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METROPOLITAN AND TOWN JURIES: THE INFLUENCE OF SOCIAL CONTEXT ON LAY PARTICIPATION

MARÍA INÉS BERGOGLIO*

INTRODUCTION

Even though its implementation has been recent, trial by jury has deep historical roots in Argentina. Understood as a guarantee against the abuse of state power, trial by jury can be found in drafts proposed during the first Constituent Assembly, held in 1813, as well as in the Constitutions of 1819 and 1826.¹ The 1853 National Constitution prescribes trial by jury in article 24, section 12 of article 64, and article 99.² The longstanding presence of trial by jury is a clear indicator of Argentina's profound democratic aspirations, as well as its ample tolerance of the gap between written law and social practices.

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1. See generally RICARDO CAVALLERO & EDMUNDO HENDLER, JUSTICIA Y PARTICIPACIÓN—EL JUICIO POR JURADOS EN MATERIA PENAL [JUSTICE AND PARTICIPATION—THE JURY TRIAL IN CRIMINAL MATTERS] (1988); see also Agustín Jorge, *Informe Preliminar Juicio por Jurados—Experiencia Comparada* [Preliminary Report on Trial by Jury—Comparative Experience], UNIDOS POR LA JUSTICIA [UNITED FOR JUSTICE] (2004), available at http://www.unidosjusticia.org.ar/archivo/UNIJUS_juicio_por_jurados.pdf.

2. After the 1994 Reform, those articles are 24, 75 section 12 and 118:

Article 24: Congress shall promote the reform of the present legislation in all its branches, and the establishment of trial by jury.

Article 75, Section 12: Congress shall . . . enact [the laws] that may be required to establish trial by jury.

Article 118: 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. The trial shall be held in the province where the crime has been committed; but when committed outside the territory of the Nation against public international law, the trial shall be held at such place as Congress may determine by a special law.

Arts. 24; 75, §12; 118; CONSTITUCIÓN NACIONAL (Arg.).

At present, only the province (state) of Córdoba has implemented jury trials as ordered by the National Constitution.³ Lay participation started in Córdoba in 1998, in the form of a mixed criminal court, composed of three professional judges and two lay citizens—called “escabinos”—to deal with serious criminal cases, but only on request by the defendant, the public prosecutor, or the victim.⁴ In this mixed tribunal with a lay minority—inspired by the German model (Schoffen)—the verdict is reached jointly by juries and professional judges. This type of citizens’ participation in judicial decision making proved to be very limited, with only thirty-three resolved cases from 1998 to 2004.⁵ However, it helped pave the way for broader lay participation in future criminal decisions.

In 2004, Law 9182 adopted a mixed tribunal with a lay majority for criminal trials, comprising eight common citizens and three professional judges. The tribunal deliberates and decides jointly by majority vote, addressing questions of both fact and law in cases of aberrant crimes and corruption.⁶ The law was passed during a period of national debate concerning efficient measures to fight insecurity and crime.⁷

Across the country, lay participation in court decisions has also been considered in other legislatures.⁸ The Penal Procedure Code of the state of Chubut, located in Patagonia—where juries were implemented for the first

3. Edmundo Hendler, *Lay Participation in Argentina: Old History, Recent Experience*, 15 SW. J. L. & TRADE AM. 1, 29 (2008).

4. Carlos F. Ferrer & Celia Grundy Celia, EL ENJUICIAMIENTO PENAL CON JURADOS EN LA PROVINCIA DE CÓRDOBA [THE CRIMINAL JURY TRIAL IN THE PROVINCE OF CÓRDOBA] 8–9 (2003) (Arg.).

5. María Inés Bergoglio, *New Paths to Judicial Legitimacy: The Experience of Mixed Tribunals in Córdoba*, 14 SW. J. L. & TRADE AM. 319, 324 (2008).

6. See Law No. 9182, Nov. 9, 2004, B.O. (Arg.).

7. For a detailed description of the social and political context of the law, see Bergoglio, *supra* note 5, at 326.

8. Raúl Lamberto presented a proposal for jury trials in the state of Santa Fe on Aug. 18, 2009; see *Proponen Implementar los Juicios Por Jurado [Implement Proposed Jury Trials]*, AGENCIA FEDERAL DE NOTICIAS (Arg.), Aug. 18, 2009, available at http://www.derf.com.ar/despachos.asp?cod_des=283812&ID_Seccion=51. María Inés Fagetti submitted a similar initiative to the Corrientes Legislature in August 2010; see María Inés Fagetti, Juicio por Jurados [Jury Trials], available at http://www.hcdcorrientes.gov.ar/Lab_Parla_Dip_Fagetti_hcd.html. In the province of Neuquén, Carla Pandolfi presented a proposal for instituting jury trials on March 4, 2010; see Carla Pandolfi, *Proponen Regular el Juicio Por Jurados en Neuquen [Proposed Regular Jury Trials in Neuquen]*, NOTICIAS INECIP (Arg.), Mar. 18, 2010, available at <http://www.inecip.org/noticiaampliada.php?id=77>.

time in Argentina, between 1873 and 1879⁹—allows for lay participation in its courts..¹⁰ However, Chubut has yet to actually utilize lay participation.

At the federal level, a Bill of Juries has been awaiting deliberation in the Senate since October 2006. The initiative—inspired by the Anglo-Saxon model¹¹—originated in a program of the National Department of Justice, *Justicia en Cambio*, which received support by the Libra Foundation and financing by the United States embassy.¹² The project was endorsed by Senator—now President—Cristina Fernandez de Kirchner and was renewed in July 2008.¹³ A similar project was initiated in the House of Representatives in March 2010.¹⁴

The issue of lay participation in the administration of justice is at a significant place in the public agenda. In March 2009, the NGO INECIP started a national campaign to reject criminal trials that do not include common citizens next to the bench.¹⁵

Within this context, we may ask how this institution could work in a country like Argentina, where regional inequalities—social, educational and economic—have deepened in past years.¹⁶ This paper analyzes the experience of jury trials in the province of Córdoba, comparing the situa-

9. Virgilio Zampini reports about these initial attempts at jury trials, which took place only in the Welsh settlement of Gaiman, a small city located about 200 km from the capital. Virgilio Zampini, *Chubut Siglo XIX: Una Década de Juicio por Jurados* [Chubut in the 19th Century: A Decade of Jury Trials], 14 CUADERNOS DE DOCTRINA Y JURISPRUDENCIA PENAL 343, 346–49 (2002) (Arg.).

10. Diego Carmona, Chubut State Attorney, declared that jury trials could start in the province in 2011. See *Carmona Afirma el Juicio Por Jurado en Chubut se Instrumentara en el 2011* [Carmona Affirms Jury Trials Will Be Implemented in Chubut in 2011], EL CHUBUT (Arg.), Aug. 26, 2010, available at <http://www.elchubut.com.ar/despliegue-noticias.php?idnoticia=137949>.

