

CONFERENCE “JUDICIAL REFORM IN JAPAN”
– SPECIAL ISSUE –

INTRODUCTION TO THE SPECIAL ISSUE

Societies are rapidly changing in Europe and Asia, and so are their systems of law and justice. Sometimes these changes take place by means of high-profile scandals that are often provoked by particular policy failures (*e.g.*, escaping prisoners, people on parole committing serious crimes, inefficient conflicts between or within police forces, etc.). A clear example of such changes is the story of Belgium, where a sequence of dramatic policy failures in the criminal justice system in the 1990s led to a regime crisis and to the subsequent approval of a large reform package. There are also countries with more incremental types of judicial reform. In such cases, policy failures may occur and play a role in the reform process, but they do not lead to the kind of deep crisis that marked the reforms in Belgium. A case in point is Japan, where the 1990s were characterized by a deep socio-economic crisis (the “bursting of the bubble”) that created the context for significant social changes in established institutions such as the bureaucracy and the education system. Prime Minister Koizumi stated in 2001 that judicial system reform also constitutes an indispensable element in the transition to an *ex post facto* check- and relief-oriented society that is governed by explicit rules and the principle of self-responsibility. The final report of the Judicial Reform Council was presented to the Japanese government in 2001, containing significant proposals for judicial reform, and most measures proposed were implemented. Various questions remain unanswered, however. Why did this package achieve approval, while many previous attempts at judicial reform (dating back to as early as the 1960s) failed? Does this reform package really represent a fundamental restructuring or merely a cosmetic change? Will the judicial reforms indeed strengthen the rule of law in Japanese society?

In response to these challenges, a number of academics working on judicial reform in both Japan and Europe decided in 2005 to set up an informal network to study these developments in a comparative perspective. Their underlying assumption was that a comparative study of such reform processes might generate some general insights into the mechanisms of judicial reforms. Yet the relevance could even extend beyond the judicial system. Judicial reform is a particularly interesting topic for comparing different systems because some key features are inevitably constant across systems (*e.g.*, core functions of the justice system, the need for an independent and impartial judiciary, tensions between the various justice branches, etc.), while the factors that influence

these key features necessarily vary across countries and cultures. The network has met three times thus far: the first meeting took place in March 2006 in Leuven (Belgium); the second in December 2007 in Tokyo (Japan); and the third in March 2008, again in Leuven. The articles that we present here constitute the first product of these collaborative efforts, and it is hoped that others will follow. In line with the overall aims of the *Zeitschrift für Japanisches Recht / Journal of Japanese Law*, this issue concentrates on the contributions that have focused on Japan and on the Japanese judicial system in particular. One exception to this is the contribution of Parmentier, who focuses on the Belgian case (albeit situated in a comparative perspective).

The contributions to this volume are organized according to what we would like to call the “triangle of judicial reform.” This triangle in our view is composed of three corners: one is judicial policy and policymaking, the second is the functioning of the judicial system and of its various layers, and the third corner refers to public opinion in relation to the other two corners of judicial policy and judicial system. Each of the three corners is addressed in turn.

The first two articles focus on the judicial policy corner of the triangle.

First, *Dimitri Vanoverbeke* and *Jeroen Maesschalck* (both from the K.U. Leuven in Belgium) tell the story of the policymaking process in Japan since the 1970s, with a view toward explaining judicial reform in Japan. The key decisional moment in this judicial reform process was the decision by the Japanese government to appropriate the proposals by the Justice Reform Council in June 2001. Using the “punctuated equilibrium” framework of Baumgartner and Jones as “lens,” they tell the story that preceded these important reforms. It is a story of a long period of relative stability after the Second World War, followed by a gradual weakening of the policy monopoly that in turn paved the way for the approval of the 2001 reform package.

Following this rather broad paper, *Hiroshi Takahashi* (Kobe University) adds focus to the lens and looks at a core issue within the judicial system and how it is being changed through judicial policymaking: the key demographic features of the Japanese judges (university, age, and gender). His research indicates that Japanese judges have traditionally been selected from an extremely narrow section of the population and thus display a remarkable degree of homogeneity. He argues that the recent judicial reforms have hardly affected the system of recruitment and therefore do not warrant over-optimistic accounts of the capacity for change from inside the judiciary.

The third contribution to this corner of the triangle is *Takayuki Ii's* (Hirosaki University) article on policymaking concerning the issue of legal services in rural Japan. Noting some interesting similarities with legal practices in the rural United States, Ii observes both a qualitative and a quantitative shortage of legal service in rural Japan. He discusses the impact of policy measures that have been developed to deal with this problem (including the setting up of a Japan Legal Support Centre) and concludes that a lot of work remains to be done.

The second corner of the triangle focuses on the functioning of the judicial system itself.

First, *Sôichirô Kozuka* (Sophia University Tokyo) observes that Japanese judges play an important role in policymaking. He illustrates this with a number of court decisions in the area of consumer law, particularly in relation to consumer loans. He argues that this type of judicial activism constitutes a form of judicial policymaking in its own right and one that is far more present than is normally assumed, also in Japan.

Second, *Masahiro Fujita* zooms in on a very particular aspect of the functioning of the judicial system: the jury trials. He particularly addresses the issue of the deliberations in the *saiban'in* jury system that is to be launched in May 2009. He describes the communication patterns during the deliberations among the jury members in two mock trials and draws some conclusions that might be useful for a better understanding of jury decision making in Japan.

The third corner of the triangle is a crucial one as well, namely public opinion. *Stephan Parmentier* (K.U. Leuven) discusses the goals of public opinion research in relation to law and legal systems, as well as the main methodologies used and some of the major challenges involved. For these purposes, he refers to public opinion research that has been conducted in Japan and in various European countries over the past few years and advocates better instruments for comparative studies.

Given its specific academic focus on judicial reform in Japan, this special issue is primarily intended for legal and socio-legal scholars who wish to increase their understanding of policymaking – and of judicial policymaking in particular – in a rapidly changing social, political, and economic environment. The contributions suggest that policy changes are influenced by many factors, some local and others global. Yet this volume might also be of interest to policymakers and practitioners in Japan, given the facts, figures, and interpretations that are offered. Finally, the volume might also be of interest to a wider audience, not only because foreign students and commentators of judicial reform will be interested to learn more about what has happened in Japan over the last two or three decades, but also because the Japanese developments display some interesting characteristics of incremental change that could be instructive for other jurisdictions and countries.

It is our sincere hope that this special issue may constitute the first in a longer series of publications on judicial reform in Asia and Europe, thus contributing to a systematic accumulation of knowledge concerning the mechanisms that underlie judicial reform.

Finally, we would like to express our gratitude to a number of colleagues who have made the production of this special issue possible: Harald Baum and Moritz Bälz, the executive editors of the *Zeitschrift für Japanisches Recht / Journal of Japanese Law*, for offering us this excellent forum and for all their advice and support in the preparatory process; Eva Schwittek for very efficient editorial assistance; the authors who have written and rewritten their pieces with enthusiasm following the instructions and sugges-

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