

Judgment by Peers: Lay Participation in Legal Decision Making

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Keywords

decision making, jury, lay court, lay judge, lay magistrate, mixed court

Abstract

Almost two-thirds of countries worldwide rely on laypersons as legal decision makers in criminal cases, and a substantial number use laypersons to resolve civil disputes. Laypersons participate as jurors, lay judges, lay magistrates, and members of lay courts. Their participation enhances fact-finding by incorporating community views and values into legal decision making. Lay participation can also increase the transparency and legitimacy of law and the courts and promote democracy. As a result, some countries have adopted lay participation in recent decades. Yet, concerns about competence and bias have led other countries to circumscribe or abolish their systems of lay participation. This review describes the different roles that laypersons play as legal decision makers and the work that they do. It also describes the competing trends to expand or limit lay participation in legal decision making. After summarizing the research evidence, this article concludes that there is much value in judgment by peers.

INTRODUCTION

This is an appropriate time to examine lay participation in legal decision making because it is widespread in practice and there have been dramatic changes in its use. A global survey found that close to two-thirds of the world's countries rely to some extent on laypersons to make decisions in criminal cases (Kutnjak Ivković & Hans 2021). Many jurisdictions rely on lay legal decision makers to resolve civil disputes as well (Boulanger-Bonnelly 2023a, Hans in press, Machura et al. 2023). Some countries use juries, where members are drawn randomly from the community and decide the case independently from the professional judge. Other countries use mixed courts (also called mixed tribunals), in which lay and professional judges decide on the outcomes collaboratively. In several countries, lay magistrates decide cases either individually or in small groups. In a few countries, lay courts, staffed by community leaders, operate outside the formal legal system (Kutnjak Ivković & Hans 2021).

Before the development of the legal profession and the ready availability of law-trained judges, it was essential to draw on community members to resolve criminal and civil disputes, and there is a long history of doing so (Dawson 1960). However, even as the legal profession has expanded and the professional judiciary has assumed a dominant role in legal systems globally, the use of lay legal decision making has persisted (Vidmar 2000). In theory, using community members as legal decision makers can serve several purposes. The first is enhanced fact-finding. Groups of individuals drawn from the community, such as juries or lay judges on mixed courts, are more likely than a professional judge to represent the range of backgrounds, perspectives, and attitudes of the community and can incorporate this diversity into their determination of the facts. In some instances, such as special juries and certain mixed courts, lay members of the community are selected for their specialized knowledge and expertise (Boulanger-Bonnelly 2023a, Machura et al. 2023). The deliberation that characterizes most uses of lay legal decision making—in juries, mixed courts, and panels of lay magistrates—also has the potential to strengthen fact-finding as group members exchange views and test one another's interpretations of the evidence (Diamond & Hans 2023). In addition, community members' participation has the potential to increase the acceptability and legitimacy of the outcomes and legal systems more broadly (Marder 2022).

Yet, relying on laypersons raises questions about whether they understand the facts, comprehend the law, and apply the law to the facts fairly and competently. Scholars have undertaken substantial research on lay participation, analyzing the experiences of lay decision makers, examining questions about their competence and fairness, and studying the effects of their participation. As a result, we have learned that lay legal decision making contributes importantly and distinctively to legal outcomes and can have salutary effects on the individuals who participate (Diamond & Rose 2005, 2018; Marder 2022). The participation of laypersons in the trial also increases the transparency and legitimacy of the trial and the legal system more broadly, thus playing a political role (Gastil et al. 2010).

In recent years, several countries have changed their systems of lay participation in legal decision making (Kutnjak Ivković et al. 2021, Marder et al. 2023). Some countries have introduced new jury systems or mixed courts to decide criminal trials, stimulating extensive scholarship that has examined how these legal transplants are working in practice (Hans 2017). Other countries have aimed to revitalize their systems of lay participation in response to the increasing complexity of legal cases, concerns about competence or bias, and the characteristics of the community (Munsterman et al. 1997, 2006). Yet, in contrast to these expansionist and adaptive approaches, other countries have instead imposed new restrictions and limits on lay legal decision making or have abolished lay decision makers entirely, replacing them with legally trained judges (Jolly et al. 2022, Kutnjak Ivković et al. 2021, Smith 2005, Thomas 2016).

Mixed court or mixed tribunal:

a group of lay citizens and professional judges who collectively decide the outcome of a legal case

Lay magistrates:

individuals without formal legal training who decide the outcome of a legal case either individually or in small groups

Lay court: a court, typically presided over by community leaders, that operates outside the formal legal system

Lay judge: a member of a mixed court or mixed tribunal who does not have formal legal training

Legal legitimacy:

community or societal support for a legal institution based on such factors as who the decision makers are, the processes they follow, and the rules they apply

Jury: a group of ordinary citizens, typically untrained in the law, who are selected from the community and collectively decide the outcome of a legal case

Legal transplant:

a legal practice or institution from one country's legal system that is imported to another country's legal system

In this article, we survey these dramatic changes that have expanded or contracted the participation of ordinary members of the community in legal decision making. Building on previous reviews in the *Annual Review of Law and Social Science* (Diamond & Rose 2005, 2018; Hans 2008; Hunt 2015), we examine key issues and concerns in the use of lay fact-finders that have led policy makers to enhance or limit lay legal decision making. We draw on the growing body of scholarly work on the topic to better understand the operation and impact of lay participation, and to explain the divergent patterns in their use across jurisdictions. We conclude by identifying central and emerging issues for research.

Our review covers empirical studies on lay participation. We focus on forms of lay participation in which lay participants decide criminal and civil cases. There are other institutions that include lay participants as fact-finders, such as medical licensing boards (Horowitz 2012) and truth and reconciliation commissions (Gibson 2004). However, their primary purposes differ from those of institutions deciding legal cases.

WHO ARE THE LAY DECISION MAKERS?

The question of who serves as lay decision makers affects whether the lay decision makers can fulfill their fact-finding and political purposes. For example, if a jury does not fully represent the community, it cannot incorporate the breadth of knowledge and perspectives of that community in assessing the facts of a case. Lay judges, who represent only a small slice of a community, are at a similar disadvantage in their collaborative decision making with professional judges. A lack of representativeness can also undermine the legitimacy of the verdicts reached by lay members of the community. Therefore, a first step in analyzing lay legal decision making is to summarize what we know about who sits in judgment.

Juries

Most jury systems today draw laypersons randomly from the local population to maximize the representativeness of juries, which should aid their fact-finding and promote the legitimacy of their verdicts. Juries today are dramatically more representative than in previous times, when it was typical to limit participation to propertied white men and individuals selected by the jury commissioner (Diamond & Hans 2023). Special juries, whose members had more education or relevant training, were also commonplace (Oldham 2006). Even as formal barriers to women's and minority participation have been eliminated over time, several practices still limit full community participation.

For example, in most jurisdictions in the United States, statutory qualifications require that noncitizens and individuals with a felony record be excluded from jury service. The disqualification of convicted felons is so widespread that Binnall (2021, p. 20), who has studied the issue, calls it "far and away the most extreme form of civic marginalization in the United States." His research revealed that convicted felons did not disproportionately favor criminal defendants, as has been the conventional view, and that jury service helped the jurors to reintegrate into the community, thus suggesting that prohibitions on participation by convicted felons were unnecessary and even counterproductive (Binnall 2021).

Another challenge in achieving representative juries is that prospective jurors' names are often drawn from only one list—typically the voter registration list—and citizens who are eligible to serve on a jury do not always register to vote. These citizens will not be summoned to serve unless courts use supplementary lists, such as lists for drivers' licenses, tax rolls, and unemployment, and update them frequently, but courts have been slow to do this (Diamond & Hans 2023). Many jury summons never reach the intended recipients due to outdated addresses (Caprathé et al. 2016). Differential response rates further contribute to unrepresentative jury pools.

Peremptory challenge: during jury selection, a challenge that allows a party to remove a prospective juror without giving a reason under most circumstances

In the United States, peremptory challenges, which permit lawyers to remove a certain number of prospective jurors without having to give a reason (except in limited cases), also lead to some lawyers using these challenges to discriminate based on race, gender, or ethnicity. Even though the Supreme Court has held that these discriminatory challenges are unconstitutional, the practice persists. It is particularly pronounced in capital cases, where Black prospective jurors are removed 2.5 times as often as white prospective jurors (Baldus et al. 2012). Discriminatory peremptory challenges threaten the integrity of the jury trial that follows [*Powers v. Ohio* (1991)].

There are a range of solutions to discriminatory peremptory challenges, from limiting the number of peremptory challenges (Diamond & Hans 2023) to eliminating all peremptory challenges (Marder 2022), as has been done in several countries, including Canada and England and Wales. Several states (e.g., California, Connecticut, New Jersey, and Washington) have modified the procedure to make it harder for lawyers to exercise discriminatory peremptory challenges. One state (Arizona) has eliminated peremptory challenges completely (Marder 2023). Whether these approaches result in fairer and more representative juries awaits further study.

