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Popular legal participation in China and Japan[☆]

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Abstract

The purpose of this paper is to examine two contrasting styles of the mixed-court system in China and Japan and investigate the extent of their civic legal participation in both nations. In 2004, Japan passed the Quasi-Jury Act to introduce a system of popular legal participation in criminal trials, where defendants have their guilt and sentence determined by a judicial panel of both professional and lay judges. In the same year, the Standing Committee of the Chinese People's Congress also promulgated the Resolution about the Improvement of the Lay Assessor System in 2004 (the Lay Assessor Act in 2004²) to revise the system of popular participation in law. The act was designed to correct the defects of the lay assessor system that have been sharply criticized by the Western observers for their lack of institutional effectiveness, minimizing the use of lay assessors, pointing at lay assessors' participatory incompetence and passivity, and disapproving of insufficient funding, among others.

There has been, however, little study critically examining the effectiveness of the revised system under the Lay Assessor Act in 2004 in China. In Japan, the first ever quasi-jury trial began in August 2009, but its quasi-jury system suffered from a lack of publicity and insufficient public knowledge about the system, thereby creating the wide-spread public reluctance, or even strong resistance, to participate in the system.

The present research is an attempt to shed both theoretical and empirical light on the effectiveness of popular legal participation in these two powerful jurisdictions in East Asia. As both nations are working to adopt a democratic system of popular legal adjudication, this study will provide important clues to

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² According to the Constitutional Law in China, this so-called "Resolution" has the legal effect equivalent to a formal "Act". For convenience, we will name this "Resolution" as the Lay Assessor Act in 2004.

measuring the nations' commitment, as well as the success or failure of the respective governments' efforts, to democratize their systems of popular participation in legal decision-making.

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1. Introduction

In December 2004, Cao Jianming, then-vice president of the Supreme People's Court of China (SPCC), declared that local courts, in the process of selecting lay assessors, should give priority to citizens with "a good educational background, better career achievements, higher moral levels, and greater legal knowledge" ("China issues reform on jury system", 2004). His statement followed the passage of the Lay Assessor Act which was promulgated on August 28, 2004 and revises the traditional system of popular legal participation that was formally instituted by the Chinese Communist Party in People's Republic of China in 1949. The lay assessor system was originally introduced to employ a judicial panel composed of both ordinary citizens and professional judges to adjudicate both civil and criminal cases. China's recent moves toward changing its lay participation system may be seen as a governmental response to both domestic and international criticisms of its judicial corruption, lack of judicial independence, and the closed nature of its judicial process ("China to introduce jury trials", 2004).

Japan has also moved along a similar judicial trajectory. The passage of the Quasi-Jury Act in 2004 by the Japanese government introducing the new system of popular legal participation has also originated from similar domestic and international pressures on Japan's traditionally closed system of judicial decision-making. After the Japanese Supreme Court overturned four death sentences in the 1980s, covering a series of infamous wrongful conviction cases, public outrage and pressure from the economic sector generated a demand for judicial reform, including the possible reinstatement of the Jury Act which was last suspended in 1943 by Japan's military government during WWII.

The current government instead introduced a mixed-court system, called Saiban-in Seido (hereinafter the quasi-jury system), in which a judicial panel of three professional and six lay judges determines both the verdict and sentence of a criminal case. Given the fact that Japan is the only nation without a system of popular legal participation among advanced industrial societies — including members of the UN Security Council, and at the same time, vigorously pursuing the goal of a permanent UN Security Council seat for the last 30 years — the establishment of a civic legal institution by the Japanese government was seen as a strategic political step to demonstrate its commitments to democratize its judicial system.

China's lay assessor system and Japan's quasi-jury system are both part of a so-called mixed-court or continental mixed tribunal system, in which both professional and lay judges determine the outcome of criminal trials. The mixed tribunal or mixed-court system is different from another distinct form of lay participatory system in law, called the jury system, whereby a group of citizens are empowered to determine outcomes of criminal trials, thereby effectively excluding the participation of professional judges from the deliberative process.

This paper examines the two contrasting forms of the mixed-court system used in China and Japan. In order to systematically compare their respective systems of civil legal participation, the paper is structured as follows: Part 1 focuses on the evolution of China's lay assessor system and analyzes recent initiatives to improve and democratize the system. Part 2 provides a brief

109 history of Japan's quasi-jury system and investigates whether or not the new quasi-jury trial has
110 helped to democratize its criminal justice and court proceedings. Part 3 then presents empirical
111 analyses of the extent of civil legal participation in both nations. First, the representativeness of
112 Chinese lay assessors is examined, followed by an analysis of the composition of Japan's grand
113 jury or Kensatsu Shinsakai – Prosecutorial Review Commissions (PRC) participants. The PRC
114 system is similar to America's grand jury system with randomly selected citizens asked to
115 evaluate and examine the propriety of a non-indictment decision made by local prosecutors.
116 The grand jury selection procedure is also very similar to that of quasi-jury selection in which
117 analytic results of the PRC composition are presented. Given that the quasi-jury system was
118 implemented in May 2009, this section also includes an analysis of quasi-juror participation in
119 Japan's criminal courts. Part 4 next discusses whether or not the systems of popular legal
120 participation in China and Japan are effective socio-political institutions for democratizing the
121 judicial systems in both nations. Lastly, Part 5 offers concluding remarks regarding present
122 research and makes suggestions for future investigation of the judicial democratization process.
123
124

126 2. China's lay assessor system and its recent reform

127

128 In 1906, China's all-citizen jury system was proposed and introduced. Four years earlier in
129 1902, the Ching Dynasty had appointed the prominent legal reformer Jiaben Shen to chair the
130 legal reform. Shen was influenced by Western legal thought and considered the bench trial
131 system to be gravely insufficient to meet the needs of a modernized judicial institution. His
132 draft of the Criminal and Civil Procedure Law of Great Ching in 1906 provided a detailed
133 description of the establishment of new all-citizen juries and guides for jury participation and
134 selection in both criminal and civil deliberations. Yet, this legal draft was not formally approved
135 by the Ching Government until after the fall of the Dynasty in 1911.
136
137

138 After decades of civil war between the Chinese Communist Party (hereinafter CCP) and the
139 Chinese Nationalist Party (Kuomintang in Chinese), in 1949, the People's Republic of China's
140 formal government (PRC) was founded, the Provisional Organic Law of Chinese Courts was
141 then enacted, and the lay assessor system was formally introduced.³ In 1954, the lay assessor
142 system was strengthened by the Constitution, which mandated that *ab initio* (first-instance)
143 cases should employ lay assessors.
144

145 Despite its democratic commitment to begin popular legal participation in China, it appears
146 that the lay assessor system failed to achieve its equitable objective in the judicial process. To
147 examine the performance of the lay assessor trial and identify the logistical and procedural
148 deficiencies of the lay participatory system, the following section looks at judicial practices of
149 the past and present.
150

151 2.1. Problematic practice

152

153 Before the promulgation of the Lay Assessor Act in 2004, the lay assessor system had
154 proved itself problematic in practice, and the following areas illustrate its deficiencies.
155

156 2.1.1. Total suspension or sporadic use

157

158 From the mid 1980s, a number of Chinese courts had ceased to use lay assessors entirely.
159 Before 2005, for instance, two out of seven local courts in the city of Yangzhou had suspended
160

161 ³KMT was originally founded in 1912 from several revolutionary groups that successfully overthrew the Ching
162 Dynasty in the Xinhai Revolution.

employing lay assessors (“The Brief Implemental Situation of the Lay Assessor System in the Law Courts of Yangzhou City”, 2006). So, too, while 83% of first-instance cases in Jiangsu Province between 1981 and 1983 were adjudicated by mixed tribunals with lay assessors’ participation; the number dropped to 72% between 1984 and 1987. Since 1988, there was no reported use of lay assessors in this province.⁴ Both academic and official information indicated that the lay assessor system had been in very limited use since the mid of 1980s (Wang, 1999; Wei, 2001a).

In addition to their suspended employment, in some courts, lay assessors had been excluded from participation at specific court levels and limited to certain case categories. According to a study by Wei and Wang, in terms of civil or administrative cases, lay assessors had been basically used in the inferior courts. They were exclusively used in local courts and regional courts, while the provincial high courts had never used lay assessors in any first-instance trial before 1999. This is despite the fact that legislatively lay assessors were to be used in any first-instance case regardless of court level (Wei, 2001b; Wang, 2006).

2.1.2. *Inappropriate stipends of lay assessors*

The compensation was then considered a key ingredient in motivating ordinary citizens to be ready to serve as a fair-minded judge on a mixed-court panel. Subsection 1 of Article 39 of the Act of the Organization of Chinese Courts in 1983 provides that courts are required to pay appropriate subsidies to lay assessors, while leaving the standard for the specific amount of payment unstated. In practice, some lay assessors have been paid extremely low compensation. According to an official newsletter, a local court in Beijing City paid only a daily subsidy of RMB 1.6 Yuan (approximately equal to USD 0.2 Dollars) to each lay assessor at a time when this sum was insufficient to even buy a bus pay-pass.⁵ It has been reported that the poor benefits directly undermined the enthusiasm and commitment of some lay assessors (Ding and Sun, 2002; Wang, 2006; Gao, 2007).⁶

It would be unfair to blame the courts for their financial compensation. As a matter of fact, China’s courts have been far from financially independent. The budget of each Chinese court has to be approved and the funds appropriated by the financial department of the local government. Since the law no longer demanded compulsory application of mixed tribunals, a number of local governments stopped providing funds to the courts for maintaining lay assessors. After losing this financial support, some courts had to sparingly use lay assessors and were unable to pay them subsidies in an appropriate way (Wei, 2001a).

