Index

Abe, M. 57, 90, 173
administrative actions
  Administrative Case Litigation Act amendments 182
  communal reforms and co-governance 40–41
  litigations, small number of 252–3
  ordinary non-constitutional cases 176
Administrative Guidance 38–9
environmental law and Water Pollution Control Act 136–7, 140–41, 143, 144–5
alternative dispute resolution (ADR) methods, comparison with West 2, 95–110
  ADR Act 102, 103, 104, 106–7
  ADR providers 104–5
  court mobilization responsibilities 96–7
  institutional effects on court-use behaviour 96–7, 103–4
  judiciary reform, initial assessment 67
  leadership power and settlements achieved after case filing 99–100
  legal culture concept 97–8, 100
  litigation reluctance 95–6, 98–101
  litigation reluctance, and Nuinosuke case in Tokugawa Period 99, 100
  suspension of court proceeding under the ADR Act 104
  trade credit and legal system, Turnaround Alternative Dispute Resolution 89
  ‘voluntary’ dispute resolutions 107–8
alternative dispute resolution (ADR) methods, comparison with West, legal consciousness effects 96–7
  concept comparison 100–101
  public attitudes towards disputing behaviour 100
  reluctance factor 97–8
alternative dispute resolution (ADR) methods, comparison with West, mediation promotion case study, UK–Japan comparison 101–7
  adjudication versus mediation (out-of-court versus in-court) 98, 100, 102–3
ADR mobilization timing expectation 104
cases disposed by court and ADR after filing actions 105–7
rent-related disputes and pre-trial mediation 102, 104
Settlement during Trial scheme 104, 105
Specially Designated Mediation Act for debt adjustment 102
suspension of court proceeding under the ADR Act 104
amicus curiae system, lack of 179–80
see also institutional change and judicial review
Amyx, J. 90
Anderson, K. 82, 90
Antimonopoly Act, effects of 217–19
antitrust litigation in Japan, Europe and the US 209–28
antitrust violations, lack of information on 214–15
bid-rigging cases (Japan) 218–20
Civil Provisional Remedies Act and injunctive relief 219
contingency fees, lack of (Japan and Europe) 216
court costs, allocation of 216
cultural aversion to litigation (Japan and Europe) 214
cultural versus institutional effects 209, 213–17, 219–20, 221
injunctive relief 216, 219
Japan Fair Trade Commission, role of 220
Japan’s Antimonopoly Act, effects of 217–19
opt-out class action mechanism, US only 215–16
residents’ lawsuits, rise in (Japan) 217–20
antitrust litigation in Japan, Europe and the US, litigation levels 210–13
case numbers 210–11, 218, 219–20, 225–8
changes in 217–21
damages awards, significance of 211–13, 215, 216, 221
Antons, C. 35
Aoki, M. 39
Aoyagi, K. 173
asbestos-related lawsuits 43
ASEAN Intergovernmental Commission on Human Rights (AICHR) 262
attorney access
court-appointed attorneys for suspects 68
and judicial reform see judicial reform and attorney access
see also courts
attorneys’ remuneration scheme and collective actions 44
Axelrod, R. 148
Aymé, S. 244
Ayres, I. 150
Ayukawa, J. 118
Baba, K. 51
Baird, D. 86
banking
bank deposit as collateral 83
debt restructuring and ‘main bank’ system 39–40
Financial Services Agency (FSA) Action Plan for Relationship Banking 91
see also debt
bankruptcy 39–40, 82, 86–7, 89, 91
bar association legal advice services, limitations of 167–8, 169
bar examination 69–70, 73–4
see also legal education
Baum, H. 102, 178
Beck, U. 46
behavioural attitudes
culture and situation see culture, situation and behaviour
legal culture and social change 21–2
Belgium, antitrust litigation 211, 212, 214, 216, 226
Bell, J. 29
benevolent paternalism see criminal justice diversity, benevolent paternalism and genbatsuka
Berger, A. 87
Bester, H. 84
Beyens, K. 126
bid-rigging cases 218–20
see also antitrust litigation
Blankenburg, E. 18, 27–8
Boot, A. 84
Borrás, S. 234
Bourdieu, P. 35
Braithwaite, J. 111, 150, 234
Brietzke, P. 45
Bruinsma, F. 27–8
Bubble Economy, law reform following 81–2, 89–92
see also economic changes, law of trade credit and security interests
Burris, S. 234
Bussiere, E. 177
Calavita, K. 30
Carruthers, B. 39–40
Chen, X. 36
Chiba, M. 1
China
contract enforcement 38
economic success 34
human rights dialogues with Europe 263
national governing bureaucrats, selection of 53
Western-style bankruptcy proceedings, rejection of 40
Index

