“The legal system is often a mystery, and we, its priests, preside over rituals baffling to everyday citizens.” — Henry Miller

Many citizens of France, Japan, the United Arab Emirates (UAE), and the United States (US) do not fully understand their own legal system. Advancing understanding of our own (US) legal system is a quixotic task, especially attempting to do that by including side-by-side descriptions of three other countries, and their law and courts. Descriptions of UAE and US legal culture are both from professional experience and by reference. Descriptions of French and Japanese legal culture are entirely referential and researched.¹

While legal systems are often a mystery and baffling to the citizens that must use them, they are very much tuned to social and legal culture. All four countries utilize two basic legal systems—Civil and Common law—although the Japanese legal system is a hybrid of both. Legal systems evolve from history, embedded in and inextricable from culture. Remarkably, the court systems of all four countries are structurally similar, but the customs and cultural differences of each country are profoundly different. The customs and cultural differences in each country, though, combined with the historical evolution of each country’s legal system, clearly define the legal culture of each country.

The study begins with the fundamental procedural differences between Civil and Common law jurisdictions. These differences include the following:

- Use of precedent or previous cases as law, in addition to statutes and regulations,² in Common law countries. In Civil law countries, judges are required to primarily utilize statutes and regulations. This key difference is somewhat belied by the use of precedent, especially for significant rulings from the appellate and highest courts in many Civil law jurisdictions. The most profound impact of the difference in legal precedent is the formal publication and use of judgments, especially at the appellate level in Common Law countries, as contrasted with the detailed expansion of statutory and regulatory law in Civil law countries.

- Right to a trial by jury³ for both civil and criminal matters in Common law jurisdictions. Again, this difference is belied by the use of lay juries in combination with judges⁴ for serious criminal and appellate cases in France and serious criminal cases in Japan.

- Adversarial criminal and civil adjudication in Common law countries, as contrasted with inquisitorial criminal adjudication and managed discovery in civil matters in Civil law countries. In criminal matters, judges have a direct role in fact-finding, usually with support from the
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prosecutor. In civil matters, discovery is directly managed by the court. For both civil and criminal matters, the practical implications are the use of a formal trial to present facts and argue the evidence in Common law countries, as contrasted with procedural events, collectively called the trial, leading to a judgment in Civil law countries.

These structural and procedural differences will be explored further in Part 3 – Procedure.

Summary of Legal Systems

France
The French legal system is the grandfather of Civil law systems used throughout Europe and South America, but it is, in turn, an artifact of the Romans’ Corpus Juris Civilis, dating from CE 529, reconfigured as the Napoleonic Code in the 19th century, and then expanded into an exquisitely modern set of complex statutes and regulations. It makes sense that both historical codes were birthed by empires, because modern Civil law systems typically operate in countries with highly centralized bureaucracies. The Napoleonic Code also adapted canon (religious) and local customary law. Many of the rules governing commercial transactions, debt, property, personal status, and inheritance were influenced by local practice and the Catholic Church.

The legal system in France is unitary and characterized by a strong centralized bureaucracy, the Ministry of Justice (Chancellerie), serving a 2015 national population of 66.8 million. The court system is dual with ordinary and administrative courts. The ordinary courts address civil and criminal matters that do not involve government agencies. Both ordinary and administrative courts are divided into three levels: courts of first instance (trial courts); courts of second instance or appellate courts; and courts of last resort: cassation court for ordinary courts, and the council of state (Conseil d’Etat) for administrative cases. In addition, a separate constitutional court presides over constitutional challenges. In many respects, while centrally administered, the court system is complex and fragmented. The judicial structure is a product of strong and historic legal traditions and mirrors the bureaucracy of a central, national government. The Judicial Services Directorate, working with the Chancellerie, has recently been exploring consolidation and streamlining of both the courts and administration, in part to rein in costs associated with inefficiencies and compartmentalization of courts.

Japan
The Japanese have a hybrid legal system, in part because of the direct occupation and oversight of the US following World War II, especially regarding criminal procedures. The 1880 Penal Code adopted the Napoleonic Code in criminal and civil matters, but changes to procedures in 1947, pushed through by occupation forces, shifted the Japanese criminal system from inquisitorial to accusatorial. Symbolically, the prosecutor is no longer permitted to sit on the raised dais with the judge and sits in the well of the court with the defense. Regardless, the basic legal structure of Civil law remains in place. Adjudication is based on statute and regulation, and lay juries are permitted, since 2009, on capital punishment and serious felony cases.

