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Structure and general principles of the Japanese legal system

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My name is Béatrice Jaluzot, I belong to the University of Lyon, to the Institute of Political Studies of Lyon and I will introduce you today to the Japanese legal system

The aim of this presentation is to outline the Japanese legal system as it is, in other words, a construction that is both complex and efficient.
My presentation will focus on three points: the first concerns the historical context in which this legal system appeared at the end of the 19th century, the second deals with the sources of law in Japan, the third focuses on the resolution of disputes in this country.

First, the historical context in which the Japanese legal system emerged.
It appeared at the end of the 19th century, in the context of European colonial expansion, and more generally that of the expansion of Western powers over the rest of the world.
Until that time, Japanese legal organisation was based on the Chinese model, the system then in force was the *ritsuryō*, whose foundations dated back to the ancient Chinese model, although it had been greatly modified by the Shogun regime.

In order to protect the country against alien intrusions, Japan adopted a policy of closure which consisted of rejecting all contact with foreigners except with the Dutch. they were strictly controlled, away from the central power. However, Japan was on a maritime transit route, and the development of international trade exposed the country to the passage of various foreign powers, such as the Russians, the British, the French or the Americans.

The Americans were the first to become seriously irritated by the Japanese stance. They sent an armed fleet to compel Japan to open its borders. Thus, Japan was finally forced to sign a first international treaty in 1854. Gradually the Japanese were induced to sign many treaties with foreign powers, and by 1869, 15 treaties with 15 different powers were in force. These treaties contained a number of clauses that limited Japan's sovereignty, in particular the jurisdiction clauses. These provisions established the jurisdiction of consular courts over disputes concerning foreigners, including mixed disputes involving foreigners and Japanese. These rules resulted in foreign diplomats having a say in Japanese internal affairs, which was perceived as an intolerable violation of the country's sovereignty. The Japanese leaders chose not to reject the treaties, but to renegotiate them. This extremely challenging choice led them to adopt foreign practices and rules, and to reorganise their country in such a way as to respond to diplomatic expectations. Japanese lawyers were led to investigate the different legal models that existed in foreign countries at that time. This sudden contact with the foreign cultures led to the overthrow of the regime, the restoration of the emperor to the throne, and the general metamorphosis of Japanese law.

Nowadays, Japanese scholars consider the contemporary system to be the result of three waves of reform. The first one dates back to the Meiji era, which began with the imperial restoration. The second wave was the result of the American occupation between 1946 and 1952. A third wave of reform was introduced after the country experienced a severe financial crisis in the 1990s, and these reforms are still underway.

The first wave laid the foundations of the system. The method used was based on the comparison of laws, and the Japanese chose the most effective legal mechanisms for each subject. This shaped Japanese legal doctrine, which is still very much bound up with European schools of thought such as the French, German and Anglo-American schools. At first, the Japanese system was modelled on the Napoleonic codification, but from the 1880s onwards, it turned to the German model, which was very modern and innovative at the time. The result was the creation of both the judicial system and the legislative system. Japanese law-makers strove to be at the forefront of modernity.

This system was strongly influenced by US-American values after the Second World War. The US Occupying Forces requested the reform of the whole system in order to democratise the whole system. Yet these reforms were carried out while preserving the fundamental structures that were previously established. The result was a new constitution, new basic laws linked to the constitution, and the introduction of far-reaching business law.

The financial crisis led to a loss of confidence in Japan's institutions on the part of the population and its leaders. It has led to a strong desire to reform the entire system. Thus Japanese law, while maintaining the existing statutes, overhauled them in an endeavour to make the laws more effective and to bring them closer to some Western values. This movement is still ongoing.

As a result of this development, the sources of law in Japan are very familiar to Europeans. This can be noticed in the informal structures of Japanese law, in particular in the division of subjects taught at the university. Thus, the basic subjects in the first year are constitutional law and the general part of civil law. During the second year, the law of obligations, administrative law, commercial law, criminal law and political science are taught. Third year students are offered family law, labour law, international law and the sociology of law. Finally, more specialised disciplines are offered in the fourth year, such as tax law, international business law, intellectual property, inheritance law, consumer law, Roman law, German law, Chinese law, etc. As you can see, this programme is quite similar to what we know.

