

**Who Cares about Judicial Change?
On the Role of Citizen-Oriented Research for Judicial Reform
in Europe and Japan**

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INTRODUCTION

This special issue is devoted to judicial reform in Japan and also holds information about similar reforms in Western countries. It is striking that the largest part of the scientific literature on reforms of the judicial system is devoted to studying the origins and the rationales of such reforms and of their consequences. Far less attention is usually paid to empirical research about what specific groups or the population at large think of the justice system and of the projected reforms, or what role law and justice play in people's dealing with conflicts, two missing elements that constitute the points of departure of this contribution. It purports in particular to pay attention to the opinions and attitudes of the population in relation to the justice system, and to the ways people use the law and the legal system. For this purpose we will draw on various citizen-oriented research studies conducted in Belgium and some other countries of Europe, as well as in Japan, with a general view of adopting a socio-legal approach to judicial reform.

I. PUBLIC OPINION RESEARCH IN RELATION TO THE JUSTICE SYSTEM

The last two decades have witnessed the emergence of a good number of empirical research studies in European countries to assess the opinions and attitudes of the population in relation to the judicial systems. Many of these were the result of fierce criticisms against the administration of justice, often criminal justice, and of the quest for a better understanding of people's opinions and attitudes. The following paragraphs provide a

brief overview of public opinion research in Belgium since 2000 and relates it to similar research in some European countries.¹

1. *Public opinion research in Belgium*

Over the last twenty years the Belgian system of criminal justice has been subjected to fierce criticisms from various sides. While the public debate started as early as the late 1980s with several high-profile criminal cases, it was not until the summer of 1996, when the case of the missing children (the “Dutroux case”) raged over the country like a tornado, that the problems of the Belgian system also became visible on an international scale. Since that time the systems of police and criminal justice, and increasingly also the civil justice system, continue to be overloaded with harsh critiques.² Simultaneously the calls for a better understanding of what people think of the justice system have increased.

Despite some research on the opinions and attitudes of the Belgian population vis-à-vis the justice system since the 1970s, a fully reliable instrument to measure such opinions and attitudes was still lacking. To fill this important gap the King Baudouin Foundation³ as early as 1995 started exploring the possibility to conduct a public opinion survey and commissioned several preparatory studies to this effect.⁴ The real stream of public opinion research started after the turn of the century with the funds provided by the then Federal Office for Scientific, Technical and Cultural Affairs.⁵

a) *The “Justice Barometer”*

In 2000 the Federal Office provided funds for a three-year research project (November 2000 – October 2003) carried out by the Katholieke Universiteit Leuven and the Université de Liège to develop a justice survey, including a measuring instrument that would enable public opinion on the justice system to be gauged at regular intervals. Between

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- 1 S. PARMENTIER/G. VERVAEKE/J. GOETHALS ET AL., *Justitie doorgelicht. De resultaten van de eerste Belgische “justitiebarometer”* [Auditing Justice. The results of the first Belgian “Justice Barometer”] (Gent 2004a); S. PARMENTIER/G. VERVAEKE/J. GOETHALS ET AL., *Une radiographie de la justice. Les résultats du premier “baromètre de la Justice” en Belgique* (Gent 2004b).
 - 2 S. PARMENTIER/J. VAN HOUTTE, *Law, Justice and Social Change in the 21st Century. The Case of Belgium* (Brussels 2003).
 - 3 Foundation for public interest founded by the former King Baudouin in 1975 (www.kbs-frb.be).
 - 4 S. PARMENTIER, *De verwachtingen van de burgers ten aanzien van justitie. Een selecte inventaris van bestaand onderzoeksmateriaal in binnen- en buitenland* [The Expectations of Citizens vis-à-vis the Justice System. A select inventory of existing research at the national and the international level] (unpublished paper 1998) 1-13 + annexes; L. VAN CAMPENHOUDT /Y. CARTUYVELS, *La justice en questions. Concept d’enquête sur les attentes des citoyens à l’égard de la justice* (Brussels 2000).
 - 5 Its current name is Belgian Federal Science Policy Office (www.belspo.be).

September and November 2002 the research team conducted the first “Justice Barometer”, a quantitative survey on a representative sample of 3,200 people living in Belgium. This survey came about in four main phases.⁶ First a literature review on public opinion surveys in Belgium and other countries was conducted, with a view to building a database of relevant questions about the attitudes of the public towards the justice system, and based on a theoretical model.⁷ In this model ‘attitude’ was defined as “the sum total of a man’s inclinations and feelings, prejudice or bias, preconceived notions, ideas, fears, threats and convictions about any specified topic”,⁸ consisting of three components, a cognitive, an emotional, and a behavioural one, while ‘opinion’ was defined as the verbal expressions of such attitude.⁹ Secondly, the questionnaire was constructed based on the theoretical model and corroborated by means of focus group interviews¹⁰ and face-to-face interviews.¹¹ The final questionnaire consisted of four parts or ‘modules’: a general section, a civil law section, a criminal law section and a section concerning background characteristics. Thirdly, the questionnaire was administered by means of telephone interviews subcontracted to a private company over a three-month period (September – November 2002). A total of 20,361 telephone calls were made, which resulted in 3,200 valid respondents for further data analysis. And finally, the data were processed by means of SPSS software, carrying out univariate and bivariate analyses, including post-tests whenever appropriate.

It is of course impossible to present and discuss all results of the first Justice Barometer, for which reason only a small selection of relevant issues can be outlined, focusing on the general section, the functioning of the justice system, and legal proceedings and conflict resolution, mostly pertaining to national results. More detailed information on the results of the Justice Barometer can be found in other publications in Dutch and English.¹²

6 S. PARMENTIER/G. VERVAEKE/J. GOETHALS ET AL. (2004a) and (2004b), *supra* note 1.

7 R.W. FAGAN, Knowledge and support for the criminal justice system, *Criminal Justice Review* 12 (1988) 27-33; M.L. HENDERSON/F.T. CULLEN/L. CAO ET AL., The impact of race on perceptions of criminal justice, *Journal of Criminal Justice* 1997, 447-462; T.J. FLANAGAN/D.R. LONGMIRE (eds.), *Americans View Crime and Justice. A National Public Opinion Survey* (London 1995); I. CRESPI, *The public opinion process. How the people speak* (London 1997).

8 J. BILLIET/H. WAEGE (eds.), *Een samenleving onderzocht. Methoden van Sociaal-wetenschappelijk onderzoek* (Antwerp 2001) 251 (translated by the author).