Choi, D.-K. 158

civil cases
duration of proceedings reduction 67
litigation rate 50–51, 55–6, 57
civil law universality see modernizing Japan, law, culture and society, universality of civil law and cultural change
Civil Procedure Code 175, 179–80
Civil Provisional Remedies Act and injunctive relief 219
Civil Rehabilitation Act 85, 86, 90
civil society involvement 41, 233, 236–7, 238, 243
Clayton, C. 177, 180
Cole, T. 209, 214
Coleman, J. 35
community patent review pilot project 236
see also patent system
competition law
patent system 233, 237, 242
see also antitrust litigation; patent system
Composition Act 90
Comprehensive Justice Support Law 68
Comprehensive Legal Support Act 168–9
confessions and remorse 113, 114–15, 116
see also criminal justice diversity, benevolent paternalism and genbatsu
constitutional duties, rule of law and human rights 251–2, 255, 260–61
Consumer Contract Law 43–4, 199
consumers
citizens’ lawsuits against local governments 56
consumer society, transformation to 56–7
residents’ lawsuits, rise in 217–20
contingency fees, lack of 216
see also antitrust litigation
contract enforcement 37–8, 44
Cooper, R. 146
Corporate Reorganization Act 85–6, 90
Cotterrell, R. 26, 98
courts
alternative dispute resolution see alternative dispute resolution (ADR) methods
costs, allocation of 216
institutional effects on court-use behaviour 96–7, 103–4
mobilization responsibilities 96–7
suspension of proceedings under ADR Act 104
see also attorney access
crime victims and human rights 257
see also rule of law and human rights
criminal cases, and lay judge system see judiciary reform, initial assessment, lay judge system and criminal procedures
criminal justice diversity, benevolent paternalism and genbatsu (harsh punishments) 111–29
confessions and remorse 113, 114–15, 116
discretionary authority by public prosecutors and judges 112
see also genbatsu, introduction, reasons for
117–18
judicial discretion 116
portrayal and practice overview 113–14
processing of large volume of offenders and prosecution suspension 115, 117
prosecution suspension and Article 248 of Code of Criminal Procedure 114–15, 116
prosecution suspension, rehabilitation prospects and recidivism aim 116–17
public influence on criminal justice policy 118, 125
rehabilitation orientation 114, 116–17
sentencing patterns and judicial goals 115–17
victims of crime, increased focus on 118
violent crimes, increase in 117–18
The changing role of law in Japan

criminal justice diversity, benevolent paternalism and genbatsuka, lay juror system (saiban in seido) 112, 125–6, 183

drug offences 126
murder trials 125–6
rape and sexual assault 126
sentencing diversification 112, 125–6

see also judiciary reform, initial assessment, lay judge system and criminal procedures

criminal justice diversity, benevolent paternalism and genbatsuka, re-evaluation 118–24
depth sentences 122
diverging trends for different offences 119–21
murder, suspended prosecution rate 120–21
rape and sexual assault, suspended prosecution rate 121
sentencing pattern changes 122–4
suspended prosecutions, rise in 118–21
suspended sentences 116, 121, 123, 124

Criminal Procedure Act amendments 68
cultural aversion to litigation 214
see also public attitudes towards legal system
cultural change, and modernizing Japan see modernizing Japan, law, culture and society
culture, legal, and social change see legal culture and social change
culture, situation and behaviour 189–205
consultation and legal advice 200–202
consultation and legal advice, legal professional consultation 201–2
Legal Consciousness Survey 193–7
third-party agencies and legal advice 200–201
culture, situation and behaviour, attitudes and behaviour, empirical model 191–4
Behaviour Survey 194

behavioural perception and evaluation of situations 192–3
legal consciousness and legal culture 191
Legal Consciousness Survey 193–4
legal consciousness, translation problems 192
culture, situation and behaviour, Disputing Behaviour Survey 193, 194, 197
casual relations 199–200
and Consumer Contract Law 199
contact with other party 198–200
and problem type 199
damages awards 211–13, 215, 216, 221
see also antitrust litigation in Japan, Europe and the US, litigation levels
Dando, S. 116
Dasgupta, P. 36, 38, 41–2
Davis, J. 213
Davis, R. 178
death penalty 68, 71, 77, 122
debt
debtor-in-possession (DIP) procedure 85, 90
debtor–creditor law reform 89–92
restructuring and ‘main bank’ system 39–40
Specially Designated Mediation Act for debt adjustment 102
see also banking
Denmark, antitrust litigation 211, 212, 225
Dewar, J. 29
Dillickrath, T. 216
dispute resolution see alternative dispute resolution (ADR) methods
Disputing Behaviour Survey
Attorney Retention Ratio 160–61, 162–3, 164, 165, 166
culture and situation see culture, situation and behaviour, Disputing Behaviour Survey
judicial reform and attorney access 159–63
Douglas-Scott, S. 250
Drahos, P. 234
Index

