Legal Problems and the Use of Law in Tokio and London – A Preliminary Study in International Comparison*

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Inhalt: Die Arbeit untersucht, inwieweit die Häufigkeiten, mit denen in verschiedenen Ländern die Bürger Rechtsmittel einsetzen, und die Muster dieser Häufigkeiten vergleichbar sind. Sie zieht dabei die von BRIAN ABEL-SMITH u. a. in ihrer London-Studie (1973) entwickelte Methode heran. 413 männliche Einwohner eines Stadtteils in Tokio wurden gebeten, über ihre Erfahrungen in Rechtsangelegenheiten (in 12 ausgewählten Problemfeldern) zu berichten. Der Unterschied in der Zusammensetzung der Samples ist im Vergleich mit den Daten, die die Londoner Studie erbracht hatte, berücksichtigt worden. Die Analyse zeigt, daß Rechtsauseinandersetzungen, über die die Tokioter berichteten, im allgemeinen zwar weniger zahlreich sind als die der Londoner, aber dazu tendieren, drastischere Formen anzunehmen. Die nach Problemfeldern unterschiedliche Rate in der Benutzung von Rechtsmitteln, die in beiden Samples ähnliche Muster aufweist, wird von einem Modell dreier Dimensionen her erklärt, die die Problemfelder jeweils charakterisieren. Dabei ergibt sich, daß die Rate der Rechtsmittelverwendung in Tokio nicht nur im großen und ganzen tiefer liegt, sondern auch einen besonderen Typus bildet. Es wird die These aufgestellt, daß die Art und Weise, in der Tokioter Konflikte lösen, dadurch erklärt werden kann, daß man in Japan Konflikte in erster Linie als Angelegenheit wechselseitiger Anpassung, zu der die Parteien kommen müssen, weniger aber als Anwendungsfall abstrakter Regeln ansieht.

Abstract: This paper explores the possibility of comparing the frequency with which, and the patterns in which, individual citizens of different countries make use of legal advice, using the survey method developed by BRIAN ABEL-SMITH and others in their London-study (1973). 413 male residents of a ward in Tokio were asked to report on their experience of legal problems in 12 chosen problem areas. In the comparative analysis of the data with those of the London study, the difference in the social composition of the both samples is taken into account. The analysis shows that the legal problems reported by Tokioers are generally less frequent, but tend to take more drastic forms than those of Londoners. The difference in the rate of the use of advice according to problem area, which shows basically the same pattern in both samples compared, is explained in terms of three dimensions which characterise each problem area. Against this background, the rate of the use of legal advice in Tokio is shown to be generally lower, and to have some special features. It is suggested that all these patterns in conflict-solving among the Tokioers may be explained by the fact in Japan a conflict is treated primarily as a matter of mutual adjustment by the parties concerned rather than as a matter of application of rules.

Introduction

One of the central questions concerning the social order of a modern society is: under what conditions are the legal problems of citizens brought to the attention of the legal system of the society: On the one hand, in all modern societies law has become, and is still becoming more and more, the central mechanism of maintaining the order, as the more informal forms of ordering break down as a result of urbanisation and industrialisation. On the other hand, law does not operate automatically. It needs to be set in motion by private persons or by certain organs of the sta-

te. As recent researches in legal sociology show, this process of mobilising law must be regarded as a problematic process which depends on many different factors. This holds especially true in the field of private law, where the responsibility of setting the legal machinery in motion is placed in the hand of private persons who happen to be involved in a conflict situation in which they feel that their legal right has been infringed upon¹.

The recent discussions on the topic "unmet legal needs" or "access to law" in major western countries reflect the growing concern about the empirical process of realisation of law and legal rights through the initiative of private persons.

* The writing of this paper has been made possible by a Research Fellowship of the Alexander von Humboldt-Foundation. I would like to thank Professor N. LUHMANN, Professor W. KAUPEN, and the editors of the *Zeitschrift für Soziologie* for their critical comments on the earlier draft of this paper.

1 For a summarising formulation of this problem of the 'complaint mechanism', see N. LUHMANN 1972: 267 ff.

In such a society as Japan which strives to modernise itself on the model of western countries with a legal system imported from the latter, the problem of realisation of law has a broader meaning. There one can ask whether a legal system of western type can be fully institutionalised within the context of non-western social structures, and to what extent its institutionalisation is indispensable for the "modernisation" of the society.

That in Japan recourse to law is taken less frequently than it should be or less frequently than in the western countries as a means of resolving a conflict between the members of the society, has been a basic assumption as well as a central concern in Japanese sociology of law. This concern has its roots in the fact that the legal system of Japan is something which was imported from western countries in the process of state-directed modernisation and that, further, the postwar reconstruction of Japanese society was carried out through imposition of laws incorporating modern liberal-democratic ideals.

Against this background it is understandable that the avoidance of recourse to law has tended to be regarded as a general characteristic of the Japanese people, culture, and/or social structure, rather than as a problem of certain social groups or classes. At the same time, law has been looked at in its most general characteristic, namely that it presupposes a social order outside the legal system regulated through a system of rights which are to be asserted by individuals of equal status. The primary cause for avoiding recourse to law has been sought in the lack of this precondition for the effective functioning of law, in the lack of the concept of 'right' in the culture, in the lack of rights-consciousness in the people, and in the lack of individuality in the social structure².

This theory has great intuitive plausibility. But as yet not much systematic empirical research has been made into the extent and the causes of avoidance of recourse to law³. This gap must be

filled. Particularly, there are indications which run counter to the assumption (KAWASHIMA 1963: 57 - 8) that the development of a capitalistic economy will automatically bring with it the growth of 'rights - consciousness' and so the decline of avoidance of law. Moreover, law must also be looked upon as an instrument for social change, for realising and maintaining the kind of social change, for realising and maintaining the kind of social order which is based upon the principle of 'rights'⁴. If we take this point of view, a wider range of factors will have to be considered in order to find out the specific conditions leading to the use or the non-use of law in a conflict situation⁵.

This paper reports on preliminary research conducted in Tokio on the legal problems which ordinary individual citizens experience and on the use they make of legal advice for solving such problems, the technique which was developed by BRIAN ABEL-SMITH and his collaborators was used⁶. Therefore I shall present and analyse the data collected in Tokio in comparison with those of ABEL-SMITH and others⁷.

It is true that ABEL-SMITH and others have used their technique in order to ascertain the amount of "unmet legal needs", whereas I am more generally interested, as indicated above, in clarifying the specific conditions leading to, and ascertaining the extent of, the use or the non-use of law

Japan is roughly between one twentieth and one tenth of the figures for suits per capita in the common law countries (p. 255), and that the number of practicing attorneys in Japan relative to population is one-eighth of those in the United Kingdom (p. 266)".

² See KAWASHIMA 1963, for a representative treatment.

³ For a discussion of this problem on the basis of presently available materials, see TANAKA 1976: 254 ff. There it is shown that "the number of civil suits per capita brought before the courts in

⁴ As is well known, it is the "Berkeley perspective" (the term is PHILLIPPE NONET's) that sees in law an instrument for realising a certain kind of social order, defined by the principle of 'legality', and makes it the central task of the sociology of law to ascertain the social conditions for its realisation.

⁵ For a more detailed presentation of my own view, see ROKUMOTO (1972, 1973).

⁶ See Part III of ABEL-SMITH et al. (1973). I would like to thank Professor BRIAN ABEL-SMITH for kindly consenting to my use of this technique.

⁷ Throughout this paper the work of ABEL-SMITH et al. (1973) will be referred to simply by citing within parentheses the relevant page numbers without repeating the title of the book.

in Japan. It goes without saying, however, that their method has a general applicability, and especially in view of the present state of development of empirical research in this field, it has several important advantages.

First of all, when a statement about a differential rate of recourse to law (whether according to culture or to social class) is made, there follows logically the need to ascertain the rate of recourse to law relative to the frequency of situations where such a recourse is meaningful or necessary (see BLANKENBURG 1976: 94). The technique of ABEL-SMITH and others represents the first systematic effort⁸ to develop a standardised instrument, which, I believe, may also be used for the purpose of international comparison, in order to establish the number of legal problems experienced by citizens. Secondly, this technique avoids letting the interviewee use his own definition of "legal problem" and tries to get at the problem cases in which legal advice is typically considered to be meaningful⁹. Finally, this method covers a range of areas in the social life of individual citizens in which they frequently face a legal problem. This enables us to compare different problem areas.

The legal problems which are collected by means of this method are assumed to arise out of conflict situations, either actual or potential. A conceptual note may be appropriate here.

