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What brings people to the courtroom? Comparative analysis of people's willingness to serve as jurors in Japan and the U.S. ☆

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Abstract

In May 2009, Japan introduced a criminal quasi-jury (called Saiban-in) system, and a judicial panel of three professional and six lay judges was asked to determine both guilt and sentence of criminal defendants. From 1928 to 1943, Japan had held criminal jury trials; but the Japanese military government suspended them in the midst of World War II, in part due to a lack of eligible males to serve as jurors. Although the 1943 Act (Law No. 88) was issued to suspend the Jury Act, which stated that the jury system would be reintroduced once the war was over, the government delayed and did not reinstate the lay judge system until 2009.¹

The quasi-jury system thereby became Japan's first participatory legal system over nearly sixty years. Like the pre-war jury system, the new quasi-jury system allowed Japanese citizens to take greater responsibility for judicial decision-making, improving public trust and confidence in the criminal justice system. The new system of lay adjudication also carried significant socio-political meaning for the Japanese government, because it placed even greater pressures on the state to behave properly and fairly in the criminal prosecution of defendants. This is especially true because, under the system of traditional

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¹It is important to note the quasi-jury (Saiban-in) system is not a substitute to the all-citizen jury system suspended in 1943. Both systems represent two distinct forms of citizen participatory institutions in Japan.

professional judge decision-making, over 99% of all criminally indicted cases resulted in automatic conviction. It is now expected that, if ordinary citizens are sufficiently displeased with the government's legal arguments, material evidence or testimony, they can vote against the convictions of those charged with serious crimes. While lay adjudication may lead to better judicial oversight of prosecutorial decision-making, recent Japanese surveys and public polls indicate that the majority of Japanese citizens do not affirmatively embrace their civic duty and obligation to serve as quasi-jurors.

This paper attempts to investigate the sources of people's participatory reluctance and examines the socio-attitudinal factors that might lead to more positive perceptions of civic responsibilities in criminal trials. Past research on American juries similarly indicates that very few Americans positively embraced jury service, and in fact expressly say that they are personally inconvenienced by it. Nonetheless, the majority of Americans who have served express positive participatory experiences, a stronger sense of civic responsibility, and a greater willingness to participate in future civic responsibilities. Based on cross-national survey data collected from Japanese citizens who have served in the Prosecutorial Review Commission (PRC) (i.e., Japan's grand jury) and American citizens who completed jury service, this paper examines socio-political factors which influence people's decision to participate in jury service, as well as provides a set of policy recommendations and suggestions to promote further civic participation in jury service in Japan.

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1. Introduction

“[I]t is a cold fact that people who are reluctant to serve as citizen judges far outnumber those who are willing to do so. ... What I see is their [government's] desperate attempt to convince the public on the need to participate in the citizen judge system, even if it means staging meetings or misleading them,” once declared Japanese Attorney Shunkichi Takayama, the author of the controversial book, “*Saiban-in Seido wa Iranai*” (We don't Need the Quasi-Jury System) (Takayama, 2009a, 2009b).

Shunkichi Takayama is one of a growing number of Japanese critics who strongly oppose the introduction of the quasi-jury system in Japan because of their widely-shared skepticism that ordinary citizens have been unable to make fair and just legal decisions. Among them prominent non-fiction legal writer Chihiro Isa also opposes the quasi-jury system. While he openly supports the system of lay adjudication, he opposes the new quasi-jury system because the structure of its jury panel allows collaborative deliberations of professional and lay judges. He argues that lay judges would be unduly influenced by the perceived higher status, as well as conservative views of Japan's professional judges (Kennedy, 2004).² While the rationales of their objections to the introduction of the lay adjudicatory system are diametrically opposed, their general opposition reflects the opinions of a growing number of Japanese citizens, who have started to express their skepticism about the new legal system and their refusal to participate in jury trials.

Other socio-political and attitudinal factors impact people's opinions and perceptions about jury service, too. This paper attempts to identify some of these causal forces both shaping and influencing people's attitudes about their renewed civic responsibilities in Japan.

²During the interview, Isa stated: “the deliberation should be done among the people without the judges' presence. If a judge sits there – even one, he is going to influence them. ... It is very plain, but the trouble is that in Japan not even the lawyers can see it”.

Part I of the paper first seeks to provide a brief historical and socio-political background covering the birth of the lay judge system in Japan. Part II then reviews the results of recent Japanese surveys and public polls that have reported people's willingness, as well as disinclination to serve as jurors. This section also reviews the theory of the "participation hypothesis." It examines whether or not the effect of jury participation in Japan will lead to increased political awareness and nurture a stronger sense of civic responsibility, greater identification with fellow citizens, heightened perceptions of the system's legitimacy, and greater willingness to participate in future civic duties.

Part III examines the results of cross-national jury surveys and discusses analytic findings related to the perception of civic responsibility and public willingness to serve as jurors in the U.S. and Japan. Part IV finally discusses the implications of these analytic findings and examines potential socio-political strategies promoting civic commitment and moral responsibilities. This section also explores the collateral impact of other factors on jury service, including strict confidentiality requirements imposed on jury participants; jurors' expressed fear of potential retaliations by criminal defendants; governmental strategies promoting civic education; and civic confidence to serve as quasi-jurors. Finally we propose a set of policy recommendations aimed at promoting popular participation in citizen adjudication and elevating both the sense of civic responsibility and the quality of public experience by participating in Japan's quasi-jury trials.

2. The introduction of the quasi-jury system in Japan's criminal courts

Japan once had a criminal petit jury system. The first Jury Act was introduced in 1923 and passed by the Japanese cabinet under the strong leadership of Prime Minister Takashi Hara. Japan initiated its first all-citizen jury trial in 1928, this system of lay adjudication lasting until 1943, when it was suddenly suspended by the military government in the midst of World War II.

Fifty-six years later in 1999, the Japanese Cabinet established the Justice System Reform Council (JSRC) to carry out a major judicial overhaul of Japan's legal system and procedures. One significant impetus for the government's decision to carry out significant judicial reforms comes from recognition of the government's failure to meet the legal challenge of globalization and the recognized necessity to incorporate new strategies and legal procedures. These include efficient use of arbitration methods in solving legal disputes; the opening of specialized fields of intellectual property rights and proprietary litigation; and the need to establish law schools to support coming generations of legal professionals employed in Japan's new financial markets and complex economic structures.

