

Developmental Processes of Corporate Legal Staffs in Japan: The Pluralizing Mechanism on Legal Practices within an Organization ⁽¹⁾

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1. Preface

In 1995, I presented my research result under the title of "Developmental Processes of Corporate Legal Staffs in Japan", at RCSSL95 held in Tokyo, the section meeting on "Lawyers and Legal Procedures for Business"⁽²⁾.

Generally speaking, empirical study has two important dimensions, the reality of topic and the contribution by new findings and their implications to academic scene. This article is published to keep the reality of the subject of my research that will come into a page of history in near future, and to try again to insist my findings to academic scene.

In the former, now in Japan, Judicial Reform which is evaluated radical has been in conducted, so the legal circumstances of Japanese corporation will be drastically changed. The policy of Judicial Reform says increasing the number of lawyers rapidly, so Japanese businesses will be able to get legal service more and to hire lawyers as in-house counsel more easy within some years⁽³⁾. Such situation could not be imagined in 10 years ago.

In the latter, the research trend of socio-legal studies has been acceptable the perspective of constructive or constitutive approach comparing with 10 years ago⁽⁴⁾. So the methodological perspective that I committed will be suitable better than those days.

Here, I consist of this article by the paper of RCSSL95 basically and add some follow-up comments and notes to it.

2. Introduction

Under the theme of "Lawyers and Legal Procedures for Business", I will report the result of analysis of my research on "Corporate Legal Departments" and "Corporate Legal Staffs" in Japan, and some of those

implications. In the faster part, I will introduce the "Corporate Legal Staffs" in Japan, and point out its particular status as lawyer, especially in comparing with lawyers as Legal Profession. In the latter part, I will mention to my own research on this theme. And finally, I will assure that when we treat socio-legal issues in business world, we should more attention to the organizational processes, which has been ignored so far.

To begin with, I will mention to my data collections. I had conducted interview with corporate executives and staffs, who were corporate legal staffs mainly. Interviewees are increasing, because I continue to research now. But up to the presentation in RCSL95, I finished to analyze the data of 20 corporations and more than 60 persons who have cooperated with my research officially. These corporations include 3 industrial materials corporations, 7 end-products corporations, 4 parts-products corporations, 4 foods and chemicals corporations, and 2 non-industrial corporations. In addition, I had chances to meet and talk with corporate staffs at some academic meetings and so on. As a result, my research does not have statistical consistence. But I think, my data have variety enough to mention to general nature of legal practices within Japanese corporations.

3. Corporate Legal Staffs as Lawyer

By the way, when scholars pick up Japanese case as a case study, mostly they want to point out Japanese unique. And the Corporate Legal Staffs in Japan I pick up here also seems one example of Japanese unique for scholars studying lawyers, especially who discuss lawyers in the context of legal profession.

Clearly to say, the Corporate Legal Staffs are different from lawyers in terms of legal profession. For example, they do not have a common academic career such as graduate student of the faculty of law in a university, or the graduate school of law. They do not pass a common examination such as bar examination. And then, though some of the staffs are belonging to associations for corporate legal staffs, these associations ordinary accept these staffs by the unit of or present for a legal section within a corporation or in the name of individual corporations. So, actually, such associations are not occupational groups for legal staffs.

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In addition above, individual corporate legal staffs, for themselves, are immediately one of the businessmen as a member of the corporation. Since, it is only for them that their job descriptions are legal. That is to say, whether they are lawyers or not is second thing for themselves.

However, not only inside Japan, but also in the international settings, the Corporate Legal Staffs in Japanese Corporations are accepted as the equivalence to lawyer.

For example, the Corporate Legal Staffs in Japanese corporations exercise their practice just like In-house Counsel in the United States. In fact, there are legal departments in Japanese corporations. Especially, some of Japanese big businesses have large legal departments which consist of over 40 staffs. These departments treat corporate matters, litigations, drafting contract, negotiating on the legal aspects in transactions, legal consulting for the other divisions, and so on. In the United States, it is said that these practices are exercised by legal departments which is composed by In-house Counsels, who can be seen as one kind of legal profession. And in international businesses, the Boss of these departments in Japanese corporations introduces themselves as the General Counsel of the corporation toward the executives and staffs of foreign corporations. And in Japanese Corporation which is established in the United State, their legal departments consist of both Japanese corporate legal staffs who are dispatched from legal department in Japan, and In-house Counsel who are hired in the United State⁽⁶⁾.

And then, some articles on how to business in Japan mention to the role of corporate legal departments and their staffs. And taking for another extreme example, the Final Report of SII (Structural Institution Initiative) in 1999 says follows, "(Japanese) (i)ndividual companies, especially big companies, should desirably enhance their legal affairs division and make compliance programs, etc. in order to prevent violations of the Antimonopoly Act." Then, in the governmental negotiation between Japan and the United States, the existence and the role of the corporate legal departments and their staffs in Japanese corporations were recognized in greater or less degree.

