

KOBE SALAD 2014

LECTURE 13

**JAPANESE SYSTEM OF DISPUTE RESOLUTION:
A LEGAL-SOCIOLOGICAL VIEW:**

**FOCUSING ON
INDIVIDUAL TROUBLE-EXPERIENCE & REMEDY-SEEKING**

SHIRO KASHIMURA

KOBE UNIVERSITY

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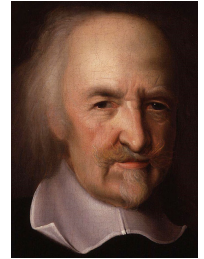
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1/20

The Sociological Perspective

What is the discipline called *sociology*?

- It developed from 17 c. moral and political *philosophy* through the influences by Hobbes, Locke, Rousseau.



Thomas Hobbes
British political philosopher
public domain

What do Sociology do?

- They study how humans live *together, peacefully and continuously*

- Humans living together in society are called as *social members*.

- *The basic assumption of sociology* is that a social member is constantly aware of the existence of other social members. *A corollary*; Each social member is aware of his being under some influence by other social members.

2/20

The Sociological Perspective

What are basic sociological concepts?

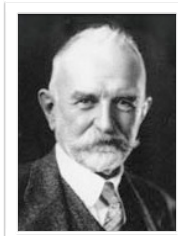
- **ACTION**: symbolic and physical manifestation of voluntariness of fellow humans, such as, walking, speaking, contracting, offending, defending, etc.

- **ORGANIZATION**: stable arrangements of multiple actions, such as, schools, hospitals, meetings, gatherings, mobs, demonstrations, courts, etc.

What do Sociological studies aim at?

- finding **ORGANIZATIONAL PRINCIPLES & METHODS** that are collectively followed by social members, for

- better **UNDERSTANDING & EXPLAINING** how social members can and *cooperate, prevent conflicts, amend misconducts, teach how to behave each other*, etc., in short, *how humans live together, peacefully and continuously*.



George Herbert Mead
American philosopher,
psychologist & sociologist
public domain

3/20

The Sociological Perspective & Law

What do the *sociological studies of law* aim at?

- understanding and explaining *legal actions* and *legal organizations*.

legal actions:

symbolic and physical manifestation of voluntariness of fellow humans, such as, contracting, planning, disputing, mediating, litigating, punishing the criminals, deciding the legal cases, constituting the nation-state, etc, in short, *actions in terms of the law*.

legal organization:

stable arrangements of multiple actions, such as, courts, police, law firms, formal and informal dispute resolution meetings, juries, etc, in short, *stable arrangements of multiple legal actions*.

- In sum; *The sociology of law aims at better understanding and explaining how social members can and do legal actions and participate in legal organizations of their society together, peacefully and collaboratively*.

4/20

Japanese System of Dispute Resolution: What to Learn?

What are *the Legal Actions* relevant to dispute resolution?

Focus: *individual member's ordinary troubles*:

- *How and why* do individual members of Japanese society *experience* and *seek for help of others* to cope with their difficulties in their ordinary lives?

What are *the Legal Organizations* to be studied?

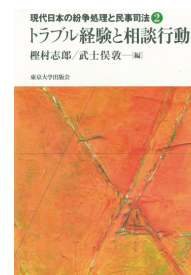
- the *stable patterns* of Japanese social member's experiencing and seeking for help of others.
- The *positive and negative responses* of other social members of family, community, and governmental system.
- The *positive and negative consequences* of the social member's actions.

5/20

Dispute Resolution in Japanese Society

The Data

- 2006 National Survey on Advice Seeking and Utilization of Law reported in the book below.



SOURCE: *Trouble Experience and Advice-Seeking Behavior*, edited by Kashimura & Bushimata (2010)

- To provide a comprehensive picture of Japanese's experience of trouble and advice seeking behaviors that follow, by the method of:

- National random sample of 11,000 individuals of ages 20-70.
- Number of respondents: 5,330
- Conducted in March to May, 2006.
- Questionnaire & interview method.

6/20

Table 1. The Types of Trouble-Areas Asked About in the Questionnaire

- | | |
|---|----------------------|
| 1. Goods/Services | 8. School |
| 2. Money Loan | 9. Neighborhood |
| 3. Real Properties | 10. Family/Relatives |
| 4. Landlord/Tenant Relations | 11. Accident/Crime |
| 5. Information Technology/
Telecommunication | 12. Government |
| 6. Workplace | 13. Business |
| 7. Hospital | 14. Not Listed Above |

7/20

Table 2 General Pattern of Advice Seeking

All respondents (people who agreed to answer the questionnaire)	5,330 (100%)
Respondents who experienced at least one problem within the past 5 years (2001-2005)	1,946 (36.5%)
Respondents who sought advice from at least one specialist advisor (including lawyer and judicial scrivener)	520 (9.8%)
Respondents who sought advice from at least a lawyer (弁護士) or a judicial scrivener (司法書士)	80 (1.5%)
Respondents who went the courts (litigation, conciliation, and other procedures)	10 (0.2%)*

* litigation 5, conciliation 3, other procedures 2 8/20

Table 3 VARIETIES OF REMEDY-SEEKING ACTIONS*

Area of Trouble	Problem Categories	N	Personal Adviser	Specialist Adviser	Legal Adviser	Court
Accident/ Crime	Theft/Vandalism	38	○	◎	×	×
	Sexual Molestation/Stalking	4	○	◎	×	×
	Trouble with Insurance Company Relating to Damage Insurance Contract/Payment	8	○	◎	○	×
	Automobile Accident (Both as Victim/Offender)	62	○	◎	○	○
Money Loan	Unnecessary Loan Was Forced Upon Them	4	○	○	×	×
	Default on Loan (as a Creditor)	8	○	×	×	○
	Default on Loan (as a Debtor)	4	◎	◎	◎	◎
Business	Time/Quality of Goods/Service	5	○	○	○	×
	Collection of a Bill/Payment of a Debt	14	○	○	○	◎
Landlord/Tenant	Return of Security Deposit	12	○	○	×	×
	Eviction	9	○	○	◎	×
	Default/Grace of Rent	12	○	○	◎	×

All cases here

* The table is excerpted, rearranged and translated from the table 3 of Nobuo Kanomata "Trouble Incidence, Advice-Seeking & Use of Law," in Kashimura & Bushimata 2010: 99-118.

