

To deepen one's understanding of the background to, and essence of, Anglo-American law, it is best to study it in English.



John Middleton

Professor, Graduate School of Law

Laws and legal systems differ from country to country — We must first acknowledge that reality

The legal institutions of every country have different philosophical and historical backgrounds. In studying the laws of another country, it is important, first of all, to delve into that background and attempt to understand it. Likewise, while Japanese laws and legal institutions may share a fundamental spirit of respect for humanity and social order, it is crucial to acknowledge the fact that they differ from those abroad.

One of the themes of my research is defamation and privacy law and the issue of harm caused by news reporting, and that is an area where the differences between Japanese law and the common law are significant. For example, Kazuyoshi Miura, the defendant in an infamous case in which he was accused of conspiring to murder his wife in Los Angeles in the early 1980s, has filed nearly five hundred lawsuits since 1984 claiming that news coverage of him constituted either libel or invasion of privacy. Miura filed these suits himself from prison, without the benefit of legal counsel, and won many of them. This would be unimaginable in Britain or Australia today, where statements of claim drafted by a lay plaintiff would simply not be in a form acceptable to a court. Even lawyers without specialist knowledge of defamation law would find it difficult to argue such a case successfully. What this tells us is that the Japanese system for commencing

legal actions is more flexible, and that Japanese libel law is simpler than the common law. This is not, of course, a question of which system is better — it is merely indicative of how different laws and legal institutions really are.

No need to worry about the language barrier — English will take you to the heart of the matter

In order to understand the legal system of another country, the most effective approach is to study it, insofar as is possible, in the language of that country. To take an example from Anglo-American law, the English expression “Magistrates’ Court” is usually rendered as *chian hanji saibansho* in Japanese law dictionaries. But this is because when the term was first translated into Japanese many years ago, the lay judges of the Magistrates’ Courts in England were Justices of the Peace (*chian hanji*), and so the translation means literally “Court of the Justices of the Peace”. Nowadays, however, Justices of the Peace have been replaced by professional magistrates in many Commonwealth countries, who are known, for example, as “stipendiary magistrates” (*yukyu hanji*) in Australia. In other words, *chian hanji saibansho* is no longer an appropriate translation for “Magistrates’ Court”.

Another example is the frequently used expression “negligence”. Until quite recently this was translated into Japanese as *kashitsu*, but nowadays it is more often simply transliterated into katakana as *neguri-jensu*. This is because the difference in meaning between “negligence” and the Japanese *kashitsu* has come to be recognized.

As we can see from these examples, there are many terms in Anglo-American law that cannot easily be translated into Japanese. As I believe studying Anglo-American law in English will deepen students’

understanding of the fundamentals of law and prove useful in their future work, I give most of my lectures in English. Of course I am not teaching an English course, so I try to keep the language as simple as possible, and I provide written abstracts of the lectures in every class as a kind of backup or safety net. I might add that while my lectures are very popular among overseas students and Japanese who have lived and studied abroad, many Japanese students who do not regard themselves as being particularly good at English tend to score among the highest in the final examinations.

Hitotsubashi University is at the forefront of internationalization — Students should make use of this valuable opportunity for themselves and society

There are still not very many universities in Japan where people can study Anglo-American law in English, and internationalization is often said to have been delayed in various areas. In this sense, Hitotsubashi University has truly assumed a position of leadership. I came to Japan on a Japanese Government Scholarship, completed the Master's program at Hitotsubashi, and returned here to teach after my admission to practice as a Barrister and Solicitor in Australia. Many Japanese universities hire non-Japanese professors on one-year contracts, but my colleague Professor Wang Yunhai, who is a Chinese national, and I, an Australian and British dual national, enjoy the same conditions of employment and perform exactly the same duties as our Japanese colleagues. There is no discrimination whatsoever, and we are made to feel that we truly belong. I think some foreign students are also encouraged to see what can become of Hitotsubashi

graduates in Japanese society!

