

JAPANESE LAW AND ORDER: SYSTEMIC ISSUES, CONTROVERSY, AND
CALLS OF REFORM

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ABSTRACT

The practice of Japanese Law in Japan has long been under scrutiny within the International Community. Although the crime rate in Japan is low, the conviction rate in Japan is over 99%. This stems from systemic issues within Japanese law enforcement. Police regularly coerce confessions from suspected individuals and will refuse to grant access to legal counsel until confessions are made. This has resulted in a substantial number of false confessions and convictions of those detained by Japanese law enforcement. In addition, there is evidence to suggest that prosecutors and courtroom judges rely on guilty verdicts to further their careers. As Japan has no formal jury system and relies on judges to listen to testimony and pass down verdicts, this has caused many people to suspect that the practice of law enforcement in Japan is filled with corruption. However, Japanese citizens have regularly called for – and received – reforms within Japanese law enforcement in order to grant protection from law enforcement. One notable example of this is the *saiban-in*, a quasi-jury system implemented in more controversial criminal cases. However, there are many other reforms which have yet to be implemented. These include such things as protection from police brutality, easier access to legal counsel, and reforms to the courtrooms in Japan. This discussion will explain how law enforcement is implemented in Japan and the reforms which could be taken in order to ensure equal protection under the law, while also providing cross-cultural analysis of the practice of Japanese law enforcement with that of American law enforcement.

I. INTRODUCTION

Japan has long-since been considered one of the safest nations in the world with one of the lowest global crime rates of 15.91%.¹ In spite of this fact, those that do find themselves arrested, interrogated, and brought to trial have a 99% chance of being convicted.² This statistic is shocking to the international community and suggest a high level of corruption within the Japanese Legal System. In fact, many Japanese law practices have been under scrutiny for some time. However, the standards of the Japanese Legal System and the conviction rate, while seemingly implying a certain level of corruption, may speak within a larger context of the needs of the Japanese people. This discussion will explore the systemic and cultural factors that have come to light which have led to the Japanese Legal System being the way it is today. In addition, a focus on the Japanese *saiban-in* (a Japanese quasi-jury system) will be explored. Also, in order to understand the Japanese Legal System in the context of Japanese society and international society, it will be important to have a cross-cultural comparison of the Japanese legal system with the American legal system throughout this discussion. It is important to examine to what extent the Japanese legal system is corrupt and to what extent is it tailored to the needs of the Japanese people. Finally, this discussion will conclude with a broad overview of the problems inherit in the Japanese Legal System and

¹ World Population Review. "Crime Rate by Country Population". *World Population Review*. <http://worldpopulationreview.com/countries/crime-rate-by-country/>

² Johnson, David T. "Japan's Prosecution System." *Crime and Justice*, JSTOR (pg. 45).

what kinds of reforms could be made to the Legal System in order to better serve the Japanese people.

II. A BRIEF OVERVIEW OF AMERICAN LEGAL SYSTEM

However, before delving into Japanese Legal System, it is important to take a basic look at the American Legal system in order to have a base by which to start this comparison. In the United States, suspected individuals to a crime are arrested by police. They are read their Miranda Rights (you have the right to remain silent, right to an attorney, etc.).³ Once brought to a police station for interrogation, suspected individuals may be interrogated by the police. However, if suspects do not wish to talk to the police, they have the right to request defense counsel (as part of their right to remain silent)⁴. Once defense counsel is received by a suspected individual, they are oftentimes counseled into ceasing any further interrogation by the police. In the Courts, a suspect is judged by a jury of their peers. Ideally, this is a group of 12 unbiased people selected by legal counsel that are summoned to judge whether or not the suspect is guilty (convicted for the crime) or not guilty (acquitted of the crime). The jury must be unbiased because they have to be able to take a subjective outlook on all evidence, and any juror that is unable to take a subjective look at all facts is likely to pass down a bad verdict (i.e. you wouldn't want a juror who has been a victim of sexual abuse to judge a suspected sexual predator)⁵. In addition, the 12 members of the jury must be aware of the crime that the suspect has been accused of doing and have basic knowledge of what that crime entails.

³ Constitution Annotated. "Fifth Amendment: Amdt 5.3.2.2.3.2.2 Requirements of Miranda". *Congress.gov*. https://constitution.congress.gov/browse/essay/amdt5_3_2_2_3_2_2/

⁴ Constitution Annotated.