Lay Judges on Mixed Courts

The use of lay judges (sometimes called lay assessors) on mixed courts introduces community values (Klami & Hämäläinen 1992), adds popular control to the legal decision-making process (Bonnieu 2001; Machura 2001, 2007), and enhances the legitimacy of the court system (Seligson 2001, Vanoverbeke 2015). As in most jury systems, lay judges are usually required to be citizens [Sweden (Diesen 2001), Germany (Machura 2001)], which systematically excludes even immigrants who have lived in the country for many years (Kutnjak Ivković 2007, Machura 2001). To ensure community input, some countries, such as France (Bonnieu 2001), Germany (Perron 2001), Japan (Vanoverbeke 2015), and Norway (Strandbakken 2001), explicitly prohibit members of the legal profession from serving as lay judges on mixed courts. Some lay judges serve for only one trial, as in Japan and Taiwan, whereas in other jurisdictions, such as Germany and Croatia, they serve for a specified term of months or years.

In addition, political actors often influence the selection process and undermine the representativeness of the pool of lay judges (Diesen 2001, Kutnjak Ivković 2007). Whereas communities in Germany are expected to prepare a list of potential lay judges, in fact political parties propose the list of candidates (Machura 2001, Perron 2001). Similarly, in Norway, the nomination committee typically selects candidates who are registered as party members (Strandbakken 2001). Furthermore, the courts often reappoint and rely on the lay judges who take their duties seriously and who have “a judge-like social background and attitude” (Machura 2001, p. 453), resulting in an overrepresentation of people who are older male civil servants and who are more educated and/or affluent than the average citizen (Diesen 2001; Kutnjak Ivković 1999; Machura 2001, 2003; Seligson 2001; Yue 2001).

In some types of cases, countries may require lay judges to have additional nonlegal education or skills. Croatia (Kutnjak Ivković 1999), France (Germain 2021), and Germany (Machura 2001, Machura & Rennig 2021, Perron 2001) require that lay judges who hear cases with juvenile defendants possess educational credentials and/or practical experience that pertains to juveniles. Similarly, Norway (Strandbakken 2001) allows professional judges to appoint expert lay judges in complex cases of economic crime. Boulanger-Bonnelly’s (2023a) global survey of the use of lay judges in civil litigation found that some countries structure their mixed courts to include specific expertise or divergent perspectives. The labor court in Austria, for example, includes a law-trained judge, a lay judge representing employers, and a lay judge representing employees. In sum, although lay judges are used for reasons like those advanced for juries, the political selection

process and perceived need for special expertise mean that lay judges are less likely to represent the full community.

Lay Magistrates/Justices of the Peace

Based on the idea of participatory democracy or judgment by one's peers (Gibbs & Kirby 2014), lay magistrates or justices of the peace are critical to the court system in England and Wales (Davies 2005, Diamond 1990, Machura 2021), Canada (Doob et al. 1991), and approximately 40 states in the United States (Greene & Renberg 2022, Parker et al. 1989, Provine 1986). In England and Wales, lay magistrates and professional magistrates, called district judges, handle approximately 98% of all criminal cases (Davies 2005); they approve police search warrants, conduct trials, and make bail and sentencing decisions (Machura 2021). They also handle some civil claims and family law cases, such as custody, adoption, and domestic abuse (Boulanger-Bonnely 2023b). Lay magistrates decide civil claims in approximately 20 other countries (Boulanger-Bonnely 2023a).

Typically, lay magistrates in England and Wales and the United States are not required to have any legal qualifications or training before commencing their duties (Greene & Renberg 2022, Machura 2021). The reason to have lay magistrates is to provide local justice, and their lay status is their key benefit (Davies 2005). Lay magistrates, compared to district judges, tend to be more lenient in their punishment decisions, primarily because they focus more on the individual offender and less on criminal control than their full-time professional colleagues (Diamond 1990). However, beginning in the 1960s, lay magistrates in England and Wales have been required to take judicial education courses and training on the criminal justice system, case management, and magistrates' duties (Davies 2005). Similarly, justices of the peace in the United States are required to undergo training, though the training differs among the states (Greene & Renberg 2022). Davies (2005, p. 113) argues that "[t]he increased training, and therefore professionalism, of the lay magistracy risks removing this community element from the majority of criminal cases."

Unlike jurors and lay judges on mixed courts, lay magistrates volunteer to be selected for their positions. Consequently, as Davies (2005, p. 96) argues, "it is unsurprising that certain types of backgrounds predominate." In the late 1980s, lay magistrates were described as "white, middle-class, middle-aged people sitting in judgement over young, working class and often black defendants" (Gibbs 2015). Despite several attempts to increase diversity among lay magistrates (Gibbs & Kirby 2014), they remain unrepresentative of the general population (Gibbs 2015, Gibbs & Kirby 2014, Machura 2021).

Lay Courts

Although traditional lay courts vary by country, they typically rely on laypersons to lead the process and are not usually a part of the official court system (Kutnjak Ivković & Hans 2021), though at times they are in dialogue with it. Two examples come from China and Rwanda.

People's mediation committees in China are a dispute resolution system operating outside of the regular court system (Li & Liu 2019, Wu 2021). Mediation, based on the principles of Confucianism, is the preferred mode of dispute resolution (Li & Liu 2019). The law requires mediators to be "adult citizens with [a] certain level of culture, policies, and legal knowledge"; in addition, the law provides that the justice department will periodically offer "operational training" [People's Mediation Law of the People's Republic of China (promulgated by the Stand. Comm. Natl. People's Congr., Aug. 28, 2010, effective July 1, 2011), order 34]. Although the mediation committees' number of cases decreased from approximately eight million in 1982 to approximately three million in 2002 (Zhang 2014), the committees remain a key vehicle for dispute resolution in China.

Adversarial

procedure: in court before a neutral decision maker, the two opposing sides make arguments and examine and cross-examine witnesses to develop the strongest case for their side; typical in common law countries

Beginning in precolonial times, Rwanda used customary *gacaca* courts (Bolocan 2004) in which elderly men of the village led a discussion of the case, typically property disputes, and guided the group toward an arrangement that was acceptable to all parties (Gaparayi 2001). After the genocide in Rwanda in 1994, there was virtually no court system, but there were many potential defendants awaiting trials (Taman 2003), and there was a pressing need for governmental legitimacy, all of which led the Rwandan government to revitalize *gacaca* courts (Karekezi et al. 2004). Organic Law #40/2000 classified potential defendants into four groups (category 1: persons charged as being planners, organizers, and instigators of genocide and crimes against humanity and those who were charged with committing rape or sexual torture; category 2: persons charged with committing homicide or violence causing death; category 3: persons charged with committing nonlethal assaults; and category 4: persons who committed crimes against property). While persons placed in category 1 were tried by regular courts and the International Criminal Tribunal for Rwanda, persons placed in categories 2 through 4 were in the jurisdiction of *gacaca* courts [Organic Law #40/2000, Setting up “Gacaca Jurisdictions” and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity committed between October 1, 1990 and December 31, 1994 (2000)].

Because *gacaca* courts were expected to deliver “justice without lawyers” (Clark 2012), people in certain occupations, such as police officers and professional judges, were disqualified from serving [Organic Law #40/2000 (2000)]. Approximately 250,000 laypersons were appointed as lay judges (Karekezi et al. 2004). Although lay judges needed to meet some qualifications (e.g., 21 years of age, no prior criminal record), none were related to literacy. Human Rights Watch (2011, p. 66) noted that “a significant number of *gacaca* judges had not finished primary school.” The government organized a week-long basic training for lay judges, addressing *gacaca* law, management skills, ethics, and trauma (Bolocan 2004, Human Rights Watch 2011). Both Amnesty International (2002) and Human Rights Watch (2011) questioned the adequacy of such training given the lay judges’ low literacy and the complexity of genocide-related cases. Over time, approximately 35% of the *gacaca* judges were removed because of their ineffectiveness, corruption, or involvement in genocide (Human Rights Watch 2011). By 2012, when *gacaca* tribunals were closed, they had tried approximately 1.9 million cases (Geraghty 2020).

THE WORK OF LAY DECISION MAKERS

Common Law Tradition, Adversarial Procedure, Juries, and Lay Magistrates

Juries and lay magistrates are most often found in countries that follow the common law tradition (Kutnjak Ivković & Hans 2021), which uses a version of adversarial procedure. Such a procedure assumes that the best way to get to the truth is through a competition between the two parties in the case—the prosecution and the defense—while the judge serves as a neutral referee who determines whether the rules are followed. In a bench trial, the judge decides on guilt and sentence; in a jury trial, the jury decides on guilt, and the judge in most cases determines the sentence (Reichel 2017). Hence, civil law countries that introduce the jury typically need to adjust their inquisitorial-style criminal procedures to accommodate the jury [Almeida et al. 2021 (Argentina), Jimeno-Bulnes 2021 (Spain)].

