Asian Journal of Law and Society, 7 (2020), pp. 159–189
doi:10.1017/als.2019.22

Lay Participation in Japanese Criminal Justice: Prosecution Review Commissions, the Lay-Judge System, and Penal Institution Visiting Committees•

Stacey STEELE*
University of Melbourne

Carol LAWSON**
University of New South Wales & Australian National University College of Law

Mari HIRAYAMA***
Hakuoh University

David T. JOHNSON****
University of Hawaii at Manoa

Abstract

This article highlights reliance on lay participation as a mechanism for solving perceived problems in Japanese criminal justice by examining three reforms aimed at increasing lay participation in Japanese criminal justice: the mandatory prosecution power given to Prosecution Review Commissions, the *saiban'in seido* (lay-judge system), and Penal Institution Visiting Committees. The article argues that lay participation plays an important role in legitimizing aspects of the current system. Despite the Nagoya Prison Scandal in 2002–03, Japan's extraordinary achievements in order inside prisons have been maintained and citizens are comforted that the system has oversight by Visiting Committees. Although PRCs and *saiban'in seido* represent a more open approach to eligibility and selection than Visiting Committees, they too help to legitimize existing structures. The article concludes by considering challenges to the continued reliance on lay participation in Japan including reform fatigue, the demographic crisis, the impact of geography, and technological developments.

Keywords: Japan, criminal justice, lay participation, Prosecution Review Commissions, *saiban'in seido*, lay-judge system, Penal Institution Visiting Committees

• The authors gratefully acknowledge the financial support of a Melbourne Law School–Asia Research Collaboration Grant ("Death Penalty, Prosecution and Detention in Japan") for the workshop and related research assistance that led to this article. Ms Lawson's contribution was also supported by an Australian Government Research Training Program Scholarship and Endeavour Research Fellowship. We thank our research assistants, Kaori Kano and Subin Cho, of the Asian Law Centre, Melbourne Law School. This article reflects the authors' personal opinions. Statements do not represent the views or policies of employers, past or present, or any other organization with which any author is affiliated.

* Associate Director (Japan), Asian Law Centre and Associate Professor at Melbourne Law School, the University of Melbourne.

** Associate Lecturer, University of New South Wales Centre for Law, Markets and Regulation; PhD Candidate, Australian National University (ANU) College of Law.

*** Professor of Law at Hakuoh University.

**** Professor of Sociology at the University of Hawaii at Manoa.

1. INTRODUCTION: LAY PARTICIPATION IN JAPANESE CRIMINAL JUSTICE

This article highlights reliance on lay participation as a mechanism for solving perceived problems in Japanese criminal justice and argues that lay participation plays an important role in legitimizing the current system. The article examines three reforms aimed at increasing lay participation over the last decade: the mandatory prosecution power given to *Kensatsu Shinsakai* (Prosecution Review Commissions, or "PRCs"), the advent of the *saiban'in* system (lay-judge system), and the *Keiji Shisetsu Shisatsu I'inkai* (Penal Institution Visiting Committees, or "Visiting Committees").[1] These reforms took effect at approximately the same time over a decade ago and each involves some element of the general public in different stages of the criminal justice process. PRC members review non-charge decisions by Japanese prosecutors. Reforms in 2004 made a PRC decision legally binding if the PRC recommends prosecution twice, effective from 2009.[2] The lay-judge system involves citizen participation in serious criminal trials and also was introduced in 2004, with the first such trial occurring in 2009.[3] Visiting Committees commenced full operations in 2006 after eight corrections officers at Nagoya Prison were charged with criminal offences in 2002–03 in connection with the deaths of two inmates and the injury of a third.[4] These reforms coincided with a broad spectrum of other legal reforms introduced in Japan throughout the 1990s and 2000s, and their content was influenced by that timing.[5]

By juxtaposing the much-studied lay-judge system with PRCs and Visiting Committees, this article analyses the diversity of meanings ascribed to "lay" and "participation" in Japan. There is no prescribed definition for either term in Japan. Lay participation, broadly defined, may refer to any method that provides an avenue for citizen involvement in any part of the criminal process.[6] In some cases, such as the Visiting Committees and PRCs, participation institutions are arguably designed to provide for lay oversight of professionals. The adoption of lay participation in so many new forms in recent years, despite significant economic costs and potential challenges to incumbent stakeholders, is a significant policy trend.[7] In the 1980s, one of Japan's leading criminal-procedure scholars criticized the criminal justice system for being indifferent to society's needs.[8] To deal with this and other concerns discussed in this article, the concept of lay participation was rhetorically appealing to many in Japan in the 1990s and 2000s.[9] However, each reform has also helped legitimize parts of Japanese criminal justice. The content, quality, and consequences of participation can be difficult to gauge, but the new lay participation mechanisms reflect policies of innovation

1. *Saiban'in* is variously translated, including as "lay judge," "quasi-jury," or "lay assessor." A conversion rate as at 2 January 2018 of USD 1 = JPY 109.39 is used in this article.

2. On the pre-reform PRCs, see West (1992); Fukurai (2007), pp. 323–8.

3. Act on Criminal Trials with the Participation of *Saiban'in* (Act No. 63 of 2004).

4. See Lawson (2015).

5. Other reforms dealt with corporate governance, administrative law, insolvency law, and obligations law in the Civil Code. See e.g. Foote (2007).

6. Herber (2019) discusses five forms of lay and expert participation in Japanese criminal justice: psychiatrists, social workers, victims, scientists, and lay judges.

7. On the economic cost, see Fujita (2018). On "opportunities and risks," see Kage (2017), pp. 2–3.

8. Kōya (1981), p. 9.

9. Wilson (2017a).

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press

in the "service of stability" and not immediate, substantive change.[10] The article's focus on the different meanings ascribed to "lay" and "participation" that are reflected in the reforms highlights the problem of finding reliable ways to assess the reforms. This article is not an attempt to assess the success or failure of these reforms, however, for that is the focus of other research.[11] Rather, it concludes by analyzing some challenges for the future of lay participation, including reform fatigue, the demographic crisis, the impact of geography, and technological developments.

2. OVERVIEW OF THE REFORMS

This section provides an outline of the PRC, lay-judge system, and Visiting Committee reforms. The reforms are presented in the order in which they interact with Japanese criminal justice. PRCs involve lay participation at the commencement of proceedings when prosecutors are making charging decisions. *Saiban'in* are involved during the criminal-trial process. Visiting Committees primarily interact with the process after the accused is found guilty and sentenced to prison, although they also oversee detention houses, where detainees await trial or sentencing. Visiting Committees are dealt with in more detail because of the relative lack of information available in English.

2.1 Prosecution Review Commissions

The revised *Kensatsu shinsakai hō* (Prosecution Review Commission Act) ("PRC Act")[12] amended the PRC Act of 1948 to make it possible for a PRC to *require* prosecutors to file criminal charges. Until this revision in 2004, a PRC could only make a non-binding recommendation that prosecutors bring charges, which was often ignored.[13] In many respects, Japanese prosecutors exercise their discretion cautiously, by following a conservative charging policy which mandates that they only file charges in cases that will end in conviction (a "trial sufficiency policy").[14] The new PRC Act means that Japanese prosecutors no longer possess a monopoly over criminal-charge decisions. PRCs cannot review prosecutors' decisions to *indict*, but they can review and overrule prosecutors' decisions *not to indict*. As of 2018, there were a total of 165 PRCs in Japan's district-court jurisdictions.[15] Each PRC is composed of 11 citizens who are authorized to review prosecutors' decisions not to indict.[16] Citizens are

10. Similarly, Foote considers "activism in the service of stability" in the context of Japanese employment, family, and landlord–tenant law reforms. Foote highlights decisions by judges that protect weaker parties but maintain existing relationships without individually empowering those weaker parties. See Foote (1996), p. 694.

11. See e.g. Johnson & Hirayama (2019); Fujita, *supra* note 7, especially pp. 67–8; Foote (2014). For comparisons of the lay-judge system and PRCs, see Yang (2017) and Fukurai (2013).

12. Prosecution Review Commission Act ("PRC Act") (Act No. 147 of 1948).

13. See *supra* note 2 for commentaries on the pre-reform process.

14. Johnson (2002), p. 473.

15. For the list of PRCs, see Courts in Japan (undated-a).

16. Art. 2, PRC Act, *supra* note 12 provides the PRC power to review the decision not to charge.

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chosen randomly from Japan's electoral roll.[17] Each member is paid a daily amount decided by the chair of the PRC of up to JPY 8,000 (approximately USD 73).[18]

If prosecutors decide not to indict, they must notify the alleged victims or parties who filed a complaint. A PRC begins a review of such a decision in one of two ways. First, a PRC may establish a review in response to a claim made by an alleged victim or victim's proxy. Alternatively, based on a majority vote, a PRC may carry out a review on its own initiative.[19] A PRC reviews the case in private,[20] by questioning prosecutors,[21] summoning witnesses,[22] and asking for expert advice.[23] Ultimately, a PRC arrives at one of three decisions, which is presented to prosecutors in writing: (1) non-indictment is proper (i.e. essentially agreeing with prosecutors that the case should not proceed), (2) non-indictment is improper (i.e. suggesting prosecutors reconsider), or (3) indictment is proper (i.e. disagreeing with prosecutors and telling them they should prosecute). For the first two of these outcomes, a majority vote is required (six to five) and a super-majority of eight or more is necessary for the third outcome.[24] If prosecutors decide not to indict and then the PRC decides that indictment is proper, prosecutors must reconsider their non-charge decision.[25] If prosecutors decide for a second time not to indict or if they do not indict within three months, they must explain their decision to the PRC.[26] The PRC then reconsiders the case and, if it still thinks that indictment is proper, its decision becomes legally binding.[27] Indictments that result from this two-step process are called cases of "mandatory prosecution" (*kyōsei kiso*). Since the reforms to the PRC Act became effective in May 2009, nine criminal cases have resulted in mandatory prosecution, involving a total of 13 defendants.[28]

Mandatory prosecutions are led by a "designated attorney" (*shitei bengoshi*) appointed by the court.[29] The designated attorneys prosecute the case and have powers similar to those of public prosecutors. However, attorneys are not permitted to discontinue the mandatory indictment unless "litigation conditions are lacking" and, whilst they may conduct supplementary investigations, they are not permitted to direct the police or public prosecutors.[30] Some local bar associations maintain a list of attorneys willing to act as designated attorneys in PRC matters for the courts to draw on. Those lists include leading attorneys in each bar association who typically belong to the Japanese Federation of Bar Associations (JFBA)

17. Arts 4, 5-18(2), *ibid*. provide the eligibility to be a member of the PRC and the structure of the PRC. See discussion further below in relation to eligibility and selection.

18. Regulation 3 of Cabinet Order prescribing the Travel Expenses, Daily Wages, and Accommodation Expenses for Members of Prosecution Review Commissions (Order No. 31 of 1949). See also Courts in Japan (undated-b).

19. Art. 2(3), PRC Act, *supra* note 12.

20. Art. 26, *ibid*.

21. Art. 35, *ibid*.

22. Art. 37, *ibid*.

23. Art. 38, *ibid*.

24. Art. 39-5(2), *ibid*.

25. Art. 41, *ibid*.

26. Arts. 41(2)-(3), *ibid*.

27. Arts. 41-2(1)-(2), *ibid*.

28. For a summary of the cases, see Johnson & Hirayama, *supra* note 11.

29. Art. 41, PRC Act, *supra* note 12.

30. Art. 41-9(3) proviso, *ibid*.

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working group on PRCs.[31] Local bar associations may ask attorneys participating in local study groups on PRCs to put their names forward for the local list.[32]

2.2 Lay-Judge System

The lay-judge system was also legislated in 2004 and came into effect in 2009. The system involves six lay judges chosen at random from the electoral roll joining three professional judges to decide criminal guilt in serious criminal trials.[33] The lay judges participate in fact-finding, decisions on law, and sentencing at the district-court level.[34] District courts are Japan's courts of first instance for most criminal cases. There is a single district court in each of the 47 prefectures, except Hokkaido, where there are four district courts. The district courts have branch offices in a total of 203 locations. Lay judges sit on the bench with professional judges and may ask questions during the trial before deliberating with professional judges. Lay judges are paid a stipend of up to JPY 10,000 (approximately USD 91) per day.[35] A trial involving lay and professional judges requires a majority of at least nine people and at least one of those nine people in the majority must be a professional judge. As such, a trial involving lay judges still needs the support of a professional judge for a defendant to be found guilty. The support of a professional judge is not required for an acquittal and a majority of lay judges may decide to acquit a defendant.

Between May 2009 and October 2018, 11,564 trials involving *saiban'in* occurred and 65,243 Japanese citizens have served as *saiban'in*.[36] Commentators have been watching to see whether there have been significant impacts on Japan's historically high conviction rates.[37] A comparison of acquittal rates pre and post reform suggests that the lay-judge system has made little difference to overall conviction rates, which remain high. In trials involving lay judges, the accused was acquitted in 0.8% of cases to October 2018,[38] while, in pre-reform cases involving only professional judges, the accused was acquitted in 0.6% of cases between 2006 and 2008.[39] But there are some significant differences, depending on the type of case. For example, post-reform acquittal rates for drug-related cases (3.9%) are higher than the average post-reform acquittal rates (0.8%).[40] Moreover, the participation of *saiban'in* in trials has seen little impact on sentencing trends overall to date, in part

31. See JFBA (undated).

32. On designated attorneys, see Yasuhara, Nakagawa, & Hasabe (2016). The authors acted as designated attorneys in the Akashi Pedestrian Bridge Case (2001–16). For the facts of that case, see Johnson & Hirayama, *supra* note 11, p. 11.

