

EXPLAINING THE PRESENCE OF THE CRIMINAL JURY
IN DEMOCRATIC POLITICAL SYSTEMS

By

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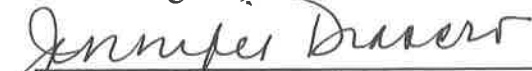
In

Justice, Law & Society

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To Adam, Luke, and Mark, who are my everything.
To my mom, who I wish had been able to see me finish.

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ABSTRACT

Although there is substantial literature on the connection between juries and democracy, there is relatively little empirical research on the nature of this connection. This project examines the question of why some democracies have juries while others do not using quantitative analysis with a large number of countries. It examines data on the adjudication systems of 91 democracies for the year 2009. The hypotheses tested are that juries would be more likely to be found in democracies that are former British colonies, have a common law legal tradition, have lower societal fractionalization, have greater wealth, have more educated citizens, are stronger democracies, and have been democratic longer. The results confirm that having a common law legal system or a system with common law elements does have a positive effect on jury usage. Democracies with higher ethnic and religious fractionalization are more likely to have jury systems, while countries with higher linguistic fractionalization are less likely to have juries. Literacy, which serves as a proxy for education, has a negative effect on jury usage. The remaining variables did not have statistically significant effects.

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Collecting information on the legal systems of the 92 countries in my dissertation required the help of many individuals. In order to get the data I needed, I had to be able to view documents in Arabic, French, Bulgarian, and Russian, among other languages. Since I cannot read these languages, I needed to rely on a little help from my friends. I feel so fortunate that I have so many talented and accomplished friends who were able to help me either translate documents directly or put me in contact with someone who could help me. I would like to thank the following people for translation help or help with a specific country: Mohammed Alaa (Arabic), Korneliya Bachiyska (Bulgarian), Kate McGurn Centellas (Bolivia), Sophie Grumelard (French), Leah Misbin (Russian), Joumana Moukarim (Lebanon), and Pablo Sanabria

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CHAPTER 1

INTRODUCTION

This project is aimed at understanding why some democracies have a jury system for criminal trials. Although the jury has been praised as an institution of democracy, the exact nature of the relationship between juries and democracy is poorly understood. The focus is on juries in criminal trials because scholars, theorists, and politicians have praised the jury as a protection against government tyranny and an assurance that defendants are judged by community standards of justice. Defenders of the jury also praise the institution for the ways in which it benefits democracies – by educating citizens about the laws and promoting broader civic engagement. For some, the jury is perceived as essential to democracy as voting in elections. In a democracy, the public has a say in the legislative and executive branches through voting in elections. Jury service represents the voice of the people in the judicial branch of government. Seen in this way, jury service is the most direct way that citizens can influence the judicial branch of government in a democracy.

Yet, trial by jury is perceived by many to be unnecessary for democratic governance. Many democracies have alternative forms of lay adjudication in the courts or have only professional judges deciding criminal cases. Additionally, non-democratic countries have had jury systems. Current trends also demonstrate that new democracies are introducing jury systems while some older democracies are abolishing them or limiting their use. What do these trends say about the role of juries in a democracy? What does having – or not having – juries mean for democracy? This project takes a first step toward understanding the relationship between juries and democracy by exploring why it is that some democracies have trial by jury. The answer to this question will shed light on the importance of juries in modern democracies.

Lay Decision-Making in the Courts

Lay participation in the courts takes many different forms around the world. Broadly speaking, a lay person in this context is anyone who is not required to have legal training or experience that would otherwise aid them in making a decision. The jury is a unique form of lay decision-making. A jury is usually identified as a group of unelected citizens drawn from the community who alone decide whether a defendant is guilty of a crime. The key difference between the jury and other forms of lay adjudication is that the verdict is rendered without judicial input. Although a judge may be able to exert influence over the jury in other ways, jurors deliberate without the assistance of the judge and the decision on whether to convict the defendant is left exclusively in the hands of the jury. Eligibility for jury service also tends to be broad, with most adult citizens eligible to serve provided that they meet certain basic criteria (e.g., not having been convicted of certain crimes). Democracies that currently have trial by jury in criminal trials include countries as diverse as the United States, Spain, El Salvador, Ghana, and Sri Lanka (see Appendix B).

The Connection Between Juries and Democracy

This project seeks to explain why some democracies have juries while others do not. The focus is on juries and democracy for a number of reasons. First, political theorists have been making the connection between juries and democracy for hundreds of years. Writers such as Blackstone, Tocqueville, Montesquieu, and America's founding fathers wrote about the virtues of trial by jury in a democracy. Vidmar (2010) asserts that "there is a good deal of writing about the jury as a democratic political institution" (p. 639). Some of this writing praises the jury for it protecting the accused from government tyranny; improving accountability and legitimacy; strengthening transparency in the legal system; educating citizens about the laws; and promoting

greater bonds between citizen and government. Additionally, recent empirical research has demonstrated that the jury does perform some of the functions that theorists have postulated (Gastil, Dees, Weiser, & Simmons, 2010).

Additionally, historical patterns have demonstrated a connection between juries and democracy. Scholars have observed that countries have tended to adopt trial by jury during periods of democratization and to abolish it under authoritarian regimes or dictatorships (Thaman, 1999; Vidmar, 2000). In part because of these patterns, scholars have argued that trial by jury can only really work in a democracy (Lempert, 2007). For trial by jury to be truly effective, the government has to trust citizens with this decision-making authority and be willing to accept jury verdicts even if they are contrary to the government's interests. This is unlikely to happen in a non-democracy because as Lord Devlin pointed out, "no tyrant could afford to leave a subject's freedom in the hands of twelve of his countrymen" (p. 164).

This does not mean that juries have only ever existed in democratic countries. What it means is that non-democracies are less likely to have a well-functioning jury system. A non-democracy may have a jury system but exert influence over jury verdicts, take away the competency of the jury in certain types of cases, or use other measures aimed at controlling the jury. For example, Russia has a jury system, but in 2008 the government removed the jury for political crimes (treason, terrorism, espionage, etc.) (Kovalev, 2011). The reason the government gave for making professional judges the sole adjudicator for these types of crimes was a high rate of acquittal for these crimes in jury trials (Kovalev, 2011). This Russian example shows just one of the many ways that governments that are not as democratically inclined can change the rules to circumvent the jury.¹

¹ The Polity IV data that is used to select the cases for this study does not consider Russia to be a democracy.

Jury History

Citizens have served as decision-makers in criminal trials for centuries. While much emphasis is placed on England as the birthplace of the modern jury, participation in criminal trials goes back much further than its English roots. Early forms of lay involvement in the courts can be traced all the way back to the first democracies in ancient Greece and Rome. By 450 B.C. in Athens, eligible citizens served on panels (*dikasteria*) of at least 201 people to decide both criminal and civil cases, including matters of fact as well as the law in those cases (Dawson, 1960). Dawson writes that “each court, though in fact a mere fraction of the whole Athenian citizenry, was a large and representative sample which in theory shared the sovereign power of the people as a whole” (Dawson, 1960, p. 12).

The history of lay participation in the Roman Republic is slightly different but still notable for its early existence. Dawson writes that all the way “to the end of the Republic all decision-making in every form of state-sponsored court was by unspecialized laymen” (Dawson, 1960, p. 29). One early example of such lay decision-making involved an appeal process called *provocatio*. Under this system, someone convicted of a serious crime could appeal to a general assembly of Roman citizens who would vote to either uphold or reverse the conviction (Dawson, 1960, p. 15). While these early forms of lay participation differ from the modern jury or lay judge system, they all share one common trait—the use of non-professionals to decide criminal cases.

The origin and proliferation of the modern jury—as one type of lay participatory system—is credited to the British. This is both because it was in England that the jury developed and took hold and it was through the influence of the British Empire that trial by jury was spread around the globe. Although the exact origins of the jury are unknown, there are some who contend that it was brought to England by the Norman invaders and others who claim that

beginnings of the jury existed in parts of England before 1066 (Dawson, 1960, p. 119). It took centuries for the jury system in England to develop into what it is today, with early forms of lay participation hardly resembling modern juries. Pollock and Maitland describe these early forms of lay adjudication as being simply “a body of neighbors summoned by some public officer to give upon oath a true answer to some question” (Vidmar & Hans, 2007, p. 23). These early “jurors” were not involved in criminal trials but rather they were giving testimony about land ownership in the Domesday Book for tax purposes (Vidmar & Hans, 2007).

Ultimately, these early forms of testimony were adopted into the criminal trial process when religious authorities were prohibited from participating in trials by ordeal by the Fourth Lateran Council (Dawson, 1960; Vidmar & Hans, 2007). Trial by ordeal involved determining guilt by crude measures such as throwing the accused in water or burning a hand with the belief that God would decide who was guilty. A person would be deemed innocent if they floated or if their burn healed (Hans & Vidmar, 2007). Additionally, the Assize of Clarendon in 1166 played a role in the development of the modern jury by creating an early form of the grand jury. Green (1985) asserts that by about 1220, trial by jury was the main method by which criminal felony trials were adjudicated in England. The role of jurors also shifted over time such that “the early jurors were functionally witnesses who testified about events that they knew about or had heard about” (Vidmar & Hans, 2007, p. 24). It wasn’t until later that jurors were chosen because of their ignorance of the case rather than for their knowledge of the events or people involved in the trial (Zander, 2001).

Jury Trials in Recent History

Previous estimates of how many countries have trial by jury today have varied substantially. Vidmar (2000) estimates that there are more than 50 countries that have juries for criminal trials. In a survey of 80 countries, Voigt (2009) found that 27 countries relied upon trial

by jury. My own research indicates that of the 91 democracies in my study, 24 have criminal jury trials.² In addition to countries that currently have trial by jury, even more countries have had a jury system at some point in the past. For example, Portugal, Switzerland, Greece, Hungary, Japan, Italy, Romania, Serbia, Poland, Czechoslovakia, Venezuela, and Germany are just a few countries that have at some point had trial by jury (Vidmar, 2002).

The present project is timely because of two concurrent and opposing global trends relating to trial by jury. The first trend is that a number of democratizing nations have introduced jury systems in the past twenty years (Lempert, 2007). Spain, Russia, Georgia, and South Korea are just a few examples of countries that have adopted juries as a part of democratic reforms. A number of former Soviet states have added jury systems or expanded lay adjudication in the courts. For example Georgia adopted jury trials in 2010 and the Ukrainian constitution provides for jury trials.³ Spain is another country where the adoption of the jury was seen as an important move towards democratic governance (Thaman, 1999).

When juries are introduced, government leaders often talk about the change as a step towards democratization. These leaders often claim that the jury will improve transparency and legitimacy in the courts, which are also characteristics perceived to be associated with democratic governance. While adding trial by jury does not make a country democratic, it is a step often taken by leaders who claim that doing so is a part of the democratization process. Marder (2011) suggests as an explanation for this trend that recently, “countries, especially those that aspire to be more democratic, have begun to recognize the importance of having ordinary citizens participate in the criminal justice system” (p. 453). Given that a number of democracies

² As my sample is limited to democracies with a population over 500,000 people, this will account for much of the variation between my jury countries and the estimate reported by Vidmar (2000).

³ As of August 2012, Ukraine has yet to implement jury trials. It has, however, adopted a mixed court form of lay adjudication (see Appendix B).

are adding jury systems or expanding forms of lay adjudication in the courts, now is the perfect time to pose the question of what factors can explain the presence of a jury system in democracies.

The second and opposing trend is that other democracies, particularly some that have had the jury for a long time, are diminishing the use of trial by jury or even abolishing it. Switzerland is an example of this trend. Prior to reforms in 2011, some cantons had juries or mixed court systems (Leib, 2008). However, in an effort to unify the criminal codes across the cantons, Switzerland adopted a federal criminal code which does not provide for trial by jury (Thaman, 2011). Additionally, Denmark abolished its jury system in 2008 in favor of a different form of lay adjudication (see Appendix B). In other countries there are continual proposals by various government officials to get rid of jury trials. One such example is from 2012 in Trinidad and Tobago. There, the nation's Minister of Justice, Attorney General, and Minister of Legal Affairs proposed abolishing juries because of a backlog of murder trials and the costs associated with jury trials (Badoo, 2012).

Recent decisions by the European Court of Human Rights (ECHR) have caused many to wonder about the future of jury systems among Council of Europe member states (Hans & Germain, 2011). In two rulings arising from *Taxquet v. Belgium*, the court decided that jury verdicts violate ECHR standards because juries do not give "reasoned decisions" (Hans & Germain, 2011, p. 624). As a result of these rulings, Belgium altered its jury system so that after a jury reaches a verdict it must give reasons for its decision (with the assistance of professional judges) (Thaman, 2011). If the professional judges find that the reasoning for the jury's verdict is contrary to the law or evidence, then the judges may overturn the jury's decision and call for a new trial (Thaman, 2011). It remains to be seen what further reforms may come from this ruling

elsewhere in Europe; however, *Taxquet v. Belgium* is undoubtedly significant because of its potential impact on the future of the jury in Europe. This case is an example of a specific historical event that may contribute to the diminution of the role of the jury in Europe.

The role of the jury is also being diminished as a result of frequent calls for reforming the jury system or reducing the competency of the jury for certain types of crimes. In England, the birthplace of the modern jury, the civil jury has effectively been eliminated and the types of criminal cases decided by juries continue to be reduced or are at risk for reduction (Vidmar, 2000). This phenomenon reached historic status in early 2010 when four defendants were tried for armed robbery without a jury trial (Laville, 2009).⁴ This was the first time in more than 350 years that someone charged with a serious crime in England was not tried by a jury (Laville, 2009). In 2009, Malawi halted jury trials for murder cases because the government's lack of financial resources for jury trials left defendants awaiting trial for years (Malawi Abolishes Jury System, 2012). The jury system is also routinely criticized on the grounds that jurors are incompetent and biased, that they are unable to understand the law, that jurors ignore the law, and that the jury system is too costly and inefficient (Hans 2003; Jonakait 2003; Park 2010). In the U.S. and other jury countries, jury reform is a perpetual topic of conversation. And in every country but the United States, the civil jury has essentially vanished.⁵

As some democracies are introducing jury systems or expanding other forms of lay participation while others are abolishing juries or reducing their role, now is a perfect time to explore why some democracies have jury systems.

⁴ The bench trial was permissible due to changes in the law created by the Criminal Justice Act 2003 that allowed a judge to dispense with the jury for cases where jury tampering is a concern.

⁵ The civil jury exists in a number of other countries (e.g., New Zealand, Australia, Canada, England, and Ireland) but only Canada comes even remotely close to the U.S. in terms of the usage of the civil jury. In the remaining countries, the civil jury is so restricted in its usage that it is effectively non-existent.

Comparative Jury Research

Comparative jury scholarship is an expanding field of research with many opportunities to ask new questions about the relationship between juries and democracy. Until recently, jury scholarship was dominated largely by research on single countries, particularly the United States. There was little jury research beyond Western juries or common law systems (Hans, 2008; Kovalev, 2010; Lempert, 2007). This has led to the perception of the jury “as a quintessentially American institution” (Lempert, 2007, p. 487). Not long ago, jury and legal scholars were described by Vidmar (2000) as “frequently very parochial in their knowledge about the jury” (p. 4). Vogler (2005) asserts that theories dealing with comparative criminal justice processes are woefully inadequate. In his view “the field of criminal procedure is largely undeveloped and continues to be dominated by sterile and atheoretical debates of the supposed opposition between different ‘systems’ of justice” (Vogler, 2005, p. 2).

Interest in studying comparative jury systems has grown in the past twenty years, along with the expansion of lay participation in the courts in many countries. As more scholars are becoming interested in comparative jury research, interest in understanding the lesser known systems involving lay participation in the courts is also growing. Indeed, “American scholarship no longer provides the only lens with which to view jury research, and American scholarship is better for it” (Lempert, 2007, p. 488).

Given the infancy of this field, there are a lot of opportunities to explore unanswered questions. As Lempert (2007) states “we are...still at an early stage in answering a number of fascinating questions” (p. 488). These single-country or small-N case studies have been largely exploratory and serve as an important foundation for this research. For example, many of these studies provide relevant details on how the jury systems of different countries operate and provide insight into the reasons why individual countries have adopted trial by jury. Now that

this preliminary work has been done, this project will build upon it to seek a broader explanation of the importance of the jury system to democracy. Lempert (2007) asserts that “the time is ripe for coordinated cross-national research into institutions that involve ordinary citizens in legal decision-making” (p. 482). The research in this dissertation helps to move this area of research forward by approaching the examination of juries from a new, largely quantitative perspective.

Valerie Hans (2008) acknowledges that one of the main reasons there has been so little comparative work on the jury is that it is difficult to do. Some of the difficulties include definitional problems (e.g., what it mean to have a jury system), data challenges (e.g., language and resource constraints), and methodological concerns (e.g., running the risk of oversimplifying country specific experiences) (Hans, 2008). With these challenges in mind, one may ask why anyone should attempt comparative jury research. In response to this question, Hans (2008) states that comparative work “can address longstanding questions about the impact of lay legal participation on democracy, legal consciousness, and the unique perspectives and contributions that lay citizens bring to legal decision making criminal trials” (p. 277). Additionally, comparative research helps us understand the factors that affect support for juries and the way in which jury systems work (Hans, 2008). Although studying juries from a cross-national comparative perspective presents many challenges, a cross-national study is necessary to address the broad question of the nature of the connection between juries and democracy.

Factors to Be Tested in This Project

In this dissertation, I develop hypotheses based on comparative jury scholarship and jury history in order to empirically test which factors are associated with the existence of a jury system in democracies. This approach is new to comparative jury scholarship: past research has primarily been qualitative and addresses only a few nations at once. To my knowledge, this is the first time that anyone has attempted to model the factors associated with the existence of a jury

system using large population of nations. Although a number of factors have been postulated to affect the existence of the jury, I am only able to test some of them in the analyses in this project. The factors tested include the common law legal system, British imperialism, ethnic and linguistic fractionalization, education, country wealth, democracy strength, and the age of democracy.

Plan of the Project

The next chapter defines lay adjudication in the courts in order to distinguish juries from other forms of lay participation in the courts, such as mixed courts, lay magistrates, and advisory lay assessors. This chapter is important in establishing the jury as the form of citizen participation having the most significant impact on trial outcomes. The purpose of chapter three is to demonstrate that the jury is an institution of democracy. The jury is perceived to be important to democratic governance, and evidence has shown that in fact it is an important tool of democracy. Chapter four is a review of the literature pertaining to the jury's use around the world in both current and historical perspectives. In this chapter I also identify a number of factors that are believed to affect whether countries have jury systems today. Chapter five outlines the methods used in selecting cases, presents the hypotheses to be tested, and describes the data collection process. Chapter six discusses the results. It presents both the descriptive statistics for the data set and the results of the regression models. The findings raise questions about the primacy of British rule as an explanation of the use of juries, and suggest instead that the external political environment (common law legal system, a common language, and mixed ethnicity) may promote the use of juries in democracies. Finally, chapter seven summarizes the findings and makes recommendations for future research.

CHAPTER 2

FORMS OF LAY PARTICIPATION AND ADJUDICATION IN THE COURTS

The purpose of this chapter is to distinguish juries from mixed courts and other forms of lay participation in the courts. As the next chapter will more fully discuss, having citizens involved in the decision-making process in criminal courts is important in a democracy because it is the only way for citizens to have a direct “vote” in the judicial process. It is not the outcomes that matter but rather the fact that lay people are a part of the process that is relevant to democracy. It is also important to acknowledge that the jury is different from other forms of lay participation in the courts. Only by discussing alternatives to the jury is it possible to realize the jury’s unique position as the form of direct lay adjudication in the courts that gives citizens the most autonomy and authority. This is what sets the jury apart from other types of lay involvement in the courts in terms of its significance in democratic governance. Additionally, it is necessary to establish clear definitions as there is some ambiguity regarding how to identify a jury system.

As mentioned in previous chapters, there are a number of roles for lay people in criminal trials around the world. These include justices of the peace or lay magistrates, advisory lay assessors, lay judges in mixed courts, and jurors. In some democracies, these forms of lay participation are seen as alternatives to juries in that they are argued to serve the same functions as juries. This chapter will first provide a definition of lay adjudication and discuss the defining characteristics of a lay person, as opposed to a professional, in the context of criminal trials. The rest of the chapter will be devoted to distinguishing the concept of the jury as distinct from other forms of lay adjudication (mixed courts) and from lay participation (lay magistrates and advisory lay assessors). The last section discusses the similarities and differences of juries and mixed

courts since comparative lay adjudication scholars and politicians often identify the mixed court system as an alternative to the jury.

Lay Person

In essence, a lay person is “a man or woman who has no, or almost no, education, training and experience in a certain field” (Malsch, 2009, p. 6). More specifically, with respect to the present research question, a lay person in criminal trials is someone who has “neither advanced education in legal issues nor systematic training in legal decision-making” (Kutnjak-Ivković, 1999, p. 1). Lay participation in the courts can mean any of several things. For instance, every criminal justice system has some form of lay participation, since witnesses, defendants, and victims are typically laypersons (Lempert, 2007). These examples of roles played by lay people are not the focus of this project. The focus here is on lay decision-makers such as jurors and lay judges in mixed courts. Additionally, although it is possible for a lay person to coincidentally have legal training, such training is not a prerequisite for service. For example, while a lawyer may serve as a juror in the United States, legal education is not required to act in that capacity. Rather, as discussed in the previous chapter, lay people are expected to represent the community’s standards of justice by bringing their own life experiences into their decision-making rather than any formal training or expertise.

The lay person’s role is in contrast to that of the professional actors, who are generally seen as having “certain education or training and have obtained specific qualifications” (Malsch, 2009, p. 7). Judges are typically the professional decision-makers in criminal courts. Defense attorneys and prosecutors are other examples of professionals involved in criminal trials. The difference between them, though, is that judges are professional decision-makers while the attorneys are merely participants. Professional judges are also distinguished from non-professionals because their work as a judge is usually their full-time job and they are

compensated accordingly. Generally, any financial compensation for lay adjudicators is minuscule in comparison to that of professional judges.

Despite these two archetypes of professional and lay decision-makers, it is sometimes difficult to differentiate the two in reality. Malsch (2009) acknowledges that the definition of professional is “less clear” than that of a lay person (p. 7). This is because the qualities that make someone a professional involve experience and training. Although jurors generally only serve on one trial, some lay judges in mixed courts serve in that capacity for multiple years and sit on numerous trials. Does this kind of repetition provide these lay judges with experience? Other countries require lay judges to undergo some sort of minimal training before service. Does this training professionalize the lay adjudicators at all? It is easy to see from just these two examples that the lines between lay and professional can get blurred very easily. The difficulty in distinguishing the professional versus the lay person is evident in a number of arenas. For example, in the musical arts a person can be classically or professionally trained but not work as a professional musician.

Malsch (2009) posits that professionalism in the legal arena should be examined according to two dimensions – legal knowledge and experience in trying criminal cases (p. 65). The juror in an American style jury scores low on both dimensions while the professional judge is high on both dimensions. Somewhere in the middle are all the other forms of lay participation. The next section will take this discussion from the general to the specific by discussing the types of lay adjudication in the courts and how to distinguish them.

Lay Adjudication

In this project I am interested in juries because they are lay decision-makers or lay adjudicators — the lay people who render a decision in a criminal case and whose decision is binding on the court. I will use Kovalev’s definition of lay adjudication in criminal trials: “the

involvement of citizens, who may not have formal legal education and training, in deciding the guilt or innocence of the accused and sentence if the accused is found guilty” (2010, p. 1).

Although this definition includes lay involvement in the sentencing phase of the trials, this project is focused on lay involvement in determining the facts of the case in deciding guilt since not all forms of lay adjudication involve lay participation in sentencing.

Lay participation in the courts is best viewed on two dimensions. The first measures whether the decision-maker qualifies as a lay person (lay decision-maker). The second measures whether the decision of the lay participants is binding on the court (adjudication authority).

Figure 1.1 shows where different types of lay participation fall in these two dimensions. This next section discusses the four types of lay participation commonly discussed in the literature – jurors, lay judges in mixed courts, advisory lay assessors, and lay magistrates or justices of the peace. As a part of this discussion, I will explain why jurors and lay judges are lay adjudicators in criminal trials but advisory lay assessors and lay magistrates are not.

		Lay Decision-Maker	
		Yes	No
Adjudication Authority	Binding	Jury Lay Judge (mixed court)	Lay Magistrate Justice of the Peace
	Not Binding	Advisory Lay Assessor	

Figure 1.1 Types of lay participation in criminal trials

Jurors

For the purposes of this project, a jury is defined as more than three unelected lay people who alone decide guilt or innocence in serious criminal trials. Despite the simplicity of this definition, defining what it means to have a jury system can be difficult because no two jury systems are exactly alike. The next chapter and Appendix B go into greater detail about some of these variations on trial by jury. The number of jurors varies from country to country (e.g., 12 in the United States and only 5 in El Salvador). Some countries require jury decisions to be unanimous and others do not. At least one country, Brazil, has a jury system in which, unlike all the other systems, juries do not deliberate. Most juries do not weigh in on sentencing but in some countries (Austria, Belgium, and Norway) jurors and professional judges decide sentencing together (Kovalev, 2010). Adding to the confusion, some countries call their lay adjudication system a “jury” and its participants “jurors” even though it does not fit the definition of a jury system (Hans, 2008).

With this in mind, there are broad characteristics necessary for a country to have a jury system for criminal trials. The main characteristic of a jury system is that the lay people are solely responsible for the verdict with no direct input from a professional judge. Jackson and Kovalev (2006) emphasize that this does not mean that a professional judge cannot influence the jury in other ways, such as giving jury instructions or having them respond to special interrogatories. What this definition excludes, however, is the judge participating in the jury’s deliberation or having any kind of official vote in the final verdict. This is the main characteristic that separates the jury from mixed court systems.

There are some other characteristics that also tend to distinguish juries from other forms of lay adjudication. The first is that jury service tends to be open to a wide array of citizens with minimal restrictions on service. Jury selection also tends to be done at random with jurors drawn

from sources such as voter rolls (Kovalev, 2010). Lastly, jurors usually serve on only one case per tour of jury duty (Kovalev, 2010).

Lay Judges in Mixed Courts

Mixed courts are similar to juries in that the system is also one of lay adjudication – the citizens involved are lay people and their decisions are binding on the court (Figure 1.1). A mixed court system of lay adjudication differs from the jury system in that lay people “deliberate and decide questions of fact and law together with professional judges (Kovalev, 2010, p. 58). Although there are different types of mixed courts, in the data analysis for this project, all mixed court systems are treated the same. Nonetheless, it is important to point out that there are at least two different types of mixed court systems that have been identified in the literature. They are called the French and German (Schöffren) style mixed courts, named after the countries in which they originated.

The French style mixed court can be distinguished from the German style mixed court in three primary ways. The first is that in the French model, lay judges are randomly selected from the community, like jurors in most jury systems (Jackson & Kovalev, 2006). In the German style courts, lay people are appointed by government officials after volunteering for service and serve for multiple years (Vidmar, 2010). The second major difference is that the lay judges in the French style mixed court remain members of the community while in the German model lay judges are not seen as members of the community but rather they become members of the bench on equal footing as the professional judges (Jackson & Kovalev, 2006). Lastly, the French style involves a greater number of lay and professional judges and a higher ratio of lay judges to professional ones (Jackson & Kovalev, 2006). For example, in France cases are decided by a panel comprised of three professional judges and nine lay judges (see Appendix B). In Benin, a former French colony, a court panel has three professional judges and four lay assessors (see

Appendix B). In contrast, district courts in Germany have one professional judge and two lay judges or two professional judges and three lay judges.

From this brief description it is easy to see that the French style mixed court system is more like a jury system than the German Schöffengericht. This is also evident in the fact that in France the lay judges are still called *jurés*. If all three forms of lay adjudication were placed on a spectrum indicating the degree of lay adjudication, juries would be on the high end, the German Schöffengericht courts would be on low end, and the French style mixed court would be somewhere in the middle.

There are also countries that have mixed courts falling between these two broad types. Jackson and Kovalev (2006) label Portugal and Italy as representing a mix between the French and German models. Japan is another country that defies clear cut labeling (see Appendix B). For these reasons, I do not attempt to identify countries with mixed court systems as either French, German, or mixed. Instead, I focus on the key factor distinguishing all of these systems from trial by jury – whether lay people alone decide a defendant’s guilt or innocence or whether they decide along with professional judges.

Mixed Courts and Juries in Practice

Many scholars consider the jury to be a unique, even “anomalous” institution (Hostettler, 2004, p. 1). And yet, as discussed in the previous chapter, countries that have a mixed court system also praise that form of lay adjudication in the courts for its democratic nature. It becomes important, then, to explore the similarities and differences between juries and mixed court systems in order to understand how both systems work and to explore the extent to which juries and mixed courts serve different functions in democracies. This section compares and contrasts juries and mixed courts using theoretical and empirical research. Comparing these two forms of lay adjudication is important to the question in this project because if mixed courts have

the same effect as juries then it is plausible to argue that mixed courts serve as an alternative to juries among democracies.

There are a number of ways juries and mixed court systems are similar. Both systems interject community values into the courtroom, can serve as a check on the government's authority, can enhance the perceived legitimacy of the system, and can prevent against judicial corruption (Kutnjak-Ivković, 2007). Some can even argue that the mixed court system has an advantage over both juries and professional judge trials because in that system there is both judicial expertise that can correct laypersons' mistakes on the law and the input of laypersons who can correct the judges' misperceptions of community attitudes (Kutnjak-Ivković, 2007).

There has been little research on the actual functioning of mixed court systems (Vidmar, 2010). However, the research that has been conducted has shown that despite some similarities to juries, there are some important differences in how these two lay adjudication systems operate. Kutnjak-Ivković (2007) reports that previous studies found that lay judges are not very involved in deliberations and are therefore not as relevant to the decision-making process as jurors (p. 441). Voigt (2009) also observes that research on lay judges generally finds that they are both less likely to contradict judges and less vocal (p. 328). Diesen (2001) found that lay judges in Sweden were passive during deliberations and overruled the professional judges in only 1-3% of all criminal cases (p. 314). Casper and Zeisel (1972) found that lay judges in German mixed courts only had a small effect on verdicts (p. 189). Research on mixed courts in Venezuela reported similar findings. In a study of mixed courts from 2001 to 2004 researchers "were of the opinion that this form of lay participation was only a formality and that the influence of professional judges becomes insurmountable" for the lay judges (Hendler, 2008, p. 8).

An interesting exception to this trend comes from Japan where in the new *Saiban-in seido* system (mixed court) early research has found that the lay judges are much more active than their counterparts in other countries (Corey & Hans, 2010, p. 92). Despite this finding in Japan, the general consensus of the empirical research is that lay judges are passive and play a minimal role in deliberations.

Still, Kutnjak-Ivković (2007) points out that, much like jurors, lay judges tend to have positive feelings about their experience. For example in Sweden Diesen (2001) found that “lay judges have high self-esteem and think they exert important influence on the decisions, in spite of the accepted fact that it is the career judge who plays a primary role during deliberations” (p. 315). This indicates that even if lay judges have little real impact on the outcome of cases, the system may still serve the same legitimizing function in society as juries. However, the lay judges’ perception of their participation is not matched by that of the professional judges, who tend to have more negative feelings about the lay judges (Kutnjak-Ivković, 2007, p. 443).

Another important difference is that the attributes of lay judges tends to differ from that of jurors. They tend to be more educated than the average person so they are less representative of the larger population (Voigt, 2009). In Sweden, Diesen (2001) found that the lay judges tend to be “much older (average age of 58), richer and more well-educated than the average Swede” (p. 314). This lack of representativeness can have an impact on the effect of lay participation on a democracy. In the German style mixed court systems, lay judges also serve longer terms than jurors who only serve on one case. It can be argued that the repetition dulls the edge of the community perspective that jurors provide (Voigt, 2009).

One potential advantage of mixed tribunals over juries is that the mixed tribunals lend themselves to more widespread use of lay participation in the courts (Smith, 2001). This is

because mixed tribunals require fewer lay participants than a jury and so it is easier for more trials to accommodate the use of lay participants. Thus, in mixed court systems the people serving may be less representative of the population but they may be used more extensively than jurors. Outside the United States, jury trials are generally restricted to the most serious offenses (see Appendix B). And even in the United States, the percentage of jury trials compared to cases filed is very low due to widespread plea bargaining. So even in countries that have the right to trial by jury, the actual exercise of that right is usually very low. In contrast, lay participation in mixed tribunals is often more widespread which allows for the argument that mixed court systems lead to greater lay involvement in the courts (Smith, 2001; Voigt, 2009). This argument assumes, however, that the jury's power resides in its actual use rather than its potential use. Even if lay participation occurs in a larger percentage of criminal trials in mixed tribunal nations, the impact of lay participation is not necessarily greater than in countries that have trial by jury. These are matters of empirical debate that I cannot answer but want to at least acknowledge when considering the impact of lay judges versus jurors.

Another difference between lay judges and jurors is that some scholars contend that reliance on lay judges is “an attempt to keep direct citizen participation in the court system under the control of professional judges” (Voigt, 2009, p. 328). Because of the judges' participation, lay judges cannot have the same impact in deliberations because they do not have the same autonomy that juries have. As previously mentioned, lay judges are not the professional judges' equal, and so they rarely overrule the professional judges' opinions even if they have enough votes to do so (Kutnjak-Ivković, 2007). This power dynamic is not an issue for jurors, who deliberate in private and away from the professional judge.

Defenders of lay judges in mixed courts have proffered a response to this criticism alleging that even if lay judges do not participate much in the deliberation process, their impact is still felt as a sort of shadow effect (Kutnjak-Ivković, 2007). They serve to keep the judges in line and only speak up if they feel strongly about an issue or feel that the judges are getting it wrong. Kutnjak-Ivković (2007) defends the lack of participation by claiming that they do not need to be active participants as long as they speak up when necessary. Stefan Machura (2007) found this to be the case when he looked at German lay assessors. He found that lay judges disagreed with professional judges when they felt the judges were acting in opposition to their own sense of justice (Machura, 2007). This finding supports Kutnjak-Ivković's (2007) claims about the impact of lay judges despite criticisms of their passivity.

Although there has only been a little empirical research on mixed courts, the preliminary findings indicate that although juries and mixed courts are both forms of lay adjudication in the courts, deliberations involving lay judges and professional judges in mixed courts do not work the same as deliberations involving only lay people.

Advisory Lay Assessors

This section discusses a form of lay involvement in the courts that does not qualify as adjudication because the decisions by lay assessors are merely advisory. In this regard, participation as an advisory lay assessor is a form of lay participation because they meet the lay element of Figure 1.1 but not the binding adjudication authority element. Assessors give a recommendation on guilt to the court but the judge is under no obligation to accept that verdict. Mongolia is one country that has advisory lay assessors (called citizen's representatives) in criminal and civil cases, but "their involvement is of no legal consequence" (Chagdaa, 2011, p. 35). The advisory lay assessor systems still in place in some African countries such as

Botswana, Ghana, Kenya,⁶ and the Solomon Islands also render non-binding recommendations to the court (see Appendix B).

The non-binding nature of the assessors' opinion is relevant because even though lay people are involved in the criminal trial process, the fact that the government can ignore their opinion entirely negates any real check on government power. As Vidmar (2010) asserts "the point of using lay decision-makers is precisely to add community perspectives and values that are potentially different than those of legally trained judges" (p. 631). When judges are free to ignore the opinion of the community, the lay input becomes something of a toothless tiger. While the advisory lay assessor system may be introduced to improve the democratic functioning of the courts, the reality of the participation says otherwise. With respect to the Mongolian example, Chagdaa (2011) writes that the intent of including citizen's representatives was to combat the perception of corruption and inefficiency in the courts. However, this form of lay involvement has been unable to change this perception because of their "limited function and passive status in trial proceedings (Chagdaa, 2011, p. 41). The Mongolian example demonstrates how ineffectual advisory lay participation can be in democratizing the criminal justice system.

Although advisory lay assessor systems do not qualify as lay adjudication because the decisions are not binding, in some instances, the assessors are not pure lay people either. In some countries the assessors are chosen because they possess some kind of expertise that the court desires.⁷ In the African context, the advisory lay assessor system seems to be a holdover from the colonial era when British colonizers included local lay assessors in criminal trials "to

⁶ Kenya abolished the advisory assessor system in 2009. In a racially charged murder trial in 2009, a judge found a wealthy white Kenyan guilty of manslaughter for shooting of a black Kenyan poacher despite the assessors' recommended not guilty verdict (Prominent Kenyan Convicted of Manslaughter, 2009). This case demonstrates how the judge's ability to disregard the lay participants' recommendation makes the advisory lay assessor system different from lay adjudication systems such as trial by jury.

⁷ This is not the case in Mongolia where citizen's representatives are not chosen for possessing any specific area of expertise (Chagdaa, 2011).

avoid having ‘an alien court’ commit injustice through ignorance of local traditions” (Ibhawoh, 2009, p. 433). The people chosen as assessors were usually tribal leaders or others with knowledge of tribal law (Ibhawoh, 2009).

Assessors still assist judges with matters of customary law or other areas of expertise in some countries today (Vidmar, 2002). For example, the Namibian Criminal Procedure Code defines an assessor as “a person who, in the opinion of the judge who presides at the trial, has experience in the administration of justice or skill in any matter that may be considered at the trial” (see Appendices B and C). Botswana is another country that still has advisory assessors. Although the law itself does not state under what conditions assessors are used, Otlhogile (1994) writes that assessors were traditionally brought in to assist with matters of customary law. Additionally, while assessors are still used in civil proceedings, advisory assessors are almost never used in criminal trials because there is rarely a need for them (Otlhogile, 1994, p. 84). While this criterion does not make the assessor a professional judge, an assessor who is brought in because his or her expertise is more like an expert witness than a lay person. Even in countries where lay assessors are not chosen for their expertise (e.g., Mongolia and Kenya), this type of lay participation still would not meet the criteria of lay decision-making since the recommendations of the lay assessors are not binding.

This project excludes advisory lay assessors because they are not lay adjudicators. However, even if the project were expanded to include advisory lay assessor systems, there are informational challenges that make their inclusion difficult. After researching the various countries’ advisory assessor systems, more questions remained than were answered (see Appendix B). This was mainly due to an inability to find reliable information about the specifics of the lay assessor system written in English. The information I have been able to obtain is

simply too vague to be able to get a clear sense of who serves as advisory lay assessors and how they are utilized in the courts. Financial and time constraints of this dissertation meant that questions surrounding advisory lay assessors needed to be put aside for a future project.

Justices of the Peace and Lay Magistrates

Another form of lay participation in the courts that does not meet one of the two essential elements of lay adjudication introduced in Figure 1.1 is trial by lay magistrate or justice of the peace. Although lay magistrates are adjudicators in that their decisions are binding, they are more like judges than lay people. This is because many lay magistrates receive professional training either prior to service or upon appointment as a lay magistrate (Kutnjak-Ivković, 1999). For example, in countries such as Italy, Russia, United Kingdom, and Canada some lay magistrates are trained as attorneys (Kovalev, 2010; Kutnjak-Ivković, 1999). In other countries, lay magistrates receive some sort of “special mandatory training to become familiar with the basic concepts of the national legal system” upon appointment (Kovalev, 2010, p. 70). While these individuals may not have had training prior to becoming a lay magistrate, the training they receive after appointment distinguishes them from a lay person because this training is deemed necessary for the job. Lay magistrates also serve for a term in office where they “act as a judge” over a multi-year period (Malsch, 2009, p. 7). The repetition of decision-making also serves as a professionalizing function because lay magistrates are given “the opportunity to develop experience, and sometimes even routine” (Malsch, 2009, p. 7). For all of these reasons, lay magistrates are not considered to be lay persons under the definition set forth in this project.

Another difference that makes lay magistrates different from jurors is that lay magistrates tend to adjudicate only minor criminal offences (Kutnjak-Ivković, 1999). Kovalev (2010) writes that “in some jurisdictions, including the United States, Australia and France, magistrates try only less serious offences, such as petty larceny, simple assault, breach of the peace, and traffic

offenses” (p. 71). Lay magistrate systems are not all the same; in some instances, such as in Australia, justices of the peace only deal with administrative issues and do not touch upon criminal cases at all (Kovalev, 2010, p. 69). This is different from juries because most countries invoke lay input only for the most serious criminal trials.

This dissertation is restricted to lay participation in serious criminal cases. As will be discussed in the next chapter, some of the arguments made in favor of lay decision-making in criminal trials in a democracy are that it serves as a check on government power, guarantees that defendants are tried by community standards of justice, and ensures that the criminal trial process remains understandable to defendants. It can be argued that all of these functions only increase in importance with the severity of the offense. The significance of juries in criminal trials is the power and trust given to untrained citizens by the government to decide matters of extreme importance such as whether a person will go to jail for life, or in some cases receive the death penalty. The minor offenses that magistrates deal with are inherently less important to the defendant and the state because of the lower penalties associated with those crimes. Despite not being involved in serious criminal cases, lay magistrates are an important part of a number of countries legal systems (Vidmar, 2000, p. 387). Nonetheless, like Vidmar (2000) I am leaving lay magistrates as a topic “reserved for another day” (p. 387).