In adversarial trials, parties give opening statements, provide evidence, cross-examine witnesses, and make closing statements. The evidence is presented to the jury orally and in a public hearing. The professional judge conducts the trial, while the jury decides the defendant’s guilt or innocence and, depending on the country and the type of case, the appropriate punishment. Before the jury deliberates, the professional judge provides it with legal instructions. To assist jurors in understanding instructions, courts provide juries with preliminary and final instructions,

all of which should be in “plain English” in English-speaking countries (Mize & Connelly 2004, Munsterman et al. 2006). Although juries in some legal systems, such as the United States and England and Wales, render general verdicts (Thaman 2011), juries in other countries, such as Spain, provide reasoned verdicts (Jimeno-Bulnes 2021).

The trials in magistrates’ courts in England and Wales adhere to adversarial procedure. The magistrates rarely ask any questions of the parties, who have the burden of proof. Lay magistrates sit in groups of two or three. Legal advisors, to whom lay magistrates turn when faced with questions of law (Darbyshire 1999), administer cases, provide advice, and join the magistrates in the deliberation room (Machura 2021). Magistrates decide whether the defendant is guilty or not guilty and, in the former, determine the sentence, while keeping in mind the needs of each individual defendant (Ward 2017).

Civil Law Tradition, Inquisitorial Procedure, and Mixed Courts

Countries belonging to the civil law tradition, such as Croatia (Kutnjak Ivković 2015) and Germany (Machura & Rennig 2021), typically use an inquisitorial procedure, characterized by an extensive pretrial investigation and a trial in which the judge plays an active role (Reichel 2017). The prosecutor or investigative judge conducting the pretrial investigation creates the case dossier, which is then sent to the court.

Mixed courts are a form of lay participation most likely to be found in countries with a civil law tradition (Kutnjak Ivković & Hans 2021). With mixed courts, professional and lay judges decide the case together. The presiding professional judge plays a prominent role in managing the trial (Kutnjak Ivković 1999, Machura & Rennig 2021). Although both professional and lay judges examine evidence and question the witnesses (Machura & Rennig 2021), studies show that professional judges tend to be more active than lay judges (Kutnjak Ivković 1999). Professional and lay judges deliberate about guilt and sentencing together, and their votes carry the same weight. However, studies show that professional judges dominate the deliberation and lay judges rarely disagree with them (Diesen 2001, Kutnjak Ivković 1999, Machura 2001).

Civil Law Tradition, Customary Law Tradition, and Lay Courts

Lay courts are associated with the civil law tradition and the customary law tradition (Kutnjak Ivković & Hans 2021). Because they are not part of the official court system, lay courts follow the rules of neither adversarial nor inquisitorial procedure. In the case of Chinese mediation committees, according to the People’s Mediation Law of the People’s Republic of China (2010), the mediation process may start either by one of the parties applying to the committee for mediation or by the mediation committee actively taking the first step. The law gives flexibility to the mediators. It instructs them to listen to the parties, explain the law to them, and propose a solution based on fair negotiations; it also recognizes that different circumstances might require different approaches.

GROWTH AND EXPANSION OF LAY DECISION MAKING

The twenty-first century has seen new systems of lay participation emerge around the globe, including in East Asia, Europe, and Latin America. These developments have been fueled by the promise that lay participation will bring community perspectives to the legal system and will help provide greater system legitimacy. A common theme in each setting that appears to have generated this movement was a recognized dissatisfaction with and mistrust of the professional legal regime, for its incompetence, corruption, or both. The all-layperson American jury system provided one model for the new systems (Vidmar & Hans 2007), and Germany’s long-existing mixed courts, consisting of lay and professional decision makers, offered another

Reasoned verdict:

a legal decision that is accompanied by written reasons or answers to questions that explain the basis for the decision

Inquisitorial

procedure: after a pretrial investigation by an investigative judge and the creation of a case dossier, the trial proceeds, with the judge playing a dominant role in questioning witnesses; typical in civil law countries

(Machura & Rennig 2021). The new systems have drawn from both versions of lay participation, but have also produced modifications with their own distinctive features. The choices reflected in the new systems reveal strengths and weaknesses of the traditional models of lay participation, as well as creative adaptations, impacts of which research has only just begun to assess.

The dual attractions of a mixed court that draws on the strengths of community input and the legal expertise of the professional judiciary are undeniable, but the mixed court poses two challenges. How can you get the value of input from lay participation and yet ensure that decisions are faithful to the relevant law? And how can you avoid undue influence by the professional judges on their lay colleagues? The newer systems of lay participation have dealt with these tensions in different ways.

Although the 1853 Constitution of Argentina mandated jury trials, lay participation in criminal trials did not arrive in Argentina until 2004, when the province of Córdoba introduced the first trials that included laypersons (Bergoglio 2021). Rather than an all-lay jury, the mixed courts of Córdoba consist of panels of eight laypersons and three professional judges, with the presiding judge voting only if the remaining ten are equally divided. A majority determines the verdict, so in principle the laypersons can outvote the professionals on the court. Bergoglio's (2021) study of final vote distributions found that more than three-quarters of verdicts were unanimous. Whether this level of agreement is achieved by appropriate or undue influence by the professionals is unclear. What is clear is that when disagreement arises, laypersons tend to be more lenient than their professional colleagues. The introduction of lay participation has been associated with a modest increase in trust in the legal system.

Other provinces in Argentina took a different approach, opting for all-lay jury trials, which first began in the province of Neuquén in 2014 with the adoption of the classic 12-person jury in the most serious criminal cases. As of 2024, 11 of Argentina's 23 provinces had passed laws that provided for jury trials in criminal cases, and in 2020, the province of Chaco passed a law to provide classic jury trials in civil cases (Almeida et al. 2021, Asoc. Argent. Juicio Jurados 2024, Diamond et al. 2023). As more provinces implemented jury trials, the civil law systems underwent substantial change to accommodate the need for an oral public trial conducted in language that could be understood by laypersons; the jury was characterized as a Trojan horse in bringing an adversarial process and transparency to legal proceedings that had previously been hidden from public view under the traditional inquisitorial system (Harfuch 2015). The earliest versions of the jury trial did not require unanimous verdicts, largely out of concern that hung juries would be common, but the success of the early systems encouraged the provinces that followed to require unanimity. Although some legal professionals were initially skeptical about the jury, preliminary research found striking support (Porterie & Romano 2018, Porterie et al. 2021). While the Argentine provinces adopted some of the practices of American juries, they also added their own unique twists, such as equal gender representation for all jury trials and a provision that if a second hung jury occurred, the criminal defendant would be acquitted.

There have also been remarkable developments in lay participation in Asia, including South Korea (Park 2021), Japan (Vanoverbeke & Fukurai 2021), and most recently Taiwan [Citizen Judges Act, *Judic. Yuan*, Aug. 28 (2020)]. In 2008, South Korea implemented an advisory jury system, which is a compromise between a traditional jury consisting solely of laypersons and a mixed court consisting of laypersons and professional judges (Park 2021). Early concerns about juror competence and a constitutional provision guaranteeing the right to a trial by judge justified the decision to make the jury advisory and to preserve the final decision for law-trained judges. Nonetheless, after a five-year monitoring program, the review committee produced a favorable evaluation and recommended that the verdict of the Korean jury be presumptively

accepted. Despite support for deference from the Korean Supreme Court, the Korean jury remains advisory, but it is now a well-entrenched part of the legal system.

In response to widespread criticism of the criminal legal system based on several wrongful convictions in death penalty cases and a nearly 100% conviction rate, Japan in 2009 introduced a mixed court, *Saiban-in seido*, which consists of six laypersons and three professional judges, that decides serious criminal cases (Vanoverbeke & Fukurai 2021). Decisions are made by a majority vote, but the majority must include at least one professional judge. Although the conviction rate has not dropped below 98% since the introduction of *Saiban-in*, it appears to have generated enhanced civic engagement by those who have participated as lay judges (Vanoverbeke & Fukurai 2021), revealing a similar impact of lay participation that Gastil et al. (2010) observed in jurors in the United States.

Not all the new developments in lay participation have proceeded without encountering obstacles. Spain has now had almost 30 years of jury trials and has experienced the challenges of grafting elements of the traditional civil law system onto the jury system. In a procedure that preserves legal control, the jurors are assisted by a legally qualified clerk, who may provide legal advice or assist in writing a “reasoned verdict.” The appropriate role to be played by this clerk has been controversial (Jimeno-Bulnes & Hans 2016).

The country of Georgia, which has a constitution that provides for juries in criminal cases, has encountered substantial challenges from limited government support, skepticism from political elites, and an uninformed public (Kovalev & Meladze 2021). The jury system has thus been slow to take hold in Georgia, and it is unclear at this point whether Georgia will eventually fulfill its constitutional mandate and produce a robust jury system throughout the country.

Despite initial skepticism from many sides, spurred on by the promise of greater legitimacy for legal systems suffering from rampant mistrust, lay participation in legal systems has seen an impressive expansion in the first years of the twenty-first century. At a time when democratic institutions are threatened at the national level in many parts of the world, it will be interesting to see whether these micro-democratic institutions can survive and thrive, and what changes occur in the forms they take. For example, issues such as court size, whether and how many professionals are included, and whether both sides can appeal are still in flux. The performance of these new institutions will bear scrutiny.