11. For a description of the project, see Hendler, *supra* note 3, at 15.

12. See CENTRO DE ESTUDIOS DE JUSTICIA DE LAS AMERICAS, *Changing Justice, Report of Justice*, 2006–2007, available at http://www.cejamerica.org/reporte/muestra_pais3.php?idioma=INGLES&pais=ARGENTIN&tipereport=REPORTE3&seccion=MPROY07#nota_141.

13. The project may be reviewed at the Federal Senate web page. See Senado de la Nación [National Senate], S-246/08: Ley de Juicio por Jurados [Law for Jury Trials] (July 30, 2008) (Arg.) [hereinafter “S-246/08”], available at http://www.senado.gov.ar/web/proyectos/verExpe.php?origen=S&tipo=PL&numexp=2464/08&nro_comision=&tConsulta=3.

14. The project may be read at the House of Representatives web page. See Cámara de Diputados de la Nación [Chamber of Deputies], File 1322-D-2010: Régimen de Juicio por Jurados [Regime for Trial by Jury] (Mar. 22, 2010) (Arg.), available at <http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=1322-D-2010>.

15. See *INECIP Juicio por Jurado* [INECIP Jury Trial], GOOGLE GROUPS, <http://groups.google.com/group/juicioxjurado> (last visited Feb. 5, 2011).

16. Guillermo Velázquez presents a careful discussion of regional differences in standards of living in Argentina. GUILLERMO VELÁZQUEZ, *Regionalizaciones y Diferenciación Socio-Territorial* [Regionalization and Socio-Spatial Differentiation], in POBLACIÓN Y BIENESTAR EN LA ARGENTINA DEL PRIMERO AL SEGUNDO CENTENARIO [POPULATION AND WELFARE IN ARGENTINA FROM THE FIRST TO SECOND CENTENNIAL] 109, 109–39 (Susana Torrado ed., 2007).

tion in metropolitan and town areas, in order to depict the impact of different social contexts on lay participation. This analysis may be useful to understanding the different ways in which the social, political, and economic context shape how lay participation operates in practice, an issue that Hans included in the research agenda for future comparative study of jury systems.¹⁷ This analysis is also relevant to the current debate in Argentina about the implementation of jury trials all over the country.¹⁸

Analyzing the experience of lay participation in criminal courts in Thailand, Munger draws attention to the fact that jury systems remove people from their personal connections with others only to then include them in decision-making bodies of strangers with whom they are formally equal.¹⁹ He argues that there might well be a mismatch between the interaction required of citizens who participate in jury systems, and typical patterns of social interaction practiced by people from areas with traditional beliefs and customs.²⁰ His observations suggest the importance of comparing lay participation in metropolitan and town areas.²¹

While anonymity is a dominant feature in a metropolitan setting like Córdoba, inclusive social networks are more typical in small and mid-sized towns, where personalization in social bonds is stronger. The differences in these patterns of social interaction create different opportunities for individual autonomy when individuals make decisions. A second difference connected with varying levels of urbanization is the public's opinion towards judges. Trust in the administration of justice is usually higher in villages and mid-sized towns, where many authorities still hold a traditional legitimation; conversely, criticism of the courts is more frequent in metropolitan areas (table 1). These differences suggest that interest in lay participation may be diverse in both areas, since it grows with the public's distrust towards judges.

17. Valerie Hans, *Jury Systems Around the World*, 4 ANN. REV. L. & SOC. SCI. 275, 291 (2008).

18. The difficulty of implementing lay participation in the administration of justice in rural areas has been used as an objection to jury trials since 1873, when the first legislative project on juries was presented to the Congress. Florentino Gonzalez and Victorino de la Plaza wrote the draft of the legislation, which was influenced by Edward Livingston's draft Penal Code for Louisiana (1825), and the Code of Criminal Procedure of the State of New York (1850) See CAVALLERO & HENDLER, *supra* note 1.

19. Frank Munger, *Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand*, 40 CORNELL INT'L L. J. 455, 458 (2007).

20. *Id.* at 466.

21. *Id.* at 468.

Table 1 – Confidence in the Judiciary, by Residence²²

Confidence in the Judiciary	Size of the Town			Total
	Less than 20,000	20,001–100,000	More than 100,000	
Have a lot	7.5%	3.4%	4.1%	4.8%
Some	30.5%	28.4%	18.7%	22.6%
A little	39.8%	40.5%	35.9%	37.4%
No confidence	22.2%	27.7%	41.3%	35.3%
Total	100.0%	100.0%	100.0%	100.0%

Comparing jury systems across the world, Hans has indicated that lay participation requires an educated public that understands its responsibilities and generally agrees with the laws, as well as sufficient resources to pay for the costs of a jury system.²³ In both aspects, differences between metropolitan and town areas are remarkable in Córdoba. Educational differences are clearly visible. According to the 2001 National Census, 51% of the inhabitants of the capital of the province have attended secondary school; whereas only 37% of the inhabitants in the rest of the province have attended secondary school.²⁴ The availability of legal professionals is also quite different: 80% of the lawyers live in the metropolitan area, which concentrates only 57% of the total population (table 2).

22. Data processed for this project was provided by Latinobarómetro Argentina 2005, available at www.latinobarometro.org.

23. Hans, *supra* note 17, at 287.

24. See Cuadro 7.5. Población de 5 años o más y población que asiste a Educación General Básica y/o primario, polimodal y/o secundario por año de estudio que cursa según sexo y edad. Año 2001 [Table 7.5. Population 5 years or older and people attending Basic General Education and/or primary polimodal or second year of study according to age and sex. Year 2001] CENSO NACIONAL 2001 [NATIONAL CENSUS 2001] – RESULTADOS PROVINCIALES [PROVINCIAL RESULTS] – CÓRDOBA (2010), available at http://www.indec.gov.ar/censo2001s2_2/ampliada_index.asp?mode=14.

