



Talent matters: Judicial productivity and speed in Japan

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ABSTRACT

To study the determinants of judicial productivity and speed (measured by published opinions), I examine all 348 trial-court civil medical malpractice opinions published in Japan between 1995 and 2004. For comparative purposes, I add 120 randomly selected civil judgments from the same period. The data cover 706 judges (about a third of the Japanese bench). I find: (A) Productivity (measured as published opinions per year on the bench) correlates with apparent intellectual ability and effort. The judges who attended the most selective universities, who passed the bar exam most quickly, and who were chosen by the courts for an elite career track publish the most opinions. (B) Adjudicatory speed (measured as time from filing to decision, for published opinions) may correlate with apparent ability and effort too (the evidence is weaker), but institutional experience counts as well. As the courts acquired increasing experience with malpractice cases, the pace of adjudication quickened.

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Using data from Japan, I examine judge-level determinants of productivity (defined as opinions published per year) and speed (time from filing to judgment) in the courts. Toward that end, I collect all 348 district-court civil medical malpractice opinions published in any reporter between 1995 and 2004. For comparison, I add 120 randomly selected civil judgments from the same period. The resulting dataset covers 706 judges, or not quite a third of the Japanese bench. For reasons of data availability, I limit the study to published opinions.

I find that talent matters. First, productivity correlates with apparent intellectual ability and effort. The judges who attended the most selective universities, who passed the bar exam most quickly, and who were chosen by the courts for an elite career track write the most published opinions. Second, adjudicatory speed may correlate with apparent ability and effort too.² The evidence is weaker, but some regression specifications suggest that the most talented judges may decide cases more quickly than the others. Institutional experience matters as well. As the courts acquired experience with malpractice cases, the speed at which they handled the cases also increased.

Note several preliminary but basic qualifications. I do not measure “judicial efficiency” itself. Any inquiry into the efficiency of an institutional arrangement involves an inquiry into its costs as well as its performance. The costs here include price – for the judge-level characteristics that (according to this study) correlate with productivity and speed are exactly the characteristics that Nakazato, Ramseyer, and Rasmusen (2010) find correlate with high incomes in the private bar. The better the judge, the higher his shadow wage. Japanese courts might increase productivity and speed by hiring more talented judges, but they would need to pay higher salaries to attract them.

In turn, performance involves more than productivity and speed. It also involves adjudicatory quality. Unfortunately, I lack the information to gauge the quality either of the trials conducted or of the opinions written. Because Japanese judges rarely cite other cases, I cannot replicate the citation studies used in the U.S. either.³

And productivity involves more than published opinions. One thoughtful referee on this paper rightly suggested that my “productivity” measure may more appropriately capture “publishability.” Although Japanese judges write opinions in all cases they decide (civil cases do not involve juries), (a) the reporters publish only a minority of opinions, and (b) many cases settle before a judge writes any opinion at all. Some high-quality judges might (only might) regularly route disputants into settlement at an early stage. Alas, Japanese courts do not disclose judge-level information about either the total number of cases decided (whether published or unpublished), or the total number of cases settled out of court.

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² Ramseyer (2011) finds that the most talented judges do not just decide the cases newly filed after their appointment, but help eliminate the backlog by deciding cases filed before their appointment as well. This results in much greater productivity, but also (because they are clearing older cases) longer average filing-to-judgment times. Note that Ramseyer (2011) is not limited to malpractice cases, and focuses primarily on the much more common (and less economically significant) single-judge opinions. It does not distinguish cases in which the judge was the senior-most judge from the others.

³ Ramseyer (2011) finds that reversal rates are no higher among the more productive judges.

One must start somewhere. Subject to these very real qualifications, I offer an examination of the judge-level determinants both (i) of the number of opinions a judge publishes each year, and (ii) of the time it takes him to issue them. I begin by reviewing the literature on judicial productivity and speed, and describe the Japanese court system (Section 1). I discuss my data and variables (Section 2). I then summarize the results (Sections 3–5).

1. Introduction

1.1. Literature review

Only recently have scholars begun to study the determinants of judicial performance. In three studies, they reach conclusions about the U.S. courts consistent with the findings I report here. Landes, Lessig, and Solimine (1998: 321) explore citation patterns in the federal courts. They find that judges from elite law schools and judges with law school honors write opinions that are cited more often than others. Christensen and Szmer (2009) examine delays. They find both that more experienced judges are slower (they attribute it to “burn-out”), and that graduates of elite law schools are faster. Choi, Gulati, and Posner (2010) study the determinants of published opinions among U.S. district court judges. They find that graduates of elite law schools publish more.

Other empirically inclined scholars have taken a variety of tasks. As an alternative to simple citation studies, Klein and Morrisroe (1999) examine references to the name of a judge as a measure of his prestige. They do not, however, try to predict prestige with judge-level variables. Bhattacharya and Smyth (2001) use Klein & Morrisroe’s prestige metric to study the Australian courts. They conclude that younger and more conservative judges have more influence.

