITICAL MARKETPLACE* 178 (1993) (arguing that “Japanese judges are agents of LDP principals”). Ramseyer and Rasmusen do not find bias in the run of the mill tax cases. J. Mark Ramseyer & Eric B. Rasmusen, *Why the Japanese Taxpayer Always Loses*, 72 S. CAL. L. REV. 571 (1999). Nor are judges demoted for acquittal in ordinary criminal cases. J. Mark Ramseyer & Eric B. Rasmusen, *Why is the Japanese Conviction Rate So High?* 30 J. LEGAL STUD. 53 (2001).

nese imperial household. Resisting this pressure, the courts demonstrated some autonomy under the leadership of Supreme Court Justice Kojima Iken, and established the principle of judicial independence in the Japanese context. This ruling became a well-spring for the traditions of institutional autonomy and freedom from pressures which remain the hallmark of the Japanese judiciary.

To be sure, this account of the Ôtsu incident is not universally accepted. Ramseyer and Rosenbluth, in their provocative revisionist account of imperial Japan, argue that in fact the judges *were* subject to pressures from the Meiji oligarchs.¹⁶ They note that Kojima was prosecuted for gambling after the incident, and that he retired shortly thereafter for mysterious reasons. They also point to evidence that many judges were removed, through early retirements, from the bench in the late 1890s. Ramseyer and Rosenbluth's interpretation, however, is not fully convincing. Kojima won his trial for gambling and two other judges were able to successfully refuse transfer orders, belying expected outcomes of a system of crude punishment.¹⁷ There is also a tension in Ramseyer and Rosenbluth's overall story of Meiji Japan, which focuses on the inability of the Meiji oligarchs to act collectively, and the idea that the oligarchs *were* able to act collectively to discipline judges.¹⁸

A final point about the Ôtsu incident is that Japanese judges *themselves* have interpreted it as a sign of their institutional autonomy. This could, of course, be ideological obfuscation, but the counter-image of judges acting in accordance with the short-term political preferences of governors does not seem to comport with judges' own understanding of their role. While Ramseyer's evidence of career punishment for postwar Japanese judges in "right-tail" cases is convincing, its impact on ordinary cases is likely to be minimal. One need only look at the problems of judiciaries in other countries to realize how unusual it is to have built an institution with strong corporate identity, efficient operations, and institutionalized mechanisms for deciding cases in a uniform manner.

In short, the creation of modern legal institutions in a period of two decades during the Meiji era is a remarkable and important

16. J. MARK RAMSEYER & FRANCES M. ROSENBLUTH, *THE POLITICS OF OLIGARCHY: INSTITUTIONAL CHOICE IN IMPERIAL JAPAN* (1997).

17. *Id.* at 77-78.

18. Indeed, Ramseyer and Rosenbluth concede that judicial autonomy was greater than that of bureaucrats. *Id.* at 169-70. To be sure, many judges were retired in the late 1890s, but as Ramseyer and Rosenbluth recount, there were good reasons to do so from the point of view of ensuring judicial quality. The judges in question, too, were essentially bribed off their courts rather than summarily fired in violation of the law. This illustrates rather than undermines the idea of the semi-autonomous nature of the judiciary and the institutionalization of the legal system: had the political principals been better able to influence the judges, we would not see the retirees leave with such a share of the "surplus."

achievement and deserves more attention in light of contemporary concerns. Although the initial motivation for creating the Japanese judiciary may have largely been symbolic, designed to satisfy foreigners that Japanese justice was not barbaric, it led to genuine institutional autonomy over some matters rather quickly. Understanding how the early leaders of the judiciary overcame their collective action problems to institutionalize judicial independence bears further inquiry and might have implications for judicial reform in other countries. Perhaps the creation of institutions from scratch is, counter-intuitively, easier than institutional transformation, which is the situation in most developing countries. But the Meiji experience suggests that a level of genuine judicial autonomy over many cases is at least one possible outcome of the current reform programs in places like China, even under authoritarian rule.

The contemporary Japanese legal system also has the potential to contribute to our understanding of institutional change. The long history of Japanese law is one of punctuated equilibrium, with major bursts of activity in the late nineteenth century and the era after World War II. In the last decade, Japan has witnessed another great round of legal reform, the effects of which will be felt for some time.¹⁹ These reforms include: an expansion in the size of the bar that is quite significant in relative, if not absolute, terms; a new graduate system of legal education; a “*saibanin*” system of lay participation in serious criminal trials; major reforms to corporate, commercial and administrative law, and; the rise of large law firms. These reforms each call out for empirical study. At a higher level of abstraction, the reform process is itself worth examining in comparative perspective. Many, though not all, of the reforms were mapped out in the 2001 final report of the Justice System Reform Council.²⁰ How the process has played out has involved complex and interesting politics worthy of further systematic analysis and might have potential to inform broader theories of institutional change. It is interesting, for example, that many of the reforms were adopted without a clear political constituency and without external shock comparable to the Meiji and postwar periods. More evolutionary models of institutional change may be applicable to this case.²¹

The possibility of such institutional changes provides a challenge to one of Haley's claims, namely that cultural patterns founded in wet rice agriculture have had lingering social and cultural residues in the form of communitarian social structures.²² The claim is that patterns of private ordering established in village Japan have lingering

19. LAW IN JAPAN: A TURNING POINT, *supra* note 13.

20. *Recommendations of the Justice System Reform Council: For a Justice System to Support Japan in the 21st Century* (June 12, 2001).

