

## BERICHTE / REPORTS

### **Comparing and Transferring Law and Legal Expertise. The Role of Japan**

– Symposium in Honor of Harald BAUM’S 70<sup>th</sup> birthday –  
Hosted in person and virtually by the Max Planck Institute for  
Comparative and International Private Law, Hamburg,  
1–3 September 2022

On 13 May 2022, Harald BAUM, founder of this journal and colleague and friend to many of its readers, celebrated his 70<sup>th</sup> birthday. To mark the occasion, the Max Planck Institute for Comparative and International Private Law, whose Centre of Expertise on Japan the jubilarian founded in the 1980s and subsequently, as its head, established internationally until his retirement two years ago, held a symposium in BAUM’S honor from 1 to 3 September. The event was organized in cooperation with the German-Japanese Association of Jurists (DJJV), the Center for Interdisciplinary Studies of Law and Policy (CISLP) at the Kyōto University’s Faculty of Law, and the Interdisciplinary Centre for East Asian Studies (IZO) at the Goethe University Frankfurt am Main. The three-day symposium was organized by BAUM’S successor and the current head of the Center of Expertise, Ruth EFFINOWICZ, along with three of BAUM’S former PhD students, Moritz BÄLZ,<sup>1</sup> Marc DERNAUER,<sup>2</sup> and Gabriele KOZIOL.<sup>3</sup> In terms of content, the numerous guests, many of whom had traveled from afar to attend the symposium and had been BAUM’S colleagues for many years, were able to enjoy a wide range of fifteen presentations on three general themes, which not only generally illuminated Japanese law and its perception – especially abroad, ranging from the past to the present and into the possible future – but also repeatedly referred to the accomplishments and life’s work of the honoree. Throughout the many topics covered, the symposium managed to keep its focus on a single overarching ambition: its emphasis was not on the supposed influence of civil law or common law jurisdictions on Japan but rather on the influence Japanese law has had on other legal systems, something which has often been overlooked or even ignored in tradi-

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1 Chair of Japanese Law and its Cultural Foundations at Goethe University Frankfurt.  
2 Professor at the Faculty and Graduate School of Law at Chūō University in Tōkyō.  
3 Professor at the Graduate School of Law at the University of Kyōto.

tional comparative law studies involving Japan. In this sense, the influence of Japanese law was dealt with not only in temporal terms but also in geographical terms, both with regard to neighboring Asian countries and with regard to Western legal systems, which for their part are typically regarded as donors – not as recipients – of foreign legal systems.

The symposium began Thursday afternoon with opening remarks by Ruth EFFINOWICZ, Ralf MICHAELS,<sup>4</sup> and Hironaga KANEKO,<sup>5</sup> who related various achievements of the jubilarian, for example with regard to the foundation and expansion of the Institute's own Centre of Expertise on Japan, the establishment and maintenance of the highly appreciated partnership with Kyōto University, the foundation and decades-long publication of *J.Japan.L.*, as well as the cooperation with the DJJV. Following the opening remarks, the first topic to be discussed on this day, a session which was chaired by Karl RIESENHUBER,<sup>6</sup> was "Japan in Comparative Law: Historical and Theoretical Perspectives". First, Keizō YAMAMOTO<sup>7</sup> gave a talk on "What Has the Study of Japanese Law to Offer for Comparatists?", in which he illustrated the continuing importance of comparative law vis-à-vis Japan by means of various pairs of categories, such as "Western law vs. Japanese indigenous law", "written vs. living law" and "soft vs. hard law".

Following this, Dimitri VANOVERBEKE<sup>8</sup> dealt with "Japan in Comparative Law: A Historical Perspective". In his presentation, VANOVERBEKE focused not so much on Japanese law in its current state but on the process of its development in the past. As an example, two hitherto lesser-known Japanese legal scholars, Rinshō MITSUKURI and Kōhei SUFU, and their contributions to the development of Japanese law and legal terminology were presented.

In the discussion that followed, the speakers and guests addressed the question of what role translators of foreign legal systems can and should play in the development and advancement of their own legal systems. YAMAMOTO also pointed out the different interests in foreign legal systems in academia and legal practice and the resulting consequences.

After the coffee break, Marie S. KIM<sup>9</sup> continued the symposium with her presentation "Japan's Impact on the Law of the Republic of Korea: The Question of Public Policy (*Ordre Public*)". KIM discussed the *ordre public*

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4 Director at the Max Planck Institute for Comparative and International Private Law.

