

CIVIL PROCEDURE IN CROSS-CULTURAL DIALOGUE: EURASIA CONTEXT¹

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In September 2012, the International Association of Procedural Law organized its annual world conference in Moscow, Russia. A review of this event was published in the first volume of this law journal.² At the start of the conference, all participants received two marvelous books, one in English and one in Russian, containing the welcome³ and keynote speeches,⁴ general reports and national reports. Like the conference, the book is titled 'Civil Procedure in Cross-cultural Dialogue: Eurasia Context'.⁵

It was a breath of fresh air that the conference focused on the evolution of civil procedure in different societies – not only in the well-known civil or common law systems, but also in different countries of Eurasia. Because culture is one of the shaping factors of civil procedure, the conference organizers decided to center on these cultural aspects. The objective was to show that culture in the contemporary world has a much more important role regarding procedural justice than it had

¹ Reviewed book: *Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure*, September 18–21, 2012, Moscow, Russia (Dmitry Maleshin, ed.) (Statut 2012), available at <<http://www.iapl.org/index.php/en/documents>> (accessed March 9, 2014) [hereinafter *Civil Procedure in Cross-cultural Dialogue: Eurasia Context*].

² Marcel Storme, *Moscow 2012 Conference – a Major Turning Point in International Association of Procedural Law History*, 1 RLJ 91 (2013).

³ By Loïc Cadiet (IAPL President), Valery Zorkin (Chairman Constitutional Court Russian Federation), Vyacheslav Lebedev (Chairman Supreme Court Russian Federation), Anton Ivanov (Chief Justice Supreme Commercial Court Russian Federation) and Pavel Krashennikov (Chairman Association of Lawyers of Russia).

⁴ Marcel Storme, *Best Science, Worst Practice?*, in *Civil Procedure in Cross-cultural Dialogue: Eurasia Context*, *supra* n. 1, at 17–26; Mikhail Treushnikov, *Evolution of the Russian Civil Procedure at the Beginning of the XXI Century*, in *id.* at 26–30; and Peter Gilles, *Some Reflections on the Keywords of the General Topic*, in *id.* at 31–36.

⁵ See *supra* n. 1.

centuries ago. Against the background of globalization and cultural interaction, the aim was to discuss and explore how the legislator in Russia and other Eurasian countries with mixed cultures draft effective civil procedural legislation at the cultural cross-road of West and East, of Europe and Asia.⁶ In his keynote speech Peter Gilles defines the conference eye catchers: Eurasia, culture, un-culture and cross-culture.⁷ He concludes that this is a challenging and complex undertaking.

All reports are categorized in six themes devoted to typical civil procedural problems in which cultural specificity plays an important role: (1) dispute resolution in different formal and informal procedures; (2) goals of civil justice; (3) civil procedural systems: pros and cons; (4) cultural dimensions of group litigation; (5) harmonization of civil procedure in Eurasia; and (6) commercial arbitration in Eurasia.⁸

1. Dispute resolution in different societies: formal and informal procedures⁹

In many parts of the world informal processes co-exist with formal adjudication. These include mediation, (informal) arbitration, and 'traditional' processes used by indigenous and other homogenous social groups for resolving intra-group controversies. This session deals with the function of these informal processes and how we can account for their role in modern societies.

The national reports underscore the reality that the development of 'alternative' methods of handling disputes – alternative, that is, to adjudication in state-sponsored and controlled courts – shows no sign of abating as the new century unfolds.¹⁰ They all sharpen the understanding of the formal vs. informal debate by variously focusing on the roots of the informality movement, its achievements, its problems, and its perhaps unanticipated political and economic impact.¹¹

Regarding the conceptual framework, attention is paid to the categorization of particular processes as formal or informal, the difficulties this entails, and the danger

⁶ Dmitry Mareshin, *Foreword*, in *Civil Procedure in Cross-cultural Dialogue: Eurasia Context*, *supra* n. 1, at 8–9.

