Labor Dispute Resolution System In Individual Labor Law And Japanese Non-Litigiousness: Capable/Incapable Institution Or Culture?

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I. Purpose

The purpose of this report is to provide an overview of labor disputes resolution systems in Japan and present a brief analysis of the "non-litigiousness" of Japanese workers.

In general, the number of lawsuits (i.e., dispute resolution conducted by a court system) in Japan is smaller than in other countries. As for civil cases in general, 143, 816 new cases were litigated in Japanese district courts in 2015,[2] about 3,400 of which were about labor and employment disputes.[3] In the same year, 279,036 civil cases were filed in the U.S. Federal District Courts, 12,205 of which were about civil rights case in employment, and 19,322 of which are about labor law cases.[4] In 2014, 28,878,663 and 8,307,450 new civil cases were filed in Brazil[5], and China[6] respectively. A recent questionnaire

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[2] Supreme Court of Japan, 2015, *Shihou Toukei Nenpō 1 Minji Gyoseihen* [Judicial Statistics, Volume 1, Part for Civil and Administrative Cases], p.6 [table 1-2] (available at < http://www.courts.go.jp/app/files/toukei/509/008509.pdf >), Nihon bengoshi rengokai [Japan Federation of Bar Association], 2016, *Bengoshi Hakusho* [White Paper on Attorneys], p.96 [table 2-1-1-1], available at: < https://www.nichibenren.or.jp/library/ja/jfba_info/statistics/data/white_paper/2016/3-1_1_tokei_2016. pdf > (accessed 2018-09-06).

[3] Supreme Court, *supra note* 2, p.35 [table 18], Japan Institute for Labour Policy and Training, *Hayawakari gurafu de miru chōki roudoutoukei* [Quick guide to long-term labor statistics], table3-1, available at < http: //www. jil. go. jp/kokunai/statistics/timeseries/html/g0703_01.html >, (accessed 2018-09-06).

survey also demonstrated Japanese non-litigiousness as well as statistics on litigations.[7]

However, fewer lawsuit cases does not mean there is less trouble. Fewer cases might simply mean that the courts are less effective than other methods for managing workplace conflicts or that traditional, premodern employment relationships might prevent Japanese workers from filing lawsuits. In this report, I would like to outline Japanese labor disputes resolution systems and discuss which factors cause Japanese non-litigiousness in an employment context.

First, I will present an overview of Japanese employment dispute resolution systems in the area that we call individual labor law (employment law) in a summary form (section II 1 and 2). Second, I will present a very rough sketch of academic discussions on this matter and after a short analysis of this discussion (section III). Finally, I will conclude by adding some comments from my viewpoint (section IV).

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4 Statistics by the Administrative Office of the U.S. Courts, available at < http://www.uscourts. gov/statistics/table/44/judicial-facts-and-figures/2015/09/30 >, (accessed 2018-09-06),

5 Conselho Nacional de Justica, 2015, *Executive Summary: Courts in figures 2015*, p.13, available at http: //www. cnj. jus. br/files/conteudo/arquivo/2015/11/491328c33144833370f375278683f955.pdf, (accessed 2018-09-06)

6 National Bureau of Statistics of China, *China Statistical Yearbook 2015* [Japanese Version available in http://www.spc.jst.go.jp/statistics/statictisc_index.html], table 24-14, available at < http://www.spc.jst.go.jp/statistics/stats2015/index.html >, (accessed 2018-09-06).

7 Masanobu Kato, *Nihonjin no "Saibangirai", "Choteishikou" no Shinwa to Jitsuwa (1) (2): "Nihonjin no Hoishiki" Saiko* [Myth and Reality of Japanese "Non-litigiousness" and "Taste for Mediation"(1): Reexamination of "Japanese Legal Consciousness"], 2008, 1359 *Jurist* 90, p.96.

II. Overview of Labor Dispute Resolution Systems in Japan

1. Overview of Labor Dispute Resolution Systems

Japanese official employment dispute resolution systems can be classified into several categories; (1) civil lawsuit (litigation), (2)labor tribunal, and (3) mediation (so-called Alternative Dispute Resolusion (thereafter, "ADR"), and (4) civil conciliation. Here I will briefly describe each dispute resolution system.

