

## Pursuing the Japanese Police

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David H. Bayley, *Forces of Order: Policing Modern Japan*. 2d ed. Berkeley: University of California Press, 1991. xvi + 193 pp. \$38.00 cloth; \$13.00 paper.

Peter J. Katzenstein & Yutaka Tsujinaka, *Defending the Japanese State: Structure, Norms and the Political Responses to Terrorism and Violent Social Protest in the 1970s and 1980s*. Cornell East Asian Series. Ithaca, NY: East Asia Program, Cornell University, 1991. xii + 217 pp. \$10.00 paper.

Setsuo Miyazawa, *Policing in Japan: A Study on Making Crime*. Translated by Frank G. Bennett, Jr., with John O. Haley. SUNY Series in Critical Issues in Criminal Justice. Albany: State University of New York Press, 1992. xviii + 267 pp. \$64.50 cloth; \$21.95 paper.

Robert Y. Thornton, with Katsuya Endo. *Preventing Crime in America and Japan: A Comparative Study*. Armonk, NY: M. E. Sharpe, Inc., 1992. 227 pp. \$39.95 cloth; \$17.90 paper.

Ted D. Westermann & James W. Burfeind, *Crime and Justice in Two Societies: Japan and the United States*. Pacific Grove, CA: Brooks/Cole Publishing Co., 1991. ix + 211 pp.

**T**he appearance of several new books on the Japanese criminal justice system offers an opportunity to reassess our understanding of policing and crime prevention in Japan and to identify the key issues in Japanese criminal justice research for the 1990s. The five books reviewed here are part of a bur-

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geoning literature in English motivated by two quite different research questions and research strategies. Both approaches are legitimate, but since they produce different answers it is important to keep the questions in mind.

For more than two decades the sharp difference in crime rates between Japan and the United States has tempted American criminologists to seek solutions to America's crime problems in Japanese institutions. This line of inquiry has produced several candidate institutions for possible export, such as neighborhood police boxes staffed by foot patrolmen and volunteer crime prevention groups organized on a neighborhood basis. These suggestions have also sparked a major debate over whether the institutions are so embedded in Japanese culture that they cannot be transferred successfully to the United States.

A second, much smaller body of research in English does not derive from U.S. policy concerns but instead seeks to understand how the criminal justice system operates within Japanese society. The research question is not how such institutions can be implemented in a different setting but how they really work in their natural setting. This line of inquiry is now producing studies that call into question the basic assumption that Japan's low crime rates are produced by benign, neighborhood-level criminal justice institutions operating in a culturally supportive environment. It is therefore essential to get a clear picture of how the Japanese criminal justice system really does operate in its natural setting, even if one's aim is to find answers to crime problems in America.

The reassessment of the Japanese criminal justice system by the latter genre of research also bears directly on the sticky matter of culture. The producers of comparative, answers-for-America research tend to be American academic criminologists or criminal justice system practitioners who know the U.S. system well, but they depend on short site visits and interviews mediated by translators, plus the limited research material available in English, for their understanding of Japanese institutions. Since the aim of such studies is to find solutions to American problems in the presumably more successful Japanese experience, they tend to accept at face value the explanations provided by practitioners in the Japanese criminal justice system. Once the Japanese practices have been described, the analysis concentrates on their potential applicability to the United States. This leads straight to culture, which is presented as a black-box explanation for why the Japanese system differs, and as the critical variable in whether it can be adapted to American conditions.

Culture plays a very different role in contemporary research that is focused primarily on how the Japanese criminal justice

system works internally. Whether conducted by Japanese or American researchers, these studies are characterized by extensive field work and interviewing in Japanese and broad contextual knowledge of Japanese society. Culture remains important as part of this context, but is no longer employed as the circular explanation for systematic differences. Instead, the aim of the research is to open up that cultural black box and understand the institutional realities that constrain the choices people make. This approach does not treat people as cultural ducks following imprinted values but rather as thoughtful agents who create, reproduce, and transform their culture in a dynamic and complex fashion.

This distinction becomes critical because too-hasty reliance on simplistic cultural explanations can obscure these more complex dynamics, leading to a very distorted picture of how institutions actually work in Japan. The problem is compounded by the language barrier. Comparative study of the first type described above depends heavily not only on translators in the field but also on the available English literature for an understanding both of the Japanese criminal justice system and of Japanese society in general. There is now a sufficient body of research in English about Japan to support such work, but the material available on the criminal justice system remains incomplete and spotty. When there is no material in English about a certain key aspect of the criminal justice system, scholars who do not read Japanese construct their explanations as if that aspect did not exist. Similarly, if there is only a small amount of material in English about a phenomenon, it may be dismissed as insignificant when in fact there is much more evidence available in Japanese, and the phenomenon is very significant to any alternative explanation of how the system operates. Needless to say, the problem gets worse when the English literature feeds off itself, generating second- and third-order analyses based on these initial misconceptions.

This is not to say that all research should be field research, or that only those who are literate in Japanese should be licensed to fish in these waters. Rather, it is a caution to the reader that these factors need to be taken into consideration when evaluating and using the English-language literature. These same considerations suggest that we should be most receptive to new studies that fill in the gaps in the English-language literature on the Japanese criminal justice system, and should test prevailing interpretations against the new evidence they offer.

