

IRC Comparative Juries and Lay Participation: Sessions Presented at the International Law and Society Conference, Mexico City, June 20-23, 2017

Wed, 6/21: 10:00 AM - 11:45 AM

2073

Paper Session

Wednesday Session 2

Sheraton Maria Isabel

Room: Constitucion A (2nd Floor)

This panel examines lay participation in juries and mixed courts in several countries, including Canada, France, Belgium, Argentina, Great Britain, and the United States, with comments about lay participation in Spain. It seems fitting for our first ever LSA Annual Meeting in Latin America that we explore lay participation across borders and oceans. We will explore an array of jury practices, such as jury instructions and reasoned verdicts, and how juries are understood in popular culture through an examination of their depiction in films. We will also consider the different ways to involve lay participants in the justice system such as by serving on traditional juries or mixed courts. We hope that such a broad approach will allow us to see what different systems have in common and where their paths diverge. In the words of the conference theme, we hope to discover "bridges" and "walls" in the "interconnected world" of lay participation in the justice system.

Chair/Discussant

Mar Jimeno-Bulnes, Universidad de Burgos

Presentations

American and British Jury Films and the Role of the Hold-Out Juror

Presenter

Nancy Marder, IIT Chicago-Kent College of Law

Juries and Lay Participation Worldwide: The Criminal Jury in France and Belgium

Presenter

Claire Germain, Levin College of Law, University of Florida

Jury instructions in Canada and the United States: A Spotlight on Forensic Science Instructions and Death Penalty Instructions

Presenter

Marie Comiskey, University of Toronto

Ten Years of Mixed Tribunals in Argentina

Presenter

Maria Ines Bergoglio, National University of Cordoba, Argentina

The remote defendant and jury verdicts: does appearance by video create prejudice?

Presenter

David Tait, University of Western Sydney

Non-Presenting Co-Author

Meredith Rossner, London School of Economics and Political Science

Peña-Rodriguez and the rule of jury secrecy: Talk inside and outside of deliberations

Wed, 6/21: 10:00 AM - 11:45 AM
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Paper Session
Wednesday Session 2

Sheraton Maria Isabel

Room: Constitucion B (2nd Floor)

In most common law countries, jurors may not disclose what happened during deliberations. In contrast, in the U.S., no prohibition bars post-deliberation disclosures by jurors (e.g., to the media or attorneys). When post-trial disclosures suggest misbehavior occurring during deliberations, should the court consider a potential exception to the general confidential nature of deliberations? This term the U.S. Supreme Court heard oral argument in *Peña-Rodriguez v. Colorado*, presenting the question "whether a no-impeachment rule constitutionally may bar evidence of racial bias offered" to prove a violation of the right to an impartial jury. Considering *Peña-Rodriguez*, this session examines alternative approaches to understanding juror reasoning and promoting jury functioning and legitimacy, including jury selection, the analysis of actual jury deliberations, post-trial juror interviews, and the requirement in some countries (Spain and Russia) that juries provide reasons for their verdicts.

Chair(s)

Shari Diamond, Northwestern U Law School/American Bar Foundation
Mary Rose, University of Texas

Discussant

Meredith Rountree, Northwestern Law

Presentations

Detecting Racial/Ethnic Bias in Jury Deliberations

Presenter

Shari Diamond, Northwestern U Law School/American Bar Foundation

Non-Presenting Co-Author

Mary Rose, University of Texas

Erasing bias in jury deliberations: how jurors do(n't) talk about race in U.S. criminal trials

Presenter

Katherine Culver, University of Pennsylvania

Examining Jurors: Using Conversation Analysis to Explore the Influence of Race on Prosecutor Speech in North Carolina Capital Jury Selection

Presenter

Catherine Grosso, Michigan State University College of Law

Non-Presenting Co-Author

Barbara O'Brien, Michigan State University College of Law

Patterned variability: What deliberations reveal (and cannot reveal) about “pain and suffering” damage decisions

Presenter

Mary Rose, University of Texas

Non-Presenting Co-Author

Shari Diamond, Northwestern U Law School/American Bar Foundation

The absence of expressed verdict reasons, the rule of secrecy, and verdict review in the classic trial by jury of Argentina.

