

# Lawyers, collective actions and legislative changes in Japan

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Adrienne Sala (Ehess)

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# GENERAL PRESENTATION OF THE RESEARCH PROJECT

## Previous research (PhD):

- Japanese households' over-indebtedness / victims of predatory lending and its **social construction** as a **public problem** by lawyers
- Lawyers organized **legal and social mobilizations** (bankruptcy filings, litigations against consumer finance companies)
- Supreme Court decisions followed by a radical legislative reform of the consumer credit regulation

## General presentation of the research project:

- Japanese lawyers and social movements: an interdisciplinary approach
- Role of few lawyers in different cases of **social mobilizations** and **collective actions** since the 1960s (Pollution, cars industry, *karôshi*, over-indebtedness, Fukushima nuclear power plant accident)
- **Significant judiciary and legislative changes** (e.g. Fundamental Act for the Environment (Compensation Act for Environmental Pollution-Related Health Injury, *karôshi bôshi hô*) (Kawashima, 1995) but not completely satisfactory

# PUZZLE & RESEARCH QUESTIONS

Many historical and **institutional barriers to initiate litigation**, limited access to courts and Law in Japan

- Lack of lawyers, high fees, court delays, strict standing rules, unavailability of class actions, relative certainty of outcomes
- Informal processes of conciliation and mediation

Nevertheless since the 1960s several Japanese lawyers played a major role in **social problem's construction, collective actions and legal mobilization's organizations**.

## Research questions:

1. How Japanese lawyers have managed to organize social movements and collective actions in a society depicted as having a **low legal consciousness** (Kawashima, 1967) with a **legal system** that strongly discourages private suits?
2. Can we use the concept of “cause lawyering” to analyze Japanese activists lawyers?
3. Does a rising **legal and political representation of weak interests** (workers, consumers, citizens, inhabitants) have an impact on the process of institutional change as well as its **efficiency**?

# LACK OF JAPANESE LAWYERS

The percentage of lawyers in Japan is **remarkably small** in comparison to other advanced countries (Sanders, 1996)

Large variety of **quasi lawyers** (judicial scriveners, etc).

Since 2000 **Judicial reforms**, the number of lawyers has increased.

Fig.1. The total number of lawyers in selected countries

Year	China	France	Germany	Japan	South Korea	U.K.	U.S.A.
1950			12844	5883		17035	221605
1960			18347	6327	450	19069	285933
1970		14890 [1973]	22882	8520	719	24407	326842
1980	31629 [1985]		36077	11494	940	37832	574810
1990	41383	42092 [1998]	56638	14137	1803	54734	755694
2000	90011		104067	<b>16340</b> [1997]	4228	79503 [1999]	1022462
More	136014 [2007]		142830 [2007]		5333 [2003]	96757 [2004]	1180386 [2009]
Recent							
% Change*	185%	183%	355%	92%	488%	226%	213%

\*Change from 1970 to 2000 or closest approximation, indicated in bold

Source: in M. Galanter "More lawyers than people. The Global Multiplication of Legal Professionals", 2009

# CONTEXT & HYPOTHESIS

1. Evolution of the social, political and economic context
2. Institutional changes

- **Neoliberalism and deregulations** make it difficult to **enact new laws that regulate the private sector**  
→ shift from **legislative to litigation legal strategy** (Meili, 2006)
- Changes in the relation between the judiciary, the executive and the legislative: bureaucracy's lower role, Japanese courts becoming more active as in other countries (Commaille, 2015)
- **Institutionalization of the group of lawyers** (e.g. consumer protection - Nichibenren's active role in the Consumer Agency, class action since 2016)
- **Increasing number of lawyers** (since the *kure-sara* case (bankruptcy and M&A) (Ramseyer, 2013)
- Judiciary institutional changes: toward a **contract-based society** (rights-bearing autonomous individuals?)
- **Poverty and socioeconomic inequalities**: social welfare and public problems (social issues' transformations/ public perception/ discourse) self-responsibility vs collectivity.

→ Evolution of the legal profession in response to other institutional changes  
→ The legal system did not rely on the **coercive capacity of courts** due to a **mutual trust** that used to make **compromise** possible but this is **affected** (e.g; Sanders, 1996; Trumbull, 2014)

# HYPOTHESIS

1. Evolution of the social, political and economic context
2. **Institutional changes**

- H1: Japanese lawyers activism is less the result of the Judiciary reform (since 2000s) than the result of a **long process of legal and social mobilizations since the 1960s**.
- H2: Continuity of lawyers' activism created an **accumulation of resources** (financial, social, political).
- H3: Active lawyers and legal mobilization reveal that the **role of the law is evolving** (more bottom-up, social changes).