33. Some trials may be heard by one professional judge and four lay judges where all parties agree. The authors are not aware of such a case to date. On the process that yielded this option, see Ikeda (2009), pp. 20–2.

34. On the system generally, see e.g. Steele (2015a).

35. Rule 7, Rules in Relation to the Lay-Judge Participating Criminal Trial (SCR No. 7 of 2007).

36. Supreme Court of Japan (undated-a), pp. 2, 5.

37. Care should be taken when comparing conviction rates and sentencing across jurisdictions. Johnson, *supra* note 14, pp. 214–42; see Herber, *supra* note 6, pp. 164–8.

38. Supreme Court of Japan, *supra* note 36, p. 4.

39. Ministry of Justice (2013). Some commentators see this change as significant. See e.g. Takeda (2019b), p. 19; Kage, *supra* note 7, pp. 181–6.

40. Supreme Court of Japan, *supra* note 36. On sentences for sex-related crimes, see Hirayama (2012) and Herber, *supra* note 6, p. 168. Herber noted higher sentences for sexual crimes meted out by the lay judges.

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because professional judges use sentencing precedents from the pre-lay-judge period to guide sentencing deliberations in lay-judge cases.[41]

Although the new system has not yet significantly changed conviction rates or sentencing patterns, its impacts may be seen in many other ways.[42] Judges, prosecutors, and defence counsel, for example, now meet before the so-called continuous trial and agree to a plan for the trial.[43] Further, since 1 June 2019, police and prosecutors are required to record suspect interviews in their entirety where the case will be heard by *saiban'in*.[44] Moreover, defence lawyers have seen an increase in the amount of information disclosed by the prosecution before trial.[45] At the same time, the number of *bengoshi* (qualified attorneys) has increased due to reforms to legal education, creating a larger pool of potential defence lawyers.

2.3 Penal Institution Visiting Committees

Japan's prison reforms were passed in two Bills. The first legislation, which introduced Visiting Committees to prisons holding sentenced inmates, was passed in May 2005 and came into force in May 2006. The legislation was amended in June 2006 to extend its coverage to unsentenced inmates and death-row inmates held in detention houses.[46] These amendments came into force in June 2007. The final regime is known as the Act on Penal Detention Facilities and Treatment of Inmates and Detainees Act 2005 ("Act on Penal Detention").[47]

Under Article 7(1) of the Act on Penal Detention, Visiting Committees are established in each of Japan's main prisons and detention houses, which currently number 76. Visiting Committees are to also visit local branch penal institutions "if possible." These currently number 108. Article 7(2) prescribes the Visiting Committee's duties: to "inspect" the prison and provide oral and written "opinions" (*iken*) to the warden regarding an abstract remit: the "administration of the penal institution." Article 8(1) provides for a maximum of ten members. In practice, the minimum membership is four. Article 8(2) stipulates that members should be "persons of advanced integrity and insight with enthusiasm for the improvement of the administration of the penal institution." Articles 8(3) and (4) prescribe a one-year renewable term. A stipend is paid for up to six half-day meetings at the prison each year.[48] Under Article 9(1), the warden is expected to brief the Visiting Committee on "the state of

41. Fujita, *supra* note 7; Herber, *supra* note 6, p. 164.

42. Fujita, *supra* note 7, pp. 44–51. With respect to criminal justice institutions and procedures, Shinomiya (2019) identified seven positive effects brought about by the lay-judge reform: a public defender system was created to provide criminal suspects with legal representation before indictment; a more formal pre-trial process and expanded rights of discovery for criminal defendants to the evidence in prosecutors' possession; continuous trials; more reliance on the principles of "directness" and "orality" at trial and less reliance on written dossiers as evidence; the increasing specialization of criminal defence lawyering; greater transparency in criminal interrogations; and changes in the judicial mindset.

43. Wilson (2017b), pp. 379–80.

44. On these 2016 reforms, see *ibid*., p. 382. For other consequences, see e.g. Miyazawa (2014).

45. Fukurai, *supra* note 11, p. 544.

46. See Act Amending Parts of the Act in Relation to the Penal Institution and the Treatment of Inmates (Act No. 58 of 2006).

47. Act on Penal Detention Facilities and Treatment of Inmates and Detainees (Act No. 50 of 2005). See also Regulations for Penal Institutions and Treatment of Inmates (Ministry of Justice Ordinance No. 57 of 2006).

48. The payment of this allowance is mentioned in a guide distributed to new Visiting Committee members, p. 2. See *infra* note 49. The amount is probably similar to the amount paid to members of the Police Detention Facilities Visiting Committees, which is about JPY 16,000 (approximately USD 146) per meeting as disclosed in prefectural ordinances (*jōrei*). See e.g. Art. 5, Osaka Prefecture Detention Facility Inspection Committee Ordinance (Prefectural Order No. 11 of 2007).

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the prison's administration," either regularly or as required. Under Article 9(2) and (3), Visiting Committees are permitted to inspect (*shisatsu suru*) the secure area of the prison and to seek the warden's permission to interview inmates. The warden is obliged to "co-operate as necessary."

Two unprecedented features of the system surrounding Visiting Committees appear only in the Ministry of Justice Correction Bureau administrative documents issued to the corrections officers and Visiting Committee members. These documents are a 2006 Ministry of Justice stipulation to wardens, *hōmusho kyōsō dai-3255 go* (*Directive to Wardens*), and the "administrative guidance" (*gyōsei shidō*) provided to new Committee members, *keiji shisetsu shisatsu i'inkai katsudō no tebiki* (*Ministry Guide*).[49] The first feature is the establishment of numerous locked suggestion boxes (*teianbako*) inside each prison, which are how inmates primarily contact the Committee. These boxes allow inmates to write the first uncensored letters ever permitted.[50] The second feature is the option for Visiting Committees to conduct unmonitored inmate interviews, which are held in ordinary rooms. The combination of these two privileges during interviews is without precedent. The Committee holds the only keys to the suggestion boxes and interviews are in private, across an ordinary table. Even after the 2006 reforms, corrections officers attend and take notes at personal inmate visits, which are almost invariably "boxed," meaning in a secure cubicle through a transparent panel. While not closely monitored, attorney visits are still "boxed."

Visiting Committees provide a steady rotation of carefully vetted local leaders who spend regular time immersed in prison conditions and operational issues that were, until mid-2005, subject to multiple layers of secrecy.[51] Whilst the Visiting Committee role is limited by design, making it difficult for them to instigate systemic reform, their administrative work in summarizing and reporting trends in inmate complaints around Japan is a useful data source for the Correction Bureau. Further, although Visiting Committees may not issue press releases or official reports in their own right,[52] some legally trained Visiting Committee members do author or contribute to scholarly articles and publications by civil-society groups lobbying for reform.[53] Moreover, the Visiting Committees may act

49. See Ministry of Justice (2006). A "directive" (*tsūtatsu*) is a type of administrative ruling (*gyōsei shidō*) that conveys detailed instructions from a ministry to those responsible for administering legislation and regulations. See Jones & Ravitch (2018), p. 134. In contrast, the Ministry Guide has no formal legal status, other than as "a helpful reference." See Ministry of Justice Correction Bureau (2019), p. 1. The guide is updated periodically. The references in this article are to the 11 August 2015 version. The JFBA also provides a guide for new Visiting Committee members. See JFBA (2015).

50. Art. 9(4), Act on Penal Detention Facilities and Treatment of Inmates and Detainees, *supra* note 47 stipulates an exception to the Art. 127 rule that all letters sent and received by inmates may undergo scrutiny (*kensa*). Letters from inmates to the Committee can thus remain confidential.

51. See Lawson, *supra* note 4, pp. 139, 146–8, 153–4.

52. Gradualism is not a new concept in the relationship between Japanese law and social change. Each participation mechanism has been introduced after being carefully examined. Once the presence of civil participants in criminal justice domains is established, that presence can be either held in check or incrementally advanced as required. See Foote, *supra* note 5.

53. See e.g. Minakawa (2015); Satomi (2015); Kawai (2014); Niimura (2014); Doi (2014); Kaido (2010); Kuwayama (2010); Mishima (2014); Terasaki (2007). The JFBA issued reform recommendations aimed at enhancing Visiting Committees' independence and authority in 2009; see JFBA (2009). For international civil prison oversight norms, see generally Her Majesty's Inspectorate of Prisons (undated) and United Nations Human Rights Office of the High Commissioner (undated). Japan has not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and abstained from voting on its adoption. See United Nations General Assembly, 57th Session, 77th Plenary Meeting (16 December 2002).

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as a brake on rogue corrections officers, as a result of the potential for complaints to be lodged in the locked suggestion boxes, which are placed in numerous locations around the prison and emptied six times a year.[54] However, the rigid expectations of Japanese corrections officers, who must maintain perfect safety and order through a system of micromanagement known as *kanri gyōkei* ("controlled corrections"), have not changed dramatically. First used in Osaka Prison in 1973, *kanri gyōkei* is reminiscent of the strict prison-management techniques popularized in Western jurisdictions in the early nineteenth century: the Auburn silent system and the Pennsylvania separate system.[55] It involves restrictions on speaking and toileting for most of the day; voice control of prisoners' bodily position, gestures, and gaze; and militaristic marching and chanting for prisoner movements around the prison.[56]

Despite persistently austere, disciplinarian conditions,[57] "big picture" improvements in prison administration in recent years include enhanced diversion and rehabilitative reintegration measures, particularly for elderly and disabled offenders,[58] that have contributed to rapid decarceration. Japan's prison population dropped by more than 38% from 81,255 at end calendar 2006 to 49,896 at end April 2019.[59] The incarceration rate per 100,000 head of population declined sharply from 63.5 to 41.0 to July 2018.[60] This decarceration progress has been aided by the decrease in Japanese crime rates for the past 15 years.[61] The steady series of reforms has been organized, not as prison reform, but as support (*shien*) for offenders at the prosecution or entry (*iriguchi*) and probation or exit (*deguchi*) stages of the criminal justice process. Specific measures include the horizontal integration of the criminal justice and welfare systems, allowing enhanced diversionary efforts by prosecutors and defence attorneys, and innovative partnerships with public and private probation and reintegration service providers.[62] Further, new legislation now allows judges innovative "prison plus rehabilitative probation" sentencing options.[63] The overall recidivism rate, meaning readmission to prison within two years of release, declined even faster than hoped from 2006 to 2016, from 20.9% to 17.3%.[64]

3. CAUSES AND CONTEXTS OF REFORM

The coalescence of these reforms in criminal justice in the mid-2000s was not a coincidence and reflects historical calls to increase lay participation in Japanese criminal justice. The Japanese criminal justice system has been criticized by historical and contemporary

54. A drop in the number of prison abuse incidents and an increase in the speed of response have been attributed to the work of Visiting Committees. See Center for Prisoners Rights (2019).

55. For an introduction to these systems, see McGowen (1995) pp. 90–2.

56. See Sakamoto (2002), pp. 119–26, 157–60; Lawson, *supra* note 4, pp. 138–40, 156.

57. See Lawson, *supra* note 4, pp. 134–42, 153–5.

58. Lawson (2020a); Herber, *supra* note 6, p. 81.

59. See Ministry of Justice Correction Bureau, *supra* note 49.

60. See Ministry of Justice (2018a), Table 2-4-4-1; Institute for Criminal Policy Research (2019).

61. See Ministry of Justice (2018b).

62. See e.g. Ishikawa (2014); Maruyama (2015); Herber, *supra* note 6, p. 83.

63. See Ministry of Justice (2017), Pt. 2/Ch. 1/5.

64. See Ministry of Justice, *supra* note 60, Table 5-2-3-9.

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commentators for being too favourable to police and prosecutors and captured by the state and its bureaucracy.[65] These arguments become particularly compelling when Japanese criminal justice is compared to that of other industrialized states, such as the US.[66] Reformers in Japan considered increasing lay participation in criminal justice as one solution to these criticisms. Lay participation in the Japanese legal system is not new, however. Foundational mechanisms such as the Volunteer Probation Officer and Human Rights Commissioner systems have been in place across the postwar era.[67] Moreover, the original version of PRCs was established in 1948.[68]

Calls for reform gained traction as Japan's elites searched for answers to perceived failings in economic, political, and social structures after the Bubble economy burst.[69] The 1990s saw many other drivers for socio-legal reforms, including the Kobe earthquake, sarin gas attack, and horrific murders of children by children. For many, nothing felt safe or secure any more. In 1999, the national government, led by Prime Minister Keizo Obuchi, established the influential ad hoc law-reform body known as the *Shihō Seido Kaikaku Shingikai* (Justice System Reform Council) ("Council"). Whilst Japanese governments often consult *shingikai* (legislative councils) on law-reform issues, this council was more broadly formulated than typical departmentally focused *shingikai*. The Council's participants were nominated by the prime minister with the consent of both the Upper and Lower Houses of the Diet, and its terms of reference were extremely broad.[70] The Council reflected a desire to use legal and regulatory reform to help Japan overcome its perceived economic and social malaise, and followed changes to other aspects of Japan's economic structural framework including "big bang" financial reforms, and consumer- and insolvency-law reforms.

The Council called for Japanese people "to break out of the excessive dependency on the state that accompanies the traditional consciousness of being governed objects, develop public consciousness within themselves, and become more actively involved in public affairs."[71] The Council "expected" people "to participate broadly in the entire range of administration in various ways, while maintaining autonomy and a sense of responsibility."[72] The Council's comments suggested that the members were conscious of the potential for legitimation of the criminal justice system through participation by laypeople, although restoring faith in the justice system was not a stated goal. The Council argued that, when

> people become more widely involved in the administration of justice together with legal professionals, the interface between the justice system and the people will become broader in scale and deeper, public understanding of the justice system will rise, and the justice system and trial process will become easier for the public to understand.

