

## SYMPOSIUM

### **Endurance in Japanese Law**

The Australian Network for Japanese Law (ANJeL)

(contributed by Leon WOLFF with  
Giorgio Fabio COLOMBO, Luke NOTTAGE and Heather ROBERTS)

The opening section of this edition of the *Journal of Japanese Law* is a celebration of Europe's enduring legal engagement with Japan. It reflects on the strength of legal links between Europe and Japan – some long-lasting; others fleeting; and yet others, emerging and evolving. It investigates the persistence of institutional practices and norms in Japanese legal system, large tracts of which have been adopted and adapted from 19<sup>th</sup> century continental European law as well as some recent legal innovations inspired by European examples. And it celebrates this work, whether by way of country reports or scholarly investigations, in this Journal – the world's only enduring journal dedicated to Japanese law, published and edited in Europe.

The reports and papers in this issue, and some more to come in the next issue, emanate from a Japanese law conference held on 23 September 2019 in the university town of Pavia in the Lombardy region of northern Italy.<sup>1</sup> Jointly organised by the Australian Network for Japanese Law (ANJeL) and Professor Giorgio Fabio Colombo, an Italian expert on the Japanese legal system based at Nagoya University, this event was intended to be an inaugural ANJeL-in-Europe event. The monastic-like University of Pavia, with a history tracing back to the 14<sup>th</sup> century, certainly made for an impressive site to inspire hopes for future research activities on Japanese law in Europe into the future. ANJeL, too, has strong connections with Europe. ANJeL co-director Luke Nottage, for example, has held research fellowships in Germany and Italy as well as having made explicit comparisons with European law in his corpus of scholarship on Japanese business and consumer law. Co-director Leon Wolff, as his surname might indicate, has German heritage. And, as a cross-institutional network established in 2002 for research,

---

<sup>1</sup> For the conference program, key participants and abstracts of presentations, see <https://japaneselaw.sydney.edu.au/2019/04/japanese-law-compared-past-present-and-future/>.

teaching and community engagement,<sup>2</sup> ANJeL has welcomed European experts to its advisory board, European researchers to its global conferences, and European law teachers to its signature offshore teaching program in Kyōto and Tōkyō co-organised at Ritsumeikan University campuses each February.

Less than six months after the Pavia event, ANJeL's plans to base future collaborative research events on Japanese law in Europe have been put on ice. This is due to the sudden and shocking intervention by the COVID-19 global pandemic. Since the initial reports of a novel coronavirus emerging from the live animal wet markets in Wuhan, China, COVID-19 has spread relentlessly across the world. According to the World Health Organisation, it had infiltrated 23 countries, infecting about 2 million people and causing 123,000 deaths.<sup>3</sup> Northern Italy, where the ANJeL-in-Europe conference was held, became one of the worst hit epicentres for the disease. The per-capita death rate remained the highest at the time of writing. This public health crisis has not only cost lives; it has shuttered swathes of the global economy, halted travel and reconfigured human interaction. Uncertainty is the new norm. It is unclear when the pandemic will be brought under a control; when a vaccine will become available; what restrictions will be imposed or relaxed; or how the world will change after the worst is over.

One thing, however, is certain. The pandemic will not endure. Although it will carry long-lasting effects, it will come to an end.

This observation stands in contrast to the overarching theme of this collection of papers: *endurance*. Specifically, the contributors have posed two linked research questions that engage this theme. The first is about the nature of the legal relationship between Japan and different parts of Europe. Why is there longstanding legal exchange between Japan and some parts of Europe, and only fleeting or emerging links in others? What historical and contemporary trends explain the unevenness in the Europe-Japan legal relationship? The second question concerns the functioning of key Japanese legal institutions, specifically, the judiciary, the legal profession and the criminal justice system. To what extent do the traditional functions of these legal institutions endure or persist despite the overlay of reform, the forces of (post-)modernisation and the pressure of interest groups? And how do we explain Japan's tendency for institutional evolution rather than transformative change?

