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Jury Systems Around the World

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Jury: a group of individuals chosen from the community who collectively decide the outcome of a legal case

Civic engagement: active citizen participation, including volunteering, voting, and other forms of social and political action

Mixed tribunal: a mixed group of lay citizens and professional judges who collectively decide the outcome of a legal case

INTRODUCTION

Jury systems exist around the world. Some jury systems, like those in Britain and the Commonwealth countries, have a long history. Others are of more recent vintage, having emerged in the last century in connection with other political and legal changes. Considering contemporary jury systems, one is confronted with something of a paradox. Although in many countries the proportion of cases decided by laypersons has declined dramatically owing to increases in legal restrictions, litigation costs, plea bargaining, and alternative dispute resolution (Galanter 2004, Smith 2005), in recent decades a striking number of countries have seriously debated or adopted new ways of incorporating ordinary citizens as decision makers in their legal systems. Diverse countries including Argentina (Bergoglio 2003, 2008; Hendler 2006), Japan (Maruta 2006, Wilson 2007), Korea (Seo 2007, Hoffmeister 2008, Park et al. 2006), Russia (Thaman 1995), Spain (Jimeno-Bulnes 2007), and Venezuela (Thaman 2002a) have all, in the recent past, changed their legal systems to include ordinary citizens, either in traditional juries composed exclusively of laypersons or in mixed bodies in which laypersons decide cases together with professional judges.

The persistence of citizen participation in increasingly complex and expert-dominated legal systems worldwide suggests that there are some enduring attractions to the practice. Those who favor lay participation maintain that it is important for sound fact finding (Lempert 2001–2002, Vidmar & Hans 2007). It is said to reduce the power of incompetent, corrupt, or out-of-touch judges (Kutnjak Ivković 1999, Thaman 2002b). Juries represent the community in the courtroom, helping to ensure that legal outcomes are consistent with local ideas about justice and fairness (Finkel 1995, Langbein 1981). They also insulate the judge from negative community responses to unpopular decisions and provide a buffer for the defendant (Marder 2005). Broader purposes have also been identified: educating citizens about

legal concepts and legal procedures, promoting a sense of procedural justice, legitimizing the justice system, and increasing civic engagement (Gastil et al. 2002, Kutnjak Ivković 1999).

Nonetheless, the use of lay citizens as legal decision makers has been attacked. Individual jury verdicts that appear inconsistent with the evidence have raised public ire (Vidmar & Hans 2007). In the United States, systematic assaults have been mounted on the civil jury, which is said to be overly generous to plaintiffs and incompetent in deciding complex lawsuits (Haltom & McCann 2004, Hans 2000). In Russia and Spain, newly minted jury systems have generated controversy with unpopular acquittals (Thaman 2000). The mixed tribunal, in which lay citizens resolve cases together with professional judges, has been roundly criticized as an ineffectual approach, with laypersons derided as “nodders” because of their prevailing tendency to agree with the professional judges (Machura 2003, Kovalev 2004).

The surprising resurgence of lay participation systems in recent decades has stimulated scholarly analysis on their introduction, operation, and impact. At the same time, existing jury systems have undergone extensive reform, some of it in response to attacks on the use of lay citizens. Research on new lay participation systems in some countries (Bergoglio 2008, Thaman 2007a) and on the impact of reforms in others (Am. Bar Assoc. 2005, Ellsworth 1999, Munsterman et al. 2006) has multiplied. However, the great variety of systems and their diverse features, along with uneven development of law and social science scholarship, have made it challenging to develop a comprehensive assessment of this intriguing legal phenomenon.

This review summarizes recent literature on jury systems and other forms of lay participation worldwide, with an eye to identifying what is presently known and what research questions need to be addressed by socio-legal scholars. The comparative perspective provides a valuable context for better understanding some of the cultural, social, and political sources of support for citizen participation in law, all of which

shape how lay participation systems operate in practice.

Much jury research to date has focused on the operation of the jury system in a single country, in particular the United States. Diamond & Rose's (2005) excellent, comprehensive survey of scholarship on real juries analyzed U.S. research, in part because the research with actual jurors is restricted in many other countries. Likewise, the work included in other recent summaries of jury research, such as Devine et al.'s (2001) survey of 45 years of research on deliberating juries (which included both real juries and experimental juries), is nearly all work on the American jury. A substantial number of books summarize American jury research (Abbott & Batt 1999, Feigenson 2000, Finkel 1995, Greene & Bornstein 2003, Hans 2006, Hastie 1993, Marder 2005, Vidmar & Hans 2007). There are useful analyses of research on the jury in Great Britain (Lloyd-Bostock & Thomas 2000, Zander & Henderson 1993) and in individual Commonwealth countries with long histories of jury trial (for overviews of systems in Australia, Canada, Ireland, Scotland, and New Zealand, see Chesterman 2000, Vidmar 2000a, Jackson et al. 2000, Duff 2000, and Goodman-Delahunty & Tait 2006, respectively). However, explicitly comparative analyses of the jury and other forms of lay participation are rare.

The first serious effort to look comprehensively at the diverse ways in which laypersons are employed as legal decision makers occurred at a 1999 international meeting in Siracusa, Italy, organized by Professor Stephen Thaman (2002b). At the Siracusa conference, "Lay Participation in the Criminal Trial in the Twenty-First Century," scholars, judges, and lawyers from more than 28 countries exchanged information about citizen involvement in criminal justice decision making worldwide. Conference papers were later published in several outlets (Maier et al. 2000; Thaman 2001, 2002b). Further scholarly exchange has been facilitated by regular meetings of a collaborative research network devoted to the study of lay participa-

tion in legal decision making (Hans 2003, 2007; Thaman 2002b). Building upon this foundation, two recent edited books (Kaplan & Martin 2006, Vidmar 2000b) feature reviews about the operation of different jury systems in a variety of countries.

Comparative work on world jury systems and other lay participation systems, although still at an early stage, holds significant promise. Such research can address longstanding questions about the impact of lay legal participation on democracy, legal consciousness, and the unique perspectives and contributions that lay citizens bring to legal decision making. As a scientific matter, many of these questions are difficult to answer when one is limited to studying an existing jury system with long-settled trial practices and stable public and elite attitudes toward jury trial. The cross-country comparisons allow us to take advantage of existing variation in different countries, akin to a natural experiment (Shadish et al. 2003). Likewise, contrasts across countries can help us identify and assess the impact of different approaches to the use of lay citizens. Nonetheless, it is a demanding intellectual task because of the political, legal, and cultural differences of diverse nations.

Some of the questions that arise in such a comparative analysis—and that have been difficult if not impossible to explore in single-country studies—involve claims of societal-level effects of jury systems. How does the opportunity to participate as a decision maker affect individual citizens and their relationship to the state? Does the jury, as some scholars and political thinkers have claimed, encourage democratic impulses, educate the public about law, legitimize the legal system, and bind citizens more tightly to their government? Furthermore, how do different legal, social, and political environments affect lay participation? In particular, is a democratic form of government essential?