Table 2 – Court Districts, Córdoba, Argentina²⁵

Court District	Population (2001)		Lawyers (2006)		Judges and Judicial Officers (2009)	
	N	%	N	%	N	%
1. C a p i t a l	1,755,318	57.24	8,548	79.69	722	66.36
2. R i o C u a r t o	347,636	11.34	477	4.45	79	7.26
3. B e l l V i l l e	166,838	5.44	414	3.86	44	4.04
4. V i l l a M a r t i a	162,412	5.30	374	3.49	56	5.15
5. San Francisco	190,182	6.20	353	3.29	62	5.7
6. V i l l a D	86,478	2.82	119	1.11	34	3.13

25. Information included in the web page of the Judiciary, Córdoba, Argentina, available at <http://www.justiciacordoba.gov.ar/site/Asp/MapaJudCircunscripciones.asp>.

	ol or es						
7.	C ru z d el Ej e	141,094	4.60	89	0.83	36	3.31
8.	L a b o ul a y e	34,647	1.13	92	0.86	14	1.29
9.	D eá n F u n es	59,482	1.94	37	0.34	15	1.38
10.	R ío T er ce ro	122,714	4.00	223	2.08	26	2.39
Total		3,066,801	100.00	10,726	100.00	1,088	100.00

Like the whole country, Córdoba presents a centralized political structure, and contrasts in public resources between the capital of the province and other areas are easily observable. The presence of state agencies is weak in small towns—a clear example of what O'Donnell called “*low in-*

tensity citizenship—and is a typical result of “delegative democracies”.²⁶ The concentration of courts, judicial officers and technical resources in the capital is still remarkable; court buildings in mid-sized cities are frequently crowded old houses, where it is not easy to find deliberation rooms. These restrictions in infrastructure may affect the implementation of lay participation.

This article explores the effects of these differences in social context, educational levels, and political structure on the mixed tribunals in Córdoba. Additional issues compared in this article are the support for citizen participation in legal decision making, the responses to the introduction of the new mixed courts, and jury-judge agreement rates.²⁷ The analysis in this paper uses data obtained in the sentences pronounced in the period 2005–2009, as well as information obtained through interviews of lawyers, magistrates, judicial clerks and common citizens who served as jurors. Focus groups were also conducted in metropolitan Córdoba and mid-sized towns.²⁸ The varied information in this article could help us to understand how citizen participation interacts with the cultural, political, and economic context in different areas. It could also be useful to a discussion about the difficulties that this type of criminal trial format could face if implemented at the federal level.

I. SUPPORT FOR CITIZEN PARTICIPATION IN LEGAL DECISION MAKING

In Argentina, available data suggest that lay participation in criminal courts is supported by common citizens. A survey carried out on the general population of the entire country by the Ministry of Justice in 1998 indicated that 72% of the people interviewed believed that the judiciary would improve if jury trials were introduced.²⁹

26. Guillermo O'Donnell, *Las Poliarquías y la (In)efectividad de la Ley en América Latina* [The Polyarchy and the (In)effectiveness of Law in Latin America], in LA (IN)EFECTIVIDAD DE LA LEY Y LA EXCLUSIÓN EN AMÉRICA LATINA [THE (IN)EFFECTIVENESS OF THE LAW AND EXCLUSION IN LATIN AMERICA] 324, 329 (Juan E. Méndez et al. eds., 2002) (Arg.).

27. For a report on other aspects of the Córdoba experience, see María Inés Bergoglio & Cynthia Cordon, *Disidencias en los Juicios por Jurado: Notas sobre la Autonomía de Decisión Legal* [Dissent in Jury Trials: Notes on the Autonomy of Legal Decisions], Contribution to XI Congreso Nacional y I Latinoamericano de Sociología Jurídica [XI National Congress and I Latin American Sociology of Law], Buenos Aires, Arg. (Oct. 6–9, 2010).

28. Field work took place in the period between June 2008 and July 2009, in Metropolitan Córdoba, Río Cuarto, San Francisco, Villa María, and Villa Dolores. See Table 2 for a description of these court districts.

29. The survey was conducted by Mora y Araujo Consulting, and included 800 cases, from rural and urban areas. Results were published in *La Nación* newspaper, April 11, 1998. Andrea Centeno, *Granillo Ocampo Reunió Opiniones en Favor de los Jurados* [Granillo Ocampo Gathered Opinions in Favor of Juries], LA NACIÓN (Arg.), Apr. 11, 1998, available at http://www.lanacion.com.ar/nota.asp?nota_id=93229.

Popular support for lay participation is associated with a lack of confidence in the Ministry of Justice as well; a study conducted in Buenos Aires in 2004 showed that a majority of people who were interviewed were convinced that implementing jury trials would reduce judicial corruption (66%) and would yield a higher proportion of guilty verdicts (68%).³⁰ The strong adherence to this type of criminal prosecution is probably also connected with a media culture of American origin.

This issue is framed in different terms among legal professionals, who normally do not favor lay participation in court decisions. A survey carried out in Córdoba revealed that 56% of the citizens were in favor of trial by jury;³¹ only 31% of the lawyers expressed the same view.³² The concern that lay participation in criminal trials may lead to a tougher penal system has propelled an opposition to jury trials among certain sectors of the legal profession. For example, the prestigious criminal lawyer, Zaffaroni, (currently a Justice of the Supreme Court of Justice of the Nation) has maintained that the idea of employing jury trials is dangerous for it may become “a quick lynching tool for the poor.”³³

Prior to passing Law 9182, preceding debates showed how lay participation in criminal courts was considered in the legal profession. During the preliminary hearings, the representatives of the Magistrates' Association and the Bar Association indicated that they had approved, in general terms, of the mixed tribunal experience with a lay minority since 1998, yet were reluctant to broadening the number of common citizens included in the tribunal.³⁴ Nearly half of the judges sitting in the Criminal Appellate Courts signed a presentation to the Legislature, rejecting the project.³⁵

Despite significant resistance from the legal profession, Law 9182 was finally passed in August 2004, in a political context marked by a national

30. The study was conducted by the Centro de Opinión Pública, Universidad de Belgrano, September 2004. See CENTRO DE OPINIÓN PÚBLICA DE LA UNIVERSIDAD DE BELGRANO [CENTRE OF PUBLIC OPINION, BELGRANO UNIVERSITY], PERCEPCIÓN PÚBLICA DE LA IMPLEMENTACIÓN DEL JUICIO POR JURADOS DE CIUDADANOS EN ARGENTINA [PUBLIC PERCEPTION OF THE IMPLEMENTATION OF TRIAL BY JURY OF CITIZENS IN ARGENTINA] 4–6 (2004), available at http://www.ub.edu.ar/centros_de_estudio/copub/sondeos_archivos/perc_pub_de_la_implemen_del_juicio_por_jurados_de_ciudadanos_en_arg.pdf.

31. MARÍA INÉS BERGOGLIO, *La Matriz del Orden Social: La Cultura en la Sociedad* [The Network of Social Order: Culture in Society], in CIENCIA, DERECHO Y SOCIEDAD [SCIENCE, LAW AND SOCIETY] 54 (2003) (Arg.).

32. *Id.*

33. Interview by Pagina 12 with Zaffaroni, Justice of the Supreme Court of Justice of the Nation, in Argentina (Oct. 24, 2004), available at <http://www.pagina12.com.ar/diario/principal/index.html>.

34. Statements by representatives of the Bar Association and Magistrates Association, during public hearings prior to the sanction of the law, can be found in LA VOZ DEL INTERIOR (Arg.), Aug. 14, 2004, available at <http://www.lavozdelinterior.com.ar>.

