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AN INTRODUCTION TO COMPARATIVE JURY SYSTEMS

NANCY S. MARDER*

The jury is experiencing a renaissance worldwide. Countries that have never had a jury system, or have had one in the past, have turned to citizens to decide criminal cases. Countries, especially those that aspire to be more democratic, have begun to recognize the importance of having ordinary citizens participate in the criminal justice system. Meanwhile, countries with a longstanding jury tradition continue to maintain that tradition. As some countries consider how best to introduce the jury, or some variation of it such as a mixed court of laypersons and professional judges,¹ and other countries consider how best to improve their jury system, it is essential for jury scholars to share their ideas and observations. This symposium on “Comparative Jury Systems” brings together jury scholars’ writings about their own or other jury systems so that the knowledge of different jury practices appears in one place and can generate new ideas about how one country’s jury practices might lead to new practices in another country’s jury system.²

An exploration of jury systems in other countries poses several challenges. First, it is not easy for American academics to know who is writing about juries in other countries. Often there is a language barrier. These scholars might publish in their own languages, and not in English. Second, there is the difficulty, as the *Chicago-Kent Law Review* can attest to,³ that

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1. I will use “jury” or “jury system” to include not just traditional juries, but also other forms of lay participation, such as mixed courts, even though traditional juries and mixed courts can have different dynamics and different drawbacks.

2. There have been other efforts to bring together jury scholars and to report on jury systems in other countries, and these collections have provided essential groundwork for comparative jury studies. See, e.g., *WORLD JURY SYSTEMS* (Neil Vidmar ed., 2000); *The Rising Tide: Citizen Participation in Legal Decision Making: A Cross-Cultural Perspective*, 40 *CORNELL INT’L L.J.* 303 (2007).

3. I thank the *Chicago-Kent Law Review* students, who have had to contend with the many foreign sources found in this symposium. I and the other contributors to this symposium appreciate the students’ enormous efforts to produce this symposium. They have had to rely on authors to do their own translation of sources and have not always been able to verify, as they would have liked to do, that sources support the points for which they have been cited. Although this is one function of a law review, it is not the only function. Another function is the exchange of ideas, and this function has been fulfilled. We live in a global economy, and through the students’ efforts, we are able to have a global exchange. Although this symposium posed a challenge to the *Law Review*, the students’ perseverance and hard work have made this symposium possible, and we, the contributors, thank them for it.

these scholars' writings depend on foreign sources. These jury scholars, writing in their own language and publishing in their own journals, rely on sources that are inaccessible to an American audience. We have difficulty obtaining these sources, and even when we do, we cannot read them. Thus, it is necessary for these writers to share their observations about their jury systems in English and to translate relevant parts of their sources for us. They have to perform double duty.

Fortunately, there are several organizations that bring together American and foreign jury scholars so that their work can cross borders. One organization is the Law & Society Association (LSA), and in particular its Lay Participation in Legal Systems Collaborative Research Network (CRN) and Lay Participation in Law International Research Collaborative (IRC). These networks allow jury scholars to meet, to read each other's work, and to undertake projects together. This symposium is an outgrowth of these annual meetings and exchanges. In fact, many of the contributors to this symposium will present their work as part of two panels, "Comparative Jury Systems: Australia, Canada, England, and Wales" and "Comparative Jury Systems: France, Germany, Japan, Russia, South Korea, and Spain," at the LSA Annual Meeting in 2011.

Another network available to jury scholars to present their work and to reach across borders is the Jury Center at Chicago-Kent. The mainstay of the Jury Center is its website.⁴ It includes a Selected Annotated Bibliography, with citations to recent jury scholarship (since 2009) and brief summaries of the articles. The entries are organized by category, including one on "comparative jury studies." The Jury Center website also includes several special projects. The website is intended to serve as a resource to jury scholars all over the world. Closer to home, the Jury Center also hosts an International Fellow at Chicago-Kent. This arrangement enables a jury scholar from a foreign country who wants to conduct jury research in the United States to spend a year at Chicago-Kent, and in doing so, to share his or her expertise with American jury scholars.