Two of the books reviewed here contribute significantly to expanding the available body of knowledge in English on the Japanese criminal justice system. *Policing in Japan* by Setsuo Miyazawa is a powerful and persuasive study of the everyday

practices of criminal investigation, while *Defending the Japanese State* by Peter Katzenstein and Yutaka Tsujinaka offers a wealth of new information on the heretofore invisible security police. Together, they go a long way toward revising the overly benign and voluntaristic view of the Japanese criminal justice system that prevails in the English literature. Central to that prevailing view is *Forces of Order*, David Bayley's influential field study of Japanese methods of neighborhood policing first published in 1976. The revised edition of *Forces of Order* reviewed here remains valuable for its original research but reveals vividly the limitations of the answers-for-America genre of study. The remaining two books also represent that genre, although they differ from each other quite substantially. *Crime and Justice in Two Societies: Japan and the United States*, by Ted D. Westermann and James W. Burfeind, is a textbook based entirely on secondary sources in English, but it makes a thoughtful contribution to the debate about whether Japanese institutions can be transplanted successfully into the United States. *Preventing Crime in America and Japan*, written by Robert Thornton with the assistance of Katsuya Endo, is a comparative study of crime prevention strategies that provides some useful information on volunteer crime prevention organizations in Japan and the United States, but it does not live up to its potential. This essay will first review each book briefly and then examine more critically their implications for a better understanding of the Japanese criminal justice system. Because of the emphases found in these particular books, the focus will be on crime prevention and policing rather than on the courts and prison system.

### *Policing in Japan*

The gem of this collection is clearly Miyazawa's *Policing in Japan*, a carefully researched investigation of the everyday practices of criminal investigation detectives in Sapporo, the major city in Japan's northern island of Hokkaido. Coincidentally, Walter Ames's (1981) excellent participant-observation study of the Japanese police was also conducted in Sapporo, the only city whose police department to date has permitted extended participant observation by Japanese-speaking researchers.

Modeling his work after North American symbolic interactionist studies of police work, Miyazawa attended a training program for new detectives in order to understand what they were formally taught to do, and then spent several months observing the daily activities of the criminal investigation units at one police station to see how they actually conducted investigations. The observations were supplemented by a lengthy questionnaire that explored the detectives' attitudes and perceptions concerning a variety of investigative practices. He

acknowledges that the department sent him to a model station and that he was not permitted to observe interrogations, but these limitations mean primarily that his observations err on the conservative side.

The research was originally published in a longer Japanese version that has been substantially reworked for the American audience by adding essential background material and dropping many of the full descriptive accounts of individual cases that appeared in the Japanese edition. While the dropped cases are fascinating in their own right, plenty of descriptive case material remains in the English edition to support Miyazawa's analysis. The English edition begins with brief accounts of a number of well-publicized cases in which suspects falsely confessed to crimes they did not commit and then were eventually exonerated, often after spending years in prison. Also recounted in this collection is a bizarre case in which the police falsely accused a woman of theft of money that she had in fact turned over to a police officer. The cases and the publicity they received in Japan reflect the growing concern among Japanese lawyers, journalists, and human rights activists over investigative excesses of various sorts, some of which have been presented to the United Nations as human rights violations.

Now a professor of law at Kobe University, Miyazawa frames his presentation with these concerns and then systematically shows us how such excesses arise out of the normal and legal practices of a criminal justice system that gives pride of place to confession. He describes in detail the enabling legal environment and routine practices that coerce without violence and intimidate with seeming benevolence.

### *Defending the Japanese State*

*Defending the Japanese State* is ostensibly about Japan's internal security policy in response to terrorism and violent social protest. That translates in practice into a detailed analysis of the role of internal security considerations in policing. Katzenstein and Tsujinaka (political scientists at Cornell University and Tsukuba University, respectively) frame their study with two chapters reviewing the range and nature of internal security threats in postwar Japan, on the one hand, and the history of Japan's security police, on the other. The historical chapter on the police is particularly pertinent because theirs is the only one of the five books reviewed here to provide such background. While Bayley cites Westney's (1987) study of the formation of the Japanese police along French and German models in the late 19th century, and Westermann and Burfiend acknowledge the rise of the special higher police during the early 20th century, the emphasis of both books is on the radical

restructuring of the police in the immediate postwar years. Without an understanding of the activities of the Japanese police from 1900 to 1945, it is easy to overlook the substantial continuity between prewar and postwar police practice and the legal environment that underlies it.

As Katzenstein and Tsujinaka point out, the Japanese police were heavily engaged in internal security matters from their inception, and during the first half of the 20th century these concerns led to the elaboration of the higher (political) police into the special higher police, who were charged with surveillance of political groups and labor organizations, and to the expansion of the military police into civilian domestic security issues. These historical aspects of policing in Japan are taken up in much greater depth in two 1991 books that will not be examined in detail in this review: Elise Tipton's study of the special higher police (*Japanese Police State: Tokko in Interwar Japan* 1991), and Richard Mitchell's extremely informative study of criminal justice before 1945 (*Janus-faced Justice: Political Criminals in Imperial Japan*, 1992). Tipton documents the organizational development of security policing in Japan and relates it to the deliberate adoption of the Prussian police state as a model. Mitchell explores in much greater depth the practices of the police, courts, and prisons during the first half of the 20th century and the relationship between the treatment of political and ordinary criminal suspects. Anyone who reads Mitchell and then looks carefully at contemporary Japanese police practices will find unmistakable parallels, despite the efforts of the Occupation era reforms to decentralize the police and relate them to the community. Although Katzenstein and Tsujinaka treat these matters only briefly, they alert the reader to the special role that security policing has playing in Japan throughout its modern history.

In a second chapter assessing the scale of threats to internal security in postwar Japan, Katzenstein and Tsujinaka point to the two peak periods of massive and violent social protest at the beginning and end of the 1960s, and to the lower-level but persistent threat from smaller-scale violent protests, terrorist bombings, and guerrilla attacks from the 1970s to the present. They conclude that the security threat is real but comparatively modest. And although there are violent groups on both the right and left of the political spectrum, the security preoccupation is clearly with the radical left and focused particularly on the tiny but elusive Red Army.