9 J. BILLIET/H. WAEGE, *supra* note 8, 251.

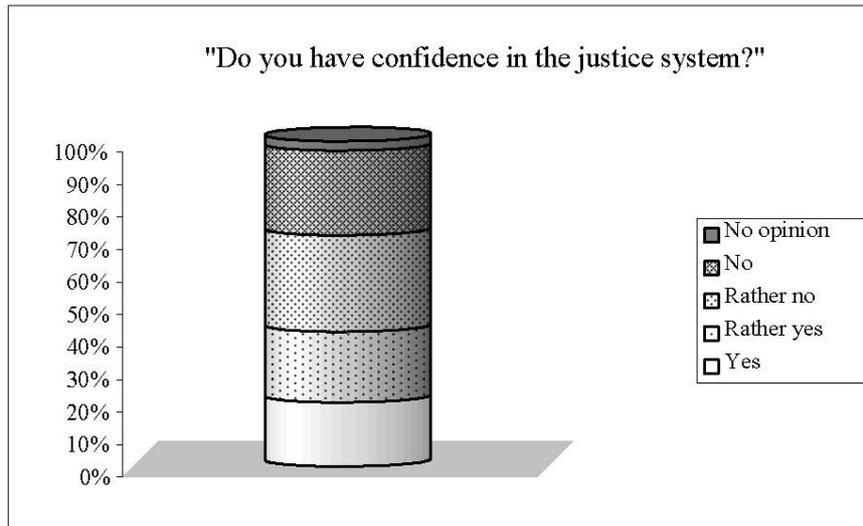
10 D.L. MORGAN, *The focus group guide book* (Thousand Oaks 1998).

11 S. KVALE, *Interviews: An introduction to qualitative research interviewing* (Thousand Oaks 1996).

12 S. PARMENTIER/G. VERVAEKE/J. GOETHALS ET AL. (2004a) and (2004b), *supra* note 1; L. WYSEUR/J. SCHOFFELEN/G. VERVAEKE/S. PARMENTIER / J. GOETHALS, *Justitie onder de loep. De publieke opinie ten aanzien van justitie* [The Justice System Under the Looking Glass. Public Opinion Towards the Justice System], *Rechtskundig Weekblad* 68 (2005), 841-851.

Respondents were asked the following general question concerning their general confidence in the justice system: "Broadly speaking, can you tell me whether you have confidence in the justice system?" Responses show that 42.6% of citizens in Belgium expressed a complete or a reasonable confidence in their justice system.

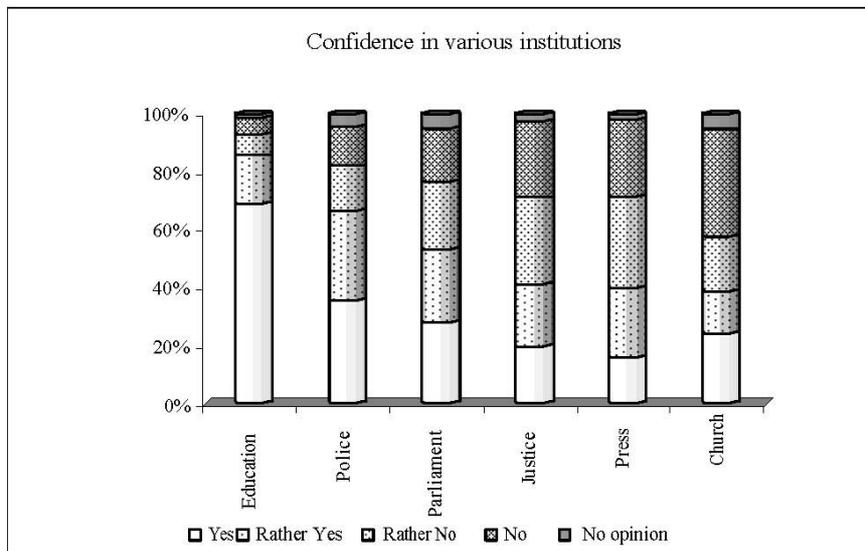
Figure 1 :



These general Belgian results revealed differences between the Flemish and Walloon regions and the Brussels region, as it was found that respondents from Flanders were more positive towards the justice system than respondents from the Walloon provinces, and that respondents from Brussels had the least confidence in the justice system. The results also showed that confidence decreases with age, increases with level of education and income, and that confidence in the justice system is stronger when the respondent is in gainful employment. Women appeared to have less confidence than men in the justice system, while people who had had experience with this institution (both criminal and civil proceedings) appeared to have less confidence than people without direct experience. It was found that reading quality newspapers or listening to public radio and television has a positive influence on confidence in the justice system.

Compared with other institutions in Belgium, the legal system occupied the fourth place – in terms of public confidence – and came behind the educational system (in which 87.1% of the respondents said they had complete or reasonable confidence), the police (69.6%), and parliament (55.9%). The justice system left two other institutions behind it, namely the Church (41%) and the press (40.8%), although the differences between the three of them were not statistically significant, which put them in a joint fourth position.

Figure 2 :



A second set of questions related to the functioning of the justice system, an aspect surveyed by means of six themes: (1) information about the functioning of the justice system, (2) the functioning of the justice system itself, (3) changes in the functioning of the justice system, (4) the accessibility of the justice system, (5) the expectation of a fair trial, and (6) the clarity of the legal language used. To the first question on “whether the justice system provides sufficient information about its functioning”, 75.5% of the respondents gave either a negative or fairly negative response. Second, 50% of the respondents also gave a negative or fairly negative response when asked about their satisfaction with the functioning of the justice system. Satisfaction in this area appeared to be stronger in Flanders than in the Walloon provinces. Third, 46.5% of respondents thought that there have been no changes in the functioning of the justice system, while 18.7% considered that the functioning had deteriorated, and 27.8% that it had improved. The fourth theme concerned accessibility: 56.3% of Belgians thought that it is easy to bring a case before the court, compared with 37.5% who do not share this view. Fifth, respondents were asked whether they expect to get a fair trial and the results showed that 64.7% of Belgians fully or reasonably expect to get a fair trial. *Post hoc* tests (Tukey) show that factors such as age, level of education and marital status have a significant influence on this variable. People between 15 and 25 years of age had the most positive opinion, while respondents in the 45-plus age bracket had the most negative opinion on this subject. With regard to the level of education, the results showed that highly qualified people had a more positive attitude than people who are less well qualified. As regards the marital status variable, it can be deduced that single people had a more positive opinion than divorcees. Sixth, 72.4% of Belgians thought that the legal language used is

not sufficiently clear. Young people and older people thought that this legal language was more comprehensible than people in the middle age groups (26-65 years old) did. There is some evidence that people with a higher level of education or a higher income found the language less clear than people with a lower level of education.

A large portion of the Justice Barometer related to legal proceedings and conflict resolution. It was subdivided into three main sections: questions of a general nature, questions about civil justice, and questions about the system of criminal justice. We shall only deal with the general questions and those relating to civil justice.

