FOREWORD

J. Mark Ramseyer*

From time to time, we hear of those fabled Japanese prosecutors who never lose a case. But we rarely hear more. Marcia Goodman is thus one of the few Americans to take us beyond journalistic accounts of prosecution in Japan. Japanese prosecutors exercise broad discretion, she tells us. Yet within that discretion Goodman finds order, for she explains the patterns and norms behind the discretion and the internal logic by which prosecutors operate. Clearly and colorfully, she describes how prosecutors pick the cases they will take to trial. Just as forcefully, she explains how defendants respond—how they often make what she describes as an implicit plea bargain, and offer remorse and apology in exchange for leniency. In telling her story, Goodman blends analysis with observation—a sophisticated understanding of Japanese law with an eye for the exigencies of practice. But she is also comfortable with the normative issues: is the Japanese prosecutorial process as it should be? Noting the points at which law diverges from practice, she describes the objections Japanese critics have raised. Assessing the validity of their claims, she concludes with her own evaluation of the system.

Daniel H. Foote takes issue with two points Goodman makes. First, he argues that implicit plea bargains are rare in Japan. Where Goodman had suggested that a confession made in hope of leniency might constitute such an implicit bargain, Foote disagrees. Given the difference in cultural patterns between Japan and the United States, he suggests that neither the prosecutors nor the defendants in Japan will see a defendant's remorse as part of a bargain. If the participants do not perceive a bargain, he asks, should we? Second, Foote questions whether prosecutors, when they suspend prosecution in cases where the guilt is unclear, are treating the defendants fairly. Although few defendants have challenged the practice in court, it can seriously stigmatize the accused. And because the process occurs outside of court, the defendants enjoy almost no legal protection. Ultimately, these points lead Foote to an assessment of

* Acting Professor of Law, UCLA School of Law.

Japanese practice that in this respect is significantly more critical than Goodman's.

Goodman and Foote bring to their discussion of Japanese law a degree of sophistication seldom seen in this country. Both know Japan intimately: both lived in Japan for years, speak and read Japanese fluently, studied Japanese law at the University of Tokyo, and combined their tenure at that university with extensive field work on the *practice* of Japanese law. Rarely are law reviews fortunate enough to see a debate between two Japanologists with the background and insight that Goodman and Foote bring.

However flagrantly most American writers ignore prosecutorial discretion in Japan, they have not ignored the regulation of foreign attorneys in Tokyo — perhaps one the "hottest" topics among international lawyers today. Many writers have tried to explain the new licensing scheme, and several have even shown how little license the scheme actually gives. Despite the widespread American sentiment that the new scheme is a mistake, however, few have been able to explain *why* the mistake (if a mistake it is) occurred — where in the bargaining the American lawyers and negotiators went wrong.

Professor John Haley gives us just such an explanation. Most readers of this journal will recognize Haley as one of the most creative and productive comparative law scholars working today. Over the past ten years, he has authored pioneering work in a wide variety of Japanese law fields: litigation, regulation, antitrust law, and legal history, to name but a few. In his article for this issue, he once again breaks new ground, and does so with all the imagination and flair that have made his other works so justly famous.

Nothing at the UCLA School of Law better showcases the school's commitment to international and comparative law than the student-edited *Pacific Basin Law Journal*. The Journal makes strenuous demands of its authors and editors. To be sure, all first-rate law journals impose formidable responsibilities. Yet those who work with the *PBLJ* must deal with radically different foreign legal systems and must often work with materials available only in difficult foreign languages. This issue of the *PBLJ* displays the brilliant results that ensue when the authors and editors are equal to the challenge. To be able to make even a small contribution to this process—to facilitate the work of students and authors as knowledgeable and talented as those who produced this issue—is one of the greatest rewards of teaching at UCLA.