

Report of Lay Participation in Law IRC (International Research Collaborative)

Professor Valerie Hans, IRC Organizer

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Our IRC sponsored three substantive panels in Baltimore and six panels in Berlin.

- In Baltimore, the three interrelated panels included one that featured scholarly presentation of “preparing the ground” for the introduction of citizen participation in legal decision making in countries where it had not been employed in recent times. Another roundtable featured a range of scholars discussing research questions that arise in considering comparative work on citizen participation as legal decision makers. The final session analyzed the law reform process.
- In Berlin, in addition to presentations of sessions of original research, there was an exciting roundtable on the implications of jury service for political and civic engagement and a grand finale session on the classic jury movie “12 Angry Men” as seen by scholars who study the Spanish and Russian jury systems. A remarkable mix of scholars from all over the globe presented in these sessions.

Thanks to IRC member Stefan Machura, in Berlin, there was also an IRC-initiated excursion to a German criminal court with lay and professional judges (Schöffengerichtsverfahren), with two extraordinarily knowledgeable German judges, Hasso Lieber, a former judge and now State Secretary in the Berlin Administration of Justice, and Christoph Rennig, judge at the State High Court in Frankfurt/Main, as tour leaders. A number of our IRC members said that this tour, which took us inside the courtrooms to observe a distinctive legal process using lay participants, was the most valuable part of the meeting.

Our IRC also had organizational/business meetings in both Baltimore and Berlin, discussing present and future activities. The initial meeting in Baltimore was small, with about ten people attending, but some excellent recommendations were made about the development of a web site, ideas for the Berlin meeting, and suggestions for encouraging research collaborations. In Berlin, twenty people attended the business meeting, representing eight different countries – Argentina (3); Australia (1); England (2); Japan (4); Kazakhstan (1); Netherlands (1); Spain (1); and USA (7). A number of exciting and important suggestions were made to further develop scholarly knowledge about the diversity of citizen participation systems and also to support methods of keeping in touch.

The value of these back-to-back meetings focusing on citizen participation is considerable, as it allowed researchers to take ideas from the first year and incorporate them into new projects and collaborations. For example, a research analysis approach used to study Korean mixed tribunals, which was presented at the 2006 Baltimore meeting by IRC member Min Kim, was adopted for research in Japan. The Japanese study was presented in Berlin in 2007 by IRC member Masahiro Fujita. Similar crossfertilization of research programs has occurred for many of our IRC members. Professor Edmundo Hendler of Argentina, who

attended both Baltimore and Berlin meetings, reports that his work as a member of a committee appointed by the Justice Ministry to consider the implementation of jury trials in Argentina, as well as his scholarly writings, have been helped immensely by the IRC sessions at the conferences. Researchers studying new jury systems are incorporating ideas from research findings from the USA Jury and Democracy Project (the focus of a roundtable session in Berlin) as they test the effects of the introduction of new systems in their countries.

In addition to the benefits flowing intellectual exchanges of these two meetings, the IRC now has a web page, hosted by Cornell Law School:
http://www.lawschool.cornell.edu/research/lay_participation_in_law/index.cfm.
The aim of the web page is to serve as a communication vehicle and repository for materials related to lay participation in law.

Finally, I drew on the IRC network to organize a productive conference on Citizen Participation in East Asian Legal Systems, sponsored by the Clarke Program in East Asian Law and Culture, Cornell Law School, September 22-23, 2006. The conference video is archived on the IRC website. Articles based on the conference presentations are due to appear soon in a special issue of the Cornell International Law Journal (Volume 40:2).

Appendix: IRC Sessions and activities, in schedule order for Baltimore and Berlin meetings:

BALTIMORE

1. Lay Participation in Law: Preparing the Ground

Fri, Jul 7 - 4:30pm - 6:15pm

Chair/Discussant: Shari Seidman Diamond (Northwestern U./ American Bar Foundation)

Comparative Analysis of Civic Legal Participation in Japan and the U.S.

Hiroshi Fukurai (University of California, Santa Cruz), Kaoru Kurosawa (Toyo University), Satoru Shinomiya (Waseda University)

Lay Participation in Japan: Discussions on Its Obstacles and Promoting Factors from Surveys and Experiments, Masahiro Fujita (National Graduate Institute for Policy Studies, Japan)

Preparing the Ground: The Case of Korea, Kwang Bai Park (Chungbuk National University, South Korea), Sangjoon Kim (Supreme Court, Korea), Sang Hoon Han

(Yonsei University)

Abstract:

This session features researchers from several different countries who are studying the process of adopting new methods of lay participation, including mixed tribunals and the jury system.