In the general section the following three themes were tackled: the duration of legal proceedings, procedural errors and the fairness of decisions. The first statement was: "Generally speaking, legal proceedings take too long", with which 94.1% of the respondents agreed or were inclined to agree. Of the remaining respondents 3.4% disagreed or were inclined to disagree (2.3% of the respondents replied 'don't know'). Respondents over the age of 65 were more likely to agree with this statement. Young people between 15 and 25 were least likely to agree. It was also found that people in the Walloon provinces and Brussels were more likely to agree than people in Flanders. Secondly, the respondents were asked whether they agreed with the statement that people should be acquitted in the event of any procedural errors. The results indicate that 64.23% of the respondents could not go along with or were not inclined to go along with this statement. Young people were more likely to agree than people in the middle age bracket (26-65 years old). Finally, 51.7% of the respondents thought that most decisions are fair.

In the civil justice section the respondents were asked for their opinion on the use of experts in civil cases. The results show that the vast majority favoured the use of experts, even if this tends to prolong proceedings (positive and fairly positive: 88.7%) or increase the costs (positive or fairly positive: 75.1%). Over three-quarters (77.2%) of the respondents had a positive or fairly positive attitude towards the use of lay judges in legal proceedings, while 81.7% had a positive or fairly positive attitude towards asking the opinion of children over the age of 12 in family cases. Civil law mediation was supported by 91.3% of the respondents.

The survey also provided information about experiences with both the civil and the criminal justice system. Twenty-two per cent of the respondents had had contact with the justice system in the previous ten years in the context of a civil case, and 6.6% in the context of a criminal case. These people were asked about the nature of their experience by means of two questions. The first question sounded out their attitude towards the outcome of the most recent case; the results showed that 51% of people involved in civil cases had a positive or fairly positive opinion, compared with 36.3% of those involved in criminal cases. The second question focused on the way in which the case was dealt with. Of the people with civil law experience, 42.7% were satisfied or fairly satisfied and 57.3% were dissatisfied or fairly dissatisfied. The equivalent figures for people with criminal law experience were 36.6% and 63.5% respectively.

Figure 3 :

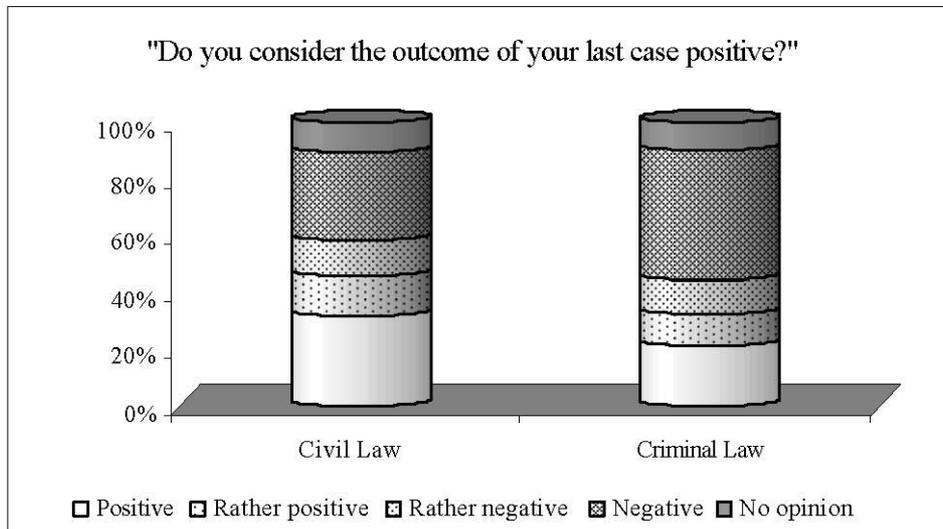
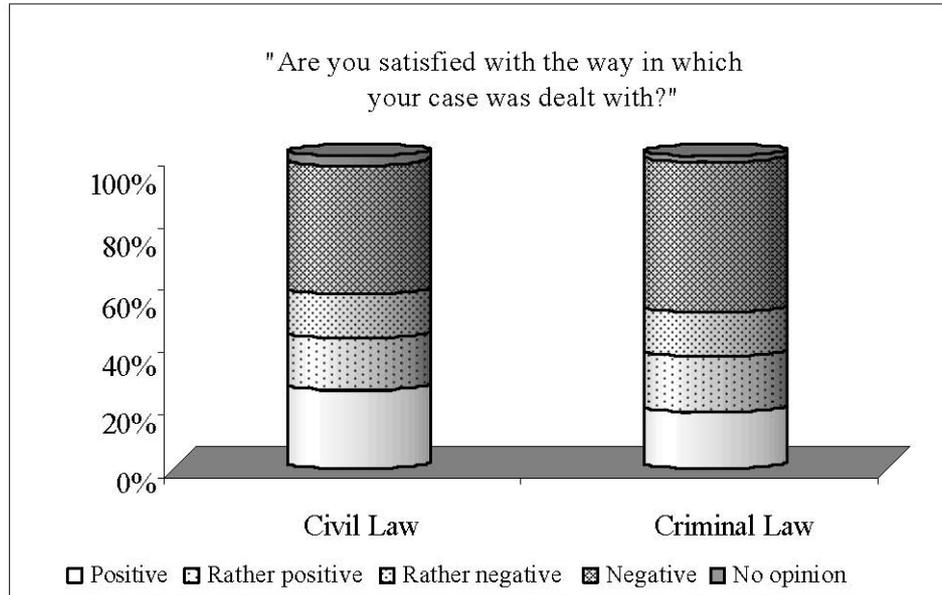


Figure 4 :



When going back to the variables that were thought to exert an influence, the following conclusions could be made on the basis of the first Justice Barometer. A significant number of the socio-demographic variables that were included in the survey often appeared to be related to public opinion on different aspects of the justice system. The independent variables that exerted an influence were: age, region, qualifications, income, political preference, ideology, family composition, marital status, province of residence, whether or not in gainful employment, preference for particular TV stations and newspapers. Other independent variables appeared less often to be related to the independent variable 'attitude' towards the various topics concerning the justice system: sex, being in a job connected with the justice system, preference for particular radio stations, watching or listening to the news, watching reports on the justice system, following legal series or programmes about criminal investigations. And one variable, nationality, was seldom found to be related to the independent variable. On the contrary, one variable played a very significant role, namely previous experience with the justice system, civil or criminal: those respondents with previous contact (in varying capacities) were clearly more negative than those without such contact. It should be noted that mutual interactions among these independent variables are of course possible. For example, a lower educational level can go hand in hand with a lower income or with the absence of a paid job. Also age, family composition, civil status and even contact with the justice system could mutually interact. Therefore a lot of additional research is necessary.

b) *Follow-up research on public opinion*

While the first quantitative Justice Barometer produced a wealth of interesting results it also left many questions unanswered, notably in relation to the meaning and the reasons of the replies given by the respondents. The same Federal Science Policy Office therefore decided to fund a follow-up qualitative research in 2003-2004, in order to more deeply analyse some of the results of the Justice Barometer. It was also carried out by the same research team of the universities of Leuven and Liège. This time the research focused on four judicial districts, two in Flanders and two in Wallonia, chosen on the basis of the foregoing quantitative results.¹³ In each district a total of eight focus groups with citizens and four focus groups with legal professionals were organized to ask about their attitudes and opinions in relation to the justice system, the problems they would identify and the proposals for change they would favour.