Over the next two years the council held over sixty public meetings and in June 2001 submitted its final proposal to Prime Minister Jun'ichiro Koizumi designed to dramatically alter the Japanese judicial landscape. One of the most significant proposals was the introduction of the system of lay adjudication in criminal trials. Ever since the suspension of the pre-war Jury Act, Japanese professional judges were given the exclusive custody over legal decisions in criminal, civil, and administrative courts. The council proposed to establish an alternative system of legal adjudication and made the recommendation to promote greater active participation of ordinary citizens in criminal trials. Contrary to the pre-war system of all-citizen juries, however, this quasi-jury system was designed to allow professional judges to deliberate together with ordinary citizens in rendering verdicts and determining sentence in criminal cases. The steps taken towards these changes were essential in a highly industrialized society still lacking in providing its citizens with basic legal equities.

163 In April 2002, the Office for the Promotion of Justice System Reform (OPJSR) was officially
164 established in the Cabinet Office. It began to formulate structures and procedural programs for
165 citizen adjudication, submitting its final proposal to the Japanese Diet in 2003. On May 21,
166 2004, the Diet proceeded to pass the Act Concerning Participation of Quasi-Jury in Criminal
167 Trials (hereinafter Quasi-Jury Act) and announced that the first quasi-jury trial could begin by
168 May 2009.

170 One of the government's key motives in creating the alternative judicial system stemmed
171 from recent judges' decisions and controversial judgments that together fell under heavy public
172 criticism, creating a social climate of illegitimacy of the ruling government itself. Japanese
173 judges rarely acquit alleged criminal defendants, with more than 99% of all indicted cases
174 resulting in convictions. Many confessions have been systematically extracted by the police
175 and/or prosecutors under the condition of extreme physical and psychological torture (Fukurai,
176 2007; Fukurai and Kurosawa, in press). As a result, there have been widespread revelations of
177 a series of wrongful convictions of innocent defendants (Fukurai, 2007). Similarly, the current
178 court system has been severely condemned because judicial procedures have been extremely
179 slow to reach verdicts, and career judges were not fully equipped or prepared to deal with cases
180 covering informed knowledge about ever-expanding legal fields of commercial, economic, and
181 financial law, including intellectual property and proprietary rights (Fukurai, in press).

184 Another major criticism focuses on the absence of checks-and-balance mechanisms in the
185 judicial system necessary to insure the proper and fair performance of Japanese judges
186 themselves. Japanese judges make up a body of elite career-government bureaucrats who are
187 employed in the judiciary. Review and consideration for their promotion, appointment and
188 reappointment are determined internally within the Office of the Japanese Supreme Court
189 without extra-judicial influence and considerations.

191 The introduction of the quasi-jury system was generally expected to infuse democratic
192 enthusiasm into people's common sense judgments in legal decision-making and establish the
193 civic oversight of the criminal justice system (Yasuda, 2008).³ And yet, despite the democratic
194 and equitable intention to build a strong deliberative legal system in Japan, recent Japanese
195 public polls have consistently indicated that the majority of Japanese citizens express their
196 strong reluctance to participate in jury service. The following section thus briefly examines
197 whether or not past Japanese polls by both Japanese public and private agencies provide any
198 trends revealing shifts in people's perception about jury service.

201 3. People's willingness to serve as quasi-jurors

203 3.1. Japanese polls on the quasi-jury trial

206 Table 1 shows poll results in the period following the promulgation of the Quasi-Jury Act in
207 2004. The national and regional surveys conducted by the Minister's Office of the Japanese
208 government, the Japanese Supreme Court Secretariat, and Nihon Hoso Kyokai (NHK or the
209 Japan Broadcasting Corporation) all show that the majority of survey respondents were less
210 than enthusiastic about participating in quasi-jury trials. Another similar result was also
211 reported by the researchers at the University of Matsuyama, in which approximately two out of
212 every three citizens were unwilling to serve as quasi-jurors.

215 ³He is a Japanese judge of Utsunomiya District Court, stating: "In my opinion, it [the quasi-jury system] will also
216 raise public confidence towards criminal justice" at 5).

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Table 1
The quasi-jury (Saiban-in Seido) polls in Japan from 2004 to 2010.

	Survey Sponsor & Sample Size	Period	Nature of Survey	Willing to Serve as Saiban-in	Unwilling to Serve as Saiban-in	Not Sure/ DK
1.	Daini Tokyo Bar Association (<i>n</i> = 1319)	April, 2004	Internet Survey	45.8%	41.2%	13.0%
2.	Ministry of Justice (cosponsored with the Japanese Supreme Court and JFBA) at “Edo Festival Event” (<i>n</i> = 600)	November, 2004	Event Participant Survey	44% ^a	46% (40%)	10% (14%)
3.	Government Monitor Conference ^b (Kokusei Monita Kaigi) (<i>n</i> = 100) ^b	2005	Conference Participant Survey	70.0%	29.0%	1.0%
4.	Cabinet Office, Minister’s Secretariat: (Government Public Relations Department) (<i>n</i> = 2077)	February, 2005	Person-to-Person Interview (<i>n</i> = 3000 & response rate = 69.2%): Two stage national cluster sample	25.6%	34.9 (70.0%) ^c	4.4%
4.	Cabinet Office, Minister’s Secretariat: (Government Public Relations Department) (<i>n</i> = 1795)	December, 2006	Person-to-Person Interview (<i>n</i> = 3000 & response rate = 59.8%): Two stage national cluster sample	20.8% (65.3%) ^d	33.6%	4.4%
5.	Japanese Supreme Court Secretariat: National Forum on Saiban-in Seido/ Forum Participant Questionnaire Results (<i>n</i> = 11,035)	October, 2005–January, 2006	Forum Participant Survey (<i>n</i> = 18,000 & response rate = 61.3%)	33.6% (83.7%) ^e	13.3%	2.9%
6.	Japanese Supreme Court Secretariat: (<i>n</i> = 5172)	January–February, 2006	National Telephone Survey (<i>n</i> = 8300 & response rate = 62%)	27.6%	61.6% ^f	10.8%
7.	University of Matsuyama (<i>n</i> = 2000)	June–August, 2006	Pedestrian Survey in Matsuyama City (>=18 years of age)	33%	67%	0%