⁵ United States Courts. "Learn About Jury Service." 2020. <https://www.uscourts.gov/services-forms/jury-service/learn-about-jury-service>

A Courtroom Judge presides over the court proceedings in order to ensure that all evidence presented is done so in an accurate and respectable manner.⁶ Evidence is presented by prosecuting council and defense council. Once all evidence has been presented, the jury will either find the suspect guilty or not guilty. If found guilty, a Courtroom Judge will pass down the sentencing (punishment) to the suspect.⁷ If found not guilty, then the suspected individual is set free and cannot be charged with the exact same crime that he has been acquitted of committing (i.e. “Double Jeopardy”)⁸.

Obviously, the Legal System in America isn’t perfect, even if it could be proven to be better than the Japanese Legal System. For example, it is nearly impossible to ensure that members of a jury are unbiased and there have been many cases where a bad verdict had been passed down by a jury. If it is suspected that a bad verdict was passed down, the defense may ask for an appeal to the case, which entails taking the case to a higher Court of Law.⁹ In the United States, there are two kinds of Courts (or Court Cases): Civil Courts and Criminal Courts. Each type of Court Case has its own hierarchy of Courts of Law. Basically, some Courts have more power than others. In the United States, the Supreme Court is the most powerful Court in both Civil and Criminal Cases. However, even with all of these systemic checks in place in order to ensure that a bad verdict is not passed down, there are still many systemic issues with the United States Legal System. However, for the purposes of this discussion, this will be enough to give a comparison between the United States Legal System and the Japanese Legal System.

⁶ United States District Court Northern District of Florida. “Role of the Judge and Other Courtroom Participants.” [No date]. <http://www.flnd.uscourts.gov/role-judge-and-other-courtroom-participants>

⁷ United States District Court Northern District of Florida.

⁸ Constitution Annotated.

⁹ United States Courts. “Appeals.” [No date]. <https://www.uscourts.gov/about-federal-courts/types-cases/appeals>

There will be additional discussion of the systemic issues of the United States Legal System as this discussion continues to compare it to the Japanese Legal System.

III. SYSTEMIC ISSUES INVOLVING JAPANESE LEGAL AGENTS

The first systemic issue will be Japanese Policing, which has been seen as one of the most controversial police forces in the world. This is because Japanese law enforcement has engaged in shady interrogation and investigative tactics.¹⁰ Much of the time, police rely on coercing confessions out of suspect individuals, many of which turn out to be false confessions. Police often get these confessions by holding people for several days at the police station and trying to coerce confessions through guilt or physical violence.¹¹ Records of such controversial interrogation tactics can be found in Japan's post-war (post-WWII) period and stem from ideas of public integrity in Japan. As a nation that has deep roots in collectivism culture, Japanese law enforcement believe that those that have committed crimes should confess in order to take the first step to atone for their crimes.¹² This may also afford suspects a lighter sentence. From this, people may question whether or not there are rights for suspected individuals that are taken in by police. In Japan, rights are afforded to these suspected individuals under articles of the Japanese Constitution, which lays out the right to an attorney (Article 37) and the right to remain silent (Article 38), and other rights which are similar to Miranda Right, and which are read by police to suspected individuals.¹³

¹⁰ Johnson, David T. "Above the Law? Police Integrity in Japan." *Social Science Japan Journal*, JSTOR. (pg. 33)

¹¹ "Japan's Prosecution System" (pg. 53)

¹² Paolo from TOKYO. "Why Japan Arrests Foreigners". 16 August 2019. *YouTube*. <https://www.youtube.com/watch?v=r1ZLGqL1FMo&t=308s>

¹³ Megumi Wada email interview.