Scope of This Project

This research project is aimed at understanding why some democracies have trial by jury in criminal trials. In determining the scope of this project, I have made a number of decisions to make addressing this research question more manageable. This is the first step of understanding how lay participation in the courts relates to democratic theories of governance. As such, the

project examines only democracies.⁸ This is done for both theoretical and practical reasons. As will be explained in greater detail in the next chapter, trial by jury is an institution of democracy (Lempert, 2007). Although it is possible for a non-democracy to have a jury system, the connection between juries and democracy is such that a well-functioning, genuine, jury system is not likely to be found under a non-democratic government. Practically, it would also be too unwieldy a project to take on all countries in the world at once. The data collection process for 91 democracies was challenging enough given the time and financial constraints on this dissertation.

The scope of this project is also limited to lay adjudication in formal criminal trials. Courts that operate outside the formal governmental structures of the state are not included. Although lay courts or customary courts exist, these courts “are typically not a part of the regular state court system” (Kutnjak-Ivković, 1999, p. 10). For this reason, any sort of lay participation in a customary court system is not included in this study. This project is also limited to lay participation in criminal trials. This is because one of the most significant functions of a jury in a democracy is its political role in protecting defendants from government tyranny or overreach (Marder, 2005). Independent decision-making by lay people is seen as one way to achieve this safeguard. The role of the jury in important political trials in England and the United States (e.g., *Bushell’s Case* and the *Zenger trial*) has long solidified the perception of the jury in criminal trials as a protection against government tyranny.

This is not to say that that lay decision-making in non-criminal courts cannot also have an important role to play in a democracy. In fact, Tocqueville makes a compelling argument about the importance of the civil jury to democracy. In *Democracy in America*, Tocqueville’s argument is that absent the civil jury, the criminal jury is always at risk of being abolished

⁸ There are some issues with conceptualizing democracy, which is addressed in Chapter 4.

because so few people have experience with criminal courts. Thus, it is easy for the jury in criminal trials to be marginalized since most people will not be a defendant in a criminal trial. In contrast, juries in civil trials are “constantly visible” and the jury is “associated with the idea of justice itself” (Tocqueville, p. 284). Despite Tocqueville’s protestations, there simply are few examples of democracies with civil jury systems. Today, with the exception of civil juries for slander and defamation cases, civil juries are usually found only in the United States, parts of Canada, and parts of Australia (Vidmar, 2010, p. 627).

The theoretical foundations of criminal trials are also distinct from those of lay adjudication in non-criminal courts. In criminal trials, representatives of the government are responsible for bringing the charges against the defendant. A defendant may temporarily or permanently lose his freedom or life if found guilty. Non-criminal trials do not carry that same importance to citizens or the government. Other forms of lay decision-making in the courts come in civil trials, labor courts, and coroner’s inquests, among others. While the use of lay people in these courts is still a form of democratic participation, it does not carry the same weight as their participation in criminal trials.

This project is also concerned only with the lay decision-making systems that exist according to the laws of each country. This is what Vidmar (2002) calls the “law on the books” rather than the law in practice (p. 387). What is important to this study is whether the country has a formal, rule-bound, lay decision-making system in place for criminal trials. Questions concerning the realities of lay decision-making are too complex and time-consuming to address in this initial project. For instance, a country might have a law providing for juries but in reality the right to trial by jury may be rarely exercised. Malawi is an example of such a situation: in 2009 Malawi suspended jury trials in homicide cases (The Zimbabwean, 2009). Trial by jury

still exists for some other serious crimes but the exact list of crimes is unclear from the law. I have therefore limited this project to the law on the books.

A related aspect of lay decision-making in the courts that will not be addressed in this project is the extent to which lay participation takes place. Again, what matters here is whether the participation exists and not how frequently it is utilized. I have, however, made an exception in cases where the constitution of a country calls for such trials have never been implemented. Argentina and the Ukraine are two democracies that have guarantees of trial by jury in their constitutions. Currently, neither country has a jury system in place (see Appendix B). The reason I do not discuss the specifics of frequency of jury usage is both theoretical and practical. From a practical standpoint, it is simply difficult to obtain this information for 91 countries. Even where data exists, it is often spotty. Additionally, even in countries with extensive jury usage like the United States, only a small fraction of criminal cases filed ever go before a jury (Hans & Vidmar, 2007, p. 63). The vast majority are resolved through plea bargain. Hans (2006) reports that as of 2002 fewer than 5% of all felonies filed in U.S. federal court are tried by jury (p. 3). In other countries, trial by jury is used even less frequently. Taylor (2011) claims that in Austria there are only about 300 jury trials a year (p. 284). In Belgium, there are only about 100 jury trials a year, representing approximately .01 percent of all criminal cases (Noelmans, 2009, p. 16).

The impact of the frequency of jury trials on democracy is a theoretically interesting question, but one that is outside the scope of this project. Countries vary widely in the frequency of lay decision-making. From a democratic standpoint, it may not be necessary that every defendant charged with a serious crime be tried by jury. It may be sufficient that defendants charged with serious crimes have the right to be tried by jury. Kutnjak-Ivković (1999) makes the

claim that despite lack of usage, juries serve as a deterrent because “the “threat” of jury trial is present in most of the cases and the negotiations between the parties are heavily influenced...by the estimates of the jury decision in the case” (p. 39). Abramson (1994) makes a similar argument in saying that “those who argue that the jury is unimportant because jury trials are infrequent thus mistake the tip of the iceberg for the whole” (p. 6). By this he is claiming that the impact of the jury looms large even if it is only visible in certain circumstances. Ultimately, whether the frequency of jury usage is relevant to democracy is an empirical question that is beyond the scope of this project.

This chapter has outlined the different types of lay participation in the courts and how they differ from juries. Specifically, it provided definitions of what it means to be a lay person versus a professional. Additionally, the three non-jury forms of lay participation in the courts were discussed – mixed courts, lay magistrates, and advisory lay assessors. The purpose of this chapter is to show how the jury is a unique form of lay adjudication in that lay people alone are responsible for the verdicts in criminal trials. The next chapter will focus exclusively on the jury. It will take this practical discussion of what the jury is and moves it into the theoretical and empirical to discuss why the jury matters in a democracy.

CHAPTER 3

THE JURY AS AN INSTITUTION OF DEMOCRACY

This chapter demonstrates that the jury is an institution of democracy. The most often mentioned democratic characteristics of the jury are its political function, its educational function, its effect on perceptions of transparency and accountability in the criminal justice system, its effect on citizen participation in other areas of civic life, and the effect of deliberation on citizens. As the review below indicates, most of the previous research is theoretical; this study is one of the few to conduct empirical research on the relation between juries and democracy. This discussion serves as background for the discussion in Chapter 4 of specific factors associated with a jury system.

Political Function

There is no shortage of praise given to trial by jury for its political function, which is that the jury protects defendants against government tyranny and ensures that defendants are tried by community standards of justice. Abramson (1994) argues that few institutions can compare to the jury in the level of direct power given to the populace by the government and that “no other institution risks as much on democracy or wagers more on the truth of democracy’s core claim that the people make their own best governors” (p. 1). Gobert (1997) contends that the existence of a jury system is a signal from the government to the citizenry that it is dedicated to democratic governance. Legal theorists, philosophers, and political figures have lauded the jury for centuries as a democratic institution.

In his *Commentaries on the Laws of England*, William Blackstone (1765-1769) called the jury “the glory of the English law” for the powers it grants the populace (Book III, Chapter 23). He saw the jury’s strength in the authority of twelve fellow citizens – not the government – to mete out punishment. According to Green (1985), Blackstone’s theory suggests that the jury is

the cornerstone of a fair and unbiased system of justice by acting as a safeguard for individuals and their property against a potentially tyrannical government. Indeed, Blackstone believed the jury contributed to “[t]he impartial administration of justice, which secures both our persons and our properties” and which “is the great end of civil society” (Book III, Chapter 23).

Additionally, Blackstone believed that “every new tribunal, erected for the decision of facts, without the intervention of a jury (whether composed of justices of the peace, commissioners of the revenue, judges of a court of conscience, or any other standing magistrates) is a step towards establishing aristocracy” (Book III, Chapter 23). Even though Blackstone was writing over 200 years ago, his words of warning are prescient given the decline of the jury in England and other countries with longstanding jury systems. Jury usage is shrinking in countries such as England where more and more cases are being tried by lay magistrates (Lloyd-Bostock and Thomas, 1999). Additionally, the jury is being abolished in places such as Denmark and Switzerland (see Appendix B).

Alexis de Tocqueville (1835) believed that viewing the jury as merely a judicial institution was to miss the real significance of the jury because “for however great its influence may be upon the decisions of the courts, it is still greater on the destinies of society at large” (Volume 1, p. 282). Indeed, for Tocqueville the jury was a quintessentially republican institution insofar as “it places the real direction of society in the hands of the governed...and not the government” (Volume 1, p. 282). Viewing the jury as a political and not judicial institution is the key to understanding the importance of the jury to democracy. Tocqueville himself acknowledges that the jury’s “utility might be contested” if it is merely viewed as a means of adjudicating cases (Volume 1, p. 280). The reason for this is that professional judges are just as capable of reaching the same conclusion as jurors would in criminal cases. In fact,

empirical work on decision-making in criminal trials generally shows a high level of agreement between judges and juries (Kalven & Zeisel, 1966). If the relevance of the jury was limited to trial outcomes then it would be easy to argue that it had less relevance to democratic governance. However, the jury's political function is what contributes to it being an institution of democracy.

Tocqueville's writings heavily influenced America's founding fathers, who also strongly advocated the virtues of the jury system as an institution of democracy. John Adams saw the jury as so integral to democracy that he considered it as important as popular elections to democratic governance (Stimson, 1990). Alexander Hamilton referred to the jury as "a valuable safeguard to liberty" and "the very palladium of free government" (Federalist 83). Thomas Jefferson considered the jury "the only anchor, ever yet imagined by man, by which a government can be held to the principles of its Constitution" (Boyd, 1958, p. 269).

Given these sources of support for the jury, it is easy to see how the Anglo-American perspective of democracy includes juries as an integral component. The principle of the right to trial by jury is so ingrained in American culture and politics – through law and practice – that despite criticism and calls for jury reform, it is unlikely that the jury will ever be abolished in the United States. Similarly, and despite significant changes in the English jury system – most notably the elimination of the civil jury – public opinion polls show that support for and confidence in the jury remains high among Britons and the public generally opposes measures to diminish the role of jury trials (Roberts & Hough, 2009). More generally, empirical research shows that juries are popular in countries that have them (Hans, 2008).

The perception of the jury as a political institution expanded to continental Europe after the French Revolution. Praise for the jury by French philosophers such as Montesquieu caused a

growing number of other European legal philosophers to see the jury system as “the essential democratic answer to an authoritarian judiciary” (Vogler, 2005, p. 233). For example, during the mid-1800s a Finnish law professor Ehrstrom argued “that the only way to ensure the judiciary’s independence from political power was to establish a jury system” (Pihlajamaki, 2001, p. 170). In Germany, Feuerbach wrote a book in 1813 “criticizing the Anglo-American jury as a legal institution, but praising it as a political institution in non-authoritarian systems” (Dubber, 1995, p. 244). He stressed the importance of “evaluating the jury in its political context” (Dubber, 1995, p. 244). Other German scholars saw value in the jury because, in their estimation, only laypeople “possessed a general sense of truth” (Dubber, 1995, p. 245).

In the end, the critical political significance of the jury is its institutionalization of lay people in an otherwise elite, professional judicial system (Kutnjak-Ivković, 1999). Decisions rendered by lay people are seen as independent of government influence and a necessary check on judicial decision-making that is – particularly in the criminal justice system – part of the governmental power structure (Kutnjak-Ivković, 1999).

The independence of the jury allows it to serve as a form of protection for the defendant against government tyranny (Marder, 2005). Even if the government is not inclined to overreach, the existence of jurors serves as a check on government authority. Kutnjak-Ivković (1999) calls this the latent function of lay participation in the courts because it helps prevent judicial corruption by deterring judges from acting in a capricious or biased manner. Kutnjak-Ivković (1999) is also quick to point out that this argument in favor of the jury has been made not just by American leaders but also by those in Russia and Croatia (p. 35).

Community Standards of Justice

In addition to preventing abuse by the government, the jury also interjects community standards of justice into the courtroom. Brown and Neal (1988) argue that “infusing community values into the operation of the criminal law is one of the most compelling arguments in favour of the jury system” (p. 131). This is because the jury guarantees that defendants are judged by the values of the community in which they live, as opposed to by those of a government official who may be out of touch with community standards or those of some other community. John Adams argued that “the key to the jury’s preferred position regarding the law was their proximity to each other and to local moral, civil and political norms” (Stimson, 1985, p. 82). The jury also has greater flexibility in decision-making in that jurors can bend the law in order to reach a decision they feel is just, even if it is contrary to the law (i.e., jury nullification) (Kutnjak-Ivković, 1999). Meanwhile, judges are bound to follow the law and cannot make such an accommodation.

The jury also brings diversity of opinions to the decision-making process, a quality that no single judge can claim (Marder, 2005). First, a jury trial has multiple decision-makers and thus provides a diversity of opinions (Kutnjak-Ivković, 1999). Trials with judges alone are either decided by one judge or at most two to three judges. Second, jurors are more likely to have something in common with the defendant than is the judge, who is generally more educated and has had different experiences from those of the average citizen. Even where there are multiple judges, they are likely to share the same outlook. All judges go through the same legal training, which tends to homogenize the way in which they look at the law.

Furthermore, Condorcet’s jury theorem provides an appropriate lens with which to view the jury’s importance to democracy. The theorem implies that in decisions involving one of two choices (in this case not guilty or guilty) the jury increases the likelihood of a correct verdict

being rendered. The theorem demonstrates that if one person (a juror) is more likely to make the right decision, then the majority of jurors making the same decision are also more likely to reach the right conclusion, and the probability of the right decision being made increases with the size of the jury (List & Goodin, 2001). Condorcet's jury theorem is relevant to this relationship between juries and democracy because it implies that jury trials should lead to better decisions in criminal trials than judges alone.

Educating Function

The argument that the jury system educates citizens was originally made by the same people who supported its political function. Thomas Jefferson called the jury the "school by which people learn the exercise of civic duties as well as rights." (Stimson, 1985, p. 88) Similarly, Tocqueville (1835) called the jury "one of the most efficacious means for the education of the people" (p. 285). Tocqueville made this claim because he believed that the jury "may be regarded as a gratuitous public school, ever open, in which every juror learns his rights, enters into daily communication with the most learned and enlightened members of the upper classes, and becomes practically acquainted with the laws..." (p. 285). James Wilson, an American founding father and jurist, argued that "one way in which common men come to know, to shape, and thus to admire the law is through their participation on juries" (Stimson, 1985, p. 131).

The educating function of the jury is important for a number of reasons. First, as Gobert (1997) contends, "jury service not only educates jurors about the law and its administration, but also contributes to the jurors' personal development" (p. 109). This is because "being an effective juror involves mastering a wide range of skills" (Gobert, 1997, p. 109). These include, among other things, listening, critical thinking, and decision-making skills. As Gobert indicates, the deliberation process requires jurors to work together to reach a consensus. Jurors must be

able to articulate their point of view and convince others of their view-point. They must also keep the views of others in mind (Gobert, 1997). The deliberation process jurors engage in is unheard of elsewhere in most citizens' lives. The jury may be their only opportunity to engage in such an activity.

The jury's educative function is also important insofar as jurors learn how the legal system works (Kutnjak-Ivković, 1999). This is seen as important for democratic governance because absent lay involvement governments have little incentive to make the laws and criminal trials understandable to the public. While civic education in schools might perform a similar function, jury service is likely the only direct exposure most citizens have to the laws and procedure of the judicial and legal process. Such an education not only increases their knowledge about the political system that governs them, but may make them better advocates of their rights.

Only a few scholars have attempted to empirically test some of these claims about the effects of jury service. Using survey data from actual jurors in the United States, Gastil, et al. (2010) find that although the effects are small and different across populations, jury service does promote increased participation in government (e.g., voting, campaign activities, and petitioning government officials), increased political self-confidence, greater confidence in government institutions, and increased participation in political and civic life. Their research is significant because it demonstrates that the jury does perform some of its alleged functions.

Enhancing Accountability and Legitimacy

A natural result of having lay people with judicial decision-making authority educated in the laws, procedures, and rights that govern them is that the judicial system – and arguably the larger political system – is made more transparent and accountable, and therefore, more legitimate. As Jefferson famously opined trial by jury is “the only anchor, ever yet imagined by

man, by which a government can be held to the principles of its constitution” (Boyd, 1958, p. 269). More recently, scholars and observers have claimed that “the jury system represents a commitment to open government” (Gobert, 1997, p. 107). Jackson, Quinn, and O’Malley (1999) make the claim that it is the jury’s independence from the government and ability to serve as a check on government power that “lends legitimacy to the fairness and independence of the system as a whole” (p. 219). Diamond (1990) summarizes the legitimacy argument best with the following quotation:

A number of governments in both democratic and socialist countries also view the fact of lay participation as beneficial in itself on the assumption that greater legitimacy may flow from decisions handed down by judges who appear to represent the community rather than by those who are viewed as instruments of the formal authority structure (p. 194).

Transparency in the criminal justice system is enhanced when regular citizens are included in the justice process because judges and lawyers must then communicate without legal jargon the facts and laws in the case (Brooks, 2004). Without lay people, there would be no incentive for legislators, judges, or lawyers to make the criminal justice system comprehensible to average citizens. As there are already concerns about the complexity of forensic evidence and the overly technical legal language used by attorneys and judges, courts across the United States have tried to write jury instructions that are more easily understood by using plain language. In so doing, they not only make it possible for jurors to make more informed decisions, but they increase the broader educative function of the jury system (as discussed above).

This problem of transparency and comprehensibility has been observed in other countries with limited lay participation in the courts. Gleadow (2001) notes that after Spain reintroduced jury trials, transparency in the courts increased and judges and prosecutors made a concerted effort to make the trial process understandable to jurors by speaking in plain language. She argues that had Spain adopted a mixed court system rather than the jury, the courts would not

have made the same efforts to make the law comprehensible to the lay participants because the judges would have been able inform the laypeople about the meaning of the law (Gleadow, 2001). Malsch (2009) also acknowledges that countries such as the Netherlands, with only professional judges, are most likely to suffer from the “ivory tower” problem of judges using language that is incomprehensible to a layperson (p. 196).

The inaccessibility of legal proceedings to regular citizens has been cited as a reason why some countries became interested in expanding lay participation in criminal trials. Lester Kiss (1999) observes that before Japan introduced its mixed court system in 2009, Japanese criminal trials were conducted almost entirely on paper, with nearly a 100% conviction rate from professional judges. Although Japan chose a mixed court method of laypeople and professional judges, one factor that influenced the decision to increase lay participation in the courts was the nature of criminal trials under the professional judge-only system.

In discussing lay judge systems, Diamond (1990) says that even if the decisions rendered by lay judges are no different from those of professional judges, there is a perception that they are different, which may lend more legitimacy to the system (p. 194). Nonetheless, there is no evidence that lay decision-making does indeed add legitimacy (Diamond, 1990). Kutnjak-Ivković (1999) also makes a similar argument about legitimacy: “An additional function of lay participation, then, lies in the fact that people seem to attribute greater legitimacy to legal decisions reached by their peers than to legal decisions reached by professional judges (who are employed by the state)” (p. 41).

This transparency and education increase the legitimacy of the courts as a whole insofar as jurors see firsthand how the criminal justice system works (Bergoglio, 2007; Gastil, et al., 2010). By serving on a jury, citizens gain confidence in the role that the jury plays in

promoting justice in the courts and the government in general (Gastil, et al., 2010). For example, Landsman and Zhang (2007) point out that in addition to bringing community values into the decision-making process, one of the reasons in favor of re-introducing lay adjudication in Japan is that it “will increase public understanding of, and appreciation for, the system” (p. 188).

Scholarship demonstrates that public support for the judiciary is tied to perceptions of fairness, specifically procedural fairness (Ellis & Diamond, 2003). Tyler (2001) contends that, when evaluating the courts, the public is most concerned with whether they are being treated fairly and whether decisions are made fairly. Also, he points out that obedience (even with a policy that imposes costs on the actor) is more likely when people believe they are treated fairly. Procedural justice scholars have shown that, even with a negative outcome, people are satisfied with trial outcomes if they believe the process was fair (Ellis & Diamond, 2003). If the public believes the process by which defendants are tried is fair, they will be more likely to accept the outcomes of cases and believe the system to be legitimate. The jury increases the legitimacy of the courts by increasing the perception of procedural fairness in criminal trials (Malsch, 2009). Although the jury is not the only way to achieve procedural fairness in the courts, studies have shown that countries with juries are highly supportive of them (Hans, 2008). It is easy to see how having regular citizens make the decisions in criminal cases may enhance the legitimacy of decisions rendered in a democracy.

Encouraging Broader Civic Participation

The direct participation of citizens in the judicial decision-making process may be the most obviously democratic element of the jury system. Blake (1998) calls jury service “the most important activity as a citizen that most people undertake. It is participatory democracy, direct involvement in the decision making institutions of the state” (p. 142). As Abramson (1994) observes, jury service may be the only time a citizen engages in self-rule. For this reason, the

jury “is an affirmation of [the government’s] confidence in its citizenry” and “cannot but help to strengthen the bond between citizen and state” (Gobert, 1997, p. 102). The jury is also a reminder that “the people must take responsibility for the running of the state” in a democracy (Gobert, 1997, p. 102).

Moreover, individual participation on a jury has been shown to lead to increased participation in other areas of civic life (Gastil, et al., 2010). This is the only function of the jury discussed in this chapter that has been empirically tested. Jury service has an impact on jurors beyond deciding one particular case; they also learn about the laws and the adjudication of criminal matters (Malsch, 2009, p. 3). Gastil, et al. (2010) found that there are three important relationship changes that happen as a result of jury service. The first is that by serving on a jury, people learn how to be citizens in a democracy; people have a greater sense of their own decision-making ability. Second, jury service strengthens the confidence people have in their fellow citizens. Lastly, it also affects the relationship between the public and the government.

When the government shows trust in the people by allowing average citizens to decide criminal cases, civic bonds are strengthened. Gastil, Dees, and Weiser (2002) showed that successful jury service (service in a trial that ends in a verdict) resulted in a 10% higher voter turnout. In another study Gastil and Weiser (2006) found that those who served on juries were more likely to engage in other political endeavors such as being active in politics and being engaged. These findings support the deliberative democratic notion that “participation begets participation” (Gastil, et al., 2002, p. 593). It also means that the jury has been “quietly replenishing the reservoir of civic spirit and political engagement in the United States” (Gastil & Weiser, 2006, p. 615). Essentially, jury service makes good citizens.

Deliberative democracy is rooted in the idea that people will make better decisions when they can discuss them in a group. They will also receive benefits beyond the specific task at hand, specifically that they will feel a greater sense of personal efficacy, that they will be more confident, and be more able to make better decisions in other avenues of life. Research has also generally shown that people who serve on juries are generally happy about the experience and come away with more positive feelings about the system (Hans, 2008). Hans (2008) suggests that this means that in order to properly introduce a jury system in a country, the citizens need to have a high level of exposure to the system. As a form of deliberative democracy, jury service is not mere translation (voting and the collection of individual preferences but rather transformation (the making of decisions based on reasoned deliberation (Gastil & Weiser, 2006).

Impact of Deliberation

Beyond the representative and civic functions of the jury, some argue in support of the deliberative function of the jury (Abramson, 1994). Because juries are groups of individuals who come together to resolve disputes, their significance is not in how they reflect or what they return to their community, but also in what they bring to the deliberation over disputed facts. Gobert (1997) argues that “[j]ury deliberations present a form of participatory democracy that is somewhat anachronistic in the modern nation-state” (p. 104). Citizens cannot attend town hall meetings as they used to. There are few, if any opportunities for public debate among citizens in today’s society. The jury, however, goes some distance toward filling that void. When members of a community gather to hear evidence and discuss the facts of a case, there is direct democracy in practice as one rarely sees elsewhere in contemporary democratic society. As such, “the jury represents...[an] approximation of the democratic ideal” (Gobert, 1997, p. 105). The emphasis on deliberation and persuasion means that jury’s work is not concluded until everyone is heard and has a say in the matter. As such, “the jury system is an assurance to the people that their

views will not be ignored in a criminal trial and an assurance to defendants that they will not be condemned except by the judgment of the people” (Gobert, 1997, p. 107).

Criticism of the Jury as it Relates to Democracy

Despite the fervent support for the jury as a democratic institution, there are many scholars and observers who express concern about whether the jury actually fulfills this role. Kalven and Zeisel (1966), pioneers of modern jury studies, contend that proponents of the jury “have tended to lapse into sentimentality and to equate literally the jury with democracy” (p. 5). They argue that this sentimentality associated with the jury is “dangerous” and “based on no justification or spurious justification” (Brooks, 2004, p. 198). Others worry that it has become “the people’s sacred democratic cow” (Broeder, 1954, p. 386), thereby limiting legitimate debate about the actual and proper function of the jury. The critique is less about the integral role the jury has played in shaping the legal and political environment of many nations, but rather that the institution is not necessarily essential to democratic governance and that its benefits may not outweigh its costs. Even defenders of the jury contend that “history and tradition are poor justifications for its continued use” (Gobert, 1997, p. 61).

Critiques of the jury range from the logistical (such as the costs associated with implementing the jury system) to the substantive (such as the claims that jurors do not understand the law well enough or that they are biased). Among the most well-articulated criticisms came from Baldwin and McConville (1979). They characterize the jury as citizens

chosen at random, often with no prior contact with the courts to listen to evidence (sometimes of a highly technical nature) and to decide upon matters affecting the reputation and liberty of those charged with criminal offences. They are given no training for this task, they deliberate in secret, they return a verdict without reasons, and they are responsible to their own conscience but to no one else. After the trial they melt away into the community from which they are drawn (p. 1).

Other concerns about the jury echo these sentiments – jurors’ lack of knowledge, experience, and accountability. For those who take this view, “the jury is regarded much more cynically as a costly, sometimes incompetent anachronism that merely creates opportunities for exploitation by “professional” criminals at great public expense” (Lloyd-Bostock & Thomas, 1999, p. 7). Arguments such as these are seen even in the United States where the jury is extremely well entrenched. It is not surprising that the prevalence of jury trials has diminished in many countries that have the jury system. This includes Great Britain, which is largely responsible for the popularity of the jury system in many places around the world.⁹

The accountability critique is especially interesting as it suggests an undemocratic perspective of the jury. Before Baldwin and McConnville, Broeder (1953) observed that jurors are not elected, are fairly anonymous, and are not beholden to anyone. They can be biased and prejudiced and decide cases contrary to the law, and no one can stop them. This view that the jury may actually be undemocratic is also made by critics who see the proliferation of the jury around the globe as a consequence of colonial rules. For example, British legal scholar Glanville Williams referred to the British imposition of the jury in its colonies as its “tyrannous origin” (Hostettler, 2004, p. 13). Subsequently, the jury system “was also an institution frequently associated with colonial injustice” (Vidmar, 2000, p. 447).

Moreover, the practice of trial by jury arguably has an undemocratic past. In an ideal form, juries represent the “universal suffrage” that de Tocqueville lauded (p. 283). However, although the British government imported the jury to many parts of the world, the right to trial by jury and jury duty were often restricted to the European settlers in British colonies (Vogler, 2005). This led to a two-tiered system of justice whereby the right to trial by jury was denied to

⁹ For example, Lloyd-Bostock and Thomas (1999) assert that only 1-2% of all criminal cases are heard by a jury (p. 12).

many of the native populations. Moreover, even in countries with strong jury systems (such as the United States and Great Britain), juror eligibility was historically limited to certain segments of the population, such as white male landowners. Only since the mid-twentieth century has there been an emphasis on the jury's representativeness, which greatly improved the "universal suffrage" element of the jury. Thus, the democratic nature of trial by jury is something of an idealization. Reality often falls short of a truly democratic system.

Conclusion

The purpose of this chapter is to establish the jury as an institution of democracy in order to understand why juries are important to democracy. The jury's relevance among democracies is as a political institution and not as a judicial one. Viewed as a judicial institution, the jury has limited utility. This is because research has shown that juries and judges largely decide cases similarly (Kalven & Zeisel, 1966). As such, it is unclear how much the outcomes of criminal trials would be different if cases were decided by judges instead of lay people. However, viewed as a political institution, the jury has wide-reaching implications for democratic governance. The jury's political function is the one most often cited as being important in a democracy. Juries serve as a protection for defendants against potential abuses of power by the government and infuse community values into the decision-making process. Juries also benefit democracy by serving as an educating function for citizens, improving transparency and accountability in the courts, and promoting increased civic participation. Additionally, the deliberation process makes for a unique, transformative experience for jurors. These functions of the jury help explain why juries are associated with democratic governance. One caveat to this discussion is that these ideas have mostly gone untested empirically. The next chapter takes this theoretical discussion a step further by exploring what factors account for the differences among democracies in jury usage.

CHAPTER 4

JURIES AROUND THE WORLD

This chapter reviews the literature on the use of juries around the world. The first half of the chapter looks at global trends relating to the jury and democracy. Specifically, it provides details on historical trends relating to the adoption of juries around the world. The next section examines factors that scholars claim affect whether a country has a jury system. The literature reviewed in this chapter help develop the hypotheses that are tested in the next chapter.

Global Trends in Jury Usage

The use of juries around the world has waxed and waned over time both within and across countries. The precise origin of the jury is unknown (Landsman, 1993). However, the roots of the modern jury can be traced to Britain after the Norman invasion in 1066 (Reichel, 2002, p. 207). Some argue that “important precursors to the jury existed in England before the time of the Norman conquest and are likely to have played a significant part in inducing the Englishmen to place their trust in the jury trial mechanism eventually put forward by the Angevin kings” (Landsman, 1993, p. 25). It is indisputable that England is considered the motherland of the modern jury system due to “the British Empire’s effort to replicate its home institutions in its colonies abroad” (Park, 2010, p. 537).

Scholars have identified three critical periods of jury expansion. Examining these time periods will help shed light on why some democracies have juries today. As noted above, the jury was initially propagated through colonization. As will be discussed in a later section, there were variations in the extent to which the jury was brought to the colonies, and these variations affected the views of locals on the institution.

The second period of jury resurgence was also “rooted in force, but this time the sword was the French” (Park, 2010, p. 538). After the French Revolution, the jury became popular

with Enlightenment thinkers. The French influence brought the jury to countries outside of the British Empire's purview. Jackson and Kovalev (2006) write that "certain philosophers and politicians, such as Montesquieu, Beccaria, Voltaire, Rousseau, Jefferson, and de Tocqueville continued to develop this spirit of democracy throughout the eighteenth and nineteenth centuries and considered it to be manifested in the Anglo-American jury system" (p. 88). Largely for this reason, the jury reached its zenith in terms of world popularity in the mid-nineteenth century, when many countries adopted the jury system. For example, trial by jury was introduced in Spain (1820), Portugal (1830), Germany (1848), Italy (1860), and Russia (1864)" (Vogler, 2005). Denmark was a part of this trend when "in the eighteen-thirties and forties liberal opinion demanded...legal reforms, including lay judges, not as lay assessors, but as jurors as had been introduced in France and were being debated in Germany" (Garde, 2001, p. 112). This influence was so pervasive that almost every European country introduced a jury system during this time (Fukurai, Chan, & Miyazawa, 2010). Juries became so popular during this time that a Gilbert and Sullivan comedic opera called Trial by Jury premiered in 1875 and had tours in England and other countries around the world.

Finally, the current period is seen as the "third wave in the spread of the jury" in large part due to "Western political and economic norms rapidly diffused throughout the globe" (Park, 2010, p. 529). Fukurai, Chan, and Miyazawa (2010) credit this current wave to the fall of the Soviet Union, which left the U.S. as the sole world superpower, and the creation of numerous newly democratizing nations, many of whom have introduced lay adjudication in the courts. As Fukurai, Chan and Miyazawa (2010) state, "not since the mid-1800s, when European nations such as France and Germany adopted the trial-by-jury system, have so many countries rushed to incorporate jury trials into their legal systems" (p. iii). It is this current wave that has contributed

to the rebirth of comparative jury scholarship. Lempert (2007) credits the expansion of jury research, which showed that the jury performed better than its critics alleged, as partially responsible for the resurgence of trial by jury around the world. This evidence, coupled with the United States' gaining "unparalleled power and prestige in the world system," made trial by jury more attractive to newly democratizing countries (Lempert, 2007, p. 479). In the past 20 years, countries as diverse as Spain, Russia, South Korea, Georgia, and Kazakhstan have chosen to adopt jury trials for criminal matters. Others, such as Japan and Bolivia, have expanded lay adjudication in the courts by introducing mixed court systems.

Juries and Democracy in a Comparative Historical Context

In his classic work, *Democracy in America*, Alexis de Tocqueville observed that throughout the history of trial by jury, "[a]ll the sovereigns who have chosen to govern by their own authority, and to direct society instead of obeying its directions, have destroyed or enfeebled the institution of the jury" (p. 283). Although written in 1835, this observation generally remains true to the present day. Historical examples demonstrate that juries are often introduced during periods of democratization and abolished under authoritarian rule. This connection between juries and democracies has been well documented. Thaman (1999) observed that "in nearly all Continental European countries, the introduction of trial by jury coincided with liberal reforms, and its abolition with the installation of dictatorial or totalitarian regimes" (p. 237). Vidmar (2000) asserts that this pattern "reflects upon [the jury's] democratic nature" (p. 447).

One of the reasons trial by jury gained appeal with politicians, legal scholars, and academics during the nineteenth century is that "the jury was seen as a bulwark of democracy...and a tool in the hands of the insurgent bourgeoisie against absolutist monarchy" (Thaman, 2002, p. 90). The fact that the jury was adopted in France following the revolution in 1789 is frequently cited as evidence of the perceived connection between juries and democracy

(Thaman, 2002, p. 90). Hans and Germain (2011) write that “the jury was introduced with fanfare as a living incarnation of French revolutionary and democratic ideals” (p. 742). This perception of the jury spread quickly throughout Europe. For example, Strandbakken (2001) says that the jury was introduced in Norway in 1887 in order to “ensure a more democratic criminal procedure” (p. 245).

Another way to examine the jury’s connection to democracy is to look at what was going on politically within countries when they abolished their jury systems. Kovalev (2010) has identified six instances since the early 1900s when juries were abolished after a country came under authoritarian rule: Russia (1917), Portugal (1927), Italy (1931), Spain (1939), France under the Vichy regime (1941), and Greece (1967) (p. 242). The trend of juries being introduced under democratizing governments and abolished under authoritarian ones can most certainly account for the Russian experience, in which jury trials were introduced by Alexander II and abandoned by the Bolsheviks in 1917 (Martín & Kaplan, 2006). Furthermore, the jury came back as a part of a “constitutional reform initiated by Gorbachev during the *perestroika*” (Martín & Kaplan, 2006, p. 70). France is another country that exemplifies this trend. It was the authoritarian Vichy Regime that got rid of jury trials in 1941 by turning the jury system into a mixed court where jurors and judges decided cases together (Hans & Germain, 2011). While the authoritarian government did not entirely eliminate lay decision-making, the inclusion of professional judges in the decision-making process introduced government control over deliberations. Hans and Germain (2011) write that “the removal of independent fact-finding by a lay decision-making body, and its replacement with a mixed court, was a significant step in diluting citizens’ power” (p. 746). The mixed court system stayed the same even after France returned to a democracy.

Perhaps more than any other country, Spain exemplifies this pattern quite astoundingly. Gleadow (2001) traces the jury's history in Spain beginning with its inception in 1820 as a part of a liberal reform, only to be followed by its abolition in 1823 under an absolutist government (p. 60). Between 1837 and 1867 the jury was adopted and abolished numerous times under monarchy (Gleadow, 2001). The jury was then re-adopted in Spain in 1873 (liberal government), abolished in 1875 (military rule), re-adopted in 1888 (monarchy rule), abolished in 1923 (dictatorial regime), re-adopted in 1931 (liberal government), abolished in 1936 (Franco's dictatorial regime), and re-adopted in 1978 (liberal government) (Gleadow, 2001). Thaman (1999) writes that the recent return to the jury in Spain in the 1990s "was conceived as the key to democratic reform of the criminal justice system following the Franco dictatorship" (p. 237). Other countries follow a similar pattern.

Lempert (2001) writes that similar to Spain, the jury in Japan "has several times risen during periods of relative political liberalism or populism and been suppressed during periods of militarism and autocracy (p. 1). Although Austria has jury trials today, pre-World War II saw "what might have been dealt a death blow to jury trial in Austria was dealt as Austrian democracy collapsed in 1933 and 1934" (Taylor, 2011, p. 290). Initially the law was changed so that judges merely observed jury deliberations without participating in deliberation until ultimately provision for trial by jury was abolished altogether (Taylor, 2011). Taylor writes that Austria re-adopted trial by jury after independence because "there was a natural inclination to restore many institution that had been lost along with Austrian democracy and independence, and it was also natural to perceive a connexion between democracy and jury trial" (Taylor, 2011, p. 291).

Even when authoritarian countries have not formally abolished the jury, there is an emerging pattern over time of reducing the jury's authority or reducing the use of the jury by leaders looking to maintain control over trial outcomes. For example, in France Napoleon reduced the role of the jury by introducing military tribunals for political crimes and other types of cases where juries were prone to acquitting defendants (Hans & Germain, 2011, p. 744). Reducing the jury's competency is just another way to circumvent the jury's authority when decisions are not in the government's favor.

Despite the overall pattern connecting juries to democracy, it is not the case that all democracies have juries, nor can it be said that juries are found only in democracies. While these observations have been made before, very little empirical work has been done to explore the connection between juries and democracy. The scholarship cited in this section represents mere observations of the correlation between juries and democratic governance. In order to actually test the effect of democracy on juries, empirical analysis like the one proposed in this dissertation is needed.

Many scholars have noted this connection and alleged that juries are not an essential element of democracy simply because democracies exist without juries (Kovalev, 2010; Lempert 2007; Park, 2010; Thaman 1999; Vidmar 2000). In response to this point, Vidmar (2000) contends that the jury's "absence in many modern countries with strong democratic cultures indicates that it is not essential for democracies to flourish" (p. 447). Lempert (2007) echoes Vidmar's claims that the existence of strong democracies in Western Europe (such as the Netherlands) demonstrates that juries certainly are not a necessary condition of democracy. However, he argues that juries "are antithetical to rigid authoritarian rule" (Lempert, 2007, p. 479).

Lempert (2007) goes further to argue that juries cannot create a democracy and that they are not essential to democracy, but “only democracies can tolerate true jury justice” (p. 481). It can be assumed that by this point Lempert means that although juries may exist under non-democratic governments, it is likely the case that the jury would either be short lived or it would not be a well-functioning jury system (i.e., verdicts would not be truly independent). Thaman (2007) makes a similar argument, contending that “egalitarian countries can exist without lay participation, but it is difficult for repressive dictatorships to exist with it, unless it is deformed into a kangaroo court of yes-sayers” (p. 361). For example, Venezuela flirted with the jury in 1999 only to abolish it in 2001 (Thaman, 2002). Venezuelan leaders chose to use a mixed court system instead because that style of lay adjudication was seen as more appropriate for Venezuela (Hendler, 2008). However, research on the mixed court system found that the participation of the lay judges “was only a formality and the influence of professional judges becomes insurmountable” for the lay people (Hendler, 2008, p. 8). As discussed in the previous chapter, it is easier for the opinions of lay judges in mixed courts to be over-ruled than the verdicts of jurors. A number of Communist countries, including Russia and China, had a form of people’s assessors’ courts where lay people essentially served as rubber stamps for the government. Russian lay assessors were literally called “nodders” (*kivaly*) during their use under Soviet rule because they just went along with the professional judges (Kovalev, 2010, p. 242). In China, the people’s assessors used during the Cultural Revolution were chosen “on the basis of their loyalty to the Chinese Communist Party” and they were known for their “ideological zeal” (Landsman & Zhang, 2007, p. 198).

Overview of Factors Affecting Jury Usage

This last section of the chapter moves beyond history to identify common themes that serve as possible explanations for the presence of the jury in some countries. Numerous authors

have suggested a multitude of reasons why a jury system did not work in a specific country or in certain types of countries. Although not all of these potential causes can be tested in this project, it is important to at least give recognition to the various factors theorized to affect jury usage.

This section presents a broad overview of explanations that have been offered, with special focus on the factors that will be tested in this dissertation.

Previous scholars have noted that the explanations of why a particular country has trial by jury are heavily dependent on the nation's cultural, political, and social context (Hans, 2008).

One aspect of this cultural context is the value placed on professional versus lay decision-making (Hans, 2008; Kagan, 2007). Countries that place high value on professionalism and professional decision-making would be less amenable to a jury system. There is also an argument to be made that lay decision-making must be a part of the legal culture of a country. For example, officials from both Turkey and the Netherlands responded to a survey that the reason their country does not have any kind of lay adjudication in the courts is that it "was not a part of their legal tradition" (Jackson & Kovalev, 2006, p. 94).

