1. Cultural Law: An Introduction

A. The Cultural Dimension of the Legal Process

Legal issues may lead multiple lives. They can be political, economic, social, historical, or cultural. Normally, the particular classification of an issue, in the abstract, is not so important. What is important, however, is to understand how a particular nonlegal dimension may condition the analysis of an issue and the appropriate response to it. Gaining this understanding is a matter not only of viewpoint or specialized information but also of professional skill. It is a skill that is best acquired by gaining a comprehensive understanding of the manifold ways in which a particular dimension of human experience – for our purposes, the cultural dimension – affects the legal process.

The first two chapters in this book address the problem of cultural conflict, the interaction of culture and law, a working definition of cultural law, and the characteristics of both culture and law. The remaining chapters examine the interaction of culture and law in specific contexts of cultural expressions, practices, and activities such as art, traditional knowledge, sports, and religion.

We begin this chapter by considering how the cultural dimension of legal issues in both private sectors and public sectors, including the principle of cultural diversity, may be significant in dispute resolution and ordinary legal discourse. The examples are neither definitive nor comprehensive, but only suggestive. The chapter concludes by broadly defining the discipline of cultural law as a set of relationships.

1. Dispute Resolution amid Cultural Diversity

YAHOO!, INC. v. LA LIGUE CONTRE LE RACISME ET L'ANTISEMITISME
169 F. Supp. 2d 1181 (N.D. Cal. 2001),
rev'd on other grounds and remanded, 433 F.3d 1199 (9th Cir. 2006)

Defendants La Ligue Contre Le Racisme Et L'Antisemitisme ("LICRA") and L'Union Des Etudiants Juifs De France, citizens of France, are non-profit organizations dedicated to eliminating anti-Semitism. Plaintiff Yahoo!, Inc. ("Yahoo!") is a corporation organized under the laws of Delaware with its principal place of business in Santa Clara, California. Yahoo! is an Internet[1] service provider that operates various Internet

[1] The Internet and World Wide Web are distinct entities, but for the sake of simplicity, the Court will refer to them collectively as the Internet. In general, the Internet is a decentralized networking system that

websites and services that any computer user can access at the Uniform Resource Locator ("URL") http://www.yahoo.com. Yahoo! services ending in the suffix, ".com," without an associated country code as a prefix or extension (collectively, "Yahoo!'s U.S. Services") use the English language and target users who are residents of, utilize servers based in, and operate under the laws of the United States. Yahoo! subsidiary corporations operate regional Yahoo! sites and services in twenty other nations, including, for example, Yahoo! France, Yahoo! India, and Yahoo! Spain. Each of these regional web sites contains the host nation's unique two-letter code as either a prefix or a suffix in its URL (e.g., Yahoo! France is found at http://www.yahoo.fr and Yahoo! Korea at http://www.yahoo.kr). Yahoo!'s regional sites use the local region's primary language, target the local citizenry, and operate under local laws.

Yahoo! provides a variety of means by which people from all over the world can communicate and interact with one another over the Internet. Examples include an Internet search engine, e-mail, an automated auction site, personal web page hostings, shopping services, chat rooms, and a listing of clubs that individuals can create or join. Any computer user with Internet access is able to post materials on many of these Yahoo! sites, which in turn are instantly accessible by anyone who logs on to Yahoo!'s Internet sites. As relevant here, Yahoo!'s auction site allows anyone to post an item for sale and solicit bids from any computer user from around the globe. Yahoo! records when a posting is made and after the requisite time period lapses sends an e-mail notification to the highest bidder and seller with their respective contact information. Yahoo! is never a party to a transaction, and the buyer and seller are responsible for arranging privately for payment and shipment of goods. Yahoo! monitors the transaction through limited regulation by prohibiting particular items from being sold (such as stolen goods, body parts, prescription and illegal drugs, weapons, and goods violating U.S. copyright laws or the Iranian and Cuban embargos) and by providing a rating system through which buyers and sellers have their transactional behavior evaluated for the benefit of future consumers. Yahoo! informs auction sellers that they must comply with Yahoo!'s policies and may not offer items to buyers in jurisdictions in which the sale of such item violates the jurisdiction's applicable laws. Yahoo! does not actively regulate the content of each posting, and individuals are able to post, and have in fact posted, highly offensive matter, including Nazi-related propaganda and Third Reich memorabilia, on Yahoo!'s auction sites.

