

# The Resurgence of Lay Adjudicatory Systems in East Asia\*

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## I. INTRODUCTION

On May 24<sup>th</sup>, 2010, new legal history was made in East Asia -- a nineteen-year-old American soldier stationed in Okinawa, Japan became the first U.S. military serviceman to be tried by a people's court.<sup>4</sup> The 2004 Lay Assessor Act enacted in Japan was finally put into effect in May 2009, allowing Japanese residents to participate in the adjudication of foreign military personnel charged with serious and violent crimes committed on Japanese territory. The procedural structure for such judicial measures consisted of a judicial panel with three professional judges plus six Japanese citizens chosen at random from local communities in Okinawa.

Ever since the U.S. established its military bases in Okinawa in 1945, local residents have witnessed a long history of their own communities victimized by foreign soldiers and their dependents. This tiny island of Okinawa currently hosts three-quarters of the entire U.S. military facilities in Japan; this highly concentrated placement of military

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<sup>4</sup> David Allen & Chiyomi Sumida, "Kinser Marine Gets Jail Time for Robbing Cabbie," STARS & STRIPES, May 29, 2010, available at <http://www.stripes.com/news/kinser-marine-gets-jail-time-for-robbing-cabbie-1.104603>.

establishment has accentuated the proliferation of serious crimes committed by military personnel on the island. According to the Japanese government, from 1952 to 2004, American military personnel have committed crimes or caused accidents in a total of 201,481 cases that resulted in 1,076 deaths.<sup>5</sup> This figure, however, did not include military crimes in Okinawa between 1945 and 1972, during which Okinawa remained a virtual U.S. military colony.<sup>6</sup>

Okinawa was an independent kingdom until the Japanese government annexed it in 1879. When the island was devastated in the 1945 battle of Okinawa, the U.S. powerfully moved into the island, expropriated and bulldozed lands, and forcibly relocated many landowners to South America.

Okinawa then became an important U.S. strategic outpost, acting as a second line of “defense” during both the Korean and Vietnam wars. Okinawa bases also became the focal point where servicemen went for R&R (“Rest and Recuperation”), creating a sub-culture of bars, proliferating prostitution, and explicit sex shows. Even after Japan established sovereignty over Okinawa in 1972, the American military continued to retain control over their bases. In essence, the people in Okinawa were entrapped in a colonized and occupied island controlled by both the Japanese and U.S. governments.

The first ever trial of an American serviceman by Japan’s lay court in May 2010 represents a break from the past – an initial effort to decolonize the island of Okinawa. This trial also sends a strong political message to South Korea, which similarly hosts huge American military installations in East Asia.

In 2008, the South Korean government introduced the all-citizen jury trial. There is material weakness in the law, however, as the consent of the defendant is required for any jury trial, which *de facto* prevents the lay adjudication of military felons in Korea.<sup>7</sup> Yet, with determination, the

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<sup>5</sup> Hiroshi Hayashi, *Higashi Ajia no Beigunkichi to Seibaibai, Seihan-zai* [American Military Bases in East Asia, Prostitution and Sexual Crime], 29 AMERICA-SHI KENKYU [AMERICAN HISTORICAL RESEARCH], 1 (2006), referring to crime statistics provided in the Defense Facilities Administration Agency, on July 1, 2005, available at <http://www32.ocn.ne.jp/~modernh/paper75.pdf>.

<sup>6</sup> See generally Hiroshi Fukurai, *Saiban-n Seido* [Lay Assessor’s System], *Kensatsu Shinsakai* [Prosecutorial Review Commission (PRC)], and *Okinawa’s Quest for Self-Determination and Political Sovereignty*, 5 OKINAWAN J. OF AM. STUDIES, 31 (2008).

<sup>7</sup> ACT ON CITIZEN PARTICIPATION IN CRIMINAL TRIALS (hereinafter, “Jury Law”). Act No. 8394, art. 8 (1). Under the “Ascertainment of Intention of Defendant,” the law states, “[A] court shall inquire a defendant of an eligible case, in writing or by other means without exception, of whether he/she desires a participatory trial.” The English translation of Korea’s Jury Law is available at [http://people.ucsc.edu/~hfukurai/documents/ACT\\_ON\\_CITIZEN\\_PARTICIPATION\\_IN\\_CRIMINAL\\_TRIALS1\\_000.pdf](http://people.ucsc.edu/~hfukurai/documents/ACT_ON_CITIZEN_PARTICIPATION_IN_CRIMINAL_TRIALS1_000.pdf).