In this paper the term 'conflict' will be used to mean the situation where the future positions wished by two actors are recognised by one of the actors as incompatible and these future posi-

tions are purposed in awareness of their mutual incompatibility (see K. BOULDING 1962: 5; J. GALTUNG 1965: 348). A 'legal problem' occurs when an actual or potential conflict exists in which a legal issue can be raised, and this legal issue becomes an actual concern of the party to the conflict. Legal problem implies then a bridge between a legal conflict and a legal dispute. The term 'dispute', on the other hand, will be used to mean the social process in which one actor communicates his rejection of the other's position and/or makes a demand to change it¹⁰. This action will normally be accompanied by an implicit or explicit reference to some justifying ground. Thus 'dispute' refers to the manner in which a party to a conflict reacts to it or handles it. Another type of reaction is one in which case the actor applies or threatens to apply power, or seeks a bargain. Still another type of reaction may be entreatment as opposed to demand¹¹.

The Research

As the target area of this preliminary investigation I chose, for its convenience in conducting the research, Bunkio-Ward, in which my university is located¹². Bunkio-Ward is one of the 23 wards which constitute Metropolitan Tokyo (*Ku-bu*) and is located in the central part of Metropolitan Tokyo. Its population was 234,326 in 1970, representing about 2.7 percent of the total population of Metropolitan Tokyo (8,840,942). I did not intend to choose an area corresponding in its character to the areas investigated in the London study, which are described as "the less prosperous part(s) of a densely populated urban

8 For some earlier efforts see CLARK & CORSTVET (1938), SYKES (1969), MAYHEW & REISS (1969). See also SCHUYT et al. (1975).

9 It would be problematic, if one equated such a situation with the "need" for legal advice, for the need depends on the subjective and other special circumstances of each case (see WHITE 1973: 35, and also LEWIS 1973: 75 ff.). It would also be wrong, if one saw in such situations only a "legal problem" and nothing else, for they may be more appropriately solved in other than legal ways (see LEWIS 1973: 78). But to use the term "legal problem" as a convenient name for a situation to which a legal solution is applicable, seems to be harmless, so long as its operational meaning is kept in mind.

10 This corresponds to N. LUHMANN's concept of 'Konflikt', which is defined as the communication of rejection of selections made by the other which is then made the theme of the interaction with him (LUHMANN 1975: 68).

11 This scheme conforms to V. AUBERT's distinction of 'competition' and 'dissensus', if the latter is understood not as referring to the objective basis of conflict, but to the social process arising out of it. See AUBERT 1963. For a somewhat more detailed presentation of my own view, see ROKUMOTO 1973: 123-5.

12 The research was financed by the grant of the Scientific Research Fund of the Ministry of Education in Japan in the amount of ¥ 900,000 for the year 1974.

centre" (p. x). Bunkio-Ward is characterised instead by the predominance of independent proprietors among its inhabitants. We cannot treat Bunkio-Ward as representative of Metropolitan Tokio, just as the target area of the London study is not representative of the whole of Inner London.

In order to obtain optimal data on the actual experience of legal problems, I decided to include in the sample only men of 30 years or more of age. In the London study, on the other hand, both men and women of 20 years or more were interviewed and each subject was asked not only about his own but also about his spouse's legal problems.

A sample of 776 men of 30 years or more was randomly extracted from the electoral register of Bunkio-Ward (dated 10.9.1974), which contained 77,844 adult men and 82,712 adult women. The interviews, executed by 17 students (mostly law, some sociology), started in April 1975 and ended in August 1975. 413 interviews were successfully completed¹³.

The composition of our sample of 413 men in respect to age, education, occupation, and income is shown in Table I. In comparing this sample composition with that of the London study, we must limit ourselves to education and social class, for in the latter the breakdown according to age is not given except for the dichotomy under or over 65 and income is classified in a way which it is not possible to duplicate for the Japanese cases. Table II reproduces the percentages for the London sample. The data as to the housing status are added to each of the tables.

We can see clearly that our sample from Bunkio-Ward is made up of far more highly educated persons. 78 percent of the Tokio respondents have completed a school education of more than 10 years, whereas this holds true for only 14 percent of the respondents in London. In addition, the London sample is overwhelmingly dominated by working class people (71%); professionals or managerials represent only 2 percent. By contrast, in the Bunkio sample blue-collar workers form a small minority (12%) and professionals or managerials have a larger share (11%). The predominant classes in the Bunkio sample are independent proprietors (32%) and white-collar workers (25%), which together represent more than half of the total. This difference in the social composition of the two samples is also confirmed when we look at the status of the respondents in relation to the housing in which they lived at the time of interview. The majority of Bunkio respondents owned the house in which they lived and less than 30 percent were tenants or lodgers. In the London study, on the other hand, an overwhelming majority (88%) were tenants, and only 10 percent were owners.

The interview schedule consisted of two parts. The first part was concerned with the legal problems actually experienced by each respondent and contained 18 main questions each with several sub-questions. The second part consisted of 26 short questions about attitudes toward law and the legal profession. In addition, we enquired about the family composition, age, education, occupation, and income of the subject.

This paper deals principally with the data obtained in the first part of our interview schedule. Here we asked each respondent if he had experienced a specific type of legal problem in 13 chosen problem areas within the past seven years; if so, we enquired about the content and the course of the case(s) and about the actions undertaken, especially about the advice taken, by the respondent. I used a translated version of the questionnaire employed in the London research; however, I made some omissions and modifications partly because of my limited financial resources and partly because of the necessity of adapting some categories to Japanese situations. The main question for each of the 12 problem

¹³ Out of 776 men in the original sample 8 were dead, 53 had moved away, 24 could not be located, 1 was missing, 5 were living abroad, 7 were stationed temporarily away from Tokio, and 6 were ill. The rate of completed interviews to the original sample is: $413/776 = 53.2\%$, to the available candidates is: $413/672 = 61.5\%$. The London research was executed in the period between October 1967 and March 1968. 1,651 interviews were made out of the original sample of 2,666 people (61.9%), and out of 2,258 available candidates (73.1%) (p.112).

TABLE I: Composition of the Bunkio sample

Age		Income*	
1) 30 or more	144 (35%)	1) less than ¥ 80,000	85 (21%)
2) 40 or more	115 (28%)	2) less than ¥ 120,000	108 (26%)
3) 50 or more	87 (21%)	3) less than ¥ 170,000	89 (22%)
4) 60 or more	66 (16%)	4) ¥ 170,000 or more	91 (22%)
Total	413 (100%)	no data	40 (10%)
		Total	413 (101%)
Education		Housing status	
1) up to 6 years	18 (4%)	1) own house, own lot	194 (47%)
2) up to 10 Years	72 (17%)	2) own house, leased lot	76 (18%)
3) up to 13 years	132 (33%)	3) leased house or apartment	93 (23%)
4) more than 14 years	185 (45%)	4) boarding room or dormitory	20 (5%)
no data	2 (1%)	5) other forms or no data	30 (7%)
Total	413 (100%)	Total	413 (100%)
Occupation			
1) No occupation	39 (9%)		
2) blue-collar workers (incl. artisans, shop-keepers, employees of a small-sized firm)	49 (12%)		
3) independent proprietors (incl. owners of a small-sized firm)	132 (32%)		
4) white-collar workers (incl. employees of a middle- or large-sized firm, public servants, teachers)	104 (25%)		
5) owners of a middle-sized firm	44 (11%)		
6) professionals and managerials	44 (11%)		
no data	1 (0%)		
Total	413 (100%)		

* Disposable monthly income per capita, computed according to the following formula:

$$\left[\begin{array}{c} \text{Disposable} \\ \text{monthly} \\ \text{income} \\ \text{per capita} \end{array} \right] = \frac{\left[\begin{array}{c} \text{Net income of} \\ \text{husband and} \\ \text{wife combined} \end{array} \right] - \left[\begin{array}{c} \text{Rent or} \\ \text{rates for} \\ \text{housing} \end{array} \right]}{\left[\begin{array}{c} \text{Number of household members} \\ \text{not at work} \end{array} \right]}$$

Children under 10 years of age were counted as 1/2 person.

areas which are dealt with in this paper is reproduced in Table III together with important modifications made in questions¹⁴.

14 Of the 17 problem areas which are included in the London questionnaire four were omitted in ours, namely, those of 'taking a lease', 'making a will', 'social security', and 'juvenile court case'. It is thought

generally that in the first three areas a problem would be experienced only exceptionally by an ordinary Japanese citizen and that the last area would be a subject which would not be welcomed by the respondent, regardless whether he had experienced problems in that area or not. In retrospect, however, I am not sure if these omissions were really necessary. Furthermore, 'death in the family' is omitted from this report because no data on it is reported for the London research.

