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Citizen Participation in Criminal Trials in Japan: The *Saiban-in* System and Victim Participation in Japan in International Perspectives

1. The symposium

This mini symposium issue is based on the symposium "Citizen Participation in Criminal Trials: The *Saiban-in* System and Victim Participation in Japan in International Perspectives," which was held as one of the 18 symposiums open to public during the 16th World Congress of the International Society for Criminology, which was held in Kobe, Japan, on August 5th to 9th, 2011. The symposium was sponsored by the Japan Federation of Criminological Associations which consisted of seven academic associations in Japan related to crime and criminal justice,[1] and was organized and chaired by Setsuo Miyazawa, who was the Chair of the Local Organizing Committee of the Congress.

The Japanese criminal justice system had been undergoing a major change by the introduction of two, very different forms of citizen participation in criminal trials when the Congress was planned.[2] One was the *saiban-in* system where mixed panels of professional judges and lay people try cases. In this system, citizens who are supposed to be neutral to the case participate. The other was the system of active participation of crime victims or their representatives (victim participation) in criminal trials. In this system, citizens who have most intimate interests in the case outcome participate. These two systems are now combined in trials of most serious cases.

[1]They are the Association for the Study of Security Science, the Japanese Association of Criminal Psychology, the Japanese Association of Criminology, the Japanese Association of Social Problems, the Japanese Association of Sociological Criminology, the Japanese Association of Victimology, and the Japanese Society of Law and Forensic Social Services.

[2]There is another form of public participation in the administration of criminal justice in Japan. That is the Inquest of Prosecution or the Prosecution Review Commission. This Commission is a post-war reform which tried to introduce democratic control of prosecutorial discretion. Unlike the grand jury system in the US which works before indictment, the Commission works after the prosecutor decided not to indict the suspect. A group of eleven lay people, who are randomly appointed from among local voters, review prosecutorial decision. With a special majority of eight or more votes, the Commission may find that the suspect should have been indicted. However, its conclusion was only advisory until its reform. The JSRC recommended to make its conclusion binding if it decided so twice. Like the *saiban-in* system, this reform was also introduced in May 2009. For contrasting views about this reform, see Fukurai (2011) and Goodman (2013). Although the Prosecution Review Commission was not formally included in the scope of the open symposium, Tokunaga, Appendix 2 of this introduction, discusses it, too.

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The victim participation system was implemented in December 2008. By the time the *saiban-in* system was implemented in May 2009, the victim participation system had been used in 206 cases. When the Local Arrangement Committee of the 16th World Congress of the International Society for Criminology started programming in earnest in December 2010, the *saiban-in* system had produced more than 1500 decisions. Given the public attention to the two systems which largely overlapped in relatively more serious criminal trials, the Committee considered it a good idea to organize an open symposium to discuss both under the rubric of "citizen participation."

Previously the *saiban-in* system and the victim participation system tended to be analyzed separately.[3] However, the most interesting issue of criminal trials which combined these two systems was the effect of victim participation on verdict (guilty or not guilty) and sentencing. In that sense, too, the Committee thought it important to discuss both in this open symposium.

The symposium consisted of the following five papers.

1. Akira Goto, Hitotsubashi University, "Citizen Participation in Criminal Trials in Japan."
2. Kyoko Tokunaga, *Kobe Shimbun* Newspaper, "The *Saiban-in* System and Media Coverage."
3. Valerie Hans, "Juries and the Impact of Victim Participation in Criminal Trials: Insights from the American Experience."
4. Hans-Jürgen Kerner, University of Tübingen, "Citizen Participation in Criminal Trials in Germany: Legal and Practical Questions."
5. Jong-Sik Choi, "Present Situation and Problems of Citizens' Participation in Criminal Trial System in the Republic of Korea."