The legal system in Japan is unified under a strong, centralized bureaucracy, under the Ministry of Justice and Supreme Court, serving a national population of 127 million in 2015. Courts address civil, criminal, and administrative matters, organized by courts of first instance, appellate, and last resort:
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the Supreme Court. Courts of first instance include 50 District Courts with 2013 regional branches. Family Courts are associated with most District Courts. Eight High (appellate) Courts are organized by Circuit.

United Arab Emirates (UAE)
The UAE legal system is adapted from Egyptian criminal, civil, and family codes, which were adapted in Egypt from the Napoleonic Code, Islamic Law, and customs. The country, founded in 1971, and its courts are very young. The Constitution and civil, criminal, and family and inheritance (collectively called personal status) codes have been modified several times since the founding of the country, most recently in 2006. The Constitution includes a preamble that states that no law can contradict or be in conflict with Sharia law. Many of the family and inheritance laws mirror Sharia, while many of the statutes are more detailed or interpret Sharia by necessity. This is due, in part, to the various schools of scholarly criticism in the Islamic culture. Law schools are also very new. As a result, many of the judges and lawyers that work in the UAE courts are experienced judges from elsewhere in the Middle East and North Africa, the primary requirements for whom are that they speak Arabic and are Muslim.

Labor courts are very important in the UAE, primarily due to the large influx of companies and workers from Southeast Asia and many other countries. The UAE has rapidly grown in forty-five years, from a population in 1972 of less than 333 thousand to well over 9 million today. This growth has led to a rapid expansion of the courts and their role in the country. While the Napoleonic Code and Sharia Law, on which the UAE legal system is based, are very old, the legal culture and traditions are relatively new and evolving.

In 1971, the courts were a single system unified under the Federal government, with three levels of court: first instance, appellate, and final appeal. Like the United States, the UAE is a federation of seven emirates or states. Since the founding of the country, three of the seven emirates have formed their own court systems, modeled after the federal system, similar to state courts in the US. The federal courts still handle all disputes in four emirates and disputes between the emirates and constitutional and national security cases. The three emirate court systems, Abu Dhabi, Dubai, and Ras Al-Khaimah, handle all civil, commercial, personal status, and criminal matters at three levels of court: first instance, appeal, and cassation. Each emirate has various types of specialized first instance courts and jurisdictions. In addition, Abu Dhabi and Dubai have commercial zones, where foreign corporations may resolve disputes at courts, based on the British Common Law in Abu Dhabi and the New York International Rules of Arbitration in Dubai, presided over by international jurists.

United States of America (US)
The US is the only country of the four in the study that is almost exclusively based on Common law, which evolved from its status as a British colony in the 18th century. Similar to France, the legal traditions are very old and reflected in the original complexity and nomenclature of the courts in each state. Common law roots are Canon law and local customary law, primarily brought to the US from Britain. A number of state courts still use nomenclature (e.g. court of common pleas, prothonotary) inherited from the 18th century, and the terminology for the state courts is quite varied across 50 states. Remarkable characteristics of US laws, codes, and legal structures include the extensive development of case law even within two and a half centuries of existence; the general migration to simplification and
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consolidation of state court systems, especially the myriad limited jurisdiction courts, and the broad use of alternative dispute resolution for family and smaller civil disputes.

The US legal system is primarily divided into state and federal courts, with the federal courts addressing matters of interstate commerce and crime, and constitutional issues. The modern broadening of federal original jurisdiction in both civil and criminal law is a subject of intense academic debate, with little public knowledge of the distinctions. State courts retain most original jurisdiction over civil, criminal, family, and juvenile matters. Most state courts have separate courts for limited and general jurisdiction, often with multiple courts or divisions for limited jurisdiction and summary matters. Ironically, while simplification and consolidation have been hallmarks of some state courts, many courts have instituted separate courts or divisions for family and juvenile matters, specialized courts, and specialized dockets.

Comparative Measures
The following five measures are an illustrative approach to comparing the legal and cultural differences between France, Japan, the UAE, and the US.

