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## Introduction Symposium of the Japan Association of the Law of Civil Procedure: The Role of the Judge in the Development of Civil Litigation

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# Introduction

By MAKOTO ITO\*

It gives me great pleasure to introduce this symposium issue presenting papers from the conference held by the Japan Association of the Law of Civil Procedure in Tokyo on June 1, 2003. We believe that these papers offer important insights for readers in the United States, as they do for readers in Japan. They are being published in Japanese by the Association, in the *Journal of Civil Procedure* (Minji Sosyo Zasshi), in early 2004. We are delighted that the *Hastings International and Comparative Law Review* is publishing them for the American audience.

It seems worthwhile for me to introduce the Association to the American audience. It was founded in 1935, and currently has about 800 members drawn from throughout Japan. It was intended to develop the study of such legal areas as civil procedure, debtors' and creditors' rights and bankruptcy, as well as alternative dispute resolution, and to promote personal exchange of views among Japanese proceduralists. Although it has a substantial membership of academics, it is unlike most legal academic organizations in Japan in that it also has substantial membership from the practicing bar, from the judiciary and also from the legislative staffs in the Ministry of Justice. Over the years, it has attempted to provide ideas and advice for reforms in Japan's civil procedure system. In particular, the Association made great contributions to the enactment of the current Civil Procedure Code. I believe that we will carry out the same role with future reforms.

Increasingly, it has become apparent that a full appreciation of procedural issues calls for consideration of the procedural techniques of other countries. On two or three occasions in the past, the Association has therefore convened an academic event involving scholars from other countries. This year, we focused on the role of

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the judge in development of civil litigation. The role of the judge is surely central to many aspects of procedure; as the authority and latitude of the judge expand, the authority and latitude of the lawyers may diminish. And it seemed to us that the role of the judge was evolving, not only in Japan but also in other countries. This year's conference was designed to examine that question.

To provide diverse perspectives on our topic, we resolved to have presentations not only on procedure in Japan, but also on procedure in Germany (on whose legal system the current Japanese legal system was originally based) and on procedure in the United States (which has a common law system). We were pleased to have notable scholars—Professor Koichi Miki of Keio University, Tokyo, Professor Astrid Stadler of the University of Konstanz and Professor Richard Marcus of the University of California, Hastings College of the Law—prepare and present papers. Copies of the papers were distributed in advance of the conference. After Professors Miki, Stadler and Marcus presented their papers, there followed a full afternoon of discussion and questions about the topics raised.

To gain a full appreciation of the points made, one must read the papers themselves; that is the purpose of this symposium issue. By way of introduction, I can report that they demonstrate the significant evolution of the role of the judge in all three countries. Whether this evolution is proceeding at the same speed, or in the same direction, is a matter for discussion and further study. At least some significant distinctions do seem to exist. For example, it does seem that, despite a more active role in pretrial preparation, the American judge does not ordinarily act on the basis of a belief in the merit of the suit. Judges in Japan and Germany, by way of contrast, may take more vigorous actions to give effect to their attitudes about the merits.

Civil procedure scholars from around the world are increasingly engaged in the enterprise of comparative procedure. In the United States, for example, the American Law Institute has undertaken a project to develop Transnational Rules of Civil Procedure that may one day provide a common set of procedures for commercial disputes in many countries. For the present, the Japan Association of the Law of Civil Procedure hopes that the papers in this symposium will contribute to further understanding of a central question—the role of the judge.