Akira Goto is a leading scholar on criminal justice in Japan who has participated in various governmental committees. He is an ideal presenter on theoretical issues of the situation in Japan. Kyoko Tokunaga is a reporter of *Kobe Shimbun*, the regional newspaper in the Kobe area. She was closely following relevant cases in the region and was able to report what was actually happening in those cases and around them. As will be explained later, the United States and Germany have systems similar or almost same to the two systems in Japan. Valerie Hans is the best known scholar in jury research in the United States, who also has intimate knowledge about criminal justice in Japan. She was invited to present her comments from a comparative perspective. Hans-Jürgen Kerner is the most respected criminologist in Germany. He was the immediate past President of the International Society of Criminology at the time of the Congress, and we were most honored to have him as the speaker on the German lay assessor system. Finally, citizen participation is not limited to Japan, but is spreading throughout East Asia.[4] South Korea, the closest neighbor to Japan, was no exception. South Korea introduced a system of advisory jury trial on an experimental basis for the period of five years in 2008. We were lucky to have Jong-Sik Choi, a South Korean criminal justice scholar, teaching in Japan at

[3] An exception was the Special Issue on the Future of Lay Adjudication and Theorizing Today's Resurgence of Civic, Legal Participatory Systems in East and Central Asia in Vol. 38, Issue 4 (2010) of this journal, which contained a paper on victim participation and three papers on *saiban-in*. However, probably because it was published soon after the introduction of the *saiban-in* system and the victim participation system, even that issue did not discuss cases where mixed panel of professional judges and *saiban-in* decided under participation of victim representatives.

[4] For an overview, see Fukurai et al. (2010).

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the time of the Congress. We invited him to tell us what was going on in his country and compare it with the situation in Japan.

2. The *Saiban-in* system

The *saiban-in* system is based on a recommendation by the Justice System Reform Council (JSRC). The Japanese government established the JSRC under the Cabinet in July 1999 with a mandate to examine reforms of the entire justice system, including those to strengthen the popular base for the justice system. Japan had a limited form of criminal jury trials in 1928–1943, and a movement appeared after the war to reintroduce a jury system in a purer form. After a highly intensive and very contentious deliberation, the JSCR presented a comprehensive set of recommendations to the government in June 2001.[5] The JSRC particularly recommended "a new system for popular participation," where "the general public can work in cooperation with judges, sharing responsibility for … deciding the cases." The JSRC set basic principles that "Judges and *saiban-in* should deliberate and make decisions both on guilt and on the sentence together," and "a minimum requirement should be that a decision adverse to a defendant cannot be made on the basis of a majority of either the judges or the *saiban-in* alone."

Details of the *saiban-in* system were left for a committee which was established after the closing of the JSRC.[6] One of the most contentious issues was the composition of the mixed panel of professional judges and *saiban-in*. Liberals wanted to have a far larger number of *saiban-in* than professional judges, while conservatives wanted to have a fewer number of *saiban-in* than professional judges. The conclusion was to form a panel with three professional judges and six *saiban-in* in principle. The Code of Criminal Procedure was amended and the *Saiban-in* Act was enacted in May 2004. The new system was to be introduced in May 2009.

The *saiban-in* system is applicable to cases of crimes punishable by death or indefinite imprisonment or crimes committed with intent that resulted in the death of the victim. In cases where the defendant has admitted guilt, and the court deems it appropriate, a panel of one professional judge and four *saiban-in* may decide the case. *Saiban-in* are selected randomly on a case by case basis from among eligible voters living in the jurisdiction of the given district court. Professional judges interpret law and procedure and explain them to *saiban-in*. Procedures for verdict (guilty or not guilty) and for sentencing are not separated in Japan. *Saiban-in* may question witnesses and the defendant, and may express their opinions about facts and sentencing in deliberation. A guilty verdict requires a simple majority, which must include at least one each of professional judge and *saiban-in*. *Saiban-in* are required to keep secrecy about the process of deliberation, opinions of individual judges or *saiban-in*, and how the panel is divided in verdict. Criminal punishment is provided for the breach of this obligation.

The introduction of the *saiban-in* system required significant procedural changes. In litigation in Japan, hearings used to be held intermittently. However, when *saiban-in* are

[5]The Justice System Reform Council, "Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century," June 12, 2001, at http://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html (accessed on March 23, 2014).

[6]For analyses of the political process at its different stages, see Miyazawa (2001, 2007a,b, 2013).

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involved, hearings must be held consecutively. In order to make consecutive hearings possible, pretrial proceeding was introduced in November 2005, and cases involving *saiban-in* are required to use it. In this closed proceeding, issues are specified, the court decides on the evidence to be examined in the trial, and the court decides on the request for discovery of evidence.