Dreyfuss, R. 237, 241, 242
drug offences 74, 75, 126
Duffy, J. 237, 241
economic changes, and state–society
  synergies see state–society
  synergies in Western and Japanese
economic and judicial reform
economic changes, law of trade credit
  and security interests 81–94
  absolute priority rule 86
  bank deposit as collateral 83
Civil Rehabilitation Act 85, 86, 90
Composition Act 90
Corporate Reorganization Act 85–6, 90
debtor-in-possession (DIP)
  procedure 85, 90
debtor–creditor law reform 89–92
debtor–creditor law reform, bad
  loan problems 89–91
financial facilitation attempts 91–2
Civil Rehabilitation Act 85, 86, 90
Composition Act 90
Corporate Reorganization Act 85–6, 90
debtor-in-possession (DIP)
  procedure 85, 90
debtor–creditor law reform 89–92
debtor–creditor law reform, bad
  loan problems 89–91
financial facilitation attempts 91–2
Financial Services Agency (FSA)
  Action Plan for Relationship
  Banking 91
insolvency law reforms 82, 86–7, 89, 91
moral hazard theory 84, 86
mortgages 83, 90
Perfection of the Transfer of
  Movables and Receivables
  (PTMAR) Law 91–2
screening theory 84–5
secured transaction theories 84–5
security interest, extinguishing 86
security interest in movable assets
  83–4, 91–2
security interests theory 85–7, 90
Special Measures for Industrial
  Revitalization Law 89
economic changes, law of trade credit
  and security interests, trade credit
  and legal system 87–9
monitoring by seller 88
  protection against diversion of asset
  89
purchase money security interest
  (PMSI) 88
retention of title clause 88
  seller advantage in liquidating goods
  88–9
  Turnaround Alternative Dispute
  Resolution (ADR) 89
  Workout Guidelines 89, 90–91
education see legal education
Ehara, Y. 51
Eisenberg, T. 90
election law decision for citizens who
  resided abroad 174–5
Elffers, H. 126
Ellis, T. 117, 118
Endō, K. 114, 116
environmental law, regulatory
  enforcement and Water Pollution
  Control Act 133–56
  Administrative Guidance and
  Administrative Orders 136–7,
  140–41, 143, 144–5
command-and-control approach
  135
  enforcement actions, basic sequence
  136–7
  enforcement process 135–41
  inspection at pre-violation stage 139
  and legal culture 133–4
  local government regulatory
  enforcement 137–41
  regulated entities 135
  regulatory agencies 135–6
  violation incidents 135
  violations and regulators’ reaction
  139–40
  voluntary compliance and
  Administrative Guidance 140,
  141
environmental law, regulatory
  enforcement and Water Pollution
  Control Act, game-theoretical
  view 141–54
capture game and private interests
  149–50, 151–4
  cooperative enforcement strategy
  characteristics 147
deterrent and cooperative
  enforcement strategies of
  regulators 143–4, 145–9, 150–51
false reports from interviewees 151
  focal point equilibrium 145–7
games between regulators and regulated firms 141–3
opportunistic and cooperative enforcement strategies of firms 143, 144–9, 151
payoffs 142–3, 146, 148, 150, 151
players’ preferences, assumptions about 143–50
pre-game communication and coordination game 146
prisoners’ dilemma game and Administrative Orders 147–9, 150, 151
prisoners’ dilemma game, face-to-face communication, benefits of 148
prisoners’ dilemma game, tit-for-tat cooperation strategy 148
regulated firms’ preferences 144–5
regulators’ preferences 143–4
regulatory enforcement game 145–50
regulatory enforcement game, coordination game 145–7, 150, 151
strategies, preferences, and assumptions 141–3
Epp, C. 177, 183
Europe
Charter of Fundamental Rights 255
class actions 42
collective lawsuits 43
consumer organizations and collective interests 43
continental law influence 2
court website information 42, 44
cultural aversion to litigation 214–15
opt-out class action mechanism, lack of 215–16
patent governance see patent system rule of law and human rights see rule of law and human rights see also individual countries
Europe, antitrust litigation 211, 212, 215–16, 225–7
court costs, allocation of 216
damages awards 213, 215, 216, 220, 221
injunctive relief 216
litigation level changes 220–21
Evans, P. 36, 37, 42
evidence collection and disclosure 67, 68, 77
Fabbri, D. 88, 89
Fair Trade Commission, role of 220
Feldman, E. 15, 30, 214
Financial Services Agency (FSA) Action Plan for Relationship Banking 91
Finland, antitrust litigation 211, 212, 225
Flango, C. 45
Foote, D. 70, 73, 100, 111, 115
France, antitrust litigation 211, 212
Frank, M. 88
Friedman, J. 20
Friedman, L. 16, 18, 19, 21, 22, 26, 27, 30, 61, 97
Fry, J. 210
Fujimoto, A. 198
Fujisawa, N. 92
Fujita, T. 176, 182
Funada, M. 254
Galanter, M. 56
game theory and environmental law see environmental law, regulatory enforcement and Water Pollution Control Act, game-theoretical view
Garland, D. 117
genbatsuka (harsh punishment) see criminal justice diversity, benevolent paternalism and genbatsuka
Genn, H. 101, 102, 104, 105, 106, 192
George, B. 116
Germany
antitrust litigation 211, 212, 214, 216, 220, 226–7
collective litigation 43
communal administrative reforms 40
Gessner, Volkmar 34–49
Gibbons, M. 43
Gillespie, J. 17
Gillman, H. 177, 178, 180
Ginsburg, T. 16, 214, 215
Glenn, P. 20, 26, 28
Index

Goldstein, L. 263

governance branches, patent system 239, 242–3, 244

governance levels
advice services, problems with 168
communal administrative reforms and co-governance 40–41
involvement in Shinto religion as constitutional violation 176
legal culture and social change 24
local government see local government
national governing bureaucrats, selection of 53

