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On the Scarcity of Civil Litigation in Japan: Two Different Approaches and More

1. Preface

Let me start with one episode. When I met Professor Honma in university bookshop, and asked to make a speech in Hungary on some topics related to the legal foundation of Japanese high economic growth (in 60's–70's), my first reply was “Oh well... the shortest answer should be ‘nothing’”.

What did I mean by that? The point is that Japan is known to be a society with very scarce occasions in which law works, in both criminal cases and civil litigations. For instance in the United Nations statistics,¹ the number of homicide per 100,000 population in Japan is only 0.5, while in the United States it is 4.6. A part of reason could be of the States and its violent society, as often be criticized. However, considering the fact that the same numbers in the United Kingdom, France, and Germany lays around 1.5,² Japan seems to be very safe society even in comparison to these countries. On civil disputes, Wollschläger shows that there are 1.6 cases in Japan per 1,000 populations per a year, while the number is around 20 in France and Germany, over 50 in the state of Arizona, U.S. and the United Kingdom,³ From these data, we could say

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¹ United Nations Office on Drugs and Crime, The 7th U.N. Surveys on Crime Trends & the Operations of Criminal Justice Systems (1998–2000), available at <http://www.unodc.org/unodc/en/data-and-analysis/Seventh-United-Nations-Survey-on-Crime-Trends-and-the-Operations-of-Criminal-Justice-Systems.html> (visited on 18th Feb., 2008).

² The accurate numbers are 1.6, 1.2, and 1.8 for U.K., Germany and France, respectively.

³ Wollschläger, Ch.: Historical Trends of Civil Litigation in Japan, Arizona, Sweden, and Germany: Japanese Legal Culture in the Light of Judicial Statistics. In: Baum, H. (ed.): *Japan: Economic Success and Legal System*, Landsberg, 1997.

that there are very scarce legal cases in Japan, and the court has not so much importance in Japanese society. The problem is, why this phenomenon exists.

Kawashima These: cultural approach

In 1960's, the main theory on this problem found its answer in cultural factors. For instance Professor Takeyoshi Kawashima⁴ wrote in his famous book *Japanese Sense of Law*,⁵ that the Japanese dislike to solve disputes by litigation. He said that in Japanese traditional sense of law, rights and duties were recognized as ambiguous beings, and the people hate to make it clear or definite, because it probably harms the harmony in community. He wrote, "Since there exists friendly or 'communal' relation, to 'make clear between black and white' destroys the foundation of this friendly 'communal' relation".⁶ So in Japan "those who make civil litigations are branded as 'weird' or 'aggressive'. The attitude to avoid litigation is deeply fixed in our hearts".⁷ For Kawashima, this feature shows the underdevelopment of Japanese society. In the developed countries, litigations are thought as "the struggle to rights", as Rudolf von Jhering said, not only just but also sacred means to protect their own rights. Because the Japanese still had very weak sense of rights, Kawashima thought, they did not want to fight by themselves. So, along with the development of Japan the Japanese will recognize their rights stronger, and make litigations more frequent. This prediction is often called "the Kawashima These".

"Kenka Ryou-Seibai Hou"

There is one clear example often referred in this topic to show that the Japanese dislike disputes at all; the idea of Kenka Ryou-Seibai [put same sanction on both sides in dispute]. The idea is originally emerged as the Kenka Ryou-Seibai Hou [The law of Kenka Ryou-Seibai], which originally means that the both party in dispute are to equally sanctioned with death penalty. The first clear case is thought to be in the law of a Daimyo [feudal lord] in Sengoku Jidai

⁴ Takeyoshi Kawashima (1909–1992) was professor of civil law in the University of Tokyo. He is famous for introducing legal sociological research into Japan.

⁵ Kawashima, T.: *Nihon-jin no Hou-ishiki* [Japanese sense of Law], Iwanami Shoten, 1967.

⁶ *Ibid.* 140.

⁷ *Ibid.* 142.