

From the Substance to the Shadow

The Court Embedded into Japanese Labor Markets*

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Abstract

Modern contract law generally does not allow property rights or similar claims to be made against employees. This undermines a claim on the return on the employer's investments in recruiting and training a worker, making them vulnerable to possible infringement from a bystander. Accordingly, employers investment in recruiting and training might become deficient. Therefore, protecting an employer's investment, balanced against the mobility of the labor market for better employer-employee matches, has emerged as an issue in the transitory phase towards a market-based economy. We explore how the Japanese state court in its early period addressed this issue in the tight labor market of the silk-reeling industry, the leading industry then. The court first directly protected interests of employers whose employees were poached, at the expense of workers mobility. Then, it seemed to indirectly govern transactions between employers as a shadow off-the-equilibrium path. Thus, an employer whose employee was poached and an employer who dud the poaching would privately negotiate to settle the dispute, using a possible suit as a threat against the poacher. Examining suits that were actually filed leads to this hypothesis. This indirect governance facilitated labor market mobility with some protection of the original employer's claim.

Key words: employment contract; poaching; bystander's infringement on claim; shadow of the law; Japan.

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Introduction

This study is a historical analysis of the strategic complementarity between the public and private institutions that govern transactions, using the labor market of the Japanese silk-reeling industry in the late nineteenth and early twentieth centuries as a case study.

An insight into the institutional evolution of governance is that the bigger the market, the greater role the state court assumes.¹ At the same time, even in developed economies with strong state courts and large markets, private settlements of disputes still matter as a means of governance. This fact does not mean that litigation is irrelevant to private settlement. Instead, the possible enforcement of contracts by the court or the costly litigation process itself sometimes affects private bargaining, often in favor of the party whose bargaining power would have been impaired had the court not existed as an off-the-equilibrium path or a shadow of the law. The state court stabilizes private settlements in that way and hence works in a complementary way with the private settlement mechanism.²

In the transitory phase to modernization, where the state court is established but its enforcement ability is not yet strong, this complementarity between public and private institutions could have even greater consequences. A weaker state court might vindicate a greater realm for private institutions. Meanwhile, the existence of a weak but still somewhat potent state court might stabilize those private institutions through its shadow. Institutional diversity in the early stages of modernization would be better comprehended by addressing the complementary roles of public and private institutions.

We focus on labor markets because, as will be discussed below, a transition toward a free labor market might result in a trade-off between better employer-employee matches through increased mobility and the potentially deficient investments in the skill and transportation of labor. In making trade-offs, labor market institutions tend to diversify during the transitory phases. In particular, along with modernization, claiming a real right³ to a worker becomes illegal, which makes claims on workers vulnerable. This might conflict with socially optimal investments in skill acquisition of workers or payments of the transportation costs of workers and thus might necessitate institutional arrangement for growth in the labor market. Such a combination of public and private mechanisms might then attain better resource allocation than would have been otherwise. At the same time, optimal allocation would hardly be achieved. It is highly likely, the better allocation is a second-best allocation, and institutional combination that achieves this level of efficiency might not be unique. Therefore, combination of public and private mechanisms could be a source of institutional diversity in the transitory phase.

We use the case of the Japanese silk-reeling industry for a straightforward reason. The silk-reeling industry was the first globally competitive manufacturing industry in both Japan and China, with the Japanese dominating the US market and the Chinese dominating the

¹See Dixit (2004), pp. 59-95.

²See Dixit (2004), pp. 25-58; Stevenson and Wolfers (2006); and Choi and Triantis (2008).

³“Real right” in civil law is a right connected to a thing rather than a person, including ownership, use, habitation, usufruct, predial servitude, pledge, and real mortgage. Hereafter, footnotes on legal terms are based on Garner, ed (1999).

French market, crowding out Italian rivals in both cases. Meanwhile, institutions in the labor and financial markets in the Japanese, Chinese, and Italian silk-reeling industry showed great diversity even though they shared technological backgrounds⁴ with Japan introducing the traditional hand-reeling techniques from China and the modern machine-reeling technologies from Italy. A focus on labor market institutions is essential to understand the different historical modernization paths led by the industry in Japan, China, and Italy.

Protection of an employer's claim on its investment in worker transportation or skill acquisition has been a long-standing economic issue. Often these costs are not covered to a socially optimal level by the workers themselves, and imperfect financial markets fail to finance them. Thus, in order to improve welfare, another party must finance these costs. One of the ways to finance worker's transportation or skill acquisition is to protect the claim of the financing party such that it satisfies requirements for perfection.⁵ A perfected claim, typically known as a real right, allows the claimant to transfer a claim without agreement from the person who has signed the bond. An agent upon whom a permanent real right is placed is called a slave. In some societies, such as in Europe and the United States in the nineteenth century, the claim of the indenture holder was also considered a real right.⁶

Most agricultural societies had used slaves, indentured workers, or other similar tradable human workforces at some point in time. As societies and economies developed, the use of these types of laborers vanished. A possible explanation is that slavery can be a steady state under a only specific land/labor ratio, and endogenously destabilize along with change in the ratio.⁷ Another is that exclusive contracts, such as indenture contracts, are more efficient in a thin market; semi-thick markets can have multiple equilibria and free contracts are more efficient in a thick market.⁸ Thus, while the superiority of the free labour market system is non-trivial in a transitory phase and hence unstable equilibria of slavery or indentured labor may arise,⁹ free labor societies were accompanied by faster growth and the free labor market reached a stationary equilibrium. During this transitory phase, the protection of claims against human capital emerged as an issue. The liberalization of people necessarily implies a weak claim against investments in human capital and human transportation and hence lower investments than the socially optimal level, without institutional arrangements.

In the cases of the United Kingdom and the United States, for instance, some form of coercive contracts or the prohibition of enticement was maintained in the agricultural sector and was inherited by the manufacturing and mining sectors to protect employers' claims.¹⁰ More moderate cases in contemporary American society are exceptions to employment at will,¹¹

⁴See Federico (1997), pp. 146–190.

⁵“Perfection” is the validation of a security interest as against other creditors by filing a statement with some public office or by taking possession of the collateral.

⁶See Galenson (1981).

⁷See Lagerlöf (2009).

⁸See Matouschek and Ramezzana (2007).

⁹See Hicks (1969), pp. 130–137; Lagerlöf (2009), p. 335; and Matouschek and Ramezzana (2007), pp. 365–366.

¹⁰See Steinfeld (1991); Hanes (1996); Steinfeld (2001); Naidu (2010); and Naidu and Yuchtman (2013).

¹¹“Employment at will” is employment that is undertaken without a contract that specifies a duration, and that maybe terminated at any time, by either the employer or the employee, without specific cause.

which allow for the specific performance of employment contracts despite the employment-at-will doctrine.¹²

In the case of modernizing Japan, the 1896 Civil Code (*Minpo*), enacted in 1898, with the enactment in 1890 of Article 22 of the 1889 Constitution of the Empire of Japan,¹³ generally did not allow a claim against a person to be considered a real right. Furthermore, regarding employment contracts, a new employer's infringement upon the claim of the existing employer against its employee, known as tortious interference¹⁴ in an employment contract, has not been recognized as an act of tort as stipulated by the Civil Code. This has been the case since the 1900s for the purpose of promoting competition in the labor market and thus improving social welfare.

Japan was included in the free trade regime instituted by Western powers in 1859. The biggest Japanese export at that time was hand-reeled raw silk, which was being exported to Europe. However, in the 1870s, when the European market stagnated, Japanese hand-reeled raw silk lost its competitive advantage over its Chinese counterpart.