(1) Civil Lawsuit (Litigation)

The most important system for labor dispute resolution is litigation (civil lawsuit). This service is provided by a judicial institution, namely Japanese courts. Courts can provide final judicial rulings in employment disputes. In Japan, there are no special courts for employment cases[8], and labor cases are processed by the usual civil courts. Japanese courts employ a three-stage trial system (namely, 50 district courts with 203 branches, 8 high Courts with 6 branches, and one supreme court.[9] In addition to these courts, there are also family courts[10] and summary courts[11]). In 2016, 3,392 new cases were filed to district courts.[12]

A court is composed of professional judge(s). Cases filed to courts are concluded by judicial decisions (about 25% of the cases), judicial settlements (about 65% of the cases), or withdrawals etc.(about 10% of the cases) in the

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8 As for Japanese judicial system in general, please refer to: http://www.courts.go.jp/english/vcms_lf/2018_Court_System_of_Japan.pdf

9 The numbers of district courts and high courts include branches.

10 Family courts have jurisdiction over domestic (family) relations and juvenile delinquency.

11 Summary courts have jurisdiction over civil cases in which the disputed sum does not exceed 1,400,000 yen, and some lesser crimes.

12 Supreme Court, 2017, 7th *Jinsokuka hokokusho* [7th Report on Expediting of Trials], pp. 51-52 [chart 1] (available at: http://www.courts.go.jp/app/files/toukei/193/009193.pdf > (accessed 2018-09-06). This number might include collective labor law cases.

first instances,[13] and about 60% of the judicial decisions are appealed.[14]

Although civil lawsuits are quite effective in a sense because these courts provide parties with legally enforceable judicial decisions, they are relatively costly and time-consuming.

As for time costs, the mean length of cases about employment-related disputes averages around 14. 3 months in first instance (general civil litigations usually take 8.6 months, as a reference), according to the supreme court.[15] According to other statistics about dismissal cases, the median length of the period from dismissal to a conclusion was 28.6 months for decisions and 15.6 months for settlements.[16]

As for monetary costs, the official fee that a plaintiff needs to pay to the court is not very high(e.g., ¥10,000 for jurisdictional amount of ¥1,000,000, and ¥15,000 for jurisdictional amount of ¥2,000,000).[17] However, most (about 95%) of the parties engaged in lawsuits use lawyers.[18] There is no fixed standard

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13 Supreme Court of Japan, 2016, *Shihou Toukei Nenpō 1 Minji Gyoseihen* [Judicial Statistics, Volume 1, Part for Civil and Administrative Issues], p.36 [table 19] (available at: < http: //www. courts. go. jp/app/files/toukei/193/009193. pdf > (accessed 2018-09-08), *ibid*, p.53 [table 4].

14 Supreme Court, *supra* note (12), p.57 [chart 13].

15 Supreme Court, *supra* note (12), pp.51-52 [chart 2]

16 Yoko Takahashi & Yuichiro Mizumachi, 2012, *Rōdōshinpanseido Riyōshachōsa no Bunsekikekka to Seidotekikadai* [Analysis of Research on Labor Tribunal Users and Institutional Issues], 120 *Nihon Rodoho Gakkaishi* p.34 [p.36].

17 Act on Costs of Civil Procedure (English translation is available from < http://www. japaneselawtranslation. go. jp/law/detail/? vm = 04&re = 01&id = 1938 >). See Supreme¥¥ Court's website (http://www.courts.go.jp/saiban/tesuuryou/index.html) for quick reference.

18 Keiichiro Hamaguchi & Yoko Takahashi, 2015, *Rōdōokyoku Assen, Rōdōshimpan oyobi Saibanjōno wakai ni okeru koyoufunsōjian no hikaku bunseki* [Comparative analysis on Employment Disputes Cases in Conciliation by Labor Bureaus, Labor Tribunals, and Judicial Conciliation], p.31-32 [table 5-3], available at < http://www.jil.go.jp/institute/reports/2015/0174.html > (accessed 2018-9-6).

for lawyers' fees, but lawyers generally charges about 20-30% of the economic value of a plaintiff's settlement should they win a civil lawsuit[19].