2.1.3. *Appearance of “full-time” and “long-serving” lay assessors*

“Long-serving” and “full-time” lay assessors were two remarkably abusive practices involving lay people who served at the courts for many years or even on a full-time basis.

In fact, irrespective of the declining use of lay assessors, the conflict between overloaded dockets and the shortage of professional judges was never resolved in China during the 1980s

⁴See JiangSu Local Chronicles, “The Historical Dossiers of Jiangsu Province – Justice Chapter”, at the official website of the Government of Jiangsu Province, at <http://www.jssdfz.gov.cn/dfz/detail?templet=detail5.jsp&id=18&searchword=ID=1197425369593>, last visit on 18 September 2008.

⁵See *The People’s Court Daily*, 29 October, 2000.

⁶See also “Lay assessors accompany, rather than adjudicate, and full-time lay assessors need to be removed”, 2004. Daily Online Global News Network, April 2, available at http://news.xinhuanet.com/legal/2004-04/02/content_1398688.htm.

217 and 1990s. For example, in 1978, there were approximately 70,000 judges in China and this
218 number doubled to 156,000 in 1998 (Wang, 2000; Yu, 2000). But by contrast, the caseload of
219 all Chinese courts increased ten times in the same two decades, starting at approximately
220 500,000 in 1978 and reaching 5,390,000 in 1998 (Xu, 2001).

221 Citizen jury panels had become impractical and professional judges could no longer handle
222 the fast-rising case overloads. Only simple civil cases and minor criminal offences were
223 permitted to be adjudicated by a single-judge panel according to the procedural laws then in
224 effect.⁷ And some courts complained that the collegial panel of three judges was by no means
225 an economical form of saving manpower and easing the courts' workload. Though not
226 demanded by the law, the mixed tribunal with lay assessors was therefore preserved by some
227 courts, essentially for alleviating the short-handed situation, as now lay assessors could replace
228 judges and be seated as tribunal members (Cui and Wang, 2008). Driven by this desire to spread
229 their caseloads between more people, rather than by a wish to encourage lay participation, it
230 seems that some Chinese courts' practice of using lay assessors has been substantially distorted
231 from what was originally intended.

232 Some of China's courts re-employed the same lay assessors for years or even decades (Xiao,
233 2007). For example, Jiang Shifeng served at the Court of Xingguo County of Jiangxi Province
234 for 13 years from 1993 to 2006, participating in a total of 720 cases ("The Story of An
235 Excellent Lay Assessor – Jiang Shifeng," 2007). Ma Hao was appointed as a lay assessor
236 by the Court of Fengtai District of Beijing City in 1994 and participated in over 2000 trials until
237 January 2nd, 2004 ("Shall the Lay Assessors Turn Left or Right?" 2004).

238 Some courts also chose to recruit unemployed people or pensioners as lay assessors and
239 allocated heavy caseloads to them, effectively transforming them into full-time court
240 employees. Sun Bozong, for example, was employed as a lay assessor by the Court of Sha-
241 pingba District of Chongqing City in 1998, when he became unemployed due to the bankruptcy
242 of his company. Until 2005, he had been living on his income from the court. During this seven-
243 year period, he participated in approximately ten cases each month while the highest record
244 being five cases within one week – even heavier workload than that of some professional
245 judges in the same court. Because he needed to participate in trials one after another, he had to
246 work at the court full-time during the weekdays (Yao, 2005). As documentary evidence has
247 revealed, this phenomena of full-time lay assessors and lay assessors serving for many years
248 was not scattered, but rather popular throughout the entire country (Wei, 2001a).

249 As well as the misdirected purpose behind the use of lay assessors, there existed a series of
250 deep-seated forces that were jointly responsible for the occurrence of full-time lay assessors.

251 First, the term "selection of lay assessors" in China's judicial practice actually involves two
252 stages of selection: (1) each court "selects" lay assessors from the local community to form a lay
253 assessor pool for its use, while each lay assessor is to serve on a basis of fixed tenure, which was
254 normally two years before the Lay Assessor Act in 2004; (2) when a mixed tribunal needs to be
255 empaneled, the court will "select" the specific lay assessor from the pool and designate him/her to
256 participate in the trial (Huang, 2008). Before the Lay Assessor Act in 2004, Article 38 of the Act of
257 the Organization of Courts in 1983 provided that lay assessors should be elected by local elec-
258 torates. This provision however was largely abandoned. In practice, it became the norm that many
259 courts made their own choices. Rather than selecting randomly from a general list of the citizens
260 such as the electoral register, as in some common-law jurisdictions (Parry, 2002), the courts
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269 ⁷Article 40 of *The Code of Civil Procedure of China in 1991* and Article 174 of *The Code of Criminal Procedure of*
270 *China in 1996*.

271 Q4 selected the lay assessors from the local community without any check (Wei, 2001b; The Supreme
272 Court of China, 2009). In other words, the courts had total freedom to decide who was selected
273 (The Supreme Court of China, 2004).⁸
274

275 Secondly, unlike in some common-law countries where refusal to attend court for jury
276 service without a lawful excuse may be classed as contempt of court, there was no punishment
277 for such behavior in China. In the absence of any compelling reasons to attend, coupled with
278 the extremely low compensation, it was common for lay assessors with employment to be
279 reluctant to perform duties in court. Some of them even chose to evade court service by
280 frequently asking for exemption or deferral (The Supreme Court of China, 2004). In this case,
281 some courts, having the unbounded discretion of selecting lay assessors, gave up recruiting lay
282 assessors who are in employment and instead exclusively selected pensioners and other
283 unemployed people who would be more responsive and available.
284

285 Thirdly, in contrast to some countries where the workload of each lay assessor was strictly
286 circumscribed, (e.g. the Russian lay assessors served no more than two weeks per year, while
287 each German lay assessor serves only eight times each year at the criminal court of Bochum
288 and four times in Frankfurt (Machura, 2003)) there was no such limitation in China's law. This
289 left the courts free to overuse a lay assessor if they so wished.
290

291 Fourthly, given that some local governments refused to provide funds for maintaining lay
292 assessors, in an attempt to cut expenses involved in selecting, training and managing lay
293 assessors, some courts endeavored to limit the number of lay assessors and allocated the entire
294 workload to a few people rather than retain a large pool of them.
295

296 Due to the above four reasons, a court may recruit only a few pensioners or other unem-
297 ployed people and allocate massive caseloads to them, effectively transforming these indi-
298 viduals into full-time court employees, such as in the case of Sun Bozhong.
299

300 The practice of having long-serving lay assessors can be attributed to the problematic
301 legislation and absence of financial support as well. According to The Supreme Court's
302 Notice of Incorporating the Selection of Lay Assessors into the General Election in 1963, the
303 tenure of each lay assessor was normally two years, without the limitation of reappointment.
304 Needless to say, dismissing the old lay assessors and selecting new recruits every two years
305 would be much less convenient than simply reappointing the old hands. In the meantime,
306 training new lay assessors was expensive and so was highly undesirable, especially since the
307 government placed ever greater financial restrictions on Chinese courts. In these circum-
308 stances, some courts were inclined to reuse the same lay assessors and refused to replace
309 them with the new blood for many years. As indicated by the case of Sun Bozhong, the
310 phenomena of full-time and long-serving lay assessors may be concurrent and interlaced with
311 each other.
312

313 2.1.4. *Passivism of lay assessors*

314 A judicial adage, popular in China in 1980s and 1990s, which states that "Lay assessors
315 accompany [judges] rather than adjudicate [cases]," captures exactly the very inactive and
316 passive performances of the lay assessors (Daily Online Global News Network, 2004; Zhao,
317 2007).
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321 ⁸For example, an official report from the Supreme Court of China revealed that before *the Lay Assessor Act in 2004*,
322 41.5% of the lay assessors were directly selected by the courts while 23.7% were nominated by the relevant organi-
323 zations and appointed by the courts after reporting to the corresponding standing committees of the local People's
324 Congresses, with few lay assessors elected by the local electorates.

325 On one hand, Chinese lay assessors were said to remain silent like puppets during trials and
326 deliberations (“[The Lay Assessor System Confronts Four Difficulties](#)”, 2008). On the other
327 hand, lay assessors were sometimes criticized for their “passive obedience to the judge during
328 deliberation, which has transformed the process into a speech instigated by the judge instead of
329 the facilitation of group discussion amongst individuals within the mixed tribunal” (He, 2005).
330 In an investigation into the deliberation records of a sample of 50 cases, the lay assessors said
331 nothing but “Yes, I agree” in 42 (84%) cases; while in the other 8 (16%) cases, the lay assessors
332 also affirmed the decisions of the judges, only supplementing their ideas (He, 2005).

333 This passivism on the part of the lay assessors can be attributed to a series of reasons beyond
334 that of their inappropriate compensations mentioned above.

335 The first possible reason was that lay assessors encountered practical difficulties in per-
336 forming their duties. As revealed in a report issued by the Supreme Court of China, 51.8% of
337 the lay assessors serving at the courts of Shanghai City admitted that they have had problems in
338 understanding legal issues of the cases. Needless to say, a lay assessor cannot be expected to
339 participate fully and effectively in a trial if they lack a clear understanding of the case.