35. Interview with Judge V.E., in Córdoba, Arg. (June 2008).

debate concerning efficient measures to fight insecurity and crime.³⁶ These discussions were impelled by a social movement, led by Juan Carlos Blumberg, who demanded harsher criminal penalties and judicial reform as means to improve urban safety.³⁷

The opinion amongst lawyers suggested that the acceptance of this procedural innovation would not be simple. When interviewed for this project, a prosecutor explained the reasons for the legal officers' opposition. The prosecutor mentioned the contrast between the difficult requirements to become judge and the simple conditions to be included in the jury, the critical view of the work of the judiciary involved in this innovation, and simple resistance to the effort required to adapt the changes.

I can't stop thinking about that, all of a sudden common people come to sit as judges, when this office required [prosecutors to obtain] a university degree, years of practice at court, rigorous and stressing selection systems, and suddenly, a [lay] person is called to the same office. The question is, why did they require me [to make] such a big effort? . . . Secondly, you can also ask: was the work I was doing up to now not correct? Left alone, wasn't I considered reliable, transparent and responsible enough? Do I need a controller, an inspector, sitting by my side? And . . . all reforms produce some opposition, since you have to restudy problems already solved, and you feel that all your previous work, which you believed correct, is being questioned. . .³⁸

The fear that lay participation in criminal trials may lead to a tougher penal system also helped propel the opposition to jury trials among certain sectors of the legal profession. The resistance to the law was expressed in a number of constitutional objections to the procedure, which would allow lay participants to help render decisions in a criminal trial.³⁹ During the first two years Law 9182 was in force, attorneys raised twelve constitution-

36. See Bergoglio, *supra* note 5, at 329–30, 336.

37. For a detailed review of the process of law-related information, *see id.* at 326.

38. Interview with Prosecutor F.C., in Córdoba, Arg. (June 2008).

39. Constitutionality objections were raised in the following cases: Cámara 1 [Chamber of Crime], Río Cuarto, 25/4/2005, "Devia" (Arg.); Cámara 2 [Chamber of Crime], Río Cuarto, 09/5/2005, "Palo-meque" (Arg.); Cámara 8^a [Chamber of Crime], Córdoba, 24/10/2005, "Arancibia" (Arg.); Cámara 11^a [Chamber of Crime], Córdoba, 24/11/2005, "Arismendi" (Arg.); Cámara 8^a [Chamber of Crime], Córdoba, 24/11/2005, "Navarro" (Arg.); Cámara 6^a [Chamber of Crime], Córdoba, 5/5/2006, "Marcial" (Arg.); Cámara 1^a [Chamber of Crime], Río Cuarto, 6/7/2006, "Fracchetti" (Arg.); Cámara 2^a [Chamber of Crime], Córdoba, 8/9/06, "Monje" (Arg.); Cámara 9^a [Chamber of Crime], Córdoba, 20/9/2006, "Medina Allende" (Arg.); Cámara 3^a [Chamber of Crime], Córdoba, 9/10/2006, "Pérez" (Arg.); Cámara 1^a [Chamber of Crime], Río Cuarto, 17/10/2006, "Mattone" (Arg.); Cámara 9^a [Chamber of Crime], Córdoba, 8/2/2007, "Ceballos" (Arg.). For a detailed analysis of these objections, *see* Armando Andruet et al., *Jurados Populares [People's Juries]*, in *GESTIÓN DEL SISTEMA DE ADMINISTRACIÓN DE JUSTICIA Y SU IMPACTO SOCIAL [MANAGEMENT OF THE JUDICIAL SYSTEM AND ITS SOCIAL IMPACT]* 81, 81–106 (2007) (Arg.).

nality objections. These objections were initiated both by the lawyers for the defense and the prosecution.⁴⁰

The arguments against the procedure varied. There were objections concerning the jurisdiction of the Province of Córdoba to legislate on the matter, the compulsory nature of the procedure, and the jurors' majority over the judges.⁴¹ In addition, there were retroactivity concerns over the applicability of the system to crimes committed before the law came into effect. The lower-level judges, whose points of view resemble those of practicing lawyers, ruled in favor of the objections to the constitutionality of the procedure in nine out of twelve cases.⁴² Therefore, the launching of trials with lay juries had a rather slow start, especially in the provincial capital.

But the highest levels of the judiciary gave strong support to this innovation. In September 2006, the General Prosecutor signed a general instruction affirming the jurisdiction of the Province to legislate on this matter and hence, the constitutionality of the procedure.⁴³ He held that "popular representation in the Administration of Justice is a significant tool for social control, which involves greater social openness in the Judiciary as well as full respect to due process requirements."⁴⁴

The Provincial High Court of Justice also supported the innovation with determination. This favorable attitude was first observed on the administrative front with the fast creation of a Jury Office, destined to resolve practical matters related to the implementation of the new system.⁴⁵

Moreover, on a doctrinal level, the High Court categorically defended the constitutionality of this type of criminal prosecution. In the *Navarro* case (decided on December 10, 2006), the High Court rejected the objec-

40. For instance, in the case "Navarro", (24/11/2005, Cámara 8ª [Chamber of Crime], Córdoba) the Public Defendant objected the constitutionality of the law; in "Monje" (08/09/06, Cámara 2ª [Chamber of Crime], Córdoba) and "Medina Allende" (20/09/2006, Cámara 9ª [Chamber of Crime], Córdoba) the objection was initiated by the prosecutor.

41. For a detailed discussion of the objections of constitutionality of the procedure, see Andruet et al, *supra* note 39, at 86–92.

42. See the following cases: Cámara 1 [Chamber of Crime], Río Cuarto, 25/4/2005, "Devia" (Arg.); Cámara 2 [Chamber of Crime], Río Cuarto, 09/5/2005, "Palomeque" (Arg.); Cámara 11ª [Chamber of Crime], Córdoba, 24/11/2005, "Arismendi" (Arg.); Cámara 8ª [Chamber of Crime], Córdoba, 24/11/2005, "Navarro" (Arg.); Cámara 6ª [Chamber of Crime], Córdoba, 5/5/2006, "Marcial" (Arg.); Cámara 1ª [Chamber of Crime], Río Cuarto, 6/7/2006, "Fracchetti" (Arg.); Cámara 2ª [Chamber of Crime], Córdoba, 8/9/06, "Monje" (Arg.); Cámara 9ª [Chamber of Crime], Córdoba, 20/9/2006, "Medina Allende" (Arg.); Cámara 3ª [Chamber of Crime], Córdoba, 9/10/2006, "Pérez" (Arg.); Cámara 1ª [Chamber of Crime], Río Cuarto, 17/10/2006, "Mattone" (Arg.).