RETRENCHMENT AND LIMITATIONS ON LAY DECISION MAKING

In some parts of the world, lay participation has contracted rather than expanded. Three primary forces have pushed in the direction of contraction: elite preference for professional decision making, discomfort with the lack of reasoning explaining a jury verdict, and high-profile unpopular verdicts. Some countries have moved from all-lay juries to mixed courts; others have shifted some offenses from lay to professional courts.

In Norway, the all-layperson jury system, which went into effect in 1887, was touted by proponents for providing practical knowledge and experience (Offit 2021). Over time, however, the legal system moved toward replacing the all-lay juries with mixed courts, and the last jury verdict was delivered in 2019 (Olsson 2019). In principle, the laypersons can outvote the professionals on the mixed courts, but there is no evidence showing how often this occurs. In response to the concern that lay members of the panels might be reluctant to disagree with the professional judges, judges and prosecutors have pointed to the “high level of social equality among citizens in Norway” as a reason why lay decision makers are likely to engage in meaningful participation on these mixed courts (Offit 2021, p. 208). Research outside Norway on mixed courts, however, reveals that although lay judges on mixed panels generally feel respected and able to participate,

Saiban-in seido:

Japan’s decision-making body that consists of six lay citizens and three professional judges who work together to decide guilt and sentencing in a criminal case

Civic engagement:

active citizen participation, including volunteering, voting, and other forms of social and political action

professional judges at times may press the lay judges to change their positions when they disagree with other members of the court (Bergoglio 2021). A classic study of influence on the mixed courts of Germany indicated that the lay judges rarely influenced verdicts on guilt, though they had some influence on sentencing decisions (Casper & Zeisel 1972). This is an intriguing distinction given the general pattern that mixed courts typically decide on sentencing as well as guilt. The one notable exception is that all-lay American juries tend to be excluded from sentencing with few exceptions.

A fundamental objection that many have raised about the Anglo-American style of all-lay jury verdicts is that, unlike a judicial verdict, which is accompanied by a written opinion, the jury delivers a general verdict on guilt, without giving any reasons for the verdict. Some support for this perspective came from the European Court of Human Rights when it decided *Taxquet v. Belgium* in 2010. Although the court did not require jurors to give reasons for their verdicts, it did specify that the defendant and the public must understand the jury's verdict to provide "an objective and transparent justice system" [*Taxquet v. Belgium* (2010), p. 26]. The court accepted that a general verdict of guilty in the Anglo-American jury system provides a sufficient safeguard to enable the accused to understand the reasons for his conviction. Thus, the court implicitly accepted that a conviction indicates that the jury has found evidence that the prosecution has proven the required elements of the charged offense specified in the jury instructions beyond a reasonable doubt.

In some countries with newer jury systems, the jury is required to provide more explicit reasons. The jury's explanation for the verdict in Spain is written with assistance from a legally trained court clerk (Jimeno-Bulnes 2021, Jimeno-Bulnes & Hans 2016). In Russia, the jury answers detailed questions rather than simply issuing a general verdict (Thaman 1995). The mixed-court model that replaced the all-lay jury in Norway offers a direct route to transparent reasoned verdicts by including professional judges who can provide a written opinion. France in 2011 officially instituted the obligation to provide a reasoned verdict (Germain 2021). In 2016, Belgium achieved a similar result by adding professional judges to the formerly all-lay *Cour d'assises*, albeit without voting rights (Germain 2021). When a verdict constitutes a legal precedent for future cases, some detail on reasoning akin to a judicial opinion may be valuable. A jury verdict in the United States, unlike a judicial verdict in a bench trial, does not create a precedent for future cases.

Proponents of professional legal decision making have often raised concerns about bias and incompetence of lay decision makers [Diamond 1990 (lay magistrates in England and Wales), Greene & Renberg 2022 (lay magistrates in the United States), Jolly et al. 2022 (civil juries in the United States), Offit 2021 (juries in Norway)]. As a result, unpopular jury verdicts have at times undermined support for juries (Jimeno-Bulnes 2021). In Uruguay, negative reaction to what was viewed as an unjustified acquittal of a prominent businessman led to the abolition of its more than 50-year-old jury system (Bado 2017). Rape trials have attracted particular concern in several countries, including Norway, France, England, and Scotland (Chalmers et al. 2021, Germain 2021, Offit 2021). That concern has been fueled in part by evidence that rape prosecutions produce lower conviction rates than other violent offenses (Crown Prosec. Serv. 2020, Scott. Gov., Safer Communities Dir. 2021) and charges that jurors' prejudicial beliefs and attitudes toward rape and rape complainants—so-called "rape myths" (e.g., belief that lack of physical resistance is evidence of consent)—may be responsible (Ellison & Munro 2009, Finch & Munro 2006). Although some recent research disputes the claims that twenty-first-century English juries harbor bias against claims by rape victims (Thomas 2020), what is missing from much of this debate is an evaluation of the extent to which the responses of professional judges to rape charges and rape victims are likely to differ from the juries' responses.

The retrenchment of and limitations on lay legal decision making not only have brought an increase in professional participation on the courts but also have led to constrictions on the scope

of lay decision making. Thus, in 2016, Belgium reclassified most cases to be eligible for trial only before professional judges rather than mixed courts (Germain 2021). Russia removed juries from political trials, ostensibly because of anti-government bias and jury intimidation (Kovalev & Nasonov 2021). In most countries outside the United States, both the prosecutor and the defense have a right to appeal the trial verdict. In the United States, contraction has also occurred, primarily through an incentive system that risks a heavy penalty if a defendant is convicted at trial. Indeed, plea bargaining has become the primary, almost exclusive, outcome for a criminal charge (Diamond & Rose 2018, Smith 2005). Jolly et al. (2022) and Thomas (2016) describe successful campaigns in the United States to limit the scope and power of civil juries.

In sum, although most polls in all countries show support for lay participation in legal proceedings, the ability of lay participation to maintain its place in an increasingly professionalized legal system has faced substantial headwinds in some countries. The resulting outcomes for the newer systems described above will depend on their ability to demonstrate that lay participation fulfills its promise of infusing the legal system with community perspectives and provides greater system legitimacy. These achievements will be necessary to counter the challenges the new systems will undoubtedly encounter.

DECISION-MAKING RESEARCH

Competence of Lay Decision Makers

One question that is raised about lay decision makers is whether they are competent to decide legal cases. After all, the practice of law requires legal training, and lay decision makers typically lack such training. There might be fewer qualms about lay judges who sit with professional judges on mixed courts because they can be guided by the professional judges who have had legal training, but what about jurors who sit on juries and whose role is to decide the facts and apply the law as the judge has given it to them and to reach a verdict on their own? Several structural features of the deliberation aid jurors in performing their role competently.

One feature is that jurors deliberate as a group and have the benefit of group recollection. One of their tasks is to find the facts. Having a jury of 12 determine the facts is likely to lead to greater accuracy (Am. Bar Assoc. 2024, Higginbotham et al. 2020). The jury's fact-finding can be further enhanced if it chooses to engage in an "evidence-driven" rather than a "verdict-driven" deliberation (Hastie et al. 1983). With a verdict-driven deliberation, the jury takes an initial vote, coalitions can form, and jurors offer support for their early positions. In contrast, in evidence-driven deliberations, jurors contribute their recollections and refrain from voting until later in the process. This deliberation style, in which a vote is delayed, is likely to lead to greater recollection of facts for the group's consideration (Am. Judic. Soc. 1999, Kane 2003) and fewer hung juries (Hannaford-Agor et al. 2002).

Another feature of the deliberation that helps jurors to perform competently is that they must give reasons for their views to one another. They cannot just announce their positions, as they might in an ordinary business meeting. When a unanimous verdict is required, as it is in all serious criminal cases in federal and state courts in the United States [*Duncan v. Louisiana* (1968), *Ramos v. Louisiana* (2020)], then all jurors must be persuaded to support the verdict. Admittedly, it can be hard to reach a unanimous verdict, and in some countries, such as England and Spain, juries do not have to reach a unanimous jury verdict [Marder 2011 (England), Jimeno-Bulnes 2021 (Spain)], but the unanimity requirement is an added safeguard. If a diverse group of jurors from different backgrounds eventually agree on the same verdict, that enhances confidence in their verdict.

One reassurance that juries perform their task competently is that judge-jury agreement is high. Kalven & Zeisel's (1966) landmark study compared verdicts that criminal juries reached

with decisions that judges said they would have reached in those same cases. They found that juries and judges agreed in almost three-quarters of the cases. Disagreements tended to occur when the evidence was more evenly balanced and either verdict could be justified. In these cases, juries were more lenient than judges. Admittedly, this study was undertaken almost 60 years ago, but more recent studies have found similar levels of agreement between judge and jury verdicts in both criminal and civil cases (Vidmar & Hans 2007). The judge–jury agreement rates in South Korea’s advisory jury system (Kim et al. 2013) and in the jury system in Neuquén, Argentina (Porterie et al. 2021), are also substantial.