TABLE II: Compositions of the London sample

Education*

1) up to 15 years of age	86%
2) up to 16 years of age	8%
3) 17, 18 years of age	4%
4) beyond 18 years of age	2%

total number	1,651	100%
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Social class*

1) unskilled workers	14%
2) semi-skilled manual workers	20%
3) skilled manual workers	37%
4) non-manual workers	11%
5) intermediate	8%

1) unskilled workers	14%
2) semi-skilled manual workers	20%
3) skilled manual workers	37%
4) non-manual workers	11%
5) intermediate	8%
6) professionals and managerials	2%
unclassified	7%

total number	1,651	100%
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Housing status**

1) owner occupied	10%
2) council rented	41%
3) privat rented	47%
4) other or not stated	2%

total number	1,651	100%
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* See ABEL-SMITH et al., 1973, p. 119.

** See op. cit., p. 245.

3) Eviction (active): "Have you had the experience of requesting your tenant to leave a leased house or leased land?" (See above.)

4) Buying a house: "Have you had the experience of buying or selling, for yourselves, a piece of land, a house or an apartment?" (We included not only those cases where the respondent bought a house, but also those where he bought or sold a piece of land or an apartment.)

5) Defective goods: "Have you had the experience of finding some defect in a product which you bought new for more than ¥ 10,000 (£ 5,00 in the London Research)?"

6) Installment arrears: "Have you had the experience of buying a product, new, for more than ¥ 5,000 (£ 5,00 in the London Research) on the installment plan and then of being unable to keep up the payments?"

7) Debt (active): "Have you had the experience of someone owing you more than ¥ 10,000 (£ 5,00 in the London Research) and not paying after the period has expired?"

8) Debt (passive): "Have you had the experience of having someone who tried to take you to court or threatened to do so, claiming that you had not returned the money you owed him after the period had expired?"

9) Accident: "Have you had the experience of a situation in which you were injured or a member of your family was killed or injured in an accident which was wholly or entirely someone else's fault?"

10) Employment problem: "Have you (or your wife) had the experience of being treated unfairly by your employer involving discharge, salary or wage, overtime, trade union activities, etc.?"

11) Matrimonial problem: "Have you had the experience of a divorce problem - divorce, factual separation, or making consultations about the possibility of divorce?"

12) Other court proceedings: "Apart from what you have told me, have you had the experience of being involved in a court procedure?"

TABLE III: Questions for 12 problem areas

1) Repairs undone: "Have you had the experience of a situation where the landlord would not do repairs, although he ought to have done them?"

2) Eviction (passive): "Have you had the experience of being requested to leave a leased house or land by the landlord?" (We included in the landlord-tenant cases those cases where he leased the house.)

Occurrence of Legal Problems in Bunkio

Let us first compare the frequency with which legal problems occur in Bunkio and in London. The number of problems for each problem area and its ratio to the total informants are given in Table IV. For reference the correlation between legal problems and social class is also indicated in the table.

TABLE IV: Legal Problems: in Bunkio and London. Numbers, Rates, and Correlations

Problem Areas	BUNKIO			LONDON		
	Num- ber	Rate* (%)	Corre- lation**	Num- ber	Rate (%)	Corre- lation
Repairs undone	13	3	—	123	7	—
Eviction (passive)	18	4	—	60	4	x
Eviction (active)	16	4	=	18	1	+
Buying a house	104	25	+	74	4	+
Defective goods	8	2		27	2	x
Installment arrears	0	0		28	2	—
Debt (active)	35	8	=	47	3	+
Debt (passive)	6	1		21	1	—
Personal injury	26	6	=	181	11	x
Employment problems	6	1		80	5	—
Matrimonial problems	6	1		52	3	x
Other court proceedings	8	2		46	3	
Total	246	59		757	46	
Total, without 'buy- ing a house'	142	34		683	41	

$$* \text{ Rate} = \frac{(\text{Number of cases})}{(\text{Number of respondents})} \times 100$$

** Correlation = Correlation with the social classes.
+ means a positive correlation, — means a negative correlation, x means no correlation. Where the number of cases is less than 10, the correlation is not shown. = means proportionally many cases of independent proprietors.

According to this table, the overall rate of occurrence of legal problems is higher in Bunkio (59%) than in London (46%). However, this overall picture is misleading, for the ratio is higher in only three areas and lower in six areas for Bunkio than for London. Moreover, if we disregard 'buying a house'

which has special characteristics (see below p. 235), the total occurrence rate becomes 34% in Bunkio compared with 41% in London. But in order to make a more accurate comparison not only in terms of the number but also in terms of the character of legal problems we must look at each problem area closely, bearing in mind the composition of the sample in each study.

Repairs undone: The thirteen cases which were judged to involve a legal problem included seven cases of leaking roofs, three cases of leaking water-pipes, one case of a broken ventilator, one case of a broken door-lock, and one case of a broken water-tap. In seven cases the respondent had had repairs done at his own expense; in two cases the owner had borne a part of the costs of the repairs carried out by the tenant; and in the four remaining cases the problem had not been settled at the time of interview.

None of these cases represents a condition which can be described as 'general delapidation', most of them falling between 'major fault' and 'minor fault' by the standard of the London study (pp. 122-3). Therefore, for the purpose of comparison we must here take into account the 136 cases of 'minor fault' which are excluded from the cases of 'legal need' in the report of the London study. Their inclusion would make the total number of problems 259 cases = 15% for London, to be compared with 3% for Bunkio. On the other hand, tenants represented 88% of the London sample, whereas they constituted only 28% in the Bunkio sample. Nevertheless, the difference in the frequency of problems (5 to 1) is much greater than that in the share of tenants in the sample (3 to 1).

As a result, we can say that the problems of Bunkioers in this area are not only more trivial in nature, but also substantially smaller in number in comparison with those of Londoners.

As a possible explanation, it may be speculated that in Japan there is more room for mutual adjustment between the tenant and the landlord and most problems are solved in this way before they become very serious. This hypothesis seems to be especially applicable to the cases of wooden, detached houses rented by a private, individual landlord, which make up still today a substantial part of the housing market in Japan.

Eviction (passive): Ten of the eighteen cases of legal problems concerned with eviction (passive) involved a rented house or apartment, five involved leased land on which the respondent's house stood, one involved a rented house and leased land, and two, a rented room.

The rate of occurrence of problems in this area is about as high in the Bunkio as in the London sample, and that in spite of the above-mentioned fact that the share of tenants in the former is smaller than in the latter. However, this must be regarded as an exception due to the special conditions of the landlord-tenant relationship in big cities in Japan.

If we ask for the reasons for eviction, we get the following answers: the house was to be torn down because of city planning (2); the owner of the rented house on leased land had his lease cancelled (2); the landlord wanted to sell the land either to the tenant or to a third party (6); the owner needed the house for his own use (1); the landlord wanted an increase of rent or the payment of a sum of money in exchange for renewal of the contract and threatened eviction if the request was not accepted (5); the house was old and needed to be torn down (1); the tenant had made unauthorised repairs (1).

As these reasons show, in most of these cases the root of the conflict lies not in some alleged fault on the part of the tenant, but in the desire of the landlord to get rid of the tenant in order to make more profitable use of his estate by selling it or by building a new modern apartment building in place of the old house, or, if that should not succeed, at least to secure an increase in the rent or the extra payment of a substantial sum of money in exchange for the renewal of the contract. This must be understood against the background of, on the one hand, the continually rising price of the land¹⁵ and, on the other hand, of the relatively large share in the housing market of privately rented, wooden, detached houses, many of which were rented before the advent of postwar economic growth.

The higher occurrence rate of problems of eviction in Bunkio, therefore, is a result of a structurally conditioned, acute conflict over a type of scarce resource which represents a great financial value for the landlord and an indispensable and irreplaceable means of living for the tenant. It may be assumed that in such a conflict there is little room for the mechanism of mutual adjustment to work.

Eviction (active): Ten of the sixteen problem cases in this area involved a rented house; one, an apartment; one, a room; and four, leased land. The reasons given for the request of evacuation are as follows: the landlord wanted to sell the land or rebuild the house (5); the landlord needed the house or land for his own use (3); the house was too old (1); the tenant had not paid the rent (2); the tenant had let some other person live in the house without permission (2); the tenant of an apartment had not kept his promise to take over the tasks of managing the apartment building (1); the tenant of a room played records too loud (1); the tenant had bought a neighbouring lot and was living there (1).

As to the general background of these disputes, what was said about 'eviction (passive)' obviously applies here, too, and the higher rate of occurrence of problems in this area in Bunkio than in London will be attributed to the same social conditions.

Buying a house: The higher percentage of people who had the experience of buying a house reflects apparently the different composition of the sample as well as the inclusion of cases of selling in the Bunkio research (see Table III-4). At any rate, it should be noted that making contract of purchase may imply a legal problem of preventive nature, but represents no actual legal conflict or dispute.