A judicial decision in a civil lawsuit is enforceable for all parties engaged in a case once it has been decided, but it has no binding effects on people not party to the case.

(2) Labor Tribunal

A Labor tribunal system was recently introduced by the Labor Tribunal Act[20] and has come to play an important role in dealing with employment-related legal problems (since 2006). In this new labor dispute resolution system, labor tribunals, composed of a judge and people with expert knowledge and experience in labor relations hear and resolve cases through conciliation (if possible) or a labor tribunal decision, thereby aiming to achieve prompt, proper, and effective dispute resolution. Labor tribunals deal with individual labor law cases. In 2016, 3,414 new cases were filed[21].

A labor tribunal committee consists of three members; one labor judge, who has knowledge and experience on labor relations, and two lay labor tribunal members. this committee is set up under a district court, but the labor tribunal itself is not a court, and therefore it does not give judicial decisions, but it provides administrative decisions, as described below.

When relevant worker can file a petition to a labor tribunal, the labor tribunal hears the case, and if the case is likely to be resolved through conciliation, it attempts conciliation. If the case cannot be resolved, the labor tribunal provides a "labor tribunal decision." Labor tribunal decisions are

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19 Bengoshi dot com, 2016, Rodomondai no Bengoshihiyo (available at < https://www.bengo4.com/c_5/gu_168/ >).

20 English translation available at http://www.japaneselawtranslation.go.jp/law/detail/?id = 2180&vm = 04&re = 01.

21 Supreme Court, *supra* note (12), pp.51-52 [chart 14]. This number does NOT contain collective labor law cases.

necessary for resolving a civil dispute arising from individual labor relations in accordance with the circumstances of the case, while considering the rights and interests of the parties. This decision is not a judicial decision, but an administrative decision; therefore, the remedies that the decision offers can be flexible.[22] Parties can transfer to a lawsuit if either of them has any objection to the decision. Roughly speaking, about 60% of the labor tribunal decisions are appealed and transferred to civil lawsuits[23].

About 15% of the cases filed to labor tribunal committees are concluded by labor tribunal decisions, and the remaining cases are concluded by settlements (about 70%) or by withdrawals etc. (about 15%).[24]

A labor tribunal decision is not a judicial one. Parties can transfer to a lawsuit if either of them has any objection to the decision. However, if parties choose not to appeal (i.e., if neither parties submits any objection to the decision within two weeks), the labor tribunal decision shall have the same legal effect as a judicial settlement.

The labor tribunal system is less costly and time-consuming for parties than lawsuit litigation. A labor tribunal is supposed to be concluded within three sessions, and the mean length of each case is 2.6 months[25] (according to

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[22] In Japanese law, judicial decision can basically decide what are rights and duties of the parties, and therefore offer remedies within those rights and duties. However, administrative decision can offer much more flexible remedies. For example, in a case of illegal dismissal, labor tribunal decision can order an employer to pay enough money to a dismissed employee to make the otherwise void dismissal effective. On the other hand, judicial decision can only nullify illegal dismissal and order the employer to pay damages to the fired employee.

[23] Exact rates are, 56.2% in 2014, and 62.8% in 2016. For details, see, Supreme Court, *supra* note (12), p.59 [table 15 and accompanying texts] for 2016 data, and Supreme Court, 2015, *6th Jinsokuka hōkokusho* [6th Report on Expediting of Trials], p.62 [table 15], (available at: < http://www.courts.go.jp/vcms_lf/hokoku_06_02minji.pdf >)(accessed 2018-09-10).

[24] Supreme Court, *supra* note (12), p.59 [table 15].