⁷ *See supra* n. 4.

⁸ The last chapter on commercial arbitration only contains two national reports by Evgeny Sukhanov (Russia) and Vladimir Musin (CIS). There is no general report. The reports simply provide an instructive overview of commercial arbitration in Russia and the CIS states. Therefore this chapter remains outside the scope of this review.

⁹ The general report was prepared by O Chase (USA). The national reporters were Vincenzo Varano & Alessandro Simoni (Italy), Neil H. Andrews (England & Wales), Jerome Cohen (China), Nataliya Bocharova (Russia), Tsisana Shamlakashvili (CIS) and Carrie Menkel-Meadow (USA).

¹⁰ Oscar G. Chase, *General Report*, in *Civil Procedure in Cross-cultural Dialogue: Eurasia Context*, *supra* n. 1, at 37.

¹¹ *Id.* at 38.

of too-easy categorizations. Interesting examples are the criminal process in the USA and the frequent use of plea bargaining (report by Carrie Menkel-Meadow), the recently introduced informal 'reconciliations' as part of the Chinese criminal procedure (report by Jerome Cohen), and the formalization of mediation in Russia (report by Nataliya Bocharova). Some reports explicitly explore the implication of the definitional problem for evaluating the various processes discussed. A pertinent example is the distinct forms of Italian arbitration labeled 'arbitrato rituale' and 'arbitrato irrituale,' reflecting different degrees of formality of process (report by Vincenzo Varano & Alessandro Simoni). In her fascinating American report, Menkel-Meadow connects the issue of categorization to a normative assessment of the claims of the ADR adherents. By setting forth several formality indicia, she describes a range of processes as falling along a continuum rather than subject to clear categorization.

Other reporters note the role of alternative procedures in relieving the burdens on the courts. Andrews explains the dramatic rise of mediation as a dispute resolution tool in England in part by comparing the defects of court litigation. The Italian reporters clarify that the main purpose of ADR is to relieve the official machinery of civil justice which seems unable to meet the growing demand of justice (report by Vincenzo Varano & Alessandro Simoni). Menkel-Meadow emphasizes the 'quantitative-efficiency' and 'qualitative-party' aspects of less formal processes.

Another theme the reporters bring up is the role of cultural traditions. Striking examples are the traditional informal means of handling disputes used by homogenous social groups such as the people of Sardinia and Albania, in addition to the Roma (report by Vincenzo Varano & Alessandro Simoni), the millennia-long Confucian tradition that has emphasized consensual resolution of disputes in China (report by Jerome Cohen), and traditional informal dispute processes that prevailed in the former Soviet republics (report by Tsisana Shamlkashvili).

Notwithstanding the advantages of informal, non-judicial processes, most reporters accentuate the necessity of court proceedings. Andrews draws attention to the indispensable coercive powers of the judiciary, for example to protect parties against the other's non-compliance or bad faith. Varano & Simoni point out that the expansion of ADR can impose limits on access to justice by establishing a barrier that must be crossed before getting to a judge.

Menkel-Meadow expresses uneasiness related to the private nature of informal disputing in a system that largely depends upon a rule of law generated by publicly announced judicial decisions. She worries that 'increasing complexification, segmentation, and differentiation of process . . . potentially threatens other justice notions of consistency, transparency, true consent and knowledge, as well as equity, equal treatment, clarity, socially "uniform" and just solutions.'¹²

¹² Chase, *supra* n. 10, at 40.