Faulty goods: The eight cases of legal problems in this area include the following: a handbag (¥ 30,000) bought from a door-to-door salesman proved to be made of imitation leather; an automatic circulator (¥ 17,000) did not work automatically; two of the three suits (¥ 30,000) bought from a door-to-door salesman proved to be of inferior quality (they were hidden under the other one at the time of sale); clothes (¥ 15,000) were worn out at the first cleaning; a mattress (¥ 20,000 and ¥ 25,000 respectively) was filled with faulty stuffing material (2); the

¹⁵ The price of land for non-industrial use in big cities has increased fivefold during the period 1960-1970, for instance.

tape recorder attached to an English self-instruction set (¥ 7,000) was defective; a refrigerator (¥ 86,000) was defective in one of its automatic devices.

Cases in which the defect was discovered more than one month after purchase are not included in these cases, according to the rules of the London study (pp. 125-7). Fourteen other cases, including some involving a large sum of money, which were solved through voluntary repair or replacement without charge are also excluded. But I had to drop the condition that the respondent must already have made complaint, because where the product is acquired from a door-to-door salesman, it is normally difficult for the purchaser to locate the seller afterwards. Further, relatively minor cases are included in the eight legal problems of Bunkioers.

Bearing in mind the above circumstances, it may be said that the frequency of legal problems in this area is smaller in Bunkio than in London, and that they are also less serious in nature. A conspicuous feature of the problems reported by Bunkioers is that a great majority of them involve a door-to-door salesman. Here again, we are tempted to hypothesise that in Japan the problems arising out of a defect in a purchased good are more readily solved between the parties concerned than in England, so long as the seller or the producer is socially visible and accessible for the purchaser.

Installment (arrear): We have found no case of problems in this area. The frequency rate is not high in the London study either (2%). The difference may reflect some unknown difference in the development or the practice of purchase on the installment plan in the two countries. It may also be possible that in Japan installment arrears tend to be negotiated between the parties and then forgotten by the respondents.

Debt (active): We found 35 cases in this area, some involving a very large amount of money. Classified according to the amount of money involved, they show the following picture:

up to ¥ 50,000	10 cases
up to ¥ 200,000	8 cases
up to ¥ 1,000,000	9 cases
over ¥ 1,000,000	8 cases

Total 35 cases

As in the London study, the majority of these are business debts: nineteen cases were concerned with money owned to a retail shop for purchases; they involved a wholesale merchant, a bar, a tailor, and the like; five were concerned with a note of credit which was not honoured; six, credit for business purposes; and five, a non-constititutional personal loan (other than lending between relatives or friends).

Twenty-eight of the thirty-five creditors belong to the occupational category of 'independent proprietor', which is proportionally overrepresented in Bunkio (see Table I and II). Therefore, the more frequent occurrence of such problems in comparison with the London study can be adequately explained by the difference in the composition of the samples. At the same time, it should be noted that in most of these cases the debtor had gone bankrupt and/or had disappeared, so that the social pressures for payment could not have any effect and there could be no room for a solution through mutual adjustment.

Debt (passive): There were six respondents who could be treated as having had a legal problem in this area. The frequency is comparable to that in the London research. The disparity between the active and passive debt cases, which is larger in our sample than in the London sample, may be attributed not only to the restriction of the passive cases to those where resort to court (or a threat of it) was made, but also to the fact that in most of the active debt cases reported in Bunkio the debtor was out of reach for the creditor.

Personal injury: Twenty-six respondents reported that they had been injured or some of their families had been injured or killed in an accident. Twenty of these cases concerned an automobile accident; three, a non-automobile accident on work-place; three, some other accident (skiing,

etc.). They included one death case, seven cases with treatment lasting over a month, four with treatment lasting over a week, and fourteen lighter cases.

Compared with the London research, the total frequency is lower. But it should be noted that the difference is due to the difference in the cases involving 'factory accidents' and 'other accidents', but not in 'road accidents'. (The percentages in each category relative to the total sample in London and Bunkio respectively are as follows: 'factory accidents' = 3.1% and 0.7%, 'road accidents' = 4.0% and 4.8%, 'other accidents' = 2.2% and 0.7%.) This may be due to the fact that in the Bunkio sample working class people are underrepresented, whereas in the London sample the contrary holds true.

An automobile accident case may or may not lead to a dispute depending on whether the wrongdoer side voluntarily pays the compensation to the satisfaction of the victim side. Nevertheless, our questionnaire is so constructed that all the automobile accidents experienced by the respondents will be registered as a legal problem. Consequently, the rate of legal problems in this area reflects the rate of traffic accidents, which should be more or less the same in both cities.

Employment problems: Six respondents were judged to have had such a legal problem. These included the following cases: dismissal because of organisation of a trade union (the case of a medical doctor); collection of wages after dismissal; giving the respondent a hard time at work after his having been injured in his work-place; employer's denial of trade union representation and overtime; employment and subsequent dismissal at an age of over 60 years; dismissal because of the oil crisis of 1973.

The frequency of problems here is much lower than in the London study, which should be, to a large extent, due to the difference in the composition of the sample. But it should also be noticed, that in Bunkio five out of six cases concern a dismissal, and only one concerns the conditions of employment, whereas in the London study the problems concerning the payment of holiday money, overtime, bonuses, insurance stamps, fairness in the decision about promotion, time off work, etc. account for more than a half

of the total cases (pp. 140 - 1). It would be interesting to investigate whether this reflects the non-existence of problems in employment relationships or whether the problems tend not to become conscious or develop into disputes for some reason or other (for example, because of a corporate spirit which dominates the working place or because of a lack of general standards governing the expectations of employees as to the conditions of employment).

Matrimonial problems: Six respondents were judged to have had a problem in this area. The frequency is a little lower than in the London research. But all the Bunkio cases are cases of actual divorce (experienced by a husband), and they include no cases of separation or enquiry about possible divorce. By contrast, the fifty-two cases in the London research include fourteen cases of divorce, thirty-one cases of separation, and seven cases of enquiry about getting a divorce (p.141). The cases of actual divorce occur to roughly the same extent in both samples¹⁶, but in Bunkio problems at the pre-divorce stage are not at all reported. Of course one must take into account, at the same time, that on the one hand, in Japan factual separation may not be very frequent¹⁷, and that, on the other, a husband (we asked only men) may want a divorce less frequently than a wife. But it may well be that the difficulties in marital relations tend not to take the clear-cut form of a dispute, accompanied by an awareness of possible divorce and its consequences.

Other court proceedings: Eight respondents (or their spouses) had participated in a court proceeding, apart from the cases already mentioned in the interview. This question was mainly designed to pick up criminal cases, and in the London study thirty-two of the forty-six cases under this heading were criminal cases. But in our sample only two out of eight were criminal cases in which the respondent was prosecuted. (Five further cases concerned a violation of traffic regula-

16 The average divorce rates per 1,000 population for 1970-1973 in Japan and in England and Wales are 0.999 and 1.70 respectively. Cf. UNITED NATIONS (1975).

17 Separation is not recognised as a legal institution in Japan.

tions, which were excluded in the London study.) Another three involved a bankruptcy of the respondent's own firm, and the remaining three were concerned with a civil matter. It is not certain to what extent this discrepancy is due to the difference in the composition of the sample, to the stronger tendency of Japanese people to feel ashamed of a criminal background, or to a real difference in the crime rate in the two populations surveyed.

As a result of the examination of the legal problems reported by Bunkioers against the background of the data of the London study, trying to control the social composition which is different in both samples, one can say with a fair certainty that, as a rule, legal problems occur less frequently and are more trivial in nature to a substantial degree in Japan than in England, so far as those problem areas involving necessarily a dispute. (In the areas of 'buying a house' and 'road accident' which do not necessarily involve a dispute, the rate of problem occurrence shows no conspicuous difference.) Another kind of exception to this rule is found in the problem areas, like those involving eviction, in which legal disputes are produced by some structural conditions peculiar to Japan, causing acute clash of interests between the parties concerned.

Another interesting feature of the legal problem of Bunkioers in comparison with those of the Londoners is their rather drastic form. In the house or land tenancy cases the predominant issue is eviction rather than repairs; in most of the debt and faulty goods cases the second party was out of reach; in most of the employment and matrimonial cases the parties had already parted¹⁸.

The explanation of these features may well be that in Japan, to a greater extent than in England, underlying conflicts tend to be solved by, or treated (not as a conflict but) as a matter of, mutual accommodation without giving rise to a serious dispute or to a legal issue, so long as the social

relations between the parties concerned are maintained¹⁹.

Problem Areas and the Use of Legal Advice

Having examined the process of emergence of legal problems, our next step is to consider the actions taken by the parties concerned in order to solve these problems. We shall focus our attention on the extent to which advice is taken from a third party, and the kind of person or agent from whom the advice is sought. In some cases not only advice is taken, but a representative for negotiation or court action is employed. But for the purpose of this study they may be treated as cases of advice.

