

Appendix A

Dan Fenno Henderson: A Tribute

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This volume is dedicated to the memory of Professor Dan Fenno Henderson, who passed away on March 14, 2001, at the age of seventy-nine. Henderson was a giant in the Japanese law field. His life profoundly affected all of us in the field of Japanese law today and played a vital role in shaping the field as we know it. To interject a personal note, one of the proudest days of my life was the day I was named the first Dan Fenno Henderson Professor of East Asian Legal Studies at the University of Washington School of Law; and one of my great regrets in moving from the University of Washington to the University of Tokyo was having to relinquish that title. To me, Henderson will always represent the epitome of what a scholar of Japanese law should strive to be.

Beginning with a thumbnail sketch of Henderson's life, he was born in Chelan, Washington, in 1921. In 1944, he graduated Phi Beta Kappa from Whitman College in Walla Walla, Washington, where he earned a BA in political science. It being the height of World War II, upon graduation he was promptly drafted by the U.S. Army; however, at the time, the army was giving all Phi Beta Kappa draftees the choice of learning either Chinese or Japanese. According to his wife of forty-three years, Carol Henderson, he later said that was "the hardest choice of his life." For those familiar with the breadth of his scholarship and academic pursuits, the reason for the difficulty in choosing is classically Henderson: "He was interested in both."¹ It goes without say-

ing that he ultimately chose Japanese. He undertook his Japanese language studies at the army's Japanese Language School, which was located at the University of Michigan. While there, he earned a second BA degree, in Oriental studies (awarded in 1945).

By the time Henderson reached Japan, the war had ended. From 1946 through 1947, he served as Japanese language officer in the Occupation forces, handling censorship in Hokkaido and Kyushu. Upon completing military service, he entered Harvard Law School under the GI Bill, and, in 1949, earned his JD degree. Following graduation, he briefly practiced law in Seattle, but then decided to pursue further academic study of Japan and entered the PhD program in political science at the University of California, Berkeley. In 1955, he completed his dissertation, which was later published as a seminal two-volume study of conciliation under Tokugawa and modern Japanese law,² and received his doctorate. (In 1983 he was awarded a second doctorate, an Honorary LLD, by Whitman College.)

Henderson spent the next seven years in private practice with the law firm of Graham & James, in San Francisco and Tokyo. He was one of the last U.S. lawyers to be admitted to the Japanese bar in the mid-1950s, and he served as resident partner of the Tokyo office.

In 1962, the University of Washington (UW) School of Law, with the support of a grant from the Ford Foundation, established a new program in Asian and comparative law (commonly known as the Asian Law Program). The UW recruited Henderson to serve as the first director of that program and entrusted him with responsibility for constructing and shaping it. He served as director for nearly three decades—through his retirement in 1991 at the age of seventy—and throughout that time devoted extraordinary effort to the program. Following his retirement from the UW, he continued to teach regularly, first as a visiting professor at Washington University in St. Louis and then as a regular member of the faculty of the Hastings College of Law in San Francisco.

In addition to his heavy teaching and administrative responsibilities, Henderson somehow found time not only for his own prolific scholarship but also for numerous other endeavors. He taught widely, serving as visiting professor at ten leading universities in six nations and offering countless guest lectures around the world. He also continued to practice law. Not only did he consult; in 1972, together with two former students, he founded the law firm of Adachi, Henderson, Miyatake & Fujita in Tokyo. And he also pursued interests in book collecting, gardening, art, apples, horses, and tennis.

As the preceding thumbnail sketch reflects, Henderson's activities and inter-

ests were rich and varied. Yet a thumbnail sketch cannot possibly do justice to his influence. The following is an attempt to enumerate a few aspects of his impact.

Henderson was a prodigious scholar in his own right. As reflected in the attached bibliography of his works, he authored or coauthored ten major books on Japanese law, in addition to close to one hundred articles and other works. These works have had a tremendous impact on scholars and practitioners alike.