These fact I have mention above show that there are persons in Japan who exercise legal practice, and those are treated as lawyer, instead that

they are not lawyer in terms of the legal profession.

4. The Image of Corporate Legal Staffs in Japan

Next, I will introduce how Corporate Legal Staffs is accounted in Japan. In general, the image of Corporate Legal Staffs is taken in related with the surveys on the Corporate Legal Departments, conducted by Syojihomu-kenkyukai and Keieihoyukai. These surveys have conducted once a five years since 1965. Here I will pick up the 1990 survey. This survey could get responses from about 500 major corporations in Japan

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First, most Corporate Legal Staffs do not have official qualifications as a lawyer. Though a few corporations hire one or some lawyers with a public qualification, so called Bengoshi, such case is rare. So Prof. Rokumoto characterizes those who get their relatively high knowledge and ability for legal practices through learning and training on the job.

Second, the development of Corporate Legal Department as one of distinct section within Japanese corporations occurred in relatively recent. I will here cite the comments of Prof. Kojima, who has committed to the surveys by Syojihomu-kenkyukai and Keieihoyukai since the third survey in 1975. He said on the Corporate Legal Departments of Japanese corporations as follows. In 1975, "Comparing to the Corporate Legal Department in the U.S. corporations, the equivalences could be find in Japanese corporations, but the actual conditions of those is very weak." In 1980, "They have been getting power and established their invariable status in the corporate organization." And, in 1985, "they have been in the period of maturity", he said. The surveys show the same trend as his comments and we can see that the Corporate Legal Department in Japan have developed from the late 70's to the first period of 80's.

And then, in the responses of 1990 survey, 42.2% corporations have independent legal sections. And the rate of it is growing to the scale of corporations. In the case of corporations capitalized over 1000 billion yen, 82.9% have the legal section which consists of 20 members in average. So we can guess the most Japanese big businesses organize such distinct legal section.

In large corporations, there are persons who have experience to go to

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study and get the degree from a Law School in the US and the European countries. And some of them have passed the bar examinations, and are the member of the bar in the US.

To summarize comments by Prof. Kojima and Prof. Rokumoto, We can image three backgrounds of the development of the legal departments. One is the frequent occurrence of both intra- and international litigations. Second is increasing the new type transactions and increasing complexities of each transaction. Third is increasing regulations to business activity.

On the origin of Corporate Legal Departments, the analyst of the survey says that the typical case was separated and developed from the Division of General Affairs. And still now the most frequent style of it is one section of the Division of General Affairs. In such case, the section composed of 10 staffs including one manager of the sections, 2 or 3 chief staffs and the others. Their main role is to cope with the contract matter, the audit of lawyers, and managing litigations. In my research, the largest legal department composes of 75 persons, and one corporations does not have the special staff for legal practices.

And it is said generally that the scale of the Corporate Legal Department depend on the scale of its corporation, and there are different tendency of the character of individual legal section depending on the type of industry. Still some years ago, it is said that corporations belonging to the financial industry have the tendency not to have legal department as a particular section, comparing that the Shosha or the corporations of manufacturing industry have a large legal department.

5. Re-stating the agenda

Above all is a general account of Corporate Legal Departments and their Staffs in Japanese corporations. But you can image easily some problems on this account. Clearly to say, we should attention to two points when we pick up Corporate Legal Staffs in Japan. The one is that the criterion who is corporate legal staffs is ambiguous. The other is that, in such situation, average score is not so meaningful to understand the existence of Corporate Legal Staffs in context.

In fact, once I had conducted research, I could not help to be in trouble who should be treated as Corporate Legal Staffs. They have too

many varieties on their status and role within each corporation. They are not always belonging to the section labeled legal. And legal sections take also various styles depending on conditions within individual corporations. In spite of it, Corporate Legal Staffs in Japanese corporations are recognized as one kind of lawyers in context of both intra- and inter-national settings within business world.

What kind of sociological explanation should we give them if they are really lawyer? Even the doubt is occurred if they are not lawyers in fact. I think that it is difficult to get over these skepticism. So I will throw the question away whether corporate legal staffs is really a kind of lawyer or not, and turn it to how they are produced and sustained in socially. To take this strategy, I think we can go into more interesting dimension as follows.

On corporate legal department and corporate legal staffs, I will assure two points as the result of analysis on my data collection. First, there are interactional processes to produce and define the role of legal practice and the person who perform it. Second, considering such process in the level of a corporate organization, it makes plural the section or staffs who exercise legal practices. As the result, the interactive processes operate within a corporation as the mechanism of pluralizing the section and the staff which exercise legal practices.

