

Civil Jury Trials “Revolutionalize” Japan: Lessons from the Experience of Civil Jury Trials in Okinawa

The Edited Volume to be Published by Nihon Hyoron-Sha (日本評論社)
By
Baishin Saiban o Kangaeru-kai (Research Group on Jury Trials or RGJT)

Satoru Shinomiya (Attorney, Kokugaku-in University)
Kaoru Kurosawa (Professor Emeritus, Toyo University)
Hiroshi Fukurai (Professor, UC Santa Cruz)
Osamu Niikura (Attorney, Professor Emeritus, Aoyama Gakuin University)
Takayuki Ii (Professor, Senshu University)
Kiyoteru Takita (Patent Attorney, IP Kokusai Patent & Engineering)
Tatsuo Kamiguchi (RGJT Member)

Nearly a half century ago in a U.S. military-occupied jurisdiction overseas, the popular jury commenced and its members came from the widest spectrum of the general population across race, ethnicity, gender, class, culture, citizenship, and national origin. Once Rome developed the similar legal institution called *Recuperatores* during its republican era more than two thousand years ago, this ancient mixed jury allowed both Roman citizens and foreign residents in Roman peripheries to jointly participate in resolving civil disputes in its territories.¹ More than two millenniums later, the nearly identical institution and participatory practice re-emerged in the Japanese island of Okinawa.

Okinawa, or Ryukyus in an indigenous language, once operated the institution of a civil jury system, which French jurist Alexis De Tocqueville once called the genuine foundation of democracy. Tocqueville had recognized that the virtuous ideal of American democracy was powerfully laid due to the “long use that they have made of the jury in civil matters,” not criminal issues as popularly thought in legal discourse.² “It is in the institution of the civil jury that it finds the principal sources of its power,” he followed.³

Ironically, such a historical feat in the installation of democratic institution took place in Okinawa while the island was occupied and often violently ruled by the U.S. Armed Forces. In Okinawa, the U.S. authorities kept strict control on the mass media, those deemed critical of U.S. policies were denied visa or passports, and Okinawa residents held no power to elect the officials who governed them, including the U.S. High Commissioner who acted as a governor of the island. Furthermore, popular participation in civil jury trials occurred during the midst of the U.S.-Vietnam war from early 1960s to the beginning of 1970s, the period in which many Okinawans and anti-war activists participated in anti-war demonstrations and engaged in anti- or de-colonial activities, thereby literally “rocking” the social and political life of the island. While recent socio-legal research has

¹ See generally John Phillip Dawson, *A History of Lay Judges* (1960)

² Alexis De Tocqueville, *Democracy in America* 285 (Stephen D. Grant ed., 2000).

³ *Id.*

begun to examine the use of criminal juries in Okinawa during the same period,⁴ the history and analysis of the civil jury system, its remarkable trials, and spectacular monetary victories for powerless women plaintiffs, including single mothers and widows, has virtually escaped the scrutiny of socio-legal specialists and feminist cultural-historians until recently.⁵

The oversight of the civil jury trial may also have attributed to the mainstream legal discourse and jury research that tend to center around the analysis of salient and media-focused criminal jury trials, including political trials and their jury verdicts. The majority of jury research outside the traditional Anglo-Saxon jurisdiction also appears to be concentrated on the adoption and development of the varied forms of jury systems in criminal cases that involve individual parties charged with the criminal offense by government prosecutors. The recent widespread fascination with popular participation in trials in the East and Central Asian regions such as Japan, Korea, China, Taiwan, and former Soviet republics, including Georgia, Kazakstan, among others has also largely centered on the evolution and adoption of criminal jury trial and its impact on civil society. As a result, jury scholars have often overlooked the socio-political significance of the civil jury trial and its societal ramifications in the region and beyond. Despite the civil jury trial's potentially impacting force in the establishment of civil society and its popular checks-and-balances function against the institution of power, including the development of effective deterrence by the imposition of hefty civil penalties against unethical government actions and egregious corporate practices, little attention has been paid to its history and democratic utility outside the U.S. or European influence. Prominent legal scholar Lawrence M. Friedman once decried, "the criminal jury gets the lion's share of the attention and the civil jury sits home among the ashes."⁶ The same skewed attention and interest in civil juries may still remain strong among many socio-legal scholars in the world.

