

# CHANGING VALUES AND THE LEGAL CULTURE IN JAPAN

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## 1. THE INDUSTRIALIZATION OF MODERN JAPAN

Since the Meiji Restoration in 1868, Japan has pursued a path of modernization, using the industrialized nations of the West as its model. In this way, modernization in Japan meant westernization and industrialization; it led to the transformation of the traditional governing structure into a highly centralized one and turned the agricultural society into a technologically modern and industrially productive nation.

One of the first steps toward the westernization of Japan was the large-scale adoption of modern legal systems, starting with the Meiji Constitution (1889) that was drafted after some field-investigations of the constitutions of major European nations. This was followed by the enactment of the criminal and civil codes which were modeled after the German and French codes. There was an urgent necessity to modernize the traditional Japanese legal system in order to amend the unequal treaties thrust upon Japan by the Western powers when the Tokugawa shogunate government was finally forced to open Japan after 260 years of self-imposed isolation. Under these treaties, the Western nations refused to recognize the Japanese government's jurisdiction over foreign nationals in Japan by claiming that the Japanese legal system was grossly inadequate to protect the rights and safety of foreigners.

From its inception the Meiji government strived to build a modern industrial society, capable of mass production, and able to sustain a strong military force. It took Japan only three quarters of a century after the Restoration to achieve a high level of industrial and military development.

However, Japan's militarism led her into World War II and to subsequent defeat at the hands of the Allied Forces. By the end of the war, Japan's major industrial sites and plants were almost totally destroyed by the strategic bombing of the United States. In spite of this almost total industrial annihilation, Japan, during the latter half of the 20th century, rebuilt her industries and has become a major economic power in the world. Japan has achieved this by concentrating on international trade and economic activity while keeping military spending to a bare minimum. Throughout this period, Japan single-mindedly pursued economic

and industrial growth at all costs. Japan has since paid the price for this rapid growth with the destruction of its natural environment and serious problems with industrial pollution.

It is often pointed out that the pervasive attitude of the West, which conceives of nature as a target to be conquered by mankind, is the underlying cause of the present environmental crisis. In the East, in contrast, it is said that human beings are considered a part of nature and, therefore, a harmonious coexistence between people and the natural environment generally exists. In reality, however, this "nature respecting" perspective of Japan obviously has made little difference in the continuing destruction of the environment in the name of industrial development.

It is indeed ironic that environmental destruction resulting in damage to people's health and the loss of human life became the first and major focal point for a change in values and a change of the traditional legal culture in postwar Japan. Before entering into a discussion of this value change, a brief sketch of traditional legal culture in Japan is in order.

## 2. ASSERTION OF RIGHTS AND LEGAL CULTURE IN JAPAN

The following four points are characteristic of Japanese legal culture. They are interrelated and thus briefly described here in comparison with American legal culture for the purpose of making the contrasts more apparent. By legal culture, I mean people's attitudes, values, and opinions with regard to law and the legal system. This includes their values and attitudes about whether or not to use law and the legal system in settling disputes.

A word of caution about the use of the term "culture" is in order. When scholars use culture as a "black box" to refer to parts of a problem that cannot be defined or analyzed, the results may be stereotyped images instead of products of analysis. The cultural approach may be interesting, but before resorting to it, it may prove more productive to focus attention on some institutional differences and constraints. For example, instead of asking why there are relatively fewer law suits in Japan than in the United States, a cogent analysis would be better served by asking what institutional constraints exist that produce such disparate result. Analysis of the system of legal education, the court system, the predictability of court decisions, or the costs of litigation would be much more fruitful than discussing the problems in general terms of cultural dichotomy.

First, Japanese law is characterized by uniformity in the source of law: a centralized legal system under a unitary national government. This uniformity can be contrasted with pluralism built into the structure of the federal system in the U.S.A.: 51 jurisdictions and 51 sources of law. Uni-

formity in Japan is, however, not limited to the structure of the legal system. It also fosters conformity among individual and group/community values. Individuals are expected to compromise their own interests in order to maintain community standards.