In contrast, the US market began to grow from the late 1870s and continued to expand in the 1880s. Moreover, during this period, the use of power-looms rapidly increased in the US silk fabric industry. Concentrating on factory-made fabrics for mass consumption, the modern mechanized US fabric industry exhibited a strong demand for machine-reeled raw silk called "filature" raw silk. Responding to this international shift in demand, the silk-reeling industry in Japan modernized and drastically increased exports to the United States. Japan's share of the US raw silk market reached 50 per cent by the end of the 1880s, and 80 per cent by the 1920s. Due to this demand, raw silk accounted for approximately 30 per cent of Japan's total exports before the Second World War.¹⁵

Silk-reeling manufacturers in Suwa County, Nagano prefecture, in central Japan led modernization and exports. In Suwa County, the demand for female workers who operated reeling machines increased by over 10 per cent annually from the 1880s to the 1890s, thereby making the labor market highly competitive. In 1900, there were 142 silk-reeling factories with a total of 10,963 basins, which each had to be operated by one reeling worker.¹⁶ Workers, most of whom were unmarried young women, lived in dormitories at the firm with room and board paid for them by the firm. The monetary wage paid by the firm was relative-performance-based and the wage differential between the most productive and the least productive was roughly 6,000-7,000 per cent.¹⁷

The demand for workers was met by the inflow of workers from other areas of central Japan on a semi-macro level over the long term as the higher wages of the sector attracted workers of higher productivity from distant regions.¹⁸ However, the tightness of the regional labor market during the rise of this industry caused problems at the micro level in the short

¹²See Schanzenbach (2003).

¹³Regarding English translation of related acts, see Appendix.

¹⁴"Tortious interference" with contractual relations is a third party's intentional inducement of a contracting party to break a contract, causing damage to the relationship between contracting parties.

¹⁵See Nakabayashi (2006, 2014).

¹⁶See Nakabayashi (2006), p. 189.

¹⁷See Nakabayashi (2006), pp. 200–203.

¹⁸See Saitô (1998), pp. 60–61.

term. Dual employment contracts prevailed and the movement of workers from one factory to another factory occurred. It was costly for a manufacturer to recruit workers from distant areas, so manufacturers attempted to prevent workers from moving by imposing large penalties in employment contracts. This was the only feasible way of having recourse to the court to protect employers' claims provided that the Japanese judicial system did not allow coercive employment contracts.

If the costs of recruiting were not met by the time a worker moved, the supply of labor would be less than socially optimal. Meanwhile, worker mobility would improve within-industry matching with performance-based payments.¹⁹ Balancing the trade-off between protection of employers' claims and potentially better employer-employee matches, arrangements on the movement of workers should have been made under some governance.

As we discuss below, the governance of transactions by the court showed two phases. At the early phase in the 1890s, manufacturers had recourse to the court for employment contract enforcement when their employees were poached. Damages stipulated in an employment contract could be enforced by the court. This outcome, however, potentially failed to realize a desirable level of mobility in the labor market. Eventually, employers ceased to have recourse to the court for enforcing the original employment contracts. Instead, they came to only file suits for damages for non-fulfillment of employment contracts, presupposing that the original employment contract not be performed. The details of the cases are consistent with the hypothesis that the employers came to indirectly utilize the court as a device to stabilize their private settlements outside of the court.

The Japanese Civil Code did not officially govern transactions between employers because it did not allow real rights to be placed on workers, and it thus officially governed only transactions between an employer and an employee. Given that legal constraint, a suit between an employer and an employee was used as a threat against the outside employer who poached the employee from the original employer. The court began to work as a shadow in the labor market. This paper focuses on how the court was embedded into the market, a process during which the court functioned first as the substantial enforcer of the employment contract and second, worked as a shadow to stabilize private settlement.

The indirect governance of the labor market by the court presumably improved resource allocation. At the same time, one nontrivial shortcoming of indirect governance by the court was cost. If possible, direct mechanisms between manufacturers would have more efficiently governed transactions. Indeed, in 1901, silk-reeling manufacturers formed a union-type organization called the League of Silk-Reeling Manufacturers of Suwa (*Suwa Seishi Domei*, the League). The League installed a private registration mechanism for all workers employed by the League member manufacturers in 1903, which means that the League set up a private mechanism for perfection. From that year forward, the League began to privately govern transactions between member manufacturers. Meanwhile, member manufacturers were strictly prohibited from suing an employee poached by another member manufacturer in the court. However, this does not mean that this newly installed private mechanism functioned without potential involvement by the court. Switching to a costly legal fight in the case of deviation from the League remained a possibility and operated as a bargaining tool for em-

¹⁹See Booth and Frank (1999).

employers whose workers were poached, prompting poaching employers to reasonably negotiate with them. The private mechanism and the court thus came to complement each other in governing the labor market.

In the literature on the labor market of the Japanese silk-reeling industry, the worker registration system established in 1903 is often discussed. However, little attention has been paid to the complementarity between private mechanisms and the court as an off-the-equilibrium path.²⁰ This is largely because previous works did not study the context in which the League and the registration system formed when the only outright system was the public institution. Only the studies by the author present a preliminary analysis of this issue.²¹ This study focuses on the role of the judicial system in the labor market before the private mechanism was created, which formed the institutional context for the following private mechanism, and provides a plausible inference of the role of the court.

Section 1 briefly reviews the modernization of Japan's judicial system and describes the tightness of the labor market of the silk-reeling industry. Section 2 analyses suits related to employment contracts during the phase when the court directly protected original employers. Section 3 analyses suits that indicate the court's indirect involvement in governing transactions between employers in the later phase.

1 Employment contracts in the silk-reeling industry

1.1 Modernization of judicial system

Before the Meiji Restoration in 1868, Japan was a feudal federation. While the Shogunate had authority over national security and diplomacy through composing the central government, each feudal lord exerted sovereignty over domestic affairs. The Shogunate itself governed its own domain including Edo (renamed Tokyo in 1868), Kyoto, and Osaka. As for real rights placed on people, while both slavery and indenture contracts had been prevalent until the mid-sixteenth century, human trafficking was prohibited in the late sixteenth century, and indentured workers became less and less common. Since the early seventeenth century when the Shogunate was established, neither slaves nor indentured workers were a considerable work force, though some industries such as prostitution used indentured contracts. Under the Shogunate regime, the judicial system was not separated from the administration.

In 1875, the government promulgated an imperial ordinance for a “gradual transition to the constitutional system of government,” responding to the liberal and democratic movement prevalent among the people. Following this ordinance, the Supreme Court was separated from the Ministry of Justice in 1875, which established judiciary independence, and the 1889 Constitution of the Empire of Japan became effective in 1890, when the Diet, the Japanese parliament, first opened.

Premier Ordinance No. 103 of 1875 ordered judges to give rulings based on customs if relevant acts were not yet promulgated, and on the rule of reason if a relevant custom did

²⁰Representative prior studies include Ishii (1972), pp. 277–290; Tojo (1990); Hunter (2003), pp. 234–240; and Kambayashi (2007).

²¹See Nakabayashi (2001); and Nakabayashi (2003), pp. 289–330.

not exist for the case. In 1890, the Code of Civil Procedure (*Minji Sosho Ho*)²² was promulgated and became effective in 1891, which defined the structure of judicial procedures. The 1890 Civil Code,²³ based on recommendations from French scholar Gustave Emile Boissonade hired by the government, was promulgated in 1890 but faced strong opposition due to its radically progressive elements such as making the longest employment contract duration one year.²⁴ Eventually, it was suspended and not enforced. Longer employment contracts were then recognized as heavier restrictions on the freedom of workers and thus a protection employers' claims.