340 The problem of insufficient instruction being given to lay assessors seems to be another
341 reason for their inactivity. Before the promulgation of The Lay Assessor Act in 2004, only
342 subsection 2 of Article 38 of The Act of the Organization of Chinese Courts in 1983 stipulated
343 that a lay assessor had the same jurisdiction and duties as a judge, except for acting as the
344 presiding judge of a mixed tribunal. However, except for this provision, there was no other law
345 or regulation to specify the detailed duties and rights of lay assessors in detail. Besides,
346 according to Zhao and Du’s investigation, numerous courts did little to instruct the lay assessors
347 on what to do and not to do in practice. Without knowing their specific duties and rights, lay
348 assessors may choose to remain silent or simply follow under the judge’s heel (Zhao and Du,
349 2006).

350 As punishments such as contempt of court had not been established in China, there were an
351 insufficient number of deterrents to assist in regulating the behavior of lay assessors. The
352 penalties that could be imposed for a lay assessor’s impropriety, such as evading the court
353 service and dozing during the trial, included only warnings, criticism, or at most suspension.
354 These were of course far less of a deterrent than a charge of contempt of court would be.
355 Further, being suspended from being a lay assessor might even be exactly what the lay assessor
356 who failed in their duties was hoping for.

357 As the tenure of lay assessors in China was two years without restrictions as to reap-
358 pointment and workload, where a lay assessor assumed a heavy caseload and kept working for
359 years (e.g. Ma Hao participated in 2000 trials within ten years), it would be highly unlikely that
360 his enthusiasm would not diminish over time. As Shen Deyong, then-Vice Chief Justice of the
361 Supreme Court of China, pointed out “overwork undermined the participant interests of the lay
362 assessors which have already been affected by their poor subsidies” ([The Supreme Court of
363 China, 2004](#)).

370 2.2. *The lay assessor act in 2004*

371 In an attempt to correct the various defects of the lay assessor system, the Supreme Court of
372 China submitted the Motion of Reforming the Lay Assessor System to the Chinese People’s
373 Congress – the supreme legislative authority in China in 1999. On 28 August 2004, the Lay
374 Assessor Act in 2004 (the LAA 2004) was enacted. The LAA 2004 contains 20 principled
375 articles relating to lay assessors, but remains ambiguous about some important issues in lay
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377
378

379 participation. As a remedy, the Supreme Court of China in association with the Ministry of
380 Justice promulgated the Regulation of Selecting, Examining and Appointing Lay Assessors on
381 13 December 2004 (the Regulation 2004), while the Supreme Court of China promulgated the
382 Provisional Regulation of Administration of Lay Assessors 2005 (the Regulation 2005) on 6
383 January 2005. These three legal documents embody the major changes discussed below.
384

385 2.2.1. *Encouraging the use of lay assessors*

386 The Act of the Organization of Chinese Courts in 1983 placed the decision to use lay
387 assessors under the jurisdiction of each individual court in China by providing that “Cases of
388 first instance shall be adjudicated by a collegial panel composed of judges or of judges and lay
389 assessors (emphasis added by the authors); simple civil cases, minor criminal cases and cases
390 otherwise prescribed by law shall be adjudicated by a single judge”.⁹
391

392 As a result, the use of lay assessors declined during the 1980s and 1990s. The LAA 2004
393 appears to be promoting the use of lay assessors by specifically providing two circumstances
394 where a mixed tribunal must be used, unless otherwise provided by the law, except for the cases
395 to be decided by the summary procedure with a judge seated alone¹⁰: (1) first-instance criminal,
396 civil and administrative cases with far-reaching social implications, and (2) any case in which
397 the litigant(s) request(s) the application of a mixed tribunal.
398

399 Those provisions seem significant in two aspects. First, in contrast to the previous
400 exclusive jurisdiction of the courts to initiate a mixed tribunal, this provision specifically
401 requests the courts to employ mixed tribunals in particular cases which will cause the courts
402 to use lay assessors more regularly. Secondly, for the first time since the establishment of the
403 People’s Republic of China by the CCP in 1949, the litigants are entitled to apply for the use
404 of mixed tribunals. This could be seen as a move by China toward principles of justice such as
405 “each citizen has the right to be judged by his peers” (Kutnjak Ivkovic, 2003, p. 98). Of all
406 the major changes embodied in the LAA 2004, none are more fundamental than the above
407 two.
408

409 2.2.2. *Promoting the quality of lay assessors by addressing education and training needs*

410 Subsection 1 of Article 38 of the Act of Organization of the Courts in 1983 simply provided
411 that any qualified voter on the electoral register aged above 23 can serve as a lay assessor,
412 except for those deprived of the political rights due to their criminal offences, regardless of
413 educational achievement. Without a limitation as to educational level, it was reported that some
414 courts even hired illiterate citizens to act as the lay assessors to simply fill vacancies in collegial
415 tribunals (The Supreme Court of China, 2004). Some scholarly materials pointed out that the
416 inappropriate education level of the lay assessors could be blamed for their incompetence
417 (Shen, 1999). The Chinese authority, when considering the reform, also held that “because lay
418 assessors have the jurisdiction equal to judges, their educational eligibility should not be much
419 lower than that of judges; otherwise they may be unlikely to perform the duties well due to their
420 unsound quality and ability” (He, 2005). To address these problems, Article 4 of the LAA 2004
421 specifically sets forth the educational eligibility and situates it at a high level by requiring that
422 the lay assessors should normally have at least a college diploma.
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426

427 ⁹Article 10 of the Act of the Organization of Courts in 1983.

428 ¹⁰In China, simple civil litigations and minor criminal offences can be handled with the summary procedures where
429 a single judge sits alone and applies the simplified procedures (for example, the litigants are allowed to be summoned by
430 telephone by the judge in a civil case), see Article 142–146 of the Code of the Civil Procedure in 1991, and Article
431 174–179 of the Code of the Criminal Procedure in 1996.
432

433 No nationally applicable rules to regulate the training of lay assessors existed before the
434 LAA 2004. Each court managed the training of lay assessors at its own discretion. Due to the
435 shortage of funds and manpower, a number of courts were found largely to ignore the training
436 of lay assessors, which was believed to contribute to the frequently reported incompetence,
437 passivity, and inactivity of these lay assessors. In response to this, Article 15 of the LAA 2004
438 specifically assigns the responsibility of training lay assessors to each individual court and the
439 Department of Justice of the local government at the same level.

440
441 Apparently, merely one article will be too principled to specify the very details as to how to
442 execute the training. As the remedy, Article 10–14 of the Regulation 2004 specifically
443 commission each court to train lay assessors and specify that the training session should teach
444 the basic principles of legal knowledge, court rules, judicial moralities and disciplines. Since
445 courts are designated with the duty to provide the training to lay assessors, the Regulation 2005
446 promulgated by the Supreme Court of China establishes a whole chapter in which eight articles
447 are set out to further regulate the execution of the training. Clearly, the previous incompetence
448 of lay assessors is expected to be overcome by the enhanced educational eligibility and the
449 provision of adequate training.
450
451

452 2.2.3. *Specifying selection procedures of lay assessors*

453 Prior to the LAA 2004, lay assessors came primarily from the local community. However,
454 gradually, chaotic practices occurred, such as the exclusive recruitment of the pensioners and
455 the unemployed as the lay assessors in some jurisdictions. Meanwhile, there was no regulation
456 as to how Chinese courts should allocate the workload of each lay assessor, leaving courts with
457 the discretion to overuse some of specific lay assessors and transforming them into full-time
458 court employees. The LAA 2004 intended to resolve these problems by setting forth three
459 articles.
460

461 Articles 7 and 8 of the LAA 2004 lay down a four-step process for selecting lay assessors.

462 First, each court individually decides the number of the lay assessors it actually needs,
463 followed by a process of approval by the standing committee of the local People's Congress at
464 the same level. Secondly, Article 8 sets down three methods for each court to use for identifying
465 candidates: (1) "self-nomination," where a citizen who wants to serve as a lay assessor
466 is allowed to nominate himself/herself to the local court; (2) "employer-nomination," where
467 employers are encouraged to nominate their employees to the courts for lay assessor selection,
468 after obtaining the employees' consent; and (3) "nomination by grass-roots organization,"
469 where various "grass-roots organizations"¹¹ are permitted to nominate local residents to the
470 courts as lay assessor candidates after securing the consent of the nominees. These three
471 nomination methods are intended to yield a sufficient number of candidates for the courts'
472 selection. Thirdly, these candidates are to be screened by each court jointly with the
473 Department of Justice of the local government so that a shortlist of suitable candidates is
474 produced. Fourthly, the candidates on the shortlist will be appointed by the standing
475 committee of the local People's Congress at the same level.
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480 ¹¹To control and regulate the community from the very grass-roots level, China's authority has respectively established
481 the so-called "the Committee of Urban Residents" in each town and city and "the Committee of Villagers" in each
482 village of China since 1954. These two "committees" are often called "grass-roots organization" or "grass-roots mass
483 organization". "The Committee of Urban Residents" and "the Committee of Villagers" are respectively established in
484 each block of the town or city and each village, enjoying the jurisdiction to tackle some local administrative affairs. See
485 *the Act of the Organization of the Committee of Urban Residents in 1998* and *the Act of the Organization of the*
486 *Committee of Villagers in 1998*.