Some of the most salient results include the following. When asked what spontaneous associations arose when hearing the word "justice", the focus group participants frequently responded with notions like slow, expensive, and above all, unjust. Many of

13 J. GOETHALS/A. LEMAITRE/R. DOUTRELEPONT ET AL., *Justitie in vraag gesteld. De "justitiebarometer" voorbij: een kwalitatief onderzoek/La Justice en question. Après le "baromètre de la Justice": une recherche qualitative* [The Justice System Questioned. Beyond the "Justice Barometer": A Qualitative Research] (Gent 2005).

the problems highlighted in the quantitative survey were repeated during the focus group sessions. The following problems in particular were listed: the lack of information about and by the justice system, the need for parties to be closely involved in the administration of their own case, the limited access to the justice system (due to the cost and mostly to the length of proceedings), the perceived abuse of the procedures by judges and lawyers, and the disrespect for citizens in their dealings with the justice system. Also the judicial actors received strong criticism. On top of the critiques relating to the difficult legal language and the long and costly procedures, lawyers were also targeted because of being dishonest and, in the case of those lawyers providing free legal aid, of being sometimes incompetent or unmotivated. When it came to judges the respondents expected them to lend a more listening ear to the parties in the proceedings and to impose sanctions in a more equal way to all parties involved, basically a plea for more insight into the decision-making process by judges. While these results originated in general terms throughout the focus groups with citizens, there were also some variations between the different groups. Those citizens with direct experience with the justice system consistently demonstrated a lower degree of confidence, irrespective of whether their experience was with the civil or the criminal justice system. Younger persons tended to adopt more positive attitudes, although it was hard to determine the exact reasons. As to the level of education an interesting trend emerged. Both the Justice Barometer and the qualitative research confirmed that lower educated persons were quite negative towards the justice system. From the qualitative research it emerged that highly educated respondents can also be very critical vis-à-vis the justice system, whereas the Justice Barometer had clearly suggested that they were among the most positive. Evidently further research is needed to confirm or to refute these data. In any case more information about the results of the qualitative research should be found elsewhere.¹⁴

The discussion of the Justice Barometer above clearly indicated the importance of hard data. To apply it only once constitutes a mere snapshot, while this type of research gains considerable significance when applied on a recurrent basis. In order to catch the developments in public opinion after 2002 the Justice Barometer was administered a second time in the fall of 2007, this time with funds from and organised by the High Council of Justice. This independent body was set up under the Constitution, in the aftermath of the police reforms of the late 1990s, with a view to supervising the relationships between the three major powers (legislative-executive-judicial) and creating more professionalism in the judicial system.

14 J. GOETHALS/A. LEMAITRE/R. DOUTRELEPONT ET AL., *supra* note 13; J. SCHOFFELEN/ S. PARMENTIER/G. VERVAEKE, *Wat denken burgers over justitie?* [What Do Citizens Think about the Justice System?], in: H. Reynaert/S. Vandewalle/D. Verlet (eds.), *Naar een DJ-overheid? Burgers en hun overheid* [Citizens and Their Public Administrations] (Brugge 2006).

A full account of the results of the second Justice Barometer again falls outside of the scope of this contribution and can be found elsewhere.¹⁵ But we can highlight some interesting results in comparison with the first survey. First of all, the confidence in the justice system in general sharply increased between 2002 and 2007, from 43% to 66%. This increase, however, did not change the order of the confidence in a number of institutions and still left the justice system in fourth place, behind the educational system, the police and the parliament, just as in 2002. Some more specific questions also merit attention. The opinions of the population about the change in the judicial system had hardly changed themselves, with nearly half of the respondents in 2007 (46% vs. 47% in 2002) thinking that no changes had taken place. On the other hand, the popular opinion about judges and lawyers had improved by 2007: more respondents expressed a positive opinion on the legal knowledge of lawyers (71% vs. 60% in 2002) and on their equal treatment of their clients (34% vs. 25% in 2002); likewise, the positive opinions on judges had increased when asked about their legal knowledge (66% vs. 55% in 2002) and the equal treatment of the parties before them (52% vs. 37% in 2002). Asked about the clarity of the judicial language, an unchanged 75% of the respondents (74% in 2002) still considered it insufficient. To the question of satisfaction with the result of the last case they had been involved in, a lower percentage of respondents proved satisfied in civil cases in 2007 (46% vs. 51% in 2002) but a higher percentage expressed their satisfaction in criminal cases (40% vs. 36% in 2002). Virtually identical in 2007 were the responses to the questions on the importance of experts, on the involvement of citizens in the justice system and on the value of mediation to manage conflicts between parties. While it is clear that the second Justice Barometer has again produced many interesting results, further research is needed to compare the findings of both surveys (2002 and 2007) and to look for explanations about the differences and the similarities in the quantitative results.

In the context of public opinion research in Belgium since the turn of the century, mention should also be made of a qualitative research with a specific segment of the population, namely foreigners and residents of foreign origin. This study was financed by the Belgian Federal Science Policy between 2001 and 2003, and involved in-depth interviews with 120 respondents, half of them coming from sub-Saharan Africa and the other half from Morocco and Turkey. The central questions focused on how immigrants and residents of foreign origin experienced the dominant legal (and judicial) system and what their expectations were. For this purpose all respondents were asked general questions about law and justice as well as specific questions in four areas, namely residence, work and employment, protection of cultural identity, and nationality and citizenship.

15 HOGE RAAD VOOR DE JUSTITIE/CONSEIL SUPERIEUR DE LA JUSTICE, *De Belgen en justitie in 2007. Resultaten van de tweede justitiebarometer/Les Belges et la justice en 2007. Résultats du deuxième baromètre de la Justice* [Belgians and the justice system in 2007. The results of the second Justice Barometer] (Brussel 2007).