These ongoing efforts to exchange ideas about jury systems in different countries allow jury scholars to learn from other countries' jury experiences. Jury practices are not written in stone. Even though jury practices might be of ancient lineage, they are not beyond improvement. What works well in one country might work well in another country. By examining jury systems outside our own, we can learn about new practices and see if they would improve our own jury system.

4. The Jury Center website at Chicago-Kent can be found at: www.kentlaw.edu/jurycenter.

Similarly, a problem in one jury system may be a problem in another jury system and a solution in one country might well provide a solution in another country. For example, Judge Barker described in his *Foreword* the challenge that judges in England face with jurors who communicate online while they are serving as jurors.⁵ Once online, they search for answers to questions that arise during trial, convey their thoughts or impressions about the trial, or ask others for advice. These jurors engage in conduct prohibited by their oath and the judge's instructions.⁶

Judges in the United States face the same challenge with jurors who use the Internet during the trial and engage in prohibited conduct, whether inadvertently or intentionally.⁷ To counter jurors' tendency to use the Internet in inappropriate ways, some courts in England and the United States have rewritten their respective jury instructions to make sure that they are specific about which online communications are prohibited, why it is so important that jurors not communicate with anyone online about the trial, and why jurors must not consider any evidence except that which is presented in the courtroom.⁸ Nobody knows if these new instructions will be effective, but once researchers start studying the effects, then jury systems in both England and the United States will benefit from their findings.

There are other ways that jury scholars can learn from other countries' jury systems. For example, some countries, such as Russia⁹ and Spain,¹⁰

5. See Brian Barker, *Foreword: Communication and Investigation in 2011: Can Our Jury System Cope?*, 86 CHI.-KENT L. REV. 449 (2011).

6. See *id.* at 450.

7. For an article describing the problem in the United States, see Thaddeus Hoffmeister, *Google, Gadgets, and Guilt: Juror Misconduct in the Digital Age*, 83 U. COLO. L. REV. (forthcoming 2011).

8. For a recently rewritten instruction for federal district court judges to give jurors as to why they cannot consult the Internet, see www.uscourts.gov/newsroom/2010/DIR10-018.pdf. For a recently rewritten instruction for Illinois state court judges to give jurors, see ILL. SUP. CT. COMM. ON PATTERN JURY INSTRUCTIONS IN CIVIL CASES, ILLINOIS PATTERN JURY INSTRUCTIONS—CIVIL 1.01 (Preliminary Cautionary Instructions) (forthcoming 2011 ed.).

9. The jury trial was introduced in Russia by Alexander II in 1864, and was abolished by Lenin and the Bolsheviks in 1917. See Stephen C. Thaman, *The Good, the Bad, or the Indifferent: 12 Angry Men in Russia*, 82 CHI.-KENT L. REV. 791, 792, 794 (2007). The jury was gradually replaced by a mixed court of one professional judge and two "people's assessors." *Id.* Russia reintroduced the jury trial in 1993 in nine of its regions and territories, and between 2001 and 2009, it extended the jury "to its entire realm." Stephen C. Thaman, *Should Criminal Juries Give Reasons for Their Verdicts?: The Spanish Experience and the Implications of the European Court of Human Rights Decision in Taxquet v. Belgium*, 86 CHI.-KENT L. REV. 613, 619 (2011) [hereinafter Thaman, *Should Criminal Juries Give Reasons for Their Verdicts?*].

10. Spain included trial by jury in its democratic constitution of 1978, but did not pass legislation to implement it until 1995. See Thaman, *Should Criminal Juries Give Reasons for Their Verdicts?*, *supra* note 9, at 619. Spain had had jury systems intermittently from the mid-nineteenth century through Franco's victory in the Spanish civil war in 1939. See *id.* at 628 n.88.

have returned to a jury system after a period without one. Countries that have recently resurrected or adopted a jury system can look to countries with a longstanding jury tradition, such as England, Australia, Canada, and the United States, to see what works and what does not. Of course, a practice that works in one country might not work in another, particularly given differences in culture, tradition, or history. So, countries need to make adjustments and tailor practices to fit with their citizens' expectations and experiences.

