

1 Are Personnel Assessments Fair?

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Presenting the problem

Personnel assessments – the Japanese equivalent of performance appraisals – are conducted fairly in Japanese companies. The number of economists and business administration scholars who shared this view increased from the mid-1980s to the mid-1990s. This was a significant shift considering that before this, a majority were sceptical of the fairness of personnel assessments.

The claim that personnel assessments are conducted fairly in Japanese companies was not substantiated by proper empirical research into the features of these assessments. Instead, it was an assumption based on the strong international competitiveness of Japanese companies in the 1980s. First, a theory was constructed to explain the above fact. Then, a natural ‘corollary’ of the above theory resulted in the assumption that personnel assessments in Japanese companies had to be fair.

The reasoning behind ‘fair assessments’

According to one of the most influential theories that sought to explain the competitiveness of Japanese companies, the high-level of work skills possessed by employees are an important managerial resource, which contribute decisively to the strong international competitiveness of Japanese companies. That is, working for long periods in the same company, employees are able to experience various types of work due to frequent job reassignment and rotation in Japanese companies. As a result of this on-the-job training (OJT), employees, in addition to being able to perform a wide range of tasks, acquire the ability to be able to adapt to work-related changes and abnormal situations. It was Koike Kazuo who noted a high-level work capacity of adapting to work-related changes and abnormal situations acquired by employees. He conceptualised it

as ‘intellectual skill’ and contributed most to the theory explaining the strong competitiveness of Japanese companies.

Having theorised the issue in the manner described above, the fairness of personnel assessments must be subsequently demonstrated. The personnel assessment ought to be a system of evaluating the work capacity of employees. Therefore, failure to evaluate work capacity fairly not only reflects unfair treatment of employees but more importantly, makes it difficult for companies to push their employees to acquire a high-level work capacity. The reason is that if it is not evaluated fairly, employees will be lax in their efforts to acquire a high-level work capacity. Incidentally, because Japanese companies maintained strong international competitiveness throughout the 1980s, their employees should have acquired high-level work capacity. Accepting this argument, the evaluation of work capacity, that is, personnel assessments must be conducted fairly.

Are such assumptions correct? Similarly, has the system of personnel assessments in Japanese companies been designed fairly? Moreover, are they managed fairly? This chapter addresses these questions. This chapter draws mainly from my research that claims to clarify most accurately the characteristics of personnel assessments in Japanese companies (Endō 1999).

In examining the fairness of personnel assessments, it is necessary to consider what ‘intellectual skill’ or high-level work capacity of adapting to work-related changes and abnormal situations – the objects of assessment – actually imply. Moreover, it is necessary to critically examine the narrow view that focuses only on employees’ ‘intellectual skill’ as the source of international competitiveness. This is because there are many factors beyond ‘intellectual skill’ that influence international competitiveness. However, due to space limitations, this chapter will not consider these. For a discussion of the former, please refer to chapter six and Endō’s research (2001). For a discussion of the latter, please consult the rest of this book.

The reasons for ‘fairness’

I stated that the theory of ‘fair assessments’ was simply based on certain assumptions. However, this does not mean that the argument for ‘fairness’ has no basis. Many reasons have been cited. They all claimed that the personnel assessments of Japanese companies are fairer than performance appraisals of foreign

companies. However, the reasons cited were not based on solid empirical research.

I will divide the reasons behind the assertion of ‘fairness’ into two groups, and critically examine both. Dividing these into two groups is done for the sake of convenience, as both share common features in kind. The first group consists of two unique and sophisticated reasons, which Koike was the first person to highlight. I point out beforehand that the ‘job-matrix chart’ (*shigotohyō*), which Koike regards as important material evidence for one of the reasons, does not in fact exist; Koike ‘made it up.’ The second group consists of various reasons listed by various researchers without rhyme or reason, which are clearly more unsophisticated than Koike’s. I use the words ‘various reasons listed without rhyme or reason,’ because their thinking is shallow and therefore easily criticised. They also borrow from Koike’s reasons frequently without care. Nevertheless, there are eminent researchers among them, who repeat the various reasons of ‘fair assessments’ in their widely-read works. They became influential and could not be ignored.