Before going into comparison of the frequency with which, and the manner in which, legal advice is taken in Bunkio and London, however, we must examine some important factors influencing the process of using law, which apparently works independently from cultural factors, and which seem to explain the difference among various problem areas in regard to the use of law.

If we look at the data of the London study in this respect, we become immediately aware of the fact that the frequency of taking advice in general as well as that of consulting a lawyer differs very much from a problem area to another. It ranges from 97 percent in 'buying a house' through 50 percent in 'matrimonial problems' down to 7 percent in 'defective goods'. This also holds true for the data of the Bunkio research. Judging from the data provided in the London study, this difference cannot be explained adequately by the corresponding differences in the social class membership or income of the persons having a problem in

18 It is reported that in Mexico the conflicts within a family or a business enterprise tend to be taken care of inside the respective social system, and that in the sphere of employment conflicts go to court only after the worker has been discharged. GESSNER 1976: 202 ff., pp. 221 ff.

19 On the indefiniteness of contractual obligations in the mind of Japanese people and the related expectation for mutual adjustment see KAWASHIMA (1976). One may pursue the analysis of the process of dispute-suppression in Japan on the basis of LUHMANN's suggestion as to the connection between the individuals' ability to reject the actions selected by the other party in the face-to-face interaction and the functionally differentiated society. See LUHMANN 1975: 73.

each area. The frequency of taking advice in a problem area does not always correspond to the degree of correlation between the social class and the occurrence of legal problems in that problem area. The correlation between the use of an adviser and the social class membership or income appears in some, but not in other problem areas. "Apathy, a general acceptance of misfortune, and a lack of confidence that advice can be helpful" (p. 187) cannot explain this difference either.

Here again we must pay attention to the special features of each problem area. We must assume that each has some typical attributes which are relevant to the use of advice²⁰. From this viewpoint it may be useful to classify the legal problems according to the following criteria.

(1) The stage of (potential) conflict at which the legal problem occurs. The legal problems can be classified according to whether they typically concern the situation in which a preventive measure may be taken in the absence of, but in anticipation of, a possible future conflict or dispute (P = preventive); the situation of conflict in which a dispute exists or may be initiated by the party in question (I = initiation); or the situation in which a defensive measure may be undertaken by the party in question against a legal attack that has already been made by the other party (D = defensive).

In preventive matters the use of advice is not dictated by the pressing need of an immediate dispute situation. It will depend on the prudence and reserve resources of the person concerned or the perceived probability of a future dispute in the particular case. More importantly, it will depend on the socially accumulated experience of, or conventional ideas about, the risk involved in the particular kind of transaction and the usefulness of the preventive measure in question. In initiatory matters a conflict has already become manifest, and the immediate situation demands action. But, on the other hand, the per-

son concerned still has a choice of possible actions. Legal steps may be inappropriate or ineffective or even groundless. Here there is more room for other factors influencing the decision on the use of legal advice. In defensive matters the freedom of choice of the party concerned is already largely reduced by the situation itself. Either he will be forced to resort to legal measures - whether he likes it or not or whether he is capable or not - if he sees any point in fighting, or he will just wait and see, if he sees that either he or the other party is clearly in the wrong or in the right.

(2) The general predictability of the occurrence of legal problems for the typical party concerned²¹. For some persons the occurrence of a specific kind of legal problem is foreseeable, because that kind of legal problem is bound up with their specific social position or role. The ownership of property is a case in point. A proprietor must constantly reckon with difficulties, disturbances, losses arising out of his property ownership as well as the chance of making a profit. In order to maintain and administer the property he must be prepared for the skillful use of law, and he often develops such skills through experience. Not only possession of property, but also involvement in some other more or less permanent social relation may have the same consequence. Landlords and tenants, employers and employees, married couples, business creditors and debtors, welfare recipients, etc. will be able to foresee certain types of problems and will have the chance to acquire knowledge and skills in dealing with them. However, these experiences will be more intensive and interest more active in the case of property owners. Therefore we shall distinguish between property-bound problems (Pr) and status-bound problems (St). In contrast to these, automobile accidents and defective goods belong to the kinds of problems (here called sporadic problems = Sp) which occur in principle for any person regardless of his permanent role or position in society. It will

20 This approach is also suggested in the studies MAYHEW/REISS (1960), and MAYHEW (1968), and further was tried by me in my case study contrasting the dispute process arising out of automobile accident and housing problems in Japan (ROKUMOTO, 1972). See also BLANKENBURG (1975).

21 This conception is nothing but a somewhat more generalised version of the category of 'property matters' in MAYHEW/REISS (1969). This conception can be translated into the terms which describe the attributes of parties to the dispute and then would cover the category of 'organisational uses of law'. See WANNER (1974).

require some special efforts for an ordinary citizen to get acquainted with the problems and the rules governing them.

(3) The degree of dependence of the one party on good relations with the other party to the conflict. In discussing the probability with which legal advice or other legal steps will be taken, or more generally, the probability with which the conflict will be legalised (that is, conceived of in legal terms), one must not forget to consider the negative effects of legalisation on the situation or on the solution of the problem from the viewpoint of the parties concerned²². A close, intimate social relation which may exist between the parties to the conflict will generally curb legalisation²³, whereas a remote social relation will allow a freer choice of measures. But for a husband who wishes to divorce his wife or for a landlord who wishes to evict his tenant, the established close relation with his opponent would not be an obstacle. A more general distinction between independence of, or dependence on, the maintenance of good relations with the other party seems to be appropriate. Then tenants, employees, social welfare recipients will be classified as dependent parties (Dep), and the others as independent parties (Ind).

These three criteria are general enough to characterise a problem area as a whole although it is conceivable to apply them to individual cases. In some cases, however, these criteria would require a redefinition of problem areas. For instance, factory accidents, road accidents at work, road accidents outside of work, and other accidents which are included in the one category 'accident', in the London study would have to be treated separately for the purpose of analysis in terms of our criteria. Even then we must recognise that some victims of automobile accidents may themselves be owners of a car and therefore more or

less prepared for such an accident and that they may better be treated differently from other victims for whom such an accident comes totally as a surprise.

It goes without saying that these criteria are not proposed as an exhaustive list of important factors which are supposed to be relevant to the use of law and characterise the typical situations contained in each problem area. In addition to these one must consider such rather obvious factors as (4) the availability of alternatives (social pressures, negotiation, etc.) to legal measures, and (5) the prospect of success or returns for taking a legal step²⁴.

Table V-a shows the result of application of these criteria to the data of the London study.

It is generally to be expected that advice is taken relatively frequently in signing a document for preventive purposes, because that already involves a conscious use of a legal instrument. (All three kinds of legal problems correlate positively with social class.) This will especially be the case in property-bound problems, such as 'buying a house' and 'making a will'. The extremely high rate of cases where advice was taken (virtually always from a lawyer) in the former must be explained by the lack of alternative means determined by the lawyers' statutory monopoly over conveyancing in England (see ZANDER 1968: 171 ff.). The somewhat lower rate in 'taking a lease' may reflect the fact that a future tenant who is signing a written agreement on the conditions of lease, is entering the status of lessee but not acquiring or disposing of his property, and therefore is in a more passive position than those who are buying a house or writing a will.

22 This consideration is inevitable when we realise that a legal problem is only a short-hand term for a total conflict situation for which a legal solution may be applicable.

23 For explanation of infrequent recourse to law in certain situations in terms of this factor, see, for example, KAWASHIMA 1963: 44, MAYHEW 1968: 155 ff., GESSNER 1976: 171 ff. See also LUHMANN 1972: 271-2.

24 These factors are rather obvious ones, but they are nevertheless mostly neglected in the discussion. The following remark belongs to exception: "But in normal circumstances one would not think so (that the best thing to do is to take proceedings before a court) unless there were at least two further facts; that there is no other way of enforcing the right, and the advantage to be gained, discounted by the possibility of not achieving it, should be proportional to the amount risked" (LEWIS 1973: 80).

