

OUTLINE OF
CRIMINAL JUSTICE IN JAPAN

Supreme Court of Japan

1980

OUTLINE OF
CRIMINAL JUSTICE IN JAPAN



Supreme Court

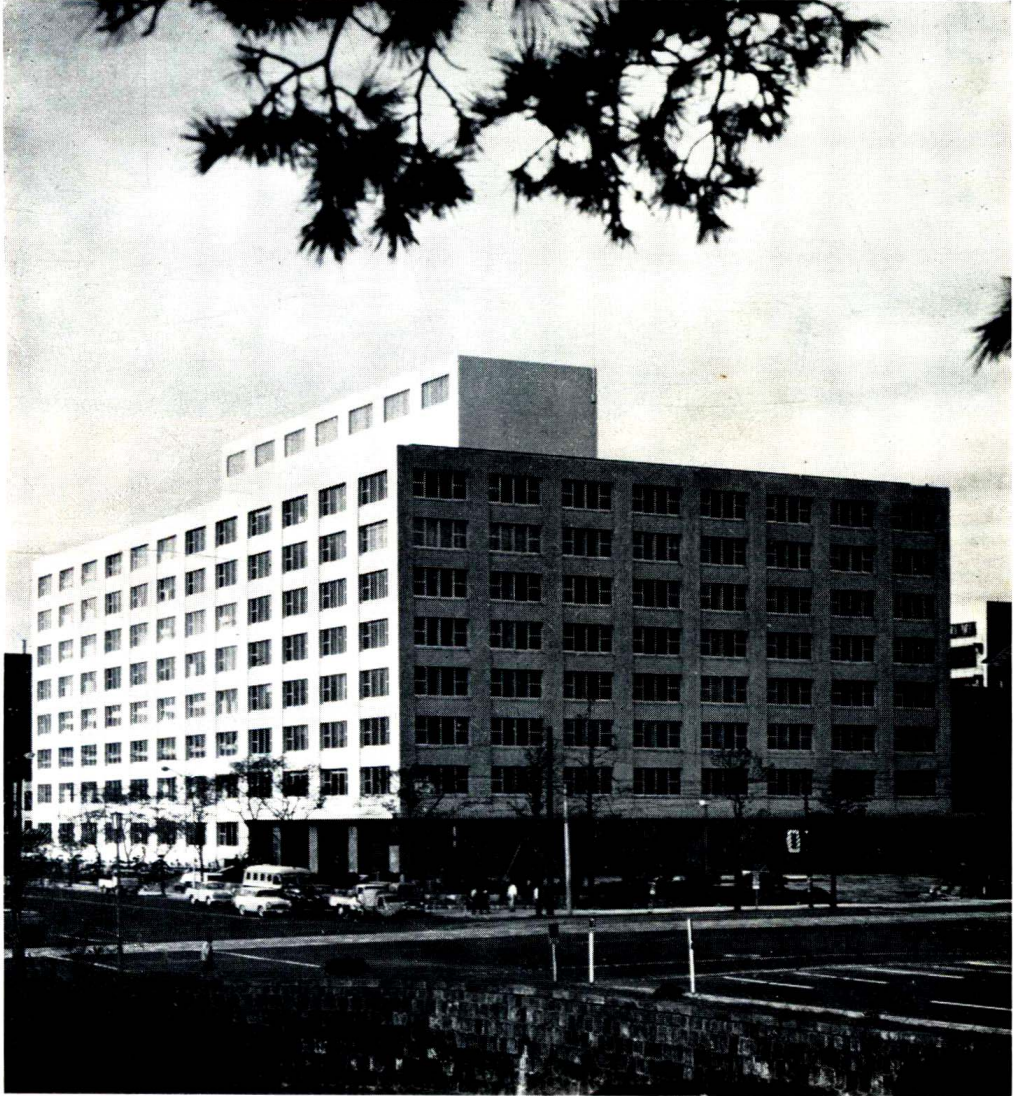


Grand Bench of the Supreme Court

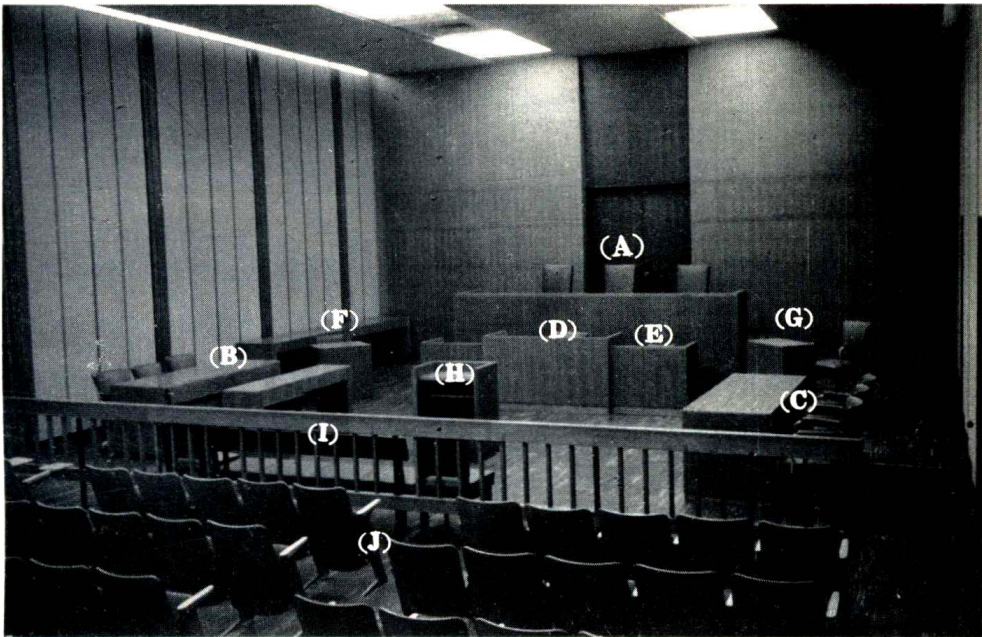
(A) Justices (B) Public Prosecutors (C) Defense counsels (D) Court clerks)
(E) Court Attendant (F) Spectators



Sapporo High Court

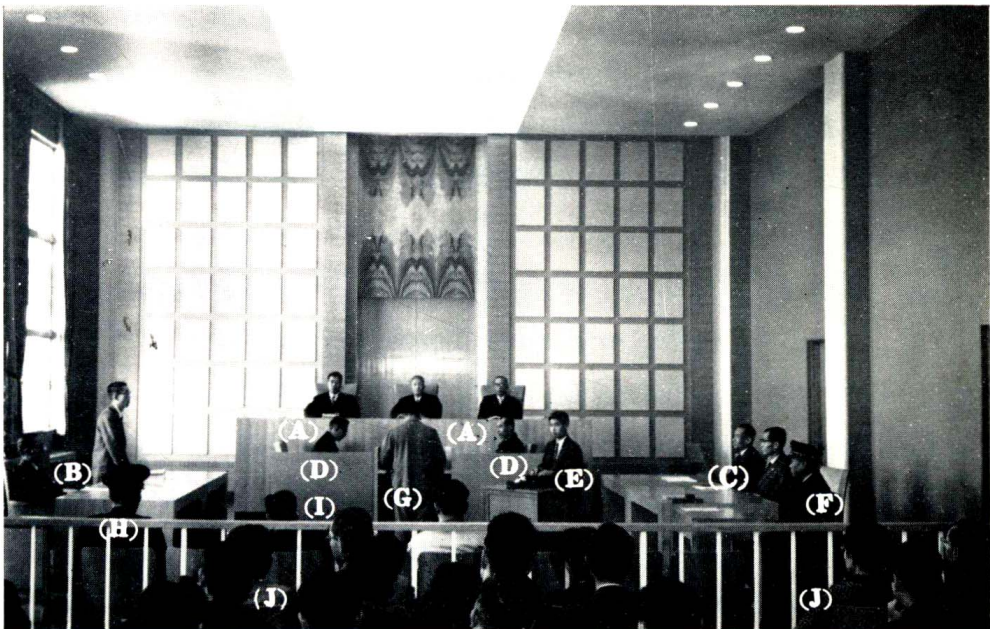


Tokyo District Court



Court Room for Criminal Trial in the Tokyo District Court

(A) Bench (B) Prosecution's Section (C) Defense's Section (D) Court Clerk's Desk
 (E) Court Stenographer's Desk (F) Court Attendant's Stand (G) Witness Stand (H)
 Accused's Stand (I) Accused's Bench (J) Spectators' Section
 Note: The distinctive feature of this court room is that the witness stand is placed at the
 side of the bench.