Less is known about the competence of lay judges who sit with professional judges on mixed courts. Agreement rates are extraordinarily high. Although lay and professional judges work together, it is unclear whether lay judges feel comfortable disagreeing with the professional judge (Kutnjak Ivković 2015). In addition, lay judges are at a disadvantage because they generally have not been given the case file beforehand and a professional judge presides over the proceeding, and thus controls it. Lay judges are more willing to give their views when they have expertise in the subject area of the case or when the professional judge invites them to give their views (Machura 2021). Thus, specific practices and the professional judge’s approach can either encourage or discourage active participation by lay judges.

Less is also known about the competence of lay magistrates and justices of the peace, both of whom traditionally do not receive extensive legal training but may decide a wide range of criminal and civil matters (Boulanger-Bonnely 2023b). Although Boulanger-Bonnely notes that both lay magistrates in England and Wales and justices of the peace in Colombia are selected as laypersons untrained in the law, they do now receive some training and legal support. Even though Boulanger-Bonnely describes them as having a “hybrid” status, he considers them to be closer to ordinary citizens than to professional judges. Doob et al. (1991) interviewed justices of the peace in Canada and reported that many had concerns about their inadequate training, lack of staff support, and the general disregard they experienced. Although lay magistrates have received some academic attention (Diamond 1990, Doob et al. 1991, Machura 2021), further study of lay magistrates, justices of the peace, and other customary law decision makers is needed to develop a fuller picture of their contributions (Hans 2008, Kutnjak Ivković & Hans 2023).

Concerns about Bias

One challenge that all legal decision makers face, whether they are jurors serving on juries, lay judges on mixed courts, or even professional judges, is bias. Bias can be explicit or implicit. Explicit bias is bias that a person is aware of, whereas implicit bias is bias that a person is unaware of (Kang et al. 2012). Bias, whether explicit or implicit, interferes with the basic requirement that a legal decision maker must be fair and impartial. There is perhaps more concern about lay decision makers being biased than professional decision makers because the latter have the benefit of professional training, but nobody is immune from bias.

Several stages in the jury process can serve as safeguards against biased jurors. One is that prospective jurors, at least in the United States, are supposed to be drawn from a fair cross section of the community (US Const. amend. 6 and 7, 28 U.S.C. § 1861). The hope is that jurors will bring a wide range of experiences and perspectives to their role as jurors that will allow them to scrutinize the evidence carefully and challenge each other’s biases (to the extent they are revealed) during deliberation. Another safeguard is *voir dire*, or the questioning of prospective jurors by judges and lawyers to determine who can serve on a particular jury. This is a feature of juries in the United States, but not in all countries with juries. For example, there is no *voir dire* in trial courts in Australia, Canada, or England and Wales. Even where there is *voir dire*, however, there is debate

about how effective it is at revealing bias. In addition, prospective jurors, when questioned, might give “socially acceptable” answers rather than acknowledge their biases (Schuller & Vidmar 2011) or remain silent during group voir dire (Mize 1999). Another safeguard is to have prospective jurors complete written questionnaires before voir dire so that they can take time to respond carefully and candidly. Written questionnaires have been used effectively in some high-profile jury trials (O’Brien & Grosso 2023).

In some jury systems, judges can excuse for cause prospective jurors who indicate that they cannot be impartial or who do not satisfy the appearance of impartiality. They can grant a for cause challenge on their own initiative or at the behest of a lawyer. In addition, lawyers can exercise a certain number of peremptory challenges to remove prospective jurors about whom they have misgivings, even if the prospective jurors have said they can be impartial. Jurors, like judges, take an oath in which they agree to decide the case based only on the evidence presented in court. Finally, when jurors deliberate, they must give reasons for their views in attempting to persuade other jurors, and if they articulate reasons based on sympathy or prejudice, they are likely to be challenged by the other jurors.

Some courts have tried to help prospective jurors understand how implicit bias can affect their decision making. They show orientation videos that explain implicit bias (New York, Washington State) or give jury instructions to inform jurors about the need to help each other identify and resist implicit biases during jury deliberations (Illinois, Washington State). A few studies have examined the effectiveness of such instructions but found mixed results (Diamond & Hans 2023; Elek & Hannaford-Agor 2013, 2015). Further study in this area is needed, particularly when several aids, such as orientation videos and jury instructions, are used together.

Effects on Lay Decision Makers

What effect does jury service, or lay participation more broadly, have on participants once they have completed their service? In the United States, some judges hold a post-verdict interview with jurors to thank them for their service; answer their questions (except about the verdict); and provide them with useful information, such as that they can refuse to meet with lawyers or the media if they choose and where to find resources for managing post-trial stress if they experience it. Some judges also ask jurors to complete a brief questionnaire to receive feedback from jurors about their experience. Although a judge has discretion whether to hold a post-verdict interview, jurors usually appreciate the opportunity to meet with the judge and to be recognized for their hard work (Munsterman et al. 1997, 2006). However, little has been written about post-verdict interviews, and this topic would benefit from further study (Marder 2022).

In the United States, polls and surveys show that those who serve as jurors usually hold positive views about the judiciary and juries after having served (Marder & Hans 2015). Jurors in the Argentine province of Neuquén also reported more favorable views of the jury and the court following their jury service (Porterie et al. 2021). There is less research on the attitudinal effects of participating on mixed courts. However, Vanoverbeke & Fukurai (2021) report that many of the Japanese citizens who serve as *Saiban-in* leave with positive views of the experience. The strong likelihood that professional and lay judge interaction will shape lay judge experiences suggests the need for further study of how lay participants in Japan and other countries that use mixed courts view their experience.

Another effect is that those who serve on juries might return to their private lives and become more engaged citizens. Gastil et al. (2010) found that those who served as jurors on criminal juries were more likely to vote in elections than they had been before their jury service. The French writer Alexis de Tocqueville [1945 (1835)], who visited the United States in the 1830s and observed

For cause challenge: during jury selection, a judge can remove prospective jurors for certain reasons, such as a familial or financial connection to the case or the inability to be impartial; the judge must give a reason in open court and on the record

its institutions, suggested in *Democracy in America* that those who served on civil juries would learn to think more judiciously from the judge and would introduce that thinking in their ordinary business lives. Hans et al. (2014) found that jurors who served on traditional 12-person civil juries required to reach a unanimous decision were more likely to vote in elections following their jury service, controlling for their preservice voting record. Several lay judges in Japan were newly inspired by their experiences to become active in public affairs (Vanoverbeke & Fukurai 2021).

LOOKING TO THE FUTURE

We have summarized what we know about the identity and selection of lay legal decision makers and the different approaches that jurisdictions use to incorporate members of the public into the legal apparatus. We have reported on research that has evaluated chief concerns about lay legal decision making, including competence and bias, and the broader impact of lay participation, such as the enhancement of civic engagement and the boost to legitimacy. We have also contrasted the experiences of jurisdictions that have embraced new systems of lay participation with those that have moved to circumscribe or eliminate community representatives as decision makers. We now turn to some suggestions for future research.

The Importance of Empirical Research

We have identified the significant role that empirical research has played in understanding the scope and operation of lay legal decision making. Since the last *Annual Review of Law and Social Science* article devoted to global lay participation (Hans 2008), scholars have generated an impressive amount of detailed information about the frequency and operation of lay legal decision making. That work shows breathtaking diversity in how countries have come to rely upon community members to resolve legal disputes. Yet it also shows some common issues of concern. Many jurisdictions struggle to identify the best approach to selecting individuals from their communities to serve as decision makers, falling short of their goal of full representation. The reliance on political parties or other nonrandom methods to choose lay judges has unknown effects on fact-finding and legitimacy. The use of empirical research to identify successful strategies and to promote best practices could thus be beneficial to many communities around the globe.

Another pressing concern is the existence of decision makers' biases and how to control them (Hunt 2015). The fact that lay legal decision makers incorporate community values into their decisions can be a double-edged sword. It can help to keep the legal system in line with changing societal norms and counter the dominance of jaded or biased professional judges. But it can also introduce unwanted prejudice into legal fact-finding. We noted above some of the protections built into the legal system, including careful selection processes and the requirement of deliberation. But more empirical testing of ways to reduce bias is urgently needed. Does providing judicial instructions about avoiding rape myths, or showing implicit bias videos to jurors, have a positive impact?

Yet another concern is how best to promote the independent voices of lay legal decision makers. Because a strong motivation for relying on laypersons is to inject community perspectives into decision making, the routine finding that lay judges play only modest roles on mixed courts is disturbing. It would be useful to compare the approaches taken in different countries to maximize lay participation—for example, asking lay judges to express their views first, before having professional judges weigh in, or having a preliminary discussion only among lay judges prior to deliberating with the professional judges.

Collaborative research groups, consisting of individuals from different countries, are in an excellent position to carry out these and other comparative research questions (Hans 2017, Marder & Hans 2015). International collaborative groups can include individuals who have not only deep

knowledge of their own countries but also diverse theoretical and methodological skills that can be deployed in the intensive work of comparing systems of lay participation.