The most comprehensive explanation of the conditions necessary for a well-functioning jury system comes from Kovalev (2010) who summarizes Vidmar (2002), Jearey (1960), and Kiss (2000):

- (1) the society must be racially, culturally, linguistically, and religiously homogenous;
- (2) the members of the society must be sufficiently educated to understand their responsibilities, including having the willingness to set aside prejudices that they may hold;
- (3) lay adjudicators must be in agreement with the basic laws that they are required to enforce;
- (4) the culture of the society must be such that it is supportive of the idea of citizen participation in the legal system;
- (5) the country must be able to afford the costs of a lay adjudication system;
- (6) the legal culture itself, including judges and other members of the legal profession, must support the idea of lay participation in the administration of justice;
- (7) the government itself must be democratically inclined (p. 189).

Democratization

As previously discussed, a number of scholars have observed that one would not expect to see trial by jury in non-democratic countries. Vidmar (2002) states that this is because “jury systems have not tended to be favoured by authoritarian regimes” (p. 405). One possible explanation for the recent resurgence of jury systems around the world is that some countries are seeking to democratize their criminal justice systems. Specifically, Thaman (2001) argues that the current trend in favor of the jury system “can be seen as an ideological underpinning of attempts to democratize former dictatorships (much like the introduction of classic juries in Continental Europe in the 19th century was seen as a blow against the absolute monarchies that rules at that time)” (p. 23). Lempert (2007) also made the same observation by arguing that the “favorable soil” needed for the jury to expand around the world “was the spread of democracy to formerly authoritarian or one-party dominant regimes” (p. 479).

Leaders of countries that have introduced jury systems or expanded other forms of lay participation in the courts often make mention of the importance of lay participation in the courts to democracy. For example, the president of Mongolia issued a statement regarding the decision to give binding authority to the decisions of Mongolia’s advisory lay assessors. The statement read that “strengthening the institution of citizen’s representatives shall serve as an important step towards ensuring the democracy and openness within the judiciary and implementing judicial reform” (Introduction on Draft Law on Judiciary, 2012).

Common Law Legal System

Many scholars have argued that jury systems are more likely to exist in countries with common law legal systems. This claim is made based on the perception that the nature of the common law system is more amenable to jury trials. Greater weight is given to this perception because

the countries most often associated with the trial by jury – the United States, Great Britain, Canada, Ireland, New Zealand, and Australia – are all common law countries. Even though it is not the case that a civil law country cannot have a jury system, there is a perception that the jury does not work well in civil law legal systems. For example, in discussing whether Mongolia should adopt a jury system, Chagdaa (2011) writes that “Mongolia does not choose introduction of the jury system because it is routinely connected to common law systems, and Mongolia has a civil law background” (p. 44). In this regard, perceptions matter because they may effect whether a country adopts a jury system.

Additionally, Reichel (2002) points out that the spread of the jury throughout Western Europe during the 19th Century was followed by the discovery “that the jury trial was not suited to criminal proceedings in civil law systems” (p. 209). Many of the civil law nations that adopted the jury system during this period have abandoned it for a mixed court system in which lay people and judges decide cases together (e.g., Germany, France, Italy, and Portugal) (Thaman, 2001). Thaman (2001) writes that countries with civil law or inquisitorial legal systems have rejected the jury “as being alien to certain other principles of the inquisitorial criminal process” (p. 19). These qualities include the judge’s role as truth seeker and the importance of being able to review verdicts (Thaman, 2001, p. 19). The jury’s ability to simply render a guilty or not guilty verdict without explanation is also problematic for some civil law countries because it can be difficult to appeal jury convictions compared to decisions made by judges.

However, there are civil law nations that have trial by jury. Vidmar (2010) identifies six non-common law countries that have jury systems – Belgium, Brazil, Denmark, Norway, Russia, and Spain (p. 627). Additionally, two of the countries that have have recently introduced the

jury (Spain and Russia) are civil law countries. Furthermore, when Voigt (2009) conducted empirical work on this subject, he found that there was no significant correlation between the jury and common law countries (p. 335). Nonetheless, trial by jury is more commonly associated with common law countries.

Impact of Past Jury Experience and Colonialism

As the earlier part of this chapter shows, a country's history is often cited as an important factor in whether it has trial by jury today. This idea rests on the belief that the jury is more likely to exist in democracies where the citizenry views the jury as an important element of democratic rule. A country's past experience with the jury has the potential to affect the image of the institution today. Thus, historical experiences with the jury can be quite complex.

Additionally, because so many countries have either been colonized or controlled by a foreign power, these historical experiences are also tied in to the effects of colonialism. A bad past experience with lay adjudication fosters negative perceptions. Jackson and Kovalev (2006) state that in many former communist countries (e.g., Romania, Albania, and Armenia) lay adjudication is perceived as "mere democratic decoration" because of its association with past authoritarian rule (p. 94). Conversely, the jury is a revered institution in America. This perception is partly due to the fact that "from early in colonial history the jury played a critical role" (Landsman, 1993, p. 32). Similarly, Vogler (2001) contends that one of the reasons the jury persists in the United States is that it served as an integral part of the transition from colony to independent democracy (Vogler, 2005, p. 549). American colonists used the jury to counteract the power of the British government. Thus, Americans saw firsthand the power of the jury to fight against a perceived oppressive government.

The Australian experience with the jury was different from the American one, but it was no less important to the development of an Australian national identity. As Vogler (2005) notes, the British colonists originally did not institute the jury system in Australia. Over time, Australian residents resented that they were denied the right to trial by jury that existed in Great Britain and all of its other colonies. Although there was no revolution, the Australian colonists lobbied the British government to allow them to have jury trials. Vogler (2005) contends that it was this lobbying by the Australians that has led to the persistence of the jury system there today. Indeed, Chesterman (1999) claims that the introduction of the jury “played an integral role in moving the country toward democratic government and the establishment of the rule of law” (p. 69). As a result, the jury in Australia holds a revered position much as it does in the United States.

Other former British colonies did not have such positive experiences with the institution of trial by jury. Vogler (2005) and others argue that the negative experiences of many former British colonies with the jury led to widespread distrust of the system. These countries are unlikely to turn to jury trials because the system is viewed as illegitimate. Part of the perception of the illegitimacy of the jury in some former British colonies was a result of the fact that in many colonies, the right to trial by jury was exclusively for the European (white) settlers (Vidmar, 2002). In these colonies, natives were tried by professional judges, sometimes with assessors (Vidmar, 2002). Kovalev (2010) claims that the jury was brought to these colonies in order “protect primarily the interests of the white minority” (p. 191). As such, Vogler (2001) contends that the British-imposed jury’s “exclusivity in selections and its open racism, has soured much of the former colonial world against the idea of direct popular participation in criminal justice” (Vogler, 2001, p. 549). Kovalev (2010) makes a similar argument by saying

that in these colonies, “native people might have seen the jury system not as a safeguard against government oppression but on the contrary, as an instrument of colonial oppression” (p. 192).

In other colonies, such as South Africa, only whites would serve on juries even for black defendants. Vidmar (2002) says that “great injustices were perpetuated under such conditions and, as a consequence, juries were abandoned” (p. 404). Seligson (2001) buttresses this argument by placing it in the South African context. He argues that there is no future for juries in South Africa because it was historically seen as a discriminatory institution lacking legitimacy. Specifically, “it was never a system that could be said to have contributed to the attainment of high standards of justice, or to have qualified as a representative form of participatory democracy” (Seligson, 2001, p. 273). Except in the Cape Province, only white men could serve on juries. As a result, racism in the jury pool led to the acquittal of a number of white defendants accused of crimes against black Africans. Huebner (1992) also agrees that “the jury’s nefarious history in South Africa” is responsible “for a near-consensus among legal thinkers that the system should not be reintroduced” (p. 970).

Vogler (2001) posits that the implementation of the jury in India resulted in similar feelings towards the jury system. Such feelings were strong enough that he says, “unsurprisingly, therefore, jury trial was abolished shortly after independence” (Vogler, 2001, p. 532). Kovalev (2010) writes that in India as well as Singapore and Malaysia the jury was abolished upon independence “because it was viewed as an alien, time-consuming and expensive institution” (p. 40). In these two examples, bad experiences with the jury led to a distrust of the system and its ultimate demise, providing a further reason for thinking that a nation’s historical experience with juries plays an important role in its decision to adopt the jury system.

Country Wealth

Previous scholars have postulated that because jury trials are more costly than bench trials, a country must also be able to support a jury system financially in order to establish or maintain it (Vidmar, 2002). The ability to afford trial by jury is one of a number of factors that Kovalev (2010) says is a necessary precondition for the effective functioning of the jury (p. 189). Jury trials are more expensive than bench trials because the jurors receive financial compensation for their time and extra court staff is needed to administer the jury system (Kovalev, 2010, p. 217). Jury trials also tend to take longer than bench trials, so a jury system is also more taxing on judicial resources.

Additionally, Kovalev (2010) writes that “it is generally known that lay adjudication in the form of a jury or collaborative court is a substantial expense in the government budget for the criminal justice system” (p. 217). Legislators and legal scholars in various countries are aware of these extra costs. In a number of instances, elected officials or scholars have cited these extra costs as reasons why they are not introducing jury trials. For example, Chagdaa (2011) states that the “lack of financial resources” would be a hindrance to the introduction of a jury system in Mongolia (p. 45). Additionally, in a survey of the Council of Europe countries on the use of lay participation in the courts Jackson and Kovalev (2006) reported that Armenia, Azerbaijan, and Ukraine responded that the “budget deficit in their country did not permit the introduction of a jury system” (p. 94). In at least one country, Malaysia, one of the reasons government leaders gave for abolishing the jury was the “costly and tedious” aspect of trial by jury (Nithi, 2010). Regardless of whether jury trials are actually too expensive, government leaders and academics around the globe have often cited the financial costs as a reason why the jury cannot be introduced in a particular country.

In addition to the perception that jury trials are too expensive to adopt, the experience in poorer countries that have trial by jury demonstrate that costs can be a real impediment to trial by jury. For example, in Malawi, which has trial by jury, budgetary constraints were such an issue that the government accepted donations from the European Union and the British government to pay for the cost of jury trials in homicide cases (Malawi Abolishes Jury System, 2009).

Although Malawi has a jury system for serious crimes, the use of juries in homicide cases has been suspended because of the financial strain and backlog caused by adjudicating cases by jury (Malawi Abolishes Jury System, 2009). The experience with the jury in Trinidad and Tobago is similar to that of Malawi. The financial and time costs of jury trial are seen as the cause of a backlog of murder cases waiting to be tried (Bagoo, 2012). The Minister of Justice, Herbert Volney, says that making defendants wait too long for trial is a miscarriage of justice and that “trial by judge is a “feasible” idea which would be less time-consuming and would reduce costs by as much as 66 percent” (Bagoo, 2012).

In some countries, the costs of jurors’ fees have proved to be problematic. A news article in Jamaica reports that financial problems are causing the government difficulties in paying jurors’ *per diem* on time (Reid, 2012). At the same time, Jamaica is also having problems getting jurors to show up for jury service, causing trial delays (Reid, 2012). While there is no evidence the two are connected, a Ministry of Justice official acknowledges that failure to timely pay jurors does nothing to help getting citizens to show up for jury duty (Reid, 2012). To put the costs in perspective, in 2011-2012 the Jamaican government spent \$14.5 million (Jamaican dollars) on jurors’ fees (Reid, 2012).¹⁰ Meanwhile, the Jamaican newspaper, The Gleaner, reports that the estimated total expenditures for the Jamaican government for the same time period was approximately \$545 million (Jamaican dollars). As a result of these financial issues,

¹⁰ This figure roughly equals \$146,000 U.S. dollars.

some have proposed a reduction in the types of crimes that are tried by jury (Reid, 2012). As these examples demonstrate, the costs of trial by jury can pose significant challenges to poorer countries. In Liberia, the financial compensation for jury service is so low that an editorial for Front Page Africa (2012) reported that people are requesting jury trials to be abolished.

Jury trials are also costlier and more time intensive than other forms of lay adjudication (e.g., mixed courts) (Strandbakken, 2001). Landsman and Zhang (2007) assert that one of the reasons Germany transitioned to a mixed court system from a jury system was because of the financial savings that came from reducing the number of lay people (p. 195). Even in England, where the jury is firmly entrenched, the use of trial by jury has been diminished over time in favor of trials before lay magistrates. Duff (2001) claims that the reason officials have changed the laws so that more crimes are tried by magistrates has been mainly to reduce the costs of adjudicating trials (p. 604). Lloyd-Bostock and Thomas (1999) write that “jury trials are undeniably more costly and time consuming than trials in magistrates’ courts” (p. 39).

Education Level

Another factor that is believed to affect the existence of a jury system is the level of education of citizens. Jearey (1960) contends that potential jurors need to have a sufficient level of education to be able to perform their functions as jurors. No one has attempted to test this argument empirically, but there is a perception that educational attainment matters. For Example, Vidmar (2002) claims that one of the reasons the jury stopped being used in the Gold Coast is that there were problems finding enough people eligible to serve. Additionally, in Malaysia the jury was abolished in 1995 in part because education deficiencies meant that citizens were unable “to weigh up legal evidence” (Nithi, 2010). As recently as 2010, the Bar

President in Malaysia said that “Malaysians today are better-educated and well-equipped to serve as jurors, compared to 15 years ago” (Nithi, 2010).

Even in countries with jury trials, concerns about jurors’ education level are raised. In Ghana, which has trial by jury, a High Court judge recently argued before the Parliament that juries in Ghana should be abolished because of concerns about jurors’ education (Ghana Business News, 2011). Specifically, Justice Efo Kosi-Kaglo testified that “in most cases, the jurors are not well educated or well informed to fully understand the legality of issues raised in court” (Ghana Business News, 2011). Whether or not jurors actually need to have a certain level of education to serve is debatable. However, this perception exists and, in some instances, may affect whether a country adopts trial by jury.

Societal Fractionalization

Another factor that is hypothesized to affect whether a country has a jury system is the claim that for a jury system to work effectively, the country must be racially, culturally, linguistically, and religiously homogeneous (Jearey, 1960; Vidmar, 2002). This is because “experience seems to indicate that jury systems often do not operate well in multi-racial societies, particularly when the racial cleavages are deep” (Vidmar, 2002, p. 388). For example, Vidmar (2002) claims that one of the reasons the Gold Coast opted for judge trials with assessors rather than juries is partially because of “problems associated with long standing conflict between ethnic and racial groups” (p. 388). South Africa is an example of another country where “the seeming utility of the jury as a democratizing institution” is outweighed by “the dysfunctions often associated with juries in highly fractionalized societies” (Huebner, 1992, p. 970). Additionally, Otlhogile (1994) claims one of the reasons the jury was never adopted in Botswana was because of “the bitter race feelings and the strong anti-native sentiment by the

Dutch farmers in the territory” (p. 77). Foreign leaders also have the perception that juries do not work well in heterogeneous countries. For example, the Attorney General of Fiji claims that “experience in other mixed communities showed that trial by jury did not work well” (Duff, 1997, p. 193). Perception of the jury matters here as well– if leaders believe the jury is difficult to implement in countries with high ethnic and cultural heterogeneity, they may be less willing to introduce that form of lay adjudication.

One problem with this assertion is the existence of countries that have juries where the citizenry is not homogeneous ethnically, culturally, or linguistically such as Canada, the United Kingdom, and the United States (Kovalev, 2010). Ireland also serves as an example of the jury system’s survival despite deep divisions (Jackson, et al., 1999). For example, Jackson, et al. (1999) write that

the survival of the jury in a country that has long been riddled with political upheaval, violence, and division may be viewed as a powerful symbol of the triumph of an institution that has endured throughout the years as a living testament to the adaptability of the common law tradition with which the jury system is often associated (p. 203).

However, the jury in Ireland, especially Northern Ireland, has had its own troubles with a well- functioning jury system. Juries for scheduled offenses were suspended during the peak of “The Troubles” and the use of secretive Diplock Courts for political offenses (Jackson, et al., 1999). Furthermore, Kovalev (2010) hypothesizes that Jearey’s (1960) perspective on societal fractionalization might have been skewed because he was studying Africa before independence. As discussed previously, the African experience with the jury is different from that in other places; this may account for some of the troubles with implementing the jury there.

Conclusion

In this chapter I have developed a theory based on the literature and history as to why some democracies have trial by jury. History is important to this topic because certain trends

have been demonstrated relating to juries and democracy. In short, juries have tended to be adopted by democratic governments and abolished by authoritarian regimes. Additionally, the expansion of trial by jury has taken place in three distinct time periods throughout history – British colonialism, the Enlightenment, and U.S. influence.

Identifying factors that affect the presence of a jury system on a global scale is challenging because there are many cultural and historical factors that go into how institutions develop. Nonetheless, in this chapter I have attempted to identify those factors most often discussed in the literature that are believed to affect jury usage. These are British colonial history, common law legal system, country wealth, education level, societal fractionalization, age of democracy, and length of democracy.

With the exception of common law legal system, these factors have gone largely untested. I have developed these factors because comparative jury scholars have pointed to them as being reasons why a jury system would or would not work in different countries. This dissertation is significant because it represents the first time that these factors are tested empirically. Additionally, many of these factors are based on perceptions. While this project deals with actual outcomes rather than perceptions, it is necessary to recognize that perceptions of the jury affect whether governments are willing to experiment with trial by jury. For this reason, perceptions matter. For example, if government X believes the jury system only works in ethnically homogenous societies, they will be less likely than a second country, Y, with a similar ethnic composition but without this belief to consider adopting a jury system. The next chapter explains the methods employed to empirically test whether these factors affect why some democracies have juries.

CHAPTER 5

METHODOLOGY

This chapter addresses the research methods employed for this project and explains the choices made in answering the question of why some democracies have juries for criminal trials. The chapter begins with a brief discussion of comparative jury research. The next section presents the hypotheses to be tested. Following that section there is an explanation of the data collection process and primary variables used in the analysis. The chapter will conclude with a discussion of the limitations of the analysis.

Hypotheses

The following hypotheses to be tested in the data analysis follow from the literature review in Chapter 4.

H_{1a}: *Former British colonies are more likely to have juries.*

H_{1b}: *Democracies with common law legal systems are more likely to have juries.* This hypothesis is related to being a former British colony as many of the countries with Common Law legal systems are also former British colonies. However, I test the potential impact of both since there is not complete overlap between the two.

H₂: *Juries are less likely to exist in countries that are more ethnically, racially, and culturally diverse.*

H₃: *Poorer countries are less likely to have juries.* In these countries, the costs of trial by jury serve as either a real or perceived impediment to government support of the institution of trial by jury.

H₄: *Juries are less likely to exist in countries that have a less educated citizenry.*

H₅: *Stronger democracies are more likely to have juries.*

H₆: *Countries that have been democracies longer are more likely to have juries.*

Case Selection

The first step in the data collection effort was to decide which countries to include in the sample. Since the dissertation is focused on democracies, this required determining which countries were democracies in 2009.¹¹ There are two issues regarding democracy that need to be addressed here. The first is how democracy is defined. The second is how democracy is operationalized. There is strong debate in the literature on both of these issues. While scholars continue to disagree about how democracy should be defined and how it should be measured, I proceeded with this project knowing that there were imperfections in the data that I chose to rely upon in operationalizing democracy. Despite these imperfections, “having a data set on democracy, even if it is partially flawed, is better than not having any data set at all and . . . scholars should use what they have at their disposal” (Munck & Verkuilen, 2002, p. 31). Before getting into more detail about the data, I want to just briefly address the definitional and measurement problems surrounding democracy.

Democracy Defined

Democracy is a contested concept (Coppedge, 2012). Indeed, Coppedge (2012) writes that “one of the most difficult challenges in studying democratization has been reaching agreement on what ‘democracy’ is” (Defining and Measuring Democracy, paragraph 2). Many authors have proffered definitions of democracy ranging from the simplistic to the complex. Przeworski, Alvarez, Cheibub, and Limongi (2000) take a minimalist approach and define democracy as “a regime in which those who govern are selected through contested elections” (Democracy and Dictatorship, paragraph 4). Contestation means an opposition party “has some chance of winning office as a consequence of elections” (Przeworski, et al., 2000, Democracy

¹¹ I chose 2009 as the year for this sample because when this project was initiated in 2011, 2009 was the first year of available data on many of the variables. Future researchers should consider looking at this question over time.

and Dictatorship, paragraph 8). Przeworski (1991) conceives democracy as “a system in which parties lose election” (p. 10).

A commonly accepted conception of democracy comes from Robert Dahl (1971). Dahl’s definition of democracy involves two dimensions – contestation (competition) and inclusiveness (participation) (Munck & Verkuilen, 2002, p. 9). Eight elements encompass these two dimensions to form a term Dahl dubbed polyarchy: “(1) almost all adult citizens have the right to vote; (2) almost all adult citizens are eligible for public office; (3) political leaders have the right to compete for votes; (4) elections are free and fair; (5) all citizens are free to form and join political parties and other organizations; (6) all citizens are free to form and join political parties and other organizations; (7) diverse sources of information about politics exist and are protected by law; and (8) government policies depend on votes and other expressions of preference (Dahl, 1971)” (Coppedge, 2012, A trade-off between validity and extension, paragraph 5).

Although the jury is an institution of democracy, it is not a defining feature of democracy. To get a better sense of how juries fit into definitions of democracy, Coppedge (2012) identifies 6 models of democracy: “socioeconomic, people’s, participatory, representative, liberal, and deliberative” (Defining and measuring democracy, paragraph 4). Juries most easily fit into the participatory model of democracy as “participatory democracy emphasizes the value of citizen involvement that goes beyond mere voting in general elections” (Coppedge, 2012, Defining and measuring democracy, paragraph 4). From this, it is easy to see how juries represent one aspect of participatory democracy.

Operationalizing Democracy

There are a number of data sets that measure democracy around the world (Munck & Verkuilen, 2002). For this study, I needed a data set that covers a large number of countries and includes information on the present day. This left essentially two options – Polity IV and

Freedom House (Munck & Verkuilen, 2002). Although Polity IV is an imperfect data set (see Appendix A), it is an accepted data source used regularly within the political science and public policy fields.¹² I chose to use Polity IV over Freedom House because it has the more transparent coding procedures of the two data sets. Although Polity IV has problems with measurement (see Appendix A), among comparable data sets, Freedom House is one of the worst offenders “due to the unsatisfactory response they give” regarding concept measurement (Munck & Verkuilen, 2002, p. 20). This problem is so glaring that Munck and Verkuilen (2002) write that “the aggregate data offered by Freedom House has to be accepted largely on faith” (p. 21).

Appendix A includes a brief discussion comparing Polity IV and Freedom House to provide further information about why Polity IV is the preferred data set. This appendix also includes a comparison of the countries listed as democracies in both data sets to show that despite differences in methodology, the two data sets largely identify the same countries as democracies. Thus, even if Freedom House were the preferable data set, using Polity IV would not make much of a difference to the countries represented in the analysis.

The Polity IV dataset lists 91 countries as democracies for 2009¹³. The full list of these countries can be found in Appendix B. The Polity IV Project includes all polities¹⁴ that have a population of at least 500,000 people. In order to determine which countries were democracies in 2009, I used the data set’s Polity score. Before discussing how the Polity score is created, it is necessary to explain how the Polity score is used to identify democracies. The Polity website recommends classifying countries according to three different regime types based on their Polity

¹² A JSTOR search of the American Political Science Review (APSR) and American Economic Review (AER) showed that from 2003 and 2009 12 APSR articles and 25 AER articles used the Polity data set.

¹³ This number excludes Switzerland, which has been removed from the sample. Switzerland was excluded because its cantons all had different lay adjudication systems or none at all. Switzerland was removed from the sample for simplicity given that there was no way to coherently code that country with respect to the dependent variable.

¹⁴ While the term polity is not the same as country, within democracies, there is complete overlap between what the Polity IV project calls polities and countries.

score – democracies, anocracies, and autocracies¹⁵. Other scholars use this classification in their quantitative analysis (Fearon & Laitin, 2003; Hegre, Ellingsen, Gates, & Gleditsch, 2001). Classifying countries according to these three government types is important because one of the critiques of the Polity data is that “the particular scoring rule used in Polity appears to discard much of the variation in the indicators” (Treier & Jackman, 2008, p. 202). According to Treier and Jackman (2008), many scholars use these three classifications to resolve this concern with the data. The Polity variable ranks countries on a score from -10 to +10. According to the Polity IV website, Polity scores of -10 to -6 are considered autocracies. Scores of -5 to +5 are considered anocracies or semi-democracies. And scores of +6 to +10 are considered democracies. Following these guidelines, I included all countries with a Polity score of +6 or greater in 2009 in my sample. Next I explain how the Polity score is created and demonstrate the stability of coding democracies in Polity IV.

A country’s Polity score is created by measuring two constructs – how a country ranks on autocratic indicators and how it ranks on democratic indicators. In short, Polity IV creates a Democracy variable (0-10) and an Autocracy variable (0-10). The Polity score is achieved by subtracting the Autocracy score from the Democracy score. A country on the lowest end of democracy or highest end of autocracy would have a Polity score of -10 (0 Democracy score minus a +10 Autocracy score). A country on the highest end of democracy or lowest end of autocracy would have a Polity score of +10 (10 Democracy score minus a 0 Autocracy score).

The Democracy and Autocracy variables measure the way leaders are selected (executive recruitment), the level of competition in the political arena (political participation), and constraints on the chief executive’s authority. A country that is higher on the Autocracy score

¹⁵ This information can be found at the home page for the Polity IV data at <http://www.systemicpeace.org/polity/polity4.htm>.

would be likely to have restricted political participation, fewer constraints on the chief executive, and non-elected executive recruitment. A country that is higher on the Democracy score would have more competitive political participation, more open and competitive executive recruitment, and more constraints on the chief executive's authority. The Polity IV manual says "a mature and internally coherent democracy...might be operationally defined as one in which (a) political participation is unrestricted, open, and fully competitive; (b) executive recruitment is elective, and (c) constraints on the chief executive are substantial" (p. 15).

As a final part of case selection, I looked at the Polity scores over time to see how much the year would affect which countries would be included in my sample. The reason for this analysis is that I selected countries that were democracies only for the year 2009. It is important to make sure that the countries included as democracies would not change dramatically had a different year been chosen. For this reason, I examined the Polity score for all countries between 2007 and 2011. What I was looking for is whether any countries would not have been considered a democracy or whether any countries would have been included as a democracy if I had chosen a different year.

After conducting this analysis, I found that the coding of democracies within the Polity scale is very stable. Between 2007 and 2011 there are only 8 countries that changed regime type between democracy and anocracy. There were 5 countries that were anocracies in 2009 and were democracies in at least one year between 2007 and 2011 – Kyrgyzstan (2011), Madagascar (2007 and 2008), Niger (2007, 2008, and 2011), Pakistan (2010 and 2011), and Thailand (2011). There were 3 countries that were democracies in 2009 but anocracies in at least one other year between 2007 and 2011 – Malaysia (2007), Sri Lanka (2010 and 2011), and Zambia (2007). Based on these findings, I am comfortable using 2009 as the single year for the analysis.

Changing the year would not substantially change the countries in the sample. Additionally, although there is some change in the countries in the sample depending on different years, five out of the eight countries in question are left out of the sample rather than included in the sample. This further supports the use of the Polity data from 2009 because the largest concern is to avoid including non-democracies. If there is any doubt, it is better that a country be excluded rather than included.

Dependent Variable Data Collection

After selecting the cases for the data set, the next step in this project was to collect the data for the dependent variable for all 91 countries (see Appendix B.) The dependent variable is trichotomous, with countries coded as having no lay adjudication, a mixed court system, or a jury system. Perhaps not surprisingly, there is no data set yet in existence that details this information for all the countries in my analysis. Voigt (2009) comes the closest with 80 countries, but he relies on self-reported data, which results in less reliable measures of lay adjudication. For example, Voigt (2009) has France listed as a country with trial by jury. Although the French still call their lay participants “jurors,” the fact that the lay people deliberate alongside professional judges makes it a mixed court system. Lacking any other readily available data sources, I had to take a very thorough and varied approach to obtaining the information for the dependent variable. In the following paragraphs I will explain the approach that I used to identify countries with jury systems, mixed courts, or professional judges only.

As a first step, I reviewed existing scholarship that describes the lay adjudication systems of multiple countries. Although large N comparative jury research is limited, work by Vidmar (2002), Jackson and Kovalev (2006), Leib (2008), Malsch (2009), and Kovalev (2010) served as a starting point for information on lay adjudication in the courts in a number of countries. These sources were helpful in answering some questions and in providing information on where to look

to for more information. Although these sources are reliable, I did not want to solely rely on secondary sources for two reasons. First, scholars use different definitions for jury systems. This made it necessary for me to look at primary sources (e.g., laws and government documents) in order to be certain of the type of lay adjudication system. Second, as mentioned in the introduction, many countries have been introducing or altering lay adjudication systems in the past few years. In some instances, a country's lay adjudication system changed since publication of the research. For instance, Denmark changed its lay participation system from a jury to mixed court in 2008 (see Appendix B).

The next step I took was to examine the laws of each country. I did so through a number of steps. First, I found websites that contained information on comparative legal research and foreign law.¹⁶ These sites were helpful in obtaining the constitutions and criminal procedure codes of many countries. Through my research, I found that if a country has a lay adjudication system, it is frequently mentioned in one or both of these documents. Additionally, many countries have laws specifically pertaining to lay adjudication. These laws all have different names so I had to study them individually. In order to be certain of the answer, I always made sure to have at least two sources confirming the existence or lack of a lay adjudication system. If the websites mentioned in Footnote 5 did not have the code of criminal procedure for a particular country, I would then use Google to search for the document. I also found that I would get better

¹⁶ For example, the following websites were used as a part of this information gathering stage: Library of Congress' Global and Comparative Law Resources (<http://www.loc.gov/law/find/global.php>), Hauser Global Law School Program of New York University School of Law (<http://www.nyulawglobal.org/globalex/index.html#>), World Legal Information Institute (<http://www.worldlii.org/catalog/215.html>), Georgetown University Political Database of the Americas (<http://pdba.georgetown.edu/Comp/comparative.html>), European Commission (https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-EU-en.do), Legislationline (<http://legislationline.org/documents/section/criminal-codes>), United Nations Human Rights Commission (<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>), South African Legal Information Institute (<http://www.saflii.org/>), Lexadin (<http://www.lexadin.nl/wlg/legis/nofr/legis.php>), and Droit-Afrique (<http://www.droit-afrique.com/index.php>).

results if I used the Google site for a particular country (e.g., Google for Germany is www.google.de).

This brings me to another issue: that of language. I am able to read documents in Spanish and English. For documents from countries that do not use either of these languages, I relied on upon pre-existing translations of foreign laws, when available. However, translations were not available in all cases. In those instances, I used Google Translate to find the words I needed to conduct an online search for the necessary documents.¹⁷ For example, the words I would frequently need to translate were jury, code of criminal procedure, lay judge or lay assessor, judicial system, Ministry of Justice, etc. After I found the words I needed, I would put them into a Google search and then use Google's translate function to find the correct documents. Once I found the documents or websites, I would use Google translate to read the text. I am aware that Google Translate is an imperfect translation tool. While I believe it performs well enough for the purposes of this project, whenever I felt Google Translate was deficient, I would rely upon a native speaker to confirm the translation of the text. I did this with languages that are much different from English such as Arabic, Bulgarian, and Russian. In the course of my data collection, individuals fluent in Arabic, French, Bulgarian, Spanish, and Russian provided me with some translation assistance. In two instances, native French and Arabic speakers helped me conduct some of the internet research in addition to providing translation assistance.

For most of the countries in the sample, this method of research was sufficient for finding the information necessary to fill out Appendix B. The information presented in Appendix B has been compiled using the sources listed in Appendix C. Appendix C contains all the sources used to identify whether a country has a lay adjudication system in its criminal courts and, if so, what

¹⁷ In Appendix B you will see that for many non-English speaking countries I have included the foreign words for jury or lay judge.

type of system is in place. The types of sources used include newspaper articles, official government websites (i.e., courts, legislatures, and Ministry of Justices), scholarly articles and books, private communication with government representatives or foreign scholars, and other relevant internet sites.

Coding the Dependent Variable

Appendix B presents multiple tables that help determine which countries have a jury system, mixed court, or no lay adjudication. Although advisory lay assessor systems are not a form of lay adjudication, they are also included in Appendix B for informational purposes. The following section describes how countries were coded as fitting into one of these three categories of the dependent variable and explains how decisions were made on any difficult countries. In determining which category each country fell into, I relied upon the information gathered from my data collection discussed in the previous section. The sources used to complete Appendix B are listed by country in Appendix C. In order to be precise in determining which democracies have juries, mixed courts, or no lay adjudication, I used the following process.

First, a country was coded as having no lay adjudication if there was no evidence of its having either a jury or mixed court system in criminal trials in 2009. In determining which countries fell into this category, I relied upon the information gathered from my data collection discussed in the previous section. In order to be precise in determining which democracies have juries or mixed courts, I recorded details about any lay adjudication on the books in each country.

A few countries have recently abolished lay adjudication systems. I decided to use whatever system was in place in 2009 regardless of recent changes. For example, Senegal abolished a mixed court system in 2008 and now has no lay adjudication; it is coded as the latter.

All countries that changed their legal systems within five years before 2009 or since then have been noted in Appendix B.

In determining which countries have mixed courts I made the decision not to distinguish between the different types of mixed court systems mentioned in the previous chapter. The only necessary condition for a mixed court system is that lay judges and professional judges decide guilt together. There was only one questionable case in the sample. In Argentina, the province of Córdoba has adopted a mixed court (*escabinado*) system. So far, it is the only one of Argentina's 23 provinces to adopt any kind of lay adjudication in the courts. For this reason, Argentina is coded as having no lay adjudication.

Lastly, in coding which countries have trial by jury the main characteristic used to distinguish a jury system from a mixed court system is that the lay people alone decide guilt. As mentioned previously, there is a lot of variation among the jury systems of different countries. For these reasons, I briefly touch upon some of the variations and how I decided which way they should be categorized.

In Brazil, jurors do not deliberate. A provision in the Brazilian Constitution requires that jurors keep their verdicts secret, even from other jurors (Gomes & Zomer, 2001, p. 76). In order to achieve a verdict, jurors individually respond to a series of yes or no questions regarding guilt (Gomes & Zomer, 2001, p. 76). Verdicts are decided by majority vote (Gomes & Zomer, 2001, p. 76). Juries are used only in criminal cases involving the intentional taking of a life (Gomes & Zomer, 2001 p. 76). Despite the lack of deliberation, the jurors' individual responses determine the verdict. Brazil is the only country with a jury system that lacks deliberation. Despite this difference, I have coded Brazil as having a jury system.

In Belgium, there is a unique provision that allows professional judges to weigh in on the jury's verdict in a very specific circumstance (Malsch 2009; Traest 2001). The Belgian jury is comprised of 12 people. The government will accept majority verdicts. If jurors are evenly split on guilt with six jurors on each side, then the defendant is acquitted. If jurors reach a verdict with eight or more jurors voting guilty, then the defendant is found guilty. However, if the jury is divided with seven jurors in favor of guilt and five not guilty (a simple majority), the three professional judges involved in the case provide their opinion on the defendant's guilt. Two out of the three professional judges have to find the defendant guilty for the jury's verdict to stand. If not, then the defendant is acquitted.

Despite this involvement of professional judges in the verdict, I code Belgium as having trial by jury. The first reason is because even though judges give their opinion on guilt or innocence they only do so if the jury fails to reach a guilty verdict by more than a simple majority. In every other verdict scenario judges are not involved at all. Traest (2001) writes that "the intervention of the professional judges was meant as a guarantee for the accused" (p. 38). This explains why judges are only involved in those cases that are so close that a change of opinion of only one juror would make the difference between guilt and innocence. Secondly, the judges do not deliberate with the jurors. Even in the circumstance described above, the judges' opinions are given after the jury has deliberated and their decisions are made separately. While it is true that in the case of a guilty verdict by simple majority the jury's decision is not supreme, some countries do not allow majority verdicts at all and others require a verdict by more than a simple majority. For these reasons, Belgium is considered to have trial by jury rather than a mixed court system.

In South Korea, the new system of trial by jury went into effect in 2008. The jury in South Korea operates like a typical jury with two exceptions. The first is that if jurors do not reach a unanimous decision, the judge gives the jury his opinion of the case (Article 46(2) Jury law). After hearing the judge's opinion, the jury resumes deliberations and may render a verdict by a simple majority (Article 46(2) Jury law). The second exception is that for the first 5 years of implementation the jury's verdicts are not binding on the court (Jae-Hyup Lee, 2010). This reform signals the first time South Korea has ever had lay decision-making in the courts (Jae-Hyup Lee, 2010). The decision to make jury verdicts non-binding during the first five years was most likely made because Article 27 of the Korean Constitution states that defendants are to be tried by judges (Cho, 2007, p. 108). The Judicial Reform Committee decided that trial by jury would be constitutional "as long as professional judges take a substantial part in the trial" (Cho, 2007, p. 109).

The fact that the decisions are not binding is potentially problematic for coding purposes. However, early analyses of the first 3 years of the jury in South Korea show a 91.4% judge-jury agreement (Kim, Park, Park, & Eom, 2013). Additionally, leaders of the South Korean government have signaled their continued commitment to making the jury trial a permanent fixture of the South Korean criminal justice system. A news article in the Seattle Times reported that the South Korean government hired a Korean-American prosecutor to move to South Korea for six months to a year to advise the government on how to best implement the jury system (Green, 2012). Now that the five year trial period has ended, the South Korean Supreme Court ruled that jury verdicts would have "de facto binding force" (Korea JoongAng Daily, 2013). This means that although jury verdicts would not be formally binding "the bench generally would have to respect jury opinions, except in exceptional cases and procedures that go against

the Constitution or law” (Korea JoongAng Daily, 2013, para. 3). The previously mentioned Constitutional provision that requires defendants to be tried by judge was cited as the reason the court did not make the jury verdicts formally binding (Korea JoongAng Daily, 2013, para. 3). Despite the fact that jury verdicts are not binding on the court, I coded South Korea as having a jury system based on the evidence from the jury in South Korea over the last five years.

In Sweden and Mexico, the law provides for juries only for press-related offenses (see Appendix B). In Sweden, a mixed court system is in place for all but the least serious criminal cases (Malsch, 2009, p. 48). Diesen (2001) writes that Sweden considered introducing trial by jury in the early 1800s but chose to adopt the system only for freedom of the press cases (p. 313). The law governing trial by jury today is the Freedom of the Press Act. Meanwhile, the law providing for trial by mixed court is the Code of Judicial Procedure. I do not consider Sweden to have a jury system because the jury is used only for press-related cases. As mentioned previously, the scope of this project is limited to lay participation in serious criminal cases. This type of trial does not fall under the category of a serious crime. Serious criminal cases are tried in the mixed court system. As such, I coded Sweden as having a mixed court system only.

Mexico’s provision for jury trials is similar to that of Sweden. Leib (2008) writes that “there are rare jury trials in Mexico for press offenses against public peace and crimes against the “domestic or foreign safety of the nation” (p. 631). Again, the nature of this type of case is so exceptional that it does not fall under the other types of cases that jurors around the world might be involved in. Additionally, Fukurai, Knudtson, and Lopez (2009) write that while Mexico used to have trial by jury, the Mexican jury “has virtually disappeared” (p. 5). For the same reasons mentioned above for Sweden, I do not code Mexico as having trial by jury. Instead, Mexico is listed as having no lay adjudication.

Norway is one of the few countries to have both a mixed court and jury system. At issue with the Norwegian jury is that both guilty and not guilty verdicts are subject to review by the court (Strandbakken, 2001). Specifically, if the jury reaches a verdict that the court decides is contrary to the evidence, the judges can ask the jury to reconsider its verdict or set aside the verdict entirely and have the case retried before a mixed court (Malsch, 2009; Strandbakken, 2001). The ability to set aside not guilty verdicts is potentially problematic from a coding standpoint.

The reason Strandbakken (2001) speculates that not guilty verdicts are retried by a mixed court is because “a new jury might then acquit the person indicted on the basis of a wrongful application of the law” (p. 241). Although Strandbakken (2001) does not specifically mention the possibility of jury nullification, where the jury finds a defendant innocent contrary to the law, he goes on to write that “a mixed court has to state the reasons for the judgment, and thus the Supreme Court would in turn have the opportunity to control that the law has been interpreted and applied correctly” (p. 241). This provision seems to be aimed at ensuring that jurors apply the law correctly. This is not necessarily a problem except that it takes away the ability of a jury to intentionally render a verdict contrary to the law (i.e., exercise jury nullification). Despite these concerns, I have coded Norway as having a jury system.¹⁸

Independent Variables

Table 5.1 shows all the independent variables used in the data analyses. In this section I review the theory and discuss the data collection process for each variable.

¹⁸ In the analyses I did run one logit model estimating the presence of a mixed court system (as compared to all other systems). In this model, Norway is coded as having a mixed court system. For the logit model estimating the presence of the jury system and the multinomial logit model estimating the differences between no lay adjudication, mixed courts, and juries, Norway is coded as a jury country.