However, there are questions as to what extent these rights under the Articles of the Japanese Constitution are implemented in Criminal Court.¹⁴ For example, according to Megumi Wada (Japanese Defense Attorney at Law), defense counsel are not allowed to be present during police interrogations, even in instances where defense counsel has been called upon by a suspected individual.¹⁵ In addition, suspects may be held for a total of 23 consecutive days by police until they confess, depending on the nature of the crime and the (suspected) guilt of suspects being detained in this manner.¹⁶ The acquisition of confessions is so important to police, even in cases where other evidence could prove overwhelming guilt, police will often feel pressured to secure a confession, as this will hasten legal proceedings.¹⁷ In addition, police often try to coerce confessions from suspected individuals before they can receive legal counsel, as defense attorneys often recommend that suspects in police custody refrain from speaking to the police, similar to how U.S. defense attorneys would.¹⁸

This desperation for confessions within police interrogations has backfired in many cases – especially considering that there have been a number of “guilty” verdicts which have been overturned upon further evidence being revealed.¹⁹ And in the most extreme cases, it has caused the darker side of police brutality in Japan to be brought into the limelight. For example, in 1995 a Japanese woman was found inside one of Japan’s love hotels with methamphetamine; it later came to light that a Chiba police sergeant provided her with the drugs. After she was sent to prison for drug possession, she was

¹⁴ Prime Minister of Japan and His Cabinet [website]. “Constitution of Japan.” [No date]

¹⁵ Megumi Wada email interview. October 7, 2020.

¹⁶ Nakamura International Criminal Defense LPC. “Criminal Cases in Japan – Q&A.” 2020.

¹⁷ Japan’s Prosecution System (36)

¹⁸ Megumi Wada Zoom Interview

¹⁹ Japan’s Prosecution System (52)

raped by a jail-guard. In both instances of sexual misconduct, she was forced to remain silent on her experiences with both men during her police interrogations, while both these officers were discreetly let go from their posts and suffering no other negative repercussions.²⁰ Another example of how the use of false confessions backfired occurred in late June of 2012, when an anonymous person that threatened to shoot up schoolchildren on the Yokohama city website led police on a manhunt.²¹ In the days that were to follow, several similar threats would be posted on the internet, which led police to arrest four people – including a 19-year-old student.²² However, it wasn't until October 9, 2012 that the true perpetrator – Yoji Ochiai – sent a confession to a lawyer and local media. In his confession, he admitted he had made those online threats in order “to expose the police and prosecutors’ abomination”.²³ As Yoji Ochiai was not one of the one’s arrested during this particular search, it would appear that his point in exposing police corruption was made.

However, these are not the only examples corruption in the history of the Japanese Police, and some experts have asserted that the problem may be worse than it appears.²⁴ This is due mostly to police corruption being covered up and hidden away from public view in order to avoid scandals and possible public outcry. In addition, while police in other nations, including the United States, have individuals in Criminal Investigations with strong and well-established investigative abilities, the Japanese police force does not appear to have individuals with as much investigative skills. According to

²⁰ Above the Law? (24)

²¹ Oi, Mariko. “Japan Crime: Why do innocent people confess?”. 2 January 2013. *BBC News*.

²² “Japan Crime: Why do innocent people confess?”

²³ “Japan Crime: Why do innocent people confess?”

²⁴ Above the Law? (26)

David Johnson, members of The National Public Safety Commission “tend to be elderly, conservative men from the community: business owners, doctors, and the like, who have neither police experience nor expertise and who, more importantly, have no staff to conduct investigations.”²⁵ These include internal police investigations to root out bad agents within the police force.

In comparison, American Police Forces, as a whole, have not reached the level of controversy that Japanese Police Forces are known for. Even in the wake of recent controversy, the United States Police Forces are generally known to be fair and held in high regard. This is not to say that American police are free from controversy, nor does it imply that there aren’t bad agents in American Police Forces. In fact, recent controversy (i.e. George Floyd, Breonna Taylor, etc.) have shed light on racial discrimination within American Police Forces.²⁶ However, even with the controversy surrounding police in America, the differences in how people react to this sort of controversy is very different. Generally speaking, whenever bad agents are exposed in American Police Forces, there are attempts to hold these bad agents responsible for their actions and large public outcry has often followed such controversy. In comparison, bad agents in Japanese Police Forces don’t often face negative repercussions beyond being “let go” from their posts. However, it should be noted that this comparison refers to general cases of police corruption in both countries.

