

EDITORIAL

The present issue's ARTICLES section starts with a comparative contribution by the former German ambassador to Japan, His Excellency Henrik Schmiegelow, dealing with the "war of advice" that has developed among Western transformation consultants below the level of philosophical thought on the Western value community. While massive U.S. resources were directed at rewriting the legal systems, especially of the former Eastern Bloc, Germany and Japan provided transformation assistance in a low-key, more demand-pull than supply-push approach and on a much more modest financial scale. Japan has focused on Southeast Asia, while Germany has focused on Eastern Europe, the former Soviet Union, and China. Sharing the experience of postwar transformation and reintegration into the Western value community, Germany and Japan have remarkably similar foreign policy reasons to engage in this field. The ARTICLES section continues with a comprehensive analysis by Robert B. Leflar and Futoshi Iwata that compares legal and institutional responses to patient safety problems in the United States and Japan, addressing developments in civil malpractice law, administrative practice, and – of particular significance in Japan – criminal law. Though both nations seek to reduce the human toll from medical error, variations in legal and institutional structures guide those efforts into different trajectories. The following article by Judge Kayoko Ishida examines possible avenues for reform of the current evidence law regime in Japan through a comparative analysis of evidence law in Japan and Australia. It outlines the evidence law regimes in each country, highlighting major similarities and differences. The article considers the possible effect of the current evidence regime on the new lay assessor system in Japan. Thereafter, Luke Nottage discusses Japan's product safety regulations, and consumer law more generally. He observes that Japan has been dismantling ex ante regulation while strengthening private liability regimes, especially information disclosure obligations, over its "lost decade" of economic stagnation since the early 1990s. Yet it has also re-regulated more broadly in response to safety concerns, as evidenced by recent events involving asbestos, defectively designed buildings, and electrical goods. In a loose topical connection with these three papers, the short contribution by Nobuo Gohara in the SHORT ARTICLES section deals with criminal liability for accidents in Japan. The author calls for a substantial reform of the present legal regime.

In a shift of perspective, Yasuhiro Okuda picks up the impact of the 2005 company law on subsidiaries of foreign companies doing business in Japan. The paper clarifies the different legal status of a foreign company in the pre-revised Commercial Code and in the new Company Act. The ARTICLES section closes with the second part of Frank Bennett's study about used goods regulation since 1645. The present part starts with the enactment of the Used Goods Dealer Oversight Act of 1895 and covers the ensuing developments right up to its most recent revision in 2004 aimed at sales via the Internet.

Thus the article provides an overview of Japan's experience across ten generations with one method of crime control.

The CONFERENCE section comprises four lectures presented at the symposium on "Privatization of State-Owned Enterprises in Japan and Germany," jointly organized by the German-Japanese Association of Jurists and the Waseda University on 24 and 25 February 2006 in Tokyo. The section starts with the welcome address by State Secretary Lutz Diwell. It continues with the lecture presented by Tetsuzo Yamamoto about privatization activities in Japan. Yamamoto first contrasts privatization activities in Japan with those in other OECD countries and then draws some lessons from the Japanese experience in the 1980s before suggesting two basic models of privatization. The article closes with a critical examination of problems that have accompanied recent privatizations in Japan. Christian Kirchner discusses privatization from the perspective of the German legal regime while taking the impact of EU regulation into account. In his view, privatization marks a new definition of the state and the role of government that raises complex constitutional questions. Thereafter, Hans-Peter Musahl deals with the reduction of debt of Japanese public corporations. The article comes to the conclusion that only a serious reform doing away with Japan's present system of two co-existing budgets can accomplish lasting debt-relief. Finally, Hanns Prütting shows how the German state secures its influence in privatization contracts. He analyzes a broad variety of means depending on the different ways of privatization. A special emphasis is put on public private partnerships.

The LECTURES section carries an updated version of an address given by the Chief Justice of New South Wales, the Hon J.J. Spigelman, A.C., at the ANJeL Japanese Law conference held in Sydney on 28 February 2006. The Chief Justice recalls his initial engagement with Japan when, in 1973, he assisted the then Prime Minister of Australia in negotiating the bilateral Nara Treaty of 1976. The address then outlines recent increases in judicial exchange between Australia and Japan, and mutual learning about each other's legal systems.

Peter Schimmann reports on RECENT DEVELOPMENTS. His report covers the 163rd and the 164th sessions of the Japanese Parliament. This adds to an earlier report about the previous 162nd session in issue 19 (2005).

On 15 June 2006, the Japanese Parliament passed the *Hô no tekiyô ni kan suru tsûsoku-hô*, a revised and renamed version of the Act on the Application of Laws (*Hôrei*) that dates from 1898. The PIL NEWS provides an authoritative German translation of the revised Act by Yoshiaki Sakurada, Yuko Nishitani, and Eva Schwittek accompanied by a short introduction to the Act and its legislative history by the translators.

The BOOK REVIEWS introduce a major treatise on the history of law in Japan since 1868, a comprehensive German PhD thesis on consumer protection in Japan, as well as a U.S. study on everyday justice in Japan. Also, a review essay by Colin Jones presents a recent publication (in Japanese) on the POW policies of the Japanese military.

Harald Baum