Second, a current of "dependency consciousness" links Japanese people through networks of longstanding personal relationships. This traditional system of social relations favors resolving disputes informally over an extended period of time. A person may keep an extensive mental ledger of favors and obligations owed others, and that person is expected to settle them when the time is appropriate. Such a system often involves a multitude of parties and it is necessary to accommodate the various interests among them. In this situation, non-confrontational, non-adversary attitudes are favored in order to maintain these personal relationships.

Defining issues is avoided in order to leave room for mutual concessions and compromises. Litigation is viewed as a last resort and usually leads to a complete termination of the relationship. This feature runs counter to American claims-consciousness, whereby a value is placed upon asserting one's rights.

Third, in Japan the law is important mainly in a symbolic sense. Its power is to be revered rather than exercised against persons within one's network of social relations. Law furnishes a formal framework for maintaining social order. Within the formal legal framework, such diverse measures as conciliation, mediation, and arbitration are actively employed. These measures may effectively be accompanied by legal as well as nonlegal sanctions. Often, resolving a conflict in this way largely depends on the resourcefulness of the parties involved in mobilizing a network of relationships and personal contacts. Invoking formal legal proceedings and instituting litigation can be ineffective and very costly both in time and money. These measures do not require the involvement of practicing attorneys and they are more likely to take into account what is practical over the long run for the parties involved. In contrast, a more utilitarian view of law dominates American legal culture. As a tool, the law serves to protect a plurality of interests, to make a choice among competing goals, and to give validity to an individual claim. Law and courts are perceived of as major instruments of social reform.

Finally, a sense of non-legal/amoral realism in Japan favors leaving many societal issues to private choice. Law is not regarded as a major source of normative decision-making, affecting public as well as private conduct. In the United States, where legalism is stronger, the rule of law is to be respected as an indicator of social values and a means of social control. Many social problems tend to be taken up in the courts. Business practices and disputes are often addressed through the formal legal system

with attorneys playing leading roles. The legal profession virtually monopolizes the process of dispute settlement and constantly works toward expanding the domain of formal laws and procedures into all walks of life. There is a strong legalistic approach to many moral issues and social problems. The enforcement of certain moral precepts by law is vigorously sought, and highly controversial subjects such as abortion, homosexual behavior and choice of lifestyle are taken up and converted into contested issues to be decided by the courts. Diverse groups come to court, each seeking to legitimize its own precepts and to force them by law upon other groups.

Professor John O. Haley (1991) contends in *Authority Without Power. Law and the Japanese Paradox* that Japan is governed by authority without power and law without sanctions, and still maintains its social cohesion and order. He finds that one of the keys to understanding the Japanese paradoxes in consensus-based informal governance can be found in the traditional village (*mura*). He maintains that the attitudes rooted in the agricultural and closely knit *mura* are still pervasive in government agencies as well as industrial firms, making informal, as opposed to formal, resolution of conflicts and disputes effective as well as preferred.

In my view, however, traditional components of Japanese legal culture have been recently undergoing substantive changes, and the court decisions involving victims of major pollution cases in the 1960s clearly indicate such a change in both values and law in Japan.

### 3. THE TRANSFORMATION OF ENVIRONMENTAL VALUES

Japan has a population of about 125 million people living in the limited confines of an insular nation. Over eighty percent of the land is mountainous and thus unsuited for habitation, making livable areas densely populated. Intense industrial activities are conducted in these populated areas, and Japan by the 1960s already had one of the highest energy consumption rates per square mile among leading industrial nations. Given this situation, pollution with serious effects on human life and health was inevitable. Japan has paid dearly for its high rate of industrial growth with human suffering caused by this pollution.