There is also value in developing an analysis of the power of lay adjudicators in legal decision-making systems around the world (Lempert 2007). The task should include descriptions of the formal legal structures that

Legal transplant: a legal practice or institution from one country's legal system that is imported into the legal system of another country

undergird different jury systems and an analysis of how these different approaches offer the potential for independent lay decision making. The inquiry about citizen power should attend both to the law on the books and to the law in action (Pound 1910). How do different systems function in practice to facilitate or impede independent decision making and citizen power? What is the actual balance between lay judge and professional judge, in case after case?

Some questions about jury systems touch on long-standing debates in comparative law. Scholars debate the desirability and likely effects of transplanting legal institutions that flourish in one country into the legal system of another (Chase 2002, Merry 2006, Munger 2007). Juries are usually embedded within an adversarial common law system in which oral testimony by witnesses is the predominant method of evidence presentation, a sharp contrast with the civil law tradition of document-based litigation. The adversarial approach favors passive decision makers, whereas the inquisitorial approach promotes the active involvement of decision makers in the development of evidence (Hans 2002, van Koppen & Penrod 2003). Some observers wonder whether a common law element like the jury can be successfully transplanted into civil law legal systems (Chase 2005).

The cultural, social, and political characteristics of the adopting country are also relevant. Munger (2007) argues that there might well be a mismatch between distinctive traditions and socialization practices in Asian nations and citizen participation in legal decision making. He notes that jury systems remove people from their personal connections with others to include them in decision-making bodies of strangers with whom they are formally equal. That is inconsistent with typical patterns of social interaction in some Asian nations such as Thailand.

The legal transplant questions take on added significance because the jury is currently used most extensively in the United States. Unique features of American law and culture have led comparative law scholars to suggest that

Western institutions that prosper in the United States may not be easily adapted to other legal environments (Chase 2005, Kagan 2007). Kagan (2007) observes that whereas European legal culture reflects bureaucratic ideals, U.S. legal culture is characterized by skepticism about the government and legal authority and promotes the idea of strong legal advocacy and party conflicts. The employment of nonexpert citizen decision makers fits much better within a legal culture that is skeptical about legal authority as opposed to one that honors it.

TYPES OF LAY PARTICIPATION SYSTEMS

Many countries use the term "juror" for any layperson who participates in legal decision making, even though the systems for using lay people vary significantly. In their survey of lay participation in countries that are members of the Council of Europe, Jackson & Kovalev (2006/2007) usefully differentiate five distinct approaches to lay legal decision making. It is worthwhile to begin our review by describing these five models, as they highlight important differences in how countries use lay citizens in legal decision making.

Jackson & Kovalev label the first approach the continental jury model, the all-citizen jury based on English tradition, which allocates to the jury an exclusive function to determine the defendant's guilt. Great Britain, the United States, Canada, Australia, New Zealand, and more than 40 other nations employ juries of citizens drawn from the general population who decide cases collectively (Vidmar 2002). Many countries that were once part of the British Empire inherited the English legal system, including its jury. After independence from Britain, although a number of former colonies abandoned the jury because of its association with an oppressive imperial regime, others retained it and made it a permanent part of the legal system (Vogler 2001). Although juries are more frequently found in common law systems, some civil law countries such as Spain and Austria employ all-citizen juries. Criminal juries typically

decide on the verdict only (but see King 2004 for a discussion of jury sentencing in a small number of U.S. jurisdictions). The major exception is U.S. capital cases, for which juries are constitutionally required to determine, at a minimum, whether the offense is eligible for a death sentence (Weisberg 2005). Although the jury is carefully insulated from the judge during the deliberation, judges still play a significant role by presiding over jury trials, ruling on the admissibility of evidence, providing legal rules for the jury, and in some jurisdictions guiding fact finding by commenting on the evidence or by directing special verdicts.

Civil law countries characteristically employ mixed decision-making bodies of lay citizens and law-trained judges to decide cases (Kutnjak Ivković 1999, Jackson & Kovalev 2006/2007). They are most often called mixed tribunals or mixed juries; Jackson & Kovalev (2006/2007) label them collaborative court models. Usually, mixed tribunals decide both guilt and sentence in criminal cases.

Jackson & Kovalev distinguish three distinct variants of collaborative courts. The classic German or *Schöff* collaborative court model features a professional judge and two lay assessors, although the number and composition vary depending on the seriousness of the case and the potential punishment. The French collaborative court model also includes professional judges deciding cases with citizens, but the ratio of lay to professional judges is much greater than in the German model. So, for example, in the French *cour d'assises*, which hears serious criminal cases, three professional judges deliberate together with nine jurors to determine the guilt of the accused. Remarkably, a French jury court of appeal, *cour d'assises d'appel*, with 12 jurors and 3 professional judges, was recently introduced (McKillop 2006). The jury court of appeal, which operates by majority rule, conducts a fresh examination of the evidence in the case.

The German and French models differ in the selection and treatment of the lay participants. In the German model, citizens are appointed as members of the court and sit at the

head of the courtroom with the professional judge (Machura 2001). By contrast, in France lay members are randomly selected from the population to be jurors. They do not become members of the court as the German *Schöff* do. During their period of service, French jurors sit separately from the judges, coming together for the deliberation (Jackson & Kovalev 2006/2007, McKillop 2006).

Another approach to a mixed court noted by Jackson & Kovalev (2006/2007) is the expert assessor collaborative court model, an interesting variant. Here, members of the community with special expertise thought to be relevant to a case sit with one or more law-trained judges to decide the outcome. For example, in Croatia, lay judges in mixed courts that decide the cases of juvenile defendants must be teachers, professors, or other persons with relevant experience in juvenile education (Kutnjak Ivković 2007).

A parallel can be drawn between the expert assessor collaborative court and the special jury, in which citizens with relevant background and expertise are chosen from the public to decide the case (Oldham 2006). Special all-woman juries of matrons served in early English and American trials. The earliest jury of any sort in Australia was reportedly a jury of matrons (Goodman-Delahunty & Tait 2006). A woman facing the death penalty might claim she was pregnant and “plead her belly,” requesting a delay in execution until the child could be born. The jury of matrons examined the defendant and used their personal knowledge to determine the veracity of the claim and whether a delay in her execution could be justified (Oldham 2006). The practice waned as medical specialists took over the task of assessing pregnancy claims.

Early on, special juries were also used in cases of substantial social and political importance. Sometimes that required that jurors have particular domains of expertise, but more often it simply meant that jurors were selected from elite members of the society, such as those with major property holdings or advanced education. As the idea of the representative jury gained ascendance in the latter half of the twentieth century, however, the use of the

Collaborative court: a mixed tribunal; a group of lay citizens and professional judges who collectively decide the outcome of a legal case

special jury declined (Vidmar & Hans 2007). Nonetheless, the idea of drawing on community members with particular expertise continues to attract supporters, as evidenced by calls for specialized medical courts today (Struve 2004).

