

## The Comprehensibility of Japanese Legal Language : The Penal Code

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# 日本の法律言語の平易度について 刑法

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### . Introduction

In 1995 the Penal Code of Japan was revised. The revised code was promulgated on 12 May 1995 and was implemented on 1 June 1995. The following is Article 1 of the Previous Code and the revised code, i. e. the Present Code.

The Present Code :

〔国内犯〕

第一条 この法律は、日本国内において罪を犯したすべての者に適用する。

(2) 日本国外にある日本船舶又は日本航空機内において罪を犯した者についても、前項と同様とする。

The Previous Code :

第一条 本法八何人ヲ問ハス日本国内ニ於テ罪ヲ犯シタル者ニ之ヲ適用ス

(2) 日本国外ニ在ル日本船舶又ハ日本航空機内ニ於テ罪ヲ犯シタル者ニ付キ亦同シ

English Translation<sub>1</sub>

(Crimes within Japan)

Article 1 . This Code shall apply to every person who commit (sic) a crime within the territory of Japan.

2 . The provision of the preceding paragraph shall also apply to a person who commits a crime on board a Japanese vessel or a Japanese aircraft outside the territory of Japan.

I assume that some non-Japanese readers notice the same characters such as 日本国内、罪、犯、者、適用、日本国外、日本船舶、又、日本航空機内 in both the Previous and the Present Codes. However, except for these characters the others are dissimilar in these two codes. Among different characters, は , に and を in the Present Code and 八 , ニ , and ㇿ in the previous code look different but indicate the same sounds and meanings respectively. The Present Code was mainly revised to modify the writing of the Previous Code. In this paper I would like to present the traditional writing style of Japanese law from a historical point of view , the tendency to use plain language in laws , and finally the limitation of the exclusive use of plain language in Japanese laws.

## . History of Writings in Japanese Laws

### 1 . The Use of Chinese Written Language

Japanese did not own any written languages until the late third century when the Discourse of Confucius in written Chinese characters was introduced to Japan from the Korean peninsula. In the mid-fourth century the first state emerged in the Yamato district ,250miles west of Tokyo. By the late fourth century Chinese characters were used as the Japanese written language among court people and naturalized Japanese of Korean and Chinese births.

By the beginning of the seventh century the court developed into a centralized government along the lines of the Chinese model. The imperial government transplanted Chinese political institutions and codes in order to defend its dynasty against other powerful clans. In 604 Prince Shootoku issued the first written constitution of Japan ,the Seventeen-Article Constitution. This Constitution was solely written in Chinese characters. In 689 Emperor Tenmu promulgated the Asuka Kiyomihara Code , which was the first Japanese legal code to be divided into criminal laws (ritsu) and administrative regulations (ryoo). During this era several legal codes were promulgated. All those codes not only faithfully imitated the contents and forms of Chinese (T'ang dynasty) codes , but also were exclusively written in Chinese characters. The fact that Chinese characters are ideographic<sup>2</sup> caused difficulty in describing Japanese grammatical forms. Therefore ,even some Japanese administrators and jurists were not able to comprehend clearly their own ritsu-ryoo codes.

### 2 . Emergence of katakana and hiragana

The defect of the use of the borrowed Chinese writing system in Japanese led to the use of a number of Chinese characters for their sounds , without taking the meaning into

consideration. Through the use of Chinese characters for sounds two Japanese syllabic alphabets<sup>3</sup>, 48 katakanas and 48 hiraganas, emerged after the eighth century. Katakana is one portion of a certain Chinese character while hiragana is a calligraphic sketch of a whole Chinese character.

Katakana was used as a marking guide to render Chinese into Japanese: the combination of ideograph Chinese characters and katakana alphabets were used in Chinese poetry, legal codes, and the Buddhist scriptures, diaries by males. On the contrary, the exclusive use of hiragana alphabets without reliance on Chinese characters were considered to be simple and thus were predominantly used by females in writing diaries, essays, and novels. Legal codes from the eighth century to the twelfth century were basically the Chinese language, only with some guiding katakana marks.

### 3 . The Use of Chinese Characters in Japanese

In the later twelfth century the military class increased its power in the provinces with the weakening of the imperial government. Since the majority of warriors were not intellectually committed to the written Chinese language, Japanese language began to be gradually used in legal codes. Yasutoki Hoojo, the third regent to shogun promulgated a legal code for the warrior class, the Goseibai Shikimoku (the Formulary of Adjudications) in 1232. This was the first code written in Japanese language and form. With the promulgation of the Goseibai Shikimoku, the entire ritsu-ryoo system was swept away and replaced by the laws of warriors.