2. Roundtable--International Lay Participation in Law: Research Questions

Sat, Jul 8 - 10:15am - 12:00pm

Chair: Valerie P. Hans (Cornell University)

Participant: Paula Hannaford-Agor (National Center for State Courts)

Participant: Hiroshi Kawatsu (Japan Federation of Bar Associations)

Participant: Sangjoon Kim (Supreme Court, Korea)
Participant: Stephen Landsman (DePaul University)
Participant: Richard Lempert (University of Michigan)
Participant: Stefan Machura (Ruhr-Universität Bochum)

Abstract:

Scholars and practitioners from diverse countries will discuss international developments in the use of laypeople in legal decision-making. Participants will be asked to identify the most important research questions about the phenomenon of lay participation that could be addressed by sociolegal research.

3. Lay Participation--Lay Participation in Law: The Law Reform Process

Sat, Jul 8 - 2:30pm - 4:15pm

Chair/Discussant: Nancy S. Marder (Illinois Institute of Technology)

Juries or Mixed Tribunals in Argentina, Edmundo Samuel Hendler (Universidad de Buenos Aires)

Lay Participation in South Korea: The Content Analysis of Jury Deliberations, Min C. Kim (City University of New York), Kwang Bai Park (Chungbuk National University, South Korea), Steven D Penrod (John Jay College of Criminal Justice)

Lay Participation and the Criminal Justice Revolutions in Eastern Europe, Richard Kenneth Vogler (University of Sussex)

Abstract:

This is one of two paper sessions featuring researchers from different countries who are studying the process and likely impact of adopting new methods of lay participation, including mixed tribunals and juries. Papers in this session examine proposed law reforms incorporating lay participation in Argentina, Eastern Europe, and Korea.

4. IRC CRN04 Lay Participation--Meeting

Sun, Jul 9 - 10:15am - 12:00pm

Organizational meeting of the IRC; planning for future activities, Berlin meeting July 2007

BERLIN

5. The Impact of Lay Participation on Law Reform

Wed, Jul 25 - 8:15am - 10:00am

Chair/Discussant: Murray NMI Levine, SUNY at Buffalo

Participants:

Hiroshi Fukurai, University of California Santa Cruz & Kaoru Kurosawa, Toyo University, Impact of Popular Legal Participation on Forced Confessions and Wrongful Convictions in Japan's Bureaucratic Court

Nikolai Kovalev, Queen's University, Belfast, Ethnic Tensions and Trial by Jury in Russia

Stephen Landsman and Jing Zhang, DePaul University, A Tale of Two Juries: Lay Participation Comes to Japanese and Chinese Courts

Session description:

How does the involvement of laypersons in the adjudicatory process affect the legal system itself in terms of either substantive or procedural law? Does the impact of lay involvement differ in an adversarial system compared to an inquisitorial system of justice? Does that impact differ in the context of criminal

justice compared to civil or administrative justice? Presenters in this session will address these questions as they have arisen in diverse countries.

6. Wed, Jul 25 - 12:30pm - 2:15pm

Roundtable--The Jury and Democracy: The Implications of Jury Service for Political and Civic Engagement

Chair: Valerie Hans, Cornell University

Participants:

Eugene (Perry) Deess (New Jersey Institute of Technology)

Edmundo D. Hendler (Federal Judiciary of Buenos Aires)

Stephen C. Thaman (Saint Louis University)

Session description:

Alexis de Toqueville praised jury service for its role in educating citizens about selfgovernment. Yet until recently, the value of jury service in promoting deliberative democracy was no more than an untested theory. Fortunately, the Jury and Democracy Project is beginning to shed light on how jury service affects individuals' participation in the political and civic life of their communities. Research from this project has found that the act of deliberating as a juror resulted in increased political and civic engagement, raising questions about potential societal impact on those countries that have recently introduced jury trials and other forms of lay participation in the justice system.

Perry Deess, a Principal Investigator on the Jury and Democracy Project, will present key findings from the research and will discuss their implication for civic and political engagement in the United States and elsewhere. His remarks will be followed by those of commentators from several countries that have recently introduced or are in the process of implementing various forms of lay participation in the justice system, especially their thoughts about the implications of the findings in the context of the democratic practices in their respective countries.

7. Wed. July 25, 2:30 pm-4:15 pm

International Research Collaborative's organizational/business meeting, to discuss present and future activities.