[25] Supreme Court, *supra* note (12), p.64 [table 16 and accompanying texts].

another research study, the median length is 2.1 months[26]). The mean length for dismissal cases in particular, is 6.4 months[27]

The fee for a labor tribunal is cheaper (about half) than that for a civil lawsuit (e.g., ¥7,500 for a jurisdictional amount of ¥2,000,000). However, most of the parties (88.9%) use lawyers in labor tribunal[28]. Lawyer's fee for labor tribunals are usually lower than for a civil lawsuit.

(3) Mediation

In Japan, various entities such as the local Labor Relations Commission, the prefectural labor offices (Ministry of Health, Labor, and Welfare), and the labor offices of prefectural governments, have the authority to conduct mediation. In 2016, about 6,009 new cases were filed to those administrative bodies in total.[29]

If an agreement between parties is achieved during the mediation process (approximately 40% of the cases), it will have the same legal effects as a judicial decision. However, if either of the parties does not enter the process (about 40% of the cases) or no agreement could be achieved (about 16% of the case), mediation fails.[30]

As for mediation, time costs are also small. The median length for a mediation process is about 1.4 months,[31] and the median length for a dismissal

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[26] Hamaguch & Takahashi, *supra* note (18), p.26

[27] Takahashi & Mizumachi, *supra* note (16), p.36.

[28] Hamaguch & Takahashi, *supra* note (18), p.31-32 [table5-2]

[29] Central Labor Relations Commission, *Kakukikan ni okeru Kobetsurōdōfunsōshoriseido no Unyōjōkyō* [Report on individual employment disputes resolution systems in each administrative body] (*website*), available in < https://www.mhlw.go.jp/churoi/assen/toukei/dl/06.pdf > (accessed 2018-9-10). This number does not contain collective labor law cases.

[30] Hamaguch & Takahashi, *supra* note (18), p.23-24 [table 3-1-1]

[31] Hamaguch & Takahashi, *supra* note (18), p.26, JILPT, 2012, *Nihon no Koyo Shuryo: Rodokyoku Assen Jirei Kara* [Termination of Employment in Japan: Analysis of Mediation Cases by Prefectural Labor Offices], p.29.

case (total period, from dismissal to conclusion) in particular, is 2.4 months.[32]

Monetary costs are very low. No fee is charged,[33] and parties usually do not use lawyers[34].

(4) Civil Conciliation

"A civil conciliation" system conducted by conciliation committee under the Civil Conciliation Act[35] can also be used to solve labor problems. Civil conciliation is applied to general disputes in civil affairs, and is not limited to labor disputes.

Conciliation committees in civil conciliation consist of one professional judge and two or more conciliation commissioners selected from the general public. In 2016, 3,471 new cases were filed to district courts,[36] and 35,708 new cases were filed to summary courts[37]; however, the number of employment-related disputes is not clear.[38]

During civil conciliation processes, cases are concluded by reaching an agreement or order in lieu of conciliation. If an agreement is achieved, that

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32 Takahashi & Mizumachi, *supra* note (16), p.35.

33 See: website of Central Labor Relations Commission (available in: < https://www.mhlw.go.jp/churoi/assen/assen_02.html > (accessed 2018-09-10)), website of Ministry Health, Labour and Welfare (available in < https://www.mhlw.go.jp/general/seido/chihou/kaiketu/ >(accessed 2018-09-10)), and

34 Hamaguch & Takahashi, *supra* note (18), p.31 [table 5-1-1, 5-1-2]

35 Civil Conciliation Act (English translation available from http://www.japaneselawtranslation.go.jp/law/detail/?id = 2732&vm = 04&re = 01).

36 Supreme Court of Japan, 2016, *Shihou Toukei Nenpō 1 Minji Gyoseihen* [Judicial Statistics, Volume 1, Part for Civil and Administrative Issues], p. 63[table 82] (available in: < http://www.courts.go.jp/app/files/toukei/256/009256.pdf > (accessed 2018-09-08).

37 Supreme Court of Japan, 2016, *Shihou Toukei Nenpō 1 Minji Gyoseihen* [Judicial Statistics, Volume 1, Part for Civil and Administrative Issues], p. 61[table 76] (available in: < http://www.courts.go.jp/app/files/toukei/250/009250.pdf > (accessed 2018-09-08).