On or about April 5, 2000, LICRA sent a "cease and desist" letter to Yahoo!'s Santa Clara headquarters informing Yahoo! that the sale of Nazi[-] and Third Reich[–]related goods through its auction services violates French law. LICRA threatened to take legal action unless Yahoo! took steps to prevent such sales within eight days. Defendants subsequently utilized the United States Marshal's Office to serve Yahoo! with process

links computers and computer networks around the world. The World Wide Web is a publishing forum consisting of millions of individual Web sites that contain a wide variety of content.

in California and filed a civil complaint against Yahoo! in the Tribunal de Grande Instance de Paris (the "French Court").

The French Court found that approximately 1,000 Nazi[-] and Third Reich[–]related objects, including Adolf Hitler's *Mein Kampf*, *The Protocol of the Elders of Zion* (an infamous anti-Semitic report produced by the Czarist secret police in the early 1900s), and purported "evidence" that the gas chambers of the Holocaust did not exist were being offered for sale on Yahoo.com's auction site. Because any French citizen is able to access these materials on Yahoo.com directly or through a link on Yahoo.fr, the French Court concluded that the Yahoo.com auction site violates Section R645–1 of the French Criminal Code, which prohibits exhibition of Nazi propaganda and artifacts for sale.[2]

On May 20, 2000, the French Court entered an order requiring Yahoo! to (1) eliminate French citizens' access to any material on the Yahoo.com auction site that offers for sale any Nazi objects, relics, insignia, emblems, and flags; (2) eliminate French citizens' access to web pages on Yahoo.com displaying text, extracts, or quotations from *Mein Kampf* and *Protocol of the Elders of Zion*; (3) post a warning to French citizens on Yahoo.fr that any search through Yahoo.com may lead to sites containing material prohibited by Section R645–1 of the French Criminal Code, and that such viewing of the prohibited material may result in legal action against the Internet user; (4) remove from all browser directories accessible in the French Republic index headings entitled "negationists" and from all hypertext links the equation of "negationists" under the heading "Holocaust." The order subjects Yahoo! to a penalty of 100,000 Euros for each day that it fails to comply with the order. The order concludes:

> We order the Company YAHOO! Inc. to take all necessary measures to dissuade and render impossible any access via Yahoo.com to the Nazi artifact auction service and to any other site or service that may be construed as constituting an apology for Nazism or a contesting of Nazi crimes.

Yahoo! asked the French Court to reconsider the terms of the order, claiming that although it easily could post the required warning on Yahoo.fr, compliance with the order's requirements with respect to Yahoo.com was technologically impossible. The French Court sought expert opinion on the matter and on November 20, 2000, "reaffirmed" its order of May 22. The French Court ordered Yahoo! to comply with the May 22 order within three (3) months or face a penalty of 100,000 Francs (approximately US$13,300) for each day of non-compliance. [The confusion of francs and euros in this opinion reflects a transition from the national to the regional currency during the course of the litigation. – *Eds.*] The French Court also provided that penalties assessed against Yahoo! Inc. may not be collected from Yahoo! France. Defendants again utilized the United States Marshal's Office to serve Yahoo! in California with the French Order.

[2] French law also prohibits purchase or possession of such matter within France.

Yahoo! subsequently posted the required warning and prohibited postings in violation of Section R645–1 of the French Criminal Code from appearing on Yahoo.fr. Yahoo! also amended the auction policy of Yahoo.com to prohibit individuals from auctioning:

> Any item that promotes, glorifies, or is directly associated with groups or individuals known principally for hateful or violent positions or acts, such as Nazis or the Ku Klux Klan. Official government-issue stamps and coins are not prohibited under this policy. Expressive media, such as books and films, may be subject to more permissive standards as determined by Yahoo! in its sole discretion.