Collegiate Court for Criminal Trial in the Gifu District Court

This picture was taken in the moot trial specially held for this pamphlet. (A)
 Judges (B) Public Prosecutor (C) Defense counsel (D) Court Clerks (E) Court
 Stenographer (F) Court Attendant (G) Witness (H) Prison Officer (I)
 The accused (J) Spectators

CONTENTS

	Page
I Courts (Comparison with pre-war days' number of courts and judges, and jurisdiction of courts)	3
II The Penal Code and the Code of Criminal Procedure (Revision of the Penal Code, Enforcement of the Revised Code of Criminal Procedure and the Rule of Criminal Procedure)	6
III The general tendency of the number of crimes after the war (Annual comparison of the number of offenses since 1938)	9
(1) Penal Code offenses (Larceny, robbery, fraud, extortion, embezzlement, arson, homicide and gambling, etc.)	
(2) Non-Penal Code offenses (Among others, violations of laws and ordinances for price control, for goods control and for road traffic control)	
IV Features of criminal justice in Japan	20
(1) Determination of penalty (Annual comparison of death penalty and the suspension of execution of penalty since 1941)	
(2) Percentage of acquittals ("not guilty") (Annual comparison of the percentage since 1941)	
(3) Rate of <i>Kōso</i> appeal (High percentage of appeals in the past, and the effect of the new Criminal Procedure (— Annual comparison of the percentage since 1938)	
(4) Some restraints upon the discretionary power of the prosecution (Especially with regard to the Inquest of Prosecution)	
V Actual results of the application of the new Criminal Procedure	31

- (1) Principle of proceedings centering around the public trial in the first instance (Ordinary trial in the Summary Courts and the District Courts in the first instance)
- (2) Increase in the number of witnesses examined
- (3) High rate of cross-examination
- (4) Reviewing character of trial in appeal instance
- (5) Cases and rate of *Jōkoku* appeals (second appeal)
- (6) Provisions for the guarantee of human rights (with regard to bail, escape and repetition of offenses)
- (7) Actual application of the principle of equality of the parties to litigation (Especially with regard to the prohibition of examining the defendant as a witness and the preservation of evidences prior to the first date for public trial)
- (8) Conclusion

CONTENTS

	Page
I Courts (Comparison with pre-war days' number of courts and judges, and jurisdiction of courts)	3
II The Penal Code and the Code of Criminal Procedure (Revision of the Penal Code, Enforcement of the Revised Code of Criminal Procedure and the Rule of Criminal Procedure)	6
III The general tendency of the number of crimes after the war (Annual comparison of the number of offenses since 1938)	9
(1) Penal Code offenses (Larceny, robbery, fraud, extortion, embezzlement, arson, homicide and gambling, etc.)	
(2) Non-Penal Code offenses (Among others, violations of laws and ordinances for price control, for goods control and for road traffic control)	
IV Features of criminal justice in Japan	20
(1) Determination of penalty (Annual comparison of death penalty and the suspension of execution of penalty since 1941)	
(2) Percentage of acquittals ("not guilty") (Annual comparison of the percentage since 1941)	
(3) Rate of <i>Kōso</i> appeal (High percentage of appeals in the past, and the effect of the new Criminal Procedure (— Annual comparison of the percentage since 1938)	
(4) Some restraints upon the discretionary power of the prosecution (Especially with regard to the Inquest of Prosecution)	
V Actual results of the application of the new Criminal Procedure	31

- (1) Principle of proceedings centering around the public trial in the first instance (Ordinary trial in the Summary Courts and the District Courts in the first instance)
- (2) Increase in the number of witnesses examined
- (3) High rate of cross-examination
- (4) Reviewing character of trial in appeal instance
- (5) Cases and rate of *Jōkoku* appeals (second appeal)
- (6) Provisions for the guarantee of human rights (with regard to bail, escape and repetition of offenses)
- (7) Actual application of the principle of equality of the parties to litigation (Especially with regard to the prohibition of examining the defendant as a witness and the preservation of evidences prior to the first date for public trial)
- (8) Conclusion