43. Instrucción General No. 8, Sept. 20, 2006 (Arg.).

44. *Id.*

45. The Jury Office was created on April 20, 2005, by Acuerdo Reglamentario No. 762 A, Tribunal Superior de Justicia [High Court of Justice] (April 20, 2005) (Córdoba, Arg.).

tions one by one, and repeated this attitude in later cases.⁴⁶ In this way, and despite resistance from the legal profession, the High Court secured the consolidation of the system. On the political front, this innovation in criminal prosecution led to an unprecedented gesture when the High Court commissioned a study on the opinion of the citizens who had acted as jurors and gave these results widespread coverage.⁴⁷

It is interesting to observe that acceptance of the innovation occurred quicker in the towns; in fact, the two first trials by jury were organized outside of the metropolitan area, in San Francisco and Villa María (table 3). At the same time, in the larger cities—where the existence of law school faculty means the presence of highly skilled lawyers—the formal objections to the constitutionality of the new law slowed the implementation of lay participation, which did not start until 2006. Only after the Provincial High Court affirmed the legitimacy of the innovation did the use of lay participation in both areas begin to balance.⁴⁸

**Table 3 – Criminal Cases Decided with Participation of Laymen
Córdoba, Argentina, 2005–2009⁴⁹**

Year	Capital City		Other Towns		Total	
	N	%	N	%	N	%
2005	—	—	2	100.0	2	100.0
2006	10	55.6	8	44.4	18	100.0
2007	18	60.0	12	40.0	30	100.0
2008	24	64.9	13	35.1	37	100.0
2009	23	65.7	12	34.3	35	100.0

46. Tribunal Superior de Justicia [Trib. Sup.] [High Court of Justice], 10/12/2006, “Navarro, Mauricio Orland / Penal” (Arg.). This doctrine was maintained in the following cases: Tribunal Superior de Justicia [Trib. Sup.] [High Court of Justice], 26/2/2007, “Frachetti, Oscar Salvador / Penal” (Arg.); Tribunal Superior de Justicia [Trib. Sup.] [High Court of Justice], 25/4/2007, “Andrew Pérez Diario / Penal” (Arg.); Tribunal Superior de Justicia [Trib. Sup.] [High Court of Justice], 25/4/2007, “Luis Eduardo Medina Allende / Penal” (Arg.); Tribunal Superior de Justicia [Trib. Sup.] [High Court of Justice], 29/6/2007, “Mattone Miguel Angel y Orto / Penal” (Arg.), available at <http://www.justiciacordoba.gov.ar/site/Asp/Jurisprudencia.asp>.

47. Official comments on these results can be read in the press. See Marcelo Altamirano, *Aprobare* [Approve], LA VOZ DEL INTERIOR (Arg.), Apr. 9, 2007 (comments of the District Attorney), available at http://archivo.lavoz.com.ar/07/04/09/secciones/sucesos/nota.asp?nota_id=60500. See also Armando Andruet, *Jurados Populares, Medios y Poder Judicial* [Popular Juries, Media and the Judiciary], LA VOZ DEL INTERIOR (Arg.), Apr. 12, 2007 (comments of the President of the High Court), available at http://archivo.lavoz.com.ar/07/04/12/secciones/opinion/nota.asp?nota_id=61476.

48. But resistance has yet to disappear; even now the Second Chamber of Crime refuses to accept these mixed tribunals, objecting to their constitutionality.

49. Jury Office of the Judiciary, Córdoba, Argentina. Includes only cases envisaged in Law 9182. (On file with author).

Total	75	61.5	47	38.5	122	100.0
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To summarize, it may be said that even if lay participation enjoyed popular support, its implementation was resisted by both lawyers and magistrates. The opposition was stronger in the bigger cities, where both the concentration of lawyers and their technical skills are higher.

II. THE IMPLEMENTATION OF LAY PARTICIPATION

The implementation of lay participation in criminal trials created a particular challenge for the judiciary, due to the centralized character of the Córdoba Judicial Power.⁵⁰ Courts located in the metropolitan area process 57% of the caseload, but have 64% of the office area and 73% of the administrative staff (table 4). The concentration of administrative staff and investments in buildings in the capital city created special difficulties in the effort to carry out the reforms in small and mid-sized cities. Previous attempts at judicial reform have been initiated in the capital, but extended to the rest of the province only when considerable technical knowledge was already available.

Table 4 – Judicial Indicators, Córdoba, Argentina, 2005⁵¹

	Capital City	Other Towns	Total
Cases filed	197,246	145,192	342,438
Office area (m ²)	76,570	42,788	119,358
Staff	3,674	1,361	5,035
Cases filed	57.60%	42.40%	100%
Office area (m ²)	64.15%	35.85%	100%
Staff	72.97%	27.03%	100%

The first step towards lay participation was to organize the jury rolls, following the mechanism prescribed by Law 9182: citizens are randomly chosen from the voter rolls. However, the right to participate in a mixed tribunal is not distributed as equally as the right to vote, since prospective jurors have to meet other requisites. To participate in a lay tribunal, an

50. The centralization of the judiciary has a long history in Córdoba. Democratic administrations have tended to reduce it, creating special Appellate Courts in mid-size cities. See María Inés Bergoglio *Argentina: The Effects of Democratic Institutionalization*, in *LEGAL CULTURE IN THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE 20* (Lawrence M. Friedman & Rogelio Pérez-Perdomo eds., 2003). However, centralization is still quite prominent, since all specialized courts (Family Courts, Bankruptcy Courts, Administrative Courts) are located in the capital city.

51. Information included in the web page of the Judiciary, Córdoba, Argentina, available at <http://www.justiciacordoba.gov.ar/site>.

individual must have at least nine years of general education, and be between the ages of twenty-five and sixty-five.⁵² There are also some categories of persons excluded from jury service, such as lawyers, military, priests, policemen, and in general, civil servants.⁵³ As Viqueira has argued, all these restrictions lead to a jury composition that is not fully representative of the citizenry.⁵⁴

The elaboration of the jury rolls was a complicated task, since officials had to contact a sufficient number of citizens who met the legal requirements, but the officials had to start from voter rolls with address data that, in many cases, was not updated. The jury lists are separated by gender, because the Córdoba law requires that each jury be composed of four men and four women.⁵⁵ After the random draw, the Jury Office sends a form to the prospective jurors, asking about their personal conditions.⁵⁶ The juror list is compiled from the returned forms.

The difficulties experienced by the state when trying to contact citizens were evident in February 2005, when the preparation of the jury rolls started (table 5). A third of the forms sent to residents in the metropolitan area were returned to the Jury Office, due to insufficient or inadequate address information. This proportion was considerably lower (18%) in small and mid-sized cities, where stronger personal networks reduce anonymity levels and improve mail services.