In 1896, with substantial amendments by authors Kenjiro Ume, Masa-akira Tomii, and Nobushige Hozumi, Civil Code Parts I, II, and III were promulgated and became effective with Parts IV and V in 1898.²⁵ The amendments did not, however, lean towards conservatism. In particular, while the 1890 act permitted the cancellation of employment to be restricted by custom in the relevant region, even if the duration of the relationship was not specified in the contract (Part of Acquisition of Property, Article 260), the 1896 act permitted cancellation of the employment contract at any time if the duration was not specified in the contract. Although it extended the maximum duration of an employment contract to five years (Articles 626 and 627) from a one year maximum in the 1890 Civil Code, it did not permit customs to affect the cancellation of an employment contract. The result was that any traditional customs designed to restrict the mobility of workers ceased to protect the claims of employers. This confirmed that if there was any recourse, it should be provided by the court.

By 1890, more than 300 ward courts were established as courts of first instance throughout Japan, such that any Japanese resident could walk into a ward court. This court system organization has not largely changed since its inception.²⁶ For Suwa County, the ward court of Kamisuwa was created in 1878. The rule of and protection by law now became available in a real sense to both employers and employees.

1.2 Labor market and contract

In the early 1890s, competition for workers among silk-reeling manufacturers was getting fierce. In addition to increased wages and side payments,²⁷ certain problems emerged during negotiations or after entering into a contract. Every year, in January, manufacturers sent agents to distant areas to recruit workers. In the Japanese silk-reeling industry, most workers were young females.²⁸ The manufacturers entered into contracts with young women from their late

²²Act No. 6 of 1890, repealed in 2005.

²³Act No. 28 of 1890, repealed in 1898.

²⁴Part of acquisition of property, Article 260.

²⁵Parts I, II, and III: Act No. 89 of 1896, in effect in 1898. Parts IV and V: Act No. 9 of 1898, in effect in 1898.

²⁶In 1890, the population of Japan was approximately 40 million, roughly one-third of that in the 1970s and later. Japanese citizens had the same or better access to litigation in the late nineteenth century. Indeed, the number of civil case filings per person in the 1890s was much greater than that of the 1970s. See Haley (1991), pp. 96–104.

²⁷Most of these side payments were in fabric, which female workers desired.

²⁸The reason why silk-reeling firms preferred hiring young females instead of continuing to use the services of mature and skilled female workers is another question. See Hunter (2003), pp. 89–143.

teens to their twenties, and their fathers or their husbands endorsed these contracts.²⁹ In Suwa, the term of an employment contract was one year or less to end in December and all wages were paid in one lump sum at the end of December. The average daily wage in the period examined was 0.2 yen to 0.25 yen,³⁰ and therefore, a worker earned 48 to 60 yen on average if she worked eight months. A typical example is as follows:

Document 1

Certificate of agreement

Term 1 Since the contract for my daughter Hatsuyo to work for your silk-reeling factory as a female silk-reeling worker from June to December is now prepared, I surely receive one yen as an advance, and provided that, she shall not be hired by another silk-reeling factory for any reason during the duration, and if the contract is breached and you suffer, let alone relevant costs, I shall immediately pay 20 yen as damages whenever you request, to which I shall never contest, and therefore, I submit this certificate of agreement in the customary way.

In this regard, salaries shall be determined by the custom in your region.³¹

1.3 Further tightening of the labor market and contractual conflicts

Female workers lived in dormitories throughout the year and all living expenses including meals were provided by the employers. When a contract was made, agents provided an advance on wages. Thus, by cheating the agents, the woman, her father, or her husband could receive advances from multiple contracts. Contracts other than the one taken by her were never fulfilled. A local newspaper reported on the situation as follows:

Among silk-reeling manufacturers, there are drones who poach female workers trained by others to work in their factories, and among female workers, there are cunning ones who enter into employment contracts with several silk-reeling manufacturers, and these not only inflict a loss on honest silk-reeling manufacturers but also would result in lost control of the female workers' society and, not least, affect the silk-reeling industry.³²

²⁹The Civil Code before the Second World War required the agreement of a minor's guardian when a minor made a contract (Article 4), and it required the agreement of the head of the household when a woman, even if she was an adult, made a contract to restrain her body (Article 14)—typically meaning for the woman to work in a factory and to live in a dormitory.

³⁰See Nakabayashi (2014), p. 262.

³¹From Household Head Fusajiro Nakamura (worker's father), and Hatsuyo Nakamura (worker), Yamagata Village, County of Higashi Chikuma (Prefecture of Nagano) / To Yokichi Imai (employer) / January, 1893. Included in "Seishi kojo yakujo sho (Certificate of agreement of silk-reeling female workers)," held by Okaya Silk Museum, Okaya, Prefecture of Nagano. The "custom" of wage determination was recognized as relative-performance-based payment by a judgment of the Ward Court of Kamiuwa in 1894 (Case ID: 26(ha)46, 5 May 1894).

³²"Seishi kojo yosei no hitsuyo (Necessity of training of female silk-reeling workers)," *Shinano Mainichi Shinbun (The Shinano Daily Newspaper)*, April 27, 1892. Shinano is the historical name of Nagano prefecture.

In the Suwa and Ina regions, silk-reeling manufacturers have recently been offering money to silk-reeling workers who are employed by others to try and poach them or they offer a piece of fabric for a kimono and other fringe benefits to induce them.³³

Silk-reeling manufacturers of Suwa are now sending their staff [to neighboring regions] and are competing directly with other local silk-reeling manufacturers, saying “We will pay you more,” to induce female silk-reeling workers, and so now is the time when workers will be gratified.³⁴

In the Suwa region...there is a shortage of female silk-reeling workers, and most female workers should not be employed by factories that offer lower wages... skilled female workers receive offers to work in many factories, and some offer several yen as bribes, offer fabric for kimonos, send spies, reward recruiting agents, and use the kinds of measures that representatives [of the Diet] do when they are competing [in a general election].³⁵

Under the terms of the employment contract, the employer would obtain a claim for the employee to work at his or her factory and the employee would obtain a claim for wages as compensation for his or her service (1896 Civil Code, Article 623). The value of the employer’s claim was equal to the cost of recruiting the employee, which included the cost of sending an agent to recruit the employee, making an advance payment, and the expected profits the employee would have generated. The tightness of the labor market and the high turnover of workers made claim protection necessary, given the potential for contract interference by other manufacturers that resulted in dual employment contracts.

2 Direct governance by the judicial system

2.1 Enforcement of employment contract

Until the early 1890s, employment contracts without a specified duration were common.³⁶ However, since then, employment contracts with a duration of one year or less dominated. Even after the 1896 Civil Code became effective in 1898, which permitted an employment contract to continue for up to five years, and five-year contracts prevailed in other regions, contracts that had a duration of one year or less continued to be prevalent in Suwa County. One possible reason for prevalence of one-year contracts is the jurisdiction of the ward courts,

³³“Seishi kojo yatoiire no serial (Competition for employing female silk-reeling workers,” *Shinano Mainichi Shinbun* (*The Shinano Daily Newspaper*), 8 June 1892.

³⁴“Kojo no hippariai (Competition for female workers),” *Shinano Mainichi Shinbun* (*The Shinano Daily Newspaper*), 23 June 1892.

³⁵“Kojo no hippari kyoso ha daigishi no kyoso ni nitari (Competition for female workers resembles the competition of representatives),” *Shinano Mainichi Shinbun* (*The Shinano Daily Newspaper*), 7 March 1894.