(continued on next page)

	Survey Sponsor & Sample Size	Period	Nature of Survey	Willing to Serve as Saiban-in	Unwilling to Serve as Saiban-in	Not Sure/ DK
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Table 1 (continued)

	Survey Sponsor & Sample Size	Period	Nature of Survey	Willing to Serve as Saiban-in	Unwilling to Serve as Saiban-in	Not Sure/ DK
8.	Shimin no Saiban-in Seido Tsukurokai (Let's Create People's Saiban-in Seido Organization) ($n = 856$)	April & May, 2005	Forum Participant Survey	36.3% (62.1%) ^e	na	na
8.	Nihon Hoso Kyokai,	February, 2004		31%	62%	7%
9.	UC-Pacific Rim Research Prosecutorial Review Commission (PRC) Society ($n = 229$)	October–December, 2005	Survey Administered at PRC Regional Meetings	52.8% (89.0%) ^h	37.6% (7.8%)	9.6% (3.2%)
10.	University of California Pacific Rim Research Survey & Dallas Courthouse Survey in Texas, U.S.A. ($n = 1011$)	March–April, 2006	Survey Administered at Jury Assembly Room	92.7%	5.6%	1.7%
11.	Japanese Supreme Court Secretariat ⁱ	March, 2010	Survey Administered after Quasi-Jury Service ($n = 781$)	30.1%	55.7%	14.3%
12.	Mainichi Daily Newspaper ^j	October, 2010	Online Survey	35%	63%	2%

^a Prior to attending the Saiban-in festival, 46% indicated that they were willing to participate, and 40% indicated that they did not wish to participate, suggesting that more people expressed their reluctance to serve after attending the festival. It was organized by the Ministry of Justice with participation from the Japanese Supreme Court Secretariat and the Japanese Federation of Law Associations in order to publicize about the upcoming Saiban-in Seido (see <http://www.moj.go.jp/SAIBANIN/saibanin01.html>).

^b “Kokusei monita kaigi ni okeru saibanin seido ni tsuite no anke-to kekka,” available at: <http://www8.cao.go.jp/monitor/h17kaigi/kekka10.pdf> (last visited March 15, 2007).

^c The breakdown is the following: “more or less unwilling to serve” (34.9%) & “do not wish to participate” (35.1%).

^d The number in parentheses shows the percentage of those who “are willing to participate” and “are more or less willing to participate”.

^e The breakdown is the following: “wish to serve” (33.6%) & “willing to participate if it were duty” (50.1%).

^f The breakdown is the following: “be not eager to participate” (28.4%) & “wish not to serve” (33.3%).

^g The breakdown is the following: “wish to serve” (36.3%) & “willing to participate if it were duty” (25.8%).

^h The breakdown is the following: “willing to serve” (52.8%) & “willing to participate if it were duty” (89.0%).

ⁱ http://www.courts.go.jp/saikosai/about/iinkai/saibanin_kondan/siry0_07/pdf/siry0_2-1.pdf.

^j <http://mainichi.jp/select/jiken/graph/enquete/2.html>.

325 Even after the Quasi-Jury Act was implemented in May 2009, the survey conducted by the
326 Office of the Japanese Supreme Court Secretariat shows that the majority of Japanese citizens
327 were initially reluctant to come and serve in criminal trials (55.7%). It is important to note that
328 these respondents actually appeared at the courthouse, completed their civic duty as quasi-
329 jurors in criminal trials, and responded to survey questionnaires after completing their public
330 duty. Initially a large number of them did not want to serve, but they ended up completing their
331 civic duty.
332

333 There are some notable exceptions, however. The opinion surveys conducted at the
334 Government Monitor Conference (“Kokusei Monita”) and the Prosecutorial Review
335 Commission Society (“Kensatsu Shinsakai Kyokai” – a community-based grassroots organi-
336 zation whose membership is comprised of Japanese citizens who previously have served in
337 Japan’s grand juries) revealed that the great majority of their members expressed their
338 enthusiasm and strong desire to participate as quasi-jurors. The Government Monitor
339 Conference is composed of five hundred fifty Japanese citizens who volunteered to monitor and
340 screen the implementation of various governmental policies and regional programs. These
341 individuals exhibit a strong resolve to perform their civic duties. A similarly motivated group of
342 Japanese citizens also included the members of former grand juries, in which nearly all of them
343 (92.7%) express their desire to serve in criminal trials as lay adjudicators. Likely their expe-
344 rience of civic duty must have led to the dramatic change in their perception about jury service.
345

346 Nonetheless, Japanese opinion surveys consistently substantiate the presence of a widely-
347 shared reluctance among Japanese citizens towards quasi-jury duties. Given the fact that a large
348 proportion of Japanese citizens are still unwilling to carry out a civic role in criminal court, it is
349 important to examine factors that led to a reluctance, and even refusal, to carry out their public
350 responsibilities. By comparison, the following section provides a review of American research
351 on people’s willingness to serve as jurors.
352

353 3.2. *American research on people’s willingness to serve as jurors:* 354 *the participation hypothesis* 355

356 An extensive body of research on jury selection and jury treatment in the United states
357 shown the impact of socio-demographic factors on people’s willingness to serve as jurors, as
358 well as explored their corresponding cognitive and psychological attributes. Factors analyzed in
359 past research, for example, included their socio-psychological mien; cognitive and perceptive
360 abilities; socio-demographic characteristics such as race, ethnicity, gender, age; and their socio-
361 economic status, including income, job ranking, and education.
362

363 *Mary Rose* (2005) reported that white citizens compared to African Americans had a greater
364 tendency to express their willingness to participate in, and return to, jury duties. Her study also
365 found that people’s satisfaction with previous jury service significantly shaped their willingness
366 to participate in future jury service. The study also reported people’s general attitudes and
367 opinions about jury service are not ameliorated by their court experience, suggesting that jury
368 service, though one of America’s most important forms of democratic participation, still
369 remains as a very uncomfortable duty (p. 627).
370