We shall report some of the important findings of a general nature and refer to other publications for more information about specific aspects of the study.¹⁶

In general terms the research identified three common narratives of law and justice in analyzing the respondents' accounts. One narrative dealt with the impact of negative experiences with law and the judicial system on the respondents' perception of law and justice. Negative experiences with law and justice appeared to have a much stronger and more decisive impact than did positive experiences. While this observation is neither new nor exclusive to foreigners and immigrants, the effects may prove even more harmful to them. Disappointments with the law and/or the judicial apparatus in the country of the habitual residence (*in casu* Belgium) might in some cases encourage people to turn to the legal authorities in their country of origin and to seek out a judge 'back home', because they no longer hold out any hope that the Belgian system can offer them a (just) solution or out of a deeper disappointment with Belgian law. The second narrative described the relationship between legal rules and their application. The study clearly demonstrated the existing gap between the legal principles and their concrete implementation. It was less the laws themselves and more the way in which they were implemented – or not – in concrete situations which proved a source of frustration as inadequate implementation gave rise to charges of discrimination, or increased the sense of uncertainty about the law. One of the consequences is that the legal and judicial system may lose a good deal of its reliability and parts of its legitimacy. And finally, a third narrative was based on the respondents' personal history. The experiences of one's own migration and its consequences had a strong impact on accounts of the law and the justice system in Belgium. The sub-Saharan African group, for instance, appeared well informed about the campaign for regularization conducted in Belgium at the beginning of 2000, as well as of the asylum procedure. Moroccans and Turks proved better acquainted with the right to family reunification. This familiarity was also evidenced in the respondents' suggestions for future policy. Despite these differences all three groups shared a common sensitivity with regard to the protection of fundamental rights, in particular of the right to equal treatment and non-discrimination, the need for education, access to the labour market and, not the least, the enduring meaning of and respect for one's cultural identity.

16 M.-C. FOBLETS/M. MARTINIELLO/S. PARMENTIER/G. VERVAEKE/B. DJAIT/B. KAGNE, *Wat denken personen van vreemde origine over recht en gerecht in België ? Les populations d'origine immigrée face au droit en Belgique* [What do Persons of Foreign Origin Think of the Law and the Administration of Justice in Belgium?] (Gent 2004); M.-C. FOBLETS/M. MARTINIELLO/S. PARMENTIER/G. VERVAEKE, *How do Foreigners and Immigrants in Belgium View the Legal System?*, *Journal of Immigration, Asylum and Nationality Law* 21/4 (2007) 263-283.

2. *Public opinion research in other European countries*

The above research on Belgium is not isolated from similar research in other countries of Europe. To provide an overview of such research in several European countries is of course completely impossible, given the rich traditions of public opinion research in a number of European countries over the last 25 years. Here we refer only to some salient findings of public opinion research in some European countries, and we strongly encourage the interested reader to consult a wealth of other bibliographical sources.¹⁷

A first conclusion is that public opinion research has a very different status in different countries of Europe. In Spain, e.g. such research already has a long tradition and public opinion surveys have been conducted for more than 20 years under the auspices of the Judicial Power,¹⁸ obviously as a form of barometer to assess the democratic character of Spanish (judicial) institutions after the demise of authoritarian rule in 1975. France also has a fairly strong research tradition, but it is heavily focused on 'social representations' of law and (criminal) justice and it is highly academic in nature.¹⁹ The United Kingdom and other English-speaking countries equally have a long tradition, but one that emphasises the criminal justice system and is therefore also related to crime victim surveys.²⁰ The net result of these varying traditions and emphases is that there is no single instrument that is applied Europe-wide, so the results of these country-specific research studies cannot really be compared adequately.

Nevertheless some large tendencies stick out. One such tendency is the lack of trust of the population across Europe in the justice system. In Spain, e.g. the courts of justice consistently receive between a score of 3 (in 1984) and 2.7 (in 2000) out of a 5-point scale when it comes to trust. It is among the lowest ranking institutions, after institutions like the monarchy (3.9 in 2000), the parliament (3.5 in 2000) and the government (3 in

17 S. PARMENTIER/G. VERVAEKE/R. DOUTRELEPONT/G. KELLENS (eds.), *Public Opinion and the Administration of Justice. Popular perceptions and their implications for policy-making in Western countries*, Proceedings of the International Colloquium, Leuven, 25-27 September 2003 (Brussels 2004).

18 J.J. TOHARIA, *The Evaluation of a System of Justice Through Public Opinion. Spain as a Case-study*, in: S. Parmentier/G. Vervaeke/R. Doutrelepoint/G. Kellens (eds.), *Public Opinion and the Administration of Justice. Popular perceptions and their implications for policy-making in Western countries*, Proceedings of the International Colloquium, Leuven, 25-27 September 2003 (Brussels 2004) 109-127.

19 P. ROBERT, *Opinion publique et administration de la Justice. Recherches françaises*, in: S. Parmentier/G. Vervaeke/R. Doutrelepoint/G. Kellens (eds.), *Public Opinion and the Administration of Justice. Popular perceptions and their implications for policy-making in Western countries*, Proceedings of the International Colloquium, Leuven, 25-27 September 2003 (Brussels 2004) 77-90.

20 D. BROWN, *How Does England Incorporate the Results of Public Opinion Surveys on the Administration of Justice?*, in: S. Parmentier/G. Vervaeke/R. Doutrelepoint/G. Kellens (eds.), *Public Opinion and the Administration of Justice. Popular perceptions and their implications for policy-making in Western countries*, Proceedings of the International Colloquium, Leuven, 25-27 September 2003 (Brussels 2004) 169-186.

2000).²¹ Similar developments have occurred in France, as part of a larger research agenda on the opinions vis-à-vis criminal justice institutions in general and heavily influenced by the discourse of the ‘security state’.²² In the UK the surveys have been able to break down the issue of confidence in the criminal justice system in sub items. For most sub items – such as bringing offenders to justice, reducing crime and meeting victim needs – the confidence levels rate between 44 and 34% (in 2001/02 and declining in recent years); it is quite high in relation to one sub item, namely the respect for the rights of the accused (76% in 2001/02).²³

Another issue relates to the use of public opinion research in policy-making. While the UK seems a good example of a considerable and considerate use of research data in policy-making, and in generating further interest in research as well, other countries have a less straightforward record. Much seems to depend on the general political and cultural traditions of producing ‘evidence-based’ policy, as well as on the concrete political and judicial issues at hand. In general it seems fair to argue that public opinion surveys have thus far had a limited direct impact on judicial policy in most countries of Western Europe.

II. EMPIRICAL RESEARCH ON THE USE OF LAW AND JUSTICE IN JAPAN

While the empirical research on Belgium and Europe was directed foremost to finding out the opinions and attitudes of the populations, or segments thereof, it is also useful to understand the place of law in any given society and thus to adopt a socio-legal approach to reforms. For this purpose empirical research into the ways that law and the judicial system are used is of crucial importance. It is fair to argue that the beginning of large-scale empirical research into the actual use of law by citizens lies in the Civil Litigation Research Project (CLRP) undertaken in the United States in the late 1970s and early 1980s, the results of which were reported in detail in a large special issue of the *Law and Society Review*.²⁴ Instead of focusing on civil litigation in courts, the project took a radical “dispute-focused approach” (DFA), looking at the emergence and transformation of legal disputes and their trajectories, some of which ended up in the judicial system (“dispute mapping”). As a result the CLRP revealed the existence of a “dispute pyramid”, indicating that roughly speaking only 10% of all legal conflicts in American society were actually submitted to the judicial system and thus demonstrating that 9 out of 10 conflicts were managed in another way, through unilateral, bilateral or other trilateral means. This conclusion stood in stark contrast with the alarming

