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1 Introduction

From June last year to June this year, I conducted overseas research at the University of Sydney Law School in Sydney, the country's largest city in eastern Australia, under the Assistant Judge Overseas Training Program by the Supreme Court of Japan.

The following is a brief introduction to the cityscape and atmosphere of Australia and Sydney, and then I would like to introduce some of my research activities in Sydney, including my research activities at the University of Sydney, as well as an overview of the Australian legal and judicial systems, and some notable topics.

2 What kind of country is Australia?

Australia is the sixth largest country in the world, with a population of about 27 million people (as of 2024), about one-quarter of the Japan, but more than 20 times the size of the Japan. While it has magnificent and beautiful nature, such as the Great Barrier Reef, the world's largest and longest coral reef that can completely enter the Japan archipelago, and Uluru (Ayers Rock), which is located almost in the middle of the Australian continent, one of the sacred places of the indigenous people, it has continued to grow steadily in recent years and occupies one of the developed countries boasting one of the highest national incomes in the world.

Focus on this country's history, the Endeavour led by the Englishman Captain James Cook landed in Botany Bay in present-day Sydney in 1770, and has been under British colonial rule for a long time, so you can easily find British-style buildings when you walk around the streets of Sydney and other major cities in Australia. In addition, although it is a formality, Australia has the King of the United Kingdom as the monarch to this day, and King's Birthday is one of the public holidays (during the reign of Elizabeth II before the current Charles III ascended the throne, it was Queen's Birthday). It should be noted that the Australian currency still depicts the portrait of Queen Elizabeth II. In addition to the existence of independence from the United Kingdom, the Olympic Australian representative sang the British national anthem until 1984, and until 1986, The High Court of Australia, which is located at the top of the Australian courts, was

further criticized by the Privy Council of the United Kingdom. It has been influenced by the UK everywhere.

As an aside, Australia's current national anthem was determined by the National Statistics Office of Australia after conducting a poll and collecting the most votes from among several folk songs. It is very interesting because of the unique Australian way of deciding that values democracy. (In addition, the current national anthem has since been changed to "We are young and free" has been changed to "We are one and free", and the details will be described later, but in understanding the origin of the country of Australia, it is essential to understand the issues related to the protection of indigenous peoples.)

3 What kind of city is Sydney?

As mentioned above, Sydney is the first city to be settled by the British, and in The Rocks, which is located on the north side of central Sydney, there are still old townscapes from the settlement era, as well as the old prison where British prisoners were accommodated in the center and the Queen Victoria Building (QVB). You can feel the atmosphere of that time from the British Victorian shopping mall (the settlement-era prison in Darlinghurst, east of central Sydney, is now used as one of The Supreme Court of NSW buildings).

On the other hand, Sydney boasts the largest population in eastern Australia, and since the abolition of the so-called white Australianism (a policy that Australia adopted until the early 1970s, which prioritized white immigrants), immigrants, international students, researchers, etc. from Europe, and in recent years, especially from China, India, and other Asian countries, have gathered. Compared to other cities in Australia, it can be said that it is a very cosmopolitan city. When you walk through the center of Sydney, you will see people with roots from various countries and regions, and it is not uncommon to hear various languages, and there are many restaurants and supermarkets from all over the city. (There are many Japan restaurants, and I do not think the level is low (although it is about twice as expensive as eating out in Japan!)). As a complete digression, my favorite food is Thai food. Although you can occasionally see Thai restaurants in Japan, Sydney's Thai food is less ethnic than what you eat in Japan, and I think it is more suitable for Japanese people's taste.)

In addition, because of the influx of immigrants from Italy, China, Vietnam, Thailand, and other countries in the center of Sydney and its

suburbs, each of them has formed a community, and there are areas where restaurants from various countries are concentrated, and just walking around Sydney makes you feel like you are traveling around the world.

In addition, Sydney has a beautiful port and sea that is counted as one of the world's three most beautiful ports, along with San Francisco in the United States and Rio de Janeiro in Brazil, and unlike Japan, natural disasters such as earthquakes and tsunamis are very rare, except for bushfires, and I would like to mention that the city is very close to the sea. The Opera House, one of the World Heritage Sites facing Sydney Harbour, and the Harbour Bridge, which connects the north and south of Sydney, are just a symbol of that.

4 What did I do in Sydney?

1 Research activities at the University of Sydney

For one year, I conducted research as a visiting researcher at the University of Sydney Law School, which is about 10 minutes by bus from central Sydney.

The University of Sydney is Australia's oldest university with a long history and tradition, with its founding in 1850 and celebrating its 175th anniversary this year. In addition, it has a track record of ranking high in multiple world university rankings every year, and has a total of 10 faculties, including a law school, attracting excellent students from domestic and abroad, making it a very international university like the city.

