

Japan's New Lay Judge System (裁判員制度)

*The Dawn of a New Day or
Doomed from the Start?*

Matthew J. Wilson
Senior Associate Dean
Associate Professor of Law



The Status Quo

- ❑ System dominated by experts
 - ❑ Panel of three **judges**
 - ❑ Judges decide the facts about an alleged crime based on evidence presented by a **prosecutor** and **defense attorney**
 - ❑ **Judges** apply relevant law
 - ❑ **Judges** determine the sentence
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Japan's Justice System: In need of a fix?

Strengths

- Stable and just
- Honest
- Esteemed
- Sophisticated
- Independent

Weaknesses

- Extreme conviction rate
 - Forced confessions
 - Delays
 - Rubber stamp
 - Out of touch with reality
 - Talking to a wall
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Are juries the solution?

*Jury systems in other
countries*

Citizen participation

*Actively engaged in the
Japanese justice system*

The Original....

- Juries in Japan (1928-1943)
 - Male taxpayers over 30
 - 12-man jury in criminal cases
 - 484 jury trials; only 2 by 1942
 - Conviction rate of 84%
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Let's try something new



The Sequel

- Citizen participation
 - Lay juries in Japan (5/21/09-)
 - Registered voters
 - 3 professional judges, 6 lay judges
 - One trial: average 3 days
 - Serious criminal trials
 - Guilty / Not-guilty pleas
 - Winning the “lottery”
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The Sequel Continued

- Lay juries in Japan (5/21/09-)
 - Judgments
 - Majority vote: it only takes two
 - Sentencing
 - Death penalty (unanimous)
 - Life imprisonment with parole (majority)
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Duties of a Lay Judge

- **Duty** to be truthful
 - 500,000 yen for false answers on questionnaire
 - **Duty** to appear and judge
 - 100,000 yen fine for failure to appear
 - Excuse from **duty**
 - Certain occupations: Diet members, judges, lawyers, law professors, police officers, Self-Defense Forces officers, governors and mayors.
 - Under arrest or charged with crime
 - Over 70, students, previously served (5 years)
 - Timing/Hardship
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Preparations



More preparations



And even more preparations



Mock Trial in Tokyo in 2007



Bokura no Saibanin Monogatari

<http://www.saibanin.courts.go.jp/news/video.html>

Voice of the people

□ Justice Reform Council (2001)

- *“... for the justice system to achieve its functions fully, it is indispensable that the justice system obtain broad support from the people and that the popular base be established.”*

□ April 1st Supreme Court Survey

- 60% of respondents accept the system because it is their duty
 - Only 15% expressed a “positive intention” to participate
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Why now?

- Stimulation through legal change
 - Commercial code, law schools, corporate law, etc.
 - Challenges of a modern “globalized” era
 - Transparency and quality
 - Enhance public faith in the system
 - Introduce common sense
 - Deregulation
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Is this the “real” story?

Tatemaie?

- 6 citizens / 3 professional judges
 - Cultural clash?
 - Criminal trials – not civil
 - Appeals
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Challenges & Solutions: Citizens

- Awareness and understanding of importance
 - Mock trials meaningful
 - Youth programs
 - Logistics
 - Time off from work – private sector
 - Child/Elderly care
 - Trial process
 - Legal knowledge
 - Expressing opinion
 - Judging others
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Challenges & Solutions: Citizens

- Service from the court
 - Initial contact and appearance at court
 - Fear
 - Yakuza
 - Confidentiality – is this counterproductive?
 - Lay judges can be penalized for disclosing certain information learned through their jury service, such as who said what during deliberations. Violators face up to 6 months of prison or 500,000 yen fine.
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Challenges & Solutions: Attorneys

- More attorneys
 - Attracting more talent
 - Teaching an old dog new tricks
 - Trial advocacy
 - Plain language
 - The need for speed
 - Consecutive deliberations
 - Sufficient investigation
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Challenges & Solutions: Judges

- Past opposition
 - Inefficient process
 - Consecutive hearings
 - Pre-trial meetings: evidence and issues of dispute
 - Environment fostering constructive debate and eliminating intimidation
 - Transcripts
 - Debriefing
 - Training
 - Teamwork
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The German Model: Judges

- ❑ Too much restraint on juror deliberation because jurors are likely to defer to the judge too often and too quickly
 - ❑ Role of lay judges is symbolic
 - ❑ Lay judges influenced the guilty verdict only 1.4% of the time
 - ❑ Reduction in number of lay judges in serious cases from six to two
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Challenges & Solutions: System

- Majority vote – is this fair?
 - Sentencing
 - Fairness and uniformity
 - Fear v. Law (increasing crime)
 - More convictions
 - Tougher punishments – death penalty
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Other Challenges

- Videotaped confessions
 - Use and procedure
 - Victim questions / testimony
 - Victims and bereaved family members will sit next to prosecutors and may directly question defendants and witnesses, and even state their opinions on sentencing.
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Where do you go from here?

- Postpone

- “If you force a person who is unwilling to participate, it will not improve the quality of the trial.” Asahi Shimbun 4/9/08

- Proceed in current form

- Test and revise

Potential Benefits

- Better understanding
 - Making your voice heard
 - Appreciation of individual rights
 - Check-and-balance
 - Government
 - Media
 - Even more
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