Table 5.1 Factors Influencing the Existence of a Jury System

Variable	Definition	Measurement	Source	N
Former British Colony	Whether a country is a former British colony, protectorate, or member of the Commonwealth	0 = No 1 = Yes	Bernhard, Reenock, & Nordstrom, 2004; Ertan, Putterman, & Fiszbein, 2012; Grier, 1997; Lange, Mahoney, & vom Hau, 2006; Persson & Tabellini, 2002; Treisman, 2000; Vidmar, 2002.	91
Former French Colony	Whether a country is a former French colony.	0 = No 1 = Yes	Same as the former British Colony Variable. Additionally, Bon & Mingst, 1980.	91
Legal Origin	Countries are identified as belonging primarily to the Common Law or Civil law legal traditions.	Three dummy variables for Common Law, Civil Law, or mixed tradition.	JuriGlobe, University of Ottawa. Data retrieved from http://www.juriglobe.ca/eng/sys-juri/index.php .	90
GDP, PPP (logged)	GDP per capita based on purchasing power parity.	The data is based on 2005 international dollars. This variable is calculated by converting GDP to international dollars using PPP rates.	World Bank	90
Literacy	The percentage of the population over the age of 15 that can read and write.	A numeric value that represents the percentage of the population that can read and write.	CIA World Factbook	90

Table 5.1 Continued

Variable	Definition	Measurement	Source	N
Democracy strength	A country's Polity score which subtracts all autocratic indicators of a country from all democratic indicators.	An ordinal variable ranging from 6 to 10.	Polity IV	91
Democracy Duration	Number of years of continuous democratic rule.	A numeric value representing the total number of years of continuous democratic rule as defined by a country's Polity score (>5).	Polity IV	91
Ethnic Fractionalization	The probability that two people chosen at random from a country belong to a different ethnic group.	A numeric value ranging from 0 to 1.	Alesina, Devleeschauwer, Easterly, Kurlat, & Wacziarg, 2003. Data retrieved from http://www.anderson.ucla.edu/faculty_pages/romain.wacziarg/papersum.html .	88
Linguistic Fractionalization	The probability that two people chosen at random from a country belong to a different language group.	A numeric value ranging from 0 to 1.	Alesina, Devleeschauwer, Easterly, Kurlat, & Wacziarg, 2003. Data Source: Encyclopedia Britannica 2001 Data retrieved from http://www.anderson.ucla.edu/faculty_pages/romain.wacziarg/papersum.html .	88

Table 5.1 Continued

Variable	Definition	Measurement	Source	N
Religious Fractionalization	The probability that two people chosen at random from a country belong to a different religion.	A numeric value ranging from 0 to 1.	Alesina, A., Devleeschauwer, A., Easterly, W., Kurlat, S., & Wacziarg, R., 2003. Data Source: Encyclopedia Britannica 2001 Data retrieved from http://www.anderson.ucla.edu/faculty_pages/romain.wacziarg/papersum.html .	88
Latitude	Each country's distance from the equator.	The absolute value of the latitude of the country, provided by the CIA World Factbook, scaled to take values between 0 and 1.	La Porta, Lopez-de-Silanes, Shleifer, & Vishny (1999). Data retrieved from: http://scholar.harvard.edu/shleifer/publications/quality-government .	91
Population Total	The total population of each country from 2009.	A numeric value representing the estimated number of people in each country.	World Bank The World Bank relies upon a number of sources to collect population data. Specific sources for the data can be viewed at: http://data.worldbank.org/indicator/SP.POP.TOTL .	91
Population Density	People per square kilometer of land area. Data is from 2009.	A numeric value calculated by taking the total population and dividing by land area in square kilometers.	World Bank Data retrieved from http://data.worldbank.org/indicator/EN.POP.DNST .	90

British Colonial History

In order to test H1_a, the hypothesis that British colonialism will affect jury usage, I included a dummy variable that coded countries according to whether they had ever been a

British colony. Data collection for this variable came from a combination of seven articles on colonialism (Bernhard, Reenock, & Nordstrom 2004; Ertan, Putterman, & Fiszbein 2012; Grier 1997; Lange, Mahoney, & vom Hau 2006; Persson & Tabellini 2002; Treisman 2000; Vidmar 2002). See Table 5.1. A country is coded as being a former British colony if more than one of the seven articles listed in Table 5.1 considered it a former colony, protectorate, or member of the Commonwealth.

I decided to be over-inclusive in coding countries as having been former British colonies. The reason for this is because there is no one set list of which countries are former British colonies. For example, some scholars include Ireland in this list, while others exclude it. Thus, Ertan (2012) only considered colonies that were located outside Europe, while others do not include the mandate colonies such as Israel (Lange, et al., 2006). Rather than engage with this debate, I chose to include any country that was listed as being a former British colony by multiple authors.

I also collected data on whether any countries had been colonized by any other Western European imperial power – France, Spain, Portugal, Belgium, and the Netherlands. I used the same methodology and articles mentioned above to determine which countries had been former colonies of these imperial powers.

Of these other colonial powers, the only country of theoretical significance is France. As mentioned in the literature review, France's adoption of the jury system after the French Revolution is in part responsible for one of the major periods of expansion of the jury. As France ended up altering its jury system to be a mixed court system, it is reasonable to expect that French colonies will be more likely to have a similar mixed court system. I do not have expectations regarding the jury system for former colonies of the other colonial powers. Spain

and Belgium have a jury system and Portugal has a mixed court system after previously having a jury system. However, none of these countries are as identified with the jury as England and France have been. The Netherlands is notable because it does not have any form of lay adjudication, so it would be surprising to see a former Dutch colony with a jury. However, there are so few countries in the sample that are former Dutch colonies that this hypothesis cannot be tested here.

Common Law Legal System

In order to test H_{1b} , whether common law countries are more likely to have jury trials, I have included a series of dummy variables representing the legal origin of the countries in the data set. The expectation is that countries that are of the common law legal origin will be more likely to have jury trials.

The legal origin variable is a series of three dummy variables representing countries with common law, civil law, or a mixed legal tradition.¹⁹ The data comes from JuriGlobe Research Group from the University of Ottawa. Researchers at JuriGlobe relied upon a myriad of academic texts to identify countries according to the different legal traditions. This information is available on their website listed in Table 5.1.

Common Law countries include those “political entities whose law, for the most part, is technically based on English Common law concepts and legal organizational methods which assign a pre-eminent position to case-law, as opposed to legislation, as the ordinary means of expression of general law” (JuriGlobe, n.d.). Additionally, these countries are often identified by the “abundance of codes, legislation and non-jurisprudential normative instruments, but for which Common law jurisprudence retains its character as the fundamental law” (JuriGlobe, n.d.).

¹⁹ Only one country, Kosovo, is missing because it is not included in the JuriGlobe data set.

Civil law countries are those that “have drawn their inspiration largely from the Roman law heritage and which, by giving precedence to written law, have resolutely opted for a systematic codification of their general law” (JuriGlobe, n.d.). Additionally, countries are coded as having a civil law system even if their legal system is based on the idea of “the role of statute law” even if they are not influenced by Roman law specifically (JuriGlobe, n.d.).

The final dummy variable is for those that are mixed systems – those countries whose legal systems have elements of both the civil and common law. Countries that fall into this category are “political entities where two or more systems apply cumulatively or interactively, but also entities where there is a juxtaposition of systems as a result of more or less clearly defined fields of application” (JuriGlobe, n.d.). JuriGlobe also includes information on countries that have elements of customary and Muslim law. Those two legal systems have been omitted for this project as the primary variable of interest is common law legal system. For example, in instances where a country is listed as being a mix of common law and customary law, that country is coded as being a common law country. The same applies to the civil law dummy variable – a country that is listed as a civil law and Muslim law country would only be counted as a civil law country. The mixed law variable only represents countries that are a mix of civil and common law. The civil law variable is the omitted category for the analysis.

Ethno-linguistic Fractionalization

For the hypothesis relating to societal fractionalization (H_2), I am using data created by Alesina, Devleeschauwer, Easterly, Kurlat, and Wacziarg (2003). These authors separate ethno-linguistic fractionalization into three variables – ethnic fractionalization, linguistic fractionalization, and religious fractionalization. This data has some advantages over alternative measures of ethnic fractionalization. First, Alesina, et al. (2003) provide data on far more

countries than alternative data sets. Secondly, Alesina, et al. (2003) include a measure of linguistic fractionalization, while other data sets do not.

Fractionalization measures the “probability that two randomly selected individuals from a population belonged to different groups” (p. 158). Ethnic fractionalization, as defined by Alesina, et al. (2003), include both “racial and linguistic characteristics” since for some countries ethnic groups are defined according to linguistic differences (p. 159). To the extent possible, Alesina, et al. (2003) attempted to define ethnicity according to only racial characteristics. However, the authors acknowledge that there are countries where the ethnicities align along linguistic differences. The ethnic fractionalization variable was created using multiple sources, including the Encyclopedia Britannica (2001), CIA World Factbook, Levinson (1998), Minority Rights Group International (1997), and the national censuses of some countries.

The linguistic fractionalization variable was created using data from the Encyclopedia Britannica. One unique aspect of the data is that while most measures combine ethnic and linguistic fractionalization into one variable, Alesina, et al. (2003) create a separate variable (linguistic fractionalization) that isolates the “share of languages spoken as “mother tongues,” and excludes any “racial or physical characteristics” (p. 159). Data for the religious fractionalization variable also came from the Encyclopedia Britannica and represents the probability that two randomly selected people from a country are of a different religion.

Country Wealth

In order to test H_3 , the hypothesis that poorer countries would be less likely to have jury trials, I include a measure for country wealth. As discussed in the literature review chapter, trial by jury is more expensive than bench trials and other forms of lay adjudication. Government officials know this and will often cite the expense of jury trials as one of the reasons why the

system cannot or should not be implemented in a particular country. As such, the expectation is that country wealth serves as either a real or perceived impediment to implementing trial by jury. The proxy that I have used to measure country wealth is Gross Domestic Product (GDP) per capita (purchasing power parity). The GDP represents the value of all goods and services produced in a country in a year. In this indicator, the purchasing power parity rates have been used to convert GDP to international dollars. The data come from the World Bank's World Development Indicators and represents rates from 2005.²⁰

Education

The next hypothesis being tested is that countries with a less educated public are less likely to have trial by jury (H₄). As discussed in the previous chapter, there is a perception that jurors have to be educated enough to understand the law and the case put before them. Additionally, one basic qualification of jury service in most countries is that jurors are able to read and write in the official language of that country. Therefore, it is expected that in places where citizens are perceived to be insufficiently educated, jury trials are less likely to exist. For this reason I have included two measures of education. The first is a measure of literacy. This variable is included in order to ascertain whether a lower percentage of literacy is associated with the absence of a jury system. Literacy is defined as the percentage of the population over the age of 15 that can read and write.²¹ The second variable, school life expectancy, measures the number of years of schooling a student is expected to receive in a particular country. The expectation is that countries with lower school life expectancy values would be less likely to

²⁰ The N for this variable is 90; Taiwan is the country that is missing from the data.

²¹ Argentina defines literacy as the percentage of the population over the age of 10 that can read and write.

have trial by jury. The education data come from the CIA World Factbook.²² See Table 5.1 for details on how these variables are measured.

Strength of Democracy

The next hypothesis to be tested is the expectation that stronger democracies are more likely to have a jury system (H_5). As discussed in the previous chapter, trial by jury has long been connected to democracy. Historical experiences with trial by jury have shown that trial by jury is adopted when countries are democratic but abolished under authoritarian rule. Although all of the countries in the data set are democracies, not all democracies are the same. There are weak democratic governments and strong ones. As such, it is reasonable to expect that weak democracies may be less likely to have trial by jury by the fact that the government is less democratic.

The Polity IV data set includes a measure of democracy strength. As discussed earlier in this chapter, the variable is derived by scoring countries on democratic and autocratic indicators. The autocratic indicators are subtracted from the democratic ones to achieve the Polity score. Subsequently, this Polity score serves as measure of strength of democracy as countries with higher Polity scores have a combination of fewer autocratic indicators and more democratic ones. See Table 5.1 for more information about this variable.

Length of Democracy

Similar to the previous hypothesis, H_6 tests whether the duration of democracy impacts jury usage. The expectation is that countries that have been democracies longer are more likely to have trial by jury. The theory behind this is similar to the strength of democracy variable. It

²² The N for the literacy variable is 90 as data on the Solomon Islands is missing. The N for the school life expectancy variable is 88 as data on Kosovo, Montenegro, and Taiwan are missing.

is reasonable to expect that just as stronger democracies are more likely to have juries, countries that have been democratic for a longer period of time are also more likely to have juries.

The variable measuring the length of democracy, called democracy duration, is the total number of years of uninterrupted democratic rule for each country. Democracy is defined using Polity IV's measurement of those countries with a Polity score of greater than 5. I did not include interruptions due to foreign occupation as a break in democracy (e.g., countries occupied during WWII).

Control Variables

A number of control variables have been included in the analyses. These include controls for region, population, population density, and latitude. See Table 5.1 for an explanation for how each variable is coded. Region is included because of the possibility that the type of lay adjudication system a country has is affected by what a neighboring country has. Regarding population and population density, jury trials may be harder to implement in smaller countries and countries with higher rural, less dense, populations. This would be because it would be more costly for these countries to find enough people to serve as jurors. In countries with lower population density, it may be difficult for jurors to serve if they have to travel long distances to do so. The population variable is just the total population of each country from 2009. The population density variable is also from 2009 and measures people per square kilometer of land area.²³ Lastly, latitude is included as a proxy for geographic differences. The latitude variable is a scaled value that represents each country's distance from the equator.²⁴

²³ Population is determined as everyone living in a country except for temporary refugees. The land area is determined as all land minus inland bodies of water.

²⁴ Four countries were missing from the original data (East Timor, Kosovo, Montenegro, and Serbia). This data was filled in by using the latitude from the CIA World Factbook and dividing by 90, which is what La Porta, et al. (1999) did to create the original scale.

Conclusion

This project is a first step in exploring the connection between juries and democracy. In this chapter I have outlined the methodology used in creating the research design for this project. I have chosen to address the question of why some democracies have juries by taking a snapshot of all democracies from a single year (2009). Although this kind of cross-section analysis has its limitations, it can still provide insight into why juries exist in some democracies but not others. A historical approach using a cross-section time series design is ultimately the direction I want to go to address this question. However, for this initial project it proved too unwieldy to do both. For this reason, I chose a single year, cross-section design.

I selected the cases for this study using Polity IV as that is the best comprehensive data set available that identifies which countries are democracies. Data collection for the dependent variable included researching the adjudication systems of 91 democracies to find out which ones had juries, mixed courts, or no lay adjudication in the courts. I have also explained how the factors believed to affect the presence of juries are defined and operationalized. These factors include British colonial history, common law legal system, education (literacy rates), country wealth (GDP), societal fractionalization (ethnic, religious, and linguistic fractionalization), democracy strength, and duration of democracy. The next chapter presents the descriptive statistics of the data and describes the results of the quantitative analysis.

CHAPTER 6

EXPLAINING JURY USAGE AMONG DEMOCRACIES

This chapter begins with an overview of the descriptive statistics for the key variables. Following that, the results of the data analysis are presented and discussed.

Descriptive Statistics

The data consists of 91 democracies. Table 6.1.1 presents the descriptive statistics for the key analysis variables. These democracies are spread all over the world with representation from every region – Africa (18), Asia (11), Australia/Oceania (3), Caribbean (3), Central America (6), Europe (28), Former Soviet Union (6), Middle East (4), North America (3), and South America (9). The vast majority (69%) of the countries have a civil law legal system. The remaining countries are either common law (20%) or have a mixture of common law and civil law (11%). Slightly more than half of all democracies in the sample are former colonies of at least one other country – 26% British, 17% Spanish, 5% French, 4% Portuguese, 1% Belgian, and 1% Dutch.

The 91 democracies vary greatly in both strength and duration. The democracy strength variable, drawn from the Polity data, ranges from 6 (low) to 10 (high). As Figure 6.1.1 demonstrates, 36% of the countries have the highest possible democracy strength score. This highlights one of the criticisms associated with the Polity data, which is that as the number of democratic countries around the world increases, “the bias in the data on high scoring on the democracy variable poses a threat to the data” (Marshall, Jaggers, & Gurr, 2010, p. 9). This may pose a problem with the appropriateness of using the democracy strength variable, as discussed in Appendix A.

Cases in the data set also vary in the length of time the country has been a democracy. The data ranges from countries with only two years of continuous democratic rule (Kosovo, Malaysia, and Zambia) to countries with over 100 years of continuous democratic rule

(Australia, Belgium, Canada, Costa Rica, New Zealand, Norway, United States, and United Kingdom). The one outlier in the sample is the United States, which has a duration of democracy of nearly 50 years more than the next closest democracy. The mean years of democracy for all the countries in the sample is approximately 36 years.

Table 6.1.1 Descriptive Statistics of Analysis Variables

Variable	N	Mean	Std. Dev.	Min.	Max.
Dependent Variable					
Lay Adjudication	91	.82	.82	0	2
Independent Variables					
Former British Colony	91	.26	.44	0	1
Former French Colony	91	.055	.23	0	1
Common law System	91	.2	.4	0	1
Civil Law System	91	.69	.47	0	1
Mixed Law System	91	.11	.32	0	1
Ethnic Fractionalization	88	.39	.24	0	.91
Linguistic Fractionalization	86	.35	.27	.002	.91
Religious Fractionalization	88	.45	.23	.005	.86
GDP (PPP) (logged)	90	8.68	1.49	5.40	11.26
Literacy	90	88.53	15.93	27.7	100
Democracy Strength	91	8.53	1.39	6	10
Duration of Democracy	91	35.56	39.97	2	201
Control Variables					
Latitude	91	.34	.20	.01	.71
Population Total (logged)	90	16.07	1.55	13.11	20.91
Population Density	90	125.83	130.44	1.75	628.10

Common Law Legal System

There are 18 countries in the sample that have an exclusively common law legal system (see Table 6.2.1). Of those 18, only two countries, Liberia and Nepal, are not former British colonies. Although Nepal was not formally colonized by the British, Nepalese rulers had an

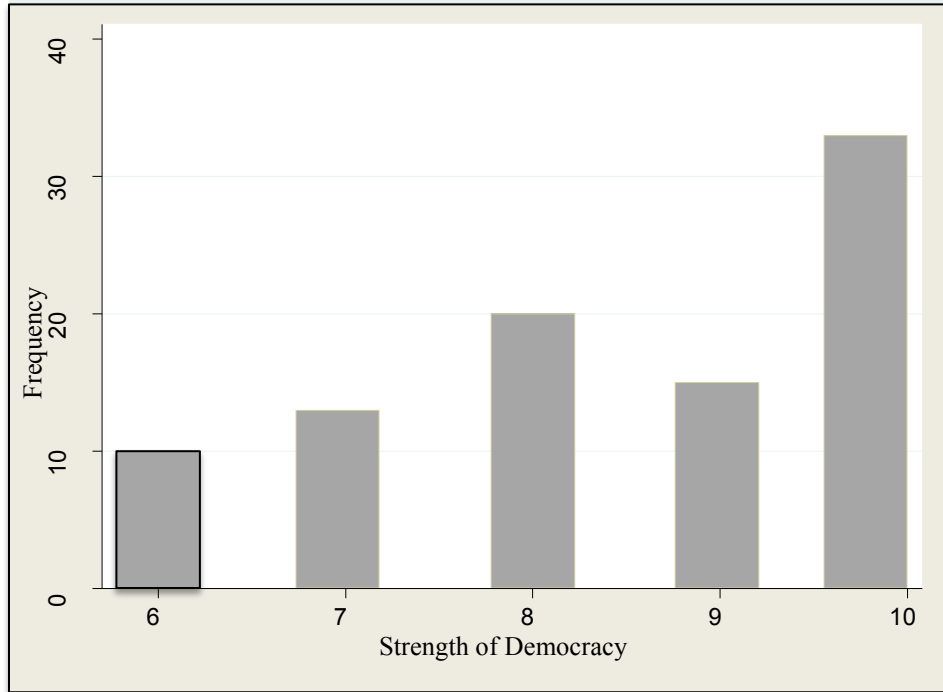


Figure 6.1.1 Frequency graph of democracy strength variable

“understanding” with the British government whereby Nepal received military protection from Britain if they followed British foreign policy guidance (Ertan, Putterman, & Fiszbein, 2012). Additionally, Liberia’s legal system is heavily influenced by the United States. There are also eight countries that are former British colonies but are not common law countries. These countries are considered to have a legal system that represents a mix of common and civil law. Although there is a great deal of overlap between British colonial history and common law legal system, there are enough differences to warrant including both variables in the analyses. Twelve out of the 18 countries (67%) with common law legal systems have jury systems today.

Table 6.2.1 Countries with Common Law Legal Systems

Australia	Jamaica	Nepal*	United States
Canada	Kenya*	New Zealand	United Kingdom
Ghana	Liberia	Sierra Leone	Zambia*
India*	Malawi	Solomon Islands*	
Ireland	Malaysia*	Trinidad and Tobago	

* Denotes democracies that do not have trial by jury

Turning to the 62 civil law countries in the data set, 9 have a jury system, 28 have a mixed court system, and 27 have no lay participation.²⁵ The nine civil law countries that have trial by jury are Austria, Belgium, Brazil, El Salvador, South Korea, Nicaragua, Norway, Panama, and Spain. It is interesting to note that only 15% of the civil law countries have trial by jury in comparison to 67% of common law countries.

There are only ten countries coded as having a legal system influenced by a mixture of both common and civil law (see Table 6.2.2). Nine of these 10 countries are also former British colonies. Of these countries, three have a jury system. The remaining seven have no lay adjudication in criminal courts.

Table 6.2.2 Countries with Mixed Legal Systems

Botswana	Guyana*	Lesotho	Namibia	South Africa
Cyprus	Israel	Mauritius*	Philippines	Sri Lanka*

* Denotes countries with a jury system

Countries with a Jury System

Roughly a quarter (24) of the 91 countries in the data set have a jury system as defined in the previous chapter (see Table 6.2.3). Juries are distinct from the mixed courts because only lay people are involved in the decision-making on guilt. Of these 24 countries, 13 are former British colonies. Given the expected impact that British colonialism has on jury usage, it is perhaps not surprising that more than half of all countries with trial by jury are former British colonies. Additionally, the influence of American institutions and government on Liberia makes it unsurprising that Liberia has a jury system as well.

²⁵ These numbers do not add up to 62 because Norway and Austria are double counted as they have both a jury system and mixed court system.

Table 6.2.3 List of Countries with Jury Systems

Australia*	Ghana*	Malawi*	Sierra Leone*
Austria	Guyana*	Mauritius*	Spain
Belgium	Ireland*	New Zealand*	Sri Lanka*
Brazil	Jamaica*	Nicaragua	Trinidad and Tobago*
Canada*	South Korea	Norway	United Kingdom*
El Salvador	Liberia	Panama	United States*

*Former British colonies, England, and Ireland

In contrast, there are 11 former British colonies that do not currently have trial by jury. Those countries are Botswana, Cyprus, India, Israel, Kenya, Lesotho, Malaysia, Namibia, Solomon Islands, South Africa, and Zambia. Some of these countries have had the jury at some point in its history. For example Malaysia had a jury system that was abolished in 1995 and South Africa abolished the jury in 1969 (Vidmar, 2002). Still others in that list, like Kenya (1963) and India (1960), abolished the jury shortly after independence from England in 1963 (Vidmar, 2002).

Figure 6.2.1 below shows a map of the world with democracies with juries shaded dark gray (no apparent geographical cluster). Juries are located in North America (2), Central America (2), South America (3), the Caribbean (2), Africa (5), Asia (2), Europe (6), and Australia/Oceania (2). The only major geographic regions that do not have trial by jury are the Middle East and the countries of the former Soviet Union.²⁶

Mixed Courts

As shown in Table 6.3.1 and Figure 6.3.1, democracies with mixed court systems do form a geographical cluster. Of the 29 countries in the data set that have a mixed court system, almost three quarters (72%) are in Europe. The percentage increases to 82% if the definition of Europe is expanded to include countries in the former Soviet Union (Ukraine, Latvia, and

²⁶ This is not to say that there are no juries in the former Soviet Union as Russia has jury trials. Russia is not included in this data set as it did not qualify as a democracy according to Polity IV. Additionally, Georgia has introduced a jury system after 2009. However, there are no countries with juries in the Middle East.



Figure 6.2.1 Democracies with jury systems

Lithuania). It is easier to list democracies in Europe that do not have mixed courts rather than those which do. Those European countries without a mixed court system are Albania, Belgium, Ireland, Netherlands, Romania, Spain, and the United Kingdom. Of those seven countries, four have a jury system instead (United Kingdom, Spain, Ireland, and Belgium). The remaining five countries with a mixed court system that are not in Europe come from Asia (1), South America (1), and Africa (3).

Table 6.3.1 Democracies with Mixed Court Systems

Austria*	Estonia	Japan	Poland
Benin	Finland	Kosovo	Portugal
Bolivia	France	Latvia	Serbia
Bulgaria	Germany	Macedonia	Slovak Republic
Comoros	Greece	Mali	Slovenia
Croatia	Hungary	Montenegro	Sweden
Czech Republic	Italy	Norway*	Ukraine
Denmark			

* Denotes democracies that also have a jury system.

The data also indicates the possibility that colonialism — especially French colonialism in Africa — may have affected the spread of the mixed court system. As indicated in Chapter 2, France has a type of mixed court with lay judges and professional judges deciding cases together. Five countries in the data set are former French colonies – Benin, Comoros, Lebanon, Mali, and Senegal. Three of these countries (Benin, Comoros, and Mali) have a mixed court system today. Additionally, Senegal had a mixed court system in place until 2008, when it was abolished (see Appendix B). Although Lebanon has been coded as a former French colony, it can be argued that because Lebanon was first a French mandate and came under French control later than the other four countries, its colonial experience was different from that of the other four former colonies discussed here. Although these five countries are too small of a sample for me to be able to make any generalizations with statistical significance, the fact that all of the former French colonies in Africa had a mixed court system as late as 2008 indicates that the type of

legal system in those countries today may have been heavily influenced by colonialism. Further research on these four African countries is needed to further tease out this relationship between colonialism and the presence of this type of lay adjudication system.

Countries with No Lay Adjudication

There are 40 democracies that have no form of lay adjudication in the courts (see Table 6.4.1 and Figure 6.4.1). These countries are located in in North America (1), Central America (3), South America (6), the Caribbean (1), Africa (10), Asia (8), Europe (3), the former Soviet Union (3), Middle East (4), and Australia/Oceania (1). Approximately half of the African countries and 73% of the Asian countries in the data set have no lay adjudication. As for Asia, countries in this region comprise only 12% of the entire sample and 20% of countries with no lay adjudication. In contrast, only 11% of European countries have no lay adjudication.

Table 6.4.1 Democracies with no Lay Adjudication

Albania	East Timor	Lesotho	Peru
Argentina	Georgia	Lithuania	Philippines
Botswana*	Guatemala	Malaysia	Romania
Burundi	Guinea-Bissau	Mexico	Senegal
Cape Verde	Honduras	Moldova	Solomon Islands*
Chile	India	Mongolia*	South Africa*
Colombia	Indonesia	Namibia*	Taiwan
Costa Rica	Israel	Nepal	Turkey
Cyprus	Kenya*	Netherlands	Uruguay
Dominican Republic	Lebanon	Paraguay	Zambia*

* Denotes democracies that have advisory lay assessor systems.

Advisory Lay Assessors

This section presents the descriptive statistics for democracies with advisory lay assessors. I have included data on advisory lay assessors even though they are not lay adjudicators because they are often brought up in discussions concerning lay participation in the courts. Table 6.5.1 shows that there are 9 countries with advisory lay assessor systems. Two of



Figure 6.4.1 Democracies with no lay adjudication

these countries (Ghana and Sierra Leone) also have a jury system. All but one of these countries (Mongolia) was a former British colony. Additionally, all but Mongolia and the Solomon Islands are located in Africa (see Figure 6.5.1).

Table 6.5.1. Democracies with Advisory Lay Assessors

Botswana	Mongolia	Solomon Islands
Ghana*	Namibia	South Africa
Kenya	Sierra Leone*	Zambia

* Denotes democracies that have a jury system

The mean length of democracy for countries with advisory lay assessor systems is 14 years. The mean strength of democracy is 7.77. These numbers are lower than for countries with lay adjudication systems. Jury countries have a mean length of democracy of 61 years and democracy strength of 8.67. Mixed court countries have a mean length of democracy of 34 years and democracy strength of 9.07.

Difference of Means Tests

Table 6.6.1 presents the difference of means tests for all three categories of the dependent variable for each for each independent variable. The three categories of the dependent variable are no lay adjudication, mixed court, and jury. Only those variables with statistically significant differences (bold in Table 6.6.1) will be discussed here.

This preliminary analysis indicates that the means for former British colonies and common law legal system are higher for the countries that have juries than either countries without lay adjudication or those with mixed courts. These differences are statistically significant at the .10 and .01 levels respectively. The mean for the civil law variable is significantly larger for countries with mixed court systems. Both of the variables measuring democracy are also statistically significant. The mean age of democracy for jury countries is 60 years in comparison with that of mixed court countries at 29 years and that of countries without



Figure 6.5.1 Democracies with advisory lay assessors

lay adjudication at 25 years. For the democracy strength variable, the mean value for both mixed higher than that for countries without lay adjudication. The means of GDP for both jury and mixed court countries is higher than for countries without lay adjudication ($p=.01$).

Two of the three variables measuring societal fractionalization are also statistically significant. The mean for the linguistic fractionalization variable is higher for countries without lay adjudication than for those with either of the two types of lay adjudication. The linguistic

Table 6.6.1 Difference of Means for Use of Lay Adjudication

Variable	Overall Mean	No Lay	Mixed Court	Jury	T Score	P Value
Former British Colony	.264	.275 (.072)	0	.542 (.1)	1.82	.07
Former French Colony	.06	.05 (.035)	.111 (.062)	0 (0)	-0.62	.53
Common law	.2	.15 (.06)	0 (0)	.5 (.1)	3.06	.003
Civil Law	.689	.68 (.08)	1 (0)	.38 (.1)	-1.95	.06
Mixed Law	.11	.18 (.06)	0 (0)	.13 (.07)	-0.90	.37
GDP (PPP) (logged)	8.68	8.09 (.19)	9.23 (.26)	9.01 (.36)	2.77	.01
Literacy	88.53	86.06 (2.34)	92.4 (3.36)	88.16 (3.27)	.70	.48
Literacy Logged	4.46	4.44 (.032)	4.5 (.06)	4.46 (.05)	.44	.66
Democracy Age	35.65	25.2 (4.8)	29.41 (4.94)	60.2 (11.86)	3.32	.001
Democracy Strength	8.53	8.13 (.22)	9 (.213)	8.70 (.32)	1.81	.07
Linguistic Fractionalization	.36	.43 (.05)	.25 (.05)	.33 (.06)	-1.75	.08
Religious Fractionalization	.45	.42 (.04)	.39 (.04)	.57 (.04)	2.39	.02
Ethnic Fractionalization	.39	.42 (.04)	.30 (.05)	.44 (.05)	.06	.95
Latitude (scale)	.34	.27 (.03)	.48 (.03)	.3 (.05)	1.31	.20
Population Total	39,300,000	55,300,000 (31,100,000)	20,400,000 (5,887,240)	34,800,000 (14,400,000)	-0.70	.49
Population Total (logged)	16.07	16.11 (.27)	15.9 (.27)	16.17 (.31)	.05	.96
Population Density	125.83	117.86 (20.12)	111.86 (17.69)	154.52 (34.76)	.99	.33

fractionalization variable reports the probability that two people chosen at random from a population speak a different language. Higher linguistic fractionalization values means there is a greater prevalence of language differences among the population. The religious fractionalization

variable measures the same concept for religious differences. Jury countries have a higher religious fractionalization mean than mixed courts and countries without lay adjudication.

Table 6.6.2 presents the difference of means for jury countries and countries without juries for all of the independent variables. Only those variables with statistically different means (bold in Table 6.6.2) will be discussed here. The means of former British colonies and countries with a common law legal system are higher for jury countries than non-jury countries. Additionally, the mean for civil law legal system is higher for non-jury countries ($p=.001$). The mean length of democracy for jury countries is 60 years compared to approximately 26 years for non-jury countries. The mean religious fractionalization variable is also higher for jury countries ($p=.003$).

While this bivariate analysis is interesting, caution should be taken with interpreting the findings. This is because the difference of means test does not take into account any other variables that may also affect jury usage. Regression analysis (discussed next) is needed for a more comprehensive analysis.

Logit Regression Results

The primary analysis for modeling the presence of a jury system uses logit regression for the binary dependent variable (jury v. no jury). Table 6.7.1 presents the coefficients and odds ratios for the logit model and Table 6.7.2 shows the predicted probabilities. Overall, this model does a good job of explaining the use of the jury in that the adjusted R^2 is .65 and 90% of cases are correctly classified.

The analysis shows that countries with common law legal systems are more likely to have a jury system compared to civil law countries, holding all other variables constant. This variable

Table 6.6.2 Difference of Means for Jury and Non-Jury Countries

Variable	Overall Mean	No Jury Mean	Jury Mean	T Score	P Value
Former British Colony	.264	.16 (.37)	.542 (.1)	3.85	.001
Former French Colony	.06	.075 (.27)	0 (0)	-1.38	.17
Common law (Ottawa)	.2	.09 (.29)	.5 (.1)	4.76	.001
Civil Law (Ottawa)	.689	.80 (.40)	.38 (.1)	-4.20	.001
Mixed Law (Ottawa)	.11	.11 (.31)	.13 (.07)	.25	.80
GDPPC (logged)	8.68	8.56 (1.37)	9.01 (.36)	1.28	.21
Literacy	88.53	88.66 (16.03)	88.16 (3.27)	-.13	.90
Democracy Age	35.65	26.39 (26.03)	60.2 (11.86)	3.94	.001
Democracy Strength	8.53	8.48 (1.35)	8.70 (.32)	.57	.57
Linguistic Fractionalization	.36	.36 (.28)	.33 (.06)	1.13	.26
Religious Fractionalization	.45	.41 (.22)	.57 (.04)	3.07	.003
Ethnic Fractionalization	.39	.37 (.23)	.44 (.05)	1.13	.26
Latitude (scale)	.34	.35 (.19)	.3 (.05)	-1.03	.31
Population Total (logged)	16.07	16.03 (1.57)	16.17 (.31)	.36	.72
Population Density	125.83	115.40 (112.34)	154.52 (34.76)	1.26	.21

is significant at the .01 level. The odds ratio for this variable indicates that the odds of having a jury system are 350 times greater for common law countries compared to civil law countries (Table 6.7.1). Table 6.7.2 shows the predicted probabilities for the variable. That shows that compared to civil law countries, the probability of having a jury system increases by .90 (from 0 to 1, which is certainty) for countries with common law legal systems. Figure 6.7.1 shows this

Table 6.7.1 Logit Results Modeling the Presence of a Jury System (Robust Standard Errors in Parentheses)²⁷

Independent Variable	Coefficient	Odds Ratio
Former British Colony	-2.21 (1.72)	0.11 (0.19)
Common law System	5.86*** (2.03)	350.54*** (711)
Mixed Legal System	3.49** (1.70)	32.67** (55.66)
Ethnic Fractionalization	9.22** (4.45)	10,046** (0.45)
Linguistic Fractionalization	-8.38*** (3.02)	.0002*** (.0007)
Religious Fractionalization	4.73** (2.38)	113.84** (275.45)
GDP (PPP) (logged)	1.27 (.83)	3.55 (2.52)
Literacy	-0.08* (.05)	0.92 (0.04)
Democracy Strength	0.25 (0.60)	1.28 (0.59)
Democracy Duration	0.02 (0.01)	1.02 (0.01)
Latitude	-1.66 (4.25)	0.19 (0.67)
Population Total	-0.38 (.35)	0.68 (0.23)
Population Density	0.01 (.003)	1.01 (0.004)
N	83	
Adj count R2	.65	
Percent Correctly Classified	90.36%	

Omitted legal system variable is Civil Law.

Notes: * Significant at .05 level; ** Significant at .01 level; *** Significant at .001 level.

relationship graphically. The mixed law variable was also statistically significant and positive.

This means that countries that have a mix of both common law and civil law are more likely to

have a jury system compared to civil law countries. The predicted probability (Table 6.7.2)

shows that compared to civil law countries, the probability of having a jury system increases by

.70 for countries with mixed law legal systems. This relationship is presented graphically in

²⁷ Former French Colony was dropped because 0 perfectly predicts failure.

figure 6.7.2. Additionally, for the variable most closely related to common law legal system, former British colonialism, the logit analysis shows no difference between former British colonies and non-former British colonies with respect to jury usage.

Table 6.7.2: Predicted Probabilities for the Use of Juries (Logit)

	No Jury	Jury
<i>Common law</i>		
Yes	.04	.96
No	.94	.06
<i>Mixed Law</i>		
Yes	.19	.82
No	.88	.12
<i>Ethnic Fractionalization</i>		
Low (25 th percentile)	.98	.03
High (75 th percentile)	.47	.53
<i>Linguistic Fractionalization</i>		
Low	.39	.61
High	.97	.04
<i>Religious Fractionalization</i>		
Low	.93	.07
High	.65	.35
<i>Literacy</i>		
Low	.81	.19
High	.92	.08

Another statistically significant finding in the model is that the societal fractionalization variables were all statistically significant. However, these fractionalization measures had different effects on the dependent variable. First, two of the fractionalization variables had a positive effect on jury usage. With the ethnic fractionalization variable, as the probability two people chosen at random from a population are of a different ethnicity increases, the probability of having a jury system increases. The predicted probability for ethnic fractionalization (Table 6.7.2) shows that as ethnic fractionalization increases from the 25th percentile to the 75th percentile, the probability of a country having a jury system increases by .50 (on the 0 to 1 scale). This relationship is graphically presented in Figure 6.7.3. There you can see that not

only does the probability of jury trial increase with increased ethnic fractionalization but also the probability of not having a jury system decreases as ethnic fractionalization increases. This finding is contrary to the hypothesized effect which is that greater ethnic fractionalization would lead to decreased jury usage.

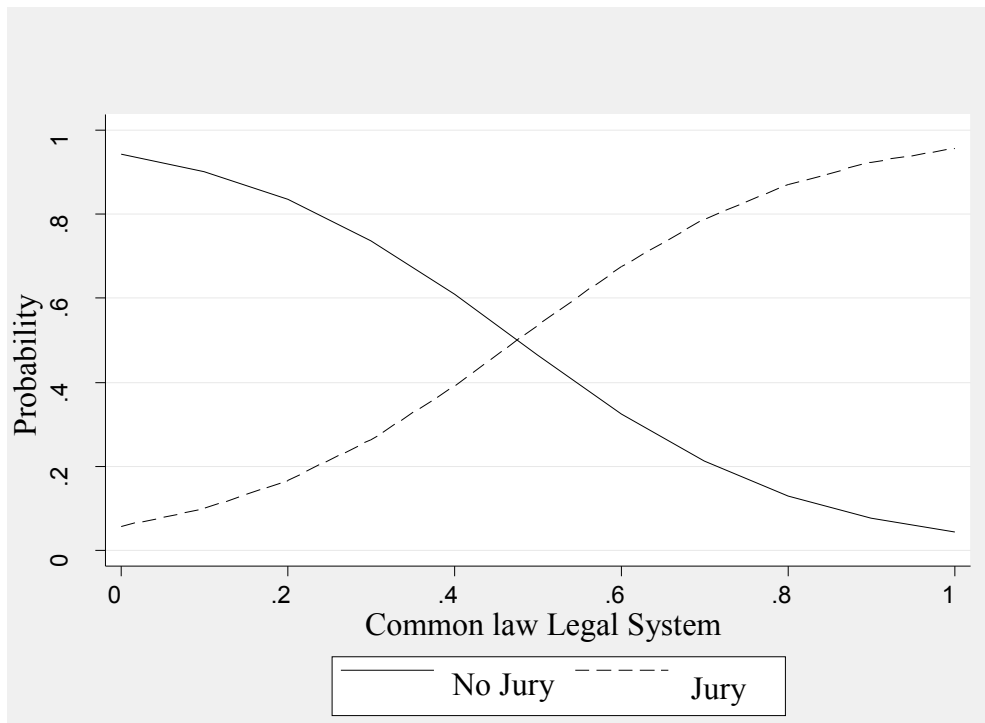


Figure 6.7.1 The effect of common law legal system on the use of juries

Religious fractionalization also has a positive effect on jury usage. This variable is significant at the .05 level. The predicted probability presented in Table 6.7.2 shows that as the probability that two people chosen at random will be of a different religion increases, the probability of a country having a jury system increases by .29. Figure 6.7.4 shows this relationship graphically. Again, this finding is opposite to that hypothesized.