38 Employment-related cases are classified as "Ippan" (i.e. "general") in the statistics by Supreme Court (*supra*, note 33). However, this category contains types of cases other than employment-related ones.

agreement becomes binding for both parties. In the case of Order in lieu of conciliation, either party can raise an objection to the order within a certain period. In the case of no objection, the order becomes binding for both parties.

The moretary costs for civil conciliation are relatively small, with the fee for civil conciliation being the same as that for a labor tribunal. A case usuall takes around 2.4 months[39].

2. Overview of Labor Disputes

(1) Number of Employment Disputes

Chart 1 shows the changing numbers of employment disputes within each dispute resolution system. One can easily notice that, several years since the 2008 (depression following the collapse of the Lehman Brothers), these has been a decline in the total number of employment-related disputes, whereas the number of civil lawsuits and labor tribunal cases has risen in a long trend.

It is notable that, despite the initiation of the labor tribunal system , the number of civil lawsuits did not decrease very much. The number of civil lawsuits has remaired stable, and the number of labor tribunal cases simply increased after 2006.

(2)Main Issues in Labor Disputes

In what follws, I will present the main issues in the cases filed to each dispute resolution system. This contains data from different sources, so the data suggests a rough tendency only. There are more dismissal or termination-of-employment cases in lawsuits and labor tribunal cases, and fewer cases in mediation. This suggests that Japanese employees choose civil lawsuits or labor tribunal for serious employment disputes (i.e., dismissals), but not for more minor employment problems.

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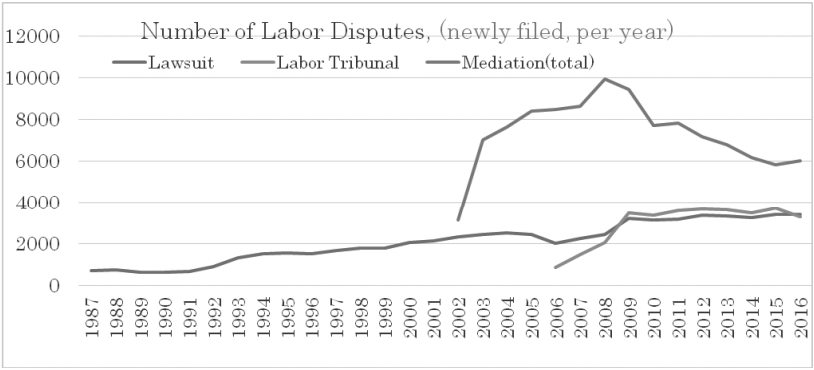
[39] Court website (http://www.courts.go.jp/saiban/syurui_minzi/minzi_04_02_10/).

(Chart 1) Number of labor disputes, (newly filed, per year)[40]



(Table 1) Main issues in labor disputes[41]

EDR Systems / Main issues	Civil lawsuit (*cases ended by settlements, 2013)	Labor Triburals	Mediation (by prefectural labor offices, 2008)
Dismissals, retirements, rejection of the extension of contracts	91.7%	95.8%	66.1%
Harassments and bullying	-	-	22.7%
Disadvantageous changes to working conditions (wages, allowances, etc.)	3.1%	2.0%	11.2%

(3) Compensation Awarded to Employees

Tables 2 and 3 show the median compensation awarded to employees in

[40] JILPT, *Hayawakari Gurafu de Miru Choki Rodo Tokei* [Quick Reference to Long-term Labor Statistics, By Graph])[Chart 3-1], available at: http://www.jil.go.jp/kokunai/statistics/timeseries/html/g0703_01. html > (accessed 2018-09-08)., and Labor Relations Committee, *Kakukikan ni okeru Kobetsurodofunso Shoriseido no Unyojokyo* [State of Process of Individual Labor Disputes in Each Institution], available at: < https://www.mhlw.go.jp/churoi/assen/toukei/dl/06.pdf > (accessed 2018-09-08). To my regret, I could not find data for civil conciliations about labor disputes.