Presenter

Andrés Harfuch, Asociación Argentina de Juicio por Jurados

Non-Presenting Co-Author

Lilián Andrea Ortiz, Asociación Argentina de Juicio por Jurados

Introducing Jury Trials in Argentina: Successes and Struggles

Thu, 6/22: 10:00 AM - 11:45 AM

2280

Paper Session

Thursday Session 2

Sheraton Maria Isabel

Room: Constitucion C (2nd Floor)

Juries in Argentina are a new institution. Jury trials were introduced in serious criminal cases only in 2011, after more than 150 years of non-compliance with the constitutional mandate that ostensibly required jury trials.

The move toward lay participation in the administration of justice has come from the provinces rather than the federal government. As a consequence, every province has a different story to tell.

This session will evaluate the current situation in Argentina, after just a few years of jury trials in the Provinces of Neuquén and Buenos Aires. It will examine the perspectives, worries and expectations of judges, prosecutors and defense attorneys who have participated in more than 60 jury trials in Buenos Aires.

Additionally, the papers will discuss a core issue that has been causing concern: the continued resistance in provincial jury legislatures to a unanimous decision rule as additional provinces enact jury legislation. An analysis of the province of Salta's proposed jury law is used to evaluate the best jury procedures for one of the most traditional provinces of Argentina.

Finally, this session will consider the right to appeal a jury decision. Against the backdrop of Argentina's judicial history and culture, we will examine the rulings of the Appellate Court of the Province of Buenos Aires in response to the first appeals against jury decisions.

Chair

Edmundo Hendler, U. of Buenos Aires

Discussant

Shari Diamond, Northwestern U Law School/American Bar Foundation

Presentations

Beyond a Broad Appeal

Presenter

Vanina Almeida, Asociación Argentina de Juicio por Jurados

Co-Presenter

Denise Bakrokar, Asociación Argentina de Juicio por Jurados

Non-Presenting Co-Author(s)

MARIANA BILINSKI, ASOCIACIÓN ARGENTINA DE JUICIO POR JURADOS

Natali Chizik, Asociación Argentina de Juicio por Jurados

FROM PREJUDICE TO EXPERIENCE: JURIES FROM THE PERSPECTIVE OF THE JUDICIAL OPERATORS

Presenter

Sidonie Porterie, Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP)

Co-Presenter

Aldana Romano Bordagaray, Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP)

Jury System from Scratch: Unanimity and Jury Trial Waiver in Salta, Argentina

Presenter

Margaret Truesdale, Northwestern University School of Law

Requiring Unanimity: The Fear of Jury Trials in Argentina

Presenter

Natali Chizik, Asociación Argentina de Juicio por Jurados

Co-Presenter

MARIANA BILINSKI, ASOCIACIÓN ARGENTINA DE JUICIO POR JURADOS

Non-Presenting Co-Author(s)

Vanina Almeida, Asociación Argentina de Juicio por Jurados

Denise Bakrokar, Asociación Argentina de Juicio por Jurados

Evidence Disclosure in Criminal, Saiban-in and Civil Trials in Japan

Thu, 6/22: 12:45 PM - 2:30 PM

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Paper Session

Thursday Session 3

Sheraton Maria Isabel

Room: Reforma A, Reforma Tower (19th Floor)

One of the grounds of introducing lay participation into criminal trials, Saiban-in system, in Japan, was to overcome the disadvantages by the professional judges' fact-finding. They rely upon more on the dossier; especially police produced documents including statements of confessions of defendant. The fact-finding based upon the oral testimonies rather than dossier is highly expected because Saiban-in, lay judges, can find facts more through live testimony in the court than reading written documents. However it is still uncertain if Saiban-in really and in fact do decide the facts and final conclusion rather based upon oral testimony or not. The issue does not stop here. Before that, production of paper documents is still used and predominant in practice and, in addition to that, Japan has traditionally unique culture to allow hiding and even destructing evidence in the criminal and civil trials. As Japan has no discovery system in both criminal and civil, the court must decide the case sometimes on the basis of insufficient evidence and especially in civil trials the law allows judges to decide the case from the total impression of court argument as well as presented evidences. Therefore it is necessary to examine what change can be seen in evidence production after Saiban-in in criminal trials and how that can influence over the civil trials such as tort case. The Japanese uniqueness of evidence handling will be examined by the European's comparative point of view.