Linguistic fractionalization is the last societal fractionalization variable, and it is also statistically significant ($p=.001$). The coefficient for this variable is negative, which means

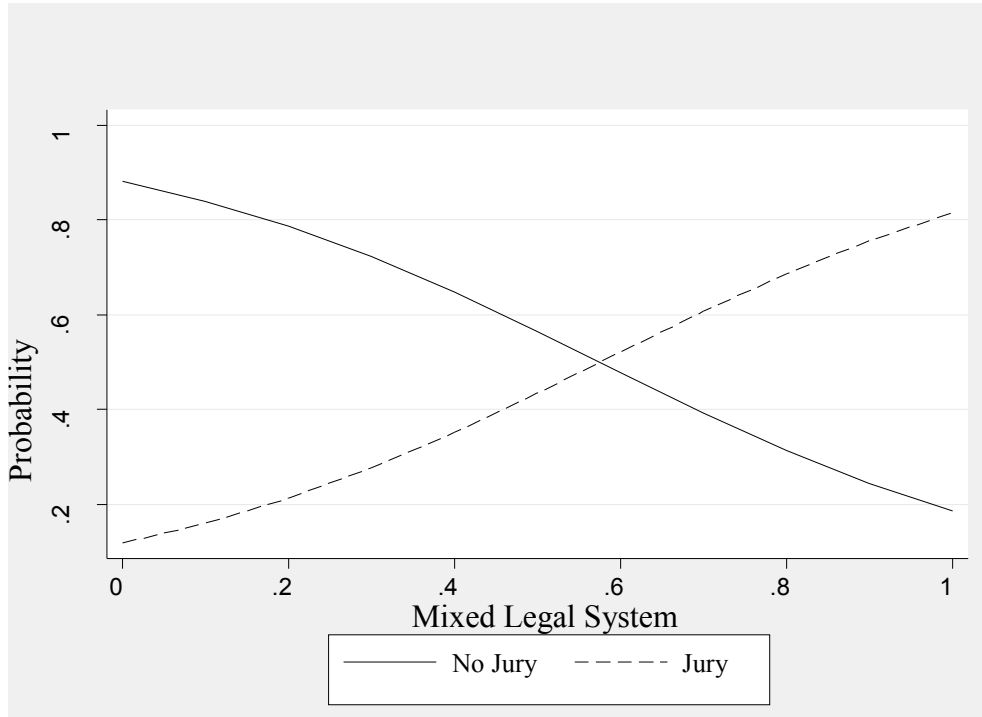


Figure 6.7.2 The effect of mixed legal system on the use of juries

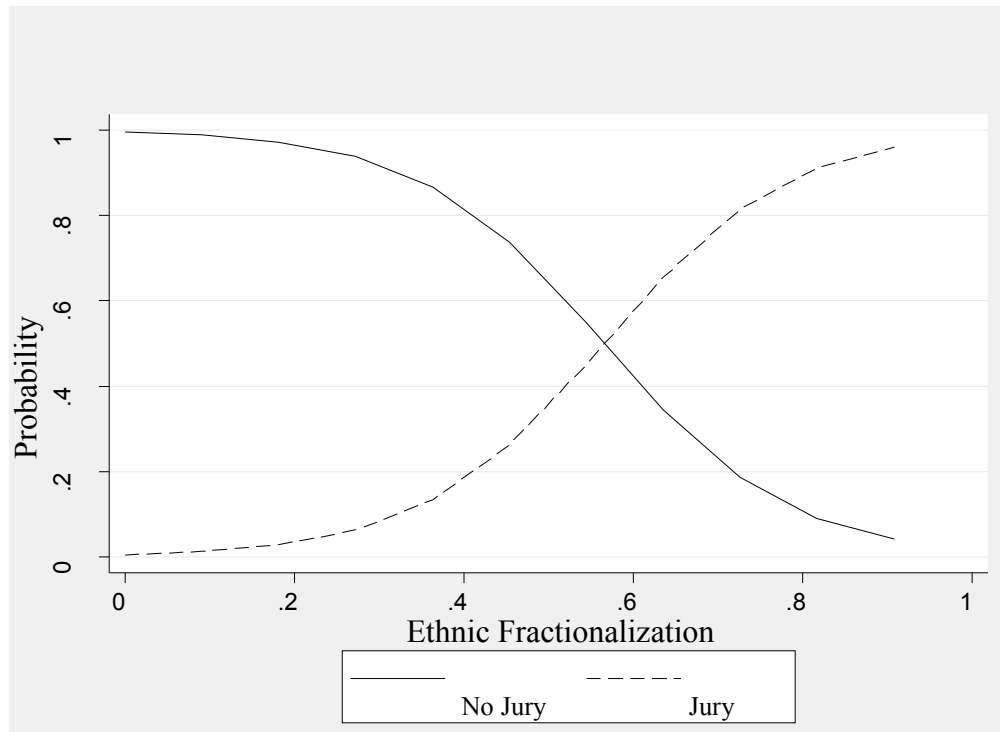


Figure 6.7.3 The effect of ethnic fractionalization on the use of juries

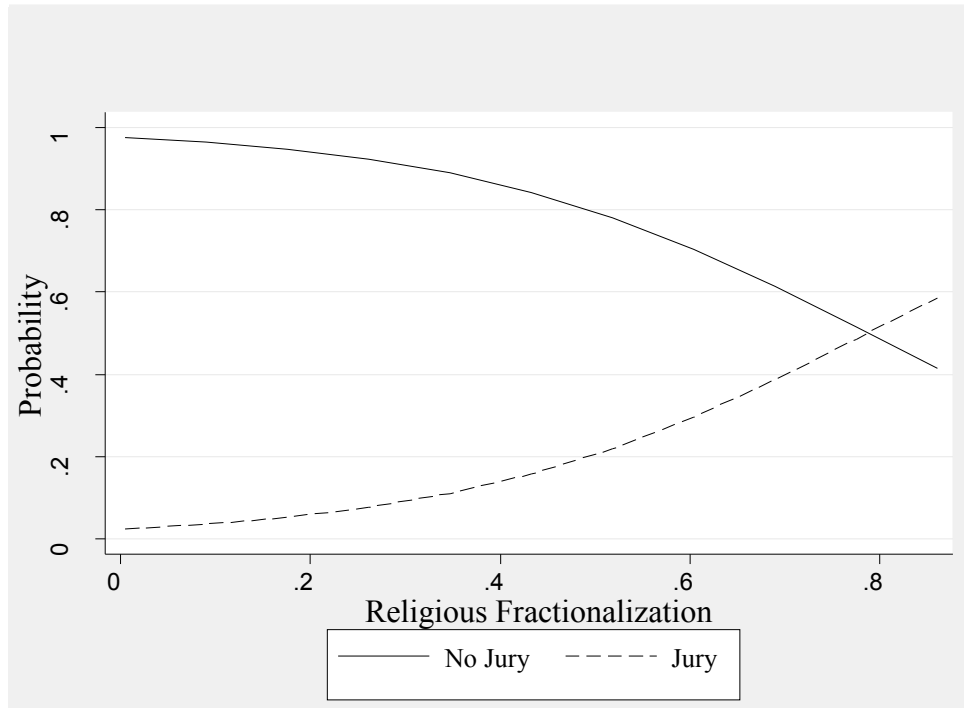


Figure 6.7.4 The effect of religious fractionalization on the use of juries

language differences in a country have a negative effect on jury usage. The linguistic fractionalization variable measures the probability that two people chosen at random from a population will speak a different language. The predicted probabilities in Table 6.7.2 shows that as the probability that two people chosen at random as speak a different language increases, the probability of a country having a jury system decreases by .57, or nearly .6 on the 0-1 scale.

Figure 6.7.5 shows this relationship graphically.

These findings relating to ethnic, religious, and linguistic fractionalization tell an interesting story about the jury and its ability to function in diverse societies. What it says is that ethnic and religious differences are not impediments to a country adopting a jury system. This finding supports the arguments made in Chapter 4 that the jury exists in ethnically diverse countries such as the United States and the Canada. Indeed, among the ten countries with the highest ethnic fractionalization, three have jury systems (Canada, Liberia, and Sierra Leone).

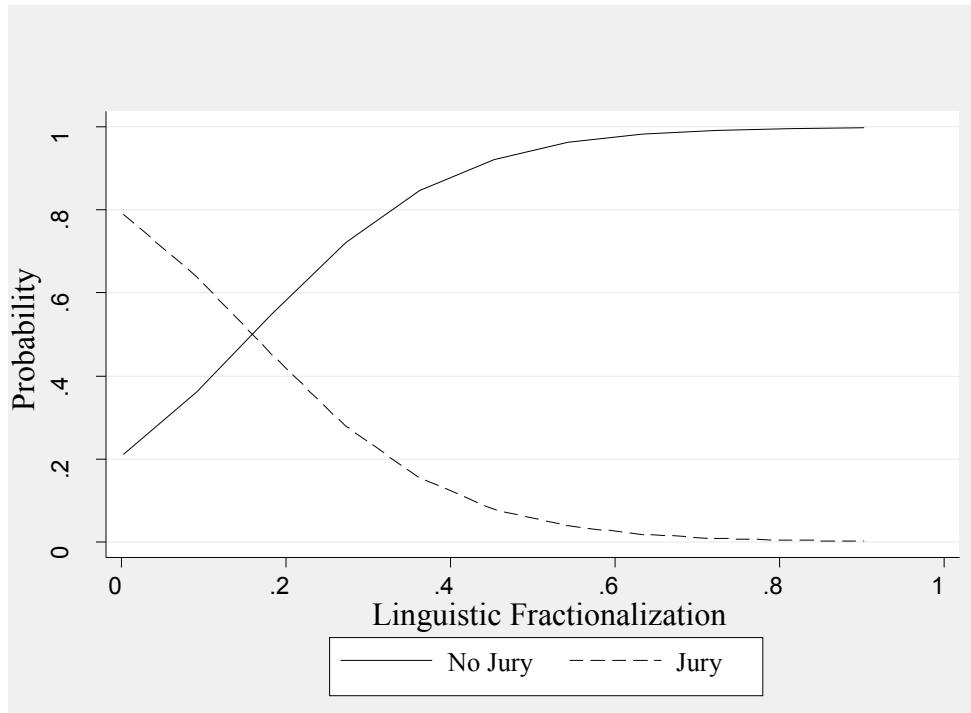


Figure 6.7.5 The effect of linguistic fractionalization on the use of juries

The same can be said for religious heterogeneity. Among the countries with the highest religious fractionalization, five have trial by jury (Australia, Malawi, New Zealand, Trinidad and Tobago, and the United States). These findings indicate that not only can juries handle ethnic diversity but that they may actually be preferable for the legitimacy when such diversity exists. Conversely, linguistic fractionalization does serve as an impediment to jury usage. This finding makes sense from a practical standpoint of using real, working juries. Societies are able to handle diversity but it is difficult to have a jury system when people do not all speak the same language. From a court management perspective, the costs of providing interpreters and other means of translation would only add to the difficulties of implementing trial by jury. Among the countries in the top 10 for linguistic fractionalization, only one country (Liberia) has a jury system.

Finally, literacy is the last independent variable to achieve statistical significance in the model. As you can see from Table 6.7.1, literacy has a negative and small effect on the presence of the jury. The effect of literacy on jury usage is in the opposite direction of the hypothesized effect. It was believed that increasing levels of literacy would lead to increased likelihood of jury usage. Instead, as Table 6.7.2 shows, the predicted probability of having a jury system decreases by .11 for countries with higher levels of literacy. Although this finding is statistically significant, the impact is small. Additionally, 82% of countries in the sample have a literacy level over 75%. The hypothesized expectation of literacy was that in order to have a jury system, a country has to have enough people qualified to serve. The ability to read served as a proxy for this hypothesized impediment. It is difficult to say what at what point enough people are sufficiently literate to have a jury system. Additionally, looking at the data, only five countries with a literacy rate below 75% (Ghana, Liberia, Malawi, Nicaragua, and Sierra Leone) have a jury system. If anything, literacy no longer varies so much that its absence effectively limits the use of juries. Alternatively, literacy may simply not be critical to the use of juries.

Alternative Models

I also ran another logit model with a dependent variable of any lay adjudication (mixed court and jury v. no lay adjudication). The results of the logit regression are presented in Table 6.8.1 and the predicted probabilities are presented in Table 6.8.2. The diagnostic statistics from the analysis show that the logit model of lay adjudication is inferior to that of the jury logit model presented above. The adjusted count R^2 in the lay adjudication model is .56 and the percent correctly classified was approximately 80%. In contrast, the jury model has an adjusted count R^2 of .65 and 90% of cases correctly classified. This shows that the model explaining the presence of lay adjudication does not work as well as the jury model. Additionally, in the lay adjudication model, the legal system variables were not significant as they were in the jury

model. Although I am presenting the results of this model in Tables 6.8.1 and 6.8.2, I will not be discussing them here as the findings do not improve upon those from the previously discussed model.

The most likely reason that the lay adjudication model does not perform as well the jury model is that the explanations for the presence of mixed courts and juries are different. This would make sense since the theory developed in the first few chapters of this dissertation is focused on understanding why some countries have “pure” juries. Mixed courts were included as another form of lay adjudication since some of the same arguments regarding democracy and democratization are made about mixed courts as well. These findings, however, indicate that juries and mixed courts really are theoretically different.

In looking at both logit models (Table 6.7.1 and Table 6.8.1), it is clear that what is driving the significant findings is the jury. Mixed courts do not seem to hold much explanatory power with the variables presented in the model. For instance, when I ran a logit model with mixed court as the dependent variable (mixed v. everything else - juries and no lay adjudication), the only variable that was statistically significant was latitude, which was positive at that $p=.01$ level.²⁸ The N for this model dropped significantly to 56 due to complete determination of the legal system variables with the small number of mixed juries. In short, this model also did not perform as well as the jury logit model. This supports the argument that juries are different from other sorts of adjudicatory systems, including mixed courts.

Regarding the one statistically significant variable in the mixed court model, there is one possible explanation that highlights a quirk of the data surrounding mixed court systems. The latitude variable measures the absolute value of the distance from the equator turned into a scale

²⁸ This model is not presented here. The adjusted count R2 for the logit model for mixed courts was .57 and the percent of cases correctly classified was 80.36%.

Table 6.8.1 Logit Results of the Presence of Any Lay Adjudication (Juries + Mixed Courts) (Robust Standard Errors in Parentheses)²⁹

Independent Variable	Coefficient	Odds Ratio
Former British Colony	-0.43 (1.80)	0.65 (1.17)
Common law System	2.46 (1.81)	11.7 (21.1)
Mixed Legal System	-0.84 (1.93)	0.92 (1.77)
Ethnic Fractionalization	6.39** (3.09)	596.41** (1840.1)
Linguistic Fractionalization	-6.89** (2.74)	0.001** (0.003)
Religious Fractionalization	3.19* (1.84)	24.4* (44.94)
GDP (PPP) (logged)	0.77* (0.42)	2.15* (0.90)
Literacy	-0.09** (0.04)	0.91** (0.04)
Democracy Strength	0.33 (0.37)	1.39 (0.52)
Democracy Duration	0.003 (0.01)	1.00 (0.01)
Latitude	5.68 (3.10)	293.54 (910.85)
Population Total	-0.30 (0.26)	0.74 (0.19)
Population Density	0.002 (0.002)	1.00 (0.003)
N	83	
Adj count R ²	.56	
Percent Correctly Classified	80.72%	

Omitted legal system variable is civil law.

Notes: * Significant at .05 level; ** Significant at .01 level;

*** Significant at .001 level.

from 0 to 1. Higher numbers means the country is further away from the equator. This finding indicates that the odds of having a mixed court system increased as distance from the equator increased. The geographic homogeneity of countries with mixed court systems most likely explains the significant of the latitude variable. As discussed earlier in this chapter, 83% of the mixed court systems in this data set are located in Europe and the former Soviet Union. The

²⁹ Former French Colony was dropped because 0 perfectly predicts failure.

remaining four are in Japan, Benin, Comoros, and Bolivia. This geographic homogeneity of the mixed court system may be what is causing difficulties in creating a model that explains the presence of that form of lay adjudication.

Table 6.8.2: Logit Model Predicted Probabilities for the Presence of Lay Adjudication

	No Lay	Lay
<i>Ethnic Fractionalization</i>		
Low (25 th percentile)	.73	.26
High (75 th percentile)	.17	.83
<i>Linguistic Fractionalization</i>		
Low	.16	.84
High	.77	.23
<i>Religious Fractionalization</i>		
Low	.57	.43
High	.26	.74
GDP (PPP)		
Low	.62	.38
High	.20	.80
Literacy		
Low	.36	.64
High	.64	.37

Ordinal Logit Analysis

I also ran a regression treating the dependent variable as ordinal. The dependent variable in this analysis contained three categories — no lay adjudication, mixed court, and jury. The theory behind treating the dependent variable as ordinal is that the dependent variable represents degrees of lay adjudication. Countries with mixed courts have a higher level of lay adjudication than those without any lay adjudication and countries with juries have a higher degree of lay adjudication than mixed courts.

In ordered logit regression it is important that the model not violate the parallel regression assumption. For the parallel regression assumption to be met, the relationship between each pair of categories of the dependent variable must be the same (Long & Freese, 2006). The Brant test

is the appropriate statistic to see if the model violates this assumption. Upon running the Brant test, five of the independent variables had a statistically significant p value, which means that the model fails the Brant test and violates the parallel regression assumption. I do not report the results of this model because the categories of the dependent variable cannot be treated as ordinal. For that reason, multinomial logit is the preferred method of analysis for a model with more than two categories of a categorical dependent variable.

Multinomial Logit Analysis

As the previous section demonstrated, the dependent variable measuring lay adjudication needs to be treated as a categorical variable. The three categories again are no lay adjudication, mixed courts, and juries. Multinomial logit works by running a series of logit regressions to determine the combined effect of independent variables on all three categories of the dependent variable. The model used for the multinomial analysis is presented in Table 6.9.1 and the predicted probabilities for model B are in Table 6.9.2. The adjusted count R^2 for this model is .60 which indicates that the multinomial logit does not perform as well as the original logit jury model.

The results of the multinomial logit regression largely reinforce the story from the jury logit analyses. Note from Table 6.9.1 that the model that has the greatest number of significant variables is the decision of having a jury system over no lay adjudication (model B). The results of this model look similar to the previous jury logit model (Table 6.7.1), with one notable exception. This difference is that the GDP variable becomes significant. As Table 6.9.1 demonstrates, GDP has a positive effect on countries with jury systems compared to those with no lay adjudication ($p=.10$). This means that compared to countries without lay adjudication, for every increase in GDP, the likelihood of the country having a jury system increases. Table 6.9.2 shows the predicted probability for the impact of GDP on the presence of the jury. Going from a

lower GDP (25th percentile) to higher GDP (75th percentile) increases the probability of a country having a jury trial over no lay adjudication by .62.

Table 6.9.1 Modeling the Use of Lay Adjudication (Multinomial Logit)
(Robust Standard Errors in Parentheses)

Independent Variable	Mixed Court v.	Jury v.	Jury v. Mixed
	No Lay (A)	No Lay (B)	Court (C)
	Coefficient	Coefficient	Coefficient
Former British Colony	-0.32 (2.16)	-2.39 (1.76)	-1.23 (.)
Former French Colony	1.87 (2.68)	-34.42*** (2.92)	-34.29*** (1.56)
Common law System	-32.20*** (2.32)	5.24** (2.18)	24.79*** (2.18)
Mixed Legal System	-32.72*** (2.37)	2.62 (1.75)	23.34*** (1.75)
Ethnic Fractionalization	5.41 (4.31)	8.87* (4.98)	3.46 (5.12)
Linguistic Fractionalization	-5.39 (3.71)	-9.09** (3.68)	-3.71 (3.79)
Religious Fractionalization	1.84 (2.22)	6.32** (2.81)	4.49 (2.95)
GDP (PPP) (logged)	0.17 (0.57)	1.56* (0.86)	1.39 (.99)
Literacy	-0.07 (0.05)	-0.12* (0.06)	-0.05 (.07)
Democracy Strength	0.70 (0.45)	0.16 (0.63)	-0.54 (.69)
Democracy Duration	-0.01 (0.02)	0.02 (0.02)	0.02 (.02)
Latitude	10.45*** (3.92)	0.41 (4.44)	-10.05** (5.19)
Population Total	0.13 (0.31)	-0.49 (.36)	-0.62 (.43)
Population Density	0.001 (0.004)	0.01 (0.004)	0.003 (.01)
Intercept	-8.56	-2.61	
Adjusted Count R ²	0.596		
Log Pseudolikelihood	-46.84		
N	83		

Notes: * Significant at .05 level; ** Significant at .01 level; *** Significant at .001 level.

Additionally, the other “new” variable to have statistical significance is the former French colony variable. The direction of the coefficient is negative, indicating that compared to countries with no lay adjudication, being a former French colony decreases the likelihood of a country having a jury system. This finding is not unexpected; however, little emphasis should be given to this finding given that there are only five countries in the data set that have been former French colonies.

Table 6.9.2 Predicted Probabilities of the Decision to Have Juries Over Mixed Courts from Multinomial Logit (Model B)

	No Lay	Jury
<i>Common law</i>		
Yes	.23	.77
No	.97	.02
<i>Former French Colony</i>		
Yes	.99	.00
No	.71	.29
<i>Ethnic Fractionalization</i>		
Low (25 th percentile)	.99	.007
High (75 th percentile)	.79	.21
<i>Linguistic Fractionalization</i>		
Low	.79	.78
High	.99	.01
<i>Religious Fractionalization</i>		
Low	.90	.11
High	.43	.57
<i>GDP (PPP)</i>		
Low	.93	.07
High	.31	.69
<i>Literacy</i>		
Low	.67	.33
High	.87	.13
<i>Latitude</i>		
Low	.74	.26
High	.68	.32

The remaining significant variables in the multinomial logit model comparing the decision to have no lay adjudication over a jury system (model B) are essentially the same as the original jury logit model discussed previously (Table 6.7.1). Those variables are common law

legal system (+), ethnic fractionalization (+), religious fractionalization (+), linguistic fractionalization (-), and literacy (-). All of these variables have the same direction as in the jury logit model. Compared to countries with no lay adjudication, having a common law legal system increases the probability of a country having a jury system increases by .75. This increase is slightly smaller than for the jury logit model (Table 6.7.2), which had a probability of .90. The literacy variable still had a negative effect on jury usage. As literacy rates go from low (25th percentile) to high (75th percentile) the probability of a country having a jury system decreased by .2 compared to countries with no lay adjudication. This difference in probability is actually higher than for the jury logit model (.11).

The societal fractionalization variables also retained the same effect on the likelihood of a country having a jury trial. Ethnic fractionalization and religious fractionalization both had a positive effect. As ethnic fractionalization increases the probability of country having a jury system increases by .20. This increase is smaller than the jury logit model, which had a probability increase of .5. Conversely, the probability increase for religious fractionalization was larger for model B than the jury model in Table 6.7.1. In model B, compared to countries with no lay adjudication, an increase from low to high religious fractionalization increases the probability of a country having a jury system by .46. The probability for the jury logit was .28. Lastly the linguistic fractionalization also had a negative effect on the existence of trial by jury. In model B, when going from low to high linguistic fractionalization the probability of a country having a jury system decreased by .77 when compared to countries with no lay adjudication. The difference in probability is greater than for the jury logit model (.57).

The results of the remaining two models from the multinomial logit analysis (models A and B) demonstrate that the model developed by the theory in Chapter 5 explains the presence of

the jury system but does not explain mixed courts. This is an important finding because it means that juries and mixed courts are not theoretically the same (e.g., they are not interchangeable). The jury is a distinct style of lay adjudication. A brief look at model B (Table 6.9.1) shows that compared to mixed courts, countries are less likely to have been a former French colony and more likely to have either a common law or mixed law legal system. The one additional variable to achieve statistical significance is latitude. Table 6.9.1 indicates that as countries increase in latitude (e.g., increase in distance from the equator), the likelihood of having a jury system decreases compared to a mixed court. This finding is most likely due to the geographic cluster of most mixed court countries occurring in Europe. The final model (A) compares countries with mixed courts with countries with no lay adjudication. Similarly to model C, very little is of statistical significance. Only the two legal systems variables are significant in addition to latitude. Much like model C, the latitude finding is driven by most countries with mixed courts being located in Europe. Compared to countries with no lay adjudication, higher latitudes increase the likelihood of a country having a mixed court system. Finally, countries with mixed courts are less likely to have common law or mixed legal systems compared to countries with no lay adjudication.

Discussion and Conclusion

The regression analyses in this chapter demonstrate that there is a story to tell about why some democracies have jury systems. Additionally, the results tell us that the factors that affect whether democracies will have juries are different from that of mixed courts. In this section, I will review the six hypotheses presented in the previous chapter and discuss whether they had the expected effect on the presence of trial by jury among democracies. The first hypothesis is that former British colonies are more likely to have jury systems (H_{1a}). In all of the models that I ran, this variable failed to achieve statistical significance. Therefore, we cannot reject the null

hypothesis. This lack of finding is interesting in light of the expected impact of British colonialism on the use of juries around the world. However, as discussed in Chapter 4, British colonial powers used the jury in different ways in different colonies. In some instances, the jury only applied to white settlers, while in others trial by jury was a right given to all. This created different perceptions of the jury among the various colonies. Future research should explore these differences in greater detail to get a better understanding of the impact of British colonialism on jury usage.

The next hypothesis has some connection with the British colonial variable. It is the expectation that democracies with common law legal systems are more likely to have juries (H_{1b}). There is a great deal of overlap between democracies with the common law legal system and those that had been former British colonies. The common law legal system variable was statistically significant and in the expected direction for all the models presented in this chapter. Countries with a mixture of common law and civil law are also more likely than pure civil law countries to have a jury system as well. This indicates that a country having some element of the common law its legal system is more likely to have a jury system. It is here that the influence of British colonialism can be felt still today. Many countries would not have a common law legal system without the influence of British colonialism. As such, it's not colonialism per se but rather the institutions that colonialism left behind that contributes to the presence of jury systems in some democracies.

The societal fractionalization variables (H_2) presented some interesting and unexpected findings. In this hypothesis, it was expected that juries would be less likely to exist in democracies with greater ethnic, racial, and cultural diversity. The results of the analysis show that ethnic and religious diversity did not negatively impact the existence of the jury among

democracies. In fact, as ethnic and religious fractionalization increased, the probability of a country's having a jury system increased. This demonstrates that societal heterogeneity is not an impediment to the establishment of a jury system in a democracy. In fact, it may indicate that as ethnic and religious differences among people increase, juries are more important to perceptions of legitimacy in decision-making in criminal trials.

One caveat to this finding is that ethnic and religious fractionalization only measures differences among people in a given democracy. It does not measure how the people from these different groups get along. For instance, a country can have a highly diverse citizenry but the people in those different groups may get along relatively well. Conversely, you can have a more homogenous society ethnically but those two groups may harbor deep animosity towards each other. It is possible that the jury is less likely to exist in the latter but not the former of those two scenarios mentioned. The ethnic and religious fractionalization measure used here does not tell us the nature of those ethnic and religious divisions. Nonetheless, it is still a relevant finding that as ethnic and religious fractionalization increases, so does the likelihood of the existence of a jury system.

The one fractionalization measure to have the expected effect is linguistic fractionalization. Of the three measures of fractionalization, these findings are the easiest to explain. In short, conducting trials becomes logistically difficult if people do not speak the same language. In this way, language differences among the population serve as an actual impediment to countries having trial by jury.

The next hypothesis tested was the expectation that poorer countries would be less likely to have juries (H_3). The theory is that jury trials are expensive and therefore, poorer countries are less likely to be able to afford trial by jury. The results show that in comparing countries

with juries with those without them, GDP per capita failed to achieve statistical significance. However, in running the multinomial logit model, the GDP variable was significant in the model comparing no lay adjudication with jury trials. In that model, increasing GDP values led to an increase in the likelihood that a country would have a jury system.

The education hypothesis (H_4) tests the expectation that juries are less likely to exist in countries that have less educated populations. In this model, literacy rates serve as a proxy for education. This is because almost all countries with a jury have the requirements that jurors must be able to read and write in the national language of the country. If literacy rates are too low, then countries may be less likely to have a jury system because they would not have enough people to serve as jurors. As discussed earlier in this chapter, in the logit model for jury usage the education variable was statistically significant and negative. This indicates that as literacy rates increase, the probability of a country having trial by jury decreases. The literacy variable was also significant in the multinomial logit model but only for the comparison of juries over no lay adjudication. But in both scenarios, increasing levels of literacy are associated with decreasing probability of a country having a jury trial. Earlier in this discussion I present an explanation for this finding. It is possible that literacy does not have a linear relationship in explaining jury usage. Literacy may not be something where more is better. Literacy may only be an issue if there is an insufficient number of people who can read and write. Additionally, in the data set presented here, only 16% of democracies have a literacy rate of less than 75% of the population. It is likely that literacy is not an issue simply because in most countries, the vast majority of the population is literate.

Neither democracy hypotheses achieved statistical significance in any of the regression models. These two hypotheses were that stronger democracies (H_5) and countries that had been

democracies longer (H_6) were more likely to have a jury system. In the difference of means tests for juries and non-juries (Table 6.6.2), the bivariate analysis results showed that democracies with juries had been democracies longer than non-jury countries. For the difference of means with three categories (juries, mixed courts, and no lay adjudication), the mean democracy duration variable was also statistically significant. The democracy strength variable was only significant for the difference of means test with three outcome categories – with jury and mixed court countries having higher means than countries with no lay adjudication. However, these analyses do not control for other variables. Once the other factors are controlled for, the democracy variables fail to be statistically significant. Thus, we cannot say that the age or strength of democracy plays a role in explaining the presence of a jury system.

One caveat to the democracy strength variable is that Polity IV has been criticized for not adequately being able to distinguish among democracies that score high on the polity scale (see Appendix A). This is evidenced in the fact that 36% of the countries in this data set scored a perfect 10 on the Polity scale. As such, it is unclear how good a measure the Polity score variable is in determining democracy strength. However, it may be difficult to find a better measure of democracy strength. Until then it is important to acknowledge these findings but to still be cautious of the results.

CHAPTER 7

CONCLUSION

In this dissertation I have set out to develop a theory of why some democracies have trial by jury. The first few chapters of this dissertation established that the jury is an institution of democracy. The jury is considered to be an important part of democratic rule by scholars, philosophers, and government leaders. The jury's political function in protecting defendants from abuses of power by the government and ensuring that defendants are judged by community standards of justice are well documented. Juries are also believed to improve transparency and legitimacy in the courts, which are important elements of democratic decision-making. Historical experiences with the jury demonstrate that juries are often introduced by democratic or democratizing governments and abolished or diminished in significance by authoritarian regimes. Additionally, when governments introduce jury systems, leaders often will cite democracy as one of the reasons for adding this form of lay adjudication in the courts. These are just some of the reasons that the jury is an institution of democracy.

Nonetheless, not all democracies have jury systems. Indeed, the data in this dissertation showed that 40 democracies have no lay involvement in the courts whatsoever and only one-fourth of democracies have jury systems. Additionally, while a number of newly democratizing countries are currently introducing jury systems, some long-standing democracies are in the process of abolishing their jury systems or reducing the use of them. These two concurrent trends make it timely to be asking why some democracies have jury systems. Addressing this question is an important step in better understanding the connection between juries and democracy. As it stands, the literature is sparse on empirical research testing theories relating to trial by jury. One of the theories that have so far gone untested is what causes some democracies

to have jury trials. A number of scholars have identified factors that are believed to affect the presence of a jury system but this study is the first of its kind to test these factors empirically.

The hypotheses tested in this dissertation were the effect of British colonialism, common law legal system, country wealth, literacy, ethnic, religious, and linguistic fractionalization, democracy strength, and democracy age on the likelihood of democracies having jury systems. Analysis showed that compared to democracies without jury systems, democracies with common law or mixed law legal systems are more likely to have trial by jury. This finding is important because although it was expected, it at least confirms the role that common law legal system plays in affecting jury usage. This variable is related to British colonialism, which failed to achieve statistical significance, because a majority of countries with common law legal systems are former British colonies. However, the results of this model demonstrate that the legal system left behind by the British has an effect on countries having a jury system today.

Additionally, ethnic and religious fractionalization had an unanticipated effect on the presence of jury systems. Contrary to expectations, ethnic and religious fractionalization had a positive effect on the likelihood of democracies having trial by jury. I had hypothesized that ethnic divisions among societies would make democracies less likely to have juries. This finding is significant because it dispels the perception that ethnic differences make countries less likely to have juries. However, the other fractionalization measure, linguistic fractionalization, had the expected negative effect on the presence of jury trials in democracies. As linguistic fractionalization increases, the likelihood of trial by jury decreases. This finding demonstrates that language differences serve as a barrier to being able to conduct the oral trials involved with juries. Countries with juries have enough difficulties keeping the process understandable to lay people. These difficulties are only compounded if people do not speak the same language. It

appears as if countries with a higher degree of linguistic fractionalization are less likely to have juries because of these logistic challenges.

One caveat regarding the ethnic fractionalization measure is that this variable only measures the probability of two people from a country being from different ethnic groups. Ethnic diversity was expected to have a negative effect on the presence of the jury is because of the potential for racism among jurors leading to unjust verdicts. In those countries where ethnic divisions lead to tension or violence between groups, it is possible that countries are less likely to have trial by jury. The ethnic fractionalization variable only measures difference in society and does not measure the nature of these differences. Future research should explore alternatives to the ethnic fractionalization variable to determine whether the nature of ethnic divisions affects jury usage.

Literacy also had a significant and negative effect on the presence of jury systems in democracies. This finding was opposite what was expected. I had hypothesized that countries with lower literacy rates would be less likely to have juries. Literacy was expected to have a positive effect on the presence of jury systems because of the perception that citizens need to be sufficiently educated to be able to perform their duties as jurors. Additionally, most countries have the ability to read and write as a prerequisite for jury service. Literacy rates may be a problem if there aren't enough people qualified to serve as jurors. Ultimately literacy was found to have a small but negative effect on the presence of jury systems.

Although this finding was unexpected it most likely indicates that literacy is not an issue for most democracies today. The vast majority of the democracies in the data set have literacy rates of 75% or higher. The potential effect of literacy on the presence of the jury may be one where a country just needs to meet a certain threshold where the majority of citizens are literate.

Since the vast majority of citizens in most of the democracies in this sample are literate, education may not be an issue for most democracies today. The theory put forth by Jearey (1960) about education was developed in the 1960s when undoubtedly literacy rates were lower in certain parts of the world. Education or literacy may not be a factor in determining jury trials today because of improving in literacy rates in democracies. It may also be that a different measure of education is necessary to use (e.g., percentage having high school degree or percentage having finished the equivalent of 8th grade). These measures were not used in this analysis because data on measures of education around the world is often incomplete.

The remaining hypotheses that were tested failed to have a significant effect on the use of juries in democracies. The ones that I want to discuss here are the measures of democracy since this dissertation explores the connection between juries and democracy. Despite expectations, neither democracy strength nor duration has a statistically significant effect on the presence of a jury system. This preliminarily indicates that among democracies, these measures do not affect the presence of the jury system over having no lay adjudication or mixed courts. More work should be done to further explore these findings. As discussed earlier, the democracy strength variable, which comes from the Polity IV data set, has been criticized for failing to differentiate between democracies that score high on democratic indicators. It may be the case that this measure can only differentiate between strong and weak democracies but not necessarily between democracies that score the highest on democratic indicators. Alternatively, it's possible that these two measures of democracy simply do not affect the presence of the jury. However, given the correlation between democratic governance and jury usage, it is important to explore this issue further. For instance, there may be alternative measures of democracy strength that have high validity.

The multinomial logit analysis provided greater insight into the relationship between democracies with juries, mixed courts, and no lay adjudication. This analysis showed that the factors that affect jury usage also hold when comparing countries with no lay adjudication to countries with jury systems. This is true for almost all hypotheses except the one measuring country wealth. As would be expected, GDP has a positive effect on the presence of the jury compared to countries with no lay adjudication. This analysis combined with the previously discussed findings tells a pretty consistent story about why some democracies have jury trials.

Lastly, the multinomial logit analysis makes it clear that reasons why democracies have juries are distinct from why they have mixed courts. This finding is important because scholars often view mixed courts as similar to juries in that they are both forms of lay adjudication. However, at least in this regard, juries and mixed courts have a different theoretical basis. Comparing juries with mixed courts and mixed courts with countries with no lay adjudication, the only significant variables are French colonial history, latitude, and the common law and mixed law legal system variables. The latitude variable is significant most likely because the majority of mixed court systems are located in Western and Eastern Europe. What these findings tell us is that the model created to explain the presence of juries does not explain the presence of mixed courts. This finding is significant for future research. It implies that the reasons why some democracies have mixed courts are different from why they have juries.

Future Research

One thing that is evident from this discussion is that this project is an important first step in understanding the connection between juries and democracy. While the analyses in the previous chapter provide an explanation for why some democracies have jury systems, it cannot answer all the questions surrounding this topic. For instance, more research needs to be done to understand why some democracies have mixed court systems as there is a lack of empirical

research on this topic. The literature on comparative lay adjudication is replete with qualitative studies on different countries' jury systems thanks to the work of a growing number of scholars interested in this area of research. There is a significant gap, however, in quantitative analyses aimed at empirically testing the relationship between juries and democracy.

Additionally, a future project should expand the scope of the cases in the data set by looking at countries over time. A cross-section time-series research design should provide additional insight into why some countries have juries. This type of research design can actually explore countries before and after democratic rule and before and after jury systems have been adopted or abolished. Future projects should consider expanding the scope of the cases in the data set to include non-democracies as well. Although well-functioning juries are not expected to be found in non-democracies, this does not mean that non-democracies cannot shed light on the nature of the relationship between juries and democracy. It would be interesting to see how well the models presented in the previous chapter continue to explain the existence of juries when non-democracies are added to the data set. These future projects are really just the tip of the iceberg when it comes to addressing questions relating to juries and democracy. It is my hope that the finding in this dissertation and the data set that I have created (Appendix B) will be useful to future scholars as they continue to explore these important questions

APPENDIX A

MEASURES OF DEMOCRACY

Although the Polity data is widely used among social science scholars who study democracy, I want to devote this appendix to discussing its strengths and weaknesses and comparing Polity IV against the competing Freedom House data set. Overall, Munck and Verkuilen (2002) identify four strengths to the Polity IV data: “identification of attributes,” “clear and detailed coding rules,” “tests of intercoder reliability,” and “comprehensive empirical scope” (p. 28). Regarding Polity’s empirical scope, as mentioned before, the Polity data is the only one of two that covers such a long period of time and continues to rate countries through the present day. The other is Freedom House, which for reasons explained below, is more problematic than the Polity data.

One of the biggest strengths of the Polity data is that it is one of a few data sets that “are models of clarity, specifying their coding rules explicitly and in a fair amount of detail” (Munck & Verkuilen, 2002, p. 19). This transparency allows readers to better understand and be able to replicate what goes into the measures in the data set. Another advantage is Polity’s efforts to reduce coding bias by using multiple coders for each country and conducting intercoder reliability checks (Munck & Verkuilen, 2002, p. 20). The last advantage of the Polity data set is that unlike some measures of democracy that define democracy based on contested elections (e.g., Przeworski, et al., 2000), Polity goes beyond that to consider other attributes (Munck & Verkuilen, 2002, p. 12). The attribute in the Polity data is the constraints of the chief executive which measures “who exercises power?” (Munck & Verkuilen, 2002, p. 12).

Munck and Verkuilen (2002) also identify three weaknesses of the Polity data: “omission of participation,” “problem of redundancy,” and “inappropriate aggregation procedure” (p. 28).

Munck and Verkuilen (2002) write that the exclusion of a measure for participation is “a

particularly grave problem” for the Polity variable (p. 11). Coppedge (2012) confirms that like most other data sets on democracy, Polity’s democracy variable is essentially a measure of contestation and not inclusiveness (participation). Although this exclusion is problematic, Munck and Verkuilen (2002) write that it is a less serious omission for modern democracies because today most have universal suffrage (p. 11). Additionally, this omission is a problem for all the other measures of democracy as well. Coppedge (2012) writes that “despite the fact that democracy is demonstrably a multidimensional phenomenon...most existing indicators focus on just one of its dimensions – contestation” (Conclusion, paragraph 1).

The other concerns with the Polity data set have to do with how democracy is measured. Specifically, Munck and Verkuilen (2002) refer to the “quite convoluted aggregation rule” used by Polity in order arrive at the democracy score given each country (p. 26). Munck and Verkuilen (2002) take issue with the lack of theory behind the decisions made to weight the various attributes that go into the measure of democracy differently and the fact that multiple indicators measure the same attribute which leads to redundancy in the aggregate measure (p. 26). The specific examples of “double counting” that Munck and Verkuilen (2002) give are that the Polity measure includes both competitiveness and regulation of participation, which both measure electoral competition, and competitiveness and openness of executive recruitment, which both measure whether the executive office is selected via election or not (p. 14).

Another issue with the Polity data that is addressed by the creators behind Polity is that as “more and more countries are turning to democracies, the bias in the data to high scoring on the democracy variable poses a threat to the data” (Marshall, Jaggers, & Gurr, 2010, p. 9). By this the researchers are referring to the fact that many democracies score a perfect 10 on the polity scale. For example, in 2009, 37% of all democracies received a 10 on the Polity score. The fact

that so many democracies score at that uppermost bound of the measure indicates that the measure has difficulties differentiating between democracies. This is not a problem restricted to the Polity data set. Indeed, Coppedge (2012) writes that “Freedom House, Polity, and other indicators appear to be truncated at the upper extreme; that is, they do not reflect degrees of democracy beyond a certain threshold” (Assumptions of Quantitative Analysis, paragraph 3). The Polity creators are attempting to address this issue but in the meantime it is a cause of concern.

