The Effect of Learning Varies According to Locality: Micro Data Analysis of the Lawyer Market in Japan

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ABSTRACT

By using individual level data, this paper attempts to examine how and to what extent behavior and perception of those bringing lawsuit's differ between large district courts (competitive lawyer market) and medium or small district ones (less competitive lawyer market). The major findings are; (1) in medium or small but not in large districts, trial experience discourages persons from employing a lawyer. (2) A natural person is less likely to employ a lawyer than a legal person in medium or small districts, but not in large ones. (3) The self-rated cost of searching for a lawyer is lower in large districts than small ones. It follows from these results that the lower competitive pressure in the lawyer markets in medium and small districts results in higher costs of employing a lawyer than is found in large districts.

1. INTRODUCTION

It is widely acknowledged that Japanese appear less likely to engage in litigation. In a classical work, it is claimed that this might be because of the harmonious nature of Japanese society (Kawashima, 1963). Contrarily, it has been argued that the institutional incapacity of the legal system has resulted in an insufficient supply of judges and lawyers. As a consequence, the high cost of litigation leads people to be reluctant to engage in litigation (Haley 1978) [1]. In the long run, institutional incapacity and regulation of the lawyer market has caused a great loss for Japanese economy (Kinoshita, 2000; 2002).

During the 1990s, an increase in litigation was observed in Japan. By using prefectural level data, Ginsburg and Hoetker (2006) suggested that the increase was mainly due to the expansion of institutional capacity and structural change in the Japanese economy. However, the supply of lawyers and the amount of litigation has been disproportionally concentrated in mega-cities such as Tokyo and Osaka (Nakazato et al., 2006; Yamamura 2008) [2]. Remarkable increases in lawyers and litigation were only observed in mega cities (Ginsburg and Hoetker 2006).

In 1999, the government of Japan established the Justice System Reform Council (JSRC hereafter) for the purpose of studying basic policies and modifying the legal system. The JSRC put forward various policies, some aimed at increasing the number of people engaging in lawsuits (JSRC 2001), as lawyers are thought to play an important role as agents of those bringing a lawsuit. For the legal reform to be successful, it will be important to enhance the ability of people to employ lawyers when they are involved in a conflict. In Japan, however, the costs of searching for a lawyer appear to be large because information about the lawyer market is not sufficiently widespread. Hence, it is important to consider the question of how to access information about the lawyer market. Those who have already experienced a lawsuit can more easily access information about the market for lawyers. Experience of a lawsuit is thus expected to reduce the costs of searching for a lawyer, leading to their increased use.

Under conditions that the market is not competitive as a result of the short supply of lawyers, the number of people using lawyers is expected to be smaller than those in the

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[1] Number of studies examine reluctance about litigation in Japan from the viewpoint of economics (e.g., Ramseyer, 1988; Ramseyer and Nakazato, 1989; 1999).

[2] It should be noted that, besides lawyers, there are many others who provide legal services; for example *shiho shoshi* (legal scriveners), *benrishi* (patent agents) as well as unlicensed graduates of law faculties (Ramseyer and Nakazato 1999:10-12, Nakazato et al. 2006).

equilibrium of a competitive market, even if people have sufficient information. Hence, it seems to depend on the market conditions whether learning from experience leads to an increase of those using lawyers. In Japan, the lawyer market in mega-cities is considered to differ from those found in other areas (Nakazato et al., 2006). This paper examines how different lawyer market conditions influence the effect of learning on lawyer employment, by using an individual level data set. With the exception of Nakazato et al. (2006), existing empirical economic work concerning the Japanese legal service industry use aggregated level data (e.g., Milhaoupt and West 2004; Kinoshita 2000; 2002; Ginsburg and Hoetker 2006; Yamamura 2008). This paper makes a contribution by using individual level data to more precisely examine the lawyer market in Japan and so provide policy implications.

2. DATA AND METHOD

2. 1. Data

This paper used the individual level data constructed from the Survey of Civil Action Users conducted in 2000 (SCAU 2000 hereafter)[3]. The survey was conducted to provide fundamental data to investigate "the state of a civil action system, is it easy for people to use?" The subjects of the survey were those involved in incidents that were settled by civil-affairs, usual being a lawsuit brought in a district court. A total of 1,612 natural and legal persons were sent letters asking them to participate in the survey. The survey ultimately collected data on 591 natural and legal persons, a response rate of 36.6%. Respondents for legal persons were those in charge of the judicial matter. Spatial unit consists of sixteen district courts in Japan[4]. When the selection of subjects was performed, a "Sufficient balance of local characteristics and residence were considered to reflect the national situation"[5].