Though I can not show the data collection in detail here, I will pick up two topics in my research interview, the situations to generate a legal section and a legal staff, and the efforts and strategies to perform the role of lawyer in the corporation.

6. Process to produce and define the role of legal practices and the person who perform it

(1) Situations to generate a legal section and a legal staff

To explain the situations to generate a legal section and a legal staff, I will take 4 cases for example.

The first case is that a group which has coped with legal affairs spun off as one distinctive legal section from the Department of General Affairs. Such case is said a typical case, as I had mentioned above. One of my informants said that he had coped with legal affairs as a member of the division of General Affairs, and one day organizational structure

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was changed and he was converted to new section labeled legal as a section leader with some staffs. In this case, the job description of the new section is fundamentally the same before. More clearly, main roles of new legal section are drafting and checking contract, legal consulting for the other divisions, coordinating lawyers for such businesses and so on, which was considered by division of general affairs before. The other legal affairs such as big litigation, labor law, tax and accounting law, intellectual properties and so on, was the jurisdiction for each other divisions, which cope with it before. And corporate matter is coped with by one group of the division of General affairs as the same before.

Second case is that a legal group within the division of international affairs copes with international contract and litigation in foreign countries. An informant said, at the beginning he has been allocated to this section, he was not only cope with legal affairs. But as he has gain experiences to cope with many kind of businesses, he has getting to be expected to perform the role of a legal staff. And then, when a section labeled legal was established, he was assigned formally to treat legal affairs mainly as a leader of the section. Such pattern as getting to be expected to perform the role of legal staff with gaining experiences, is found in the case of spinning out of new legal section from the division of General Affairs, keeping a group named legal in the division of intellectual properties and the division of international affairs like this.

Thirdly, there is a case that one day a legal section was established suddenly, and the staffs of this section were converted from non-legal divisions. My informant who is the leader of this section said that he had not thought that he was assigned the role of legal staff. In this case, he and his colleagues must have made effort to develop know-how to gather from the other divisions and cope with legal affairs on the job. He said the section have assigned the job description which is a formal rule in a corporation. But because it was too abstract, they must by themselves have developed relations with the other division to gather legal affairs they cope with. As a result, legal affairs coped with by the legal section is bound by the relation with the other divisions, and the kind of those depend on each cases.

Finally, I will pick up the case that a legal division was established by gathering the legal staffs who were allocated to each other divisions as

legal staffs. In this case, legal affairs in each other divisions was concentrated to and coped with by the new legal division. My informant point out that to take such form as an organizational structure enables to develop legal staff's faculties easily. But, in any way, the important point is that the role of them was as the same as before, to response the needs of each other divisions which they have belong to.

The cases above suggest that the role of a legal section and a legal staff in context has been defined in relation to the role that the section or the other divisions performed before. So it is possible that even if new legal section was established, legal affairs which have been coped with by the other division were coped with by the same way. And then in a corporate organization, the legal staffs who were expected to perform the role of a legal staff are able to produce from the interaction between members involved.

(2) The efforts and strategies to perform the role of a legal staff

Many of my informants told about many kinds of their efforts to perform the role of a legal staff. As the second topic, I will pick up their such effort. Mostly, the contents of the effort was to gather legal affairs which is suitable to be cope with by a man of a legal staff, and to perform the role of a man of a legal staff within the member involved the business.

Firstly, as I have mentioned above, even if a legal section was established, the affairs do not come to the section certainly. According to them, the effort was needed to gather legal affairs in some settings. For example, at the beginning the legal section was established, there were staffs but nothing to do. In such situation, they took strategies to get their job. Such strategies includes 1) constructing the system by rewriting and develop their job description to flow legal affairs they want to their section, 2) advertising and enlightening the other divisions that there are many legal risk within businesses which they cope with, and such risk was able to be avoided if they consult the legal section on it and those affairs are coped with by the legal section, and so on.

However, even if they could establish the system and gather legal affairs within the corporation, it is not sure that they can perform the role of a man of a legal staff.

For it is possible that Planning Division or Sales Division promote

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their project ignoring legal staffs. And when the project has reached the step to sign on the contract, they request legal staffs to admit and sign formally. Even when a legal staff committed to the project, he may not take part in the important decision, because he can not grasp the whole structure of the project. And some cases are there that if legal affairs occurred, they were coped with by President Secretaries which has higher status than the legal section within a corporation, or outside lawyers who was contacted to by each divisions directly.

To gather legal affairs and to cope with them properly as a legal staff, it is necessary not only the existence of the formal rule and system within a corporation, but also to show their ability to cope with it successfully. For legal staffs, the term of "successfully" is including the case that even if the business was lost, a legal staffs gave satisfaction to their colleagues and got trust from them as a member involved.