Critiques of Koike Kazuo’s theory of ‘fair assessments’

Assessment by multiple bosses over a long period of time

One of the two reasons Koike cites for the ‘fairness’ of assessments was put forward as a hypothesis in 1981 (Koike 1981: 27–45). According to this hypothesis, Japanese assessments are conducted over a long period of time. Because there are changes in company bosses and their subordinates due to personnel reshuffling during this period, assessments are conducted by ‘multiple assessors.’ As a result, ‘it is easy to create a ‘market’ (*sōba*) for assessment standards, which diminishes arbitrariness based on subjectivity.’ That is, it increases the ‘fairness’ of assessments. According to Koike’s hypothesis, however, this is not the case with European and American companies where appraisals are conducted by bosses who have considerable discretionary and arbitrary powers. The hypothesis displayed a level of certain sophistication as it combined several features of employment practices in Japanese companies: long service, frequent personnel reshuffling (transfers, reassignments and rotations) and employees’ acquiring a work capacity due to OJT.

This is undoubtedly a hypothesis that is not based on empirical research. Koike himself emphasised that it was ‘dogmatic and

biased' and 'complete speculation' (Koike 1981: 29, 31). Even after that, Koike never conducted empirical, comparative research into foreign companies. In fact, Koike's understanding of European and American companies was nothing more than a subjective impression. For instance, in America performance appraisals are heavily regulated by laws prohibiting employment discrimination. This has led to the elimination of arbitrary appraisals (Endō 1999: 107–110; Nagayoshi 2000–01). In Germany performance appraisals are heavily regulated by labour unions based on labour-management agreements and discretionary appraisals have been eliminated (Asao 1993; Tōnai 1995). It is the various provisions of the Works Constitution Act (*Betriebsverfassungsgesetz*) that provide security against this (Ogata 1999).

However, as this sophisticated hypothesis was congruent with trends in the 1980s, it can be said that it was only the notion that 'personnel assessments of Japanese companies are fairer than performance appraisals of foreign companies' that became popular among researchers. Moreover, from around 1986, Koike himself began speaking to Aoki as if it was a verified hypothesis, or an established theory (Koike 1986; Aoki, Koike and Nakatani 1986). The spread of this hypothesis was the beginning of all theories concerning 'fair assessments.'

Criticism

Are the reasons Koike cites correct? Based on Koike's reasoning, it is necessary to fulfil the following conditions in order to increase the assessment's degree of fairness. First, multiple assessors should conduct each assessment independently without referring to or being influenced by other assessors' results. Second, the mean value of the assessment results should be used. If this is done, it is believed it will offset errors in the individual assessment results and also increase their accuracy. On the other hand, if the assessments are conducted while referring to other assessors' results, it is feared they will be influenced by these. Although this will improve the consistency of the assessment results among the assessors, there is a fear it may also lead to consistently erroneous results.

How then are personnel assessments actually conducted? The assessors' manual frequently instructs them to 'refer to your predecessor's assessment results.' Previous assessment results are sometimes written down in the assessment form in advance for the

sake of the present assessor's convenience. For instance, a certain company's assessment form that was made public in 1996 contained three years worth of assessment results. The reason given for this was 'listing three years worth of assessment results will reduce the impact of changes in one's superiors, duties and place of work' (Nikkeiren-Kōhōbu ed. 1996: 256). That is, it recommends that assessors refer to other assessors' results. In other words, it is believed individual assessors should not conduct assessments independently.

Although this system leads to more consistent assessment results among assessors, it can also result in an increase in erroneous results. Moreover, a system has not been established that will prevent this. A 'market' for erroneous results is not only a theoretical possibility, it actually occurs. To cite an obvious example, the personnel assessments of female employees who provide long service to large companies are frequently viewed negatively when determining promotions and wage increases. This has led to appeals from female employees to rectify their assessments. A part of this phenomenon can be explained by prejudice against long serving female employees and the absence of a mechanism to protect against the establishment of a 'market' for consistently biased assessment results.

