Judicial Reform and Introducing Information Technologies into Court Procedures in Japan

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1. Japanese Judicial System

Following Japan’s defeat in World War II, the legal system in the country underwent wholesale reform that was influenced by Anglo-American law during the occupation era. The modern judicial system in Japan was first organized in the late 19th Century after the Meiji Restoration of 1868, which ended the Tokugawa shogunate, restored imperial rule, and transformed the country into a modern Western-style state. Since the early Meiji government had aspirations toward an imperial monarchy (Ito 1906), constitutional law, civil code, criminal code, and other fundamentals of modern law were enacted under heavy influence from Prussian jurisprudence, and these elements formed a judicial system that was similar to that of the Prussian government.

Lawyers in the occupation forces serving at General Head Quarters under General Douglas MacArthur, however, tried to reform this monarchial type of judicial system into a democratic one soon after the occupation began (Oppler 1976). Based on doctrines provided in “MacArthur’s Notes,” Japan’s new constitutional law was drafted as a revision of the Constitution of the Empire of Japan (Meiji Constitution) and ratified on 3 November 1946 as the Constitution of Japan. New constitutional law clearly stipulated the introduction of democratic government in Japan, and all legal, judicial and political systems were required to conform to the democratic provisions in the new Constitution. Reform was extensive and covered rules and regulations such as the Code of Criminal Procedure as well as details such as the abolishment of court hats for judges. As a result of this reform during the occupation era, a
great many of the principals and procedures seen in the United States such as due process of law, the guarantee of human rights, the court’s judicial review over all laws and regulations, and merit selection for Justices of the Supreme Court were installed in Japan’s judicial system.

2. Why Reform Now?

Since the previously mentioned reform, the Japanese legal profession has continued to remain small in size for many years. Considering Japan’s economic growth and population expansion, the country has indeed been short of lawyers. In 1963, there were 6,932 practicing attorneys and 2,445 sitting judges in Japan. In 2000, these numbers were at 16,852 and 2,881, respectively.

As a result of this, many people believe that the current judicial system is totally incapable of meeting the legal demands of the 21st Century. In fact there are many “zero or one” cities, and people often have a hard time finding an attorney in rural areas. Even in large cities, people feel it is hard for ordinary citizens to gain access to justice, and only 20 percent of people consult an attorney when they have legal questions [Supreme Court of Japan 2000]. Compared to democratic European nations and the United States, Japan’s ratio of attorneys per capita is extremely low.6

![Figure 1. Number of Practicing Attorneys, 1950-1999.](image-url)
Meanwhile, the Federation of Economic Organizations (Keidanren), one of the most influential organizations that represents business and industrial interests, and the Liberal Democratic Party (Jiyu Minshu To) [LDP], Japan’s ruling conservative party, as well as other influential players in the political and economic arena have also criticized the Japanese judicial system.

Once again, the time for reform and revamping of Japan’s judicial system has arrived. Japan is currently attempting to dramatically reform its judicial system as part of the governmental and administrative reforms that were kicked off by the Hashimoto administration (1996-1998). In 1999, the Judicial Reform Council was established under the Cabinet to examine Japan’s judicial system which will play a key supportive role in the 21st century. On June 12, 2001, the Council released an opinion paper. It proposed wholesale reform of the current Japanese legal and judicial system, including the establishment of graduate law schools, a substantial increase in the number of legal professionals, and the participation of citizens in criminal trials by introducing a “quasi-jury” system. Reconsideration of provisions stipulated in the Juvenile law that protect the criminally accused and suspects under 18 years of age, reforming the long-entrenched career system of judges, and other issues were also set to go under discussion.

More important, the Council stated that information technologies should be introduced into court procedures as soon as possible in order to allow people to use judicial services more easily and conveniently. The Supreme Court of Japan, which has jurisdiction over judicial administration for all lower courts, announced an action plan to execute the Council’s proposal.

This reform will have a substantial impact not only on Japanese citizens, but also on non-Japanese people due to the increasing number of foreign nationals and overseas firms that become involved in the Japanese legal system in one form or the other.