The *saiban-in* system may be seen as a hybrid of the Anglo-American jury system and the German lay assessor system.[7] On the one hand, like Anglo-American jurors, *saiban-in* are appointed randomly from among local voters on a case-by-case basis. On the other hand, however, unlike Anglo-American jurors, they work in a panel including professional judges. Furthermore, unlike Anglo-American jurors, they may question the defendant and witnesses and decide both on fact-finding and on sentencing. Therefore, while it has elements of both the Anglo-American jury system and the German lay assessor system, the *saiban-in* system is closer to the German system, than to the Anglo-American system. Another important commonality between the Japanese system and the German system is that the fact finding procedure and the sentencing procedure are not separated.

However, in one crucial point, the *saiban-in* system is different from the German system: *saiban-in* outnumber judges in Japan by six to three, while professional judges outnumber lay assessors in relatively serious cases in Germany by three to two.[8] It would be an interesting topic for comparative empirical research to find out how and to what extent these different compositions produce differences in group dynamics and case outcomes.

3. The victim participation system

The victim participation system has a totally different origin. It is a fruit of the victims' rights movement in Japan, particularly the effort of the National Association of Crime Victims and Surviving Families (NAVS). The NAVS was established in January 2000 by families of crime victims. The NAVS criticized the Japanese criminal justice system for its exclusion of crime victims and their families and requested the government to give them the right to actively participate in criminal trials and to apply for civil damages to the given criminal court. The NAVS quickly succeeded to obtain access to the legislative process, and the Code of Criminal Procedure was amended in June 2007.[9] In cases involving serious crimes such as homicide, injury, rape, professional negligence resulting in death or injury, or kidnapping, the victim, surviving family member or their legal agent may sit behind the prosecutor in the trial, may seek explanations from the prosecutor about his exercise of his legal authorities, may question witnesses and defendant, and may present an opinion following the examination of all evidence, including sentence. Once the court has found the defendant guilty, the same court may order the defendant to pay a civil damage upon application from the victim. This system of victim participation was introduced in December 2008, half a year before the introduction of the *saiban-in* system.

[7] See Kerner, Appendix 1 of this article.

[8] In this regard, the *saiban-in* system is closer to the French system for relatively serious cases where a panel of three professional judges and nine jurors decide. See Delmas-Marty and Spencer (2002, p. 231).

[9] For analyses of the political process of the rapid success of the NAVS and the introduction of the victim participation system, see Miyazawa (2008a,b) and Matsui (2011).

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In the United States, the Supreme Court allowed the introduction of victim impact statements as evidence at the sentencing stage in capital cases in 1991[10]. However, there are significant differences between the two countries. In Japan, victim participants (victims or their representatives) do not simply present statements; they may question the defendant and witnesses, and recommend a sentence to the court. In Japan, the fact finding and the sentencing stage are not separated, and victim participants may question the defendant with an assumption that he is guilty even when he denies the charge. In the United States, victims may not seek civil compensations to the criminal court.

In contrast, the Japanese system of victim participation is very similar to those in Continental countries. In fact, the NAVS members and supporters studied the systems in Germany, France, and Italy, visited Germany and France, and used their systems to support their demand.[11] In Germany, crime victims or bereaved family in certain serious cases may sit with prosecutors, present opinions, appeal acquittals, and seek civil damages in criminal proceedings. In certain minor cases, victims may also initiate prosecution.[12] Victims have a similar status in France. The victim may join the proceedings already initiated by the prosecutor or initiate a prosecution by himself, question the defendant, claim compensation in criminal court, and appeal the decision by the trial court.[13]

Given the similar constitutional provisions in the United States and Japan, it is natural to conduct comparative legal analyses between the two countries. In that sense, it is surprising that no constitutional scholar in Japan has raised a question about the constitutionality of allowing victim participants question the defendant and recommend a sentence in the system which does not separate the fact finding and the sentencing stages.

However, direct inspirations for the victim participation system in Japan came from the Continental countries. Continental European scholars have a natural advantage to conduct comparative empirical analyses of the actual functioning of the similar systems in Japan and Continental European countries. It is unfortunate that none of them seem to have conducted such research so far.

4. Papers in this mini symposium

This mini symposium issue consists of extensively revised full papers by Akira Goto, Valerie Hans, and Jong-Sik Choi. I am most grateful to them.