OUTLINE OF CRIMINAL JUSTICE IN JAPAN

I Courts

With the enforcement of the New Constitution in 1947, great changes have been brought about in the judicial system of Japan. The highlights of the transformation are: firstly, the court has been vested with the power to determine the constitutionality of any law, order or regulation on the one hand and the power to make rules on the other (cf. Arts. 81 and 77 of the Constitution); and secondly, the court has obtained a complete independence from the executive branch of the State (cf. Art. 76 *ibid.*). Under the old Constitution, the court was bound by the laws enacted by the Diet and had no authority to declare legislative enactments invalid because of their unconstitutionality. Moreover, judges as well as the prosecuting organ attached to the courts were placed under the administrative supervision of the Minister of Justice, who was in charge of not merely the budgetary matters for courts but also the matters of appointment and promotion of judges. Under the newly-established judicial system, the court is separated from the prosecuting organ completely, with public prosecutors belonging to the Public Prosecutor's Office under the general direction and supervision of the Minister of Justice. The power to exercise administrative supervision over the courts has now been conferred upon the Supreme Court. Furthermore, extraordinary tribunals such as the Administrative Court have been abolished, and all legal controversies are to be heard and determined by the ordinary judicial tribunals (cf. Art. 76 *ibid.*; Art. 3 of the Court Organization Law). In accordance with these marked changes under the new system, the courts have acquired a corresponding structure and have increased in number as compared with those of the past.

The following tables show clearly the comparison between the old and the new systems.

Table No. 1

Courts under the Old Constitution

Type of courts	Supreme Court	Courts of Appeals	District Courts	Branches of District Courts	Local Courts
Number	1	7	52	87	283
Locality	Tokyo	Tokyo, Osaka, Nagoya, Hiroshima, Sendai, Nagasaki and Sapporo	Tokyo, 2 Hokkaido 4 Saghalien 1 In addition to the above, 1 in the capital city of each prefecture	Main cities within the territorial jurisdiction of each District Court	Generally speaking, 1 in every county of each prefecture
Criminal Cases	(1) Handling of <i>Jōkoku</i> (second) appeals (2) Handling of <i>Kōkoku</i> complaints against rulings and orders rendered by District Courts as courts of the second instance, as well as those rendered by Courts of Appeals; (3) Handling of <i>Kōkoku</i> complaints against rulings dismissing <i>Jōkoku</i> (second) appeals rendered by District Courts or Local Courts.	(1) Handling of <i>Kōso</i> (first) appeals for judgments passed by District Courts as courts of the first instance (2) Handling of <i>Kōoku</i> complaints against rulings and orders rendered by District Courts as courts of the first instance, except those cases which come under the jurisdiction of the <i>Supreme Court</i>	(1) As a court of the first instance: Handling of the criminal cases other than those coming under the jurisdiction of Local Courts and the special jurisdiction of the <i>Supreme Court</i> (2) As a court of the second instance: a. Handling of <i>Kōso</i> (first) appeals from judgments of Local Courts; b. Handling of <i>Kōoku</i> complaints against rulings and orders rendered by Local Courts, except those which come under the jurisdiction of the <i>Supreme Court</i>	(1) As a court of the first instance: Handling of the claims other than those coming under the jurisdiction of Local Courts and Courts of Appeals; (2) As a court of the second instance; a. Handling of <i>Kōso</i> (first) appeals from judgments of Local Courts; b. Handling of <i>Kōoku</i> complaints against rulings and orders rendered by Local Courts.	(1) Handling of offenses punishable by detention or a minor fine; (2) Handling of offenses punishable by a limited term of imprisonment at or without forced labor (in both cases, except those which are punishable with imprisonment at or without forced labor for the minimum term of one (1) year or more) or a fine.
Outline of authorities	Ditto	Ditto	(1) As a court of the first instance: Handling of the claims other than those coming under the jurisdiction of Local Courts and Courts of Appeals; (2) As a court of the second instance; a. Handling of <i>Kōso</i> (first) appeals from judgments of Local Courts; b. Handling of <i>Kōoku</i> complaints against rulings and orders rendered by Local Courts.	(1) Handling of claims of which amount of money does not exceed one thousand yen (¥ 1,000) or claims concerning things of which value does not exceed one thousand yen (¥ 1,000); (2) Suits concerning lease of a house; (3) Boundary disputes of immovables; (4) Suits concerning occupancy.	(1) Handling of claims of which amount of money does not exceed one thousand yen (¥ 1,000) or claims concerning things of which value does not exceed one thousand yen (¥ 1,000); (2) Suits concerning lease of a house; (3) Boundary disputes of immovables; (4) Suits concerning occupancy.
Fixed number of judges	47	129	855	855	517