371 Another survey examined the effect of monetary rewards on people’s willingness to serve as
372 jurors. The study prepared for the Wichita Bar Foundation examined whether or not jury pay
373 plays an important part in people’s ability and willingness to serve. Conducted in Sedgwick
374 County, Kansas, the survey included 286 people summoned for jury duty and found that more
375 than three quarters of them (76.6%) reported that the compensation was less important than
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379 their perceived civic responsibility to serve on juries. Only 10.8% said that compensation was
380 more important than other factors, suggesting that the monetary reward alone failed to motivate
381 people to serve on juries (Geiszler-Jones, 2000).
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383 Another report by the independence subcommittee of the New Jersey Judiciary also suggests
384 that educating the public about the importance of jury duties increased people's inclination to
385 participate. The subcommittee stated that statewide efforts to further educate New Jersey
386 citizens about jury service and to publicize the importance of jury duties were two key factors
387 that improved individual citizens' willingness to participate in jury duty at the state court (New
388 Jersey Judiciary, 1997).
389

390 Other research has found that potential jurors with positive attitudes about jury service may
391 not necessarily respond to jury qualification questionnaires or summonses, or even appear at the
392 courtroom, because of socio-economic hardships or extra-legal limitations. A 2006 jury survey
393 conducted in Durham County, North Carolina, found that only 20% of summoned jurors were
394 able to appear at the courthouse for jury duty (North Carolina Court System, 2008). This four-
395 months survey also found that more than 30% of jury notices failed to reach summoned jurors,
396 who were then classified as the "undelivered", and nearly half of remaining summoned jurors
397 failed to appear in court, as they were disqualified, excused, postponed, and/or released from
398 jury duty due to socio-economic or personal excuses and/or were legally ineligible. The
399 findings suggest that such socio-economic hurdles and extra-legal barriers could further exclude
400 a large portion of the willing citizenry from serving on juries.
401

402 Socio-political factors also determined people's chances of serving on juries, regardless of
403 people's willingness to serve. For example, until quite recently, many southern states had
404 practiced the legal custom of so-called affirmative registration for jury service, in which
405 a written declaration of the willingness to serve must be filed by women to become potential
406 candidates for jury service, while male residents were automatically enlisted as jury candidates
407 and included in jury rolls (Fukurai and Krooth, 2003). In *Taylor v. Louisiana* (1975), the
408 Supreme Court found that the procedural practice of gender-based affirmative registration for
409 jury service constitutes a violation of the Sixth Amendment guarantee of a jury drawn from
410 a fair cross section of the community.
411

412 Gall and Gastil (2006) also examined the role and function of jury-orientation prior to jury
413 service and found that the jury-orientation session positively increased the feeling of people's
414 support for jury participation and promoted their willingness to participate in future jury service.
415 They discovered, for example, that the effective use of video orientation was important in inspiring
416 juror confidence and increasing their willingness and excitement about serving. Rose et al. (2007)
417 also reported that jury participation was positively predicted by the greater willingness to serve,
418 one's personal maturity, residential stability, nativity to the state, and being a recent voter.
419

420 Outside the U.S., the fact that few people look forward to engaging in jury duties is also
421 reiterated by the national opinion survey in Russia. The recent Russian survey conducted showed
422 that the majority of citizens (78%) expressed their reluctance to serve, while only 16% were
423 positively interested in doing so (Court and Jury, 2006).⁴ The key finding was that respondents
424 with higher education expressed a great willingness to take on the role of jurors (28%).
425
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427
428 ⁴The survey was based on the nation-wide home interviews conducted on April 1–2, 2006 in 100 residents in 44
429 regions, and a sample size of 1500 respondents. Additional pools of the Moscow population with a sample of 600
430 respondents were also contacted, with the margin of error that does not exceed 3.6%. The survey also found that 30% of
431 respondents said that jury trials are more reliable than those without a jury, 21% consider jury trials to be less reliable,
432 30% show difficulty responding, and 19% consider both types of trials to be equally trustworthy.

433 These studies and surveys substantiate that people's willingness to participate in jury service
434 varies across geo-political boundaries, and their socio-psychological attributes. Generally
435 speaking, people are initially less than enthusiastic about jury service, but positive engagement
436 in jury participation often leads to a heightened sense of civic responsibility and increased
437 willingness as future jury participants. These findings provide strong support for the so-called
438 participation hypothesis and the long-term civic impact on jury participation.
439

440 The participation hypothesis provides the basic theoretical premise underlying the merits of
441 so-called participatory democracy – meaning participation ensuring the democratic process
442 (Warren, 1993). According to this theoretic perspective, individualized involvement in delib-
443 erative processes evokes a strong sense of civic responsibility and increases one's likelihood to
444 participate in future civic and political engagement (Gastil et al., 2006). Research on delib-
445 erative participation already has examined the collateral benefits, psychological impacts and
446 cognitive attributes that emanate from participating in civic forums, public meetings, study
447 circles, and other deliberative activities in a way that successfully transforms originally-dis-
448 engaged individuals into active participants in public duties (Burton and Mattson, 1999).
449 Similar studies also suggest that the actual deliberative experience can lead to increased
450 turnouts among previously reluctant and infrequent voters, suggesting that meaningful delib-
451 erative experiences help create the personal space for civic engagement, even among non-
452 voluntary or even reluctant citizens (Gastil et al., 2006, p. 31).⁵
454

455 The thesis of the participation hypothesis is also supported by findings from Japan's grand jury
456 participants. Fukurai (2007) reported that, approximately 40% of citizens who served in Japan's
457 grand juries originally did not want to participate. After completing their civic duties over a six-
458 month period, the same survey also found that nearly all of them (98%) said that the deliberative
459 experience was positive, and nearly 70% indicated that they were willing to participate in future
460 grand jury deliberations. So, too, the report also indicated that nearly all former grand jurors
461 expressed a high level of confidence in governmental agencies and legal practitioners, including
462 the court, prosecution, and defense attorneys, suggesting that their jury experience led to their
463 heightened perceptions of government legitimacy, including its personnel.
464