The expert collaborative court approach has some appeal even in nations that do not have a strong tradition of citizen participation in law. For example, Munger (2007) reports that in Thailand, a predominantly civil law country with no history of lay participation, three specialty courts have laypersons with expertise in the court's domain decide cases together with professional judges (Munger 2007).

A final approach identified by Jackson & Kovalev is the pure lay judge model, in which lay judges without formal legal training sit either individually or in small groups to decide the outcomes of legal cases. They operate in various countries as lay judges, justices of the peace, or lay magistrates (Jackson & Kovalev 2006/2007). Lay judges are used most frequently in lower courts and minor cases. Lay judges perform their work as an occupation or during substantial terms of service. Lay judges are included here in our description of Jackson & Kovalev's models for the sake of completeness, but the current review focuses primarily on the all-citizen jury and the mixed tribunal approaches.

Jackson & Kovalev's effort is one of the few attempts at systematic categorization of different types of contemporary lay participation systems; their ambitious project examined members of the Council of Europe but deserves to be expanded to non-European nations. Vidmar (2000b, 2002) has also summarized the use of juries and other forms of lay participation in over 50 countries that were or are part of the British Commonwealth, including nations in Asia, Africa, the Caribbean, Europe, and Latin America. The publications deriving from the Siracusa conference produced compilations of the use of juries and other forms of lay participation in diverse countries (Thaman 2002b). However, no single source has comprehensively surveyed and described all lay participation sys-

tems worldwide. That straightforward descriptive task is an important first step for comparative analysis that in time will produce a richer understanding of the phenomenon of citizen involvement in legal decision making.

SUPPORT FOR CITIZEN PARTICIPATION IN LEGAL DECISION MAKING

Understanding citizens' views about lay participation in legal decision making is essential in that the citizenry constitutes the pool of lay decision makers, and a cooperative public is required for successful operation of the system. Expressions of public support reflect the value placed on community voices in legal decisions and may also signal that the jury system has successfully legitimated the justice system (Tyler 2006). Preference for juries may also indicate dissatisfaction with judges, the most likely alternative to juries.

In countries that use the jury, there is strong public support for its continued use. In the jury's birthplace of Great Britain, despite declining numbers of jury trials in contemporary times, the jury is highly regarded across demographic groups. Roberts & Hough (2007) summarized seven surveys with a combined total of over 11,000 respondents from England and Wales and concluded that the public shows substantial confidence and trust in the jury. The jury trial guarantee is rated as more important than a host of other important rights such as the right to political protest and the right to privacy. Furthermore, the public in England and Wales reports more confidence in the jury than in judges, barristers, or government ministers. When asked their preference for judge versus jury if they had been charged with a criminal offense, respondents in that survey overwhelmingly selected the jury over a judge or a magistrate (Bar Council 2002).

In Northern Ireland, judge-only Diplock courts were created in 1973 to bypass the jury in cases involving terrorist activities in Northern Ireland because of concerns about threats, intimidation, and danger to jurors

(Jackson & Doran 1995). These special courts were phased out in 2007. Nonetheless, the citizen jury has enjoyed consistent public support in Northern Ireland, with substantial majorities expressing confidence in the jury's contribution to the fairness of the criminal justice system. However, they are not as unanimous as their English and Welsh counterparts; when asked whether people charged with serious crimes should always have the right to a jury trial, close to half of the respondents in Northern Ireland disagreed (Roberts & Hough 2007).

Opinion surveys in other Commonwealth countries with jury systems also show substantial public support. A Canadian poll (Doob 1979) found that many respondents thought that both judge and jury were equally likely to arrive at just and fair verdicts, yet those who distinguished between them overwhelmingly selected the jury as the better choice. Canadians who had served as jurors and those who knew others who had performed jury service were more likely to endorse the jury as the most fair and just decision maker. Canadian judges, too, were supportive of trial by jury, although they saw its ability to represent the community's views as more valuable than the jury's fact-finding advantages over the professional judiciary.

Two New Zealand surveys from 1999 and 2006 found that the majority rated the performance of juries as excellent or good; they were evaluated similarly to the police and better than judges, criminal lawyers, and probation officers (Roberts & Hough 2007). In several Australian jurisdictions, Goodman-Delahunty and colleagues (2008) surveyed over 6000 members of the public, including people called for jury duty who did not decide a case as well as those who served as jurors. Majorities of all groups agreed that jury service is an important civic duty; that "people from all walks of life should participate in the administration of justice"; that jury duty is educational and interesting; and that juries help to ensure the accountability of the justice system (Goodman-Delahunty et al. 2008).

Notably, the Australians in the jury pool and those who served as jurors were significantly

more positive about the jury system than their fellow community members with no jury experience. Australians with some jury experience were twice as likely as community members to express confidence in the fairness and efficiency of jury selection and jury trials. They were also slightly more likely to prefer a jury over a trial by judge alone, compared to community members with no jury experience.

In the United States, the public expresses strong and consistent support for trial by jury. In one national sample of registered voters, three-quarters said they were somewhat or very confident that "most jury trials in the United States reach fair verdicts" (Fox News/Opinion Dynamics 2003). Another survey (Harris Interactive 2004) found that 84% agreed that jury service is an important civic duty that should be fulfilled even if it is inconvenient, and 75% expressed a preference for a jury over a judge if they were a participant in a trial.

As in several other countries, support for the American jury system is stronger among those who have served on juries (Harris Interactive 2004, Diamond 1993). Post-trial surveys of jurors routinely find that jurors are more positive about the courts and the jury system after their service than before. A national survey of over 8000 jurors who served in 16 federal and state courts found that the majority said that their impression of jury duty and the courts was more favorable after serving (Diamond 1993). Rose et al. (2008) found that jury experience had a significant impact on minority support for trial by jury, even in racial and ethnic groups whose members were relatively less enamored of the jury.

MacCoun & Tyler (1988) found that most of their poll participants strongly favored the jury over the judge. By a two-to-one margin, people saw the jury as fairer, more accurate, better at representing minorities, and more likely to minimize bias. Juries were seen as more expensive, however. Asked about their views of juries of different sizes and decision requirements, poll participants saw the 12-person unanimous jury as most accurate, most thorough, fairest, most likely to represent minorities, most apt

to minimize bias, and most likely to listen to holdouts. The 12-person unanimous jury was preferred for serious crimes such as murder, whereas for minor cases such as shoplifting, smaller nonunanimous juries were favored.