Table No. 2 Courts under the New Constitution (as of May, 1980)

Type of courts	Supreme Court	High Courts	Branches of High Courts	District Courts	Branches and Local Offices of District Courts	Family Courts	Branches and Local Offices of Family Courts	Summary Courts
Number	1	8	6	50	242	50	338	575
Locality	Tokyo	Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo and Takamatsu	Kanazawa, Okayama, Matsue, Miyazaki, Naha and Akita	One in each of 46 prefectures and four in Hokkaido	In all main cities	Same as those of District Courts	Same as those of District Court Branches	One or more in each county
Fixed number of judges	15	283	283	1311	1311	347	791	791
Outline of authorities	(1) Handling of <i>Jōkoku</i> (second) appeals from judgments of High Courts as court of the second instance; a. Cases involving constitutional questions; b. Cases in contradiction of judicial precedents; c. Other material violations of laws and ordinances. (2) Handling of special <i>Kōboku</i> complaints specified in code of procedure.	(1) Handling of <i>Kōso</i> (first) appeals from judgments passed by District, Family and Summary Courts as courts of the first instance; (2) Handling of <i>Kōboku</i> complaints against rulings and orders rendered by courts of the first instance.	(1) Handling of those cases in the first instance other than those falling under the jurisdiction of Summary Courts.	Handling of juvenile protection cases; (2) Conduct of trial of adult criminal cases which are inimical to the welfare of juveniles.	Handling of those cases in the first instance other than those falling under the jurisdiction of Summary Courts.	Handling of juvenile protection cases; (2) Conduct of trial of adult criminal cases which are inimical to the welfare of juveniles.	Handling of juvenile protection cases; (2) Conduct of trial of adult criminal cases which are inimical to the welfare of juveniles.	Handling as courts of the first instance of: a) Offenses punishable by a fine or lighter penalty; b) Offenses punishable by a fine as an optional penalty; c) Larceny, embezzlement, offenses relating to stolen goods, etc., punishable with imprisonment at forced labor not exceeding three years.
Criminal Cases	Same as in case of criminal cases above.	(1) Handling of <i>Kōso</i> (first) appeals from judgments passed by District Courts as courts of the first instance; (2) Handling of <i>Jōkoku</i> (second) appeals from judgments of District Courts as courts of the second instance, as well as those <i>Jōkoku</i> appeals (in this case, first appeal: Jumping <i>Jōkoku</i> appeal) from the judgments passed by Summary Courts.	(1) Handling of those claims in the first instance of which subject-matters are valued at more than three hundred thousand yen (¥300,000) (2) Handling of <i>Kōso</i> (first) appeals from judgments of Summary Courts.	Conduct of adjudgement as well as conciliation in respect to domestic matters.	Handling of claims in the first instance whose subject-matters are valued at not exceeding three hundred thousand yen (¥300,000)			
Civil Cases								

The first great change worthy of notice is the inauguration of Family Courts which have been given jurisdiction over both the juvenile criminal cases handled heretofore by the Juvenile Protection Office, and the domestic relations cases heretofore dealt with by the ordinary courts. The next important point is the far-reaching change in the material jurisdiction of the courts. The Supreme Court will ordinarily hear only such *Jōkoku* (second) appeals lodged against judgments in the second instance in violation of the Constitution or judicial precedents; and the High Court, as the exclusive *Kōso* (first) appeal court in criminal cases, will render (in most cases) final judgment to all *Kōso* appeals and *Kōkoku* complaints made against decisions in the first instance; while the District Court, which had hitherto dealt with both serious cases in the first instance and *Kōso* appeal cases concerning minor offenses, became the pure trial court in the first instance (in serious cases). The marked increase in the number of courts may be pointed out as the third noticeable point; the number of High Courts, inclusive of their branches, became twice as many as that in the pre-war days; indeed the number of District Courts has decreased a little (from 52 to 50), but the number of their branches has increased almost three times from that in pre-war days; and the Summary Courts have doubled their number as compared with the former Local Courts.

