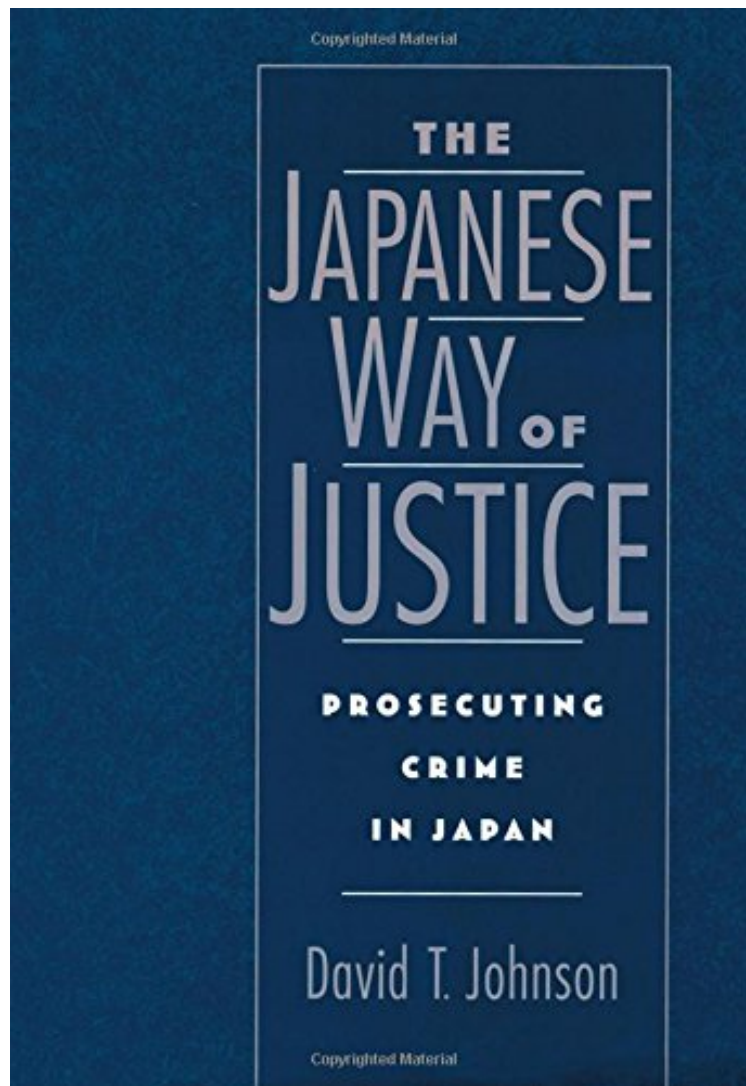


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## The Japanese Way of Justice: Prosecuting Crime in Japan (Studies on Law and Social Control)

David T. Johnson

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**David T. Johnson : The Japanese Way of Justice: Prosecuting Crime in Japan (Studies on Law and Social Control)** before purchasing it in order to gage whether or not it would be worth my time, and all praised The Japanese Way of Justice: Prosecuting Crime in Japan (Studies on Law and Social Control):

3 of 3 people found the following review helpful. A Classic in Sociological ScholarshipBy HAROLD J.