Constantly to gather affairs they want, they must learn about their corporate organization, characters of their colleagues, the other party of businesses, contents of each project and transactions and so on, as well as legal aspect of those. And they are demanded to advice not only on legal affairs properly, but also on the other aspects. At the same time, they must judge their performance and its extent of their commitment, depending on the situation of the relationship between staffs of the other division and the other parties of the business. Their mission is here to remedy to each business project, so that their actions as a member involved will suitable to the situation as possible.

Such efforts and strategies conducted and carried by legal staffs are constantly required to enable it to perform properly the role of a legal staff within the corporation. This suggests that the role a legal staff performs in reality is defined not only by the relevant formal rules or labels, but also by the day to day interaction between the persons involved in each business activity.

7. Summary

The two topics I have discussed suggest the following.

First, the role of a legal staff and a legal section performs is defined by their relationships with the other divisions and the results of their interaction during projects or other activities.

Second, legal issues are not necessarily handled only by the staffs labeled "legal" or the staff of the section labeled "legal" within a corporation. The members involved in each project are able to make someone perform the role by defining what needs to be done, even if it were ambiguous. As a result, the role of legal staffs can be determined through the interaction of the participants.

These findings clearly show that certain interactional processes produce and define the contents and characters of legal practices and at the same time determine who performs the role. These are therefore the processes of interactions found in the work which the persons exercising legal practices are involved in. In other words, within the process from the conceptualization of the project, to its development in various ways, the members involved, by interacting with each other, determine the role which may be called legal practices. Who performs this role depends on the circumstances surrounding the work when it is decided. Of course, consulting outside counsel is one method. But at the same time, making someone who is a member perform it is also a possible way.

In addition to such realistic responses, it seems to me that the following cases are the results of the same kind of processes. That is, the case where someone is assigned to act as the legal staff within each division, the case where a staff member was lured from a legal section and internalized in the other division to treat legal issues within it, and the case where, in order to identify and respond to legal affairs immediately, a legal division was separated or divided into each line division.

A more important point in those cases is that legal work occurred in various situations within a corporation, and then the responsibility for it was determined by the members involved, and the person who was suitable for it was decided and located through interactions among them in each situation.

These practices performed in individual projects are day to day practices, and such practices themselves include the possibility of making various persons handle legal issues in various situations. Since, when it is considered at a level of an organization in which different members handle various affairs, legal practices are performed by a plurality through the processes consisting of interactional processes

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which produce and define the contents and characters legal practices, and which decide the person who performs the role. It seems to operate within a corporation as a mechanism to pluralize persons and sections who perform legal practices.

To focus on the development of corporate legal staffs means that attention has been paid to such interactional processes and that such process have been conducted in various settings. These practices enable their existence to be sustained. Though it is too complex a subject to be treated here in detail, the practices to mention them and which try to make clear their existence also seem to affect their development.

Finally, I will comment on some implications of by conclusion. Above all, I am certain that the mechanism which pluralizes the performer of legal practices is build into a corporation's organization. I am also certain of the existence of the possibility that various lawyers will be produced in each situation. The main point is that lawyers, including de facto lawyers, are a social production of interactional processes by members, and are not determined only by academic careers or formal qualifications.

Is this an example of Japanese uniqueness? I do not think so. Though I selected corporate legal staffs in Japanese corporations as a case study, the process which produce and sustain such staffs are created by very mundane and easy practices which can be seen everywhere. Within these processes, the role which can be called legal practices is produced and characterized, and, of course, such processes characterize lawyers themselves.

To understand the many kinds of de facto lawyers which exist, it is useful to apply the viewpoint of interactional processes, which I have done. Especially when the business world is the subject, we should shed more light on the processes within a corporate organization. Then, research findings will also be linked to more interesting agenda such as organization and law, organization and professions, and the theory of the profession itself.

Note

- (1) I wish to my special thanks to Phillip Lewis, Senior Research Fellow at Oxford University, Center for Socio-Legal Studies, who remember my paper for RCSL95 during over 10 years and sent me short but striking e-mail about it on February 4 in 2006. Without this e-mail, these findings will not be published, or even if published, it will be in far distant future. And also I express my thanks to everyone who encouraged me to present and assisted my presentation.
- (2) "RCSL" means International Sociological Association, Research Committee on Sociology of Law. The information for this organization is in URL: <http://www.ucm.es/info/isa/rc12.htm> (Last visited in February 10, 2006). Original paper is Yoneda (1995b).
- (3) See Chapter III of Shiho Seido Kaikaku Shingikai (2001), which is the master plan of Judicial System Reform in Japan.
- (4) For Example, Suchman (2003) shows one of such trends.
- (5) After the RCSL95, this research has been conducted once five years. Recent 2005 survey is in analyzing.
- (6) In the case of Japanese corporation in the United States in 1980's, see Miyazawa (1986).

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