In fact, the assessors themselves believe the results vary according to the individual assessors. According to a recent survey of section chiefs (1604 in total) from 24 companies, which asked the greatest number of levels by which the results of a five-level survey changed following a change in assessors, 58.6% replied one level; 32.8% – two levels; 3.7% – greater than three levels; and 4.2% – no change (Nihon Rōdō Kenkyū Kikō 1998: 113). It may be 'common sense' among assessors that assessment results vary according to individual assessors. Yet, I would like to pay attention to the fact that it is precisely because the respondents know their predecessors' assessment results that these responses were obtained.

I can surmise that the reason the assessment results vary is that there are many evaluation items such as 'passion/will' and 'ability' used in the personnel assessments of Japanese companies, which require subjective judgment. Because judgment is subjective, there is considerable variation. Japanese companies leave the excessive subjectivity inherent in personnel assessments intact, but pursue consistency of assessment results and require assessors to refer to other assessors' results. However, this can also

lead to an increase in erroneous assessment results. This is the 'market' for assessments that Koike gave as a reason for the fairness of Japanese assessments – it does not necessarily imply a 'fair assessment,' but can imply an unfair one.

The 'job-matrix chart'

The second reason Koike cites for the 'fairness' of assessments is a practice he refers to as the 'job-matrix chart' for production workers (Koike 1989: 319–338, Koike 1994: 261–274). According to Koike, there are two types of 'job-matrix charts.' One is a form that displays production workers' 'breadth of experience,' and the other shows 'depth of experience.' In addition, a factory manager evaluates production workers' 'breadth of experience' and 'depth of experience' 'every three months' and 'sometimes displays these on the factory wall.' Koike points out that this practice reduces the arbitrariness of assessments. It was Koike who pointed out for the first time that the chart, which is understood as a practice that promotes skill training, increases the assessments' degree of fairness. The paper of Koike's in which this was noted was included in a volume of articles entitled *Japanese Companies* (Japanese version) or *Business Enterprise in Japan* (English version) that resulted from a conference attended by eminent economists and business administration scholars (Imai and Komiya 1989, 1994). *Japanese Companies* went through many reprints in Japan, which is probably why the second reason Koike cites for the 'fairness' of assessments became so popular.

Other criticisms

How important are the reasons Koike cites for the 'fairness' of assessments? I do not believe they are so important. This is because the skill evaluation criteria, which are only dealt with by the 'job-matrix chart,' are limited to part of these criteria. As is well known, there are many evaluation criteria in Japanese personnel assessments, which are classified into three broad categories: 'results,' 'passion/will' and 'ability.' Skill evaluations are limited to part of these criteria. Therefore, assessment results are not determined by merely evaluating skill. They are strongly influenced by the criteria in the 'passion/will' category. The claim that 'simply being skilled will not improve assessments' can often

be heard when conducting survey interviews at factories. Indeed, not determining results merely based on skill evaluation is a feature of personnel assessments in Japanese companies. One cannot attach too much importance to the practice of 'job-matrix charts' as a reason for 'fairness.'

Incidentally, in what is truly surprising, of the two types of 'job-matrix charts' that Koike highlights as documented evidence, 'the job-matrix chart for depth of experience,' does not actually exist. It is now clear that Koike 'made up' this evidence. It was Endō who first raised suspicions regarding this (Endō 1999: 23–26). Nomura Masami made it clear from what information Koike 'made up' the evidence (Nomura 2001). 'The job-matrix chart for depth of experience' was an essential piece of documented evidence that substantiated the theory of 'intellectual skill.' However, the act of 'making up' evidence to substantiate one's own argument can only be called a rare scandal. At a time now when it has been revealed that all of Koike's arguments, namely, the theories of 'intellectual skill' and 'fair assessments,' would not stand up without 'making up' this evidence, it is only natural to scrutinise closely the essence of Koike's arguments and why they had formerly gained considerable influence in academia.