TABLE V-a: Use of Legal Advice (London)

	Foreseeability of conflict	Dependence on the continuation of relation	Number of problems	All advisors (%)	Lawyer (%)	Public advice agencies (%)	Other advisors (%)	Court cases (%)
<i>Preventive</i>								
Buying a house	Pr	I	(74)	100	96	0	4	—
Making a will	Pr	I	(175)	59	48	2	19 ^a	—
Taking a lease	St	D	(54)	33	29	2	2	—
<i>Initiatory</i>								
Debt (active)	St-Pr	I	(18)	50	17	27	6	—
Eviction (active)	St-Pr	I	(47)	28	19	0	9	11
Matrimonial problems	St	I	(52)	50	40	2	8	29
Employment			(80)	38	4	5	29	5
(Factory accident) ^b	St	D (I)	(52)	40				
Repairs undone	St	D	(123)	33	1	29	3	—
Social security	St	D	(74)	19	3	4	12	1
Accident	Sp (Pr)	I	(181)	57	41	4	12	3
(Accident road) ^c	Sp (Pr)		(166)	57				
(Accident other) ^d	Sp		(36)	19				
Defective goods	Sp	I	(27)	7	0	4	4	—
<i>Defensive</i>								
Eviction (passive)	St	D	(60)	68	25	42	1	18
Debt (passive)	Sp (St)	I	(21)	57	29	10	19	33
Installment arrears	Sp	I	(28)	11	7	0	4	4
Other court proceedings			(46)	52	43	4	4	100
Juvenile court cases			(37)	35	3	10	19	100
Total numbers			(1097)	(525)	(328)	(95)	(102)	(133)

a) Including the cases in which a will is written by solicitor (ABEL-SMITH et al., 1973, p. 134, p. 157).

b) Factory accident cases completed (op. cit., p. 170).

c) Road accident cases (at or not at work) completed (ibid.).

d) Other accident cases completed (ibid.).

Among the dispute-initiatory problem areas, the overall patterns of use of advice seem to conform to our expectations, namely that (1) property-bound problems and status-bound problems with independent parties provide a more favourable setting for the use of advice than (2) status-bound problems with dependent parties, and the latter in turn a more favourable setting than (3) sporadic problems, with the exceptions of 'debt (active)' and 'accident'.

Among the three problem areas of the first group, matrimonial and eviction cases show the highest rate of advice (50% and 45%), but with the important difference that the former are much more frequently brought to a lawyer than the latter (40% and 17%). Probably this difference reflects the circumstance that in eviction cases the landlord often does not see a good prospect of success; in many cases he goes to a free public advice bureau first and does not find any good

justification for pushing the case further. In the matrimonial cases one might prefer private consultation with a lawyer or a marriage counsellor because of the complicated personal nature of the case; one might need an intermediary in order to be able to communicate with the other party; and divorce requires a lawsuit and, therefore, the advice of a lawyer. It should be noted that the rate of the cases brought before a court or a tribunal is the highest in this problem area. The cases of 'debt (active)' contrast with those of 'eviction (active)' in that the former are not brought to a public advice bureau. Probably this is because in most cases the problem lies not in knowing what rules apply, but in the possibility and the practical method of collection. In many cases it may be felt that it would simply not pay to consult or employ a lawyer for the purpose of collection. These circumstances of the lack of prospect of returns may explain the lower overall frequency of advice taken in spite of otherwise favourable conditions in this problem area.

The problems of the second group are characterised by a uniformly low frequency of involvement of a lawyer. In 'employment' and 'repairs undone' advice is taken predominantly from public advice agencies or 'other' agencies of more or less public nature: trade union, labour exchange, and tribunal for the former and local authorities for the latter (see p. 153). This pattern seems to reflect the advice seeking potential of the status-bound problems which is curbed by a consideration of the negative effect of legalisation of the problem²⁵. 'Social security' shows a similar pattern, but a substantially lower overall rate of advice, which may be explained by the more passive status of welfare recipients than employees or tenants.

The last group of the initiatory problems consists of sporadic problems. 'Defective goods', which represents a pure sporadic problem, conforms to our expectation with the lowest rate of advice. 'Accident' must be regarded as an exception from the viewpoint of our scheme. But it is not wholly impossible to explain this except-

ion. There are among the victims of automobile accidents those who are themselves owners of a car, for whom the accident takes on the character of a status- and property-bound problem. In addition, a road accident occurs very frequently (accident problems are the largest in number among all the problem areas dealt with in the London study, whereas our typical sporadic problem of defective goods is one of the smallest), and it is fairly well known among the general public that the victim may have a large claim for damages, thus diminishing further the sporadic character of the problem. Moreover, liability insurance enhances the chance of a successful claim.

In defensive problems the party concerned is more or less forced by the situation to take advice, regardless of the handicaps that he may have in other respects. There will be some cases among them, where he knows without consultation, or finds out through consultation, that his position is legally unassailable, so that he need not go to see a lawyer. The high overall rate of advice combined with the relatively low rate of advice from a lawyer in 'eviction (active)' and 'taken to court for debt' seems to correspond to the characteristics of defensive problems. However, 'installment arrears' includes only those cases in which the debtor is clearly in the wrong, so that it is natural that he should often feel that it would be useless to take any action or any advice.

Turning to the data from Bunkio and looking at the patterns of the use of advice for each problem area in Table V-b, we find that the column 'all advisers' presents a close parallel to the London data, except for preventive problems (see below p. 243), although for most problem areas the rate is lower in Bunkio. This seems to indicate the universal applicability of the criteria we have used to explain the difference in the use of law among different problem areas.

The Use of Legal Advice in Bunkio

We come now to the task of examining the frequency and the manner of using law in Bunkio in comparison with those in London against the background of the general characteristics of each problem area. As mentioned above, one can see from Table V - b that the rate of consulting an ad-

25 It is to be noted here that the cases of dismissal represent a minority of the employment cases in the London study, although the precise percentage is not available. See pp. 141-2.

TABLE V-b: Use of Legal Advice (Bunkio)

			Number of problems	All advisors (%)	Lawyer (%)	Public advice agencies (%)	Other advisors (%)	Court cases (%)
<i>Preventive</i>								
Buying a house	Pr	I	(104)	—	4	—	—	—
Making a will	Pr	I	—	—	—	—	—	—
Making a lease	St	D	—	—	—	—	—	—
<i>Iniatory</i>								
Debt (active)	St-Pr	I	(16)	63	44	0	19	26
Eviction (active)	St-Pr	I	(35)	11	3	0	8	7
Matrimonial problems	St	I	(6)	33	0	0	33	4
Employment (Factory accident) ^b	St	D (I)	(6)	17	17	0	0	4
Repairs undone	St	D	(13)	15	0	0	15	0
Social security	St	D	—	—	—	—	—	—
Accident (Accident road) ^c	Sp (Pr)	I	(26)	27	8	4	15	0
(Accident other) ^d	Sp (Pr)							
	Sp							
Defective goods	Sp	I	(8)	0	0	0	0	0
<i>Defensive</i>								
Eviction (passive)	St	D	(18)	67	28	22	17	22
Debt (passive)	Sp (St)	I	(6)	33	33	0	0	7
Installment arrears	Sp	I	(0)	—	—	—	—	0
Other court proceedings			(8)	75	75	0	0	30
Juvenile court cases			—	—	—	—	—	—
Total numbers			(246)	(46)	(28)	(5)	(17)	(27)

b), c), d): Legend see Table V-a, p. 241.

viser is generally lower in Bunkio with the exception of 'eviction (passive)', 'eviction (active)' and 'other court proceedings'. It is in these problem areas that advice taken from a lawyer concentrates itself in Bunkio, a conspicuous difference to note. Let us examine each problem area a little more closely.

For the preventive problems we have a large gap in data. But we could fill it fairly well with our everyday knowledge, so far as 'buying a house' and 'taking a lease' are concerned. In Japan the business of transfer of title to land or house is delegated to the legal scriveners²⁶ and licensed real estate agents. At any rate, the help of these people is generally regarded as indispensable and

normally relied upon, although it is claimed on the part of lawyers that the poor work of the former sometimes gives rise to a serious dispute, which is then brought to a lawyer — often when it has become too complicated even for him to be handled satisfactorily. We can, therefore, safely assume that most of the cases of 'buying a house' in Bunkio were processed by the hand of a legal scrivener and/or a real estate agent. One may say that they constitute a substitute for the solicitors in England

26 The legal scrivener (*shiho-shoshi*) may be regarded as a legal profession of a lower rank with a lower qualification, or as a "quasi-lawyer". For a short account, see TANAKA 1976: 563-4.

who enjoy a statutory monopoly in this field. In the field of 'taking a lease' a similarly established pattern exists. It is generally regarded as sufficient that the real estate agent who mediated the lease contract stands by at the time of signing the contract. This is normally what actually happens, and one almost never thinks of consulting a lawyer. As to making a will, it is generally believed that average Japanese people do not have a habit of making a will; and it is, unfortunately, not known whom they consult if they do make one.

In 'eviction (active)' advice is taken at a considerably high rate, as is also the case in the London sample. But in the majority of cases the advice is taken from a lawyer, and in no case from a public advice bureau. This feature, which presents a sharp contrast to the London cases, must be interpreted against the already mentioned general background of the housing problems in Tokio. For the landlords their involvement in the lease is nothing but handcuffs which prevent them from making free and profitable use of their property, from which they try to free themselves whenever there is a good pretext²⁷.

