Saiban-in “Quasi-Jury”

Generic structure for a question evaluating the relative strength/success of the Saiban-In thus far
A. Articles


B. Books

1. Anderson, K and Johnson, D, ‘Japan’s new criminal trials: origins, operations and implications’ in Andrew Harding and Penelope Nicholson (eds), New courts in Asia (Routledge, 2010), 371-390.


Introduction

- Judicial Reform Council (JRC) Final Report 2001, recommending the implementation of civil participation into the Japanese criminal trial as one of the major mission among many suggested reforms in the judicial system. (Ibusuki, 26-7)
- Proponents of the reform became increasingly frustrated with the perceived inefficiency of the judiciary, lengthiness of trial proceedings, and the high costs involved in attaining judicial resolutions (Ibusuki, 27)
- May 2004 the law was enacted introducing lay judges into its criminal justice system. As of May 2009, Japan started its trial system for serious criminal cases in which 6 lay persons sit with 3 professional judges to adjudicate guilt and determine sentence (Anderson and Johnson, 371)
- Rationales: improve the quality of Japanese law and democracy by increasing the size of the legal profession and the availability of legal services, improving the quality of legal services through reforming legal education, and instituting other ‘huge’ and ‘extensive’ reforms that ‘relate to the very foundation of all aspects of the justice system’ (Anderson and Johnson, 372)
  - Improve the quality of Japanese criminal justice by widening the experience of trial decision-makers and reducing the elitism of the small corps of professional judges
  - Foster greater civic participation in Japan’s polity and society.
  - Motives do not include promotions of defendants’ rights which the Justice System Reform Council explicitly excluded as a rational for reform (372-3)
  - Professor Ryuichi Hirano said, “In Western countries, the court is the place where guilty or not guilty is judged, whereas in Japan, the court is the place where guilty is confirmed.” (Kazuko Ito, 1249)
  - Contrary to Article 319 of the Code of Criminal Procedure, and Article 38 of the Japanese Constitution, many Japanese wrongful conviction cases, exonerated innocent people claimed police misconduct such as verbal violence, intimidation, psychological pressure, coercion and deceit. (Kazuko Ito 1250-1251).
  - Japanese criminal justice has been so consistent and predictable that trials have been rendered ‘empty shells’ and ‘meaningless rituals’. (David T. Johnson, The Japanese Way of Justice: Prosecuting Crime in Japan (New York: Oxford University Press, 2002), 6).
  - Japan’s legal system was heavily criticized as an “insular bureaucracy that is detached from the needs of the people.” (Sher 637).
  - Series of high profile death row acquittals in the 1970s and 1980s, in which it was discovered that individuals who had been wrongly convicted suffered through decades of imprisonment – confidence in the criminal justice system waned (Sher 637).
  - No checks on the power of prosecutors who play a central role in criminal justice proceedings (Owens 192).
  - Japanese system appears to emphasize the rehabilitation and reintegration of offenders, but does so at the expense of personal autonomy. Significant trust in prosecutors and other authorities in the criminal justice system and broadly granting them discretion. (Owens 192).
    - Trust and discretion is not accompanied by effective checks and balances → highlighted by prosecutorial mistakes and findings of unintentional/intentional bias within the system. + lack of external accountability = significant concerns regarding the transparency of a country with a conviction rate of 99.8% (Owens 192).
    - Others argue that the entire criminal justice system, as currently structured, favours the prosecution by emphasizing the power of prosecutors to elicit confessions from suspects and independently conduct their own investigations into crimes (Owens 201).
    - Evidence limited historically to written documentation prepared by the prosecution, especially confession statements. Defense counsel’s role was significantly diminished → “cooperative adversary system”. Judges reported that they felt as if they were simply “confirming the results of the investigation” under the pre-reform system (Owens 202).
Historically, a single judge tried the majority of cases, with 3 judge panels hearing criminal cases involving possible sentences of death, life imprisonment, or imprisonment with a minimum period of more than 1 year (Owens 195).

Japanese prosecutor independence is manifested by their high level of discretion in pursuit of their goals; ability to investigate crimes and indict suspects, and also suspend the prosecution of defendants. Japanese criminal justice system has been structured to uncover the ‘truth’ = de-emphasis on the importance of suspects’ individual rights and a focus on obtaining confessions regardless of whether suspects’ rights were violated in the process (Owens 198).

Investigations centred around questioning of suspects, with a consequent emphasis placed on non-verbatim “confession statements” and “witness statements.” (Owens 199).

Length, intensity, and intrusiveness of interrogations, the procedural rules that systematically favour state interests, the bias and discrimination against foreign suspects and female victims, the wrongful convictions and other miscarriages of justice, and a serious shortage of transparency and accountability in the criminal process – has motivated many reformers to pursue major change (Anderson and Johnson, 373)

Lack of lay participation in the justice system in the post-war era has led to the creation of symbiotic power relations among three key agencies of Japan’s criminal justice system, namely the police, prosecutors’ office, and the court. (Fukurai 2013, 518)

Hierarchy has always played an important role in Japan, so providing citizen judges with comparable authority as professional judges is significant (Wilson 39).

Prominent defense attorney Shojiro Goto who worked on many wrongful conviction cases pointed out; (1) problem of prosecutors’ frequent use of an arrest warrant on a separate, pretextual criminal charge in order to allow the continued interrogation of criminal suspects, (2) manufacturing of fabricated and falsified evidence, (3) purposeful suppression of exculpatory evidence and destruction of proof, (4) judges’ deeply ingrained biases and prejudices against criminal defendants. (Fukurai 2013, 526)
- Substitute prisons and coerced confessions (ibid 527-528)
- Coerced confessions are contrary to article 38 of the Japanese constitution (ibid 528)
- Evidence of falsifying evidence/corrupting data by Chief and Deputy Directors at the Special Investigation Division of the Osaka Prosecutor’s office in 2010 (Fukurai 2013, 535)

Justice System Reform Council (JSRC) 1999 → 3 pillars of justice system reform; a justice system that meets public expectations, legal profession supporting the justice system, and establishment of the popular base → 3 pillars (Miyazawa 321)
- JSRC recommendation was apt to eliminate numerous causal factors behind criminal procedural anomalies that previously led to not only wrongful convictions but also violations of criminal defendant’s rights. (Fukurai 2013, 519)
- Proceedings should be; seen, understood and worthy of reliance by the people. The legal profession and the courts would need to win over the public trust → need to respond to public expectations (Plogstedt 391).

Overarching aims:
- Produce a higher quality of criminal justice and promoting a more democratic society through greater civic engagement (Anderson 373).
  - Promotion of greater transparency and accountability in a variety of governmental sectors (Anderson 376)
  - Improve the standing of the judiciary in the eyes of the public, repair the reputation of the courts and raise public regard for judicial decision-making (Anderson 384)
  - Higher order ideals of democracy and the rule of law can be facilitated through jury participation (Anderson 385)
  - Instil greater trust in the truth-finding process, preserve the rights of the accused, and help ensure the due process of law (Wilson 41).
  - Dual purpose: strengthen the legitimacy of criminal justice (Goto 122). Make Japanese judges more autonomous and independent (Goto 123).
  - Citizen involvement in government → spurring private sector economic activity by reducing governmental influence and power. Civil interaction with a judicial system presents many benefits including a system that is much easier to understand, trust and utilise. (Wilson 181)