8. Thurs., July 26. 8 a.m. IRC-sponsored tour, Criminal Court with Lay Judges (Schöffengerichtsverfahren). A mixed court, or Schoeffen, at German lower criminal courts consists typically of one professional judge and two lay judges. After an introductory lecture and discussion session with either Christoph Rennig (German judge who had conducted research on German mixed courts, and has presided over them); or Hasso Lieber (President of the German Association of Lay Judges) the group observed a mixed court trial at the Schoeffengericht.

9. Fri July 27 8:15 am-10:00 am

Citizens and Experts

Chair/Discussant: Judith Fordham, Murdoch University

Participants:

Antoine Pelicand, University of Nantes, Peace Judges, Proximity Judges: The Changes of Lay Status in French Legal System

Joao Salm, Arizona State University, Thinking Community Mediation as Paulo Freire's Political Process of Education

Gerald Thain, Law Professor and Foreperson of a Jury: How I spent (Some of) Last Summer

Session description: This session contrasts lay and expert legal decision making.

10. Sat, Jul 28 - 10:15am - 12:00pm

Historical and Contemporary Perspectives on Lay Participation

Chair/Discussant: Ellen Cohn, University of New Hampshire

Participants:

Adriana Sylwia Bartnik (University of Warsaw), The Role of Lay Judges in the Justice System of the Republic of Poland: Sociological and Legal Analysis

Nikolai P Kovalev (Queen's University Belfast) & John D Jackson (Queen's University Belfast), Lay Adjudication and Human Rights in Europe

Marc Musick (University of Texas, Austin) & Mary R. Rose (University of Texas, Austin), The Role of Religion in the Production of Attitudes toward the Jury

Zhuoyu Wang (University of Birmingham) & Sally Lloyd-Bostock (London School of Economics), Lay Assessors in China: 100 Years of History and the Present Institution

11. Sat, Jul 28 - 10:15am - 12:00pm

Lay Decision-Making in the Justice System

Chair/Discussant: Nicole L. Waters (National Center for State Courts)

Participants:

Shari Seidman Diamond (Northwestern University), Mary R. Rose (University of Texas, Austin), Balance in Deliberations: Over Time, By Case Type, and Across Jurors

Valerie Hans, Cornell University, & Ted Eisenberg, Cornell University, Taking a Stand on Taking the Stand

Neal Feigenson (Quinnipiac University), Effects of PowerPoint on Juror Decision Making

Masahiro Fujita (National Graduate Institute for Policy Studies), Lay Participation in Japan: Lessons from Mock Mixed Jury Trials by Real Professional Judges and Citizens
Session description: How do laypersons decide factual or legal issues in adjudicatory proceedings? What factors do they take into account? And how do these factors differ from those relied upon by legal professionals? What implications do techniques or strategies to strengthen the decision-making role of laypersons in adjudicatory proceedings have on the unique perspective that laypersons bring to these proceedings? Presenters will address these questions in this session.

12. Sat. Jul 28 4:30-6:15 pm

The 50th Anniversary of "12 Angry Men"

Chair/Discussant: Nancy Marder, Illinois Institute of Technology

Participants:

Mar Jimeno-Bulnes, University of Burgos, A Different Argument for "12 Angry Men" from the Spanish Perspective: The Rule of the Majority for the Verdict

Austin Sarat, Amherst College, Fathers in Law: Violence and Reason in "12 Angry Men" Stephen Thaman, Saint Louis University, The Good, the Bad, and the Indifferent: "12 Angry Men" in Russia

Session description:

The year 2007 marks the 50th anniversary of the movie "12 Angry Men." This movie offers the only portrayal of an active jury in the history of American film-

making. The movie has withstood the test of time, not only because of the great ensemble cast, but also because it portrays the jury as a group of twelve ordinary men who learn in the course of their deliberations what it means to be a jury. The learning process is not an easy one. The deliberations are marked by clashing personalities and marred by prejudice. Yet, the jurors, led by the persevering and patient Henry Fonda, eventually learn to put aside prejudice and personal enmity, to piece together the evidence with a critical eye, and to deliver a verdict of not-guilty based on their reasonable doubt.

When this movie was released fifty years ago, audiences greeted it with little enthusiasm. Yet, the movie has endured and is now recognized as a classic. Even though the movie offers a fictional account, it provides a rare glimpse into jury deliberations. It continues to raise such questions as: Is this how a jury should deliberate? Is this fictional jury deliberation consistent with actual jury deliberations now that we have fifty years of empirical studies? How do audiences in other countries view this classic American film on the jury?