1. Civil Disputes
An important marker of the use of the courts in a country is the number of civil cases as a ratio of the population. In the US, considerable analysis has focused on the use of private arbitration or mediation in civil disputes, often in competition with the judiciary. The following chart provides a comparison of the number of civil cases in three of the four countries in the study.

An important factor to consider in the greater rate – more than double France and triple Japan – of civil cases in the US is the number of lawyers (see below) in each country. Other factors include cost, time to resolution, and intangibles related to culture. A key difference that is difficult to measure is also the regulatory structure of each country, especially in civil and commercial matters. It is a common truism that companies in the US are restrained by possible punitive remedies in litigation, often more so than by regulation.

![Rate of Civil Cases per 100K Population](chart.png)

<table>
<thead>
<tr>
<th>Country</th>
<th>Rate of Civil Cases per 100K Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>2,416</td>
</tr>
<tr>
<td>Japan</td>
<td>1,768</td>
</tr>
<tr>
<td>U.S.A.</td>
<td>5,806</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Country</th>
<th>Population 2015</th>
<th>No. Civil Cases 2009</th>
<th>Rate of Civil Cases per 100K</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>66.8 million</td>
<td>1,613,888</td>
<td>2,416</td>
</tr>
<tr>
<td>Japan</td>
<td>127 million</td>
<td>2,245,360</td>
<td>1,768</td>
</tr>
<tr>
<td>UAE</td>
<td>9 million</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>US</td>
<td>321 million</td>
<td>18,660,484</td>
<td>5,806</td>
</tr>
</tbody>
</table>

2. **Numbers of Judges**

The numbers of judges in France and the US are closely aligned, while the number of judges in Japan is approximately one-fourth of France and the US. This is consistent with the amount of litigation, as well as the numbers of lawyers in the US, but reflects a more robust, professional system of judges in France at multiple, distinct trial court jurisdictions. The court systems of both France and the US are complex and diverse, with many types of courts and specialties, especially at the local and regional level. The federal court system in the US is comparable to many characteristics of the legal system in France from general jurisdiction courts up through the appellate courts. Judges as a profession, including training and roles in government, will be described in Part 2.

<table>
<thead>
<tr>
<th>Country</th>
<th>Population 2015</th>
<th>No. Judges 2015</th>
<th>Rate of Judges per 100K</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>66.8 million</td>
<td>6,774</td>
<td>10.1</td>
</tr>
<tr>
<td>Japan</td>
<td>127 million</td>
<td>3,094</td>
<td>2.4</td>
</tr>
<tr>
<td>UAE</td>
<td>9 million</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>US</td>
<td>321 million</td>
<td>29,023</td>
<td>9.0</td>
</tr>
</tbody>
</table>

3. **Numbers of Lawyers**

In 2015, there was one lawyer for every 247 persons in the US; in Japan, one lawyer for every 3,528 persons; and in France, one lawyer for every 1,113 persons. The differences are remarkable, but distinctions are often rooted in legal structures and culture. As an example, in France, a broad network of licensed, professional notaries handles many property, contractual, and personal legal matters that would often be handled by a lawyer in the US. In Japan, the number of lawyers has been, until recently, tightly controlled by government regulation. The rate of lawyers is actually a substantial increase from even a decade ago, when the Japanese government began to relax some of the restrictions on law school graduation rates and attorney licensure. Differences are also rooted in culture and the expectation that families and their communities will resolve disputes outside the public arena. It is also estimated that Japanese police only issue citations or arrest less than one-quarter of misdemeanor offenders, with broad, immediate discretion.
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Numbers and Rate of Lawyers

<table>
<thead>
<tr>
<th>Country</th>
<th>Population 2015</th>
<th>No. Lawyers 2015</th>
<th>Rate of Lawyers per 100K</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>66.8 million</td>
<td>60,223</td>
<td>90.1</td>
</tr>
<tr>
<td>Japan</td>
<td>127 million</td>
<td>36,415</td>
<td>28.7</td>
</tr>
<tr>
<td>UAE</td>
<td>9 million</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>US</td>
<td>321 million</td>
<td>1,300,705</td>
<td>405.2</td>
</tr>
</tbody>
</table>

4. Doing Business

The following are three out of ten World Bank measures for doing business in 190 countries. The three measures are all court-focused and based on a review of comparable court cases in each country. They include the following, with the relative rankings of each country across the globe. Enforcing contracts is a measure of the time and cost of resolving a complex contract dispute. Remarkably, the US and Western Europe have both been working to reduce delay and the costs of litigation. The one outlier, resolving insolvency in the UAE, is an outcome of a relatively new legal system with only recently emerging remedies to mitigate the negative economic impacts of insolvency.

