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In 1983, Malcolm M. Feeley published a seminal book on criminal court reforms in the United States: *Court Reform on Trial: Why Simple Solutions Fail*.[1] Feeley presented his thesis through case studies of four planned innovations: bail reform, pretrial detention, sentence reform, and speedy trials. He theorized that "because our understanding of the courts is flawed and our expectations about what the courts can do are unrealistic, many innovations fail."[2] According to Feeley, some fail because reformers try to eliminate discretion by mistaking discretion for arbitrariness. Some are misdirected because reformers overreacted to horror stories when, in fact, the problem is fairly limited. Others are misconceived; they are merely responding to symbols of legal formalisms when they should be dealing with actual practices. Some strive to introduce reforms which are beyond capacities of the courts. At the time of its publication, Feeley's *Court Reform on Trial* was considered "one of the best statements of the policy science, legal effectiveness, and tradition within the sociology of law."[3] It has continued to inspire research on various areas of court reform in the United States today.[4] Is Feeley's analytical framework applicable to court reform outside the United

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[1] MALCOLM M. FEELEY, COURT REFORM ON TRIAL: WHY SIMPLE SOLUTIONS FAIL (1983). This book was republished in 2013 with a new introduction by Greg Berman. MALCOLM M. FEELEY, COURT REFORM ON TRIAL: WHY SIMPLE SOLUTIONS FAIL (2013).

[2] FEELEY, *supra* note 1, at xiv.

[3] Austin Sarat, *Courts and Court Reform: Which Appearances are the Most Deceiving? Review of Court Reform on Trial: Why Simple Solutions Fail by Malcolm Feeley*, 8 ALSA F. 454, 458 (1984) (book review).

[4] One of the most recent examples includes Alissa Pollitz Worden et al., *Court Reform: Why Simple Solutions Might Not Fail? A Case Study of Implementation of Counsel at First Appearance*, 14 OHIO ST. J. CRIM. L. 521, 522 (2017) ("We frame our inquiry around Malcolm Feeley's thesis that court reforms are more likely to fail than to succeed, and draw conclusions about the conditions under which such reforms are likely to be successful.").

States? This symposium issue is organized to tackle this question with cases from East Asia.

According to Feeley, the primary problem within American courts is that "the courts themselves have . . . fostered unrealistic expectations, and promoted bold but often empty solutions."[5] Such a problem arises because changes are often brought about by raised standards and increased attention from politicians, the press, and the scholarly community. The result is disillusionment and disappointment even when significant improvements are produced. In particular, Feeley emphasizes importance of attention to the fragmentation of the American criminal court in its organization, operations, and goals.[6] The American courts are arenas in which a range of competing and conflicting interests collide: "[j]udges, prosecutors, defense attorneys, defendants, clerks, police officers, bailiffs, sheriffs, bondsmen, witnesses, and all the others . . . pursue distinctly different interests and purposes and may understand their participation in the process in entirely different ways."[7] Such fragmentation appears to make coherent implementation of introduced reforms particularly difficult. Planned changes in the American court often fail because innovators do not understand these characteristics of fragmentation of the court.

Feeley identified the following five stages of planned change[8]:

1. *Diagnosis or Conception:* "[t]he process of identifying problems and considering solutions . . . Different perspectives lead people to identify different problems and suggest different remedies."

2. *Initiation:* "[n]ew functions are added or practices are significantly altered. This stage requires several decisions: (1) Which of several alternatives will be adopted? (2) How will the problems be financed? (3) Where will the program be located?"

3. *Implementation:* "[i]nvolves staffing, clarifying goals, and adapting to a new environment."

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5 FEELEY, *supra* note 1, at xiii.
6 *Id.* at 9.
7 *Id.* 9–10.
8 *Id.* at 35–37.

> 4. *Routinization:* "[i]nvolves commitment by an institution to supply funding and a physical base of operations. Ultimately, the success of an innovation must be judged by how it performs under this routine rather than under its initial conditions."
>
> 5. *Evaluation:* "[n]ew programs are usually assessed during their experimental (the first three) stages rather than their routine periods (the fourth stage) . . . it tells us next to nothing about whether it *will* work."

In the four cases Feeley analyzed, fragmentation seems to have worked most strongly at the stages of *implementation* and *routinization*. In those stages, fragmentation produced a result contrary to the result expected by those who had diagnosed the status quo and initiated the given reform.[9]

Feeley further mentioned several characteristics of "the context of change." On the one hand, Feeley found the following characteristics which promote planned change:[10]

1. Highly trained professionals who perform complex tasks.

2. Diffused and flexible authority, rather than centralized authority.

3. Ambiguous duties, rather than duties formally codified in detail.

4. Flexible roles and mobility, rather than rigid roles.

On the other hand, Feeley identified the following two factors that discourage innovation:[11]

1. Higher volume of production increases the need for established routine and lowers the incentive to change.

2. Greater emphasis on efficiency increases the likelihood that program change will be discouraged.

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[9] *Id.* at 36–37.
[10] *Id*. at 37–38.
[11] *Id.* at 38.

In relation to these innovation-impeding factors, Feeley observed that "courts also are enmeshed in a web of rules that can be and often are inimical to change. Those comfortable with current practices selectively invoke these rules to impede change."[12] This would require reformers to introduce new rules specifically designed to facilitate implementation of the planned reforms.