[41] Data from Hamaguch & Takahashi, *supra* note (18) (civil lawsuits and labor disputes), and JILPT, *supra* note (31),p.27 (mediation)

(Table 2) Median compensation for dismissal cases (Takahashi&Mizumachi (2012)[42])

	Claimed amount (by monthly wages)	Total awarded
Lawsuits (decisions)	￥373,000/month	￥0 (mean: ￥6,099,000)
Lawsuits (ended up with settlements)	￥400,000/month	￥3,000,000
Labor tribunal:	￥295,000/month	□￥1,000,000
Mediation:	? (￥500,000 in total)	￥175,000

(Table 3) Median compensation (Hamaguchi&Takahashi (2015)[43])

	Claimed amount (total)	Total awarded
Lawsuits, concluded by settlements	￥5,286,000	￥2,301,357
Labor tribunal:	￥2,600,000	￥1,100,000
Mediation:	￥600,000	￥156,400

(Table 4) Costs and gains for each dispute resolution system

	Timely cost	Monetary cost	Monetary return	Frequency (# of cases per year, in recent 10 years)
Lawsuit	Long (14.3 months)	High	High	c. 2,300-3,400/year Increasing
Labor tribunal	Short (2.6 months)	Middle-low	Middle	c. 1,500-3,700/year Increasing
Mediation	Short (1.4 months)	Free-low	Low	c. 5,000-9,000/year Slightly decreasing?

each system. Here I introduced two data sets, both of them showing almost the same tendency.

42 Takahashi & Mizumachi, *supra* note (16), p.36 [table 2].

43 Data from Hamaguch & Takahashi, *supra* note (18), p.38.

In Table 2, the median "total awarded" is ¥0. This is because plaintiffs lost in a lot of cases. The mean values suggest that if plaintiffs win, they can acquire high returns.

It is notable that, in general, the higher the time and monetary costs of the dispute resolution system the higher the plaintiffs' awards if they win. Table 4 presents a the rough sketch of cost-and-benefit trade-offs for each dispute resolution system.

III. Academic Discussions and Analysis

1. Academic Discussions about Japanese Non-litigiousness

The number of employment-related litigation seems to be relatively small in Japan, at least at first glance. Is this a sign of the courts' dysfunction? Or, on the contrary, a sign of courts' effectiveness? Or is this just caused by a coercive and oppressive Japanese workplace culture?

Academic discussions about Japanese non-litigiousness in general (i.e., not limited to employment-related matters) can be roughly classified into two types according to the background.

One view suggests that Japanese people might share a cultural tendency to suppress conflicts between community members.[44] This view and other similar views that see Japanese non-litigiousness to be a result of the cultural background are sometimes termed ""culturalists" in approach[45] (however, these views do not necessarily claim that culture is the only cause of Japanese non-litigiousness, or that there is no institutional background).

Another position is sometimes called " institutionalist". This position

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44 Takeyoshi Kawashima, 1967, *Nihonjin no hōishiki* [Japanese Legal Consciousness].

45 As for classification of ""Culturalists" and "Institutionalists", see, Tony Cole, 2007, *Commercial Arbitration in Japan: Contributions to the Debate on "Japanese Non-Litigiousness*", 40 N.Y.U.J. Int'l L. & Pol. 29.

explains how Japanese non-litigiousness is caused by wider institutional background. This view points out that the need for a court's judgement is relatively less in Japan. Yet within the institutionalists, somewhat different approaches have emerged. One explains that Japanese courts are not so frequently used because they are very costly (in time and money) and hard to use[46] (I will call this view the "inefficient court" view in this paper[47]). Another explains that Japanese courts are very effective in setting clear and forecastable standards, which decreases the number of lawsuits because those standards can predict the outcomes of prospective lawsuits[48] (I will call this view the "efficient court" view just for convenience).

At first glance the "efficient court" view and "inefficient court" view seem to be contradictory, but I think they say same thing in the end. " The inefficient court" view points out that the current court system is so inefficient that it is too costly to go to court, whereas the "efficient court" view points out that the court system is so efficient and predictable that it is too costly to go to court since the same results can be achieved using out-of-court resolution systems. Both views see legal institutional costs as the primary reason for non-litigiousness.