The abstracts prepared for the original symposium by Kyoko Tokunaga and Hans-Jürgen Kerner are also appended to this introduction as they include interesting information. Kerner provides a very succinct description of the German assessor system. Tokunaga's abstract is actually more than an abstract. It particularly makes a unique contribution in reporting about the media coverage and discusses the Inquest of Prosecution[14] as well as the *saiban-in* system and the victim participation system.

[10]Payne v. Tennessee, 501 U.S. 808, 1991. See Hans, in this issue, for a general discussion of the practice. For contrasting views, see Frankel (2008) and Cassell (2009).

[11]See Okamura (2007, pp. 93–110, 112–115).

[12]For the status of victims in the German criminal procedure, see Delmas-Marty and Spence (2002, pp. 77-78, 302-303, 308, 319, 450, 452-455, 543-544, 567).

[13]For the status of victims in the French criminal procedure, see Delmas-Marty and Spence (2002, pp.36, 121, 226–227, 242, 247, 250, 253, 262, 271–275, 453, 545, 562, 567–568).

[14]See, supra note 2.

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It is my hope that together they will give readers ideas and inspirations for comparative empirical research on citizen participation systems in these and other countries.

Appendix 1

The Saiban-in System and Media Coverage.

Kyoko Tokunaga, Kobe Shimbun

[1] Before implementation of the *saiban-in* system

The implementation of the *saiban-in* system was a major turning point for Japanese criminal justice, and it was also an opportunity to reconsider the appropriate form of media coverage. Upon commencement of the system, each newspaper company created guidelines on crime coverage. *Kobe Shimbun* also held numerous in-house discussions, and reconsidered our newsgathering activities, as well as expressions to be used in articles and headlines.

The two major points of reconsideration are to (1) maintain the fundamental principle of "innocent until proven guilty" and refrain from biased reporting with an accusatory tone, and (2) clearly indicate the information source.

Previously, articles covering an arrest contained the arrest charges announced by the investigative authorities, as well as information obtained by investigations conducted by a journalist. Now, the wording will be "arrested on suspicion of _____ on _ (mm)/ _ (dd)," and as for investigation information other than the arrest charges, sources will be clearly stated such as "according to the _____ police station…" or "according to the investigative authorities…" The origin of information from sources other than the investigative authorities will also be indicated as far as possible, such as "according to the lawyer…," "according to an acquaintance of the suspect…" or "according to neighbors of the suspect…"

Even for short articles, interviews must be conducted with the investigative authorities in order to ensure that whether the suspect admits or denies the charges is reported. Particularly if the charges are being denied, the lawyers must also be interviewed to carefully construct the article. The conventional expression of "it was suggested that…" will no longer be used, and instead, will be changed to "partially admitted" or "admits to ___ , but denies ___." When charges are being denied, the denial must be included in the headlines, whenever possible.

In major cases, a profile of the suspect is also included in the article. Previously, expressions such as "the suspect did not associate with neighbors and seemed strange" or "the suspect seemed idle and lazy without a steady job," which carried an accusatory tone were often used. Keeping in mind that the suspect is only "suspected," unjust attacks on his or her character must be avoided. Clear indications of the source and use of expressions such as "seemed not to be working these days" are necessary. Since prior convictions or records can negatively affect a *saiban-in*'s impression, they should not be included in the article unless they are necessary to understanding the true nature and background of the case.

This is an overview of the guidelines that were created and disseminated within the company.

Also, in preparation for the commencement of the *saiban-in* system, a series of articles introducing preparations made by the legal community, issues concerning criminal trials,

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current status of capital punishment, etc., was published. We provided clear and simple explanations of legal terminology so as to aid our readers in understanding criminal trials. We also covered a number of model trials held in various locations.

[2] Actual newsgathering

The first *saiban-in* trial in western Japan, the trial on September 7, 2009, at Kobe District Court, attracted a great number of media representatives to the Kansai area. Journalists in the gallery seats took turns to cover every detail of the trial proceedings. The *saiban-in* seemed nervous, but were asking straightforward questions to the defendant.