Indeed, outside the U.S., common law countries, and other former British colonies where new settlers inherited and transplanted England's traditional legal institutions, analysis of the civil jury has recently become so scarce as to be almost non-existent. This lack of attention also paralleled the steady decline and even near disappearance of the use of civil jury trial in England, Canada, and other common law countries in recent decades. For example, England, which first adopted an earlier form of popular resolution in civil disputes and developed a first modern system of civil jury trials by the fifteenth century, recently has even decided to do away with it all together.⁷

The gradual decline of a civil jury trial has been in direct contrast to recently emerging and growing interests on the adoption of a criminal jury trial and its varied forms around the globe. Ever since the early 1990s, many countries that had little or no history of criminal jury tradition have decided to experiment and/or introduce with the variants of jury trial in criminal cases such as Spain,

⁴ Dimitri Vanoverbeke, *Juries in the Japanese Legal Systems: The Continuing Struggle for Citizen Participation and Democracy* (2015).

⁵ The first book that focused on Okinawa's civil jury trials is, Matthew Wilson, Hiroshi Fukurai, and Takashi Maruta, *Japan and Civil Jury Trials: The Convergence of Forces* (2015).

⁶ Lawrence M. Friedman, Some Notes on the Civil Jury in Historical Perspective, 48 DePaul L. R. 201 (1998).

⁷ Hiroshi Fukurai, Sociological Approaches to the Popular Jury (on file with the author)

Venezuela, Argentina, South Korea, Taiwan, Japan, South Africa, Russia, and many former Soviet republics.⁸ At the same time, the effort to introduce the system of civil jury trial has been virtually non-existent. None of these countries, for instance, have yet to propose its civil equivalent in their lay participation system.

In Asia countries, a similar dormancy of lay participation in civil disputes remains true today. Japan introduced a quasi-jury trial (called *Saiban-in Seido*) in criminal case in 2009, while China also renovated its similar mixed tribunal system in both criminal and civil matters in 2010.⁹ China's lay participation system relies, however, on the active and joint participation of a professional judge in collaborating with lay judges. There is no history of a legally-constituted, all-citizen civil jury trial in Asia, except in Hong Kong, during which it remained under the British colonial rule.¹⁰ Today, Hong Kong's civil jury trial is narrowly tailored to function in proceedings for civil fraud, malicious prosecution, and false imprisonment.¹¹

In Asian peripheries outside the British colonial influence and outreach, a remarkable exception occurred in the Island of Okinawa where a number of civil jury trials took place during the U.S. military occupation in the 1960s and early 1970s. Towards the end of WWII in early 1945 and immediately after the Allied forces took over the Ryukyu islands after an epic fight called the "Battle of Okinawa" that led to the defeat of Japanese imperial forces in the island of Okinawa, the U.S. military began to establish forward operating bases and military camps and outposts. After the war, the U.S. government held the complete control of the island, prepared the comprehensive geopolitical survey of resources in the region, and established its civil administrative government, while continuing to build military bases and installations in Okinawa especially following the Korean War in the early 1950s and the Vietnam War in the 1960s and 1970s. The American control of the island lasted until 1972 when Okinawa reverted to Japan's control. During the U.S. administrative control, American-style civil and criminal trial juries were instituted from 1963 to 1972. The grand jury was also introduced during the same period. Nonetheless, the extent of popular legal participation and the content of trial and grand juries have yet to be sufficiently examined in the socio-legal literature.¹² This book aims to fill that scholarly gap.

⁸ Hiroshi Fukurai, Kay-Wah Chan, and Setsuo Miyazawa, Introduction to the Special Issue: The Future of Lay Adjudication and Theorizing Today's Resurgence of Civic, Legal Participatory Systems in East and Central Asia," 38 International Journal of Law, Crime and Justice 141 (2001).