During the 1960s attitudes toward the environment changed radically. Throughout the period of industrialization begun in the Meiji era, many Japanese viewed the smoke rising from industrial plants with pride because it symbolized the nation's economic growth. By 1970, citizens from all walks of life were challenging the morality of environmentally destructive industrial development. They now weighed new concerns such as

the sanctity of human life, individual dignity, and the integrity of local communities against the benefits of economic growth.

The transformation began with the suffering of the victims of four pollution-induced diseases, and these victims became the center of a national upheaval against industrial pollution. The Japanese legal system has subsequently articulated and adopted new values generated by these antipollution movements. These values weakened traditional extrajudicial intermediary institutions and motivated the victims to turn to the courts and engage in legal remedies. Changing values continue to influence legal processes and to be influenced by these in turn.

After the mid-1950s, there were several major personal injury cases caused by toxic waste discharged from industrial plants. There were cases of mercury poisoning in Minamata Bay among fishermen whose daily meals depended on fish and shellfish tainted by discharged mercury from a fertilizer plant. This was followed by cases of severe cadmium poisoning in Toyama Prefecture. This type of poisoning produces an affliction called *itai-itai* (literally, ouch-ouch) disease due to the excruciating pain from broken bones. Victims were poisoned by eating rice and drinking water contaminated by cadmium; the cadmium was in the waste discharged into the water from a smelting plant located upstream from the Jinzu river. Later incidents involved several hundred residents, mostly children and elderly people, who were living beside a large petro-chemical industrial complex in Yokkaichi. These individuals fell victim to asthma, and a form of bronchitis from breathing air which was heavily polluted by sulfur dioxide discharged from the plants.

In all of these cases, polluting company officials denied any wrongdoing and refused to admit their responsibility for the damages incurred by the victims. After exhausting all traditional methods of dispute settlement, the victims were forced to seek damages through legal action against these industrial polluters. It was a long struggle for the victims to prove that their diseases were, in fact, caused by the toxic substances emitted from the defendant's plants. However, in the end, the courts ruled in favor of the victims in each of these cases.

#### 4. THE IMPACT OF POLLUTION CASES ON JAPANESE LEGAL CULTURE

As a result of these court decisions, about a dozen environmental pollution control laws were enacted by the Diet around 1970. Major laws imposed strict liability on polluters for air and water pollution causing personal injury. These laws also provided stringent emission standards for toxic pollutants.

The loss of human life and the degradation of health due to severe pollution in the 1960s raised the national consciousness about the need to prevent personal injury from industrial pollution. It also taught the Japanese the following lessons: first, any industrial development, if uncontrolled and excessive, results in the desecration of the environment and grave harm to the people; second, the natural environment and human health once destroyed can never fully be restored; third, it is less costly to spend money on the prevention of pollution than to compensate for the damage it does to the natural environment and human health; fourth, there must be laws to regulate and control industrial behavior in order to protect the environment.

In a more practical sense, however, the victims' use of, and success in, court made the general public aware that the court could be an effective forum to assert and to establish one's rights; and that litigation could draw public attention to social issues and bring about social reform. The victims of pollution sued the industrial polluters because 1) the victims found the polluters arrogant and uncaring throughout their dispute; 2) there was an overwhelming difference in terms of power between the parties involved: the plaintiff-victims were poor and splintered while the defendant-polluters were resourceful and organized; 3) all traditional means of dispute settlement proved to be ineffective and unfair to the victims; 4) the victims were morally outraged by the polluters' conduct in dealing with them and wanted their claim vindicated in a court of law; and 5) the victims desperately needed to attract public attention to what had happened to them and the environment from heedless industrial development.

Public perception of the role of the court changed. A more active and instrumental view of the judiciary has since emerged. Societal inhibitions toward using courts have weakened. Disadvantaged groups, such as the aforementioned pollution victims, and other individuals who perceived that their rights have been wronged, have become less hesitant to assert their claims in court.

## 5. NEW TYPE OF CASES LITIGATED

Throughout the 1970s and 1980s, a number of cases have been brought before the courts by litigants who seek to raise new issues and establish new rights. Although the Japanese Supreme Court has consistently remained conservative in its exercise of constitutional judicial review, some lower courts are employing a more active and innovative jurisprudence in deciding these new types of cases.

