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Presidential Address

Trial by Jury: Story of a Legal Transplant

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Introduction

The word "transplant" conjures up diverse images, whether it is a team of doctors crowded around an operating table during an organ transplant, or rows of small tomato plants recently inserted into newly tilled earth. For comparative law scholars, the term signals something completely different. Decades ago, the Scotsman Alan Watson (1974) generated the concept of a legal transplant, which continues to be a major focus of comparative law scholarship (Graziadei 2006; Riles 2006). According to Watson, a legal transplant is the common phenomenon of one country adopting, in whole or in part, another country's established law, legal procedure, legal institution, or legal system. Some see this as the single most important phenomenon in the development of law, for example: "the growth of law is principally to be explained by the transplantation of legal rules" (Ewald 1995:489). The notion has been employed to explain the dissemination of legal procedures (Brake and Katzenstein 2013), plea bargaining (Langer 2004), and a host of other legal phenomena across the globe. This essay employs the concept of legal transplant as a vehicle to describe the global spread of trial by jury.

The concept of a legal transplant has been ubiquitous in the field of comparative law, but also contentious. Scholars differ in their views of the extent to which culture and society affect the transfer of laws and legal procedures (for a review of the debate, see Goldbach 2015:92–95). Even the "transplant" terminology is

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contested (Graziadei 2006:443). Some scholars of comparative law maintain that the word is at the very least misleading because it suggests that an organ, plant, or legal procedure transplant might function exactly the same in its new body, garden, or country as it did in the previous one (Legrand 1997; Merryman et al. 1994). From this perspective, the idea of legal "translating" more correctly captures the ways in which legal systems import, borrow, or export their laws, procedures, constitutions, or institutions to other legal systems (Berkowitz, Pistor, and Richard 2003; Langer 2004). These scholars believe translation is a more apt metaphor because it allows one to distinguish between two countries' laws that may be textually identical but function in completely different manners.

I am an outsider to the field of comparative law. I am trained as a social psychologist, running experiments, analyzing surveys, and interviewing participants. But like many others in the interdisciplinary Law and Society Association, my research focus on juries and lay participation has lured me into fields well beyond my initial training, in this case, the domain of comparative law. From my outsider's perspective, I find the concepts of transplanting and translating to be thought-provoking metaphors for the movement of the jury in global legal systems: its introduction and its flourishing, as well as its abolition and its decline, around the world.

My essay about the jury as a legal transplant presumes the importance of society on legal movements, and has two emphases. First, I try to understand the societal, political, and legal circumstances and actions that have led to the adoption, expansion, and decline of lay citizen participation in law (Hans 2007, 2008; Thaman 2007; Thomas 2016). Trial by jury is a frequent topic in popular culture. It is regularly featured in movies, television shows, books, and other popular media, particularly in the United States (Abramson 2000:498–500; Hans 2013:392–94; Marder 2007; Papke et al. 2007). Further, research on how the jury functions as a decision making body is voluminous (Baldwin and McConville 1979; Devine 2012; Diamond and Rose 2005; Goodman-Delahunty and Tait 2006; Kovera 2017; Vidmar and Hans 2007). Much jury research is focused on how a jury or another lay fact-finding body functions within a single country at a particular point in time. There is a relatively modest amount of work that engages generally in historical and international comparisons and that specifically contrasts different forms of lay participation (Hans et al. 2017). As a result, questions about how juries have become part of legal systems around the world, and the circumstances under which they have flourished and declined, have not yet been definitively answered.

Goldbach, Brake, and Katzenstein (2013:146, note 16) observe that "a detailed account of how legal change occurs—the details, processes, and minutia of unpacking transplants" is missing from many scholarly accounts of legal transplants. That is certainly the case for the transplanting and translating of trial by jury. Therefore, my first goal in this essay is to draw on existing scholarship to begin to develop a comprehensive account of the global dissemination of institutions of lay participation in law.

My second goal is to consider the role that legal and sociolegal scholars play in the process of legal transplantation and translation. Comparative law scholars point to the important roles legal elites play in the movement of laws and legal institutions (Dezalay and Garth 2002). What role, if any, have research scholars played in the spread of juries? My specific interest is to assess the role of collaborative working groups of scholars, including the Law and Society Association's (LSA) inventions of Collaborative Research Networks (CRNs) and International Research Collaboratives (IRCs). I discuss how these groups allow us to compare, contrast, and study legal institutions and their international movements. These scholarly analyses have in some instances helped to shape political debates over the adoption and implementation of new legal ideas and institutions, such as jury trials and mixed courts, around the globe. Moreover, these collaborative working groups are promising vehicles for producing the next stage of comparative analysis and empirical research on juries.

Argentina: The World's Newest Jury Systems

An ideal place to start our investigation of the jury as a legal transplant is in the country of Argentina, which has the world's newest jury systems. The Argentine Constitution of 1853 (Constitución de la Confederación Argentina [1 de mayo de 1853]) enshrined trial by jury in three different articles. Article 24 provided that "Congress shall promote the reform of the present legislation in all its branches, and the establishment of trial by jury;" Article 64, section 11, later renumbered to Article 75, Section 12 promised that "Congress shall … enact [the laws] that may be required to establish trial by jury;" and Article 99, later renumbered to Article 118, asserted that "The trial of all ordinary criminal cases … shall be decided by jury once this institution is established in the Nation." Reportedly, the Argentine drafters modeled these and other provisions of the 1853 Argentine Constitution on similar American constitutional provisions (Bergoglio 2008:328; Hendler 2001/2002; Scherr 2016:347–48). Thus, the

genesis of the Argentine constitution reveals evidence of legal transplantation.

However, even though trial by jury was expressly provided for in the Argentine Constitution, the federal government has yet to pass the required enabling legislation for federal juries (Hendler 2001/2002). Bills proposing trial by jury were submitted to the federal legislature in 2004 and 2006, and the initiative received support from the National Department of Justice and the U.S. Embassy (Bergoglio 2011:833). I visited Buenos Aires in 2004 and gave lectures to judges, prosecutors, defense attorneys, and the public on the subject of jury trials (Hans 2004). However, the jury bills were not passed (Hendler 2008:15). Moreover, the national courts have expressly refused to recognize jury trial rights in several cases (Hendler 2008:9).

The Argentine legal scholar and judge Edmundo Hendler, who has written extensively about the Argentine Constitution's jury provisions, has reflected on the country's historical resistance to move forward with trial by jury. He has pointed to a variety of factors, including the persistence of the traditional inquisitorial system of criminal procedure, inherited from Europe, which is still dominant in Argentina. In addition, during the twentieth century, ideas from the Italian positivist school of criminology influenced Argentine jurists to believe that criminal behavior was an illness that was best treated by medical science, and hence criminal trials were best left to experts rather than common citizens. Finally, during many years, Argentina was in the grip of a dictatorial or authoritarian rule, and "these regimes were not motivated to democratize the courts" (Hendler, personal communication 2016).

However, within the last dozen years, five provinces—which have separate legal systems from the federal government—have now introduced trial by jury, in a fascinating process of innovative, bottom-up law reform. Córdoba, which in 2005 became the first Argentine province in contemporary times to ask lay citizens to participate in legal decision making, employs a mixed court of professional and lay judges (Bergoglio 2008; Law No. 9182 2005). Law and society scholar María Inéz Bergoglio has studied the successful introduction of Córdoba's mixed court system (Bergoglio 2008, 2011). The mixed court includes three professional judges and eight lay citizens (four men and four women).

Bergoglio explains that the lay participation initiative arose in the 1990s during a time of intense political debate over crime and personal security (Bergoglio 2008:319, 2011:832). Quoting the parliamentary debate over the lay participation law, she illustrates how one major legislative goal of the reform was to increase the legitimacy of the legal system: "[T]he Argentine

people demanded justice for they felt they had none; the Argentine people demanded security for they felt none; the Argentine people demanded to believe in their institutions for they no longer believed. So, we legislators in Córdoba must provide answers to the people's demands and create those institutions which will allow us to restore the social contract that has been lost, in order to generate a bridge between the people and their leaders. . . . That is why trial by jury is necessary, because it is an instrument that leads toward the aforementioned goal" (Bergoglio 2012:11).

At the start, many people expressed concern that lay citizens would be strongly punitive and that these attitudes could detrimentally influence the mixed court's decisions. Bergoglio (2016) analyzed the votes of lay citizens and professional judges in criminal sentences. Interestingly, lay and professional judges agreed unanimously in 79% of the trials. When their votes differed, lay citizens tended to be more lenient than the professional judges. These data should reassure those who were concerned about overly punitive lay citizens. Indeed, the substantial agreement and leniency tendencies are quite consistent with the findings in the U.S. and in South Korea (Kim et al. 2013; Vidmar and Hans 2007). Bergoglio (2012) documented how Argentine perceptions of the judiciary became much more favorable among those who participated as lay judges; public opinion surveys in Córdoba also showed small but statistically significant increases in general confidence in the judiciary.