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[46] John Owen Haley, 1978, *Myth of the Reluctant Litigant, The Journal of Japanese Studies* 4 (2), pp. 359-390 [Japanese Translation by Shintaro Kato], 1978-1979, *Saibangirai no shinwa*, 902 *Hanreijihō* 14 and 907 *Hanreijihō* 13].

[47] This view is sometimes called "hiyousetsu"[cost theory]. See, Ramseyer, infra note (48), p.20.

[48] Prof. Ramseyer pointed out that since Japanese courts are predictable and usually returns same answers to same questions, people did not need to go to court. See, Mark Ramseyer, 1990, *Hō to Keizaigaku: Nihonhō no Keizai Bunseki* [Law and Economics: Economic Analysis on Japanese Law], p.21-. He names this theory "yosokukanouseisetsu" [predictability theory].

2. Analysis

(1)Explanation Offered by "Institutionalist" Theory

The data aralyzed have present some evidence that supports the institutionalists' approach.

First, the number of labor tribunal cases has increased since its introduction into practice in 2006, but the number of civil lawsuits did not decrease considerably. This means that this new cheaper and shorter means of dispute resolution (i.e., labor tribunal) fulfilled the needs of those employees who hesitated to sue their employers because of time and monetary costs. This seems to support the "inefficient court" view to some extent. However, the absolute gap in the numbers of employment disputes between Japan and other nations, does not seem to be fully explained by the "inefficient court" view.

Second, the fact that disputes about dismissals, harassments, and disadvantageous changes to working conditions are major issues in Japanese labor disputes, seems to partly support the "efficient court" view. Among all the employment-related issues, these are the ones where no clear standards are established, so the parties will have an incentive to go to court to request a judicial judgement.

However, the non-litigiousness shown by the total number of disputes (including ADR) is not fully explained by the current "institutionalist" theory. If only employment litigation cases (civil lawsuits) were waived by the Japanese, the "institutionalist" theory would make makes sense; however, the total number of other civil disputes remains small, which seems to be hard to explain using the "inefficient court" view. One might say that ALL of the Japanese dispute resolution systems are costly and hard-to-use ; however, that explanation is not very persuasive. It so, why have the Japanese people left their dispute resolution systems in such a terrible state? With no

reasonable explanation available, this view remains almost the same as the " culturalist" explanation. The "efficient court" view might better explain this phenomenon since predictable rules could decrease the total number of disputes, but we should notice that courts are not as predictable as this theory premises, at least in employment-related cases[49]; Japanese employees cannot acquire the same level of compensation from ADRs, as is shown in Table 4, and also not all employees go to court or even to mediation[50].

(2) Explanation by "Culturalist" Theory

We might be overlooking other factor(s) that the current institutionalist theory does not stress. Could it be culture without any reasonable backgrounds?

We might find the "culturalist" approach persuasive, for example, but we might also feel that there should be some background for that "culture," at least how that culture was created, and whether or not the background seems to be economically reasonable from a modern point of view. As long as

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49 Dr. Ramseyer proved his theory by the evidence that Japanese can acquire almost as much compensations in ADR as in lawsuits in car accident cases, and that victim of a car accidents usually claims his right to compensation. However, it seems that neither of these hold true in the case of employment-related troubles. Dismissed employees usually do not sue his employer nor uses ADRs, and even if they use ADRs, employer reject to enter the mediation process in 40% of the cases, and even the parties enter the mediation process, what they acquire is very small. See cases shown in JILPT, *supra* note (31) for details.