65. See e.g. Miyazawa (1993); Johnson, *supra* note 14; Ito (2013); Croydon (2016b); Herber (2016b); Jones (2017); Amnesty International (2018); Herber, *supra* note 6, p. 9.

66. Rich & Ewing (2018); Agence France-Presse (2018); The Peninsula (2018).

67. See e.g. Ellis, Lewis, & Sato (2011).

68. The original PRC Act was enacted in 1948 (Act No. 147 of 1948).

69. Fujita argues that this interest in the justice system began in the 1980s, gained traction in the 1990s, and reached its zenith in the 2000s with the introduction of the lay-judge system. Fujita, *supra* note 7, p. 64.

70. Prime Minister of Japan and His Cabinet (2001b) ("JSRC Recommendations"); see Herber, *supra* note 6, p. 16.

71. Prime Minister of Japan and His Cabinet, *supra* note 70, Chapter IV Introduction.

72. *Ibid*.

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The Council's goal came from a domestic, indigenous reform agenda—to establish "a much firmer popular base of the justice system" which has "broad support from the people." The Council's lay-judge and PRC reforms did not result from "popular calls for reform or foreign pressure."[73] In conclusion, the Council claimed that "the establishment of a popular base through increased popular involvement in the justice system thus constitutes one of the three pillars of this reform of the justice system."[74] The Council recommended the establishment of the lay-judge system and the system of mandatory prosecution described in Section 2.1 of this article.

Article 1 of the Act on Criminal Trials with the Participation of *saiban'in* provides that the establishment of the lay-judge system was done "with the view that the involvement of *saiban'in* appointed from among the citizens in criminal procedures alongside [professional] judges helps to promote the citizens' understanding of and enhance trust in the judicial system." The Council's concept of building trust (and therefore legitimation) was reflected in the legislation's stated purpose, although media interpretations of the reforms emphasized lay judges bringing the common sense of the citizenry to Japanese criminal trials.[75]

Providing a mechanism for citizen involvement was relevant to establishing the original PRCs after World War II. In the 1930s, when Japan's government became militaristic and fascistic, prosecutors abused their power by prosecuting political enemies and protecting political friends.[76] Following Japan's defeat in World War II, the American-led occupation authorities prompted the Diet to pass the original PRC Act in July 1948.[77] The broadest aim of the occupation was the "democratization" of Japan. Article 1 of the PRC Act states that its main purpose is to guarantee "proper and fair execution of the right of public action by reflecting the popular will" and the Supreme Commander for the Allied Powers ("SCAP") described PRCs as a "safeguard against procurators who fail to prosecute cases."[78] Even today, Japanese prosecutors have a high level of discretion in prosecution decisions, depending on a suspect's personality, age, living environment, gravity of crime, mitigating factors, and the circumstances after the crime.[79] In 2016, 64.3% of all referred cases were subject to *kiso yūyo*, which means that the indictments were suspended at the discretion of the prosecution even though prosecutors believed there was enough evidence to charge and convict.[80] Moreover, only 8.3% of all referred cases were indicted for trial at a district court.[81]

Today, there are still relatively few trials in Japan where guilt is contested and citizens can be educated about law, government, and the duties of citizenship.[82] Professional prosecutors

73. Wilson, *supra* note 43, p. 369.

74. The other two pillars were "*Kokumin no kitai ni kotaeru shihō seido*" ("A Legal System that Meets the Expectations of the People") and "*Shihō seido o sasaeru hōsō no arikata*" ("The Future Shape of the Legal Profession that Upholds the Legal System"); Prime Minister of Japan and His Cabinet (2001a).

75. Fujita, *supra* note 7, pp. 20–1, 176; Herber, *supra* note 6, p. 161.

76. Mitchell (2002).

77. It is unclear how much of the idea for PRCs came from occupying authorities and how much from officials in the Ministry of Justice; West, *supra* note 2, pp. 694–5.

78. *Ibid*.

79. Art. 248, Code of Criminal Procedure (Act No. 131 of 1948); Herber, *supra* note 6, pp. 11–2.

80. Ministry of Justice, *supra* note 60, Material 2-3 (H28).

81. *Ibid*.

82. Johnson & Hirayama, *supra* note 11, p. 2.

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have been careful to adhere to the traditional requirement of a high probability of conviction before indictment (*yūzai hanketsu o erareru kōdo no mikomi*). Accordingly, Japanese prosecutors typically do not prosecute an accused person unless they are very confident of a conviction. PRCs are not bound by the same institutional standards. Examples of mandatory prosecution cases suggest that complainants and PRCs expect this mechanism to bring members of elites to trial, thus realizing justice (*seigi no jitsugen*) and democracy. According to this line of thinking, criminal trials are a place to find the truth. In practice, less aggressive charging policies in a system dominated by prosecutors mean that the Japanese public loses the perceived benefit of the general deterrence that more aggressive charging policies may generate, and the supply of skilled and vigorous defence lawyering is also suppressed. Moreover, it may be difficult for judges to remain neutral when a contested trial does occur because they believe prosecutors are cautious about charging,[83] thus heightening the risk of false confessions and wrongful convictions.[84] Conversely, many victims of crime feel abandoned or betrayed by prosecutors who do not indict, particularly in a system such as Japan's where prosecutors are typically cautious about charging.[85] Some commentators see lay participation mechanisms in Japan as a means of checking Japanese legal professionals who, they argue, represent elites.[86]

Despite earlier calls for PRC decisions to be binding on prosecutors, these reforms were not possible until the period following the turbulent decade of the 1990s and the complex debates leading to the Council and its recommendations.[87] Prosecutors are unlikely to welcome oversight of their non-indictment decisions, but the indirect interaction between the prosecutors and PRCs may help to validate and legitimate prosecutors' decisions. If few cases are brought to PRCs, prosecutors may argue that this means their decisions are proper. Even if the number of cases brought to the PRCs increases but the PRCs decide "non-indictment is proper," then the PRC's decisions may still be interpreted as supporting the prosecutors' approach. Alternatively, if more mandatory prosecution decisions are made by PRCs but the accused is found not guilty, then these verdicts also suggest that the prosecutors were correct in deciding not to indict.

The reasons for establishing Visiting Committees were more immediately dramatic than the stated reasons for the lay-judge system and PRC reforms, and were not directly associated with the Council's recommendations. Japanese elites had long benefitted from the "soft power" generated from an exemplary reputation in the criminal justice sphere, including for apparently extraordinarily safe, orderly prisons.[88] This tended to keep them in stasis and, in any event, a prolonged deadlock over the content of reforms to the Prison Act (Act No. 28 of 1908) made changes difficult. The JFBA demanded the abolition of *daiyō kangoku* (substitute prison) police detention of arrestees, while the National Police Agency insisted

83. *Ibid*. Fukurai argues that judges have contributed to the problem of false confessions by not challenging prosecutors. Fukurai, *supra* note 11, pp. 537–8.

84. Johnson (2015), pp. 1–10.

85. Miyazawa (2008).

86. Yang, *supra* note 11, pp. 76–7.

87. The JFBA, for example, called for PRC decisions to be binding in 1975. See Fukurai (2011).

88. See e.g. Johnson (1996) and Fukuda (2013). See also Botsman (2005) on the pivotal role of prison building in late Meiji Era (1868–1912) diplomacy and Lawson (2020b) on the use of criminal justice successes, including in prisons, as a source of soft power across the postwar era. Note, however, the list of serious security incidents spanning 1868–2013 in Fukuda's "hidden history" of Japanese prisons.

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on retention.[89] The deadlock continued even as popular punitivism contributed to overcrowding from 1996, peaking at 106.5% of capacity in 2002.[90] The year 2003 marked a turning point. First, as the Nagoya Prison Scandal worsened early in the year, Japan's reputation for success in the criminal justice domain suffered significant damage at home and abroad.[91] What had been occasional activist reports of the harshness of Japanese prisons became global condemnation.[92] Second, in December 2003, former Diet Member Jōji Yamamoto published *Gokusōki*, a prize-winning exposé of the over-representation of vulnerable persons with physical, mental, or intellectual disabilities in Japan's prisons, based on his own 14-month stint in prison for fraud.[93]

The events of 2002–03 forced warring stakeholders to finally revisit the 1908 Prison Act.[94] The Correctional Administration Reform Council (*Gyōkei Kaikaku Kaigi*) ("CARC") was given just eight months in 2003 to create a vision for Japan's new prisons legislation. Notions of transparency and legitimacy were important in the design of the Visiting Committees. The 2003 *Gyōkei Kaikaku Kaigi Teigen* (*CARC Proposal*) formulated the official vision for inclusion of civil oversight in the new prisons legislation by stating that prisons "cannot be independent of society" but must "earn their understanding," and in turn "reflect society's common sense" and "reflect the people's will." Visiting Committees were seen as "deepening ties between prisons and their local communities."[95] The CARC Proposal argued that civil participation would "open prisons up" so that "inmate complaints reach the ears of those outside" and "lower the prison walls," while ensuring prison officials would hear the "the people's voice."[96] These rationales are reinforced at the start of the *Ministry Guide* given to all new Visiting Committee members.[97] Concepts such as "earning understanding" are reminiscent of statements in the 2001 *Recommendations of the Justice System Reform Council*, but the CARC Proposal also expanded the rationales for the Visiting Committees to transparency and prisoner welfare. These differences may be reflected in the type of person permitted to participate in the frameworks.

4. WHO IS A "LAY" PERSON?

The scope for including ordinary people in criminal justice processes in a given jurisdiction may take many forms, as Japan's PRCs, lay-judge system, and Visiting Committees demonstrate. The PRCs and *saiban'in* suggest representative models, but the Visiting

89. The JFBA conceded defeat on the basis that arrest and custody would be handled by separate officers. See Croydon, *supra* note 65; Iwasawa (1998), pp. 260–70.

90. Ministry of Justice, *supra* note 60, Table 2-4-1-02.

91. See Lawson, *supra* note 4; Croydon (2016a), pp. 1–28.

92. Lawson, *supra* note 4; Croydon, *supra* note 91.

93. See Yamamoto (2003); Herber, *supra* note 6, p. 73. Yamamoto's elite Waseda University background and re-election as a Diet member just prior to his arrest gave credibility to his searing critique of the use of prisons as workhouses for the disabled. This work—the first of three by Yamamoto on the plight of disabled prisoners to date—can be seen as prominent among a new wave of compelling autobiographical accounts of Japanese prison conditions by former prisoners and corrections officers that emerged after the Nagoya Prison Scandal. See Lawson, *supra* note 4.

94. See Lawson, *supra* note 4.

95. *Gyōkei kaikaku kaigi* [Correctional Administration Reform Council] (2003), pp. 10–1, 27.

96. See *ibid*., pp. 1–3, 10–1, 27.

97. Ministry of Justice Correction Bureau, *supra* note 49.

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Committees might be described as more akin to a community-service model of participation, where civil participants do not report externally—to the public or the Diet—but internally, to the ministry that they are overseeing.[98] Further, lay participation does not automatically exclude citizens who are legally trained or formally related to the parts of the criminal justice system they are tasked with overseeing, as demonstrated by the analysis of Japan's Visiting Committees in this section. Moreover, citizen involvement may be paid or unpaid.[99] Participation may be voluntary or involuntary, including in the sense of being *ex officio*, which means that a formal or informal obligation to participate may arise because a person is appointed to another office or status.

Only a small minority of criminal justice system participation schemes in Japan involve random selection. *Saiban'in* and PRC members are chosen at random from the electoral roll and must be over 20 years old.[100] Systematic screening and exclusion of *saiban'in* and PRC members seem difficult. The list of expected *saiban'in* candidates, for example, is created from the electoral roll by the electoral administrative commission of municipalities. Each candidate will receive a notification that the candidate has been included in the list and a survey to ask whether there is a reason that the candidate should be excluded from the list, including due to the candidate's occupation, long-term sickness, or having served as a *saiban'in* in the past five years.[101] If the reason is considered valid, that person will be excluded from being called to attend on the selection date. For each case, a number of *saiban'in* candidates are selected randomly from the list; the people selected will receive a notice to attend the selection proceedings and a further questionnaire that asks whether there is any reason that the person should be excused from participating at this time, including sickness, caring for others, or work or other important commitment for the duration of the trial.[102] If the reason for being excused is considered valid by the court, then the person will receive a notice that they are not required to attend on the selection date. Otherwise, the selected candidates must attend on the selection date and will be interviewed by judges, the prosecutor, and the defence lawyer. The process does not, however, allow extensive questioning or exclusion of candidates. Six *saiban'in*, and sometimes additional alternate *saiban'in*, are selected.

Despite the open nature of the selection process, a key problem for administrators is the high rate of self-exclusion, which occurs because candidates either ask to be excluded on grounds established by the legislation or simply do not show up at all.[103] According to statistics collated by the Supreme Court of Japan, for the period between January and October

98. See the discussion of transparency and monitoring below.

99. On the debates as to whether Japan's lay judges should be compensated, see Fujita, *supra* note 7. Japanese lay judges currently receive a daily amount of up to JPY 10,000 (approximately USD 91).

100. Despite amendments to electoral laws to allow people 18 years old and above to vote, the eligible age for *saiban'in* and PRC service has not changed: Arts 7 and 10 of the Supplementary Provision of the Public Election Act (Law No. 100 of 1950) provide the exceptions of the application of the amendment to 18 years old to the PRC Act and Act on Criminal Trials with the Participation of *Saiban'in*, *supra* note 3, respectively. On the lowering of the electoral age, see Kano & Steele (2018).