487 This four-step process prescribed by the LAA 2004 attempts to outline a clear routine and
488 involve more parties, such as the standing committee of the local People's Congress and the
489 Department of Justice of the local government, in overseeing the selection of lay assessors. In
490 this way, the courts are expected to be prevented from potentially engaging in discriminatory
491 selection practices in favor of the specific groups such as the pensioners or the unemployed.
492

493 Further, Article 14 of the LAA 2004 provides that each court shall produce a roster of
494 eligible lay assessors and “randomly select” the specific lay assessor from the roster and
495 designate him/her to each specific case. This should serve to prevent the previous practice
496 where some courts kept summoning one or several lay assessors repeatedly and commissioned
497 them all the workloads, eventually transforming them into the full-time court workers.
498
499

500 2.2.4. *Promoting welfare of lay assessors*

501 The LAA 2004 attempts to improve the benefits for lay assessors in three ways. First, Article
502 18 mandates that Chinese courts shall compensate lay assessors for traveling and accommo-
503 dation costs. Secondly, it is reaffirmed that the employers of lay assessors are forbidden to
504 reduce or covertly reduce their salaries, bonuses and other benefits during their court services.
505 Thirdly, Article 18 provides that any lay assessor without employment shall be paid an
506 allowance calculated on the basis of multiplying lay assessor's serving days with the average
507 daily income of local workers in the previous year. Article 14 of the Regulation 2004 adds that
508 lay assessors shall be paid allowances and stipends as well during their training process.
509
510

511 2.2.5. *Addressing local governments' financial supports*

512 Each of China's courts has been financially dependent on the local government. During the
513 two decades before the LAA 2004, some courts complained that their budgets for maintaining
514 lay assessors had been slashed or even totally rejected by the local governments so that they had
515 to reduce or discontinue the use of lay assessors.¹² To address these complaints, Article 19 of
516 the LAA 2004 prompts Chinese local governments to provide adequate financial support,
517 specifying that each court is permitted to place the potential expenses for employing lay
518 assessors into its normal annual budget which should be approved and duly provided by the
519 local government. Those remedial measures represented the very important step, not only to
520 eliminate various logistical and procedural deficiencies in the selection of fair-minded lay
521 assessors, but also to improve the structural quality of the court and related institutions and
522 provide the financially stable foundation for the equitable operation of the lay assessor system
523 in China.
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527 3. History of Japan's mixed-court system – Saiban-in Seido (the quasi-jury system)

528 Distinguished from China's system of legal equities, which in her modern history had never
529 used the all-citizen jury trial, Japan once had a criminal petit jury system. The Jury Law was
530 passed in 1923 under the strong leadership of Prime Minister Takashi Hara and was put into
531 effect in 1928. But the system was suspended in 1943 by the military government during World
532 War II. Beginning in the late 1980s and 1990s, the pressure to change the existing legal system,
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537 ¹²For example, the Court of Yuzhong District of Chongqing City and the Court of Jinshi County of Hunan Province
538 have revealed this reality. See “The Court of Jinshi County Addressing the Application of Lay Assessors”, at the official
539 website of the Court of Jinshi County, at <http://zjfy.changde.gov.cn/zjfy/937312784843014144/20061010/165606.html>,
540 last visit on 14 December 2007.

541 including the introduction of lay judges in criminal cases, began to emerge. The move for
542 judicial reform then became part of the national agenda; and the demand for judicial reform
543 came from several sources, including (1) the Ministry of Justice; (2) the Secretariat of the
544 Supreme Court; (3) the Japanese Federation of Bar Association (JFBA); (4) the Federation of
545 Economic Organizations (FEO or “Keidanren”) and the Japanese Association of Corporative
546 Executives (JACE or “Keizai Doyukai”) — two of Japan’s most influential business organiza-
547 tions; and (5) the Liberal Democratic Party (“Jiminto”) and the New Clean Government Party
548 (“Komeito”) — the ruling political alliance in the Japanese government.

549 Since early 1990s, those five interest groups acted as the exclusive set of powerful policy
550 brokers in the establishment of law schools and the new legal profession, as well as in the
551 formulation of new policies impacting the legal process, including the possible introduction of
552 the system of lay participation in judicial decision-making.

553 The Ministry of Justice and the Supreme Court first proposed the need to increase the
554 number of both prosecutors and judges. Their close alliance and collaborative relationship
555 reflected the historical fact that the Ministry of Justice once handled the operation of all judicial
556 institutions, including the prosecutor’s office. After 1947, in an effort to promote the inde-
557 pendence of the judiciary, the structure was transformed to provide the Supreme Court of Japan
558 control over personnel issues involving judges and judicial officers. Because of the historical
559 collaboration between the judiciary and the ministry, both prosecutors and judges remained as
560 an exclusive group of bureaucratic elites within the Japanese government. In order to achieve
561 their objective, they jointly proposed increasing the number of legal applicants who passed the
562 national bar exam in order to alleviate the problem of recruiting a sufficient number of
563 successful applicants to fill positions of prosecutors and judges. Despite the strong opposition
564 from the JFBA, the National Bar Examination Act was nonetheless amended in 1991, opening
565 the door for a new era of young, idealistic lawyers (Miyazawa, 2001; West, 2003).

566 With a prolonged recession at home and facing increasing business and legal challenges due
567 to the globalization of the Japanese economy, the economic groups also shared a similar interest
568 with the ruling LDP, the court, and the ministry. Together they felt the need to expand the legal
569 profession, providing legal roles for non-attorneys, such as judicial scribes, patent agents,
570 and non-attorney corporate legal staff to represent parties in litigation. In order to increase the
571 efficiency in handling legal issues, the JACE, one of the most powerful economic interest
572 group, first published its report in June 1994, followed by another JACE report in January 1997
573 supporting significant legislative and judicial reforms to create a market-led economy in
574 Japan.¹³

575 Besides the expansion of legal professionals, these reports also emphasized the need for the
576 unification of the legal professions, with judges actively recruited from experienced practicing
577 attorneys who showed a better understanding of contemporary business practices, international
578 legal customs, and complex business laws.¹⁴ Similarly, a think-tank established by the FEO

586 ¹³The committee was called Gendai nihon shakai wo kangaeru iinkai and the report was called Gendai nihon shakai no
587 byori to shoho (The pathologies of and remedies for contemporary Japan). The 1997 report was called Gurobaru ka ni
588 taosuru kigyo hosei no seibi wo mezashite: Minkan shudo no sijo keizai ni muketa seido to rippo, shiho no kaikaku
589 (Toward establishing corporate legal structure to meet the challenges of globalization: The system for market-led
590 economy and accompanying legislative and judicial reforms). See Kamiya, 2006, n12.

591 ¹⁴See “Shiho seido kaikayu ni mukete — ronten seiri” (For Judicial Reform: Main issues and points,” <http://www.kantei.go.jp/jp/sihouseido/pdfs/1221ronten.pdf>. For the English version, see http://www.kantei.go.jp/foreign/policy/sihou/singikai/991221_e.html). It is interesting to note, in the English version, the mixed-court system was referred to the “Magistrate” system.

595 also published its recommendation in December 1998, suggesting more flexible and expansive
596 views of legal practice and an efficient system of alternative dispute resolutions to deal with the
597 increasing globalization of the Japanese economy, industrial development, and corporate
598 investment (Miyazawa, 2001; Anderson and Nolan, 2004; Johns, 2006).
599

600 The JFBA, representing Japan's practicing attorneys, also proposed the unification of the
601 legal profession and the introduction of the all-citizen jury system in order to transform the
602 bureaucratically controlled judiciary. The JFBA's proposal stems from the fact that judges'
603 decisions and judgments recently have become increasingly under criticism following a series
604 of wrongful convictions of innocent defendants in prominent criminal cases. Almost all
605 indicted cases resulted in automatic convictions – for Japanese judges almost never acquit
606 criminal defendants. The JFBA also argued that there are few checks-and-balance mechanisms
607 in the judiciary necessary to insure the proper and fair performance of Japanese judges or
608 prosecutors.
609

610 611 612 *3.1. Political pressure and the establishment of the justice system reform council (JSRC)* 613

614 In 1999, in order to create an official guideline for Japan's judicial reform, then-Prime Minister
615 Keizo Obuchi established the Justice System Reform Council (JSRC, or "Shiho Seido Kaikaku
616 Shingikai"). The council had 13 members who were recruited from different political and
617 economic sectors. The analysis of the council members is important to understand the potential
618 influence of various interest groups in shaping and influencing any future blueprint for Japan's
619 judicial reform. For example, the interests of the Japanese government were expressed through
620 two members of the bureaucratic elites – a former chief justice of the Hiroshima high court and
621 a former chief prosecutor of the Nagoya Public Prosecutor's Office. The council also included two
622 members from the FEO and business interest groups, as well as a former JFBA president,
623 a president of the Federation of Private Universities, a female business professor from a private
624 university, a female popular writer, a vice president of "Rengo" (a labor organization), and
625 a president of "Shufuren" or the Federation of Homemakers (or Housewives). The governmental
626 influence was evident because, in addition to a judge and prosecutor, six members had previously
627 served in various governmental committees and agencies, including a member who was a former
628 first secretary of the Japanese embassy in Thailand (Maruta, 2004, p. 77).
629

630 The first public meeting was held on July 27, 1999, and the council held a total of sixty-three
631 meetings over the next two years. The JSRC's activities were quite extensive, as it conducted
632 hearings, fact-finding inspections of the Japanese courts, prosecutors' office, local bar associ-
633 ation offices, and law firms, also actively seeking out resources and materials on foreign judicial
634 systems and procedures. So, too, the JFBA also has taken a very active role in influencing the
635 judicial reform initiative and sponsored many community discussions and held forums and
636 symposiums, together with civic organizations, to educate the public regarding the background
637 and need for the judicial reform. There were many responses to the interim report and proposals
638 sought by the JSRC, for example; and they were coordinated by JFBA members in closely
639 working with civic organizations, including the Research Group on Jury Trial (RGJT).¹⁵
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644 ¹⁵RGJT (The Research Group on Jury Trial) is a prominent civic organizations which members are composed of
645 distinguished legal scholars, civil rights attorneys, and civic activists that Since late 1990s, the second author also
646 worked closely as members of both the RGJT and another civic organization called "Shimin no Saiban-in Seido
647 Tsukuro-kai [Let's Make Citizens' Quasi-Jury System]" and spoke in a number of conferences, forums, and sympo-
648 siums in Tokyo metropolitan areas.