5 President of the DJJV, Partner at Heuking Kühn Lüer Wojtek.

6 Dean of the Law Faculty at Ruhr University Bochum.

7 Professor and former Dean at the Graduate School of Law at the University of Kyōto.

8 Professor of Sociology of Law at the Law Faculty of the University of Tōkyō.

9 Professor at the Department of History at the St. Cloud State University in Minnesota.

principle, on the one hand abstractly in terms of its meaning for the international legal order as well as within nation states and on the other hand concretely in connection with Japanese colonial law in the past and Korean compensation claims in the present.

The influence on another Asian country was then addressed in the last paper of the day by Ying-Hsin TSAI,<sup>10</sup> under the title “Learning from Japan. A Taiwanese Perspective.” The focus was on the influence of Japanese corporate law on the Taiwanese legal system during the colonial period, which at the same time acknowledged and integrated Taiwanese customs. In the ensuing discussion, the topics addressed included different implications of the *ordre public* principle in national and international private law and, as seen more recently, the influence of the Japanese Corporate Governance Code. The successful first day of the event ended with a reception in the foyer of the Max Planck Institute, where Klaus J. HOPT<sup>11</sup> gave a keynote speech entitled “German-Japanese Friendship: Personal Memories on the Occasion of Harald BAUM’s 70<sup>th</sup> Birthday”.

The first half of the second day of the symposium was chaired by Julius WEITZDÖRFER,<sup>12</sup> another former student of the jubilarian. In terms of content, the first topic area was continued in the morning with further presentations on the influence of Japanese law on other legal systems.

The first speaker of the day was Ruoyin CHEN,<sup>13</sup> who gave a talk on “Japanese Law and the PRC: Influence and Inspiration”. CHEN described the change in the relationship between the two legal systems from a dominant role model function of Japanese law to constructive interactions on an equal footing in the present.

Following CHEN, Eric A. FELDMAN<sup>14</sup> described the past and present state of research on Japanese law in the United States under the title “Why (Still) Study Japanese Law in the US?”. His presentation showed the initially great interest of the US in the Japanese legal system due to the boom of the Japanese economy in the 1980s, as well as the subsequent decline with the bursting of the Japanese economic bubble. FELDMAN appealed for a renewed interest in the Japanese legal system, especially among the students, whose interest has had only a limited chance to develop under the Covid-19 pandemic due to a lack of travel opportunities.

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10 Professor of Law at the National Taiwan University.

11 Former Director at the Max Planck Institute for Comparative and International Private Law.

12 Professor of East Asian Law at Hagen University.

13 Professor at Peking University Law School.

14 Heimbold Chair in International Law, Professor of Law at the University of Pennsylvania.

The last paper on the first topic was given jointly by Luke NOTTAGE<sup>15</sup> and Melanie TREZISE,<sup>16</sup> whose presentation “Japan’s Role in Comparative Law. An Australian Perspective” illustrated the interest in the Japanese legal system in Australia. In contrast to FELDMAN, they painted a far more positive picture of the scholarly treatment of Japanese law and encouraged greater international cooperation in this context in the future.

After a guided tour through the extensive library of the Max Planck Institute and a lunch break, the symposium then turned to the second of the three topics, “Japan in Comparative Law: Examples from Specific Fields of Law”, which was chaired by Hiroshi ODA.<sup>17</sup>

First, two Japanese colleagues shed light on Japanese capital market and company law. Masao YANAGA<sup>18</sup> gave a presentation entitled “Capital Markets Law and Related Company Law” considering the Japanese influence on those fields of law abroad. Among other things, YANAGA offered a revealing look at the “channels of influence”, which have changed from the influence Japan exercised as a colonial power to fruitful cooperative relationships.

Maki SAITŌ’s<sup>19</sup> talk “Takeover Law” dealt in particular with the development of hostile takeover attempts and their defence as well as the role of Japanese courts in this context. The focus was on the recent *Tōkyō Kikai Seisaku-sho* decision of the Tōyō District Court on so-called poison pills, which illustrated the development of judicial takeover law in Japan.

In the ensuing discussion with the guests, it was then debated what influence foreign court decisions can have in addition to foreign laws and to what extent the decision presented by SAITŌ might also indicate a general trend toward protectionism in Japan’s economy.

In the second part on the second topic, two Europeans addressed the influence of Japanese law abroad. In his presentation “Japanese Intellectual Property in the Context of Foreign and International Law”, Christopher HEATH<sup>20</sup> compared Japanese intellectual property law, including aspects of enforcement with other national and international legal systems, focusing in particular on European and American law.