³⁶For instance, a contract between Naozemon Oguchi, the employer, and Shinjuro Mitsui, the father of the worker, Yone Mitsui, which was concluded on 9 March 1891, on file at Okaya Silk Museum.

which assumed jurisdiction over employment contracts whose duration was one year or less.³⁷ A suit to enforce of an employment contract whose duration was longer than one year had to be filed at the District Court of Nagano, a distant city. If the regional labor market became tight, workers mobility increased, and employers wanted their claims to be protected by the court at a reasonable cost, Thus employers made the duration of contracts one year or less so that they could file a suit at the nearby Ward Court of Kamisuwa.

Further, from the early 1890s, employment contracts began to stipulate the payment of damages by an employee when the employee failed to fulfill the contract. The clause sought enough damages to prevent the worker from moving. In the suits described in Tables 1, 2, and 3, damages were 3 to 20 yen in the early 1890s, 20 yen in the late 1890s, and in the 1900s, as the labor market tightened, the maximum amount jumped to 100 yen.³⁸ Damages totaling 20 yen or more amounted to half or more of a year's wages. By including such closes in their contracts, manufacturers attempted to deter the movement of workers to other factories. Indeed, employers did not hesitate to file suits against employees who failed to perform their employment contracts. While those from the very early period have been lost, civil cases filed at the Ward Court of Kamisuwa from December 1892 to June 1896 and from December 1899 have been preserved. Tables 1, 2, and 3 contain summary results of all preserved adjudications related to employment contracts in the silk-reeling industry through December 1901.³⁹

INSERT Table 1, Table 2, and Table 3 HERE

2.2 Liberalization of the market

At the same time in the 1900s, in order to prompt free competition, it came to be accepted that it was not an act of tort as stipulated by Article 709 of the 1896 Civil Code⁴⁰ for an

³⁷The 1890 Code of Civil Procedure, Article 14. Note that when an employer laid off an employee, the employment contract was assumed to be canceled such that the employer lost his claim to have the employee work and the employer was not obliged to pay wages (See Case 1 below).

³⁸Damages were 20 yen in most cases in the 1890s and increased to 100 yen at maximum in the 1900s. However, if the value of the object was more than 100 yen, then jurisdiction over the case was assumed by the District Court of Nagano, a distant city. Thus in practice, a smaller amount, for instance the 25 yen cited in Case 4 below, was requested. Until the early twentieth century, damages were left to the contracting parties and were not restricted by any act or judicial precedent.

³⁹For summaries of individual cases, see Nakabayashi (2001), pp 147–160. Adjudications of civil cases were preserved by the High Courts and for fifty years after pronouncement were, temporarily entrusted to national universities from 1994 to 2001, and were transferred to the National Archives of Japan in 2001. The author was permitted to access the original adjudications when they were temporarily held by the University of Tokyo.

⁴⁰Chapter 5 Torts, Article 709 on Damages in Torts states “A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.” Article 709 of Chapter 5 is a general clause of tort for intention or negligence as are Articles 1382 and 1383 in the French Civil Code (see Saito (2015), pp. 95–96). The Japanese title of Chapter 5 Tort is *Fuho koi*, whose French translation by Masa-akira Tomii, one of the drafting authors of the bill was *Des actes illicites* (see Motono and Tomii (1898), p. 168), which means “the unlawful acts” in English. However, in French legal terms, the counter part of the concept “tort” in the common law is in fact *délit*, which means “offense” in English. Actually, *actes illicites* is a French translation of the German concept *unerlaubter Handlung*, which means again “unlawful acts.” Such a roundabout transfer of this legal concept from the continental law

employer to infringe on another employer's claim to an employee by poaching, unless the poaching employer physically restrained the employee. The employee was still liable for obligations stipulated by the original employment contract, but the poaching employer was not liable for damages caused by poaching.⁴¹ It was thus technically impossible for the original manufacturer to find recourse to the court to claim the right to an employee against a poaching employer.

An example of the court's tendency to promote free competition is also observed regarding layoffs. It was common among silk-reeling manufacturers to lay workers off during a downturn in the export market. When the export market recovered, manufacturers called back workers with whom they had concluded employment contracts. Case 1 below was filed in 1904 by a manufacturer against a worker who had begun to work for another employer while laid off, seeking damages for the non-fulfillment of the employment contract. The manufacturer did not operate his factory in the spring season, but he reopened it in the summer season. The employee understood that her employment contract was canceled in the spring season, began to work at another factory, and did not respond to the employer's call for the summer season.

Case 1: Suit for damages for non-fulfillment of employment contract / Katsuhei Ito (plaintiff, manufacturer) vss Kiroku Aikawa (defendant, the defendant worker's father / Judge: Yoshiyuki Ariizumi / Court: Ward Court of Kamisuwa / Date: 15 October 1904 / Result: Loss of plaintiff / The text: Dismissal of the claim / Responsibility for the cost of suit: Plaintiff.

The Ward Court of Kamisuwa concluded that the request from the manufacturer should be dismissed, explicitly stating:

Document 2

It is unequivocal that this case is a bilateral contract, and hence, if the plaintiff wants to blame the third party Teru [employee]⁴² for violation of the contract, he shall not avoid verifying that he had prepared for his own obligation, and further, Teru's obligation, her service to the plaintiff, could not be performed unless the plaintiff began operation, but, nonetheless, the plaintiff himself did not operate in the spring season and still asserts that Teru is responsible for the non-fulfillment and intends to request damages, which is strongly unlawful.

2.3 Two types of transactions governed by the court

In the mid-1890s, two kinds of suits related to employment contracts were filed by employers at the Ward Court of Kamisuwa: (1) suits for the enforcement of the employment contract

occurred because Japanese scholars and lawmakers introduced the basic structure of the civil code system from France and built their own system inspired by German law. Meanwhile, the word "tort" as an English legal term is originally French, but it is not a formal legal term in the French legal system.

⁴¹See Ishizaka (1908a, 1908b, 1908c); Suehiro (1914); Wagatsuma (1940), pp. 13–14, 79–80; and Yoshida (1991), pp. 7–150.

⁴²In this case, the defendant was Teru's father, who was the party in the employment contract.

or for damages, and (2) suits for damages for the non-fulfillment of the employment contract. If the court should deliver a judgment in favor of the plaintiff (employer), regarding the former, the court would deliver a judgment ordering the defendant (employee) to fulfill the employment contract, or to pay the amount covering the employer's damages, as required by the contract (Table 1). On the other hand, for the latter, the court would simply order the defendant (employee) to pay the amount covering the employer's damages. While suits for the enforcement of the employment contract or for damages still had recourse to the court for the enforcement of original employment contracts, suits for damages based on the non-fulfillment of an employment contract were only for damages to compensate for the value of the original contract that was not expected to be performed.

3 To the shadow on the market

3.1 Transformation of employment contracts

Suits related to employment contracts changed by the end of the 1890s. From 1900, suits requesting enforcement of the original employment contracts disappeared. From that point, all related issues turned into suits requesting only damages for the non-fulfillment of the original employment contract (Tables 2 and 3).

Among transactions governed by the court, we can assume two types of real transactions: (1) actual transactions between an employer and an employee, when a worker did not fulfill the contract typically because of illness and consequent withdrawal from the labor market, and (2) virtual transactions between relevant employers, when a worker moved to another factory.

What form of judgment did the court deliver in the first case? The court would dismiss the claim by the plaintiff (an employer) because the 1896 Civil Code allowed for an immediate cancellation of an employment contract for an "unavoidable reason" (Article 628),⁴³ which typically was the illness of an employee. Indeed, in a case of non-fulfillment caused by the illness of a worker, the court denied non-fulfillment of the contract, recognized the termination of the contract, and dismissed the claim of the manufacturer, pursuant to Article 628 of the 1896 Civil Code.