They then trace the growth of postwar security police forces, finding that although the security threat decreased markedly from the early 1970s on, the budgets and manpower devoted to security policing have steadily increased over the past two decades. They point out in passing that it was during

precisely the same period that Japanese crime rates dropped from levels that were average by international standards in the 1960s to the low levels that have intrigued American criminologists ever since. Through interviews and careful study of official statistics that were designed to obscure rather than inform, Katzenstein and Tsujinaka tease out the size and organization of Japan's security police forces. They estimate the overall size in the late 1980s at 13–18% of all police, about the same proportion as is devoted to criminal investigation or traffic, and double the proportion of the total police they comprised in the early 1960s (p. 65). The highly visible riot police make up only a fraction of this, with the larger part attributable to the security police units deployed in local police stations throughout the country, plus investigative and intelligence units concentrated in Tokyo whose numbers are a closely held secret. By another clever calculation the authors estimate that Tokyo, where the crime rate is similar to that of the prefectures, is “overpoliced” by about 20,000 officers, which they attribute to security activities.

Except for the chronic conflict over Narita airport and a major riot in the Airin (Kamagasaki) district of Osaka in 1990 sparked by police corruption, the impressively outfitted riot police have not been needed since the early 1970s for serious riot control. Since then they have been used primarily to project a very high security presence during major state ceremonies and international meetings hosted by Japan and also for control of ordinary political street demonstrations. Although they are less visible to the general public, the plainclothes security police also deploy in great numbers at these same events, as part of their investigative duties.<sup>1</sup>

While Katzenstein and Tsujinaka's discussions of internal security policy and the norms underlying it are significant in their own right, more central to my discussion are the ways in which security considerations extend into other aspects of policing. The authors document the growing political power and influence of high-ranking security police officers, who now serve regularly in several cabinet-level offices and move easily into prominent positions in politics or the private sector after retirement. At the other end of the scale, they point out many ways in which security policing penetrates everyday life, from the security uses of the routine household surveys conducted by patrol police to the increasing use of household and personal searches, with or without warrants, that are justified to

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<sup>1</sup> I have described elsewhere (Steinhoff 1993) the standard pattern for political street demonstrations in which the line of demonstrators is flanked on the street side by a phalanx of riot police in full gear and on the sidewalk side by a crowd of plainclothes security police, readily identifiable to the cognoscenti by their unstylish casual clothes and small notepads and by the radio receiver button in the squad leader's ear.

the public by security considerations. The authors point out that this substantial growth of security policing in Japan over the past three decades has come about without much new legal authorization, by gradual internal shifts within the range of bureaucratic discretion, and that it has been carefully calibrated to stay within the public's tolerance. Although the Diet has refused several times to pass laws that would give the police greater authority to detain or arrest people for security reasons, Katzenstein and Tsujinaka show how the security police have been able to accomplish the same ends by greatly expanding their use of the Obstruction of Police Duties Act to make arrests on minor pretexts, which can be followed by house searches and intensive interrogation.

### *Forces of Order*

The research of both Katzenstein and Tsujinaka and Miyazawa should be kept firmly in mind as we venture into the realm of the answers-for-America studies. Their findings are most significant as a corrective to the tendency to project Bayley's study of neighborhood policing into a general description of the Japanese criminal justice system. Bayley's classic study *Forces of Order* (1976) described the Japanese system of small neighborhood police substations manned by 2–12 policemen who conduct daily foot or bicycle patrols of the neighborhood and interview every household twice a year. Besides providing fast emergency response, they also offer a broad range of small services such as giving directions, taking care of drunks, serving as the local lost and found, and offering simple counseling for domestic disputes. Bayley argued that this low-key approach successfully integrates the police into the community, producing a long-term payoff in crime prevention and citizen cooperation with the police.

*Forces of Order* fueled the argument that Japanese crime rates were low because neighborhood policing prevented crime and increased the likelihood that criminals would be caught. There is a basic truth to this, but Bayley's explanatory emphasis was on the spontaneous, cooperative aspects of police practices, and not on the surveillance and subtle coercion that are also implicit in the neighborhood policing system. The book sparked broad professional interest in Japanese methods of policing and played a significant role in the community policing movement, prompting some quite successful American experiments with urban foot patrols and neighborhood police substations. A comparative criminologist who has also studied the police in India, Bayley has since studied Singapore's experiment with Japanese-style neighborhood policing. As Katzenstein and Tsujinaka point out, however, Singapore may have been more



interested in the surveillance potential of the system than in its friendly public relations approach to low-level crime prevention.

Bayley has now updated *Forces of Order* for the 1990s. He has taken the task quite seriously, updating both the statistics and the analysis throughout the book, rather than simply adding a new chapter at the end. There is little new observational material, but a chapter on the riot police has been dropped on the grounds that it is outdated due to the decline in student protest activity, despite the fact that the force is even larger today and retains a conspicuous presence in Tokyo. In updating the statistics Bayley found that Japanese recidivism rates are now roughly equivalent to those in the United States, which undercuts the premise for comparative research promoting the effectiveness of Japanese sentencing and probation practices to combat recidivism.

The book contains a thoughtful discussion of the extent to which the Japanese criminal justice system succeeds because of very pervasive cultural habits of order, compliance, and moral obligation to the community that are simply alien to contemporary America. Despite these very real differences, Bayley argues that some aspects of Japanese policing practices can be successfully imported into the United States and suggests that we ought to think about cultivating some of the broader cultural and moral underpinnings of the Japanese system as well.

### *Crime and Justice in Two Societies*

Westermann and Burfeind also take up the cultural argument but from a somewhat different perspective. Chagrined by studies advocating wholesale importation of Japanese practices to the United States that looked only at institutional mechanics, they set out to explain how the Japanese and American criminal justice systems were rooted in two very different cultures. Westermann and Burfeind have managed to write a credible comparative cultural and institutional analysis based entirely on the secondary research literature available in English. They apparently did no original research in Japan, and the book is essentially a textbook for comparative criminology courses. The analysis is systematically comparative, showing how cultural values and socialization affect the institutional arrangements of the criminal justice system in both the United States and Japan, as well as how various institutions are linked together within each society. They, too, conclude that some borrowing is possible but seem less sanguine than Bayley about its extent.