²⁵ Above the Law (27)

²⁶ Alcorn, Chauncey. “Body cam industry is under pressure after deaths of George Floyd and Breonna Taylor.” *CNN Business*. Sep 28, 2020. <https://www.cnn.com/2020/09/26/business/breonna-taylor-george-floyd-axon-body-cams/index.html>

Obviously, not all bad agents in American police are caught, nor is every case of Japanese police corruption swept under the rug. However, for the purposes of this discussion, it is important to look at how the performance of both Police Forces affect the general attitudes towards police in both nations, as it helps to demonstrate the systemic issues in both instances. In the United States, there is oftentimes a push to hold police accountable for their actions, should those actions be reprimandable. Meanwhile, the way in which Japanese police are discreetly let go from their posts instead of facing negative consequences shows how Japanese society in general prescribes to ideas of collectivism and “face” culture – principles that are fairly common throughout East Asia. And while there have been recent efforts in Japan to have bad police officers held accountable for their negative actions, the level to which police are held accountable in Japan is not nearly close to police accountability that are held in America.

While the Japanese police are a big part of the problem when it comes to the controversial practices of the Japanese Legal System, they are only the start. The next step in understanding the alleged corruption is looking at how the judicial system in Japan functions, which includes the roles of prosecutors, defense attorneys, and Courtroom Judges in Japan. While examining these law professionals, many have commented on the quality and quantity of cases which are brought to court. Part of this stems from the police, which oftentimes sends cases to Judges and prosecutors after acquiring confessions from interrogation.²⁷ From the perspective of Japanese law enforcement, there is no point in sending someone through the court system if they vehemently refute their guilt and if there is no evidence which can be presented to

²⁷ Japan’s Prosecution System (36)

ascertain their guilt with certainty.²⁸ Also, Japan has no formal jury system to speak of, but it does have the *saiban-in* system (implemented c. 2008), which functions as a sort of quasi-jury system for more serious felony cases.²⁹ The *saiban-in* system relies on three professional judges and six *saiban-in* (lay assessors chosen from the electoral role) to examine a case in court and reach a verdict together.³⁰ However, it should be stressed that this system is implemented in only the most serious and controversial criminal cases and that most of the time, Japanese court hearings are heard by professional judges that pass down the verdict and sentencing.

From the point of view of the United States, the proceedings of Japanese courts would appear strange. As stated previously, all Court Cases in the United States are overseen by a jury of 12 (hopefully unbiased) peers – citizens that are selected to determine the guilt or innocence of an accused party. However, in most Japanese Court Cases – where *saiban-in* isn't implemented – the verdict of guilt and innocence is determined by just one person, the professional Judge presiding over the case. And, even in cases where *saiban-in* is implemented, it does not rely on the verdict of normal citizens to determine the results of a case. Rather, it simply increases the number of legal professionals that are relied upon to investigate the truth of the most extreme and controversial crimes. In recent years, there has been a push by the International Community for Japan to adopt some form of jury system – as many have viewed this as a means to increase Japanese civil rights for suspected criminals. However, Legal agents

²⁸ Ramseyer, Mark J. and Eric B. Rasmusen. "Why is the Japanese Conviction Rate So High?" *The Journal of Legal Studies*, vol 30 no. 1, January 2001 (68).

²⁹ Lawyer interview-survey, Megumi Wada

³⁰ Katsuta, Takuya. "Japan's Rejection of the American Jury System." *The American Journal of Comparative Law*, JSTOR (500).

in Japan have long-resisted adopting a formal jury system, including professional Judges, as they fear this would decrease or abolish their power in court.³¹ While the *saiban-in* system does alleviate some of the controversy surrounding the power of professional Judges in Japanese courts, the idea that professional Judges wish to hold onto what power they have speaks to the magnitude of that power – it would appear as though they rely on their position of power to maintain their reputation within the Japanese Legal System. Obviously, such power would compel these professional Judges to “lock up criminals”, which would help to explain another large part of why the Japanese conviction rate is so high – and why so many potentially innocent people are locked up. However, while judges maintaining their power is another large link in the high conviction rate of the Japanese Legal System, there is one more factor that we must study in order to get a complete picture of the high conviction rate: the prosecuting and defense lawyers.