Gowers, A. 231
Graber, M. 180
Granovetter, M. 38

Greece, antitrust litigation 211, 212, 226

Grigoleit, J. 46

Grimm, D. 260

Haas, P. 233, 234

Hadfield, G. 100

Haley, J. 1, 15, 50, 95–6, 97, 98, 111, 112, 114, 209, 214

Halliday, T. 39–40

Haltom, W. 22

Hamai, K. 117, 118

Hamano, Ryo 157–72

Harada, K. 116, 117

Harashima, S. 59

harsh punishment (genbatsuka)
see criminal justice diversity, benevolent paternalism and genbatsuka

Hasebe, Y. 251, 260
Hasegawa, K. 61
Hatajirii, T. 173
Heller, P. 37
Henderson, D. 99
Herber, Erik 111–29
Hirano, R. 116, 117
Hirata, Ayako 133–56
Hoetker, G. 16, 214, 215
Hofstede, G. 25
Hotta, S. 62
human rights, and rule of law see rule of law and human rights

Igarashi, K. 51, 251
individual legal consciousness see legal consciousness
individualization increase, modernizing Japan 56–7
Indonesia, institutional governance rejection 40
inheritance rights for child born out of wedlock 175
injunctive relief 216, 219
see also antitrust litigation
innovation focus, Japan as IP-based nation 234–6
see also patent system
insolvency 39–40, 82, 86–7, 89, 91
institutional change, legal culture and social change 15–16, 21, 22
institutional change and judicial review, judicial review changes since late 1990s 179–85
Administrative Case Litigation Act amendments 182
amicus curiae system, lack of 179–80
Cabinet alterations 184
Civil Procedure Code and partial certiorari 179–80
future research 184, 185
judicial selection process 185–6
Judicial System Reform Promotion Act 182
Justice System Reform Council Recommendations 181–2
lay assessor system (saiban’in) 183
legal education and training changes 184–5
normative resources 180–82, 184–5
political one-party dominance, effects of 181, 183, 184
political resources 183
practical resources 179–80
public’s expectations of the judiciary 181–2
recent personnel developments 184–5
institutional change and judicial review, recent judicial review exercise 174–6
administrative actions in ordinary non-constitutional cases 176
Civil Code clause, inheritance rights for child born out of wedlock
175
decision-makers, values and attitudes of 178
election law decision for citizens who resided abroad 174–5
governments’ involvements in Shinto religion as constitutional violation 176
ideology and policy position of the appointer, effects of 178, 184
judicial behaviour constant since before joining Court 178
landmark decisions 174–6
Nationality Act and child born out of wedlock to Japanese father and foreign mother 175
normative resources and legal validity 176–7, 178
political and practical resources 177
precedential landscape and relative strengths of competing theories within legal community 178
selection and appointment of Justices 178
State Liability for Compensation Law 175
theoretical factors 176–8
theoretical factors, volume of available resources 176–7, 183
institutional effects on court-use behaviour 96–7, 103–4
institutional patent actors 232–3, 235–8 see also patent system
institutional reform, need for increased in judicial reform 167, 168–9
institutions versus culture, modernizing Japan 50–51
international patent convergence reforms 229–30
IP Strategy Headquarters responsibilities 235–6, 237–8, 242–3
Itô, M. 82
Izumi, T. 182, 186
Jackson, T. 84
Japan Legal Support Centre (JLSC) 168–70
‘Japan as Number One’ model, challenges to 2
Japan Patent Office (JPO) responsibilities 235, 236, 237
Johnson, D. 112, 113, 114, 115, 117
Johnson, H. 84
Joy, P. 69, 73
judicial goals, and sentencing patterns 115–17
judicial reform
rule of law and human rights 252–4
and state–society synergies see state–society synergies in Western and Japanese economic and judicial reform
judicial reform and attorney access 157–72
access and referral network 169
attorney access types 161–5, 166
attorney numbers, need for increase in 170
attorney retention 160–61, 162–3, 164, 165, 166
attorney use by parties in litigation 158–9
bar association legal advice services, limitations of 167–8, 169
Comprehensive Legal Support Act 168–9
current position 158
Disputing Behaviour Survey 159–63
Disputing Behaviour Survey, Attorney Retention Ratio 160–61, 162–3, 164, 165, 166
government advice services, problems with 168
individuals involved in disputes, use by 159–61, 162
institutional arrangements, need for increased 167, 168–9
Japan Legal Support Centre (JLSC) 168–70
legal aid, need for increased 167, 169
legal education curriculum and information access 169–70
legal professionals, acquaintance with 159, 161–2, 164–5, 166–7
methods for finding attorneys 159
policy-based reform, need for increased 167, 168
socio-economic identities 164–5, 166, 167–8, 169–70
judicial review
external, patent system 233, 235, 237
and institutional change see
institutional change and judicial review
judicial system, rotation system for
Japanese judges 235, 237
judiciary reform, initial assessment 2, 66–92
alternative dispute resolution (ADR) 67
bar examination 69–70, 73–4
civil cases, duration of proceedings reduction 67
Comprehensive Justice Support Law 68
court-appointed attorneys for suspects 68
criminal cases, new preparatory proceedings and jury system 67
Criminal Procedure Act amendments 68
evidence collection and disclosure 67, 68, 77
final deliberation and lay judges 72
implementation 68–73
jury duty 71–2
Justice Support Center 68
Justice System Reform Council
recommendations 66–8
Law School Admission Test (LSAT) applications 73
legal aid and access points 67, 68