British and U.S. citizens show hesitancy about juries in one prime domain: terrorism cases. In two separate polls in 2002 and 2005, British samples were closely divided in whether they agreed or disagreed that denying the right to a jury trial was a “price worth paying” to counteract a terrorist threat (Roberts & Hough 2007). Americans are also divided, with a slight preference for jury trials (49%) over military courts (46%) for dealing with people suspected of terrorist attacks against the United States (CBS News/New York Times 2006). The clever design of one survey showed the importance of the terrorism context. U.S. respondents in half the sample of one poll were told that in the past “the United States has tried suspected murderers in criminal court, requiring a jury, a unanimous verdict, and a civilian judge” (CBS News/New York Times 2001). They were asked whether they thought this was the right way to deal with suspected murderers. Fully 82% endorsed the criminal jury trial. When the question wording was changed slightly for the other half of the sample, so that it was suspected terrorists who were on trial, just 53% agreed it was the right way. Scheppele (2006) observes that terrorist attacks create an environment in which constitutional rights are vulnerable. The right to jury trial is no exception.

Most public opinion surveys to date have asked about the criminal jury; civil juries are used infrequently outside the United States. American surveys on the civil jury reveal some concerns about civil jury trial outcomes, especially jury awards (for summaries, see Hans 1993, 2000; Kritzer 2001). For example, significant numbers of the public assert that civil jury verdicts are “excessive” and “too large.” They are nearly evenly divided on whether jury awards are “out of control” or “generally reasonable” (Kritzer 2001). Kritzer (2001) reports that those who say they follow local or national political news very closely have higher

estimates of typical civil jury awards compared with those who are less attentive to national political news. News media coverage that typically overrepresents high jury awards (Bailis & MacCoun 1996, MacCoun 2006, Haltom & McCann 2004) along with plaintiff lawyer advertising and tort reform campaigns appear to produce exaggerated ideas of typical jury trial outcomes (Hans 2000).

Although there is substantial research on the effects of demographic and other factors on juror decision making (Vidmar & Hans 2007), few researchers have focused on whether demographic differences exist in support for the jury. Rose and colleagues (2008) found that while African Americans, Hispanics, and non-Hispanic whites favored juries over judges, the preference for the jury was strongest among the non-Hispanic whites. Racial minorities may be less enthusiastic because although symbolically the jury stands for full participation of the citizenry, the jury is created by government actors and government actions, has historically underrepresented racial and ethnic minorities, and has been linked to racist verdicts.

Furthermore, the experience of racial and ethnic minorities on the jury may be less positive compared with those in the majority. Antonio & Hans (2001) found that non-Hispanic whites who served as civil jurors were more satisfied with their deliberation than racial and ethnic minority jurors. An intriguing finding of Rose and colleagues (2008) is that Hispanics who were less acculturated to the United States—those who took their Texas survey in Spanish rather than English and those who were not U.S. citizens—showed a clear preference for a judge over a jury, in contrast to all the other groups. Rose and her coauthors explain that these less acculturated Hispanics may worry most about discrimination by the jury; but even more fundamentally, they are more familiar with the (Mexican) legal system that does not typically use juries.

These findings suggest that juries in the United States, Great Britain, and Commonwealth countries may enjoy strong public support because they have long been an accepted

part of the political and legal landscape in common law countries. There is extensive direct and indirect experience with juries, and people are comfortable with the idea of lay justice.

What happens, then, with more recently adopted jury systems in civil law countries? In Spain, where the jury was introduced in democratic reforms following the demise of Franco's totalitarian regime, the Spanish public has shown ambivalence toward its new jury system (Martín & Kaplan 2006). Many Spanish academics, professional judges, and some political groups prefer the mixed court system of lay and professional judges to the jury.

Roberts & Hough (2007) collected results from several surveys of the Spanish public. In 1996, a year after the jury's introduction, the Spanish public said they preferred to be tried by a jury (49%) rather than a judge (37%), with 14% expressing no preference. However, the following year, right after a controversial jury trial in which the jury acquitted a person charged with killing two police officers, support for the jury plummeted. Then, over half the respondents said they preferred to be tried by a judge, and just 32% preferred the jury. The proportion who agreed that "a jury comprised of members of the public with better experience of the problems of everyday life is better able to arrive at a more just verdict than a judge" dropped from 48% in 1996 to 34% in 1997. Public opinion about the jury may be volatile when it is a novel institution, as opposed to one that is long-standing and has a strong reservoir of public support that allows it to weather even widespread criticisms of particular jury verdicts.

Thaman (2007b) reports that in Russia, where the jury was resurrected in 1993 and extended throughout most of Russia in 2002–2003, there are divided views about the appropriateness of the new jury system. In one survey, about a third of the population thought the introduction of the jury was a positive development and that trial by jury was suitable for Russia. Thirty-nine percent thought it was not suitable. Half of those polled regarded it as difficult for juries to be objective, and a similar

proportion agreed that one could easily buy off or frighten jurors.

In anticipation of legal changes in South Korea, a presidential reform commission surveyed opinion leaders, members of the Korean public, and even prison inmates to ask about their views of citizen participation (Park et al. 2006). Two-thirds of the opinion leaders, including judges, prosecutors, lawyers, religious leaders, business executives, and members of the national assembly, agreed that the judicial system would become more democratic and transparent if laypersons were included as legal decision makers. A similar proportion agreed that such a reform would promote honesty and rationality in Korea. Ninety percent of the Korean public endorsed the jury trial, with many seeing it as a method of achieving social justice. Some did express worry about making mistakes, being biased, or fearing threats or influence attempts. The views of inmates are quite relevant because in the new Korean system, defendants may choose to have a jury or a judge trial. The Korean defendants strongly supported the jury system, seeing it as fairer and offering better protection for defendants' rights.

Japanese surveys, on the other hand, show concerns among the public about participating in the new Japanese *saiban-in seido* set to debut in 2009 (Anderson & Nolan 2004, Bloom 2006, Wilson 2007). Opinion polls reveal that some Japanese worry about participating in the new system (*Kyodo News* 2005, Onishi 2007, Nagano 2007). These Japanese citizens voice reluctance to judge another person and anticipate difficulty determining whether a defendant is guilty (*Kyodo News* 2005).

Fukurai's (2007) research in Japan suggests the possibility that direct experience with *saiban-in seido* might thaw out the current cold shoulder the Japanese are showing toward it. He surveyed Japanese citizens who had participated in Japan's Prosecutorial Review Commission (PRC), in which randomly selected Japanese citizens are asked to review prosecutors' decisions not to indict. Some of these citizens had actually deliberated as part of a PRC, whereas others had not participated in deliberations.

Saiban-in seido:

Japan's mixed decision-making body of six lay citizens and three professional judges that will decide serious criminal cases beginning in 2009

Deliberative

democracy: a political theory that emphasizes the importance of citizen deliberations about policy choices as part of democratic self-governance

Although many said they were initially reluctant to serve, both PRC groups were extremely positive about the experience. They agreed that ordinary people serving could prevent overzealous prosecution and could even prevent future crimes. PRC members said that if they stood trial as defendants, they preferred a jury trial to a judge trial. In a familiar pattern, those who had actively deliberated were much more enthusiastic about the institution and about serving again than those who had not.