Criticism of the various reasons for 'fair assessments'

Aoki Masahiko's reasons for 'fairness'

The first person who listed the reasons for 'fairness' without rhyme or reason was Aoki Masahiko – a researcher who had gained international acclaim. Aoki cited four reasons for the 'fairness' of assessments in Japanese companies after making a comparison with appraisals in American companies (Aoki 1988: 56). According to Aoki, although one 'cannot deny the partiality' associated with assessments in Japanese companies, there are four reasons why this 'can be deterred to a certain extent.' First, assessors cannot make arbitrary decisions because assessment procedures are regularised and standardised by the personnel division. Second, multiple assessors evaluate employees over a long period of time. Third, dissatisfied employees can appeal to the personnel division to be relocated. Fourth, the informal reputation of bosses among their subordinates influences their career prospects.

Criticism

Are the reasons Aoki cited correct? Because the first and fourth reasons also apply to appraisals in other advanced industrialised countries such as America, they do not explain why assessments in Japan are fairer than appraisals conducted overseas. On the contrary, as will be discussed later, these reasons are linked to those features that reveal distinct unfairness associated with assessments in Japan. Therefore, if Aoki was to point out the first and fourth reasons, he would be asked for his opinion of this fundamental problem. However, Aoki makes no mention of this at all.

The second reason is a rehash of one Koike cites for 'fairness.' However, Aoki did not write down that this reason was Koike's idea. Why did Aoki not make this clear? Is it because he directly heard Koike speak as if it was an established theory (Aoki, Koike, and Nakatani 1986)? Did Aoki judge that it was not necessary to point this out because it was an established theory? If this is the case, Aoki's judgement was thoughtless for a researcher. This reason has already been criticised because of the problems associated with it.

The third reason is incorrect. It is understood that Japanese companies are clearly authorised to order employees to relocate without promoting them. The basis for this does not lie in seeking employees for particular types of work, but in an employment practice whereby companies take on employees without specifying the nature of the job. It is precisely because of this that companies are authorised to relocate employees. This practice has the support of the courts. It is rare for the personnel division in Japanese companies to fulfil employees' wishes regarding job relocation. In addition, dissatisfied employees in Japanese companies are deterred from seeking to resolve their problems through job changes because the seniority-based wage system makes this disadvantageous. Incidentally, because American companies seek employees to fill specific jobs, it is unusual for them to order employees to relocate without promoting them. Unlike Japanese companies, American companies arrange a 'job-posting program' to give incumbent employees opportunity to fulfil their wishes to be relocated. Moreover, it is possible for dissatisfied employees in American companies to resolve their problems through job changes, because there is no seniority-based wage system. If the 'job-posting program' is common practice in American companies, the third reason accords fully with American companies, but not their

Japanese counterparts. Aoki does not understand the differences in employment practices between Japanese and American companies.

Looking back from the present, it is even surprising that Aoki was satisfied with this set of reasons. According to my understanding, it is because these reasons are either simply casual ideas or are a rehash of Koike's work. Aoki may not have been satisfied completely, because he originally used the words 'can deter to a certain extent.' However, he did not properly examine the 'fear of partiality.' Ultimately, the reason for this is that he initially assumed that personnel assessments in Japanese companies are undoubtedly fair based on the fact that Japanese companies are extremely competitive in international markets. The Four reasons Aoki cites were certainly a product of the times.

Koike Kazuo and Aoki Masahiko, both eminent scholars, developed the theory of 'fair assessments.' Moreover, Koike spoke as if it was an established theory, and Aoki borrowed from what he thought was an established theory. If this is the case, it is not surprising that other economists and business management scholars believed the notion that personnel assessments in Japanese companies are conducted fairly to be already an established theory that did not require substantiation.

Fujimura Hiroyuki's article

The first 'academic thesis' to openly display such bias was Fujimura Hiroyuki's 'An International Comparison of Performance Appraisals' (Fujimura 1989). Fujimura put forward the proposition that 'in order to secure the fairness of personnel assessments in Japanese companies, three systems: the self-reporting system, the interview system and assessor training, have been established.' In order to advocate this, Fujimura's research should have featured a comparison with overseas cases to demonstrate that either these systems have not been introduced in other advanced industrialised countries, or even if they have, their content and level are lower than in Japan. However, Fujimura not only came to this conclusion without comparing these three systems overseas, but also without making any mention of them at all. Therefore, despite giving it the title 'international comparison,' the article was a curious 'academic thesis' that displayed little concern for overseas systems. Because the 'fair assessments' assertion had already become an established theory,

did Fujimura think that it probably required neither substantiation nor mention?

