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How Dictionaries Were Used in a Lawsuit of Gay Rights

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Overview

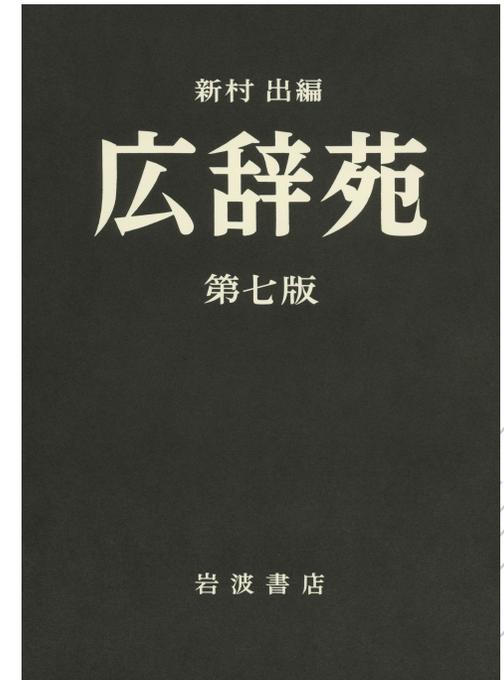
- Summary of the “Fuchu Youth House” case
- *Kojien* and how it is perceived in society
- How *Kojien* was used by all the parties in the case
- Problems with use of dictionaries in court

Fuchu Youth House case: a landmark

- **1990:** Discrimination against OCCUR during a study camp at Fuchu Youth House
- The House's refusal of OCCUR's use of the accommodation facility was supported by the Tokyo Metropolitan Board of Education.
- **1991:** Lawsuit
- Plaintiff: OCCUR
- Defendant: the Tokyo Metropolitan Government
- **1994:** OCCUR won the case (the judgment of the Tokyo District Court), and the Government appealed.
- **1997:** OCCUR won again (the judgement of the Tokyo High Court)

Kojien
『広辞苑』

- Is a single-volume comprehensive dictionary of the Japanese language
- Is published by a prestigious publisher, Iwanami Shoten
- Has a long history, or the longest history among medium-sized Japanese dictionaries
- Is cited often in newspapers, the Diet committees, and in court
- Is often described as “nationally iconic” and “synonymous with a dictionary”