Some countries have adopted a mixed tribunal consisting of a mix of professional judges and laypersons, rather than a jury consisting wholly of laypersons. Japan has opted for this arrangement, as have France, Germany, and Córdoba, Argentina. Although these mixed tribunals provide a means of introducing citizens' values into the criminal justice system, they also create new challenges that a traditional jury system does not face, such as ensuring that laypersons feel as free to speak during the deliberations as the professional judges, in spite of the disparity in training.

What all of these jury systems—broadly defined to include traditional juries of laypersons and mixed tribunals of laypersons and professional judges—reveal is that the jury is a way to introduce community values into a country's justice system. The jury is longstanding in some countries, new to other countries, and a return to a past practice for still other countries. Thus, one has to take a comparative perspective in order to appreciate all the ways in which jury systems are thriving and spreading. There are new countries with democratic aspirations that hold out the hope of adopting a jury system, even if they have not yet been able to realize that hope.

In the interest of furthering a comparative approach to juries, scholars from around the world have written about their jury system and have focused on new developments, new directions, or new or recurring problems. Whether they take a quantitative, qualitative, or theoretical approach, the goal is to share knowledge about jury systems in countries around the world.

Beginning with the common-law countries, David Tait, a member of the Justice Research Group in Sydney, Australia, examines the Australian practice of placing criminal defendants in a glass-enclosed dock during the trial and what effects this might have on jurors. In *Glass Cages in the Dock?: Presenting the Defendant to the Jury*,¹¹ he considers different countries' practices of placing a defendant in the dock, and how these practices

11. David Tait, *Glass Cages in the Dock?: Presenting the Defendant to the Jury*, 86 CHI.-KENT L. REV. 467 (2011).

have changed over time. England still uses a dock; Australia uses a glass-enclosed dock; and the United States has abandoned the dock. In the United States, the move has been to have the defendant sit next to his counsel, whereas in Australia and England, the defendant is isolated from his counsel and from other participants in the courtroom.

Tait draws from the American practice and suggests that there are certain values that should be promoted whether a dock is used or not. For example, the dignity of the defendant and his ability to communicate with counsel should be protected. Similarly, courts should consider the jurors and the visual message that a dock, and particularly a glass-enclosed dock, conveys. Courts in Australia that continue to use a glass-enclosed dock need to make sure that it does not lead to juror fearfulness of or prejudice toward the defendant. Tait focuses on two high-profile terrorism cases in Australia in which the defense challenged the glass-enclosed dock and the court agreed that the glass should be removed. In the context of these two cases, the judges agreed that the glass undermined basic principles of the dignity of the defendant and the presumption of innocence and that it was important to preserve these principles in the minds of the jurors.

As Regina Schuller and Neil Vidmar explain in *The Canadian Criminal Jury*, although the Canadian jury system is based on English common-law, the Canadian jury has several practices that are unique to Canada, and they describe these practices in their Article.¹² For example, jury selection in Canada entails “triers,” who are members of the jury panel, and who begin the process of selecting the jury.¹³ Two triers are randomly selected from the jury panel, and they question a third individual, also from the panel, to decide whether that person can be impartial. If found to be impartial, that person becomes Juror #1, and one of the two original triers is excused. The second trier and Juror #1 then determine whether the next randomly selected person from the panel can be impartial, and if so, that person becomes Juror #2. Juror #1 and Juror #2 then assess the impartiality of the next person called, who would then become Juror #3, and the process continues until a jury has been selected.

The Canadian method of jury selection involves only laypersons, in contrast to the American method where juror impartiality is challenged by lawyers and decided by the judge. One criticism of the Canadian method is not that it entails laypersons, but that the yes-or-no questions the triers are permitted to pose to a panel member are limited and may not elicit bias.