Table 5 – Step One: Building the Jury Roll⁵⁷

Area	Citizens Drawn from Voter Rolls		Forms Returned to Sender*		Contacted	
Total	1,512	100%	406	27%	1,106	73%
Capital city	860	100%	287	33%	573	67%
Other towns	652	100%	119	18%	533	82%
*Due to inadequate address information.						

52. See Law No. 9182, art. 5, Nov. 9, 2004, B.O. (Arg.).

53. See *id.* at arts. 6–7.

54. Sebastián Viqueira, *La Forma en que se Eligen los Jurados: Un Duro Camino Hacia una Mayor Democratización de la Justicia* [The Form of Jury Selection: A Hard Road to a Greater Democratization of Justice], in SUBIENDO AL ESTRADO: LA EXPERIENCIA CORDOBESA DE JUICIO POR JURADOS [RISE TO THE STAGE: THE EXPERIENCE OF TRIAL BY JURY IN CÓRDOBA] 107, 124 (María Inés Bergoglio ed., 2010).

55. See Law No. 9182, art. 18.

56. Acuerdo Reglamentario No. 743 A, Tribunal Superior de Justicia, [High Court of Justice] (Dec. 1, 2004) (Córdoba, Arg.).

57. Data processed for this project was published in *Diario Judicial Newspaper*, 15/02/2005.

Furthermore, the number of prospective jurors was reduced because of a lack of interest in participating in this civil service. A third of the recipients did not return completed forms, showing their indifference towards lay participation in judicial decision making (table 6). This percentage was slightly higher in the metropolitan area (table 6).

The final jury list was even smaller, since not all contacted and interested citizens met the legal requirements to participate in jury service. Insufficient education proved to be the principal cause of exclusion, particularly in towns, where one third of people summoned had to be dismissed for this reason (table 6). As gender differences in general education are not significant in Córdoba, this type of exclusion affected both men and women equally.⁵⁸

Table 6 – Step Two: Jury Selection Process⁵⁹

Area	People Contacted	No Reply	Excluded for Lack of Education	Excluded for other Reasons	Met Legal Requirements
Capital City	573	37%	18%	12%	33%
Other Towns	533	31%	34%	4%	31%
Total	1,106	34%	26%	8%	32%

It could easily be assumed that the restrictive effect of the education requirement could be more intense if lay participation extended to the whole country, since educational differences are deeper in other provinces, especially in the northern region. To avoid this consequence, the Kirchner project for juries at the federal level establishes that all citizens who can read and write may be included in the jury rolls.⁶⁰

The cumulative effect of these factors meant that only 23% of the names drawn from the voter rolls were eligible as jurors, and it was neces-

58. The gender quota imposed by Law 9182 has been carefully respected; 49.9% of the citizens who served as jurors between 2005 and 2009 are women. Sánchez Mariana & Gastiazoro María Eugenia, *Representatividad y Decisión en las Estructuras de Poder. Las Diferencias de Género en el Juicio Penal con Jurados* [Representation and Decision in the Power Structure: Gender Differences in Criminal Jury Trials], in SUBIENDO AL ESTRADO: LA EXPERIENCIA CORDOBESA DE JUICIO POR JURADOS [RISE TO THE STAGE: THE EXPERIENCE OF TRIAL BY JURY IN CÓRDOBA] 175, 189 (María Inés Bergoglio ed., 2010). It is interesting to note that women are half the jurors, but 57% of the dissenters. Bergoglio & Cordon, *supra* note 27, at 10.

59. Data processed for this project published in *Diario Judicial Newspaper*, 15/02/2005. Percentages over the total contacts.

60. See S-2464/08, *supra* note 13, at art. 4.

sary to repeat the random draw three times.⁶¹ Recent reports indicate that the situation has not changed lately.⁶² It is worth observing that the percentage of non-responses to the official form—a good indicator of interest in participating in jury service—remains substantially the same.⁶³

The difficulties in compiling the jury rolls had an undesirable consequence. Since the list of eligible citizens is rather short, in many instances the same citizens are summoned again. Some of our interviewees who live in the metropolitan area reported having participated in four or even five jury trials within a period of two years. In small and mid-sized towns it was common to find people who served in two or three trials in the same period. This consequence reduces the chance of participation by other citizens, and changes the views of those already experienced in courtroom matters. A prosecutor interviewed during the research declared:

There are jurors who have participated in many trials, and that is against the nature of this institution. We do not need trained jurors, but common persons who can present common understandings on the evidence of the case, who can discuss, deliberate and decide if the defendant is innocent or guilty. But if they come with some practice on the matter, they are not lawyers of course, but this changes the meaning of their participation. . . .⁶⁴

The ability of the state to connect the citizenry, and the public's interest in jury service, are not the only challenges to the implementation of this new procedure for criminal decision making. Restrictions in public facilities, particularly in small and mid-sized towns, are clearly visible. Infrastructure matters may complicate the implementation of lay participation, since it is necessary to accommodate fifteen persons (three professional judges, eight jurors and four alternate jurors) in a stand where there were only three people before. Furthermore, these trials attract many journalists, and the audience halls are usually crowded.

In the capital city, criminal courts are located in a modern building, where the areas for judges and prosecutors are clearly separated. It is easy to prepare an audience hall and a deliberation room in such a building. In other places, this issue is more complicated, since there are no rooms avail-

61. See *Inconvenientes para Seleccionar los Jurados en Córdoba* [Inconveniences in Selecting Juries in Córdoba], DIARIO JUDICIAL (Arg.), Feb. 14, 2005, available at http://www.diariojudicial.com/contenidos/2005/02/15/noticia_0001.html.

62. *Una Responsabilidad Ciudadana* [A Civic Responsibility], LA VOZ DEL INTERIOR (Arg.), July 27, 2009 (interview with Eduardo Soria, Head of the Jury Office), available at http://archivo.lavoz.com.ar/09/07/27/secciones/sucesos/nota.asp?nota_id=537379.

63. Viqueira, *supra* note 54, at 118.

64. Interview with Prosecutor F.C., *supra* note 38.

able in judicial buildings; for instance, in Río Cuarto, the first trials took place in the Bar Association.⁶⁵

Initially, judges from small towns also complained about the absence of adequate furniture. The Provincial High Court found an imaginative solution: two sets of special chairs and tables were bought, and sent by van wherever a trial by jury was scheduled.⁶⁶ It seems that now, local courts are solving this problem with their own resources.⁶⁷

It is important to recall that infrastructure matters are quite significant, since they affect much more than the actors' comfort. When the decision-making process is based on face-to-face interaction, the organization of the space where decisions are made affects the quality of the decision obtained. If the building does not allow the jury to be isolated from the public during the breaks, the jurors are exposed to direct contact with relatives of the victim and the defendant, and experience additional pressures, which in turn reduce their autonomy. We heard comments about a feeling of reduced autonomy from jurors in small and mid-sized towns.