The finding across countries that those with direct experience become more enthusiastic indicates that the most effective way to introduce, educate, and persuade a population about the benefits of a new lay participation system is to provide a substantial amount of direct experience with it. Japan has taken that approach in the period leading up to the introduction of *saiban-in seido*, conducting many *saiban-in* proceedings to date. Emphasizing it as a societal contribution and duty may also be effective. Fukurai (2007) reports that when asked about their willingness to serve as jurors, 58% of PRC members who had deliberated and 49% of those who had not said yes. However, when they were asked whether they felt it was their duty to serve as a juror when needed, agreement shot up to 91% and 89% for the two groups, respectively.

Relatively few systematic surveys about public opinion concerning mixed tribunals could be located (Kutnjak Ivković 2003, Machura 2007). Machura (2007) found that most West German respondents expressed general support for lay participation. However, when asked about their own willingness to serve as lay members of mixed courts, the majority of respondents were not enthusiastic. Machura notes, however, that once lay assessors have served, the vast majority are positive about participating again (S. Machura, personal communication).

Kutnjak Ivković's (1999) careful study of mixed tribunals in Croatia surveyed professional judges, attorneys, and lay members of mixed tribunals. The majority of respondents had favorable opinions of mixed tribunals, although there was some variation by region of the country and the specific type of court. Lay

participants were the most enthusiastic group. Interestingly, judges and attorneys with positive views about mixed tribunals reported a higher frequency of lay judge questions during the trial and said lay judges' questions were more important, compared with legal professionals who had more negative attitudes. That suggests the critical importance of judicial support for effective citizen participation in collaborative courts.

In sum, opinions about juries and other forms of lay participation are significant and deserve continued scholarly attention. They relate to the willingness of citizens to participate, to the importance attached to lay participants' comments, and to the perceived legitimacy of governmental institutions. Our review reveals that countries in which juries have existed for many years show strong public and societal support for trial by jury, with more mixed evaluations in countries that have recently introduced or anticipate bringing lay members into the justice system. To move research in this area to the next level, scholars should develop a common set of questions that can be asked across a range of countries and different systems, and track responses over time.

CITIZEN PARTICIPATION AND CIVIC ENGAGEMENT

Across countries, citizens who participate in juries or other forms of lay participation systems become more positive about the use of lay legal decision making and about the legal system. Could such experiences increase civic involvement in other domains?

Participation in meaningful group discussions appears to be a powerful force for informational and attitudinal shifts (Diamond 1993). The deliberative democracy movement among political scientists and policy makers emphasizes the importance of citizen deliberation about political choices and decisions (Gastil & Levine 2005, Gutmann & Thompson 2004). Deliberative democracy theorists maintain that citizen debates, valuable in themselves, also create significant increases in civic participation.

Gastil and collaborators (Gastil et al. 2002, 2008; Gastil & Weiser 2006) confirmed a link between service as a criminal juror and increases in other forms of political participation. Their work took into account the participants' prior voting history because that is strongly associated with the likelihood of future voting. In a county-level study, jurors who served on a criminal jury and reached a verdict voted more often in subsequent elections than jurors who were dismissed, were alternates, or were on hung juries that could not reach a verdict (Gastil et al. 2002). A second study examined court and voting records of over 13,000 jurors in both criminal and civil cases in seven additional U.S. counties (Gastil et al. 2008). Those with strong voting histories did not change after their jury duty. However, jurors who previously had voted infrequently and who served on a criminal jury that deliberated—whether the jury reached a verdict or was declared hung—were more likely to vote after their jury service. Jurors who said their experience exceeded their initial expectations were more apt to engage in a wide variety of other political behaviors (Gastil & Weiser 2006).

One puzzle is that the link between jury service and voting was found only in criminal trials. In civil trials, jury service and voting were not related. This difference suggests a number of potential explanations. In addition to structural differences between criminal and civil juries, such as size and unanimity, the typical criminal trial pits the state against the defendant. The idea of participating in a meaningful community activity may be more prominent in criminal as opposed to civil trials. Then, too, criminal cases may lead jurors to bond together to reinforce their community values in the process of rejecting and punishing the defendant.

Thus far, the link between lay participation and other forms of civic involvement has been demonstrated primarily in the United States. The common finding that jurors (Goodman-Delahunty et al. 2008, Roberts & Hough 2007) and lay participants in other systems (Fukurai 2007; S. Machura, personal communication) are more positive after their service is

in line with the American research and offers the tantalizing promise that civic engagement effects will occur in other countries, but it remains to be demonstrated. The emergence of new lay participation systems offers a timely opportunity to address this issue.

One intriguing question is whether a civic engagement effect will occur with mixed tribunals. A key tenet of deliberative democracy theory is that citizens deliberate as equals. Although there is formal equality in mixed tribunal systems, the roles of professional and lay judges are clearly differentiated. Whether civic engagement effects occur may depend on whether there is an atmosphere of mutual respect, genuine outreach by judges, meaningful participation by lay members, and robust debate (Landsman 2003).

JURY FACT FINDING: THE PROMISE AND REALITY OF CITIZEN DECISION MAKERS

In addition to lay participation's effects on legitimacy, many scholars argue that citizen involvement contributes significantly to accurate legal decision making (Marder 2005, Vidmar & Hans 2007). The inclusion of a representative group from the community is identified as particularly valuable for effective fact finding. The diversity of viewpoints and the opportunity to deliberate together promote thorough evidence evaluation (Ellsworth 1989, Sommers 2006). The topic of jury fact finding competence has generated extensive social science research in the American context and has been reviewed elsewhere, so this review summarizes only the major conclusions of those comprehensive analyses. Most scholars who study jury competence in the U.S. context reach generally favorable conclusions, finding that most jury verdicts are solidly grounded in the trial evidence. The strength of the evidence in the case—whether it is evaluated by the judges or the jurors—is the prime determinant of jury verdicts (Garvey et al. 2004, Eisenberg et al. 2005, Hans et al. 2003, Diamond & Rose 2005).

A line of research comparing the actual verdicts of U.S. juries with the case evaluations of other court actors is interesting in its own right and has applicability to the mixed court context. In this work, spanning five decades, post-trial questionnaires completed by judges, lawyers, and jurors have asked for their opinions and views about the case, including their preferred verdicts (Hans et al. 2003; Heuer & Penrod 1988, 1989; Kalven & Zeisel 1966). Comparing the judge's hypothetical verdict with the jury's actual verdict, researchers have routinely found that judges agree with the jury verdict in a substantial majority of the cases (agreement rates range from about 64% to 80%). When they disagree in criminal trials, jurors are much more likely than the judge to find the defendant not guilty. Civil cases produce similar rates of agreement, but when there is disagreement, there is no asymmetrical preference for one verdict over the other as there is in criminal cases. Civil jury awards tend to differ somewhat from judicial award preferences.