21 TOHARIA, *supra* note 18, 114.

22 ROBERT, *supra* note 19, 84.

23 BROWN, *supra* note 20, 175.

24 *Law and Society Review*, Special Issue on Dispute Processing and Civil Litigation 15 (1980-1981) 391-920.

publications on the dramatic “litigation crisis” that had allegedly hit the United States since the 1970s and required immediate and drastic measures.²⁵

Inspired by the American CLRP, similar research has been undertaken in Japan in recent years. The Civil Justice Research Project (CJRP) proved the first large-scale empirical research into the use of law, lawyers and courts in Japanese society, developed and administered under the leadership of a team of Japanese socio-legal scholars.²⁶ The main objective was “to determine to what extent the Japanese people experience various kinds of legal problems in their private lives and how they try to handle those problems”.²⁷ The project consisted of three national surveys that would focus respectively on the problems experienced by citizens and their disputing behaviour, on their behaviour in seeking legal advice, and on their behaviour when litigating. The first national survey (on disputing behaviour) was conducted in the spring of 2005, by way of stratified multistage sampling and based on a combination of face-to-face interviews and filled-out questionnaires. Some results are reported here.²⁸

The first set of questions related to the type of legal problems experienced by the respondents in the previous five years. Among the more than 12,000 respondents interviewed, 2,343 (18.9%) reported to have experienced 4,144 problems: of these, the most frequently reported were accident problems (7.3%), followed by problems with neighbours (5.3%) and with goods/services (4.8%); the least reported were private insurance problems (1.4%), claims against public authorities (1%) and others (0.3%). When asked if they knew the amount at stake in the problems incurred, roughly half of the respondents did (51.8%), while one quarter did not (22.4%) and the other quarter indicated that the legal problem could not be counted in monetary terms (25.2%). Not surprisingly, the amounts seemed to be best known in the cases of accidents, goods/services, money/credit, rent/lease, land/house, and private insurance. Other problems, e.g. with neighbours and family/relatives, appeared much more difficult to convert in monetary terms. This problem-mapping stage allowed the investigation of a second set of issues, namely how people handle their legal problems. For this purpose, the researchers asked questions about the type of information sought in brochures and websites, the frequency of consultations with other persons (family, friends) or agencies (insurance company, police, lawyer office), and the submission of cases to the court, as well as the financial cost of these consultations and court proceedings. It is impossible to give all the details

25 S. PARMENTIER, *Alternative Dispute Resolution in the United States. No Roses Without Thorns*, in: S. Nagel/M. Mills (eds.), *Systematic Analysis in Dispute Resolution* (Westport, CT 1991) 223-241; S. PARMENTIER, *Pyramids in the Sand. Present and Future of Dispute Processing in Belgium*, in: C. Meschievitz/K. Plett (eds.), *Beyond Disputing. Exploring Legal Culture in Five European Countries* (Baden-Baden 1991) 31-66.

26 M. MURAYAMA, *Experiences of Problems and Disputing Behaviour in Japan*, *Meiji Law Journal* 14 (2007) 1-59.

27 MURAYAMA, *supra* note 26, 1.

28 See also other contributions in this special issue.

about the problem-handling behaviour of the Japanese respondents. Some conclusions, however, are salient.²⁹ First of all, overall only a tiny fraction of legal problems actually reached the courts – *i.e.* only 21 court procedures in every 1,000 experiences (0.2%) – which is very clear when constructing the general dispute pyramid. While this concurs in general terms with the conclusions of the US research, the proportion is clearly much smaller in Japan and the dispute pyramid thus has an even smaller top. Moreover, these results are different from one type of legal problem to the other, with the highest numbers of legal problems brought to Japanese courts in the fields of family/relative cases (167/1,000), other cases (83/1,000), rent/lease cases (32/1,000), and neighbour cases (17/1,000), suggesting that agreements at an earlier stage proved impossible. It is striking that while in some areas respondents indicated to have indeed experienced legal problems, they did not bring a single case to court – e.g. in private insurance cases and in the field of claims against public authorities – thus suggesting that such types of cases were all settled before court. Finally, the researchers conclude that the disputing process is not always as chronological as is often assumed: people with legal problems may seek advice from a third party before contacting the other party, or they may even file a court case before making direct claims to the other party. Interestingly, the respondents in most types of problems have sought legal advice more often from non-legal agencies than from lawyers and other law-related professionals. Although the figures clearly differ, it should be noted that most if not all of these conclusions are clearly in line with the American research of the 1980s and beyond.

This very rough overview of some results of dispute processing in Japan is of great importance in any debate about the reform of law and justice. From the perspective of judicial reform it is important to understand that court cases constitute only a tiny fraction of the totality of legal problems experienced in Japanese society, and it raises questions whether the current court system sufficiently addressed the legal needs of the population. From the perspective of the legal profession, it must be interesting to read that citizens when confronted with legal problems seem to turn first and foremost to non-legal persons and agencies, which raises the question of accessibility of the legal profession. Other institutions and professions can also benefit from a better insight into the dispute-processing behaviour of the Japanese population.

These reflections lead us to a number of wider ranging reflections and recommendations on the usefulness of empirical research based on citizens' responses and judicial reform policies in general.

29 MURAYAMA, *supra* note 26.

III. REFLECTIONS AND RECOMMENDATIONS ON THE USEFULNESS OF CITIZEN-ORIENTED RESEARCH FOR JUDICIAL REFORM

Are citizen-oriented investigations, whether public opinion surveys about the justice system or surveys about dispute-processing behaviour, useful in any way? The international literature definitely reveals contradictory views on this issue. Some commentators think that surveys are a crucial instrument in finding out what their target group's attitudes, perceptions and behaviours are, while others think that they constitute a danger or, at the very least, an unnecessary luxury when something of public interest is involved. *Toharia* has argued that those opposing surveys see no point in asking the man in the street for his or her opinion.³⁰ According to them, the responsibility for formulating and implementing judicial and other policies within a parliamentary democracy lies with elected representatives, who have to be sufficiently informed for making policy decisions properly. Since the judicial system is too complex and too far removed from average citizens, the latter do not have the required expertise.³¹

In this debate it is worth investigating the notion of 'citizens'. Following *Toharia*, a distinction can be made between several types of citizens – or 'publics' as he calls them – to be surveyed.³² The first type comprises the 'operators' or the people who are professionally involved in the justice system and thus possess a high level of technical knowledge. This category includes the judges, the (prosecuting) magistrates and the court clerks. Secondly, there are persons who are not directly involved professionally but who are certainly well informed of the justice system because they are 'related professionals'. These include lawyers, specialist legal journalists and policy-makers. The third public is composed of 'users', *i.e.* people with a low level of technical expertise but who have had direct experiences of the justice system on one or more occasions. The fourth and final type of public comprises persons who are potential users of the justice system but do not yet have any direct experience; in essence it comprises the general public, without direct experiences of the justice system. In relation to this last group the opinions largely differ: for opponents of public opinion surveys in particular it goes without saying that the general public should not be interviewed; proponents, on the other hand, consider it vital to know the attitudes and perceptions (and the behaviours) of this target group since democracy means that all citizens have the right to express their opinion about government institutions, regardless of their experience with them. *Flanagan* examines this point in more depth and is of the opinion that arguments about democracy are nonsensical unless the views of the public have a place within policy-

30 J.J. TOHARIA, Evaluation systems of justice through public opinion: Why, what, who, how and what for?, in: E.G. Jensen / E. Thomas (eds.), *Beyond common knowledge : Empirical approaches to the rule of law* (Palo Alto 2003) 1-39.