465 The 2010 survey of Japanese petit-jurors revealed a similar result, indicating that nearly all
466 former quasi-jurors (96.7%) responded positively to their jury experience (The Office of the
467 Japanese Supreme Court Secretariat, 2010). The finding further suggested that, regardless of
468 the duration of deliberative engagement – as when Japan's petit-jurors spent several days in
469 a courtroom; or grand jurors engaged in deliberation over a six-month period – their
470 involvement in, and experience with, direct deliberative processes evoked a stronger sense of
471 willingness to participate in future civic duties, developed a stronger sense of civic responsi-
472 bilities, and led to an increased level of their confidence in government institutions.
473

474 Past research thus suggests that people's inclination to serve as jurors depended, not only on
475 various socio-economic variables and attitudinal inclinations, but also on their personal
476 involvement in deliberative and collaborative experiences. Yet, despite the extremely positive
477 experience of grand jury deliberations, it is important to note that only one-third of original grand
478 jurors (30.1%) were initially willing to take on the juror's role, and the majority of them (55.7%)
479 expressed their unwillingness to come to a courthouse and serve as grand jurors (see Table 1).
480

481 As Japan's quasi-jury trial began in May 2009, the analysis of factors that influence people's
482 willingness to participate in criminal quasi-jury trial was of great significance, especially given
483

484
485 ⁵Gastil et al., stated that "a democratic system can survive, provided its citizens have ample opportunities – perhaps
486 including some non-voluntary ones – to discover the attractions of civic engagement".

487 the fact that the majority of Japanese citizens continue to express their reluctance to participate
488 in jury service. The following section now sheds further light on the analysis of those socio-
489 demographic factors and attitudinal traits that tend to shape and influence civic participation in
490 Japan's criminal court.
491

492 493 **4. Methodology** 494

495 Two different sets of cross-national data were collected in both Japan and the U.S. in order to
496 critically analyze people's willingness to engage in popular legal participation. In Japan, the
497 members of the Prosecutorial Review Commission Society were asked to respond to a series of
498 research questions. In the United States, prospective jurors who appeared at a county court-
499 house in Dallas, Texas were asked to respond to the same questions. In order to make
500 systematic comparisons of those prospective citizens with and without jury experiences, two
501 groups of both Japanese and American college students were also contacted to provide their
502 views about, and attitudes towards, the system of civilian legal participation.
503
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505 506 *4.1. Samples of legal participants in Japan and the U.S.* 507

508 From September 2005 to December 2006, with help of the President of the Japanese
509 Prosecutorial Review Commission Society (JPRCS or "Nihon Kensatsu Shinsakai Kyokai
510 Rengokai"), we contacted 229 individual members to fill out our survey questionnaires. The
511 regional office of the JPRCS, which was established in every Japanese prefecture, is composed
512 of Japanese citizens who previously participated in grand jury deliberations. Out of 47
513 prefectures, we contacted 11 prefectural offices and asked their members to fill out our
514 questionnaire. The sample size is equivalent to approximately 10% of the previous national
515 survey conducted in 2000 by the Japanese Federation of Bar Associations (JFBA) (i.e., the
516 Japanese Bar Association), which was able to obtain 2315 responses. We also were able to
517 identify members who were willing to participate in person-to-person interviews. Some of the
518 interviews were conducted by telephone and their opinions are transcribed and analyzed. In the
519 U.S., prospective jurors who reported to a county courthouse in Dallas, Texas were asked to fill
520 out the survey questionnaire. The survey was conducted for one month from March 7 to April 3,
521 2006. A total of 2564 prospective jurors responded to the survey questionnaire, and 1011 of
522 them (39.4%) indicated that they had previously served on juries.
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527 528 *4.2. Survey questions* 529

530 More than 70 questions were asked of our Japanese and American respondents. For this
531 report, the following seven different sets of questions are examined: (1) Willingness to engage
532 in legal participation; (2) perceived obstacles to legal participation; (3) confidence in civilian
533 legal participation; (4) commitment to moral/ethical responsibilities; (5) confidence in jurors'
534 abilities; (6) fear of serving as jurors due to possible retaliation from defendants and/or their
535 families; and (7) specific Japanese quasi-jury questions including confidentiality requirements,
536 resident aliens' potential participation as quasi-jurors, possible affirmative programs to increase
537 female and minority attorneys, and publicity about quasi-jury service in local communities.
538 Each question was asked in a five-point likert scale: (1) strongly agree, (2) somewhat agree, (3)
539 uncertain/neutral, (4) somewhat disagree, and (5) strongly disagree.
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4.3. Representativeness of the 2006 prosecutorial review commission (PRC) survey

First, let us examine the representativeness of the 2006 PRC survey results and its findings. As stated earlier, the latest PRC survey was made possible at eleven out of a forty-seven JPRCS regional offices in Japan. The representativeness of survey findings is examined against another population survey conducted by the JFBA. In 2000, the JFBR had asked all members of the PRC Society to respond to a one-page survey questionnaire. The survey was the largest survey project ever conducted on the Japanese grand jury system. The questionnaire was sent to approximately 5800 JPRCS members all over Japan and 2315 of them responded (i.e., 39.9% response rate). The 2006 PRC survey, on the other hand, asked the members of eleven JPRCS regional offices to respond to the two page questionnaire, and a total of 229 respondents filled out the questionnaire.

Table 2 shows the results of the two JPRCS surveys conducted in 2000 and 2006. The findings show remarkably similar results in terms of respondents' profiles and their opinions on their PRC experiences, and it is safe to assume that the results of the 2006 survey may also be

Table 2
The 2000 JFBA survey and the 2006 prosecutorial review commissions (PRC) survey.

Variables and Questions	2000 JFBA ^a	2006 PRC ^b
<i>Gender</i>		
Male	—	66.3%
<i>Age^c</i>		
20–29	.7%	.5%
30–39	3.0	1.5
40–49	8.4	3.9
50–59	22.1	14.2
60–69	32.5	36.3
70–79	26.5	37.3
80–89	6.3	6.4
90 & over	.5	.0
<i>(A) Opinions on the PRC System and Experience</i>		
I feel my PRC experience was a positive one	98.2	98.6
PRC that asks civilian participation is a good system	90.2	93.5
<i>(B) Quality of PRC Deliberation</i>		
I feel that the deliberation covered the main issues	89.6	87.4
My employer would not be resentful of my quasi-jury duty ^d	72.4	64.1
In high profile cases, quasi-jurors are incapable of separating actual evidence from media coverage ^e	35.7	49.3
<i>(C) Opinion on the Introduction of the Jury System</i>		
I support introducing a jury system in Japan ^f	76.5	70.6

Note: $n = 2315$ for the 2000 Japanese Federation of Bar Associations (JFBA) survey & $n = 229$ for the 2006 Prosecutorial Review Commission (PRC) survey.