Disagreements occur at similar rates in trials of low and high complexity, suggesting that divergence from the judge is not due to jury fact-finding failures (Heise 2004, Heuer & Penrod 1994, Eisenberg et al. 2005). Instead, jurors appear to require more evidence to convict than judges (Eisenberg et al. 2005). Jurors' ideas about justice and fairness also lead jurors to prefer different outcomes than judges (Hannaford & Hans 2003, Kalven & Zeisel 1966).

Baldwin & McConville (1979) compared jury verdicts in London and Birmingham with the opinions of judges and other legal actors. Although the English project's methodology was not strictly comparable to the U.S. research, there are some striking similarities (Baldwin & McConville 1979). English judges volunteered no doubts about the majority of jury verdicts and reported that the strength of the trial evidence was the major determinant of the verdict. They were more likely to disagree with jury acquittals than with jury convictions, as in the U.S. research. In the judges' opinion, in some

cases jury verdicts were influenced by fairness, sympathy, or equity concerns.

The Crown Court Study surveyed trial participants including jurors in all cases in England and Wales over a two-week period in 1992 (Zander & Henderson 1993). The vast majority of jurors—over 90%—reported no difficulties understanding and remembering the evidence and following the judge's instructions in the law. About one in five jurors on average said that the decision would have been more difficult if the judge had not summed up the facts of the case at the conclusion of the trial; jurors in longer as opposed to shorter trials were more likely to say this (Lloyd-Bostock & Thomas 2000, Zander & Henderson 1993).

Case studies, post-trial interviews, and laboratory experiments have also been employed in the United States and in other jury countries to examine jury decision making (Lempert 1993, Vidmar & Hans 2007). The post-trial interviews and questionnaires allow in-depth looks at jury decision making at the level of individual cases, whereas the experimental work permits researchers to vary aspects of the case and assess the effects albeit with simulated rather than real juries. These methods generally reinforce the importance of evidence to the jurors but also have identified some problematic areas, such as pretrial publicity (Stebly et al. 1999), expert evidence (Vidmar & Diamond 2001), statistical and scientific testimony (Kaye et al. 2007), and death penalty trials (Vidmar & Hans 2007). Some jurors also experience difficulty comprehending judicial instructions in the law (Diamond & Rose 2005).

Whether trial reforms can help jurors manage challenging evidence and instructions has been studied experimentally (Am. Bar Assoc. 2005, Ellsworth 1999, Munsterman et al. 2006, Vidmar & Hans 2007). Researchers have examined the impact of different jury sizes and decision rules; the effects of juror notetaking, question asking, and trial discussions; and the benefits of different approaches to instructing jurors on the law (for reviews of major findings,

see Diamond & Rose 2005, Munsterman et al. 2006).

Jury selection has been extensively studied in the United States (Vidmar & Hans 2007), less so in other countries that generally do not allow as much latitude in the selection of trial jurors. Despite dramatic differences in the legal environments of the United States, Britain, Canada, Australia, and New Zealand, each of these countries has grappled with serious challenges to jury impartiality stemming from massive pretrial publicity in high-profile trials. Researchers have only just begun the fruitful process of comparing and contrasting the different approaches taken by courts in these nations. Vidmar (2000b) notes that comparative work could contribute to policy debates about how best to manage the problem of pretrial prejudice.

There is less extensive research in other nations. Part of the reason is that some of the research methods used to analyze jury competence—those that involve real juries, such as post-trial interviews and questionnaires—are not allowed in other countries. Canadian law prohibits jurors talking about their experience after the trial. In Britain, the Contempt of Court Act was used to deny researchers who surveyed jurors and other court actors the ability to link jurors' responses to other information about the case (Lloyd-Bostock & Thomas 2000, Zander & Henderson 1993). Researchers in Australia (Fordham 2006) and New Zealand (Cameron et al. 2000) had to obtain research exceptions in those countries to conduct studies with actual jurors. Bans on describing the experience of lay participation—such as the one that will affect *saiban-in seido* in Japan (Landsman & Zhang 2008)—will make it difficult to evaluate the system. Restrictions on jury research in some countries may force scholars to rely more heavily on research conducted in countries with greater latitude, even if serious differences between the lay participation systems complicate the inferences that may be drawn.

Nonetheless, the fact that countries have experimented with a wide variety of procedures

relating to the use of lay decision makers offers some tantalizing intellectual thought experiments. What are the effects of increasing the number of verdict options available to jurors? Consider the Scottish jury system, which allows a “not proven” verdict in addition to the traditional guilty or not guilty verdicts (Duff 2000, Hope et al. 2008). Analyzing the experiences of Russian and Spanish juries, whose members are required to provide written justifications for their verdicts, can offer evidence about how posing interrogatories and requiring special verdicts might influence the jury decision-making task (Martín & Kaplan 2006).

CITIZEN POWER ON THE JURY

The romantic notion of trial by jury envisions an unfettered community voice. Even though jurors do not deliberate with judges, as happens in the mixed tribunal settings, the legal context for all-citizen jury trials offers substantial constraints. The historical record on jury trials shows that the power of juries to find the facts and the law has varied in different historical periods. The earliest juries in England found both the law and the facts (Meyler 2006). As the legal profession matured first in Great Britain and later in the United States and professional judges increased in number, enthusiasm for lay decision making, especially lay interpretation of the law, waned. A distinction between “the law” and “the facts” emerged, with judges to provide the first and juries to decide the second (Meyler 2006). Today, only a few U.S. states still give the jury the formal authority to determine the law as well as the facts (Hannaford & Hans 2003).

The common law judge's role in admissibility decisions also circumscribes the jury's role. Rules of evidence originally developed to attempt to counteract what were seen as likely biases emanating from an untutored jury, and these rules today still place significant limits on what evidence can be heard by the jury (Shauer 2006). (Interestingly, lay members of European mixed tribunals often see the type of evidence that is withheld from British and U.S. juries.)

In England and Wales, at the close of the trial, judges may comment on the evidence and witnesses during the summing up (Lloyd-Bostock & Thomas 2000). The wide latitude given to British judges raises the concern that jurors may be overly influenced by their summing up. Such judicial influence is difficult to study with sitting jurors, but the Crown Court Study (Zander & Henderson 1993) asked jurors whether the judge's summing up was tilted, and if so, whether the tilt was justified by the evidence. Two-thirds of the jurors reported that judicial remarks were not tilted. Those who perceived a tilt mostly agreed that the tilt was justified by the evidence. Most jurors decided the case in line with the judicial tilt, although it was not possible to distinguish between the impact of the judicial comments and the impact of the evidence itself.

