CONFERENCE

RESPONSIBILITY AND ACCOUNTABILITY IN JAPAN AFTER THE 1990S: A LEGAL PERSPECTIVE

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Introduction to the Special Issue

The 1990s in Japan were characterized by a deep socioeconomic crisis, "the lost decade" (*ushinawareta 10-nen* 失われた 10 年), that created the context for reforms in various fields characterized by inertia and continuity during many decades. Deregulation, decentralization, administrative reforms, an overhaul of the legal institutions, educational reforms, labor law reforms, and a reform of the social security system are just some of the changes that were implemented since the second half of the 1990s. The main purpose of these reforms was stated by the policy makers to be the enhancement of transparency and the so-called duty to explain, but also other new concepts such as policy evaluation were introduced in the wake of the reforms. Moreover, existent concepts such as the rule of law and participation of the citizens in state affairs were revisited and emerged out of the reformative process with new meanings. Obviously there was a need for a new approach in the context of the development of the neo-liberal society and the restructuration of the centralist bureaucracy-driven structure of authority in Japan. Prime Minister Koizumi stated in 2001 that the reforms (he specifically referred to the reforms of the judiciary and of the legal system) had to transform society to an *ex post facto* check- and relief-oriented society that is governed by explicit rules and the principle of self-responsibility. How can we explain the changes that have been presented as fundamental ruptures with the past? Did the changes of the institutional framework really result in a difference? Will the new institutions really matter? This series of articles aims towards a deeper analysis of the content of the norms that have been the target of the reforms, not by analyzing the institutional design but by focusing on the (legal) norms in the process of change.

In response to these challenges, a number of academics active in various disciplines have set up a joint research project to tackle the issue of reform in their disciplines and to analyze the past, the process of change, and this novel system. This analysis is oriented less from the point of view that has been taken in traditional scholarship on the policy process and more from focusing on the content of the legal norms and practice that have been the result of the reforms. What links the various researchers in their analysis is their methodological framework. In recent years, the *social constructivist* framework has been applied in a promising way in institutional design and development – for example, in the discipline of International Relations. Indeed, this framework acknowledges the relevance of the rationalists' explanations of choices of the actors involved in the design and development of institutions, but it goes deeper into the observation by including the importance of the "social or historical contexts" as formative parts of rational choices that play a role in the developments in social constructs.[1] There are two parts to such inquiries. The first part focuses on the past and therefore takes a positive view of the norms that have been challenged and redesigned: How did the reform come about and against what was it a reaction? The second part of the inquiry asks a more normative question and places emphasis on the effectiveness of the new norms: What kind of norms came out of the process? Are they effective, or are these norms promising real change? This kind of future-looking research question helps in understanding and explaining changes that are waged at a certain moment in time.

The three articles in this volume will focus on the second part of the inquiry by analyzing the effectiveness of the reforms which, it has to be said, are mostly ongoing and recent processes. Observation of the past and anticipation of the future are two sides of the same coin that cannot be separated by scholars of reformative processes of institutions.

The first article by *Narufumi Kadomatsu* (Kobe University) introduces the concepts of "accountability" (*akauntabiritî* アカウンタビリティー) and "duty to explain" (*setsumei sekinin* 説明責任) as the core of the reformative discourse in Japan in the middle of the 1990s. He focuses on the legal constructs that were the result of the discussion, including the Administrative Information Disclosure Act (1999) and three other laws: the Incorporated Administrative Agencies, etc. Information Disclosure Act (2001), the Government Policy Evaluations Act (2001), and the Public Record Management Act (2009). *Kadomatsu* analyzes how and what the administrative organs have to "explain"; who the administrative organs are accountable to; and whether accountability focuses on outcome or process. Institutional design is imbedded in the new legal schemes that open up new communication arenas and contribute to the control of administrative activities. The purpose of the reforms is well reflected in the percep-

1 A. WENDT, Driving with the Rearview Mirror: On the Rational Science of Institutional Design, in: International Organization 55 (2001) 1020.

tion of problem and solution by policymakers: the construction of a new communicative space, including the possibility for response and the realization of the duty to explain.

In the second contribution, *Yosuke Yotoriyama* (Niigata University) addresses the revision of the Basic Law on Education (*Kyôiku kihon-hô* 教育基本法) in 2006, which was presented as a comprehensive and fundamental reform of the postwar educational institution. The author looks into ruptures and conformities with the Fundamental Law of Education of 1946 and takes as a guiding principle the concept of responsibility, which was the main motivator for waging reform and the helm of social discourse at the time in the realm of education. The content of this concept is the first challenging question that is tackled. *Yotoriyama*'s first aim is to clarify the characteristics of three different types of structures of responsibility that can be discerned since 2006: direct responsibility, indirect responsibility, and accountability. Are these similar to the existing patterns of responsibility, or can we observe rupture or complementation? The author also briefly offers insights into the political dynamics that led from the former LSE to the reform of 2006. The kind of response that is given to whom and with what purpose is an issue that clarifies the concern with responsibility and accountability and is not necessarily limited to one answer. The law is the basis for the analysis of a new approach towards the institution of education. The policy, content, and effect of this reformed institution are the elements taken into account by *Yotoriyama*, allowing him to reach some normative conclusions.

The final article is not directly related to the law but addresses an important and overarching problem that has not been efficiently dealt with for decades: the controversy over "comfort women." *Naoki Odanaka* (Tôhoku University) opens his inquiry into the concept of responsibility and refers to Tetsuya Takahashi's definition as "the ability to respond."[2] By analyzing the specific case of the controversy over "comfort women," *Odanaka* very rightly points out that this concept becomes operational when the discussion framework is shifted from a mere "responsibility-based collective memory" to what he calls a "compassion-based individual history." He concludes that Japanese society failed to realize that responsibility can also be taken in an indirect way, and as a historian he suggests new avenues for overcoming the problem that have implications for legal reforms and for the dynamics of a society coping with certain perceived problems. Conceptual changes in discourse can help in finding new effectiveness, which can also help newly designed institutions in different disciplines to function effectively.

The three articles presented here are the result of an ongoing project and are mainly intended for legal and socio-legal scholars interested in analytical models for explaining the changes that occurred in Japan in the 1990s. More contributions to this special issue were planned, but the dramatic events of 11 March 2011 decided differently. The editors wish to pay their respects to all those affected in one way or another and would like to dedicate this special issue to the victims of the disaster.

2 T. TETSUYA, *Sengo sekinin-ron* [On Postwar-Reponsibility] (Tokyo 2005, First edition 1999).

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 Bältz, the executive editors of the Zeitschrift fur Japanisches Recht/Journal of Japanese Law, for offering us this excellent forum and for their advice and support in the preparatory process; and Julius Weitzdörfer for very efficient editorial assistance. Without financial support by the Japanese Ministry of Education and Science (through the Grant-in-Aid for Scientific Research – KAKENHI 21330006), this research project would not have been possible. Finally, the editors would also like to thank everyone who took the time and energy to participate in the international seminar at the Katholieke Universiteit Leuven and in the various workshops that were organized in various cities in Japan.

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