He also promoted and facilitated scholarship by others in countless ways. His vision was that the UW and its Asian Law Program should play a key role in propagating scholarship on and understanding of Japanese law (and, in later years, after the program had become more firmly established, other areas of Asian law). Among the many steps he took to achieve that end, he invited several young Japanese lawyers and scholars to the UW to teach or to work with resident faculty members in preparing comparative course materials, and he persuaded many of his American colleagues to undertake collaborative work with the visitors. These efforts led to important sets of materials, for example, an introduction to Japanese law (by Henderson himself with Kazuaki Sono); "U.S.-Japanese Contract and Sales Law" (Warren Shattuck with Zentarō Kitagawa); "U.S.-Japanese Taxation" (John Huston with Toshio Miyatake and Griffith Way); "U.S.-Japanese Administrative Law" (Yasuhiro Fujita); "U.S.-Japanese Corporate Law" (initially, Henderson himself, and later, Richard O. Kummert, with Misao Tatsuta); "Patent and Know-How Licensing in Japan and the United States" (Teruo Doi and Shattuck); and "Japanese Antitrust Law" (John O. Haley with Mitsuo Matsushita).³

Among Henderson's other efforts to promote scholarship on and understanding of Asian law, in the mid-1960s he organized a series of annual symposia on Asian law for the *Washington Law Review* and he persuaded the University of Washington Press to establish the Asian Law Series, dedicated to publishing important works on Asian law. He also viewed comprehensive library resources as crucial for fostering knowledge of Asian law; under his influence, the UW's Gallagher Law Library assembled (and to this day continues to maintain and expand) a superb collection of Asian law materials, staffed by research librarians knowledgeable about Asian law and fluent in Asian languages.

Above all, Henderson sought to promote knowledge of Asian law through his own teaching and the teaching efforts of others at the UW and, ultimately, through the scholarship and teaching of those who trained under him. He himself developed and taught the first regularly scheduled course on Japanese

law offered outside Japan; under his guidance, the UW developed a wide array of comparative courses on U.S.-Japanese law, as well as courses on traditional and contemporary Chinese law and Korean law. Henderson was a demanding teacher, but one who cared very deeply about his students and who inspired dedication and outstanding scholarship. His former students include many scholars, American and non-American alike, teaching in the field of East Asian law, as well as scholars at leading universities throughout East Asia.

Henderson's efforts to promote knowledge of Japanese law extended well beyond the walls of the UW. In the late 1960s, he set aside the annual *Washington Law Review* symposia to begin serving as editor of the journal *Law in Japan: An Annual*, and for many years thereafter he kept a watchful eye over that journal as his former students assumed the primary editorial duties. His ties to the Japanese American Society for Legal Studies were just as close as his ties to *Law in Japan: An Annual*. From the time of the establishment of the society in 1964, Henderson was a member of the board of councilors; soon thereafter he became a member of the board of directors; and for the last seventeen years of his life he served as the American representative director of the society. He also taught and lectured widely.

One other feature of Henderson's vision for the Asian Law Program bears especial note: under his influence, the program has been highly integrative, in several respects. The program has provided Asian students with training in U.S. law; it has provided U.S. and foreign students alike with training in Japanese and Asian law; and, above all, it has sought to integrate the study of U.S. and Asian law.

The Asian Law Program also has sought to integrate theory and practice. Henderson was a true scholar, but he was also a practitioner; and he regarded it as very important that scholarship should inform, and should be informed by, the world of practice. From the outset, he invited practitioners, as well as academic scholars, to the program; he encouraged both groups to undertake collaborative research bridging theory and practice. In addition to practicing lawyers, the program has welcomed staff members of corporate legal departments, bureaucrats, judges, and prosecutors from Japan and other Asian nations and has sought to integrate the varied perspectives they bring.

Finally, the Asian Law Program has sought to integrate the study of law with the study of other disciplines. Henderson felt strongly that law could not be studied in isolation, but rather it must be considered as part of a much broader setting. His own passion was legal history, so it is natural that he viewed attention to law's historical context as vital. He also placed great weight on the importance of other contexts, including law's social, cultural, eco-

nomic, and political contexts. Accordingly, Henderson regarded interdisciplinary study of law as essential. This view is reflected in the structure of the program. With respect to the major comparative research paper required of all LLM candidates, Henderson was flexible as to topic, but he had one firm stricture: the paper must not consist merely of “parallel exposition.” In other words, no matter how long the paper or how much research it entailed, it was unacceptable simply to follow the formula: “U.S. law is A; Japanese law is B; the similarities are U, V, and W; the differences are X, Y, and Z.” Rather, the paper must probe further, exploring, for example, the historical (or social, or economic, or political) settings that gave rise to the differences, and the implications of the respective systems in their existing context. It is not by chance, moreover, that the terminal degree in the program is the PhD, rather than the SJD. To Henderson, a fundamental aspect of the doctoral program was the need to place law in a broader context; to that end, he insisted that the program’s doctoral track be an explicitly interdisciplinary PhD program.