Based on the advice of Professor Luke Nottage of the University of Sydney Law School, who accepts dispatched judges from Japan every year, I have attended several classes at the University of Sydney Law School over two semesters.

Although the style of lectures was basically based on the lecturer's explanation based on slides, there was active discussion and question-and-answer sessions with the students present, and two-way exchanges were commonplace (it is not uncommon for students to ask questions even if they interrupt the lecturer's explanation). I was able to understand the outline of Australia's legal system and court system and feel the difference style between the lectures at Japanese universities.

I am also a member of the Centre for Asian and Pacific Law (CAPLUS) and the Australia Network for Japanese Law (ANJeL), which are institutions of the University of Sydney Law School. I belonged to both at the same time. The former is an institution mainly for the purpose of exchanges between legal professionals and legal researchers

from various countries in the Asia and Pacific region through the University of Sydney Law School, and the latter is an institution for the purpose of exchanges between legal professionals from Australia and Japan (both of which are established and operated by Professor Nottage mentioned above). I was preparing for classes and preparing for visits to various institutions, which will be described later, in the joint research room, which is also the research room of both institutions. In addition to me, researchers from Indonesia, Thailand, Spain, and other countries came and went every day, so we were able to frequently exchange opinions on the differences in the legal systems and court systems of Japan, Australia, and other countries.

2 Visits to various institutions such as courts

In addition to the research activities at the University of Sydney Law School mentioned above, during my stay, I visited many legal institutions such as courts, observed various procedures, and exchanged opinions with judges and court officers. I also had the opportunity to interview many Australian lawyers, public prosecutors, and mediators, as well as a wide range of visits to civil administrative tribunals and probation offices.

Every time I visit an Australian court, I feel strongly that there is a very homely atmosphere in the area where judges and staff come and go, and in the courtroom. Each judge had his own room (in the federal, state, and district courts, each room was equipped with a shower room and toilet, and judges decorated their rooms with whatever they wanted. Some courts have from one to three associates for each judge (associates are mainly hired from those who have just graduated from the Faculty of Law, and in addition to managing the court equivalent to the duties of a court clerk in Japan, they also mainly conduct legal research and other activities to support judges so that they can focus on directing litigation and drafting judgments during the trial or hearing.) . During breaks such as morning tea, lunchtime, and afternoon tea, it is not uncommon for judges to not only exchange opinions with associates and other judges in a place such as a judge's room or a multipurpose room with a kitchen, but also to joke in exchanges with lawyers who appear during the trial or hearing. In addition, it is common for agents who have fiercely exchanged objections during the interrogation to each other before and after the due date, even in court, as if they were other people, talking casually (and sometimes they even discuss settlement in a friendly atmosphere rather than small talk!). You can fully feel Australia's tolerant national character in the judicial area.

5 Overview and characteristics of Australia's legal and judicial system

1 How many legal systems are there in Australia?

Australia has a federal system consisting of six states and two territories, with nine different systems: six states and two territories and one central government, the federal system. Therefore, for example, in the constitutional law classes I attended during the semester, most of the lectures were based on the interpretation of the provisions of the Federal Constitution and case law on the relationship between the federation and each state and special territory, and specifically, how to judge when federal law and state law conflict or conflict in each field. A notable case is that the federal government of Tasmania, which inscribed Tasmania on the UNESCO World Heritage List over a plan to build a dam on the Gordon River in the state, fought fiercely with the state over the plan to build a dam in the state, claiming that the dam construction plan violated the World Heritage Protection Act, and was eventually brought to the Federal High Court in the capital Canberra (Commonwealth v Tasmania (Tasmania Dam Case) (1983) 158 CLR1).

In addition, although the Federal Constitution of Australia enacted in 1900 also has many articles on the relationship between the federation and the states, there are almost no comprehensive human rights provisions such as the amendments to the Constitution of Japan and the Constitution of the United States, and there are only a few such as the right to a jury trial (Article 80 of the Federal Constitution), freedom of religion (Article 116 of the Commonwealth Constitution), Since there is only a prohibition of discrimination between states (Article 117), human rights theory was rarely touched on even in the aforementioned constitutional law class¹.

2 Is the court structure complex in Australia?

As mentioned in (1) above, Australia has nine different legal systems, and the structure of courts in each state is also very complex compared to Japan. Since it is not possible to mention the structure of the courts of all states and special districts due to paper constraints, here is a brief example of NSW, which has Sydney as its capital.

In NSW, there are the Federal Courts², which has jurisdiction over all

¹ Masahiro Kobori, Comparative Political Institutional Theory Learned from History, Japan, England, the United States, France, and Australia, Koyosyobo, 2023. p.209-211, p.213

² Hiroshi Hiramatsu, Modern Australian Law, Keiaido, 2005. p.32-36

of Australia, and State courts of NSW³, with the Federal High Court at the top of all courts Court.