Given that the Freedom House data is the only alternative data set available for measuring democracies in 2009 it is important to compare the criticisms of Freedom House to those of Polity. In contrast to Polity, the Freedom House data set has only one strength and four weaknesses (Munck & Verkuilen, 2002, p. 28). The strength of the Freedom House data is its scope, which is more or less the same as the Polity data (Munck & Verkuilen, 2002, p. 28). Both are the only data set to cover a large number of countries every year continuing to the present day.

On the other hand, Freedom House’s weaknesses include: “maximalist definition,” “problem of conflation,” “multiple problems of measurement,” and “inappropriate aggregation procedure” (Munck & Verkuilen, 2002, p. 28). Regarding conflation, Freedom House has so many attributes that go into its measures of democracy “that it is hardly surprising that a large number of distinct or at best vaguely related aspects of democracy are lumped together” (Munck & Verkuilen, 2002, p. 14). Although all data sets have problems with measurement, Freedom House is one of the two worst offenders “due to the unsatisfactory response they give to all three tasks involved in the measurement of a concept” (Munck & Verkuilen, 2002, p. 20). Perhaps the most glaring problem for Freedom House relating to measurement is the lack of transparency.

Munck and Verkuilen (2002) write that “the aggregate data offered by Freedom House has to be accepted largely on faith” (p. 21). For these reasons, the Freedom House data offers no advantage over the Polity data.

Polity IV and Freedom House Comparison

Although Polity is the superior data set, I still wanted to do a comparison between Polity and Freedom House to see how much using either data set would change the countries in the sample for 2009. In order to be deemed an electoral democracy according to Freedom House a country must receive a score of at least 7 out of 12 on subcategory A of the political rights rankings and a score of at least 20 out of 40 for the overall political rights rankings (Puddington, n.d., p. 29). Subcategory A of the political rights checklist deals with the way government officials are elected (e.g., free and fair elections). The other parts of the political rights checklist are about political pluralism and participation (e.g., ability to organize political parties, political opposition to the government, and full rights for minority groups) and government functioning (e.g., corruption, transparency, and accountability) (Puddington, n.d., p. 34).

Upon comparing the countries that meet each data set’s definition of democracy, I found a great deal of overlap. According to the definition above, 120 countries qualified as electoral democracies in 2009 in the Freedom House sample. Polity had 92 democracies in 2009. Much of this difference is due to the fact that Polity is limited to countries with populations over 500,000. There are 27 countries in the Freedom House sample that are not in Polity because they do not meet that population size threshold. Taking these countries out of consideration, the difference in number between the two databases is 93 democracies for Freedom House and 92 democracies for Polity.

Looking within this subset of democracies, there are 15 countries that are coded differently. Kosovo is not in the Freedom House sample at all but it is coded as a democracy in

Polity. Bosnia-Herzegovina is a democracy in Freedom House but the Polity database has that country coded as being under an “interruption period.” An interruption period is when a country is occupied by a foreign power. When that happens, Polity does not rank those countries on the Polity scale. This leaves 13 countries that one database has as a democracy that the other does not. Interestingly enough, the breakdown of these 13 countries is split almost evenly with 7 countries coded as democracies in Freedom House but not Polity³⁰ and 6 countries coded as democracies in Polity but not Freedom House.³¹ Although there are differences in these two samples, it still means that 92% of the democracies in Polity are also democracies according to Freedom House.

Additionally, when Freedom House and Polity differ, the ratings are all concerning what could be considered weak democracies (e.g., those that are on the cusp of being coded a democracy). These findings give me greater confidence in using the Polity data for determining which countries are democracies. These findings comport Munck and Verkuilen (2002) finding that despite the issues with measuring democracy across all of the data sets, there is “a very high level of correlation among indices” (p. 29). Polity IV is an admittedly imperfect measure but given the reasons stated above, I believe it is the best data available.

³⁰ The countries along with their Polity scores are Bhutan (3), Ecuador (5), Haiti (5), Madagascar (0), Mozambique (5), Niger (-3), and Suriname (5). As you can see, four of these seven countries just missed the cut off score (6) for being considered a democracy under the Polity rankings.

³¹ The countries along with their Freedom House scores are Georgia (6 and 18), Kenya (6 and 19), Lebanon (5 and 17), Malaysia (6 and 20), Nepal (6 and 21), and Solomon Islands (6 and 22). The minimum scores needed to be a democracy according to Freedom House is 7 and 20.

APPENDIX B
DATA COLLECTION

The following tables were created as a result of the data collection using the sources presented in Appendix C. Although only juries and mixed court systems qualify as lay adjudication, countries with advisory lay assessors have also been noted.

Table B.1 Countries with Lay Adjudication (2009)							
Country	Jury	Mixed Court	Advisory Lay Assessors	Country	Jury	Mixed Court	Advisory Lay Assessors
Albania				Czech Republic		✓	
Argentina†				Denmark*		✓	
Australia	✓			Dominican Republic			
Austria	✓	✓		East Timor			
Belgium†	✓			El Salvador	✓		
Benin		✓		Estonia		✓	
Bolivia		✓		Finland		✓	
Botswana			✓	France		✓	
Brazil†	✓			Georgia*			
Bulgaria		✓		Germany		✓	
Burundi				Ghana	✓		✓
Canada	✓			Greece		✓	
Cape Verde				Guatemala			
Chile				Guinea-Bissau			
Colombia†				Guyana	✓		
Comoros		✓		Honduras			
Costa Rica				Hungary		✓	
Croatia		✓		India			
Cyprus				Indonesia			
Ireland	✓			Peru			

Table B.1 Continued							
Country	Jury	Mixed Court	Advisory Lay Assessors	Country	Jury	Mixed Court	Advisory Lay Assessors
Israel				Philippines			
Italy		✓		Poland		✓	
Jamaica	✓			Portugal		✓	
Japan		✓		Romania			
Kenya*			✓	Senegal*			
Kosovo*		✓		Serbia		✓	
Latvia*		✓		Sierra Leone	✓		✓
Lebanon				Slovak Republic		✓	
Lesotho				Slovenia		✓	
Liberia	✓			Solomon Islands			✓
Lithuania				South Africa			✓
Macedonia		✓		South Korea†	✓		
Malawi†	✓			Spain	✓		
Malaysia				Sri Lanka	✓		
Mali		✓		Sweden†		✓	
Mauritius	✓			Taiwan			
Mexico†				Trinidad	✓		
Moldova				Turkey			
Mongolia			✓	Ukraine†		✓	
Montenegro		✓		United Kingdom (England)	✓		
Namibia			✓	United States	✓		
Nepal				Uruguay†			
Netherlands				Zambia			✓
New Zealand	✓			* Denotes countries where the type of lay adjudication system was changed shortly before or after 2009. See Table X.X for more information. † Denotes countries where there is some ambiguity in coding the type of lay adjudication system.			
Nicaragua	✓						

Table B.2 Details About Lay Adjudication Systems				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Albania	None			
Argentina	None (Only Córdoba province has mixed court).	Panels are comprised of eight lay people and three professional judges (Article 4 of the Provincial Law 9182).	In Córdoba, mixed courts are involved in deciding cases involving serious crimes like "felony murder" and cases involving public officials (Hendler, 2008, p. 14). Specifically, mixed courts decide cases involving aggravated homicide, rape resulting in death, kidnapping resulting in death, homicide involving torture, murder involving robbery, and administrative corruption and economic crimes (Article 2 of the Provincial Law 9182).	Decisions are made by a simple majority (Article 44 of the Provincial Law 9182; Hendler, 2008)
Australia	Jury	Juries are comprised of 12 people. Some of the states allow for more jurors under certain circumstances. See Appendix C for the laws of the various states.	The types of cases involving juries vary by state law. The jury is generally used for crimes involving indictable offenses (as opposed to non-indictable ones (Chesterman, 1999). Indictable offenses tend to be those of a more serious nature (Chesterman, 1999).	There are different rules for each state. Most require unanimity for murder or treason cases. Majority verdicts are usually accepted for other types of cases (Chesterman, 1999).
Austria	Jury	Juries are comprised of eight people (Taylor, 2011; Section 32(1) of the Criminal Procedure Code).	Juries are involved in deciding cases involving crimes punishable by life in prison or prison sentence of a maximum of more than 10 years and minimum of more than 5 years (Taylor 2011; Section 31(2) of the Criminal Procedure Code). Juries are also involved in deciding all political crimes (e.g., espionage, treason) (Taylor 2011; Section 31(2) of the Criminal Procedure Code).	Decisions are made by majority vote (Article 331(1) of the Code of Criminal Procedure). The jury decides guilt alone and sentencing with the judges (Taylor, 2011).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Belgium	Jury	The jury is comprised of twelve people (Malsch, 2009). Article 91, Section 3 of the Law Reforming the Court of Assize says that the jury is to be composed of twelve people with no more than 2/3 of jurors being of the same sex.	Juries are a part of the Hof van Assisen courts. Juries are involved in cases for crimes with a maximum penalty of at least 5 years in prison (Malsch, 2009).	If the jury returns a verdict of 6 to 6, the defendant is acquitted. If there is just a majority for guilt (7/5), then the three professional judges weigh in on guilt. If 2/3 judges find for acquittal, then the defendant is acquitted. (Malsch, 2009).
Benin	Mixed Court	Panels are comprised of three professional judges and four lay judges (Articles 215 and 262 of the old Code of Criminal Procedure). The Code of Criminal procedure was revised in 2012. The new law provides for four professional judges and four jurors (Articles 257 and 303 of the new Code of Criminal Procedure).	Juries are involved in criminal trials in the Cour D'assises (Article 212 of the Code of Criminal Procedure).	Decisions of guilt and aggravating circumstances require five votes. All other decisions are made by simple majority (Article 315 of the old Code of Criminal Procedure).
Bolivia	Mixed Court	Panels are comprised of three lay judges and two professional judges (Article 52 of the Code of Criminal Procedure).	Mixed courts are involved in cases involving crimes punishable by more than 4 years in prison (Hendler, 2008)	Decisions are made by majority vote (Hendler, 2008; Article 359 of the Code of Criminal Procedure)
Botswana	Advisory Lay Assessors			
Brazil	Jury (jurors do not deliberate)	The jury is comprised of seven people (Articles 433 and 447 of the Code of Criminal Procedure).	Juries are involved in cases involving intentional crimes against life (murder, abortion, assisted suicide, infanticide) (Gomes & Zomer, 2001; Tribunal de Justiça do Estado de Rondônia website).	Verdicts are made by majority rule (Article 489 of the Code of Criminal Procedure).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Bulgaria	Mixed Court	In District courts, panels are comprised of one professional judge and two lay judges for cases involving crimes punishable by 5 to 15 years in prison (Article 28(2) Criminal Procedure Code; Sofia District Court website). Panels are comprised of two professional judges and three lay judges for cases involving crimes punishable by more than 15 years in prison (Article 28(3) of the Criminal Procedure Code; Sofia District Court website).	The types of cases involving lay judges are determined by law. Currently, lay judges are involved in criminal cases in District Courts where the punishment is more than five years in prison (Article 28 of the Criminal Procedure Code; Sofia District Court website).	Decisions are made by simple majority (Section 34(4) of the Criminal Procedure Code).
Burundi	None			
Canada	Jury	Juries are comprised of twelve people, unless the judge deems that 13 or 14 jurors are needed (Article 631, Section 2.2 of the Criminal Code).	At the federal level, juries are involved in trials for any crime where the maximum punishment is 5 years or more in prison (Section 11(f) of the Canadian Charter of Rights and Freedoms). The Criminal Code states that unless otherwise provided for by law, all persons tried for an indictable offense shall be tried by jury (Article 471 of the Criminal Code).	Jury verdicts must be unanimous (Article 653(1) of the Criminal Code).
Cape Verde	None			
Chile	None			
Colombia	None (Constitution allows for juries; not implemented)			

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Comoros	Mixed Court	Panels are comprised of three judges (a president and two assessor judges) and six lay people (Article 13 of the law Relative to the Organization of the Judiciary).	Lay judges are involved in deciding criminal cases before the Court of Assize (Articles 11 and 13 of the law Relative to the Organization of the Judiciary).	Most likely majority rule but I am unable to confirm this information.
Costa Rica	None			
Croatia	Mixed Court	In municipal courts, panels are comprised of one professional judge and two lay judges (Section 19b(1) of the Code of Criminal Procedure). In county courts of first instance, panels are comprised of one professional judge and two lay judges or two professional judges and three lay judges (Section 19d(1) of Code of Criminal Procedure).	Lay judges are used in the municipal courts (Section 19b(1) of the Code of Criminal Procedure) and county courts of first instance (Section 19d(1) of the Code of Criminal Procedure). In municipal courts, crimes punishable by up to 8 years in prison can be tried by a single judge except for the following crimes: infanticide; suicide and assisted suicide; causing death by negligence; various crimes relating to forcible sexual intercourse; the exploitation of children or minors for pornography; a serious offense against public health, public safety, or the environment; and traffic accident cases (section 19b(2) of the Code of Criminal Procedure). County courts of first instance hear cases involving crimes punishable by more than 12 years in prison (19c(1)a of the Code of Criminal Procedure).	Decisions are made by simple majority (Section 164(1) of the Code of Criminal Procedure).
Cyprus	None			

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Czech Republic	Mixed Court	Panels are comprised of two lay judges and one professional judge (Sections 31 2(a) and 35(2) of the Law on Courts and Judges).	Lay judges serve in Regional Courts of first instance in criminal matters (Section 31 2(a) of the Law on Courts and Judges; European Commission website). Lay judges also serve on criminal cases in District Courts of first instance (Section 35(2) of the Law on Courts and Judges; European Commission website).	Decisions are made by simple majority (Section 127(2) of the Code of Criminal Procedure).
Denmark	Mixed Court (Jury abolished in 2008)	Changes were made to the composition of the jury in 2008 (Danmarks Domstole website). Danish court website states that for District Courts (Byret), the panel consists of six lay people and three judges (Danmarks Domstole website). At the Courts of Appeal (Landsret), there are nine lay people and three professional judges (Danmarks Domstole website). Formerly, the Danish jury was a traditional jury with 12 members (Malsch 2009).	Lay people are used in District Courts where punishment for a crime is 4 years or more in prison (Danmarks Domstole website). Examples of crimes include manslaughter, arson, rape, and robbery (Vejledning til Domsmand og Nævninger document).	As of 2008, jurors decide guilt alongside professional judges. In District Court, there needs to be at least two professional judges and four lay judges voting for guilt to be considered a guilty verdict (Vejledning til Domsmand og Nævninger document). In Appeals court, there needs to be at least two professional judges and six lay judges voting for guilt (Vejledning til Domsmand og Nævninger document).
Dominican Republic	None			
East Timor	None			
El Salvador	Jury	The jury is comprised of five people (Article 404 of the Code of Criminal Procedure).	Juries decide cases for crimes involving injury, serious injury, aggravated assault, those relating to personal autonomy, and damages and aggravated damages (Article 52 of the Code of Criminal Procedure).	Decisions are made by simple majority. Three out of five jurors must vote to convict (Article 412 of the Code of Criminal Procedure).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Estonia	Mixed Court	The panel shall consist of one professional judge and two lay judges. Lay judges have all the rights of a judge in a court hearing (Section 18(1) of the Code of Criminal Procedure).	In county courts, criminal matters concerning criminal offences in the first degree (Section 18(1) of the Code of Criminal Procedure).	Decisions are made by simple majority (Section 23 of the Code of criminal procedure).
Finland	Mixed Court	District Courts involve one professional judge and three lay judges (Chapter 2, Section 1 of the Code of Judicial Procedure; Jackson & Kovalev, 2006; Ministry of Justice website; Malsch, 2009). The District Court trial may have one additional professional judge and one additional lay judge (making 4 total) if the court decides it is necessary (Chapter 2, Section 2 of the Code of Judicial Procedure).	Lay judges serve only in criminal cases in District Courts (Malsch; Ministry of Justice website). A single professional judge decides cases where punishment is up to 18 months in jail (Malsch; Ministry of Justice website).	Simple majority. A tie vote goes to the defendant (Chapter 10, Section 2 of CPA; Malsch; and Ministry of Justice website).
France	Mixed Court	The panel is comprised of three professional judges and nine lay judges (Hans & Germain, 2011; Jackson & Kovalev, 2006; Leib, 2008). In appeals cases, the size is increased to twelve lay people and three professional judges (Hans & Germain 2011; Jackson & Kovalev, 2006; Leib 2008). In 2012 the size of the jury was reduced to six lay judges in first instance cases and nine lay judges in appeals cases (Article 13 of Law No. 2011-939 of August 10, 2011 that revised Article 296 of the Code of Criminal Procedure).	In the cour d'assises, lay judges are involved in cases involving crimes punishable by a minimum of 10 years in prison (Jackson & Kovalev, 2006). Lay judges are also involved in appeals courts (Hans & Germain, 2011).	Eight votes are needed for conviction (Hans & Germain, 2011). The decision rule was changed to at least six votes in 2012 when the jury size was reduced (Article 13 of the Law No. 2011-939 of August 10, 2011 that revised Article 359 of the Code of Criminal Procedure). In appeals, ten out of fifteen are needed for confirmation of conviction (Hans & Germain, 2011). This ratio was also changed in 2012 to eight out of fifteen (Article 13 of Law No. 2011-939 of August 10, 2011 that amended Article 359 of the Code of Criminal Procedure).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Georgia	None (law provides for jury trials; not passed until 2009 and not implemented until 2011 in one region).			
Germany	Mixed Court	In District Courts of first instance the panel is comprised of one professional judge and two lay judges or two professional judges and two lay judges (Article 29 (1) of the Courts Constitution Act; Jackson & Kovalev, 2006). In Regional Courts the panel is comprised of three professional judges and two lay judges for grand criminal division cases (Section 76(1) and 76(2) of the Courts Constitution Act; Jackson & Kovalev, 2006). Appeals trials involve one professional judge and two lay judges (Section 76(1) of the Courts Constitution Act; Ministry of Justice chart on the Courts of Law).	The Constitution Courts Act simply says "courts with lay judges (Schoffengerichte) shall be established at the Local Courts to hear and decide criminal matters falling under the jurisdiction of the Local Courts, insofar as such matters are not decided by a Criminal Court judge" (Section 28). Malsch (2009) writes that lay judges are generally involved in most criminal trials except for petty crimes and serious political crimes.	Decisions are made by an absolute majority of votes (Section 196(1) of the Courts Constitution Act). If there is a tie between two professional judges and two lay judges, the presiding judge's vote breaks the tie (Section 196(4) of the Courts Constitution Act). One section of the Code of Criminal Procedure says that 2/3 majority is required for guilt (Section 263(1)).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Ghana	Jury and Advisory Lay Assessors	The jury is comprised of 7 people (Section 244 of the Criminal and Other Offences (Procedure) Act; Vidmar, 2002).	Section 245 of the Criminal and Other Offences (Procedure) Act states that "trials for all offences punishable by death shall be with a jury." For non-capital cases, it appears as if the legislature can decide which types of crimes shall be tried by jury (Section 242 of the Criminal and Other Offences (Procedure) Act). Section 204 of the Criminal and Other Offences (Procedure) Act also states that "all trials on indictment shall be by a jury or with the aid of assessors in accordance with the provisions hereinafter contained."	Jury verdicts require unanimity but a judge may accept a five to two verdict if the punishment is not death (Section 285 of Criminal and Other Offences (Procedure) Act; Vidmar, 2002).
Greece	Mixed Court	In first instance courts, the mixed panel is comprised of three professional judges and four lay judges (Article 8(1) of the Code of Criminal Procedure; Jackson & Kovalev, 2006; Leib, 2008).	The Code of Criminal Procedure states that lay judges are involved in trials for all felonies except those under the jurisdiction of the Court of Appeals and political misdemeanors (Article 109). Leib (2008) writes that the mixed court system is used to adjudicate serious felonies.	Decisions are made by simple majority with a tie going to the defendant (Article 371(2) of the Code of Criminal Procedure; Leib, 2008).
Guatemala	None			
Guinea-Bissau	None			
Guyana	Jury	The jury is comprised of twelve people (Section 33 of the Criminal Law (Procedure) Act; Guyana Ministry of Legal Affairs website).	Juries are used in criminal cases before the High Court (Ministry of Legal Affairs website). It appears as if indictable offenses are tried by jury unless the judge deems otherwise (Section 91 and 92 of the Criminal Law (Procedure) Act).	For capital cases, the jury must be unanimous (Section 159 of the Criminal Law (Procedure) Act). For all other cases, the jury must return a unanimous verdict in first 2 hours of deliberation or after that the verdict can be split 10/2 or 10/1 (if only 11 jurors) (Section 159 of the Criminal Law (Procedure) Act).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Honduras	None			
Hungary	Mixed Court	Panels are comprised of one professional judge and two lay judges or two professional judges and three lay judges (Article 14 of the Code of Penal Procedure; Malsch, 2009).	Lay adjudicators are involved in trials for crimes punishable by 8 years or more in prison (Malsch, 2009; Europe e-Justice website; Hungarian Assessors' Association).	Verdicts are made by simple majority (Article 256(1) of the Code of Penal Procedure; Malsch, 2009).
India	None			
Indonesia	None			
Ireland	Jury	Juries are comprised of twelve people (Citizens Information website; Courts Service website).	Juries are involved in criminal trials with the exception of minor (summary) offenses. Summary offenses are tried in District Courts and can impose sentence of up to 1 year in prison for one offense or 2 years for multiple offenses (Jackson, Quinn, & O'Malley, 1999). The Citizens Information website says non-minor criminal cases are heard by juries. The remaining criminal trials are all jury eligible. The government can create special courts to try cases without juries (Jackson, Quinn, & O'Malley, 1999).	The court accepts majority verdicts (Jackson, Quinn, & O'Malley, 1999, p. 208). Verdicts of 10 out of 11 or 10 out of 12 are permitted (Section 25(1) of the Criminal Justice Act, 1984).
Israel	None			
Italy	Mixed Court	Panels are comprised of six lay judges and two professional judges (Articles 3 and 4 of the Law of April 10, 1951, Number 287; Jackson & Kovalev, 2006; Malsch, 2009).	Lay judges are involved in trials for crimes punishable by more than 24 years in prison and crimes against the state (Malsch, 2009). Lay judges preside over trials in the Court of Assize and the Assize Court of Appeal (Ministry of Justice website).	Cases are decided by simple majority. A tie goes to the defendant (Section 527(3) of the Code of Criminal Procedure; Jackson & Kovalev, 2006; Malsch, 2009).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Jamaica	Jury	The jury is comprised of twelve people for murder and treason trials (Section 31(1) of the Jury Act; Vidmar, 2002) and seven jurors for all other cases (Section 31(2) of the Jury Act; Vidmar, 2002).	Juries are involved in trials for serious criminal offences (Supreme Court website). Murder, manslaughter, rape and carnal abuse, robbery, arson, and treason are examples of crimes tried with a jury (Supreme Court website). Gun crimes, excluding those involving murder, are tried without a jury (Ministry of Justice brochure).	For murder cases, the jury needs to be unanimous (Section 44(1) of the Jury Act). After an hour of deliberating, the judge will accept a 9-3 decision for a manslaughter conviction or acquittal (Section 44(2) of the Jury Act). In all other cases, the judge will accept a 5-2 decision after an hour deliberating (Section 44(3) the Jury Act).
Japan	Mixed Court	The panel is comprised of three professional judges and six lay judges (Article 2(2) of the Act Concerning Participation of Lay Assessors in Criminal Trials - translated by Anderson and Saint). However, the panel may be comprised of one professional judge and four lay judges when there is no dispute about the facts of the case (Article 2(3) of the Act Concerning Participation of Lay Assessors in Criminal Trials - translated by Anderson and Saint).	Lay judges are used in cases involving crimes punishable by death, indefinite imprisonment, or imprisonment with hard labor. Also, lay judges are involved in cases for crimes where victim died due to intentional act of the defendant (Article 2(1) of Act Concerning Participation of Lay Assessors in Criminal Trials; translation by Anderson and Saint). The Japanese Supreme Court website lists some of the crimes tried with lay judges - homicide, robbery causing death or injury, arson of inhabited buildings, and kidnapping for money.	Verdicts are made by majority rule (Article 67 of the Act Concerning Participation of Lay Assessors in Criminal Trials - translated by Anderson and Saint).
Kenya	Advisory Lay Assessors (abolished in 2009)			

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Korea (South Korea)	Jury (Decisions not binding)	The jury is comprised of nine jurors for capital cases or cases involving life in prison and seven jurors for all other cases (Article 13 of the Act on Citizen Participation in Criminal Trials). A trial may have five jurors if the defendant pleads guilty (Article 13 of the Act on Citizen Participation in Criminal Trials).	The types of cases triable by jury include homicide, murder, rape, and kidnapping and abduction (Article 5, Sections 1 and 2, of the Act on Citizen Participation in Criminal Trials).	Jury verdicts must be unanimous (Article 46(2) of the Act on Citizen Participation in Criminal Trials). If jurors cannot reach unanimity, they will hear the opinions of the judges of the case and then decide the case on majority vote (Article 46(3) of the Act on Citizen Participation in Criminal Trials). Jurors weigh in on guilt and sentencing (Article 12 of the Act on Citizen Participation in Criminal Trials). Jury opinions are not binding (Article 46(5) of the Act on Citizen Participation in Criminal Trials).
Kosovo	Mixed Court (abolished in 2012)	Lay judges serve in Municipal and District courts. Municipal courts hear cases of criminal punishment up to 5 years in prison. In cases involving less than 3 years punishment in prison, only a professional judge decides (ABA Rule of Law Initiative - Kosovo, P. 8). In other cases, the court panel is comprised of one professional judge and two lay judges (ibid., Article 22 of Provisional Criminal Procedure Code). District courts hear cases involving crimes punishable by more than 5 years in prison. For cases involving 5-15 years in prison, 1 professional and 2 lay judges decide. For cases involving more than 15 years in prison, 2 professional judges and 3 lay judges decide (ABA Rule of Law Initiative; Article 24 of the Provisional Criminal Procedure Code).	Lay judges serve in Municipal and District courts. In Municipal courts, they are involved in cases involving punishment of 3-5 years in prison (municipal courts only hear cases of up to 5 years imprisonment) (ABA Rule of Law Initiative - Kosovo, P. 8). In District courts, lay judges are involved in all cases as that court tries crimes involving punishment of more than 5 years in prison (ABA Rule of Law Initiative - Kosovo, P. 8; Articles 22 and 24 of the Provisional Criminal Procedure Code).	Cases are decided by simple majority (Article 210 of the Provisional Code of Criminal Procedure).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Latvia	Mixed Court (abolished in 2009)	In District and Regional courts, trial panels are comprised of one professional judge and two lay judges (Section 31(2) of the Law on Judicial Power; Section 37(2) of the Law on Judicial Power).	Lay judges are involved in criminal trials in the District Courts unless otherwise specified by law (Section 31 of the Law on Judicial Power).	Decisions are made by simple majority (Section 20(3) of the Law on Judicial Power). If votes are even, the presiding judge breaks the tie (Section 20(3) of the Law on Judicial Power).
Lebanon	None			
Lesotho	None			
Liberia	Jury	Juries are comprised of twelve people (Section 19.1 of the Criminal Procedure Law; Section 18.1 of the Judiciary Law of 1972).	Juries are involved in any criminal trial that is not a petty larceny or petty offense (Section 20.1 of the Criminal Procedure Law). A defendant can waive right to jury trial in all but capital cases (Section 20.2 of the Criminal Procedure Law).	Prior to 2006, jury verdicts had to be unanimous (Section 20.11 of the Criminal Procedure Law). In 2006, the criminal procedure code was revised to accept verdicts of a 5/6 majority (Section 5 of the Law Relating to Juries).
Lithuania	None			
Macedonia	Mixed Court	The court is comprised of two professional judges and three lay judges in first instance courts for crimes punishable by 15 years or more in prison (Article 22(1) of the Code of Criminal Procedure). The court is comprised of one professional judge and two lay judges in first instance courts for crimes involving a mitigated sentence (ibid.). For crimes involving less than 3 years in prison there are only professional judges (ibid.).	Lay judges are involved in first instance courts for crimes punishable by more than three years in prison (Article 22(1) of the Code of Criminal Procedure).	Decisions are made by majority vote (Article 109(1) of the Code of Criminal Procedure).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Malawi	Jury (juries for murder trials are temporarily on hold)	The jury is comprised of twelve people (Section 294 of the Criminal Procedure and Evidence Code).	Section 294 of the Criminal Procedure and Evidence Code states that other than by ministerial directive, "all criminal trials before the High Court shall be by jury." Vidmar (2002) says that Malawi has juries for homicide and other serious cases (e.g., armed robbery) (p. 323). Prior to 2009, jury trials were used in murder cases before the High Court. However, in 2009, the Minister of Justice suspended jury trials for murder cases (R v. Mziya; State Department; The Zimbabwean). Jury trials still exist for certain offenses. In 2011, there is a news article about a jury trial for a treason case (Nyasa Times). However, the Minister of Justice can and has issued directives suspending jury trials in individual cases and for certain types of crimes.	Eight out of twelve votes are needed to reach a verdict (Section 321C of the Criminal Procedure and Evidence Code).
Malaysia	None			
Mali	Mixed Court	A panel is comprised of three professional judges and four lay judges (ABA Access to Justice; Section 19 of the Judicial Reorganization Act).	Lay judges are used in Court of Assize trials (Article 260 of the Criminal Procedure Code).	Decisions are made by simple majority (Article 346 of the Criminal Procedure Code; ABA Access to Justice). There must be a least 5 votes for death penalty cases (Article 346 of the Criminal Procedure Code). Articles 342 and 343 outline the deliberation process.

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Mauritius	Jury	The jury is comprised of nine people (Section 30(1) of the Judicial and Legal Provisions Act; Supreme Court of Mauritius website).	In criminal cases before the Supreme Court unless otherwise directed by law (Section 30(1) of the Judicial and Legal Provisions Act). All criminal cases tried before the Supreme Court except those crimes listed in the fifth schedule of the Criminal Procedure Act (e.g., violations of the Prevention of Terrorism Act, Dangerous Drugs Act, Consumer Protection Act, and others) (Section 10(1) of the Criminal Procedure Act and the Fifth Schedule as listed in the Criminal Procedure Act; Supreme Court of Mauritius website).	Need to have a majority of at least seven people for a verdict (Section 30(8) of Judicial and Legal Provisions Act).
Mexico	None (juries exist for press offenses only)	A jury panel is comprised of seven people (Article 58 of the Ley Orgánica del Poder Judicial de la Federación).	Jury trials are at the Federal level and restricted to crimes committed by the press against public order or national security (Article 57 of the Ley Orgánica del Poder Judicial de la Federación).	Verdicts are made by majority vote (Article 331 of the Federal Criminal Procedure Code).
Moldova	None			
Mongolia	Advisory Lay Assessors	The composition of the court is listed in Article 32 of the Criminal Procedure Law. Only professional judges are mentioned. However, three lay people are involved in criminal cases of first instance involving grave or extreme grave crimes (Article 34.2 of the Criminal Procedure Law; Chagdaa, 2011). Two lay people are used in other instances according to law (Article 34.2 of the Criminal Procedure Law).	Lay assessors are involved in first instance criminal cases involving grave or extreme grave crimes (Article 34.2 of the Criminal Procedure Law). Chagdaa (2011) says lay assessors are involved in felony criminal cases.	Citizens' representatives' opinions are merely advisory (Chagdaa, 2011). In discussing the deliberation process, Section 285.2 of the Criminal Procedure Law states that the only people allowed in the room are the members of the bench of judges. Citizens' representatives have the right to ask questions during trial and submit an opinion on guilt and sentencing (Article 34.1 of the Criminal Procedure Law).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Montenegro	Mixed Court	In first instance courts, cases are tried before a panel of two professional judges and three lay judges as long as the punishment is greater than 15 years in prison. A panel of one professional judge and two lay judges is used for crimes punishable by a lesser sentence (Article 24(1) of the Code of Criminal Procedure). In second instance courts, the panel is comprised of two professional judges and three lay judges (Article 24(2) of the Code of Criminal Procedure).	Unless otherwise specified by law, criminal trials are heard by a panel of lay judges and professional judges in first instance courts (Article 24(1) of the Code of Criminal Procedure).	Decisions are made by majority vote (Article 161 of the Code of Criminal Procedure).
Namibia	Advisory Lay Assessors	One to two assessors are selected (Section 164(2) of the Criminal Procedure Act).	The decision as to when to include lay assessors in a criminal trial seems to be at the discretion of the judge (Vidmar, 2002).	Verdicts are made by majority vote (Section 164(4)(b) of the Criminal Procedure Act). If there is only one lay assessor then the professional judge's opinion governs (Section 164(4)(b) of the Criminal Procedure Act).
Nepal	None			
Netherlands	None			

Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
New Zealand	Jury	The jury is comprised of twelve people (Section 17 of the Juries Act 1981).	Section 361A(1) of the Crimes Act 1961 states that "every accused person shall be tried before a judge with a jury." A defendant may apply for bench trial in cases except those involving punishment of 14 years or more in prison (Section 361 B(5) of the Crimes Act 1961). The judge may also order a judge trial for long or complex cases that don't involve prison time of more than 14 years (Section 361(D) of the Crimes Act 1961). Under the Summary Proceedings Act of 1957, any defendant facing a charge of more than 3 months in prison has the right to request a jury trial (Section 66). Automatic jury eligible trials are those tried on indictment. If tried summarily, a defendant may elect for a jury trial which essentially turns it into an indictable offense (Cameron, et al., 1999).	Verdicts need to be unanimous but the judge will accept a non-unanimous verdict after 4 hours of deliberations (Section 29C of the Juries Act 1981). The majority verdict the judge will accept is an 11/12 decision or any decision agreed to by all but one juror (29C of the Juries Act 1981). Majority verdicts were first accepted in 2009 after a change in the law (New Zealand Herald article).
Nicaragua	Jury	The jury is comprised of five people (Section 297 of the Code of Criminal Procedure).	Juries decide cases involving all felonies with the exception of drug crimes, money laundering, and assets derived from illegal activities (Article 293 of the Code of Criminal Procedure). Defendants can also waive their right to jury trial (Article 293 of the Code of Criminal Procedure).	Four out of five jurors must be in agreement on guilt or innocence. If the jury doesn't reach a verdict in 72 hours, the case goes to a retrial (Article 301 of the Code of Criminal Procedure).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Norway	Jury and Mixed Court	The jury is comprised of ten people (Article 24, Chapter 355 of the Law on Procedure in Criminal Cases; Jackson & Kovalev, 2006; Malsch, 2009).	In Court of Appeals trials where the defendant is appealing conviction of a crime punishable by more than 6 years in prison (Article 24, section 352 of the Law on Procedure in Criminal Cases; Malsch, 2009). The only exceptions are "crimes concerning the independence and security of the nation and crimes against the constitution or the head of state" or appeals where the defendant is under 18 (Strandbakken, 2001). In Norway, appeals for crimes punishable by more than 6 years in prison are automatically granted when the defendant is appealing a matter of fact (Strandbakken, 2001).	Seven votes are needed to find the defendant guilty (Article 24, Chapter 372 of the Law on Procedure in Criminal Cases; Malsch, 2009). If the three professional judges feel guilt is not justified, they can decide to retry the case by mixed tribunal (Malsch, 2009). Section 376(a) and 376(c) of the Law on Procedure in Criminal Cases allows for judges to have a case retried before mixed tribunal of four lay judges and three professional judges (Norwegian Courts website).
Norway	Jury and Mixed Court	In District Court, mixed courts are comprised of one professional judge and two lay judges (Chapter 22, Section 276 of the Law on Procedure in Criminal Cases; Malsch, 2009; Strandbakken, 2001). For more complex cases (those involving punishment of more than 6 years in prison) it is permissible to have two professional judges and three lay judges (Chapter 22, Section 276 of the Law on Procedure in Criminal Cases; Malsch, 2009; Norwegian Courts website; Stranbakken, 2001). Appeals trials that are not tried by jury use three professional judges and four lay judges (Malsch, 2009; Strandbakken, 2001).	Lay judges are used in District Court cases where the punishment is over one year in prison (Chapter 22, Section 276 of the Law on Procedure in Criminal Cases). A mixed court system is also used in Appeals Court cases involving crimes punishable by less than six years (Strandbakken, 2001).	Decisions are made by simple majority (Malsch, 2009; Strandbakken, 2001). For verdicts in the Court of Appeals, there must be at least five out of seven votes for guilt (Malsch, 2009; Strandbakken, 2001).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Panama	Jury	The jury is comprised of seven people (Article 439 Code of Criminal Procedure).	Article 43 of Code of Criminal Procedure states that the jury will decide the following types of cases: homicide that is not a result of terrorism, kidnapping, extortion, conspiracy, drug trafficking, racketeering, money laundering, abortion when the mother dies, and death that is a harm to public health not caused by negligence or incompetence.	Decisions are made by majority rule (Article 446 of the Code of Criminal Procedure).
Paraguay	None			
Peru	None			
Philippines	None			
Poland	Mixed Court	Criminal trials are comprised of one professional judge and two lay judges or two professional judges and three lay judges for crimes involving life imprisonment (Article 28 of the Code of Criminal Procedure).	Lay judges are involved in courts of first instance cases unless otherwise directed by law (Article 4(1) of the Law on Common Courts).	Decisions are made by majority rule (Article 111(1) Code of Criminal Procedure)
Portugal	Mixed Court	Panels are comprised of three professional judges and four lay judges (Article 1(1) of the Jury System in Criminal Procedure Law; Jackson & Kovalev, 2006).	Lay decision-makers are involved in criminal trials when the punishment for the crime is more than eight years in prison (Article 13(2) of Code of Criminal Procedure). Mixed courts are not used for terrorism or organized crime trials (Article 207(1) of the Portuguese Constitution).	Decisions are made by majority vote (Article 365(5) of the Code of Criminal Procedure).
Romania	None			

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Senegal	None (Mixed Court abolished in 2008)	Criminal trials are comprised of a panel of three professional judges in the Court of Assize (one president and two assessors) (Article 225 of the Loi No. 2008-50 du 23 Septembre 2008 Modifiant le Code de Procédure Pénale).		
Serbia	Mixed Court	In first instance courts, panels are comprised of one professional judge and two lay judges for criminal offences punishable by a term of imprisonment from eight to twenty years or two professional judges and three lay judges for criminal offences punishable by a term of imprisonment from thirty to forty years (Article 21 of the Code of Criminal Procedure).	In first instance courts where punishment for the crime exceeds eight years in prison (Article 21 Code of Criminal Procedure).	Decisions are made by simple majority (Section 272 of the Code of Criminal Procedure).
Sierra Leone	Jury and Advisory Lay Assessors	Juries are comprised of twelve people (Section 143 of the Criminal Procedures Act, 1965).	Crimes punishable by death require a jury (Section 143 of the Criminal Procedures Act). For lesser crimes, a defendant can opt out of a jury trial (Section 143 of the Criminal Procedures Act).	Just verdicts must be unanimous for cases involving the death penalty. A judge may accept a 2/3 majority verdict for all other cases (Sections 199-203 of the Criminal Procedures Act).
Slovak Republic	Mixed Court	Panels are comprised of two lay judges and one professional judge (Chapter 2, Section 14 of the Law on Courts and on Amending and Supplementing Certain Acts; Klanduch, 2012).	Lay judges are involved in District Court trials (Chapter 2, Section 14 of the Act on the Courts and on Amendments to Certain Laws). Unless otherwise specified, the District Court hears all criminal cases of first instance (Section 15 of the Criminal Procedure Law). The law determines what types of cases involve lay judges (Chapter 11, Section 1 of the Act on Courts and on Amendments to Certain Laws).	Decisions are made by simple majority (Section 170(3) of the Criminal Procedure Law).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Slovenia	Mixed Court	Panels are comprised of two professional judges and three lay judges (Article 102 of the Courts Act; Jackson & Kovalev, 2006; Maja and Košak, 2006). The courts may also have a panel of two lay judges and one professional judge (Article 102 of the Courts Act; Maja and Košak, 2006).	Lay decision-making takes place in District Court proceedings (Article 41 of the Courts Act). For case involving crimes where the sentence is more than 15 years in prison, three lay judges and two professionals decide guilt (Article 25 of the Criminal Procedure Act; Jackson & Kovalev, 2006). For lesser crimes, the trial panel is comprised of one professional judge and two lay judges (Article 25 of the Criminal Procedure Act).	Decisions are made by majority rule (Article 113 of the Criminal Procedure Act). Lay judges decide guilt and sentencing (Article 113 of the Criminal Procedure Act).
Solomon Islands	Advisory Lay Assessors	The Criminal Procedure Code makes mention of assessors plural but no specific number is mentioned. Colvin (2004) says there are one or more assessors.	Assessors are used in criminal trials in the High Court. Section 260 of the Criminal Procedure Code states "when the court thinks fit to call in the assistance of assessors, the court shall select such assessors from the list of those summoned to serve as assessors at the sessions."	The assessors give an advisory opinion that is recorded. The judge alone makes the decision on guilt (Section 275 of the Criminal Procedure Code).
South Africa	Advisory Lay Assessors	High court trials will sometimes involve two lay assessors (South Africa government website). Magistrate's Court trials will also sometimes involve one or two lay assessors (DOJ&CD website; Chapter 34 of the Magistrate's Court Act).	In some serious criminal trials in the High Court and in some Magistrate's Court cases (DOJ&CD website). In Magistrate's Court, assessors must be brought in for murder trials unless defendant waives assessors (Section 93(1)b of the Magistrate's Court Act).	Lay assessors' opinion is merely advisory (DOJ&CD website).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Spain	Jury	The jury is comprised of nine people (Section 2(1) of the Organic Law of the Jury Court; Pascual, 1995).	Juries are involved in trials involving crimes against a person's life, crimes committed by public officials in performance of their duties, crimes against honor, crimes against freedom and security (privacy and domicile), and arson (Article 1(1) of the Organic Law of the Jury Court; Pascual, 1995). Among the list of specific offenses are manslaughter and infanticide, infidelity in the custody of prisoners, bribery and embezzlement for public officers, fraud and extortion (Article 2 of the Organic Law of the Jury Court).	Seven votes are needed to determine guilt and only five votes needed for acquittal (Article 60 of the Organic Law of the Jury Court; Malsch, 2009; Pascual, 1995).
Sri Lanka	Jury	The jury is comprised of seven people (Section 209(1) of the Code of Criminal Procedure).	Juries are involved in certain types of crimes tried before the High Court if the accused chooses jury trial (Section 161 of the Code of Criminal Procedure).	Jury verdicts must be unanimous or by a 5 to 2 vote (Section 209(2) Code of Criminal Procedure).
Sweden	Jury for Press Offenses Only	Juries are comprised of nine people (Chapter 12, Article 2 of the Freedom of the Press Act; Jackson & Kovalev, 2006; Malsch, 2009).	Juries are used only for freedom of the press cases (Freedom of the Press Act; Malsch, 2009). Chapter 12, Article 2 of the Freedom of the Press Act states: "In freedom of the press cases in which there is a question of liability under penal law, the question of whether an offence has been committed shall be tried by a jury of nine members, unless both parties have declared themselves willing to refer the case for decision by the court, without trial by jury." The jury is also mentioned in the Fundamental Law on Freedom of Expression concerning radio broadcasts (Chapter 3, Article 5).	Six out of nine jurors are needed for a guilty verdict (Chapter 12, Article 2 of the Freedom of the Press Act). Acquittals are not reversible. However, if the jury finds the defendant guilty, then three professional judges weigh in on the verdict. The professional judges can find the defendant guilty of a lesser sentence, acquit, or agree with the jury (Malsch 2009; Chapter 12, Article 2 of the Freedom of the Press Act).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
Sweden	Mixed Court	District courts are comprised of panels of one professional judge and three lay judges (Jackson & Kovalev, 2006; Malsch, 2009; Chapter 1, Section 3B of the Code of Judicial Procedure). For appellate courts, the panel is comprised of three professional judges and two lay judges (Chapter 2, Section 4 of the Code of Judicial Procedure; Jackson & Kovalev, 2006; Malsch, 2009).	If the punishment for a crime is less than six months in prison, cases are tried without lay judges (Chapter 1, Section 3B of the Code of Judicial Procedure). Essentially all criminal cases except for the simple and minor cases are heard by lay judges (Malsch, 2009).	Decisions are made by simple majority with the presiding judge casting the deciding vote in the event of a tie (Chapter 16, Section 3 of the Code of Judicial Procedure; Malsch, 2009).
Taiwan	None			
Trinidad	Jury	The jury is comprised of twelve people for capital cases (murder and treason) and nine for all others. (Section 19 of the Jury Act; Judiciary of the Republic of Trinidad and Tobago website; Vidmar, 2002)	Section 6 of the Criminal Procedure Act states: "Every person committed for trial shall be tried on an indictment and, subject to the provisions of this Act, every such trial shall be held by and before a Judge and jury." Trinidad and Tobago follow the British model where indictable offenses are tried by jury and summary offenses by magistrate (Westmin, 2010). Indictable offenses include murder, wounding with intent, and arson (Westmin, 2010).	Jury verdicts must be unanimous for capital cases (murder and treason) (Section 19(1) of the Jury Act; Vidmar, 2002). In all other cases, the judge may accept a verdict of 7 to 2 or 6 to 2 (in juries of 8) after 3 hours of deliberations (Judiciary of the Republic of Trinidad and Tobago website; Section 28 of the Jury Act; Vidmar, 2002).
Turkey	None			
Ukraine	Mixed Court (Constitution provides for jury; not implemented)	Panels are comprised of two professional judges and three people's assessors (Article 17 of the Code of Criminal Procedure).	Article 17 of the Code of Criminal Procedure states that "criminal cases related to crimes which under law may be punished with life imprisonment are tried in the trial court by a panel composed of two judges and three people's assessors, the latter enjoying all rights vested in a judge when administering justice."	Decisions are made by simple majority (Article 325 of the Code of Criminal Procedure).