Yahoo Auction Guidelines (visited Oct. 23, 2001) <http://user.auctions.Yahoo.com/html/guidelines.html>. Notwithstanding these actions, the Yahoo.com auction site still offers certain items for sale (such as stamps, coins, and a copy of *Mein Kampf*) which appear to violate the French Order. While Yahoo! has removed the *Protocol of the Elders of Zion* from its auction site, it has not prevented access to numerous other sites which reasonably "may be construed as constituting an apology for Nazism or a contesting of Nazi crimes."[3]

Yahoo! claims that because it lacks the technology to block French citizens from accessing the Yahoo.com auction site to view materials which violate the French Order or from accessing other Nazi-based content of websites on Yahoo.com, it cannot comply with the French order without banning Nazi-related material from Yahoo.com altogether. Yahoo! contends that such a ban would infringe impermissibly upon its rights under the First Amendment to the United States Constitution. Accordingly, Yahoo! filed a complaint in this Court seeking a declaratory judgment that the French Court's orders are neither cognizable nor enforceable under the laws of the United States.

Defendants immediately moved to dismiss on the basis that this Court lacks personal jurisdiction over them. That motion was denied.[4] . . .

As this Court and others have observed, the instant case presents novel and important issues arising from the global reach of the Internet. Indeed, the specific facts of this case implicate issues of policy, politics, and culture that are beyond the purview of one nation's judiciary. Thus it is critical that the Court define at the outset what is and is not at stake in the present proceeding.

This case is *not* about the moral acceptability of promoting the symbols or propaganda of Nazism. Most would agree that such acts are profoundly offensive. By any reasonable standard of morality, the Nazis were responsible for one of the worst displays of inhumanity in recorded history. This Court is acutely mindful of the emotional pain reminders of the Nazi era

[3] The Court also takes judicial notice that on October 24, 2001, a search on Yahoo.com of "Jewish conspiracy" produced 3,070 sites, the search "Protocols/10 Zion" produced 3,560 sites, and the search "Holocaust /5 'did not happen,'" produced 821 sites. The search "National Socialist Party" led to a Web site of an organization promoting modern-day Nazism.

[4] *See* Yahoo!, Inc. v. La Ligue Contra Le Racisme et L'Antisemitisme, 145 F. Supp. 2d 1168 (N.D. Cal. 2001).

cause to Holocaust survivors and deeply respectful of the motivations of the French Republic in enacting the underlying statutes and of the defendant organizations in seeking relief under those statutes. Vigilance is the key to preventing atrocities such as the Holocaust from occurring again.

Nor is this case about the right of France or any other nation to determine its own law and social policies. A basic function of a sovereign state is to determine by law what forms of speech and conduct are acceptable within its borders. In this instance, as a nation whose citizens suffered the effects of Nazism in ways that are incomprehensible to most Americans, France clearly has the right to enact and enforce laws such as those relied upon by the French Court here.[5]

What *is* at issue here is whether it is consistent with the Constitution and laws of the United States for another nation to regulate speech by a United States resident within the United States on the basis that such speech can be accessed by Internet users in that nation. In a world in which ideas and information transcend borders and the Internet in particular renders the physical distance between speaker and audience virtually meaningless, the implications of this question go far beyond the facts of this case. The modern world is home to widely varied cultures with radically divergent value systems. There is little doubt that Internet users in the United States routinely engage in speech that violates, for example, China's laws against religious expression, the laws of various nations against advocacy of gender equality or homosexuality, or even the United Kingdom's restrictions on freedom of the press. If the government or another party in one of these sovereign nations were to seek enforcement of such laws against Yahoo! or another U.S.-based Internet service provider, what principles should guide the court's analysis?

The Court has stated that it must and will decide this case in accordance with the Constitution and laws of the United States. It recognizes that in so doing, it necessarily adopts certain value judgments embedded in those enactments, including the fundamental judgment expressed in the First Amendment that it is preferable to permit the non-violent expression of offensive viewpoints rather than to impose viewpoint-based governmental regulation upon speech. The government and people of France have made a different judgment based upon their own experience. In undertaking its inquiry as to the proper application of the laws of the United States, the Court intends no disrespect for that judgment or for the experience that has informed it.

. . .