Thaman's (1995, 2007a,b) careful case study of the Russian jury illustrates how social and political forces can dramatically curtail jury power. A jury system was reintroduced in 1993 in Russia along with other democratic and legal reforms as the Soviet Union was being dismantled. Soviet-era trial courts had employed a mixed tribunal system in which one professional judge decided cases together with two people's assessors. In turn, the professional judge, regularly approached by party or government officials with verdict recommendations, often acquiesced to the prosecutors' conclusions based on preliminary investigations (Thaman 1995). An adversary system of jury trial was viewed as a more effective and independent method of citizen input.

In practice, though, the new Russian jury system has been undermined (Thaman 2007a). Trial judges may return cases that seem to be insufficient for conviction to the prosecutor for further investigation, even in the midst of an active jury trial. Rather than rendering general verdicts, Russian juries are required to answer specific, often complex questions about their fact finding, and if they make errors, the judgment may be set aside. Appellate judges frequently overturn jury acquittals, and the cases are retried to new juries. The judiciary's ability

to remove cases from the jury during the trial, to control the jury's voice through structured questions, and to overturn both jury convictions and jury acquittals contributes to a weak form of jury trial in Russia. Russia's professional judges remain powerful even in the most independent seeming variant of citizen participation. The findings further illustrate the critical importance of understanding the political, economic, and social context for effective citizen involvement.

FACT FINDING AND CITIZEN POWER IN MIXED TRIBUNALS

The composition of a mixed tribunal would seem to facilitate strong fact finding, as it joins the legal knowledge and experience of professional judges with the diverse backgrounds and substantial community knowledge of the lay judges. Citizens can educate professional judges who might be out of touch with community norms and values. Likewise, if lay participants on mixed tribunals are ignorant of the law or voice arguments based on passion or prejudice, the law-trained members of the mixed tribunal can inform and reorient them.

Yet the combining of lay and law-trained judges into one decision-making body has another inherent challenge: potential domination by the legal experts. A number of procedural features permit professional judges to dominate collaborative courts if they are so inclined (Kutnjak Ivković 1999, 2007). The presiding professional judge usually controls access to the case file and manages the trial, including summoning the defendant, calling and questioning witnesses, and appointing experts. Supplementary questions by lay assessors are often funneled through the presiding judge. Rennig (2001) notes another advantage: Even if the professional judge is outvoted by the lay members, the judge alone writes the reasons underlying the tribunal's judgment.

Kutnjak Ivković (1999, 2007) argues that status differences along the relevant dimension of law, combined with these procedural advantages, help to explain the strong

influence of professional judges within mixed tribunals. Group members develop expectations about participants' contributions partly on the basis of status characteristics, especially those that are relevant to the fact finding task. Those high in relevant status characteristics receive more opportunities to speak and more favorable reactions when they do (Kutnjak Ivković 2007). The relevant status characteristics of legal training and legal fact finding experience give another important advantage to the professional judges in mixed tribunals.

If the law-trained judge controls the proceedings and the deliberations and does not encourage lay participation, it lessens the potential fact finding advantages of a diverse decision-making body. Citizen participation could be mere window dressing, unjustly enhancing the legitimacy of the legal system while allowing no meaningful input. Or, if the professional judge's domination is widely known or assumed, the tribunal's legitimacy could suffer as well.

The research on mixed tribunals is not as extensive as that on juries. Deliberations and votes are typically confidential (Rennig 2001). Nonetheless, researchers have gathered opinions from lay and professional judges about their general experiences. A consistent finding from this research is, as expected, minimal participation by lay judges and domination by professional judges (Kutnjak Ivković 2007; Machura 2001, 2003; Rennig 2001). Lay judges in mixed tribunals do not tend to follow the trial closely. They ask few questions and contribute only modestly to the tribunal's deliberations. Lay judges typically agree with the professional judges, and when they disagree it is most often the lay judges rather than the professional judges who change their votes. Many verdicts are unanimous.

Kutnjak Ivković's (1999) study of Croatian mixed tribunals compared the views of both professional and lay judges and discovered divergent perspectives on the lay members' contributions. In the eyes of most professional judges, lay judges' contributions were infre-

quent and only somewhat important. However, the lay judges asserted that they made comments more often. The strong majority of both groups said that disagreements between lay and professional judges occurred in only a few cases at most. Other studies of mixed tribunals show very low rates of disagreement. For example, lay and professional judges disagree in only 1% to 3% of all criminal cases in Sweden (Kutnjak Ivković 2007). Machura (2001) surveyed lay assessors in two German jurisdictions. Most said they had sufficient and fair opportunity to ask questions. However, less than one-fifth of lay judges reported that they had stated a divergent opinion during deliberations (Machura 2001).

These limited but consistent data point to a dominant role for professional judges. Nonetheless, the previously described high judge-jury agreement rate in U.S. and British jury studies suggests that even if professional judges exerted zero influence on citizen decision makers in the deliberations of the tribunal, there would likely be substantial agreement. Typical judge-jury agreement rates are in the 64%–80% range. Tribunal agreement rates appear to exceed 90%. The difference between these two figures might be our current best estimate of deliberation influence of tribunal members on one another.

The collected research suggests some testable propositions about how to maximize the input of lay judges. Supportive professional judges who actively welcome and effectively facilitate full debate appear critically important. Larger tribunals with substantial numbers of lay members and a favorable ratio of lay to professional judges—characteristics of the French collaborative court model—may also promote more effective lay participation. To prepare lay participants for meaningful trial participation, one might consider giving lay judges sufficient time to examine portions of or the complete case file in advance of the trial (jurisdictions vary on whether lay members may review the case file). However, case files often include potentially prejudicial information in a defendant's criminal record or police reports. The chance

Status characteristics theory: proposes that group members' attributes or status characteristics shape their social interaction

of bias may outweigh the informational advantages of the case file review.

One issue that has not been studied systematically is how the mere presence of laypersons on the mixed panel changes the thinking of judges, and vice versa. Judges deciding with other judges in one case and with laypersons in another likely think about and approach the case somewhat differently. Some of the research on jury diversity (Sommers 2006) and public members of medical boards (Horowitz 2008) suggests that anticipating deliberation in a mixed group and the mere presence of diverse others in a group discussion may alter it. The possibility of anticipatory effects is worth exploring.

Mock tribunal methodology can be used, as mock jury research has been employed, to explore ways to enhance decision making. Projects in Korea and Japan have taken this approach to examining how citizens understand new and complicated legal terms when they confront them for the first time (Fujita 2006) and how professional and lay judges communicate within a mixed tribunal deliberation (Kim 2006).

A RESEARCH AGENDA FOR COMPARATIVE STUDY OF LAY PARTICIPATION SYSTEMS

This review concludes by identifying some of the theoretical and empirical questions necessary to advance understanding of the phenomenon of citizen participation in legal decision making.

Comparative Context

How does citizen participation interact with the cultural, political, economic, and legal traditions in different countries? Countries in which lay participation might do well are those with an educated public that understands its responsibilities and generally agrees with the laws, with sufficient resources to afford the costs of the system, and with a supportive legal and political culture (Vidmar 2002). Racial, cultural, linguis-

tic, and religious homogeneity have also been identified as important preconditions for successful systems. Racial homogeneity seems like a questionable factor, considering the firm entrenchment of the jury system in the ethnically and racially diverse United States. However, cases with racial overtones do produce great challenges in U.S. jury trials.