The sample used for the estimations was 354, since some observations were deleted because of missing values. Observations divided into large and other (small and

[3] The data for this secondary analysis were from the " Survey of Civil Action Users (Minji Sosho Riyo-sha Chosa)". The survey was conducted by the Justice System Reform Council (Shiho Seido Kaikaku Shingi-kai) in 2000. The data was provided by the Social Science Japan Data Archive, Information Center for Social Science Research on Japan, Institute of Social Science, The University of Tokyo.

[4] The selected courts are located in Sapporo, Akita, Fukushima, Maebashi, Tokyo, Toyama, Kofu, Shizuoka, Otsu, Osaka, Matsue, Okayama, Matsuyama, Fukuoka, Niyazaki, Naha.

[5] Abstract of "SCAU 2000" (http://ssjda.iss.u-tokyo.ac.jp/abstract/0198a.html accessed at June 9, 2009).

medium size) district courts were 145 and 209, respectively.

2.2. Method

Definitions of variables used for the estimations are in Table 1. Mean values of large districts and the small or medium ones are also recorded.

This paper examines the determinants for employing a lawyer when a person has experienced a trial. Restricting samples to those who have employed a lawyer, this paper also explores the question about their considerations of the costs involved searching for a lawyer. Therefore, a two-stage selection model is employed to control for the selection bias.

The function for the estimation of lawyer employment takes the following form:

(The first stage estimation)

$$LAWYER_i = \alpha_0 + \alpha_1 EXPE_i + \alpha_2 AMOUNT_i + \alpha_3 NATU_i + \alpha_4 LARGE_i + \alpha_5 COMPL_i + u_i ,$$

where $LAWYER_i$ represents the dependent variable in person i. α's represents regression parameters. u_i represents the error term. The dependent variable is a dummy variable that takes 1 if a person employs lawyer when he/she experienced a trial, otherwise 0. Hence, a Probit model is employed for estimations. After selecting those who have used a lawyer, the self-rated cost of searching for a lawyer is examined. The self-rated cost of searching is measured using the question "Did you have a hard time searching for a lawyer?". The responses ran from 0 (No, not at all) to 5 (Yes, very hard). I defined those that took 0-2 as the low-cost group, and those taking 3-5 as the high-cost group. SCOST takes 1 in the case of the high-cost group, otherwise 0. A Heckman Probit model (Probit model with sample selection) is used for the estimation of SCOST since Probit estimation is conducted in the second stage after the first stage selection. Probit estimation as above is conducted in the first stage and then the second stage estimated function takes the following form:

(The second stage estimation)

$$SCOST_i = \alpha_0 + \alpha_1 EXPE_i + \alpha_2 NATU_i + \alpha_3 LARGE_i + \alpha_4 ACQUA_i + \alpha_5 COMPL_i + e_i,$$

As presented in Table1, LAWYER is larger in large district courts than in small or medium district ones, while SCOST is larger in small or medium sized district courts than in large district ones. This implies that people can more easily search for lawyers and are more likely to employ them in mega city based courts than those in small or medium size areas.

The independent variables used for the estimations are as follows. Past trial experience is incorporated to capture the learning effect. The first time participant in a lawsuit appears to have very little knowledge about the lawyer market, and therefore does not know a reasonable retainer for employing a lawyer. However, through experience, people acquire the information about what is a reasonable retainer. Therefore, in the lawyer market, information asymmetry between persons (demand) and lawyer (supply) decreases as persons experience trials.

If the market is not competitive because of a shortage in the supply of lawyers, lawyers come to have monopolistic power over the market. As a consequence, lawyers' wages become higher than an equilibrium wage in a competitive market when quantity lessens to below the equilibrium level of a competitive market. This conjecture is supported by Nakazato et al. (2006) suggesting that lawyers working in under-lawyered provinces can earn scarcity and monopoly rents not available in the far more competitive Tokyo market. In this case, and if other things are equal, persons with experience are less likely to employ a lawyer since they know that the retainer for a lawyer is higher than the wage in a competitive market[6]. Therefore, the sign of EXPE is expected to be negative in the first stage estimation. In the second stage estimation, the experience of a lawsuit is thought to reduce the cost of searching for a lawyer since those people are likely to be acquainted with a lawyer through their past experience. Even if people are not acquainted with lawyers, their experience of a trial seems to increase their information about the lawyer market and therefore reduce search costs. Therefore, EXPE and ACQUA are anticipated to take negative sings in the second stage estimation.