Chase concludes that reform movements are the product of overlapping and sometimes conflicting forces of culture, politics, and economics. The momentum of the informalist movement, which was fueled by a general political trend favoring privatization, was accompanied by the striking commitment in many nations to constitutional rights through formal courts. Among the many tasks facing proceduralists, the goal of defining and defending the boundaries between the two is among the greatest.¹³

2. Goals of civil justice¹⁴

This chapter starts with two basic inquiries: the role of civil justice in the contemporary world and how these goals differ from country to country. In his elaborate general report, Uzelac not only summarizes the ten national reports, but also contextualizes the issues treated.¹⁵

The national reports essentially focus on the two main goals of civil justice: the conflict resolution goal (the resolution of individual disputes) and the policy implementing goal (the implementation of social goals, functions, and policies). These goals are never fully separated, but the balance between them differs and shifts over time and space. The national reports depict civil justice systems positioning their role and social task somewhere in between.¹⁶ The systematic position and relative importance of the first or second goal is, of course, different depending on the legal culture, as is illustrated by the Chinese and American systems (reports by Fu Yulin and Richard L. Marcus).

While most reports phrase the 'conflict resolution' goal in a similar way, the expression of the 'policy implementing' goal is less uniform. Uzelac lists a series of interpretations in terms of legal order (Hungary, China, Austria, and Russia), development and uniform application of private law (the Netherlands), social harmony (China and Russia), bare effectiveness (Italy), and proportionality (Hong Kong).¹⁷

¹³ Chase, *supra* n. 10, at 41.

¹⁴ The general report was prepared by Alan Uzelac (Croatia). The national reporters were Christian Koller (Austria & Germany), Teresa A. A. Wambier (Brazil), Fu Yulin (China), David Chan & Peter C. H. Chan (Hong Kong), Miklós Kengyel (Hungary), Elisabetta Silvestri (Italy), Remco van Rhee (Netherlands, Belgium & France), Inge Lorange Backer (Norway), Dmitry Nokhrin (Russia) and Richard L. Marcus (USA).

¹⁵ Alan Uzelac, *General Report*, in *Civil Procedure in Cross-cultural Dialogue: Eurasia Context*, *supra* n. 1, at 111–136. The reports deal with the following topics: goals of civil justice, matters within the scope of civil justice, protection of individual rights vs. protection of the public interest, establishing the facts of the case correctly vs. the need to provide effective protection of rights within an appropriate amount of time, proportionality between case and procedure, multi-party litigation and collective actions, equitable results vs. strict formalism, problem solving vs. case processing, freely available public service vs. quasi-commercial source of revenue for the public budget, and user orientation.

¹⁶ Uzelac, *supra* n. 15, at 116.

¹⁷ *Id.* at 117–120.

Several national reports underline the fact that the policy goals and reasons are in the forefront in uncontested (or extra-contentious) cases – *i.e.* cases where judges do not adjudicate disputes, but perform a more or less administrative function. The transfer of more or less ‘externalities’ to courts – from the regulation of family relations to the control of local elections – depends on the political choices of each state at a particular moment of its own history. Contrary to, for example, the Netherlands (report by Remco van Rhee), the share of non-contentious matters is apparently higher in Austria and Germany (report by Christian Koller) and Italy (report by Elisabetta Silvestri). The Brazilian and Italian reporters rightly underline the concerns of intensive court involvement in non-contested matters (reports by Teresa A. A. Wambier and Elisabetta Silvestri), which could potentially distract the judiciary’s attention from more pressing matters.

The national reports show that the tension between the approaches to civil justice focused on the protection of individual rights vs. the protection of the public interest, takes diverging forms. According to Marcus, the American civil justice not only takes on some essentially administrative tasks, it sometimes replaces state administration (report by Richard L. Marcus). It is therefore characterized by a judicialization of matters otherwise dealt with by state bureaucracies. In China, the consciousness of protection of public interest permeates civil justice (report by Fu Yulin). Accordingly, Chinese judges have a very large discretion to intervene for reasons of public interest into the parties’ disposition of their private rights. The Russian approach is closer to the ‘balance of private and public rights and interests’ (report by Dmitry Nokhrin).

