Preface

There is a widespread perception that the administration of civil justice is failing to meet the needs of the community. This perception seems to persist across national and cultural frontiers. It is present in many different countries, both within the common law and civil law legal systems. Access to justice is so adversely affected by high litigation costs and long delays that in quite a few countries the courts no longer provide an adequate venue for seeking the protection of rights or for resolving disputes. It is no exaggeration to say that many systems of civil justice experience a crisis of some kind.

Most countries have responded by adopting various measures to address the pressing problems faced by their systems. There seems to be a truly global trend to reform the administration of civil justice. However, while legislatures, practising lawyers, and academics are familiar with the difficulties within their own respective systems, there is limited knowledge of what happens elsewhere. This collection of essays aims to redress this position so that those interested in the reform of civil justice may obtain a broader perspective. After all, the problems of high costs and excessive delays are the same, wherever they occur, and even the solutions are not that different.

Thirteen countries were chosen to be included in this volume, representing both common law and civil law systems. They are: Australia, Brazil, England, France, Greece, Germany, Holland, Italy, Japan, Portugal, Spain, Switzerland, and the United States of America. In each case, an essay was commissioned from a local civil procedure expert to present the country’s system of civil justice.

Each essay begins with a general outline of the national civil justice system. Thus, quite apart from the question of reform, the essays aim to provide the raw material for comparative studies of civil procedure. Each essay then moves on to describe the practical operation of the national system, its strengths and weaknesses, and the steps that have been taken, or are proposed, to improve the system. Finally, each essay concludes with an assessment.

The essays aim to provide as much statistical information as is available, so that the reader may get some idea about the size of the court system, the length of delays, and the cost of litigation in each country. Unfortunately, the availability of data varies greatly between countries. In some ample information is available; in others very little. The temptation to construct comparative statistical tables has been resisted because of the risk of making misleading comparisons. For instance, most countries can provide some figures about the number of judges, but what is included in these figures varies considerably: judicial statistics in one country may include all judges, but in another they may
exclude lay judges (such as the English magistrates) or specialist judges (such as judges of industrial tribunals). The same goes for the number of lawyers; the English figures may include all lawyers, but the Italian figures will exclude notaries and the conveyancing profession, who would be included in the English statistics. Nevertheless, the statistics available for each country should provide readers with an opportunity to form a fairly good idea about the operation of the various systems.

The study of different systems will help those involved in reform to learn how others have approached the problems, what solutions have been tried, and with what success. The first chapter in the book tries to provide a general comparative perspective. It offers parameters of civil justice or criteria of reasonable provision of justice. It draws attention to the main themes of the different national essays and to the sources of the difficulties. Finally, it highlights the general trends, such as the move towards judicial control of civil litigation. The second chapter, written by Professor Leubsdorf, gives a historical and rather gloomy perspective of the reform of civil procedure, particularly in common law countries. These two introductory chapters are followed by national accounts.

As many of the contributors are not native English speakers, considerable editorial work was involved in preparing the essays for publication. Sue Gibbons and Paul Michalik of University College, Oxford, provided invaluable assistance with the editorial task. If deficiencies of style still remain, it is not for lack of effort on their part.

Lastly, thanks are due to Professor Chiarloni and Professor Gottwald, who were involved with the project from the start and whose wise counsel helped to bring it to a successful conclusion.

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