### 4 . The Use of Hiragana in the Codes

By the eighteenth century the Buke Shohatto (Laws for the Military Houses) came to be written in the use of Chinese characters and hiragana. Hiragana was not any more women's exclusive writing system; it was rather one writing system indispensable in written formal Japanese language.

### 5 . The Revival of the Written Chinese Language

In 1868 Emperor Meiji proclaimed the restoration of direct imperial rule. The new government overthrew the Tokugawa shogunate. In order to maintain the independence of the state, the imperial government restructured the legal system and reformed the law. All the laws were used in the modified written Chinese language form because the courtiers, unlike the warriors, were traditionally committed to the written Chinese

language and because it was considered to be appropriate to readopt the old ritsu-ryoo style due to the nature of the restoration of the imperial regime.

The new government was aware of the need for a penal code to maintain the public peace. At the early stage the government resorted to Chinese codes , the Ming or the Ch'ing codes , due to lack of the specialists of Western codes. The Provisional Code of 1868 thus followed Chinese legal principles and language. The style and terms of a penal code was established in this Provisional Code.<sup>4</sup>

The first Penal Code was drawn up by Gustave Boissonade , an invited French Law Professor by the government. Boissonade drafted the Penal Code in French , which was later translated into Japanese for discussion and modification by legislatures. In 1880 the Penal Code was promulgated and implemented in 1882. The first Penal Code had French legal principles in traditional Chinese ritsu-ryoo style , more concretely , in Chinese characters with katakana of guiding marks.

In 1907 a new Penal Code was promulgated and enacted in 1908. The principles of the Boissonade code were revised , but the style and language remained the same. It was the Previous Code which was in use until 1995.

## 6 . The Movement of the Use of Spoken Japanese Language

By the late nineteenth century there were various styles in Japanese language: colloquial speech vs. literary language (classical Chinese writing , Chinese writing with the Japanese rendering , old epistolary style). Around 1900 the unification of the written and spoken language , i. e. , the ordinary style , became a social issue and was gradually observed in novels , poetry and elementary school textbooks. After the initial use of the ordinary style in legal articles by Kenjiro Ume around 1905 , the ordinary style of writing began to filter into legal articles and books. By 1920 the ordinary style was predominantly used even in legal articles and books , but the literary style was still used in legal cases and laws.

In 1926 Prime Minister Reijiro Wakatsuki gave the Cabinet his instruction regarding the betterment of legal forms.<sup>5</sup> The instruction urged the legal experts to use plain and ordinary Japanese. However , the instruction had little effect on the language of legal cases and laws.

## 7 . Plain Legal Language Movement

As a result of its defeat in World War , Japan was subjected to the Allied Occupation from 1945 to 1952. During the occupation period Japan was forced to pursue some reforms such as the establishment of the democratic constitution , reform of the educational system ,

and reform of agrarian laws. In 1946 the Constitution of Japan was promulgated and came into force in 1947. The Constitution was written based on the ordinary Japanese. The language of the Constitution gave influence to the language and style of other codes when revised for it was the common view at that time that the Constitution would have never been written in the ordinary language due to its solemn tone. Code of Criminal Procedure , Labor Standard Law , and Trade Union Law are now written in the ordinary language. However , Commercial Code , Civil Code , Code of Civil Procedure are still used in classical literal style.

The Japanese language council , basing their Japanese language policy on GHQ , presented a draft list of 1,845 Chinese characters designated for daily use in 1946. The use of Chinese characters in newspapers was soon limited within this list. The restriction of the use of Chinese characters changed the wording from unintelligible to plain and simple. In 1981 the Cabinet notified the public of a list of 1,945 Chinese characters in common use.

The language and style of the Penal Code remained basically the same as the Code of 1907 after every minor amendment. In the case of a partial amendment of Computer Fraud in 1987 an amendment draft was first made in spoken Japanese and then was later translated into classical literary Japanese for the provisions of the Penal Code. The movement for the revision of the Penal Code for the use of the spoken language as well as the revision of the principle occurred in the 1960s. However , the revision regarding some changes of the principle were severely criticized by the legal profession in general. As a result , no drafts were laid before the Diet. In 1990 the Ministry of Justice started the program of revising the Penal Code mainly for comprehensibility of the language , which eventually became the present Penal Code.

## . The Penal Codes

The Previous Code was written in Chinese writing style with the katakana rendering , without the use of hiragana , as mentioned before. Since modern written Japanese language is expressed in Chinese characters for most content words and hiragana for declension and katakana only for non-Chinese foreign borrowed words, one glance at the Previous Code was enough to realize that the code language was removed from every day Japanese language. Secondly , punctuation was not basically used in the Previous Code. No periods were ever used in the entire text. Most sentences were classified by items and therefore readers were able to identify each sentence if they had read the text carefully. However , some long sentences , as shown in the following , caused difficulty in understanding the content.