Korean people may demand that their government change and eliminate the defendant's consent requirement when it reviews the Jury Law in 2013.<sup>8</sup>

A new historic stage has clearly begun. The Asian neo-colonies under U.S. military jurisdiction are finding an independent legal path to protect their citizens from abuse. And on May 27, 2010, the movement at last was launched with the Japanese citizen's lay court in Okinawa, finding the U.S. soldier guilty of robbery and bodily injuries to a cab driver and sentencing him to three to four years in a Japanese prison.<sup>9</sup>

There will be more American military defendants subject to this judicial process, as lay adjudication begins to play an important role in placing the burden of responsibility on military personnel's activities -- functioning as effective judicial oversight of the actions and conduct of American military personnel in Okinawa and other parts of the world still hosting substantial U.S. military installations.

## II. RE-EMERGENCE OF THE SYSTEM OF LAY ADJUDICATION IN ASIA

Today, many citizens in Asia are embracing the introduction of the lay adjudicatory institutions in democratizing their own jurisprudence and legal systems. Not since the nineteenth century in the wake of the French Revolution, when most European nations adopted the trial by jury system, have so many countries in Asia and other parts of the world rushed to reform or incorporate lay judge trials into their legal systems.

The current wave of judicial reforms in Asia is similar to those in 19<sup>th</sup> century Europe – triggered by the aftermath of the 1789 French Revolution and subsequent political unrest in Europe – which helped strengthen the petit trial jury in England. Soon after, trial by jury became an integral part of the emerging democratic societies in the U.S. and other nations on the European Continent.<sup>10</sup>

France, for example, introduced trial by jury in 1789, and it became an important political tool in the hands of the insurgent bourgeoisie against the absolutist French monarchy. Most local governments of Germany and Italy quickly introduced trial by jury in the early 19<sup>th</sup> century, followed by Austria and Greece in 1848, the Italian kingdom in 1860, Russia and Rumania in 1864, Spain in 1872, and the German kingdom in 1877.<sup>11</sup> Almost all other European nations followed

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<sup>8</sup> “In 2013, the final format and scope of the [jury] system will be determined.” Jae-Hyup Lee, *Getting Citizens Involved: Civic Participation in Judicial Decision-Making in Korea*, 4 E. ASIA L. R. 177, 181 (2009).

<sup>9</sup> Allen & Sumida, *supra* note 5.

<sup>10</sup> Stephen Thaman, *Japan's New System of Mixed Courts: Some Suggestions Regarding Their Future Form and Procedures*, 2001-2001 ST. LOUIS-WARSAW TRANSATLANTIC L.J., 89, 89-90 (2001-2002).

<sup>11</sup> Francois Gorphe, “Reform of the Jury System in European Countries:

by the end of the 19<sup>th</sup> century.<sup>12</sup> Lay participatory systems also spread to European colonies in Africa, Asia, and Central and South America.<sup>13</sup>

In the last two decades, the recent emergence of political awareness and debate concerning the merits of introducing lay adjudication in many Asian countries also traces the comparable paradigmatic shift in the balance of political power and order that existed in Europe in the late 19<sup>th</sup> century. Following the collapse of the Soviet Union in 1991, fifteen former Soviet republics have declared their political independence, and many of them proposed and incorporated the system of lay adjudication in their legal systems.<sup>14</sup> These nations include Ukraine, Georgia, Azerbaijan, Kazakhstan, Uzbekistan, Kyrgyzstan, Russia, and other post-Soviet republics in Central Asia.

