

Steinhoff's "Pursuing the Japanese Police": A Rejoinder

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Patricia Steinhoff (1993) reviewed five books in her review essay "Pursuing the Japanese Police" but singled out my *Forces of Order* (Bayley 1991) for extended commentary because it was a "classic" that epitomized the "benign," "friendly," and "answers-for-America" (p. 830) school of writing about the Japanese police. Her review of my work, as well as the others, was insightful, knowledgeable, well argued, and fair. Some of her comments were strongly worded, but there's no fun in writing a review essay if you can't get off a few zingers.

Her commentary raised two important points about contemporary scholarship on criminal justice in Japan: first, that culture may be a weak explanation for what is happening in Japanese criminal justice; second, that the activities of the Japanese criminal justice system may not be as humane and principled as they appear. Unfortunately, she argued so vigorously that further discussion seemed to be precluded—all cultural arguments are naive and Japanese criminal justice is clearly illiberal. In fact, both topics require a great deal more study, both theoretical and empirical, by all of us before we have answers we can rely on.

Culture, she says, has been used as a "black-box" (p. 829) which makes appeals to them "circular" (p. 842) and "tautological" (p. 848). Sometimes the appeal to culture has been all of these, but we must be careful not to go the other extreme of making no provision in our explanations for behavioral propensities that people carry into different situations. Setsuo Miyazawa, Peter J. Katzenstein, Yutaka Tsujinaka, and John Haley, all of whose work has been reviewed in *Law and Society Review*, have shown compellingly that Japanese legal behavior has been strongly shaped by institutional decisions. Legal culture is not, therefore, premordial but is created. At the same time, it would be naive indeed to think that socialization does not make different people behave differently in similar circumstances or predis-

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pose institutional actors to act in characteristic ways in different cultural settings. Appealing to legal culture is not always unintelligent reductionism. Saying culture shapes is not incompatible with saying culture is created.

Whether Japan's criminal justice institutions are "benign" and "friendly" depends altogether on the basis for comparison. When James Thurber, the humorist, was asked, "How's your wife?" he replied, "Compared with what?" It is far more honest to make judgments about the normative quality of Japanese criminal justice by comparing it with the United States than to describe Japanese practices critically without a standard of judgment. Explicit comparative judgments can be tested; ungrounded criticisms cannot. Undoubtedly, comparativists like myself need to learn much more about the operations of Japanese criminal justice institutions. Japanese and Japan experts, on the other hand, need to be very careful that they do not devalue unfairly the achievements of Japanese criminal justice. In the spirit of provoking further debate as well as scholarly inquiry, I put forward the following testable proposition: that when the facts about Japanese criminal justice processing are carefully compared with processing in the United States, Japanese institutions will be found to treat victims and suspects more humanely and equitably than do U.S. institutions.

Finally, I join wholeheartedly with Steinhoff in urging the Japanese government to encourage empirical study of criminal justice processes, especially by its own able scholars. In this respect, the United States is far ahead of Japan.

References

- Bayley, David H. (1991) *Forces of Order: Policing Modern Japan*. 2d ed. Berkeley: Univ. of California Press.
- Steinhoff, Patricia G. (1993) "Pursuing the Japanese Police," 27 *Law & Society Rev.* 827.