The legislatures of four other provinces—Neuquén, Buenos Aires, Rio Negro, and Chaco—subsequently passed bills introducing a more traditional form of the common law jury, one that decides a party's guilt or innocence independently of the judge (Almeida, Bilinski, and Bakrokar 2016; Chizik and Bakrokar 2016). Jury bills are being considered in other provincial legislatures as well, and there is renewed discussion in the federal congress about a jury bill (Arrancó el Debate para Implementar Juicios por Jurado 2017). Participants in two Argentine organizations, the nongovernmental organization INECIP (Instituto de Estudios Comparados en Ciencias Penales y Sociales), and a sister organization, the AAJJ (Asociación Argentina de Juicio por Jurados), have been active in promoting trial by jury by organizing conferences, working with legislators, and drafting model laws.

I want to focus on juries in Neuquén, where, along with both U.S. and Argentine collaborators, I am conducting an empirical study of its new jury system. An international team of scholars and lawyers are involved in this project, including Shari Seidman Diamond, John Gastil, and Paula Hannaford-Agor in the United States and Carla Pandolfi, Andrés Harfuch, Sidonie Porterie, and

Aldana Romano Bordagaray in Argentina.[1] The lawyers, policymakers, and legislators who developed a jury law for Neuquén modeled some of the law's features on well-known common law juries, following the practice for legal transplants. In Neuquén, juries are made up of 12 persons drawn from the local community, who sit together during trial, deliberate in secret and independently of the trial judge, and deliver a group verdict (Law No. 2784 2011). The most serious crimes, ones for which convictions carry lengthy prison sentences, are eligible for jury trial. Thus, several key features of Neuquén's jury system reflect traditional common law jury elements.

However, important modifications take into account the Argentine political, social, and legal environment, revealing the substantial translation that has already occurred during the development and adoption of the Neuquén jury. The Argentines involved in the process took seriously the idea that juries should embody a fair cross-section of the local community, an idea that is central to United States jury selection (Abramson 1994:99–141). However, the United States has encountered many problems turning this representative ideal into reality. U.S. jurisdictions often rely on lists of voters, but they provide skewed and incomplete rosters of the nation's citizens. Even when U.S. jury commissioners combine voter lists with other sources of eligible community members, the lists fall short of including everyone. Argentina has mandatory voting, so its voter lists provide a more fully representative record of the community's members. Moreover, in the U.S., race-based and gender-based peremptory challenges, as well as uneven response rates to jury summonses in different parts of the community, contribute to the undermining of the ideal of a fully representative jury (Eisenberg in press; Eisenberg et al. in press; Hans 2012a; Vidmar and Hans 2007:76–81).

Neuquén's lawmakers, informed by these American failures, introduced several features that maximize the extent to which juries will reflect the full range of the members of the community. Andrés Harfuch and his colleagues, instrumental in jury adoption efforts throughout Argentina, wrote: "Perhaps due to recurring problems of racism in jury selection in many common law countries, and because the selection process often has resulted in unrepresentative juries, the legislators of Argentina decided to choose a different approach to achieving a representative jury" (Harfuch, Bilinski, and Ortiz 2016:2).

[1] Many others from Argentina and the U.S. have contributed significantly to the project, including Vanina Almeida, Denise Bakrokar, Mariana Bilinski, Natali Chizik, Lilián Andrea Ortiz, and Camila Petrán Sayago from AAJJ, Argentina, and Kayla Burd, Rebecca Helm, Karen Ojeda, and Claire Santiago from Cornell University, U.S.

One feature of the Neuquén jury law is that it specifies that juries must include an equal number of women and men. Even more boldly, the Neuquén jury chosen to decide the case of a criminal defendant must also reflect the social and cultural background of the defendant (Harfuch, Bilinski, and Ortiz 2016). The jury law reads as follows: "The jury must be integrated, including alternates, by men and women equally. It will be that at least half the jury belongs to the same social and cultural environment of the accused. It will also try, whenever possible, to have seniors, adults and youth in the panel of juries" (English interpretation by Harfuch, Bilinski, and Ortiz 2016). This insistence on including jurors from the same cultural environment as the accused is a remarkable provision, even more so because Neuquén includes a significant Indigenous community within its provincial borders. In cases involving Indigenous defendants, one would expect at least half of the jury would come from that Indigenous group within Neuquén province.

In 2015, just such an "intercultural jury" in Neuquén heard the case of local Indigenous Mapuche leaders who participated in a political protest against the Apache Oil Company (Cregan 2015; Harfuch, Bilinski, and Ortiz 2016). The defendants, Relmu Ñamku, Mauricio Rain, and Martín Velazquez Mariqueo, were part of a group that protested as Apache Oil Company vehicles attempted to come onto the defendants' ancestral Mapuche lands to reactivate oil drilling. During the protest, some individuals threw stones at the vehicles. One of the defendants, Relmu Ñamku, allegedly threw a stone that hit a court officer accompanying the police and the Apache Oil company workers. Although initially the charges were minor assault offenses, the Attorney General of Neuquén elevated the charges to include "attempted homicide." As a result, the case was eligible to be heard by a jury.

This led to the first use of an intercultural jury in Neuquén. The defense requested that an intercultural jury be selected, composed equally of Mapuche jurors and non-Mapuche jurors from the community. As justification, the defense argument drew not only on the precise language in the jury law but also on international law pertaining to the rights of Indigenous peoples. In this case of first impression, the trial judge granted the request, ruling that half of the jury would be selected from the Mapuche community and that the other half would be composed of Neuquén residents who were not Mapuche.

The trial proceeded, and the defendants were given wide latitude to discuss their perspectives and their justifications. Indeed, they were allowed much more latitude than a U.S. court would typically afford criminal defendants (Vidmar and Hans 2007:221–34). For example, witnesses testified about a number of instances in

which members of the Mapuche people had been victimized, but the legal system in Neuquén had failed to respond. As one illustration, Velazquez Mariqueo testified that the oil companies had violated human rights, including exploiting him as a child when he worked for them in exchange for soda and bread. Additionally, Velazquez Mariqueo testified that oil companies had polluted the community's water sources with oil spills (Cregan 2015). Another witness gave testimony about her son, who had been shot by security guards that were associated with the oil company. The case was reported to the authorities, but there was no legal action to bring them to justice. Thus, the jury heard not only evidence about the specific alleged assault but also stories of the difficulties experienced by the Mapuche. These difficulties helped to shape the perspectives of the defendants toward the current dispute, and infused their testimony. For example, during the defendant Relmu Ñamku's testimony, she asserted that "'[i]nstead of me sitting here in the seat of accused, it should be the oil company directors, the governor and his ministers and members of the judiciary" (Cregan 2015).

The intercultural jury retired to deliberate. It returned after 2 hours with a not guilty verdict on the attempted homicide charge, resulting in much jubilation in the courtroom and elsewhere, particularly among activists for Indigenous rights, and a guilty verdict on minor assault charges. The defense lawyer proclaimed: "The decision made by the jury today is a sign of hope and a historic revindication of the rights of the Mapuche" (Cregan 2015). In a subsequent ruling, the Neuquén Superior Tribunal of Justice (2016) held that the prosecution would be responsible for the defense trial expenses because the prosecution had charged the defendants with attempted homicide without adequate support for the charge.

Neuquén's jury system, in particular its distinctive intercultural jury option, is a remarkable translation of trial by jury. The province adapted the traditional common law jury to fit within its unique social, political, and legal context. A new jury system confronted a major challenge in enacting the letter and the spirit of the jury law, and rose to the occasion with a unique set of adaptations. Interestingly, Neuquén's intercultural jury is reminiscent of an early form of English jury trial, the jury *de medietate linguae*, the "half-tongue" or mixed jury (Constable 1994). The early English mixed jury included half of the jurors from the local community and half from an alternative community such as Jews or aliens, and could be assembled in cases where the litigants were members of these alternative communities. The members of the mixed jury would sit together to hear the presentation of evidence and deliberate together as well. Jurors drew on their

distinctive law and community norms, yet delivered a single, agreed-upon verdict in the case. The appeal of the mixed jury was its fact-finding ability and its greater legitimacy, especially among the alternative groups.

The mixed jury institution traveled to the American colonies, where it was employed periodically as well (Vidmar and Hans 2007:69–70). In one notable Plymouth Colony murder trial in which both the defendant and the victim were Indigenous Americans, six Indigenous individuals were appended to a group of twelve colonists to form a large group, which unanimously recommended the conviction of the defendant (Ramirez 1994). However, the mixed jury's use declined in both England and the U.S. as the ideal of a jury as a representative cross-section of the community gained ascendance and random selection became the preferred method of achieving that ideal.