12. Regina Schuller & Neil Vidmar, *The Canadian Criminal Jury*, 86 CHI-KENT L. REV. 497 (2011).

13. *See id.* at 516–17 (providing a description of the Canadian for cause challenge process).

But as Schuller and Vidmar point out, the challenge for-cause procedure is “in a state of change and development” and reflects “changing social conditions in Canada and an attempt to provide a remedy to foster the legal goal of a fair trial and public perceptions of fairness.”¹⁴ Several other aspects of the Canadian criminal jury that Schuller and Vidmar describe are also in a state of flux, such as the treatment of aboriginal defendants and jurors and ways of protecting defendants from other forms of racial and ethnic prejudice. The Canadian jury system has made strides in addressing these challenges through the use of interpreters and the incorporation of more traditional forms of aboriginal dispute resolution as part of the jury system in certain areas.

In a study based on two weeks of observations of jury trials and interviews with judges and barristers at the Old Bailey in London, I describe in *Two Weeks at the Old Bailey: Jury Lessons from England*¹⁵ several English jury practices that would benefit American jurors and that we should adopt immediately, and other practices that we should adopt over time because they are likely to meet with initial resistance. Among the practices that we should adopt right away is the practice of giving jurors what the English call a “jury bundle.” A jury bundle includes all of the evidence that will be presented during the course of the trial, and jurors can refer to these documents during the trial. This is a tremendous resource and one that the parties can prepare and, with the court’s approval, provide to American jurors with very little expense or time. Among the practices that we should adopt over time would be jury selection without the peremptory challenge, which the English have done, and which produces a more diverse jury because selection is random rather than skewed. Not surprisingly, there are many practices that the two jury systems share in common, such as allowing jurors to take notes, to submit questions to witnesses, and to read a written copy of the jury instructions at the same time as the instructions are read aloud. These practices give jurors the tools they need to perform their tasks, but these practices need to become far more widespread than they are now in both jury systems.

Finally, there are some English jury practices that would not serve American jurors well, and these should be rejected. Examples of such practices include seating the defendant in the dock and accepting a majority verdict from the jury. In these instances, the American practice works well and protects the American jury in ways that the English practice would not.

14. *Id.* at 523–24.

15. Nancy S. Marder, *Two Weeks at the Old Bailey: Jury Lessons from England*, 86 CHL-KENT L. REV. 537 (2011).

One of the lessons that becomes clear from these observations of jury trials at the Old Bailey is that there is no one way to design a jury system and that some, but not all, practices that work well in one country might work well in another.

There are some civil-law countries, such as Spain, that have juries consisting wholly of ordinary citizens that decide criminal cases. In *Jury Selection and Jury Trial in Spain: Between Theory and Practice*, Mar Jimeno-Bulnes describes the Spanish jury, made up of nine citizens, and presided over by a professional judge, and highlights some of the unusual features of this jury system.¹⁶ The Spanish Jury Law provides for a number of qualifications and disqualifications for serving as a juror.¹⁷ One of the most common excuses, which is not provided by this law, is the “conscientious objection ‘escape’ clause” in which the person indicates that he or she is not a suitable person to serve as a juror. People who offer this reason are often excused because the parties and judge prefer to avoid reluctant jurors. Another unusual feature of the Spanish jury system is the requirement that the jury provide a reasoned verdict. This legal requirement causes problems for juries because, according to Jimeno-Bulnes, about fifty percent of all verdicts are poorly reasoned.¹⁸ Jimeno-Bulnes notes that not many cases are tried by juries, and this is because the prosecutor and defense often agree to the charge and the sentence (essentially reaching a plea agreement), and thus, avert a jury trial.