Table B.2 Continued				
Country	Type of Lay Adjudication	Composition	Types of cases	Decision Rule
United Kingdom (England)	Jury	The jury is comprised of twelve people (gov.UK website).	Juries serve in Crown Courts and decide serious criminal cases (e.g., murder, rape, burglary, and fraud) (gov.UK website). The Crown Court hears cases of "indictable offenses," which are the ones tried by jury. There is also a category of crimes that could "go either way," meaning they could be tried by jury in the Crown Court or a magistrate in magistrate's court. In those instances, the defendant has the right to choose a jury trial or magistrate trial (gov.UK website; Lloyd-Bostock & Thomas, 1999).	Majority verdicts of at least 10-1, 10-2, or 9-1 are accepted provided that the judge feels the jury has deliberated a sufficient amount of time (at least 2 hours) (Section 17 of the Juries Act 1974).
United States	Jury	At the federal level, juries are comprised of twelve people unless the parties agree to a lesser number (Rule 23, Federal Rules of Criminal Procedure). At state level, the number of jurors varies. At the state level, the norm is to have twelve jurors but some states allow for as few as six jurors in felony cases (State Court Organization, Table 42).	A defendant is eligible for a jury trial for criminal offenses except for those involving "petty crimes" (<i>Blanton v. City of North Las Vegas</i> (1989)).	At the Federal level, jury verdicts must be unanimous (Rule 31, Federal Rules of Criminal Procedure). For most states, unanimity is required (State Court Organization, Table 42). In Louisiana and Oregon a vote of 10 out of 12 jurors is sufficient for a verdict in most criminal cases (<i>ibid.</i>). In Oregon, murder or aggravated murder trials must be 11 out of 12 (<i>ibid.</i>). In Louisiana, capital cases require unanimity (<i>ibid.</i>).
Uruguay	None (Constitution allows for juries; not implemented)			

Table B.2 Continued				
Country	Country	Country	Country	Country
Zambia	None	Section 261 of the Criminal Procedure Code states that "all trials before the High Court shall be held before a Judge sitting alone, or before a Judge with the aid of assessors (if the presiding Judge so decides), the number of whom shall be two or more as the court thinks fit."	Section 261 of the Criminal Procedure Code states that "All trials before the High Court shall be held before a Judge sitting alone, or before a Judge with the aid of assessors (if the presiding Judge so decides), the number of whom shall be two or more as the court thinks fit." Subordinate courts before a magistrate may also have assessors if the magistrate chooses (Section 197(1) of the Criminal Procedure Code). However, in cases of treason or murder before a subordinate court, assessors must be used if they are available (197(2) of the Criminal Procedure Code).	In the High Court, assessors are invited to give their opinion on guilt or innocence but the judge is not bound by their decision in making his ruling (Section 297(1) and 297(2) of the Criminal Procedure Code Act).

Table B.3 Mention of Lay Participation in Constitution		
Country	Type of Lay Adjudication	Lay Participation Mentioned in Constitution
Albania	None	
Argentina	None (Only Córdoba province has mixed court).	Juries are mentioned in Articles 24, 75, and 118 of the Constitution. Article 118 states that "the trial of all ordinary criminal cases not arising from the right to impeach granted to the House of Deputies, shall be decided by jury once this institution is established in the Nation." However, the jury has never been implemented in Argentina. The Constitution of the Province of Córdoba states: "La ley puede determinar los casos en que los tribunales colegiados son también integrados por jurados" (Article 162). This roughly translates to "the law will determine the situations in which the courts will be integrated by juries."
Australia	Jury	Section 80 of the Commonwealth of Australia Constitution Act states that "the trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes."
Austria	Jury	Article 91(2) of the Constitution states that "a jury returns a verdict upon the guilt of the accused in crimes entailing severe penalties, to be specified by law, and in all cases of political felonies and misdemeanours."
Austria	Mixed Court	Article 91(3) of the Constitution says "in criminal proceedings for other punishable offences lay assessors take part in the administration of justice if the penalty to be imposed exceeds a limit to be determined by law."
Belgium	Jury	Article 150 of the 1994 Belgian Constitution states that "a jury is sworn in for all criminal matters, as well as for political and press offences, with the exception of press offences motivated by racism or xenophobia."
Benin	Mixed Court	No
Bolivia	Mixed Court	No
Botswana	Advisory Lay Assessors	
Brazil	Jury (jurors do not deliberate)	The jury has been in all Brazilian constitutions except 1937 (Hendler, 2008). Article 38 of the current Constitution (1988) says that "the institution of the jury is recognized, according to the organization which the law shall establish, and the following are ensured: 1. full defense; 2. secrecy of voting; 3. sovereignty of verdicts; 4. power to judge willful crimes against life."
Bulgaria	Mixed Court	Article 123 of the Constitution states that "court assessors shall participate in the trial process in certain cases established by law."
Burundi	None	

Table B.3 Continued		
Country	Type of Lay Adjudication	Lay Participation Mentioned in Constitution
Canada	Jury	The jury is mentioned in the Canadian Constitution Act, 1982 as a part of the Canadian Charter of Rights and Freedoms. Section 11(f) states that "any person charged with an offense has the right...except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment."
Cape Verde	None	
Chile	None	
Colombia	None (Constitution allows for juries; not implemented)	
Comoros	Mixed Court	No
Costa Rica	None	
Croatia	Mixed Court	Article 121 of the Constitution states that "lay magistrates and court advisors shall participate in court proceedings in compliance with law."
Cyprus	None	
Czech Republic	Mixed Court	Article 94(2) of the Constitution says that "the law may define in what cases and in what manner other citizens participate in addition to judges in judicial decision-making."
Denmark	Mixed Court (Jury abolished in 2008)	Section 65(2) of the Danish Constitution of 1953 says "laymen shall take part in criminal procedure. The cases and the form in which such participation shall take place, including what cases are to be tried by jury, shall be provided for by Statute."
Dominican Republic	None	
East Timor	None	
El Salvador	Jury	Article 189 of the Constitution translates roughly to "the jury is established for the prosecution of criminal offenses prescribed by law."
Estonia	Mixed Court	Lay judges are not mentioned in constitution.
Finland	Mixed Court	Lay judges are not mentioned in constitution.
France	Mixed Court	No

Table B.3 Continued		
Country	Type of Lay Adjudication	Lay Participation Mentioned in Constitution
Georgia	None (law provides for jury trials; not passed until 2009 and not implemented until 2011 in one region).	Article 82, Section 5 of the Constitution states that "the cases shall be considered by juries before the courts of general jurisdiction in accordance with a procedure and in cases prescribed by law." The provision for jury trials was added to the Constitution in 2004.
Germany	Mixed Court	Lay judges are not specifically mentioned in the Constitution. However, a government website claims that Article 20 of the Constitution is the basis of the legal authority of lay judges (Landgericht Osnabrück website). Article 20(2) of the Constitution states that "all state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies."
Ghana	Jury and Advisory Lay Assessors	Article 125(2) of the Constitution states that "citizens may exercise popular participation in the administration of justice through the institutions of public and customary tribunals and the jury and assessor systems."
Greece	Mixed Court	Article 97(1) of the Greek Constitution states that "felonies and political crimes shall be tried by mixed jury courts composed of regular judges and jurors, as specified by law."
Guatemala	None	
Guinea-Bissau	None	
Guyana	Jury	No
Honduras	None	
Hungary	Mixed Court	Article 46(2) of the 1949 Constitution states that "non-professional judges shall also participate in the cases and in the manner prescribed by law." Article 27(2) of the Fundamental Law of 2011 states that "non-professional judges shall also participate in the administration of justice in the cases and ways defined by laws."
India	None	
Indonesia	None	No mention of lay participation in the constitution.
Ireland	Jury	Article 35(5) of the Constitution states that except for certain specific circumstances "no person shall be tried on any criminal charge without a jury." These circumstances include minor offenses, military trials, and special courts created for certain circumstances.
Israel	None	Only professional judges are mentioned in the Basic Law for the Judiciary.

Table B.3 Continued		
Country	Type of Lay Adjudication	Lay Participation Mentioned in Constitution
Italy	Mixed Court	Article 102 of the Italian Constitution states that "the law regulates the cases and forms of the direct participation of the people in the administration of justice."
Jamaica	Jury	No
Japan	Mixed Court	No
Kenya	Advisory Lay Assessors (abolished in 2009)	
Korea (South Korea)	Jury (Decisions not binding)	No
Kosovo	Mixed Court (abolished in 2012)	Lay judges are mentioned in the constitution but only to describe the conditions in which judges and lay judges would have immunity (Article 107).
Latvia	Mixed Court (abolished in 2009)	No
Lebanon	None	
Lesotho	None	
Liberia	Jury	Article 20(a) of the Constitution states that "in all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to trial by jury." Article 21(h) states that "no person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by Grand Jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with appropriate understanding, expressly waive the right to a jury trial."
Lithuania	None	
Macedonia	Mixed Court	The election of lay judges is mentioned in Article XXIX of the Constitution. However, the reference is minimal. It merely states that "on the election of judges, lay judges, and court presidents, equitable representation of citizens belonging to all communities shall be observed."
Malawi	Jury (juries for murder trials are temporarily on hold)	No

Table B.3 Mention of Lay Participation in Constitution		
Country	Type of Lay Adjudication	Lay Participation Mentioned in Constitution
Malaysia	None	
Mali	Mixed Court	No
Mauritius	Jury	No
Mexico	None (juries exist for press offenses only)	The Mexican Constitution used to make reference to trial by jury for certain offenses. Constitutional reforms occurred in 2008 to remove this provision so that currently no reference to the jury is made in the Mexican Constitution (Sumario de Reformas a la Constitución Política de los Estados Unidos Mexicanos, por Artículo; Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos). Article 20, Section A(6) of the Constitution pre-2008 reforms stated: "He shall be entitled to a public trial by a judge or jury of citizens who can read and write and are also residents of the place and district where the offense was committed, provided the penalty for such offense exceeds one year's imprisonment. The accused shall always be entitled to a trial by jury for all offenses committed by means of the press against the public peace or against the domestic or foreign safety of the nation."
Moldova	None	
Mongolia	Advisory Lay Assessors	Article 52, Section 2 of the Constitution states that "in passing a collective decision on cases and disputes, the courts of first instance shall allow representatives of citizens to participate in the proceedings in accordance with the procedures prescribed by law.
Montenegro	Mixed Court	Article 119 of the Constitution states that "the court shall rule in panel, except when the law stipulates that an individual judge shall rule. Lay-judges shall also participate in the trial in cases stipulated by the law."
Namibia	Advisory Lay Assessors	No
Nepal	None	
Netherlands	None	
New Zealand	Jury	Jury trial was first provided for in the Supreme Court Ordinance 1841 (Cameron, et al., 1999). Article 24(e) of the Bill of Rights Act of 1990 guarantees that "everyone charged with an offense...shall have the right, except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for more than 3 months."

Table B.3 Mention of Lay Participation in Constitution		
Country	Type of Lay Adjudication	Lay Participation Mentioned in the Constitution
Nicaragua	Jury	Article 34 of the Nicaraguan Constitution states: "Todo procesado tiene derecho, en igualdad de condiciones, a las siguientes garantías mínimas... 3. A ser sometido al juicio por jurados en los casos determinados por la ley. Se establece el recurso de revisión." This roughly translates to "Every defendant has the right to the following guarantees... To be subjected to trial by jury in cases determined by law." Article 166 of the Nicaraguan Constitution states: "la administración de justicia se organizará y funcionará con participación popular, que será determinada por las leyes. Los miembros de los Tribunales de Justicia, sean abogados o no, tiene iguales facultades en el ejercicio de sus funciones jurisdiccionales." This roughly translates to the administration of justice is organized and functions with popular participation as determined by the law.
Norway	Jury and Mixed Court	No
Norway	Jury and Mixed Court	No
Panama	Jury	Article 218 of the Constitution states "Se instituye el juicio por jurados. La Ley determinará las causas que deban decidirse por este sistema." This translates to "Establishing the institution of trial by jury. The law shall determine the causes to be decided by this system."
Paraguay	None	
Peru	None	
Philippines	None	
Poland	Mixed Court	Article 182 of the Polish Constitution states that "a statute shall specify the scope of participation by the citizenry in the administration of justice."
Portugal	Mixed Court	Article 207(1) of the Portuguese Constitution states that "in such cases and with such composition as the law may lay down, and particularly when either the prosecution or the defence so request, a jury may participate in the trial of serious crimes, save those involving terrorism or highly organised crime."
Romania	None	
Senegal	None (Mixed Court abolished in 2008)	
Serbia	Mixed Court	Article 142 of the Constitution states that: "Judges and jurors shall participate in a trial, in the manner stipulated by the Law. The Law may also regulate that only judges may participate in a trial in particular courts and in particular cases. The court shall decide on matters within the Council, while the Law may stipulate that a single judge may decide on particular matters."

Table B.3 Mention of Lay Participation in Constitution		
Country	Type of Lay Adjudication	Lay Participation Mentioned in Constitution
Sierra Leone	Jury and Advisory Lay Assessors	In Constitution of 1991 states that "the High Court of Justice shall be duly constituted as the case may be— a. by any one Judge thereof; or b. by any one Judge thereof and a jury" (Section 131(2)).
Slovak Republic	Mixed Court	Article 148 of the Constitution states that "the manner of establishing the lay judges shall be laid down by a law." Article 143(3) of the Constitution also states that "in an extent laid down by a law, the bodies of judicial self-administration shall participate in the management and administration of Courts."
Slovenia	Mixed Court	Article 128 of the Constitution states that "the circumstances and form of the direct participation of citizens in the exercising of judicial power are regulated by law."
Solomon Islands	Advisory Lay Assessors	No
South Africa	Advisory Lay Assessors	No
Spain	Jury	Article 125 of the Constitution of 1978 states that "citizens may engage in popular action and participate in the administration of justice through the institution of the Jury, in the manner and with respect to those criminal trials as may be determined by law, as well as in customary and traditional courts."
Sri Lanka	Jury	The Constitution makes reference to juries but only in so far as to say that some crimes will be punishable by judge without a jury.
Sweden	Jury for Press Offenses Only	Freedom of the Press Act guarantees trial by jury for cases concerning freedom of the press (Chapter 12, Article 2 of the Freedom of the Press Act).
Sweden	Mixed Court	No
Taiwan	None	Article 80 of the Constitution has been interpreted to mean that no one other than judges can render verdicts. The article specifically states "Judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference."
Trinidad	Jury	No
Turkey	None	
Ukraine	Mixed Court (Constitution provides for jury; not implemented)	The Constitution provides for trial by jury but it has not been implemented (State Department). Article 124 of the Constitution states that "the people shall directly participate in the administration of justice through people's assessors and jurors." Article 129 of the Constitution states that "judicial proceedings shall be conducted by a single judge, by a panel of judges, or by a court of the jury."

Table B.3 Mention of Lay Participation in Constitution		
Country	Type of Lay Adjudication	Lay Participation Mentioned in Constitution
United Kingdom (England)	Jury	No
United States	Jury	The 6th Amendment of the Constitution guarantees right to trial by jury in Federal cases. The Amendment states that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed..." The Supreme Court case <i>Duncan v. Louisiana</i> (1968) incorporated this right to the states.
Uruguay	None (Constitution allows for juries; not implemented)	
Zambia	None	

Table B.4 Representation and Selection Procedures for Lay Adjudication Systems		
Country	Type of Lay Adjudication	Representation and selection
Albania	None	
Argentina	None (Only Córdoba province has mixed court).	To be eligible to serve as a lay judge a person must be between the ages of 25 and 65, have completed a basic education requirement, possess Argentinian citizenship, be in full possession of all rights, live in the province for the past 5 years, and be mentally and physically able to perform duties as a lay judge (Article 5 of the Provincial Law 9182). Those ineligible to serve as a lay judge include elected and appointed public officials, attorneys, military personnel, police officers, and religious leaders, among others (Article 6 of the Provincial Law 9182). Those prohibited to serve include individuals who are currently defendants awaiting criminal trial, those who have been convicted of a felony in the last 10 years, and those who are bankrupt and have not yet been rehabilitated (Article 7 of the Provincial Law 9182).
Australia	Jury	Jury selection varies by state. However, all states use random selection from people who are eligible voters. All states prohibit people who have been convicted of crimes within some years past to serve. Also, states include prohibitions for those who are lawyers, judges, police, the infirm, etc.
Austria	Jury	To be eligible to serve as a juror a person must be an Austrian citizen between the ages of 25 and 65 (Article 1(2) of the Jurors and Lay Assessors Act of 1990). People ineligible for jury service include those whose mental or physical disability prevent them from serving, those with insufficient understanding of the language of the court, defendants in pending criminal trials where punishment is more than 6 months in prison, and those convicted of a crime (Article 2 of the Jurors and Lay Assessors Act of 1990). Those excluded from jury service include elected officials, religious leaders, lawyers, court personnel, judges, and people who are not primary residents of Austria (Article 3 of the Jurors and Lay Assessors Act of 1990). Jurors are randomly selected from voter rolls (Jackson & Kovalev, 2006; Taylor, 2011). The process is outlined in Sections 5-17 of the Jurors and Lay Assessors Act of 1990).
Austria	Mixed Court	Eligibility to be a lay judge is the same as a juror (Jurors and Lay Assessors Act of 1990).
Belgium	Jury	To be eligible to be a juror a person must be between the ages of 28 and 65, be able read and write, be on the register of electors, and be in full possession of civil and political rights (Belgium.be website). Belgium.be website also says that jurors cannot have been sentenced to a crime over 4 months in jail or 60 hours community service. Those who are excluded from jury service include political appointees, judges, public officials, military personnel, and doctors (Belgium.be).
Benin	Mixed Court	To be eligible to be a lay judge individuals must be citizens of Benin, at least 30 years old, able to read and write in French, and in full possession of all civil and political rights (Article 222 of the old Code of Criminal Procedure). The new Criminal Procedure Code (2012) requires citizens to be at least 40 years old and also in good physical and mental health (Article 264 of the Code of Criminal Procedure). Those who are prohibited from serving as lay judges include those who have been convicted of a crime and not rehabilitated, government officials removed from office, and those currently under bankruptcy (Article 223 of the old Code of Criminal Procedure). Those who are excluded from jury service include government officials, police officers, military members, and judges (Article 224 of the old Code of Criminal Procedure). A person over the age of 70 can request exemption from service (Article 225 of the old Code of Criminal Procedure).

Table B.4 Representation and Selection Procedures for Lay Adjudication Systems		
Country	Type of Lay Adjudication	Representation and selection
Bolivia	Mixed Court	Lay judges must be at least 25 years old, be in full possession of all citizenship rights, have a profession, art, or trade, and reside in the area where the trial is taking place (Article 57 of the Code of Criminal Procedure). Judges, lawyers, police officers, and military members cannot be lay judges (Article 58 of the Code of Criminal Procedure).
Botswana	Advisory Lay Assessors	
Brazil	Jury (jurors do not deliberate)	All citizens over the age of 18 and of "notorious reputation" are eligible to be jurors (Article 436 of the Code of Criminal Procedure). Those exempt from jury service are members of parliament, judges, attorneys, military members, and those over 70 years old (Article 437 of the Code of Criminal Procedure). Article 425, Section 2 of the Code of Criminal Procedure says that a judge will request that local authorities, associations and neighborhood associations and cultural organizations, educational institutions in general, universities, unions, government agencies and other community centers identify people who fulfill the conditions for exercising function of the jury.
Bulgaria	Mixed Court	Lay judges are chosen by nomination by municipal councils (Jackson & Kovalev, 2006). A Sofia District Court website says that citizens interested in serving as a lay judge must submit an application to the city government. The city commission submits the names of eligible citizens to the courts. To be eligible to be a lay judge, a person must be a legally competent Bulgarian national who has turned 21 years old and has not turned 70 years of age at the time in which he is appointed as court assessor, has good reputation in society, and has not been convicted of a deliberate criminal offence, notwithstanding any subsequent rehabilitation (Article 67 of the Judiciary System Act). Lay judges serve for 5 year terms (Article 69 of the Judiciary System Act).
Burundi	None	
Canada	Jury	The Criminal Code allows the provinces to determine eligibility for jury service. Each province has its own laws governing eligibility for service. At the federal level, the Criminal Code simply states that if a person is eligible under provincial laws to serve, then they are eligible to serve on any jury in that province (Article 626(1) of the Criminal Code). However, the Criminal Code says that regardless of any provincial law, a person cannot be disqualified or exempt from jury service based solely on their sex (Article 626(2) of the Criminal Code).
Cape Verde	None	
Chile	None	
Colombia	None (Constitution allows for juries; not implemented)	

Table B.4 Representation and Selection Procedures for Lay Adjudication Systems		
Country	Type of Lay Adjudication	Representation and selection
Comoros	Mixed Court	To be eligible for service a person must be a citizen of Comoros, be at least 30 years old, be able to read and write in one of the 3 languages recognized by the Constitution, and be in full possession of their civil and political rights (Article 14 of the law Relative to the Organization of the Judiciary). People who are ineligible to serve as lay judges are those who work for the government, military, or the police (Article 14 of the law Relative to the Organization of the Judiciary). For each trial, individuals are chosen at random from a list of eligible lay judges (Article 14 of the law Relative to the Organization of the Judiciary).
Costa Rica	None	
Croatia	Mixed Court	To be a lay judge, a person must be a Croatian citizen, have reached adult status, and be someone who is "worthy to exercise duties of lay judges" (Section 131(1) of the Courts Act). Section 133(1) of the Courts Act says that "judges and jury of municipal, commercial and county courts shall be appointed by the county assembly, and Zagreb City Assembly proposals obtained by the municipal or city councils, trade unions, employer associations and chambers of commerce." Lay judges are appointed for 4 year terms and can be reappointed (Section 132(1) of the Courts Act).
Cyprus	None	
Czech Republic	Mixed Court	To be eligible to be a lay judge a person must be a Czech citizen, at least 30 years old, and have an unblemished record and moral character (Section 60(1) of the Law on Courts and Judges). Lay judges are nominated by local councils (Section 64 of the Law on Courts and Judges; Bobek 2009; Jackson & Kovalev, 2006). Lay judges are appointed to a 4 year term (Section 61(2) of the Law on Courts Judges).
Denmark	Mixed Court (Jury abolished in 2008)	To be eligible for jury service a person must be able to "perform their tasks and should be sufficiently capable of understanding complex cases" (Malsch, 2009). Jurors and lay judges serve for 4 year terms (Danmarks Domstole website). Eligibility for jury duty or lay judge service are the same. A person must be eligible to vote for parliament and have an impeccable reputation (Vejledning til Domsmænd og Nævninger document). They cannot have been convicted of a crime, cannot turn 70 years old during time of service, must be of sound mind and body, and must speak and read Danish (Vejledning til Domsmænd og Nævninger document). Exemptions exist for politicians, police officers, people employed in the justice system, and ministers, among others (Vejledning til Domsmænd og Nævninger document).
Dominican Republic	None	
East Timor	None	
El Salvador	Jury	To be eligible for jury service a person must be a citizen of El Salvador, between the ages of 25 and 70, be in full possession of all political rights, and meet a minimum education requirement (Article 405 of the Code of Criminal Procedure). Those who are ineligible to be jurors include employees of the judicial system, military members, police personnel, those with a mental or physical disability, and those who lack the education to serve (Article 406 of the Code of Criminal Procedure). Jurors are drawn from voter rolls (Article 404 of the Code of Criminal Procedure).

Table B.4 Representation and Selection Procedures for Lay Adjudication Systems		
Country	Type of Lay Adjudication	Representation and selection
Estonia	Mixed Court	Lay judges are nominated by local government councils (Jackson & Kovalev, 2006; KOHTUD website). Lay judges are appointed to 4 year terms and cannot have more than 2 successive terms (KOHTUD website; Section 104 of the Courts Act). To be eligible to be a lay judge a person must be an Estonian citizen, between the ages of 25 and 70 years old, be of active legal capacity, a resident of Estonia, possess proficiency in the Estonian language at an advanced level, and be of suitable moral character (KOHTUD website and Section 103 of the Courts Act). Exclusions from service include the following people: 1) those convicted of a crime, 2) anyone who is bankrupt; 3) those with health problems that would preclude serving, 5) anyone who works in the judicial, prosecutorial or police services; 6) anyone in the military; 7) lawyers, notaries, or bailiffs; 8) any member of the government or elected officials (KOHTUD website; Section 103 of the Courts Act).
Finland	Mixed Court	Lay judges are to be representative of the community as much as possible. To be eligible to be a lay judge a person must be a Finnish citizen, live in the municipality where the trial is taking place, cannot be bankrupt, cannot be under guardianship, and must be between 25 - 63 years old (Section 6, District Courts Act; Ministry of Justice website; Malsch, 2009). People who work in the courts, prisons, prosecutor's offices, and police departments are ineligible to be lay judges (Section 6, District Courts Act; Malsch, 2009). City councils select the candidates for lay judge (Malsch, 2009; Ministry of Justice website). Lay judges are appointed for 4 year terms (Ministry of Justice website). They are expected to serve approximately 12 days per year (Malsch, 2009).
France	Mixed Court	Random selection from population (Jackson & Kovalev, 2006). To be eligible to be a juror you must be at least 23 years old, able to read and write in French, and in full possession of all political and civil rights (Article 255 of the Code of Criminal Procedure). Those who are prohibited from serving are include anyone convicted of a crime, those who are bankrupt, those who are under guardianship, and those who have been removed from public office (Article 256 of the Code of Criminal Procedure). Court officers, public officials, police officers, and military members are also excluded from jury service (Article 257 of the Code of Criminal Procedure). Those over the age of 70 are exempt from service (Article 258 of the Code of Criminal Procedure).
Georgia	None (law provides for jury trials; not passed until 2009 and not implemented until 2011 in one region).	

Country	Type of Lay Adjudication	Representation and selection
Germany	Mixed Court	To be a lay judge you must have German citizenship (Section 31 of Courts Constitution Act). Lay judges must also be between the ages of 25 and 70, live in the municipality where they serve, have suitable command of the German language, cannot be unfit for health reasons, and cannot be unfit to dispose of their assets freely (Section 33 of the Courts Constitution Act). Individuals are prohibited from serving as a lay judge for the following reasons: a judge has determined them to be ineligible to serve public office, if you have served a prison sentence of more than 6 months for an intentional act, or if you are under investigation for an act that may result in the loss of eligibility to serve public office (Section 32 of Courts Constitution Act). Anyone who has "violated the fundamental principles of humanity or of the constitutional state" or has been a member of the state security service of the former German Democratic Republic is prohibited from being a lay judge (Section 44a(1) of the Judiciary Act). German law also provides for exclusions from service for the following reasons: anyone employed as an elected officials or in the judicial system, anyone who is a religious leader and religious people whose beliefs make them "committed to the common life, and anyone who is serving a 2nd consecutive term as a lay judge (Section 34 of the Courts Constitution Act). The law also includes exemptions for people like doctors, pharmacists, those with family obligations, and those over 65 (Section 35 of the Courts Constitution Act). Lay judges are nominated by political parties and sometimes charitable organizations (Jackson & Kovalev, 2006). Nominations for lay judge service come from the municipality and then the municipal assembly has approval over the final list of names. Following that, a committee of court personnel and other people select those who are to be lay judges (Sections 36-41 of the Courts Constitution Act). Lay judges serve for a term of 5 years (Section 42(1) of the Courts Constitution Act).
Ghana	Jury and Advisory Lay Assessors	To be eligible for jury service, a person must be 25-60 years old, a resident of Ghana, and able to read and understand English (Section 205 of the Criminal and Other Offences (Procedure) Act). Exemptions for service are given to people in the usual professions such as legislators, doctors, pharmacists, practicing ministers, practicing schoolmasters, police officers, and those who work in the criminal justice system (Section 207 of the Criminal and Other Offences (Procedure) Act). Anyone convicted of treason, any felony, or of any crime involving dishonesty is prohibited from service unless a pardon has been issued (Section 208 of the Criminal and Other Offences (Procedure) Act).
Greece	Mixed Court	Lay people are randomly chosen from the community (Jackson & Kovalev, 2006). To be eligible to be a lay judge a person must be a Greek citizen, be between the ages of 30 and 70, be in full possession of their political rights, live in the district where the trial is taking place, and have completed a minimum education requirement (Article 379(1)(a) of the Code of Criminal Procedure). Eligibility for the mixed jury in the appeals court is the same except that lay judges must be at least 40 years old and have completed high school (Article 379(1)(b) of the Code of Criminal Procedure). The following people are ineligible to serve as lay judges: elected officials, judges, religious leaders, employees of the court system, and professors (Article 380 of the Code of Criminal Procedure). Convicted criminals who were sentenced to more than 3 months in prison also cannot serve as lay judges (Article 381 of the Code of Criminal Procedure). Additionally, the following people are also prohibited from serving as jurors: the mentally ill, those who are blind or deaf, those who have an unresolved bankruptcy, and those who are banned by a judge from serving (Article 382 of the Code of Criminal Procedure).

Table B.4 Representation and Selection Procedures for Lay Adjudication Systems		
Country	Type of Lay Adjudication	Representation and selection
Guatemala	None	
Guinea-Bissau	None	
Guyana	Jury	To be eligible for jury service a person must be between 18 and 60 years old and able to read and write English (Section 20 of the Criminal Law (Procedure) Act). Jurors must be citizens of Guyana, reside in Guyana, and meet certain income or property qualifications (Section 19, Criminal Law (Procedure) Act). Additionally, they cannot have been convicted of a crime serving more than 6 month sentence (unless pardoned), cannot currently be charged with a crime, and cannot have a disability such as blindness or deafness (Section 20, Criminal Law (Procedure) Act). Those exempt from jury service include, among others, public officials, judges, lawyers, religious ministers, and medical professionals (First Schedule of the Criminal Law (Procedure) Act).
Honduras	None	
Hungary	Mixed Court	Lay judges are chosen by county administrations (Malsch, 2009). Lay judges serve for 4 year terms (Europe e-Justice website). To be eligible to serve as a lay judge a person must be a Hungarian citizen, have the right to vote, be between the ages of 30-70, and have no criminal record (Europe e-Justice website; Hungarian Assessors' Association). Malsch (2009) writes that there are few requirements to be a lay judge. Many are retired people (Malsch, 2009).
India	None	
Indonesia	None	
Ireland	Jury	To be eligible to be a juror a person must be an Irish citizen, over the age of 18, and a registered voter (Article 6 of the Juries Act, 1974). Certain people are disqualified from serving on a jury if they have been convicted of various crimes depending on how long ago they were sentenced and for how long in jail (Article 8 of the Juries Act, 1974). People ineligible to serve as jurors include attorneys, elected officials, judges, prison employees, military members, those with a physical disability that makes it impossible to serve, and those with mental health issues that require hospitalization (Schedule 1 of the Juries Act, 1974). Various other people can request exemptions (Schedule 2 of the Juries Act, 1974). Jurors are drawn from random selection from community (Article 11 of the Juries Act, 1974).
Israel	None	

Country	Type of Lay Adjudication	Representation and selection
Italy	Mixed Court	Eligibility to be a lay judge in the Assize Court includes the following: Italian citizenship, being in possession of full civil and political rights, being of good moral conduct, being between the ages of 30 and 65, and meeting a minimum education requirement (Section 9 of the Law of April 10, 1951, Number 287). Eligibility to be a lay judge in the Assize Court of Appeal includes all of the previous requirements plus a higher education requirement (Article 10 of the Law of April 10, 1951, Number 287). Those excluded from being a lay judge include anyone affiliated with the judiciary, military, police, or any religious ministers (Article 12 of the Law of April 10, 1951, Number 287). In order to be considered for service, eligible citizens must sign up themselves (Ministry of Justice website). After confirming eligibility and ruling out any objections, lay assessor candidates are put in the pool of potential lay assessors. From there, the court randomly selects people from the pool to serve for 3 month terms. These lists are updated every 2 years (Ministry of Justice website).
Jamaica	Jury	To be eligible to be a juror a person must be between the ages of 18 and 70, a Commonwealth citizen, and able to read and write English (Section 2 of the Jury Act; Ministry of Justice brochure). Jurors cannot currently be under investigation for an indictable offense and cannot have served in prison for longer than 6 months (Section 2 of the Jury Act; Ministry of Justice brochure). Those exempt from jury service include, among others, members of parliament, elected officials, judges, lawyers, and ministers (Schedule A of the Jury Act). Prospective jurors are selected from voter lists and taxpayer registration numbers (Ministry of Justice brochure).
Japan	Mixed Court	People excluded from being a lay assessor include: those who have not completed compulsory education (or equivalency), those who have been sentenced to prison, and those with mental or physical disabilities that preclude them from serving (Article 14 of the Act Concerning Participation of Lay Assessors in Criminal Trials). Those who are excluded from lay assessor duties due to their profession include: judges, members of parliament, police, attorneys, military personnel, and court personnel (Article 15 of the Act Concerning Participation of Lay Assessors in Criminal Trials). Lay assessors are randomly selected from lists created from voter rolls (Article 21 of the Act Concerning Participation of Lay Assessors in Criminal Trials; Japanese Supreme Court website).
Kenya	Advisory Lay Assessors (abolished in 2009)	

Table B.4 Representation and Selection Procedures for Lay Adjudication Systems		
Country	Type of Lay Adjudication	Representation and selection
Korea (South Korea)	Jury (Decisions not binding)	To be eligible for jury service a person must be a citizen of South Korea and at least 20 years old (Article 16 of Act on Citizen Participation in Criminal Trials). Those disqualified from jury service include anyone declared incompetent, anyone who is bankrupt and not recovered, anyone who was sentenced to prison without labor in the last 5 years, anyone who has had a suspended sentence to prison without labor in the last 2 years, anyone whose sentence of imprisonment has been suspended and who is still under suspension (Article 17 of the Act on Citizen Participation in Criminal Trials). Those prohibited from serving are members of Parliament, the President, police officers, lawyers, judges, military officers, among others (Article 18 of the Act on Citizen Participation in Criminal Trials). Jurors chosen by random selection (Article 23 of the Act on Citizen Participation in Criminal Trials).
Kosovo	Mixed Court (abolished in 2012)	Requirements for serving as a lay judge changed a couple of times since 2005. As of 2005, eligibility to be a lay judge consisted of being a resident of Kosovo for at least five years, being at least 25 years old, possessing high moral integrity, and not having "engaged in discriminatory practices as defined by law" (Regulation No. 2005/52; ABA Rule of Law Initiative - Kosovo, p. 9). The passage of the law on Courts in 2010 required that lay judges have Kosovar citizenship, live in Kosovo, be at least 25 years old, and be of "high moral reputation" (Article 28(2) of the Law on Courts). Lay judges also cannot have been convicted of a crime (except for minor offenses) (ibid.). They may also have to meet additional criteria set by the Kosovo Judicial Council (ibid.). Lay judges are also required to complete the training required by law to serve as a lay judge (ibid.). Prior to 2010, to become a lay judge an individual can apply themselves or be nominated by local government and judicial authorities (Section 5.1 of the 2005 Regulation No. 2005/52).
Latvia	Mixed Court (abolished in 2009)	To be eligible to be a lay judge an individual must be at least 25 years old and a Latvian citizen (Section 56 of the Law on Judicial Power). Lay judges also cannot have been convicted of any crime or be under investigation for a crime (Section 55 of the Law on Judicial Power). Additionally, anyone who is or has been employed by any kind of state security or intelligence agencies cannot serve as a lay judge (Section 55(5) of the Law on Judicial Power). Lay judges are nominated by local governments and serve for five year terms (Jackson & Kovalev, 2006; Section 64(2) of the Law on Judicial Power). Lay judges serve for 2 weeks per year (Section 65 of the Law on Judicial Power).
Lebanon	None	
Lesotho	None	

Table B.4 Continued		
Country	Type of Lay Adjudication	Representation and selection
Liberia	Jury	To be eligible for jury duty, a person must meet the following criteria: Liberian citizenship, minimum of 21 years old, able to read and speak English, cannot have been convicted of an infamous crime without restoration of civil rights, cannot have a physical or mental impairment that prevents service, and cannot have served on a jury in the last year (Section 18.2 of the Judiciary Law of 1972). People exempt from jury service due to their profession are military members, police officers, fire fighters, lawyers, public officers of any branch of government, doctors, clergy, teachers, and nurses if they are actively employed (Section 18.3 of the Judiciary Law of 1972).
Lithuania	None	
Macedonia	Mixed Court	Article 48(1) of the Law on Courts stipulates that "a person may be elected lay judge if they are a major national of the Republic of Macedonia who has completed at least secondary education, who has an active command of the Macedonian language, who enjoys the reputation for exercising this office, and who is not older than 60." Lay judges are elected for a four year term and can be re-elected (Article 49 of the Law on Courts). Section 42 of the Law on Courts states that "lay judges shall be elected and dismissed by the Judicial Council of the Republic of Macedonia under the conditions and in the procedure stipulated by law."
Malawi	Jury (juries for murder trials are temporarily on hold)	Jury service is open to every person between the ages of 21 and 60 (Section 295 of the Criminal Procedure and Evidence Act). Those excluded from servicing on a jury include the following: elected officials, judges, military officers, those with a mental disability, religious leaders, those engaged in the medical profession, police officers, lawyers, those who have been sentenced to death, those who have been sentenced to prison for more than 6 months when it hasn't been set aside, and those whose sentence of less than 6 months in prison is currently under appeal (Section 296 of the Criminal Procedure and Evidence Act).
Malaysia	None	
Mali	Mixed Court	Article 261 of the Criminal Procedure Code indicates that assessors are nominated from some government representative. To be an assessor you have to be 30 years old, be in full possession of your civil and political rights, be able to read and write in French, and cannot be an assessor on a case where you have some involvement (Article 263 of the Criminal Procedure Code). A person can only be appointed once per year to the Court of Assizes unless there are extra sessions and even then the same person can only be appointed twice (Article 269 of the Criminal Procedure Code).
Mauritius	Jury	To serve as a juror a person must be a citizen of Mauritius, be registered voter, not be over the age of 70, and be resident of Mauritius (Section 30(2) of Judicial and Legal Provisions Act). Anyone who has been convicted of a crime and sentenced to prison or is on bail awaiting trial cannot serve on a jury (Section 30(3) of Judicial and Legal Provisions Act). A judge can also excuse someone from serving on a jury if they have a physical or mental disability that would interfere with jury service, if they cannot understand English sufficiently, or (for women) if there are medical or other reasons the judge deems reasonable (Section 30(4) of Judicial and Legal Provisions Act).