Although the intercultural jury bears some resemblance to the ancient mixed jury, it differs in one very significant way from the historic jury *de medietate linguae*, which was not only a fact-finding body but also a law-making body. Instead of hearing a judge pronounce the law, jurors' verdicts *were* the law (Constable 1994). They were empowered to draw on their dual communities' norms to make law and apply it to the facts. In contrast, Neuquén's intercultural jury receives the law they are to apply from the trial judge and is instructed to apply the official provincial law to the facts. Thus, Neuquén's intercultural jury retains the fact-finding aspects of the traditional common law jury as currently practiced, while borrowing the cultural representative aspects of the historic jury *de medietate linguae*.

Legal Transplants and Translations of Trial by Jury

The classic common law jury that was borrowed, transplanted, and translated in its new Argentine context was itself the product of a long line of successive transplantations across legal systems. Developing as a dispute resolution mechanism in medieval England, the English jury came to be considered as, in Blackstone's words, "the glory of the English law." The institution spread throughout the world during British and French colonial expansions (Hans and Germain 2011; Vogler 2001).

Scholars have written compelling historical accounts of the earliest forms of trial by jury (Beattie 1986; Dawson 1960; Green 1985; Landsman 1993; Langbein, Lerner, and Smith 2009; Pollack and Maitland 1898:141–42; Whitman 2008). At the king's inquests and other legal proceedings, community members were called upon to provide sworn testimony, offering administrative

efficiency (Landsman 1993). England's reliance on community judgment to resolve both criminal and civil disputes, in the form of local juries, grew after the Catholic Church's Fourth Lateran Council banned trial by ordeal in 1215. These medieval juries provided community resolution of crimes and other disputes, but departed significantly from today's institutions. For instance, jurors were likely "self-informing," gathering information about the parties and the evidence prior to coming to court (Klerman 2003). They relied, at least in part, on their own knowledge of the parties and the evidence to resolve cases. Klerman observes that what differentiates the modern jury from its medieval counterpart is that "medieval jurors came to court with extensive knowledge about the case and the defendant. They heard testimony, but they heard much less, and what they heard was less important" (p. 149).

Over time, non-juror witnesses became a more prominent part of the trial, and jurors shifted to finders of fact rather than providers of fact. But juries were still seen as instruments of the court and of the king; jurors could be punished for delivering what the court considered to be a wrong verdict, a practice that only ended after *Bushell's Case* (1670). During the following centuries, the expansion of the English judiciary and increased roles for lawyers in oral adversary trials led step by step to a shift in the jury's role (Landsman 1988, 1990). A basic tenet of the adversary system is the parties' presentation of evidence to a neutral and passive fact finder. Although the rise of the adversarial model limited the previous more active approach of juries, Landsman writes that it also favored lay juries over judges as judges might be more tempted to insert themselves into the development of the evidence in the case (Landsman 1990:501). Even as it shifted toward greater passivity, the common law jury retained its iconic identity as a symbol of democratic self-governance.

Across the Channel, laymen participated in legal decision making in old France, as they did in medieval England. But after the Fourth Lateran Council banned trial by ordeal as a form of dispute resolution in 1215, the French adopted the Roman-canon law of evidence. This law's highly technical requirements and proceedings led to the rise of professional judges and the decline of lay decision makers. Thus, the same political development that created an impetus for juries in one country depressed its usage in another.

The French who came to power following the French Revolution of 1789 shunned these technicalities and, instead, were attracted to the democratic symbol of the jury. They demanded both broad changes in the inquisitorial approach to criminal procedure and lay participation in the machinery of justice (Hans

and Germain 2011). The jury as the embodiment of the sovereign French people reflected still-fresh revolutionary ideals as well as a mistrust of and willingness to dispense with expert judicial authority (Donovan 2010). In 1791, the Constituent Assembly developed a new penal code, which included two vehicles for citizens to participate in serious cases: an 8-person grand jury and a 12-person trial jury (Donovan 2010; Savitt 1996). Thus, France, a civil law country, became an important early adopter of the jury. However, the French jury differed from the English jury in significant ways, in part because of the need to incorporate it into a civil law rather than a common law legal system. For example, the French jury did not render a general verdict, but instead answered specific questions asked by the presiding judge (Langbein, Lerner, and Smith 2009). Additionally, the presiding judge played a much more significant role in the trial, which was in line with the inquisitorial tradition in French law (Hans and Germain 2011).

The centrality of the jury in both the English common law system and the French civil law system helps to explain the jury trial's subsequent global march. During the 1800s, the English and French jury systems were widely admired on the continent, and a number of European countries incorporated juries into their legal systems (Vidmar 2000a). But British and French imperialism was even more significant. In the first broad wave of jury transplantation, the British Empire brought the English-style common law jury along with its British legal system to the many lands that it conquered (Park 2010; Vidmar 2000a; Vogler 2001, 2005). The British Empire exported and imposed trial by jury along with the common law legal system. However, Richard Vogler's (2001) compelling account notes that the English did not always make trial by jury available as a method of dispute resolution to the citizens of the dominated countries, and this fact helps to explain the retention or rejection of jury systems following independence. In some colonies like America, the right to a jury trial and the ability to serve on juries extended to the colonial population (Vidmar and Hans 2007). The jury transplant took hold and vigorously grew in colonial America where residents came to see the advantages of having their disputes resolved by their fellow colonists rather than the imported English judges. The American jury became a strong symbol of democracy and a contributor to democratic self-rule. Thus, America preserved the right to trial by jury in its Constitution following independence, and the jury continues to be an important American institution.

In contrast, in other colonies, such as Nigeria, Zanzibar, Kenya, and Southern Rhodesia, the jury trial was typically reserved for Europeans rather than Africans (Vogler 2005:224–

25). Once these colonies achieved independence, the new nations rejected British law and the institution of the jury that had been imposed upon them during colonial times (Vogler 2001, 2005). These countries fit the pattern of rejection that Miller (2003:847–49) has identified as common for externally-dictated legal transplants. Ryan Park further notes that "nations that enjoyed a more cooperative relationship with the former empire, achieved independence through an orderly and peaceful process, or sought to claim for themselves the 'rights of Englishmen,' tended to retain the institution" of the jury (Park 2010:528 (footnotes deleted)). Canada, Australia, and New Zealand exemplify such countries and all retained the institution of the jury trial in criminal cases following independence from Britain.

A second wave of jury transplantation occurred through French imperial action (Hans and Germain 2011; Park 2010). The Napoleonic Code was imposed on the lands Napoleon conquered, transplanting the jury system to the countries and territories annexed during the period of his rule. Merryman and colleagues observe the "imposition of French laws and institutions on the nations conquered in the Napoleonic campaigns; French imperialism carried French law with it because Frenchmen believed that they were bringing enlightenment and progress to the peoples they conquered" (Merryman, Clark, and Haley 2010:475). Along with these features came trial by jury, an institution that still remains in some of these countries today.

Some legal transplant theorists note that it is more difficult to share legal procedures across the two major legal traditions of common law and civil law (Goldbach, Brake, and Katzenstein 2013; Langer 2004). One key aspect of the wide dissemination of the institution of jury trial is that, although its earliest manifestation was in the English common law legal system, it was incorporated successfully into both common law and civil law legal systems through the separate British and French empires.

In time, however, a number of civil law countries abandoned trial by jury, shifting to the mixed court approach in which lay judges and professional judges decide cases jointly (Jackson and Kovalev 2016). The dominant role of the presiding judge was seen as more compatible with the inquisitorial approach of civil law legal systems. Cynically, however, one must also note that a mixed tribunal offers an easier method of controlling unruly lay fact finders. In the studies that have examined agreement rates between lay and professional judgments in mixed tribunals, the rates are extraordinarily high (Kutnjak Ivkovic 2007, 2015).

The French jury, so strongly endorsed after the French Revolution as the manifestation of the sovereignty of the people, came to be criticized for what was perceived to be its overly generous

treatment of some classes of defendants (Donovan 2010; Hans and Germain 2011). Juries were said to be too favorable to women charged with infanticide, to defendants facing trial for crimes of passion, and to those accused of political violence. In short, French juries, it seems, considered, more than professional judges might have, extenuating circumstances.

Napoleon realized, though, that "the jury is the son of the Revolution; it cannot be touched" (Toulemon and Larnaude 1930:61). Instead, the jury's jurisdiction was decreased through the introduction of special courts that heard political cases. Still later, the reclassification of offenses as less serious crimes that could be tried by judges removed more of the jury's reach (Hans and Germain 2011). The most significant modification, however, came in 1941 during the Vichy government, when the independent body of jurors was replaced by a mixed court of professional judges and lay jurors who sat together to decide on both guilt and punishment (Donovan 2010:166–68). An authoritarian regime preferred to take no chances on citizens deliberating on criminal cases independently. And, not surprisingly, the proportion of cases that resulted in acquittals dropped following the switch from juries to mixed tribunals. There was no shift back to the traditional form of the independent jury in post-war France, but France continues to use the term "jury" in referring to its lay participation system.