Lawyers, both prosecutors and defense, are also not free from the scrutiny and controversy of Japanese law. To start, prosecutors have often been seen more favorably over defense attorneys in the public eye, as prosecutors were seen to help put bad people away, while defense attorneys were often seen as trying to defend those that were guilty. However, according to one attorney, Megumi Wada, these attitudes have started to shift slightly in the wake of controversial court cases, especially in overwhelming evidence of coerced confessions from police. In addition, she also states that the introduction of the *saiban-in* system has “contributed a little to have the public understand the roles of defense counsels”.³² However, the acquisition of confessions from police is still often

³¹ Megumi Wada Zoom Interview

³² Lawyer interview-survey, Megumi Wada

seen as necessary for the prosecution's case.³³ In spite of this reliance on confessions during police interrogations for the prosecution (and police), however, there have been efforts in recent years to place more emphasis on what defendants say during the trial, mostly in the wake of scandals regarding coerced false confessions.³⁴ This differs widely from court cases in the United States, which don't rely as much on admissions of guilt, but puts more emphasis on evidence and witness testimony. However, there is also evidence to suggest that prosecutors and police often work together in Japan, as prosecutors rely on the confessions brought forth from police interrogations in criminal cases against suspected individuals.³⁵ In addition, the burden of proof in Japan, according to official documents, states clearly that the burden of proof lies with the prosecution, meaning that the defendant is innocent until proven guilty.³⁶ However, the overabundance of confessions and convictions in Japan would seem to suggest that the prosecutors rarely have to prove that the defendant is guilty, as they rely on these confessions in order to convict them. This means that while the burden of proof appears to lay with the prosecution in theory, in practice, the defense has to prove that the defendant confessed under false pretenses – which may be difficult within the practices of Japanese Law.

When comparing defense counsel and prosecuting counsel in Japan to that of the United States, there are only slight difference. Prosecution counsel in America may rely on police to give testimony on what a suspect said upon being interrogated, but this is not always the case. In addition, while all agents in the American Legal System (defense,

³³ Japan's Prosecution System (35-36)

³⁴ Lawyer interview survey, Megumi Wada

³⁵ Megumi Wada Zoom Interview

³⁶ Ramseyer and Rasmusen (55).

prosecution, judges, and police) work together to some degree in many court cases, it is only to ensure that all Legal agents are aware of everything that is occurring in a case. For example, defense counsel and prosecuting counsel may communicate with each other about what kinds of evidence (physical, witness, etc.) that each is planning to use in a case before it is presented to the Court officially. Also, while there have been many American cases in which prosecuting counsel has relied on police testimony of what suspected individuals have said during interrogation, it is done to a lesser degree in comparison to Japanese trials, as prosecutors can rely on more than just police testimony (i.e. witness testimony, physical evidence, etc.). This is not to say that Japan does not rely on other forms of evidence. However, the reliance on confessions from police interrogations by the prosecution is so high, it is well-known that the police and prosecutors in Japan work in ways that are considered much more tight-knit in comparison to their American counterparts.³⁷ Therefore, people that are brought to the courtroom have a lot going against them when they are sent to the courtroom, as the odds are stacked against them from the moment that they are arrested and formally indicted for a crime.

IV. CONTROVERSY AND REFORM

This discussion has taken a thorough look at the legal agents between the American Legal System and the Japanese Legal System, where Japanese police use shady interrogation methods to coerce confessions, the professional judges have ample reason to find defendants guilty, and where prosecuting legal counsel is viewed more favorably

³⁷ Megumi Wada Zoom Interview

than defense counsel. At this point, it is important to examine exactly why the Japanese Legal System is like this, especially considering that the crime rate is so low. The first factor that will be explored will be Japanese Collectivist principles, where Japanese individuals see themselves as one part of a larger society and do what they can to increase benefits for society at the expense of their own Individualism. Japanese Collectivism forms a strict social hierarchy, which often looks down upon those that fail to benefit society. From this vantage point, we will explore why suspected individuals are viewed as guilty upon their arrest under the idea that they have potentially let society down. The second factor that this discussion will focus on are the possible benefits that come about from the prosecution and conviction of people that are brought to court. This factor will explore how Japanese Legal agents explain the Japanese conviction rate in a positive light and the nuanced benefits of their Legal System as it currently stands. This discussion will see how accurate these positive aspects of the Japanese Legal System are. Finally, it will be important to know how the citizens of Japan view the Japanese Legal System and whether or not they see need for improvement. This will be important in establishing if the Japanese people are demanding reform of the Japanese Legal System and how strong the desire for reform is.