REYNOLDS David T Johnson's 'The Japanese Way of Justice' is the first systemic examination of the Japanese prosecutorial system, the most powerful governmental institution in Japan. The book, written in a prose mercifully free of academic aridity, has been virtually deemed a classic in sociolegal scholarship. So variegated in detail and close in analysis, it warrants treatment beyond the summary reach of a book review. Every prosecutor in the USA should read it. Every American intent on crime in Japan should keep a copy under his pillow. He will not find there the cat and mouse game of our failed criminal justice system. There, plea bargaining and immunity grants are forbidden, 92% confess, acquittals are 1 in 800, and razzle-dazzle lawyers are not seen running down courthouse steps with their laughing clients. A suspect drawn by arrest or invitation to meet with a Japanese prosecutor must be prepared to be questioned for the 23 days that he may be lawfully detained without the filing of a charge. The nicety of arraignment is unknown to Japanese law. He will not be assigned counsel until he is formally charged, and in any event his attorney will not have the right to be present during his interrogation. As for bail, there is no right to it during the detention period, which may be lengthened by the creative filing of another charge and the tacking to it of another 23 days, an illegality, but nevertheless usually effective. He has the right to be silent and may even declare his unwillingness to talk, but he has the duty to endure the interrogation that may extend for many hours, day after day. He may meet with counsel, but only when, for so long, and at the places determined by the prosecutor. The reader may be tempted to think this impairment of counsel a grave loss. Not at all. Those who may be said with some hilarity to practice defense law in Japan are elderly men in their seventies languishing at the end of the feed line. They advise their clients to cooperate with the prosecutor as they themselves do, for they believe it their duty to disclose the facts to the prosecutor and the court. As one ungrateful defendant said of his counsel, he was "as useless as tits on a bull", a mixed metaphor perhaps but precisely correct, for that old lawyer, like the hedgehog, knew one over-arching truth: he and his client are standing in what is the appearance of an adversarial judicial process that in fact does not exist. The suspect is the target of an inquisition. He has no right to pre-trial discovery, the interrogation is actually the trial, the trial is a ritual, the judge is present to conduct the ritual by receiving evidence, and the evidence is the dossier, compiled and written by the prosecutor, signed by the suspect, and received by a compliant court under numerous hearsay exceptions. Indeed, the dossier will contain not only police reports and the statement of witnesses but the defendant's confession as well, a confession reported not verbatim but in the form of the prosecutor's statement of what he believes the defendant in reality confessed. The prosecutor is not required to disclose exculpatory evidence. The judge takes the dossier to his chambers there to ponder it and render a decision very close, some may say too close, to that had in mind by the prosecutor when he made his recommendation. If there is that rare derangement, an acquittal or sentence that does not satisfy the prosecutor, the prosecutor may appeal. Where was the jury? There is none in Japan, nor are there grand juries or preliminary hearings. The media? They are the prosecutor's lapdog. "Writing critical investigative articles is not a press custom", said a reporter of Japan's largest daily. "Prosecutors", he said, "are our superiors and we are their supplicants." In Japan's media, prosecutors are virtually anonymous; no ecstasies for publicity are among them. They are appointed, may not be fired, do not play whore to political powers, and very rarely leave for elective office. The iron-willed purpose of the Japanese prosecutor is the suspect's confession which, if he is wise, he will accompany with genuine remorse, repentance, and a property settlement with his victim, in the absence of any of which he will be given a cell unheated throughout the year. Anyone familiar with Hiroshige woodcuts knows that in winter Japan looks like Vermont. After six years of research, including 33 months in the field, and after discovering that investigations are sometimes coercive, that truth is fabricated, corrupted and concealed, that prosecutors are unaccountable, that defense lawyers are all but impotent, and that the system is hostile to external scrutiny, Johnson concludes that "it is worth considering that American criminal justice works worse than criminal justice in Japan". He gives higher marks to Japanese prosecutors for refraining from charging in the absence of a belief in the defendant's guilt, for being markedly more respectful of defendants, for obsessively learning the facts, for taking into account the needs and circumstances of individuals, and for promoting healing and not just punishment. He finds Japanese prosecutors actively involved with rehabilitation and reintegration, and fearfully preoccupied with error, notwithstanding that their decisions are made after two or three levels of thorough reviews with superiors. He points to their substantial rate of suspending prosecutions, contrary to American practice, and he cites the fact that Japanese sanctions are less severe than our own. Johnson may have reservations about the Japanese system, but they are insufficient "to change the bottom line: the Japanese way of justice is uncommonly just." In 'The Best Defense' (xv, 1982), Alan Dershowitz wrote: "I have only one agenda: I want to win... It is the job of the defense attorney - especially when representing the guilty - to prevent, by all lawful means, the 'whole truth' from coming out". An American lawyer who made that statement in a Japanese interrogation room would probably be last seen, so to speak, in a Japanese memorial urn. For myself, if I were poor and innocent, give me that Japanese obsessive prosecutorial fact seeker and let the Charlie Chaplin defense counsel tag along, but if I were poor and guilty, give me that harried, underpaid American prosecutor and, though I cannot have the original, find me a Legal Aid Alan Dershowitz look-alike.