The Contemporary Global Jury

Today, as a result of the historical transplanting of trial by jury and new contemporary adoptions of the institution, a substantial number of countries resolve criminal cases using lay citizen fact finders. More than 50 countries use some variation of the classic common law jury, which decides the case during a separate, private deliberation (Marder 2011; Park 2010; Vidmar 2000b). Others, especially civil law countries, use mixed courts of lay persons and law-trained judges to evaluate facts and decide the outcomes of criminal cases together (Jackson and Kovalev 2007, 2016).

In civil cases, most nations rely on professional judges (Vidmar 2000b) or mixed tribunals (Machura 2016) to decide outcomes. Only a handful uses the common law model of independent juries, most notably the U.S. (Vidmar 2000b). Machura's (2016) recent survey of European Union countries revealed that the majority include lay participants in civil justice courts in mixed tribunals, specialized labor or commercial courts, or lay judge panels. Some

lay participants are drawn from the community; others have expertise in a domain relevant to the specialized court.

The ubiquity with which legal systems around the globe rely on untrained citizens is surprising from one perspective. In virtually all of the countries that rely on lay people as legal fact finders, there are substantial numbers of lawyers and judges trained in law and legal procedures (Kritzer 2002). This raises the question, why not leave decision making to the experts?

As we assess the contemporary use of citizen fact finders, we see evidence of two competing and seemingly inconsistent trends. One can observe steep declines over time in the reliance on lay fact finding in a number of countries with long-standing jury systems. For example, in Great Britain, the birthplace of the jury, the jury system does not enjoy constitutional protection and has been increasingly limited in criminal cases and all but abolished in civil cases (Levi 1983; Lloyd-Bostock and Thomas 2000). In the U.S., a variety of factors, including plea bargaining, alternative dispute resolution, increased costs of litigation, and interest group legal reform campaigns, have contributed to the decline in proportions of cases decided by criminal and civil juries (Galanter 2004; Smith 2005; Thomas 2016). Citing declines in percentages of cases resolved by trial, U.S. federal judge Patrick Higginbotham (2002) notes with alarm that these and other changes suggest that case settlements have come to be seen as successes whereas trials are considered to be failures. In his view, a well-conducted public trial is a "crowning achievement" of the system that helps to clarify normative standards and guide behavior (p. 1423).

In addition to these pressures, some scholars argue that citizens in a contemporary democratic society increasingly expect government transparency and accountability. These expectations are at odds with the traditional secrecy of the common law jury because the common law jury deliberates privately, delivers only a general verdict, and does not explain its decision (Kozinski 2015; Stith-Cabranes 1995). In other legal systems, we can observe the lessening of the secrecy barrier. For example, the European Court of Human Rights' decisions in *Taxquet v. Belgium* (2009; 2010) moved toward greater juror accountability. A Belgian jury convicted the defendant (one of eight defendants on trial); the ECtHR ruled that the conviction violated the defendant's rights because the jury did not provide adequate reasoning for its verdict. The Grand Chamber of the ECtHR, sitting *en banc*, affirmed, but clarified that the ruling did not mean that a jury was generally required to provide reasoned verdicts if the basis for the judgment was understandable. Nonetheless, many observers concluded that the decision was a clear signal about the

desirability of reasoned verdicts even from lay fact-finding bodies (Jackson and Kovalev 2016; Thaman 2011). Even in the United States, the recent Supreme Court decision in *Peña Rodriguez v. Colorado* (2017) overturned a jury verdict because two jurors reported another juror's racist language during jury deliberations. This decision is in line with the global trend toward greater accountability for juries.

Against this backdrop of decline in some countries, it is an intriguing contrast that other countries have introduced new systems of lay participation, including both the common law jury and the mixed court. As in Argentina, these introductions often occur during periods of democratizing political and social change, reflecting the fact that trial by jury has symbolic global significance as an indicator of democratic self-governance. The jury's reputation has spread in part by high profile movies and other media (Marder 2007) but also by foreign legal scholars who have obtained degrees in higher education in jury system countries, such as the U.S. and Great Britain, and have returned to their home countries enthusiastic about trial by jury (Goldbach, Brake, and Katzenstein 2013; Lempert 1992, 2007). In addition to the influence of politics, education, and the potent symbolism of the jury trial, foreign aid has surely been a significant contributing factor, although its precise influence is hard to trace.

Following the breakup of the Soviet Union, Russia reintroduced trial by jury in 1993 along with other democratic and legal reforms (Thaman 1997, 2007). Russia employed a jury system from 1864, during the time of Alexander II, and trial by jury persisted until it was eliminated by the Bolsheviks in 1917 (Thaman 1995). During the Soviet period, Russia resolved criminal cases by mixed tribunals that included one law-trained judge and two people's assessors. Reportedly, government and party officials would routinely share their views about the appropriate case outcome with the professional judge, who, in turn, would exert influence over the people's assessors to reach the preferred outcome (Thaman 1995). As a consequence, these tribunals did not function as correctives against party or government interference in legal cases.

In the post-Soviet period, one major attraction of trial by jury was its promise of greater independence from outside influences. Advisors from the American Bar Association, including Stephen Thaman serving as a liaison for the CEELI Program, provided training in oral advocacy and litigation to Russian judges and lawyers. The new Russian jury was introduced in 1993 (Thaman 1995). Following the French approach, the trial judge provides the jury with a list of specific questions that the jury must answer, including whether the crime has been proven, whether the

defendant was the perpetrator, and whether the defendant is guilty of having committed the crime.

The Russian jury, introduced to great fanfare and promise, has faced severe challenges, especially in recent years (Jackson and Kovalev 2016; Kovalev 2010; Thaman 2007). Institutional features of the Russian jury have made it vulnerable to political and other shifts. Because Russian juries do not give general verdicts, and instead answer a series of specific questions about the evidence in the case, if there are errors and inconsistencies in the jury's responses, the trial judge is permitted to set aside the jury's factual findings. Additionally, even in the midst of an active jury trial, a trial judge is permitted to stop the trial and return the case to the prosecutor for further investigation. Finally, appellate courts can overturn both jury convictions and jury acquittals. All these characteristics create a relatively weak form of lay participation, and both Thaman (2007) and Kovalev (2010), who observed the development of the Russian jury over time, conclude that its power and influence has significantly diminished.

Other countries in the former Soviet-bloc region, supported by U.S. advisors and financial assistance, also introduced democratizing reforms after the breakup of the Soviet Union (Jackson and Kovalev 2016; Kovalev 2010), including constitutional provisions for trial by jury. These experiments in lay participation are at an early stage, and thus far only a few countries, such as Georgia, have actually implemented trial by jury. Further, those countries have conducted only a small number of jury trials (Dolidze and Hans 2013; Jackson and Kovalev 2016).

Moving our survey from Eastern to Western Europe, Spain introduced trial by jury in 1995, two decades after the death of the dictator Francisco Franco (Jimeno-Bulnes 2011; Thaman 1998). A substantial period of time elapsed between Franco's death and the implementation of the jury trial, in part because there was vigorous discussion and debate about what was meant by the constitution's guarantee of trial by jury. Did it mandate jury trial or did it merely permit jury trial? Was a specific form of jury trial required, such as the common law jury that deliberates independently, or could its requirements also be met by a mixed court of lay and professional decision makers? If both forms could meet the constitutional provision, which was the best approach for Spain? Some jurists and academics argued that the constitutional guarantee permitted either the independent jury or the mixed court. Looking to nearby European neighbors such as France and Italy, both of which employed mixed courts, these Spanish theorists argued that the mixed court would both fulfill the constitutional mandate and be a better fit for Spain's civil law legal system.

The 1995 Jury Law departed from these scholars' advice and implemented the constitutional provision with an independent jury that deliberates separately from the judge. However, as with several other civil law jury systems, Spanish juries do not pronounce a general verdict as their counterpart common law juries do. Instead, Spanish juries are asked for reasoned verdicts. The judge provides the jury with a series of specific questions; the jury must answer these questions and provide detailed written explanation of the reasons for their responses.