In East Asia,<sup>15</sup> Japan,<sup>16</sup> South Korea,<sup>17</sup> China,<sup>18</sup> and Thailand<sup>19</sup> have taken similar paths. The wave of lay adjudicatory adoptions also spread to other parts of the world, including Venezuela,<sup>20</sup> Bolivia,<sup>21</sup> and Argentina<sup>22</sup> in South America, and South Africa in Africa.<sup>23</sup> In South

England” 27 J. CRIM. LC. 18 (1936).

<sup>12</sup> Id.

<sup>13</sup> See Neil Vidmar, WORLD JURY SYSTEMS 422-428 (2001).

<sup>14</sup> Nikolai Kovalev, TRIAL BY JURY AND MIXED COURT IN TRANSITIONAL CRIMINAL JUSTICE SYSTEMS OF THE FORMER SOVIET UNION: IN SEARCH OF INDEPENDENT AND IMPARTIAL COURTS (hereinafter, “Trial by Jury”) (manuscript accepted for publication by Mellen Press in 2011) (Manuscript on file with the first author).

<sup>15</sup> Id. See also Stephen Thaman, *infra* note 33.

<sup>16</sup> Hiroshi Fukurai, *The Rebirth of Japan’s Petit Quasi-jury and Grand Jury Systems: Cross-national Analysis of Legal Consciousness and Lay Participatory Experience in Japan and the U.S.*, 40 CORNELL INT’L L.J. 315 (2007).

<sup>17</sup> Lee, *supra* note 9.

<sup>18</sup> Hiroshi Fukurai and Zhuoyu Wang, “Civic Participatory Systems in Law in Japan and China,” a paper presented in a session, *IRC East Asian Legal Professionalism: Judiciary in Transition*, at the Law and Society Association Meeting in Berlin, Germany, July 28, 2007 (on file with the first author).

<sup>19</sup> Frank Munger, *Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand*, 40 CORNELL INT’L L.J. 455 (2007).

<sup>20</sup> On November 12, 2001, the Venezuelan legislature stopped the jury court. However, the mixed court system is still operating in Venezuela. See Stephen Thaman, *Latin America’s First Modern System of Lay Participation*, in STRAFRECHT, STRAFPROZESSRECHT UND MENSCHENRECHTE: FESTSCHRIFT FÜR STEFAN TRECHSEL 765-79 (Andreas Donatsch et al., eds., 2002).

<sup>21</sup> See Diego Rijas, Ariel Morales and Mario Kempff, LATIN LAWYER: LITIGATION BOLIVIA (2010), available at <http://www.latinlawyer.com/reference/article/25524/litigation/>.

<sup>22</sup> See María Ines Bergoglio, *New Paths Toward Judicial Legitimacy: The Experience of Mixed Tribunals in Córdoba*, 14 SW. J.L. & TRADE AMERICAS 319 (2008).

Korea (a country with no history of lay adjudication), all-citizen jury trials were introduced in 2008, followed by the lay assessor (saiban-in) trial introduced in Japan in 2009. In the People's Republic of China, the new measures were adopted to improve its lay assessor system in 2004, 2005, and 2010.<sup>24</sup> In Thailand (a country with no history of jury trial), the Thai government debated and considered the possible introduction of the system of lay judges in their legal system<sup>25</sup> prior to the September 2006 military coup. The of all-citizen or mixed-court model still continued to operate in other Asian jurisdictions, including Hong Kong and<sup>26</sup> Sri Lanka,<sup>27</sup> while the jury trial was abolished in India in 1960,<sup>28</sup> Singapore in 1969, and Malaysia in 1995.<sup>29</sup>

In Central Asia, many former-Soviet republics have decided to introduce or improve their own systems of lay adjudication.<sup>30</sup> In 1993, Russia successfully reinstated jury trials after a break of more than seven decades.<sup>31</sup> Recent studies have revealed the significant effect of lay participation in Russia's criminal trials, indicating that the acquittal rate by the jury became much higher (18%) than by judges (3.6%).<sup>32</sup> The 2006 Russian national survey also showed that 44% of citizens would encourage friends and relatives to opt for a jury trial in criminal cases including the allegation of terrorism.<sup>33</sup> The higher acquittal rate of Russian juries is partly due to the fact that the bulk of evidence against defendants in Russia has mainly consisted of their confessions extracted

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<sup>23</sup> See Marshall Huebner, *Who Decides? Restructuring Criminal Justice for a Democratic South Africa*, 102 YALE L.J. 961 (1993).