101. Arts 14–16 of the Act on Criminal Trials with the Participation of *Saiban'in*, *supra* note 3 lists the reasons for disqualification, prohibition for service, cause of refusal to be appointed as a lay judge. Art. 17 lists the causes for ineligibility to be selected as a lay judge for a particular case.

102. Art. 30, *ibid*.

103. See Tokyo Web (2018).

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2018, out of 99,805 persons selected as potential *saiban'in*, 30,572 people (30.63%) were excluded from being called to attend on the selection date and 35,207 people (35.27%) were excused from attending on the selection date after receiving their notice to attend, leaving 34,026 people (34.09%) who had been requested to attend on the selection date.[104] However, of the people requested to attend, only 23,096 people (67.9%) actually attended on the selection date.[105] These statistics have commentators concerned that interest and support for the lay-judge system may be declining in Japan, despite initial enthusiasm from the general public.[106] In 2017, 36% of people failed to attend when asked, but the authors are not aware of anyone receiving a penalty for failing to attend.[107] The Supreme Court itself noted that the falling attendance rate has not yet reached a level that is likely to threaten the "stable operation" of the system, but it is necessary to monitor these trends and, if necessary, take measures to address the situation.[108]

Willingness to serve skews the pool of people who participate in PRCs as well.[109] There is no *voir dire* for selecting PRC members, although some persons are excluded from participating, including almost all those who have served time in prison (*kinko ijō no kei ni shoserareta mono*) and serving ministers of religion.[110] Eleven people are randomly selected from the electoral roll to serve for six months. PRC members may consult amongst themselves without the involvement of any legally trained professionals during a first review and must obtain legal advice during a second review. A foreperson is selected from the citizens to lead each PRC, whereas the members of a *saiban'in* panel are typically led by a judge on the panel.[111] PRC decisions are based on a majority vote and a successful mandatory prosecution vote requires at least eight people. In 2017, 2,162 suspects were subject to requests for review of a prosecutorial decision not to indict.[112] The authors are not aware of publicly available statistics on the number of people who fail to attend when asked to participate in a PRC.

Membership of a Visiting Committee is not determined by random selection from the electoral roll. Rather, Visiting Committees involve a narrow class of well-respected local citizens and appointments are governed by an *ex officio* (*ateshoku*) process. The size of each Visiting Committee is determined centrally by the Correction Bureau according to the size of the prison's population, on a scale ranging from four to ten members. The *Directive to Wardens* and *Ministry Guide* outline the eligibility and selection criteria. Members cannot apply for the role directly. Wardens are instructed to prevent the Committee skewing in terms of gender, age, occupation, or other attributes; to approach local bodies that are appropriate in light of local circumstances; and

104. Supreme Court of Japan, *supra* note 36, p. 5.

105. *Ibid*.

106. See e.g. Fujita, *supra* note 7.

107. A penalty of up to JPY 100,000 (approximately USD 914) applies. Art. 112, Act on Criminal Trials with the Participation of *Saiban'in*, *supra* note 3.

108. Supreme Court of Japan (2019a), p. 4.

109. Fukurai and Wang argue that PRC membership does not represent a cross section of the community. See Fukurai & Wang (2014), pp. 964–6.

110. Arts 5–7, PRC Act, *supra* note 12 list excluded people.

111. Fujita, *supra* note 7.

112. Supreme Court Secretariat Criminal Division (2019), Table 198: Number of suspects subject to requests for review, p. 436.

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to ensure candidates meet generic National Public Service Act[113] criteria. Wardens formally request recommendations from at least the three predetermined local institutional sources explained below, which give an implied warranty that their candidate meets the "integrity … insight and enthusiasm" eligibility criteria. The warden controls appointments to the Visiting Committee in two ways. First, the warden can decide which local bodies to approach beyond the three core sources. Second, the warden can decline to forward a recommendation to the Minister of Justice and ask for a new name.

Members of Visiting Committees commonly have little or no prior knowledge of prisons, although the JFBA offers half-day training twice annually for the local criminal defence attorneys who usually chair each Committee. These local criminal defence attorneys are likely to at least have experienced "boxed" attorney visits, but are unlikely to have been inside the secure area of the prison or have any expertise or experience in prison operations. Members are typically over 55 years of age and overwhelmingly male.[114] The majority of members are recommended by the three sources the warden is obliged to approach: the local Bar and Medical Associations, and local public bodies. Local welfare and educational bodies supply some members. Accordingly, Visiting Committees are typically made up of older men of high status or educational attainment.[115] A majority serve for two years to five years and a small but significant group serves for six years or more.[116] These periods of service are much longer than the period of service for *saiban'in* who attend a one-off trial and PRC members who serve for a period of six months, suggesting that members could build up expertise in their roles in ways in which it is not possible to do for *saiban'in* or PRC members.

The selection and eligibility for membership on Visiting Committees sidestep the assumptions of independence and authority typical of the European-origin human rights-based template for civil prison oversight found in other liberal democracies.[117] Rather than the state being made subject to the opinions of ordinary citizens, a select group of predominately older and male citizens of relatively high status in the particular locality has been harnessed in the service of the state.[118] However, Visiting Committees, like other lay participation mechanisms, have features designed to prevent domination by a single profession. No more than one member of a Visiting Committee, for example, may be a *bengoshi* (licensed attorney) and the minimum Visiting Committee size is four members. These rules allow criminal

113. The National Public Service Act (Act No. 120 of 1947). Art. 38 provides the reasons for disqualification under this Act, which include: an adult ward, a person under curatorship, a person who has been sentenced to imprisonment or more severe punishment and the sentence has not been completed, a person who was dismissed by a disciplinary action in the previous two years, and a person who worked for or belonged to a political party or other organization that advocated the overthrow by force of the Constitution of Japan or the government.

114. Lawson, *supra* note 88. In late 2016, surveys were distributed to all 243 serving Visiting Committee members. Just over 70% of the 198 members who returned valid responses to the question on age were aged over 55, with nearly 40% over 65 years of age. Just 19 (nearly 10%) were women.

115. Anderson & Nolan (2004), pp. 966–70 point out that this pattern of appointing those with "high standing in the community" has long been common in a range of lay participation organs tasked with a narrow focus ("Narrow Lay Participation Organs").

116. Lawson, *supra* note 88.

117. See e.g. the powerful Her Majesty's Inspectorate of Prisons regime, the operations of which are usefully described by Owers (2014). Kuwayama, *supra* note 53 compares the Japanese civil prison oversight design with the "National Preventive Mechanism" inspection design used under the OPCAT.

118. See Lawson, *supra* note 58.

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defence attorneys—who are often human rights advocates in Japan—inside the participatory body, but in a minority.[119]

By including laypeople perceived to be respectable and competent based on their other professional or community activities, the Visiting Committees give the perception that the prison system is being overseen by independent and reliable third parties. The system has thus performed a role in legitimizing the prison system after the Nagoya Prison Scandal.[120] It contributes to re-establishing trust, buying time and space in which the Correction Bureau can get on with its own reform agenda. Similar criticisms have been made historically in relation to other socio-legal spheres in Japan.[121] For example, involving laypeople in death-penalty trials may legitimate Japan's continued use of this sentence, although there were hopes that the lay-judge system would advance the movement to abolish the death penalty in Japan.[122] Experience suggests that this result is unlikely.[123] The small number of mandatory prosecution decisions from PRCs may also play a role in legitimizing prosecutorial decisions, as demonstrated by the TEPCO Case and examined in the next section in the context of participation.

5. WHAT DOES "PARTICIPATION" MEAN?

The scope and content of "participation" in Japanese criminal justice are more difficult to benchmark than the meaning of "lay," which is generally defined by the relevant framework. The perceived quality and impact of participation, which help to shape the perceived legitimacy that the reforms bring to Japanese criminal justice, are difficult to quantify. Participation may refer, for example, to the interaction between the criminal justice system and lay participants, or the level and nature of oversight that laypeople have over professionals. The reforms to the PRCs demonstrate that the meaning and conceptualization of participation may also vary across time. Mandatory compliance with PRC recommendations has only been a feature after the reforms, while lay participation in the form of PRCs has been possible since 1948.

The lay-judge system offers laypeople a one-off engagement in a court context, although the interaction is quite intimate in terms of associating together in closed-door deliberations. Some lay judges come back to give feedback in discussion groups organized by the courts and more than 90% report to the Supreme Court via questionnaires that the overall experience was positive.[124] Behavioural scientists have attempted to assess the extent of interaction between professional judges and lay judges by looking at transcripts of mock trials and the results of surveys

119. A Visiting Committee must contain one member of the local bar association. There are rare cases of two legally trained members on a single Committee such as when another member is a legal academic.

120. See Lawson, *supra* note 4.

121. For examples of this literature, see Upham (1987); Vanoverbeke, Maesschalck, Nelken, & Parmentier (2014).

122. Amber (2008).

123. From 2010 through 2018, prosecutors sought a sentence of death from a lay-judge panel for 53 defendants and a death sentence was imposed on 36 of them (68%). By comparison, in the pre-lay-judge period of 1980–2009, panels of three professional judges imposed a sentence of death in 56% of the cases that prosecutors sought one. See Takeda (2019a).

124. Supreme Court of Japan (2019b).

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and minutes of feedback sessions held at district courts administered by the Supreme Court.[125] But the quality and level of interaction in actual deliberations are difficult to document and assess. Although lay judges are sometimes invited to participate in post-trial press conferences to express their feelings and general observations, lay judges are not permitted to divulge details of deliberations.[126] Moreover, the participation of lay judges is limited to serious criminal cases and does not extend across the full spectrum of criminal justice in Japan. Approximately 97% of criminal trials in Japan are not lay-judge trials.[127]

PRC members are also prohibited from divulging details of a Commission's deliberations and the authors are not aware of any press conference involving PRC members. The voting record (*giketsusho*) is publicly available and reveals the rationale behind the votes for mandatory prosecution, but it does not set out the evidence or witnesses on which the PRC relied to come to its decision.[128] Moreover, there is no regular interaction between prosecutors and members of PRCs, although the prosecutor may be asked to explain the decision not to indict to the PRC.[129] The PRC system is administered by a government office known as the Prosecution Review Commission Office, or PRCO, which is located within the Supreme Court of Japan.[130] The PRCO controls budgets, communications, and administration of the PRCs. The location of the PRCO within the court gives the court potential influence over how PRCs are run. Moreover, PRC members may be influenced by the legal adviser tasked with providing advice on law and legal processes.[131]

In contrast to the limited and formal interaction between lay judges and PRC members, and judges and prosecutors, respectively, it appears that some corrections officers engage in social events out of hours, which involve members of Visiting Committees.[132] There is no prohibition on this out-of-hours interaction and it does not in itself suggest impropriety. The Ministry of Justice strongly encourages corrections officers and their families to be active in local community organizations and events to build local goodwill.[133] This lack of prohibition suggests that strict independence and separation were not expected when the oversight system was designed. In contrast, socializing between other criminal justice system actors is frowned upon. Serving judges, for example, do not typically socialize with defence attorneys or prosecutors out of hours.

Visiting Committees are almost solely reliant on wardens for information and facilitation of their activities. Article 9(1) of the of the Act on Penal Detention obliges wardens to "furnish the Committee on a regular or as-needed basis" with the information on the administration of the penal institution prescribed by ministerial ordinance, while Article 9(2)

125. Fujita, *supra* note 7. See also discussion of feedback in Steele (2015b), p. 6.

126. Art. 108, Act on Criminal Trials with the Participation of *Saiban'in*, *supra* note 3. On the secrecy of both the lay-judge and PRC deliberations, see Yang, *supra* note 11, pp. 84–5.

127. Herber, *supra* note 6, p. 163.

128. Yang reflects on the potential negative consequences of PRC members lacking legal expertise. Yang, *supra* note 11, p. 82.

129. *Ibid*.

130. Courts in Japan, *supra* note 15.

131. Yang, *supra* note 11, p. 82.

132. Lawson, *supra* note 88.

133. Strengthening this relationship is a theme in Hiroshi Nishida's 2014 book, written the year he was appointed as the first director-general of the Correction Bureau from within the Correction Bureau, rather than the ranks of elite prosecutors: Nishida (2014), pp. 109–13, 159–73.

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allows—but does not oblige—the Visiting Committee to "conduct a visit to the penal institution". The same vague aim is given "in order to grasp the circumstances of the administration of the penal institution." This provision *permits*, but does not oblige, the Committee to seek the warden's co-operation to interview inmates. Article 9(3) requires the warden to co-operate with Committee visits and inmate interviews. Moreover, the Ordinance for Penal Institutions and Treatment of Inmates 2006, Article 5 stipulates that the penal institution's General Processes Section (*shomuka*) will handle each Visiting Committee's administrative work. Accordingly, there is scope for the institution's administrative section to influence the Visiting Committee's work.

The legitimizing role of participation is being tested by the results of the PRC's nine mandatory prosecution cases. Of the eight cases already finalized, six resulted in dismissal of the indictment or acquittal and two resulted in criminal conviction and punishment: a JPY 9,000 (approximately USD 82) petty fine and a one-year suspended prison term.[134] As of June 2019, only two of the ten defendants charged in these cases had been convicted at trial. Though it is difficult to make confident conclusions from so few cases, this conviction rate is vastly lower than the conviction rates that result when Japanese prosecutors control the charging process. In a statement published in 2016, the JFBA suggested that the lower conviction rate does not mean that PRCs are not performing an important check on public prosecutors in Japan and not-guilty verdicts should be expected given that the public prosecutors had decided not to indict in the first place.[135] The JFBA argued that, where PRCs have requested prosecutors to reinvestigate a case, however, 18% of those cases between 2013 and 2015 were eventually indicted by the prosecutors themselves.[136] The substantially lower conviction rate in cases charged through mandatory prosecution could be interpreted as a "we told you so" by prosecutors, however, and seems to suggest the "appropriateness" of their initial decision not to indict.