The requirement of reasoned verdicts created obstacles for the smooth functioning of the Spanish jury, especially in its early years. Judges had to craft questions for the jurors that addressed the key relevant legal dimensions of the case in a way that could be understood by lay citizens. Occasionally, the jurors responded inconsistently or incompletely, from the court's perspective. In a number of instances, juries submitted reasons and responses the presiding judge or appeals judges found wanting, and thus their verdicts were overturned (Thaman 1998:364–76). In response to these problems, the law-trained Clerk of the Court has come to play an increasingly important role in Spain's jury trials (Jimeno-Bulnes and Hans 2011). The Clerk is the only court official who is permitted to enter the jury room during deliberations for the purpose of providing assistance in the drafting of the jury's responses. Jimeno-Bulnes and Hans (2011:211) reported that the Clerks they interviewed varied in their levels of assistance to jurors; some took a narrow approach, limiting themselves to answering specific questions posed by jurors, whereas others gave broader assistance, such as helping the jury avoid contradictory statements and insufficient reasoning.

Additionally, Asian countries have engaged in recent initiatives to incorporate lay participation into their legal systems. Lempert (1992) described the debates in Japan over whether it was time for the country to adopt trial by jury. One of his LLM students at the University of Michigan, Takashi Maruta, had returned to Japan enamored with the jury trial and its possibilities. In the late 1980s and early 1990s, there were great concerns, especially among defense attorneys, about the fairness of the criminal trial system in Japan. The system was not at all transparent. The conviction rate at trial was 99%, and two high profile cases in which defendants had been erroneously convicted and sentenced to death were headline news (Lempert 1992:39; see also discussion in Vanoverbeke 2015). Could introducing trial by jury inject more transparency and public accountability into the system?

To inform themselves of international models, members of Japan's Justice System Reform Council, the Osaka Bar Association's Committee for Judicial System Reform, and Japan's Supreme

Court investigated different approaches to lay participation, traveling to the U.S, Great Britain, France, and Germany to observe the operation of lay participation systems in these countries (Lempert 1992:38–39; Vanoverbeke 2015:125). U.S. law professor and comparative legal procedure scholar Stephen Thaman, who had consulted in both Russia and Spain as those countries reintroduced their jury systems in the 1990s, co-organized a 2000 conference with the Japan Federation of Bar Associations on the subject of lay participation in the judicial process (Thaman 2015). The Japanese defense bar was strongly supportive of jury trials, whereas many judges and prosecutors argued strenuously against them (Fukurai 2007).

Richard Lempert, a strong advocate for the U.S. jury trial (see, e.g., Lempert 2015), weighed in with important commentary at the 1990 meeting of the Japanese American Society for Legal Studies (Lempert 1992:37, author's note). He warned against cross-cultural generalization, observing that the success of the U.S. jury did not guarantee success if it were to be transplanted into Japan. Factors that could pose difficulties to a successful transplant were differences in language, the relatively greater homogeneity of the Japanese population, the possibility of distinctive goals, and procedural concerns (40–44). Yet, he also observed that the elitism of the Japanese judiciary, the fact-finding benefits of lay participants, and the political value of participation suggested ways in which a jury transplant might enhance fact finding and legitimacy. Vigorous debate over whether the independent jury was the best approach for Japan eventually led to a compromise, a 2004 law adopting *Saiban-in seido*, a mixed court with six lay judges and three professional judges (Fukurai 2007). These mixed courts began hearing cases in 2009.

One of the remarkable aspects of Japan's introduction of lay participation is that the Japanese Supreme Court organized extensive preparations for the introduction of *Saiban-in seido* and embarked on the systematic collection and public dissemination of data about the operation of the new system. Japanese scholars have presented their analyses of these data in Japan and at international meetings, so we know a substantial amount about the impact and operation of Japan's lay participation transplant. Interestingly, the high conviction rate has hardly budged. *Saiban-in* have given multiple press conferences following their service, offering the public an inside and largely favorable perspective, although some topics are off-limits. The Japanese Supreme Court has conducted post-trial surveys of the *Saiban-in*, which routinely show citizens have generally very positive responses to their participation. Scholars have documented broader effects as well;

there is now a great deal more transparency and citizens' knowledge of the legal system has increased (Hans 2012b).

South Korea's venture into lay participation in legal cases took a distinctive turn, producing an advisory jury system. The introduction of this unique approach in 2008 followed a governmental initiative that included judges, lawyers, and scholars, and that surveyed the public, legal elites, and criminal defendants to obtain their views about the value of lay participation in law (Hans 2014). These surveys revealed that all groups, including legal elites, expressed positive views about the prospect of introducing a jury-like system.

Ryan Park describes the Korean jury as "a unique hybrid that reflects domestic innovation as well as borrowing of best practices from abroad" (Park 2010:533). He notes, as others do, that the advisory jury draws on both traditional common law jury models and mixed court approaches. In particular, this form of jury is structured to permit an unusual degree of interaction between judges and jurors. Three judges preside over the trial, and eight jurors, selected from the population, sit separately in a jury box throughout the trial. The jurors retire to a private room to deliberate independently on the guilt of the accused. However, under two circumstances, the presiding judge may join the deliberations. First, if the majority of the jurors request it, the presiding judge may join them to answer specific questions or to provide other guidance. Second, if the jurors cannot reach a unanimous verdict, the presiding judge must provide commentary and offer guidance. The judicial commentary is supposed to be limited to explanations of factual and legal issues. These interactions are not recorded. Thus, one might imagine that, like the Spanish Clerks of the Court, judges vary in their guidance. Lee and his colleagues conducted a mock jury study in which they asked real judges to offer guidance to the jurors under the two permitted circumstances (Lee et al. 2013). Judges varied, with some judges providing their own personal opinions about the case (Lee et al. 2013:65–66). Nonetheless, the mock jurors had favorable views about the judicial interventions, and they contributed positively to mock jurors' views about the trial's fairness (Hans 2014:94).

Another distinctive feature of the Korean jury is that its guilt judgments are advisory; the three judges make the binding decision on guilt. Next, if the defendant is found guilty, the judges join the jurors to form a mixed court that deliberates jointly on the punishment. Interestingly, a research project that compared jury decisions and judges' decisions over the first 3 years of the Korean advisory jury found that the jury and judges agreed 90% of the time on the guilt of the accused (Kim et al. 2013). When they disagreed, the jury was more likely to be lenient than the judges, a

result that echoes U.S. judge-jury agreement studies (Hans et al. 2003; Kalven and Zeisel 1966; Vidmar and Hans 2007).

Summary

This survey only scratches the surface of the journey of trial by jury as an institution. Multiple groups, including NGOs and other legal reformers, U.S. embassies, and individual scholars have worked to transplant the institution of the jury. Jury trial is frequently introduced in democratizing moments in which the political desirability of popular control is strong. It is often accompanied by other sweeping political and legal reforms and great aspirations. Thus, we see strong political factors encouraging the transplant of trial by jury. When legislators, policymakers, advisors, and lawyers begin the process of translating the idea of jury trial into its institutional manifestations, its specific form and characteristics are often hotly contested and the subject of substantial debate. Judges and lawyers often weigh in with objections and concerns about how untrained citizens will perform and how they as legal experts will need to change.

Yet many arguments raised by both supporters and opponents of juries are based on assumptions about how well juries will understand law, how they will approach the decision making process, and what specific legal techniques are apt to aid or interfere with sound fact finding. Lawmakers must decide just how much they can trust their lay juries before determining the specifics of the jury system. This trust can vary dramatically depending on one's background and experience. Nancy Marder and I (Marder and Hans 2015) contrasted the views of scholars participating in an international conference we helped to organize in Oñati, Spain. We discovered that participants varied significantly in how much faith they had in juries, and that this basic difference related to their institutional design preferences. U.S. scholars were among the most trusting and enthusiastic about the jury institution, and they were the most negative about procedures that they saw as interfering with jury independence. In contrast, a number of those who hailed from civil law backgrounds expressed less trust, and were more supportive of tools to guide and direct juries, such as decision trees and reasoned verdicts (Marder and Hans 2015).

Scholarly Collaborations and the Transplanting and Translating of the Jury

It is important to discuss the role of scholarly collaborations in helping us plot and understand the transplanting and translating

of trial by jury. For other legal reform topics, sociolegal researchers have documented how scholars have facilitated the diffusion of legal ideas and legal institutions around the globe. See, for example, Dezalay and Garth's (2002) discussion of the role of University of Chicago-trained economists, the "Chicago Boys," in supporting legal and political change in Latin America. However, to date, there has not been a full account of scholarly exchange around transplanting and translating of lay participation. Therefore, it is worthwhile to trace the development of the collaborative research network of scholars working on juries and lay participation.