No legal judgment has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. 28 U.S.C. § 1738. However, the United States Constitution and implementing legislation require that full faith and credit be given to judgments of sister states, territories, and

[5] In particular, there is no doubt that France may and will continue to ban the purchase and possession within its borders of Nazi[-] and Third Reich[–]related matter and to seek criminal sanctions against those who violate the law.

possessions of the United States. U.S. CONST. art. IV, §§ 1, cl. 1; 28 U.S.C. § 1738. The extent to which the United States, or any state, honors the judicial decrees of foreign nations is a matter of choice, governed by "the comity of nations." *Hilton v. Guyot*, 159 U.S. 113, 163, 16 S. Ct. 139, 40 L. Ed. 95 (1895). Comity "is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other." *Hilton*, 159 U.S. at 163–64, 16 S. Ct. 139 (1895). United States courts generally recognize foreign judgments and decrees unless enforcement would be prejudicial or contrary to the country's interests. *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017, 92 S. Ct. 1294, 31 L. Ed. 2d 479 (1972); *Laker Airways v. Sabena Belgian World Airlines*, 731 F.2d 909, 931 (D.C. Cir. 1984) ("[T]he court is not required to give effect to foreign judicial proceedings grounded on policies which do violence to its own fundamental interests."); *Tahan v. Hodgson*, 662 F.2d 862, 864 (D.C. Cir. 1981) ("[R]equirements for enforcement of a foreign judgment expressed in *Hilton* are that . . . the original claim not violate American public policy . . . that it not be repugnant to fundamental notions of what is decent and just in the State where enforcement is sought").

As discussed previously, the French order's content and viewpoint-based regulation of the web pages and auction site on Yahoo.com, while entitled to great deference as an articulation of French law, clearly would be inconsistent with the First Amendment if mandated by a court in the United States. What makes this case uniquely challenging is that the Internet in effect allows one to speak in more than one place at the same time. Although France has the sovereign right to regulate what speech is permissible in France, this Court may not enforce a foreign order that violates the protections of the United States Constitution by chilling protected speech that occurs simultaneously within our borders. *See, e.g.*, *Matusevitch v. Telnikoff*, 877 F. Supp. 1, 4 (D.D.C. 1995) (declining to enforce a British libel judgment because British libel standards "deprive the plaintiff of his constitutional rights"); *Bachchan v. India Abroad Publications, Inc.*, 154 Misc. 2d 228, 585 N.Y.S.2d 661 (Sup. Ct. 1992) (declining to enforce a British libel judgment because of its "chilling effect" on the First Amendment); *see also Abdullah v. Sheridan Square Press, Inc.*, No. 93 Civ. 2515, 1994 WL 419847 (S.D.N.Y. May 4, 1994) (dismissing a libel claim brought under English law because "establishment of a claim for libel under the British law of defamation would be antithetical to the First Amendment protection accorded to the defendants"). The reason for limiting comity in this area is sound. "The protection to free speech and the press embodied in [the First] amendment would be seriously jeopardized by the entry of foreign [] judgments granted pursuant to standards deemed appropriate in [another country] but considered antithetical to the protections afforded the press by the U.S. Constitution." *Bachchan*, 585 N.Y.S.2d at 665. Absent a body of law that establishes international standards with respect to speech on the Internet and an appropriate treaty or legislation addressing enforcement of such standards to speech originating within the United States, the

principle of comity is outweighed by the Court's obligation to uphold the First Amendment.

. . .

In light of the Court's conclusion that enforcement of the French order by a United States court would be inconsistent with the First Amendment, the factual question of whether Yahoo! possesses the technology to comply with the order is immaterial. Even assuming for purposes of the present motion that Yahoo! does not possess such technology, compliance still would involve an impermissible restriction on speech.

Yahoo! seeks a declaration from this Court that the First Amendment precludes enforcement within the United States of a French order intended to regulate the content of its speech over the Internet. Yahoo! has shown that the French order is valid under the laws of France, that it may be enforced with retroactive penalties, and that the ongoing possibility of its enforcement in the United States chills Yahoo!'s First Amendment rights. Yahoo! also has shown that an actual controversy exists and that the threat to its constitutional rights is real and immediate. Defendants have failed to show the existence of a genuine issue of material fact or to identify any such issue the existence of which could be shown through further discovery. Accordingly, the motion for summary judgment will be granted. The Clerk shall enter judgment and close the file.