After adjourning, a *saiban-in* press conference is hosted by the press club, and former *saiban-in* may choose whether or not to participate. Court personnel attend the press conference to provide an opinion when questions concerning confidentiality are asked and answered. Further, another press conference without court involvement may be held at another location for "additional interviewing." If former *saiban-in* give their consent, it may be recorded or filmed freely.

There actually were moments where Kobe District Court personnel interrupted a statement during the press conference, or pointed out that the question asked by a journalist was "asking for a personal opinion" (both objections were later withdrawn).

[3] One-year review

During the first year of the system implementation in Hyogo Prefecture, 40 cases (43 defendants) reached a verdict; all defendants were found guilty. Of these, 32 cases (33 defendants) were given actual prison sentences, and the length of the sentenced prison term compared to what had been requested by the prosecutors was, on average, 77%. It has been said that 80% of the requested term is the norm for conventional criminal trials with judges, so this shows that the percentage remains the same for *saiban-in* trials. The national average is also very close to this figure.

There is a strong tendency to attach probationary supervision to stays of execution, and as for sexual crimes, the sentencing averaged 85% of requested term, showing a trend towards severe punishment. In general, it became apparent through questions asked during trials and after-trial press conferences that *saiban-in* are concerned with whether or not the defendant regrets what he/she has done, and if there is hope for rehabilitation.

After-trial press conferences were held following each trial, and 75% of former *saiban-in* (including former replacement *saiban-in*) spoke their thoughts, thereby demonstrating their confidence.

Some points of concern present before commencement of the system turned out to be irrelevant. For example, it was unknown how many citizens would respond and appear when summoned for selection, and therefore, a larger number was summoned in the beginning. However, since the appearance rate is close to 80%, the number of summons is gradually being decreased. The rate of participation in press conferences is equally high.

There were also apprehensions about whether *saiban-in* would be able to make sober and fair judgments in cases that attract much social attention with massive media coverage. This was probably the reason why judicial authorities requested the mass media to exercise restraint. However, in the case where a famous actor was tried as a defendant, to which much attention had been paid even before the trial began, *saiban-in* chose to give an actual prison sentence, but

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partially rejected the charges made by the prosecutors. All *saiban-in* participated in the after-trial press conference and commented that they had not been influenced by the press coverage.

On the other hand, there were some expected problems that did occur. "The presiding judge moved the trial along as if he already had a conclusion in mind"; "When I asked if we can give a verdict exceeding the requested sentencing, the answer was, 'but the judicial precedent…'"; and "Even though they say they want to hear the opinion of the general public, I felt as though they are seeking opinions that fitted within a certain framework," were some opinions from *saiban-in* given during interviews. This suggests a degree of steering by the judges, but since specific content is not disclosed, this cannot be accurately verified.

Further, some point out that substance abuse cases are unfamiliar to citizens and difficult to judge, and therefore should not be included in charges to which a *saiban-in* trial applies. Some say that sexual crimes have the issue of victim privacy that prevent much of the information from being presented in court, and therefore, should also be excluded from *saiban-in* trials. When the defendant was a member of a crime syndicate, some former *saiban-in* worried that "my face was seen, maybe there will be retaliation."

There is also confusion about the confidentiality obligation. What exactly is "secrecy of deliberation and any secret matter brought to one's knowledge in the performance of one's functions," discloser of which is target of criminal punishment? How far can one speak without breaching confidentiality? Some former *saiban-in* say that "it is better if the obligation of confidentiality is not too strict" and "being able to speak properly about the case can help those who become *saiban-in* in the future, as well as to help familiarize them with the system."

[4] Victim participation

One of the triggers that drew attention to victim support was the serial killing of several children that occurred in Kobe in 1997. Surviving families strongly wished to know the motive and other investigative information, especially because the suspect was a boy. It was in consideration of the feelings of victims and their families that the Kobe Family Court made the decision to publicize a summary of the juvenile trial verdict. The establishment of the victim participation system for criminal trials began from this point on.

Victim participation is not unusual in *saiban-in* trials. Emotional reactions are sometimes seen during questioning of the defendant by the victim. However, during after-trial press conferences, one former *saiban-in* stated, "I really understood how the victim felt, but I was able to remain calm when deciding on the sentencing."