31 TOHARIA, *supra* note 30.

32 TOHARIA, *supra* note 30; also VAN CAMPENHOUDT/CARTUYVELS, *supra* note 4.

making.³³ Some policy officials and others who are somewhat reticent about opinion surveys on government institutions are afraid that the survey results may be misused by politicians. This fear is not fully unjustified. In this context *Flanagan* has eloquently asserted that “politicians use public opinion surveys in a manner that a drunk uses a lamppost, for support rather than illumination.”³⁴ Probably the same argument could be used in relation to surveys relating to legal problems and dispute-processing behaviour. The question raised here is whether possible misuse offsets the availability of an additional source of knowledge on which to ground policy and communicate about it.

Taking into account public opinion (regardless of people’s knowledge of a particular subject) does not automatically mean, however, that policy has to blindly follow all the views or the actions of the public. According to proponents, the ‘social legitimacy’ of the justice system is certainly one aspect that must be surveyed in order to find out whether the justice system is respected by society as a whole, whether it merits compliance and whether it is perceived to be credible. Specifically, this raises questions as to whether the justice system is just, accessible, fair and equal for all. To answer these questions requires no specific knowledge of the justice system, since it is how the system is perceived through opinions and actions that matters – in other words, the confidence that people have in the system.³⁵ Having insight into social legitimacy is important. If society did not legitimise the justice system it would be impossible for that system to function effectively. This outlook is in keeping with the view of *Toharia*, who makes a major distinction in the justice system between efficiency and effectiveness on the one hand, and legitimacy on the other.³⁶ For him the justice system must offer effective and timely solutions to problems that crop up in society and must also successfully implement them (efficiency and effectiveness). Quite apart from that, however, it is crucial that ordinary citizens who make up society should have confidence and faith in the justice system. To verify this point, *Toharia* concludes, it is essential to know more about each of the four groups or ‘publics’ mentioned above, both about their opinions and about their actions.

Given this brief outline of views on the usefulness of public opinion surveys concerning the justice system, it is evident that policy-makers are interested in knowing more about how ordinary citizens think of law and justice and how they use these, which is illustrated by their financial support for survey research. What conclusions and possibly recommendations can be drawn from the investigations on public opinion

33 T. FLANAGAN, Public Opinion, Crime and Justice. An American Perspective, in: S. Parmentier/G. Vervaeke/R. Doutrelepon/G. Kellens (eds.), *Public Opinion and the Administration of Justice. Popular perceptions and their implications for policy-making in Western countries*, Proceedings of the International Colloquium, Leuven, 25-27 September 2003 (Brussels 2004) 23.

34 FLANAGAN, *supra* note 33, 25.

35 FLANAGAN, *supra* note 33, 19.

36 TOHARIA, *supra* note 30.

conducted in Belgium and Europe thus far? Here we make a distinction between conclusions concerning the research on public opinion and conclusions relating to judicial policy. Our argument has always been that public opinion research is intended to provide a scientific basis that can be used for the purpose of evaluating the justice system, and furthermore that the results can serve as guidelines for policy officials in developing proposals to reform and to improve the justice systems. In doing so one has to keep in mind that public opinion surveys need to be handled with adequate circumspection. In light of this, *Toharia* has eloquently argued that “an opinion survey is not an oracle; it is a social thermometer, measuring social climate and detecting attitudes.”³⁷

When it comes to conclusions concerning public opinion surveys on the justice system, it should first of all be emphasised that the survey results constitute nothing more than a snapshot in time. These are ‘baselines’ for further research and it will be very important to repeat the surveys at regular intervals in order to establish a number of trends and to carry out further in-depth analyses. In order to be able to compare the results of different surveys, it is crucial that the same measuring instrument and the same methodology be used. Moreover, one cannot be blind to the risk that certain events that occur in the course of the interviewing period may have an influence on the public and on public attitudes. Fluctuations in the results of previous public opinion surveys confirm the possibility of this kind of impact.³⁸ Consequently, this must be taken into account in interpreting the findings, for example by means of an analysis of newspaper stories during the period of the survey. Besides the fact that surveys only reflect what people think of the justice system, it should also be mentioned that quantitative research does not always allow for the interpretation and the clarification of attitudes or differences in attitudes between groups. Therefore, it would be unwise to draw policy conclusions solely on the basis of the survey results, in order to adjust these popular attitudes, where expedient. To overcome these problems it is important to do more qualitative research, which allows for a better understanding of people’s attitudes and opinions.

Furthermore, it is clear that the content of public opinion surveys determines their value. In our opinion it is important not to limit surveys to ‘insiders’ who will mostly report on technical matters of the justice system, but to extend them also to ‘outsiders’ who can cover a wide variety of topics and issues. In this context, it is useful to come back to the *Toharia*’s distinction between four types of ‘publics’: the justice system experts, who comprise professional insiders (such as judges) and related professionals (such as lawyers and specialist legal journalists); and people external to the justice system, *i.e.* existing users and potential users.³⁹ Each of these publics has its own knowledge base and its own interests. The evaluation of the justice system by the so-called experts will, for example, be based on a thorough knowledge of the subject

37 TOHARIA, *supra* note 30, 1.

38 FLANAGAN, *supra* note 33.

39 TOHARIA, *supra* note 30.

matter, but their evaluation may be biased on the account of vested interests, or because of an emotional and ideological desire to preserve the status quo. The experts will also devote more attention to the justice system as a functional organisation, whereas lay people will tend to think of it as an institution that provides services. As a result public opinion surveys should not confine themselves purely to the procedural and technical aspects of the justice system, but should also examine the degree of public confidence in the justice system and its credibility in the eyes of ordinary citizens. Most 'justice barometers' do not take into account the division into the four publics from the very outset. The respondents, however, are often asked about any experiences with the civil or criminal justice system and about any jobs within the justice system. Since the various respondents answer from the point of view of different needs, purposefully splitting them up into four types of publics could be useful when it comes to analysing and interpreting the survey results.