The 'self-reporting system' is the modification of the Management by Objectives (MBO) system, which was developed and is widely used at present in America. This is not particularly specialised knowledge. Fujimura does not understand it. The 'self-reporting system' also exists overseas, as does 'assessor training.' Fujimura did not conduct research into the content and level of both systems overseas, so we must wait for future investigation. It is certain, however, that these systems do not only exist in Japan. Moreover, the 'interview system' that Fujimura made note of 'backfired.' As will be discussed later, this is because this system is linked to the significant unfairness of assessments in Japan.

Itami Hiroyuki and Kagono Tadao's textbook

Even textbooks treated the theory of 'fair assessments' as an established theory. In one of the most widely read business management textbooks today, Itami Hiroyuki and Kagono Tadao, after making a comparison with American companies, gave three reasons for the fairness of assessments in Japanese companies (Itami and Kagono 1989: 508–509; 1993: 542–43). First, multiple bosses conduct assessments over a long period of time. Second, because Japanese companies concentrate personnel management into their personnel division of head office, the personnel division can re-evaluate bosses' assessments. Third, a market for assessments develops because many of them are collected in the personnel division.

Are these reasons correct? The first is a rehash of Koike's reason. While this may also apply to the second and third reasons, Itami and Kagono did adopt a novel approach by focusing on an organisational feature of Japanese companies, that is, the centralisation of personnel management into the personnel division of head office. In addition, based on this, they pointed out a third reason: a 'market' for assessments develops in the personnel division. However, the problems associated with Koike's reasons have already been critiqued and are still valid even if a 'market' for assessments develops in the personnel division.

The second reason is that the personnel division 'monitors' bosses. If Itami and Kagono point out this 'monitoring,' which takes place during the assessment process, why do they not refer to the importance of 'monitoring' of final assessment results that have

been determined by the personnel division? It is precisely the 'monitoring' of final assessment results, to be discussed later, that is related to the significant unfairness of assessments in Japan.

The second and third reasons concern the distinctive practice of 'adjustment' in Japanese companies. Here, assessments conducted by employees' direct bosses are not final; the personnel division 'adjusts' these and turns them into final results. 'Adjustment' often involves changing first-stage assessments, which are conducted as absolute evaluations (there is an evaluation standard outside the group being evaluated), into relative evaluations (there is an evaluation standard within the group being evaluated). Therefore, under the practice of 'adjustment,' the assessment results of the first-stage assessors, who are employees' direct bosses, may not become the final results. Because of this possibility, the practice of 'adjustment' is also related to the definite unfairness of assessments in Japan, which is discussed later.

Aoki Masahiko and Okuno Masahiro's textbook

An advanced textbook in comparative institutional economic analysis is similar in this regard. After considering appraisals in American companies, Aoki Masahiko and Okuno Masahiro stated that with assessments in Japanese companies, 'efforts are made to establish objective and fair assessment standards under the supervision of the personnel division.' As an example, they provide a detailed introduction of two types of 'job-matrix charts' (Aoki and Okuno 1996: 133–134). 'Fair assessment standards' is the first reason Aoki cites for 'fairness' and the 'job-matrix chart' is a rehash of Koike's reason. The problems associated with these reasons have already been criticised.

What deserves special mention is that this textbook illustrates how dangerous 'borrowing' is for researchers. Although one type of 'job-matrix chart' was 'made up' by Koike, because they accepted and borrowed from this 'job-matrix chart,' Aoki and Okuno should have been aware that every time readers scanned the text's narrative, they would probably smile wryly or derisively.

Influencing court decisions?

At the end of the 1990s, the theory of 'fair assessments' may have begun to influence court decisions. In recent court cases involving

wage discrimination in which the judges ruled against employees, the judges cited 'fair assessments' as an important reason for their decision. That is, the judges stated that 'detailed systemic preparation has been undertaken with regards to the evaluation methodology, procedures, and subjects etc. of the assessments,' enumerating various particulars of these systems without rhyme or reason. They also ruled that the assessments of the cases involved were fair (National Life Finance Corporation Case Tokyo District Court Decision – presiding judge Takase Saburō – 2 February 2000). This ruling is the theory of 'fair assessments' itself. This may be a new sign of the situation ahead because it was uncommon for courts to rule on the theory of 'fair assessments' until this time. I believe this to be a serious matter.