So, what was Feeley's proposed solution for reforms in the American courts? Instead of bold reforms conceived and initiated from outside the judiciary, Feeley proposed that courts should introduce reforms by themselves, and posited that litigation would be the main source of such changes. Feeley argued that litigation is well suited to pursue change in complex institutions because "[i]t is problem specific . . . [i]t is ameliorative . . . [i]t is incremental . . . [a]nd litigation is relatively inexpensive."[13] Feeley warned that "litigation is not a recipe for success," but he still argued that "litigation is especially suited to pursuing changes in the *legal* process. Here the courts are on their home territory."[14] This argument might remind us about his later research on prison reforms through judicial policy making in the United States,[15] while observers of the East Asian judicial system, particularly those with interest in the independence of individual judges in East Asia, may wonder whether they could have similar expectations to the courts.[16]

So, is Feeley's analytical framework applicable to court reform outside the United States? Will cases outside the United States require any modifications to his analytical framework so that it will become more generally applicable? Is litigation preferable to legislation as a vehicle for court reform in countries other than the United States? East Asia offers an ideal context for wrestling with these questions because the region recently introduced very ambitious steps toward court reform.[17]

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[12] *Id.*

[13] *Id.* at 214.

[14] *Id.* (emphasis in original).

[15] *See generally* MALCOLM M. FEELEY & EDWARD L. RUBIN, JUDICIAL POLICY MAKING AND THE MODERN STATE: HOW THE COURTS REFORMED AMERICA'S PRISONS (1998).

[16] On the independence of individual judges in Japan, *see generally* J. MARK RAMSEYER & ERIC B. RASMUSEN, MEASURING JUDICIAL INDEPENDENCE: THE POLITICAL ECONOMY OF JUDGING IN JAPAN (2003); Mark A. Levin, *Civil Justice and the Constitution: Limits on Instrumental Judicial Administration in Japan*, 20 PAC. RIM. L. & POL'Y J. 265 (2011); Setsuo Miyazawa, *Administrative Control of Japanese Judges*, *in* LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY (Philip S.C. Lewis ed., 1994).

[17] For publications which cover East Asia as a whole, *see, e.g.*, LEGAL INNOVATIONS IN ASIA: JUDICIAL LAWMAKING AND THE INFLUENCE OF COMPARATIVE LAW (John O. Haley & Toshiko Takenaka eds., 2014); EAST ASIA'S RENEWED RESPECT FOR THE RULE OF LAW IN THE 21ST CENTURY: THE FUTURE

To discuss these questions, I organized a roundtable session titled "East Asian Court Reform on Trial" at the 2016 annual meeting of the Law and Society Association in New Orleans on June 2, 2016. Daniel H. Foote, Erik Herber, Mari Hirayama, Matthew J. Wilson, and Margaret Y.K. Woo responded to my call for participation, and Malcolm Feeley kindly agreed to participate as the discussant. Foote, Herber, Hirayama, and Wilson discussed cases from Japan, while Woo discussed cases from Mainland China. I presented my hypothesis about the process of criminal justice reform in East Asian countries in the following way in the program book:

> It may be the case in East Asian countries, for instance, that the process of policy making and policy implementation is strongly controlled by the players in the status quo from the very beginning, so that only those reforms which are acceptable to such players are likely to be introduced, implementation is tightly and carefully managed by them, and the introduced reform becomes highly routinized with a result than can be evaluated by the status quo as a success.[18]

The discussion was lively, and it seemed only natural to share it with a wider audience through publication. However, having papers on only two countries was obviously too narrow for a symposium with East Asia in its title. I wanted to add papers which covered at least South Korea and Taiwan as well. Fortunately, Yong Chul Park agreed to write a paper on South Korea, while Kai-Ping Su responded to request for a paper on Taiwan. Hirayama then agreed to turn her presentation into a paper co-authored with me.

Thus, this symposium issue has seven articles, with four on Japan, and one each for South Korea, Taiwan, and Mainland China. The articles are presented in the following order:

> Daniel H. Foote, *Diversification of the Japanese Judiciary*
>
> Matthew J. Wilson, *Assessing the Direct and Indirect Impact of Citizen Participation in Serious Criminal Trials in Japan*

OF LEGAL AND JUDICIAL LANDSCAPES IN EAST ASIA (Setsuo Miyazawa et al. eds., 2015). *See also* issues of the ASIAN J.L. & SOC'Y.

[18] Printed Program, Law & Soc'y Ass'n 23 (June 2, 2016) http://www.lawandsociety.org/NewOrleans2016/docs/2016_Program.pdf.

Erik Herber, *Victim Participation in Japan*

Setsuo Miyazawa and Mari Hirayama, *Introduction of Videotaping of Interrogations and the Lessons of the Imaichi Case: A Case of Conventional Criminal Justice Policy-Making in Japan*

Yong Chul Park, *Advance Toward "People's Court" in South Korea*

Kai-Ping Su, *Criminal Court Reform in Taiwan: A Case of Fragmented Reform in a Not-Fragmented Court System*

Margaret Y.K. Woo, *Court Reform with Chinese Characteristics*

Each article begins with a summary of Feeley's analytical framework, and each author differs slightly in his or her understanding of Feeley's analysis. Such differences reflect the richness of Feeley's original analysis.

This symposium concludes with a contribution from Feeley that comments on these papers. His comments will help us generate an analytical framework that goes beyond the United States and is applicable to East Asian countries. I hope that this symposium issue will stimulate interest in court reform processes in other parts of the world, so that we will eventually have an internationally applicable analytical framework for court reform.