⁹ Zhuoyu Wang and Hiroshi Fukurai, China's Lay Participation in the Justice System: Surveys and Interviews of Contemporary Lay Judges in Chinese Court, in East Asia's Renewed Respect for the Rule of Law in the 21st Century: The Future of Legal and Judicial Landscape in East Asia, edited by Setsuo Miyazawa, et al., 113-136 (2015).

¹⁰ The Law Reform Commission of Hong Kong Juries Sub-Committee: Consultant Paper: Criteria for Service As Jurors, January 2008, available at www.hkreform.gov.hk/en/docs/juries_e.doc.

¹¹ Master of the Rolls: The Rt. Hon. The Lord Dyson, Master of the Rolls Advances in Open Justice in England and Wales, Oct. 18, 2013, <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Speeches/mr-speech-hong-kong-lecture-18102013.pdf>.

¹² The only exception is Anna Dobrovolskaia's paper. Her paper exclusively focuses on criminal jury trials in the Island of Okinawa.

As stated earlier, all of these jury trials took place during the midst of the Vietnam War. The increased presence of military personnel in the U.S. bases, their families, and military contractors and support personnel who worked on military bases and installations led to a startling mixture of jury participation from the widest spectrum of social, racial, ethnic, economic, and multinational groups. The eradication of nationality requirement made possible the even greater range of jury participation from American soldiers and their family members, to overseas civilian workers from the Philippines and other Asian peripheries who were employed at U.S. bases and military installations, Okinawan residents and those employed at military bases and support industries, and American and Japanese business people profiting from the war economy in Okinawa.

Our research further revealed that all of the civil trials in Okinawa were brought by women – single mothers and widows -- who lost or had their loved one injured by the powerful business establishment that operated in the island. The defendants in the civil lawsuit included multiple U.S. multinational corporations and Okinawa's powerful electric power company. Against all odds and despite an obvious asymmetric imbalance of financial resources and political influence and power, all civil juries in Okinawa have ruled, without exception, in favor of women plaintiffs and awarded them with a huge sum of monetary compensation for the wrongful death and injuries of their loved ones.¹³

Given the significance of civil jury trials that have been commenced in Okinawa, the prominent civil grassroots organization called *Baishin Saiban o Kangaeru-kai* (Research Group on Jury Trials or RGJT) is organizing the cross-national alliance building in order to create the nationwide movement to adopt the civil version of jury trial in Japan. The purpose was to create the possible lay adjudicative system in addition to Japan's bench-trial system that, ever since the Fukushima nuclear disasters and the forced removal of millions of residents in Fukushima, continued to dismiss the civil lawsuits filed by disaster victims. The civil jury trial was seen as a viable alternative to the Japanese court adjudication of civil case disputes in today's post-Fukushima nuclear era.

This RGJT's proposed book first examines the civil jury trials that took place in Okinawa, as well as the possible application of a legally-constituted, lay participation system in controversial civil litigation, involving corporate and government liabilities in relation to the colossal nuclear catastrophe in Fukushima in 2011. The nuclear disaster eventually forced hundreds of thousands of Fukushima residents to flee their homes and relocate to far away regions. Thousands of local businesses were also shutdown and the farming communities were forcefully relocated. So far nearly all civil lawsuits filed by nuclear disaster victims have been turned down by the Japanese court. The introduction of civil jury trials may transform Japan's legal landscape in the resolution of civil dispute cases. If the outcome of Okinawa's civil jury trials shows any prophetic vision on Japan's future civil litigation, the nuclear disaster victims may be encouraged, and more willing, to pursue civil litigation as a viable

¹³ Anna Dobrovolskaia, *An All-Laymen Jury System Instead of the Lay Assessor (Saiban-in) System for Japan? Anglo-American-Style Jury Trials in Okinawa under the U.S. Occupation*, 24 *ZJapanR* 57 (2007).