The Law and Society Association has proven to be a fertile meeting ground for sociolegal scholars around the globe. In particular, Collaborative Research Networks (CRNs) and International Research Collaboratives (IRCs) have been incredibly productive inventions of the Law and Society Association (LSA) that have done so much to create valuable connections and research collaborations among scholars working on the same research topic. Here is how it started. Just before the first international meeting the LSA cosponsored in Amsterdam (1991), Bill Felstiner and David Trubek organized informal, transnational affinity groups that would plan panels for Amsterdam. As Trubek recounts:

> When Bill and I planned for the Amsterdam event, we arranged to create informal transnational affinity groups that would communicate before the event and organize panels for it. The year before Amsterdam, LSA met in Berkeley. This was before people were using the internet. We set up subject matter tables in the conference hotel and people were encouraged to meet and talk about common interests and organize panels for Amsterdam. (Trubek, personal communication 2016)

In Amsterdam, a number of these transnational affinity groups presented panels and discussions (LSA Program 1991). However, there was no formal working group on lay participation. Scholars interested in lay participation and juries presented seven papers in two related panels at the Amsterdam meeting (Laypersons I and Laypersons II, both chaired by Neil Vidmar, with Michael Saks serving as discussant). The papers reflected a predominantly North American focus, although the panels included contributions from a British criminologist and a Japanese historian.

A more thoroughly international panel on lay participation occurred at a subsequent LSA meeting. At the 1997 LSA annual meeting in St. Louis, Missouri, in addition to a panel devoted to presentations on U.S. jury research projects, a comparative panel,

Lay Participation in Criminal Courts: A Comparative View, was convened. Neil Vidmar chaired the panel; I served as the discussant. Among the panelists was Stephen Thaman (1997), who spoke about the recent introduction of jury trials in Spain and Russia. He would subsequently play a lead role in pushing the group toward greater internationalization. Other panelists included Sanja Kutnjak Ivkovic (discussing Croatian mixed tribunals); Victor Kogan (discussing the concept of impartial juries); and Stefan Machura (focusing on lay judges in German mixed courts). My handwritten notes on the program indicate that British scholar Penny Darbyshire also presented her paper at the panel.

Thaman (2001, 2002) subsequently organized a remarkable international meeting in Siracusa, Italy, to examine the diverse approaches taken around the world in using laypersons as legal decision makers. At the Siracusa conference, "Lay Participation in the Criminal Trial in the Twenty-First Century," more than 50 scholars, judges, and lawyers from over 28 countries presented and discussed the global picture of citizen involvement as legal decision makers. Thaman and others organized the publication of conference papers in several different outlets (Thaman 2001, 2002). For me, the Siracusa conference was a remarkable experience that shook up some of my thinking about laypersons and the law. I was struck first by the surprising ubiquity of lay involvement as decision makers, and then by the wide variety of approaches to incorporating lay citizens into legal cases as decision makers in both civil and common law countries.

The Law and Society Association introduced a more formal approach to the transnational affinity groups: Collaborative Research Networks or CRNs. My former graduate student, Sanja Kutnjak Ivkovic, had conducted an empirical dissertation on mixed tribunals in Croatia, attended the Siracusa conference, and was a regular participant in LSA conferences. She and I decided to employ the CRN format to organize a Lay Participation in Legal Decision Making group. For our subject, the timing was perfect. It was a potentially fruitful moment for scholars to learn from one another and consider collaborating in the study of lay participation in law. Some traditional systems were in decline; other new systems were being introduced. In November of 2000, she and I wrote to fellow jury scholars, those we had met in Siracusa and others we knew through other connections, and invited them to join our new CRN. Kim Scheppele, who cochaired the Budapest program, approved our CRN.

The Lay Participation CRN organized itself for the Budapest meeting, putting together three diverse panels and some group dinners. The European location, the formal structure of the

CRN, and the inspiration from the Siracusa conference all combined to produce a robust international quality to the Budapest conference panels. Panels included papers on lay participation systems in twelve specific countries, including: Argentina, Australia, Brazil, Croatia, England, Germany, Hungary, Russia, Scotland, Spain, the United States, and Venezuela (LSA conference program 2001).

The CRN has, in my view, proven to be an effective vehicle for continuing exchange and collaboration. Like many other CRNs and IRCs organized through the LSA, scholars associated with the CRN have been astonishingly productive. Marder, Thaman, Vidmar and I have all sponsored conferences and edited books or special journal issues featuring work by CRN and IRC members (Hans 2007; Marder and Hans 2015, 2016; Marder 2007, 2011; Thaman 2002; Vidmar 2000a, b). Further, joint sessions at LSA conferences with the East Asian Law and Society CRN have informed us about developments in the lay participation experiments in Japan and South Korea.

The latest variation on our international lay participation group is the World Systems of Lay Participation IRC, organized for the Mexico City international law and society meeting. Organized by Sanja Kutnjak Ivkovic, Mary Rose, Valerie Hans, and Shari Seidman Diamond, the IRC "analyzes the transnational social, political, economic and legal factors that facilitate, impede, or shape diverse lay participation systems to explore: (1) the process of adoption of lay participation; (2) the undulating use of lay participation; and (3) the movements to reform lay participation systems" (LSA website, 2017). Research papers on a wide range of lay participation systems, including the current Neuquén project, were presented in Mexico City.

The benefits of such a collaborative working group can be substantial. Many of the researchers cited in this essay are members of the CRN or IRC. The substantial amount of research and writing on diverse systems of lay participation is one indication that the field of jury studies has expanded beyond its original focus on the contemporary U.S. jury system.

Some interesting convergences have emerged from comparisons of systems of lay participation. I noted above that the substantial judge-jury agreement found in U.S. studies has also been found in research on the Korean advisory jury and the Córdoba mixed court. When lay participants depart from their law-trained colleagues in the minority of cases, it is typically in the direction of greater leniency. On the basis of these research projects, one suspects that, overall, having a judge or a jury does not produce massive differences in legal outcomes, although when judges and juries disagree, judges are more punitive. Instead, the major

effects are likely found elsewhere. Public trials with lay fact finders demand greater transparency and clearer presentation of law and evidence. Participation as a lay decision maker, whether as a juror or a lay judge, appears to produce greater civic engagement (Gastil et al. 2010; Hans, Gastil, and Feller, 2014; Porterie, Bordagaray, and Sayago 2016), and increased support for the judiciary and the legal system. Research that explores in more detail how features of these different systems affect not only fact finding but also these broader societal effects will deepen our knowledge of the multiple influences created by lay participation in the legal system. These and other research findings may help to guide policymakers as they craft and refine their institutional design to create strong and vibrant lay participation.

As a research scholar, I see another, equally significant potential benefit. Comparative research and new introductions of lay participation systems offer amazing scientific opportunities. Yet, even though the last decades have given me and other scholars of lay participation a lot to work with, many of the research questions we now want to ask are not readily addressed using traditional jury research methodologies. The comparative approaches and case studies that seem to be called for push beyond my original disciplinary training and that of many other jury scholars. Here is where jury scholars can learn a great deal from comparative law researchers. The collaborations made possible by CRNs and IRCs hold promise as people with diverse theoretical and methodological perspectives and talents can combine their strengths in cross-disciplinary projects. Legal transplants, it turns out, are definitely a team effort.

References

Abramson, Jeffrey (2000) "The Jury and Popular Culture," 50 *DePaul Law Rev.* 497–523.

——— (1994) *We the Jury: The Jury System and the Ideal of Democracy.* New York, NY: Basic Books.

Almeida, Vanina, Mariana Bilinski, & Denise Bakrokar (2016) "From Common Law to Civil Law: The Jury's Great Potential to Transform Argentina's Inquisitorial Culture." Presented at the Annual Meeting of the Law and Society Association, New Orleans, LA (3 June).

"Arrancó el Debate para Implementar Juicios por Jurado" (2017) *Perfil* (19 April). Available at: http://www.perfil.com/politica/arranco-el-debate-para-implementar-juicios-por-jurado.phtml (accessed 12 June 2017).

Baldwin, John, & Michael McConville (1979) *Jury Trials*. Oxford: Clarendon Press.

Beattie, J. M. (1986) *Crime and the Courts in England 1660–1800*. Princeton, NJ: Princeton Univ. Press.

Bergoglio, María Inés (2008) "New Paths to Judicial Legitimacy: The Experience of Mixed Tribunals in Córdoba," 14 *Southwestern J. of Law and Trade in the Americas* 319–38.

——— (2011) "Metropolitan and Town Juries: The Influence of Social Context on Lay Participation," 86 *Chicago-Kent Law Rev.* 831–53.

——— (2012) "Legitimacy of the Judicial System and Lay Participation in Judicial Decision-Making Processes in Córdoba, Argentina." Presented at the 2012 International Conference on Law and Society, Honolulu, Hawaii (June). Available at: http://ssrn.com/abstract=2062319 (accessed 15 March 2017).

——— (2016) "Citizen Views on Punishment: The Difference between Talking and Deciding," 6 *Oñati Socio-Legal Series* 216–34.

Berkowitz, Daniel, Katharina Pistor, & Jean-Francois Richard (2003) "Economic Development, Legality, and the Transplant Effect," 47 *European Economic Rev.* 165–95.