## *Preventing Crime in Japan and America*

*Preventing Crime in Japan and America*, by Robert Thornton with the assistance of Katsuya Endo, is a comparison of two rather dissimilar small municipalities whose political linkage as sister cities opened the doors for research. The American side of the comparison is Salem, Oregon, a small state capital surrounded by farmland where Thornton, the principal author, has served as state prosecuting attorney and senior judge of the appeals court. The Japanese side is Kawagoe, a smallish bedroom community in Saitama prefecture north of Tokyo, where Endo is an assistant professor of education at Tokyo International University.

The study was prompted by the senior author's longstanding interest in the Japanese use of volunteers for crime prevention and probation programs and his own apparently successful efforts to introduce the practice in Oregon. There was a nice opportunity here either to tell a personalized story in a persuasive way or to do a serious comparative study to evaluate the effects of importing and adapting a Japanese practice to an American setting. It could have been a useful case study to help ground the debate over whether Japanese innovations can survive the transfer to a culturally different setting. The authors are sincere and well-meaning, but this book simply does not measure up to current standards of scholarship. The research in Japan consisted of VIP tours of local facilities, VIP interviews featuring banal questions that are dutifully reproduced in the book, and a simplistic and pointless questionnaire exercise involving a hundred high school students in each city. Despite the assistance of Endo, the sources cited are entirely in English, including lots of newspaper clippings and summaries of official reports.

The product of their efforts reflects an absence of academic peer review or serious professional editing. The book contains huge chunks of notes, lists, and document summaries dumped into the text without analysis, uneven use of statistical data from other sources with occasional egregious errors of interpretation, and a set of conclusions that reinforce the author's preexisting opinion, independent of any sustained analysis of the evidence. The irritating intrusion of many irrelevant Japanese terms in parentheses, sometimes misspelled, has no apparent function other than to convey a false sense of authenticity.<sup>2</sup>

Thornton and Endo do provide some basic information about Japan's nationwide system of local volunteer crime pre-

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<sup>2</sup> Bayley also indulges in this practice, with a similar level of misspelling, but he at least is trying to use the Japanese terms to further the analysis.

vention organizations, including impressive statistics about the number of volunteers enrolled in the program. The crime prevention program often overlaps heavily with the local neighborhood association to which every local business or property owner in the community automatically belongs, however, so it is not clear whether the statistics signify anything. The authors provide primarily official information, but from Bayley and Katzenstein and Tsujinaka we get a closer-to-the-ground look at how the volunteer crime prevention programs operate at the local level. Basically, these programs serve as public relations links between the police and the retired men in the community who like being associated with them. As members of the neighborhood association the volunteers may participate in the traditional nightly walk through the neighborhood to remind people to turn off their heating stoves before they retire. In addition, they provide volunteer labor for various police public relations and safety campaigns.

In some communities, they also patrol areas considered dangerous for young people, to keep them out of pachinko parlors and stop them from smoking cigarettes. An earlier study not cited by Thornton or Bayley (Yoder 1986) found that the working-class teenagers living near entertainment areas who were the primary targets of these ministrations hated being hassled by the volunteer crime prevention patrols. Already alienated by school failure, they could not walk to the train station or hang out in the neighborhood without risk of being stopped and "given guidance." Viewed from this perspective the crime patrols may very well reduce the incidence of petty crime in a neighborhood, but not necessarily through benevolent paternalistic guidance of wayward youth.

Thornton and Endo, as well as Bayley, also describe a program similar to the American Neighborhood Watch, in which about one household in every 30 is designated as a local police contact point from which the police distribute information to the neighborhood. Individuals can also use these locations to report information to the police or seek police assistance. These programs also embody a complex mix of citizen cooperation and low-level surveillance.

All these neighborhood policing and volunteer crime prevention strategies seem to work best in the traditional small, stable neighborhoods of single-family homes, shops, and small apartments in which crime rates tend to be low in any society. As Katzenstein and Tsujinaka report, the neighborhood policing system is far less successful in the high-rise apartment neighborhoods that have sprung up in Japan's major cities in the past two decades and in areas with high numbers of transients. In these areas the police cannot keep track of everyone who lives in the neighborhood, let alone everyone who passes

through it. Moreover, the neighborhood associations in such areas, and the crime prevention strategies associated with them, are essentially organized by and for local business owners, not renting residents. Still, the simple presence of a police substation in a congested area has some effect both in preventing crime and in providing faster response when a crime occurs.

### **How the System Really Works**

In general, both Bayley and Thornton and Endo present their respective segments of the Japanese criminal justice system as benign, friendly neighborhood institutions that promote safety and a sense of well-being in the community and prevent crime indirectly through their familiarity and positive presence in the neighborhood. Yet Katzenstein and Tsujinaka's study of the expansion of internal security activities during the past two decades documents that these formal and informal neighborhood-level crime prevention arrangements constitute a low-level but pervasive surveillance net maintained and utilized for security purposes. That does not necessarily make them any less effective for neighborhood crime prevention, but it does cast them in a rather different light in the overall criminal justice system. To their credit, Westermann and Burfeind do point out the surveillance aspects of the neighborhood policing system, surmising that Americans would not tolerate the same degree of intrusion into their personal and private lives. Their larger argument is that the Japanese are culturally conditioned to be comfortable with these institutions and do not find them intrusive, a point I shall return to later.

This is but one example of the tendency of both Westermann and Burfeind, and Bayley, to accept descriptions of Japanese phenomena at face value and jump to cultural explanations for them, rather than examining more deeply the institutional practices that produce the phenomena. The most significant and glaring example of this is the bland assumption by the authors of both books that the astonishingly high rates of compliance and confession reported by the Japanese criminal justice system are voluntary phenomena produced largely by cultural values, rather than the result of systematic police practices. Westermann and Burfeind, reflecting the gaps in the available literature in English when they did their research, leap from the police doing patrol work directly to prosecution of crimes through the courts, with little sense that anything comes between these two phases of the criminal justice process. Given the thoroughness of their bibliography, I have no doubt that the next edition will incorporate Miyazawa's study,

which may in turn force some rethinking of their basic argument.