21. PAUL PIERSON, *POLITICS IN TIME* (2004).

22. Compare KARL WITTFOGEL, *ORIENTAL DESPOTISM* (1957).

effects today. This claim is hard to assess and to falsify. Haley contrasts it with the Chinese system, in which meritocratic examinations provided routes of escape from the village and entry into the elite (though one might counter-argue that the Chinese system was more open in theory than in practice). Certainly, Haley's position challenges the old view of modernization theory that the Japanese village mentality is a constraint rather than a facilitator of development.²³ For Haley, collectivism is a grand factor explaining much of Japanese law as well as political economy.

Certainly no one who has worked in a Japanese institution can deny that there are distinct patterns of social organization that reflect culture. But the presence of dramatic institutional and social changes makes assertions of lingering effects of village life difficult to evaluate. Take the Japanese firm, which has long been analogized to the village.²⁴ While many firms do assert that they take care of labor as their primary goal, a far larger percentage claim that shareholders are of primary importance.²⁵ The labor market, which is central to Haley's understanding of how institutions operate, has been in transition. Haley pivots much of his argument on the immobility of the mid-career labor market. Yet the rigid labor market has not always been a feature of Japanese economic life—prewar labor mobility was relatively fluid.²⁶ And the postwar system too has changed fairly dramatically, so that mid-career job changes are no longer quite so rare. Seniority systems are being eroded by the rise of merit-based compensation.²⁷ The entry of foreign firms combined with rising bankruptcy rates has meant that there is both new demand and new supply of mid-career workers. Some firms have moved to more portable pensions, which allow workers to take their pension investments with them if they leave the company. And a growing category of "non-regular" workers on short term contracts now constitute one-third of the labor force.²⁸ If institutions are explained as an outcome of collectivist values, then either those values are finally eroding after surviving major earlier shocks, or perhaps were never as consequential for institutions as we might imagine. Assertions of the influence of longstanding patterns require, at a very minimum, the stipulation of a mechanism by which some patterns remained stable

23. Takeyoshi Kawashima, *Dispute Resolution in Contemporary Japan*, in *LAW IN JAPAN: THE LEGAL ORDER IN A CHANGING SOCIETY*, *supra* note 7, at 41.

24. Tadao Kogano & Takao Kobayashi, *The Provision of Resources and Barriers to Entry*, in *BUSINESS ENTERPRISE IN JAPAN: VIEWS OF LEADING JAPANESE ECONOMISTS* 89, 90 (Kenichi Imai ed., 1994).

25. Economist, Special Report on Business in Japan, Dec. 1, 2007.

26. Masahiko Aoki, *The Japanese Firm as a System of Attributes: A Survey and Research Agenda*, in *THE JAPANESE FIRM: THE SOURCES OF COMPETITIVE STRENGTH* 11, 30 (1996).

27. Economist, *supra* note 25.

28. *Id.*

while others changed radically. It seems unlikely that we will be able to identify such influences with much rigor given the current state of social science.

III.

We compare in part to learn lessons we might apply at home. One version of the method involves looking at societies that are similar to ours along some dimensions and to see if there are institutions that might inform our own reform efforts. In some cases, the lessons we might draw from Japanese institutions might be such as to undermine the surface image of success. Consider health care. J. Mark Ramseyer has begun to turn his considerable skills to the health care system, showing in one paper that Japanese seem to live long despite their health care system, not because of it.²⁹ Robert Leflar documents the relatively weak systems of accountability for preventable medical error and the interesting use of criminal sanctions for severe cases of negligence.³⁰ Eric Feldman argues that declining trust in medical expertise is fueling a rise in malpractice litigation.³¹ In short, Japanese health law bears examination, though it may offer lessons more negative than positive.