NOTES AND QUESTIONS

1. By a bare majority (6–5), the Ninth Circuit Court of Appeals reversed on procedural grounds the decision you have just read and remanded the case to the federal court for dismissal without prejudice. In a complicated set of opinions, three of the eleven judges sitting en banc in the case voted to reverse the lower court for a lack of personal jurisdiction and the three others for a lack of ripeness to adjudicate the case. 433 F.3d 1199 (9th Cir. 2006).
2. The case highlights the divergent views on freedom of speech (namely, Internet communications) between France, conditioned by its experience in the 1930s and 1940s, and the United States, under the First Amendment of its U.S. Constitution. As the court observed, "What makes this case uniquely challenging is that the Internet in effect allows one to speak in more than one place at the same time." The carefully written opinion in *Yahoo!, Inc.* confirms the essence of a cultural dimension in what otherwise might be a toss-up on the question of whether one legal system should enforce a judgment of another system that runs contrary to the enforcing system's public policy. Note in particular the court's acknowledgment that "[t]he modern world is home to widely varied cultures with radically divergent value systems. There is little doubt that Internet users in the United States routinely engage in speech that violates, for example, China's laws against religious expression, the laws of various nations against advocacy of gender equality or homosexuality, or even the United Kingdom's restrictions on freedom of the press." Note also the court's sensitivity to "the emotional pain reminders of the Nazi era cause to Holocaust survivors" and its deep respect of the motivations

that underlay the French statutes and the pursuit of relief under them that the defendants sought.

3. The court's discussion of the general principle of comity in international law is instructive, given the lack of international standards to resolve cultural tensions. But in the end, did comity play any role at all, or was it just nice-sounding rhetoric? Ultimately, the court held that "the principle of comity is outweighed by the court's obligation to uphold the First Amendment." Why?
4. During the same period as this litigation, France was vigorously promoting the drafting of what became the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression (2005) (Convention on Cultural Diversity), which we shall examine briefly in the discussion of culture as a human right later in this chapter and again in Chapter 4. Does the French court's decision to apply the statute at issue in *Yahoo!* seem to be an expression of cultural diversity? Indeed, does the statute itself bespeak a tolerance for cultural diversity? Should intolerance of certain behaviors (especially genocide and ethnic cleansing) and symbols (such as Nazi artifacts) be an exception to acceptance of cultural pluralism? To answer that question, the following commentary may be helpful:

> Cultural diversity proves to be an even more elusive concept [than culture], because every culture and interest group has its own unique definition. Constructive ambiguity in this area is at its apex. We must briefly delve into the definitional depths to structure meaning around the concept.
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> France, original proponent of the *exception culturelle* (cultural exception) to the traditional rules of free trade, interprets diversity as differences between national cultures. . . . The polar opposite view is espoused by the United States, in which diversity refers to the free flow of ideas and expressions – a distinctly nation-neutral (and audiovisual sector liberalizing) approach. Both approaches have intrinsic problems.
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> UNESCO (United Nations Educational, Scientific, and Cultural Organization) has struggled to reach consensus among its members on this issue and defines cultural diversity as "the manifold ways in which the cultures of groups and societies find expression." This approach creates its own set of problems. Chief among these is its emphasis on the various different means of expressions (a commoditized approach) rather than the differences between cultures (an anthropological/sociological approach).

Johnlee Scelba Curtis, *Culture and the Digital Copyright Chimera: Assessing the International Regulatory System of the Music Industry in Relation to Cultural Diversity*, 13 INT'L J. CULTURAL PROP. 59, 61 (2006).

Do you understand the diametrically opposed interpretations of cultural diversity between those of France and the United States, that framed the core issue in *Yahoo!, Inc.*? It is the French interpretation that motivates and defines the Convention on Cultural Diversity, thereby ensuring the convention's unacceptability within the cultural tradition of the United States.

5. Cultural differences abound in implementing intellectual property and privacy rights. Again, we find tension between French and American expectations:

> North American copyright law has a clause called "fair use," which allows writers to quote phrases here and there without permission from the copyright

> holder. It's minimal, but it's something. American copyright law also allows paraphrasing. . . .
>
> The French do not have fair use for unpublished material. Paraphrase has to be extremely loose. (There must be no echo of the original voice; the imagery and even the tone must be changed.) The French also have a law protecting "private life" – "a loi sur la vie privée" – which means that if you do not like what someone says about you, you can sue.