The Kobe District Court is currently holding the trial for the Amagasaki JR derailment case, a railway accident in which 107 people died. In May, the trial attracted much attention when the defendant, the former president of West Japan Railway Company, was questioned by the surviving families of victims that participated in the trial. During this trial, the prosecutors hold a briefing session after every trial date for victims. These sessions are held in order to explain the major points of the trial for that day as well as future plans in presentation of evidence. Such practice is quite out of the ordinary.

[5] Prosecution by Committees for the Inquest of Prosecution

Equally important for citizen participation in justice along with the *saiban-in* system is the revision of the Act on Committees for Inquest of Prosecution, enforced simultaneously with the *saiban-in* system. Now, if a Committee for the Inquest of Prosecution comprised by citizens

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resolves in favor of prosecution twice, the prosecution becomes compulsory. The first and second cases of compulsory prosecutions occurred in Kobe.

Interviewing the Committee for the Inquest of Prosecution is extremely difficult. Meeting dates, discussion content, and committee members are all undisclosed. Members do not accept direct interviews. Journalists walk around the entrance of the court and of the corridors of the authorities offices to check whether the committee is convening, and to estimate the timing of the resolution.

Even when compulsory prosecution is determined, there is only a simple resolution statement, and there is no press conference. Until now, only prosecutors possessed the power of prosecution, but the problem now is that the process in which citizens make the important decision to exercise this newly given power is not fully disclosed. Of course, interviews with involved parties may shed some light onto the situation, but the absence of an official position on this matter is a major issue.

One foreseeable issue would be, for example, who takes responsibility when the defendant of compulsory prosecution is found not guilty? Is it the lawyer who served as the prosecutor? Or is it the members of the Committee for the Inquest of Prosecution who made the decision to prosecute? Is a state compensation claim possible, as in conventional cases? Various problems will be revealed in the future.

[6] Summary and related issues

As mentioned above, issues of confidentiality, charges for which a *saiban-in* trial is applicable, and the manner in which press conferences are held will be, among others, points to consider when reviewing the system in or after 2012.

Also, *Kobe Shimbun* has made interview requests to judges, but none have accepted as yet. Although the catch phrases are "citizen participation" and "open judicial system," the truth of the matter is that the courts lack an assertive attitude to realize information disclosure even to the extent possible.

Meanwhile, with the system taking root, the method of coverage is becoming somewhat routine. In addition, the courts are becoming accustomed to the system and holding multiple *saiban-in* trials at once, making it difficult for the limited number of journalists to cover all of these trials. Attendance of the after-trial press conferences is decreasing, and the media no longer cover cases unless they are special or unique. Something must be done.

It can be expected that in the future, *saiban-in* trials will face more and more difficult cases where the prosecutors request the death sentence or where defendants plead "not guilty." How will the future *saiban-in* make their judgments? What is the significance of citizen participation in criminal trials? The mass media must indeed revisit these points.

Appendix 2

Citizen Participation in Criminal Trials in Germany: Legal and Practical Questions.

Hans-Jürgen Kerner, University of Tübingen.

The concept that "the people" should become a genuine part of the adjudication of persons charged with a criminal offence relates strongly to the idea of democracy. In Germany its main historical source was related to a revolutionary movement in the middle of the 19th century, i.e.

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the so-called March-Revolution of 1848, aiming at introducing counter-balancing parliamentary structures into the monarchical power systems of the then German Kingdoms, Dukedoms etc. This movement failed as such. It had nevertheless far reaching influence in many fields of politics and legislation until the 20th century. It led inter alia to the famous "Paul's Church Constitution" of 1849. Part of it was the call for special "jury courts" (*Schwurgerichte*) in cases of heavy crimes like murder or manslaughter, where the 12 independent lay jurors (*Geschworene*) would be responsible for the verdict of guilt, and 3 professional judges then for finding the suitable type of punishment along the penalties as provided by law. Several states introduced jury courts afterward. Others continued with court systems relating to professional judges only, or with mixed bench courts along the other older tradition of the so-called "*Schöffen*" (i.e. citizens entrusted with the power to "find" the truth by turning to their wisdom and life experience).