Consequently, they see in law a powerful tool for achieving their goal rather than an authoritative guide for conduct. A lawyer is an indispensable key to the ultimate machinery of compulsion: the court procedure. Seven out of sixteen cases were brought to court (three for a regular litigation, and four for a conciliation procedure), and in four of them the landlord did not succeed. Five out of seven lawyers consulted were used in connection with a court procedure, and three 'other advisers' included two real estate agents and one gangster who were used not for legal advice, but for "negotiation" with the tenant.

For 'debt (active)' the interpretation which was attempted for the London data applies to a greater extent in the cases in Bunkio (see p. 243, above). In the majority of these cases the debtor had run away or gone bankrupt, so that it can be assumed that in most cases the creditor sees no

point in seeking legal advice. What is needed is a sure and inexpensive method of collection, which in most cases does not exist.

'Matrimonial problem' reveals another point of difference in the use of law. In non of the six matrimonial cases, which were all cases of divorce, was a lawyer consulted. The two 'other advisers' are the persons who had served as the go-between in the marriage and the aunt who happened to be a marriage conciliator in the family court. Although the number of cases is extremely small, this must reflect the unique Japanese institution of divorce by consent of the marital partners²⁸. A lawyer is not required for a divorce to be granted.

In the rest of the initiatory problems Bunkioers used advisers less frequently. It should particularly be noted that 'accident' shows a considerably lower rate of advice than its English counterpart. Doubtlessly, an important role is played by the law which prescribes a virtual liability without fault for automobile accident, as well as by the system of compulsory liability insurance. Under this system damages can be claimed directly by the injured party by filling out some simple forms. Although there is a limit to the amount covered by the compulsory insurance (the car owners are normally insured additionally by "voluntary insurance"), most routine cases are settled by it²⁹.

In 'eviction (passive)' we meet again a higher rate of consultation, which is comparable to that in the London study, but exceptional within the Bunkio data, and which may be explained within our general framework of 'defensive' problem combined with the special condition of the acute housing situation. But here, too, the lawyer is used mostly for defence against the landlord in court, whereas in London a lawyer is much more often consulted at an earlier stage. To compensate for this a public advice bureau serves as a guardian, in the cases where a lawyer is not consulted.

27 This characterisation of landlords in Bunkio-Ward is based on my previous research on disputes arising out of housing problems. ROKUMOTO (1971). Cases of similar pattern are reported for the civil court in Mexico. See GESSNER 1976: 66-7.

28 About 90 percent of all divorces registered yearly are divorces by consent.

29 An empirical analysis of the various ways in which disputes arising out of automobile accidents are resolved is attempted in ROKUMOTO (1976).

TABLE VI

		Number of Problems	All Advisors	Lawyer	Public Advice Bureaus	Other Advisors	Court Cases
(a)	London	683 (100%)	304 (45%)	154 (23%)	67 (10%)	67 (10%)	96 (14%)
	Bunkio	142 (100%)	46 (32%)	24 (17%)	5 (4%)	17 (12%)	27 (19%)
(b)	London	637 (100%)	280 (44%)	134 (21%)	65 (10%)	65 (10%)	50 (8%)
	Bunkio	134 (100%)	40 (30%)	18 (13%)	5 (4%)	17 (13%)	19 (14%)

(a) all legal problems except buying a house, making a will, social security, and juvenile court cases.

(b) all legal problems except buying a house, making a will, social security, juvenile court cases, and other court proceedings.

Although our data suffer especially here from the smallness of the sample, they seem to confirm the assumption of more infrequent recourse to law by individual Japanese. They show namely that within a more or less homogenous setting of each problem area the Bunkioers used legal advice less frequently than the Londoners with some exceptions (notably in eviction cases) which can be explained by certain special social circumstances. In addition, our data suggest that there are some characteristic patterns of using various categories of advisers.

Table VI summarises our findings. It compares the number of cases in which various kinds of advisers were used and the court was resorted to in the two samples for all the problem areas for which complete data are available from both. It shows that, on the whole, the respondents in Bunkio used advisers substantially less frequently than those in London, in spite of the fact that the former occupy, in average, higher social positions than the latter. Lawyers were also used less frequently in Bunkio than in London³⁰.

As to the kind of adviser, the ratio of lawyer to all advisers used is about the same in the two samples, but the ratio of public advice bureaus and of other advisers present a significant contrast. The public advice bureaus are much less frequently used in Bunkio than in London. Finally, the rate of the cases which were brought before a court or a tribunal is, paradoxically, a little higher in Bunkio.

There is another important feature in the use of lawyers in Bunkio, which is not shown in the Table VI. The Bunkioers not only used a lawyer less frequently than the Londoners, but they did it mostly for a case which is brought to court. More than half (17) of all the lawyers who appear in our legal problems (28) appear as a representative in a court procedure (litigation or conciliation). By contrast, only 42 out of 351 lawyers (12%) are used for a court procedure in London. If we take only those problem areas for which we have data for both sides and if we exclude further 'buying a house', the figures are:

³⁰ If we ask, how many of the respondents have ever consulted a lawyer in their lives (including those who did it in the cases which were included in our legal problems), we get this result: 71 persons out of 413 (17%). Those who have consulted a lawyer twice or more are counted only once. This compares with the following figures from other countries:

28% for Amsterdam (N=188) (SCHUYT et al. 1975: 20), 44% for the Federal Republic of Germany (N=1100) (KAUPEN 1972: 558); and about 70% for Detroit, USA (N=780) (MAYHEW/REISS 1969: 340). For London there is no comparable data except that 361 out of 1651 persons (22%) saw a solicitor within the past seven years (p. 157).

11 out of 18 (61%) for Bunkio and 20 out of 134 (15%) in London. Apparently, the Japanese respondents tend to hesitate to go to a lawyer until it becomes absolutely necessary³¹.

How could these patterns be explained? That in Japan law is used less frequently must be understood in some cases, as mentioned above, in relation to certain special institutional arrangements. But even these may themselves reflect the general negative attitudes toward law and strict application of rules. More generally, one might hypothesise that in Japan conflicts tend to be prevented from taking on the strong character of dispute and to be treated as a matter of mutual adjustment or power contest, rather than as a matter of application of rules, and that consequently the room for a third party advice on rules to play a part is narrowed down (see AUBERT 1963: 36). The merit of this hypothesis is that it can also explain the other related features consistently. In such a conflict a public advice bureau, which, although inexpensive, cannot act as a negotiator for one party but only give information will be less useful. A lawyer can be a negotiator, but there are other, less expensive substitutes for that purpose. He will not be used until a resort to court procedure is necessary, for in his ability to assist in a court procedure he is hardly replaceable. To the extent to which rules are irrelevant, the court will be looked upon as an agency of ultimate coercion rather than that of proper application of rules; and to the extent to which rules cannot function as a common basis for communication between the parties to conflict, the likelihood with which the court is called upon to serve as a substitute will increase.

The relative irrelevance of rules may also explain the greater distance in Japan between the ordinary citizens and lawyers, which can be well documented by our data. We asked respondents how they came to know the lawyer they consulted or,

if they had already known him, what the precise relationship was. Table VII summarises the result. According to this table, in some cases the lawyer consulted stands within the immediate social circle of relatives, friends, or acquaintances of the client for other reasons than that he was employed by him before. In other cases, he is the consultant lawyer of an organisation to which the client belongs, a business firm³² or a trade union. In still other cases the lawyer is provided through a chain of social relationships which the client can activate. In short, in most cases the lawyer is found through the established social network which connects him with his potential clients, directly or indirectly. There is only one case in which the lawyer was reached through referral by a public agency³³ and no case in which the respondent just walked into a lawyer's office just because one has seen his name on the name plate in the street or in the telephone book. One needs an intermediary³⁴.

No data is available concerning the relations between the solicitor and the person who consulted him in the London study. But in that study it was asked: "Do you know a solicitor or firm of solicitor you can get to within an hour?" and "How did you first get to hear of them?" We also asked similar questions in our study, although

31 This picture also corresponds to the generally held belief that "the role of lawyer is limited, with a few exceptions, to lawsuits and areas directly related to lawsuits" (TANAKA 1976: 257). This does not mean, of course, that every lawsuit is represented by a lawyer. Quite to the contrary, often a lawyer is not used even in a lawsuit: a large percentage of parties to a lawsuit are not represented. See TANAKA 1976: 259-60.

32 It is to be noted that the consultant lawyer (*komon bengoshi*) of a business firm is employed not explicitly for the benefit of its employees, but for the business matters of the firm itself. (A lawyer is not allowed to have a position within a business firm without giving up his title of practicing attorney.) But this practice of consultant lawyer functions latently as a contact channel between the lawyer and the individual members of the organisation.

33 Under the general conditions of modern law under which "the individual cannot know the law" (LUHMANN 1972: 254), public advice bureaus would have to play a more important role in the selections of cases which need to be handled by a lawyer as well as in the referral of cases to a lawyer, if law should play a greater part in the solution of conflicts.