^a The figure shows the percentage of those who responded with “yes”.

^b The figure shows the percentage of those who responded with “strongly agree” and “somewhat agree” with the statement.

^c The respondents who failed to give age information are excluded from the analysis.

^d The question in the 2000 JFBA survey was phrased as: “Some critics claim that pretrial publicity often influences trial outcomes. When prejudicial publicity against defendants saturates the community, despite the judge’s instruction, jurors often become incapable of making a fair and right judgment.” The question in the 2006 survey is phrased as: In a media saturated trial like Wakayama Currey’s case, quasi-jurors are incapable of separating facts from media reports.

^e The question in the 2000 JFBA survey was phrased as: “After the introduction of a jury system, you must spend several days in a courthouse. Do you believe that people will effectively understand the importance of your jury duty?”.

^f The question in the 2006 survey was phrased as: “I support introducing a jury system if debated in the Cabinet”.

595 generalized over PRC members who responded in 2000.⁶ For example, both surveys found that
596 the majority of PRC respondents were in their 60s and 70s. While the 2000 JFBA survey failed
597 to ask for age at the time when respondents served in the PRC, the 2006 survey reveals that the
598 majority of PRC members served in their 40s and 50s. Similarly, the overwhelming majority of
599 them were employed when they served.
600

601 Comparing the general profiles of Japan's jury participants with those of American jurors,
602 their age and economic profiles are very similar (Fukurai et al., 1993, p. 64).⁷ The majority of
603 respondents (53.6%) also expressed strong political support for the then-ruling Liberal
604 Democratic Party, and nearly one half of them (48.9%) professed conservative political views.
605 Many of them have been the JPRCS member for a long time – those who served in their 20s
606 have been the member for an average of 31.3 years, and those who served in their 30s and 40s
607 (i.e., 45.4% of the respondents) for an average of 27.6 and 20.7 years, respectively. Such a long
608 and sustaining membership to this civic organization shows the extent of their strong
609 commitment to civic participation and deliberative processes.
610

611 The main purpose of the 2000 JFBA survey was to examine people's attitudes and opinions
612 involving legal participation, soliciting positive views of former PRC members on the possible
613 introduction of the all-citizen jury system in Japan. The JFBA publicly announced their strong
614 preference and support for the introduction of the American-style, all-citizen jury system, rather
615 than a mixed court tribunal system where both professional and lay judges engage in collabor-
616 ative deliberations. On the other hand, the latter system was strongly supported by the
617 Japanese Ministry of Justice and the Office of the Supreme Court Secretariat. Posed with the
618 questions about their views for the introduction of the jury system, not the mixed court system,
619 more than 70% of PRC members in both surveys indicated that they would support the
620 introduction of the American-style jury system in Japan (76.5% in 2000 and 70.6% in 2006).
621 Based on the commonalities of survey results between two PRC surveys, deliberative experi-
622 ences in general have fostered a strong sense of civic responsibility, greater support for the
623 introduction of all-citizen jury deliberations, and positive attitudes about future civic partici-
624 pation, thereby supporting the basic theoretical assumption of the participation hypothesis.
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629 5. Results

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631 **Table 3** shows the results of statistical analysis of people's willingness to serve on juries. The
632 OLS multiple regression is used as an analytic method. Two specific questions are generally
633 addressed to examine people's willingness to participate in a jury trial: (1) "I am willing to
634 serve as a juror," and (2) "I feel it is my duty to serve as a juror when needed." In the Japanese
635 questionnaire, the second question was slightly modified as follows: "If quasi-jury service is
636 considered a governmental duty that the citizen must perform, I feel that I must serve." Notice
637 that the first question was designed to solicit responses without the imposition of a public
638 obligation to serve. And the second question was specifically designed to examine attitudes
639 towards obligatory responses to governmental duties.
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641 A total of seventeen questions were then used to examine their impact on jury participation.
642 **Table 3** shows the result of multiple regression analyses under the following seven independent
643
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645 ⁶It is important to note that almost 40% of the PRC respondents came from two prefectures, Aichi and Chiba
646 Prefectures, two of the very metropolitan regions in Japan.

647 ⁷American jurors tend to be white, middle-aged, white-collar workers or employees in a stable primary labor market
648 and of higher income.

Questions	Japanese PRC Members			American Jurors		
	Willing ^a	Duty ^b	Mean ^c	Willing	Duty	Mean
(1) <i>Perceived Obstacles to Jury Service</i>						
If I could pick the date of jury service 6 months in advance, I could easily serve	.085	.118*	1.97(1.06)	.027	.056***	2.12(1.28)
My employer would not be resentful of my jury duty	.135*	.063	2.35(1.11)	.032	.037*	1.73(1.21)
(2) <i>Confidence in Public Legal Participation</i>						
It is extremely difficult for ordinary people to determine the verdict (i.e., guilty/not-guilty)	-.052	.037	2.78(1.26)	-.045*	-.016	3.97(1.29)
It is difficult for ordinary citizens to determine an appropriate penalty in a criminal trial	-.101	-.004	3.21(1.29)	.023	-.003	3.43(1.41)
In high profile cases, jurors are incapable of separating actual evidence from media coverage ^d	.053	-.067	2.94(1.28)	-.022	-.023	3.48(1.41)
(3) <i>Moral/Ethnic Responsibilities</i>						
I would feel overwhelmed if I had to make a judgment on the defendant and his/her charges	-.084	.033	2.07(1.19)	-.009	.013	3.93(1.34)
I am confident that, if I became a juror, I could make a fair and just judgment	.359***	.158**	2.42(1.19)	.277***	.313***	1.31(.68)
(4) <i>Confidence in Jurors' Abilities</i>						
If I became a defendant in a criminal case, I would prefer a jury trial to a judge trial ^c	-.094	.005	2.44(1.19)	.024	.038*	1.76(1.02)
A jury's decision reflects the community's values and judgments	.193*	.226**	1.65(.73)	.137***	.121***	1.91(.98)
(5) <i>Fear of Serving as Jurors: Possible Retaliation from Defendants and/or Their Families</i>						
If I became a juror, I would be concerned about potential retaliation from the defendant	-.218**	-.090	2.57(1.27)	-.053*	-.039*	3.87(1.29)
In a trial where many gang supporters may appear, I believe I could make a fair judgment as a juror	.002	.061	2.74(1.29)	.094***	.045*	1.74(1.03)
(6) <i>Confidentiality, Resident Alien's Participation, and Publicity about Jury Service</i>						
It would be very difficult for me to never discuss my jury experience	.091	-.033	2.83(1.36)	-.013	.010	3.10(1.50)