As stated previously, the methods of the Japanese Legal System are somewhat analogous with ideas of Collectivism principles found inside Japan. According to David T. Johnson, “the collective and hierarchal features of Japan’s procuracy such as *kessai* – the system of consultation with superiors about case dispositions – help explain Japan’s high conviction rates.”³⁸ As this suggest, ideas of a highly hierarchal system can be

³⁸ Japan’s Prosecution System (60).

found within the Japanese Prosecution System, one which revolves around strict Collectivistic principles that are common in Japan. This Collectivistic hierarchy within the Japanese Prosecution System has allowed them to become very powerful within the overall Legal System itself. Johnson notes this by saying,

“Prosecutors have more control over life, liberty, and reputation than any other officials in Japan. Their discretion is so great that commentators call the country’s criminal process a system of “prosecutor justice.”

Prosecutors exercise this discretion in the context of three overlapping ambits: their own organization, which is highly centralized, hierarchical, and integrated; a criminal court community that includes judges, police, and defense lawyers but is largely controlled by prosecutors; and the political and cultural contexts of Japan’s nation-state.”³⁹

Due to the very hierarchical nature of the Japanese Prosecution System, which allows them some level of control over police, judges, and defense attorneys, it is hardly surprising that the conviction rate in Japan is so high. However, before continuing onwards, it is important to note that while Japanese society as a whole prescribes to certain Collectivistic principles, it also prescribes to certain Individualistic principles as well. This is important, as it helps to demonstrate that Japan has consistently looked for ways to reform its Legal System since the end of World War II (as one example, the introduction of *saiban-in* circa 2008). In addition, there would hardly be any point in discussing possible future reforms if the Japanese Legal System were slave to the

³⁹ Japan’s Prosecution System (35-36).

Collective and hierarchical system of the Japanese Prosecution. However, the important takeaway from these ideas is that the Japanese Prosecution System maintains more control of the Legal System in comparison to other Japanese Legal agents.

Ramseyer and Rasmusen examine other possibilities, beyond culture, to determine why the Japanese conviction rate is so high. For their research, they point out a number of possibilities:

“For a scholar, high conviction rates are a bedeviling puzzle. They might be high because prosecutors prosecute only the guilty, and judges then duly convict. Or they might be high because judges dutifully convict everyone prosecuted, guilty or not. To determine the truth – which could include both reasons – we would seem to need independent evidence of the guilt of the accused. That, of course, is information we rarely have.”⁴⁰

Here, the possibility of having a Legal System which prosecutes (and convicts) the people that are only truly guilty is introduced. Ramseyer and Rasmusen seem to conclude as much when they state “Japanese prosecutors are woefully understaffed. Tied as they are to a severe budget constraint; one might expect them to try only the most obviously guilty. Unbiased courts would then convict. The conviction rate would approach 100 percent.”⁴¹ However, this information should also take into account certain aspects of the Japanese Legal System in history. According to Johnson, “For much of the postwar period...law enforcement officials confronted little serious crime, few firearms or illicit drugs, and an impressive quality of public order, all of which made their work

⁴⁰ Why is the Japanese Conviction Rate so High? (59).

⁴¹ Why is the Japanese Conviction Rate so High? (88).

less demanding and vastly less dangerous than law enforcement work in many other nations.”⁴² However, Johnson points out that since the early years of the postwar period, crime increased for Japan and ultimately caused law enforcement to become a lot harder to accomplish, especially when crime increased between the 1990s and 2000s.⁴³ Given the fact that Japanese prosecutors would face incentives to prove the defendant guilty and that they work closely with police, the idea that they only prosecute the people that are obviously guilty becomes much more unlikely in the face of such evidence.

When it comes to the United States and its Legal System, it is easy to imagine that it is far better than the Japanese Legal System. However, the American Legal System is far from perfect, and the Japanese often like to hound on the systemic problems that face the American Legal System in order to resist reform that would make the Japanese Legal System similar in nature to its American counterpart.⁴⁴ One such major resistance has been the implementation of a legitimate jury system. Japan has often been quick to point out the systemic flaws in relying on ordinary citizens to reach a verdict on the guilt or innocence of any given defendant.⁴⁵ Oftentimes, juries can get things wrong, and even with the ability to appeal a guilty verdict to a higher court of law, the Japanese see this as spending more time and energy than is necessary for all persons involved in the legal proceedings. The narrative, in this instance, is to streamline the process of law most of the time, as the Japanese place more value on “uniformity and predictable accuracy of decisions.”⁴⁶ On the one hand, by cutting out a jury and allowing a single judge to decide

⁴² Japan’s Prosecution System (36).