One goal related to the protection of public interests plays an important role in almost all contemporary systems of civil justice: the goal of efficient and fair administration of justice, which the general reporter defines as the *intrinsic* goal of civil justice. Active case management should be in the function of swift, streamlined, and inexpensive proceedings, foreseeable timing of the procedure, and prevention of abuse and delaying behavior of the parties (a poignant example is Hong Kong, report by David Chan & Peter C. H. Chan). In cases in which public interest elements are recognized, about half of the reported legal systems allow the participation or intervention in civil proceedings by a state prosecutor acting on the side of trans-individual interests (China, Russia, France, Brazil, the Netherlands, Germany and Austria).

Another topic of this chapter deals with the proportionality between case and procedure. Although in most countries some proportionality is aimed by channeling small claims to special courts or special summary proceedings, the general report surprisingly reveals that most civil law systems have an inclination to focus on the resolution of a large number of average and small cases, instead of targeting exemplary and social significant cases (a notable example is Italy, report by Elisabetta Silvestri). In other words, the goal of the system is first to survive the influx of cases, and only secondarily to produce high-quality justice. In such a situation, it is not

surprising that separate and out-of-court mechanisms are gaining momentum, such as arbitration that is taking over the primacy in dispute resolution of complex and valuable international commercial cases.

The general report also discusses the inclination towards substantive justice vs. formal legality, a shift from problem solving (*i.e.* finding adequate solutions to the problems underlying the disputes) to case management (*i.e.* efficiently processing cases within their jurisdiction, engaging the least effort and expense), and a trend towards the commercialization of civil justice (abandoning the idea that civil justice is a freely available public service). Finally, attention is paid to the unanswered question, if civil justice serves the interests of its users or if its users serve the interests of civil justice.

3. Civil procedural systems: pros and cons¹⁸

The third chapter starts from the following enquiries: what kind of civil procedural systems exist in the contemporary world? Is it still important and does it make any sense to distinguish opposite procedural systems? Could we propose any other classification than civil law vs. common law? Do we have any new criteria? What is the role of legal culture in the contemporary civil procedure?

In his general report, Maleshin goes to the essence of the conference and the book: discussing culture as one of the shaping factors of civil procedure.¹⁹ Although legal systems are converging and procedural diversity is diminishing, he states that cultural diversity continues to be one of the most crucial factors that differentiates one procedural system from another. The frontier is not lying in the field of legislation or doctrine, but in the area of day to day practice and legal culture, in other words in the 'spirit of law.'

Maleshin starts from the traditional classification of civil law (*i.e.* codified systems) vs. common law (*i.e.* systems based on precedents), while recognizing that there are also mixed jurisdictions (Japan, China, and the Philippines). However, he considers this distinction outdated and puts forward culture as the main criterion for classification of procedural systems: 'dispute resolution is a reflection of culture in which it is embedded: it reflects and expresses its metaphysics, values, psychological imperatives, histories, economics, and political and social organization. Western society is litigation-oriented. In contrast, traditional and collectivistic societies do not use formal dispute resolution. They prefer conciliation or mediation by moral or

¹⁸ The general report was prepared by Dmitry Maleshin (Russia). The national reporters were David N. Bamford (Australia), Teresa A. A. Wambier (Brazil), Margaret Woo (China), Chiara Besso (Italy), Viktória Harsági (Hungary), Serban Vacarelu (Romania), Daniel van Loggerenberg & André Boraine (South Africa), Murat Ozsunay (Turkey) and Jeffrey E. Thomas (USA).

¹⁹ Dmitry Maleshin, *General Report*, in *Civil Procedure in Cross-cultural Dialogue: Eurasia Context*, *supra* n. 1, at 235–244.

divine authority.' He illustrates this by referring to the similarities of the Japanese and German legal system, both having their roots in the German Code of Civil Procedure of 1877. Nevertheless, law in Japan is less effective in social regulation than non-legal mechanisms. The latter discourage antisocial conduct more effectively than any legal system. The Japanese tradition of emphasizing the ascendancy of the group interest over the individual interests of its members takes its root from the Confucian thought. Although this theory reveals great insight into the analysis of law and legal systems, it may prove very difficult to classify Germany and Japan in different procedural traditions.

