

## Japan's lay judges, and why Australia should listen up

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In 2009 Japan introduced two systems of lay adjudication: a quasi-jury system (*saiban-in seido*) and a grand jury system, the Prosecution Review Commission (*kensatsu shinsakai* or PRC).



Much public and scholarly attention has been paid to the quasi-jury trials, where six citizens and three professional judges decide on criminal matters. But the greatest impact of lay adjudication is seen in the power of the new grand jury, the PRC, to prosecute members of formerly untouchable groups.

The PRC was established in 1948. Eleven randomly chosen citizens were asked to review the prosecutor's failure to prosecute the accused, often reversing its decision and recommending the accused be prosecuted. But because PRC decisions were regarded as advisory, prosecutors consistently failed to follow them. The new PRC law, however, made prosecution recommendations legally binding, leading to a series of high-profile prosecutions, including that of prominent politician Ichiro Ozawa over [political funding violations in 2009](#)<sup>[1]</sup>. While Ozawa was recently acquitted, the prosecutor's decision to appeal his acquittal further hampered his ability to return to the political scene.

The introduction of these two systems of citizen adjudication is the product of grassroots movements supported by progressive lawyers and concerned citizen activists, who sought to bring about transparency and accountability in Japan's criminal justice system.

In the post-war decades, civilian efforts to transform Japan's criminal court system were focused on re-introducing Japan's 1923 Jury Law, which the military government had suspended in 1943 in favour of a collegial bench trial system. Without juries, the post-war colleges had a 99.9 per cent criminal conviction rate. By contrast, pre-war juries acquitted 17

per cent of criminal defendants. This imbalance prompted victims of wrongful convictions and their families, progressive lawyers and civil activists to advocate and secure all-citizen jury trials.

The campaign to reinstate jury trials gained momentum with the creation in 1982 of the Research Group on Jury Trial (*Baishin Saiban o Kangaeru Kai* or RGJT). This organisation was led by prominent legal writer Chihiro Isa, who participated in a 1964 jury trial in US-controlled Okinawa. Also joining the group were prominent Attorney Shojiro Goto and many progressive lawyers from the Japanese Federation of Bar Associations (JFBA). The RGJT soon became the national centre for disseminating jury information and organising public forums attended by prominent scholars and jurists. Individual RGJT members also created branch organisations in Niigata, Osaka, Kumamoto and other regions.

Another organisation that helped establish lay adjudication systems is the PRC Society (*Kensatsu Shinsakai Kyokai*), established in 1955 by former PRC members. Its purpose was to educate the public about the importance of citizen participation in law, as well as civilian oversight of the activities of Japanese prosecutors.

The influence of these movements came to fruition when a JFBA lawyer, who was a long-time RGJT member and worked closely with the PRC Society, successfully joined the governmental joint-task force to formulate specific provisions of the quasi-jury and PRC systems. Since the introduction of the systems in 2009, more than 600,000 citizens have served as PRC members.

Both the quasi-jury and the new PRC systems then successfully altered the ways in which military crimes are adjudicated, eradicating the privilege of extraterritoriality reserved for US military personnel stationed in Japan. In 2010, an American soldier who robbed and injured a cab driver was tried in a lay court for the first time in Japanese legal history. The quasi-jury panel found him guilty and sentenced him to 3–4 years in a Japanese prison. The PRC's decisions in subsequent cases involving American military personnel also forced the Japanese and US governments to modify the [US–Japan Status of Forces Agreement \(SOFA\)](#) <sup>[2]</sup> policies on the handover of military felons.

Similar civilian oversight functions are needed in Australia. In November 2011, President Obama announced that the US would [deploy 2500 marines to Australia](#) <sup>[3]</sup> and made an agreement that allowed the US Air Force to have increased access to airfields near Darwin. Like in Japan, the increased presence of US soldiers in Australia risks the victimisation of local residents, as the case of the US Navy sailor who killed an Australian cyclist in Willowbank, Queensland, in 2011 shows. But as the US–Australia SOFA gives the US military the right to exercise primary jurisdiction over crimes committed while on duty in Australia, it was an American military court, rather than an Australian court, that adjudicated the crime.

It is time for civil activists and grassroots organisations in Australia to reclaim the right to exercise primary jurisdiction over crimes committed by foreign soldiers. Similarly, a civilian oversight panel might be established to monitor the decisions of Australian prosecutors. Japan's recent history offers some clues to the benefits of citizen adjudication and the need to create civilian oversight of both the Australian and US governments' activities.

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[1] political funding violations in 2009:

<http://www.eastasiaforum.org/2009/09/20/no-interests-no-connections-and-no-expertise-the-man-in-charge-of-japanese-agriculture/>

[2] US–Japan Status of Forces Agreement (SOFA):

<http://www.eastasiaforum.org/2009/11/15/us-japan-alliance-time-for-the-us-to-accept-new-realities/>

[3] deploy 2500 marines to Australia:

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