Case 2: Case requesting damages for non-fulfillment of the employment contract: Case ID 38(ha)177 / Sehei Hayashi (plaintiff, manufacturer) vs. Matsuzaemon Kimi Tanaka (defendant, father of the worker, Kimi Tanaka)/ Judge: Naoya Kawachi / Court: The Ward Court of Kamisuwa / Date: 11/21/1900 / Result: Loss of the plaintiff / The text: Dismissal of the claim / Responsibility for the cost of suit: Plaintiff.

In Case 2, the defendant himself did not refer to Article 628 in his pleadings, probably because he did not know the effect of the article and was too poor to consult a lawyer. Never-

⁴³Article 628 states, "Even in cases where the parties specified the term of employment, if there are unavoidable reasons, either party may immediately cancel the contract. In such cases, if the reasons arise from the negligence of either one of the parties, that party shall be liable to the other party for damages." For interpretation of Article 628 of the 1896 Civil Code, see Ume (1897), pp. 686–687 and Matsunami, Niho and Niida (1903), pp. 1210–1214.

theless, the judge dismissed the claim of the plaintiff on his own authority, which indicates the strong intent of the court to find against the plaintiff. Given that employers typically lost in cases where employees withdrew from the labor market due to illness, we can therefore infer that employers usually sued employees when they moved to another factory.

When a worker moved to another factory that offered a higher wage, it was unlikely that the worker would come back at will. The manufacturer could make a claim for damages against the worker and then negotiate with the new employer. This seems to be the reason why suits for the enforcement of employment contracts disappeared by the end of the 1890s, and it is possible that court adjudications began affecting negotiations between employers.

Moreover, in many cases, defendants (employees) lost suits for damages by default and in some cases, plaintiffs (employers) also lost by default (Tables 1, 2, and 3). The losing party was responsible for the cost of the suit including fees paid to the court and hence, a loss by default would have cost the absent party more than responding.⁴⁴ Such cases are understandable if it is the relevant manufacturers settled disputes outside of court. Thus, damages seems to have been virtually used as a bargaining chip by the manufacturer from whom the worker had moved.

In practice, the recruiting cost could be compensated by worker's renunciation of the unpaid wage of the worker who moved. It was observed by contemporary officials in the early 1900s that most of the poaching occurred before mid-August because movement to another factory implied a worker's waiver of unpaid wages and would barely be compensated by a possibly higher wage from a new employer beyond August.⁴⁵

Until the end of the 1890s, workers also filed suit for unpaid wages (Table 1). Out of eight suits, two were suits filed as objections to a loss by default of the defendant, the employer, and thus there were six real disputes filed by six different employees. Out of these six suits, two were filed in May or June for the past year's wages, and three were in December for unpaid wages for the year until the date of filing. A possible interpretation is that after the defendant worker moved from one employer to another employer, the settlement did not go through and the worker filed suit.

Further, a suit for damages filed by a manufacturer and that for repossession of belongings filed by a worker in Table 2 were related, and they are easier to understand if we assume private negotiations outside of court.

Case 3: Suit for repossession of belongings: Case ID 33(ha)153 / Chie Tanaka (plaintiff, worker) vs. Sehei Hayashi (defendant, manufacturer) / Judge: Naoya Kawauchi / Court: The Ward Court of Kamisuwa / Date: October 22, 1900 / Result: Favor of plaintiff / The Text: The defendant deliver belongings of the plaintiff to the plaintiff. / Reason: Default. / Responsibility of the cost of suit: Defendant.

Case 4: Suit for damages on nonfulfillment of employment contract: Case ID 33(ha)186, Sehei Hayashi (plaintiff, manufacturer) vs. Chie Tanaka (defendant, worker) / Judge:

⁴⁴Article 72, 1890 Code of Civil Procedure. In the majority of the suits examined by this study, no lawyer was hired and the parties themselves appeared in every procedure.

⁴⁵See Ministry of Agriculture and Commerce, Department of Commerce and Manufacturing, Factory Surveillance Section (Noshomusho Shokokyoku Komuka Kojochosakakari) (1903), p. 180.

Naoya Kawauchi / Court: The Ward Court of Kamisuwa / Date: November 28, 1900 / Result: Loss of plaintiff / The text: Dismissal of claim / Reason: Default / Responsibility of the cost of suit: Defendant.

On 22 November, Hayashi requested an order of payment to the court demanding 31.25 yen out of 5 yen in advance, 100 yen in contracted damages and 1.25 yen for the cost of the demand procedure, to Chie Tanaka. Tanaka did not pay it and Hayashi filed a suit against Tanaka demanding the amount, which was Case 4 above. Tanaka did not attend the oral proceeding on 28 November, and lost by default. The point here is that the judgment of the suit filed by Tanaka for repossession of belongings, which Tanaka left at Hayashi's dormitory, Case 3, was delivered on 22 October, prior to the date of request by Hayashi for an order of payment, 22 November, and the date of delivery of Case 4, 28 November.

In Case 3, Hayashi lost by default, which indicates that the negotiations might have been close to a settlement. However, the request by Hayashi for an order of payment on 22 November, preceding Case 4, indicates that negotiations were continuing at that point. Finally, in Case 4 on 28 November, Tanaka lost by default, which seems to indicate that a settlement had been reached. The plaintiff in Case 4, Hayashi, was one of the largest manufacturers in Suwa and actively negotiated with other member manufacturers after the private registration system of the League of Silk-Reeling Manufacturers of Suwa was established in 1903.⁴⁶

Therefore, the change in the type of suit from the mid-1890s to the early 1900s can be interpreted to reflect a change in transactions: from between an employer and an employee to between employers. Moreover, in the 1900s, the court seemed to recognize that the transactions between manufacturers were held in parallel with the official transactions between a manufacturer and a worker in the court. The court did not protect an employer's claim if it was concluded that the employee was not poached as seen in Case 2 above.

In addition, suits for payments of wages filed by employees disappeared in 1900 (Tables 2 and 3). As settlements outside the court prevailed and went through smoothly, they became less necessary to use as bargaining chips when a worker changed employers.

3.2 Indirect governance of trades between employers by the court

In summary, a possible inference can be made that the judicial system indirectly governed transactions between employers in the labour market (Figure 1). Let C denote a deal in the court that follows the articles of the 1890 Code of Civil Procedure, and let S denote a deal outside of court. Then, the process of negotiation under this indirect governance could be depicted as follows:

INSERT Figure 1 HERE

($S-1$) When worker W moves from manufacturer M_A to manufacturer M_B and does not fulfill the employment contract with M_A , M_A investigates to whom W moved and requires M_B to send W back to M_A , or to compensate the value of M_A 's claim.

⁴⁶See Tohoku University, ed (1969a, 1969b, 1970).

- (*C* – 1) M_A has recourse to the Ward Court of Kamisuwa to order W (or the head of her family) to pay the amount to cover damages for the non-fulfillment of the employment contract, following which the court makes a decision to order W to pay the same (1890 Code of Civil Procedure, Article 383). To request the court for an order of payment, the plaintiff (M_A) paid the initial cost (0.025 to 1.525 yen) to the court,⁴⁷ which was to be paid by the losing party after delivery of judgment.
- (*S* – 2) M_A and M_B negotiate for a settlement, whether balancing out a part or all of the damages by the unpaid wages of W held by M_A , or by sending W back to M_A . If they arrive at a settlement at this stage, the negotiation ends. If not, the process goes to the next stage, possibly with W filing a suit for wage payment against M_A .
- (*C* – 2) W (actually M_B) files an objection to vacate the decision within 14 days after (*C*1), and then the suit begins (Articles 386, 389, 390, and 501).
- (*S* – 3) If they reach a settlement after (*C*2), the negotiation ends. M_A does not require the court to set a date for oral proceedings, which means the discontinuance of the suit, or M_A is absent on the day of the oral proceedings and then loses by default; his claim is dismissed by the court. If they do not reach a settlement, they go to the next stage.
- (*C* – 3) M_A attends but W does not attend the oral proceedings, and then M_A wins by default; the court delivers a judgment ordering W to pay an amount to cover the damages (Article 248).
- (*S* – 4) If they reach a settlement, the negotiation ends. If not, the process moves forward.
- (*C* – 4) W (M_B) files an objection against the judgment by default within 14 days after (*C*3), and then (*C*3) is repeated (Article 255).
- (*S* – 5) They reach a settlement. The negotiation is complete.
- (*C* – 5) M_A loses by a default judgment, W (M_B) loses by a default judgment, or W (M_B) loses by acknowledgment (Articles 229, 247, and 263). The judgment at this stage is an ultimatum to M_B , because W (M_B) cannot make another objection against the judgment by default (Articles 255 and 260).