Technological Change and Lay Legal Decision Making

Courts are usually cautious about technological changes, but even before the COVID-19 pandemic closed courthouses worldwide, courts in the United States had begun conducting selected legal procedures remotely, including bail and immigration hearings (Diamond et al. 2010). When the COVID-19 pandemic struck in March 2020, courts were forced to make changes so that they could function. Some courts, facing significant backlogs, forged ahead with in-person jury trials using social distancing, masks, and plexiglass shields. A few others ventured into previously unexplored territory and conducted civil jury trials using online platforms such as Zoom (Hans 2022).

Lawyers have voiced strong objections to online jury trials, arguing that virtual jury selection is inadequate and that remote proceedings do not allow them to consult effectively with their clients or fully present their cases (Benninger et al. 2021). Legal scholars worry that remote jurors will be less representative, less attentive, and less empathetic than in-person jurors (Bandes & Feigenson 2020).

Interestingly, the real-world experiences with remote civil juries during the pandemic appeared to be generally positive, although technical problems were common. One of the few mock jury studies that compared online and in-person juries' performance in the same civil case found few differences between the two (Hans 2022). Even as jury trials have returned to the physical courtroom, some judges have continued to hold jury selection online, with the justification that it is more convenient for prospective jurors and might lead to a more diverse jury pool. Nonetheless, the digital divide, in which some people in the community have less access to and less familiarity with digital resources, might undermine representativeness rather than improve it.

Researchers who focus on the courtroom of the future continue to examine its online possibilities. They have considered some of its challenges, such as ensuring that participants feel the seriousness of purpose that people in a courtroom feel (Rossner & Tait 2023), and have looked at online pilot programs, such as the UK Pilot Program (Rossner & McCurdy 2020), for guidance. The formal setting of the physical courtroom helps citizens to be transformed into jurors (Marder 2022), yet some researchers anticipate that online courtrooms will eventually recreate essential features of brick-and-mortar courtrooms (Rossner & Tait 2023).

The fact that trials can be conducted online creates new possibilities because participants no longer need to be in the same location. Individuals with disabilities may find it easier to serve remotely. Some trials are of great interest and importance not only to individuals in a local community but also to those elsewhere. One can now imagine a jury trial or a mixed court proceeding where participants are drawn from different sections of a country, or even across national boundaries. Yet along with any experimental remote trial procedures, the extent to which virtual and in-person trials differ, and the impact not only on decision making but also on the broader effects of the lay participation system, such as transparency and legitimacy, should be studied.

Deliberative Democracy and Lay Participation

Some of the most striking research findings on lay participation in recent years pertain to these broader effects of lay participation systems, in particular, the way in which lay legal decision making promotes democracy and self-governance. We saw that jurors in the United States and Argentina reported more favorable views of the judicial system after their jury service, that jury service can increase voting for some populations, and that Japanese lay judges became more active politically following their service. All these countries are democracies; one question is whether lay participation has similar effects in countries with other political structures.

In a global study of the links between democracy and lay participation, Kutnjak Ivković & Hans (2023) analyzed the relationship between a country's use of laypersons as legal decision makers and the country's democratic characteristics. They found striking correlations between the two. Using several different measures of global democracy, Kutnjak Ivković & Hans found higher democracy scores in countries with lay participation. Global freedom scores and measures of civil liberties and political rights were all higher in countries with lay participation. The relationships were especially strong for juries as a form of lay participation.

The relationship between democracy and lay participation is significant, but we do not know whether it is causal. The fact that jury participation leads to voting, and service as a lay judge leads to greater political involvement, is suggestive but not definitive. It is also possible that democratic countries are more comfortable giving citizens a voice in legal decision making. Tocqueville suggested that citizens learn to engage in self-governance by serving on juries. Further exploration of the role that lay legal decision making plays in facilitating democracy can build on the insights that Tocqueville wrote about almost two centuries ago.

SUMMARY POINTS

1. Lay citizens, untrained in the law, participate as legal decision makers in different ways, including as jurors, as lay judges on mixed courts, as lay magistrates, and as lay judges on lay courts.
2. The selection process—who is appointed or selected to serve as a lay decision maker—is critical and influences the extent to which lay decision makers represent the community and are able to fulfill their fact-finding and legitimizing purposes. Most jury systems today draw laypersons randomly from the local population to maximize the representativeness of juries, which should aid their fact-finding and promote the legitimacy of their verdicts.
3. Participating as a juror increases support for the institution and fosters civic engagement.
4. In countries where lay participation has declined, three primary factors contribute: elite preferences for professional decision making, discomfort with the lack of reasoning in a jury verdict, and high-profile verdicts that are unpopular.
5. The emergence of new lay participation systems, developed to promote democracy, offer excellent opportunities to examine whether and how lay legal decision making increases the fairness and legitimacy of the legal system.
6. The new lay systems reveal strengths and weaknesses of the traditional models of lay participation, as well as creative adaptations, whose impacts must still be assessed.

FUTURE ISSUES

1. Given the strong emphasis in prior research on lay participation systems in Global North countries, future work should explore lay participation in Global South countries.
2. Future research should go beyond examining how lay legal decision making operates to explore the broader effects of lay participation on the acceptability and legitimacy of legal decisions and legal systems.

3. At a time when democratic institutions are threatened at the national level in many parts of the world, one question is whether these micro-democratic institutions can continue to survive and thrive.

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LITERATURE CITED

- Almeida VG, Bakrokar DC, Bilinski M, Chizik ND, Harfuch A, et al. 2021. The rise of the jury in Argentina: evolution in real time. See Kutnjak Ivković et al. 2021, pp. 25–46
- Am. Bar Assoc. 2024. *Principles for Juries and Jury Trials*. Eagon, MN: Thomson/West. https://www.americanbar.org/content/dam/aba/administrative/american_jury/principles-juries-jury-trial.pdf
- Am. Judic. Soc. 1999. *Behind Closed Doors: A Guide for Jury Deliberations*. Chicago: Am. Judic. Soc.
- Amnesty International. 2002. *Rwanda: Gacaca tribunals must conform with international fair trial standards*. Press Release, Dec. 17. <https://www.amnesty.org/en/documents/afr47/005/2002/en/>
- Asoc. Argent. Juicio Jurados. 2024. *Argentina: The province of Santa Fe gives the world its newest jury system*. Press Release, March 23. <http://www.juicioporjurados.org/2024/03/argentina-province-of-santa-fe-gives.html>
- Bado W. 2017. *De Abogados, Jueces y Juicos. La Justicia a Través de la Historia [Of Lawyers, Judges, and Trials; Justice through History]*. Montevideo, Urug.: Fund. Cult. Univ.
- Baldus DC, Grosso CM, Dunham R, Woodworth G, Newell R. 2012. Statistical proof of racial discrimination in the use of peremptory challenges: the impact and promise of the *Miller-El* line of cases as reflected in the experience of one Philadelphia capital case. *Iowa Law Rev.* 97:1425–65
- Bandes SA, Feigensohn N. 2020. Virtual trials: necessity, invention, and the evolution of the courtroom. *Buffalo Law Rev.* 68:1275–352
- Benninger T, Colwell C, Mukamal D, Plachinski L. 2021. *Virtual justice? A national study analyzing the transition to remote criminal court*. Rep., Stanford Crim. Justice Cent., Stanford Univ., Stanford, CA. <https://law.stanford.edu/wp-content/uploads/2021/08/Virtual-Justice-Final-Aug-2021.pdf>
- Bergoglio MI. 2021. Twelve years of mixed tribunals in Argentina. See Kutnjak Ivković et al. 2021, pp. 47–68
- Binnall JM. 2021. *Twenty Million Angry Men: The Case for Including Convicted Felons in Our Jury System*. Oakland: Univ. Calif. Press
- Bolocalan MG. 2004. Rwandan gacaca: an experiment in transitional justice. *J. Dispute Resolut.* 2:355–400

Shows how best practices in jury selection, trial processes, and jury deliberation promote fair juries.

Provides research showing a link between jury service and other forms of civic engagement.

