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THE HYBRIDIZATION OF LAY COURTS: FROM COLOMBIA TO ENGLAND AND WALES

JÉRÉMY BOULANGER-BONNELLY*

ABSTRACT

We know very little about how lay courts operate and, specifically, how their features help them address common concerns regarding their competence and legitimacy. This Article explores that question through a comparative study of the English and Welsh lay magistrates and the Colombian justices of the peace.

The study reveals a paradox: while both institutions were initially conceived as grassroots non-professional bodies, they have become 'hybridized' over time. First, the lay judges they rely upon have become 'semi-professionals' through several mechanisms designed to improve their competence, including initial and continuing training, long terms of tenure, and legal support. Second, both institutions, whose legitimacy comes partly from their local roots, have integrated with the central architecture of their jurisdiction's justice system through features such as centralized selection processes and oversight mechanisms.

Despite this hybridization, the two institutions under study seem to continue to generate the main benefits associated with lay justice. This observation suggests that some degree of hybridization may allow lay justice institutions to function in contemporary societies without significantly altering their fundamental nature and contributions.

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INTRODUCTION

Lay justice embodies the idea that the resolution of disputes is not, and should not be, the sole preserve of professional judges. This impulse to involve laypeople in the administration of justice is motivated by the belief that despite their lack of legal training or experience, they can appropriately serve as decision-makers in some types of disputes. Firmly entrenched in societies as old as Ancient Greece and Rome,[1] lay justice remains present in a majority of jurisdictions around the world in various forms, including juries, mixed courts, lay courts, and lay magistrates.[2] Its prevalence, while surprising to many, shows that lay justice is a phenomenon worth studying.

The literature has already canvassed the reasons for implementing lay justice and the benefits it can yield, including improvements to civic education and to the ability of the justice system to reflect societal views, as

1. JOHN P. DAWSON, A HISTORY OF LAY JUDGES 10–34 (1960).

2. Sanja Kutnjak Ivković & Valerie P. Hans, *A Worldwide Perspective on Lay Participation*, *in* JURIES, LAY JUDGES, AND MIXED COURTS: A GLOBAL PERSPECTIVE 323, 334 (Sanja Kutnjak Ivković, Shari Seidman Diamond, Valerie P. Hans, & Nancy S. Marder eds., 2021) (In criminal matters, about two thirds of the world's jurisdictions resort to lay justice in some form); In civil matters—defined as cases which are not criminal or penal in nature, for instance monetary claims between private persons, family disputes, or even administrative disputes—at least one in two countries (98/196) resort to some form of civil lay justice. According to a preliminary survey of these systems, thirty-four have informal or traditional civil lay justice institutions; sixty-one have civil mixed courts; and twenty-two have civil lay courts or lay magistrates: Jérémy Boulanger-Bonnelly, Civil Lay Judges: A Global Overview, 3–16 (Aug. 2, 2022) (unpublished manuscript) (on file with author).

well as an increase in the legitimacy of justice institutions.[3] These contributions are perhaps even more valuable in times of crisis, when populism rises and public confidence in the justice system wanes.[4] The jury is only one form of lay justice through which these objectives can be achieved. Other lay justice institutions—such as lay courts—harbor a similar potential in helping governments reform and improve their justice systems.

Despite these potential benefits, lay justice is not immune from criticism, especially in societies where law is ubiquitous and professionalized. Some of the main concerns it faces include skepticism about the lay judges' competence as adjudicators and a related worry that, instead of enhancing the legitimacy of the justice system, they will jeopardize it by rendering second-class decisions.[5] The ability of lay justice institutions to address these concerns is crucial to their success, and it depends in large part on the way in which each institution is designed and operates. Yet, little research has been conducted on that front.[6] More specifically, few studies have sought to identify how the features of lay justice institutions affect their competence and legitimacy.

This Article makes a modest step in that direction by comparing the features of two different lay courts: the English and Welsh lay magistrates

3. *See, e.g.*, Sanja Kutnjak Ivković et al., *Introduction* to JURIES, LAY JUDGES, AND MIXED COURTS: A GLOBAL PERSPECTIVE, *supra* note 2, at 1, 1 (citing the incorporation of community perspectives into judicial decision-making and the greater legitimacy of legal institutions as two advantages of lay participation in law); *see also* Alexandra D. Lahav, *The Jury and Participatory Democracy*, 55 WM. & MARY L. REV. 1029, 1035–37 (2014) (discussing the educative value of participation as a juror); Alexandra D. Lahav, *The Roles of Litigation in American Democracy*, 65 EMORY L.J. 1657, 1691–96 (2016) (referring to the educative and empowering effect of juries); Valerie P. Hans, *Introduction: Citizens as Legal Decision Makers: An International Perspective*, 40 CORNELL INT'L L.J. 303, 306–08 (2007) (pointing to civic education and to the justice institutions' increased legitimacy and responsiveness to community values as benefits of lay participation in law). *See generally* Valerie P. Hans, *Trial by Jury: Story of a Legal Transplant*, 51 LAW & SOC'Y REV. 471 (2017).

4. In Canada, for example, public confidence in the justice system has gone from 61% in 2009 to 57% in 2013 and 55.2% in 2020, when combining a "great deal" of confidence and "some" confidence. *See* CHARLOTTE FRASER, DEP'T OF JUST. CAN., PUBLIC CONFIDENCE IN THE CANADIAN CRIMINAL JUSTICE SYSTEM: A REVIEW OF THE EVIDENCE (2013), https://canlii.ca/t/t914; Adam Cotter, *Public confidence in Canadian institutions*, STAT. CAN. (2015), https://www150.statcan.gc.ca/n1/pub/89-652-x/89-652-x2015007-eng.htm [https://perma.cc/R4UK-UP3J]; *Confidence in Canadian institutions, by groups designated as visible minorities and selected sociodemographic characteristics, 2020*, STAT. CAN. (2022), https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=4310006201 [https://perma.cc/KDC8-WBL7]. Another indicator, developed by Environics, leads to similar conclusions, with 35% of respondents significantly trusting the justice system in 2006, compared to only 27% in 2017. THE ENVIRONICS INST., AMERICASBAROMETER: THE PUBLIC SPEAKS ON DEMOCRACY AND GOVERNANCE IN THE AMERICAS: CANADA 2017 at 16 (2017), https://www.vanderbilt.edu/lapop/canada/AB2016-17_Canada_Country_Report_W_100417.pdf [https://perma.cc/E84W-LEC9].

5. *See* Kutnjak Ivković et al., *supra* note 3, at 1. Competence, in the form of technical legal knowledge and experience, is often seen as a defining characteristic of a professional judiciary. *See, e.g.*, Arie Rosen, *Office and Profession in the Design of Modern Institutions*, 70 U. TORONTO L.J. 198, 209–10 (2020); Nigel J. Cohen, *Nonlawyer Judges and the Professionalization of Justice: Should an Endangered Species be Preserved?*, 17 J. CONTEMP. CRIM. JUST. 19, 32 (2001).

6. Kutnjak Ivković et al., *supra* note 3, at 20; Kutnjak Ivković & Hans, *supra* note 2, at 343.

and the Colombian justices of the peace ("JPs"). It reaches a paradoxical conclusion: while these two lay courts—like many others—were initially conceived as non-professional grassroots institutions, they have become increasingly professionalized and centralized over time, in a process dubbed here *hybridization*. This observation, which remains tentative due to this Article's limited scope, suggests that lay courts fall on a spectrum from 'pure' lay justice to professional justice. It also suggests that lay courts may need to hybridize to some extent if they are to remain competent and legitimate in heavily legalized and professionalized societies. However, this conclusion raises the question of whether this process may go too far and undermine the unique contributions of lay justice.

The Article is divided into three sections. The first one contextualizes the inquiry by recalling that many initiatives in participatory democracy have similarly become hybrids over time. This well-documented observation and the frequent connection between the theories of participatory democracy and lay justice generate the hypothesis that the same process of hybridization may occur with lay justice institutions. The second section explores this hypothesis, focusing on the mechanisms and features by which lay courts in England and Wales and Colombia have become hybridized. Lastly, the third section discusses a few potential implications of these findings for the implementation of lay courts in other contexts and opens the door to further research.

