

Thoughts on Wrongful Convictions and the Power of the Courts

When I first studied law as a first-year university student, I remember that our teacher asked us to watch a film and write our impressions of it. I have forgotten the film's title, but I remember realizing from it that law is not the embodiment of justice in an absolute sense. The common view is that courts are places where fairness and justice are determined, but who defines “fairness”?

Our textbook, *Thinking about the Constitution of Japan*, states: “The Constitution is the supreme law of the country. In other words, the Constitution possesses the greatest authority in the country. Anything that conflicts with the Constitution is not permitted.”¹ Article 98(1) of the Constitution likewise provides: “This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.” Japan is known as a state governed by law with a well-established and strict constitution, unlike countries in which the constitution can be freely changed in accordance with the government’s wishes. I therefore think that this provision clearly places constitutional authority at the highest level.

Rousseau wrote: “Human beings cannot create new forces; they can only join together to make use of forces that already exist. Accordingly, obstacles can be overcome only by combining those forces and acting in concert under a single motive power.”² The concept of the social contract emerged in this context. Each of us gives up part of our rights and “transfers” that part to the human collective in exchange for greater freedom. This may be understood as one source of constitutional authority: people entrust their rights to a supreme entity so that they can live in stability.

Formally, other laws possess the same kind of legitimacy. This is because the enactment and amendment of each law must be approved by the Diet, whose members are elected by the people. The Constitution was born from the social contract and the will of the people, and because all other laws must conform to the Constitution, all laws can be regarded as products of the people’s will. Ultimately, however, it is the courts that decide guilt or innocence. A court judgment may be seen as an outward expression of the abstract language of law.

Across human cultures, the symbols of the court are the scales and the gavel. A scale is an instrument for comparing differences in weight; if the weight on its two sides differs even slightly, it tilts. A court is an institution that judges conduct that cannot be seen directly and distinguishes right from wrong, and it is required to be fair and just. The gavel represents “the power of judgment” - the power to decide whether a person is guilty or not guilty. A court’s determination of guilt or innocence is made on the basis of police and prosecutorial investigations, evidence, and precedent. In this sense, the judicial system as a whole arises from the will of the people. We need law, we need legislation, and we need law-enforcement institutions.

Yet if everything were perfect, how could wrongful convictions occur? Imagine the extreme situation in which a person is convicted of a crime they did not commit. Such a situation may be rare, but it can happen. In that case, the power of the court seems to possess much less “legitimacy.” The Constitution arose from a social contract between the people and the state, and other laws must conform to it. Yet the final decision is made by a court acting on the basis of “evidence, investigation, and precedent.” The source of power has changed.

A court’s judgment is therefore based on law and bears the law’s sacred character, but the judgment itself also possesses an ambiguous power. “When a store has sufficient stock, buyers can go whenever they wish. When goods are scarce, purchasers must stand in line and wait. When the line becomes too long, a police officer must be sent to maintain order. This is the starting point of the power of the Soviet bureaucracy: it ‘knows’ who can obtain something and who must wait.”³ In *The Revolution Betrayed*, Trotsky made this observation about the source of Soviet power, but I believe it also applies to courts.

Law arises from the will of the people, but the power of the court arises from “knowing” who committed the crime. In other words, law is sacred and is a product of the social contract, but a court’s final judgment results from a combination of several forms of power. Law is a means of maintaining social order, but it does not represent absolute justice. Courts are regarded as places where fairness and justice are determined, yet the definition of fairness is itself subjective. Under such conditions, wrongful convictions can occur.

Nevertheless, Japan remains a highly developed state governed by law. In traditional Chinese thought, however, courts are seen as possessing “absolute fairness.” When people approach the judicial system with such expectations, they are often disappointed. I believe people need to understand that law and judicial power are not beyond question and that their operation must continually be optimized and improved. “Fairness” is not fixed; it is merely the outcome reached through constant compromise.

Notes

1. Shigenori Matsui, *Nihonkoku Kenpō o Kangaeru* [Thinking about the Constitution of Japan], 3rd ed. (Suita: Osaka University Press, 2014).
2. Jean-Jacques Rousseau, *The Social Contract*, Book I, Chapter 6, “The Social Compact,” trans. G. D. H. Cole (London and Toronto: J. M. Dent & Sons, 1923). The source location was verified; the wording quoted in this English edition is translated from the Japanese wording in the original essay.
3. Leon Trotsky, *The Revolution Betrayed: What Is the Soviet Union and Where Is It Going?*, Chapter 5, “The Soviet Thermidor,” §3, “The Social Roots of Thermidor,” trans. Max Eastman (New York: Doubleday, Doran & Company, 1937). The source location was verified; the wording quoted in this English edition is translated from the Japanese wording in the original essay.