Cauthen and Latzer (2008), Binford, Greene, Schmidkofer, Wilsey, and Taylor (2007), Cecil (1985), and Lindquist (2007) explore the determinants of judicial delays but do not consider the characteristics of individual judges. Songer (1988) and Hettinger, Lindquist, and Martinek (2006) consider judge-level factors, but only those related to politics. Beenstock and Haitovsky (2004) examine the relation between judicial productivity and caseload in Israeli courts. They conclude that judges respond to lower caseloads by working less. Using U.S. data on judicial vacancies, Binder and Maltzman (2009: 132–133) reach the opposite conclusion.

1.2. Japan

Ironically, the bureaucratic nature of the Japanese courts may facilitate the study of the impact of judicial talent on performance.⁴ The administrative office of the courts (the “Secretariat”) hires judges who closely resemble each other on many dimensions. That essential similarity magnifies the effect of the dimensions on which they do differ, and in this article I focus the impact of those remaining characteristics.

The Secretariat appoints its recruits immediately after they graduate from the one national law school, the Legal Research & Training Institute (LRTI).⁵ Although critics urge it to hire practicing lawyers, to date it has seldom done so. The LRTI, in turn, admits students on the basis of a (mostly blindly graded) annual examination. During the period in question (the system recently changed), the pass rate on this exam hovered below 3 percent. Most people

who took it never passed, and those who did typically passed only after failing it five or six times first.

Students in Japan who would become lawyers, judges, or prosecutors usually studied law as an undergraduate subject. They then took the entrance examination to the LRTI. If they passed, they studied there for two years (recently changed). Upon graduation, they took jobs in private practice, on the bench, or in the prosecutorial office. Those who never passed typically worked in the legal departments of the large corporations.

Most years, the Secretariat hired 70–130 new judges a year. Over the course of their careers, these judges moved through a series of appointments, generally at three-year intervals. Virtually all of them spent some time in courts considered undesirable, and virtually all also spent time in coveted Tokyo or Osaka appointments. The more talented the judge, the more time he spent in urban courts. The more plebeian his abilities, the longer he worked in the outback.⁶

Because Japanese courts do not use juries in civil cases, judges hold discontinuous trials. The lawyers for the parties appear before the judge at regular intervals (about once a month). On one occasion, they present evidence on an assigned topic. Should that evidence not decide the case, the judge will then order them to appear in about a month with evidence on another topic.

In most district courts, cases are assigned to judges randomly.

Routine civil cases are heard by a single judge in district courts; extraordinary cases are heard by three judge panels. At the intermediate appellate level (the High Court), cases are heard by three-judge panels.⁷

2. Data and variables

2.1. Data

2.1.1. Introduction

As in the U.S., so in Japan: the time a judge needs to decide a case depends on the type of dispute. The days he needs to hear evidence, study the law, decide motions, and write an opinion all vary by field. In some fields, litigants call many witnesses; in others they use almost none. Some types of cases raise complex technical issues; others are simple. Some include new and unsettled questions; others follow established precedent.

To hold constant this field-specific variation, I focus on one closely defined group of disputes: medical malpractice.⁸ I search for “medical malpractice” in the “Hanrei taikai” database (a Japanese equivalent to Lexis or Westlaw), and code every district court opinion published in some venue (either a public or commercial reporter) from 1995 to 2004.⁹ This yields 351 opinions. I drop the three criminal cases, and focus on the resulting 348 civil decisions. Because most (not all) of these cases involve three-judge panels, this process produces 926 judge-case observations. Because many judges published multiple malpractice opinions, it generates a dataset with 706 judges.

⁴ I take this description from Ramseyer and Rasmusen (2003). A nice description of the system appears in Law (2009).

⁵ The system recently changed. Japanese universities now offer graduate-level professionally oriented “law schools.” Most students currently enter the LRTI only after time in these post-graduate “law schools.” See generally West (2007).

⁶ I do not consider the politics of this arrangement here. The subject is discussed at length in Ramseyer and Rasmusen (2003), Ramseyer and Rasmusen (2006), Ramseyer (2008), and Ramseyer (2009). For the controversy over the possible politicization of the Japanese courts, see Haley (2007) and Upham (2005).

⁷ Saibansho ho [Courts Act], Law No. 59 of 1947, Secs. 18, 26. Of the 348 district court malpractice cases in the database discussed below, 33 were decided by single judges. The rest were decided by three-judge panels.

⁸ Ramseyer (2011) does not hold legal field constant, but instead holds constant the year a judge was appointed. It then examines productivity in the district courts over the entire career of a judge. It finds that indices of talent do correlate with higher productivity, but not with shorter measured filing-to-judgment times. Crucially, it does not distinguish cases in which a judge was the senior-most judge from the rest.

⁹ That is, under “jiko,” I search for “iryō kago.” Hanrei taikai is published by the Dai-ichi hoki firm. Eighteen cases that appeared in the search were dropped as not involving malpractice. See generally Ramseyer (2010).

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