第三十四条ノ二 禁固以上ノ刑ノ執行ヲ終リ又ハ其執行ノ免除ヲ得タル者罰金以上ノ刑ニ処セラ  
ルルコトナクシテ十年ヲ経過シタルトキ八刑ノ言渡ハ其効力ヲ失フ罰金以下ノ刑ノ執行ヲ終リ又  
ハ其執行ノ免除ヲ得タル者罰金以上ノ刑ニ処セラルルコトナクシテ五年ヲ経過シタルトキ亦同シ

#### English Translation

Article 34-2. When ten years have elapsed for a person against or for whom the execution of a sentence of imprisonment or graver penalty was completed or remitted without his being sentenced to a fine or graver penalty, the sentence shall lose its effect. The same shall apply when five years have elapsed for a person against or for whom the execution of a sentence of fine or minor penalty was completed or remitted without his being sentenced to a fine or graver penalty.

Two long sentences connected one another without periods nor commas were simply incomprehensible. Only commas for enumeration were used in the Code. Thirdly, in the previous code dots indicating voiced consonants and p-sounds were omitted. In addition to literary Japanese style, the omission of dots in declension increased the incomprehensible nature of the code more. Lastly, some uncommon wording further caused difficulty in understanding the text. Not only difficult Chinese character words but also the made-up Chinese character words for commonly used English borrowed words such as 電子計算機 (computer) are used.

The Present Code was drastically improved in character and style. First of all, all the texts are basically limited to 1,945 Chinese characters in common use and hiragana. Some Chinese characters outside the list are written with phonetic transcriptions in hiragana at the side at their first appearances in the text, Needless to say, proper punctuation and declension along with dots indicating voiced consonants and p-sounds are used. Furthermore, a caption for an article is included. Extremely difficult wording is paraphrased in understandable wording.

Despite the improvement of language in the Present Code, it is still difficult for lay persons to understand the Penal Code. Several Penal Code books translated in simple language are still published and sold well.

Readability in Japanese language is measured by two major factors: the ratio of Chinese characters and the length of a sentence.<sup>6</sup> The high use of Chinese characters and a longer sentence are considered to be difficult factors to read and understand the text. Table is Morioka's readability scale.<sup>7</sup>

T A B L E

	Length of Sentence	Ratio of Chinese Characters
Very Easy	Below 30	Below 10%
Easy	About 35	Below 20%
Normal	40 45	About 30%
Difficult	50 60	35 40%
Very Difficult	Above 70	Above 45%

The Penal Code consists of two books: general provisions and crimes. These two books are the same in style and language. Table is the average length of a sentence and the ratio of Chinese characters of all the sentences counted in Book I of the Previous Code , the Present Code , and the Spoken Language Version.<sup>8</sup>

T A B L E

	The Previous Code	The Present Code	The Spoken Version
Length of Sentence	NA	39.19	42.07
Ratio of Chns Chrtrs	59.41	50.44	47.04

Since the previous code did not have periods, it is not appropriate to measure the length of sentences. The length of sentence in the Present Code is shorter than that of the Spoken Version. However, it does not mean that the Present Code is easier to read than the Spoken Version. More words are simply used in the Spoken Version to explain the Code and thus each sentence tends to be longer than that of the Present Code. The fact that both the Present Code and the Spoken Version have about 40 characters per sentence indicate that both are much easier to read than the local news page (51 characters) and editorials (58.7 characters) of newspaper.<sup>9</sup>

The ratio of Chinese characters indicates that the Previous Code is in the range of 'difficult' and 'very difficult'. The Present Code is also 'difficult', but is close to 'normal'. The Spoken Version is between 'difficult' and 'normal'. Although much improvement is shown in the length of sentence in codes, the use of Chinese characters seems to have limits in reducing its number due to the precise use of legal terms. The following is one example of legal language use.

第二〇二条 人を教唆し若しくは幫助して自殺させ、又は、人を、その囑託を受け若しくはその承諾を得て殺した者は、六月以上七年以下の懲役又は禁錮に処する。

#### English translation

Article 202. A person who instigates or assists another to commit suicide , or kills another at the request or with the consent of the latter shall be punished with penal servitude or imprisonment for not less than six months nor more than seven years.