Bayley presents numerous bits of information scattered through his book about what happens between neighborhood policing and trial, but seems not to have made the analytical connections between them. Instead, each tidbit of information is isolated in a different context and its significance discounted. At the beginning of chapter 4, Bayley opens a discussion of discipline and responsibility among the police by briefly citing several of the sensational cases of the 1980s discussed by Miyazawa, including convictions based on false confessions that took years to overturn, and some curious cases of police corruption. The cases are not described or examined in detail but are simply treated as rare examples of individual misconduct by police officers. The emphasis in the remainder of the chapter is on how unusual these cases are, how few police officers are disciplined for misconduct in Japan, and the various cultural practices that produce high morale, discipline, and loyalty among the police.

Later, in chapter 7, Bayley asserts:

The Japanese police officer . . . need devote less time, compared with American police, to determining guilt. The reason for this is that the characteristic stance of a Japanese confronting the police is submissiveness. More than simply being polite or deferential, Japanese are willing to admit guilt and to accept the consequences of their actions. (P. 136)

The cooperativeness of the Japanese people with the police and prosecutors is indicated by one stunning fact: four-fifths of suspects are prosecuted without arrest. The great majority of suspects cooperate voluntarily in their own prosecution. In 1987, for example, 78 percent of all suspects for Penal Code and other serious crimes were examined by officials without being arrested. Only 19 percent were held for longer than three days. In the United States, on the other hand, arrest is the beginning of a criminal case; it is the way in which prosecution is instigated. And arrest is tantamount to detention in jail, at least until a judge has heard the charge.

Of the relatively small number of Japanese suspects who are bound over for trial in district courts because they do not plead guilty and prosecution is not suspended, about 25 percent are released on their own recognizance and another 17 percent are granted bail. In effect, approximately 54 percent of suspects submitted for trial are detained. (P. 137)

This is a garbled and misleading statistical presentation, conjuring up an image of the vast majority of Japanese who have committed crimes simply walking into police stations on their own and confessing their crimes before the police even have to arrest them, which is utter nonsense. The problem is that the

statistics cannot be interpreted without a clear understanding of how the Japanese criminal justice system processes suspects.

Bayley reveals the source of his misunderstanding when he points out by way of contrast that arrest is the start of interrogation and detention in the U.S. criminal justice system. He seems to think that if Japanese suspects confess to a crime before they have been formally arrested, they have not been detained and interrogated, and the confession has been spontaneous and voluntary. Nothing could be further from the truth, as we will see shortly. In fact, a brief footnote attached to the end of the paragraph quoted above acknowledges that 84% of Summary Court suspects, the people who confess and therefore do not have a full trial, are also detained. Moreover, throughout this discussion Bayley presents statistics about detention versus bail that refer to the period after indictment when the defendant is awaiting trial, rather than during initial interrogation when subjects are not even eligible for bail.

Following this confused presentation, Bayley produces six pages of rambling cultural explanation of why Japanese submit so willingly to the moral authority of the police, and how the police reward their submission by benevolently helping to reintegrate them into the community. He then admits:

More than moral authority is brought to bear on Japanese who are suspected of crimes. Compared with Americans, they have many fewer procedural protections. Japanese law allows suspects to be detained for up to twenty-three days before a decision to prosecute is made. In effect, suspects may be detained during investigation. The Japanese police on their own authority may detain a suspect for forty-eight hours; the suspect is then turned over to the public prosecutors, who have twenty-four hours to apply to a judge for a detention order. Judges can then authorize as much as twenty days further detention under supervision of the prosecutors before a charge is filed. All of this is in sharp contrast to the United States where suspects may be detained for only twenty-four hours unless a charge has been filed before a court.

In each of the past few years, between ninety and a hundred thousand people have been held beyond forty-eight hours. Most are detained for less than ten days. (Pp. 144-45)

A footnote clarifies “most” in the previous sentence as having been 62.5% in 1985, which means that more than a third of them, or at least 30,000 people in that one year, have been held for 10 days or longer. Bayley also seems unaware of the fact that the detention period is often extended beyond the supposed maximum of 23 days by rearresting the suspect on a new charge, which restarts the detention clock for another 10 days. It is not clear how Japanese statistics count these cases of extended investigative detention under serial detention orders for different charges, but since the suspect gets indicted on

each charge within the legal time period, I suspect they are recorded as separate events rather than as the continued detention of a single suspect. If this is the case, they would show up in the official statistics as several different cases in which a suspect was detained for 10 days or less, when in fact one person may have been held continuously for weeks or even months.

Bayley then describes the terms of investigative detention. Suspects are held in “substitute prisons,” meaning jail cells inside the police station in which interrogation takes place. Access to legal counsel is totally at the discretion of police and prosecutors, and lawyers are never present during interrogations. Only after reporting that persons held for investigative detention are not eligible for bail does Bayley let the cat out of the bag: “Because a key purpose of precharge detention is to induce confession, confession in effect becomes a condition for bail” (p. 145).

If the little bits of information Bayley has dribbled out in the course of his explanation are rearranged in logical sequence, a rather different picture emerges. The police can legally stop and question people without arresting them and can ask them to come to the station for further questioning without arrest. People who are stopped for questioning have a right to refuse, but the police have no obligation to inform them of their right to refuse, or of their right to remain silent until they are formally arrested. Moreover, people who have not been arrested have no right to legal counsel. They are free to refuse to talk or to accompany the policeman voluntarily to the station, but doing so invites further suspicion and immediate arrest. And even after formal arrest starts the clock, the police can detain the suspect for 48 hours of interrogation before they have to notify the prosecutor, and another 24 hours before the prosecutor must go to court with a detention request, which has a greater than 99% chance of being granted. Anyone who confesses “voluntarily” during this period of unimpeded police interrogation will be counted in the official statistics as confessing to a crime without arrest, because the prosecutor does not go to the judge for a detention order for purposes of investigation, but instead initiates the summary trial procedure. And 84% of the persons remanded for summary trial will also remain in detention until the trial ends.