I. FRAMEWORK: THE HYBRIDIZATION OF PARTICIPATORY DEMOCRACY

Lay justice is conceptually connected to the theories of participatory democracy. These theories reject so-called classical conceptions of democracy revolving around the role of an elected "active elite,"[7] in favour of a system that fosters the active participation of the greatest number in "the collective initiation, discussion, and decision of policy questions concerning public affairs".[8] This increased level of public participation is credited with contributing to civic education, legitimacy, and social integration.[9] These

7. Lane Davis, *The Cost of Realism: Contemporary Restatements of Democracy*, 17 W. POL. Q. 37, 44 (1964); *see also* CAROLE PATEMAN, PARTICIPATION AND DEMOCRATIC THEORY 2–5 (1970); JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 269 (2003).

8. Davis, *supra* note 7, at 38; *see also* BENJAMIN R. BARBER, STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE 132 (20th anniversary ed. 2003) (similar but slightly different understanding).

9. PATEMAN, *supra* note 7, at 24–27, 33, 38, 42–43 (tracing the link between participation, on the one hand, and the development of both human abilities – the educative function – and the sense of belonging of members of society – the integrative function); Davis, *supra* note 7, at 40; BARBER, *supra* note 8, at 155; Thomas Zittel, *Participatory Democracy and Participation*, *in* PARTICIPATORY DEMOCRACY AND POLITICAL PARTICIPATION: CAN PARTICIPATORY ENGINEERING BRING CITIZENS

characteristics, in turn, are said to allow for "the fullest self-expression of all the members" of society,[10] for the construction and consolidation of "a sense of genuine community",[11] and for the realization of "the 'dignity' which is found in sharing the colleagial [sic] life of the rulers of the human city."[12] In other words, through active public engagement, participatory democrats seek to foster the human development of all members of society, not only a few.

Public participation in justice institutions can be seen as one of the vehicles for the achievement of this goal. Participatory democrats have applied their theories to a range of institutions engaged in "'political activity' in a *very wide* sense of that term,"[13] including the justice system.[14] These theories have also served as a conceptual foundation for various legislators and constitutive assemblies in deciding to implement different forms of lay justice.[15] In other words, the theories of participatory democracy are not limited to obvious political institutions such as legislative assemblies or municipal councils, but they also extend to other institutions that wield public power and shape public policies, including the justice system.

Those who embrace a more classical view of democracy do not necessarily object to the goals pursued by participatory democrats, but they raise practical objections. Among others, they argue that modern societies are too large and too complex to allow for the active participation of ordinary citizens in public institutions, particularly on a national scale.[16] This objection is rooted in Weberian thought:[17] because the spread of capitalism and the division of labor have led to the specialization, bureaucratization, and professionalization of almost all spheres of modern societies, classical democrats argue that it is unrealistic to believe that laypeople will be able to contribute.

BACK IN? 9, 11 (Thomas Zittel & Dieter Fuchs eds., 2007); JOHN STUART MILL, UTILITARIANISM, LIBERTY & REPRESENTATIVE GOVERNMENT 278–79 (1910).

10. *See* G. D. H. COLE, SOCIAL THEORY 208 (1920) (discussing this normative objective in connection with the "full participation [of people] in the common direction of the affairs of the community").

11. Davis, *supra* note 7, at 40.

12. JOSEPH TUSSMAN, OBLIGATION AND THE BODY POLITIC 121 (1960).

13. PATEMAN, *supra* note 7, at 21 (emphasis added) (quoting PETER BACHRACH, THE THEORY OF DEMOCRATIC ELITISM 99 (1967)).

14. *See, e.g.*, BARBER, *supra* note 8, at 280–81.

15. *See infra* notes 42, 44 and accompanying text.

16. *E.g.*, ROBERT A. DAHL & IAN SHAPIRO, ON DEMOCRACY 105–08 (2d ed. 2015); *see also* PATEMAN, *supra* note 7, at 2 (recounting this objection).

17. *See* MAX WEBER, ECONOMY AND SOCIETY: A NEW TRANSLATION 351 (Keith Tribe ed., trans., 2019) (discussing the trend towards increasingly rationalized and professionalized institutions, spurred in part by the spread of capitalism); MATHIEU DEFLEM, SOCIOLOGY OF LAW: VISIONS OF A SCHOLARLY TRADITION 42–43, 47 (2008) (discussing Weber's idea of rationalization and the argument that it leads to the handing over of various state functions, including legal decision-making, to specialized institutions which employ people who are themselves specialized and full-time bureaucrats).

But while classical theorists often mobilize this argument to sound the death knell of participatory democracy, studies suggest that many participatory experiments have successfully adapted to the growing rationalization and professionalization of society. These experiments have done so by adopting elements of so-called classical representative institutions while retaining their fundamental objective of increasing lay participation. A few examples will illustrate this trend. In the Danish municipality of Gentofte, for instance, the City Council has been supplemented "with collaborative arenas in which politicians and local citizens work together to solve the most pressing problems confronting their community."[18] According to authors Sørensen & Torfing, this model, which integrates elements of direct citizen participation into existing representative institutions, has strengthened both the position of these institutions and the role of ordinary citizens.[19] Another example is provided by the Brazilian National Public Policy Conferences, which allow for citizens' assemblies organized at the municipal, state and national levels to inform the development of public policies in collaboration with elected representatives.[20] This example shows that "participatory and representative democracies are not, as some assume, necessarily incompatible . . . [but] can complement each other."[21]

These are only two examples of a broader trend that sees active lay participation integrated into central institutions. Drawing from such examples, Frank Hendriks posits the more general idea that modern, sustainable models of democracy are not as absolute or pure as the literature suggests, but instead incorporate aspects of several models, including representative and participatory democracy.[22] This phenomenon, which can be described as a process of hybridization, takes different forms. But for our purposes, it means that participatory institutions, traditionally conceived as grassroots initiatives, are increasingly integrated with central institutions where professionals play a more significant role.[23] As the examples discussed above suggest, this process seems to allow the benefits of lay participation to percolate through institutions that remain otherwise embedded in a professionalized and centralized setting.

18. Eva Sørensen & Jacob Torfing, *Towards Robust Hybrid Democracy in Scandinavian Municipalities?*, 42 SCANDINAVIAN POL. STUD. 25, 26 (2019).

19. *Id.*

20. Thamy Pogrebinschi & David Samuels, *The Impact of Participatory Democracy: Evidence from Brazil's National Public Policy Conferences*, 46 COMPAR. POL. 313, 319 (2014) (although recent political events in that country may have altered the situation).

21. *Id.* at 314.

22. FRANK HENDRIKS, VITAL DEMOCRACY: A THEORY OF DEMOCRACY IN ACTION 141–45 (2010).

23. *See id.* at 142–43.

The same body of literature teaches us another important lesson: the success of this process of hybridization depends in large part on the specific features through which it is instantiated. Sherry Arnstein gave the image of a ladder of citizen participation ranging from an "empty ritual" used by authorities to manipulate citizens to full "citizen control", with several steps in between.[24] Where a particular institution stands depends largely on its institutional design. Authors point to the importance of factors such as sufficient resources and robust procedures guiding deliberations.[25] In Venezuelan cooperatives, Camila Piñeiro Harnecker further observed that the quality of participation varied depending on features including the size of the institution and the training provided to its members.[26] Similar conclusions have been reached in the context of participatory budgeting, where experiments have ranged from "key experience[s] for the rehabilitation of participatory democracy" to "opportunit[ies] grasped by . . . institutions to engage in governance projects."[27] A randomized control trial also confirmed that the "structures in which participation takes place," as well as the frequency and scope of opportunities to participate, play a key role in the success of participatory democracy.[28] In other words, we must pay careful attention not only to the institutions themselves but also to their design—that is, the particular features and the mechanisms they use to operate.[29]

24. Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 216, 216–17 (1969).

25. ARCHON FUNG, EMPOWERED PARTICIPATION: REINVENTING URBAN DEMOCRACY 224, 232 (2004).

26. *See* Camila Piñeiro Harnecker, *Workplace Democracy and Solidarity Development: An Empirical Study of Venezuelan Cooperatives*, *in* LEARNING CITIZENSHIP BY PRACTICING DEMOCRACY: INTERNATIONAL INITIATIVES AND PERSPECTIVES 186, 197–200 (Elizabeth Pinnington & Daniel Schugurensky eds., 2010).