An insufficient right to know assessment results

When making claims about the fairness of personnel assessments in Japanese companies, there is an assessment mechanism that Koike, Aoki, other researchers and judge Takase did not make any mention of. This mechanism is also seen as an integral component in attaining fairness of performance appraisals in advanced industrialised countries such as America. This mechanism is employees' right to know their appraisal results. Moreover, it involves the preparation of a series of procedures premised upon this right.

The right to know in America

Because scholars advocating a theory of 'fair assessments' normally do so after making comparisons with appraisals in American companies, I will explain employees' right to know their appraisal results, highlighting examples of the situation in America (Endō 1999: 97–101).

'The employees' signature column'

There is an 'employees' signature column' in perhaps all appraisal forms in American companies. After companies show employees the forms in which the appraisal results are recorded, they request a signature from the employees signifying that they have reviewed it. Because of the development of laws prohibiting employment

discrimination, in the event that employees do not review the appraisal results, a precedent is set whereby the court rules the appraisal to be discriminatory. This is the reason why employees' signature columns have become an established practice in America. When this precedent is established, American companies have to obtain employee's signatures, which are to be submitted as explicit documentary evidence to the court demonstrating that employees have reviewed the appraisal results. It is essential for American companies to do so in order for appraisals not to be judged discriminatory in court in the event an employee files a suit claiming these are unfair. In other words, the burden of proof that employees have reviewed the appraisal results lies with the companies. What the 'employees' signature column' shows is that employees have the legal right to know their appraisal results. This right is not only valid in terms of legal precedent, but also statute. In more than ten states, beginning with Massachusetts, the right of employees to examine company personnel records is recognised by state laws.

If companies lose a case without being able to prove that they informed employees of their appraisal result, they not only have to pay compensation to the employees (who are the plaintiffs) for damages, but in some cases, must also pay punitive damages that can amount to several times the cost of the damage incurred. Ordering punitive damages is a legal measure designed to force companies not to undertake discriminatory employment practices. This ensures companies will make efforts to show employees appraisal results.

'Notice about allowing for disapproval'

Creating a precedent whereby companies lose a case if employees do not review their appraisal results, and ensuring the burden of proof that employees have reviewed these rests with the companies led to the establishment of a new practice. It is a 'notice about allowing for disapproval' appended to the 'employees' signature column.' The note, for example, states 'Your signature does not necessarily mean that you agree with the appraisal result. What it simply means is that the appraisal result was reviewed by you.' On reviewing their appraisal results, there may be employees who are dissatisfied or disagree with them and refuse to sign in the fear that doing so will be interpreted as their agreeing with it. If those

employees should not sign and later file a suit in the court claiming discriminatory assessments, the companies would certainly lose the case because of the absence of evidence that the companies informed them of their appraisal results. Therefore, companies must make considerable effort to get employees not to refuse to sign their appraisal forms, that is, to obtain evidence in order not to lose cases fought in court over the fairness of appraisals. The existence of a 'notice about allowing for disapproval' symbolises the significance of the burden of proof that rests with companies.

Presently in court cases in America where the fairness of appraisals is in dispute, it could even be the case that informing employees of their appraisal results is the very precondition for companies to decide to fight. Because it can be reasonably predicted that the decision will go against companies if they do not show employees their appraisal results, fighting the matter out in court may be futile for companies. It is fair to say that while a case is fought after fulfilling this precondition, there are several precedents that have been established concerning other mechanisms linked to the fairness of appraisals. For instance, when appraisals are not conducted based on job analysis, companies will lose the case (Endō 1999: 107–110).