II The Penal Code and the Code of Criminal Procedure

The necessity of modernizing the Penal Code and the Code of Criminal Procedure of Japan on the basis of the modern theories of criminology had long been acknowledged both in the field of jurisprudence and in the law-practice in this country, but the actual reform did not materialize until the end of World War II. To keep pace with the promulgation of the new Constitution of Japan, however, the necessity of effectuating fundamental changes in the substantive as well as the procedural criminal laws became imperative.

In the field of penal laws, a substantial revision was imperative because of the constitutional changes in the status of the Emperor (cf. Arts. 1 and 14 of the Constitution), declaration of war-renunciation (cf. Art. 9 *ibid.*) and the equality of both sexes (cf. Art. 14 *ibid.*), etc. The Law for Partial Amendments to the Penal Code of Japan promulgated on Oct. 26, 1947 stipulates: (1) abolishment of lese-majesty; (2) revision of those provisions predicated upon the right of the State to fight the enemy, of the provision relating to crimes concerning foreign aggression, and (3) abolishment of the provisions relating to adultery, which prescribed punishment only of adultery of wife and her adulterer. One thing which is worthy of notice from the viewpoint of equality of people under the law is that the Penal Code, as amended, which abolished on one hand the provisions concerning lese-majesty, has on the other hand retained intact the former provision prescribing heavier punishment for a person killing his own or his spouse's lineal ascendant than for those who commit ordinary homicide (Art. 200 of the Penal Code of Japan). With regard to this provision, its unconstitutionality had been contended from the viewpoint of equality of people under the law, but the Supreme Court, since 1950, had continued rendering judgments rejecting the contention for the reason that to respect one's lineal ascendants belongs to a principle of moral and natural law of mankind.

On April 4, 1973, however, the Supreme Court changed its opinion and declared the unconstitutionality of the provision for the reason that it violates Art. 14 of the Constitution so long as it prescribes as punishment only death or imprisonment at forced labor for life which is extremely and unreasonably heavier than that for ordinary homicide (cf. Art. 199 of the Penal Code).

Now what has become of the law of criminal procedure? The newly promulgated Constitution of Japan contains a number of stipulations for criminal justice with a view to guaranteeing the fundamental human

rights of the people (cf. Arts. 31 to 39 inclusive of the Constitution). Under these stipulations, it becomes imperative that the old Code of Criminal Procedure derived from the continental system of laws be drastically amended to conform to the requirements and spirit of the new Constitution. Therefore the Diet enacted the Law concerning Temporary Modification of the Code of Criminal Procedure (Law No. 76, 1947) pursuant to the enforcement of the Constitution of Japan as a stop-gap measure simultaneously with the enforcement of the Constitution. The above Temporary Modification Law prescribed for the following: a suspect was granted the right to select defense counsel; State-assigned counsel system was established for an indigent accused; an accused or a suspect was given the right to be informed of the reason for detention; the police or the public prosecutor was prohibited from issuing a warrant of arrest or a warrant of detention; the police or the public prosecutor was, except in the case of arrest of flagrant offender found on the spot of offense and in the case of the execution of a warrant of arrest or of detention, required to carry with him a warrant issued by the judge for search, seizure, and taking of evidence by inspection; limitation was put upon the time for the commencement of public action by the prosecutor; compulsory self-incrimination and conviction solely on the basis of confession were prohibited; the prosecutor and defense counsel were given the right to examine the accused and witnesses; documents recording testimony were excluded from evidence unless the accused concerned was afforded an opportunity to examine the witnesses or the persons who have drawn up such documents at the public trial; and renewal of trial after a finally binding judgment to the disadvantage of the accused was eliminated so as not to place him in double jeopardy.

A completely revised new Code of Criminal Procedure was enacted by the Diet on July 5, 1948 and put into force on January 1, 1949. The new Code retained the substance of the reforms made by the Temporary Modification Law, and adopted some further detailed stipulations concerning several matters. The time limitation for the commencement of public action was somewhat amended; the record of investigation of a case is