27. LEONARDO AVRITZER, THE TWO FACES OF INSTITUTIONAL INNOVATION: PROMISES AND LIMITS OF DEMOCRATIC PARTICIPATION IN LATIN AMERICA 46–47 (2017). Recent technological experiments designed to encourage participation through "a fluid and flexible digital combination of representative and direct, spontaneous democracy in digital forums" have similarly shown that true participation cannot be achieved if certain prerequisites are not met, including a relative level of equality between participants. Philip Dingeldey, *A Fourth Transformation of Democracy? Liquid Democracy, Supra-National Democracy and the Fate of Participation*, 23 LAW, DEMOCRACY & DEV. 181, 183 (2019). Dingledey also notes that "social fragmentation, neo-liberal economy and commercialization of politics and society, and extreme social inequalities, combined with an unequal access to the digital sphere and very different socio-cultural traditions" are obstacles to the development of a digital participatory democracy. *Id.*

28. Michael E. Morrell, *Citizen's Evaluations of Participatory Democratic Procedures: Normative Theory Meets Empirical Science*, 52 POL. RSCH. Q. 293, 318 (1999).

29. *See* Josh Lerner, *Learning Democracy Through Participatory Budgeting: Who Learns What, and So What?*, *in* LEARNING CITIZENSHIP BY PRACTICING DEMOCRACY: INTERNATIONAL INITIATIVES AND PERSPECTIVES, *supra* note 26, at 242, 249 ("[W]hat people learn depends largely on how the process is designed.").

These observations pertaining to participatory democracy provide a lens to examine the evolution of lay justice. As mentioned previously, the latter is often connected to the former in such a way that we may reasonably anticipate that the hybridization observed in participatory democracy experiments may also occur in lay justice institutions. In fact, some of these institutions are hybrids by design. Mixed courts, for instance, allow both professional and lay judges to sit on the same benches.[30] The jury, to some extent, is also a hybrid by design, with a professional judge overseeing the proceedings and instructing lay jurors who make the final decision. These two models were conceived at the outset as hybrid institutions combining features of both professional and lay justice. A more interesting question, however, is whether lay courts, conceived as 'pure' forms of lay justice relying entirely on the contribution of lay judges, have also become hybridized over time. The next section turns to this question.

II. THE HYBRIDIZATION OF LAY COURTS

To start tracing this phenomenon of hybridization, I propose to study and compare two lay courts: the lay magistracy of England and Wales and the Colombian justices of the peace. As I will explain in greater detail below, both institutions were designed as pure lay courts relying solely on the contribution of laypeople. Yet, carried by the Weberian tides of rationalization and professionalization, they have become hybridized over time. This phenomenon has manifested itself in two ways. First, while each institution was built upon the idea that its members did not require any legal training or experience, they have become semi-professionalized through features such as initial and continuing training, long terms of tenure, and legal support. Second, while both institutions were conceived as purely local dispute resolution mechanisms, they have increasingly centralized and integrated with the state's architecture, through features such as central controls on selection and appointment processes, as well as increased judicial scrutiny and oversight.

A. Method: Comparative Case Studies

Before delving into the details of hybridization in these two jurisdictions, it is important to explain the rationale for choosing the case-study method to explore this phenomenon. The case-study method consists

30. *See, e.g.*, Sanja Kutnjak Ivković, *Ears of the Deaf: The Theory and Reality of Lay Judges in Mixed Tribunals*, 90 CHI.-KENT L. REV. 1031, 1053–63 (2015) (conducting a critical analysis of these models and some of their potential drawbacks); Sanja Kutnjak Ivković, *Exploring Lay Participation in Legal Decision-Making: Lessons from Mixed Tribunals*, 40 CORNELL INT'L L.J. 429, 440–50 (2007) (same).

of an in-depth analysis of one or several cases using a broad range of sources.[31] While it cannot be relied upon to draw conclusions about the prevalence of a phenomenon—in contrast to quantitative methods, for example—the case-study method helps explore the interaction of a phenomenon with its context.[32] The careful examination of this interaction can generate plausible causal inferences which, while not always generalizable, provide insight into the phenomenon under study and can suggest conditions under which the findings may apply in other contexts.[33] With respect to the topic of this Article, case studies can help identify how lay courts set in different contexts (the cases under study) have become hybridized. This, in turn, can generate findings that may be transferred to other jurisdictions and contexts under certain conditions. Importantly, this type of comparative case study is only a starting point laying the foundation for future studies that could examine whether and how the same phenomenon exists in other lay courts around the world.

An important step in the case-study method is the careful selection of the cases to be studied. Different strategies can be used, one of which is to choose cases which, based on the applicable theoretical framework, are either typical of the phenomenon, atypical, susceptible of revealing longitudinal trends, or otherwise capable of generating new insight.[34] When the study involves multiple cases, choosing examples that present significant variations in different contexts allows for a comparative examination of "the interaction of the [selected] variables in different environments."[35] In other words, comparing multiple instances of the same phenomenon can provide

31. *See* ROBERT K. YIN, CASE STUDY RESEARCH AND APPLICATIONS: DESIGN AND METHODS 15, 17 (6th ed. 2018); Roda Mushkat, *The Case for the Case Study Method in International Legal Research*, 42 J. FOR JURID. SCI. 143, 146 (2017); Helena Harrison et al., *Case Study Research: Foundations and Methodological Orientations*, 18 F.: QUALITATIVE SOC. RSCH. art 19, 6, 8 (2017) (citing also the Merriam Webster Dictionary's definition as "an intensive analysis of an individual unit (as a person or community) stressing developmental factors in relation to environment" and adding that "an in-depth analysis of an issue, within its context with a view to understand the issue from the perspective of participants"); MARTYN HAMMERSLEY & ROGER GOMM, *Introduction* to CASE STUDY METHOD 1–7 (Roger Gomm, Martyn Hammersley, & Peter Foster eds. 2009), http://methods.sagepub.com/book/case-study-method [https://perma.cc/N4BG-PAV2].

32. *See, e.g*, YIN, *supra* note 31, at 8.

33. Lisa Webley, *Stumbling Blocks in Empirical Legal Research: Case Study Research*, LAW & METHOD, Oct. 2016, at 4, 17 (case study "also seeks to explain which elements of context may mean that some of the findings are applicable to other situations and if so under what conditions." Through descriptive inferences, it allows "inferring under what circumstances a similar pattern or occurrence may occur in a carefully defined unobserved situation."); *see also* YIN, *supra* note 31, at 54–55 (showing effectiveness when drawing on comparative case studies).

34. Webley, *supra* note 33, at 11; *see also* Katerina Linos, *How to Select and Develop International Law Case Studies: Lessons from Comparative Law and Comparative Politics*, 109 AM. J. INT'L L. 475, 478–79 (2015) (reviewing different case selection strategies).

35. Webley, *supra* note 33, at 12.

insight into the effect of different features and contexts on its operation and results.

The two cases presented in this Article are examples of lay courts—that is, courts that rely entirely on lay judges for the adjudication of disputes. They share some basic features, including the fact that their judges are local lay volunteers working on a part-time basis, which distinguishes them from professional judges. However, they differ in other respects. The lay magistracy of England and Wales has existed for centuries and now relies on thousands of volunteers, who are appointed by locally constituted committees and sit as panels, to provide compulsory adjudication in law for many criminal matters and some civil ones. By contrast, the Colombian justices of the peace have been implemented more recently, are less widespread, and are directly elected by local populations to decide a range of criminal and civil matters. They provide a voluntary two-step service of conciliation and adjudication in equity, not in law. The contexts in which each institution operates also differ, as England and Wales is a common-law jurisdiction of the Global North, while Colombia is a civil-law country of the Global South.

These two cases were selected, therefore, because they are both examples of lay courts but still differ in other significant respects. The study of these different cases may generate insights about lay justice more generally, especially if common trends are identified across these two contexts. Of course, this study could also have included other cases drawn from the twenty-two jurisdictions where there are civil lay courts or lay magistrates. The scope of this Article is more limited, but exploring these other cases in future studies will allow us to confirm or perhaps nuance its conclusions. In that sense, this Article should be seen as a first step, not a complete and definitive study of the hybridization of lay courts. With these caveats in mind, this Article turns now to an exploration of the mechanisms by which the lay magistrates of England and Wales and the Colombian justices of the peace have hybridized over time.

B. The Professionalization of Lay Justice in Colombia and England and Wales

The first mechanism by which lay justice has become hybridized in both Colombia and England and Wales is the professionalization of the laypeople who sit on these jurisdictions' lay courts. I pause here to note that authors define *professionalism* in different ways. This Article builds on the definitions found in the literature on lay justice, which essentially identify professional judges as those who have extensive legal training or experience prior to their appointment, and who perform their judicial duties on a full-

time basis.[36] By contrast, lay judges are usually defined by their lack of similar characteristics.