- Bonnieu M. 2001. The presumption of innocence and the *Cour d'Assises*: Is France ready for adversarial procedure? *Int. Rev. Penal Law* 72:559–77
- Boulanger-Bonnely J. 2023a. *Civil lay judges: a global overview*. Work. Pap., McGill Univ., Montreal, Can. <https://ssrn.com/abstract=4179703>
- Boulanger-Bonnely J. 2023b. The hybridization of lay courts: from Colombia to England and Wales. *Chicago-Kent Law Rev.* 98:191–216
- Caprathé W, Hannaford-Agor P, Loquvam SM, Diamond SS. 2016. Increasing jury representativeness. *Judges J.* 55:16–20
- Casper G, Zeisel H. 1972. Lay judges in the German criminal courts. *J. Legal Stud.* 1:135–91
- Chalmers J, Leverick F, Munro V. 2021. Why the jury is, and should still be, out on rape deliberation. *Crim. Law Rev.* 9:753–71
- Clark P. 2012. How Rwanda judged its genocide. *African Research Institute Counterpoints*, May 2. <https://www.africaresearchinstitute.org/newsite/publications/how-rwanda-judged-its-genocide-new/>
- Crown Prosec. Serv. 2020. *Rape and serious sexual offences (RASSO) flagged pre-charge and prosecution outcomes by crime types management information*. Publ., Case Manag. Inf. Syst., Crown Prosec. Serv., London. <https://www.cps.gov.uk/sites/default/files/documents/publications/Rape-Annual-Data-Tables-Year-Ending-March-2020.xlsx>
- Darbyshire P. 1999. A comment on the powers of magistrates' clerks. *Crim. Law Rev.* May:377–86
- Davies M. 2005. A new training initiative for the lay magistracy in England and Wales—a further step towards professionalism? *Int. J. Legal Prof.* 12:93–119
- Dawson J. 1960. *A History of Lay Judges*. Cambridge, MA: Harvard Univ. Press
- Diamond SS. 1990. Revising images of public punitiveness: sentencing by lay and professional English magistrates. *Law Soc. Inq.* 15:191–221
- Diamond SS, Bowman LE, Wong M, Patton MM. 2010. Efficiency and cost: the impact of videoconferenced hearings on bail decisions. *J. Crim. Law Criminol.* 100:869–902
- Diamond SS, Hans VP. 2023. Fair juries. *Univ. Ill. Law Rev.* 2023:879–953**
- Diamond SS, Hans VP, Chizik N, Harfuch A. 2023. The arrival of the civil jury in Argentina: the case of Chaco. *Chicago-Kent Law Rev.* 98:163–89
- Diamond SS, Rose MR. 2005. Real juries. *Annu. Rev. Law Soc. Sci.* 1:255–84
- Diamond SS, Rose MR. 2018. The contemporary American jury. *Annu. Rev. Law Soc. Sci.* 14:239–58
- Diesen C. 2001. Lay judges in Sweden. *Int. Rev. Penal Law* 72:313–15
- Doob AN, Baranek PM, Addario SM. 1991. *Understanding Justices: A Study of Canadian Justices of the Peace*. Toronto: Cent. Criminol. Univ. Tor.
- Duncan v. Louisiana*, 391 US 145 (1968)
- Elek JK, Hannaford-Agor P. 2013. First, do no harm: on addressing the problem of implicit bias in juror decision making. *Court Rev.* 49:190–98
- Elek JK, Hannaford-Agor P. 2015. Implicit bias and the American juror. *Court Rev.* 51:116–21
- Ellison L, Munro V. 2009. Reacting to rape: exploring mock jurors' assessments of complainant credibility. *Br. J. Criminol.* 49:202–19
- Finch E, Munro V. 2006. Breaking boundaries? Sexual consent in the jury room. *Legal Stud.* 26:303–20
- Gaparayi IT. 2001. Justice and social reconstruction in the aftermath of genocide in Rwanda: an evaluation of the possible role of the gacaca tribunals. *Afr. Hum. Rights Law J.* 1:78–106
- Gastil J, Deess EP, Weiser PJ, Simmons C. 2010. *The Jury and Democracy: How Jury Deliberation Promotes Civic Engagement and Political Participation*. New York: Oxford Univ. Press**
- Geraghty MA. 2020. Gacaca, genocide, genocide ideology: the violent aftermaths of transitional justice in the new Rwanda. *Comp. Stud. Soc. Hist.* 62:588–618
- Germain CM. 2021. Trials by peers: the ebb and flow of the criminal jury in France and Belgium. See Kutnjak Ivković et al. 2021, pp. 218–36
- Gibbs P. 2015. The white, middle-aged and middle-class who are still sitting in judgement. *Financial Times*, Nov. 6. <https://www.ft.com/content/63711808-818e-11e5-8095-ed1a37d1e096>
- Gibbs P, Kirby A. 2014. *Judged by peers? The diversity of lay magistrates in England and Wales*. Work. Pap., Inst. Crim. Policy Res., Birkbeck, Univ. London. https://eprints.bbk.ac.uk/id/eprint/22162/1/HLWP_6_2014.pdf

- Gibson JL. 2004. *Overcoming Apartheid: Can Truth Reconcile a Divided Nation?* New York: Russell Sage Found.
- Greene SS, Renberg KM. 2022. Judging without a J.D. *Columbia Law Rev.* 122:1287–388
- Hannafor-Agor PL, Hans VP, Mott NL, Munsterman GT. 2002. *Are Hung Juries a Problem?* Williamsburg, VA: Natl. Cent. State Courts
- Hans VP. 2008. Jury systems around the world. *Annu. Rev. Law Soc. Sci.* 4:275–97
- Hans VP. 2017. Trial by jury: story of a legal transplant (presidential address). *Law Soc. Rev.* 51:471–99
- Hans VP. 2022. Virtual juries. *DePaul Law Rev.* 71:301–30
- Hans VP. In press. The landscape of lay decision-making in civil litigation. In *Comparative Civil Procedure: Power, Authority and Culture in Dispute Resolution*, ed. M Woo, R van Rhee. Northampton, MA: Edward Elgar Publ.
- Hans VP, Gastil J, Feller T. 2014. Deliberative democracy and the American civil jury. *J. Empir. Legal Stud.* 11:697–717
- Harfuch A. 2015. La firmeza (finalidad) del veredicto del jurado [The finality of the jury's verdict]. In *II Congreso Internacional de Juicio por Jurados* [Second International Conference of Trial by Jury], ed. G Lentner, L Piñeyro, pp. 85–112. Buenos Aires: Jusbares
- Hastie R, Penrod SD, Pennington N. 1983. *Inside the Jury*. Cambridge, MA: Harvard Univ. Press
- Higginbotham P, Rosenthal LH, Gensler SS. 2020. Better by the dozen: bringing back the twelve-person civil jury. *Judicature* 104:47–57**
- Horowitz R. 2012. In *the Public Interest: Medical Licensing and the Disciplinary Process*. New Brunswick, NJ: Rutgers Univ. Press
- Human Rights Watch. 2011. *Justice compromised: the legacy of Rwanda's community-based gacaca courts*. Rep., Cent. Geogr. Inf. Syst. Remote Sens., Natl. Univ. Rwanda, Butare. <https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>
- Hunt JS. 2015. Race, ethnicity, and culture in jury decision making. *Annu. Rev. Law Soc. Sci.* 11:269–88
- Jimeno-Bulnes M. 2021. The twenty-fifth anniversary of the Spanish jury. See Kutnjak Ivković et al. 2021, pp. 107–27
- Jimeno-Bulnes M, Hans VP. 2016. Legal interpreter for the jury: the role of the clerk of the court in Spain. *Oñati Socio-legal Stud.* 6:197–215
- Jolly R, Hans VP, Peck RS. 2022. Democratic renewal and the civil jury. *Ga. Law Rev.* 57:79–162
- Kalven H Jr., Zeisel H. 1966. *The American Jury*. Boston: Little, Brown
- Kane JL. 2003. Giving trials a second look. *Denver Law Rev.* 80:738–42
- Kang J, Bennett M, Carbado D, Casey P, Dasgupta N, et al. 2012. Implicit bias in the courtroom. *UCLA Law Rev.* 59:1124–86
- Karekezi UA, Nshimiyimana A, Mutamba B. 2004. Localizing justice: gacaca courts in post-genocide Rwanda. In *My Neighbor, My Enemy: Justice and Community in the Aftermath of Atrocity*, ed. E Stover, HM Weinstein, pp. 69–84. Cambridge, UK: Cambridge Univ. Press
- Kim S, Park J, Park K, Eom JS. 2013. Judge-jury agreement in criminal cases: the first three years of the Korean jury system. *J. Empir. Legal Stud.* 10:35–53
- Klami HT, Hämäläinen M. 1992. *Lawyers and Laymen on the Bench*. Helsinki: Suom. Tiedeakat.
- Kovalev N, Meladze G. 2021. Trial by jury in Georgia: a catalyst for evolving independent courts. See Kutnjak Ivković et al. 2021, pp. 261–81
- Kovalev N, Nasonov S. 2021. The Russian jury trial: an ongoing legal and political experiment. See Kutnjak Ivković et al. 2021, pp. 237–60
- Kutnjak Ivković S. 1999. *Lay Participation in Criminal Trials: The Case of Croatia*. Lanham, MD: Austin & Winfield Publ.
- Kutnjak Ivković S. 2007. Exploring lay participation in legal decision-making: lessons from mixed tribunals. *Cornell Int. Law J.* 40:429–53
- Kutnjak Ivković S. 2015. Ears of the deaf: the theory and reality of lay judges in mixed tribunals. *Chicago-Kent Law Rev.* 90:1031–67
- Kutnjak Ivković S, Diamond SS, Hans VP, Marder NS, eds. 2021. *Juries, Lay Judges, and Mixed Courts: A Global Perspective*. Cambridge, UK: Cambridge Univ. Press**
- Kutnjak Ivković S, Hans VP. 2021. A worldwide perspective on lay participation. See Kutnjak Ivković et al. 2021, pp. 323–45

Reviews the empirical evidence on the advantages of larger juries.