This lower rate highlights the higher risk of acquittal associated with a bolder approach to prosecution. The court is still required to apply a "beyond a reasonable doubt" standard. The cases reviewed by the PRC are cases dropped by prosecutors because they believed, for example, that the case did not meet that standard. However, the reasons why particular cases are not pursued by prosecutors vary and may include a delay in bringing a claim forward or insufficient evidence. Interestingly, none of the first nine mandatory prosecution cases was tried under the lay-judge system. A mandatory prosecution case for a serious criminal offence such as murder, attempted murder, arson, or rape causing injury would be required to be tried before a panel including lay judges. It remains to be seen whether lay judges will react differently in these so-called double-lay participation cases where the indictment was instituted by lay participants.[137]

Yang argues that the "PRC's impact on the daily work of the prosecutor is minimal."[138] High-profile and controversial cases, however, emphasize the possibility of the PRCs

134. See Akashi Pedestrian Bridge Case (2001–16) and Judo Class Severely Injured Case (2008–14) as discussed in Johnson & Hirayama, *supra* note 11, pp. 11, 16.

135. JFBA (2016), pp. 5–6.

136. *Ibid*.

137. Fukurai, *supra* note 11, p. 562.

138. Yang, *supra* note 11, p. 86.

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representing community responses to key contemporary events. Fukurai argues that PRCs are "now the single-most important institution of civil oversight over the allegation of corporate predation and governmental abuse of power."[139] From this perspective, the ninth case of mandatory prosecution, involving Tokyo Electric Power Company ("TEPCO") and the nuclear meltdowns at Fukushima following the Great East Japan Earthquake (*Higashi Nihon Daishinsai*) and tsunami of 11 March 2011, raises some interesting issues for PRCs. In June 2012, a citizen group consisting of victims of Fukushima (*Fukushima genpatsu kokuso dan*) filed criminal complaints against 42 TEPCO executives and government officers for "professional negligence resulting in death and injury" (*gyōmujō kashitsu shishō*) with the Fukushima Prosecutor's Office.[140] The case was referred to the Tokyo Prosecutor's Office ostensibly because of the size and complexity of the case, although some commentators allege political motivations.[141] In September 2012, the Tokyo Prosecutors Office decided not to indict any of the executives or officers on the basis of "insufficient suspicion" (*kengi fujūbun*), because there was not enough evidence to show that they should have been able to predict that a tsunami might damage the nuclear-power plant.[142] When the Fukushima victims group requested a review by the Tokyo PRC No. 5, the PRC voted that "indictment is proper" for three of the TEPCO executives on 31 July 2014.[143] The Tokyo Prosecutors Office again decided not to indict the case based on "insufficient suspicion."[144] The Tokyo PRC No. 5 voted for "indictment" (*kiso giketsu*) on 31 July 2015. On 29 February 2016, three TEPCO executives (a former chairman and two vice-presidents) were mandatorily prosecuted for professional negligence resulting in death and injury.[145] The formal pre-trial process (*kōhan mae seiri tetsuzuki*) started on 29 March 2017 and verdicts for the three defendants are scheduled to be announced on 19 September 2019.

A key question in the TEPCO Case is whether the legal trajectory would have been different if a prosecutor's office closer to the incident had initially reviewed the case, rather than the Tokyo Prosecutor's Office. Legally, the prosecution needs to prove that each defendant had a *concrete* concern that a nuclear accident could happen, which is difficult. There may be a gap between legal professionals and laypeople in their respective interpretations of "prediction" and "efforts to avoid the outcome." One conservative newspaper criticized the decisions to indict, stating that they put pressure on society to become a "zero-risk society."[146] Other commentators support the PRC's decisions,[147] while still others recognize

139. Fukurai, *supra* note 11, p. 557.

140. On the Fukushima citizen group's activities, see Nuclear Prosecutors Group (undated); Herber, *supra* note 65.

141. On the transfer to the Tokyo Prosecutor's Office, see Media Kokusyo (2014); Saikōsai Mondai (2014); Johnson & Hirayama, *supra* note 11. The suggestion is that PRCs and courts in Tokyo were more likely to be pro-prosecutor, as discussed below.

142. Saikōsai Mondai, *supra* note 141.

143. The PRC found that these three executives had been able to predict the possibility of a mega-height tsunami. A report by TEPCO in 2008 stated that the company calculated the maximum possible height of a tsunami to be 15.7 metres. The actual maximum height of the tsunami on 11 March 2011 had been estimated at 14–15 metres. See Yomiuri Shimbun (2015), p. 11.

144. Independent Web Journal (2014).

145. Sankei News (2016).

146. Sankei Shimbun (2015).

147. Machida (2015).

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how difficult it is to reach a clear normative conclusion about the propriety of the PRC's actions.[148]

As this analysis demonstrates, none of these lay participation reforms is functionally independent of the criminal justice institutions within which they operate, although the levels of dependence and transparency differ. Lay judges are involved, for example, in an open court process initially, but their deliberations with professional judges are not public and lay judges are prohibited from speaking to the media. Moreover, although the final outcome is reflected in the judgment, the final written document is typically finished by the professional judge after the lay judges have gone back to their ordinary lives. Similarly, Article 10 of the Act on Penal Detention requires the Minister of Justice (not the Visiting Committees) to "compile the opinions expressed by the Committee to the warden," and the warden's measures in response, by publishing an annual summary online.[149] The *Ministry Guide* adds that Visiting Committees may send reports directly to the Minister of Justice, who need not respond.[150] Visiting Committees may not publish their findings.[151] Despite these and other limitations, most Japanese scholars and attorneys writing on Visiting Committees acknowledge and welcome the unprecedented opportunities for dialogue they represent.[152] One commentator argues that civil oversight by a select group of ordinary citizens, screened for capability and led by a local attorney in thoughtful interactions with prisons, is consistent with democratic theory and a sign of progress given the traditional antagonism between the JFBA and the Ministry of Justice.[153]

6. CHALLENGES AHEAD

Looking ahead, the future holds numerous challenges for lay participation, with implications for the role it may play in further legitimizing Japanese criminal justice. Serious concerns exist about the limits of the population's patience for lay participation.[154] Some of these concerns relate to personal costs. One former lay judge attempted to sue the government for anxiety after participating in a robbery and murder trial in 2013.[155] Almost half of respondents to a survey conducted in early 2017 stated that they would not want to participate in the lay-judge system even if they were legally required to do so (if it were "a duty").[156] Reforms to the lay-judge system introduced in 2015 reflect feedback from lay participants themselves that the experience was burdensome.[157] The amendments revised the jurisdictional limits for lay-judge trials to exclude cases where the inconvenience to

148. Herber (2016a).

149. For annual summaries, see Ministry of Justice (undated).

150. JFBA, *supra* note 49, p. 5.

151. Art. 100, National Public Service Act, *supra* note 113 imposes a duty of confidentiality on members as public officials.

152. See e.g. Satomi, *supra* note 53, pp. 89–91; Niimura, *supra* note 53, p. 362; Mishima, *supra* note 53, pp. 696–7.

153. See Kawai, *supra* note 53, pp. 129–30.

154. On the impact of participating in death-penalty trials, see e.g. Johnson (2009).

155. Japan Times (2019).

156. Cited in Fujita, *supra* note 7, p. 91; 41% of 2,000 randomly selected participants chose this option. Wilson also notes that those who have not served worry about possibly having to serve. Wilson, *supra* note 43, p. 381.

157. Ministry of Justice, *supra* note 39, p. 9; Secretariat-General of Supreme Court of Japan (2012), p. 15.

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lay judges is perceived to be high. The jurisdiction now excludes cases where the expected period required for the proceeding is extremely long or where the trial is expected to require an extremely large number of trial dates or preparation. A prosecutor or lawyer may apply for a trial to be handled by a panel of judges only or the court may decide to handle a trial by a panel of judges only where it is anticipated that it will run for an excessively long period.[158] The period is not defined but it was suggested that one year will be used as the benchmark.[159] The authors are not aware, however, of a trial involving lay judges taking more than a year and the Supreme Court's own statistics to April 2019 show that the longest trial involving lay judges lasted 207 days.[160] Thus, it seems unlikely that a case will be excluded on this basis.

Burdens placed on lay participants are also evident in Visiting Committee workloads. Members can face a large amount of paperwork, including reading, analyzing, and discussing letters from inmates and writing opinions to the warden.[161] Furthermore, Visiting Committees need to confront the changes being wrought by prison reform. As the vulnerable, needy, and first-time offenders are increasingly managed with non-custodial, diversionary, and welfare measures, the prison population is inevitably skewing towards repeat and serious offenders.[162] Prison staffing and programmes are becoming increasingly diversified and sophisticated to meet the complex needs of this prison population. Prisons are now hiring social workers as well as aged care workers and providing cognitive behaviour therapy-based substance-addiction and sex-offender programmes. The tension will increase between the specialized knowledge required to deal with such needs and the desire to include genuine participation by ordinary laypeople.

Other concerns about lay participation are linked to institutional and external contexts. Ageing, for example, was noted by the Justice System Reform Council in its *Recommendations* in 2001. The Council suggested that it was becoming increasingly difficult to find people to act as volunteer probation officers due to "the aging of the existing volunteer probation officers" and recommended considering measures to secure "suitable persons from a broad spectrum of the people to serve as volunteer probation officers, including the possibility of payment of expenses."[163] According to a survey conducted by the Supreme Court, the age of lay judges was spread evenly between people in their twenties and sixties, and the number of people over 70 decreased between the introduction of the lay-judge system and 31 May 2012.[164] More people will need to be found to fill new positions as lay participation is expanded even further in Japan. Visiting Committees have been replicated, for example, for immigration detention centres and juvenile-training schools. Moreover, prison reforms themselves are now being driven by an ageing prison population. The number of vulnerable, isolated elderly in Japanese prisons who in effect "self-incarcerate" to receive a basic level of care and

158. Act Amending the Act on Criminal Trials with the Participation of *Saiban'in*, *supra* note 3 added a new Art. 3-2, which provides for the exclusion of lay judges in the trial.

159. Kano & Steele (2017).

160. Supreme Court of Japan (undated-b).

161. Lawson, *supra* note 88.

162. See Ministry of Justice, *supra* note 60, Chart 5-2-3-1.

163. The Justice System Reform Council (2001), Ch II, pt 2.5, "Rehabilitation of Offenders, Protection of Victims."

164. Secretariat-General of Supreme Court of Japan (2012).

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companionship has risen dramatically, turning some prisons into *de facto* nursing homes.[165] This ageing prison population suggests that the older demographic profile of Visiting Committees is not necessarily out of place, if it is assumed that people of a similar age may have a better understanding of the needs of older prisoners than younger people.

The uneven impact of geography on a person's experience of lay participation is often overlooked by researchers in the context of Japan's unified and national approach under legislation such as the Penal Code (Act No. 45 of 1907) and the Code of Criminal Procedure (Act No. 131 of 1948).[166] The potential impact of regional and metropolitan dynamics on mandatory prosecution cases, with only one case each from metropolitan Tokyo and Osaka, is interesting.[167] A request for a review is also not limited by geography, as illustrated by the mandatory prosecution in the TEPCO Case (2011–ongoing) and the Senkaku Islands Ship Collision Case (2010–12). In the Ship Collision Case, a Tokyo-based group requested a review by the Naha PRC.[168] In that case, a patrol ship of the Maritime Safety Agency found a Chinese ship in the Senkaku Islands Area on 7 September 2010. The Chinese ship was warned to depart Japan's territorial waters, but collided with Japanese patrol ships. The agency arrested the captain of the Chinese ship, who was referred to the Naha District Prosecutors Office Ishigaki Branch and detained for indictment, but the prosecutors concluded that the captain had not intended to collide with the Japanese ships. After footage of the collision was posted on YouTube anonymously on 4 November 2010,[169] the citizen group in Tokyo, which included journalists, requested a review. After two votes in favour of indictment by the Naha PRC, the captain was mandatorily prosecuted on 15 March 2012. By then, however, the captain had returned to China and the document of indictment could not be delivered within the required two-month period.[170] The indictment was dismissed.

Geography also affects the operation of the lay-judge system. Chiba District Court, for example, has a high number of lay-judge trials for a regional centre.[171] The court is close to Tokyo and the key international airport, Narita, and therefore the international drug trade. Turning to Visiting Committees, the prisons in heavily populated urban areas around the Kanto, Kansai, and Kyushu regions and major regional cities such as Sapporo and Nagoya draw on much deeper pools of local professionals eligible to serve on the Visiting Committee, while prisons in small or remote areas may struggle to find appointees.[172]

165. See Lawson (2020a), *supra* note 58.

166. See e.g. debates in Japan about differences between sentencing in Tokyo and Osaka, the latter being seen as inappropriately lenient when compared to Tokyo. See Johnson, *supra* note 14, pp. 66–71.

167. Rikuzankai Case (2009–12) and TEPCO Case (2011–ongoing). See Johnson & Hirayama, *supra* note 11, p. 5.

168. See *ibid*., p. 15.

169. It was later discovered that the post was made by an officer of the Maritime Safety Agency.

170. Art. 271-2, Code of Criminal Procedure, *supra* note 79.

171. See Steele, *supra* note 125, pp. 2–4.

172. The Shimane-Asahi, Kurobane, and Kitsuregawa prisons are both large and remote, and require comparatively large Visiting Committees. The size of each Visiting Committee is determined centrally by the Correction Bureau according to the size of the prison's population, on a scale ranging from four to ten members. See Ministry of Justice (2018c).

