In the United States at least, the criminal justice system seems to many to have run amok. Frightening incarceration rates are the most frequently cited, though hardly the only, evidence. We criminalize too quickly and punish too harshly. Tragic injustice and incalculable suffering are the result. Yet our criminal laws and institutions do not stand out for being comparatively less democratic. How have we come to this place and, more importantly, how can we extricate ourselves? Those who share these concerns should welcome Albert Dzur’s impassioned and richly argued defense of the jury in *Punishment, Participatory Democracy, & the Jury*. More than anything else, this is a book that asks one to envision solutions to the problems of our criminal justice system.

Though ostensibly a study of the jury, Dzur’s book, as its title suggests, engages broader themes. Specifically, Dzur is concerned to defend a particular vision of participatory democracy. On this view, citizen participation includes work in authority wielding institutions. It is not confined to the exercise of individual political rights, e.g. voting, or to non-governmental political action, e.g. joining with like-minded citizens to advocate for public policy. This institutionalized conception of participation is paired with an account of (some) well-functioning institutions. Borrowing a phrase from Sheldon Wolin, Dzur terms these ‘rationally disorganized institutions’ (p. 55). The jury then lies at the confluence of a serious practical problem (the excesses of the modern penal state), an ideal of democracy (participatory), and a thesis about what makes some institutions well-functioning (rational disorganization). Precisely because the jury (properly constituted) is a rationally disorganized institution it invites the kind of participation important to democratic citizenship, and precisely through the participation of citizens the jury promises to (partially) tame the excesses of the criminal justice system.

The idea that the jury is a distinctively important institution for democratic society is, of course, not new, and Dzur offers interesting discussion of earlier defenses of the jury such as those offered by Tocqueville and Mill. Dzur’s own defense of the jury stands out for being less perfectionist and his preferred model of jury functioning stands out for being less hierarchical. With respect to the former and in keeping with most recent democratic theory, Dzur avoids strong prescriptive assumptions about what must redound to a citizen’s personal good. If the jury has an educational or ennobling effect on those who serve, the argument for the jury does not depend upon this effect being directly
beneficial for citizens. This will be welcome news to those who find their relatively apolitical lives fully satisfying and who do not wish to be improved by compulsory civic service. Instead, Dzur claims, the transformation of jurors is important for the broader health and functioning of democratic institutions. Presumably the latter does then tend to benefit individual citizens, but the argument is now indirect. Dzur purchases normative modesty at the price of greater empirical vulnerability. For now one may wonder, as before, whether jury service really is transformative for individual citizens but also whether such transformed citizens will make for better functioning democratic institutions.

The jury best functions, Dzur argues, when it exemplifies “rational disorganization.” This is to be contrasted with a more hierarchical view according to which jurors are subservient to legal professionals. The jury is disorganized in at least two respects. First, it asks citizens to undertake tasks that might be more efficiently accomplished by professional bureaucrats. Second, in exercising their duties jurors are less beholden to rule following than are their counterparts in the professional legal community. What is valuable about such disorganization? Why is it “rational?” On Dzur’s telling, the jury is superior at dispensing justice in individual cases because of its “tight focus on particular facts” while, by comparison, judges in bench trials are more apt to “see defendants as case types” (p. 55). Additionally, the jury fosters valuable reflection on legal rules and practices. Because jurors are less invested in established rules and precedents and are less accountable for consistency across cases, they are poised to challenge prevailing rules and to ask whether the application of a rule to a particular case would be substantively just. Note that what is needed here is not simply an argument that the jury adds value to trial procedures. What is needed is an argument that a less hierarchical jury is better than a more hierarchical one. It is not clear that this question admits of a general answer.

These claimed advantages of the jury are not implausible, but it is also difficult to build a compelling empirical argument in their favor. How, for example, would one test the hypothesis that bench judges see defendants as case types to an extent that inhibits the just resolution of cases? To take another issue, many would treat wide disparities in outcomes across similar cases as evidence not just of procedural inconsistency but of substantive injustice. Such arguments have certainly influenced the adoption of policies, such as mandatory sentencing guidelines, that limit discretion. As Dzur rightly insists, to assume that procedural inconsistency evidences substantive injustice is to risk uncritically treating the rule focused perspective of legal insiders as ultimately authoritative. By the same token, we cannot treat procedural