and legal consciousness 72–3
legal education system reform 68–70
pre-trial meetings in criminal procedures 68
professional law schools 69, 73–4
rule of law principle, promotion of 67
sanctions for breaking secrecy provisions 72
specialization and increase in numbers 68
speedy trial system for misdemeanors 68
targets 67
‘user-friendly justice’, development of 67
see also modernizing Japan, law, culture and society, judiciary expansion
judiciary reform, initial assessment, lay judge system and criminal procedures 70–77
candidates selected 75
crime types 74
death penalty 68, 71, 77
drug offences 74, 75
geographical distribution 74–5
language use 75–6
numbers of completed trials 74–5
professional judge influence 76
see also criminal justice diversity, benevolent paternalism and genbatsuka, lay juror system
Juro, H. 39, 40
jury duty 71–2
lay juror system see criminal justice diversity, benevolent paternalism and genbatsuka, lay juror system
Justice System Reform Council
judiciary reform recommendations 66–8
Kagan, R. 30, 180
Kammen, M. 229, 230
Kanda, H. 84
Katō, M. 198
Katō, T. 103
Kawai, M. 118
Kawaide, T. 118
Kawashima, T. 1, 15, 50, 51, 54, 57–8, 60, 72–3, 96–8, 189–90, 191, 192, 194, 197, 213–14
Keck, J. 2
Kenny, S. 27–8
Kim, C. 213–14
Kinoshita, M. 198
Kitagawa, Z. 38
Kitamura, Y. 140, 141
Kiyomiya, S. 251
Knowles, S. 36
Koba, A. 59
Koguchi, A. 168
Korea
national governing bureaucrats, selection of 53
Western-style bankruptcy proceedings, rejection of 40
Koyama, T. 260
Kozuka, Souichiro 81–94, 218, 220
Kritzer, H. 105, 192
Kronman, A. 84
Krygier, M. 31
Kurusu, S. 60
Kymlicka, W. 51, 52
Lam, W. 37
Lande, R. 213
language use
judiciary reform 75–6
misinterpretation risks, legal culture and social change 20
translation problems, legal consciousness 192
transnational agencies, involvement of 24, 25–6
Law, D. 185
law schools see legal education
law and society, gap between 57–8
Lawson, C. 214
lawyers see attorneys
lay judge/juror system see criminal justice diversity, benevolent paternalism and genbatsuka, lay juror system; judiciary reform, initial assessment, lay judge system and criminal procedures
legal advice
bar association legal advice services, limitations of 167–8, 169
and culture, situation and behaviour see culture, situation and behaviour
legal aid 2, 67, 68, 167, 169
legal consciousness
and ADR see alternative dispute resolution (ADR) methods, comparison with West, legal consciousness effects
and judiciary reform, initial assessment 72–3
and legal culture 191
legal culture and social change 21, 22, 27
modernizing Japan, law, culture and society 50, 51, 54, 58
Survey 193–7
translation problems 192
legal culture
concept, ADR methods 97–8, 100
natural cycle of regeneration 61
legal culture and social change 15–33
Anglo-American model 25
and behavioural attitudes 21–2
common legal code 25
Continental legal systems 25
culture, coherence and change 29–31
culture and psychological differences in national traits 25
elements of legal culture 26–8
empirical measurement methods 22–3
governance levels 24
historical influences 20–21
institutional changes 15–16, 21, 22
internal and external legal culture 19, 27
legal consciousness 21, 22, 27
legal culture, definition problems 17–21
legal culture, use of term 16–17
legal culture, ways of using concept 21–3
misinterpretation risks 20
nation state units 24, 25
and political culture 22
political, economic or religious culture, distinguishing from 19
public attitudes towards legal system 27
and rational choice theory 22
and rule of law 19
social dimensions of legal culture 26–7
transnational agencies, involvement of 24, 25–6
legal education
bar examination 69–70, 73–4
curriculum and information access 169–70
Law School Admission Test (LSAT) applications 73
system reform 68–70
and training changes 184–5
legal professionals, acquaintance with, and attorney access 159, 161–2, 164–5, 166–7
‘legal turn’ (hōka) concept 2–3
Lemley, M. 231
Lenaerts, K. 250
Leng, J. 34
Leymore, S. 84
Lin, N. 35
litigation
antitrust see antitrust litigation in Japan, Europe and the US, litigation levels
and court reform see state–society synergies in Western and Japanese economic and judicial reform, litigation and court reform
reluctance, ADR methods 95–6, 98–101
local government
environmental law regulatory enforcement 137–41
lawsuits against, by citizens 56
Longhofer, S. 88
LoPucki, L. 44
Luhmann, N. 18, 46, 52, 59, 62
Macaulay, S. 38
McCaa, M. 22
McMahon, K. 180
Macneil, J. 38
Maesschalck, Jeroen 1–11, 34
Maksimovic, V. 88
Malaysia, Western-style bankruptcy proceedings, rejection of 40
Martin, C. 175
Matsubara, M. 261
Matsuda, N. 229
Matsumura, Y. 159–60, 161
mediation see alternative dispute resolution (ADR) methods, comparison with West, mediation promotion case study
Menichini, A. 88, 89
Merry, S. 16, 20–21, 26–7
Mexico, court website information 45
Michelman, F. 260
Mihira, Tsukasa 173–88
Milhaupt, C. 39
Miller, R. 192
Miwa, Y. 39, 88
Miyazawa, S. 66, 113, 118
modernization theory and institutional economics 35
modernizing Japan, law, culture and society 50–65
civil litigation rate, possible explanations for low 50–51, 57
culture theory 51–4
culture theory, action, institution and ideology relationships 52–3
culture theory, culture as construction of meanings 51–2
culture versus institutions 50–51
individualization increase 56–7
legal consciousness 50, 51, 54, 58
national governing bureaucrats, selection of 53