In both jurisdictions, in line with these definitions, candidates must only satisfy basic requirements to be eligible for appointment as lay judges. In England and Wales, they must be at least eighteen years old and must not hold a disqualifying position (for example, as a police officer or prison officer, depending on their potential assignment).[37] From that broad pool of applicants, magistrates are "selected and appointed solely on merit"[38] based on six qualities: "Good Character; Understanding and Communication; Social Awareness; Maturity and Sound Temperament; Sound Judgement; [and] Commitment and Reliability."[39] No specific knowledge or experience is required, much less any legal training. Similarly, in Colombia, candidates must meet basic requirements to be eligible for election: they must have reached the age of majority, be Colombian citizens, enjoy their full political and civil rights (which excludes, for instance, those who are incarcerated or under guardianship or curatorship), and "reside[] in the respective community for at least one year prior to the election."[40]

The basic nature of these qualifications reflects the fact that both institutions were created with the intention of involving laypeople in the administration of justice. In England and Wales, the lay magistracy has been described as an "embodiment of citizen participation in justice"[41] and as a

36. *See, e.g.*, DAWSON, *supra* note 1, at 3–4 (defining a "professional" as "a person who applies a substantial part of his time and energy, with some degree of continuity, to the task at hand," and who generally does so with "specialized training and skill," resulting in a "specialization [that] is rewarded by paid income"); RALPH V. TURNER, THE ENGLISH JUDICIARY IN THE AGE OF GLANVILL AND BRACTON C.1176–1239, at 39 (1985) (referring to legal knowledge and full-time occupation as the two characteristics of professional judges); *cf.* TRACEY L. ADAMS, REGULATING PROFESSIONS: THE EMERGENCE OF PROFESSIONAL SELF-REGULATION IN FOUR CANADIAN PROVINCES 16–21 (2018) (showing alternative elements of professionalism like self-regulation, monopoly, and special status in an overview of the theories on professions); George Ritzer, *Professionalization, Bureaucratization and Rationalization: The Views of Max Weber*, 53 SOC. FORCES 627, 630–31 (1975); ELIOT FREIDSON, PROFESSIONALISM: THE THIRD LOGIC 12 (2001) (defining professionalism as existing "when an organized occupation gains the power to determine who is qualified to perform a defined set of tasks, to prevent all others from performing that work, and to control the criteria by which to evaluate performance").

37. JUDICIARY OF ENGLAND AND WALES, BECOMING A MAGISTRATE IN ENGLAND AND WALES: CANDIDATE INFORMATION 6, 8 (2020).

38. *Id.* at 4.

39. JUDICIARY OF ENGLAND AND WALES, MAGISTRATES ENGLAND AND WALES: APPLICATION FOR FAMILY COURT 9 (2020).

40. L. 497/99, febrero 10, 1999, DIARIO OFICIAL [D.O.] 43499, art. 14(2) (Colom.); *see also id.* art. 15 (providing exceptions that disqualify candidates).

41. JANE DONOGHUE, TRANSFORMING CRIMINAL JUSTICE?: PROBLEM-SOLVING AND COURT SPECIALISATION 50 (2014); *see also* Jane C. Donoghue, *Reforming the Role of Magistrates: Implications for Summary Justice in England and Wales*, 77 MOD. L. REV. 928, 928–29, 933–35 (2014); Barry Godfrey, *At the Crossroads, but Which Way to Go?*, *in* THE MAGISTRACY AT THE CROSSROADS 83, 85 (David Faulkner ed., 2012); ROD MORGAN & NEIL RUSSELL, THE JUDICIARY IN THE MAGISTRATES' COURTS 6 (2000).

means of building a more active and engaged citizenry.[42] Lay magistrates are perceived as a bulwark against a professional system where "complexity and formality isolate the public, obfuscate the legal process and further entrench notions that the process(es) of justice are exclusive, remote and administered by an elite professional class."[43] Similarly, in Colombia, the JP system was created among other reasons to implement participatory democracy in the justice system[44] not only because of its educative effect on citizens[45] but also to improve the legitimacy of the justice system as a whole.[46] This legitimizing effect was said to result in part from the more human and accessible approach of lay judges, which contrasts with the legalistic and often alienating approach associated with professional justice.[47]

These putative benefits for which lay justice was implemented in both Colombia and England and Wales are directly connected to the fact that lay judges are untrained in law. Yet several of their features have professionalized lay magistrates and JPs over time. First, both types of lay judges now receive significant training to perform their judicial duties, albeit less extensive than the training of professional judges. In England and Wales, lay magistrates must undertake a four-day initial training course as soon as they are appointed and before they can sit, which introduces them to the legal

42. MORGAN & RUSSELL, *supra* note 41, at 117.

43. Donoghue, *supra* note 41, at 933.

44. ANTONIO NAVARRO WOLF ET AL., CONSTITUENT ASSEMBLY, *Proyecto de acto reformatorio de la constitución política no 7*, febrero 13, 1991, 2, 71 (Colom.); Corte Constitucional [C.C.] [Constitutional Court], octubre 16, 2018, Sentencia T-421-18, ¶ 15 (Colom.); *see also* C.C., agosto 15, 2012, Sentencia C-631-12, ¶ 7 (Colom.); *Proyecto de ley número 57 de 1997 Senado y exposición de motivos*, agosto, 28, 1997, Gaceta del Congreso [G.C.] vol. 346, at 13 (Colom.) (describing JPs as a mechanism to allow for "participation as a process of mobilization of the community, emphasizing the exercise of sovereignty in direct form, the creation of new life relationships, being the government, building popular power, and being part of public management"); C.C., noviembre 23, 1995, Sentencia C-536-95, at 7 (Colom.); C.C., febrero 10, 2004, Sentencia C-103-04, at 14 (Colom.); Andrés Mauricio Guzmán-Rincón & Victoria Eugenia Velásquez-Marín, *Perspectivas de la justicia de paz y reconsideración: escenarios de investigación para el fortalecimiento de los saberes prácticos*, 16 SABER, CIENCIA Y LIBERTAD 44, 46 (2021) (identifying the "democratic potential" of JPs as one of their main features).

45. C.C., octubre 16, 2018, Sentencia T-421-18, ¶ 20 (Colom.); *Proyecto de ley número 223 de 1998 Cámara, 057 de 1997 Senado*, 1st reading, diciembre 28, 1998, G.C. vol. 384, at 2, 4 (Colom.) (stating that the goal is to "reeducate people so that they learn to resolve their own conflicts"); CONSTITUENT ASSEMBLY, *Informe de la sesión de la Comisión Cuarta*, mayo 15, 1991, 112 (Colom.) (noting that the JPs "would accomplish a beneficial function of social pedagogy").

46. CONSTITUENT ASSEMBLY, *Informe de la sesión de la Comisión Cuarta*, abril 16, 1991, 9 (Colom.); *see also* FOURTH COMMISSION, CONSTITUENT ASSEMBLY, *Ponencia sobre los proyectos de actos reformatorios que se ocupan de la elección popular de jueces municipales, jueces de paz, autoridades indígenas y jurados de conciencia*, mayo 6, 1991, 7 (Colom.) (noting the twin goals of making justice more accessible for minor cases and better expressing a sense of justice); CARLOS DANIEL ABELLO ROCA, CONSTITUENT ASSEMBLY, *Proyecto acto reformatorio de la Constitución Política de Colombia no 51, Elección popular de jueces municipales y jueces de paz*, marzo 7, 1991, 5.

