

Research on Personnel Management of Senior Judges in Japan: Using Career Resources as an Indicator

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Summary

1. Why does this book focus on the personnel management of senior judges?

Political science, and especially theories of the state, has almost never focused on “the court” as a target of analysis. There has been a tendency for “the court” to be considered as a research area belonging entirely to legal sociology and not to political science. However, trials are an institutional function that is both essential and inherent to the state. Only the state can legally put a person to death by means of a trial. Therefore, “the court” is a theme that cannot be overlooked in any political analysis of the realities of the modern state. With a keen awareness of these issues, this book aims to fill in the blanks, so to speak, in the analysis of the modern state.

This book focuses on the personnel management of senior judges in Japan. The research empirically demonstrates that contrary to the notion of the independence of judges guaranteed by the Constitution, a method of personnel management, which makes judges conscious of their rating and career progression, has been institutionalized within the judiciary in Japan. This book dissects the present situation in order to demonstrate that the Japanese judiciary has the same problems as a bureaucratic organization performing administrative functions.

2. What kind of analytical technique is used?

The method of analysis used in this book is a hypothetical concept called “career resources,” which is defined as “a personal history or prior position anticipated to be useful in future career progression.” Career resources include the universities from which judges graduated, judges’ experience of service (*kyokudoku* and/or *kacho*) at the General Secretariat of the Supreme Court, and their experience at important positions in the judiciary.

For example, if most of successive appointees of position “A” graduated

from “T” university, judges who graduated from T university have a career resource that will aid them in being appointed to position A. Similarly, if successive appointees of position C often go on to ascend to position D, which is of higher status, position C can be determined to be useful as a career resource for attaining position D. If the career resources of successive appointees to each position of a senior judge position are added up, it would be possible to indicate a tendency of successive appointees to each position with regard to career resources.

The following two examples illustrate the theory. Most successive appointees to the Chief Judge of the Tokyo District Court are graduates from the University of Tokyo; therefore, to be a graduate of the University of Tokyo is a useful career resource for a judge to become the Chief Judge of the Tokyo District Court. All successive appointees to the Director of the Personnel Affairs Bureau (PAB) of the General Secretariat have experience (*kyokuduki* and *kacho*) at the General Secretariat; therefore, to be appointed *kyokuduki* and *kacho* is an essential career resource if one wants to become the Director of the PAB.

Each specific career path that takes a judge to high-ranking administrative positions will be derived in this analysis and, as a result, we can understand the degree of importance of each administrative position. As an example, although both are Presidents of High Courts, the trends in the career resources of successive appointees to the President of the Tokyo High Court and the President of the Takamatsu High Court differ greatly. This would seem to indicate that there is an important difference between the two positions.

In this book, this kind of investigation is applied to a total of 110 senior positions; Justice of the Supreme Court (six positions reserved for career judges), President of the High Court (eight positions), Secretary General of the High Court (eight positions), Executive of the General Secretariat of the Supreme Court (eight positions), Head of the Legal Training and Research Institute (one position), Chief Judge of the District Court and Family Court (76 positions), Director of the Civil Affairs Bureau at the Ministry of Justice (one position), and Counselor of the Cabinet Legislation Bureau (two positions reserved for the assignment of judges). We investigate successive appointees to

each position and their career resources. By adding up their career resources—position by position—we can determine the characteristics that each post possesses in the judiciary. Thus, it is possible to understand that personnel management is institutionalized and that judges must always be conscious of ratings and career advancement paths.

3. Justice of the Supreme Court; Career Path

For a career judge to become a Justice of the Supreme Court, he or she must have previously served as a President of the High Court. More specifically, positions that are significant as the career resources for serving on the Supreme Court are President of the Tokyo High Court and President of the Osaka High Court. Furthermore, almost all career judges who have ascended to become a Justice of the Supreme Court have previously served as Chief Judges of District Courts and/or Family Courts within the jurisdiction of the Tokyo High Court and as Directors of the General Secretariat of the Supreme Court.

In addition, they have served in any of the following four important positions; Secretary General of the General Secretariat, Head of the Legal Training and Research Institute, Head of Law Clerks of the Supreme Court, or Director of Civil Affairs Bureau at the Ministry of Justice. In short, the four ladders of success exist on the path to becoming a Justice of the Supreme Court.

In terms of their educational background, graduates of the University of Tokyo account for more than 75% of the former Justices of the Supreme Court.