option to seek the claim of their rightful compensation. Prominent American legal scholar Harry Kalven Jr. once declared the significance of the use of civil jury trial in the resolution of cases involving the liability issue and the damage issue, stating that “the jury with its common sense and feel of the community is the ‘expert’ tribunal for the two great distinctive issues posed by the common law: drawing the profile of negligence and handling the individual pricing of damage.”¹⁴

The proposed book will be written in a Japanese language in order to reach the widest spectrum of Japanese audiences. The book will begin with the forward written by Hawaiian Supreme Court Jurist Sabrina Shizue McKenna who was originally born in Tokyo, Japan. She became the first openly gay judge to serve on the Hawaii Supreme Court in 2011 and remains one of twelve openly LGBT state supreme court justices currently serving in the U.S. Honorable McKenna has also written on Japan’s judicial reform and civil justice system.¹⁵

Her forward will be followed by the description and analysis of four civil jury trials that took place in Okinawa in the 1960s and early 1970s. The entire court transcript of two civil jury trials will be introduced in the manuscript. The cases involved Plaintiff Tsuruko Robirds, an Okinawan woman, widow and single-mother, whose husband was killed by an employee of the American-based multinational construction corporation. The “international jury” had awarded the plaintiff with more than \$60,000 compensatory damages for the wrongful death of her husband.

The book also include essays written by legal scholars, civic activists, and former *Saiban-in* members who served on Japan’s newly adopted mixed tribunal (*Saiban-in trial* or 裁判員裁判). The book will serve as the important pedagogical material to be used for educating the Japanese public about the importance of introducing the civil aspect of all-lay person jury system in Japan.

Table of Content

Chapters:

1. Forward (Valerie Hans)
2. Prologue: Proposal to Introduce Civil Jury Trial in Japan (Attorney and Professor Osamu Niikura, Aoyama Gakuin University, Law School)

Section 1: Okinawa’s Jury Trials

3. Introduction (Attorney and Professor: Satoru Shinomiya, Kokugakuin University Law School)
4. Overview of Okinawa’s Jury Trials: Criminal and Civil Disputes (UCSC Hiroshi Fukurai)
5. Discovery of Jury Trial Records (former Professor of Toyo University Kaoru Kurosawa)

¹⁴ Harry Kalven Jr. “The Dignity of the Civil Jury,” 50 *Virginia Law Review* 1055 1056 (1964).

¹⁵ Hon. Sabrina Shizue McKenna, “Proposal for Judicial Reform in Japan: An Overview,” 2 *Asian-Pacific Law and Policy Journal* 122 (2001).

6. Interpretations and THE Significance of Discovered Trial Records in Okinawa (Attorney and Professor Tetsu Saito, Dokyo University)

7. Japanese Translation of Discovered Trial Records (Kaoru Kurosawa, Patent Lawyer Kiyoteru Takita, Hiroshi Fukurai)

Section 2: Significance of Lay Participation in Justice Systems in Fukushima, Okinawa, and Beyond

8. Introduction (Kurosawa, Takita)

9. Possibility of Civil Jury Trial: Litigation to Stop the Night Flight Airforce Military Exercise in Kadena, Okinawa (Attorney Takeshi Nishimura)

10. Possibility of Civil Jury Trial to Recoup the Economic Loss on Behalf of Nuclear Disaster Victims in Fukushima (Professor of Toyo University, Eri Osaka)

11. Social Significance of Introducing Civil Jury Trials from the Perspective of Citizens (Osaka Judicial System Reform Council Member Tatsuo Kamiguchi)

12. Today's Civil Jury Trials in America: Considering the Essence of Civil Jury System (Attorney and Professor Kwanzei Gakuin University Takashi Maruta)

13. Civil Jury Trial from the Perspective of Korean Jurors and Experiences (Lecturer Aoyama Gakuin University Yusei Tei)

14. Using the Jury to Spread Democratic Reform in Argentina and Beyond (Andres Harfuch, Argentina)

15. *Saiban-in* Trial and Gender (Aki Kurosawa, UC Santa Cruz, Graduate Student)