(continued on next page)

Table 3

OLS unstandardized coefficients – people's willingness to serve as jurors.

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Table 3 (continued)

Questions	Japanese PRC Members			American Jurors		
	Willing ^a	Duty ^b	Mean ^c	Willing	Duty	Mean
The importance of jury duty is widely advocated in my community	-.091	-.111*	3.78(1.08)	.071***	.067***	2.07(1.21)
Every taxpayer including permanent residents (non-citizens) should be allowed to serve on juries	-.105	.012	2.77(.89)	-.034*	-.041**	3.26(1.68)
It is important to increase female judges/lawyers as they only make up 12% of Japan's bar ^f	.160*	.076	1.95(1.07)	.019	.039*	2.59(1.35)
(7)						
Gender (1 = male, 2 = female)	.339*	-.008	1.37(.46)	-.065	-.088*	1.54(.49)
Age	-.002	.003	66.99(9.43)	.000	-.001	53.05(10.2)
Constant	2.039	.691		.978	.661	
R-Square	.397	.280		.253	.272	

Note: A number of respondents are: American respondents ($n = 1011$) and Japanese respondents ($n = 229$). The term, "juror" was translated as "quasi-juror (Saiban-in)" in the Japanese version of the survey questionnaire. All the attitudinal variables are measured on a 5-point likert scale: (1) "strongly agree" to (5) "strongly disagree."

* $p < .10$ ** $p < .01$ *** $p < .001$.

^a "I am willing to serve as a juror".

^b "I feel it is my duty to serve as a juror when needed." In a Japanese questionnaire, the question was phrased as: "If quasi-jury service is considered a duty that must be performed, I feel that I must serve".

^c The figure in the parenthesis shows a standard deviation.

^d In a Japanese questionnaire, the question was phrased as: "In a media saturated trials like Wakayama Currey's case, quasi-jurors are incapable of separating facts from media reports".

^e In a Japanese questionnaire, the question was phrased as: "Saiban-in's decisions are fairer than a bench trial's".

^f The question in the American questionnaire is phrased as: "It is important to create programs to increase the number of female and minority lawyers".

analytic themes: (1) perceived obstacles to jury service; (2) confidence in public legal participation; (3) moral/ethic responsibilities; (4) confidence in jurors' abilities; (5) fears of serving as jurors due to possible threat of retaliation from defendants/or their families; (6) confidentiality requirement, resident aliens' legal participation, and the extent of publicity about jury service; and (7) demographic variables including gender and age.

The regression analysis revealed that the following three variables showed a statistically significant impact on people's willingness to serve: (1) the confidence in their ability to make a fair and just judgment; (2) the belief that jury's judgments reflect collective sentiments of the community; and (3) the less anxiety or fear about possible threats of retaliation from defendants and/or their families.⁸

When jury service is posed as a civic duty, a different set of variables appeared as significant predictors of jury participation. For example, people are willing to serve if they can determine the date of jury service in advance. Such a relationship was found to be statistically significant for both Japanese and American respondents ($p < .10$ & $p < .001$). Among American respondents, greater publicity on the importance of jury service in their communities was found to be related to people's desire to serve. On the other hand, the reverse relationship is found among Japanese grand jurors, in which less publicity on the importance of jury service led to people's greater inclination to serve ($-.111$). But this relationship is found to be statistically significant only when people are forced to serve, as jury service is considered an official duty.

Another notable finding is that Japanese respondents who support greater gender diversity among legal practitioners are more willing to serve ($p < .10$), while this statistically significant relationship disappeared when jury service was considered as part of civic duty. Additionally, Japanese men are more willing to serve than women ($p < .10$), but the relationship disappeared when, again, jury service is considered as an official duty to be carried out. These findings suggest that if jury service is an official duty enforced by the government, only four variables are found to be statistically significant: (1) the flexibility to serve as jurors in 6 months in advance ($p < .10$); (2) jurors' superior confidence in making a fair and just judgment ($p < .01$); (3) the jury verdict representing the collective sentiment of the community ($p < .01$); and (4) the significant lack of publicity on jury service in their communities ($p < .10$). The four variables that previously influenced people's willingness, when jury service was not treated as a governmental duty, no longer exerted their statistically significant impact on jury service. Those variables included (1) people's concern about possible employer resentment; (2) fear of threat from defendants and/or their families; (3) embracement of affirmative strategies to increase female lawyers/judges; and (4) a gender attribute, i.e., male jurors were no longer willing to serve.

Another notable finding is that, regardless of whether jury service is a duty or non-duty, there was no statistically significance for the variables that measured people's confidence in cognitive abilities or socio-psychological competence related to specific deliberative tasks. Those variables related to respondents' difficulties in determining both verdicts and appropriate penalties and individual abilities to separate factual evidence from media reports in highly publicized trials.⁹ Juror competence remains of key issue in the U.S. as well. When American jurors were

⁸The regression result did not come out statistically significant in the relationship between the fear of retaliation and Japanese respondents' willingness to serve when jury service was intended as a duty to be carried out.

⁹The relationship between the difficulty to determine the verdict and the willingness to service was statistically significant for American jurors ($p < .10$), suggesting that those who do not consider the verdict determination difficult are more willing to serve as jurors ($-.045$).