Brake, Benjamin, & Peter J. Katzenstein (2013) "Lost in Translation? Nonstate Actors and the Transnational Movement of Procedural Law," 67 *International Organization* 725–57.

Chizik, Natali, & Denise Bakrokar (2016) "The Historical Development of the Jury in Argentina." Presented at the Annual Meeting of the Law and Society Association, New Orleans, LA (3 June).

Constable, Marianne (1994) *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law, and Knowledge*. Chicago, IL: Univ. of Chicago Press.

Cregan, Fionula (2015) "Mapuche Leader Found 'Not Guilty' in Unprecedented Trial in Argentina," *Intercontinental Cry.* Available at: https://intercontinentalcry.org/mapuche-leader-found-not-guilty-in-unprecedented-trial-in-argentina/ (accessed 12 March 2017).

Dawson, John P. (1960) *A History of Lay Judges*. Cambridge, MA: Harvard Univ. Press.

Devine, Dennis J. (2012) *Jury Decision Making: The State of the Science*. New York, NY: NYU Press.

Dezalay, Yves, & Bryant G. Garth (2002) *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States*. Chicago, IL: The Univ. of Chicago Press.

Diamond, Shari S., & Mary R. Rose (2005) "Real Juries," 1 *Annual Rev. of Law and Social Science* 255–84.

Dolidze, Anna Valerie, & Valerie P. Hans (2013) "Jury Trial as Legal Translation: The Case of the Republic of Georgia." Presented at the Annual Meeting of the Law & Society Association, Boston, MA (30 May).

Donovan, James M. (2010) *Juries and the Transformation of Criminal Justice in France in the Nineteenth and Twentieth Centuries*. Chapel Hill, NC: Univ. of North Carolina Press.

Eisenberg, Ann M. (Forthcoming 2017) "Removal of Women and African-Americans in Jury Selection in South Carolina in Capital Cases, 1997–2012," 9 *Northeastern University Law J.*

Eisenberg, Ann M., et al. (Forthcoming 2017) "If It Walks Like Systematic Exclusion and Quacks Like Systematic Exclusion: Follow-up Essay on Removal of Women and African-Americans in Jury Selection in South Carolina Capital Cases, 1997–2014," 68 *South Carolina Law Rev.*

Ewald, William (1995) "Comparative Jurisprudence (II): The Logic of Legal Transplants," 43 *American J. of Comparative Law* 489–510.

Fukurai, Hiroshi (2007) "The Rebirth of Japan's Petit Quasi-Jury and Grand Jury Systems: A Cross National Analysis of Legal Consciousness and the Lay Participatory Experience in Japan and the U.S.," 40 *Cornell International Law J.* 315–54.

Galanter, Marc (2004) "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts," 26 *J. of Empirical Legal Studies* 459–570.

Gastil, John, et al. (2010) *The Jury and Democracy: How Jury Deliberation Promotes Civic Engagement and Political Participation*. New York, NY: Oxford Univ. Press.

Goldbach, Toby S. (2015) "Instrumentalizing the Expressive: Transplanting Sentencing Circles into the Canadian Criminal Trial," 25 *Transnational Law & Contemporary Problems* 61–107.

Goldbach, Toby S., Benjamin Brake, & Peter J. Katzenstein (2013) "The Movement of U.S. Criminal and Administrative Law: Processes of Transplanting and Translating," 20 *Indiana J. of Global Legal Studies* 141–84.

Goodman-Delahunty, Jane, & David Tait (2006) "DNA and the Changing Face of Justice," 38 *Australian J. of Forensic Sciences* 97–106.

Graziadei, Michele (2006) "Comparative Law as the Study of Transplants and Receptions," in M. Reimann & R. Zimmermann, eds., *The Oxford Handbook of Comparative Law*. New York, NY: Oxford Univ. Press.

Green, Thomas (1985) *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury 1200–1800*. Chicago, IL: Univ. of Chicago Press.

Hans, Valerie P., et al. (2003) "The Hung Jury: *The American Jury*'s Insights and Contemporary Understanding," 39 *Criminal Law Bulletin* 33–50.

——— (2004) "Citizen Participation in the Judicial System: Trial by Jury," U.S. Speaker and Specialist Program of the U.S. Department of State's Office of International Information Programs (Argentina) (Aug. 29–Sept. 4, 2004).

——— (2007) "Introduction: Citizens as Legal Decision Makers: An International Perspective," 40 *Cornell International Law J.* 303–14.

——— (2008) "Jury Systems around the World," 4 *Annual Rev. of Law & Social Science* 275–97.

——— & Claire Germain (2011) "The French Jury at a Crossroads," 86 *Chicago-Kent Law Rev.* 737–68.

——— (2012a) "Jury Duty: It's No Joke in the State of New York," *Cornell J. of Law and Public Policy Blog* (Jan. 20). Available at: http://jlpp.org/blogzine/jury-representativeess-its-no-joke-in-the-state-of-new-york/ (accessed 12 June 2017).

——— (2012b) "What Difference Does a Jury Make?" 3 *Yonsei Law J.* 36–54.

——— (2013) "Jury Jokes and Legal Culture," 62 *DePaul Law Rev.* 391–413.

——— (2014) "Reflections on the Korean Jury Trial," 14 *J. of Korean Law* 81–115.

——— John Gastil, & Traci Feller (2014) "Deliberative Democracy and the American Civil Jury," 11 *J. of Empirical Legal Studies* 697–717.

——— et al. (2017) "Global Juries: A Plan for Research," in M. B. Kovera, ed., *The Psychology of Juries: Current Knowledge and a Research Agenda for the Future*. Washington, DC: APA Books.

Harfuch, Andrés, Mariana Bilinski, & Andrea Ortiz (2016) "Argentina's Indigenous Jury." Presented at the Annual Meeting of the Law and Society Association, New Orleans, LA (3 June).

Hendler, Edmundo (2001/2002) "Lay Participation in the Judicial Process: The Situation in Argentina," 2001 *Saint Louis-Warsaw Transatlantic Law J.* 81–8.

——— (2008) "Lay Participation in Argentina: Old History, Recent Experience," 15 *Southwestern J. of Law and Trade in the Americas* 1–29.

Higginbotham, Patrick (2002) "So Why Do We Call Them Trial Courts?" 55 *Southern Methodist University Law Rev.* 1405–23.

Jackson, John D., & Nikolay P. Kovalev (2007) "Lay Adjudication and Human Rights in Europe," 13 *Columbia J. of European Law* 83–123.

——— (2016) "Lay Adjudication in Europe: The Rise and Fall of the Traditional Jury," 6 *Oñati Socio-Legal Series* 368–95.

Jimeno-Bulnes, Mar (2011) "Jury Selection and Jury Trial in Spain: Between Theory and Practice," 86 *Chicago-Kent Law Rev.* 585–611.

Jimeno-Bulnes, Mar, & Valerie P. Hans (2016) "Legal Interpreter for the Jury: The Role of the Clerk of the Court in Spain," 6 *Oñati Socio-Legal Series* 197–215. Available at: http://ssrn.com/abstract=2784185 (accessed 12 June 2017).

Kim, Sangjoon, et al. (2013) "Judge-Jury Agreement in Criminal Cases: The First Three Years of the Korean Jury System," 10 *J. of Empirical Legal Studies* 35–53.

Klerman, Daniel (2003) "Was the Jury Ever Self-Informing?" 77 *Southern California Law Rev.* 123–49.