3. Information Technologies in Courts

Japanese courts have remained behind the times when it comes to information technologies. Most procedures have been carried out on paper for many years, and the rate of computerization did not increase until the late 1980’s. In 1995, the average number of court clerks who shared one PC was more than twenty, and many of them used word processing machines to draw up legal documents instead of
using a computer. In 1998, this figure was still at the several-clerks-per-one-PC level. The administrative branch of the Supreme Court in Japan has tried to catch up with the times though, and budget amounts for establishing court networks, developing information systems that support/assist court clerks, and improving the PC environment have been increased.

![Budget (JP Yen)](chart)

Figure 2. Annual budget for improving the PC environment in all courts 1995-1999.

By the early of 2002, they have developed the information technologies in Japanese courts as follows:

# PCs to all judges and law clerks.
# Shared trial date management between judges and court clerks in each trial section of the court.
# Development of processing systems for real estate execution cases and bankruptcy cases.
# Support system for court clerks who handle a lot of paper work in civil cases.
# Introduction of a video (television) conferencing system in civil procedures.
Expert opinion procedures conducted via videoconferencing with 12 national universities.

Examination of witnesses using a remote video link system in criminal procedures.

Immediate translation of documents written in shorthand using PCs.

Under the action plan to execute the Council’s proposal, the Supreme Court must go on endorsing the computerization of court-related business. These information technologies will facilitate judicial reform. For instance, there have been an increasing number of court cases involving medical suits, and malpractice or negligence on the part of doctors has increased the need for expert witnesses. However, many engaged in the medical profession do not wish to appear in the courtroom because they are often so busy that giving evidence for trial is a hard burden that offers little reward. A videoconferencing system will therefore lighten the burden on expert witnesses. Currently, this system connects courts in Japan with the remote television conferencing systems of 12 major national universities, and enables an expert witness to provide testimony from his/her workplace. In the near future, this system will be linked up with more and more medical universities and medical institutions.

Meanwhile remote systems will carry a more important role in court procedures. Attorneys hired by the plaintiffs and defendants will be able to state their oral arguments at their offices using a teleconferencing system. They can also submit documentary evidence to the court from their offices via the Internet. The worsening of public safety in the country may also result in an increased need for remote interrogation of suspects in jail in order to protect their personal security. In the most extreme case, a courtroom may consist of only a judge and the audience ---- the plaintiff, defendant, attorneys, and witnesses may all participate in the proceedings using a television system from outside the court building. The popularization of high-speed Internet connection technology that can transfer a large amount of data at a low cost such as xDSL will promote things in this direction. Court clerks and staff are busy dealing with an increasing number of court cases, and systems that support and assist them will lead to improvements in the operational efficiency of case management.

The Supreme Court is also trying to achieve its “e-court” plan. The plan is a vision of the courts of the future, and some of its components to be developed are currently under experimental use. The online procedures included in the e-court plan are aimed at shortening the period of trials (especially civil cases) via reduction of the work load on court clerks and employees. It includes:
Online application for legal aid services.

Electronic payment of court charges, fees and commissions (scheduled to be implemented in 2004).

Electronic certification.

Online summary procedure (scheduled to be implemented in 2005).

Electronic forwarding of court orders to execute real estate attachments.

Electronic forwarding of divorce decisions to public offices in cities, towns, and villages.

Online filing of motions into court dockets.

The Supreme Court and lower courts are also making efforts themselves to provide legal information to the public. The Court opened its website in 1996\textsuperscript{10}, and has posted recent court rulings online. The Court has also developed a database that covers all decisions since its foundation\textsuperscript{11}. Other lower courts meanwhile have developed databases that cover intellectual property cases\textsuperscript{12}. They are currently available via the Internet. These services are free of charge, however it is believed that they can coexist with some services offered by private companies\textsuperscript{13}, as in the United States where free Internet resources coexist with services provided by LEXIS and West-Law. Yet there still are no established rules or standards for citing such legal documents on the web.