The national reports contain other examples. The recent governmental reforms in China have the goal to stabilize society and are based on the ideas of 'using mediation whenever possible, using adjudication whenever appropriate, and combining mediation with adjudication' because the courts are unable to constrain social discord (report by Margaret Woo). South African civil procedure is of common law origin, but also largely influenced by local African culture, which is reflected in the constant pressure to comply in order to meet the changing needs of society (report by Daniel van Loggerenberg & André Boraine). Hungarian civil procedure reflects a strange multi-layer culture (report by Viktória Harsági). In that same vein, the American reporter explains that the uniqueness of some exceptional US procedural features have their roots in culture: 'why is the US so committed to the jury system when other common law countries are not? It is because of the deep cultural suspicion that Americans have for the government. The jury system was a mechanism to counterbalance the power of the British government' (report by Jeffrey E. Thomas). The general reporter also illustrates this point by referring to the Russian legal system. Russian civil procedure is a unique system with exceptional features not existing in civil or common law. 'The tasks of the modern Russian legislator are to conduct detailed research about the moral ideas of the Russian citizens and to create rules of law which reflect the demands of both the society as a whole and its individual members. The Russian law should take into account both individualistic and collectivistic traditions, as well as ideas and moral views that exist in the Russian society. This means that in the process of legal regulation, a "golden mean" between two moral traditions should be found.'²⁰

Based on this, Maleshin puts forward a new classification of civil procedural systems: collectivistic vs. individualistic, both corresponding with two widespread cultural models. The latter based on individualism, the former on collectivism. In collectivism, the law aims to protect the interests of society as a whole and to achieve common goals, while in individualism the law primarily protects the interests of individual members of society.²¹

²⁰ Maleshin, *supra* n. 19, at 243.

²¹ *Id.* at 244.

4. Harmonization of civil procedure law in Eurasia²²

The fourth chapter focuses on the integration of civil procedure in Eurasia: discussing the main differences and similarities of civil procedure in the Eurasia countries, and inquiring whether uniform rules and principles could be devised for the region.

In his general report, Yarkov approaches the issue of harmonization in the light of civil justice developments in the post-Soviet region.²³ Based on a comparative analysis of civil procedure legislation in the Eurasia countries of Kyrgyzstan, Russia, Slovenia and Ukraine, he lists multiple similarities and differences in order to detect common trends. This is done from three angles: common spheres and institutes of civil procedure, such as similarities of the models of civil procedure, organization of the judicial power, similarity of the sources of civil procedure, similarity of the principles of court organization and court procedure, similarity of evidentiary rules, and differentiation of court procedures and efforts towards their simplification. Secondly, current issues and specific institutes of civil procedure, like access to justice and the mechanism of public interest protection, approaches to organization of judicial acts enforcement, implementation of information technologies, and methods of alternative dispute resolution. Finally, he deals with the receptivity of the national legal system to harmonization. The third is undoubtedly the most interesting aspect in the general report.

It is clear from the outset that all jurisdictional systems of the Eurasian countries, as opposed to the opaque Soviet system, operate in a context of competition with each other. This rivalry leads to convergence and approximation of rules and procedures.

Yarkov points out that present distinctions among the systems of civil procedure in each country do not influence the common trends of development. This is caused by multiple factors. First, all legal orders are based on common models of civil procedure. All countries of the post-Soviet region are to some extent influenced by the German legal tradition of civil legal procedure mixed with the traditions of the so-called 'socialist' law in varying degrees. Second, there is the continuity of some Soviet law institutes. Although the influence of the former USSR legislation displays variously in all countries concerned, it undoubtedly left a significant mark on the application and development of a number of procedural institutes. And finally, there are Yarkov detects similar directions of the gradual reforms of procedural legislation in all countries. These reforms are being carried out, *inter alia*, on the basis of adoption of experience from neighboring countries as well as aspiration to follow the world-wide trends in civil procedure development. However, there also seems to be some obstacles to harmonization, for example the various geopolitical

²² The general report was prepared by Vladimir Yarkov (Russia). The national reporters were Azamat Saliev (Kyrgyzstan), Viktor Blazhev (Russia), Aleš Galič (Slovenia) and Vyacheslav Komarov (Ukraine).