Chair

Valerie Hans, Cornell Law School

Discussant

Richard Lempert, University of Michigan

Presentations

Culture of Hiding and Discarding Evidences by the Japanese Authorities

Presenter

Takashi Maruta, Kwansai Gakuin University Law School

How Judges Decide the Criminal Case: Criminal Evidence Production Before Saiban-in Trial

Presenter

Takeshi Nishimura, Osaka Bar Association

How the Saiban-in Decide the Criminal Cases: Criminal Evidence Production after Saiban-in Trial

Presenter

Satoru Shinomiya, Kokugakuin University Law School

CRN 4 Business Meeting

Thu, 6/22: 6:30 PM - 7:30 PM

Business Meeting

Sheraton Maria Isabel

Room: Caza B (3rd Floor)

CRN 4, Lay Participation in Legal Systems, will hold their annual business meeting on Thursday, June 22.

Chair(s)

Mary Rose, University of Texas - [Contact Me](#)

Sanja Kutnjak Ivkovich, Michigan State University - [Contact Me](#)

Valerie Hans, Cornell Law School - [Contact Me](#)

New Books in the Field: Lay Participation in Legal Systems

Fri, 6/23: 12:45 PM - 2:30 PM

1003

Roundtable Session

Friday Session 3

Sheraton Maria Isabel

Room: Caza B (3rd Floor)

Jim Crow's Last Stand (2015): presented by the author, Thomas Aiello

The Missing American Jury (2016): presented by the author, Suja A. Thomas

The Jury in America (2016): presented by a reader, Mary Rose

Japan and Civil Jury Trials (2015): presented by one of the co-authors, Hiroshi Fukurai

Juries in the Japanese Legal System (2015): presented by a reader, Hiroshi Fukurai

Chair/Discussant

Nancy Marder, IIT Chicago-Kent College of Law

Participant(s)

Thomas Aiello, Valdosta State University

Suja A. Thomas, University of Illinois College of Law

Mary Rose, University of Texas

Hiroshi Fukurai, University of California Santa Cruz

A Comparative View on Lay Participation

Fri, 6/23: 4:45 PM - 6:30 PM

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Paper Session

Friday Session 5

Sheraton Maria Isabel

Room: Colonia (2nd Floor)

This is a CRN-sponsored panel that includes six papers, which have undertaken (or are undertaking) empirical research on different forms of lay participation across the world. The paper by Abdulraheem-Mustapha explores the role of magistrates in Nigerian juvenile cases. The papers by Meladze and Kovalev and Kovalev discuss recent and/or proposed jury reforms in Georgia and Russia. Bado's paper, conducted before the proposed reform of the lay participation system, presents the results of an empirical analysis of the interaction between professional and lay judges in mixed tribunals. Vanoverbeke and Fukurai's paper studies the operation of a recently established system of mixed tribunals in Japan. The panel will reveal the social and political complexities surrounding the existence of lay participation in legal decision-making.

Chair

Sanja Kutnjak Ivkovich, Michigan State University

Discussant

Mary Rose, University of Texas

Presentations

An empirical analysis of the Hungarian mixed tribunal system

Presenter

Attila Badó, University of Szeged

Playing Rugby Without A Scrum-Half: Critical Analysis of Jury Reform in Georgia

Presenter

Giorgi Meladze, Ilia State University

Co-Presenter

Nikolai Kovalev, Wilfrid Laurier University

Putin's Jury Reforms: Strengthening or Undermining the Institution in Russia

Presenter

Nikolai Kovalev, Wilfrid Laurier University

Willful Ignorance: Screening Prospective Jurors for Racism in Canadian Criminal Jury Selection

Presenter

Rakhi Ruparelia, Faculty of Law, University of Ottawa

The Role of Jury in the Administration of Juvenile Justice: The Need for Legal Framework in Nigeria

Presenter

Mariam Abdulraheem-Mustapha, Faculty of Law, University of Ilorin

The Success or Failure? Japan's Introduction of the *Saiban-in* Seido and the System of Lay Participation in Criminal Trials

Presenter

Hiroshi Fukurai, University of California, Santa Cruz

Non-presenting Coauthor

Dmitri Vanoverbeke, KU Leuven – University of Leuven