Doing Business World Bank 2017 Rankings – 190 Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Protecting Minority Investors</th>
<th>Enforcing Contracts</th>
<th>Resolving Insolvency</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>32</td>
<td>18</td>
<td>24</td>
</tr>
<tr>
<td>Japan</td>
<td>53</td>
<td>48</td>
<td>2</td>
</tr>
<tr>
<td>UAE</td>
<td>9</td>
<td>25</td>
<td>104</td>
</tr>
<tr>
<td>US</td>
<td>41</td>
<td>20</td>
<td>5</td>
</tr>
</tbody>
</table>

5. Cultural Intangibles – A Summary

The following summary of cultural intangibles is borrowed from the language used by a 2009 University of South Dakota study of Japanese conflict resolution. The observations of Japanese culture are by reference to the study. The observations of UAE and US culture are both anecdotal and from experience, while cultural observations about French culture are reserved. High context dispute resolution, referenced in studies by Tinsley, 2001, of conflict resolution comparing Japanese to German, and US managers, demonstrated that Japanese managers “tended to put more emphasis on hierarchy, collectivism, and low-explicit contracting, which culminated in their preferred use of power-oriented conflict strategies that put more importance on the relative social power of the speaker.” (Allan, 11)

By contrast, managers from the United States put greater importance on individualism, polychronicity, and egalitarianism. (Allan, 11) By analogy, low-context dispute resolution, would
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also tend to favor explicit contracting. Research studies of cultural approaches to dispute resolution have sprung from attempts to bridge the challenges of global business interactions and disputes. The summaries of cultural differences below are primarily descriptive of legal cultures for comparison purposes.

France has a complex system of local and regional courts and specialties, very old historical and legal traditions dating back to the Roman era, and a strong, centralized bureaucracy. These characteristics are consistent with perceptions that their culture and legal system would be rooted in low context dispute resolution (e.g. statutory and regulatory framework for decision-making).

Japan has a simple yet centralized bureaucracy with long traditions, but a high context dispute resolution culture; low-explicit contracting; hierarchy and collectivism. Allan’s research supplements significant research focusing on both governmental limitations on the number of lawyers permitted to be licensed every year and the social constraints on solving disputes in the courts.

The UAE is a relatively young and emerging legal system, even though the roots of both the laws and the structure of the courts are quite old. As important, the legal system is deeply embedded in a high-context dispute resolution culture with low-explicit contracting. The legal culture is observed and reflected in language and the ambiguity of language in contracts. This is due, by contrast with US legal culture, to the lack of very technical and legally-tested contracts. As important, are explicit provisions for character witnesses and testimony in legal procedures, both in contract negotiations and personal status disputes. These provisions include numerical requirements for up to three character witnesses.

The US has a complex system of local, regional, and federal courts and specialties; a low-context dispute resolution culture; and high-explicit contracting. While practices vary, legal systems and courts are explicitly egalitarian, both in procedures and in ethical guidelines for professionals, judges, and lawyers. Both as a result and perhaps as a factor, the role of lawyers in the courts and the legal culture is pervasive.

Conclusion

Broad generalizations about culture, and especially legal culture, are not as reliable and enduring as the legal systems in which they are embedded. Culture evolves and differs, even between regions within a country. A good illustration of the evolution of legal cultures between countries is based on a 1983 Northwestern University research study of Japanese contracts:

Americans should note, however, that the larger Japanese companies—such as Mitsui, Mitsubishi and Sumitomo—have "learned" from their American counterparts how important contractual language may be for defining party duties. With regard to international contracts, the Japanese have changed their attitudes somewhat. They have moved from their traditional reliance on wa (harmony between the parties) and relegating of the contract language to a secondary role, to another, more Western view. Nevertheless, the Tokugawa/Confucian emphasis on wa, trust and internal resolution of problems by the parties remains a crucial factor in maintaining strong business relationships with the Japanese.36
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By design and charter, legal systems have basic structures and procedures that are enduring and difficult to change. Yet they do evolve, especially in a global world with multi-national corporations and trade, ubiquitous ease of travel, and rapid communications and media. Examples of overt initiatives to positively impact justice system structures and procedures include rule of law initiatives by the US State Department in post-conflict countries, and World Bank and United Nations justice programs.