34 That this is a general pattern is confirmed by occasional statements by practicing attorneys as well as by some research results about lawyers and their clientele.

TABLE VII: Through what social relationship did the respondent go to their lawyer?

1) Direct relations	10
The lawyer is the respondent's relative (2), acquaintance (3), classmate or senior in college (2), patron of restaurant (1), co-member of moral-religious organisation (1), business-acquaintance (1).	
2) Indirect relations, through organisation	8
The lawyer is the one who is retained on a retainer's basis by the firm for which the respondent works or by the labour organisation to which he belongs.	
3) Indirect relations, through intermediary	12
The lawyer is introduced by the respondent's relative (3), acquaintance (3), co-tenant through latter's firm or acquaintance (2), former patient (1), leading parishioner (1), business-acquaintance (1), or by a local politician introduced by his relative (1).	
4) No relations	1
The lawyer is introduced by the Automobile Accident Adjudication Committee.	
5) The lawyer was used before	1
6) Relation not clear	2
Total number of lawyers used	34

the form of the question is somewhat different: "Do you know a lawyer or a law firm that you might consult when something happens?" "How did you come to know the lawyer or the law firm?" (Note the omission of the limitation "within an hour"). For the second question we offered alternative categories. We shall compare the results in the following.

In the London study 51 percent (836 cases) of all respondents "knew precisely or imprecisely" (p. 191) and in the Bunkio survey 44 percent (180 cases) knew a lawyer or a law firm³⁵. Table VIII summarises and contrasts the answers to the second question in the two surveys. A precise comparison cannot be made because of the asymmetry of the questions as well as because of fail-

ing details for some categories in the Bunkio survey. But there is a clear contrast in the response 'noticed the name plate'. Only one Bunkio respondent mentioned a lawyer whose name he had seen on a name plate as the one whom he might possibly consult. On the other hand, 31 percent of the London respondents gave a name which they had seen on a name plate. We may assume that these people are prepared to go to that lawyer when they actually need one.

TABLE VIII: How they came to know of the lawyer whom they know of?

<i>London</i> (p. 192)	
1) noticed the plate while walking by	261 (31%)
2) got the name through a friend, relative or neighbour	252 (30%)
3) the firm is the family solicitor or acted for them before	92 (11%)
4) heard from their employer	39 (5%)
5) heard from their union	31 (4%)
6) heard from the citizens' advice bureau, legal advice centre, or police . . .	37 (4%)
7) miscellaneous	109 (13%)
8) no answer	15 (2%)
Total	836 (100%)
<i>Bunkio</i>	
1) noticed the name plate	1 (1%)
2) the lawyer is their relative	14 (8%)
3) the lawyer is their friend or acquaintance	46 (26%)
4) know him through their workplace . . .	43 (24%)
5) the lawyer was introduced by someone .	34 (19%)
6) others	29 (16%)
7) no answer	13 (7%)
Total	180 (101%)

This particularistic behaviour pattern of Japanese people vis-a-vis lawyers, which apparently reflects the survival of the traditional lack of confidence outside established social relations³⁶, revivals the weak institutionalisation of the profession of private attorneys, which is supposed to be characterised by universalistic supply of its services. There is no doubt that this particularistic pattern is closely related to the low rate of consultation with a lawyer, although it is clear that other factors must be considered as well and it is as yet difficult to set up a causal chain of factors³⁷.

35 The knowledge of a lawyer shows a correlation with occupation and education in Bunkio as well as in London.

A further point of comparison is provided by the question: "How much do you imagine he (a private lawyer) would charge for half an hour's advice?" which was also asked in the Bunkio survey in a comparable form. The result which is shown in Table IX, is astonishing³⁸.

Although a greater percentage of the Bunkio respondents answered "nothing" than did the London respondents, 80 percent of the London respondents compared with only 20 percent of the Bunkio respondents named a price under 20 (¥ 10,000). About 30 percent of the Bunkioers imagined that they would be charged between £ 20 (¥ 10,000) and 60 (¥ 30,000). These estimates must be considerably higher than the actual practice, although there is no way of knowing it³⁹.

This discrepancy indicates a large distance between lawyers and their potential clients and an exaggerated fear of the high price of legal services in the mind of ordinary people, which may well contribute to a reluctance to seek a lawyer's help.

TABLE IX: Imagined charges for half an hour's advice from a lawyer

London (p. 202)

Nothing	16 (1%)
£ 1 or less	202 (15%)
Over £ 1 but under £ 2	203 (15%)
Over £ 2 but under £ 3	239 (18%)
Over £ 3 but under £ 5	219 (17%)
Over £ 5 but under £ 10	147 (11%)
Over £ 10 but under £ 20	46 (3%)
£ 20 or over	18 (1%)
Don't know	228 (17%)

Total 1318*(98%)

* (ABEL-SMITH et al., 1973, p. 102.)

Excluding those who had spoken to a solicitor in the previous seven years and 36 cases in which we had no information.

Bunkio

Nothing	19 (5%)
¥ 10,000 or less	63 (15%)
Over ¥ 10,000 but under ¥ 30,000 . . .	118 (29%)
Over ¥ 30,000 but under ¥ 50,000 . . .	27 (7%)
Over ¥ 50,000	30 (7%)
"Depends on circumstances"	16 (4%)
Don't know	140 (34%)

Total 413 (101%)

36 This pattern is not found in the relation between patient and their medical doctors. See ROKUMOTO (1975). Another interesting contrast with the doctor-patient relation is shown in the following piece of result taken from the second part of the Bunkio survey: The respondent was asked to choose from the three given alternatives the one which best describes his opinion or feeling. "Asking a lawyer's help is a matter of course just like consulting a doctor" (39%); "A decent man should try to avoid asking a lawyer's help except in some extreme situations" (33%); "One cannot say one or the other" (25%); No answer (4%).

37 It might be interesting to look at the relation between the lawyer and his client in terms of its bearing on the fees actually paid him. In our sample, for instance, of the six lawyers who gave only oral advice five received nothing for their services. Two of them were consultant lawyers of a firm and three were friends or relatives.

38 We asked this question without giving the respondent any alternative answers among which to choose. We assume that the same method was used in the London study, too.

39 The old Standards for the Lawyers Fee of the Japan Lawyer' Association prescribed ¥ 6,000 or more for a legal consultation. But these standards are not followed strictly, and the actual charge fluctuates widely depending on the circumstances from case to case. The new Standards which came into effect in April, 1975, sets ¥ 5,000 or more for an oral consultation within an hour (Art. 10).

Concluding Remarks for Further Investigations

Our preliminary study seems to assure that by applying on a large scale the basic method of collecting the legal problems experienced in various problem areas as developed by ABEL-SMITH and others, and by taking into account the peculiar legal and social settings of each problem area as well as certain factors influencing legal behaviour universally, it is possible to establish in quantitative terms the distinguishing features of the manner in which legal problems are handled and solved by Japanese people in comparison with the people of western countries. Such a comparative study would also make it possible to pin down the specific correlates, if not causes, of those features, and thus throw light on the general question of the factors contributing to the effective functioning of the legal machinery based on the complaint mechanism and to the institutionalisation of the social order based on the principle of rights.

Our preliminary study seems also to demonstrate the methodological advantages of working with actual cases of conflict of various kinds. It facilitates insight into the specific constellation of immediate situations in regard to which a party to the conflict must choose his course of action out of several available alternatives. But in the search for the factors influencing the individuals' legal behaviour, we would have to go beyond the collection and analysis of cases and to look to the broader context of conflicts and conflict resolution in the society at large. The analysis of cases would have to be accompanied by the analyses of (1) the social background of conflicts as well as the opportunities offered and restrictions imposed by the substantive and procedural rules of law in each problem area within the respective legal system; (2) the basic character of the interpersonal, organisational, and stratificational structures of the society; (3) the organisation of the supply of legal and non-legal services and advices provided by private lawyers, various public agencies, and other persons and institutions; (4) the effectiveness of the machinery for the ultimate enforcement of legal rights.

At the same time the technique of research would have to be more sharply geared to the purpose of studying legal behaviour in conflict cases and away from that of establishing the quantity of 'unmet legal needs.' The questionnaire would have to be so constructed as to take hold, not only of conflicts which have the clear forms of legal dispute, but also of those which have not given rise to dispute or have already been solved in some way or other. It would have to be able to collect more detailed information as to the way in which the conflict is viewed, pursued, solved, or suppressed and in which the help or the advice of a third party is used. We would have to combine in some way the objective of obtaining a quantitative overview of the major legal problems and that of analysing more intensively the conflict process in a few chosen problem areas. A measure would have to be taken in order to obtain a sufficient number of cases to allow such an intensive analysis. Some problem areas would have to be redefined, so that the conflicts in each area might be more homogeneous in their character.

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