649 In April 2002, in order to implement the recommendation, the Office for the Promotion of
650 Justice System Reform (OPJSR) was established in the Cabinet Office, and the office created
651 eleven different investigative committees to implement specific recommendations in the JSRC's
652 final report.¹⁶ The responsibility to deliberate on specific items of the judicial reform for the
653 quasi-jury system was delegated to the Quasi-jury/Penal Matter Investigation Committee
654 (Saiban-in, Keiji Kentokai"), including the task to determine the specific number of lay and
655 professional judges for the quasi-jury trial (Maruta, 2004, pp. 125–127). The makeup of the
656 committee again reflected the groups of various interests that helped shape the initial proposal
657 for the judicial reform. The committee was chaired by Tokyo University Professor Inouye who
658 also served on the JSRC. Ten other members included two defense attorneys from the JFBA,
659 a Tokyo district court judge, a prosecutor from Supreme Public Prosecutor's Office ("Saiko
660 Kensatsucho Kenji"), a police chief from the National Policy Agency, four university profes-
661 sors, and a journalist. The strong political influence from the Japanese Supreme Court Secre-
662 tariat and the Ministry of Justice was undeniable, as one university professor from Keio
663 University was a former judge, and one of two practicing attorneys was also a former prose-
664 cutor. He was also known as a strong opponent to the system of citizen participation in the legal
665 process (Isa, 2004).

666 The Investigation Committee held 32 public meetings over two years, from February 28,
667 2002 to July 6, 2004. In the thirteenth meeting on March 11, 2003, the committee introduced
668 the draft paper on the quasi-jury system to facilitate the discussion. In terms of the ideal
669 composition of the deliberative model, two very different models emerged. The "A" model
670 suggests the three professional judges and two or three lay judges, and the "B" plan suggests
671 one or two professional and nine to eleven lay judges (Niikura, 2004).

672 The first model was preferred by the Supreme Court and the Ministry of Justice, while the
673 second model was supported by the JFBA. After heated discussions on the proposal, the
674 composition of the quasi-jury was decided to have three professional and four lay judges. The
675 proposal also left open the option of five or six lay judges in the alternative model and sug-
676 gested that prospective quasi-jurors must be 25 years of age or over to serve ("Anataga sabaku",
677 2004). The committee also decided on the following: (1) the majority vote will be used to
678 determine issues of fact and sentencing; (2) only serious crimes will be heard under the quasi-
679 jury system; (3) the procedure is mandatory and cannot be avoided by defendants or waived by
680 courts; (4) restrictions are imposed on publicity around and about the trials; and (5) other
681 matters including lay judge selection procedures and funding. The committee's interim report
682 was then sent to the Office for the Promotion of Justice System Reform (OPJSR) on October
683 28, 2003.

684 The final proposal of the investigation committee was mostly based on the party proposal
685 and Professor Inouye's original proposal, and it was submitted to the OPJDR in the Cabinet
686 Office. On March 2, 2004, the Cabinet then decided its final overall proposal on Japan's judicial
687 reform entitled, "Recommendation of the Justice System Reform Council: For the Justice
688

689 ¹⁶Those committees include: (1) Labor Study Committee (rodo kentokai), (2) Legal Access Investigation Committee
690 (shiho akusesu kentokai), (3) ADR investigation committee (ADR kentokai), (4) Arbitration Investigation Committee
691 (chusai kentokai) (5) Administrative Litigation Investigation Committee (gyosei socho kentokai), (6) Quasi-jury/Penal
692 Matter Investigation Committee (saiban-in seido, keiji kentokai), (7) Public Defender System Investigation Committee
693 (koteiki bengo seido kentokai), (8) Globalization Investigation Committee (koku saika kentokai), (9) Judicial Officer
694 Training Investigation Committee (hoso yosei kentokai), (10) Judicial Officer System Investigation Committee (hoso
695 seido kentokai), and (11) Intellectual Property Litigation Investigation Committee (chiteki zaisan socho kentokai). See
696 <http://www.kantei.go.jp/jp/singi/sihou/kentoukai/>.

System to Support Japan in the 21st Century,” and submitted it to the Diet (Maxeiner and Yamanaka, 2004). The Diet passed the proposal on May 21, 2004, creating a quasi-jury system and announced that the first quasi-jury trial would begin in May 2009.

3.2. *The evolution of Japan’s grand jury system (Kensatsu Shinsakai or prosecutorial review commissions (PRC))*

While it is still little known to even Japanese citizens, the Japanese government first introduced and established the all-citizen grand jury system in 1948. Immediately after the end of WWII, with legal support from the Allied Forces under the leadership of General Douglas McArthur, the Prosecutorial Review Commission (PRC or “Kensatsu Shinsakai”) was established in each of Japan’s fifty district court jurisdictions. The PRC, comprised of eleven citizens chosen randomly from a local electoral register, was appointed to a six-month term, and held the power to review whether or not the prosecutor’s decision not to indict criminal suspects was appropriate.

In practice, this citizen’s investigation begins only after crime victims or concerned citizens have filed a civic complaint to the PRC. After investigating and deliberating on the case, the PRC submits one of three recommendations: (1) the non-indictment is proper; (2) the non-indictment is improper; and (3) the indictment is proper. The PRC then delivers a written recommendation to the prosecutor’s office. Since the prosecutors have the power to indict, the PRC recommendation has been regarded as merely advisory rather than legally binding, and prosecutors’ systematic refusal to act on the PRC recommendations have contributed to undermine public confidence in the PRC system (Fukurai, 2007).

In order to improve the oversight function of the PRC and facilitate its deliberative procedures, the Japanese Diet finally enacted the Act to Revise the Code of Criminal Procedure (including the PRC Law) in May 2004.¹⁷ The revised PRC law gave its recommendation legally binding status. If the PRC twice recommends the indictment of the accused, the recommendation becomes legally binding and the court must appoint a lawyer to perform the prosecution’s role until a ruling is reached.

This forced prosecutorial power of the PRC has recently led to the conviction of political and judicial elites, whom, under the traditional prosecutorial system, would not have been indicted or prosecuted. The PRC has facilitated, for example, the forced prosecution of a former deputy police chief,¹⁸ three past presidents of the JR-West, one of the most powerful private corporations in Japan,¹⁹ as well as Ichiro Ozawa, perhaps one of the most powerful political powerbrokers in Japanese political circles during the post-WWII era (Martin and Kamiya, 2010).

These details reveal how the lay adjudicatory systems of both Japan and China have gone through the dramatic transformation in recent years. New financial and political support by the Chinese Government to its lay assessor system, as well as the creation of quasi-jury trials and the revision of the PRC system by the Japanese Government, have all led to the expansive civic

¹⁷Keiji Soshohoto no Ichibu o Kaiseisuru Horitu [Act to Revise the Code of Criminal Procedure etc.] (hereinafter PRC Act), Law No. 62 of 2004.

¹⁸“Motofukushocho o kisoe: Kensatsushin, zenkoku hatsu no giketsu [Indictment of former deputy police officer: Prosecutorial Review Commission and the first forced indictment],” *Kobe Shimbun*, January 28, 2010, available at <http://www.kobe-np.co.jp/backnumber/asagiri/0003520156.shtml>.

¹⁹JR Nishi no Rekidai 3 Shacho, Futatabi Fukisoni, Dassenjiko de Kobe Chisai [Non-Indictment Again for Three Past JR-West Presidents, on the Derailment Incident, by the Kobe Prosecutors], *Nikkei Net*, Dec. 4, 2009, available at <http://www.nikkei.co.jp/news/main/20091204AT5C0401S04122009.html>.

757 opportunities and the creation of popular institutions to function as important means for
758 oversight of governmental affairs and corporate behaviors.

759 As evidence of these changes, the following section provides an empirical examination of
760 citizen participants in lay adjudicatory institutions in China and Japan. The cross-national
761 analysis of citizen participation in these lay justice systems reveals the comparative extent of
762 different representation from various geo-demographic sectors and socio-economic groups in
763 China and Japan.
764

765 4. Methodology and analysis

766 The following section examines the extent of civic legal participation in China and Japan. In
767 terms of China's situation, this article has tried to examine lay assessors' representativeness and
768 to discuss the resolution of the deep-seated problem of long-serving or full-time lay assessors.
769 Our empirical analysis of China's progress has relied on published reports from a number of
770 Chinese local courts and judicial institutions.²⁰

771 In Japan, we have provided an analysis of lay participants' representation in the quasi-jury
772 trial based on two major surveys conducted by the Japanese Supreme Court in 2009 and 2010.
773 We also have analyzed lay participants' representation in Japan's grand jury system or
774 "Kensatsu ShinsaKai (PRC)" (JFBA, 2001). Our analysis was based on a PRC survey con-
775 ducted by the second author of this paper in 2006. The members of the Prosecutorial Review
776 Commission Society (PRCS) which is composed solely of those who served in the grand jury
777 were asked to participate in the survey.
778

779 4.1. Representativeness of Chinese lay assessors

780 A detailed review of representativeness of Chinese lay assessors necessarily begins with
781 Article 4 of the LAA 2004, providing that lay assessors should have the educational level of
782 college diploma or above. According to the report of the National Population and Family
783 Planning Commission of China in 2005, only 5.4% of the national population have college
784 diplomas or higher educational levels, with 12.6% having received high school education,
785 36.9% graduating from junior high schools, and 30.4% only having finished primary school
786 education.