Trained personnel may, of course, avoid these difficulties; as is the case with trials conducted in the capital. But these difficulties must be specially considered in courts located outside the metropolitan area, where administrative and building restrictions are common.⁶⁸

To sum up, it may be said that the implementation of lay participation in penal decision-making posed varied organizational and infrastructure challenges, which were particularly significant in small and mid-sized towns. If we are seeking to implement this institution, repeated summons to the same people must be avoided and better care should be taken to isolate the jury while it is in session.

III. JURY AND JUDGE DECISIONS

During the course of our research, we were also interested in observing the effect that social context and educational differences had on jury

65. See Alejandro Fara, *Juicio con Jurado Popular Policías que Rescataron a la Familia Sentous Reconstruyeron el Tiro* [Police Who Rescued Family Reconstruct Sentous Shootings at Jury Trial], PUNTAL.COM (Arg.), Aug. 17, 2006, available at http://www.puntal.com.ar/noticia_ed_anteriores.php?id=3119.

66. See Cristina Aizpeolea, *Su Señoría el Hombre Común* [His Lordship, The Common Man], LA VOZ DEL INTERIOR (Arg.), July 27, 2009, available at http://archivo.lavoz.com.ar/09/07/27/secciones/sucesos/nota.asp?nota_id=537382.

67. *Id.*

68. For example, criminal courts located in the metropolitan area have a permanent police presence, and there are metal detectors at the entrances. On the contrary, in many cases criminal courts in some of the towns visited during the research project—e.g. Río Cuarto—receive police protection only on special occasions.

decisions. Following Munger, we assumed that where social bonds are tighter, common citizens may experience reduced autonomy in their decisions.⁶⁹ We also supposed that in small and mid-sized cities, mixed tribunals would be composed by less educated people, who would be easily convinced to vote with the judges. As trust in judges is higher in towns than in the metropolitan area, we imagined that judicial influence during the deliberations would also be higher. For all these reasons, we expected higher unanimity rates in mixed tribunals located outside of the metropolitan area.

The situation in Córdoba provides a good opportunity to analyze this issue, given that we have a written registry of the decisions made by each of the judges and juries that took part in the deliberations. According to legal provisions, the participation of laymen is restricted to deciding two issues: whether the crime charged was committed and whether the defendant was the person who committed the crime. This way, laymen are called to assess facts together with the magistrates, while legal issues (such as the duration of the penalty) are left only to the judges.

The information concerning the votes contained in the sentences is restricted, of course, to the final decision of each member of the tribunal and neither reflects the richness of the debates nor the dynamics of the participation. It is nonetheless very useful to analyze the differences in the perspective of judges and common citizens in the same kinds of cases.

In the course of our research, we reviewed the sentences of 122 jury trials, ranging from January 1, 2005 to December 31, 2009. Table 7 shows the ways in which the decisions were reached.⁷⁰

Table 7 – Voting Results in Mixed Tribunals (2005–2009)⁷¹

Area	Rulings	2005	2006	2007	2008	2009	2005–2009
Capital	Total	—	14	25	44	37	120
City	By unanimity	—	86%	92%	84%	86%	87%
Other	Total	4	12	20	19	13	68
Towns	By unanimity	75%	92%	80%	74%	92%	82%
Total	Total	4	26	45	63	50	188
Province	By unanimity	75%	88%	87%	81%	88%	85%

69. Munger, *supra* note 19, at 458.

70. The number of decisions reached is greater than the number of deliberations, since a single verdict may resolve the situation of more than one of the accused.

71. Author's own study on 122 registered sentences in the 2004–2009 period (on file with author).

Contrary to our expectations, unanimity levels were quite similar in the metropolitan area and small and mid-sized towns, and even slightly lower outside of the metropolitan area. The results in table 7 also show considerable variation in annual figures.⁷²

It is important to compare these agreement rates with results from studies conducted in other countries. Reviewing research on jury systems across the world, Hans concludes that typical agreement rates range from about 64% to 80% in common law countries, where citizens are alone during deliberations.⁷³ It is common for mixed tribunals to have agreement rates that exceed 90%, arousing doubts about the real levels of lay participation obtained in the deliberation, an issue that worried Coppola and Hendler.⁷⁴ However, as Córdoba unanimity rates are a little lower than typical rates in other countries, we may safely assume that the chances for lay persons to hold their own views is not below the average, both in the metropolitan area and in town courts.

Qualitative data gathered during the interviews support these inferences. Most jurors reported that they felt respected in their status during deliberations. Common citizens said that they were able to take part in the tribunal's deliberation, and that the professional judges oriented them in case of doubt, but did not attempt to influence their decisions. However, two jurors affirmed that the magistrates pressed them to change their point of view. The first of these situations took place during a trial in the metropolitan area.

Juror Y.B . . . sometimes, when you gave your opinion and it was different from the judges, some judges got angry and raised their voices . . .

Interviewer And this happened during the deliberation?

Juror Y.B. Yes, during the deliberation . . .⁷⁵

The second event occurred in a mid-sized town, and the behavior of the legal officers was described by one of the jurors as follows:

72. For an analysis of the mechanisms of consensus building during the deliberation see María Inés Bergoglio, *Jury and Judge Decisions: The Severity of Punishments in Cordoba Mixed Tribunals*, CONTRIBUTION TO THE LAW & SOCIETY MEETING, Denver, Colo. (May 2009) available at <http://ssrn.com/abstract=1517940>.

73. Hans, *supra* note 17, at 287.

74. PARTICIA CÓPPOLA, *Proyecto de Seguimiento de los Procesos de Reforma Judicial en América-Latina—Informe de Córdoba, Argentina* [Project Monitoring the Process of Judicial Reform in Latin America—Report from Córdoba, Argentina] 144, INECIP, Córdoba, Arg. (2001), available at http://pdf.usaid.gov/pdf_docs/PNACY356.pdf. See Hendler, *supra* note 3, at 24.

75. Interview with Juror Y.B., in Córdoba, Arg. (Oct. 2008).

- Juror M.E. They didn't accept the jurors' decision
- Interviewer Who? The judges?
- Juror M.E. Yes. Specially the prosecutor, who told us: "Look, guys, think about it again, take a look at the law"
- Interviewer Did the prosecutor speak to you in private during the deliberation?⁷⁶
- Juror M.E. Yes. When we had already reached a decision, they came back and said: see, boys, don't you want to think about it again?
- Interviewer Who came back? The judges or the prosecutor?
- Juror M.E. All together, and asked: are you sure? And we said: it is not only what we think, or that we [were trying] to be different. We were here for five days, considering all the evidence, and then we reached the verdict.⁷⁷

Qualitative data was also useful to identify another effect connected with differences in social contexts. Jurors are commonly afraid about the consequences of their decisions, since their vote may mean a long sentence for the defendant. In the metropolitan area, the impersonal atmosphere typical of big cities, and the protection offered by legal officers are enough to reduce this fear.