people's dislike of legal practices 53, 54
social unities, reduction in 56–7
modernizing Japan, law, culture and society, judiciary expansion 55–8
and civil litigation rate 55–6
consumer society, transformation to 56–7
law and society, gap between 57–8
lawsuits against local governments by citizens 56
novel types of litigation, introduction of 56
see also judiciary reform, initial assessment
modernizing Japan, law, culture and society, universality of civil law and cultural change 59–62
artificial facilitation and fulfillment of natural fate 60–61
cultural convergence and natural providence, differences between 61–2
gap with society 59–60
law of history concept 60–61
legal culture, natural cycle of regeneration 61
nature and artifact 60–61
Western laws, incorporation of 60
Morikazu, T. 76
mortgages 83, 90
Murakami, J. 99
Murayama, Masayuki 159–60, 161, 189–205, 209
murder trials 120–21, 125–6
Murray, K. 231, 232, 234
Nakata, K. 99
Nakazato, M. 50
Nard, C. 237, 241
national governing bureaucrats, selection of 53
national traits, and legal culture 25
Nationality Act 175
neighbourhood associations with mandatory membership 41
Nelken, David 1–11, 15–33, 98
Newton, S. 35
Niehaves, B. 40
Nippa, M. 46
Noda, Y. 1
Nolan, J. 61
Nolte, G. 248, 255, 260
nuclear industry, and close state cooperation 39, 41
Nuinosuke case in Tokugawa Period 99, 100
Oda, H. 210
offenders, prosecution suspension 114–15, 116–17
see also criminal justice diversity, benevolent paternalism and genbatsuka
Ohki, M. 50
Ohnesorge, J. 34
Ōki, M. 99
Okubo, N. 253
Okudaira, Y. 173, 174
Okuwada, K. 236
Ono, A. 82, 83, 92
Ōno, M. 179
Ōsawa, H. 173
Ostoyich, J. 216
Ostrom, E. 148
Ozaki, Ichiro 50–65
Parmentier, Stephan 1–11
patent system, Japan–Europe comparison 229–46
civil society involvement 233, 236–7, 238
community patent review pilot project 236
competition authorities, involvement of 233, 237, 242
consultation procedures 236
double-track problem of review 237
dynamic patent governance 232–8
epistemic patent community involvement 233–4, 236, 242
evaluation procedures 237–8
exceptionalism concept 229, 230, 244
external judicial review 233, 235, 237
infringement cases 235, 236
innovation focus, Japan as IP-based nation 234–6
institutional patent actors 232–3, 235–8
internal review procedures 232–3, 235, 237
international convergence reforms 229–30
invalidation trials 235, 236–7
Japan IP Strategy Headquarters responsibilities 235–6, 237–8, 242–3
Japan Patent Office (JPO) responsibilities 235, 236, 237
judicial system, rotation system for Japanese judges 235, 237
network governance 234, 241
patent governance challenges 231–2
post-grant opposition procedure 236–7
trade regulators, involvement of 233, 237
patent system, Japan–Europe comparison, Europe 238–43
civil society involvement 243
Court of Justice, lack of powers on patents 239, 242
European Patent Litigation Agreement proposal 239
European Patent Organization (EPO) responsibilities 239, 241, 242, 243
evaluation 241–3
governance branches 239, 242–3, 244
multi-level nature, problems with 238–9
opposition procedure 243
patent actor network 241
‘patent package’ adoption 240, 241
Unified Patent Court (UPC) 240–41, 242, 243
unitary patent regime 239–40, 243
Patrick, H. 39
payoffs, and environmental law 142–3, 146, 148, 150, 151
Peerenboom, R. 35, 36–7
Peretti, T. 178
Perfection of the Transfer of Movables and Receivables (PTMAR) Law 91–2
Peters, A. 113, 115
Petersen, M. 88
Peysner, J. 106
Philippines, Western-style bankruptcy proceedings, rejection of 40
Pickerill, M. 180
Poland, antitrust litigation 211, 212, 225
policy-based judicial reform, need for increased 167, 168
political one-party dominance, effects of 181, 183, 184
political resources, and judicial review 177, 183
Popper, K. 61
Potter, P. 38
Pratt, J. 118, 125
professional law schools see legal education
prosecution suspension 114–15, 116–17
see also criminal justice diversity, benevolent paternalism and genbatsuka
public attitudes towards legal system 27, 53, 54
cultural aversion to litigation 214–15
expectations of the judiciary 181–2
influence on criminal justice policy 118, 125
Putnam, R. 35
Rai, A. 241, 242
Rajan, R. 88
Ramseyer, M. 1, 15, 39, 50, 88, 96, 117, 210, 214, 217
rape and sexual assault cases 74, 120, 121, 126
Rasmussen, E. 117
recidivism, and criminal justice diversity 116–17
regulatory enforcement, environmental law see environmental law, regulatory enforcement and Water Pollution Control Act
rehabilitation of offenders 114, 116–17
Reimann, K. 40
remorse and confessions 113, 114–15, 116
see also criminal justice diversity, benevolent paternalism and genbatsuka
rent-related disputes and pre-trial mediation 102, 104
residents’ lawsuits, rise in 217–20
Reuschle, F. 43
Rodger, B. 210, 211, 220, 221, 225–7
Rokumoto, K. 54, 96, 97–8, 141, 158, 190, 191, 192
rule of law
and economic growth 34–5, 37, 45
and legal culture and social change 19
promotion of principle, judiciary reform 67
rule of law and human rights, EU–Japan relationship 247–66
administrative litigations, small number of 252–3
ASEAN Intergovernmental Commission on Human Rights (AICHR) 262
common-law concept 251
constitutional duties to protect against infringements by private parties 255
constitutional scholars’ understanding 251–2
crime victims 257
domestic or international issue, debate about 255
EU Agency for Fundamental Rights and human rights violations by private actors 259
The changing role of law in Japan