47. *Proyecto de ley número 223 de 1998 Cámara, 057 de 1997 Senado*, 1st reading, diciembre 28, 1998, G.C. vol. 384, at 2 (Colom.) (Roberto Camacho); *Proyecto de ley número 57 de 1997 Senado y exposición de motivos*, agosto 28, 1997, G.C. vol. 346, at 13 (Colom.).

system, their place in it, and the notion of structured decision-making.[48] After a year, they must follow a course of consolidation training which takes an average of two days and provides them with more detailed instructions about the applicable laws, procedures, and the decision-making process.[49] They are then observed in court and evaluated based on four competencies, including their "understanding of and ability to apply basic law and procedure" as well as their "ability to think and act judicially."[50] Lay magistrates must continue to attend yearly training sessions and undertake appraisals every few years.[51]

It would be reasonable to presume that Colombian JPs do not require the same level of training, given that they decide in equity (not in law) and only when the parties consent to their intervention.[52] But while the JPs' jurisdiction is largely unfettered, they must still uphold due process and act within the limits of the country's constitution.[53] In other words, while they issue "decisions which predominantly incorporate social norms, [they must do so] in a framework that makes them valid within the national justice system."[54] Upholding these limits requires some basic knowledge of both substantive and procedural law. As a result, the statute creating the office of JP provides that they must follow a course of training prepared by the "Superior Council of the Judiciary . . . with the participation of the Ministries of the Interior, Education, Justice and Law, Universities, specialized organizations and communities in general."[55]

In line with this legislative requirement, the Rodrigo Lara Bonilla Judicial School has developed several training programs.[56] A review of their training materials reveals two main components. The first one, in line with the previous discussion and some concerns raised by lawmakers,[57] is

48. Courts Act 2003, c. 39, § 10(4) (UK); JUDICIARY OF ENGLAND AND WALES, *supra* note 37, at 8; DONOGHUE, *supra* note 41, at 48; Mark Davies, *A New Training Initiative for the Lay Magistracy in England and Wales—A Further Step Towards Professionalisation?*, 12 INT'L J. LEGAL PRO. 93, 97 (2005).

49. DONOGHUE, *supra* note 41, at 49; Davies, *supra* note 48, at 97.

50. Davies, *supra* note 48, at 98–99 (discussing also two competencies added for chairpersons: their "ability to manage people and processes," and their "ability to communicate effectively in court").

51. *See* Courts Act 2003, c. 39, § 19 (UK) (providing a statutory basis for these requirements); Davies, *supra* note 48, at 97–98; JUDICIARY OF ENGLAND AND WALES, *supra* note 37 at 8.

52. CONSTITUCIÓN POLÍTICA DE COLOMBIA, [C.P.] art. 247; L. 497/99, febrero 10, 1999, DIARIO OFICIAL [D.O.] 43499, arts. 2, 14 (Colom.); *see also id.* art. 29 (requiring JPs to decide in equity when conciliation fails).

53. L. 497/99, arts. 7, 14; *see also* C.C., agosto 21, 2008, Sentencia T-809-08, at 16, 18 (Colom.) (rationalizing that because JPs are a public institution, they remain subject to the constitution and must therefore uphold the rights it protects).

54. Guzmán-Rincón & Velásquez-Marín, *supra* note 44, at 51.

55. L. 497/99, art. 21.

56. *See* Acuerdo PCSJA19-11426, Funcionamiento de la Jurisdicción de Paz, Colom., octubre 31, 2019, art. 14.

57. *Proyecto de ley número 223 de 1998 Cámara, 057 de 1997 Senado*, 1st reading, diciembre 28, 1998, G.C. vol. 384, at 3 (Colom.) (Roberto Camacho).

relatively technical and legal in nature, focusing on the constitution and on the procedural requirements JPs have to comply with.[58] The second part, however, focuses on the human aspect of their work.[59] For instance, there are modules on how to communicate effectively and draft various documents, how to deal with the psychosocial aspects of judicial cases, and how to provide an integral treatment of conflicts.[60] While these training efforts are somewhat less consistent in practice than their counterparts in England and Wales,[61] they do contribute to the JPs' specialization and professionalization. In both jurisdictions, lay judges, whose lack of legal training is supposed to make the judicial process more understandable and accessible, end up receiving significant training in substantive and procedural law. While this training does not make them the equivalent of professional judges—who, as noted above, are characterized by the specialized training they receive and the experience they acquire[62]—it does start to blur the lines between lay and professional justice.

Second, these training efforts are supplemented by legal support provided to lay judges in the form of manuals and professional guidance. In England and Wales, lay magistrates receive a Bench Book that summarizes

58. *See* ROSEMBERT ARIZA SANTAMARÍA, CONTROL DISCIPLINARIO PARA JUECES Y JUEZAS DE PAZ 11 (2017) (designed to help JPs avoid disciplinary sanctions); RODRIGO UPRIMNY YEPES, LA JUSTICIA DE PAZ EN COLOMBIA 109–17, 136–41 (2010) (exploring the constitutional and procedural requirements imposed on JPs). *See generally* CÉSAR AUGUSTO TORRES CÁRDENAS, LA JURISDICCIÓN ESPECIAL DE PAZ: ENTRE LA NORMA JURIDICA Y LA NORMA SOCIAL (2010) (discussing both the JPs' social role rooted in community justice and the constitutional limits imposed on them); DIEGO EDUARDO LÓPEZ MEDINA, LA JURISDICCIÓN ESPECIAL DE PAZ Y LOS DERECHOS FUNDAMENTALES (2010) (focusing on the procedural and substantive fundamental rights that JPs are constitutionally bound to uphold); ARMANDO DAVID RUIZ DOMÍNGUEZ, HERRAMIENTAS JURÍDICAS Y PSICOSOCIALES DE LA JURISDICCIÓN ESPECIAL DE JUSTICIA DE PAZ (2010) (focusing partly on law and also on the psychosocial tools necessary for JPs); ROSEMBERT ARIZA SANTAMARÍA & CARLOS JULIO CÁRDENAS TRUJILLO, MÓDULO DE FORMACIÓN DE JUECES DE PAZ Y RECONSIDERACIÓN (2009) (focusing primarily, but not exclusively, on law).

59. Guzmán-Rincón & Velásquez-Marín, *supra* note 44 at 46.

60. *See* LINA MARCELA TRIGOS CARRILLO, HABILIDADES COMUNICATIVAS (2010) (focusing on communication skills); RUIZ DOMÍNGUEZ, *supra* note 58 (exploring the psychosocial aspects of the JPs' work); CARLOS JULIO CÁRDENAS TRUJILLO, TRATAMIENTO INTEGRAL DEL CONFLICTO (2010) (discussing the notion of the "integral treatment" of conflicts and how JPs can provide it); ÁLVARO SEPÚLVEDA FRANCO & FRANCISCO FELIPE GUEVARA, MANUAL DE COMPETENCIAS DE LOS JUECES DE PAZ (2015) (a training program developed by the Citizenship School, a not-for-profit organization in Cali, Colombia).

61. *See* COLOMBIA, RAMA JUDICIAL, CONSEJO SUPERIOR DE LA JUDICATURA, *Informe 2020 de la Rama Judicial al Congreso de la República*, 203 (2021), https://www.ramajudicial.gov.co/documents/1545778/5597675/Informe+al+Congreso+2020.pdf [https://perma.cc/8LVK-D8AQ] (expressing the objective of training only 520 JPs and not all of them, in contrast to England and Wales); Jesús Héctor Ramírez Moncaleano, *Gestión, caracterización y retos de la justicia de paz en Cali*, *in* JUECES DE PAZ EN SANTIAGO DE CALI: UNA MIRADA DESDE EL DERECHO Y LA EDUCACIÓN DE CARA AL POSCONFLICTO 17, 31 (Jesús Héctor Ramírez Moncaleano & Xiomara Cecilia Balanta Moreno eds., 2015) (noting the low attendance at training sessions and the lack of continuity in training).

62. *See supra* note 36 and accompanying text.

the legal provisions and principles that they are most likely to apply.[63] This book is complemented by Reference Cards, which provide an even more succinct summary of the applicable law in a range of cases, for use primarily while on the bench or in the retiring room.[64] In addition, lay magistrates benefit from the support of a legal adviser working under the supervision of the local justices' clerk.[65] These legally-trained advisers are empowered both to answer the lay magistrates' legal questions and to highlight points of law and procedure when appropriate.[66] In Colombia, while JPs do not benefit from similar professional support, they receive a "Guide to apply justice in equity," which provides a simplified resource to be used in their daily work, similar to the Bench Books prepared for the lay magistrates of England and Wales.[67] Once again, in both jurisdictions, the focus on substantive and procedural law that marks the lay judges' training and support challenges the notion that they are pure laypeople and suggests instead that they are becoming semi-professionals.