⁴The former are Federal Court that is in charge of cases with exclusive jurisdiction over federal courts such as tax law and company law(There are two types: a single court in which a judge is in charge of one person and a full court in which three judges are in charge, and if the former judgment is appealed, an appeal hearing will be held by the latter) and The Federal Circuit and Family Court of Australia, which is in charge of all family court cases(There are also single courts and full courts. In Australia, The Federal Circuit and Family Court has exclusive jurisdiction over all family court cases, except for Western Australia. The reason why The Federal Circuit and Family Court originally existed separately was that there were many overlapping jurisdictions. The color of the robe worn varies depending on which court one is from (red or purple), and the remnants of the robe can still be glimpsed.).

The latter, in the case of NSW, in brief, are The Local Court of NSW (In civil cases, cases with a claim amount of less than a certain amount, such as minor traffic accident cases, are in charge of misdemeanor cases in criminal cases, equivalent to a Summary Court in Japan), The District Court of NSW(Equivalent to the District Court of Japan) and The Supreme Court of NSW (Equivalent to The High Court of Japan. Translated into Japanese, The High Court and The Supreme Court are reversed, so it may be a little confusing at first for those who are somewhat familiar with Japan's legal system. As The Federal Court and The Federal Circuit and Family Court, there are single courts and full courts.). You can appeal in that order. However, unlike Japan's three-instance system, depending on the case, The Supreme Court may suddenly have jurisdiction over the first instance.

3 How to become a legal practitioner in Australia?

Studying for the bar exam is basically not necessary to become a lawyer in Australia. The reason is clear, because the bar exam system itself does not exist.

In Australia, as in the UK, there are two types of lawyers: lawyers who cannot argue in court called solicitors, and lawyers who can argue in court called barristers.

As for solicitors, you can start working immediately after graduating from an Australian law school after receiving short-term

³ Hiroshi Hiramatsu, *Modern Australian Law*, Keiaido, 2005. p.37-40

practical training and registering with the bar association of each state (as an aside, it is an Australian tradition of British origin that only barristers who can argue wear a wig in court. Whether the judge also wears a wig depends on the court.) . The system for barristers varies slightly depending on the state and territory, but in NSW, it is required to pass an exam and complete a certain amount of practical training.

Judges are usually appointed by application or court solicitation from among those who have extensive and long-term work experience as barristers. Therefore, unlike Japan and other countries that have adopted a professional judge system, there are no young judges like Japanese assistant judges (therefore, every time I visited the court, Australian judges and staff were very surprised with the fact that Japan has young judges like me.).Also, there are judges who are from scholars, and there seem to be other routes to becoming multiple judges.

Public prosecutors, like judges, are often appointed from barristers, mainly from who have extensive experience in criminal cases. Unlike Japan, Australian public prosecutors do not conduct their own investigations, including interrogations of suspects, and police officers exercise full investigative power.

4 What is the First Nations issue?

Australia was inhabited by Aboriginal and Torres Strait Strait peoples even before the British settlement mentioned above, and the relationship between these aborigines and the British who settled later was always a problem.

Mabo v. The State of QLD (No. 2) (1992, 175 CLR1, 66 ALJ 408) by the Federal High Court in 1992 held that for the first time, traditional land control by indigenous peoples is legal occupation. It was officially recognized that the Australian territory itself was acquired by taking away Indigenous peoples' indigenous lands, and in response, the Native Title Act 1993 allowed land taken from Aboriginal people to be returned.⁵⁴

In Australia, especially in criminal courts, state juvenile courts, state drug courts, etc., full-time staff were assigned to support the use of justice by indigenous peoples, and in each class at the University of Sydney Law School where I attended, the existence of indigenous lands was always mentioned at the beginning of the handout. Even during my stay in Sydney for only one year,

⁵⁴ Hiroshi Hiramatsu, *Modern Australian Law*, Keiaido, 2005. p.67, 68, 83

consideration for the protection of indigenous peoples was scattered everywhere.

However, against the backdrop of the large economic disparity between indigenous peoples and settlers, various social problems, such as the high proportion of indigenous people in penal institutions, have been regarded as problems to this day, and they remain as major issues.

6 Conclusion

As far as the paper allows, I have briefly introduced my research activities in Sydney over the past year, as well as the legal and judicial systems of Australia and NSW. As mentioned above, Australia has many unique characteristics of Australia, which is strongly influenced by the UK. If you have the opportunity to visit Australia, I highly recommend to attend Australian trials where you can experience the atmosphere of Australian justice firsthand (In addition to trials, etc., there are many cases where the issue settlement procedure is open to the public.)).

I would also like to take this opportunity to conclude this article by thanking Professor Nottage and other researchers at the University of Sydney Law School, as well as the legal professionals and local people who have helped me during my stay, for their great efforts and cooperation in my research activities in Sydney.