Introduction

Around the turn of the century, Japan embarked on a journey to revamp its legal system. Recognizing that society can profit from greater civic engagement and that government might indirectly and directly benefit from increased citizen involvement, reforms to the justice system were propelled to the forefront. Up until these reforms, the Japanese government had played a hands-on role in every facet of society and the economy. In the judicial and legal realms, the country had relied almost exclusively upon legal specialists and career professionals.

As the pace of Japan’s economic success waned in the late twentieth century, the country increasingly viewed deregulation and participatory democracy as not only desirable, but also as even possibly superior to the status quo and existing practices. To further its historic reforms and enable the country to prosper, reformers believed that Japan would have to proactively explore a host of expansive measures that would restructure the legal system and enhance participatory democracy. Among many far-reaching reforms, Japan decided to directly involve citizens in the judicial process through a quasi-jury trial system known as the saiban-in seido or ‘lay judge system.’

Interestingly, Japan’s movement towards legal reform and greater civic engagement was not without comparison on the global stage. Around this same time, other countries started embracing increased popular oversight of governmental institutions and greater civic participation in government through the institution of jury trial or quasi-jury systems. Similar to Japan, other countries were independently discussing and debating the merits of lay participation in the judicial process.

Aside from voting and holding public office, the most direct means of citizen participation in government is lay participation in the judicial process. Distinguished French legal philosopher Alexis de Tocqueville once astutely observed that the ‘institution of the jury raises the people itself or at least a class of citizens, to the bench of judicial authority [and] invests the people … with the direction of society.’¹ Not since the

nineteenth century in the wake of the French Revolution have so many
countries sought to incorporate trial by citizens into their legal systems.
In East Asia, Japan has been joined by South Korea, Taiwan and China in
adopting some form of trial involving lay participation. Hong Kong made
sure that it would retain its jury system as well. In Central and South
America, the nations of Mexico, Venezuela, Bolivia and Argentina have
moved toward jury trials. In Central Asia and Europe, jury trial propo-
nents made progress in Spain, Croatia, Uzbekistan, Kazakhstan, Russia
and many former Soviet republics. Interestingly, these bold and innova-
tive moves stand in stark contrast to other parts of the world where
established jury systems and lay participation in the judicial process have
been criticized, attacked and even face diminished use.

In light of these emerging global trends and the diverse views on lay
participation in the administration of justice, it is valuable to closely
examine the experience of Japan as one of the major newcomers to the
lay participation club. Also, with the growing appreciation of the value of
citizen involvement in the judicial process, it is useful to explore the
underpinnings of Japan’s monumental shift, the progress made in the lay
judge system’s first decade of existence, as well as the advantages and
disadvantages of potentially expanding civic engagement in the judicial
process. To date, jury service in Japan and other countries has been
largely limited to criminal trials. However, the relative success of the lay
judge system, as well as the potential benefits of greater citizen involve-
ment in the administration of justice and resolution of civil disputes,
warrant further examination.

Civil dispute resolution plays a vital role in shaping any society. Most
often, people and organizations resolve civil disputes without resorting to
formal mechanisms such as litigation, arbitration or official investigation.
Rather, they successfully solve conflict through informal means including
negotiation, mediation, apology, abandonment or creative problem-
solving techniques. To the extent that a dispute cannot be resolved
through informal means, however, an injured person or entity must
pursue formal legal relief or remedies from another through the interven-
tion of a court of law or other formal body.

Although there are many similarities among systems and techniques,
the judicial process itself and citizen involvement in resolving civil
disputes naturally varies from country to country. In common law
systems such as the United States and the United Kingdom, lay citizens
have traditionally been enlisted to take an active role in the civil dispute
resolution process. To varying degrees, citizens continue to play a vital
role in resolving civil disputes by serving on jury panels. In essence, they
participate in the enforcement and evolution of the law. Generally, citizen
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Jurors listen to the evidence of each party to a dispute about each fact in contention, and hear an explanation of the relevant law from the professional judges. They watch the interactions among the parties, witnesses and judge. Through deliberations, jurors then rationally determine which version of a disputed fact they find more convincing and resolve the dispute by arriving at a verdict. In study after study, researchers have concluded that this process is fair, accurate and effective. From an educational standpoint, citizen participants on a jury have a first-hand opportunity to observe how the court system functions and experience the benefits of civic engagement. From a dignitary perspective, their role in deciding cases stands as an important vehicle in the context of participatory self-rule.²

Conversely, in civil law systems, lay participation has been largely alien to the civil dispute resolution process. Traditionally, civil law systems like those found in European and Asian countries rely exclusively on professional judges and their ‘expertise’ in making factual and legal determinations for both civil and criminal matters. Until recently, citizens have typically not played a material role in criminal justice or any formal dispute resolution within the court system.

In Japan, citizen involvement in the adjudicatory process of civil litigation and other forms of civil dispute resolution is a foreign concept. Citizen participation in the criminal justice process has been extremely limited as well. Although Japan experimented with lay participation in its criminal justice system shortly before the Second World War, the authoritarian government completely eliminated jury trials in 1943. After the war, jury trials surprisingly were not included in the reconstruction plans of the American occupiers. Subsequently, Japan never experienced any popular movements advocating increased citizen involvement in the judicial process. Accordingly, citizen participation in the judicial process has been extremely limited in Japan, and has come only through largely obscure prosecutorial review commissions.

Due to the sweeping legal reforms in Japan at the turn of the century, the notion of ordinary citizens participating in the judicial process has gained traction and experienced greater acceptance. In fact, after five years of intensive preparations, Japan officially rolled out its saiban-in or lay judge system in 2009. This new participatory criminal justice scheme conscripts registered voters to adjudicate certain serious criminal matters together with professional judges.

Naturally, the new lay judge system is not perfect. It faces various structural and operative challenges. In fact, it could benefit from some fine-tuning and adjustments. Nonetheless, lay involvement in the criminal trial process has been comparatively effective on many fronts. Japan’s new system has attained relatively high praise and acclaim from citizen participants, professional judges, the public, observers and governmental officials alike despite its short history. This success combined with the potential benefits underlying increased citizen involvement in the judicial process as a whole form a foundation for exploring the advantages and disadvantages of expanding lay participation in Japan.

As Japan continues to face a myriad of ongoing societal, economic and political challenges, it has been working to bring the justice system closer to the people based on the belief that greater citizen involvement will help the country overcome its ills and prepare current and future generations to lead the country. Given the level of acceptance of lay judge trials combined with the need to further engage the citizenry, forces have converged making it an ideal time to look at expanding lay participation into portions of the civil dispute resolution system. Japanese society would benefit considerably from the involvement of ordinary citizens in civil matters of great import and significance. Such an extension would also be consistent with the goals underlying the monumental legal reforms promulgated in Japan at the turn of the century.