In the process of rapid urbanization, many highrise buildings were built in cities, blocking sunlight from neighboring houses. A series of suits were brought by parties deprived of sunshine, asking the courts to enjoin the building of such structures as well as to provide monetary damages for the loss of sunlight. In 1972, the Supreme Court held that a deprivation of sunlight by an adjoining building constituted an invasion of a legally protected interest, entitling a person to monetary compensation. A number of subsequent lower court decisions established a right to sunlight through their interpretation of personal as well as property rights provided in the Civil Code. These court decisions led to revisions of the national construction standards law and of local zoning ordinances.

In 1980, a suit was brought by an activist anti-smoking group against the national railway corporation and the Japan national tobacco corporation (both entities have since been privatized) asking the defendants to designate one half of the cars of every train as non-smoking cars, as well as to pay monetary damages for harm caused by being forced to ride in smoke-filled cars. Seven years later, the trial court rejected both of these demands. The court found that the plaintiffs could choose other means of transportation to avoid their exposure to smoking, and that the discomfort and health hazard from riding in a smoke-filled car was temporary. The plaintiffs did not appeal because the suit had attracted enough public attention to their anti-smoking campaign. Quietly and quickly, Japan Railway and many private lines increased the number of non-smoking cars and extended non-smoking hours and areas within their facilities.

In 1983, a trial court rendered a decision for parents who lost their child in a drowning accident in a nearby pond. The mother of the child asked their neighbour, who had a child of similar age, to look after her child while she went shopping. Both children were playing in front of the neighbour's house at that time, but later they moved to an area containing a pond that the child fell into and drowned. The parents of the lost child sued the neighbour and the court awarded damages to the plaintiffs. After the court decision, a heated public debate ensued. The parents who won the judgement suffered countless anonymous calls and hate letters. Many people thought that the parents should not have sued the neighbouring couple for damages because the latter acted out of neighbourly kindness; furthermore, it was generally felt that the matter should have been settled by negotiation between them without casting their problem in terms of legal rights and liabilities. The public reactions were so intense that the Ministry of Justice felt it necessary to issue a statement saying that every citizen is entitled to bring his or her case to court, thus reaffirming the legitimacy of such legal action. This suit between the neighbours may be

taken as a clear indication of the breaking down of traditional modes of dispute settlement, along with increasing ability of ordinary citizens to resort to court more readily in a rapidly expanding urban setting.

As observable in any industrial society, Japan has witnessed a marked increase in the number of cases in such areas as traffic accidents, product liability, medical malpractice, and family disputes involving divorce and inheritance. However, other types of cases have also increased – these cases have raised new issues concerning certain public policies and have tested traditional values.

Several suits have sought injunctions against nuclear power plants. These suits raised such issues as the right of residents near the plants to contest the validity of permits, the extent of judicial review over the administrative agency's permit procedure, and the adequacy of safety standards for operating the plant and for disposing of radioactive waste materials. Most courts deferred to the agency on the matter of issuing permits, after finding that the residents had the right to sue and the agency complied with its procedure for processing permit applications. A series of suits have also been filed asking the courts to find existing electoral malapportionments unconstitutional and elections based on them void. In 1985, the Supreme Court ruled that the difference in the actual weight of one vote among different electoral districts (1 to 4.4) violated the equal protection clause of the constitution. However, the Court did not hold the elections void, calling on the Diet to promptly remedy the situation.

Many women find courts effective for fighting discrimination. The courts have held employment contracts void that provide women with an earlier retirement and a lower wage than men for doing the same work. Such contracts were held to be against "public order and good morals" in the Civil Code and against the equal protection of the constitution. Recently, sexual harassment cases have come before the courts. Traditional male-oriented values are being challenged and changed, thus affecting the attitudes of the people and consequently changing the law. In 1985, the equal employment opportunity act was passed to eliminate sex discrimination.