Parts 2 and 3 of this series will be featured in the Justice Management Institute’s newsletter and website: http://www.jmijustice.org/

Part 2 – Judges, Lawyers, and Clerks, will compare and contrast the training, selection, and retention of professional staff that work in the courts. The legal system for each of the four countries is closely tied to each approach, although cultural differences impact the way the public views these professions and their role in government and society.

Part 3 – Procedure, will return to the procedural differences between Civil and Common law legal systems and the ways in which they have evolved in the four countries and by cross-fertilization between each of the countries.

1 A biographical footnote – the author has worked in court administration for over four years each in a US court, the First Judicial District in Philadelphia, and in a UAE court, the Abu Dhabi Judicial Department. I have never worked in a French or Japanese Court, and the paucity of English language studies for research on both courts is daunting. While I speak French, my skills are technically limited, especially in my chosen profession. The sum total of my French legalese emerges from long conversations with Moroccan, Mauritanian, and Tunisian judges and clerks in the UAE. I do not speak Arabic, and they do not speak English.
2 Regulations include regulatory law, administrative law, ordinances, and court and local rules.
3 These rights have some threshold restrictions in the USA, depending on the state. These restrictions include possible incarceration or fine minimums.
4 Typically nine lay jurors + three judges.
5 The Judicial Services Directorate (Directions des Services Judiciaires, DSJ) under the Ministry of Justice administers the courts, and the French National School for the Judiciary (Ecole Nationale de la Magistrature, ENM) is responsible for training and certification of judges and lawyers.
6 In addition to separate local and regional courts for infractions, misdemeanors and felonies (assises), and for civil small claims, general civil, commercial, labor, and family matters, the judiciary has a complex system of local tribunals, many of which address regulatory disputes and violations.
7 Lay juries consist of nine citizens and three judges.
8 Summary, Family, and District Courts. District Courts handle appeals on civil and family matters from Summary and Family Courts.
9 High Court
10 The Egyptian civil code is a 1949 adaptation by Abd El-Razzak El-Sanhuri of the Napoleonic Code. The criminal code evolved over a longer time, and the family code established separate courts in 2004.
11 World Bank.
12 Abu Dhabi Global Market.
13 Dubai International Financial Center.
14 Louisiana is historically rooted in Civil law, but many Court practices and legal traditions, including the use of case law, now mirror the other 49 states.
Trial court of general jurisdiction. Common pleas refer to laws common across a region, rather than being local summary offenses or laws.

Civil clerk.

This is quite varied, with notable examples of consolidation including California, New Jersey, Maryland, and the Dakotas.

There are now thousands of drug, mental health, veterans, and homeless courts, as well as other collateral issues associated with crime.

Examples of specialized dockets include business and technology, commercial and maritime matters, and specialized summary matters (e.g. red light and parking violations), among many others.

Data were not available for the UAE on three of the five measures, primarily for some of the smaller emirates. Comparisons would not be valid without complete country-wide data.


Country-wide data not available for the UAE.

NCSC aggregated data as reported by Ramseyer, Rasmusen.

France Ministry of Justice.

Supreme Court of Japan.

Country-wide data not available for the UAE.

American Bar Association. Numbers include federal, state, and local courts.

France Ministry of Justice.

Wall Street Journal.

Country-wide data not available for the UAE.

American Bar Association. Numbers include federal, state, and local courts.

Court cases were chosen from the largest city, economically in each country: Paris, France; Tokyo, Japan; Dubai and Abu Dhabi, UAE; and New York and Los Angeles, USA. The relative monetary value of each case is based on a comparable ratio to the gross domestic product (GDP) of each country.

As recently as 2009, the UAE performed very poorly (ranked in the bottom half of the globe) in all three measures. It is remarkable how rapidly their expanding legal system has caught up with the rest of the world.


Terminology from research by Allan, Jeffrey, Japanese Conflict Resolution: Cultural Differences, Contrasts, and Styles, University of North Dakota, 2015.