This policy towards foreign staff is just one example. At Hitotsubashi, there is a strong sense of openness towards the world and a solid foundation for international scholarship. I hope those fortunate enough to study at Hitotsubashi will make full use of this privileged environment to absorb as much as they can and return the fruits of their labor to society. When I write academic papers, I differentiate in the contents between the ones I write in Japanese and the ones I write in English. When I write in Japanese, it is to try to assist Japanese people in understanding Anglo-American law. And when I write in English, it is because I hope to bring a better understanding of Japanese law to people in other countries.

(Article based on interview conducted in Japanese.)



Understanding the economic situation and social environment in the countries you are studying is an important approach to research in corporate governance.



Yupana Wiwattanakantang

Professor
Center for Economic Institutions,
Institute of Economic Research

Japan's main bank system, Korea's chaebol conglomerates, Thailand's family-owned business groups—the forms of business have emerged out of the necessities of each country.

Who are the principal shareholders in Japan's major banks? As is commonly known, the principal shareholders in the big banks are the big insurance companies, while the shareholders in the small and mid-sized banks are the big banks. Examining this using a database gives us an even clearer picture of this situation. One aspect of the research I am engaged in is an attempt to elucidate from a historical perspective the questions of how this structure came into being and what influence, if any, it exerts on the corporate governance of Japanese banks.

The banks have a major impact on the economy and industry in any country, but the nature of the banks themselves differs according to the ways that each country structures its corporate governance. For example, in Japan it is the main banks, in Korea the chaebol, and in Thailand the family business groups that play the central role in corporate management. Generally speaking, the chaebol and family business groups do not have a very

positive image. But the chaebol have played a part in Korea's recovery from economic crisis, and in Thailand, where the laws regulating finance are underdeveloped and there continues to be bribery and corruption in the judiciary, family management is an almost unavoidable way of putting corporate governance in the hands of people that can be trusted. And in Japan, the former “convoy system” in banking has collapsed, there is increasing integration of firms across the lines of existing corporate groups, and there is a shift toward letting businesses facing inevitable failure fail rather than trying to prop them up with financing and other supports for restructuring. Thus we can see that the state of the banks is entwined in complex ways with a variety of factors: changes in the temporal and social environment, legal systems, national character, and so on.

Ignoring the structure, conditions, and social environments that vary from country to country and using American notions of “corporate governance” as a universal yardstick for evaluating systems as right or wrong is meaningless. This is because American corporate governance is something that was born out of a social consensus supporting the idea that “companies belong to the shareholders” and of an environment in which it is always possible to raise funds in the capital markets. Of course the concept of corporate governance itself is still important, and there is a need for nations to develop policies and create institutions that will facilitate healthy economic development. At the Center for Economic Institutions we are currently participating in a research network

being set up under the auspices of the World Bank called the Global Corporate Governance Academic Network, carrying out research on corporate governance in collaboration with other researchers around the world.

While I enjoy my detective work unraveling complex events with an eye on both the past and the present, I am also aiming at policy proposals for the future.

Explicating the structure of corporate governance, not only of banks but of other companies as well, and accurately grasping its current state and the issues and problems involved requires amassing data from the past, analyzing it, and digging up the objective facts. The process of unraveling these complex elements and exploring how it all works is fascinating, almost like becoming a detective. Holing up in the university library to analyze thirty years worth of annual reports, or visiting banks to interview their executives is a dynamic process that offers more excitement than academic research normally does. The approach from the micro level, piling up and delving into individual events and then examining their essence in the light of theory reveals things that cannot be seen at the macro level. I think this sort of

micro approach is particularly effective in illuminating the processes of management, which sometimes tend to disappear inside a black box.

Theory should be universal in nature, but in research one needs to get to grips with the background of the subject. As I said at the beginning, we cannot understand the state of corporate governance in a country without understanding the situation of the country itself. I feel very fortunate to be able to do research on Japanese banking in Japan.

The collaborative research into corporate governance that the Center for Economic Institutions is currently pursuing with researchers from around the world is basic research seeking new approaches to economic development. Our common goal is to use the patient and careful accumulation to formulate policy proposals that will contribute to the future of all of our countries. (Article is based on interview.)