16. The Possibility of Civil Trial to Respond the Grievances of Family Victims: Schindler Elevator Accidents and Litigative Lessons (Takayuki Ii, Senshu University)

17. Serious Damages Caused by the Fukushima Nuclear Disaster (Tatsuya Ito, Representative of Iwaki Nuclear Disaster Victims and the National Center of Nuclear Problem and Civic Action)

18. Civil and Administrative Disputes and the Role of Prosecution Review Commission in Okinawa (Hiroshi Fukurai, UCSC)

19. Litigation by the 77 Bank Branch in Onagawa in Relation to Nuclear Disasters and Damages (Yoshiyuki Kitami, Attorney)

20. Commonality between Okinawa and Fukushima: Citizens' Perspectives on How Legal Decisions May be Rendered (Hiroshi Fukurai, UCSC)

Section 3: The Possibility of Lay Participation in Civil Disputes

21. Introduction (Kurosawa, Takita)

22. The Role of Japan Federation of Bar Association (JFBA) and Civic Participation in Civil and Administrative Disputes (Takeshi Obara, Attorney)

23. Passions to Realize the Civil Jury Trial in Japan (Toshihiko Morino, Attorney, former Judge)

24. Lay Participation in Civil Disputes from the Perspectives of Previous *Saiban-in* Participant (Hironobu Takahashi, Previous *Saiban-in* Participant)
25. The Possibility of Lay Participation in Civil Disputes from the Perspective of the *Saiban-in* System (Masahiro Takeda, Kyodo Press)
26. Expanding Citizen Participation to Civil Lawsuits in Japan: Examining the American Experience (former President of University of Akron Matt Wilson)
27. Lay Participation in Intellectual Property Disputes (Patent Lawyer Kiyoteru Takita)
28. Lay Participation in Civil Disputes from the Perspective of Japanese Lawyers (Shigeru Makino, Attorney)
29. Considerations on the Deliberation of Civil Jurors (Ayumu Arakawa, Musashino Art University, Associate Professor)
30. Realization of “True” Lay Participation in Civil Jury Trial (Futaba Igarashi, Attorney)
31. Lay Participation in Civil Trials Involving Sex Crimes (Mari Hirayama, Hakuoh University)
32. The Introduction of Monsanto Law in Japan and Protection of Consumers by Civil Jury Litigation: San Francisco Civil Jury Verdicts on Monsanto and Their Significance (Hiroshi Fukurai, UCSC)
33. Reintroduction of Lay Participation in Jury Trial in Japan and the Possible Resolution of Disputes on Comfort Women Crimes Committed by the Imperial Japanese Army During the WWII (Takashi Mizuno, “Comfort Women” Justice Coalition)
34. Civil Compensation Damage Suits Against Japan’s Ultra-Right “Zaitoku-Kai”, the Japanese Government’s Refusal to Provide Financial Support to Korean Schools, and the Possibility of Introducing Civil Jury Trial to Resolve Civil and Administrative Disputes (Ryangok Ku, Attorney)
35. Lay Participation in Civil Disputes: Considering Today’s Labor Disputes and Arbitration Proceedings (Shiro Kawashima, Doshisha University)
36. Social Significance and the Possibility of Lay Participation in the Settlement Procedures in Civil Disputes (Makoto Ibusuki, Seijo University)
37. Agendas for Civil Jury Trial and Its Introduction in Japan (Setsuo Miyazawa, UC Hastings Law School)

Section 4: Conclusions

38. Summaries: Significance of Lay Participation in Civil Cases after a Half Century (Takayuki Ii, Senshu University)
39. Importance of Alliance Building to Realize Lay Participation in Civil and Administrative Trials (Osamu Iikura, Attorney and Professor, Aoyama Gakuin University)
40. Future Activities and Alliance Building and Collaboration (Hiroshi Fukurai, UCSC)