Table B.4 Continued		
Country	Type of Lay Adjudication	Representation and Selection
Mexico	None (juries exist for press offenses only)	To be eligible to serve on a jury, an individual must have Mexican citizenship, be in full possession of their rights, be able to read and write, and reside for a minimum of one year in the jurisdiction where the trial is taking place (Article 59 of the Ley Orgánica del Poder Judicial de la Federación). Those ineligible to serve on a jury include public officials, religious leaders, those with criminal convictions, and those with disabilities such as blindness or deafness that would interfere with jury service (Article 60 of the Ley Orgánica del Poder Judicial de la Federación).
Moldova	None	
Mongolia	Advisory Lay Assessors	Chagdaa (2011) says that the laws are "vague on citizens' representatives election criteria" (p. 40). Chagdaa (2011) describes the selection process as follows. First the names of potential citizens' representatives are chosen from voter rolls. The court administrative officer contacts people from the list to see if they are able to serve. The official then chooses the citizens' representatives from among those who have no impediments to service. This selection process is entirely at the discretion of the court officer. There is no time limit to service.
Montenegro	Mixed Court	Lay judges are elected by the Judicial Council. The Judicial Council puts out a notice for lay judge applications, interviews those who have applied and meet the qualifications, and selects the finalists for lay judge from among the finalists (Article 36 of the Law on the Judicial Council). To be eligible to be a lay judge a person must be 30 years old, have full possession of all rights, and be a national of Montenegro (Article 70 of the Law on Courts). Lay judges cannot be a judge, attorney, elected official, or a member of a political party (Article 70 of the Law on Courts). Lay judges also cannot have been sentenced to prison (Article 70 of the Law on Courts). Lay judges cannot be older than 70 years of age (Article 74 of the Law on Courts).
Namibia	Advisory Lay Assessors	Lay assessors are not randomly selected. Rather, the judge chooses assessors because of some skill that they possess. The definition of assessor in the Criminal Procedure Act is "in relation to a criminal trial...a person who, in the opinion of the judge who presides at the trial, has experience in the administration of justice or skill in any matter that may be considered at the trial."
Nepal	None	
Netherlands	None	
New Zealand	Jury	To be eligible for jury service a person must be a registered voter (Section 6 of the Juries Act 1981). Those ineligible for jury service include anyone who has been sentenced to prison for more than 3 years or anyone sentenced to more than 3 months in prison in the past 5 years (Section 7 of the Juries Act 1981). Section 8 of the Juries Act 1981 states that the following people cannot serve as jurors: elected officials, judges, lawyers, police officers, and people with intellectual disabilities. According to Section 15(2) of the Juries Act 1981 a people can request exemption from service if they over 65, have served as a juror in past 2 years, or if jury service is incompatible with their religious beliefs.

Table B.4 Continued		
Country	Type of Lay Adjudication	Representation and selection
Nicaragua	Jury	To be eligible for jury service a person must be a citizen of Nicaragua, be at least 25 years old, be able to read and write, be in full possession of political and civil rights, and be a resident of the district in which the trial takes place (Article 43 of the Code of Criminal Procedure). Jurors also cannot have any physical or mental disability that would interfere with service and cannot have served as a juror in the last year (Article 43 of the Code of Criminal Procedure). General prohibitions for service exist for people who work in legal field (attorneys, judges, police), members of the military, and anyone who is currently charged with a crime or convicted of one without going through rehabilitation (Article 44 of the Code of Criminal Procedure). Exemptions exist for people who are over 70, pregnant or nursing, or if jury service would cause work difficulties (Article 46 of the Code of Criminal Procedure).
Norway	Jury and Mixed Court	Potential jurors are chosen by appointment by local councils (Jackson & Kovalev, 2006; Chapter 4, Section 66 of the Law on Courts). Eligibility for jury service and lay judge service are the same. Individuals must be between ages of 21 and 70, must be eligible to vote, cannot be involved in a bankruptcy or public debt proceeding, must be a resident of the municipality, and must possess Norwegian citizenship or citizenship from another Nordic country, and must have been a resident of Norway the past 3 years (Chapter 4, Section 70 of the Law on Courts). Those ineligible to serve because of their profession include members of parliament, judges, court personnel, lawyers, and anyone affiliated with the justice system (prosecutors, police, etc.) (Chapter 4, Section 71 of the Law on Courts). Those who have been sentenced to prison for various periods of time are also prohibited from serving (Chapter 4, Section 71 of the Law on Courts).
Norway	Jury and Mixed Court	Eligibility to be a lay judge is the same as for jury service. Lay judges serve for 4 years (Norwegian Courts website; Malsch, 2009). Lay judges are selected from lists of citizens created by local governments and political parties (Malsch, 2009).
Panama	Jury	To be eligible to serve on a jury a person must have lived in Panama for more than 5 years, must be between the ages of 25 and 60, and must reside in the area where the trial is taking place (Article 434 of the Code of Criminal Procedure). Jurors must also be of recognized integrity, be able to read and write Spanish, be in full possession of their political and civil rights, cannot have been convicted of any criminal offense, and must have completed basic education training (Article 435 of the Code of Criminal Procedure). Those prohibited from jury service include elected officials, lawyers, judges, religious leaders, medical workers, public utility employees, and people who have mental or physical disability that would interfere with jury service (Article 436 of the Code of Criminal Procedure). Prospective jurors can be excused from service if they were a juror less than 6 months ago, if they have serious health issue, or care for someone with a health problem (Article 441 of the Code of Criminal Procedure).
Paraguay	None	
Peru	None	
Philippines	None	

Table B.4 Continued		
Country	Type of Lay Adjudication	Representation and selection
Poland	Mixed Court	To be eligible to be a lay judge a person must be between the ages of 30 and 70, be a Polish citizen, be in full possession of all rights, be employed or has lived a current residence for at least 1 year, not have any health issue that would preclude service, and have completed secondary education (Article 158 of the Law on Common Courts). People excluded from lay judge service are court employees, police personnel, attorneys, soldiers, prison employees, and clergy (Article 159 of the Law on Common Courts). Lay judges are elected by municipal council (Article 160 of the Law on Common Courts). Lay judges serve for 4 year terms (Article 165 of the Law on Common Courts; Parlak, 2006). Lay judges are nominated by court presidents, organizations, associations, unions, and by petition signed by at least 25 citizens (Parlak, 2006).
Portugal	Mixed Court	To be eligible for service a person must be a Portuguese citizen, be a registered voter, be under the age of 65, have completed compulsory education, and have full possession of all political and civil rights (Chapter 2, Article 3 of the Jury System in Criminal Procedure Law). Lay judges cannot have any mental or physical illness that would prevent serving and cannot have been arrested or detained for a criminal offense (Chapter 2, Article 3 of the Jury System in Criminal Procedure Law). Those ineligible to serve as lay decision-makers include judges, elected officials, police officers, and anyone employed in the justice system (Chapter 2, Article 4 of the Jury System in Criminal Procedure Law). Lay people are chosen randomly from the community (Jackson & Kovalev, 2006). Voter rolls serve as the basis of the selection process. The process is outlined in Articles 8 to 13 of the Jury System in Criminal Procedure Law).
Romania	None	
Senegal	None (Mixed Court abolished in 2008)	
Serbia	Mixed Court	Article 71 of the Law on Judges says that "a Yugoslav citizen, who has reached twenty six years of age and is worthy to be a lay judge may be appointed a lay judge. In appointing, attention shall be given to the sex, age, vocation and social status, knowledge, expertise and affiliation for specific legal matters. A lay judge shall be appointed to a five year period and may be reelected." Article 72 of the Law on Judges states that "the High Judicial Council shall appoint a lay judge at the proposal of the Minister in charge of judiciary. Before making a proposal, the Minister shall obtain the opinion from the court to which the lay judge is being appointed."
Sierra Leone	Jury and Advisory Lay Assessors	To be eligible for jury service a person must be male, between the ages of 30 and 60 years old, a resident of Sierra Leone, and possess English literacy (Section 151 of the Criminal Procedures Act). Exemptions for jury service exist for legislators, judges, anyone who works in the legal system or courts, medical practitioners, priests, and pharmacists (Section 151(2) of the Criminal Procedures Act). People who have been convicted of treason, any felony, or a crime of dishonesty (without a pardon) are disqualified for jury service (Section 151(3) of the Criminal Procedures Act).

Table B.4 Continued		
Country	Type of Lay Adjudication	Representation and selection
Slovak Republic	Mixed Court	Lay judges are elected by municipal councils and serve for a four year term (Section 140 and 141 of The Law on Judges and Lay Judges and Amending Certain Laws). Lay judges must be 30 years old, medically and legally fit to serve, have personal integrity and moral character, and be citizens of Slovakia (Section 139 of The Law on Judges and Lay Judges and Amending Certain Laws).
Slovenia	Mixed Court	Lay judges are nominated by representative bodies of municipalities (Jackson & Kovalev, 2006; Article 45 of Courts Act). Political parties may not directly nominate lay judges (Article 45 of the Courts Act). Lay judges must be a Slovenian citizen, at least 30 years old, physically and mentally fit to serve, fluent in the Slovenian language, and cannot have been convicted of an offense that is prosecuted ex officio (Article 42 of the Courts Act). Lay judges serve for 5 years and can be reappointed (Article 43 of the Courts Act).
Solomon Islands	Advisory Lay Assessors	To be eligible to be a lay assessor a person must be between 21 and 60 years old, a resident of the Solomon Islands, and able to read and write in English (Section 242 of the Criminal Procedure Code). Those exempt from service include Members of Parliament, attorneys, doctors, clergy, police officers, and military members (Section 243 of the Criminal Procedure Code). Those disqualified from jury service include those who make less than \$100 per year, those with mental or physical disability that makes serving impossible, and those who have been convicted of treason, any felony, or infamous crime who have not been pardoned (Section 244 of the Criminal Procedure Code).
South Africa	Advisory Lay Assessors	In the High Court assessors are usually retired magistrates or advocates (DOJ&CD website). In Magistrate's Court, assessors are chosen for their "skill and experience in the matter to which the action relates" (Chapter 34 of the Magistrate's Court Act). In deciding whether to bring in assessors, the magistrate is to consider the following criteria: "(i) the cultural and social environment from which the accused originates; (ii) the educational background of the accused; (iii) the nature and the seriousness of the offence of which the accused stands accused or has been convicted; (iv) the extent or probable extent of the punishment to which the accused will be exposed upon conviction, or is exposed, as the case may be; (v) any other matter or circumstance which he may deem to be indicative of the desirability of summoning an assessor or assessors" (Chapter 93(2)(a) of the Magistrate's Court Act).

Table B.4 Continued		
Country	Type of Lay Adjudication	Representation and Selection
Spain	Jury	Jurors are selected randomly from voter rolls (Jackson & Kovalev, 2006; Malsch, 2009). In order to be eligible to serve on a jury a person must have reached the age of majority, possess Spanish citizenship, be in full possession of all political rights, be able to read and write Spanish, live in the municipality in which the trial is taking place, and not have any physical or mental disability that interferes with serving (Article 8 of the Organic Law of the Jury Court; Pascual, 1995). Those prohibited from serving as a juror include those convicted of intentional crimes that have not been rehabilitated, those who are under suspension from their jobs or in public office due to a criminal proceeding, and those who are currently on trial or under arrest for a criminal offense (Article 9 of the Organic Law of the Jury Court; Pascual, 1995). People considered "unfit" for jury service include the king or any other royal, elected officials, judges, lawyers, military personnel, corrections officers, among others (Article 10 of the Organic Law of the Jury Court; Pascual, 1995). Those eligible to be excused from jury service include those over 65 years old, those who have been a juror in the past 4 years, those whose family responsibilities prevent them from serving, citizens living abroad, those whose work responsibilities make them unable to serve, professional soldiers in active duty, and those with any other reason why serving would not be possible (Article 12 of the Organic Law of the Jury Court).
Sri Lanka	Jury	In order to be eligible to serve as a juror a person must be 21 years old, a resident of Sri Lanka, have attained certain level of education (passed General Certificate of Education or equivalent), and have an income of at least 300 rupees per month (Section 194 of the Administration of Justice Law). People who cannot serve as jurors include the president, members of the National State Assembly, police officers, judges, attorneys, priests, people who have been imprisoned for more than a month, and those with mental or physical disability that preclude them from serving as jurors (Section 195 of the Administration of Justice Act). People who serve only if they want to are military personnel, those over 60 years old, doctors, and pharmacists (Section 196 of the Administration of Justice Act). Exemption from jury service is permissible if a person has served on a jury in the past 12 months (247(1) Code of Criminal Procedure).
Sweden	Jury for Press Offenses Only	Chapter 12, Article 4 of the Freedom of the Press Act states that "jurors are appointed, by election, for a period of four calendar years. Jurors shall be elected by the county council of the county administrative district or, where the county administrative district includes a municipality which does not come under the county council, by the county council and the council of the municipality concerned." To be eligible for jury service a person must be a Swedish citizen, of age of majority, a resident of the county where the trial is taking place, and "be known for their soundness of judgment, independence, and fairmindedness" (Chapter 12, Article 5 of Freedom of Press Act).
Sweden	Mixed Court	Lay judges are elected (Chapter 4, Section 6 of the Code of Judicial Procedure). Any adult who is a Swedish citizen living in the municipality of the court can be a lay judge (Chapter 4, Section 6 of the Code of Judicial Procedure). Anyone with formal legal training (e.g., judges, lawyers, police officers) is prohibited from being a lay judge (Chapter 4, Section 6 of the Code of Judicial Procedure). Lay judges are appointed for terms of 4 years (Chapter 4, Section 8 of the Code of Judicial Procedure; Malsch, 2009). Municipal Councils and County Council Assemblies elect lay judges (Chapter 4, Section 7 of the Code of Judicial Procedure; Malsch, 2009; Sveriges Domstoler website).

Table B.4 Continued		
Country	Type of Lay Adjudication	Representation and selection
Taiwan	None	
Trinidad	Jury	To be eligible to serve a person must be between 18 and 65 years old, a resident of Trinidad and Tobago, born in Trinidad or Tobago or lived there for 2 years, able to read and write in English, and able to meet an income or property ownership requirement (income of at least \$3,000, or own property of at least \$720, or live in home assessed at \$600 or more) (Section 4 of the Jury Act). Those who are disqualified for jury service are those who have been convicted of an arrestable offense, those who are mentally or physically disabled, and those who have gone bankrupt (Section 5 of the Jury Act). Exemptions for service are given for elected officials, judges, lawyers, police, military members, and teachers (Section 7 of the Jury Act). Jurors are selected randomly voter rolls (Section 10 of the Jury Act).
Turkey	None	
Ukraine	Mixed Court (Constitution provides for jury; not implemented)	Article 59 of the Law On the Judicial System and Status of Judges states that to be a people's assessor a person must be a Ukrainian citizen, between the ages of 30 and 65, and permanently live in the territory of the court. A person cannot be a people's assessor if they have limited legal capacity, have a mental or physical disability that would interfere with service, have an outstanding criminal conviction, or have no understanding of the official language (Article 59 of the Law On the Judicial System and Status of Judges). Additionally, lawyers, public officials, military members, and judicial officers cannot serve as people's assessors (Article 59 of the Law On the Judicial System and Status of Judges). List of assessors will be made of eligible citizens of whom have given their consent to be assessors (Article 58(2) of the Law On the Judicial System and Status of Judges). Local council approves the list of assessors who serve on four year terms (Article 58(2) of the Law On the Judicial System and Status of Judges). Assessors serve not more than one month per year (Article 61(1) of the Law On the Judicial System and Status of Judges).
United Kingdom (England)	Jury	Jurors are drawn randomly from voter rolls (Section 3 of the Juries Act of 1974). To be eligible to serve as a juror a person must be a registered voter, between the ages of 18 and 70 years, and resident of the UK for at least 5 years since age of 13 (Section 1 of the Juries Act of 1974). Those ineligible to serve as jurors include judges, those involved in the administration of justice, clergy, and those suffering from a mental disorder (Schedule 1, Part 1 of the Juries Act of 1974). People disqualified for jury service include those who have ever been sentenced to life in prison, those who have been sentenced to prison for 5 years or more, those who have served a prison sentence of any length (or had a suspended sentence) in the last 10 years, and those who had a probation order imposed upon them in the last 5 years (Part II of the Juries Act of 1974). People who can be excused from jury service include those over 65 years old, members of Parliament, public officials, medical professionals, those whose religion prohibits them from serving as a juror, and military members (Part 3 of the Juries Act of 1974).

Table B.4 Continued		
Country	Type of Lay Adjudication	Representation and selection
United States	Jury	At the Federal level, jurors are selected randomly from voter rolls and other sources (28 USC, Section 1683). To be eligible for jury service at the Federal level a person must be at least 18 years old, a citizen of the United States, live in district for at least one year prior to service, have proficiency in the English language (28 USC, Section 1865). Additionally, those ineligible to serve on a jury include anyone who has a mental or physical illness that would prevent service, and anyone convicted of crime and sentenced to more than 1 year in prison without restoration of civil rights (28 USC, Section 1865). Exemptions for service are given for anyone in active military, police and fire workers, and public officers in any branch of government (28 USC, Section 1863(6)). At the state level, selection methods, eligibility, and exemptions vary. See the State Court Organization 2004 Charts 39-41 for detailed information on the differences between states. For example, one difference is that while most states set the minimum eligibility for jury duty at 18, in Mississippi a person has to be 21 to serve on a jury (State Court Organization).
Uruguay	None (Constitution allows for juries; not implemented)	
Zambia	None	Those eligible to serve as an assessor are all males between the ages of 21 and 60 (Section 263 of the Criminal Procedure Code). People exempt from serving include all government officers, Members of the National Assembly, religious leaders, doctors, dentists, lawyers, military members, and those mentally or physically disabled such that they cannot serve (Section 264 of the Criminal Procedure Code).

Table B.5 Additional Information about Each Democracy		
Country	Type of Lay Adjudication	Additional Information
Albania	None	
Argentina	None (Only Córdoba province has mixed court).	Argentina has 24 provinces. Hendler (2008) addresses the various unsuccessful proposals that have taken place in Argentina to adopt jury trials.
Australia	Jury	All criminal trials take place at state or territory courts (Chesterman, 1999). Providing a general overview of juries in Australia is difficult because each state and territory has its own jury rules. The Appendix includes information on the sources of law for the six states and two territories.
Austria	Jury	Jurors called <i>Geschworene</i> , meaning "the sworn" (Taylor, 2011).
Austria	Mixed Court	Lay judges are called <i>schöffen</i> or <i>schöffengericht</i> .
Belgium	Jury	Jurors are called <i>gezworene</i> in Flemish (Jackson & Kovalev, 2006).
Benin	Mixed Court	In 2012, Benin adopted a new Criminal Procedure Code. The lay judge system remains largely the same as before but any differences are indicated in the chart.
Bolivia	Mixed Court	Lay participants are called <i>jueces ciudadanos</i> or citizens judges. According to Hendler (2008), citizens judges are the first form of lay participation in the courts for Bolivians.
Botswana	Advisory Lay Assessors	Section 7 of the High Court Act states that in a civil or criminal case, the judge may call for two or more assessors to give an advisory opinion. A judge alone makes the decision but the assessors' opinion is noted in court records (Vidmar 2002).
Brazil	Jury (jurors do not deliberate)	A unique aspect of the Brazil jury is that jurors do not deliberate (Gomes & Zomer, 2001). Vote is by secret ballot (Gomes & Zomer, 2001).
Bulgaria	Mixed Court	Bulgarian lay judges are called <i>Съдебни заседатели</i> in Bulgarian.
Burundi	None	Subsection 2, Paragraph 1, Article 18 of the Code of the Organization and Jurisdiction of the Judiciary states that Courts of First Instance are comprised of a single judge.
Canada	Jury	Each province and territory has laws governing jury trials. For simplicity, the jury information presented here is for juries at the federal level. Jury laws in the various provinces and territories are very similar but the possibility of differences remains. For instance, there is variation across the provinces in whether majority verdicts are accepted, the types of crimes eligible for trial by jury, and the types of exemptions and prohibitions given for jury service.
Cape Verde	None	Criminal trials in courts of first instance are comprised of a single judge or three judges (<i>tribunal colectivo</i>) (Articles 46 and 73 of the law on the Organization, Jurisdiction, and Operation of the Courts). There is no mention of juries at all in the laws relating to the judiciary or criminal procedure.
Chile	None	Neither the Code of Criminal Procedure nor the Organic Code of Courts mention lay participation in the courts. Antonio Bascuñán, professor of criminal law, confirmed that all judges are professionals.

Table B.5 Continued		
Country	Type of Lay Adjudication	Additional Information
Colombia	None (Constitution allows for juries; not implemented)	Article 116 of the Constitution that was amended in 2009 provides for the possibility of juries when they would have been previously unconstitutional. Juries have not been implemented by law in Colombia (private correspondence with Yecid Echeverry and Pablo Sanabria). Here is the roughly translated text from the Constitution - Individuals may be temporarily invested with the function of administering justice in the condition of juries in criminal cases, conciliators or arbitrators authorized by the parties to utter failure at law or in equity, in the manner prescribed by law.
Comoros	Mixed Court	Lay judges are called <i>juré</i> , the French word for juror.
Costa Rica	None	Multiple sources confirm that criminal trials are decided only by professional judges.
Croatia	Mixed Court	Lay judges are called <i>porotnici</i> in Croatian.
Cyprus	None	The Supreme Court of Cyprus website says that Assize Courts handle criminal cases involving more than five years in prison and panels are comprised of professional judges.
Czech Republic	Mixed Court	Lay judges are called <i>přisedicích</i> in Czech.
Denmark	Mixed Court (Jury abolished in 2008)	Denmark also has a second type of mixed court system for crimes in which the defendant pleads not guilty and the penalty for the crime is less than 4 years in prison (Vejledning til Domsmænd og Nævninger document). The composition of panels in the District Court (Byret) is two lay judges and one professional judge. The Appeals court also has a mixed court system comprised of three lay judges and three professional judges (Malsch 2009; Vejledning til Domsmænd og Nævninger document). Decisions are made by simple majority (Vejledning til Domsmænd og Nævninger document). Jurors are called <i>naevning</i> in Danish and lay judge is called <i>lægdommer</i> .
Dominican Republic	None	The Code of Criminal Procedure only mentions professional judges. Article 332 of the Code of Criminal Procedure discusses deliberations and says that judges retire to render a verdict.
East Timor	None	Article 278 of the Code of Criminal Procedure details the deliberations process in criminal trials. In that article it says that the judges who make up the tribunal shall deliberate and reach a decision by majority vote. Section 121 of the Constitution says that "jurisdiction lies exclusively with the judges installed in accordance with the law." There is no mention of lay participation in the courts in either document.
El Salvador	Jury	
Estonia	Mixed Court	
Finland	Mixed Court	In 1993, the law relating to lay judges was changed so that the lay people could outvote the professional judge. Previously, all 7 laypeople had only one vote. Since 1993, each of the 3 lay people has their own vote (Malsch, 2009). Lay judge in Finnish is <i>lautamiehen</i> .
France	Mixed Court	France still calls lay judges jurors (or <i>jure</i> or <i>juries</i>) but the nature of the institution is that of a mixed court where professional judges and lay people decide cases together (Jackson & Kovalev, 2006).

Table B.5 Continued		
Country	Type of Lay Adjudication	Additional Information
Georgia	None (law provides for jury trials; not passed until 2009 and not implemented until 2011 in one region).	The revised Criminal Procedure Code, which provided for trial by jury, was not signed in law until October 2009 (Kovalev, 2010). The first jury trial took place in November 2011 (Georgia Supreme Court website). Kovalev (2010) also reports that for the first few years jury trials will only take place in one jurisdiction (Tbilisi City Court. Information on the new jury system in Georgia is available at http://www.msajuli.ge/index.php?m=779 .
Germany	Mixed Court	Lay judges in Germany are called <i>schöffen</i> .
Ghana	Jury and Advisory Lay Assessors	Section 14(2) of the Courts Act states that "The High Court shall be constituted — (a) by a single Justice of the Court; or (b) by a Chairman of a Regional Tribunal; or (c) by a single Justice of the Court and jury; or (d) by a single Justice of the Court with assessors; or (e) by three Justices of the Court for the trial of the offence of high treason or treason as required by Article 19 of the Constitution." Although the law also provides for the use of lay assessors, Vidmar (2002) says the assessor system hasn't been used in decades. Even when assessors are used, they are there merely in an advisory capacity (Section 264 of the Criminal and Other Offences (Procedure) Act).
Greece	Mixed Court	The mixed court in Greek is called <i>Μικτό Ορκωτό</i> . Jurors are called <i>ένορκοι</i> . In Greece, lay judges are called jurors despite the form of lay adjudication resembling a mixed court system.
Guatemala	None	The Code of Criminal Procedure states that "immediately after the debate closed, the judges who were involved in the trial will deliberate in secret session" (Article 383). Additionally, Article 387 of the Code of Criminal Procedure states that voting is done by majority vote and the judge who disagrees must give reasons for doing so. There is no mention of any other decision-maker other than professional judges in the document. In the Guatemalan Constitution one of the qualifications for being a judge or magistrate is having a law degree (Article 207). There is no mention of any lay decision-making in the Constitution, Code of Criminal Procedure, Law on Judicial Organization, or any government website.
Guinea-Bissau	None	There is no mention of lay adjudication in the Constitution or Code of Criminal Procedure. Article 252 of the Code of Criminal Procedure states that the verdict is to be made by all the judges who make up the court. Courts of First Instance are comprised of a single judge or panel of three judges (Articles 47 and 48 of the Organic Law of Courts). Panels of three judges are used when the crime is punishable by more than 5 years in prison (Article 50 of the Organic Law of Courts). Guinea-Bissau introduced assessors in small claims matters but it does not have criminal jurisdiction (Article 9 of the Organic Law of the Court Sector).
Guyana	Jury	

Table B.5 Continued		
Country	Type of Lay Adjudication	Additional Information
Honduras	None	Article 57 of the Code of Criminal Procedure states that trial courts are to be composed of four judges, three of whom decide the case. Articles 335 and 336 of the Criminal Procedure Code mention only professional judges (El Tribunal de Sentencia) as being involved in deliberations. There is no mention of juries or any other form of lay participation in the Constitution or Criminal Procedure Code. Honduras briefly had trial by jury from 1899 to 1906 (Lagos, Lanza, and Palacios, Section 2.1.2.)
Hungary	Mixed Court	Lay judges are called <i>ülnökböl</i> in Hungarian.
India	None	India abolished juries in 1960 (Leib, 2008).
Indonesia	None	In discussing the criminal trial procedure, the ABA Access to Justice report (2012) states that professional judges render verdicts.
Ireland	Jury	
Israel	None	Criminal cases are tried before the Magistrate's Court and the District Court. In both courts, cases are tried by a single judge or a panel of judges (Israel Ministry of Foreign Affairs website).
Italy	Mixed Court	Lay assessors are called <i>giudici popolari</i> (popular judges) in Italian.
Jamaica	Jury	Jamaica also has a civil jury and jurors sit on coroner's inquest trials (Ministry of Justice brochure).
Japan	Mixed Court	Mixed court system is called <i>Saiban-in Seido</i> .
Kenya	Advisory Lay Assessors (abolished in 2009)	Kenya used to have advisory lay assessors but this was abolished in 2009. Prior to abolition, three lay assessors could be appointed by a judge to assist in murder and treason cases. Decisions by the assessors were not binding. This system was phased out in 2009. In the Criminal Procedure Code (2010), the sections concerning assessors (Articles 262-273) have been repealed. This revised Criminal Procedure Code makes no reference to assessors, only judges. Section 322(1) of Code of Criminal Procedure states that "when the case on both sides is closed, the judge shall then give judgment." Kenya abolished the jury upon independence in 1963 (Vidmar, 2002). There is no mention of lay participation in the courts in the constitution.
Korea (South Korea)	Jury (Decisions not binding)	South Korea introduced a jury system effective January 1, 2008. Initial decisions are not binding. Prior to 2008 there were only judge trials. When the jury system was first implemented it was only for a five year trial period. The courts recently indicated that the jury system is being made a permanent fixture of the South Korean legal system (JoongAng Daily article).
Kosovo	Mixed Court (abolished in 2012)	Kosovo abolished the use of lay judges in 2012 with the adoption of a new Criminal Procedure Code (Smibert, 2013, p. 15). Article 25 of the Criminal Procedure Code (2012) states that criminal cases are decided by either a single professional judge or panel of professional judges.
Latvia	Mixed Court (abolished in 2009)	All references to the Law on Judicial Power are from the December 12, 2008 version of the law. In 2009, Latvia abolished lay judges (June 6, 2009 Law Amending the Law on Judicial Power). Lay judge in Latvian is <i>tiesas piesēdētāju</i> .

Table B.5 Continued		
Country	Type of Lay Adjudication	Additional Information
Lebanon	None	Criminal trials are decided by professional judges, either singly or as a panel (Section 233 of the Criminal Procedure Code; private correspondence with Dr. Talal Jaber). The Ministry of Justice website says that a single judge decides first instance criminal cases.
Lesotho	None	The Ministry of Justice Human Rights and Correctional Service says that there is no jury and only judges decide criminal cases.
Liberia	Jury	
Lithuania	None	Article 36 of the law Amending the Law on Courts (1994) states that cases before the District and Regional Courts are heard by one or three judges.
Macedonia	Mixed Court	Lay judge in Macedonian is <i>судиите поротници</i> .
Malawi	Jury (juries for murder trials are temporarily on hold)	Malawi had juries for homicide and other serious cases but suspended them in 2009 (The Zimbabwean; R v. Mziya; State Department). Jury trials still exist for treason cases.
Malaysia	None	Malaysia abolished jury trials and trials with assessors in 1995 (Vidmar, 2002). The portion of the Criminal Procedure Code that dealt with juries and lay assessors (Chapters 21, 22, and 23) were repealed. Prior to 1995, juries existed in criminal cases involving murder, drug trafficking, and crimes punishable for death (Nithi, 2010).
Mali	Mixed Court	In Mali, lay judges are called <i>assesseurs</i> .
Mauritius	Jury	
Mexico	None (juries exist for press offenses only)	For all practical purposes, Mexico does not have trial by jury. Fukurai, Knudtson, and Lopez (2009) write that the Mexican jury "has virtually disappeared" (p. 5). Leib (2008) says "there are rare jury trials in Mexico for press offenses against public peace and crimes against the "domestic or foreign safety of the nation" (p. 631).
Moldova	None	Article 344 of the Code of Criminal Procedure says criminal trials are to be heard by a single judge or panel of judges. Article 339 of the Code of Criminal Procedure outlines the deliberation process. In that section, there is only mention of professional judges.
Mongolia	Advisory Lay Assessors	Lay assessors in Mongolia are called citizens' representatives. As of 2011, draft legislation entitled Legal Status of Citizens' Representatives was introduced that would strengthen the role of citizens' representatives by my clarifying criteria for eligibility, procedures for selection, and the role of lay people in criminal trials. One change in particular would appear to make the lay assessors' input binding. Article 16.3 of the draft law on the Legal Status of Citizens' Representatives states that "in the deliberation room, the decision shall be made by the opinion of the majority of the judges and citizens' representatives." As of May 2012, the President of Mongolia issued a statement saying the Parliament is considering this law (President of Mongolia website).
Montenegro	Mixed Court	Lay judges are called <i>sudije-porotnika</i> in Montenegro.

Table B.5 Continued		
Country	Type of Lay Adjudication	Additional Information
Namibia	Advisory Lay Assessors	Because assessors are chosen for some relevant skill, it is questionable as to whether this system qualifies as lay participation. Assessors not chosen randomly. Additionally, Vidmar (2002) says that "in practice, there is very little public participation in the administration of criminal justice" (p. 394).
Nepal	None	The constitution makes no reference to anything but professional judges. Various government websites mention only professional judges (e.g., Office of the Attorney General of Nepal and Supreme Court of Nepal). The Supreme Court of Nepal's website discusses the composition of District Courts (criminal courts) and says that to be appointed a judge a person must have been practicing law for eight years or have been an officer of the Judicial Service for three years. The Administration of Justice Act (1991) establishes the courts. The law makes no provision for lay participation in the courts.
Netherlands	None	The Constitution of the Netherlands specifically states in Article 113(1) that the trial of offences shall also be the responsibility of the judiciary." The jury only existed in the Netherlands under French occupation and lasted only two years (1811-1813) (Malsch, 2009).
New Zealand	Jury	Detailed information about jury service is available from the New Zealand Ministry of Justice at: http://www.justice.govt.nz/services/access-to-justice/jury-service-1 .
Nicaragua	Jury	Juror in Spanish is <i>jurado</i> .
Norway	Jury and Mixed Court	Jury is called <i>lagrette</i> in Norway. Lay judges are called <i>lekdommer</i> or <i>meddommer</i> .
Norway	Jury and Mixed Court	
Panama	Jury	
Paraguay	None	Trial courts are comprised of a single judge or a panel of three judges (Article 41 of the Code of Criminal Procedure; Supreme Court website).
Peru	None	José Luis Sardón, Dean of the Law School of Universidad Peruana de Ciencias Aplicadas (UPC), confirmed that Peru does not have a jury system or mixed court system. Peru does have justices of the peace (<i>juez de la paz</i>) to try minor offences. Trials for crimes involving sentences of more than six years in prison are decided by three professional judges (Article 28(1) of the Code of Criminal Procedure).
Philippines	None	Section 7(2) of the 1987 Constitution states that "the Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar." The Filipino Revised Rules of Criminal Procedure makes no mention of lay assessors or lay judges. The ABA Access to Justice initiative states that professional judges decide criminal cases. Additionally, there is an organization called the Philippine Jury Initiative (http://www.philippinejury.com/) that seeks to bring the jury to the Philippines to fight corruption in the judiciary.
Poland	Mixed Court	Lay judges are called <i>lawnik</i> or <i>lawników</i> in Polish.
Portugal	Mixed Court	Lay decision-makers are still called jurors (<i>jurado</i> or <i>júri</i>) but the system is a mixed court system now (Jackson & Kovalev, 2006). The present law concerning the jury went into effect in 1987.

Table B.5 Continued		
Country	Type of Lay Adjudication	Additional Information
Romania	None	Romania had people's assessors under Communist rule (Malsch, 2009). Parliament abolished lay assessors in 1991 with a law that states only judges are to try cases (Law On Amending Some Provisions on Judicial Activities). Romania Ministry of Justice website confirms only professional judges decide cases.
Senegal	None (Mixed Court abolished in 2008)	Senegal abolished its mixed court system in 2008 (Loi No. 2008-50 du 23 Septembre 2008 Modifiant le Code de Procédure Pénale; news articles). When Senegal had a mixed court system, it was comprised of three professional judges and four lay people (Articles 225 and 245 of the Loi de Base No. 65-61 du 21 Juillet 1965, Code de Procédure Pénale). To be eligible to serve as a lay judge, individuals had to be citizens of Senegal, be over the age of 30, be able to read and write French, be able to hear, and be in full possession of civil and political rights (Article 240 of the Loi de Base No. 65-61 du 21 Juillet 1965, Code de Procédure Pénale). Those ineligible to serve were those who had been convicted of a crime, government officials who had been removed from office, those currently under bankruptcy, and the mentally ill (Article 241 of the Loi de Base No. 65-61 du 21 Juillet 1965, Code de Procédure Pénale). Also, government officials, the police, military, and judges were among those prohibited from serving (Article 242 of the Loi de Base No. 65-61 du 21 Juillet 1965, Code de Procédure Pénale). Those over the age of 70, religious ministers, and those who had served as a juror in the past year are exempt (Article 243 of the Loi de Base No. 65-61 du 21 Juillet 1965, Code de Procédure Pénale). In deliberations, a vote of five out of seven was needed for a verdict (Article 336 of the Loi de Base No. 65-61 du 21 Juillet 1965, Code de Procédure Pénale).
Serbia	Mixed Court	Lay judges are called <i>protnici</i> in Serbian.
Sierra Leone	Jury and Advisory Lay Assessors	Sierra Leone also has an advisory lay assessor system. Assessor trials are usually comprised of no less than 3 people (Section 183 of the Criminal Procedures Act). Assessors orally state their opinion but it is purely advisory (Section 205 of the Criminal Procedures Act).
Slovak Republic	Mixed Court	Lay judges in Slovakia are called <i>prisediaci</i> .
Slovenia	Mixed Court	Lay judge in Slovenian is <i>sodnika porotnika</i> .
Solomon Islands	Advisory Lay Assessors	
South Africa	Advisory Lay Assessors	
Spain	Jury	Jury in Spanish is <i>jurado</i> .
Sri Lanka	Jury	
Sweden	Jury for Press Offenses Only	Jury in Swedish is <i>jury</i> .
Sweden	Mixed Court	Lay judges in Sweden are called <i>Nämndeman</i> . Lay judges decide guilt and sentencing along with the professional judges (Malsch, 2009).

Table B.5 Continued		
Country	Type of Lay Adjudication	Additional Information
Taiwan	None	Although Taiwan does not have lay participation in their legal system, the government is in the process of considering a quasi-jury system called the "public trial observation system (Judicial Yuan statement). The system would involve lay decision-making where the lay people would deliberate but their opinion on guilt would be merely advisory. The judge alone makes the final decision on verdict (Judicial Yuan statement; Taiwan Today article; Cohen and Chen 2011). The proposal currently would involve the use of five lay people and three judges for serious criminal cases (Cohen and Chen 2011; Taiwan Today article). Criteria for eligibility include being at least 23 years old and possessing at least a high school diploma (Taipei Times article).
Trinidad	Jury	
Turkey	None	There is no one place in the Criminal Procedure Code to cite judge only trials. However, throughout the code, there is only mention of professional judges. Section 227-229 of the Criminal Procedure Code discuss the deliberation process and only refer to professional judges as being involved in voting.
Ukraine	Mixed Court (Constitution provides for jury; not implemented)	The 1996 Constitution provides for lay participation through lay assessors and jurors but jury system has not been implemented yet. Citizens can only participate in criminal trials through people's assessors (Kovalev 2010). People's assessor in Ukrainian is <i>народних засідателів</i> .
United Kingdom (England)	Jury	Although England does not have a mixed court system, it does have lay magistrates deciding matters of minor criminal offenses (Lloyd-Bostock & Thomas, 1999).
United States	Jury	
Uruguay	None (Constitution allows for juries; not implemented)	Uruguay does not have trial by jury but Article 13 of the Constitution states that "the ordinary law may establish trial by jury in criminal cases." This has not been acted upon. Only professional judges are mentioned in the Code of Criminal Procedure.
Zambia	None	In addition to lay assessors in the High Court, judges of the Supreme Court can appoint any person with special expert knowledge to be an advisory assessor in any case where the judges feel they need that information in order to make a decision (Section 16(f) of the Supreme Court Act of Zambia).

APPENDIX C

SOURCES OF ADJUDICATION SYSTEMS

This Appendix shows all the sources used for each country in order to determine whether a type of lay adjudication exists, and if so, whether the country has a jury or mixed court system.

Albania

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