Kovalev, Nikolay P. (2010) *Criminal Justice Reform in Russia, Ukraine, and the Former Republics of the Soviet Union*. Lewiston, NY: The Edwin Mellen Press.
Kovera, Margaret Bull, ed. (2017) *The Psychology of Juries: Current Knowledge and a Research Agenda for the Future*. Washington, DC: APA Books.
Kozinski, Alex (2015) "Criminal Law 2.0," 44 *Georgetown Law J. Annual Rev. of Criminal Procedure* iii–xliv.
Kritzer, Herbert M., ed. (2002) *Legal Systems of the World: A Political, Social, and Cultural Encyclopedia*. Santa Barbara, CA: ABC Clio.
Kutnjak Ivkovic, Sanja (2007) "Exploring Lay Participation in Legal Decision Making: Lessons from Mixed Tribunals," 40 *Cornell International Law J.* 429–53.
——— (2015) "Ears of the Deaf: The Theory and Reality of Lay Judges in Mixed Tribunals," 90 *Chicago-Kent Law Rev.* 1031–67.
Landsman, Stephan (1988) *Readings on Adversarial Justice: The American Approach to Adjudication*. Eagan, MN: West Publishing.
——— (1993) "The Civil Jury in America: Scenes from an Unappreciated History," 44 *Hastings Law J.* 579–619.
——— (1990) "Rise of the Contentious Spirit: Adversary Procedure in Eighteenth Century England," 75 *Cornell Law Rev.* 497–609.
Langbein, John H., Renée Lettow Lerner, & Bruce P. Smith (2009) *History of the Common Law: The Development of Anglo-American Legal Institutions*. New York, NY: Aspen Publishers.
Langer, Maximo (2004) "From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure," 45 *Harvard International Law J.* 1–64.
Lee, Jae-Hyup, et al. (2013) "What's Happening in the Jury Room? Analyzing Shadow Jury Deliberations in Korea," 13 *J. of Korean Law* 41–69.
Legrand, Pierre (1997) "The Impossibility of 'Legal Transplants,'" 4 *Maastricht J. European and Comparative Law* 111–24.
Lempert, Richard (1992) "A Jury for Japan?" 40 *American J. of Comparative Law* 37–71.
——— (2007) "The Internationalization of Lay Legal Decision-Making: Jury Resurgence and Jury Research," 40 *Cornell International Law J.* 477–88.
——— (2015) "The American Jury System: A Synthetic Overview," 90 *Chicago-Kent Law Rev.* 825–59.
Levi, Michael (1983) "Blaming the Jury: Frauds on Trial," 10 *J. of Law and Society* 257–69.
Lloyd-Bostock, Sally, & Cheryl Thomas (2000) "The Continuing Decline of the English Jury," in N. Vidmar, ed., *World Jury Systems*. Oxford, England: Oxford Univ. Press.
Machura, Stefan (2016) "Civil Justice: Lay Judges in the EU Countries," 6 *Oñati Socio-Legal Series* 235–54. Available at: http://ssrn.com/abstract=2665612 (accessed 12 June 2017).
Marder, Nancy S. (2007) "Introduction to the 50th Anniversary of *12 Angry Men*," 82 *Chicago-Kent Law Rev.* 557–76.
——— (2011) "An Introduction to Comparative Jury Systems," 86 *Chicago-Kent Law Rev.* 453–66.
Marder, Nancy S., & Valerie P. Hans (2015) "Introduction to Juries and Lay Participation: American Perspectives and Global Trends," 90 *Chicago-Kent Law Rev.* 789–824.
——— (2016) "Special Issue: Juries and Mixed Tribunals across the Globe: New Developments, Common Challenges and Future Directions," 6 *Oñati Socio-Legal Series* 163–78.
Merryman, John H., David S. Clark, & John Owen Haley (1994) *The Civil Law Tradition*. Charlottesville, VA: Michie Co.
——— (2010) *Comparative Law: Historical Developments of the Civil Law Tradition in Europe, Latin America, and East Asia*. New York, NY: LexisNexis.

Miller, Jonathan M. (2003) "A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process," 51 *American J. of Comparative Law* 839–85.

Papke, David R., et al., eds. (2007) *Law and Popular Culture: Text, Notes, and Questions*. Newark, NJ: LexisNexis.

Park, Ryan Y. (2010) "The Globalizing Jury Trial: Lessons and Insights from Korea," 58 *American J. of Comparative Law* 525–82.

Pollack, Frederick, & Frederic W. Maitland (1898) *The History of English Law before the Time of Edward I*, vol. 1. Cambridge, England: Cambridge Univ. Press.

Porterie, Sidonie, Aldana Romano Bordagaray, & Camila Petrán Sayago (2016) "The Jury and its Democratic Legitimacy: Trial by Jury in Argentina's Public Agenda." Presented at the Annual Meeting of the Law and Society Association, New Orleans, LA (3 June).

Ramirez, Deborah A. (1994) "The Mixed Jury and the Ancient Custom of Trial by Jury de Medietate Linguae: A History and a Proposal for Change," 74 *Boston Univ. Law Rev.* 777–818.

Riles, Annelise (2006) "Comparative Law and Socio-legal Studies," in M. Reimann & R. Zimmermann, eds., *The Oxford Handbook of Comparative Law*. New York, NY: Oxford Univ. Press.

Savitt, William (1996) "Villainous Verdicts? Rethinking the Nineteenth-Century French Jury," 96 *Columbia Law Rev.* 1019–61.

Scherr, Caitlyn (2016) "Chasing Democracy: The Development and Acceptance of Jury Trials in Argentina," 47 *University of Miami Inter-American Law Rev.* 316–53.

Smith, Bruce P. (2005) "Plea Bargaining and the Eclipse of the Jury," 1 *Annual Rev. of Law and Social Science* 131–49.

Stith-Cabranes, Kate (1995) "Faults, Fallacies, and the Future of Our Criminal Justice System: The Criminal Jury in Our Time," 3 *Virginia J. of Social Policy and Law* 133–45.

Thaman, Stephen C. (1995) "The Resurrection of Trial by Jury in Russia," 31 *Stanford J. of International Law* 61–274.

——— (1997) "The Return to the Classic Jury on the European Continent: The Case of Russia and Spain." Presented at the Annual Meeting of the Law and Society Association, St. Louis, MO.

——— (1998) "Spain Returns to Trial by Jury," 21 *Hastings International and Comparative Law Rev.* 241–537.

——— (2001) "The Idea of the Conference," 72 *International Rev. of Penal Law* 19–23.

——— (2002) "The Jury's Role in Administering Justice in the U.S.: Introduction to Saint Louis Public Law Review Jury Issue," 21 *St. Louis Univ. Public Law Rev.* 3–10.

——— (2007) "The Nullification of the Russian Jury: Lessons for Jury-Inspired Reform in Eurasia and Beyond," 40 *Cornell International Law J.* 357–428.

——— (2011) "Should Juries Give Reasons for their Verdicts? The Spanish Experience and the Implications of the European Court of Human Rights Decision in Taxquet v. Belgium," 86 *Chicago-Kent Law Rev.* 613–68.

——— (2015) "Resume," http://law.slu.edu/sites/default/files/resume-thaman-2015.pdf (accessed 12 June 2017).

Thomas, Suja A. (2016) *The Disappearing American Jury: Restoring the Fundamental Constitutional Role of the Criminal, Civil, and Grand Juries*. New York, NY: Cambridge Univ. Press.

Toulemon, André, & M. Larnaude (1930) *La Question Du Jury*. Paris, FRA: Librairie du Recueil Sirey.

Vanoverbeke, Dimitri (2015) *Juries in the Japanese Legal System*. New York: Routledge.

Vidmar, Neil (2000a) "The Jury Elsewhere in the World," in N. Vidmar, ed., *World Jury Systems*. Oxford, England: Oxford Univ. Press.

——— ed. (2000b) *World Jury Systems*. Oxford, England: Oxford University Press.

——— & Valerie P. Hans (2007) *American Juries: The Verdict*. Amherst, NY: Prometheus Press.
Vogler, Richard (2001) "The International Development of the Jury: The Role of the British Empire," 72 *International Rev. of Penal Law* 525–50.
——— (2005) *A World View of Criminal Justice*. Aldershot, England: Ashgate.
Watson, Alan (1974) *Legal Transplants: An Approach to Comparative Law*. Charlottesville, VA: Univ. Press of Virginia.
Whitman, James Q. (2008) *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial*. New Haven, CT: Yale Univ. Press.

Cases Cited

Bushell's Case, 124 English Reports 1006 (1670).
Juzgado de Primera Instancia de Neuquén (1A INST.) [Neuquén Court of First Instance], 1/12/2015, Sentencia Número 2214/2015, Legajo Nu. 10450/2014 (Arg.). (unpublished criminal judgment for minor assault charges, on file with author).
Peña-Rodriguez v. Colorado, 580 U. S. ___ (2017).
Taxquet v. Belgium, App. No. 926/05 (Eur. Ct. H.R., Jan. 13, 2009), available at: http://www.echr.coe.int.
Taxquet v. Belgium (GC), App. No. 926/05 (Eur. Ct. H.R., Nov. 16, 2010), available at: http://www.echr.coe.int.
Tribunal Superior de Justicia de Neuquén (Trib. Sup. Nqn.) [Neuquén Superior Tribunal of Justice], 8/5/2016, "Pelayes Verónica Andrea; Carol Soae; Rain Maurico; Velazquez Mariqueo Martín s/Lesiones Agravadas," (Arg.). (unpublished court judgment directing the province to reimburse defendants for litigation costs, on file with author).

Statutes Cited

Constitución de la Confederación Argentina (1 de mayo de 1853), http://www.wipo.int/wipolex/en/text.jsp?file_id=361080.
Law No. 9182, art. 57, Jan. 1, 2005, [CDLXXXV] B.O. 27/05/2005 (Arg.) (Córdoba jury law).
Law No. 2784, Nov. 24, 2011, Código procesal penal de la Provincia de Neuquén (Arg.) (Neuquén jury law).

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