In other cases, we might use the Japanese materials to develop broader points about the functioning of law itself. Haley's account of the didactic role of law in signaling dominant understandings is a generalizable one consistent with recent theoretical work on law's impact.³² Law is usually considered to be a formal mechanism, contrasted with informal mechanisms for which it provides an uneasy substitute. Haley's suggestion is that law provides not only a substitute but a complement. The oft-noted judge-made rules minimizing the ability of Japanese landlords to evict tenants,³³ employers to fire workers,³⁴ and private parties to break contracts, forcing parties to negotiate, all serve to *reinforce*, not substitute for, private

29. J. Mark Ramseyer, *Universal Health Insurance and the Effect of Cost Containment on Mortality Rates: Strokes and Heart Attacks in Japan*, 6 J. EMPIRICAL LEGAL STUD. 309 (2009). J. Mark Ramseyer, *The Effect of Universal Health Insurance on Malpractice Claims: The Japanese Experience* (Discussion Paper No. 648 (Sept. 2009)).

30. Robert B. Leflar, "Unnatural Deaths," *Criminal Sanctions and Medical Quality Improvements in Japan*, 1 YALE J. HEALTH POLICY LAW AND ETHICS 1 (2009).

31. Eric B. Feldman, *Law, Society, and Medical Malpractice Litigation in Japan*, 8 WASH. U. L.Q. 257 (2009).

32. Jacob Gersen & Eric Posner, *Soft Law: Lessons from Congressional Practice*, 61 STANFORD L. REV. 573 (2008); Richard McAdams, *The Expressive Power of Adjudication*, 2005 ILL. L. REV. 1043 (2005).

33. Curtis Milhaupt & Mark West, *The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime in Japan*, 67 UNIV. CHICAGO L. REV. 41 (2000).

34. Daniel Foote, *Judicial Creation of Norms in Japanese Labor Law: Activism in the Service of Stability*, 43 UCLA L. REV. 43 (1996).

ordering. This is a generalizable point hardly unique to Japan. Law, we know, works through sanctions and incentives. But it works through other mechanisms as well. Sometimes, law without sanctions can be effective simply by changing the structure of private beliefs about others' behavior, allowing people to coordinate their actions.³⁵ Perhaps this theory can help to resolve the puzzle of "*Authority Without Power*" in Japan: whether or not Japanese courts have powerful sanctions available to them may be less important than whether private parties rely on courts to help coordinate behavior.³⁶

There are several other worthy reasons to study Japanese law. Japan is perhaps the world's most legible state. This fact itself results from the remarkable success of the state-building enterprise.³⁷ High quality statistics are available on everything from high end taxpayers³⁸ to the number of deaths from blowfish³⁹ to the number of *yakuza* members.⁴⁰ The statistics are for the most part reliable. Few other societies even approach the amount of data collected by the Japanese government. This makes Japan a rich laboratory for testing comparative theories.⁴¹

Though not the topic of Haley's essay, one can add reasons why the *teaching* of Japanese law is extraordinarily valuable. I would go so far as to say that the debate triggered by John Haley's 1974 challenge to Takeyoshi Kawashima belongs in every serious course on comparative law.⁴² Haley's debates with Mark Ramseyer about the independence of the Japanese judiciary, briefly reviewed above, are also illuminating. They force us to sharpen our conceptualization of judicial independence and autonomy, and have spurred important efforts to measure new institutions that will set the standard for other such efforts. The Japanese way of criminal justice provides an instructive counterpoint for American students used to our own distinctively punitive approach. Learning about Japanese institutions may be helpful in many other ways, as well. It goes without

35. McAdams, *supra* note 32.

36. JOHN O. HALEY, *AUTHORITY WITHOUT POWER* (1991).

37. JAMES SCOTT, *SEEING LIKE A STATE* (1998).

38. J. Mark Ramseyer et al., *Public and Private Firm Compensation Compared: Evidence from Japanese Tax Returns*, 25 KOREAN ECON. REV. 5 (2009); J. Mark Ramseyer & Minoru Nakazato, *Bidding for Ballplayers: A Research Note*, 26 J. JAPAN. L. 85 (2008).

39. Mark West, *Haley and the Blowfish*, 8 WASH. U. GLOBAL LEGAL STUDIES Q. 427 (2009).

40. Milhaupt & West, *supra* note 33.

41. Cf. Stephen Green, "Lies, Damned Lies, and Chinese Statistics," FAR EASTERN ECON. REV. (Jan. 2009), available at <http://www.feer.com/essays/2009/january/lies-damned-lies-and-chinese-statistics>.

42. John O. Haley, *The Myth of the Reluctant Litigant*, 4 J. JAPANESE STUDIES 359 (Summer 1978).

saying that the teaching of these things presupposes a certain amount of study.

Haley is surely correct that Japan has plenty to teach us. But to return to the point made at the outset of this essay, one should not neglect the non-instrumental reasons for studying Japanese law. Japan is interesting in its own right and on its own terms, even if the lessons it offers us turn out to be elusive. Notwithstanding their disciplinary self-consciousness, most comparativists pursue their study simply because of the inherent joy in learning about another legal system. We might study Japanese law, as George Mallory famously said about climbing Everest, because it is there.