After the foundation of the Second German Empire in 1871 which united most of the former independent particular regional States or Dukedoms etc., the Law of 1878 on the "Constitution of German Courts" introduced Jury Courts along the 1849 model as mandatory courts for treating in special ad hoc trials, heavy crimes, particularly those leading to the death of victims, usually called "capital crimes". The term "capital" stems from the Roman term "*caput*" (= the head of a person) indicating that those crimes could lead after a guilty verdict to the death penalty. Due to a couple of reasons, the Jury Courts (*Schwurgerichte*) were abolished in the core during the Weimar Republic. A decree law of 1924 retained them by name, but actually they were transformed into mixed bench courts, where now 6 jurors and 3 professional judges deliberated and decided in common on both, guilt and punishment.

After World War II, the Federal parliamentary bodies considered further reform. It was effectuated in the 1960ies. Eventually the term "*Schwurgericht*" was to be retained, again. However, the courts were to be transformed into "chambers" of the criminal divisions of the Regional Courts. They were from then on sitting like any other "criminal chamber", consisting of a mixed bench of 3 professional judges, including the chamber president, and 2 "*Schöffen*", who deliberate and decide in common on guilt and the meting out of punishment. However, those jury court chambers were entrusted with special jurisdiction, and still are today, in the old tradition: trying the former "capital crimes" which , after the abolition of death penalty in Germany (Art. 102 of the Constitution, the so-called Basic Law since 1949), usually carry a penalty of life imprisonment or temporal imprisonment of up to 15 years.

So at present, the distribution of judicial power in criminal cases in all the States of the German Federation is like follows:

* Minor offences are being dealt with in first instance by single sitting professional judges at Local Courts (*Amtsgerichte*), criminal division or youth division (*Strafrichter*, *Jugendrichter*). Those minor offences are misdemeanors carrying penalties like a fine or conditional punishment or short term detention or even imprisonment or youth imprisonment under the condition that in the concrete case the eventual punishment will not exceed 2 years duration.
* Medium offences are being dealt with in first instance by mixed bench courts at the Local Courts (*Amtsgerichte*), criminal division or youth division. These bench courts regularly consist of 1 professional presiding judge and two lay assessors (*Schöffengericht*, *Jugendschöffengericht*). Medium offences are serious misdemeanors and lower category felonies in all cases where the eventual punishment will not exceed 4 years duration.

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* Heavy offences are being dealt with in first instance by mixed bench courts at the Regional Courts (*Landgerichte*), criminal division (*Strafkammer* or *Jugendkammer*). They have jurisdiction on complex criminal cases when the Public Prosecutor has chosen to charge the defendants before the Regional Court, and on all cases of heavy misdemeanors and felonies carrying penalties which may lead to an imprisonment verdict of more than 4 years duration, if not for life time. Exclusive jurisdiction for all kinds of "deadly" crimes is given, as noted, to the special criminal chambers at the Regional court carrying the name "Jury Courts" or "Jury Chambers". All criminal chambers regularly act as mixed bench courts, consisting of 3 professional judges including the presiding judge, and of 2 lay assessors.
* So-called "Senates" of State Supreme Courts (*Oberlandesgerichte*), criminal division (*Strafsenate*) are sitting as courts of first instance only in rather rare events, which is being the case when the Federal General Prosecutor has been charging defendants with creating or upholding a terrorist organization, with creating or upholding a criminal organization (type organized crime), or committing heinous crimes related to such an organization, or committing political crimes like high treason. They consist of professional judges only. The decision to open a trial will be taken by 5 judges including the presiding judge; the trial usually is guided by a bench of 3 professional judges including the presiding judge. The main business of State Supreme Courts, however, is to serve as courts of appeal.
* The Federal Supreme Court of Appeal (*Bundesgerichtshof*), with civil and criminal divisions, is only acting on questions of law, as court of second instance in all cases where Regional Court or State Supreme Court decisions of first instance are being appealed against. The so-called Criminal Senates (*Strafsenate*) deliberate and decide as bench courts, consisting of 5 professional judges including the presiding judge.

All in all one can say that lay assessors in the German criminal court system play an important role in all but minor criminal court trial cases. They act during trial not just "like", but really "as" judges, entrusted with the same power to ask questions, to deliberate in closed chamber, and to decide about guilt and punishment as the professional judges. At present some 37,000 women and men are serving as lay assessors. The presentation will deal with eligibility, selection of candidates, appointment procedure, duty time, terms of duty, and other important questions, with some regard to practical experiences.

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