The existence of juries and lay assessors in nondemocratic systems raises the question of whether only democratic and open governments are capable of genuine lay participation (Lempert 2007). China's little-studied lay assessor system has expanded dramatically in recent years (Landsman & Zhang 2008). Comparative analysis of socialist and democratic lay participation systems provide a chance to contrast lay legal decision making within these political systems. Confirming the societal conditions that promote and restrict effective citizen involvement is an important priority for comparative study.

Jury Power

Lempert (2007) advocates the development of a global taxonomy of jury power. We are not yet at the stage of a complete account, but the basic contours can be identified. Depending on the specific legal frameworks, systems in which lay citizens deliberate independently and give binding verdicts (particularly those that cannot be readily overturned by trial or appellate judges) seem to afford the most power. Mixed tribunals in which lay citizens decide together with professional judges would appear to offer lay citizens the weakest platform. Citizens who participate in expert assessor collaborative courts might derive more influence from their particular expertise, but because they are selected on that basis, they are not as likely to represent the full spectrum of community attitudes as are juries or the lay members of mixed tribunals (Horowitz 2008). In truth, judges have a great deal of power in both systems. However, in mixed court systems their influence is hidden, whereas in most jury systems the communications between judge and jury are open to view.

How variations in formal roles and procedure affect jury power deserves systematic analysis.

Introducing New Lay Participation Systems

Fascinating questions arise in thinking about how best to prepare the citizenry for participation. Korea, Japan, and Argentina are among the countries that have faced this challenge most recently. The research described here indicates that promoting direct experience with legal fact finding can be a successful approach. Jury service routinely enhances regard for the system, and under some circumstances has broader collateral benefits. Mock *saiban-in seido* proceedings, albeit with interested participants, has likewise promoted more positive views about Japan's new system (Fukurai 2007). Thus, countries that are in the process of introducing a new system of citizen participation should invite citizens to participate in such proceedings. Careful study of participants' responses can allow policy makers to adjust the procedural features to better promote citizen participation.

Civic Engagement Effects

We do not yet completely understand the mechanisms by which jury participation enhances civic engagement, even in the United States context, where researchers have found jury service increases the likelihood of voting. What features of citizen participation are essential to promote it? Is it unique to the United States or, as Fukurai (2007) argues, likely to occur in Japan and elsewhere? Will deliberating with elite and powerful judges produce the same effect as deliberating with other members of the citizenry? Discoveries about the functioning and impact of mixed tribunals could contribute to theoretical debates over deliberative democracy.

Methodological Issues

Systematic comparisons across studies of different types of jury systems are challenging

because research projects on different systems often begin with distinct theoretical questions and take divergent methodological approaches. In future there is a need for explicitly cross-national work that asks the same questions with identical or near identical methodologies. If confidentiality issues can be resolved, the judge-jury agreement approach used in American and British research studies could be usefully employed elsewhere. For example, in Korea, the new jury system will render only advisory verdicts during a five-year experimental phase. During this period, the actual decisions of judges in particular cases could be contrasted with the advisory verdicts given by the jury. Experimental research under way in Japan (Fujita 2006) and Korea (Kim 2006) has explored the patterns of communication in mock mixed tribunals. How does communication in mixed tribunals compare to that in juries and other small groups?

First-rate research on comparative lay participation systems, however, will require moving outside traditional jury research methods. A good deal of empirical research on the jury's functioning has been conducted by social psychologists in the laboratory. High-quality studies of the operation of the lay participation systems of multiple countries demand other research skills and approaches and require an appreciation of cultural and political contexts, factors that are not normally evident in single-nation studies. Interpreting jury system outcomes will also require taking into account diverse legal rules and the actions of litigants and their lawyers that determine what cases are selected for lay decision making (Clermont & Eisenberg 1992). In short, it will be necessary to integrate the traditional approaches to studying juries with the methodologies of comparative research.

Lay Participation and Human Rights

A century ago, the legal theorist Roscoe Pound proclaimed that "[j]ury lawlessness is the great corrective of law in its actual administration" (Pound 1910, p. 18). He referred to the jury's

ability to decide cases in line with community sentiment when a strict application of the law would be inappropriate or unfair in an individual case. Nonetheless, the vision he celebrated has a dark side. The latitude given to lay legal decision makers allows community prejudices to be reflected in jury decisions. The U.S. work on jury nullification indicates that outright nullification is rare. Jurors take their jobs seriously. Community sentiments have their greatest impact when the evidence is close and

either verdict can be justified. Nonetheless, Jackson & Kovalev (2006/2007) raise the important question of whether traditional jury systems that refrain from requiring justification of verdicts may someday be judged to be inconsistent with human rights standards. As we embark on new comparative work on lay participation systems around the world, one of the most important questions is whether and how justice is served by the inclusion of the citizenry into decision-making roles in the legal system.

SUMMARY POINTS

1. Comparative work on the diverse ways that countries employ lay citizens as legal decision makers holds significant promise. It may deepen our understanding of the strengths and limits of lay participation and could show whether direct citizen participation affects the relationship between the individual and the state.
2. In nations that have long used juries, the right to a jury trial continues to be cherished by the public even in the face of occasionally controversial verdicts. In contrast, support for new jury systems is more vulnerable. Direct participation as a juror or a member of a mixed tribunal increases regard for the legal system and support for lay involvement. Jury service also has been found to increase other forms of civic engagement.
3. Juries composed entirely of citizens appear to have more power than laypersons in mixed decision-making bodies of lay and professional judges. Procedural and social psychological factors facilitate the domination of the professional judge in mixed tribunals. However, political, legal, and social factors can constrain lay citizen power under both of these forms of lay participation.

FUTURE ISSUES

1. Newly emerging systems offer an important scientific opportunity to observe whether legal consciousness and the public legitimacy of the legal system are affected when citizens participate as decision makers. This issue has been difficult to study with stable existing systems.
2. Although it will be demanding, work on world jury systems should adopt an explicitly comparative approach, combining jury research methods with the distinctive methodologies of comparative law and society scholarship.

DISCLOSURE STATEMENT

The author is not aware of any biases that might be perceived as affecting the objectivity of this review.

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Comprehensive volume with chapters that describe the range and features of diverse jury systems worldwide.

RELATED RESOURCES

- Jury and Democracy Project. <http://depts.washington.edu/jurydem/index.html>
- Lay Participation in Law International Research Collaborative. 2007. <http://www.lawschool.cornell.edu/research/lay-participation-in-law/index.cfm>
- Lay Participation in Legal Systems Collaborative Research Network. 2008. <http://www.lawandsociety.org/CRN/crn4.htm>