Paper Title: Policy and Politics in Contract Law Reform in Japan

Name of Author 1 : Prof Luke Nottage  
Institutional Affiliation : University of Sydney  
Name of Author 2 : Prof Souichirou Kozuka  
Institutional Affiliation : Gakushuin University  

Proposed Program Stream: Law

Abstract  
Contract law reform in Japan started as an (ostensibly) academic project in 2006 and has been officially on the law reform agenda at the Legislative Council of the Ministry of Justice (MOJ) since October 2009. Despite the historic political turnover in September 2009, with the Democratic Party of Japan taking power after almost uninterrupted rule by the Liberal Democratic Party (LDP) since 1955, the principles of the private draft revisions derived from the lengthy academic project on contact law seem to have remained unchanged. The return to power of the LDP in December 2012 made little difference either. Apparently, contract law is too technical an agenda for political initiative to exert significant influence over. On the other hand, among legal professionals there has been much politicking over the contract law reform process. Experienced lawyers in practice—especially in small law firms—have opposed changing the contract law rules that they are familiar with, while professional bureaucrats at the MOJ have tried to produce some fruits of reform after many years of deliberations. Thus, this paper will suggest that contract law reform is largely unaffected by macro-politics but is quite strongly influenced by micro-politics.

Our paper explores this tension in the context of other law reform initiatives in Japan as well as abroad. There are significant parallels particularly with the European Union, where academic leadership coalesces with bureaucratic incentives to promote comprehensive contract law reforms, even when the legal profession and the business sector remain quite lukewarm. This comparative perspective also offers insights for the prospects of the Australian government’s discussion paper released in April 2012, investigating the pros and cons of various types of contract law in Australia.