But in small and mid-sized towns, where anonymity levels are lower, lay judges know that they will still be living in the same community after the trial, and that the chances of encountering relatives or friends of the defendant are high. This risk is stimulated by the local media, which in many cases enthusiastically publishes individual photographs and detailed information of each juror. Members of a focus group conducted in a small town recommended protecting jurors' privacy by reducing their media exposure.⁷⁸

To summarize this section, we can say that unanimity rates are quite similar in different urban areas, suggesting that differences in patterns of interaction among professional and lay judges in both social contexts are not significant. However, it was observed that in areas where anonymity levels are lower, additional measures to protect the privacy of jurors are required, in order to reduce their fear and preserve their autonomy.

76. Legal rules do not allow the prosecution to be present during deliberations. Only the professional judges, the secretary of the court and the lay judges are admitted into the deliberation room.

77. Interview with Juror M.E., in Villa Dolores, Arg. (June 2009).

78. Focus group conducted in Río Cuarto, August 2009.

IV. LAY PARTICIPATION AND THE CONSTRUCTION OF AN IDENTITY AS A CITIZEN

The fact that democratic participation helps us to build an identity as a citizen of a community is widely known. Based on lay participation in judicial decisions, recent research has shown that jury service can promote civic engagement and political participation.⁷⁹ During the interviews conducted for this research, we obtained many testimonials about how the experience of lay participation in judicial decisions affirms democratic attitudes:

That's why I say that jury trials are good, and I will be supporting this point of view. . . you learn from the law, you are there, and listen, and read, but then you realize that the law is not something abstract, but something you are making everyday . . .⁸⁰

Andruet, Ferrer and Croccia conducted a study in Córdoba on the opinion of the citizens who had acted as jurors.⁸¹ They found that the respondents reported generally positive assessments of their experiences. The common citizens interviewed during our project also experienced feelings of pleasure and honor from their participation. Particularly in small and mid-sized towns, where the state is more distant, the experience of participation is highly appreciated. There, feelings of honor and pride arising from jury service are clearly evident:

Interviewer Do you feel honored because of your jury service?
Juror A.S. Yes, yes, yes, and I have a diploma, and I got it framed too. I have kept everything, even my paper notes. . . This was . . . a new experience you know?⁸²

Interviewer After taking the oath your status was equivalent to . . .
Juror B.D. . . . to the judges.
Interviewer How did you feel about that?
Juror B.D. Well, you know, you feel as if you were stronger and calmer, too. Because you knew you were like a judge, as they explained us and nobody could come to press us, well. . . We could even park our car in the judges'

79. John Gastil & Phil Weiser, *Jury Service as an Invitation to Citizenship: Assessing the Civic Value of Institutionalized Deliberation*, 34 POL'Y STUD. J. 605 (2006); John Gastil et al., *Jury Service and Electoral Participation: A Test of the Participation Hypothesis*, 70 J. POL. 1 (2008).

80. Interview with Juror P.T., in Río Cuarto, Arg. (Aug. 2009).

81. Andruet et al., *supra* note 39, at 101.

82. Interview with Juror A.S., in San Francisco, Arg. (June 2009).

- parking lot.
- Interviewer Really?
- Juror B.D. Yes, yes. My car was parked next to the judge's car, inside the court building.⁸³

The great appreciation of this experience is in some cases connected to a clear recognition of the political consequences of lay participation in judicial decision making. A juror interviewed in Villa Dolores remarked about the contribution this institution makes in reducing inequalities in access to justice:

There is something unavoidable, here, in small towns . . . in small towns the wallet rules, do you understand? That is, where somebody can afford a good lawyer, he is less delinquent than other people who cannot pay, you know . . . But if you can participate in the legal decision, and be there, you can reduce those distances. I am not saying we are the filters, or the people saviors, but simply that . . . we can make a contribution to level the situation.⁸⁴

Common citizens who participated in a focus group in a mid-sized city suggested that lay participation in judicial decision making enhances transparency in court activities, and therefore, helps to legitimate judicial decisions. As one of them expressed this idea:

[W]hen you get out of the court, in my case at least, you have [a different] view of the Judiciary. And then when you talk to other people, you can say: things are not that way, you know. . . . I have been inside, I have been on the other side and I've seen how they proceed, why they are so slow. . . . Then you are taking these words and the society has a different image of the Justice Administration.⁸⁵

To conclude, it may be said that qualitative data gathered during field work suggests that lay participation in mixed tribunals reshapes civic attitudes and reinforces confidence in public institutions, particularly in the judiciary. After being part of a deliberation, people are also more likely to feel a broader sense of joint membership in political units, and to see themselves as public citizens. These effects were particularly evident in small and med-sized towns, which usually receive little attention from state agencies.

83. Interview with Juror B.D., in San Francisco, Arg. (June 2009).

84. Interview with Juror M.E., *supra* note 77.

85. Interview with Juror F.L., in Córdoba, Arg. (Aug. 2009).

CONCLUSION

Comparing the experience of lay participation in judicial decision-making in metropolitan and town areas, we were able to find some interesting differences. Even if this procedural innovation was supported by public opinion, there was significant resistance from the legal profession. This resistance was particularly strong in larger cities, where both the technical abilities of lawyers and the political activism of magistrates are greater, and took the form of constitutionality objections. Therefore, the implementation of lay participation advanced at a better pace outside of the capital city.

Support from the highest judicial authorities was decisive. Not only did these judicial authorities reject the constitutionality objections, but they also helped solve the practical difficulties associated with a shortage of buildings and administrative staff—difficulties particularly significant to courts located in small and mid-sized towns. The composition of jury rolls—an issue that may affect whether the jury is really representative of the public body—and the lack of proper infrastructure to provide adequate isolation for jurors during the deliberations are matters that require additional thought and better solutions.

Interviews with judges, lawyers and common citizens were useful to understand, from the point of view of the actors, how differences in social context shape this experience. We found similar unanimity rates in metropolitan and town areas, a finding that suggests that close social networks typical of towns do not affect the autonomy of lay citizens during the deliberation. However, where anonymity levels are low, jurors are more worried about the consequences of their decisions, and have asked for additional precautions to protect them from media exposure.

Finally, we were able to detect some of the rich political consequences of this experience. People who deliberate and jointly decide upon the guilt and the freedom of others obtain a broader sense of joint membership in a political unit whose rules are partly derived from their work. They are also able to make sound reflections about how the judiciary works, improving the quality of the public's attitude towards judicial policies. These effects are stronger among residents in small and mid-sized towns, who feel that politically important decisions are usually made far from their towns. It is clear then, that the experience of lay participation in penal tribunals contributes—as Law 9182 intended—to the legitimation of judicial power.