<sup>24</sup> On 12 January 2010, the Supreme People's Court of the People's Republic of China also promulgated the Provisions of the Supreme People's Court on Several Issues Regarding the People's Jurors Participating in Trial (Fa Shi [2010] No.2), which became effective on 14 January 2010. See generally Fukurai & Wang, *supra* note 18.

<sup>25</sup> Munger, *supra* note 20.

<sup>26</sup> Vidmar, *supra* note 14 at 427-428.

<sup>27</sup> *Id.* at 3.

<sup>28</sup> *Id.* at 426.

<sup>29</sup> *Id.*

<sup>30</sup> See Nikolai Kovalev, Lay Adjudication of Crimes in the Commonwealth of Independent States: An Independent and Impartial Jury or a Court of Noddors? 11 J. E. EURO L, 123-158 (2004).

<sup>31</sup> Stephen Thaman, *The Nullification of the Russian Jury: Lessons for Jury-Inspired Reform in Eurasia and Beyond*, 40 CORNELL INT'L L.J. 355 (2007).

<sup>32</sup> "205 out of 1,160 defendants in 600 cases" were acquitted. Alexei Trochev, *Fabricated evidence and fair jury trials*, RUSSIAN ANALYTICAL DIGEST, June 20, 2006, at 7.

<sup>33</sup> "Only 26 percent said they would advise against a jury." Nabi Abdullaev, *A Jury is a Better Bet Than a Judge*, MOSCOW TIMES, June 1, 2006.

under torture, and all-citizen juries showed higher evidentiary standards in evaluating the legal validity and reliability of confessions.<sup>34</sup> Citizen adjudication systems were also adopted in Belarus, Kazakhstan, Ukraine, and Uzbekistan; and new proposals for the introduction of lay adjudication was also proposed in Azerbaijan, Georgia, and Kyrgyzstan.<sup>35</sup>

A. *Lay Adjudication and Paradigmatic Shifts in Global Power*

Looking back to the eighteenth century, when the French absolutist monarchy faced the insurgent French Revolution and lost its Pan-American ambitions due to revolutionary movements in America, Haiti, and its former colonies, the vacuum of its global influence also created the paradigmatic changes in global power and led to the emergence of democratic movements throughout Europe and the world.

Nearly two hundred years later, the 1991 dissolution of the Soviet Union and its global influence had similar collateral impacts upon other nations in Asia and other parts of the world. Since 1991, the U.S began to emerge as the lone global superpower and started to exert its military muscle and significant political influence around the world. After 9/11, in particular, the U.S. assumed world leadership against terrorism focused on Muslim nations and their insurgents. The U.S. began to engage in legally questionable governmental policies, unethical law enforcement practices, and covert intelligence activities, including warrantless surveillance against its own citizens,<sup>36</sup> extra-ordinary “renditions” of alleged terrorists,<sup>37</sup> lengthy detention of alleged suspects in secret prisons at so called “black sites,”<sup>38</sup> the illegal use of torture to interrogate suspected terrorists,<sup>39</sup> and the CIA’s clandestine assassination program against a select group of alleged terrorists including U.S. citizens.<sup>40</sup> Many U.S. allied nations in East Asia and the South Pacific, including Australia, New Zealand, Japan, and South Korea, have also passed and adopted similar

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<sup>34</sup> Trochev, *supra* note 34 at 9.

<sup>35</sup> Kovalev, *supra* note 32.

<sup>36</sup> Jeffrey Silva, *Telecom Execs Asked about Roles in Warrantless Wiretapes*, RCR WIRELESS NEWS, February 13, 2006, at 9.

<sup>37</sup> David Leppard, *US Says It Has Right to Kidnap British Citizens*, SUNDAY TIMES (LONDON), December 2, 2007, at 1.

<sup>38</sup> David Johnston & Mark Mazzetti, *A Window into C.I.A.’s Embrace of Secret Jails*, NY TIMES, August 13, 2009, at Section A.