787 If Article 4 of the LAA 2004 is to be strictly carried out, 94.6% of the national population
788 will be deprived of the right to serve as lay assessors. Yet the Act explicitly excludes the great
789 majority of the Chinese population on the grounds of inadequate education. Properly
790 acknowledging this problem, the Regulation 2004 made a concession by specially giving the
791 courts the discretion of easing the educational eligibility of lay assessors in two circumstances:
792 (1) in rural jurisdictions, where the educational requirement makes it difficult to obtain
793 a sufficient number of lay assessors; and (2) the availability of elderly candidates with lower
794 educational attainment but who have excellent reputable standing in the community.²¹ These
795 concessions intentionally gave the courts — especially those situated at rural areas where the

805
806 ²⁰The reports published by some Chinese courts on their official websites have been the realistic and convenient
807 sources for the authors to access the statistical data with regard to the operation of lay assessor system as many data
808 about the operation of Chinese courts have been classified and hard to be obtained.

809 ²¹See Article 2 of *The Regulation for the Selection, Training and Examination of Lay Assessors* promulgated by the
810 Supreme People's Court of China and the Justice Ministry of China on 13 December 2004.

residents generally have a comparatively lower educational level – discretion to recruit lay assessors whose educational level cannot reach the college diploma.

Table 1 examines whether Chinese courts have been appraised of this concession and taking measures to ensure lay assessors' wide cross-sectional representation in terms of their educational background. For China as a whole, the 2006 report indicates that 48,211 of lay assessors were selected by various Chinese courts; 18,274 of them had college diploma or higher educational level, comprising 37.9% of the total number of lay assessors in China (Chen, 2006). By contrast, only 5.4% of the total population in China had received higher education. Statistically speaking, the absolute disparity reaches –32.40% and the comparative disparity is –34.29%, suggesting that more than one of every three Chinese without a college diploma has been excluded from lay assessor duties (The Central People's Government of the People's Republic of China, 2005). Significant under representation of the less educated is found in the different regions of China, such as Yangzhou, Nanjing, Beijing, and Harbin.

Table 1
Representation of Chinese lay assessors without college education.^a

Case Study	City	Number of Lay Assessors	(A)% of General Population without College Diploma	(B)% of Lay Assessors without College Diploma	(C) Absolute Disparity: (B) – (A)	(D) Comparative Disparity: (C)/ (A) * 100	(E) Critical ratio
1	Entire Population	48,211	94.5%	62.1%	–32.40%	–34.29%	–312.04
2	Yangzhou City	203	71.5%	14.8%	–56.70%	–79.30%	–17.90
3	Nanjing City	369	80.9%	12.5%	–68.40%	–84.55%	–16.33
4	Beijing City	1332	82.5%	12.2%	–70.30%	–85.21%	–67.52
5	Haidian District of Beijing City	222	56.0%	1.4%	–54.60%	–97.50%	–16.39
6	Harbin City	156	90.80%	0.00%	–90.80%	–100.00%	–39.24

^a Note: The statistics are based on the following information:

- Chen Yonghui, "Perfecting the Lay Assessor System and Promoting Judicial Fairness – Interviewing Li Ke, the CCP Team Leader and the Head of the Personnel Division of the Supreme Court", available at the united official website of China's law courts, see: <http://www.chinacourt.org/public/detail.php?id=212244>, last visit November 12, 2010;
- "The General Situation of the Agricultural and Village Economy of the Whole City", available at the official website the local government, see: <http://www.jsyzagri.gov.cn/viewarticle.asp?id=11&classid=1>, last visit June 20, 2007;
- See the report available at the official website of the National Population and Family Planning Commission of China, see: http://www.chinapop.gov.cn/rkzh/rk/tjzlg/t20060330_57759.htm;
- Zhao Xingwu and Du Hui: "They Have the Power Equivalent to that of the Judges – the Survey of the Implemental Situation of the Lay Assessor System in Nanjing City", *The People's Court Daily*, May 23, 2006, website version, see: <http://rmfyb.chinacourt.org/public/detail.php?id=96753>, last visit November 12, 2010;
- "Over One Thousand Lay Assessors Will Take Exams Tomorrow and Enjoy the Power Same As the Judges If Passing", available at the Chinese Government's official news website, see: http://www.china.com.cn/zhuanti2005/txt/2005-04/29/content_5851507.htm, last visit November 12, 2010;
- "The Gazette of Basic Statistical Data of the Fifth Nationwide Census in Beijing City in 2000", available at the official website of the National Population and Family Planning Commission of China, see: http://www.chinapop.gov.cn/rkzh/rk/tjzlg/t20040326_2818.ht, last visit July 1, 2007;
- "The Educational Level of the Population in Beijing Has Been Improved Continuously and the Proportion of the Population with Higher Education Is Increasing", available at one of China's biggest gate websites, see: <http://city.finance.sina.com.cn/city/2006-03-28/68291.html>, last visit November 12, 2010;
- Available at the official website of the Harbin Municipal Government, see www.harbin.gov.cn/hrbzfz/hrb_today/display.php?id=3307, last visit November 12, 2010;
- "Heilongjiang (Province): the 1% Population Spot Check in 2005 Indicated the Residential Population in Harbin City Was Reaching 10 Million", available at the official website of the National Population and Family Planning Commission of China, see http://www.chinapop.gov.cn/rkzh/rk/tjzlg/t20060517_59573.htm, last visit July 1, 2007.

865 As a matter of fact, in addition to the elitism of lay assessors' duties legislatively encouraged
866 by the LAA 2004, which effectively excluded the large majority of Chinese citizens from lay
867 assessor service, the Chinese authorities also seemed to be aware of such elitism. Cao Jianming,
868 then-Vice Chief Justice of the Supreme Court of China, declared that: "when selecting lay
869 assessors, the courts should give priority to the citizens with good educational background,
870 social achievements, reputable personalities and sufficient legal knowledge" (Li, 2007). Driven
871 by these dual reasons, it is no wonder that the courts were intentionally pushing the elitism of
872 lay assessors, which may well bring about a variety of problems.

873 First, one of the democratic merits of lay participation is that lay judges representing a wide
874 cross-section of the society provides the input of various community values, morals, norms and
875 customs into the judicial decision-making process. However, when the lay assessor pool
876 becomes dominated by the well-educated, male, middle-aged and well-to-do individuals, the
877 deliberative panel is transformed into an elite club representing the voice of a highly
878 concentrated segment of the upper class, rather than that of the whole community.

880 Secondly, privileging the well-educated Chinese citizens in legal duties appears to conflict
881 with China's own constitutional doctrines. Subsection 2 of Article 33 of the Constitutional Law
882 in 1982 provides that the citizenry of the People's Republic of China are equal before law.
883 Article 34 further mandates that each citizen aged above 18 has the right to vote and stand for
884 election regardless of their ethnic group, race, gender, occupation, family background, religion,
885 education (emphasis added by the authors), property status and length of residence. The only
886 exception is those deprived of political rights due to their criminal offences and convictions.
887 The LAA 2004 belongs to normal law, before which all the citizenry should at least theoret-
888 ically be "equal." Furthermore, it can be argued that the right of "standing for election" should
889 be an integrated right, allowing the election or selection of citizens to participate in the
890 administration of national affairs, including judicial matters. The skewed representation of lay
891 assessors thus violates the essential democratic principle embedded in the Chinese Constitution,
892 as well as the legal rights of citizens in China.

896 Thirdly, lay people's participation in the judiciary is expected to play an educational
897 function which has been portrayed by some scholars as the "democratic school," suggesting that
898 among the common people can be fostered the idea of collaborative participation in making
899 decisions in politics embracing participant democracy (Hans and Vidmar, 1986, p. 249). It is
900 also argued that the less educated may need this educational opportunity more so than the well-
901 educated, because their attainment of full-time education has been substantially less than those
902 well-educated. Thus, to deprive the less educated of this educational opportunity may seriously
903 impair lay participation's educational function because of the very selectiveness of the more
904 educated "students" in this "democratic school."

906 4.2. *Reborn full-time lay assessors*

909 Table 2 indicates that, after the promulgation of the LAA 2004, an average lay assessor in
910 China had participated in 4.7 cases per year. While this workload may not seem much hardship
911 for lay assessors without full-time employments, it may cause heavy burdens for those with
912 full-time work commitment. For example, if each case requires three-working days, lay
913 assessors will have to appear in courts more than one day a month. It is important to remember
914 that some cases might be complicated and require many appearances for the trial and delib-
915 erations, creating additional time of commitment for lay assessor duties. More radical examples
916 come not singly but in pairs. From May 2005 to April 2006, 1500 lay assessors had participated

in 11,079 cases in Hunan Province, suggesting that each lay assessor deliberated 7.4 cases per year (Yi, 2007). Some 54 lay assessors at the Local Court of Wuhou District of Chengdu City, Sichuan Province tried 1098 cases, suggesting that each lay assessor participated in 20 cases per year (Yi, 2007). Similarly, 45 lay assessors at the Local Court of Pudong New District of Shanghai City tried 2500 cases approximately, indicating that each lay assessor participated in 55.6 cases per year (Yan, 2006). In addition, for nearly eight months, from May 1 to December 20, 2005, 40 lay assessors serving at the Local Court of Jiangnan District of Wuhan City, Hubei Province, participated in a total of 1497 cases, suggesting that each lay assessor participated in 37.4 cases in less than 8 months (Hubeigy China Court, 2010). It is not clear that how many of them serving at the courts in those regions had full-time employments. However, according to the above calculation, if a lay assessor handles over 50 cases per year, he may spend quite a few months solely working at the court each year, which will make him more like a full-time judge rather than a lay assessor who only participate in trials occasionally.