# INTERDISCIPLINARY APPROACH

## Collective actions and social movements theory

Link between law, social and political change

Transformation's process of **social demand into public problem**

(e.g. Cobb et Elder, 1972; Olson, 1967; Tilly, 1992; Gusfield, 1965, Offerlé, 2001, Neveu, 2015)

## Cause lawyering theory

Lawyer dedicated to the **usage of law for the promotion of social change.**

→ Cause lawyering is about **the belief in a cause and the will/desire to advance that cause.**

(e.g. Sarat & Scheingold 1998, 2005, 2006; Israël, 2005; MacCann 2004)

## Political economy of institutional change

*(...) There is a wide but not infinite variety of modes of institutional change that can meaningfully be distinguished and analytically compared*

(e.g. Streeck & Thelen, 2005; Pallier & Surel, 2005; Thelen, 2009)

## 1. PARADOX OF PROFESSIONALISM: TENSIONS BETWEEN COMMERCIAL AIMS, PUBLIC ASPIRATIONS, CLIENTS' INTEREST

- **Tensions between commercial aims, public aspirations**

*“(...) in their roles as Revolutionnary spokesmen and Constitution-makers they have been among the world’s most eloquent and effective architects of the **institution of rights-based democratic government**... A zealous **servants of wealthy and powerful clientele**, however they have also effectively (...) rollback of, access to **equal justice and political power for workers, minorities, and other marginalized groups**” (R. Gordon 2009)*

*“(...) Lawyers is a group in **low repute**, suspecting that they are more **concerned with collecting fees than serving the public good** ” (ref).*

- **Tensions between public interest and lawyers clients' interest (Sarat & Scheingold, 2001)**

➔ How can we address this **paradox** in the Japanese case?

➔ Can we apply the **cause lawyering** analytical concept to Japanese lawyers, and to whom (business lawyers, activists for minorities' interests and victims?)

## 2. SOCIAL MOVEMENTS AND CAUSE LAWYERS:

### ▪ Tensions between lawyers and other social actors

- Labor unions, local associations, victims and community, non-lawyer activists, other lawyers (non cause lawyer?)
- E.g. Upham, 1976; Jobin, 2006 in the Minamata case (critics of those who sue for **pursuing their own ends** ahead of the **good of the community** and other victims)
- Tensions between an **individualistic rights-based discourse** and a **collective norms approach** (not only to protect individuals victims but for the **broader good** (Meili 2009)

### ▪ Resources (political, financial, human resources)

- Depending on the political context: political opportunity, coalition of interests (ex: 2005)
- **Financial resources**: non-profit law adviser (litigation fees, etc.) influence the **legal mobilization's strategy**
- **Human resources**: lack of experience at the beginning, then accumulation (generation, social capital)

➔ How do these tensions affect the **social and legal mobilization' issues?**

➔ Does the role of law in the Japanese society increased the **legal consciousness?**

## 3. LEGAL MOBILIZATION AND STRATEGIES

- **Legal mobilizations:** cause lawyers do not privilege litigation over other forms of legal and social mobilization (Scheingold 2004) but depending on the political context, litigation has become **the primary legal mobilization strategy** (McCann, 2004)
- **Legal tactics:** lawsuits even if they failed in court, attract the **public outcry and media attention**
- **Social mobilizations:** community organizing (class action or impact litigation), coalition building and legislative advocacy. **Preference for legislation to litigation** (success in the legislative arena > courts)
- **Media campaign, citizen power and other advocacy technique** win effective social change

→ **Pragmatic** choice for litigation (compensations for the victims, trial fees) that could affect the “cause”

# METHODOLOGICAL ISSUES

## SURVEY OF FOUR CASES (BY CHRONOLOGICAL ORDER)

### 1. **Minamata case and pollution cases**

**History** of the fight against pollution reveals how citizens can **use courts** to receive redress / and how **a regime can discourage litigation as a method of dispute resolution** (e.g. Upham, 1987; Kitamura, Hirano, Noguchi, Kojima, Kakita, Kuwaki, 1959).

### 2. *Karôshi and Karôjisatsu*

### 3. *Kure-sara (over-indebtedness and victims of predatory lending)*

### 4. **Fukushima nuclear power plant accident**

→ How lawyers contribute to **building, maintaining, and realizing the aspirations** of social movement?

## KARÔSHI – AUTUMN 2017 & WINTER 2018

Collaboration with a Japanese legal scholar (E. Kasagi, CNRS) and a Japanese lawyer (H. Kawahito)

- Death and suicide caused by overwork / Work related cerebro-cardiovascular diseases
- According to legislative norms, *karôshi* is caused by **long working hours** (過労死防止対策推進法 / **Karôshi prevention measures law, 2012** / **Working-hours regulation since 2017** and employee security enforcement (**Labour contract law, art.5**).
- **A long process of recognition** of the problem since the 1960s (the term “karôshi” was elaborated by a doctor in 1978(上畑 鉄之丞 ) followed by the Ministry's recognition)
- Since the late 1980s **increase of cases** where a **compensation** was received
- Since the 1990s, **several major lawsuits** (e.g. Ijima case, 1999; Tokyo Kaijyô case,2000; Dentsu case, 1996-2000)

→ Lawyers' role within legal and social mobilizations is one the **major force of legislative reforms**. Question remains about social change...

## KARÔSHI – AUTUMN 2017 & WINTER 2018

- **Qualitative and quantitative methods:**
- Archives (Nichibenren data, lawsuits and courts' reports) lawyers white papers publication, etc.
- Statistics (Supreme Court (number of lawyers, number of trials, etc.)
- **Interview of 10 - 15 lawyers**
- Place: Tokyo, Osaka, Nagano
- Age: three generations, women and men (although women are few....)
- 1 hour Interview (qualitative, open questions)
- **Interview of others social actors** : Labor unions; associations, victims and/or victims family, bureaucrats form the ministry of Health, Labour, Welfare, Diet's members.)
- Next year (2018) interview with lawyers specialized in kure-sara, Fukushima nuclear plant accident and to conduct **comparative analysis**
- **Mid-term: Comparative and collaborative analysis including China, France and North America cases of activists lawyers to consider different institutional context.**

Thank you very much...

[adrienne.sala@gmail.com](mailto:adrienne.sala@gmail.com)