‘The Jurisprudence of Suehiro Izutarō’ Review: Healthy Sense of Justice Inherent in Japanese Legal System

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Suehiro Izutarō (1888-1951) was a Japanese jurist and legal philosopher. Although his name has faded from the front pages of historical memory in Japan, his legacy remains strong. He is often hailed by legal scholars as the “father of labor law in Japan,” for example, due to his groundbreaking research in such issues as sharecropping (*kosaku*) disputes prior to World War II, and his work in helping to formulate state-labor relations during the American Occupation. He also pioneered the use of the case method in Japanese jurisprudence, and was the founder and editor of a law journal, *Hōritsu Jihō*, which remains in print today, more than 1,180 issues strong (https://www.nippyo.co.jp/shop/magazines/latest/1.html). Not only this, but Suehiro and his colleague in the Law Faculty at Tokyo Imperial University, Hozumi Shigetō (1883-1951), nurtured a generation of lawyers and law professors influential in the postwar, famed law experts such as Kainō Michitaka (1908-1975), Kawashima Takeyoshi (1909-1992), and Fukushima Masao (1906-1989). While Suehiro’s may not be a household name, his influence on Japanese society is pronounced.

I was therefore very glad to learn of the publication of Ryukoku University Faculty of Law professor Kawasumi Yoshikazu’s (https://www.law.ryukoku.ac.jp/teacher/kawasumi.html) new comprehensive volume on Suehiro, titled *The Jurisprudence of Suehiro Izutarō: Formation, Development, and Prospects* (Nihon Hyōronsha, 2022). It is a meticulously researched book, the erudition of which does justice to Suehiro’s extraordinary achievements in the field of law and legal philosophy. Professor Kawasumi has read and absorbed the vast library which flowed from Suehiro’s pen, and has contextualized Suehiro’s labile thinking within the ever-changing historical backdrop of late Meiji, Taisho, and Showa Japan. At five hundred and seventy-five pages of text, divided into eight hefty chapters plus four additional chapters on Suehiro’s legal-studies forerunner Hozumi Nobushige (1855-1926) and the era of Taisho Democracy, Professor Kawasumi’s tome, crowded with dense footnotes, is a wealth of information. While I recommend this scholarly book only to specialists in the study of Japanese law, I applaud Professor Kawasumi for his accomplishment and thank him for having added a rich new vista to Japanese legal studies. It is a field which rewards close attention, and I hope many other scholars will join in the discovery of this too-often overlooked genre of Japanese social and intellectual history.

In this short review, I would like to focus on a key point which Professor Kawasumi raises in his book, a point which I think has unfortunately escaped the attention of many today both inside of Japan as well as in foreign countries. Namely, I wish to show the influence of Japan on Suehiro’s thinking, and, more broadly, the healthy sense of justice which pervaded Japanese law even before the importation of Western jurisprudence began in earnest during the Meiji period. Many in the West, and also in Japan, tend to assume that Japanese law prior to the heavy influx of foreign legal paradigms was somehow backwards, even inhumane. Extraterritoriality and the unequal treaties, after all, were premised on the notion that people in Japan lacked the legal capability and rational capacity to conduct trials and other legal procedures at the same level as

the West. This unfortunate stereotype lingers today. But it is simply not true. And Suehiro's career helps to prove it.

One of the most enjoyable features of Professor Kawasumi's book for me is the author's emphasis early in the volume on how much Suehiro Izutarō's father, Suehiro Ganseki (1858-1922), had on his son's development as a legal philosopher. Suehiro Ganseki was a justice on the Daishin'in, or supreme court of Japan before the establishment of the modern legal system. Suehiro himself related, as Professor Kawasumi reminds his readers, that Ganseki used to regale his family every night with stories of the law courts of that day. What was interesting about Ganseki's jurisprudence was that he didn't discern his rulings solely out of lawbooks. Instead, Suehiro said, Ganseki would think through the problems he encountered in the courts.

This may seem a minor point, but in fact it is of great significance. In my monograph on Suehiro Izutarō, I emphasize that Suehiro used natural reason in his jurisprudence. I believe that Suehiro learned how to do this from his father, and from Japanese society and history more broadly. As Professor Kawasumi notes, Kawashima Takeyoshi (mentioned above), in the latter's remembrances of Suehiro immediately after his passing, recalled that Suehiro had a sense of the American style of jurisprudence—meaning the "case method" of paying careful attention to the problems brought before judges—*before* he went to study in the United States (Kawasumi p. 5). Kawasumi also notes that Suehiro himself wrote with great admiration of the "intuition" (直観) that his father placed at the center of his own legal thought (Kawasumi, p. 5). Suehiro Izutarō made intuition, and natural reason, the centerpieces of his jurisprudential thinking and practice, too.

The reason this is so significant is that it points to a very deep tradition in Japan, that of what my colleague, Harvard Law School professor J. Mark Ramseyer, has called "second-best justice" (https://www.amazon.com/Second-Best-Justice-Virtues-Japanese-Private/dp/022628199X). This is very different from the absolutist, abstract justice which is often pursued in the West. In Japan, judges have long tried to find a solution to legal troubles which benefits everyone, and in a way that helps the wider society to heal from the effects of misunderstandings and disputes. The result may not be perfect, and it may not map out exactly in the spiderwebbed theories in books of the law. But it is human in a very deep way. Second-best justice is everyday justice, the use of human-centered reason to bring about good results from painful situations. Second-best justice, I think, typifies Edo period and earlier Japanese law (and to a large extent still works in Japan today).

The importance of this tradition of second-best justice for Suehiro is reinforced by his deep respect for an Edo period magistrate (*machi bugyō*) called Ōoka Tadasuke, Echizen-no-kami (1677-1752). Ōoka's trials are legendary in Japan because of Ōoka's masterpieces of creative, compassionate, and wise rulings. One example I like to retail is about a boy who had accidentally killed a waterfowl while innocently throwing rocks into the moat around a Tokugawa castle. The penalty on the lawbooks for killing one of the shōgun's animals was death. Ōoka, however, like most of us, thought that it would be a travesty to execute a boy for a simple mistake. So, at the boy's trial, Ōoka—with a wink and a nod—swapped out the dead bird brought in as evidence with a live one, and then declared the case dismissed (https://www.thepublicdiscourse.com/2021/10/78728/).

It was second-best justice, because Ōoka had had to bend the truth, and the law, to save the boy's life. But it was done using natural reason, which Suehiro highly appreciated. Suehiro thought the "ningenmi saiban," or "trials with the human touch," were ideal, and he worked hard to restore this lost sense of humanity to courtrooms under the heavy influence of abstract Western, especially German, legal philosophy.

In my view, Suehiro's entire career was just this, an attempt to bring back, in some form or another, the natural reason—one might say the natural goodness—of Japanese jurisprudence from before the influx of laws and legal codes from the West. This is what drew Suehiro to the legal ideas of Austrian jurist Eugen Ehrlich (1862-1922), especially Ehrlich's "living law," and to the study of customary law in Japan, China, and elsewhere. Suehiro wanted to get down to the level of the human heart, to find the place where justice could be effected using "intuition" and not just the cold light of reason. Suehiro's career is thus well worth learning about, as it points us back to a forgotten Japanese past in which justice may have been "second-best" by Western standards, but in which the outcome was, arguably, a more humane society than what Western legal reasoning has produced in its place.

Professor Kawasumi Kazuyoshi, in his new book about Suehiro Izutarō, has called attention to this salient feature of Suehiro's lifework. This is a most welcome intervention, and a very heartening reminder for us all of the underlying vibrancy and goodness of Japan's long legal tradition.