The larger the amount of money involved in a lawsuit, the larger the loss becomes if a persons loses the suit. Therefore, large amounts of money lead to people retaining a lawyer to help in winning the suit. Inevitably, AMOUNT is anticipated to take a positive sign in the first stage. The amount of money involved in a lawsuit is not associated with the cost of searching for a lawyer. Hence, in the second stage, AMOUNT is not incorporated as an independent variable.

A legal person appears inclined to employ a corporate type of lawyer. If this is true, a corporation's cost of searching for a lawyer is 0. As a consequence, natural persons are

[6] Tokyo sees more complex litigation and business transactions than do other places in Japan. Therefore, talented lawyers are more inclined to work in Tokyo and earn higher incomes than less talented lawyers, despite the competitive Tokyo market. However, lawyers in Tokyo cannot earn scarcity and monopoly incentives because of the competitive pressure (Nakazato et al., 2006).

less likely to employ a lawyer and their costs of searching become higher than those for a corporation. Therefore, the expected sign of NATU is negative in the first stage but positive in the second. According to earlier works (Ginsburg and Hoetker 2006; Yamamura 2008), lawyers and litigation are concentrated in mega cities such as Tokyo and Osaka. If this is the case, the supply of lawyers is larger and so the market is more competitive in mega cities than in other part of Japan. The sign of LARGE is thus expected to be positive in the first stage and negative in the second. As a control variable, COMPL is incorporated to control for the difference between complainants and defendants both in the first and second stages.

3. ESTIMATION RESULTS

Estimation results of the intention to employ a lawyer are presented in Table 2 and those of the costs involved searching for a lawyer are in Table 3. In Table 2, the results using all samples, as well as those of the large district courts samples and small or medium district court samples are presented[7]. In both Tables 2 and 3, marginal effects are exhibited.

I now discuss the results concerning the employment of lawyers in Table 2. Coefficients of EXPE take negative signs in all estimations. As shown in Columns (2) and (3), the results using the large district samples are not statistically significant, whereas the results using small or medium ones are statistically significant at the 1 % level. Also, the absolute value of the coefficient for small or medium sized areas is 0.05, which is approximately 10 times larger than that for mega cities. This implies that the past experience of trials discourages people from employing a lawyer in a medium or small size district, but not in a large one. This is consistent with the conjecture that learning has a detrimental effect on employment of lawyers if the lawyer market is not competitive.

The sign of NATU is negative despite being statistically insignificant. I interpret this result as suggesting that the barrier for natural persons to enter the lawyer market is higher than for legal persons. After splitting samples, it is interesting to observe that NATU takes a positive sign in large districts courts whereas it takes significant negative signs in small or medium districts. The absolute coefficient value of the latter

[7] In Table 3, only the results of all samples are shown. Estimations using the large district courts samples and the small or medium areas ones are attempted but the coefficients fail to settle down because of the non-convergence. As a consequence, results using split samples cannot be reported.

is 0.20, which is 20 times larger than that of the former. This means that there is no difference in lawyer retention between natural and legal persons in large districts. On the other hand, natural persons are less likely to retain a lawyer than are legal persons in small or medium districts. That is, a barrier for natural persons to enter the lawyer market is observed only in small or medium size district courts. This barrier is partly caused by the costs involved searching for lawyers. I conjecture that the search cost seems to be significantly higher in small or medium districts than in large districts. To more closely examine search costs, Heckma Probit estimations are conducted and the results are discussed later. LARGE yields a positive sign despite being statistically insignificant in column (1), suggesting that persons in large districts are more inclined to employ lawyers. This might be because the lawyer market is more competitive in large districts than in small or medium ones.

I now turn to Table 3, which shows the results of the estimations of the costs of searching. Consistent with expectations, EXPE takes negative signs even if ACQUA is incorporated, despite being statistically insignificant. ACQUA produces the predicted negative sign and is statistically significant at the 1 % level; indicating that experience of trials and an acquaintance with a lawyer reduces the search cost. In both columns (1) and (2), NATU takes positive signs while being statistically significant at the 1 % level. This means that natural persons incur higher search costs than do legal persons. This is consistent with the estimation of lawyer employment as argued above.

Coefficients of LARGE are significant negative signs in columns (1) and (2). In my interpretation, there are not only large numbers of lawyers but also various types of lawyers in large districts. Because of this condition, it is easier to resolve the problem of matching between people (demand) and lawyers (supply) in the lawyer market of large district courts. This leads me to argue that a large search cost is thought to discourage natural persons from employing a lawyer, especially in medium and small district courts.