4. Interim Conclusion

Judicial reform in Japan embodies several aspects, and its ultimate goal has been vague. It is doubtful that it can lead to improvements in allowing ordinary people to have access to justice, because the LDP and organizations representing economic and industrial interests can halt the reform once they have satisfied their immediate goals such as increasing the number of practicing attorneys and reducing the cost of law suits (Miyazawa 2001). In fact, the LDP has been against introducing juries into criminal tribunals because they can’t control the jury but the judicial branch. Implementing information technologies into court procedures however will undoubtedly improve
ordinary people’s access to justice, and will contribute to the realization of the “rule of law” in Japan in its true sense — not “rule by law,” or “rule by bureaucratic law.” Through the use of information technologies, more ordinary people will have the opportunity to be engaged in the legal and justice system, thereby increasing their interest in actual laws and court-related matters.

References


Shiho Seido Kaikaku Shingikai [Judicial Reform Council]. 2001. “Shiho Seido Kaikaku Shingikai...


Footnotes

1 Among the fundamental laws, only the first version of the civil code was drafted based on French legal principles. It was drawn up by G. E. Boissonade, an invited French civil law professor. Release of the draft caused a serious amount of struggle among people who were enthusiastic about Prussian law during the period 1889-1892. They argued that G. B. G. should be followed in enacting the Japanese Civil Code, and finally their opinion won out.

2 MacArthur made simple notes to illustrate his principal ideas such as continuing to have the Emperor be the “symbolic” head of Japan, abolition of war as a sovereign right even in times of self defense, and the abolishment of feudal institutions and systems, for the purpose of drafting a new Japanese constitution on 2 Feb 1946. He ordered his officers to immediately draft the new constitution according to his principal concepts. G. H. Q. finalized its draft in a week’s time, and delivered it to the Japanese government requesting them to compose a formal version of the draft for the new constitution at once.

3 The full text of the Meiji Constitution (1889) translated into English is available at: <http://www.service.emory.edu/HISTORY/RAVINA/1889_Constitution.html>.

4 The full text of the Constitution of Japan translated into English is available at: <http://list.room.ne.jp/~lawtext/1946C-English.html>.

5 A “zero or one city” means a city that has a Summary Court, a District Court or a local branch of such, but which has zero or only one practicing attorney in the jurisdiction covered. In 2000, approx. 60 cities had at least one court, but zero or only one practicing attorney. For the details of “zero or one city,” please see <http://www.nichibenren.or.jp/kasotai/menu01.htm>.

6 Compared to Asian countries, the ratio in Japan is not so low in fact. For example, Korea has only 4,300 practicing attorneys out of a total population of 46 million people (Kim 2001). A more serious problem is that practicing attorneys tend to be concentrated in large cities in Japan. In 2000, there were 7,786 attorneys engaged in the legal profession in Tokyo, while this figure was 2,368 in Osaka.

7 During his second administration (1997-1998), Prime Minister Ryutaro Hashimoto launched reforms in six major areas which consisted of: administration, fiscal structure, education, economic structure, monetary system,
and social welfare. Among them, Hashimoto proceeded with drastic reform of fiscal structure by creating
tight-financing policy, yet he has been criticized for making the serious mistake of taking ill-timed action.

8The Jury Law [Baishin Hou] was enacted in 1924 and went into effect in 1929. However its enforcement
has been suspended since 1939. It provides for juries in criminal trials if the accused agrees to have such and if the
nature of the case meets the requirements stipulated in the Law. In 2004, Quasi-Jury Law [Saibanin no Sanka Suru
Keizi-Saiban Ni Kansuru Houritsu] was enacted, and it provides to introduce quasi-jury in criminal trial courts by
2011.

9Different from the situation of expert witnesses in the U.S., there is no established profession of “expert
witness” in Japan. In many medical suits, scholars who work for a medical research institute, or medical professors
who work at medical universities are appointed by the judge as an expert witness.


13To retrieve information on Japanese cases via the Internet, TKC offers LEX/DB Internet at
<http://www.tkclex.ne.jp/>. As for CD-ROM based databases, there is Hanrei Taikei CD-ROM (Dai-ichi Houki,
<http://www.daiichihoki.co.jp/dhweb/cdrom/h_fro.asp>), Hanrei Master (Shin Nihon Houki Shuppan,
<http://www.sn-hoki.co.jp/kobetsu.cgi?product=951>), and Legal Base (Nihon Houritsu Joho Center,
<http://www.legalbase.co.jp/>). Back numbers of Hanrei Times, which consists of general commentaries on recent
cases and is published twice a month by Hanrei Times Co., are available on DVD