811 asked to allow non-citizens to serve on juries, those who opposed their jury participation are
812 more willing to serve on juries, regardless of whether or not jury service was considered
813 voluntary or mandatory ($p < .10$ & $p < .01$).
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815 6. Discussions

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818 Past American research has indicated that the presence of great monetary rewards failed to
819 predict people's willingness to serve on juries. By comparison, recent reports on the quasi-jury
820 pay-scale shows that Japanese quasi-jurors are paid higher than their American counterparts.¹⁰
821 Given the widespread reluctance among Japanese citizens to serve, it may be safe to assume
822 that monetary rewards alone may not sufficiently motivate Japanese respondents to report to the
823 courtroom and carry out their civic duties.
824

825 Present analysis reveals that people's determination to render fair and just verdicts
826 transcending the fear of potential retaliation by defendants or their families are signifi-
827 cant predictors of people's inclination to serve. This relationship was found to be
828 statistically significant, regardless of whether the jury duty is considered voluntary or
829 mandatory.¹¹
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831 When jury service is posed as an obligatory civic duty, the effect of gender, employment-
832 related obstacles, and fear of potential threat or retaliation from defendants were no longer
833 statistically significant. Only the following four variables came out statistically significant,
834 including (1) the flexibility to determine the appearance date for jury service; the confidence in
835 rendering just and fair decisions; the belief that the jury verdict reflects collective sentiments of
836 the community; and the recognized lack of publicity in jury service in their communities.
837 Because the Quasi-Jury Act states that jury service must be considered a civic duty, the
838 government needs to develop flexible strategies to allow individual citizens to make the date of
839 jury service more optional and to accommodate each candidate's personal needs and circum-
840 stances in their appearance at the courtroom. Those who recognize the significant lack of
841 publicity on jury service in their communities displayed a greater inclination to serve, sug-
842 gesting that they felt a greater sense of urgency and obligation to support and participate in the
843 new system of lay justice trials.
844

845 Comparing the present government strategies and public campaigns with those conducted
846 nearly ninety years ago, much greater publicity and educational efforts by the Japanese
847 government seem necessary than when Japan first attempted to introduce and establish the
848 system of all-citizen jury trials in 1920s. Prior to the commencement of the first jury trial in
849 1928, the pre-war Japanese government held 3339 nation-wide lectures and public forums to
850 educate the citizenry about the importance of jury participation, and a total of 1.24 million
851 people attended those meetings and lectures. Similarly, the government produced and distrib-
852 uted 8.24 million copies of educational pamphlets and materials on jury service and made seven
853 movies specifically designed to publicize the jury system (Maruta, 2004, p. 187).
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857 ¹⁰The quasi-jury pay is approximately \$100 per day (10,000 yen), while the PRC duty is paid between 7000 and 8000
858 yen per day (approximately \$70) and 3930 yen for alternates, both of which are generally higher than the normal jury
859 fee paid in CA (\$15) or at federal jury trials (\$40) in the U.S. See "Aonosukima: 20040807," available at: <http://aonosukima.jugem.cc/?day=20040807>(last visited march 20, 2010).

861 ¹¹While the unstandardized regression coefficient for the variable on jurors' fear among Japanese respondents ($-.090$)
862 was found to be statistically insignificant because of the relatively small sample size ($n = 229$, as opposed to $n = 1011$
863 for the American survey); the absolute value of the regression coefficient was in fact larger than that of American
864 respondents ($-.039$ at $p < .10$).

865 On March 14, 2006, in efforts to publicize the quasi-jury system and promote the importance
866 of civic legal participation in Japan, the Japanese Ministry of Justice made the announcement
867 that they had already sponsored approximately 4000 forums and symposiums, and that the
868 Supreme Court, and the JFBA also participated in those public events drawing a total of
869 200,000 local residents (Japanese Ministry of Justice, 2006). Nonetheless, the current publicity
870 efforts by the Japanese government is clearly not sufficient, considering the fact that a large
871 proportion of our survey respondents stated that there was insufficient publicity efforts about
872 the importance of civic legal participation in their communities.

873 In pre-war Japan, despite the fact that only men aged 30 and over who paid an annual tax of
874 three yen or more were eligible for jury service – i.e., only three percent of the entire Japanese
875 population – the pre-war Japanese government did a much greater job than the current
876 government in publicizing the importance of jury service and jury trial. The present Japanese
877 government must continue to engage in public campaigns, hold educational forums and
878 symposiums, and support community-based grassroots organizations, including the JPRCS, in
879 order to engage new Japanese audiences, develop a strong sense of civic responsibilities, and
880 continue to instill democratic principles and deliberative ideals in the hearts and minds of the
881 younger generation of the Japanese citizenry.
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7. Conclusions

Participatory democracy is founded upon institutional equities available to the citizenry of a given nation; and there may be no democracy if the ordinary people are unable to participate in decision-making in a nation's popular deliberative institutions. Yet, despite significant judicial reforms and legal transformation in Japan, recent polls indicated that the majority of Japanese citizens remain less than willing to participate in the new quasi-jury system. This paper attempted to investigate the sources of people's participatory reluctance and to examine socio-attitudinal factors that might lead to more positive perceptions of civic responsibilities in participating as jurors in criminal trials.

Past American jury research has also indicated that very few Americans positively embrace jury service, and in fact expressly say that they are personally inconvenienced by it. Nonetheless, the majority of Americans who have served come out of jury service with a greater feeling of a positive participatory experience, a stronger sense of civic responsibility, and a greater willingness to participate in future civic duties. Based on cross-national survey data collected from Japanese citizens who served in the PRC and American citizens who completed jury service, the present analysis found the people with less confidence in their ability and those who exhibited the greater fear of potential retaliation associated with jury service were less willing to serve on the jury. Similarly, gender, socio-economic, and attitudinal variables appeared no longer statistically significant in explaining people's willingness for civic participation when jury service is posed as a mandatory duty to be performed.

In order to successfully engage the Japanese public in the new quasi-jury system, further research is necessary to increase the level of public participation even more, as the experience of deliberative participation in jury trials in Japan and the U.S. already has led to increased political awareness, a stronger feeling of civic responsibility, a heightened sense of system's legitimacy, and a potential increase in future civic and political participation.

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