<sup>39</sup> Bob Herbert, *The Torturers Win*, NY TIMES, February 20, 2006, at 15.

<sup>40</sup> Joby Warrick, *CIA Assassin Program was Nearing New Phase: Panetta Pulled Plug After Training was Proposed*, WASHINGTON POST, July 16, 2009, at A-Section 1. *See also Who Gave This Man the Right to Decide If a Citizen Lives or Dies?* BELFAST TELEGRAPH, February 25, 2010, at 32.

anti-terrorist political measures against political groups in their own countries.<sup>41</sup>

As many governments have become increasingly vulnerable to the outside political and military influence of the United States and other powerful Western nations, popular efforts to create participatory institutions, including their own equitable judicial systems, have been recognized as the crucial mechanism of people's resistance and collective strategy to fight against legally questionable actions and conduct of their own governments and the overarching influence of extraterritoriality exercised by the U.S. and other Western powers in their nations. Trial by jury was largely perceived to be the safeguard of liberty in the hands of progressive citizens and insurgent intellectuals against the governmental abuse of power and authority. This remains a distinct possibility, as the power of lay adjudication extends the boundaries of jurisdictional authority over both indigenous governments and foreign occupiers of their countries. Through the political use of lay adjudication, the imposition of extraterritoriality as a crucial aspect of predatory colonial policies may be coming to an historical end.

### III. THE INAUGURAL EAST ASIAN LAW AND SOCIETY CONFERENCE IN 2010

While significant political changes and judicial reforms have been taking place in Asia, the Inaugural East Asian Law and Society Conference was held on February 5<sup>th</sup>, 2010, in the vibrant city of Hong Kong.<sup>42</sup> Nearly 160 delegates came together from the U.S., Japan, Korea, China, Taiwan, Malaysia, Iran, the U.K., Sweden, Australia, France, Canada, Hong Kong, Singapore, and other countries. Conference papers and presentations all revealed the depth of deep concern, academic energy, and scholarly research recognizing recent transformative changes and legal development in Asia. The presentations also provided fertile grounds for future socio-legal research and collaboration in the region.

The conference offered a total of 24 concurrent sessions, covering lay participation in legal institutions, legal education and professional practice, constitutional reforms, colonial policing and legacies, changing legal consciousness, legal impacts on the environment, gender in law, and the development of alternative dispute resolution techniques adopted in East Asia, among many others.<sup>43</sup> The largest number of panels focused

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<sup>41</sup> George Williams, *Law on Terror Erodes Freedoms* [in Australia], COURIER MAIL, April 30, 2004 at 17; *Anti-Terrorist Bill Passed* [in New Zealand], DOMINION POST, October 11, 2002 at 2; *Japan's Lower House Passes Anti-Terrorism Law Extension Bill*, BBC SUMMARY OF WORLD BROADCASTS, October 3, 2003; *South Korean Parliamentary Committee Passed Controversial Anti-Terrorism Law*, BBC SUMMARY OF WORLD BROADCASTS, November 14, 2003.

<sup>42</sup> The Hong Kong Government Tourism Board and the University of Hong Kong provided the institutional and logistical support to the inaugural conference.

<sup>43</sup> There was also an opening session with three keynote speakers, and four

on the analysis of newly emerged systems of lay adjudication in Asia.<sup>44</sup> Since Japan and South Korea most recently introduced their own systems of lay adjudication, many papers and in-depth discussions focused on the analysis of their citizen-based participatory institutions. The analyses were presented by lawyers, legal scholars, and jury researchers from many countries including Japan, South Korea, Taiwan, Australia, and the U.S.

It is also important to recognize that, so far as covering the international conference on the specific topic of lay participation, the Hong Kong Conference has had two predecessors. The first international conference on lay participation was held in 1999 in Sicily, Italy, and it was organized by St. Louis University Professor Stephen Thaman.<sup>45</sup> Another conference was held at Cornell Law School in 2006, sponsored by the Clarke Program in East Asian Law and Culture under the leadership of Professor Valerie Hans. At this conference, many Asian scholars were invited to present the analysis of the changing role of popular participation in East Asia.<sup>46</sup> Many excellent papers were then published in a special issue of the *Cornell International Law Journal* in 2007.