The third feature through which lay judges in both jurisdictions become professionalized is the remarkable length of their tenure. While most observers may be used to jurors serving on one specific case, the lay judges' tenure is much different. In England and Wales, lay magistrates are appointed during good behaviour, meaning that they can remain in post until they reach the mandatory retirement age of 75 years old, and can only be removed in exceptional circumstances by a joint decision of the Lord Chancellor and Lord Chief Justice.[68] These long terms of tenure are seen by lay magistrates themselves as instrumental "to the huge satisfaction they derive from the role."[69] But they also entrench them more deeply in their position and allow them to develop some level of expertise in adjudication. In Colombia, the term of tenure for JPs is limited to five years, but the law provides that they may be reelected for an indefinite number of terms.[70] While the evidence is lacking as to whether JPs do seek reelection, this

63. *See, e.g.*, JUDICIAL COLLEGE, FAMILY COURT BENCH BOOK (2018), https://www.judiciary.uk/wp-content/uploads/2016/10/family-court-bench-book-jan-2018.pdf [https://perma.cc/E77M-QTQX] (latest Bench Book published with respect to family matters).

64. JUDICIAL COLLEGE, FAMILY COURT REFERENCE CARDS (2014), https://www.judiciary.uk/wp-content/uploads/2016/10/family-court-reference-cards-september2014.pdf [https://perma.cc/798V-G7EF].

65. JUDICIARY OF ENGLAND AND WALES, *supra* note 37, at 5. In family matters, magistrates may also request the independent assistance of a family court adviser or a children's guardian. *Id.* at 6.

66. Courts Act 2003, c. 39, § 28 (UK).

67. *See* MINISTERIO DE JUSTICIA Y DEL DERECHO, GUÍA PARA APLICAR LA JUSTICIA EN EQUIDAD: CRITERIOS PARA CONCILIADORES EN EQUIDAD Y JUECES DE PAZ (3d ed. 2015).

68. Courts Act 2003, c. 39, §§ 11(2), 12–13 (UK).

69. JENNIFER WARD, TRANSFORMING SUMMARY JUSTICE: MODERNISATION IN THE LOWER CRIMINAL COURTS 74 (2017).

70. L. 497/99, febrero 10, 1999, DIARIO OFICIAL [D.O.] 43499, art. 13 (Colom.).

possibility opens the door to JPs sitting for long periods of time and thus acquiring the same type of expertise in adjudication as the lay magistrates of England and Wales.

A fourth feature that contributes to the professionalization of lay magistrates, but only in England and Wales, is the key role of chairpersons presiding over hearing panels. Each panel of lay magistrates must be chaired by a magistrate who is specifically authorized to do so.[71] That authorization can only be obtained upon fulfilling three conditions. First, the magistrate must have been appraised before applying, which means that they will have attended many sittings, completed hours of training and gained a confirmed competence as a lay judge.[72] Second, the magistrate must apply to their local Training, Approvals, Authorisations and Appraisals Committee for authorization to sit as a chairperson, which will only be provided if the magistrate's appraisals show that they would be a suitable chairperson.[73] Third, the magistrate must follow a course of training developed specifically for chairpersons, which focuses on the skills required to conduct hearings and discusses the applicable procedure in greater detail.[74]

These four features—training, legal support, long terms of tenure, and the position of chairpersons—challenge the dichotomy between lay and professional judges often implicit in the literature. They exacerbate the already paradoxical position of lay magistrates and JPs who are sought after because of their lay status but are required to operate in a system that is overwhelmingly professionalized.[75] Of course, lay judges do not become professionalized to the same extent as professional judges, since they do not receive the same type of legal training; but the experience in adjudication they acquire over long periods of time brings them closer to their professional counterparts. For that reason, as some authors suggest, lay magistrates and JPs are perhaps best described as "lay legal professionals" (or professional lay judges) and not as pure lay judges.[76] This is particularly true for chairpersons who are chosen for their specialized skills and who become true experts in their role.

This professionalization suggests both opportunities and challenges. On the one hand, it may answer some of the concerns discussed earlier with

71. Family Court (Composition and Distribution of Business) Rules 2014, SI 2014/840, art. 11 (UK) https://www.legislation.gov.uk/uksi/2014/840/made [https://perma.cc/82QD-ZSG8]; Justices of the Peace Rules 2016, SI 2016/709, art. 5 (UK).

72. Justices of the Peace Rules art. 30.

73. *Id.* art. 25.

74. *Id.* art. 19; Davies, *supra* note 48, at 99; *see also* Courts Act 2003, c. 39, § 17(3), (6) (UK) (providing the statutory basis for these requirements).

75. Davies, *supra* note 48, at 94.

76. WARD, *supra* note 69, at 12; Davies, *supra* note 48, at 102–03; David Faulkner, *Introduction* to THE MAGISTRACY AT THE CROSSROADS, *supra* note 41, at 13, 15.

respect to the competence of lay adjudicators in modern societies. Lay judges who professionalize, to some extent, may become more familiar with the rules of procedure and in some cases the substantive law applying to the cases they are called upon to decide. This growing expertise may bring to their work some of the benefits of professionalism, including the ability to take on more complex cases, while continuing to reflect and embody the idea that non-professional members of the public can be involved in administering justice. On the other hand, the professionalization of lay justice may reintroduce some of the disadvantages that lay participation precisely seeks to avoid, including a more legalistic approach to the judicial process.[77] In other words, the professionalization of lay judges may curtail the benefits of the fresh and unjaded approach for which laypeople are sought after as decision-makers. The balance to be achieved between these two considerations is delicate. It seems, however, that with the increasing complexity of trial procedures, at least in England and Wales, adopting a hybrid model where 'professional' lay judges sit with more recent appointees has proven effective to maintain the competence and legitimacy of the lay magistracy.

C. The Centralization of Lay Justice in Colombia and England and Wales

Beyond the professionalization of lay judges, the second process by which lay courts have hybridized in Colombia and England and Wales is their growing integration with the central architecture of the state and the justice system. Lay courts are often conceived as institutions grounded first and foremost in the community itself—and specifically local communities—which empower people to resolve their own disputes without the intervention of distant state institutions. In England and Wales, the lay magistracy has been described as a purely local institution that strives to bring justice closer to communities while allowing local norms and knowledge to make their way into the resolution of disputes.[78] This local focus is concretely reflected, for example, in the requirement that lay magistrates be assigned to a particular local justice area and acknowledge that they "are expected to be living or working in, or reasonably close to, the area in which they wish to

77. *See* WARD, *supra* note 69, at 98 (describing how some magistrates note that their work has become more formulaic, with less freedom and discretion). In 1975, a committee noted that the jury seemed more popular than lay magistrates in criminal matters, because of the view that the latter "inevitably become case-hardened." INTERDEPARTMENTAL COMMITTEE, THE DISTRIBUTION OF CRIMINAL BUSINESS BETWEEN THE CROWN COURT AND MAGISTRATES' COURTS, 1975, Cm. 6323, at 18, ¶ 36.

78. Davies, *supra* note 48, at 113; *see also* Heather Hallett, *'Twas Ever Thus*, *in* THE MAGISTRACY AT THE CROSSROADS, *supra* note 41, at 109, 110.

serve."[79] In Colombia as well, JPs are viewed as purely local decision-makers. When their office was created in 1991, they were associated with the constituent's desire to "foster a closer connection between the formal mechanisms promoting coexistence and the social realities in which they would have to operate."[80] JPs were further meant to reinforce local "cohesion, legitimacy, resilience, autonomy and appropriation of conflict by the community."[81] The one-year residence requirement that conditions eligibility translates this local focus into practice and is meant to ensure that the JPs gain knowledge of "the community values and criteria" that they are asked to apply.[82] The fact that the voters participating in these elections are drawn from that same community also contributes to the JPs' local connections.[83]

Despite this stated intention to ensure that lay justice remains in the hands of local communities, lay courts in both jurisdictions have become increasingly centralized over time. This centralization is first apparent in the central controls imposed on local selection and appointment processes. In England and Wales, until 1835, the appointment of lay magistrates was directly in the hands of local councils.[84] However, due to concerns regarding the politicization of these appointments, the power was ultimately transferred to the judiciary, more precisely to the Senior Presiding Judge as the delegate of the Lord Chief Justice.[85] To retain some form of local control over the process, the Senior Presiding Judge is now required to consult with local advisory committees composed of both magistrates and citizens interested in contributing to the selection process.[86] But despite this effort to keep the process local, it remains structured and planned by central authorities and, as a result, is less decentralized and local than it used to be.