The litigation costs including initial cost paid at (*S* – 1), were to be paid, in principle, by the losing party (Article 72) as well as damages in the case after the delivery of judgment. The primary role of the court summarized above was the adjusting the point of disagreement in

⁴⁷For one bill filed, 0.025 yen was to be paid and additionally 0.3 yen when the value of the object was more than 5 yen and 10 yen or less, 0.6 yen when value of the object was more than 10 yen and 20 yen or less, 1.5 yen when value of the object was more than 20 yen and 50 yen or less, or 3 yen when value of the object was more than 50 yen and 100 yen or less was to be paid to the court (Article 2 of the 1890 Act of Civil Procedure Cost, Act 64 of 1890 and Article 2 of the 1890 Act of Documentary Stamp for Civil Procedure, Act 65 of 1890). As the average damages requested were 20 yen until 1900, and 1.525 yen was required up front in order to begin litigation.

the bargaining between both manufacturers. Possible enforcement of the payment of damages increases the disagreement payoff of MA and by doing so, pushes the bargaining solution in a direction in favor of M_A . If the possible solution is adjusted such that it satisfies M_A 's participation constraint, M_A would remain in private settlement negotiations with MB and the transaction could improve efficiency. A judicial process could help stabilize a private governing mechanism, and thus the public and private mechanisms here could complement each other.

3.3 Litigation as an off-the-equilibrium path

This might be a bit more complicated when a common discount factor, or the same level of patience, among employers cannot be assumed. To the average employers to whom workers moved, the possibility of a suit should be sufficient to make them accept a private settlement. Therefore, on-the-equilibrium path, a suit should not have been initiated. However, in reality, some employers might have smaller discount factors than others. In the legal procedures described above, the 1890 Code of Civil Procedure sets forth four stages of legal costs: (1) an order (Article 386), (2) a suit at the Ward Court (Articles 377 and 390), (3) a suit at the District Court (Article 396), and (4) an appeal to the Court of Appeals or the Supreme Court (Article 432) where the cumulative legal costs discontinuously increase. In the period studied here, no case was sent to the district court in Nagano. The cost of the standard process was about 7 yen for each party, excluding the fee paid for a lawyer and damages.⁴⁸ In addition, it took a long time to reach a settlement. Taking into account that the cost to recruit a worker without including an advance was about 0.5 yen and an advance was about 1 to 2 yen in the late 1890s,⁴⁹ the transaction cost under indirect governance by the court until procedure (2) already seems large.

Given the cumulative legal costs and additional transportation costs, a suit at the district court was an off-the-equilibrium path for any market participant. By switching the transaction costs, the court could adjust to different discount factors and encourage the parties to return to private settlement.

Indeed, the number of suits was not significant given the number of workers. For over 10,000 employees, the number of suits in Table 1 looks rather small. We can also cite a number of negotiations settled by the office of the League of Silk-Reeling Manufacturers after the League set up the registration system and forbade member manufacturers to file suit against an employee who was poached by another member manufacturer in 1903. In 1904, the total number of cases settled by the office was 67 and the volume since then did not tend to decline.⁵⁰ The number is greater than the number of suits before 1903 but still seems to be small given the size of the labor market. While member manufacturers were required to

⁴⁸The cost included the initial cost for a bill filed, the cost of catchpole, the cost of demand procedure, postal fees, telegraph fees, transportation costs, the cost of public notice and the cost of enforcement that were necessary for the legal procedure by the court, pursuant to Articles 5, 6, and 7 of the 1890 Act of Civil Code Procedure Cost.

⁴⁹See Nakabayashi (1999), p. 16.

⁵⁰See Tohoku University, ed (1969a), pp. 11-37.

pay annual membership fees, there was no fee for individual arbitration by the office. Thus, the marginal governance cost was only the opportunity cost of time. Either before or after the registration system was established, the on-the-equilibrium path continued to be private settlement. The equilibrium strategy was private negotiation, outside of the court before 1903, and without arbitration by the office of the League after 1903. If the manufacturer from whom a worker moved had a discount factor smaller than the equilibrium strategy required, he went to the court before 1903, and to arbitration by the League from 1903. By providing a less costly off-the-equilibrium path, the governance mechanism covered a broader spectrum of manufacturers.

Conclusion

In the labor market of the Japanese silk-reeling industry in the late nineteenth and early twentieth centuries, three mechanisms of governance were feasible. First, the court directly deterred employee turnover and protected employers' claims by enforcing original employment contracts as written in the 1890s. However, the strict enforcement of original employment contracts and the suppression of labor mobility were not desirable for the silk-reeling industry in Suwa County as a whole, because it might have hindered potentially better employment matches.

Following this phase, in the 1900s, suits for non-fulfillment of the original employment contract disappeared, and only suits for damages for non-fulfillment of the original employment contract were filed, presupposing that the original employment contract would not be performed. This change does not contradict the hypothesis that silk-reeling manufacturers began to privately negotiate as a means to resolve conflicts, which ran parallel to a suit in court. This indirect governance could address the point of disagreement for the original employer, set the bargaining solution in a direction that favored the original employer, and satisfy participation constraint of the original employer. The original employer was encouraged to participate in the transaction to realize a more efficient allocation of labor resources.

A shortcoming of this indirect governance was the high litigation costs. In 1901, silk-reeling manufacturers organized the League of Silk-Reeling Manufacturers of Suwa, and within the League, they established a registration system under which every single employee hired by a member manufacturer was to be registered. Furthermore, member manufacturers were prohibited from filing suits to request damages for non-fulfillment of employment contracts against employees who moved to another member manufacturer.⁵¹ The possibility of a costly bargaining process through litigation by the court prompted settlement within the private registration system, which reduced transaction costs in the labor market. Further, this prohibition by the League of member manufacturers to sue a worker who was poached by another member manufacturer is in line with our inference that, preceding the explicitly designed registration system, there existed an informal settlement mechanism in the shadow of the court.

⁵¹See Nakabayashi (2003), pp. 308–309.

This “shadow” of the court, in Dixit’s terms, could affect bargaining powers favoring employers from whom workers moved. The potential threat was not restricted to the enforcement of damages. The costly legal procedure itself prompted settlements outside of court as discussed by Choi and Triantis.⁵²

In transition, there was some friction. In 1903, the first year of the registration system, negotiations between two manufacturers—Kanetaro Katakura, the largest manufacturer, and Kahachiro Kasahara, a much smaller manufacturer—stalled when the latter filed a suit against a worker whom the former poached even though filing a suit violated the League’s bylaws. Responding to inquiries by the office of the League, Kasahara argued that he filed the suit because the advance paid to the worker was not repaid. The office suggested that Katakura repay the advance and that Kasahara drop his suit, and the negotiation was settled.⁵³ This case indicates that private negotiations existed in parallel with litigation prior to the establishment of the registration system. In addition, it shows that the existing court still worked to stabilize a new private mechanism by presenting the weaker party with a bargaining chip in the off-the-equilibrium path. After this case, there were no suits against a worker who moved to another member factory, and the office of the League processed several dozen negotiations a year. A thorough analysis of the new private mechanism is left for future research.