⁴³ Japan’s Prosecution System (36).

⁴⁴ Katsuta (499).

⁴⁵ Katsuta (499).

⁴⁶ Katsuta (508).

verdicts in common criminal cases, less time and money is spent in determining the verdict of the accused; on the other hand, the possibility of false confessions and false testimony could lead to false convictions. However, this leaves Japan in a precarious situation, where all Legal agents appear to abuse their powers in order to further their careers. While Japan has tried to implement checks in order to avoid these pitfalls in recent years, the System is still very much in the thralls of corruption and scandal. Therefore, because the Japanese Legal System is so resistant to the implementation of a jury system, it seems unlikely that one will be implemented anytime soon.

Due to the number of systemic issues in the Japanese Legal System, Legal Reform is a topic of major importance in Japan. This discussion has explored one example of Legal Reform thus far (*saiban-in*) which has been one of the most significant pieces of Legal Reform in Japan since the end of WWII. However, the demand for Legal Reform in Japan has been an ongoing process for quite some time. In the 1990s-2000s, for instance, there was a major push to open more law schools in Japan and to increase the number of people that passed the bar exam in Japan.⁴⁷ In addition to this, there have been numerous demands for other reforms, including increasing the number of cases where *saiban-in* is implemented, police accountability, allowing suspected individuals to have greater access to legal counsel, and debates about the viability of a jury system in Japan. In order to better understand how each of these reforms would be implemented, it is important that they be discussed in detail within a Japanese context.

⁴⁷ Rosen, Dan. "Japan's Law School System: The Sorrow and the Pity." *Journal of Legal Education*, vol 66, no. 2. (271).

Another big piece of legal reform is the accountability of the Japanese police. As previously pointed out by David Johnson, the police in Japan have been under scrutiny as a major force of scandal and corruption.⁴⁸ As such, there is a great push both within Japan and the International Community to push for greater police accountability in Japan. However, Johnson also points out that this may be harder to implement than most people think. Even in the wake of many scandals that have come to light in recent years, the Japanese police supposedly hold more integrity within Japanese society than in comparison to American police within American society.⁴⁹ This can partially be explained by the fact that Japanese society as a whole is less diverse than in comparison to American society; and the Japanese police are far less divided on issues of the law and who they are protecting in comparison to their American counterparts. However, Johnson also argues that the amount of integrity that police subscribe to is up for some debate, as “despite these favorable social contexts, the recent wave of police scandals raises doubts about officers’ normative commitment to integrity and about previous claims that Japanese police behavior is ‘astonishingly good.’ I hasten to add, however, that the evidence all around is thinner than it should be, in part because Japan’s police establishment is so ‘keenly suspicious of academic scholars...that it is impossible to make confident conclusions.’”⁵⁰ Therefore, Johnson concludes that Japanese police should open up to more outside scrutiny and become more transparent. This would not only allow for a crackdown on police corruption, but it would also allow for better communication between the Japanese police and the Japanese public. If legal reformers

⁴⁸ Above the Law? (19).

⁴⁹ Above the Law? (32).

⁵⁰ Above the Law? (32).

and ordinary Japanese citizens could demand better police accountability, it would go a long way in ensuring that false confessions are never made and would help to better facilitate another part of legal reform: the ease of access to which people arrested by the police have to legal counsel.

As stated previously by Megumi Wada, many people that are arrested by the police are not allowed access to a lawyer. In America, legal counsel is a right that is guaranteed by United States law. And while Japan has similar laws which allow an accused person to have a lawyer during trial, there are times where police will withhold legal counsel from an accused party in order to extract a confession. In Japan, much like in the United States, if a lawyer is made to be present sometime during police interrogation, legal counsel will advise an accused person to cease all further dialogue with the police if possible. In America, police will often cease any further interrogation once an accused person has asked for a lawyer. In Japan, this same policy is not afforded to an accused person, with police continuing to press for an individual to confess to committing a crime. While there are already some legal reformers that have pushed Japan to allow a greater ease of access to legal counsel, this should be something which is pushed to a much greater degree than it is now. This is because greater ease of access to legal counsel would help to facilitate a fairer trial within Japanese court, especially given the number of false confessions and other scandals that have come to light within the Japanese Legal System. The right to an attorney in Japan, much like in America, is to help better facilitate the gathering of relevant information and to allow fair and equal treatment under the law. This is something that should be afforded to all people that are arrested by the police in Japan.