The same trend toward greater centralization can be observed in Colombia. Local authorities and community organizations play an important

79. JUDICIARY OF ENGLAND AND WALES, *supra* note 39, at 3; Courts Act 2003, c. 39, § 10(2)-(3) (UK).

80. C.C., febrero 10, 2004, Sentencia C-103-04, at 14 (Colom.); *see also* C.C., septiembre 27, 2007, Sentencia T-796-07, ¶ 6 (Colom.) (quoting Sentencia C-103-04). C.C., octubre 16, 2018, Sentencia T-421-18, ¶ 18 (Colom.) (quoting Sentencia C-103-04).

81. Guzmán-Rincón & Velásquez-Marín, *supra* note 44, at 54; *see* Ángela Patricia Navarrete Cruz et al., *La justicia en equidad y la transformación comunitaria. Reflexiones desde Colombia a partir de la experiencia Galardón*, 48 LA TRAMA 1, 1–2 (2016).

82. *Proyecto de ley número 57 de 1997 Senado y exposición de motivos*, agosto 28, 1997, G.C. vol. 346, at 14 (Colom.).

83. *See Proyecto de ley número 223 de 1998 Cámara, 057 de 1997 Senado*, 1st reading, diciembre 28, 1998, G.C. vol. 384, at 40–41 (Colom.).

84. Municipal Corporations Act 1835, 5 & 6 Will. IV c. 76 (UK).

85. Courts Act 2003, c. 39, § 10(1) (UK); JUDICIARY OF ENGLAND AND WALES, *supra* note 37, at 5.

86. Courts Act 2003, c. 39, § 10(2ZA) (UK).

role in the electoral process for JPs because elections are called by the municipal council on the initiative of a majority of its members, the mayor, the *personero* (a government official who supervises municipal affairs), or any registered group of neighbours.[87] The municipal council is also responsible for establishing the boundaries of its electoral districts[88] and, prior to being registered as candidates, interested persons must obtain the support of a community organization or a registered group of neighbors located in their district.[89] The whole election and appointment process, therefore, is locally administered with the objective of reinforcing the ties between JPs and their local community even before they take office. However, while the process is intended to be locally driven, it must comply with the rules and regulations adopted by the National Electoral Council, a central state institution.[90] These regulations impose various constraints on the process and create a central complaint mechanism through which the results of the local electoral process may be challenged.[91] They also subsidiarily apply the national Electoral Code to the JPs' election.[92] As a result, while the electoral process remains largely local, the fact that it is subject to central requirements and oversight further integrates it into the structure of the state.

Beyond the central controls imposed on the selection of lay magistrates and JPs, both institutions are further centralized through various judicial review and oversight mechanisms. In England and Wales, the decisions of lay magistrates in family matters are appealable as of right before a circuit judge, or before a High Court judge when the appeal raises an important point of principle or practice.[93] This stands in contrast with appeals from decisions made in the very same types of disputes by professional judges, which require prior permission from a lower court judge or an appellate judge to proceed.[94] This discrepancy shows that while lay magistrates are considered competent to adjudicate a wide range of family disputes, it is deemed necessary to facilitate the review of their decisions by professional judges and thus integrate them more closely with the central architecture of the justice system.

87. L. 497/99, febrero 10, 1999, DIARIO OFICIAL [D.O.] 43499, art. 11, para. 1 (Colom.).

88. *Id*.

89. *Id.* para. 3.

90. *Id.* para. 4.

91. *See* Resolución No. 2543 del Consejo Nacional Electoral, junio 17, 2003, D.O. 45221 (Colom.).

92. *Id.* art. 12.

93. Family Procedure Rules 2010, SI 2010/2955, Practice Direction 30A, art. 2.1 (UK) https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_30a [https://perma.cc/9XHQ-MSNG].

94. *Id*.

In Colombia, the first level of review for the JPs' decisions is a process of reconsideration by lay judges themselves. Specifically elected to that position,[95] Justices of the Peace of Reconsideration ("JPRs") are empowered to review decisions issued by the JPs of their district in panels composed of the initial JP and two JPRs.[96] If no JPR is available, the panel is composed of the initial JP and two other JPs chosen by the parties or, failing agreement, JPs from neighbouring districts.[97] This mechanism preserves a greater degree of independence between the JPs and the central institutions of the justice system. Yet, because JPs must operate within the Colombian constitutional framework, they are also subject to "actions of protection" (*tutela*) before the Constitutional Court when they fail to uphold constitutional guarantees; for instance, when they disregard human rights or when they exceed their competence and thus encroach on the jurisdiction of professional courts.[98] This latter mechanism ensures that JPs are integrated with the professional judiciary albeit to a lesser extent than the lay magistracy. In both cases, lay courts do not benefit from their own separate sphere of action but are instead intertwined, to some extent, with the professional judicial structures from which they are designed to differ.

In England and Wales, the integration of lay magistrates with central institutions has gone even further in recent years with the establishment of a unified Family Court. The lay magistrates who work in family matters are now part of that court as much as professional judges,[99] and they receive their cases after an allocation process driven by a panel of professional judges and court staff.[100] As a result, lay magistrates in family matters are far from an independent grassroots institution and instead appear to be part of a much broader professional institution. Moreover, cases can be transferred from lay magistrates to professional judges upon a party's application or on the magistrates' own motion, signaling once again the close integration of the lay magistracy with the professional judiciary.[101]

95. L. 497/99, art. 11, para. 5.

96. *Id.* art. 32, para. 2.

97. *Id.* para. 3.

98. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 86.

99. Family Court (Composition and Distribution of Business) Rules 2014, SI 2014/840, art. 14 (UK) https://www.legislation.gov.uk/uksi/2014/840/made [https://perma.cc/82QD-ZSG8].

100. *Id.* arts. 4, 20; Matrimonial and Family Proceedings Act 1984, c. 42, § 31D (UK); UK, *President's Guidance on Allocation and Gatekeeping for Proceedings under Part II of the Children Act 1989 (Private Law)*, ¶ 6 (2014), https://www.judiciary.uk/wp-content/uploads/2013/02/private-law-allocation-and-gatekeeping-guidance.pdf [https://perma.cc/E4GD-DZS]; JUDICIAL COLLEGE, *supra* note 63, at 27.

101. Family Procedure Rules 2010, SI 2010/2955, art. 29.19(1)–(5) (UK) https://www.legislation.gov.uk/uksi/2010/2955/rule/29.19 [https://perma.cc/SW99-8ZVJ].

In Colombia, the JPs' centralization can also be seen in the mechanisms allowing for their removal. While JPs are elected by the population, it is the Disciplinary Division of the Sectional Council of the Judiciary, the body responsible for disciplining professional judges, that has the power to remove a JP who has "violated fundamental rights and guarantees or engaged in reprehensible conduct affecting the dignity of their office."[102] The fact that JPs are subject to the same disciplinary mechanism as the rest of the judiciary further integrates them into the state's apparatus of justice and reinforces their hybrid nature.[103] At least one author criticizes this centralization and argues that placing JPs under the disciplinary control of government authorities strips them of their popular character.[104]

Lastly, when it comes to enforcement, lay judges must resort to the same mechanisms that the state uses to enforce the decisions of professional judges. For example, JPs must rely on the collaboration of judicial and police authorities for the execution of their decisions.[105] This enforcement structure reinforces the idea that JPs are integrated with the justice system. While this arrangement may be necessary to ensure the JPs' effectiveness, it challenges, like many other of their features, the idea that they are a pure grassroots institution.

In short, while lay courts in both England and Wales and Colombia were initially designed as local institutions distanced from the central architecture of the state, and especially from the professional justice system, they have become more centralized over time. This centralization finds its expression primarily in the central controls imposed by the state over selection and election processes otherwise rooted in local communities and in the oversight mechanisms that allow professional judges to intervene in the decisions of lay judges. The centralization of lay courts is also apparent in the unification of the Family Court in England and Wales and the removal and enforcement mechanisms for Colombian JPs. Overall, lay courts are now clearly embedded in the central architecture of their jurisdiction and cannot be viewed as purely grassroots institutions controlled by local communities.

102. L. 497/99, art. 34.

103. *See* Guzmán-Rincón & Velásquez-Marín, *supra* note 44, at 47, 49 (noting that JPs are subject to the same disciplinary mechanism as the rest of the judiciary); Rosembert Ariza Santamaría, *La Jurisdicción Especial de Paz: La Justicia de la Esperanza*, 2 IUSTA 15, 29 (2007) (same); Rodrigo Uprimny, *¿Son Posibles los Jueces de Paz y la Justicia Comunitaria en Contextos Violentos y Antidemocráticos?*, 12 PENSAMIENTO JURÍDICO 53, 65 (2000) (same).