In *Should Criminal Juries Give Reasons for Their Verdicts?: The Spanish Experience and the Implications of the European Court of Human Rights Decision in Taxquet v. Belgium*, Stephen Thaman focuses on whether juries should have to provide reasons for their verdicts and uses the jury systems in Belgium and Spain as lenses through which to examine this question.¹⁹ One case that brought this question to the foreground in Belgium was *Taxquet v. Belgium*,²⁰ which was heard by the European Court of Human Rights (ECtHR). Belgium has a jury system in which twelve laypersons sit with three professional judges. The panel of judges gives the jurors a list of questions, which they must answer. In *Taxquet*, in which Taxquet and several other defendants were tried for the murder of an honorary minister and the attempted murder of his partner, Taxquet

16. Mar Jimeno-Bulnes, *Jury Selection and Jury Trial in Spain: Between Theory and Practice*, 86 CHI.-KENT L. REV. 585 (2011).

17. *See id.* at 589–90.

18. *See id.* at 601–602.

19. Thaman, *Should Criminal Juries Give Reasons for Their Verdicts?*, *supra* note 9, at 613.

20. *Id.*

claimed that the questions given to the jury and the jury's subsequent answers did not provide him with reasons for the jury's verdict. The case ultimately went before the Grand Chamber of the ECtHR, which said that juries do not have to give reasons for their decisions, but the defendant must be able to understand the verdict and neither the indictment nor the questions in this case gave the defendant sufficient information as to why he was found guilty.

Thaman explains that under Spanish law, the jury, consisting of nine laypersons and presided over by one professional judge, is required to give reasons for its verdict. The judge is to give the jurors a list of questions, and they are to answer them. The requirement that the jury must give reasons for its verdict has led courts to take different approaches, including a "flexible approach," in which the jury only has to identify the evidence it relied on, and a "demanding approach," in which the jury has to provide reasons similar to those that a professional judge would provide.²¹ In one high-profile case, involving Mikel Otegi who was charged with the murder of two Basque police officers, but who was acquitted by a jury because it had "doubts" about his mental state and his state of inebriation, the acquittal was reversed on appeal. The reversal was ultimately upheld by the Constitutional Court because the verdicts did not contain adequate reasons. Thaman juxtaposes this case with another high-profile case, that of Rocio Wanninkhof, who was allegedly killed by Dolores Vázquez, her mother's former lesbian partner. The jury convicted Vázquez, even though there was only indirect evidence, but on appeal, the conviction was overturned due to the insufficiency of reasons given by the jury. Another person eventually confessed to the crime, and the case against Vázquez was dismissed, but the case highlights the problem of requiring the jury to give reasons.

Thaman uses these examples to highlight the difficulty of requiring a jury to provide detailed and complete reasons for its verdict. In particular, he thinks this is a problem when the jury votes to acquit; in such a case, it should be sufficient that the defendant enjoys the presumption of innocence and the prosecutor's case has left the jury with reasonable doubt. In light of the number of wrongful convictions in the United States, Thaman suggests that the United States, and other common-law countries, should consider requiring criminal juries to return special verdicts, and to give reasons when they convict a defendant, and that judges should serve as gatekeepers and be willing to grant a motion for a directed verdict of acquittal in cases with insufficient evidence. He also recommends that when the

21. *Id.* at 634.

evidence is of a type that is particularly susceptible to error, such as uncorroborated eyewitness identification, the judge should instruct the jury to consider such evidence with caution.

Nikolai Kovalev, in *Jury Trials for Violent Hate Crimes in Russia: Is Russian Justice Only for Ethnic Russians?*,²² examines several high-profile jury cases in Russia, in which the victims were members of minority groups and the defendants, charged with hate-crime murders, were ethnic Russians. The juries acquitted the defendants in all but one of the cases. Although these and other hate-crime cases have been the impetus for efforts to limit the Russian jury, Kovalev disagrees with these efforts. He recounts some of the history of the jury in Russia where juries, consisting wholly of laypeople, hear serious criminal cases except for those involving treason or espionage. He notes that the Russian Constitution only provides for trial by jury in cases punishable by the death penalty, and Russia has not imposed the death penalty since 1996.²³ There has been some discussion of abolishing the jury in hate-crime murder cases because, according to proponents, Russian citizens do not act impartially when the victim is from a minority group and the defendant is an ethnic Russian. However, Kovalev, after reviewing court transcripts in four of these cases (including the retrials) and interviewing a number of the participants, including prosecutors, judges, and defense lawyers, does not share this view. Rather, he concludes that the juries in these cases did not act based on bias, but on reasonable doubt.