Japanese legislation is based on a codification system, which remains at its heart, even if it is largely exceeded by a proliferation of legislation. Codification is very present through a tool that is very familiar to Japanese lawyers: the code of six laws. This code is inspired by the Napoleonic codification in that it contains the constitution, the civil code, the commercial code, the code of civil procedure, the penal code and the code of penal procedure. This codification is unofficial and managed by legal publishers. it gathers the relevant legislation for each of these subjects. This compilation gives coherence to the Japanese legal system and provides a synthetic overview of it. The synthesis can be seen in the professional edition of the 6 laws, which is divided into six main sections: public law, civil law, criminal law, corporate law and international conventions.

Nowadays the sources of Japanese law are structured according to the Kelsen pyramid, such as we are used to in Europe. At the top of the hierarchy of norms stands the current constitution, whose supreme character is provided for in Article 98. Immediately below are the international treaties. It is worth noting that these are not directly enforceable in Japanese domestic law. At the core of the system is the parliamentary law, which is produced by the Diet, the Japanese parliament. This is supplemented by regulatory law, which is produced by the ministries, in particular the Prime Minister's Office.
Japanese local authorities have regulatory powers, whose scope of application is territorially limited. Lastly, administrative directives are of considerable importance for the functioning of the Japanese system, in particular its administration. They are the primary instrument of administrative guidance.

Among these sources of law, the Japanese constitution plays an important role, as it is the apex of the entire Japanese system. The Peace Constitution was drafted under American influence, promulgated on 3 November 1946, and came into force on 3 May 1947. It contains only 103 articles, which establish a symbolic monarchy, provide for the fundamental principle of renunciation of war, and include the main state institutions. 31 articles are devoted to fundamental rights, which fall into three categories: individual freedoms such as the right to life, liberty and the pursuit of happiness, freedom of religion, of association and academic freedom. The second category deals with the prohibition of discrimination of all kinds, providing for a principle of equality, in terms of gender, social or ethnic origin, etc. The third category covers social rights such as the right and duty to work and trade union freedoms. These rights are actually implemented by the labour law, the Trade Union Act, and the whole Japanese social system.

A second major statute in Japanese law is the Civil Code, which is the primary body of Japanese private law. This code is structured along the lines of the German Civil Code, known as the pandect system. It is divided into five books: a general part, a book devoted to the law of property, the law of obligations, family law and the inheritance law. Its content was inspired by both French and German models, however, its interpretation is strongly influenced by the German law and its subsequent developments. Civil law is undergoing reform, e.g. the law of obligations was fundamentally reformed in 2017, the new law came into force on 1 April 2020. The law of individuals is also subject to change: the legal age of majority will be reduced from 20 to 18 as of 1 April 2022.

A legal system also aims at preserving social peace, and this purpose is well fulfilled by the Japanese system, thanks to an efficient dispute resolution process. It relies on the one hand on a conflictual mode of litigation resolution, notably thanks to a very efficient judicial system, and on the other hand on highly developed ADR mechanisms.

The judicial system was completely overhauled after the Second World War and it is extremely simplified. The Supreme Court, which is also a constitutional judge, is at the top of the system ensuring the uniform interpretation of all Japanese laws and the respect of fundamental rights. The courts of first instance are divided into two categories: on the one hand, the courts with ordinary jurisdiction, which depend on the value of the dispute, and on the other, the family courts, which have dual jurisdiction in family matters and juvenile criminal justice.

The use of judicial proceedings is very well organised and efficient, but every effort is made to avoid them, and the amicable settlement of disputes is highly favoured. A large number of mechanisms have been created to ensure that the out-of-court settlement of disputes operates successfully. As an example, the transition from conflict to amicable settlement is facilitated in the courts, and settlements are under the aegis of the judges. The Law on Judicial Conciliation provides a framework for such procedures. A large number of mediation centres are available, certified by the Ministry of Justice. Mediation centres are widely used within the administration and local authorities. Conciliation is the main method of resolving disputes related to the consumer law.

In conclusion, the Japanese legal system has, since the 19th century, been firmly converted to a positive view of the law. Japan has fully embraced the idea that law is an essential tool of governance and that the State retains exclusive control over it. Through law, the State can assert its power to transform and control the Society. What is disconcerting about Japanese law is that whilst one expects it to be unique in the Far East, one encounters a striking similarity with Western law. Generally speaking, what characterises Japanese law is the prevalence of comparative law.

Thank you for your attention, I look forward to the forthcoming discussion.