Finally, there has been some debate as to whether or not Japan could have a jury system or some other system that would have greater societal participation than the current *saiban-in* system that is currently implemented in Japan. Despite the fact that Japan currently has no jury system, it did attempt to implement a jury system that was active from 1928 to 1943.⁵¹ However, despite the popularity and success of the Jury Law in Japan initially, many people that were accused opted to have a trial by judge rather than a trial by jury. There has been much debate over exactly why individuals decided to forego a trial by jury which ended with the suspension of the Jury Law in 1943, including that the Japanese Jury Law had many defects.⁵² However, regardless of the actual causes which led to it, this had a profound effect on the ways in which Japanese society and the Japanese government viewed a jury system.

Saiban-in has been one of the most substantial pieces of legal reform of Japan in the 21st century. However, as has already been discussed, it is only used in the most extreme legal cases, such as arson and murder. However, because it relies on a more thorough examination of facts within legal cases, there has been some push to expand the *saiban-in* system.⁵³ The *saiban-in* system, which has only been implemented for a few years, was designed as a compromise between those that wanted to break away from the old system of simply having a courtroom judge view the facts and having a jury system.⁵⁴ It was designed to be more inclusive and allow more people with legal experience to take a closer look at facts for particularly controversial cases, but not so inclusive that it relied on the judgement of ordinary citizens in order to determine the facts of all cases. For the

⁵¹ Katsuta (503).

⁵² Katsuta (506).

⁵³ Megumi Wada Zoom Interview.

⁵⁴ Katsuta (524).

most part, the *saiban-in* system appears more legally sound in comparison to a legal case that is overseen by a single judge only. Therefore, it is no surprise that legal experts in Japan would seek to expand its use. Of course, minor criminal and civil cases will most likely be excluded (i.e. petty theft, traffic law, etc.). However, for the purposes of reform, it is important to move forward cautiously when expanding the implementation of *saiban-in*, as due to the high resistance of the jury system of Japan, it would most likely be unwise for legal reformers in Japan to move too quickly and rashly when pushing for greater use of the *saiban-in* system. However, given the amount of impact that the *saiban-in* system has had on the Japanese Legal System, legal reform which involves greater implementation of the *saiban-in* system would be one of the greatest ways to help facilitate legal reform.

V. CONCLUSION

While many of the ways in which the Japanese Legal System is set up may seem corrupt and unethical by American standards, it is important to realize that Japanese society recognizes the flaws within their Legal System and many are attempting to change it. However, it is also important to realize that the Japanese crime rate is low, and although the Japanese Legal System has many flaws, there are many that see the low crime rate and question the need for reform of the Japanese Legal System, even with its many flaws. Because of this, reform will come slower than what may be deemed optimal by the International Community. However, change has been implemented within this System with *saiban-in*, and so there is hope that Japan can reform its Legal System in order to weed out the corruption that is currently present. Some of the biggest reforms will have to involve expanding *saiban-in* to more court cases, the accountability of the

Japanese police, and the ease of access of accused persons to Japanese legal counsel. Generally speaking, this is where current legal reformers in Japan are focusing their attention. However, there is some doubt that Japan will reach these goals, as there are a large number of Japanese people which questions the need to reform at all, not only because of the low Japanese crime rate, but also because of Japanese cultural attitudes towards uniformity and decision-making. Therefore, if legal reform is to be further implemented in Japan, it is important that legal reformers within Japan and the International Community continue to make the push and hold the Legal agents within the Japanese Legal System to a higher standard. Even then, progress will be slow, as Japan has had very little reform and push-back by more conservative/traditional citizens in Japan may prove to halt the progress of legal reform. However, as long as the systemic issues within Japan exist, the discussions about what sorts of legal reform Japan should implement will continue.

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