Hazel Rowley, *Point of Departure: Censorship in France*, 78 AM. SCHOLAR, Winter 2009, at 144. Cultural predilections about privacy are profound. Consider, on the one hand, the relaxed attitude of Europeans toward surveillance cameras and national identification cards and, on the other hand, the relaxed, anything-goes attitude of Americans toward Internet and broadcast communications. Are those attitudes shared across the Atlantic Ocean?

6. Taking account of the cultural diversity dilemma, as highlighted by the examples here, is there any point in trying to develop cross-cultural or international standards to promote, let alone govern, anything as ambiguous as cultural diversity?

David J. Przeracki, *"Working It Out": A Japanese Alternative to Fighting It Out*, 37 CLEV. ST. L. REV. 149 (1989)

In stark contrast to America's legal and cultural heritage, and essential to an understanding of contemporary Japan, is the recognition of the pervasive influence of Confucian philosophy on Japanese society from the earliest times. Best known for its moral philosophy, Confucianism "gives primary emphasis to the ethical meaning of *human relationships*, finding and grounding the moral in the divine transcendence." The relationships one has with others, if harmonious, lead to achievement of the basic Confucian virtue of *jen* (translated as compassion, human-heartedness, or "man-to-manness"). For the Japanese,

> [t]he spirit of harmony and concord [is] expressed in the virtue of *wa*. If people abided by *wa*, disputes would not arise. It is one's duty to avoid discord. *En* is the principle of social tie. The net effect of these two principles [constitutes the foundation of] . . . the Japanese [perspective]. Maintaining the relationship bound together by these two forces is the paramount concern.
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> [Watts, *Briefing the American Negotiator in Japan*, 16 INT'L LAW. 597, 600 (1982).]

Wa is the principle of harmony which the Japanese feel is a condition of one's being in any relationship, including contractual. Accordingly, *wa* may prevent discord in all activities.

Owing to simple Confucian principles, the Japanese are socialized to avoid interpersonal disputes in every realm, including social and business. The principles of *wa* and *en* are still practiced in contemporary Japan, as

evidenced in Japanese contract methodology and Japanese dispute resolution techniques, which are characterized by conciliation, less litigation, and very few lawyers.

It is worthy of reiteration that there exists no concept of right in Japanese society. Historically, the emphasis has been on duty, specifically, a duty to maintain harmonious relationships. As a consequence, the Japanese approach to dispute resolution reverses the order of practice in America; the Japanese strongly prefer extra-judicial, informal means as opposed to litigation. "When a dispute arises, the *relationship* functions as the dispute settling mechanism."

. . .

The procedure by which interpersonal settlements are made has been called "reconcilement." Reconcilement is described as "the process by which parties in the dispute confer with each other and reach a point at which they can come to terms and restore or create harmonious relationships." Japanese confidence in reconcilement is perhaps best exemplified in the "We Can Work It Out" clause which invariably appears at the end of Japanese contracts. The clause will typically take one of two forms:

> If in the future a dispute arises between the parties with regard to the [provisions] . . . stipulated in this contract, the parties will confer in good faith [*Sei-o o motte Kyogi Suru*].
>
> or
>
> . . . will settle [the dispute] harmoniously by consultation [*Kyogi Ni Yori emman Ni Kaiketsu Suru*].
>
> [D. Henderson, Conciliation and Japanese Law 194 (1965).]

The notion of reconcilement recalls the traditional idea that both parties are to blame when a conflict arises (*kenka ryoseibei*) because they both failed to maintain harmonious relations. It is, therefore, in the best interest of each party to settle the dispute privately.

A second level of dispute resolution in Japan is conciliation (*chotei*). Also rooted in Confucian philosophy, and first codified during the Tokugawa Shogunate, conciliation is now provided for in the Civil Conciliation Law of 1951. According to Article 1, "[t]he purpose of this law is to devise, by mutual concessions of the parties, solutions for disputes concerning civil matters, which are consistent with reason and befitting actual circumstances." The negotiations are conducted through a third party (a conciliator or a judge) or a committee. When a compromise is reached, the settlement is enforceable as if determined by a court.

Conciliation is very popular in Japan. Surveys conducted over a three-year period indicate that 80% of Japanese would seek settlement through conciliation. Only 20% would prefer settlement in court (after first attempting reconcilement). The Western practice of arbitration, however, is not very popular in Japan. The Japanese dislike arbitration because it