EU Charter of Fundamental Rights 255–6
EU, human rights protection 249
EU powers, rule of law against and *Les Verts* case 249–50
EU powers, vertical relationship governance 250
European acceptance of constitutional duties 259–60
European changes after Lisbon Treaty and EU Charter 258–9
European Social Charter 256–7
European understanding before Lisbon Treaty 255–7
European understanding of rule of law 249–50
human rights issues, and legal rights, borderline between 255
human rights issues, range of 255–7
human rights protection, Japan 252
human rights violations by private actors 258
institutional framework 261–3
institutional framework, multi-layered European regional framework 261–2
Japanese non-national framework, lack of 262–3
Japanese understanding of human rights 257–8
Japanese understanding of rule of law 251–4
judicial reform 253–4
judicial remedy against public authorities, ineffectiveness of 252–3
precaution against state power, EU 249
state responsibilities, and duty to protect 261
state responsibilities, Japanese reluctance to accept constitutional duties 260–61

Saraf, A. 192
Sasaki, T. 111, 114, 115
Satô, I. 158, 251, 252, 253, 257
Schelling, T. 145
Schneider, I. 231
Scholz, J. 147
Schröder, R. 42
Schwartz, A. 85
Schwittek, E. 102
screening theory, law of trade credit and security interests 84–5
security interests, and economic changes see economic changes, law of trade credit and security interests
Seneviratne, M. 106
sentencing patterns changes, criminal justice diversity 122–4
diversification, criminal justice and lay juror system 112, 125–6
and judicial goals 115–17
Settlement during Trial scheme 104, 105
see also alternative dispute resolution (ADR) methods
severe punishment (*genbatsuka*) see criminal justice diversity, benevolent paternalism and *genbatsuka*
sexual assault cases 74, 120, 121, 126
Shapiro, S. 42
Sheldon, C. 177–8
Shiibashi, T. 118
Shintoism, governments’ involvement as constitutional violation 176
Shirai, S. 112, 115
Shirosihita, Y. 117
Shishido, J. 173
Silbey, S. 21–2, 98
situation, and culture see culture, situation and behaviour
Slaughter, S. 216
social capital, state–society synergies in economic and judicial reform 35–42
social change, and legal culture see legal culture and social change
social unities, reduction in 56–8
socio-economic identities, judicial reform and attorney access 164–5, 166, 167–8, 169–70
Sosa, F. 38
South Korea
economic success 34
Western-style bankruptcy proceedings, rejection of 40
Spain, antitrust litigation 211, 212, 214, 226
Spaventa, E. 256
Special Measures for Industrial Revitalization Law 89
specialization, judiciary, and increase in numbers 68
speedy trial system for misdemeanors 68
see also judiciary reform, initial assessment
State Liability for Compensation Law 175
state responsibilities, and Japanese reluctance to accept constitutional duties 260–61
state–society synergies in Western and Japanese economic and judicial reform 34–49
Administrative Guidance, Japan 38–9
agency theory and risk 42, 46
communal administrative reforms and co-governance 40–41
consumer protection groups and Consumer Contract Law 43–4
contract enforcement 38, 44
contract role in business relations 37–8
debt restructuring and ‘main bank’ system 39–40
group actions of business associations, lack of 44
informal institutions 36–7
lawyers’ remuneration scheme and collective actions 44
‘main bank’ system 39–40
modernization theory and institutional economics 35
neighbourhood associations with mandatory membership 41
non-governmental organizations, involvement of 41
Non-Profit Organisation Law 41
nuclear industry, and close state cooperation 39, 41
public administration 38–9
rule of law and economic growth 34–5, 37, 45
social capital 35–42
social capital, formal administrative structures, replacement by 36
social capital, theoretical challenges 41–2
trust, importance of 41–2
volunteer activities, access problems 41
Western-style bankruptcy proceedings 39–40