Bayley briefly discusses the growing concern about the coercive aspects of this confession-oriented process but concludes on the basis of the very limited material available in English that there are “scarcely more than a handful” of known cases of serious intimidation. He continues:

Nor does it appear that it is the poor who are particularly at risk. Precharge detention is used on people who willfully commit crimes, whose acts seem brazen and calculated.

Therefore, the most notorious cases of detention pressure have involved crimes allegedly committed for political purposes, like the bombings by radical students in the early 1970s. Gangsters fall into the same category. But so too do white-collar criminals, especially if they might destroy evidence pertinent to prosecution. (P. 147)

Let's try this one again. If the police can't get a confession within 48 hours of arrest, they apply for investigative detention so they can continue to question the suspect in a police station jail without a lawyer present for another 10 days, which can be extended for an additional 10 days on the same charge. Every year they do this for about 90,000 to 100,000 people, but of course those are only the brazen types who willfully committed crimes, because the "good" criminals have already confessed "voluntarily" so they can be morally reintegrated into the community. Bayley concludes: "Because it is used so seldomly and the cultural promptings of confession are so powerful, I doubt that this practice [extended precharge detention] has any important effect on either crime- or clearance-rates" (p. 170).

There is something profoundly circular about this logic, and I am surprised that a criminologist as astute as Bayley does not recognize it. The clues to why he does not are scattered throughout the text, in small side comments like the one above, associating prolonged detention first with radical students, then with gangsters and white-collar criminals. In fact, these are the only groups in Japanese society sufficiently organized or sophisticated to resist the overwhelming institutional pressures to confess. Of course the poor are not particularly victimized by prolonged and inhumane detention; they've already confessed in the first three days.

That radical students come first on this list of brazen criminals is not coincidental. As Katzenstein and Tsujinaka report, an enormous amount of police resources are devoted to surveillance and control of the radical left, and the sections of the police responsible for internal security enjoy the highest prestige in the organization. It is not at all surprising, then, that these attitudes pervade the institution. Moreover, the left has long provided legal assistance and support organizations to help persons accused of political crimes, and since 1969 a well-organized support program has educated radical students in how to behave if they should be arrested, and has provided legal counsel and social support to help them resist the institutionalized pressures to confess (Steinhoff 1989).

Bayley conducted the original fieldwork for *Forces of Order* during the early 1970s, at the end of a period of intense and violent student unrest in Japan in which pitched battles between student protesters and riot police were not uncommon. He noted with some surprise then that the greatest police an-



tipathy was directed not at minority groups but rather at radical students. That was an honest and useful observation, but Bayley does not seem to have drawn out its implications with the same objectivity he would apply to his own society. Why does Bayley expect that police might subject the poor to harsh treatment or express prejudice against minority groups? Precisely because these are the groups that have been shown time and again to have been treated less than fairly in the American criminal justice system. Yet when he finds that these specific groups are not particularly the object of police ire in Japan, he concludes that the police are evenhanded. Going on to blame the victim, he presumes that the group that *is* the focus of police antipathy in Japan must deserve whatever treatment it gets.

This same naiveté appears in other random comments: refusals to submit voluntarily to the routine residential survey come “primarily from left-wing people—a point that may be inferred from a refusal and duly noted on the information card” (p. 80); rudeness and verbal resistance to the police “comes most commonly from hardened street people, such as hoodlums and day laborers, drunks, and politicized students” (p. 137); and the only appreciable hostility toward the police comes from “ideologues of the left” (p. 4). And finally, after noting that the police are suspicious of scholars and that only two Japanese scholars have done empirical work on the police (citing, of course, only their English reports!) Bayley gratuitously discredits any criticism of Japanese police practices by Japanese scholars with the comment that “since Japanese social scientists lack a tradition of empirical research into bureaucratic behavior, they tend to approach the police with strong ideological predispositions” (p. 76).<sup>3</sup>

The comments cited above are not quoted or attributed to the Japanese police by Bayley, they are Bayley’s own assertions about the state of affairs in Japan. Although in his conclusions Bayley observes that “[i]deological orientation plays the same role in structuring the world for Japanese police that race does for American police,” he does not seem to recognize the extent to which he has uncritically adopted the same stance as the Japanese police. If all good Japanese just naturally volunteer to confess for cultural reasons, and only “leftist ideologues” resist confession or criticize the police, there can be no alternative to the hermetically sealed cultural nonexplanation.

My criticism of Bayley can quite easily be tarred with the same ideological brush, even though I am an American social

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<sup>3</sup> There are indeed few empirical studies of the police by Japanese scholars, primarily because the Japanese police do not provide scholars the access to data and direct observation that empirical research requires. The only researchers who do have such access are employed by the police and do not publish their work in journals that are available to the academic public.

scientist well-schooled in the empirical study of bureaucratic behavior. Having studied the Japanese radical left and its relations with the state for the past 25 years, I must by association be one of those disreputable ideologues, too, although my informants regard me as hopelessly conservative. Because virtually all the cases of prolonged detention or coerced confession that I knew of personally or had read about in the Japanese literature (cf. Takazawa 1983; Maruoka 1990; Tokyo San Bengoshi Kaigō Daiyō Kangoku Chōsa Iinkai 1984; Satō 1989) were associated with the left, for many years I thought it was only the radical left that received such extraordinary treatment in the Japanese criminal justice system. However, Miyazawa's *Policing in Japan* has persuaded me that the extreme treatment accorded the radical left is but the natural extension of the everyday practices of criminal investigation in Japan.