4. President of the High Court; Career Path

By adding up the career resources of successive appointees to the position of President of the High Court, it can be shown that judges who are eligible for this position have served as General Secretariat of the Supreme Court (*kyokuduki* and/or *kacho*) or in administrative offices at the Ministry of Justice, the Ministry of Foreign Affairs and so on (*Hanken Koryu*). In addition, experience as a Chief Judge of the District Court or the Family Court is indispensable if a judge wants to become a President of the High Court. Moreover, if this experience is not within the jurisdiction of the Tokyo High Court, it is very weak as a career resource for becoming President of the High Court. Approximately

70% of judges who become Presidents of High Court have experience as a Chief Judge within the jurisdiction of the Tokyo High Court, and approximately 85% of judges who were promoted to President of the High Court are graduates of the University of Tokyo or Kyoto University.

Among Presidents of the High Court, the position of President of the Tokyo High Court is in a class of its own for the following reasons; (1) all successive appointees to this position are graduates of the University of Tokyo or Kyoto University; (2) almost all have served as *kyokuduki* and/or *kacho* at the General Secretariat; and (3) thereafter, they have held the position of Director of the General Secretariat or Head of the Legal Training and Research Institute. These kinds of career resources are seen as being crucial for attaining the position of President of the Tokyo High Court.

Only 30% of those promoted to President of the Tokyo High Court have no experience as Presidents of other High Courts before their promotion to Tokyo. The remaining 70% already have experience as Presidents of other High Courts. Therefore, it is important for judges aiming to attain the position of President of the Tokyo High Court to secure an appointment as President of any High Court other than Tokyo. In contrast, all successive appointees to the Presidents of the High Courts of Sendai, Sapporo and Takamatsu are judges who have no experience as a President of other High Courts. A hierarchy consisting of eight positions for the Presidents of High Court can thus be inferred.

5. General Secretariat Executive; Career Path

All successive Secretary Generals of the General Secretariat have experience as a Director of the General Secretariat and as a Chief Judge of the District Court or Family Court within the jurisdiction of the Tokyo High Court. As well, the position of Secretary General is a definite career resource for being promoted to President of the High Court and/or Justice of the Supreme Court.

Meanwhile, close to 90% of appointees to the Directorship of the General Secretariat are graduates of the University of Tokyo or Kyoto University and have experience as *kyokuduki* and/or *kacho* at the General Secretariat. In other words, Directors of the General Secretariat are almost entirely occupied by homogeneous judicial officials. There are six Director positions at the General

Secretariat. Among them, the position most deserving of our attention is the Director of the Personnel Affairs Bureau (PAB). All successive appointees to this position are graduates of the University of Tokyo or Kyoto University and have served as *kyokuduki* and *kacho* at the General Secretariat. They are thus the best and brightest of the judicial officials. After serving as Directors of PAB, these judges almost certainly become either Chief Judge of the District Court or Family Court within the jurisdiction of the Tokyo High Court. Thereafter, they are promoted to Secretary General or Head of the Legal Training and Research Institute. In the end, they are all appointed to President of the High Court.

6. Chief Judges of the District Court and Family Court; Career Path

There are 76 Chief Judges of local courts and family courts in Japan. These courts geographically come under the jurisdiction of eight High Courts. We added up the career resources of all successive appointees to Chief Judge for each jurisdiction. The result was that the position of the Chief Judge of the District Court and Family Court within the jurisdiction of the Tokyo High Court was far superior to the same position within the other seven jurisdictions. Approximately half of the successive appointees to the Chief Judge of the District Court and Family Court within the jurisdiction of the Tokyo High Court are graduates of the University of Tokyo, and have served as *kyokuduki* and/or *kacho* at the General Secretariat. These career resources are striking in comparison to the other seven High Court jurisdictions: Due to these career resources, close to 30% of appointees to the Chief Judge of the District Court and Family Court within the jurisdiction of the Tokyo High Court are promoted to the President of the High Court. The same is true of appointees to the Chief Judge within the jurisdiction of the Osaka High Court. The position of Chief Judge in jurisdictions other than the Tokyo and Osaka High Courts, however, are not useful as career resources to achieve the position of a President of the High Court.

We also examined the characteristics of each Chief Judge. In particular, Chief Judges of the Tokyo District Court, the Tokyo Family Court, and the Yokohama District Court can be considered the “top three” Chief Judges in terms of their career resources. We found that over 70% of the judges were

graduates of the University of Tokyo or Kyoto University and had experience as *kyokuduki* and/or *kacho* at the General Secretariat. Their homogeneity stands out among successive appointees to Chief Judge of the District Courts and Family Courts in all jurisdictions.