state–society synergies in Western and Japanese economic and judicial reform, litigation and court reform 42–6
asbestos-related lawsuits 43
collective lawsuits 43–4
foreign advisors 45–6
Internet-enabled governmental transparency 44
transparency issues 44–5
Steele, S. 85
Strathern, M. 25
Stulz, R. 84
Suami, Takao 66–92, 247–66
Sugawara, I. 43, 44
Sugimoto, Y. 41
suspended prosecutions, rise in 104, 118–21
suspended sentences 116, 121, 123, 124
see also criminal justice diversity, benevolent paternalism and genbatsu
Suzuki, M. 237
Tagashira, S. 90
Taiwan, economic success 34
Takahashi, Hiroshi 95–110, 180, 258
Takao, Y. 40, 41
Takii, S. 180, 182
Takuichi, K. 76
Tamura, Y. 237
Tanaka, W. 85, 87
Tanase, T. 15, 168, 190
Taylor, V. 92
Teubner, G. 46, 61
Thailand, Western-style bankruptcy proceedings, rejection of 40
third-party agencies and legal advice 200–201
Timberg, T. 45
Tomatsu, H. 173, 174
Tonami, K. 260–61
trade credit law see economic changes, law of trade credit and security interests
trade regulators, involvement in patent system 233, 237
translation problems see language use
Trebilcock, M. 34
Triantis, G. 84
Tsuchimoto, T. 114
Tsuchiya, Y. 181
Tsujimura, M. 251, 257
Uchida, H. 82, 87
UK
Automatic Referral to Mediation (ARM) pilot 102, 104, 106
Civil Mediation Council (CMC) accreditation scheme 105
Civil Procedure Rules (CPR) 05, 102, 103, 104
costs sanction and ADR attempt refusal 103
court website information 44
group litigation 43
information exchange prior to filing suit at court 103
mediation and ADR see alternative dispute resolution (ADR) methods, comparison with West, mediation promotion case study, UK–Japan comparison
private antitrust litigation 211, 212, 220, 221, 226
Woof Report 101–2
Upham, F. 34
US
attorney selection criteria 166–7
Baker v. Carr 180–81
Brown v. Board of Education 180–81
class actions 42, 43
court website information 42, 44–5
debtor protection and credit availability for SMEs 87
dispute settlements before court decisions 100
human rights protection 259–60
influence 1–2
judicial decision-making and state–society synergy 42
judicial reviews and judicial statesmanship 180–81, 183
patent jurisdiction 237, 241–2
selection and appointment of Justices 178
contingency fees in litigation cases 216
court costs, allocation of 216
damages awards 213
damages awards, level of 216
opt-out class action mechanism 215–16
‘user-friendly justice’, development of 67
Van Zimeren, Esther 229–46
Vande Walle, Simon 209–28
Vanoverbeke, Dimitri 1–11, 34, 66–92
victims of crime, increased focus on 118
violent crimes, increase in 117–18 see also criminal justice diversity, benevolent paternalism and genbatsuka
Vogel, E. 2
voluntary compliance and Administrative Guidance 140, 141
‘voluntary’ dispute resolutions 107–8
volunteer activities, access problems 41
Von Benda-Beckmann, F. and K. 16, 27
Wada, Y. 57
Waelbroeck, D. 220
Ward, D. 103
Water Pollution Control see environmental law, regulatory enforcement and Water Pollution Control Act
<table>
<thead>
<tr>
<th>Webber, J.</th>
<th>19–20, 28, 37</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western society</td>
<td></td>
</tr>
<tr>
<td>economic and social reform</td>
<td>see</td>
</tr>
<tr>
<td>state–society synergies in Western and Japanese economic and judicial reform</td>
<td></td>
</tr>
<tr>
<td>laws, incorporation of 60</td>
<td></td>
</tr>
<tr>
<td>see also Europe; US</td>
<td></td>
</tr>
<tr>
<td>Whitman, J.</td>
<td>29</td>
</tr>
<tr>
<td>Whittington, K.</td>
<td>180</td>
</tr>
<tr>
<td>Wildfang, K.</td>
<td>216</td>
</tr>
<tr>
<td>Wollschläger, C.</td>
<td>55, 98, 107</td>
</tr>
<tr>
<td>Woolcock, M.</td>
<td>35</td>
</tr>
<tr>
<td>Workout Guidelines, trade credit and legal system</td>
<td>89, 90–91</td>
</tr>
<tr>
<td>Yamada, A.</td>
<td>103</td>
</tr>
<tr>
<td>Yamagishi, T.</td>
<td>62</td>
</tr>
<tr>
<td>Yamamoto, K.</td>
<td>102</td>
</tr>
<tr>
<td>Yokoo, Y.</td>
<td>236</td>
</tr>
<tr>
<td>Zimmermann, R.</td>
<td>77</td>
</tr>
</tbody>
</table>