Taken together, the combined results of Tables 2 and 3 make it evident that the more competitive the lawyer market (large districts), the smaller the negative effect of experience on retaining a lawyer and on the costs of searching for a lawyer. From this I derive the argument that the lawyer market in medium and small size districts should be more competitive to expand the numbers of people using lawyers.

4. CONCLUSION

This paper attempted to examine how and the extent to which the behavior and

perception of those who participate in a lawsuits differ between district courts in large areas and those in medium or small areas. The major findings can be summarized as follows. Trial experience discourages people from employing a lawyer in less competitive markets (medium or small districts). Costs involved searching for lawyers is lower in more competitive markets (large district). These imply that the lower competitive pressure of the lawyer market in medium and small districts results in higher costs for employing lawyers than in large districts.

It was found that people living in non-urban areas in Japan are more inclined to resort to informal rules such as norms than they do to formal ones (Yamamura, 2008). The findings of this paper suggest that such reluctance to litigate in non-urban areas can be partly explained by the market condition which is characterized by the short supply of lawyers. The racially homogenous feature of Japan is expected to decline as a result of increases in immigrant numbers, and so the perception of Japanese persons will change (Yamamura 2009). Therefore, as the harmonious nature of Japanese society gradually declines, informal rules will be thought of as less effective in the long run. As argued by Greif (1994; 2002), formal rules lead to more efficiency in the long run than do informal ones, so whether an informal rule-oriented society transits to the formal rule oriented one is crucial to increases in social benefits. Hence, I found it is important that the non-urban lawyer market is made more competitive and that there is an increase in the numbers of people using lawyers in those areas. The bifurcated lawyer market in Japan needs to be eliminated.

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Table 1
Variable definitions and descriptive statistics

Variables	Definition	LARGE	MEDIUM-SMALL
LAWYER	Dummy variable: 1= employing a lawyer; 0 otherwise	0.79	0.67
SCOST	Dummy variable: 1= self rated cost of searching for a lawyer is high; 0 otherwise	0.07	0.11
EXPE	Number of the trial experiences other than this time.	1.45	0.96
AMOUNT [a]	The amount claimed in the lawsuit (Billions of yen)	0.03	0.01
NATU	Dummy variable: 1= natural person; 0 otherwise	0.55	0.60
ACQUA	Dummy variable:1= previously acquainted with a lawyer; 0 otherwise	0.25	0.18
COMPL	Dummy variable: 1= a complaint; 0 otherwise	0.54	0.53
LARGE	Dummy variable: 1=lawsuit conducted in a large district court (Tokyo or Osaka); 0 otherwise.	---	---

Table 2

Determinants of employing a lawyer (Probit)

Variables	(1) *ALL*	(2)LARGE	(3)MEDIUM-SMALL
EXPE	-0.01*	-0.006	-0.05**
	(-2.04)	(-1.12)	(-2.36)
AMOUNT	3.51*	3.86*	2.70
	(2.01)	(1.69)	(1.20)
NATU	-0.10	0.01	-0.20*
	(-1.50)	(0.15)	(-2.07)
LARGE	0.04		
	(0.86)		
COMPL	0.37**	0.27**	0.45**
	(7.79)	(4.07)	(6.62)
Pseudo-R square	0.18	0.14	0.23
Sample size	354	145	209

Numbers are marginal effects. Numbers in parentheses are z-statistics calculated by robust standard error. * and ** indicate significance at 5 and 1 per cent levels, respectively. A constant term is included in the estimations, but not reported to save the space.

Table 3

Determinants of the cost of searching for a lawyer (Heckman Probit)

(a) Winners

Variables	(1)	(2)
EXPE	-0.0007	-0.05
	(-0.07)	(-0.36)
NATU	0.20**	0.22**
	(6.84)	(5.05)
LARGE	-0.08**	-0.09*
	(-3.74)	(-1.76)
ACQUA	-0.19**	
	(-5.20)	
COMPL	-0.24**	-0.27**
	(-5.73)	(-5.62)
Log Pseudolikelihood	-266.1	-261.6
Sample size	354	354
Uncensored sample	240	240

Numbers are marginal effects. Numbers in parentheses are z-statistics calculated by the robust standard error. * and ** indicate significance at 5 and 1 per cent levels, respectively. A constant term is included in the estimations but not reported to save the space. The independent variables used in the first stage estimation are the same as those used in Table 3.