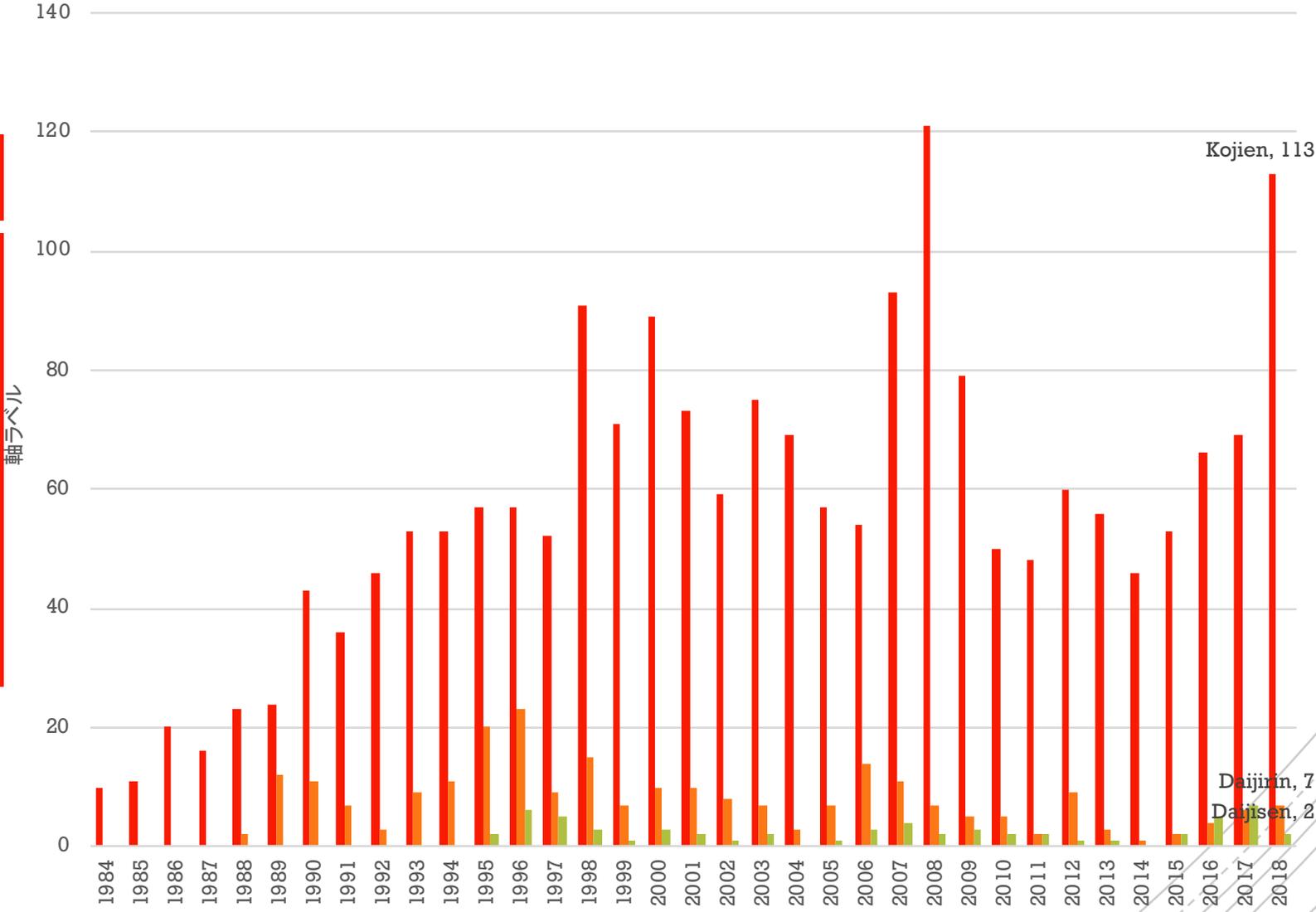


Sales of *Kojien*

Edition	Year	No. of headwords	No. of copies sold
1 st	1955	200,000	1,000,000
2 nd	1969	200,000	2,300,000
	1976		2,300,000
3 rd	1983	200,000	2,600,000
4 th	1991	220,000	2,200,000
5 th	1998	230,000	1,000,000
6 th	2008	240,000	500,000
7 th	2018	250,000	200,000 (as of 2018)

- Nakagawa, Y. 2018. *Kojien* niwa mada zotohin toshiteno juyo ga aru. *Ronza*.
<https://webronza.asahi.com/culture/articles/201803120004.html>

The number of references in The Asahi Shimbun



References
made in a
newspaper

Kojien
used as evidence
by a defense
witness

- The head of the Youth House referred to how “homosexuality” was explained in some glossaries and dictionaries before making the decision to refuse OCCUR to use their facility.
- *Kojien* 3rd ed. (1983) defined homosexuality as “abnormal sexuality”.
- The head used the definition to support his view that the OCCUR members might engage in sexual activity and that would give a negative influence on other young people who use the facility.

OCCUR and Iwanami

- OCCUR wrote to Iwanami and asked for a meeting to be set up in 1991.
- Iwanami replied, but no meeting was held between them.
- Iwanami later let OCCUR know the definition would be revised in the 4th edition (1991).
- The definition of the fourth edition reads “Sexual attraction to people of the same sex, and such relations” (my translation).

Decision by the
Tokyo District
Court
(1994)

- After explaining the changes made in DSM about homosexuality and similar changes made in the Japanese medical community, the court mentions the change made in the definition of homosexuality in *Kojien*, 4th edition to show the conventional way of seeing homosexuality as an abnormal attitude has been rethought.

Questions about
use of dictionaries
in court

- Academic **authority** the defendant saw in a dictionary
- **Power** a dictionary can have in court the plaintiff saw
- Dictionary as **a legal tool** in court

Kazama
(1996: 75)

- (When the head refused OCCUR to use their facility he cited glossaries and dictionaries.) This attitude shows the social structure where “academic” authorities such as dictionaries support a negative view on homosexuality that society, in particular the head, came to embrace.
- (My translation)

- The latest versions of 6 different dictionaries of 5 publishers

Definition of
other
dictionaries

Dictionary 1 (1980)	Publisher A	
Dictionary 2 (1981)	Publisher B	
Dictionary 3 (1983)	Publisher C	
Dictionary 4 (1988)	Publisher D	Abnormal sexuality
Dictionary 5 (1989)	Publisher D	
Dictionary 6 (2000)	Publisher E	

Mugglestone
(2016:
558, 559)

- “Cultural prescriptivism—the presenting of norms and images of normativity which are ideologically rather than empirically affirmed—is a further aspect of lexicographical practice which demands scrutiny in this respect.”
- “Definitions reflect the dominant—and naturalized—ideologies of a given period, elucidating norms which seem ‘normal’ in their own time, whether this is in terms of sexual tolerance or repressiveness”

Use of dictionaries in court

- The dictionary is useful to the judge not because it can provide sociolinguistically accurate guidelines to follow, but **because it offers an authority seen as objective and general**. The dictionary strips language of its sociological and normative complexity, and is **the external authority** closest in spirit and form to the statute. ...—for the judge at least—the linguist’s manifold objections to the dictionary are beside the point, as the flaws in the dictionary from the linguist’s point of view are precisely what make it a useful tool for the judge.
- (Hutton 2009: 101)

Decision by the
Tokyo High Court
(1997)

- At the time of 1990, it is assumed that both the general public and the administrative authorities were indifferent to and did not have correct knowledge about homosexuality and homosexual people. However, unlike the general public, the administration including the Tokyo Metropolitan Education Board should not be allowed to be indifferent to or ignorant of the rights and interests of homosexual people when **the administration, in exercising public authority, is to be more sensitive and supportive about minorities such as gay people and protect their rights.** This is true not only of today, but also of 1990. (My translation)

Decision by the Tokyo High Court

- The main reason why the Tokyo Metropolitan Government lost the case is their lack of sensitivity, as public authority, towards minorities, and the blame is not placed on low awareness of homosexuality or gay people among the public at the time, which is to some extent reflected in dictionaries.

References

- The Supreme Court's Thirst for Dictionaries in the Rehnquist Roberts Eras" *William & Mary Law Review*, Vol. 55, Issue 2. <http://scholarship.law.wm.edu/wmlr/vol55/iss2/4> Retrieved February 2019.
- Hutton, Chris. 2009. *Language, Meaning and the Law*. Edinburgh: Edinburgh University Press.
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 - Suwanomori Law Office. "'Fuchu Seinen no Ie' Saiban" ['Fuchu Youth Hostel' Case] <http://www.ne.jp/asahi/law/suwanomori/special/supplement.html> Retrieved 21 February 2019.
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