Furthermore, serving as Chief Judge of any of the top three would mean direct promotion to President of the High Court. The next position to any of the top three is surely that of the President of the High Court—any of the top three positions is a definite career resource for becoming President of the High Court. We performed the same investigation on other Chief Judge positions in District Courts and Family Courts within the jurisdiction of the Tokyo High Court. We found that Chief Judges of the District Courts of Saitama and Chiba are rated as next highest after the top three Chief Judges. After Saitama and Chiba, the next-best rated are Chief Judges of the District Courts of Mito, Utsunomiya, and Maebashi. The hierarchy for the Chief Judges of Family Courts is generally the same as that for the Chief Judges of District Courts within the Tokyo jurisdiction.

The following characteristics were confirmed for Chief Judges of District Courts and Family Courts within the jurisdictions of the other seven High Courts. First, we found that the position of Chief Judge of a District Court that is located in a city where any High Court is located (position “S”) is superior to any other Chief Judge position within the jurisdiction of the High Court. This is because most of successive appointees to position S have experience as Chief Judges of District Courts and/or Family Courts, which are not located in a city where any High Court is located. This is because there is an unwritten rule which states that judges appointed to position S must have served as Chief Judge in a position other than S. Furthermore, excluding the position of Chief Judge of the Tokyo District Court, which is the stronghold of the elite judicial officials, and the position of Chief Judge of the Sapporo District Court, where personnel affairs are related to those in the jurisdiction of the Tokyo High Court, trial judges who have not served at the General Secretariat occupy the remaining six position S posts. Within the jurisdiction of each of these six High Courts, position S is regarded as a place of final promotion for trial judges.

Second, we can identify two main trends in the pattern of appointment to Chief Judges of District Courts and Family Courts other than position S. One

trend is as follows; judicial officials with experience at the General Secretariat are appointed to the position to acquire a career resource as Chief Judge, and thereafter are promoted to a higher position. The other trend is that trial judges who are on the verge of retirement are appointed in order to gain the prestige of being a Chief Judge. The former tendency is stronger within the jurisdiction of the Sapporo High Court; and the latter is stronger within positions of Chief Judges of Family Courts that are not located in a city where any High Court is located.

In this way, although we use the same title—Chief Judge—for the top position of both District Courts and Family Courts, the characteristics of each Chief Judge differ greatly in terms of appointees' career resources. This fact reflects how each position is evaluated by the judiciary.

Judges are “established” (*teichaku*) at any of the eight High Court jurisdictions less than 20 years after their first appointment. After *teichaku*, their possibilities for change are limited within the established High Court jurisdiction. Thereafter, some judges are appointed to the position of Chief Judge. Is there any correlation between their established jurisdictions and the appointment of Chief Judges? We found that many judges established within the jurisdiction of Tokyo or Osaka High Court were appointed Chief Judges not only within the jurisdiction of Tokyo or Osaka but also within the jurisdictions of other High Courts. In contrast, judges established within the jurisdictions of High Courts other than Tokyo and Osaka have little chance of being appointed Chief Judge.

We can therefore identify a vertically integrated system at work in the positions of Chief Judges of District Courts and Family Courts; those within the jurisdiction of the Tokyo High Court equal a “suzerain state;” those within the jurisdiction of the Osaka High Court equal a “quasi- suzerain state;” and those within the jurisdictions of other High Courts equal a “colony.”

In sum, there are two hierarchies governing the positions of Chief Judges of District Courts and Family Courts. At the national level, the hierarchy of Chief Judges of eight High Court jurisdictions is a pyramid-like structure, with a suzerain state at the top, a quasi-suzerain state in the middle, and a colony at the bottom. In each jurisdiction, position S is superior to that of other Chief Judges. These hierarchies are likely reasonable from the perspective of the

judiciary. However, it is also true that these hierarchies lead judges to be constantly aware of their promotion, which has an effect on their independence.

7. Being a Professional Judge

On what basis is the promotion of judges to senior positions in the judiciary decided? Which definite factors influence this promotion, and can they be defined using only the objective and quantifiable data of career resources? This book tackles these findings.

It is clear that senior judges' positions are hierarchical and that each position has its own characteristics. In other words, a bureaucratic, hierarchical system is rigidly formed in personnel affairs concerning senior judges. A specific pattern of promotion is established, and this creates an incentive for judges to be promoted to a higher position.

Although this system enables the judiciary to manage courts bureaucratically, it also creates certain problems in terms of being a professional Judge. We must construct a system of personnel management that does not motivate judges to focus so much on their own career paths. Some scholars and former judges have already made various proposals in this regard. We hope that this book can also serve the cause in a positive way.