The absence of a right to know in Japan

In Japan employees do not have the right to know their assessment results. As the various surveys reveal, Japanese companies that inform employees of their assessment results are a minority. Because those companies surveyed frequently include so-called foreign-affiliated firms, when one excludes these and picks out companies that only go as far as to inform employees of their assessment results, the number is really extremely small. At the highest estimate, this equated to only about one percent of Japanese companies in the 1980's. However, it should be noted that this figure has risen somewhat since the late 1990s. This situation reflects the fact that the right for employees to know their assessment results does not even exist legally as an intra-company right. Even though there are many court cases in Japan fought over fair assessments, and also employees (who are the plaintiffs) who demand that companies present the assessment results as evidence to the court, there are virtually no companies that comply with these requests.

The advocates of the theory of 'fair assessments' ignore employees' right to know their assessment results. They are also ignorant of the fact that employees' right to know their appraisal results in advanced industrial countries such as America is seen as pivotal in achieving fair performance appraisals. When one takes this right into consideration, the reasons frequently cited for 'fairness' are exposed as hollow.

Without the right to know: The hollow reasons cited for 'fairness'

As discussed previously, among the four reasons Aoki cites for 'fairness,' the first and the fourth are applicable to appraisals in America and other advanced industrial countries. However, in Japanese companies the first of these: 'the regularisation and standardisation of assessment procedures,' does not include making it obligatory for them to notify employees of their assessment results. Aoki is ignorant of this. Therefore, Aoki should have stated why the assessments in Japanese companies (which lack processes by which employees are notified of assessment results) 'can deter partiality' more than the appraisals in American companies (which do have these processes, and where the employees' right to access information is guaranteed). Moreover, when Aoki pointed out the fourth reason: 'the informal reputation among subordinates,' he should have stated why this feature of Japanese companies (where employees are not notified of assessment results) 'can deter partiality' more successfully than the same feature developed in American companies (where the employees' right to access their appraisal results is guaranteed).

When Fujimura pointed out 'the interview system,' he was ignorant of the fact that it is common for Japanese companies not to notify employees of their assessment results during 'interviews.' Therefore, his understanding is that personnel assessments in Japanese companies (where 'interviews' are conducted but employees are not notified of their assessment results) are fairer than performance appraisals in American companies (where 'interviews' are conducted and employees have the right to be notified of their appraisal results).

If Itami and Kagono were to point out the effects of 'monitoring' by the personnel division on bosses' assessments in the process, they should have also referred to the effects of 'monitoring' by the assessed employees on the final assessment results that had been

determined by the personnel division. In addition, in order for employees to be able to 'monitor,' of course, it is necessary for them to be notified of their assessment results.

Moreover, when Itami and Kagono point out the practice of 'adjustment,' they do not consider that a failure to notify employees of their assessment results is not unrelated to the practice of 'adjustment.' This relationship means that the practice of 'adjustment' makes it difficult to notify employees of their final assessment results. That is, when the final result is more poorly 'adjusted' than the first stage result, and when the first stage assessors notify employees of their final results, it is difficult for the first stage assessors to convince employees of the reasons for the poor, final results because they do not know the reasons. When an absolute evaluation is changed into a relative evaluation during the 'adjustment' process, the difficulties may further increase. Do Japanese companies fail to notify employees of their assessment results because many of them prioritise the practice of 'adjustment,' which makes notification difficult? Itami and Kagono should have examined such an issue.

Assessment discrimination against long-serving employees

Thus far, I have examined and critiqued the various reasons highlighted in the theory of 'fair assessments.' However, there is a simpler and easier method of pointing out the errors of this theory. This is by noting the significant possibility that personnel assessments in Japanese companies are used as a tool for employment discrimination and, as a result, there are not a few instances in which employees claim assessment discrimination and file a suit in court. This completely contradicts the theory of 'fair assessments.'

Employees filing a suit in court

Among employees working in Japanese companies for a long period of time, there is a certain group who are treated in such a way that their promotions take longer and salary increases are smaller than most other employees. While the influence on the treatment of assessment results is minor in a year, it becomes significant after a decade. After a decade or more, there are occasions when this group of employees feels they can no longer endure the consistently

poor treatment. They then claim employment discrimination and take companies to court seeking a resolution to this problem. Such court cases increased from the mid-1960s. Initially, there were many cases in which employees claimed they had been discriminated against because of their beliefs and ideologies – although the companies did not acknowledge this as a cause of discrimination. However, from the mid-1980s, just when the theory of 'fair assessments' was being propagated, cases emerged in which women claimed they faced discrimination because of their gender.