One of the two Japanese scholars acknowledged by Bayley to have conducted an empirical study of the Japanese police, Miyazawa found that Japanese police detectives did indeed achieve a very high rate of confession, not because Japanese criminal suspects were falling all over themselves to confess voluntarily, and not because the police flagrantly violated the law to coerce confession, but rather because the legal environment itself was so enabling. Because they had nearly complete control over the interrogation of isolated suspects for extended periods of time, detectives could cajole them and wear down their resistance relatively easily without having to break any rules at all. At the same time, Miyazawa found that the performance expectations for criminal investigations and the heavy emphasis on confession tended to distort the investigative process and lead detectives into systematically bending the rules, even when they were under the close supervision of procedurally conservative superiors. His findings shed enormous light on the circumstances that produce the outcomes that Bayley has described as voluntary confession without prior arrest.

First, the police work under strong expectations of perfect performance: false arrests of the wrong person should be avoided at all cost, and conversely, all arrests should lead to confession and proper adjudication of the crime.<sup>4</sup> Under these circumstances, police hesitate to make a formal arrest until they are quite certain that there is sufficient evidence for indictment and, preferably, a confession. The police thus exhibit a preference for voluntary questioning<sup>5</sup> and voluntary appearance at the police station for interrogation until sufficient information

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<sup>4</sup> These expectations stem largely from the fact that Japanese law provides for monetary compensation to persons subjected to false arrest.

<sup>5</sup> The practice of questioning a person who has not been arrested is generally called voluntary questioning, although it is the agreement to be questioned that is supposed to be voluntary.

has been elicited from the suspect to ensure success. Miyazawa found that even when the police had a prior warrant for the suspect's arrest, they often preferred to engage in extended voluntary questioning until they were certain of a confession before enforcing the warrant.

Second, having made a formal arrest, the police were doggedly determined to produce a confession to justify the arrest. This in turn led to the common practice of making an initial pretext arrest on a minor but easily sustainable charge so that the suspect could be interrogated at leisure about a more serious charge for which there was insufficient evidence. Miyazawa found that interrogation almost invariably focused on the search for additional charges that could be brought against a single suspect over an extended period of investigation, making the interrogation more "productive" than if it only solved a single case. This coincided with a bias toward known suspects and toward working primarily on cases with readily available suspects. While the same practice of trying to clear multiple charges with a single arrest is common in the United States, the emphasis seems to be slightly different here, since the multiple charges may simply be pretexts to continue questioning the suspect and force a confession to something, rather than an effort to clear previously known cases by a single arrest.

The most peculiar aspect of this practice involved attempts to fit the complaints to the available confessions. Theft confessions sometimes preceded any report of the crime, and had to be followed up with investigation to obtain the victim's statement. The issue might be dropped if the victim was too vague about the loss to sustain the charge. And conversely, in at least one case the victim was persuaded to drop his complaint because a suitable suspect could not be found. While Miyazawa does not press the point, these practices raise intriguing questions about both the low crime rate and the high clearance rate reported for Japan.

The emphasis on confession, the standard procedures of interrogation, and the requirements of successful prosecution also distorted the investigation process in more direct ways. Since no one is present at interrogations other than the suspect and his interrogator, and no transcripts or recordings of the sessions are made, the only record of the interrogation is the summary statement created by the interrogator and signed by the suspect. It is essentially the detective's construction rather than the suspect's statement, which provides ample opportunity for the detective to expand on the suspect's admissions, put words in his mouth, or cajole a weary suspect into signing something that is simply not true. Similarly, Miyazawa found that the legal requirement of demonstrating motive led detectives to expend considerable energy concocting plausible mo-

tives to fit the emerging confessions or drawing out motives and projecting them into plausible confessions. Once they had embarked on a particular general strategy, it was pursued doggedly even if the suspect confessed to improbable facts that kept changing under pressure.

Perhaps the single most distorting practice was rooted in the assumption that a “good” confession contained facts that only the criminal would know and that therefore could not have been fed to him by the interrogator. This orientation led investigators to first seek a confession and then investigate the facts of the crime to see if they fit, ostensibly to avoid tainting the confession with suggestions. In fact, the interrogators made all sorts of suggestions based on their own hypotheses about the crime and its motive and tried to get the suspect to supply details for their scenario. After the suspect had signed a statement confessing this joint construction, the detectives would go out to check whether the newly confessed details fit the evidence at the scene of the crime. The result was sloppy and delayed physical investigation of the scene and the vigorous pursuit of corroborating evidence to match false confessions generated by the detectives’ own misconstructions.

Although Miyazawa does not make the point explicitly, the strategy of first seeking confession and then looking for corroborating evidence provides the logical basis for the legal justification that detention is necessary to avoid the destruction of evidence, which had heretofore seemed to me to be completely cynical in cases of very extended detention. Since there can be no complete examination of the evidence until there is a confession, detention can be justified indefinitely for a suspect who refuses to confess. The other side of the coin is that prolonged detention and isolation make it very difficult for a suspect to establish an alibi to defend himself against the charges. Once they have arrested a suspect, the police have no motivation to investigate any corroborating evidence in the suspect’s favor, are unlikely to discover such evidence independently, and are most likely simply to dismiss the possibility of an alibi in their pursuit of a confession.

Most disturbing of all, Miyazawa found that once a suspect had made a false confession, he was unlikely to use subsequent opportunities to recant it to the prosecutor, to his own lawyer if he had one, or to the judge, and none of these parties was motivated to question the confession independently. When 99% of all persons tried are found guilty, the vast majority of them on the basis of confession, there is little reason for officers of the court to question what appears to be routine. There is equally little incentive for the hapless defendant to recant a false confession, particularly if he remains in detention

throughout the trial, as 84% of summary trial defendants do, according to Bayley.