One of the widely acknowledged merits of lay participation has been that, in contrast to case-hardened judges, lay assessors are normally more sensitive, responsive and patient in trials because they “are selected for a period of several years [i.e., tenure] and are only occasionally summoned to the courts to serve on a particular day” (Kutnjak Ivkovic, 2003, p. 95). Rarely entering into the courtroom, each trial could be a whole new story for them. However, some lay assessors assume a heavy caseload equivalent to that of a judge serving for years (according to the LAA 2004, a Chinese lay assessor’s tenure is 5 years), and he or she probably will act “out of routine” like a judge, with their sensitivity and enthusiasm eroding (Kutnjak Ivkovic, 2003, p. 96).

Table 2
Caseloads of lay assessors.^a

Court	Total Numbers of Cases with Participation of Lay Assessors and Period	Numbers of Lay Assessors	Yearly Caseloads of Each Lay Assessor
Courts in the Whole China	226,759 (May 2005–April 2006)	48,211	4.7
Courts in Hunan Province	11,079 (May 2005–April 2006)	1500	7.4
The Local Court of Wuhou District of Chengdu City of Sichuan Province	1098 (May 2005–April 2006)	54	20.3
The Local Court of Jiangnan District of Wuhan City of Hubei Province	1497(1 May 2005–20 December 2005)	40	37.4 (in 7 months and 20 days)
The Local Court of Pudong New District of Shanghai City	2500 (May 2005–April 2006)	45	55.6

^a Note: The statistics are based on the following information:

- Chen Yonghui, “Perfecting the Lay Assessor System and Promoting Judicial Fairness – Interviewing Li Ke, the CCP Team Leader and the Head of the Personnel Division of the Supreme Court”, available at the united official website of China’s law courts, see: <http://www.chinacourt.org/public/detail.php?id=212244>, last visit November 12, 2010;
- Yi Fuqiang: “Designing at High Starting Point and Pushing Forward in High Quality – the Lay Assessor System Makes Remarkable Success in Our Court After One Year’s Operation”, available at the official website of the People’s Court of Wuhou District of Chengdu City Sichuan Province, see <http://www.whfy.gov.cn/shownews.asp?id=1856>, last visit November 12, 2010;
- Yan Jianyi: “The Court of Pudong New District Happily Welcomes 20 Expert Assessors”, available at the united official website of China’s law courts, see <http://www.chinacourt.org/public/detail.php?id=205405>, last visit November 12, 2010;
- “Strengthening the Leadership, Regularizing the Administration, and Fully Implementing the Lay Assessor System”, available at the official website of the Higher People’s Law Court of Hubei Province, see: <http://hubeigy.china-court.org/public/detail.php?id=4465>, last visit November 12, 2010.

973 Another value of the mixed tribunal is the lay participants' equitable oversight preventing
974 any misdeeds undermining fair and equitable decision-making. Lay assessors are expected to
975 prevent the potential injustice of both judges and courts who are "bound by organizational
976 restrictions" and thus "susceptible to the state's direct influence" (Kutnjak Ivkovic, 2003,
977 p. 95). By contrast, a lay participant from the community without administrative affiliation to
978 the court may be free of these "organizational restrictions." But where a lay assessor works full-
979 time and even lives on the income from the court like the case of Sun Bozhong, a financial
980 bondage will be established. Taking into account the risk of losing his income, the lay assessor
981 may have to bend over to satisfy the court, his employer, and become "susceptible to" the
982 court's (and indirectly the state's) "direct influence".
983

984 Meanwhile, the oversight function of lay participants also embodies the idea that they, as an
985 independent party representing the community, enter into the courtroom and the judge's
986 chamber to oversee the judicial proceedings and prevent potential misconduct by the judge. For
987 the successful realization of this potential impeachment function, the independence and
988 impartiality of the lay participants is necessary. Yet, once lay assessors work together with their
989 professional colleagues on a day-to-day base for years, they could gradually form alliances
990 which may counteract any potential role as a checking agent.

991 It has been revealed that after the Russian lay assessors reported to the same courtroom for
992 a long time, they likely "became dedicated to their respective judge" (Coughenour, 2003,
993 p. 406). In America, the criminal grand juries are also said to "become dedicated to a pros-
994 ecutor with whom they regularly work" (Coughenour, 2003, p. 406). Likewise, it has been
995 reported in China that concerns such as "maintenance of human relationship," "office poli-
996 tics," and "face saving" held back the lay assessors from impeaching their professional
997 colleagues even when they found the latter's conduct to be akin to lawbreaking (China
998 Network Television, 2004).

1003 4.3. Representativeness of Japanese quasi-jury participants

1005 Do citizen jurors in Japan also act as watchdogs with the ability to root out inequities in
1006 rendering verdicts? The first survey of the quasi-jury system was conducted by the Supreme
1007 Court Office in 2001, which published its report in March 2010. The report indicates that the
1008 Japanese court summoned a total of 5054 citizens to serve on 138 criminal trials, and nearly
1009 eighty% of them reported to the courthouse (78.7%) in 2009 (The Supreme Court Office,
1010 2010a). A total of 781 were chosen as quasi-jurors and 298 as alternates. The majority of
1011 both summoned jurors and actual quasi-jurors were male (54.1% and 53.4%, respectively).
1012 Other notable characteristics were that middle-aged jurors formed the majority of both
1013 summoned and actual quasi-jurors (63.5% and 63.4% for those in 30s through 50s), and the
1014 majority of them were employed (58.1%). While 16.8% of them had a responsibility to care for
1015 children, they were chosen as quasi-jurors and were able to carry out their jury duty.

1016 With respect to the evaluation of their quasi-jury experience, nearly all of lay participants
1017 were satisfied with their experience (96.7%). Regarding their understanding of the content of
1018 trial proceedings, three-quarters of them said that it was easy for them to understand legal
1019 discussions and exchanges in the courtroom (70.9%). The overwhelming majority of quasi-
1020 jurors also said that the courtroom instruction and explanations by the judge and the prosecutor
1021 were easy to understand (90.7% and 80.3%, respectively), whereas less than half of quasi-jurors
1022 said that the defense attorney's explanation was easy to comprehend (49.8%). The majority of
1023 them were satisfied with deliberative experience and discussions (83.1%). Those positive
1024
1025
1026

1027 feedbacks were contrary to the finding that the majority of them originally did not want to serve
1028 as quasi-jurors (55.7%).

1029 The Supreme Court Office conducted another survey in 2010 and published its second report
1030 on Japan's quasi-jurors in July 2010 ([The Supreme Court Office, 2010b](#)). From January 4th to
1031 April 30th, a total of 11,641 citizens appeared at the courthouse and 1889 of them were selected
1032 as quasi-jurors. The findings were very similar to the ones in the first report. The quasi-jurors
1033 were mostly male (55.5%), middle-aged (63.5%), and employed (54.8%). Nearly one-fifth of
1034 the quasi-jurors had child-care and/or nursing responsibilities (18.0%). The overwhelming
1035 majority of them said that the judge's and prosecutor's explanations were easy to follow (89.5%
1036 and 77.2%), but less than the majority said that the defense lawyer's explanation was easy to
1037 comprehend (47.0%). The majority of quasi-jurors were satisfied with deliberative discussions
1038 (77.6%) and nearly all of them said that the quasi-jury duty was a positive experience (96.1%).

1040 Those two government surveys substantiate that the quasi-jury duty provided a very positive
1041 experience to Japanese lay participants, and the content of trial proceedings did not pose great
1042 difficulty in understanding or following the instruction or explanation by the judge and the
1043 prosecutor. The deliberative experience was also positive and nearly all of them were satisfied
1044 with the content of deliberative discussions. The only consistent difficulty faced by the quasi-
1045 jurors was the defense attorney's inability to deliver comprehensive explanations and legal
1046 narratives to the lay participants. The majority of them were not satisfied with the courtroom
1047 performance, case presentation, and/or oratory methods of the defense attorneys.

1051 4.4. Japan's grand jury participation (prosecutorial review commissions (PRC))

1052 We also examined the extent of civic legal participation by the members of the Prosecutorial
1053 Review Commissions, i.e., Japan's grand jury institution (see [Table 3](#) under PRC in 2006). Our
1054 analysis shows that nearly two-thirds of grand jurors were male (66.3%) and the majority of
1055 them were also middle-aged in their 40s and 50s (27.0% and 31.9%).

1056 Since 49.0% of Japan's general population is male, men are overrepresented in both quasi-
1057 jury trials and grand jury institutions. In terms of age compositions, 15.3% and 18.5% of the
1058 Japanese citizens are in their 40s and 50s, respectively, in the general population. However,
1059 nearly two-fifths of lay assessors and three-fifths of grand jurors fall in those age groups,
1060 indicating their significant overrepresentation in Japan's two lay participatory institutions.

1061 Similar representative disparities are found in jurors' educational background. While
1062 respective proportions of groups with high school and college education are similar to the
1063 general population proportions, our finding suggests that those with junior college and/or
1064 technical or vocational colleges are underrepresented among grand jury members. In terms of
1065 occupational representation, homemakers, the self-employed, and farmers are better repre-
1066 sented among the grand jury members. Unlike the quasi-juror members who are required to
1067 report to the courtroom and attend the trial consecutively for a number of days, the grand jury
1068 proceeding normally takes place in the evening or weekend and grand jurors are thus more
1069 likely to make necessary preparatory arrangements to attend and complete grand jury
1070 deliberation.