When these cases were taken to court, the companies often claimed the reason for the poor treatment was that these employees' past assessment results were consistently poor. Moreover, the companies of course claimed that the assessments were conducted fairly. Although the companies made such assertions, there are virtually no instances in which they presented employees past assessment results as evidence to the court – even when the employees (who were the plaintiffs) demanded that the companies present their assessment results as evidence to the court. Instead, the companies highlighted employees' minor errors and failures and claimed they had a low work capacity. There are not a few instances in which the evidence to support these claims rested with the testimony of their boss.

The manner in which judges preside over the proceedings

Judges rarely order companies to present assessment results as evidence to substantiate their claims. They usually permit companies to arrange the testimony of many bosses, and employees to make a counterargument. Therefore, each party concerned needs considerable time. This is typical of the way in which judges preside over the proceedings in Japan. It is not uncommon for these cases to take more than 10 years to resolve. Moreover, the costs of going to trial are exorbitant. In my opinion, this procedure in Japan is difficult to understand. While companies emphasise employees' mistakes and failures, they do not demonstrate how these are reflected in actual assessment results or influence employee treatment. Therefore, I think the alleged employees' mistakes and failures cannot substantiate actual assessment results, whether they are right or wrong. This is the case particularly when a relative evaluation is used. Judges' 'beliefs,' or judges making an inference about actual assessment results from mistakes and failures alleged

by companies, I think, runs counter to the principle of 'trial by evidence' and is something judges fundamentally 'should not do.' In any case, such an approach greatly influences court cases concerning assessment discrimination in Japan.

If it was an American judge...

Based on an established legal precedent in America today, what ruling would an American judge hand down in a case concerning assessment discrimination in Japan? One can easily imagine the ruling. It would almost certainly be a victory for the employees (the plaintiffs). The reason is simple: employees were not informed of their assessment results. Indeed, the ruling may be that 'the courts themselves are not set up' to handle these cases. It is because the courts in Japan do not recognise employees' right to know their assessment results – a right that is seen as critical for the fairness of performance appraisals in America. In other words, it is because American judges cannot understand that without demanding that companies present the assessment results to the court as material evidence, Japanese judges give the parties concerned considerable time to fight each other over the fairness of assessments on the other 'evidence.' Significant differences exist between Japan and America with regards to court cases fought over assessment discrimination. If we compare the fairness of assessments in Japan and America, we must take into consideration this difference in legal rights.¹

Employees' determination to present a case to the court claiming assessment discrimination in Japan means they realise they have to bear a heavy burden. It is more burdensome than in America. This is because it costs employees (who are plaintiffs) considerable time and money. In addition, the psychological burden is not insignificant. Moreover, employees' chances of winning are lower than in America. This is because the manner in which judges preside over proceedings in court in Japan is disadvantageous for employees. As a result, there are relatively fewer cases in Japan fought over assessment discrimination than in America. This is not because discrimination does not exist, but because the court system preventing discrimination is weak in Japan. Therefore, in Japan employees only take their claims to court in 'extreme cases.'

Scholars such as Koike Kazuo and Aoki Masahiko who claimed that personnel assessments in Japan were fair should not ignore the

fact that personnel assessments may have been used as a tool for employment discrimination, and also that employees' right to know their assessment results does not exist. Moreover, if they refer to performance appraisals in America, they should not overlook the development of laws prohibiting employment discrimination, which strongly suppresses the arbitrariness of performance appraisals, and the establishment of employees' right to know their appraisal results.

Koike and Aoki based their analyses on the premise that Japanese companies were highly competitive internationally in the 1980s. They were convinced that 'personnel assessments in Japanese companies must be fair.' Meanwhile, they did not conduct any research on the various features of personnel assessments adequately. However, these ideas should be quickly dispelled today. Not only is the prejudicial theory of 'fair assessments' incorrect, but it also impedes the realisation of social justice in the sense of making personnel assessments as fair as possible.