Given the breadth of Henderson’s scholarship, identifying all of its animating themes would be virtually impossible. The following quotation offers five themes that one might consider applying to Henderson’s work:

[First, it] is more academically concerned with law as a system or social science than with law as a professional discipline. This is not to imply, of course, that the organic understanding sought is not valuable to the practical lawyer. . . . [H]owever, . . . it is largely concerned with a discussion of the policy and function of modern Japanese law rather than with legal doctrine and nuances of its application—although there are many useful discussions of the latter. . . . A second feature . . . is the need for historical perspective in order to assess the progress of legal growth in Japan. A third and related emphasis . . . is the problem of the efficacy of legislation, foreign inspired or otherwise, to change and modernize Japan’s highly refined and tenacious traditional social patterns. As Professor [Arthur T.] von Mehren [has] noted, there is a tendency to view all these problems as dichotomies—Anglo-American and Continental European law; modern and premodern Japanese law; Japanese and non-Japanese elements; and the legal and nonlegal—even though the underlying reality is a moving whole which comprehends all of these different facets in Japan’s rather unique modernization process. Only acute attention to historical perspective as well as to underlying social behavior enables one to see the whole modernization process without the distortion of such dichotomies.

A fourth theme . . . is a desire to understand the fate of certain of the American legal ideas implanted in Japan during the basic reforms of the occupation period (1945–1952). A final and much related pervasive theme is the problem of Japan's earlier reception of German and French law and the adaptation of these foreign concepts to local needs since the Meiji Restoration (1868).⁴

As many readers undoubtedly inferred, the above words are Henderson's own. He did not write them in reference to his own work, however. Rather, they appeared in his book review of *Law in Japan: The Legal Order in a Changing Society*,⁵ the 1963 predecessor to this volume. Yet all five of the above themes might equally be applied to Henderson's own work, with one notable exception. Henderson was intensely concerned "with law as a system or social science" and "with a discussion of the policy and function of modern Japanese law," but, as reflected in *Civil Procedure in Japan* and many other works, he *also* was intensely concerned "with law as a professional discipline" and "with legal doctrine and nuances of its application."

To offer my own one-word summation of the central theme I see animating Henderson's work, I would return to the adjective used earlier with regard to his vision for the Asian Law Program: integrative. Whether dealing with conciliation, civil procedure, contract law, corporate law, foreign investment regulation, constitutional law, or any one of numerous other topics, Henderson strove to integrate comparative perspectives, theoretical and practical perspectives, and historical and other interdisciplinary perspectives, so as to achieve a comprehensive and nuanced understanding of law in its overall context. Returning to Henderson's own words, by paying "acute attention to historical perspective as well as to underlying social behavior," he sought to capture "the underlying reality" of Japanese law: "a moving whole which comprehends all of [the] different facets in Japan's rather unique modernization process." That he succeeded so admirably in that goal is a testament to his thirst for knowledge and his fierce intellect. We are all the beneficiaries.

NOTES

1. Quoted in Eli Sanders. "Dan Henderson, UW Program Founder, Dies," *Seattle Times*, March 19, 2001.

2. Dan Fenno Henderson, *Conciliation and Japanese Law: Tokugawa and Modern*, 2 vols. (Seattle: Association for Asian Studies / University of Washington Press, 1965).

3. In addition, Henderson prepared a wide range of materials himself, including a guide to Japanese legal literature and research and materials for courses on transnational litigation and doing business in Japan. He also collaborated with Haley on the extensive set of materials "Law and the Legal Process in Japan." Under Henderson's influence, the UW also has encouraged faculty members, including Haley, Toshiko Takenaka, Veronica Taylor, and myself, in the preparation of materials for courses on specific fields of Japanese law, including administrative law, intellectual property, criminal justice, and labor law.

4. Dan Fenno Henderson, review of *Law in Japan: The Legal Order in a Changing Society*, edited by Arthur Taylor von Mehren, *Stanford Law Review* 16(4) (1964): 1129, 1130–31 (citation omitted).

5. Arthur Taylor von Mehren, ed., *Law in Japan: The Legal Order in a Changing Society* (Cambridge, MA: Harvard University Press, 1963).