A number of countries make use of laypersons as decision-makers in the legal system, but have them work alongside professional judges. In these “mixed tribunals” or “mixed courts,” judges and jurors are called upon to decide cases together, and the interaction between professionals and laypersons offers interesting lessons for other countries with mixed tribunals, as well as for countries with traditional jury systems.

In France, as Valerie Hans and Claire Germain describe in *The French Jury at a Crossroads*, there are mixed courts at both the trial and appellate levels.²⁴ The French mixed court (*cour d’assises*) consists of nine lay jurors and three professional judges²⁵ and hears only criminal cases. A minimum of eight votes is needed to convict, so lay jurors have “a definitive voice in

22. Nikolai Kovalev, *Jury Trials for Violent Hate Crimes in Russia: Is Russian Justice Only for Ethnic Russians?*, 86 CHI.-KENT L. REV. 669 (2011).

23. *Id.* at 682.

24. Valerie P. Hans & Claire M. Germain, *The French Jury at a Crossroads*, 86 CHI.-KENT L. REV. 737 (2011).

25. *Id.* at 747.

deciding the guilt of the accused.”²⁶ However, one way of diminishing the power of lay jurors in France is to remove certain types of cases from the jurisdiction of a mixed court. Some crimes have been reclassified so that they are less serious and can be heard by a court consisting wholly of judges rather than by a mixed court of judges and jurors. Other ways of reducing the power of the lay jurors include giving greater responsibilities to the presiding judge, who is one of the three professional judges on the mixed court, and limiting access to the “dossier,” containing the record of the case, to the professional judges, making it unavailable to the lay jurors.

One of the distinctive features of the French legal system is that it includes laypeople as part of the appellate tribunal (*cour d’assises d’appel*). The appellate tribunal consists of twelve lay jurors and three professional judges and can hear appeals brought by the defendant or prosecutor from a mixed court decision. Two-thirds (or ten out of the fifteen members) must agree to uphold the conviction; otherwise, the defendant can be acquitted or his sentence reduced. Given that voting rule, the lay jurors continue to play a significant role. Although the future direction of lay jurors in France is under debate—with some urging a more expansive role and others urging a more limited role—the French use of lay jurors, particularly at the appellate level, could spark other countries to reconsider how they make use of lay jurors and whether there is a role for lay participation both at the trial and appellate levels.

Germany also makes use of mixed courts consisting of lay judges and professional judges, as Stefan Machura describes in *Silent Lay Judges—Why Their Influence in the Community Falls Short of Expectations*.²⁷ Machura suggests that one reason to use laypeople is that they will share their experience as lay judges (taking care not to compromise the secrecy of their deliberations) and will contribute to the education of their friends, family, and colleagues. However, Machura found, based on a questionnaire distributed to lay judges in administrative courts where three professional judges and two lay judges sit together on a panel, that lay judges tended not to share their judging experiences with those around them. Older lay judges, in particular, tended to be less forthcoming about sharing their experiences as lay judges; thus, they were not performing the educational function that lay judges could potentially provide.

Machura also studied criminal courts in the German cities of Bochum and Frankfurt and found that lay judges did not share their judging expe-

26. *Id.*

27. Stefan Machura, *Silent Lay Judges—Why Their Influence in the Community Falls Short of Expectations*, 86 CHI.-KENT L. REV. 769 (2011).

riences with friends, family, or colleagues at very high rates. Follow-up interviews with some of the participants from Bochum provided some explanations. Some lay judges did not have outgoing personalities, whereas others found that their firsthand experiences with the criminal justice system made them more concerned about the rehabilitation of defendants, in contrast to their colleagues at work who were more likely to mirror popular views and favor retribution. Thus, lay judges were less inclined to share their experiences with colleagues knowing that there would be differences in points of view. Age might also play a role in that younger lay judges were more likely to have colleagues and family members with whom to share their observations about judging, whereas older lay judges might be more isolated and alone. Machura noted that lay judges in both criminal and administrative courts generally had positive experiences as lay judges, and so the question remains how best to encourage lay judges to share their experiences and newfound understanding of the legal system with friends, family, and colleagues, as part of the process of educating the public.