Describes the extent of lay legal decision making in different countries and countries' changing practices over time.

Describes how the stages of the jury process transform citizens into jurors.

- Kutnjak Ivković S, Hans VP. 2023. Beacons of democracy? A worldwide exploration of the relationship between democracy and lay participation in criminal cases. *Chicago-Kent Law Rev.* 98:131–61
- Li SD, Liu TH. 2019. Problem-solving courts in China: background, development, and current status. *Vict. Offenders* 14:360–74
- Machura S. 2001. Interaction between lay assessors and professional judges in German mixed courts. *Int. Rev. Penal Law* 72:451–79
- Machura S. 2003. Fairness, justice, and legitimacy: experiences of people's judges in South Russia. *Law Policy* 25:124–50
- Machura S. 2007. Lay assessors of German administrative courts: fairness, power-distance orientation, and deliberation activity. *J. Empir. Legal Stud.* 4:331–62
- Machura S. 2021. "... And my right": the magistrates' courts in England and Wales. See Kutnjak Ivković et al. 2021, pp. 131–51
- Machura S, Kutnjak Ivković S, Hans VP. 2023. Recent developments about lay judges in the European Union. *Laikos* 2023:54–61
- Machura S, Rennig C. 2021. "In the name of the people": lay assessors in Germany. See Kutnjak Ivković et al. 2021, pp. 152–73
- Marder NS. 2011. Two weeks at the Old Bailey: jury lessons from England. *Chicago-Kent Law Rev.* 86:537–83
- Marder NS. 2022. *The Power of the Jury: Transforming Citizens into Jurors*. Cambridge, UK: Cambridge Univ. Press
- Marder NS. 2023. Race, peremptory challenges, and state courts: a blueprint for change. *Chicago-Kent Law Rev.* 98:65–106
- Marder NS, Diamond SS, Hans VP, Jimeno-Bulnes M, Kutnjak Ivković S, Rose MR. 2023. Introduction to symposium: juries in a time of crisis and change. *Chicago-Kent Law Rev.* 98:13–33
- Marder NS, Hans VP. 2015. Introduction to juries and lay participation: American perspectives and global trends. *Chicago-Kent Law Rev.* 90:789–824
- Mize GE. 1999. On better jury selection: spotting UFO jurors before they enter the jury room. *Court Rev.* 1999:10–15
- Mize GE, Connelly CJ. 2004. Jury trial innovations: charting a rising tide. *Court Rev.* 41:4–10
- Munsterman GT, Hannaford PL, Whitehead GM, eds. 1997. *Jury Trial Innovations*. Williamsburg, VA: Natl. Cent. State Courts
- Munsterman GT, Hannaford-Agor PL, Whitehead GM, eds. 2006. *Jury Trial Innovations*. Williamsburg, VA: Natl. Cent. State Courts. 2nd ed. https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0021/7644/jury-trial-innovations-2d-ed-2006.pdf
- O'Brien B, Grosso CM. 2023. Judges, lawyers, and willing jurors: a tale of two jury selections. *Chicago-Kent Law Rev.* 98:107–30
- Offit A. 2021. Dismissing the jury: mixed courts and lay participation in Norway. See Kutnjak Ivković et al. 2021, pp. 197–217
- Oldham J. 2006. *Trial by Jury: The Seventh Amendment and Anglo-American Special Juries*. New York: NYU Press
- Olsson SV. 2019. The professional judges rejected the jury's verdict: the whole case must be retried. *NRK*, Jan. 28. <https://www.nrk.no/norge/fagdommeme-juryens-kjennelse-hele-saken-ma-opp-pa-nytt-1.14398128>
- Park J. 2021. The Korean jury system: the first decade. See Kutnjak Ivković et al. 2021, pp. 88–106
- Parker H, Sumner M, Jarvis G. 1989. *Unmasking the Magistrates*. Philadelphia: Open Univ. Press
- Perron W. 2001. Lay participation in Germany. *Int. Rev. Penal Law* 72:181–95
- Porterie MS, Romano A, Hans VP. 2021. *El Jurado Neuquino: El Comienzo del Jurado Clásico en la Argentina* [*The Neuquenian Jury: The Beginning of the Classic Jury Trial in Argentina*]. Buenos Aires: INECIP. <https://inecip.org/wp-content/uploads/2021/11/El-jurado-neuquino-El-comienzo-del-jurado-cl%C3%A1sico-en-la-Argentina.pdf>
- Porterie S, Romano A. 2018. *El Poder del Jurado: Descubriendo el Juicio por Jurados en la Provincia de Buenos Aires* [*The Power of the Jury: Discovering Trial by Jury in the Province of Buenos Aires*]. Buenos Aires: INECIP. <https://inecip.org/wp-content/uploads/El-poder-del-jurado-October-2018.pdf>

- Powers v. Ohio*, 499 US 400 (1991)
- Provine DM. 1986. *Judging Credentials: Nonlawyer Judges and the Politics of Professionalism*. Chicago: Univ. Chicago Press
- Ramos v. Louisiana*, 590 US 83 (2020)
- Reichel PL. 2017. *Comparative Criminal Justice Systems: A Topical Approach*. Upper Saddle River, NJ: Prentice Hall
- Rossner M, McCurdy M. 2020. *Video hearings process evaluation (phase 2) final report*. Rep., HM Courts Trib. Serv., London. <https://perma.cc/5UG5-YMU2>
- Rossner M, Tait D. 2023. Virtual technology and the changing rituals of courtroom justice. *Chicago-Kent Law Rev.* 98:251–79
- Schuller R, Vidmar N. 2011. The Canadian criminal jury. *Chicago-Kent Law Rev.* 86:497–535
- Scott. Gov., Safer Communities Dir. 2021. *Criminal proceedings in Scotland 2019-20*. Rep. Scott. Gov., Edinburgh. <https://www.gov.scot/publications/criminal-proceedings-scotland-2019-20/>
- Seligson M. 2001. Lay participation in South Africa from apartheid to majority rule. *Int. Rev. Penal Law* 72:273–84
- Smith BP. 2005. Plea bargaining and the eclipse of the jury. *Annu. Rev. Law Soc. Sci.* 1:131–49
- Strandbakken A. 2001. Lay participation in Norway. *Int. Rev. Penal Law* 72:225–52
- Taman E. 2003. Lay participation in criminal justice: enhancing justice system legitimacy in post-conflict states. *Dalhousie J. Legal Stud.* 12:33–61
- Taxquet v. Belgium*, Eur. Court Hum. Rights, appl. 926/05 (2010). <https://www.legal-tools.org/doc/a77480/pdf/>
- Thaman SC. 1995. The resurrection of trial by jury in Russia. *Stanford J. Int. Law* 31:61–274
- Thaman SC. 2011. 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*. *Chicago-Kent Law Rev.* 86:613–68**
- Thomas C. 2020. The 21st century jury: contempt, bias and the impact of jury service. *Crim. Law Rev.* 11:987–1011
- Thomas SA. 2016. *The Missing American Jury: Restoring the Fundamental Constitutional Role of the Criminal, Civil, and Grand Juries*. Cambridge, UK: Cambridge Univ. Press**
- Tocqueville A. 1945 (1835). *Democracy in America*, Vol. 1. New York: Vintage Books
- Vanoverbeke D. 2015. *Juries in the Japanese Legal System*. New York: Routledge
- Vanoverbeke D, Fukurai H. 2021. Lay participation in the criminal trial in Japan: a decade of activity and its sociopolitical consequences. See Kutnjak Ivković et al. 2021, pp. 69–87
- Vidmar N, ed. 2000. *World Jury Systems*. New York: Oxford Univ. Press**
- Vidmar N, Hans VP. 2007. *American Juries: The Verdict*. Amherst, NY: Prometheus
- Ward J. 2017. *Transforming Summary Justice: Modernisation in the Lower Criminal Courts*. London: Routledge
- Wu J. 2021. People's mediation committees: bargaining between hospitals and patients. *J. Chin. Polit. Sci.* 26:353–71
- Yue L. 2001. The lay assessor system in China. *Int. Rev. Penal Law* 72:51–56
- Zhang J. 2014. *The Tradition and Modern Transition of Chinese Law*. Berlin: Springer

Analyzes the arguments about whether juries should give reasoned verdicts.

Explains how political and judicial actors have taken away the power and authority of juries.

Describes the range and features of different jury systems worldwide.

RELATED RESOURCES

- Jury and Democracy Project: <https://jurydemocracy.la.psu.edu/>
- Lay Participation in Law, Cornell Law School: <https://www.lawschool.cornell.edu/academics/centers-programs/lay-participation-in-law/>
- Lay Participation in Legal Systems Collaborative Research Network, Law and Society Association: <https://www.lawandsociety.org/crn04/>
- The Justice John Paul Stevens Jury Center: <https://kentlaw.iit.edu/law/faculty-scholarship/centers-institutes/justice-john-paul-stevens-jury-center>