

By bringing together a group of scholars who represent a variety of academic disciplines and come from nine different countries, the editors have provided us with an exemplary comparative study that makes a major contribution to the study of law and disasters in Japan, in Asia, and in the world. This is a book that deserves to be read by anyone interested in the critical legal, political, ethical, and policy questions raised by the occurrence of, and recovery from, disasters.

Eric A. FELDMAN

University of Pennsylvania Law School

Matthew J. Wilson, Hiroshi Fukurai, and Takashi Maruta, *Japan and Civil Jury Trials: The Convergence of Forces* (Northampton, MA: Edward Elgar, 2015) pp. 208.
doi:10.1017/als.2016.48

First published online 8 August 2016

Matthew J. Wilson, Hiroshi Fukurai, and Takashi Maruta's book *Japan and Civil Jury Trials* examines the development of the lay judge system, *saiban in seido*, in criminal trials in Japan. The six lay judges and three professional judges contribute their views and perspectives in order to reach a verdict and sentence. The authors argue that lay participation in Japan should be extended to include civil cases and that citizens should serve on all-citizen juries. They believe that parties and citizens would benefit and that citizens are ready for such service because they have had experience with *saiban in*. Their argument is an important one and needs to be heard in Japan, the US, and countries that are considering a jury system.

In making this argument for civil jury trials, the authors begin by explaining how and why Japan moved to a lay judge system. Interestingly, the impetus to involve ordinary citizens in the criminal justice system came from lawyers in Japan who thought it would be good for citizens to be engaged in the justice system. They also believed it would lead to government transparency, as lawyers and judges had to explain cases in a way that ordinary citizens could understand. They even thought it might spark greater economic activity. Not surprisingly, judges initially resisted the idea. After all, they had spent years training for their profession and were reluctant to share their position with lay judges. Perhaps most surprising is that Japanese citizens initially opposed the idea of serving as lay judges. They thought that professional judges performed their task well and that there was no need for citizens to serve in this capacity. In addition, they worried about the time commitment, their lack of qualifications, and the possibility that defendants might retaliate against them.

In spite of Japanese citizens' initial qualms, their experience as lay judges has generally been positive. Indeed, the authors suggest that Japanese citizens benefit from their service as lay judges in many of the ways that American citizens benefit from their experience as jurors. In 1835, in *Democracy in America*, the French writer Alexis de Tocqueville described the benefits of the American jury. Tocqueville had travelled throughout the US in the early 1830s and observed its institutions, including the jury. Tocqueville wrote that citizens who serve as jurors are raised to the "judges' bench." One of the features that Japanese citizens appreciate today is that they are raised to the level of the judge. Tocqueville recognized that the jury was a source of

education when he described the jury as a “free school.” The lay judge, who works with fellow lay judges and professional judges, also receives an education in how legal decision-making works. Tocqueville concluded that the American jury was “above all a political institution” because it allowed jurors to check the power of judges, and allowed the judiciary to check the power of the executive and legislature. The lay judge system in Japan serves a similar function. The authors apply insights from Tocqueville to demonstrate that there are advantages to having Japanese citizens participate in legal decision-making in criminal cases.

The authors also use Tocqueville’s arguments to make the case for Japan to extend citizen participation to civil juries. They recommend all-citizen juries, rather than mixed tribunals. In doing so, they remind readers why the jury is so important. In the American popular press, the advantages of a jury system are often overlooked. Thus, the authors provide an important antidote to the popular portrayal of the American jury by reminding readers that juries make many important contributions, including the following: juries introduce the commonsense judgment of the people into legal decision-making; they broaden the public’s exposure to the law; they teach citizens to think more judiciously; they enhance democratic engagement; and they keep judges, who can be isolated, more in touch with the experience of ordinary citizens. The authors even offer a practical consideration: courtrooms have already been altered to accommodate lay judges in criminal cases, so no additional renovations are needed to accommodate all-citizen juries in civil cases.

The book also places Japanese lay participation in a global context, thus providing a useful framework for the reader. The authors identify a number of countries that have moved in the direction of adopting juries. Although some of these countries have not yet implemented a jury system, they still aspire to do so. The authors note that countries across the globe—in Latin America, Eastern Europe, and Asia—have begun to experiment with juries and that Japan should be part of this growing movement.

The authors argue that Japan should adopt all-citizen juries to hear civil cases and that Japan is ready for such a change. Japanese citizens have had experience serving in criminal trials and are thus prepared to embrace civil juries. Moreover, they have had recent experiences, such as the nuclear disaster at Fukushima, in which justice was not done, so that there is a compelling reason for them to have their voices heard. The authors firmly believe that civil juries will empower Japanese citizens and that the citizenry is ready to embrace this power. To respond to concerns of judges who might be reluctant to move in this direction, the authors could turn to Tocqueville again. Tocqueville argued that in civil cases, jurors take their cue from judges and learn important lessons about judicial thinking that they will use when they return to their private lives. Thus, Tocqueville argued that civil juries extend the reach of judges even more than criminal juries, so judges should welcome civil juries.

This book is optimistic about the jury, about empowering citizens, and about the role that juries serve in helping citizens to secure just results from their legal system. Juries are often portrayed in a negative light. The authors challenge this portrayal and make an important contribution by setting the record straight. Their positive message about the jury and its role in a democracy is essential reading for students and faculty alike.

Nancy S. MARDER
IIT Chicago-Kent College of Law