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15 Professor of Comparative and Transnational Business Law at the University of Sydney.

16 Former ANJeL Exec Coordinator and PhD candidate in Law at the University of Sydney.

17 Sir Ernest Satow Professor of Japanese Law at the University of London (UCL).

18 Professor of Law and Accounting at Meiji University in Tōkyō.

19 Professor at the Graduate School of Law at the University of Kyōto.

20 Judge at the Boards of Appeal of the European Patent Office and extra-curricular professor at the University of Maastricht.

Under the title “Law of Obligations”, Béatrice JALUZOT<sup>21</sup> examined the recently reformed Japanese law of obligations from a historic perspective and its influence in other Asian countries as well as in the West. Similarly, JALUZOT explored the question of the extent to which the recent Japanese reform of the law of obligations was influenced by foreign legal systems.

The second topic area, and with it the second day of the symposium, ended with a discussion following these two papers which clarified the original Japanese character of the law, particularly as relates to the reform of the law of obligations, despite the existing interest in foreign legal systems.

The third and last day of the symposium, chaired by Eva SCHWITTEK,<sup>22</sup> another former PhD student of BAUM’s, continued the previous day’s lectures with the third topic, “Japan’s Legal Export: Its Role in International Harmonization, Legal Technical Assistance, and Education of Foreign Legal Experts”.

In the first half of the topic area, the presentation of Souichirou KOZUKA,<sup>23</sup> “Japan as a Member of UNIDROIT”, was devoted to Japan’s participation in UNIDROIT throughout history and to the reception of UNIDROIT instruments in contemporary Japan. KOZUKA also discussed whether and to what extent there was an interest in unification or a harmonization of law in Japan.

In her presentation “Japan and Asia at the Hague Conference on Private International Law”, Yuko NISHITANI<sup>24</sup> explored Japan’s past and potential future role in the Hague Conference (HCCH), including a look at the child-related cases taken up by the HCCH, such as child welfare and child abduction. NISHITANI called for a closer cooperation among Asian jurisdictions within the HCCH and for Japan to play a more active role with regard to proposals submitted to the HCCH. The discussion between speakers and guests that followed the two presentations explored Japan’s influence on international rules and the significance of international rules in Japanese arbitration clauses.

In the second and last part of the third topic area, Gen GOTŌ<sup>25</sup> first presented “Locating Japan in the ‘Anatomy of Corporate Law’ Project,” outlining ways in which Japan’s legal system has and could continue to contribute to this classic international project. In doing so, GOTŌ did not so much argue for the ever-advancing addition of other legal systems to the work, but suggested instead that Japan’s soft law mechanisms, such as in

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21 Professor in Private Law at Lyon Institute for Political Studies (Science-po Lyon).

22 Notary and lawyer at Rittershaus.

23 Professor of Law at Gakushūin University in Tōkyō.

24 Professor of International Private and Business Law at Kyōto University.

25 Professor of Law at the University of Tōkyō.

the area of corporate governance, stood as a Japanese peculiarity whose closer examination could benefit the work in the future.

Nobumichi TERAMURA,<sup>26</sup> in his presentation “Exporting Japanese Legal Ideas to the Mekong Subregion of ASEAN”, outlined past and present legal support assistance provided by Japan to Central and Southeast Asia in general, and to countries along the Mekong River in particular. Similar to NISHITANI, TERAMURA also advocated more initiatives by Japanese legal scholars to highlight and promote Japanese regulatory structures in the regions addressed.

At the end of the day and of the symposium as a whole, the jubilant himself addressed the guests and speakers and gave thanks for the presentations, the organization, and the opportunity to reunite with friends. With regard to German-Japanese comparative law, BAUM pointed out that the relationship had long ceased to be a one-way street, a result to which the jubilant himself had admittedly contributed a great deal.

BAUM’S concluding remarks marked the end of a symposium that will be remembered not only for the breadth and depth of the presentations by a wide variety of speakers, but also for the deep, often decades-long bond between those present, which was expressed again and again not only in the papers but also between the lines. The symposium on the occasion of Harald BAUM’S 70<sup>th</sup> birthday was a moving demonstration of how professional expertise and personal friendship can and should be combined in academic exchange.

Julian HINZ\*

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26 Professor at the Institute of Asian Studies at the Universiti Brunei Darussalam (UBD).

\* Research Associate at the Max Planck Institute for Comparative and International Private Law.