## 6. LEGAL CULTURE OF THE POST-INDUSTRIAL SOCIETY

Japan has enjoyed a stable, democratic form of government and continuous economic growth for the last forty-five years. In economic terms, Japan has become one of the leading powers among industrialized nations. Japan now shares with other advanced industrial states the same problems of post-industrial society. Japan, like others, must find some way to re-



structure the industrial sector from labor-intensive to technology-intensive fields, and to reorder its market to ensure a fair and equitable distribution of benefits and costs to meet the ever-increasing expectations of its people. In this context, it is interesting to consider the trends in the United States toward what Professor Lawrence Friedman (1985) calls "total justice." According to Professor Friedman, American society is evolving toward a firm and unyielding commitment to "total justice." He defines the concept as a social commitment which has produced two principles. One is a "general expectation of recompense": the idea that people who have suffered some form of personal economic harm should be made whole, without regard to the cause of, or reasons for, the harm incurred. The second principle is a "general expectation of justice": a commitment to procedural regularity in public and private affairs (due process), and to "plural equality," in the public sphere. This plural equality means that every person has the right not to suffer any handicap or disadvantage because of immutable characteristics, way of life, ethnicity or religion. These principles could explain much of the "law explosion" that American society has experienced, including the breadth and detail of modern statutory regulations, the frequency and extent of modern litigation, and the attendant increase in the demand for lawyers' services. These phenomena of the "law explosion" are considered by Friedman to be positive developments. According to him, they produce a society that is more open to individual differences (plural equality), a society more concerned with the rational and even-handed treatment of its members (due process), and a society more disposed to soften the impact of injury and misfortune (recompense).

It is possible to observe similar trends in Japanese society: pervasiveness of government regulations and the increasing dependence on law as a means of social engineering. There certainly exist growing expectations in Japan for "total justice." However, Japan may yet be far away from having a "law explosion" in its pursuit of such "total justice."

How far can "total justice" expectations penetrate Japanese legal culture? What social and institutional factors will shape this movement in Japan? First, the urbanization of Japanese society has been important in promoting the shift toward formal judicial mechanisms. Behind traditional dispute resolution, one finds the long-standing network of personal and social relations. The traditional way assumes this preexisting network of interdependencies which is being quickly eroded in the urban setting, thus weakening traditional means of dispute resolution. Second, a rapidly increasing proportion of the aging population calls for a large-scale social investment to provide institutionalized care for the aged. There are rising expectations among the aged and the young for greater social welfare

arrangements; for the aged, to provide more institutional care, and for the young to lessen the individual burdens of caring for the aged. Family disputes involving property and support are increasing. Social insurance arrangements are necessary to cope with problems resulting from the aging of the population. No doubt, the courts are asked to decide more cases involving policy issues. At the same time, a rather well-established practice of settling disputes by paying money provides a framework that can be adopted administratively to satisfy recompense and welfare expectations. A recent example of this is the system of administrative compensation that was established by national law in 1973, as a means of compensating people for the adverse health consequences of pollution.

The increasing number of international business transactions may also serve as a stimulus for making the transition from informal dispute settlement to formal legal procedure. When foreign interests are excluded from informal arrangements such as traditional dispute resolution, consensus forming and administrative guidance, and where there is no court system to which one can appeal, the means available to vindicate rights and resolve disputes are often blocked. It seems inevitable that greater formalization of legal relations will be needed to bridge complex international problems.

Among the cultural factors likely to temper the movement for total justice in Japan is non-legal realism. When Japan adjudicates social questions using public dispute mechanisms by relying on the courts more often, it incurs new expenses that the society is not accustomed to paying. This new or added cost of realizing "total justice" may, in the long term, be very substantial. It is not clear how many people in this society are prepared to pay these costs and still insist on "total justice" – in the sense of more due process and greater monetary compensation.

#### REFERENCES

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