The five articles in this Special Issue of the *Asian-Pacific Law and Policy Journal* provide a sampling of key issues and questions raised at the first East Asian Law and Society Conference in Hong Kong.

Anna Dobrovolskaia's article provides a complete and comprehensive history of various systems of lay adjudication adopted in Japan. She argues that Japan has had a long history of lay adjudicatory experiences. Japan's actual experience of lay participation begins with the system called Sanza or "Kan'in Baishin" (a bureaucratic jury), as the first lay justice system adopted in 1873 which was composed not of lay citizens, but of governmental bureaucrats recruited outside of the judiciary. Her analysis also focused on the passage of the Jury Act in 1923 and its implementation in 1928. The Jury Act, however, only allowed a small segment of the Japanese population to participate in criminal jury trials –

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distinct panelists participated in a concluding session, "The Recursivity of Law as a New Paradigm for Socio-legal Theory and Research in East Asia." The conference program is available at [http://www.crn33-eals.org/hkconference2010\\_program.pdf](http://www.crn33-eals.org/hkconference2010_program.pdf).

<sup>44</sup> A total of five panels focused on the topic of lay participation in legal decision making. The panels included: (1) Comparative Lay Participatory Systems in Law; (2) the Introduction of the Lay Justice System in Japan: Early Evidence; (3) Comparing and Assessing Judicial System and Administrative Reform in Japan: Criminal Justice and Beyond; (4) Lay Participation, Other Forms of Democratic Justice, and Legal Consciousness; and (5) Judicial System Reform & Popular Participation in Japanese Criminal Justice. Some papers on lay participation were also presented in other sessions with related topics and agendas.

<sup>45</sup> Richard O. Lempert, *The Internationalization of Lay Legal Decision-Making: Jury Resurgence and Jury Research*, 40 CORNELL INT'L L.J. 303, 488 (2007).

<sup>46</sup> Valerie P. Hans, *Citizens as Legal Decision Makers: An International Perspective* [Introduction], 40 CORNELL INT'L L.J. 303, 309-10 (2007).

these were made up of Japanese male citizens who were 30 years of age or older and paid an annual national tax of three yen or more, meaning that only three percent of the entire population was eligible for a jury duty. This jury system lasted until 1943 when the military government decided to suspend it in the midst of WWII. Dobrovolskaia also reviews the historical use of jury trials in Okinawa during the U.S. military occupation from 1945 to 1972. Finally, she analyzes the most recent establishment of the lay participatory system called “saiban-in seido” in Japan. Dobrovolskaia’s paper thus presents the ongoing historical evolution of different forms of lay adjudication in Japan.

Makoto Ibusuki’s article reviews the first year performance of Japan’s lay assessor trials, which was introduced in May 2009. His article provides the results of official governmental statistics and questionnaire surveys of lay judges. One of the most important findings reveals that the sentencing has been significantly affected by the new introduction of a victim’s participation program in lay assessor trials. In murder trials of defendants who have allegedly killed their sick-family members or relatives as results of extreme fatigue and exhaustion, Ibusuki observes that lay judges’ emotive reactions to the tragic cases -- rather than their objective evaluation of factual evidence presented in court -- led to a proliferation of suspended sentences, expressing their sympathetic judgments about the culpability of the defendants. Professor Ibusuki also examined the performance of professional trial participants, suggesting that the prosecutors were the clear winner of the first year of the saiban-in trial as they were able to secure convictions of nearly all defendants. The prosecution’s careful screening of trials, according to Ibusuki, has successfully excluded highly controversial death penalty cases. The prosecutor also succeeded in controlling the sentencing in lay assessor trials. There was not a single appeal made by the prosecution until the end of March 2010, in which the prosecution appealed that the incarcerative penalty was not long enough.