It is difficult to verify the existence of working economic institutions, either public or private, when they are actually working because working institutions are somehow in Nash equilibria from which no player wants to deviate. Only if some dispute that might destabilize an institution occurs, will some traits of the working institution be left. Furthermore, only if the traits are examined later will it be established that an economic institution existed and actually worked. In this sense, without historical analysis, any game-theoretic prediction about an institution is one of potentially infinite logical possibilities. A contribution of this historical analysis is to suggest a hypothesis on the complementary nature of private and public mechanisms that worked together as an economic institution a century ago in Japan and to present evidence that is consistent with this hypothesis.

Lastly, let us consider how the institutional arrangement this paper deals with be related to a broader context of Japan’s modernization. As reviewed in the introduction, in the Western world, the state court directly enforced coercive employment contracts and indenture contracts, which suited the real economy in transition towards full liberalization of labor market. Meanwhile, Japan adopted the state-of-the-art Western law in the late nineteenth century although the real economy was still in a transitory phase. The adoption was not superficial. As seen in Case 1 and Document 2, trust in the liberalization of labor market was deeply embraced in mind set of educated members of society such as judges. The divide between the educated elites and the reality of the economy prevented the court from directly governing coercive contracts in the transitory phase of the Japanese economy. The court, if at all, only indirectly governed trades between employers, and the institutional complexity promoted creation of the private registration system. The divide between the educated elites and the real

⁵²See Choi and Triantis (2008).

⁵³Case 2 of 1903, “On interpretation of Article 6 of the Bylaws of the League,” Petitioner: Kanetaro Katakura, Defendant: Kahachiro Kasahara, Related female worker: Takeno Maruyama, Date of pleading: April 7, 1903. Tohoku University, ed (1970), p. 16.

economy, which resulted in institutional complexity in Japan's case, might give an insight to better understand not only nineteenth century Japan, but also a broader range of emerging economies in general.

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Appendix: Related acts

Original texts are in Japanese. The acts were translated into Japanese by the author, with the exception of articles other than Article 14 of the 1896 Civil Code, which were translated by the Ministry of Justice, Government of Japan. That translation can be obtained at: <http://www.japaneselawtranslation.go.jp/>, last accessed on February 12, 2014. The acts were and are effective only in the sense of the original Japanese texts.

The 1875 Acquaintance of Procedure of Court (Saiban Jimu Kokoroe), Premier Ordinance (Dajokan Fukoku) No. 103 of 1875.

Article 3: In a civil case, judgment should be based on the custom if there exists no relevant statute law and should be based on the rule of reason if no relevant custom exists.

1890 Court Organisation Act (Saibansho Kosei Ho), Act No. 6 of 1890, in effect in 1890 and repealed in 1947.

Article 14: Ward court has jurisdiction over civil suits below,
... snip ...
D. Suits related to a contract whose duration is one year or shorter between employer and employee.

The 1889 Constitution of the Empire of Japan (Dai Nippon Teikoku Kenpo), in effect in 1890, amended in 1946, and the amended constitution (Nippon Koku Kenpo) in effect in 1947.

Article 22: Every subject of Japan shall have freedom to choose and change his/her residence within the confines of the law.

The 1890 Civil Code (Minpo), Act No. 28 of 1890, planed to be in effect in 1893, postponed to be in effect in 1892, and repealed in 1898.

Part of acquisition of property, Article 260: (1) A servant, a manager, an assistant manager, worker and other employee may perform a duty receiving salary or wage determined by annual, monthly, or daily basis.

(2) Employment may be canceled by a request of cancellation in advance from either party after the duration specified as a custom of the relevant region expires or at any time if there is specific custom; provided, however, that, the request should not be made without prejudice or malice.

Part of acquisition of property, Article 261: (1) Duration of employment should never be longer than five years for a menial, a manager, and an assistant manager and longer than one year for a worker and other employee; provided, however, that, this never obstructs provisions below related to apprenticeship contract.

(2) If a duration longer than stipulated above is contracted, the duration can be shortened at the will of either party; provided, however, that, it never obstructs renewing the contract.

The 1890 Code of Civil Procedure (Minji Sosho Ho), Act No. 29 of 1890, in effect in 1891 and repealed in 2005.

Article 188: (1) Both parties are allowed to agree to suspend the procedure of suit; provided, however, that, the suspension never keeps unextendable period from proceeding.

(2) If both parties fail to appear on the date for oral argument, then the litigation proceeding is discontinued until one of the parties petitions for another designation of the date for oral argument.

(3) If one of the parties does file a petition of the preceding paragraph within one year, it is recognised that the principal action and the counterclaim are withdrawn.

Article 229: If the litigated claim is waved or the defendant acknowledges the claim at the oral argument, the court at the request should pronounce a judgment of dismissal or loss.

Article 246: If the plaintiff or the defendant fails to appear on the date of oral argument, the court at the request of the other party pronounces a default judgment.

Article 247: If the party who fails to appear is the plaintiff, the court should pronounce a dismissal of the plaintiff by a default judgment.

Article 248: If the party who fails to appear is the defendant, the court recognises that the defendant has convicted the statement about the fact by the plaintiff and if the court recognises that the claim by the plaintiff is legitimate, then the court should pronounce a loss of the defendant and if the court does not recognise it as legitimate, then the court should pronounce a dismissal.

Article 252: (1) In the following cases, a request of default judgment is dismissed; provided, however, that, the plaintiff and the defendant who appears may

request postponement of oral argument.

First The plaintiff or the defendant who appears is not able to give a necessary evidence about conditions to be examined by the court's own authority.

Second Document of the statement about the facts or the request is not serviced at an appropriate time to the plaintiff or defendant who failed to appear.

(2) If the oral argument is postponed, the plaintiff or defendant who has failed to appear should be summoned on the renewed date.

Article 255: (1) The plaintiff or defendant judged by default may enter an appeal against the judgment.

(2) The period of an appeal is fourteen days, and this period is unextendable period and begins by service of the judgment document.

(3) An appeal may be entered even before service of the judgment document.

Article 257: (1) An appeal that is obviously unforgivable, fails to satisfy legal formality or is entered after the period should be dismissed by the presiding judge.

(2) An immediate appeal against the ruling of the dismissal may be entered at the upper court.

Article 258: Except for the case of the preceding article, the court should serve the document of the appeal to the other party, set a new date of oral argument about the appeal and summon both parties.

Article 260: If an appeal is recognised as legitimate, the suit is restored to the phase before the absence.

Article 263: (1) If the plaintiff or the defendant who entered an appeal fails to appear on the date of oral argument or the date of postponed oral argument, except for the cases stipulated in Article 252 and Article 254, the court at a request of the other party who appears pronounces a dismissal of the appeal by a renewed default judgment.

(2) An appeal may not be entered against the renewed default judgment.

Article 377: (1) There should be at least three days between the date of oral argument and the service of the complaint document.

(2) In a case of urgency, this period may be shortened to twenty four hours . . . snip . . .

Article 383: (1) The ward court gives an order of payment . . . snip . . .

Article 384: (1) Giving an order of payment may be requested by a document or a statement.

(2) This request should satisfy the following matters.

First Indication of the both parties and the court.

Second Indication of the amount, the object and the statement. If claims are several, indication of for the amount, objet, and the statement for each

claim.

Third Request of giving an order of payment.