In *Japan's Quasi-Jury and Grand Jury Systems as Deliberative Agents of Social Change: De-Colonial Strategies and Deliberative Participatory Democracy*, Hiroshi Fukurai describes Japan's recent inclusion of citizens on two judicial bodies, the Quasi-Jury (Saiban-in) and the new Grand Jury (Kensatsu Shinsakai or Prosecutorial Review Commission (PRC)).²⁸ Japan had once had an all-citizen jury system—from 1928 to 1943—but it was suspended during World War II. With the introduction of the Quasi-Jury in 2009, Japan once again has a form of jury, but this time, citizens serve alongside professional judges. A Quasi-Jury in Okinawa heard the case of Jonathan Kim, a U.S. military man charged with robbery and assault of a local taxi driver. The Quasi-Jury, consisting of six quasi-jurors (laypeople) and three professional judges, sentenced Kim to three to four years in a Japanese prison. This was the first time an American soldier from an American military base was tried by a Quasi-Jury in Okinawa for crimes committed against a local resident. According to Fukurai, quasi-jury trials, like trials before professional judges, lead to conviction in almost one hundred percent of all cases.²⁹

Fukurai points to the trial of politician Ichiro Ozawa for election campaign law violations as another important moment for lay adjudication in Japan. Prosecutors had declined to indict Ozawa, but a group of citizens

28. Hiroshi Fukurai, *Japan's Quasi-Jury and Grand Jury Systems as Deliberative Agents of Social Change: De-Colonial Strategies and Deliberative Participatory Democracy*, 86 CHI.-KENT L. REV. 789 (2011).

29. *See id.* at 819.

filed a complaint to the grand jury (PRC) in Tokyo, and it overruled the prosecutor's decision not to prosecute. This decision was reached by eleven citizen members, chosen randomly from the community, who could reverse the prosecutor's decision. Fukurai describes the PRC as a "hybrid institution, adapting the American civil and criminal grand jury systems into Japanese culture and its legal milieu."³⁰ One interesting feature of the PRC is that it has the authority to investigate in criminal, civil, and administrative matters. Given that almost one hundred percent of indictments lead to convictions in Japan, the decision whether to indict is critical, and now laypeople play a role in that decision.

In Córdoba, a province in Argentina, mixed tribunals, consisting of eight laypeople and three professional judges, hear criminal cases, thus, providing ordinary citizens the opportunity to participate in the judicial process, as María Inés Bergoglio describes in *Metropolitan and Town Juries: The Influence of Social Context on Lay Participation*.³¹ The introduction of laypeople took more time than anticipated because there was some resistance from judges and lawyers who wondered why they had spent so much time preparing for their careers if people without any training could now serve as "judges." There were also some practical problems, particularly in some of the smaller towns, such as finding jurors who met the required level of education, finding proper spaces in which to hold deliberations, providing adequate courtroom furniture, and protecting jurors from public pressure after they had reached a decision.

In spite of the slow start and the practical problems, most of the jurors had a positive experience and appreciated the opportunity to serve. They also felt, as revealed in interviews afterward, that they had gained an understanding of the legal system that they had not had before their experience. Although Córdoba is the only province in Argentina with mixed tribunals, there is interest in a few other provinces, such as Chubut, as well as some interest on the federal level. Bergoglio's findings that judges and jurors tend to agree on the decision in over ninety percent of the cases and that jurors had a positive response to their actual service³² should encourage other provinces that are considering mixed tribunals.

What these Articles teach us is that there is much to be gained by studying other countries' jury systems. Even in countries with a long-standing jury tradition, such as the United States, there is much to be learned and

30. *Id.* at 807.