Jae-Hyup Lee’s article presents a critical evaluation of the first two-years of the five-year experiment in the adoption of the all-citizen jury in South Korea. The Korean Constitution states that a judge’s ruling must be the trial’s final judgment, and thus the jury verdict is considered as an advisory to the final court ruling. Nonetheless, Professor Lee indicates that the jury verdicts and judge’s rulings were nearly identical in more than ninety percent of the case. In a small number of mismatched cases, jurors were more inclined to vote for a not-guilty verdict and judges were more likely to vote for conviction.<sup>47</sup> Professor Lee also reports that jurors found the defendant “not guilty” in nearly ten percent of criminal cases. In comparison with Japan’s lay assessor trials, Korea’s jury trial was more efficient in its trial process and deliberation. While Japan’s

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<sup>47</sup> *Id.*

average trial lasted of 3.3 days, no jury trial in South Korea lasted three days or more. In Japan, the prosecution secured the near perfect conviction of Japanese defendants and made virtually no appeals until nearly one year into the operation of the saiban-in system. The prosecutorial verdicts and sentencing patterns stand in stark contrast to South Korea's high appeals and acquittal rates. In South Korea, appeals to higher courts were made in nearly ninety percent of the cases. Nonetheless, the Korean High Court dismissed the appeal in the majority of cases, whereas it reversed the trial court judgment in just 28 percent of the cases.

Valerie Hans' and Zachary Corey's article examines the impact of lay participation on Japanese citizens through the lens of deliberative democracy. Tracing the long history of direct democracy imbedded in the form of deliberative forums and assemblies from Athens to modern-day society, the article reveals the multitude of scientific studies conducted on different forms of group deliberation and their impact on deliberative participants. Both scholars then turn their attention to the mixed tribunal system adopted in Japan and examine whether or not the participation of professional judges in the deliberative process will help create the values of public support and confidence in the justice system. While the initial report on Japanese lay involvement in the trial process indicates a radiating spectrum of positive experiences among lay judges, Hans and Corey express a concern about the future operation of Japan's lay assessor trials because lay judges were legally prevented from sharing deliberative contents and experiences, thereby effectively disallowing wider community-based discussion on the merits and values of deliberative processes which are necessary to develop public trust and confidence in the justice system.

The article by Fukurai examines the political utility of Japan's lay assessor trial in the adjudication of military crimes committed by U.S. servicemen in Okinawa, Japan. Fukurai explores the question of whether or not direct participation by local residents in trials of accused military felons establishes strong deterrence against military crimes in Okinawa. Fukurai argues that direct judicial participation by local residents of Okinawa have helped eradicate a climate of impunity shared among military personnel and their dependents because their crimes were rarely punished in the U.S. military court. The climate of impunity created long-term discontent and public opposition to the continued presence of the American military bases in Okinawa. The proliferation of military crimes also led to strong political opposition to the U.S.-Japan Status of Forces Agreement (SOFA) that "legitimized" the establishment of U.S. military bases in Okinawa. Fukurai finally argues that lay adjudication of military felons can help create a strong sense of popular sovereignty and judicial independence in Japan.

## IV. CONCLUSION

“It is an exciting time to be a jury researcher,”<sup>48</sup> declared past LSA President and prominent jury scholar Richard Lempert in the 2007 special issue of *Cornell International Law Journal* that presented cross-national analyses of different systems of lay adjudication in East Asia. Indeed, we concur with the exciting spirit embedded in his statement. All articles included in this APLPJ Special Issue provide exciting research opportunities for the cross-national studies of juries and other forms of lay adjudicative institutions. While past jury research has been an almost entirely American endeavor, the advent of new lay adjudicatory systems in Asia allows a comparative perspective that can shed new light on the socio-political role of legal decision-making in countries throughout the world.

The Inaugural East Asian Law and Society Conference, at which the papers in this special issue were discussed and presented, is testimony to the emergence of new scholarship and new collaboration, creating greater interest in comparative research on the system of lay adjudication. We are now at an early yet exciting stage in answering a number of fascinating research questions on the role of lay participation in legal decision-making. These articles in this Special Issue are thus an excellent illustration of the ways in which cross-national and comparative research can inform the policy process and democratic movement in East Asian nations.

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<sup>48</sup> Richard O. Lempert, *The Internationalization of Lay Legal Decision-Making: Jury Resurgence and Jury Research*, 40 CORNELL INT’L L.J. 477, 487 (2007)