²³ Vladimir Yarkov, *General Report*, in *Civil Procedure in Cross-cultural Dialogue: Eurasia Context*, *supra* n. 1, at 335–365.

positions and stages of involvement in economic globalization that affect both law as a whole and civil procedure in particular.²⁴

Nevertheless, the general reporter concludes, optimistically, that in spite of the different rates and directions of procedural law development in the Eurasian countries, the national legal orders have much in common – for example, with respect to the civil procedural model in general, sources of civil procedure and evidentiary rules – which can lead the pathway for further harmonization.²⁵

5. Cultural dimensions of group litigation²⁶

The fifth chapter deals with cultural dimensions of group litigation, discussing how culture influences the model of group litigation, and what kind of solutions exists in other countries than civil or common law.

In her detailed general report, Walker gives an overview of worldwide developments regarding group litigation.²⁷ She starts from the provocative question: who's afraid of US-style class actions?²⁸ While everyone, at least in principle, wants to develop better access to justice for victims of mass harms, some might not want to adopt US-style class actions in their legal systems.²⁹ This statement, of course, depends on the meaning of 'US-style.' To examine the precise nature of this argument, 11 national reporters were asked to address various aspects of the collective regimes

²⁴ Yarkov, *supra* n. 20, at 364–65.

²⁵ *Id.* at 365.

²⁶ The general report was prepared by Janet Walker (Canada) (*see also* Janet Walker, *Who's Afraid of U.S.-style Class Actions?*, 15 Sw. J. Int'l L. 509 (2012)). The national reporters were Vicki C. Waye & Vincenzo Morabito (Australia), Ada Pellegrini Grinover (Brazil), Stefaan Voet (Belgium) (*see also* Stefaan Voet, *Cultural Dimensions of Group Litigation: The Belgian Case*, 41 Ga. J. Int'l & Comp. L. 433 (2013)), Jasminka Kalajdzic (Canada), Rachael Mulheron (England & Wales), Elisabetta Silvestri (Italy), Helene van Lith (Netherlands), Dmitry Tumanov (Russia), Henrik Lindblom (Sweden), Javier Lopez Sanchez (Spain) and Dmitry Magonya (Russia).

²⁷ Janet Walker, *General Report*, in *Civil Procedure in Cross-cultural Dialogue: Eurasia Context*, *supra* n. 1, at 413–458. For another recent overview of worldwide developments on class actions, *see* Antonio Gidi, *The Recognition of U.S. Class Action Judgments Abroad*, 37 *Brook. J. Int'l L.* 893, 926–27 (2012); and *World Class Actions. A Guide to Group and Representative Actions around the Globe* (Paul G. Karlsgodt, ed.) (Oxford University Press 2012).

²⁸ This question is not new. *Cf.* Richard O. Faulk, *Armageddon Through Aggregation? The Use and Abuse of Class Actions in International Dispute Resolution*, 37(3) *Tort & Insurance L. J.* 999 (2002) (arguing that there are plenty of reasons to fear adoption of class action in civil-law countries); Antonio Gidi, *Class Actions in Brazil. A Model for Civil Law Countries*, 51 *Am. J. Comp. L.* 311, 322 (2003) (arguing that 'the civil-law class action proceeding is likely to fit in well with approaches, practices, habits, and attitudes peculiar to a civil-law system. There is thus no reason to fear class litigation in any country'). *See also* the recent European Recommendation on Collective Redress Mechanisms (*see* Elisabetta Silvestri, *Towards a Common Framework of Collective Redress in Europe? An Update on the Latest Initiatives of the European Commission*, 1 *RLJ* 46 (2013)).