The point here is not that most confessions are false, but rather that the same conditions of routine criminal investigation that produce some false confessions also produce vastly larger numbers of confessions that may be true but are certainly not voluntary or spontaneous. Moreover, the conditions that precipitate confessions are not so much cultural characteristics of the individual, such as the mysterious cultural predisposition to confess posited by Bayley, but institutional conditions of the criminal justice environment and the behavior of the police that make options other than confession immensely difficult to sustain.

Similar objections can be raised against the argument that although Americans would find it difficult to tolerate, the Japanese are culturally comfortable with the intrusive surveillance of their police system. It is certainly true that Japanese are socialized to work closely together in groups, to find personal satisfaction in well-cultivated reciprocal social relationships, and to respond to the demands of people on whom they are dependent. It is also true that the institutional arrangements of modern Japanese life tend to make people economically and emotionally dependent on their employers, co-workers, and family to a greater degree than is generally true in the United States. Consequently, people in Japan simply have more at risk if they violate social expectations, resist authority, or stain their reputations. Under these circumstances they may choose to acquiesce, to conform, to avoid, or to put up with conditions over which they have little control. That does not mean they like doing so, or even that they are “culturally comfortable” with what they perceive to be the only reasonable alternative available. Is this a cultural explanation? Certainly, but it is one that does not short-circuit human choice and feelings to simplify and reify difference. Rather, it traces the link from culture through institutions and circumstances, so that the choices people make are demystified and their personal costs revealed.

None of the books reviewed here examines those choices and personal costs in much depth, because their collective focus is on the criminal justice system rather than on its clientele. Bayley devotes the most attention to the clientele of the police, but he misconstrues the situation for two reasons. First, he observed primarily the interaction of neighborhood police with citizens seeking minor police services, rather than police interactions with persons suspected of criminal behavior. Second, he jumps too quickly into circular cultural explanations based on imputed individual psychology and does not give sufficient weight to the institutional context.

Although Miyazawa examines the institutional context bril-

liantly, early in the book he comes close to falling into the same trap as Bayley when he asserts, perhaps a bit tongue-in-cheek, that Japanese crime rates are low not because the Japanese police do such a great job but because the Japanese are such law-abiding people.

Both law-abidingness as a cause of low crime rates and the cultural predilection of individuals to confess as the cause of high confession rates reflect the tautological tendencies into which functionalist analysis slips so easily. If you begin with the assumption that culture subsumes everything, you will find a cultural explanation for everything, even if more powerful alternative explanations abound. The fundamental issue is not whether culture matters; of course it does. The question is how we understand culture and how we go about studying its traces. I suggest that this can be done most productively not by positing abstract cultural mindsets that systematically polarize societies on the basis of their differences, but rather by trying to understand how the everyday institutional context of life in a particular society constrains the choices people make, and how those choices in turn gradually reproduce or transform the institutional context that will constrain future choices.

### Raising New Questions

As this review has shown, Miyazawa's *Policing in Japan* and Katzenstein and Tsujinaka's *Defending the Japanese State* profoundly alter our understanding of policing and crime prevention in Japan by supplying important missing pieces of the institutional context. When these missing pieces are put into place, the entire picture changes so drastically that the old cultural explanations also must be rethought. This in turn raises new questions about the transferability of Japanese institutions to help solve U.S. crime problems.

Because the focus of this essay is on how the Japanese criminal justice system actually works, I have ignored the more basic flaw in the logic of answers-for-America research, the question of whether the comparative enterprise is reasonable at all, given the differences between the two societies on the dimensions that presumably ought to be held constant if the critical variable is to be criminal justice practices. All three of the studies of this genre reviewed here have given the matter some attention as a side issue in discussing whether cultural differences affect the transferability of Japanese criminal justice practices. It is remarkable that while they all acknowledge that gross differences in the availability of guns and hard drugs might account for differences in the crime rate, not one of the three notices that there might also be a difference in the crime rate between a society with chronic high unemployment rates

among low-skilled workers and one with a long-term labor shortage in the same category. However, I prefer to leave the transferability debate to others, whether it hinges on culture or on other intervening variables.

Instead, I want to raise the question of what pieces may still be missing, and how their addition may alter our understanding of the Japanese criminal justice system even further. Both Miyazawa and Katzenstein and Tsujinaka revealed pieces of the Japanese criminal justice system that were not only missing from the English literature, but were hidden from view even inside Japan, though they left little traces in plain sight. Several such traces of what is still missing can be picked out of the books under review as odd discrepancies. How and why does a society with extremely low crime rates also support over 3,000 organized crime groups with more than 85,000 members? (Westermann & Burfeind, p. 32). Why did the only major riot in 20 years break out in a day laborers' community following revelations of links between the police and organized crime groups? (Katzenstein & Tsujinaka, p. 102). Why would a local crime prevention association pass out signs to businesses that said, "Don't Fear Gangsters, Don't Give Them Money, and Don't Use Their Help?" (Bayley, p. 87). Why did the Japanese government mobilize 28,000 organized crime group members to supplement the police in preparation for the planned visit of President Eisenhower to Japan in 1960? (Katzenstein & Tsujinaka, p. 30). Why would two police officers take a visiting scholar to tea at the headquarters of an organized crime group? (Bayley, p. 168). And why would a visiting scholar who has been taken to tea at the headquarters of an organized crime group by two police officers link this event to police surveillance of organized crime rather than police corruption by organized crime? (Bayley, p. 169).

These traces all point in the same general direction, to the range of illegal activity carried out by organized crime groups that is neither reported as crime nor prosecuted; to the areas of Japanese social and economic life that are not regulated by the police but instead are policed privately by organized crime groups and other kinds of marginal fixers; and to the close relations between politicians, police, and organized crime groups that are often visible but not treated officially as symptoms of corruption or illegal activity. These questions need to be examined together, so their interrelations can be understood, but it will not be an easy task. As these missing pieces begin to be filled in, they will undoubtedly raise new questions about what Japanese crime rates actually are and what Japanese police actually police.

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