1071 Nearly all grand jurors expressed their positive experience with the grand jury service
1072 (98.2%), substantiating the affirmative positive response of Japanese citizens on both quasi-jury
1073 and grand jury proceedings. Similar to petit jurors' pre-trial reluctance to serve, nearly half of
1074 grand jurors stated that they originally did not want to serve (45.5%), though their actual
1075 judicial experience seemed to have far exceeded their initial hesitance and disinclination.

Table 3
Representativeness of Japan's quasi-jury and grand jury (PRC) participants.

Variables and Questions	Japan ^a	Quasi-Jurors in 2009	Quasi-Jurors in 2010	PRC in 2006 ²
Gender				
Male	49.0%	53.5	55.5%	66.3%
Age ^b				
20–29	15.0%	15.0%	14.3%	3.8%
30–39	17.8	21.5	23.9	18.4
40–49	15.3	20.5	19.6	27.0
50–59	18.5	21.5	20.0	31.9
60–69	15.6	17.0	18.1	16.2
70–79	11.6	0.9	1.6 ^c	2.7
80–89	5.2	3.6 ^d		0.0
90 & over	1.1			0.0
Education ^e				
Junior High School or Less	16.0			22.4%
High School	47.0			47.4
Junior College/Technical or Vocational College	17.0			11.3
College Graduate or Higher Degree/Education	20.0			18.9
Occupation				
Employees	56.2 ^f	58.1	54.8	43.1%
Public Officers	na			5.1
CEO/Executives	na			4.6
Self-Employed	5.0 ^g	6.5	8.1	14.4
Homemakers ^h	14.2	10.2	9.4	17.4
Retired				0.5
Farmers ⁱ	6.6			5.1
Unemployed	5.1 ^j	5.0	7.7	9.7
Experience of Lay Participation				
Positive		96.7	96.1	98.2
Originally did not want to serve		55.7	52.9	45.5

^a Age breakdowns are based on the 2005 Japanese census. Percentages are computed for Japanese citizens who are 20 and over.

^b Figures show respondents' age at which they served as grand jurors.

^c The figure shows those who are 70 years-old and above.

^d The figure shows those who are 80 years-old and above.

^e Percentages are based on those between 25 and 64 years of age in 2004. See http://www.mext.go.jp/b_menu/////shingi/chukyo/chukyo6/gijiroku/001/05031601/007/002.pdf.

^f The figure is based on the 2010 statistics (January–March). See <http://stat.go.jp/data/roudou/sokuhou/4hanki/ft/index.html>.

^g The figure is based on the 2010 statistics (January–March). See <http://stat.go.jp/data/roudou/sokuhou/4hanki/ft/index.html>.

^h The figure is based on the 1995 statistics. See <http://www.stat.go.jp/data/kokusei/1995/22.htm>.

ⁱ The figure is based on the 2005 statistics. See <http://www.stat.go.jp/data/nihon/g1507.htm>.

^j The figure is based on the 2010 statistics (January–March). See <http://stat.go.jp/data/roudou/sokuhou/4hanki/ft/index.html>.

5. Discussions

Significant representative disparities are found among Chinese lay assessors, especially in terms of their educational achievements and academic backgrounds. Those with college education are significantly overrepresented in all provincial courts under examination. In Japan, while there are some disparities of lay participants, the differences are not as large as the ones

found among Chinese lay assessors. Nonetheless, in Japan, males are overrepresented as both quasi-jurors and grand jurors. The majority of both quasi-jurors and grand jurors are also found to be in their 40s and 50s, far exceeding their respective proportions of their age group in the general population. Among the grand jurors, those with junior college or vocational education were underrepresented compared with their proportional representation in the general population.

The finding thus suggests that the eligibility standard imposed by China's Lay Assessor Act in 2004 had a significant impact and led to a much skewed representation of China's lay assessors. The Act helped exclude a large proportion of the Chinese population from serving in lay assessor courts because of the lack of college education. In Japan, those who failed to complete compulsory education (i.e., primary and junior high schools) were ineligible to serve. Nevertheless, our finding showed that those with compulsory education are slightly overrepresented among Japanese grand jurors.

5.1. Use of affirmative mechanisms to ensure equality in jury selection and representation

In 2005, a total of 45,697 Chinese lay assessors participated in 164,630 cases of various trials ("China's supreme people's court president on court reform", 2006). However, due to the problems in schedule arrangements, expenditure payments, and work-related responsibilities, nearly half of lay assessors failed to carry out their civic duties. As our studies have shown, since Chinese citizens with college education are extremely small, the future panel of Chinese lay assessors will not be representative of the general population. Similarly in Japan, citizens without compulsory education are ineligible to serve in a quasi-jury trial. While a number of ineligible populations in Japan are considerably smaller than those in China, our studies also found skewed civic representation in terms of gender, age, education, and occupational categories. In order to ensure trial fairness and representative equality in civic legal participation, some scholars suggested the possible application of affirmative strategies to increase and ensure the greater diversity among civic participants. The future programs may also expand eligibility categories to secure a large pool of potential candidates (Ramirez, 1995). The specific application of affirmative mechanisms may also include the use of remedial strategies to impose the proportionate quota and improve the overall representation of civic participants based on gender, ethnic status, social class, and/or occupational groups (Fukurai and Krooth, 2003).

The political application of affirmative selection strategies is not uncommon in the Anglo-Saxon history or its long tradition of the jury system. For example, affirmative jury selection called "jury de medietate linguae" was first devised in the late twelfth century England in order to ensure the presence of Jewish community members in trials (Fukurai and Krooth, 2003). Jury de medietate linguae literally means "juries of half tongue," signifying that the trial should allow a half of a 12 member jury to be represented by Jewish members and another half by residents of a non-Jewish community. After Jews were expelled in the thirteenth century, foreign residents or businessmen were then given the same juridical rights to ensure the trial fairness in both criminal and civil trials, and its practice continued until the late 19th century (Fukurai and Krooth, 2003). The U.S. as a former British colony also transplanted this system of affirmative jury selection and practiced it until the end of 19th century, mostly in north-eastern states where Native Americans, or in some cases, African Americans, were allowed to serve in criminal trials where their members were tried as criminal defendants. The application of such affirmative selection could be legally and effectively argued in China because of the

1189 Chinese Constitution's guarantee of equal participation of its citizens in politics and related
1190 state affairs.

1191 The impact of popular legal participation, as well as the importance of equal civic repre-
1192 sentation should not be discounted in criminal trials where citizens are often prosecuted for
1193 governmental crimes. For example, after China regained political and juridical control of Hong
1194 Kong from Britain in 1997, the Hong Kong government introduced a bill in 2003 that people
1195 charged with treason, secession, or subversion must be tried by an all-citizen jury, not by the
1196 professional judges appointed by the Chinese government (Ching, 2003). The bill further
1197 specified that Hong Kong residents charged with sedition or unlawful disclosure shall also be
1198 given the option to ask for jury trial if they prefer (Ching, 2003).

1200 The system of civic legal participation thus affords a broad array of citizens a degree of self-
1201 determination that is particularly valuable during times of significant social change and trans-
1202 formation. The jury system also represents people's check on the power of their government to
1203 silence or restrict dissenting voices, and it also serves a check on political control and external
1204 influence on their own government. After 9/11, many citizens including Arab-Muslims and
1205 those in political oppositions were tried for their suspected terrorist activities in the U.S., Russia,
1206 and Australia (Fukurai, 2008). In many of those cases, the judicial panel of lay citizens returned
1207 verdict of not guilty, suggesting that citizens in those nations are beginning to arm themselves
1208 with the legal apparatus to resist oppression from their own governments, which also became
1209 extremely vulnerable to exterritorial influence of the U.S. and European powers (Fukurai and
1210 Kurosawa, 2010).

1214 6. Conclusions

1215 This paper has attempted to examine the systems of civic legal participation in China and
1216 Japan. In 2004, Japan passed the Quasi-Jury Act and introduced the system of popular legal
1217 participation in criminal trials, where defendants have their guilt and sentence determined by
1218 a judicial panel of both professional and lay judges. In the same year, China also promulgated
1219 the Lay Assessor Act to revise the system of popular participation in law. The act was designed
1220 to correct shortcomings of the lay assessor system that has long been criticized by the lack of
1221 institutional support, insufficient funding, infrequent uses of lay assessors, and/or people's
1222 reluctance to participate in lay judge tribunals.

1223 For empirical analysis in China, we relied on published reports on the use of lay assessors
1224 and their representation. In Japan, since the quasi-jury trial began in May 2009, we have
1225 examined the overall representativeness of quasi-jurors in 2009 and 2010. We also examined
1226 the representation of civic participants in the grand jury system.

1227 We found that lay participants in both nations are not truly representative of the general
1228 populations. Rather, highly educated residents were disproportionately overrepresented in
1229 China's lay assessor trials. While Japan's jury representation was not as skewed as that of
1230 China, male and middle-aged jurors were overrepresented. Our results are very similar to jury
1231 representation in the U.S., where male, middle-aged groups, highly educated residents are
1232 overrepresented in jury duties (Vidmar and Hans, 2007).

1233 We also proposed the possible application of an affirmative jury selection strategy to
1234 increase the diversity of lay assessors in China and Japan. The application of proportionate
1235 representative quotas may be more effective in China, as the legal rationalization of its possible
1236 adoption may already have been provided in the Chinese Constitution which guarantees the
1237 equal political participation by its citizens. In Japan, more women and younger candidates must

1243 be recruited to serve in the system of civic legal participation. Further research is also needed to
 1244 evaluate the extent of citizen representation in legal institutions and ensure that socially diverse
 1245 groups will be properly recruited and fairly represented in the lay judge systems in the future.
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