50 Japanese Ministry of Health, Labor and Welfare reported there are more than 255,460 applications for consultations about individual employment troubles to labour bureaus and labour standards inspection offices in fiscal year of 2017, but only 8,976 cases proceeds to consultation and guidance by those institutions, and only 5,123 case proceeds to mediation. For detailed data, see press release by Ministry of Health, Labour, and Welfare, available at < https: //www. mhlw. go. jp/file/04-Houdouhappyou-11201250-Roudoukijunkyoku-Roudoujoukenseisakuka/0000167799.pdf >, (accessed 2018-09-10).

a culture's reasonable background remains unchanged, it is hard to differentiate cultural and institutional backgrounds; people make reasonable choices about their behaviors on the basis of the given institutions. Those choices that might due to "culture" would only seem so to outside observers who do not share the same institutional background. Culture might become more noticeable if the institutional background changes and the culture has little experience reasoning whithin that new institutional background, but such reasonless culture would not last so long.

As for employment cases, I think that here is some kind of reputational cost that makes the culture of non-litigiousness reasonable. The "culturalist" approach implies some kind of reputational cost that causes non-litigiousness.

In small communities where members cannot eliminate other members, there are strong incentives to waive any conflicts and keep a sense of community . The cost that troublemakers owes the community (including justifiable troublemakers) is a reputational cost, which usually turns into isolation and harassments.

Dr. Kawashima, who took the "culturalist" approach, pointed out that traditional Japanese out-of-date legal consciousness originated from communitarianism.[51] Japanese people (as well as other people in other nations) tend to waive disputes with their communities such as close friends and family members.[52] Moreover, it is often the case that Japanese employees (particularly, male employees working for traditional Japanese companies as core workers) see their employers and colleagues as very important

[51] Kawashima, *supra* note (44), pp.162-, Saburo Matsuoka, 2006, *Nihonjin no Hoishiki ni tsuite* [About Japanese Legal Consciousness], *Hogakuronsō* 78(2 = 3), p.125, pp.159-.

[52] Masanobu Kato, 2008, *Nihonjin no "Saibangirai", "Choteishikou" no Shinwa to Jitsuwa* (2), 1360 Jurist 86, p.86-87, Tomio Kinoshita, 1982, Nihonjin no Ho heno Taido to Kodo [Japanese Attitude and Behavior to Law], 762 Jurist 88, p.89-.

community members, perhaps more important than their family or friends.[53] This communitarian attitude to companies is caused by the fact that the Japanese labor market for core workers is very rigid: Japanese core workers ("seishain") are expected to work for one company only throughout their career.[54] This rigid labor market and the strict Japanese dismissal regulations, sometimes referred to as "lifetime employment," are two sides of the same coin.

This work environment resembles life in a small community, like a village. The employee will feel that it is necessary to keep a good relationship with the company that he/she is working for because there is no choice to earn his/her living elswhere. Additionally, even if the employee has any complaints about his/her employer, the employee will hesitate to sue the employer, unless he/she is dismissed or voluntarily quits. Therefore, at lease some part of the Japanese non-litigiousness in an employment context can be explained by this reputational cost.

IV. Conclusion

In this paper I presented a brief overview of Japanese labor dispute resolution systems and some statistics surrounding employment-related disputes. I then provided a brief analysis of this data and comments based on observations.

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53 Matsuoka, *supra* note (51), pp.164-, Kato, *supra* note (52), p.87. It is often pointed out that Japanese (male) workers devote themselves to the companies they work for.

54 Turnover rate of Japanese workers is about 4.5% recently (see Cabinet Office, Government of Japan, 2018, *Nihonkeizai 2017-2018* [Japanese Economy 2017-2018], p.82 [Chart 2-1-4], available at < http://www5.cao.go.jp/keizai3/2017/0118nk/pdf/n17_2_1.pdf > (accessed 2018-09-11)). Turnover rate of the U.S. workers was about 20% in 2016. See, Kathryn O'Connor,2017, 2016 Turnover Survey Released, available at https: //www. hrsource. org/maimis/Members/Articles/2017/02/February_28/2016_Turnover_Survey_Released.aspx > (accessed 2018-09-11).

As noted above, the "institutionalist" approach and the "culturalist" approach are not necessarily mutually exclusive. Each approach has validity: All the actors highlighted by these views cause Japanese non-litigiousness, at least to some extent. The next question might be, "Which factor is playing most major role in causing this phenomenon?" I have been unable to discuss this matter in this report in detail, and this is a point that I wish to return and discuss in the future.