Selective Use of the Law

- In most problem categories, **Courts** are never used: × in far-right columns for the 20 out of 27 categories shown in Table 3.

- **Court** are more likely to be used in only 3 categories: "Too High Price of Goods/Services," "Default on Loan as a Debtor (all cases)," & Collection of Bill/Payment on Business."

- In half of problem categories, **Legal Specialists** are never used: × in second-right columns for 14 out of 27 categories).

- **Legal Specialists** are more likely to be used in only limited categories: "Default on Loan as a Debtor," & "Eviction," "Default/Grace of Rent," some categories in Family/Relatives areas, & Others.

The Common Use of Non-Legal Specialists

- **Non-Legal/Area-Specific Specialists**, are used in *most* of the problem categories: the tendency shown by ◎ in third-right columns for the 6 categories, & by ○ for 16 categories out of 27 in Table 3.

- **Most-used Non-Legal/Area-Specific Specialists:** Significantly used such specialists are "Police"/"Insurance Companies" for "Accident/Crime" area, & "Consumer Centers," "Labor Standard Agencies" and *Other Area-Specialists* in other areas.

- **Non-Legal/Area-Specific Specialists** are *less* likely to be used in a few problem categories: such as "Importunate/Persistent Phones/Emails," "Shortage/Deficiencies in the Services," "Denial/Ill-Natured Response to a Claim/Inquiry," "Too High Price for Actual Quality of the Goods/Services."

The Pervasive of the Use of Personal Advisers

- In *all* of problem categories, **Personal Advisers (members of family, relatives, friends, etc.)** are used: the tendency shown by no × in fourth-right columns for 27 categories.

- Especially, **Personal Advisers** are used in all cases in a category: "Default on Loan (as a Debtor)."

- However, **Personal Advisers** are *less* likely to be used in a certain categories: "Importunate/Persistent Phones/Emails," "Shortage/Deficiencies in the Services," "Denial/Ill-Natured Response to a Claim/Inquiry," "Too High Price for Actual Quality of the Goods/Services."

The Organization of Seeking of Remedy-Offering Others

The data suggests that the *Alternative Model corresponds better* than the *Legalistic Model* to the pattern of *Remedy-Seeking Actions* by the members of Japanese society.

To remind of the *Alternative Model's statements*:

- that not all of the people experiencing legal troubles seek legal remedies;
 - *Variety of meaning*: Trouble-experience & remedy-seeking actions are varied.
 - *Variety of helpers*: Not only the organization offering legal remedies but also organizations offering a variety of help are relevant.
 - *Centrality of meaning*: The actions vary according to their *meaning* of the experience in individual's life.

How Can the Organization of Remedy-Seeking Actions Be Explained?

- *Variety and Centrality of Meaning*: Trouble-experience & remedy-seeking actions are varied; The actions vary according to their *meaning* of the experience in individual's life

- **Non-Use of Non-Legal/Legal Specialist Advisers** can be explained in terms of the *transitional nature and the lack of serious threat to their lives*. E.g. In most *Telecommunication and Goods/Service areas*, both *non-legal and legal measure are not likely to be taken*.

- **Some Use of Non-Legal/Legal Specialist Advisers** can be explained in just the opposite terms: the *persistent nature and the existence of serious threat to their lives*. E.g. In "*Default on Loan (as a Debtor)*" & "*Will/Succession/a Family Tomb*" (not shown in Table 3) *categories, both non-legal and legal measure are likely to be taken*.

How can the organization of remedy-seeking actions be explained?

- *Variety of helpers*: Not only the organization offering legal remedies but also organizations offering a variety of help are relevant.

- **The Use of Non-Legal Specialist Advisers in Certain Problems** can be explained in terms of the *expectation of effective help from the type of advisers and their performances*. E.g. In most *categories of Accident/Crime areas*, "*Police*" / "*Insurance Companies*" are used for help.

- **In Some Non-Use of Legal Specialist Advisers or Court** may suggest *lack of appropriate legal remedies*: E.g. In "*Divorce/Custody of Children*," "*Denial/Ill-Natured Response to a Claim/Inquiry*," "*Discharges/Retirement Allowances*," (not shown in Table 3) "*Eviction*," & "*Default/Grace of Rent*" *categories, both non-legal and legal measure are likely to be taken, but no use of courts*.

Conclusions

- The results of 2006 national survey was discussed.

- The actions and organizations of trouble-experiencing and remedy-seeking by social members of Japanese society were analyzed, focusing on the difference across problem-categories.

- The data shows that not all trouble-experiencing actions are seeking for legal remedies; Rather, they suggest that the actions actually taken generally reflect the *variety of meaning of the experience of trouble in individual's life, e.g. persistence of trouble and threat to their lives*.

- The data also shows that not only the organization offering official legal remedies (i.e. courts) were relevant; Rather, the organizations offering a variety of specialist/personal help are relevant because they offer the *Area-Specific or Problem-Specific Remedies* for the types of problems effectively.

- The data also suggests the *Problematic Lack of Effective Legal Measures* in some problem categories.