²⁹ Walker, *supra* n. 27, at 413–414.

implemented or contemplated in their countries, and more specifically to comment on the applicability of these regimes with US-style class actions.³⁰ The reports are structured around 6 themes: the objectives of group litigation (access to justice, judicial economy, and/or behavior modification?), the issue of representation (who can/should represent the interests of the claimants?), the vital funding and financing problem, the available reliefs (injunctive vs. compensatory), court involvement, and the compatibility with US-style class actions.

There is considerable agreement among the national reports that the objectives of group litigation are to advance access to justice, judicial economy, and behavior modification. Access to justice has particular significance among common law regimes, in which claimants ordinarily must finance the prosecution of their claims. In civil law countries, the improvements in access to justice tend to be more closely related to easing the burden on courts whose dockets would otherwise be clogged by large numbers of individual matters that could be aggregated. Behavior modification is the most controversial of the objectives and there has been considerable debate in civil law and common law countries alike over the extent to which civil litigation undertaken by private persons should serve this function.

Important distinctions exist between the approaches taken in the various legal systems to representing claimants. In general, in the common law, there is a well-established tradition of individual claimants framing and prosecuting their own claims through class attorneys. In the civil law jurisdictions, ideological plaintiffs, such as community organizations or the government are thought to be better able to meet the challenges of protecting the interests of the class.

In the US, contingency fees are regarded as essential to the successful operation of class actions. In other, mainly civil law, countries they are still regarded with suspicion. Nevertheless, even in legal systems that once considered conditional fees as fundamentally unacceptable, their merit in the context of group litigation has prompted reforms to relax restrictions.

Management of class actions creates new challenges for common law and civil law courts alike. Common law courts must develop ways to address the adversarial void in which the interests of class counsel and defense counsel in gaining approval for settlements are aligned so that the court is deprived of the fundamental forensic benefits of the adversarial system. In civil law jurisdictions, the parties may insist on greater involvement in the process than might ordinarily be expected. The particular responsibilities assigned to the court reflect important assessments of judicial competence and the requirements for oversight of group litigation.

In her conclusion Walker states that the national reports make clear that the strong reaction that seemed routinely provoked by the discussion of US-style class actions in many international settings was strangely muted. One explanation for this could be that the hostility and anxiety was borne largely of ignorance.

³⁰ For this reason, there was no national report for the United States.

One of the core issues for most non-US observers is whether legal enforcement is ultimately an essentially entrepreneurial activity. According to Walker, this is neither clear in the civil law, nor in other parts of the common law world. The general reporter suggest a pragmatic solution: 'the only way to find the answers to these questions is to implement reform and observe the results . . . if entrepreneurship is an inevitable reality for effective legal enforcement, there is no need to lunge forward to embrace it – its necessity will eventually become apparent'³¹ (Canada and Australia are notable examples where this happened; reports by Vicki C. Waye/Vincenzo Morabito and Jasminka Kalajdzic).

The general report concludes that the Dutch Collective Settlements Act (which is a settlement-only class action, *see* the report by Helene van Lith) seems to be the solution that promises to inspire the most confidence and, possibly, the least fear among those who seem most afraid of US-style class actions.³² We do not think, however, that the Dutch system could be a model to any country for the reasons discussed in the book: this solution was created within a particular legal culture, that of the Dutch consensus-based, '*polder model*.' Transplanting it to other legal systems, based in an adversarial model will be challenging. Moreover, we have serious doubt whether this system would work even in the culture that created it.³³

6. Conclusion

This wonderful multifaceted conference book is an exceptional addition to international civil procedure scholarship, spearheaded for many decades by the International Association of Procedural Law. Its focus on the legal culture of Eurasia is original, novel, and vivid. Undoubtedly, it will influence scholarship and possible legal reform for the years to come.

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³¹ Walker, *supra* n. 27, at 457.

³² *Id.* at 458.

³³ See Gidi, *supra* n. 27, at 926–27.