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The relationships between lay and professional participants involved in these reforms introduce new complexities and possible conflicts of interest that still need to be studied and addressed. Recent appellate court decisions have overruled outlier sentences by panels involving lay judges, offering a controversial example of monitoring lay-judge decisions.[173] Visiting Committees are, at least nominally, tasked with influencing in a "closed environment"—that is, Japan's prison system.[174] However, there are no external evaluative or audit processes to guarantee the quality or effectiveness of their work. This situation may be contrasted with Europe, where designing external audits that "inspect the inspectorates" is a growth industry in both the governance and scholarly contexts.[175] Moreover, while Japanese prisons policy is now slowly moving towards contemporary rather than nineteenth-century practices,[176] the design of the new lay participation system indicates that its primary role is likely to be to enhance public trust, facilitating this modernization. It is not designed as a key driver for reforming prison conditions.[177]

Lay participation may increase the possibility that prosecutorial and court decisions will be driven by emotion and public perceptions of morality. PRCs have been criticized as part of a general move in Japanese criminal justice towards "punitiveness."[178] The idea that "indictment by a PRC should equal conviction" ignores the procedural and public standards involved in a trial. More prosecutions also have cost and efficiency implications for the criminal justice system that need to be thought through. Defendants are already at a great disadvantage in Japan and the PRCs may be used to pursue innocent people with lifelong consequences.[179] Other reforms to include victims more in the criminal justice system have added to the potential for trials to be more emotive.[180] A similar concern about potential punitiveness is associated with the introduction of the lay-judge system, but any punitive tendencies appear to be tempered by the use of sentencing precedents by professional judges in the deliberations and by the Supreme Court's willingness to overturn "outlier" sentences.[181]

Finally, as new technologies emerge, the fascination with lay participation in Japanese criminal justice may seem old-fashioned and quaint. Courts globally are experimenting with artificial intelligence to help with sentencing and consistency; evidence collected through electronic devices, cameras, and DNA, for example, may make it easier for prosecutors to prove their cases and thus increase decisions to prosecute or lead to confessions. Moreover, Japan's new plea-bargaining rules have given prosecutors more power,

173. Since the introduction of the lay-judge system, five death-penalty verdicts have been quashed by High Courts and two of these five cases have been upheld by the Supreme Court of Japan so far.

174. See OPCAT, *supra* note 53. A "closed environment" is "any place ... where persons are or may be deprived of their liberty ... in a public or private custodial setting which that person is not permitted to leave at will."

175. Day & Klein (1990) is the definitive early work. By 2002, Boyne, Day, & Walker (2002) had suggested an analytical framework for evaluating public service inspection. For applications to the criminal justice field, see Quirk, Seddon, & Smith (2010).

176. See generally, Lawson (2019).

177. Lawson, *supra* note 88.

178. Goodman (2013).

179. The Kabutoyama Case from 1974 ended with a not-guilty verdict in 1999. See Johnson & Hirayama, *supra* note 11. On the disadvantages faced by defendants, see Foote (2010).

180. Herber, *supra* note 65, p. 145; Herber, *supra* note 6, pp. 122–4.

181. Steele, *supra* note 34; Steele, *supra* note 125.

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potentially changing the rules for corporate Japan. It is not yet clear how these developments will impact lay participation.

7. CONCLUSION

Lay participation continues to be a preferred solution to many perceived problems in Japanese criminal justice, but it also legitimates existing practices and processes. Japan's apparently extraordinary achievements in order inside prisons have been maintained,[182] but the heavily anachronistic "controlled-corrections" (*kanri gyōkei*) approach has also been preserved. Citizens may be comforted that the system now has oversight by Visiting Committees. PRCs, the lay-judge system, and Visiting Committees also reveal a diversity of approaches to lay participation. The PRCs and lay-judge system represent a more open approach to eligibility and selection than Visiting Committees, but they may be subject to influence from existing stakeholders because of their administrative structures and the involvement of professional judges. Controversial cases such as the TEPCO indictment test popular perceptions of lay participation by PRCs. Ageing, geography, a prison population increasingly made up of repeat offenders, and new technology may also impact the scope and willingness of laypeople to participate in such institutions and thereby shape their legitimation roles. The capacity of the current versions of PRCs, the lay-judge system, and Visiting Committees to respond to these challenges raises key questions for future research.

REFERENCES

Agence France-Presse (2018) "Held 'Hostage' by Police? Carlos Ghosn's Arrest Highlights Japan's Overreliance on Extracting Confessions from Suspects," *South China Morning Post*, 4 December, https://www.scmp.com/news/asia/east-asia/article/2176360/predetermined-justice-carlos-ghosns-arrest-highlights-japans (accessed 8 January 2019).

Amber, Leah (2008) "The People Decide: The Effect of the Introduction of the Quasi-Jury System (Saiban-in Seido) on the Death Penalty in Japan." 6 *Northwestern Journal of International Human Rights* 1–23.

Amnesty International (2018) "Japan 2017/2018," https://www.amnesty.org/en/countries/asia-and-the-pacific/japan/report-japan/ (accessed 14 January 2018).

Anderson, Kent, & Mark Nolan (2004) "Lay Participation in the Japanese Justice System: A Few Preliminary Thoughts Regarding the Lay Assessor System (Saiban-in Seido) from Domestic Historical and International Psychological Perspectives." 37 *Vanderbilt Journal of Transnational Law* 935–92.

Botsman, Daniel (2005) *Punishment and Power in the Making of Modern Japan*, Princeton, NJ and Oxford: Princeton University Press.

Boyne, George, Patricia Day, & Richard Walker (2002) "The Evaluation of Public Service Inspection: A Theoretical Framework." 39 *Urban Studies* 1197–212.

Center for Prisoners Rights (2019) "*Gōmon kinshi i'inkai no dai-2 seifu hōkokusho shinsa o ukete – hikōkinsha no jinken jōkyo no kaizen to shikei seido · shikei kakuteisha shogū no minaoshi o motomeru seimei* [Response to the Comments of the Committee Against Torture on Japan's Second Periodic Report—Submission Seeking the Improvement of the Human Rights Conditions of

182. See Ministry of Justice, *supra* note 60, Table 2-4-3-1: "*Keiji shisetsu ni okeru jiko hassei jōkyo*" showing escapes, suicides, and deaths and injuries, as well as workplace and other accidents and disasters dropping from a reported 25 in 2008 to a reported 14 in 2017.

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press

Detainees and the Review of the Death Penalty and the Treatment of Those on Death Row],” http://www.cpr.jca.apc.org/archive/statement (accessed 26 March 2019).
Courts in Japan (undated-a) “*Kensatsu shinsakai seido* Q&A [Prosecution Review Commission System Q&A],” http://www.courts.go.jp/kensin/q_a/q59/index.html (accessed 5 April 2019).
Courts in Japan (undated-b) “*Zenkoku no kensatsu shinsakai ichiranhyō* [List of PRC in Japan],” http://www.courts.go.jp/kensin/seido_itiran/index.html (accessed 5 April 2019).
Croydon, Silvia (2016a) “Prison Law Reform in Japan: How the Bureaucracy Was Held to Account over the Nagoya Prison Scandal.” 14 *The Asia-Pacific Journal: Japan Focus* 1–30.
Croydon, Silvia (2016b) *The Politics of Police Detention in Japan: Consensus of Convenience*, Oxford: Oxford University Press.
Day, Patricia, & Rudolf Klein (1990) *Inspecting the Inspectorates*, York: Joseph Rowntree Memorial Trust.
Doi, Masakazu (2014) “*Keimusho ni okeru fukushi to iryō: Keiji Shisetsu Shisatsu I’in no keiken o fumaete* [Welfare and Medical Care in Prison: Through the Experiences of a Penal Institution Visiting Committee Member],” 125 *Keisei [Japanese Journal of Correction]* 12–23.
Ellis, Tom, Chris Lewis, & Mai Sato (2011) “The Japanese Probation Service: A Third Sector Template?” 58 *Probation Journal* 333–44.
Foote, Daniel H. (1996) “Judicial Creation of Norms in Japanese Labor Law: Activism in the Service of—Stability?” 43 *UCLA Law Review* 635–710.
Foote, Daniel H. (2007) “Introduction and Overview: Japan at a Turning Point,” in D. H. Foote, ed., *Law in Japan: A Turning Point*, Seattle: University of Washington Press, xix–xxxix.
Foote, Daniel H. (2010) “Policymaking by the Japanese Judiciary in the Criminal Justice Field,” 72 *Hōshakaigaku [Journal of the Japanese Association for Sociology of Law]* 6–47.
Foote, Daniel H. (2014) “Citizen Participation: Appraising the Saiban’in System,” 22 *Michigan State International Law Review* 755–75.
Fujita, Masahiro (2018) *Japanese Society and Law Participation in Criminal Justice*, Cham: Springer.
Fukuda, Keita (2013) “*Nihon no keimusho ura nenpyō: keimusho ‘jiken’ 140-nenshi 1868–2013* [The Hidden History of Japanese Prisons: 140 Years of Security Incidents 1868–2013],” in M. Kubota, M. Saito, A. Hinago et al., eds., *Keimusho no tabū [Prison Taboos]*, Tokyo: Takarajimasha.
Fukurai, Hiroshi (2007) “The Rebirth of Japan’s Petit Quasi-Jury and Grand Jury Systems: A Cross-National Analysis of Legal Consciousness and the Law Participatory Experience in Japan and the US,” 40 *Cornell International Law Journal* 315–54.
Fukurai, Hiroshi (2011) “Japan’s Prosecutorial Review Commissions: Lay Oversight of the Government’s Discretion of Prosecution,” 6 *University of Pennsylvania East Asia Law Review* 1–42.
Fukurai, Hiroshi (2013) “A Step in the Right Direction for Japan’s Judicial Reform: Impact of the Justice System Reform Council Recommendations on Criminal Justice and Citizen Participation in Criminal, Civil, and Administrative Litigation.” 36 *Hastings International and Comparative Law Review* 517–67.
Fukurai, Hiroshi, & Zhouyu Wang (2014) “People’s Grand Jury Panels and the State’s Inquisitorial Institutions: Prosecution Review Commissions in Japan and People’s Supervisors in China.” 37 *Fordham International Law Journal* 929–72.
Goodman, Carl (2013) “Prosecution Review Commissions, the Public Interest, and the Rights of the Accused: The Need for a ‘Grown Up’ in the Room.” 22 *Pacific Rim Law & Policy Journal* 24–30.
Gyōkei kaikaku kaigi [Correctional Administration Reform Council] (2003) “*Gyōkei kaikaku kaigi teigen – Kokumin ni rikai sare, sasaerareru keimusho e* [Correctional Administration Reform Council Proposal—Toward Prisons that Citizens Understand and Support],” http://www.moj.go.jp/content/000001612.pdf (accessed 5 April 2019).
Herber, Erik (2016a) “The 2011 Fukushima Nuclear Disaster: Japanese Citizen’s Role in the Pursuit of Criminal Responsibility.” 42 *Zeitchriftrt fuer Japanisches Recht/Journal of Japanese Law* 87–109.
Herber, Erik (2016b) “Victim Participation in Japan: When Therapeutic Jurisprudence Meets Prosecutor Justice.” 3 *Asian Journal of Law and Society* 135–57.

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press

Her Majesty's Inspectorate of Prisons for England and Wales ("HM Inspectorate of Prisons") (undated) "What We Do," https://www.justiceinspectorates.gov.uk/hmiprisons/about-hmi-prisons/ (accessed 11 February 2019).

Herber, Erik (2019) *Lay and Expert Contributions to Japanese Criminal Justice*, New York: Routledge.

Hirayama, Mari (2012) "Lay Judge Decisions in Sex Crime Cases: The Most Controversial Area of Saiban'in Trials." 3 *Yonsei Law Journal* 128–45.

Ikeda, Osamu (2009) *Kaisetsu saiban'in hō: Rippō no kei'i to kadai [Commentary on the Saiban'in Act: Legislative History and Agenda]*, 2nd edn, Tokyo: Kōbundō Publishers.

Independent Web Journal (2014) "*Tōden wa zendengen sōshitsu o yosōdekita – Kensatu shinsakai ga katsumata tsunehisa moto kaichōra moto Tōden kanbu 3-nin ni 'kiso sōtō' giketsu – Fukushima genpatsu kokusodan ga Fukushima shi de kinkyū kisha kaiken* ['TEPCO Could Have Predicted the Total Power Loss,' Prosecution Review Committee's 'Indictment is Proper' Decision Against Three TEPCO Executives including Chairman Tsunehisa Katsumata—Urgent Press Conference by Fukushima Nuclear Power Plant Prosecution Group in Fukushima City]," https://iwj.co.jp/wj/open/archives/159240 (accessed 11 February 2019).

Institute for Criminal Policy Research (2019) "World Prison Brief Data: Japan," http://www.prisonstudies.org/country/japan (accessed 10 July 2019).

Ishikawa, Masaoki, ed. (2014) *Shihō shisutemu kara fukushi shisutemu e no daiba-jon puroguramu no genjō to kadai* [Current Situation and Issues in Programs Diverting Offenders from the Judicial System to the Welfare System], Tokyo: Seibundō.

Ito, Kazuko (2013) "Wrongful Convictions and Recent Criminal Justice Reform in Japan." 80 *University of Cincinnati Law Review* 1245–75.