A report on "The State of Japanese Legal Studies in Europe" is the first comprehensive attempt to map Japanese legal studies across Europe. Reflecting on the trajectory of Japanese legal studies across the continent, the

---

2 For more information, including about free membership, see <http://www.anjel.com.au/>.

3 See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>.

relative influence of Japanese Studies or Comparative Law on this trajectory, and the key research or teaching initiatives, the team of contributors covers Italy (Giorgio F. Colombo), France (Béatrice Jaluzot), Israel (Wered Ben-Sade), Scandinavia (Roger Greatrex), Spain (Francisco Barberán), Belgium and The Netherlands (Dimitri Vanoverbeke), Germany (Harald Baum and Moritz Bälz) and the United Kingdom (Luca Siliquini-Cinelli). Although the Japanese legal system is accessible to many European legal researchers because the Japanese system of codified laws draws heavily on a patchwork of European transplants, the motivations among Europeans to engage seriously with Japanese law vary widely. It might be inspired by the strong tradition of Japanese law scholars to research aspects of European law and forge scholarly links (such as France); the growth of the Japanese economy since the 1970s and its significance to European economies (such as Germany and the Low Countries); the lure of Japanese society and culture (such as Italy and Spain); or the personal passions and scholarly initiatives of individual researchers (all countries, but consider especially Israel and Scandinavia). Japanese law scholarship – whether long-lasting (France), rich and voluminous (Germany), emerging (Italy), patchy (Scandinavia) or nascent (Israel) – finds diverse expression across Europe.

The next four articles explore different legal institutions in Japan: the legal profession (Masako Kamiya), the judiciary (Souichiro Kozuka) and the criminal justice system (David Johnson and Dimitri Vanoverbeke) and gendered law (Levin and Hiraoka). In “The Style and Role of Judgments by Japanese Courts: How They are Written and Read”, Kozuka argues that case reporting decisions in Japan reflect a deliberate judicial policy of social conservatism. Specifically, which decisions get published in official reporter series, and how they should be written, reflects an institutional imperative to maintain public confidence in the court system through the cautious development of social policy through law; this contrasts with the broader goals of the common law system to ensure incremental and coherent development of legal doctrine itself. Kozuka, however, rejects the view that the courts, especially the Supreme Court, are archly conservative. Rather, through an analysis of recent legal decisions on controversial issues, the Court and the Japanese judiciary as a whole ensure that the development of social policy through the law is carefully aligned with legislative history, accepted canons of statutory interpretation and criterion-referenced balancing tests.

In “Disciplinary Procedure: What it Tells Us about Practicing Attorneys in Japan”, Kamiya explores the disciplinary and dispute resolution procedures available to clients dissatisfied with the conduct of their case by their lawyers. Kamiya argues that, to be sure, lawyers take ethical and misconduct complaints seriously, and the Japanese Bar’s oversight powers can be

successful in punishing and weeding out serious offenders of legal ethics. However, Kamiya makes the case that bar associations' complaints-handling and dispute resolution procedures do little to enhance the autonomy and dignity of the legal profession. This is because ethical oversight is premised on the narrower, neo-liberal view of the legal profession as a market-based service-provider rather than a broader, public-oriented philosophy of lawyers defending the rule of law and constitutional freedoms.

In "The Limits of Change in Japanese Criminal Procedure", Johnson and Vanoverbeke express reservations about the substantive impact citizen participation has had on the Japanese criminal justice system. Although Japanese citizens judge can make findings of fact and law in serious criminal cases as lay judges, can participate in criminal trials as victims of crime, and can review non-charge decisions by prosecutors, these reforms have not had the desired democratic impact that reformers envisaged. The authors argue that this is because the reforms are too narrowly targeted and, as a result, have largely cemented the status quo rather than transformed criminal justice.

In "Gender and Law Scholarship in the Law in Japan Field: A Comprehensive Bibliography", Levin and Hiraoka assemble a comprehensive bibliography of scholarship that reflects on the diverse ways in which the law is gendered in Japan. With pieces dating back as far as 1962, the bibliography captures the enduring academic interest in how women experience the law in Japan and the way law addresses, tackles and even reinforces gender norms in Japanese society.

These articles make important contributions to our understanding of the endurance of institutional design and function in the Japanese legal system. In particular, they show that conservatism – whether it is in the cautious management of reported case law, the neo-liberal philosophy that defines legal ethics, or the narrowly-focused scope of criminal justice reforms or the gendered operation of law – ensure gradual transformation<sup>4</sup> rather than radical change in important areas of the Japanese legal system.

---

4 Compare also L. NOTTAGE/L. WOLFF/K. ANDERSON (eds.) *Corporate Governance in the 21<sup>st</sup> Century: Japan's Gradual Transformation* (Cheltenham 2008), especially chapter 2 (with a version also at <https://ssrn.com/abstract=885367>).