The terms such as 教唆 (instigation) 幫助 (assistance) 囑託 (commission) 懲役 (penal servitude) 禁錮 (imprisonment) need to be distinguished from each other to convey the exact meaning of the Code. If we replace those terms with traditional Japanese terms, そのかすこと (instigation) 人のすることをやりやすくしてやるために手助けすること (assistance) , まかせること (at the request or with the consent of) , 監獄にとどめおいて決められた労働を行わせること (penal servitude), 監獄にとどめおくこと (imprisonment) , we would be able to convey the meaning but we would end up with longer legal terms. Chinese character words are often difficult to understand but they are precise and efficient in meaning and can also form new words such as 囑託殺人 (murder by contract). If we stick to traditional Japanese words ; 'murder by contract ' would be translated as 頼みをきいて人を殺すこと. Therefore , the use of every day words does not guarantee readable and pertinent legal text.

We should continue to revise the classical style of legal texts to get for a more readable one; however, at the same time we need to work for the familiarization of laws. This is particularly true in the case of Japan. Some Japanese cannot even distinguish between criminal cases and civil cases. Laws had been regarded as something enforced by lords , not as something which had protected one 's democratic right. Many lay Japanese have not read the Penal Code nor the Civil Code. Living in a homogeneous society , one is reluctant to resort to court in disputes. Therefore, some subjects regarding laws should be set up as a part of social studies in high school.<sup>10</sup> By reading codes in one 's high school days one would be able to become familiar with legal reasoning, which would enable him / her to comprehend the legal texts clearly.

## . Conclusion

Japanese established its legal system by borrowing Chinese laws and language. Japanese legal language shifted to a more spoken one after the twelfth century. However ,



in the middle of the nineteenth century legal language was reversed to the modified Chinese classic style. Since the second World War the ordinary language has come to be used in some codes in every major revision. However, the Penal Code was one of the codes that remained unchanged. The revision of 1995 displayed a great deal of improvement in terms of readability, though there exists some parts which are unintelligible. The fact that legal terms should be precise and efficient has set some limitation in the use of every day language in the legal text. Legal language is also one genre of language, of which nature should be accepted. Therefore, we need to work for the legal education at the high school level so that every citizen should be familiarized with legal reasoning. We should continue to revise the classic style of legal language into a more spoken style; at the same time we need to be aware and appreciate the nature of formal legal text.

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## NOTES

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- 1 . The Penal Code of Japan (1996) by EHS Law Bulletin Series is used for the translation of the Penal Code in in this paper.
- 2 . The Ideographic system of writing indicates that graphic symbols represent not only sounds but meanings.
- 3 . Syllabic alphabets represent both single sounds and clusters of sounds. In the case of Japanese language a cluster of sounds is a combination of consonant and vowel.
- 4 . Matsuo, Kooya (松尾浩也) (1995), Kei-houten to Sono Heiika (刑法典とその平易化) [ The Penal Code and Its Plain Language Movement ], *Jurist* (ジュリスト) vol 1067, p.2 .
- 5 . Chigusa, Tatsuo (千種達夫) (1974), Hoorei Yoogo no Kaisei (法令用語の改正) [ Betterment to Legal Terms ], *Hyoogen Hyooki* (表現・表記) [ Expression and Declaration ], Kyooiku Shuppan, (教育出版) p.165-6.
- 6 . Takagi, Yuuko (高木裕子) (1991), Sokudoku-yoo Dokkai Kyoozai Kaihatsu ni mukete-Readability Kenkyuu wo kiso ni shite (速読用読解教材開発に向けて リーダビリティ研究を基礎にして) [ Toward Development of Rapid Reading Material-on the Basis of the Research of Readability ], *Nihongo Kyooiku Ronshuu* (日本語教育論集) [ The Journal of Japanese Language Education ], Kansai Gaikokugo Daigaku Ryuugakusei Bekka (関西外国語大学留学生別科) [ Kansai University of Foreign Language Studies ], p.75. The length of a sentence is

obtained by the characters in the text divided by the number of sentences. The ratio of Chinese characters is obtained from the number of all Chinese characters divided by all the characters used in the text.

- 7 . Morioka, Kenji (森岡健二) (1988), Buntai to Hyoogen (文体と表現) [ Style and Expression ], Meiji Shoin (明治書院).
- 8 . Koogo Keiho (口語刑法) [ The Penal Code in Spoken Language ] published by Jiyuu Kokuminsha (自由国民社) is used for the Spoken Version.
- 9 . Takagi, Yuuko, Sokudoku-yoo Dokkai Kyoozai, p.78.
- 10 . The Constitution of Japan is referred to in the course of social studies, but none of the other codes are taken up in Japanese high school.