Iwasawa, Yuji (1998) *International Law, Human Rights, and Japanese Law*, Oxford: Oxford University Press.

Japan Federation of Bar Associations (JFBA) (2009) "*Keiji Shisetsu Shisatsu I'inkai no arikata ni kansuru ikensho* [Opinion on the Future Shape of Penal Institution Visiting Committees]," 17 September, https://www.nichibenren.or.jp/library/ja/opinion/report/data/090917.pdf (accessed 11 February 2019).

Japan Federation of Bar Associations (JFBA) (2015) "*Keiji Shisetsu Shisatsu I'inkai no katsudō jujitsu no tame ni* [Towards Fulfilling the Potential of Penal Institution Inspection Committee Activities]," https://www.nichibenren.or.jp/library/ja/publication/booklet/data/keijishisetsuiinkai.pdf (accessed 5 April 2019).

Japan Federation of Bar Associations (JFBA) (2016) "*Kensatsu shinsakai seido no unyō kaizen oyobi seido kaikaku o motomeru ikensho* [Statement of Opinion Seeking Improvements in Prosecution Review Commission Operations and Reform of the Prosecution Review Commission System]," 15 September, https://www.nichibenren.or.jp/library/ja/opinion/report/data/2016/opinion_160915_5.pdf (accessed 14 July 2019).

Japan Federation of Bar Associations (JFBA) (undated) "*Kensatsu shinsakai ni kansuru torikumi (Kensatsu shinsakai wākingu gurūpu)* [Efforts Concerning Prosecution Review Commissions (Prosecution Review Commissions Working Group)]," https://www.nichibenren.or.jp/activity/criminal/kensatsu_shinsakai.html (accessed 6 July 2019).

Japan Times (2019) "Reviewing the Lay Judge Trial System," *The Japan Times*, 24 January, https://www.japantimes.co.jp/opinion/2019/01/24/editorials/reviewing-lay-judge-trial-system/#.XF-4LGddmos (accessed 11 February 2019).

Johnson, David T. (2002) *The Japanese Way of Justice: Prosecuting Crime in Japan*, Oxford: Oxford University Press.

Johnson, David T. (2009) "Capital Punishment Without Capital Trials in Japan's Law Judge System." 7 *The Asia-Pacific Journal: Japan Focus* 1–40.

Johnson, David T. (2015) "Wrongful Convictions and the Culture of Denial in Japanese Criminal Justice." 13 *The Asia-Pacific Journal: Japan Focus* 1–10.

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press

Johnson, David T., & Mari Hirayama (2019) "Japan's Reformed Prosecution Review Commission: Changes, Challenges, and Lessons." 14 *Asian Journal of Criminology* 77–102.

Johnson, Elmer (1996) *Japanese Corrections: Managing Convicted Offenders in an Orderly Society*, Carbondale: Southern Illinois University Press.

Jones, Colin P. A. (2017) "Japan's New Conspiracy Law Expands Police Power," –https://apjjf.org/-Colin-P-A–Jones/5064/article.pdf (accessed 11 February 2019).

Jones, Colin P. A., & Frank S. Ravitch (2018) *The Japanese Legal System*, St Paul, MN: West Academic Publishing.

Justice System Reform Council (2001) "Recommendations of the Justice System Reform Council—for a Justice System to Support Japan in the 21st Century," http://japan.kantei.go.jp/judiciary/2001/0612report.html (accessed 11 February 2019).

Kage, Reiko (2017) *Who Judges? Designing Jury Systems in Japan, East Asia, and Europe*, Cambridge: Cambridge University Press.

Kaido, Yuichi (2010) "*Keiji Shisetsu Shisatsu I'inkai setsuritsu 3-nenkan no katsudō seika to kongo no kadai* [Penal Institution Visiting Committees—First Three Years' Results and Issues Ahead]." 91 *Niben Frontier* 48–51.

Kano, Kaori, & Stacey Steele (2017) "Japan's Lay Judge System (Saiban-in Seido) and Legislative Developments: Annotated Translation of the Act Amending the Act on Criminal Trials with Participation of Saiban-in." 17 *Asian-Pacific Law & Policy Journal* 1–12.

Kano, Kaori, & Stacey Steele (2018) "Developments in Contemporary Japanese Electoral Law: Lowering the Voting Age from 20 to 18 Years Old." 23 *Zeitschrift fuer Japanisches Recht/ Journal of Japanese Law* 103–27.

Kawai, Mikio (2014) "*Keiji shisetsu shisatsui'in seido to shimin no shihō sanka* [The Penal Institution Visiting Committee System and Civil Participation]," in Y. Wada, S. Kashimura, M. Abe, & M. Funakoshi, eds., *Hō no kansatsu: Hō to shakai no hihanteki saikōchiku ni mukete [Oversight of Law: Towards a Critical Reconstruction of Law and Society]*, Tokyo: *Hōritsu Bunkasha*, 115–33.

Keihō [Penal Code], Act No. 45 of 1907, http://www.japaneselawtranslation.go.jp/law/detail/?id=3130&vm=02&re=2&new=1 (accessed 11 February 2019).

Keiji shisetsu oyobi hishūyōsha no shogū- ni kansuru kisoku [Regulations on Penal Institutions and Treatment of Inmates], Ministry of Justice Ordinance No. 57 of 2006, http://www.japaneselawtranslation.go.jp/law/detail_download/?ff=14&id=3227&x=26&y=5 (accessed 11 February 2019).

Keiji shisetsu oyobi jukeisha no shogū to ni kansuru hōritsu no ichibu o kaisei suru hōritsu [Act Amending Parts of the Act in Relation to the Penal Institution and the Treatment of Inmates], Act No. 58 of 2006, http://www.shugiin.go.jp/internet/itdb_housei.nsf/html/housei/16420060608058.htm (accessed 11 February 2019).

Keiji shūyō shisetsu oyobi hishūyōsha tō no shogū ni kansuru hōritsu [Act on Penal Detention Facilities and Treatment of Inmates and Detainees], Act No. 50 of 2005, http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=142 (accessed 11 February 2019).

Keiji soshō hō [Code of Criminal Procedure], Act No. 131 of 1948, http://www.japaneselawtranslation.go.jp/law/detail/?id=2283&vm=02&re=2&new=1 (accessed 11 February 2019).

Kensatu shinsai'in tō no nittō oyobi shukuhakuryō o sadameru seirei [Cabinet Order prescribing t the Travel Expenses, Daily Wages, and Accommodation Expenses for Members of Prosecution Review Commissions], Order No. 31 of 1949, http://www.courts.go.jp/kensin/q_a/q59/index.html (accessed 11 February 2019).

Kensatsu shinsakai hō [Prosecution Review Commission Act], ("PRC Act"), Act No. 147 of 1948, http://www.shugiin.go.jp/internet/itdb_housei.nsf/html/houritsu/00219480712147.htm (accessed 11 February 2019).

Kokka ko-muin hō [The National Public Service Act], Act No. 120 of 1947, http://www.japaneselawtranslation.go.jp/law/detail/?id=2713&vm=04&re=2&new=1 (accessed 11 February 2019).

Ko-shoku senkyo hō [Public Election Act], Law No. 100 of 1950, https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=325AC1000000100 (accessed 11 February 2019).

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press

Kōya, Matsuo (1981) "*Dai-4 han no kankō ni attate* [Preface to the Fourth Edition]," in R. Hirano, K. Matsuo, & H. Tamiya, eds., *Keiji Soshō hō hanrei hyakusen dai-4 han [The Most Influential 100 Criminal Procedure Cases]*, 4th edn, *Juristo Special Edition*, 74.

Kuwayama, Aya (2010) "Exploring the Possibility of Designating a National Preventive Mechanism in Japan." 6 *Essex Human Rights Review* 125–37.

Lawson, Carol (2015) "Reforming Japanese Corrections: Catalysts and Conundrums," in L. Wolff, L. Nottage, & K. Anderson, eds., *Who Rules Japan? Popular Participation in the Japanese Legal Process*, Cheltenham: Edward Elgar, 128–63.

Lawson, Carol (2019) "Satoshi Tomiyama, Director-General of the Japanese Corrections Bureau," in P. Birch & D. Das, eds., *Trends in Corrections Volume 3: Interviews with Corrections Leaders Around the World*, Florida: CRC Press/Taylor Francis, 127–48.

Lawson, Carol (2020a, forthcoming) "*Nihon no tokusei ni michita kōrei dansei jukeisha* [Japan's Older Male Prisoners—a Distinctive Cohort]," in Y. Hosoi & B. Tatsuno, eds., *Kōreisha hanzai no sōgōteki kenkyū: Shakai hoshō, kazoku, kōreika nado o shiya ni, hikaku bunkateki ni kaimei suru [Understanding Elderly Crime: Comparative Cultural Studies through the Lenses of Social Security, Families & Aging]*, Clarendon: Tuttle Publishing (simultaneously in Japanese: "*Nihon no tokusei ni michita kōrei dansei jukeisha," in* Y. Hosoi & B. Tatsuno, eds., *Kōreisha hanzai no sōgōteki kenkyū: Shakai hoshō, kazoku, kōreika nado o shiya ni, hikaku bunkateki ni kaimei suru*, Tokyo: Kazama Shobo).

Lawson, Carol (2020b, forthcoming doctoral thesis) "The Nature and Impact of Civil Oversight in Prisons in Japan and the Australian Capital Territory: Voices from Inside." PhD diss., ANU College of Law, Australian National University.

Machida, Tōru (2015) "*Tōden moto kanbura o kyōsei kiso! kono kuni no mirai no tame ni kensatsu ga mesu o ireru beki mittsu no tabū* [Mandatory Prosecution of Former TEPCO Executives! Three Taboos that the Prosecution Should Investigate for the Future of this Country]," *Gendai.ismedia*, 4 August, http://gendai.ismedia.jp/articles/-/44512 (accessed 23 January 2019).

Maruyama, Yasuhiro, ed. (2015) *Keiji shihō to fukushi o tsunagu [Connecting Criminal Justice and Welfare]*, Tokyo: Seibundo.

McGowen, Randall (1995) "The Well-Ordered Prison: England, 1780–1865," in N. Morris & D. J. Rothman, eds., *The Oxford History of the Prison: The Practice of Punishment in Western Society*, New York: Oxford University Press, 71–99.

Media Kokusyo (2014) "*Tokyo dai-5 kensatsu shinsakai no 'yami', dai-5 kenshin ni yoru giwaku dar-ake no Ozawa kiso giketsu no tsugi wa Fukushima genpatsu soshō no shinsa* [Tokyo 5th Public Prosecutors' Review Commission under Cloud: Highly Questionable Decision to Prosecute Ozawa to be Followed by Examination of the Fukushima Nuclear Lawsuit]," *Media Kokusyo*, 10 June, http://www.kokusyo.jp/kensatsu/5892/ (accessed 11 February 2019).

Minakawa, Makoto (2015) "*Ronsetsu: keiji shisetsu ni okeru hikōkinsha no kokusai jinken hoshō* [Article: Guaranteeing the International Human Rights of Detainees in Penal Institutions]." 7 *Waseda Shakai Anzen Kenkyusho Kiyo [Proceedings of the Waseda Institute of the Policy of Social Safety]* 95–112, https://www.waseda.jp/prj-wipss/ShakaiAnzenSeisakuKenkyujo Kiyo_07_Minakawa.pdf (accessed 5 April 2019).

Ministry of Justice (2006) "*Hōmusho kyōsō dai-3255 go Heisei 18-nen 5-gatsu 23-nichi keiji shisetsu shisatsu i'inkai ni taisuru kyōryoku ni tsuite (tsūtatsu)* [Ministry of Justice Correction Bureau General Affairs Directive No. 3255, 23 May 2006, 'Concerning Co-Operation with Penal Institution Visiting Committees']," http://www.moj.go.jp/content/000074535.pdf (accessed 5 April 2019).

Ministry of Justice (2013) "*Saiban'in seido ni kansuru kentōkai torimatome hōkokusho* [Consolidated Report of the Working Group on the Lay Judge System]," http://www.moj.go.jp/content/000112006.pdf (accessed 8 February 2019).

Ministry of Justice (2017) "White Paper on Crime 2017," http://hakusyo1.moj.go.jp/en/66/nfm/mokuji.html (accessed 11 February 2019).