31. María Inés Bergoglio, *Metropolitan and Town Juries: The Influence of Social Context on Lay Participation*, 86 CHI.-KENT L. REV. 831 (2011).

32. *See id.* at 849–50.

even borrowed from other countries' jury practices. Some practices can be shared among countries, but of course, not all practices can be transplanted. Some problems are common to jury systems in different countries, and the solution that one country arrives at might work well in another country that shares that problem. Jury research is hard to do in some countries. For example, the Contempt of Court Act,³³ which prohibits everyone, including researchers, from asking jurors about their jury deliberations, makes jury research a challenge in England and Wales. However, what we learn about jurors and juries in other countries might well be of use to countries with limited access to jurors, such as England and Wales.

The juxtaposition of traditional juries, consisting of ordinary citizens, with mixed courts or mixed tribunals, consisting of laypersons and professional judges, also raises interesting questions for both forms of lay participation. In a traditional jury system, the jurors are seen as equals and are expected to participate as equals during deliberations. In a mixed tribunal, the laypersons can look to the professionals for guidance, but they have to try hard to maintain their independent views during the deliberations. Mixed tribunals can be structured in ways that exacerbate the differences between laypersons and professionals. Laypersons are not always given access to the record; they do not always sit with the professional judges; and they are not always accorded respect by the professional judges. And what happens when traditional juries, consisting of laypersons, are asked to perform functions typically performed by professional judges, such as giving reasons for their verdict? How should their reasons be assessed and what standard must they meet? Does this requirement diminish the power of the jury since a judge is assessing the adequacy of its reasons or does it transform the jury into a fairer institution in the eyes of the defendant, who now has reasons for the verdict, and in the eyes of the international community?

This symposium is intended to further a dialogue among jury scholars worldwide. There are many different approaches that jury scholars can take as they consider next steps. Valerie Hans has suggested two different approaches to add to what we know about jury systems around the world—one would be to undertake a comprehensive survey so that we know the different forms that lay participation takes worldwide and another would be to examine each jury system looking at certain features so that we can

33. Contempt of Court Act, 1981, § 8(1) (Eng.) (providing in relevant part that "it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings").

compare one jury system to another.³⁴ Richard Lempert has identified a number of different approaches that can be taken, such as creating a “taxonomy of all rules and regulations governing lay fact finding,”³⁵ examining ways to enhance the power of lay judges,³⁶ and assessing the cultural role of certain trial verdicts and whether they achieve the status of “cultural icons” as some cases do in the United States.³⁷ Over a decade ago, Stephen Thaman organized a conference that drew together jury scholars from around the world to meet face-to-face and to exchange ideas and papers.³⁸ Thus, there are different ways to continue the dialogue, as the Articles in this symposium suggest.

The common theme that emerges from all of the Articles in this symposium is that jurors, whether serving on a jury or a mixed court, have an important role to play as decision-makers in criminal and civil justice systems. Although no system is perfect and can always be improved, citizens who have served as jurors tend to view the experience as a positive one, to feel that they have gained a better understanding of the legal system than they had beforehand, and to think more highly of the judicial system after they have served as jurors. These findings cut across countries—from Russia to Spain to the United States. These findings suggest that juries need to be protected and promoted because they continue to serve as “free schools,”³⁹ educating citizens on the roles and responsibilities of self-governance, as Tocqueville recognized over 180 years ago when he came to the United States to study our institutions, including the jury.

34. Valerie P. Hans, *Jury Systems Around the World*, 4 ANN. REV. L. & SOC. SCI. 275, 280, 291 (2008).

35. Richard O. Lempert, *The Internationalization of Lay Legal Decision-Making: Jury Resurgence and Jury Research*, 40 CORNELL INT’L L.J. 477, 483 (2007).

36. *See id.* at 484.

37. *Id.* at 486.

38. *See* Hans, *supra* note 34, at 277 (describing the international conference in Siracusa, Italy in 1999).

39. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 275 (J.P. Mayer ed., 1969) (13th ed. 1850).