2 of 2 people found the following review helpful. A Different Approach to Justice By Lisa J. Steele Johnson's research into Japanese criminal justice, and specifically Japanese prosecutors, is an eye-opening resource for discussions and debates about criminal justice in theory, and the U.S. system in particular. Johnson exposes the strengths of the system in its focus on victim's

restitution and criminal rehabilitation. He also discusses the weaknesses in the system, especially in its response to sexual harassment and violence against women, political corruption, and white collar crime. 1 of 1 people found the following review helpful. Outstanding! By A reader David T. Johnson's *The Japanese Way of Justice: Prosecuting Crime in Japan* is a masterful comparative study of Japanese and US prosecutors and their institutional cultures. Described by Malcolm Feeley as "quite simply the best book on the administration of justice in Japan in English or any other language", it is a work that avoids many of the problems that plague previous works on the Japanese criminal justice system. Fluent in Japanese, Johnson was not only able to undertake his field work and interviews without the assistance of an interpreter, but also - and perhaps even more crucially - read official documents and access criminological writings in the local language. Unsurprisingly, the picture he paints of Japan and the Japanese criminal justice system is altogether more textured and less flattering than that which emerges in the writings of previous Western criminologists. Furthermore, the Orientalism that mars many works in the field is simply not present in Johnson's work. While Johnson does not shy away from making comparisons between Japanese and American culture, he always does so with a degree of caution, and in almost every instance takes great pains to ensure that his observations are read in context. For Johnson, Japan's prosecutorial system cannot be understood by reference to familiar stereotypes and metaphors, but rather through a painstakingly detailed examination of how the exercise of prosecutorial discretion affects other criminal justice agencies and actors. By explaining, for example, that criminal defence lawyers in Japan are poorly paid, in short supply, and hampered by a lack of powers at the pre-indictment stage, Johnson not only enables his reader to better understand his immediate subject - the prosecutors - but the also the context in which they work. As a consequence, far from implying that the Japanese are some idealised other who simply are simply different from "us", he eventually arrives at the conclusion that the Japanese criminal justice system faces similar challenges and shares many of the same flaws that characterise similar systems the world over. Overall, this is a truly outstanding piece of scholarship, and essential reading for anyone interested in the Japanese criminal justice system.

Criminal proceedings in which people can lose life, liberty, or reputation tell us a great deal about the character of any society. In Japan, it is prosecutors who wield the greatest control over these values and who therefore reveal most clearly the character of the Japanese way of justice. In this book, David T. Johnson portrays Japanese prosecutors at work; the social, political, and legal contexts that enable and constrain their actions; and the content of the justice thereby delivered. Johnson is the first researcher, Japanese or foreign, to gain access to the frontline prosecutors who charge cases and the backstage prosecutors who manage and direct them. He shows that prosecutors in Japan frequently harmonize to imperatives of justice that Americans often regard as irreconcilable: the need to individualize cases alike. However, their capacity to correct offenders and to obtain contrite, complete confessions from criminal suspects. Johnson argues that this extreme reliance on confessions occasionally leads to extreme efforts to extract them. Indeed, much of the most disturbing prosecutor behavior springs directly or indirectly from the system's inordinate dependence on admissions of guilt. The major achievements of Japanese criminal justice are thus inextricably intertwined with its most notable defects, and efforts to fix the defects threaten to undermine the accomplishments. Clearly written and skillfully argued, this comparative analysis will be of interest to students of Japan, criminology, and law and society. It illuminates unexplored realms in Japan's criminal justice system while challenging readers to examine their assumptions about how crime should be prosecuted in their own systems of criminal justice.

*The Japanese Way of Justice* makes an outstanding contribution to both scholarship on the Japanese criminal justice system and comparative sociolegal research in general. The author communicates his thoughts so well that anyone generally interested in criminal prosecution will find it of interest." --Law and Politics Book "Americans like to think that Japan is evolving into an Anglo-American-style 'liberal democracy.' Nowhere are they more wrong than in a comparison of the two countries' criminal justice systems. The independence of Japan's prosecutors and their decisions to indict based on social impact, not a citizen's complaint, is totally alien to our system, but it may deliver more justice. David Johnson's truly brilliant analysis is an eye-opener." --Chalmers Johnson, Japan Policy Research Institute "This is a superb book. David Johnson provides a detailed and nuanced account of the vitally important role played by prosecutors in Japan, based on several months of direct personal observation inside a large prosecutor's office, together with extensive interviews, surveys and other research. This book will immediately occupy a place as one of the most important works on the Japanese criminal justice system in any language." --Daniel H. Foote, University of Tokyo Faculty of Law "This is quite simply the best book on the administration of justice in Japan in English or in any other language.... With its concern for context, theory, and method it offers a sophisticated analysis that is unparalleled in studies of the Japanese legal system. Indeed, it sets a new standard for comparative sociolegal scholarship generally. Comparative scholars, regardless of their particular focus, will benefit from a close reading of this book." --Malcolm M. Feeley, University of California at Berkeley From the Publisher "This is a superb book. David Johnson provides a detailed and nuanced account of the vitally important role played by prosecutors in Japan, based on several months of

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**From the Inside Flap**

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