- Article 386: (1) An order of payment is given without examining the obligor.
(2) An order of payment should indicate matters of the request set forth in item 1 and item 2 of Article 384 and state an order that, if an immediate execution is desired to be avoided, the claim should be met within fourteen days from the date of service of this order document and the designated amount of the cost of procedure should be paid to the obligee, or an appeal to the court should be entered.
(3) The period in the preceding item may be shortened to twenty four hours for exchange and three days for other claims at request.
- Article 388: The obligor may enter an appeal against the order of payment by a written or oral statement.
- Article 389: (1) If the obligor enters an appeal against whole or part of the claim at an appropriate time, the order of payment ceases to be effective but has an effect of *lis pendens*.
(2) The service of the document of the order of payment should be served to the obligee.
- Article 390: In the case where an appeal is entered at an appropriate time, if jurisdiction of the suit to be filed with regard to the claim belongs to a ward court, the suit is recognised to be filed at the same time of service of the document of the order of payment, and the date of oral argument is decided according to the provision of Article 377.
- Article 391: (1) If jurisdiction of a suit to be filed with regard to the claim belongs to a ward court, it should be noticed to the obligee at an appropriate time that an appeal has been entered.
(2) If the obligee fails to file a suit within a month from the date of the notice at the court with jurisdiction, *lis pendens* cease to be effective.
- Article 392: (1) If an appeal is entered at an appropriate time, the cost of demand procedure may be recognised to be a part of court costs of the suit to be filed
... snip ...
- Article 393: (1) An order of payment declares that the order may be provisionally executed after the period indicated in the order unless the obligor enters an appeal before the declaration of the provisional execution.
(2) The provisional execution should be declared by the order of execution to be attached to the order of payment and the order of execution should indicate the cost of procedure calculated by the obligee.
(3) An immediate appeal may be entered against an order to dismiss the request by the obligee.
- Article 394: (1) An order of execution is the same as a judgment by default with a declaration of provisional execution, and an appeal against the order of

execution may be entered following the provisions from Article 255 to 264 . . . snip . . .

Article 501: A provisional execution may be declared at a request by the court's own authority in the followings.

First Pronouncement of judgment of loss by acknowledgment.

. . . snip . . .

Article 502: A provisional execution may be declared at a request in the followings.

. . . snip . . .

Third A suit with regard to a contract between an employer and an employee whose employment duration is within one year. . . . snip . . .

The 1896 Civil Code (Minpo), Part I, Part II, and Part III, Act No. 89 of 1896, effective in 1898.

Article 4: (1) A minor must obtain the consent of his/her statutory agent to perform any juristic act; provided, however, that, this shall not apply to an act merely intended to acquire a right or to be relieved of a duty.

(2) A juristic act in contravention of the provision of the preceding paragraph may be rescinded.

Article 14: (1) A wife is required to be permitted by her husband to perform following acts.

. . . snip . . .

Third to conclude a contract that entails body restraint.

(2) A juristic act in contravention of the provision of the preceding paragraph may be rescinded [this article was repealed in 1947].

Article 92: In cases there is any custom which is inconsistent with a provision in any law or regulation not related to public policy, if it is found that any party to a juristic act has the intention to abide by such custom, such custom shall prevail.

Article 99: (1) A manifestation of intention made by an agent representing that the same is made on behalf of the principal within the scope of the agent's authority binds the principal.

(2) The provision of the preceding paragraph shall apply mutatis mutandis to any manifestation of intention made by a third party to an agent.

Article 415: If an obligor fails to perform consistent with the purpose of its obligation, the obligee shall be entitled to demand damages arising from such failure. The same shall apply in cases it has become impossible to perform due to reasons attributable to the obligor.

Article 466: (1) A claim may be assigned; provided, however, that, this shall not apply to the cases where its nature does not permit assignment.

(2) The provisions of the preceding paragraph shall not apply in cases where the parties have manifested their intention to the contrary; provided,

however, that such manifestation of intention may not be asserted against a third party without knowledge.

- Article 623: An employment contract shall become effective when one of the parties promises to the other party that he/she will engage in work and the other party promises to pay remuneration for the same.
- Article 625: (1) An employer may not assign his/her rights to third parties unless the employer obtains the employee's consent.
(2) An employer may not cause third party to work on his/her behalf unless the employee obtains the employer's consent.
(3) If an employee causes any third party to work in violation of the provisions of the preceding paragraph, the employer may cancel the contract.
- Article 626: (1) If the term of employment exceeds five years, or employment is to continue during the life of either party or any third party, either party may cancel the contract at any time after the expiration of five years; provided, however, that said five years shall be ten years with respect to employment for the purpose of apprenticeship in commerce and industry.
(2) If a person intends to cancel a contract under the provisions of the preceding paragraph, he/she must give notice three months in advance [1947 Labour Standard Act (Rodo Kijun Ho), Act No. 49 of 1947, has overridden this article in its effect such that this article has been ineffective since 1947].
- Article 627: (1) If the parties have not specified the term of employment, either party may request to terminate at any time. In such cases, employment shall terminate on the expiration of two weeks from the day of the request to terminate.
... snip ...
- Article 628: Even in cases where the parties specified the term of employment, if there are unavoidable reasons, either party may immediately cancel the contract. In such cases, if the reasons arise from the negligence of either one of the parties, that party shall be liable to the other party for damages.
- Article 709: A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.

Table 1 Civil suits related to employment contracts filed by silk reeling manufacturers, December 1892 to June 1896.

	Total	Favor of plaintiff	settlement	Loss of defendant by default	Loss of defendant by acknowledgement	Loss of plaintiff by default
Filed by employer						
Suits for enforcement of contract or damages	8	6	0	3	1	2
Suits for damages for the nonfulfillment of employment contract	5	4	0	3	1	0
Suits for payback of the cost of training	0	0	0	0	0	0
Filed by employee or her agent						
Suits for wage payment	8	5	0	0	0	2
Suits for repossession of belongings	0	0	0	0	0	0

Source : 'Kamisuwa ku saibansho minji Hanketsu genpon tsuzuri' (Judgments of Civil Cases, delivered by the District Court of Suwa).

Notes : All related judgments delivered from December 1892 to December 1901, and kept by the Branch in Suwa of the District Court of Nagano, are covered. Suits for payback of the cost of training were filed when a young (about 15-year old) worker did not fulfill the apprentice employment contract.

Table 2 Civil suits related to employment contracts filed by silk reeling manufacturers, December 1899 to December 1900.

	Total	Favor of plaintiff	settlement	Loss of defendant by default	Loss of defendant by acknowledgement	Loss of plaintiff by default
Filed by employer						
Suits for enforcement of employment contract or damages	0	0	0	0	0	0
Suits for damages for the nonfulfillment of employment contract	24	22	0	17	0	2
Suits for payback of the cost of training	0	0	0	0	0	0
Filed by employee or her agent						
Suits for wage payment	0	0	0	0	0	0
Suits for repossession of belongings	1	1	0	1	0	0

Notes : See notes of **Table 1**.

Table 3 Civil suits related to employment contracts filed by silk reeling manufacturers, January 1901 to December 1901.

	Total	Favor of plaintiff	settlement	Loss of defendant by default	Loss of defendant by acknowledgement	Loss of plaintiff by default
Filed by employer						
Suits for enforcement of employment contract or damages	0	0	0	0	0	0
Suits for damages for the nonfulfillment of employment contract	20	17	0	13	0	0
Suits for payback of the cost of training	5	3	1	2	0	0
Filed by employee or her agent						
Suits for wage payment	0	0	0	0	0	0
Suits for repossession of belongings	0	0	0	0	0	0

Notes : See notes of **Table 1**.

Figure 1 Indirect governance of transactions between manufacturers by the court when a worker changes employer.