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press

Ministry of Justice (2018a) "*Hanzai Hakusho 2018* [White Paper on Crime 2018]," http://hakusyo1.moj.go.jp/jp/65/nfm/mokuji.html (accessed 8 February 2019).
Ministry of Justice (2018b) "White Paper on Crime 2018," http://www.moj.go.jp/content/001276462.pdf (accessed 8 February 2019).
Ministry of Justice (2018c) "*Kyosei tokei chōsa – 17-00-03 Shisetsubetsu nenmatsu shūyōjin'in* [Correction Bureau Statistical Survey—17–00–03 End-of-Year Detainee Numbers by Institution]," https://www.e-stat.go.jp/stat-search/file-download?statInfId=000031738094&fileKind=0 (accessed 11 February 2019).
Ministry of Justice (undated) "*Keiji Shisetsu Shisatsu I'inkai no katsudō jōkyō* [Report on the Activities of Penal Institution Visiting Committees]," http://www.moj.go.jp/shingi1/kyousei_katsudou_index.html (accessed 11 February 2019).
Ministry of Justice Correction Bureau (2015) *Keiji Shisetsu Shisatsu I'inkai katsudō no tebiki* [Ministry Guide—Penal Institution Visiting Committee Activities], 11 August.
Ministry of Justice Correction Bureau (2019) "*Tōkeihyō 19-04-01: Keimusho kōchisho betsu hishūyōsha no nyūshussho jiyū betsu jin'in* [Statistical Table 19–04–01: Number of Detainees by Reasons for Entering and Leaving Prisons and Detention Centres]," 25 June, https://www.e-stat.go.jp/stat-search/files?page=1&layout=datalist&toukei=00250005&tstat=000001012930&cycle=1&year=20190&month=12040604 (accessed 10 July 2019).
Mishima, Satoshi (2014) "*Osaka Iryō Keimusho Shisatsu I'inkai no 2011-nendo no katsudō jōkyō ni tsuite: nenji hōkokusho ken ikensho oyobi hōmu daijin ate no yōbōsho* [Fiscal 2011 Activities of Osaka Medical Prison Penal Institution Visiting Committee: Annual Report, Written Opinions to Warden and Written Requests to the Minister of Justice]." 60 *Osaka Shiritsu Daigaku Hōgakukai Hōgaku Zasshi [Osaka City University Law Association Law Journal]* 464–507.
Mitchell, Richard (2002) *Justice in Japan: The Notorious Teijin Scandal*, Honolulu: University of Hawaii Press.
Miyazawa, Setsuo (1993) *Policing in Japan: A Study on Making Crime*, Albany: SUNY Press.
Miyazawa, Setsuo (2008) "The Politics of Increasing Punitiveness and the Rising Populism in Japanese Criminal Justice Policy." 10 *Punishment & Society* 47–77.
Miyazawa, Setsuo (2014) "Citizen Participation in Criminal Trials in Japan: The Saiban'in System and Victim Participation in Japan in International Perspectives." 42 *International Journal of Law, Crime and Justice* 71–82.
Niimura, Shigefumi (2014) "*Kangokuhō kaiseigo no hitotsu no sokumen: keiji shisetsu shisatsu I'inkai no katsudō o megutte* [One Aspect of the Prison Act Reforms: Regarding the Activities of Penal Institution Visiting Committees]," in S. Ishizuka, Y. Okamoto, T. Kusumoto, A. Maeda, & H. Miyamoto, eds., *Kindai keihō no gendaiteki ronten: Adachi Masakazu sensei koki kinen ronbunshū [Essay Collection in Honour of Professor Masakazu Adachi's 70th Birthday]*, Tokyo: Shakai Hyo-ronsha, 350–64.
Nishida, Hiroshi (2014) *Keimukan e no ēru – Hōmusho 'keimukan' kyokuchō no hitorigoto [Cheering Corrections Officers On: Thoughts from the Director-General of the Correction Bureau]*, Tokyo: Ko-saido Publishing.
Nuclear Prosecutors Group (undated) "*Fukushima genpatsu kokuso dan* [Fukushima Nuclear Prosecution Team]," http://kokuso-fukusimagenpatu.blogspot.com/ (accessed 11 February 2019).
Osakafu ryūchi shisetsu shisatsu i'inkai jōrei [Osaka Prefecture Detention Facility Inspection Committee Ordinance], Prefectural Ordinance No. 11 of 2007, 16 March, http://www.pref.osaka.lg.jp/houbun/reiki/reiki_honbun/k201RG00001401.html (accessed 11 February 2019).
Owers, Anne (2014) "Comparative Experiences of Implementing Human Rights in Closed Environments: Monitoring for Rights Protection," in B. Naylor, J. Debeljak, & A. Mackay, eds., *Human Rights in Closed Environments*, Sydney: Federation Press, 209–27.
Prime Minister of Japan and His Cabinet (2001a) "*Shihō seido kaikaku no mittsu no hashira* [Three Pillars of the Justice System Reform]," https://www.kantei.go.jp/jp/sihouseido/kentoukai/adr/dai1/1siryou1_3_1.html (accessed 23 January 2019).

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press

Prime Minister of Japan and His Cabinet (2001b) "*Shihō seido kaikaku shingikai ikensho – 21 seiki no Nihon o sasaeru shihō seido* [Recommendations of the Justice System Reform Council—for a Judicial System to Support Japan in the 21st Century]" ("JSRC Recommendations"), http://www.kantei.go.jp/jp/sihouseido/report/ikensyo/index.html (accessed 8 February 2019).

Quirk, Hannah, Toby Seddon, & Graham Smith, eds. (2010) *Regulation and Criminal Justice: Innovations in Policy and Research*, New York: Cambridge University Press.

Rich, Makoto, & Jack Ewing (2018) "Japanese Justice Faces Scrutiny in Case of Nissan Chief and U.S. Board Member," *The New York Times*, 19 December, https://www.nytimes.com/2018/12/19/business/carlos-ghosn-jail.html (accessed 8 January 2019).

Saiban'in no sankasuru keiji saiban ni kansuru hōritsu [Act on Criminal Trials with the Participation of Saiban'in], Act No. 63 of 2004, http://www.japaneselawtranslation.go.jp/law/detail/?id=2772&vm=04&re=2&new=1 (accessed 11 February 2019).

Saiban'in no sankasuru keiji saiban ni kansuru kisoku [Rules on Lay Judge Participation in Criminal Trials], Supreme Court Rule No. 7 of 2007, http://www.saibanin.courts.go.jp/vcms_lf/kisoku27.pdf (accessed 9 February 2019).

Saikōsai Mondai (2014) "*Tōkyō dai-5 kensatsu shinsakai ga, Tōden no moto keieijin ni taishite kisosōtō no giketsu, kujibiki sofuto no giwaku wa hareta no ka?* [The Tokyo Fifth Prosecution Review Commission in Favour of Prosecuting the Former TEPCO Management Team: Cleared of Suspicion of Arbitrariness?]," 1 August, http://saikousaimondai.com/prosecutor/6276/ (accessed 11 February 2019).

Sakamoto, Toshio (2002) *Kanzen zukai jitsuroku! keimusho no naka [Fully Illustrated Account! Inside Prison]*, Tokyo: Futami Bunko.

Sankei News (2016) "*Tōden moto kaichōra 3-nin wo kyōsei kiso – kensatu shinsakai no kisogiketsu uke* [Compulsory Prosecution of Three Senior TEPCO Executives—Responding to the Decision of the Prosecution Review Commission to Prosecute]," https://www.sankei.com/affairs/news/160229/afr1602290011-n1.html (accessed 11 February 2019).

Sankei Shimbun (2015) "*Tōden genpatsu jiko kyōsei kiso ni wa gimon nokoru* [TEPCO Nuclear Power Plant Accident: Compulsory Prosecution Leaves Questions]," 1 August, https://www.sankei.com/column/news/150801/clm1508010002-n2.html (accessed 26 March 2019).

Satomi, Yoshika (2015) "*Oshu gōmon tō bōshi i'inkai, Eikoku hōritsu keiji shisetsu shisatsu i'inkai to Nihon no keiji shisetsu shisatsu i'inkai seido* [The European Committee Against Torture, Penal Institution Visiting Bodies under English Law, and Japan's Penal Institution Visiting Committee System]," *Jinbun shakaikagaku kenkyūsho nenpō [Institute for Research in Humanities Annual Report]*, https://www.keiwa-c.ac.jp/wp-content/uploads/2015/05/nenpo13-5.pdf (accessed 11 February 2019).

Saikō saibansho jimu sōkyoku [Secretariat-General of Supreme Court of Japan] (2012) "*Saiban'in saiban jisshi jōkyō no kensho- hōkokusho* [Verification Report on the Implementation of Lay Judge Trials]," http://www.saibanin.courts.go.jp/vcms_lf/hyousi_honbun.pdf (accessed 11 February 2019).

Shinomiya, Satoru (2019) "*Saiban'in seido shikko 10-nen: sono seika to kadai* [Ten Years since the Commencement of the Lay Judge System: Achievements and Issues]" Presented at Hakuoh University, Oyama, Japan, 18 May 2019, 1–15.

Steele, Stacey (2015a) "Elderly Offenders in Japan and the Saiban'in Seido (Lay Judge System): Reflections through a Visit to the Tokyo District Court." 35 *Japanese Studies* 223–43.

Steele, Stacey (2015b) "Proposal to Reform the Japanese Saiban'in Seido (Lay Judge System) to Exclude Drug-related Cases: Context and Complexities from the Chiba District Court." 16 *Australian Journal of Asian Law* 1–19.

Supreme Court of Japan (2019a) "*Saban'in seido 10-nen no tōkatsu hōkokusho* [General Report on 10 Years of the Lay Judge System]," http://www.saibanin.courts.go.jp/vcms_lf/r1_hyousi_honbun.pdf (accessed 6 July 2019).

Supreme Court of Japan (2019b) "*Saiban'in seido no jisshi jōkyō ni tsuite (de-ta) ~ motto kuwashiku o shiri ni naritai kata e* [About the Current State of the Lay Judge System (Data): For Those Who

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press

Would Like to Know More Detail]," http://www.saibanin.courts.go.jp/topics/09_12_05-10jissi_jyoukyou.html (accessed 6 July 2019).
Supreme Court of Japan (undated-a) "*Saiban'in saiban no Jisshi jōkyō ni tsuite (seido shikō ~ heisei 30-nen 10-gatsumatsu: sokuhō)* [About the Implementation of Lay Judge Trials (from Implementation to End October 2018: Summary)]," http://www.saibanin.courts.go.jp/vcms_lf/h30_10_saibaninsokuhou.pdf (accessed 6 July 2019).
Supreme Court of Japan (undated-b) "*Saiban'in saiban no jisshi jōkyō ni tsuite (seido shikō ~ heisei 31-nen 4-gatsumatsu: sokuhō)* [About the Implementation of Lay Judge Trials (from Implementation to End April 2019: Summary)]," http://www.saibanin.courts.go.jp/vcms_lf/h31_4_saibaninsokuhou.pdf (accessed 6 July 2019).
Supreme Court Secretariat Criminal Division (2019) "*Heisei 29-nen ni okeru keiji jiken no gaikyō (ue)* [Overview of Criminal Cases in 2017 (1)]." 71(2) *Hōsō jihō [Legal Affairs]* 263–442.
Takeda, Masahiro (2019a) "*Genbatsuka no ippō de yūyo ōku* [Toughening the Law with One Hand while Giving More Suspended Sentences with the Other]," *Kyoto Shimbun*, 23 March.
Takeda, Masahiro (2019b) "*Utagawashiki wa muzai tettei* [Ensuring a Not Guilty Verdict where there Is Doubt]," *Fukui Shimbun*, 10 March.
Terasaki, Akiyoshi (2007) "*Fuchū Keimusho Shisatsu I'inkai no ichinen* [A Year in the Life of the Fuchu Prison Visiting Committee]." 118 *Keisei [Japanese Journal of Correction]* 27–32.
The Peninsula (2018) "Ghosn Arrest Puts Japan's Justice System in the Dock," https://thepeninsulaqatar.com/article/04/12/2018/Ghosn-arrest-puts-Japan-s-justice-system-in-the-dock (accessed 8 January 2019).
Tokyo Web (2018) "*Saiban'in kōho, shusseki 2-wari sennin tetsuzuki seido keigaika no osore* [20% Attendance Rate for Lay Judge Candidates Poses a Threat to the Selection Process and System]," 11 November, http://www.tokyo-np.co.jp/article/national/list/201811/CK2018111102000164.html (accessed 11 February 2019).
United Nations Human Rights Office of the High Commissioner (undated) "Introduction to Optional Protocol to the Convention against Torture (OPCAT) Subcommittee on the Prevention of Torture," https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx (accessed 11 February 2019).
Upham, Frank (1987) *Law and Social Change in Postwar Japan*, Cambridge: Harvard University Press.
Vanoverbeke, Dimitri, Jeroen Maesschalck, David Nelken, & Stephan Parmentier, eds. (2014) *The Changing Role of Law in Japan: Empirical Studies in Culture, Society and Policy Making*, Cheltenham & Northampton: Edward Elgar.
West, Mark (1992) "Prosecution Review Commissions: Japan's Answer to the Problem of Prosecutorial Discretion." 92 *Columbia Law Review* 684–724.
Wilson, Matthew J. (2017a) "Assessing the Direct and Indirect Impact of Citizen Participation in Serious Criminal Trials in Japan." 27 *Washington International Law Journal* 75–118.
Wilson, Matthew J. (2017b) "Japan's Lay Judge System: Impact on the Judiciary and Society," in K. Ageishi, H. Ōtsuka, K. Musashi, & M. Hirayama, eds., *The Legal Process in Contemporary Japan: A Festschrift in Honor of Professor Setsuo Miyazawa's 70th Birthday*, Tokyo: Shinzansha, 369–84.
Yamamoto, Jōji (2003) *Gokusōki [Diary from a Prison Window]*, Tokyo: Poplar Publishing.
Yang, Kenny (2017) "Trust the People or Business as Usual? An Examination of Lay Participation in the Japanese Criminal Justice System." 42 *University of Western Australia Law Review* 69–87.
Yasuhara, Hiroshi, Kanta Nakagawa, & Shinichi Hasabe (2016) "*Kyōsei kiso jiken shitei bengoshi no jitsumu keiken (shitei bengoshi no tachiba kara) (tokushū kaisei kensatsu shinsakai hō shikō go 7-nen* [Practical Experiences of Designated Attorneys in Charge of Mandatory Prosecution Cases (from the Standpoint of a Designated Attorney) (Seven Years after the Special Amendment to the Prosecutor Review Commission Act)]." 67 *Jiyū to seigi [Freedom and Justice]* 53–9.
Yomiuri Shimbun (2015) "*Kaisetsu Special: Kashitsu sekinin muzukashii risshō* [Special Commentary: The Difficulty of Establishing Liability in Negligence]," 1 August.

https://doi.org/10.1017/als.2019.22 Published online by Cambridge University Press