Finally, underlying the distinction between groups or 'publics' is the fundamental idea that a justice system should attract the confidence and faith of all citizens that make up society. This brings us to another crucial distinction, namely between efficiency/effectiveness on the one hand, and legitimacy on the other hand, as mentioned previously by *Toharia*.⁴⁰ On the basis of this distinction four possible situations may arise: (1) It is possible that the justice system is perceived as being not very efficient or effective, yet still enjoys a high degree of legitimacy; people in this situation primarily feel disappointed with the way the law works, but remain loyal to the institutions as such. (2) The opposite is also possible, namely that people think the justice system is very efficient/effective, but nevertheless have little confidence in it; these people waver between criticism and alienation. In addition, there are two extreme situations: (3) those people who consider the justice system to be both efficient/effective and legitimate; and (4) those people who see it as neither, who are alienated from the justice system and do everything possible to avoid having to have recourse to it. Most 'justice barometers' contain a few questions that gauge the efficiency/effectiveness and the legitimacy of the justice systems. Nevertheless, when surveys are repeated it is interesting to explicitly ask about these two aspects. In contrast to what is usually suggested, an efficient/effective justice system does not necessarily increase public confidence. Therefore, the distinction is also very relevant to policy officials.

We have also formulated a number of conclusions and recommendations concerning judicial policy. First of all, there are contradictory views concerning the value of public opinion surveys and the risks and fears of ensuing populist policies. It is important to emphasise that public opinion surveys on the justice system, which by and large are based on lay knowledge, do not provide any pointers for policy proposals by themselves. This is because public opinion surveys often reveal vague and even contradictory attitudes. Consequently, they can only serve as an indirect source of information for

40 *TOHARIA, supra* note 30.

planning in judicial matters, as they can provide data about the perception of all facets of the justice system. The way in which the justice system is perceived by the various types of publics also provides us with further information.⁴¹ When the experts of the justice system – *i.e.* the professionals and the related professionals – have a more positive attitude than people external to the justice system – *i.e.* the existing and the potential users – communication problems will arise within the justice system. The system can then respond and can try to enhance its position and improve its image. Public opinion surveys can also clarify certain matters, for example on the policy alternatives people prefer, and can shed light on various views of the justice system.⁴² Finally, they can indicate the limits of government actions according to the public.⁴³

Furthermore, public opinion surveys can assist policy-makers in drawing up their own ‘standards of success’. It is often seen that the results of public opinion surveys come as a surprise to policy-makers, both in a positive and a negative sense. If they have not established their success criteria in advance it is particularly difficult to assess the results of a survey as either good or bad. Of course, drawing up indicators and standards beforehand is no easy task, but it is the most efficient way of determining in which fields additional efforts should be directed. In this context it is even more important to repeat surveys of any nature at recurrent intervals. Certain trends and general patterns in public opinion and behaviour must be apparent before decisions can be made with more certainty as to where and how to invest more.

Finally, public opinion surveys can also invite a culture of open debate, not only between groups of well-informed professionals, but also with the public at large. As citizens increasingly expect to be kept informed about the ins and outs of the justice system, this debate may also help public opinion surveys and judicial policy officials because it reduces the risk of stereotype answers in surveys.⁴⁴ It is also important to pick up on the signals from the public regarding the functioning and perception of the justice system in an organised way. Judicial personnel often have the preconceived notion that the public has a general lack of confidence in the system. There is therefore just as much need to inform judicial personnel about public opinion as there is a need to inform public opinion about the justice system.⁴⁵ In this light, providing information about the justice system can be seen as a two-way street.

Although these reflections pertain foremost to public opinion surveys, quantitative and qualitative, they are also relevant to other types of empirical research that seek to know more about the behaviour of citizens in relation to legal problems, the use of

41 TOHARIA, *supra* note 30.

42 FLANAGAN, *supra* note 33.

43 J.J.M. VAN DIJK, *Publieke opinie en misdaad*, *Justitiële Verkenningen* 9 (1978), 4-10; FLANAGAN, *supra* note 33.

44 TOHARIA, *supra* note 30.

45 J. ROBERTS/M. HOUGH (eds.), *Changing Attitudes to Punishment. Public Opinion, Crime and Justice* (Cullompton 2002).

lawyers and recourse to the judicial system. The Japanese Civil Justice Research Project, and the US research agenda before that, has clearly demonstrated the usefulness of gaining additional insights in how people solve their legal problems and what they expect from the legal profession and the judicial system. Such research is not only limited to dispute mapping and constructing dispute pyramids but also raises fundamental issues of efficiency/effectiveness and legitimacy of the different layers of the judicial system and its auxiliaries. Therefore, the above recommendations in relation to judicial policy-making are also relevant for any research intending to focus on dispute-processing behaviour by citizens.

BY WAY OF CONCLUSION

Modern-day democracies are increasingly paying attention to their systems for the administration of justice. Over the last decades, several countries of the Western world have undertaken far-reaching judicial reforms to speed up the processing of cases or to widen the access to justice for citizens, with a general view towards increasing the efficiency and the legitimacy of their administration of justice. Interestingly, a very similar debate has occurred in Japan, with its mixture of Western and Asian features.

When developing or adapting judicial policy, some countries pay attention to existing empirical research or even encourage new research to be undertaken. Such research can relate to what people think about the justice system and its auxiliaries (public opinion research) or it can relate to their experiences with legal problems and their behaviour when it comes to dealing with legal disputes. In both cases, reliable instruments have to be used, and sometimes to be developed from scratch, in order to gain more insight into reality and to provide the necessary data for judicial policy-making. Both aspects are fundamentally of a socio-legal nature.

In this contribution we reported on some such developments in Europe, with a focus on the results of the Justice Barometer in Belgium and the follow-up research of a qualitative nature. At the same time we highlighted some results of major research in Japan on the experiences with legal problems and the ways of dealing with legal disputes. Despite the many differences between these regions of the world, and between the types of research conducted, we have also mentioned many similarities, notably when it comes to understanding the value of socio-legal research and the relation between socio-legal research data and judicial policy-making.

ZUSAMMENFASSUNG

Die Diskussion über Reformen des Justizsystems konzentriert sich in den westlichen Staaten meist auf den Ursprung und die Gründe sowie die Konsequenzen der Reformen. Empirische Untersuchungen zur Meinung einzelner Gruppen oder der Gesamtbevölkerung zum Justizsystem oder zur Rolle von Recht und Justiz beim Umgang der Bürger mit Rechtsstreitigkeiten werden dagegen wenig oder gar nicht beachtet. Jedoch kann eine solche empirische Herangehensweise eine Fülle von Informationen erschliessen – nicht nur zur Realität des Soziallebens, sondern auch zur Haltung und den Erwartungen der Bürger gegenüber dem Recht, dem Rechtssystem und den juristischen Berufen. Der Beitrag geht einigen dieser Fragen nach und zieht dabei Untersuchungen zur öffentlichen Meinung in Belgien – in einem weiteren europäischen Kontext – sowie Analysen zum Recht und zur Rolle der Juristen in Japan heran.

(Übersetzung durch die Red.)