104. Wilhelm Londoño Díaz, *La justicia de paz en Colombia: Discurso y praxis*, PRECEDENTE 175, 186–90 (2006).

105. L. 497/99, art. 37, para. 3.

III. THE IMPACTS OF HYBRIDIZATION

It is one thing to conclude that lay courts are becoming professionalized and centralized, but another to determine the implications of this trend. Going back to the initial discussion of hybridization in participatory democracy, many authors viewed the integration of representative and participatory democracy as having the potential to generate the benefits of both models. Others, however, worried that bringing participatory experiments closer to representative structures would defeat the very purpose of lay participation. The same concerns may arise with lay justice: if lay judges chosen precisely for their local non-professional profile are becoming professionals and placed under the close supervision of central institutions, can they still generate the results associated with lay justice? Will their purpose be defeated?

This question exceeds the scope of this Article and further research will be necessary to come to a definitive conclusion. However, the available data suggest that despite their hybridization, lay judges in both Colombia and England and Wales continue to generate some of the benefits associated with lay justice, including greater legitimacy stemming from their connection with local communities and the less formal and more understandable process they adopt.

In England and Wales, lay magistrates are generally perceived as legitimate decision-makers. In 2010, a government report relying on data collected nationally from 47,000 adults between 2002 and 2008 concluded that public confidence in magistrates was slightly higher than public confidence in professionals within the criminal justice system—including professional judges.[106] This legitimacy appears to result at least in part from the contributions of lay justice anticipated in the literature. First, despite their growing centralization, lay magistrates are still recognized for their "greater connection with the local community" compared to the professional judiciary.[107] Second, they are associated with the opportunity they give ordinary citizens to participate in the administration of justice and with the fact that their group decisions are more democratic.[108] And third, even if lay

106. DOMINIC SMITH, PUBLIC CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM: FINDINGS FROM THE BRITISH CRIME SURVEY 2002–03 TO 2007–08, at 17 (2010); *see also* Donoghue, *supra* note 41, at 939 (citing *Id.*). A caveat is that many people do not know about the lay magistrates—a 2000 survey of a nationally representative sample of 1,753 adults in England and Wales concluded that 73% of respondents did not know the difference between professional and lay magistrates. MORGAN & RUSSELL, *supra* note 41, at 77.

107. ASHLEY AMES ET AL., THE STRENGTHS AND SKILLS OF THE JUDICIARY IN THE MAGISTRATES' COURTS 1, 18 (rev. ed. 2013) (interviews and discussion groups conducted in 2011 with 355 respondents including members of the judiciary, court staff, and professional and lay court users).

108. *Id.* at 1, 19.

magistrates are increasingly professionalized, they are recognized for their impact on the judicial process itself, where their presence is described as making the proceedings more understandable and human.[109] In general, lay magistrates tend to be more accessible, addressing litigants by name, using plain language, avoiding jargon, and engaging in a true dialogue.[110] These findings, made at a time when the lay magistracy had already hybridized to a great extent, tend to suggest that, despite their professionalization and centralization, there is still a benefit to entrusting them with the resolution of some disputes.

Colombian JPs are also perceived as legitimate decision-makers. The broadest survey of users, while a bit dated and thus not necessarily representative of the current situation, reported in 2003 that 94.4% of a sample of users in six different cities said they had received a 'good' or 'excellent' service from JPs.[111] Several more recent small-scale and qualitative studies tend to confirm that finding. In 2018, 90% of a sample of thirty users in Bogotá said they were "very satisfied" or "satisfied" with the JPs' work and believed that the process was "very just" or "just".[112] In 2019, a qualitative study of four users of the jurisdiction of peace in Armenia, Quindío, reached a similar conclusion.[113] In the absence of any study contradicting those findings, JPs generally appear to be considered legitimate by users of their services.

The same qualitative studies identify some of the reasons why users perceive JPs as legitimate, reasons which are closely connected to the discussion above. The first reason lies in the process itself, which four users interviewed in Armenia, Quindío in 2019 said was characterized by a respectful atmosphere and the use of less technical language, which made it more welcoming and understandable.[114] The second reason seems to be the personal legitimacy that some JPs had already acquired in the context of prior service to their local community. In 2015, for instance, a qualitative study of

109. WARD, *supra* note 69, at 89; *see also* MORGAN & RUSSELL, *supra* note 41, at vii, x.

110. Aubrey Fox, *Promoting Innovation: How the Magistracy Can Make a Difference*, *in* THE MAGISTRACY AT THE CROSSROADS, *supra* note 41, at 53, 55.

111. Diana Marcela Monroy Hernández, Justicia de paz: del ideal a la realidad balance de la jurisdicción de paz en Colombia 40 (2004) (Bachelor's Thesis, Universidad de los Andes) (on file with the Séneca Repositorio Institucional).

112. Carlos Arturo Guzmán Claros, Estudio y análisis descriptivo sobre la percepción de la justicia de paz en la ciudad de Bogotá 31 (2018) (industrial engineering thesis, Universidad de los Andes); *see* María de Jesús Illera Santos, Alexandra García Iragorri & María Lourdes Ramírez Torrado, *Justicia de paz y conciliación en equidad: ¿Formas alternativas de resolución de conflictos comunitarios en Barranquilla (Colombia)?*, REVISTA DE DERECHO - UNIVERSIDAD DEL NORTE, 307, 326 (2012) (reaching similar conclusions in Barranquilla, based on surveys of 650 users of the houses of justice).

113. Jose Luis Rivera García, *Sentidos y procesos de la Justicia en Equidad en Armenia, Quindío*, 21 ESTUDIOS SOCIO-JURÍDICOS 197, 207 (2019).

114. *Id.*

four of the six JPs in Kennedy, Bogotá, noted how they were local leaders involved in various aspects of public life, including citizens' associations and community organizations.[115] A 2008 study of thirty-nine JPs across the country similarly noted that most of them "had a long background as community leaders and in politics at various levels".[116] In short, while further studies would be needed to confirm these observations, it seems that the JPs' legitimacy continues to rest in part on the de-professionalized process they adopt and on their local recognition, despite their growing centralization and professionalization.

CONCLUSION

Lay courts are often described, perhaps idealistically, as grassroots institutions led by local communities in which laypeople act as adjudicators to resolve a range of minor civil and criminal disputes. That picture, however, must be nuanced in light of the two cases studied in this Article. Lay justice institutions set in highly legalized societies have progressively become hybrids, straddling the fence between lay and professional justice. Their lay judges, chosen for their lack of expertise in law, have become professionalized through various mechanisms, and the institutions in which they operate have become integrated with the central architecture of the justice system and the state. The two examples suggest, however, that despite their growing professionalization and centralization, these two lay courts continue to generate the benefits attributed to them in the literature. Among other contributions, they seem to improve the legitimacy of the justice system by strengthening its connection with local communities and making the judicial process more understandable and welcoming for litigants.

What can we make of these conclusions? In societies governed by a complex set of laws and a highly professionalized judiciary, it seems perhaps illusory to resist this hybridizing trend, especially if it does not fundamentally alter the lay character of lay courts and their contributions to justice. However, the devil may be in the details. While the two institutions studied in this Article seem to have achieved a balance between lay and professional justice that allows them to operate in modern contexts without altering their fundamental nature, that delicate equilibrium is at risk to be upset by reforms implemented by lawmakers and judicial actors.

Historically, many members of the legal profession and other actors of the justice system have pushed back against the involvement of lay judges in

115. *See* Juan Manuel Quinche Roa, Orfandad institucional en los jueces de paz. Experiencia en la Localidad de Kennedy 24–25 (2015) (bachelor's thesis, Universidad de los Andes).

116. Rosembert Ariza Santamaría & Diana Carolina Abondano Lozano, *La Jurisdicción Especial de Paz en Colombia: ¿Un nuevo paradigma jurídico?*, 2 IUSTA 37, 42 (2008).

the resolution of disputes, arguing that the increasing complexity of modern legal systems makes them unfit for this role. This position, should it continue to be advanced, may pressure governments to further professionalize lay courts, or even replace them with professional judges. Should that be the case, there is a risk that lay courts may continue to hybridize even further and become less and less distinguishable from their professional counterparts. The question that cannot be answered at this stage, but which should remain present in the minds of lawmakers, is whether lay courts will eventually become so similar to professional justice institutions that they will stop generating the benefits that set them apart.

In the same vein, governments may want to centralize lay courts even further, motivated by various considerations including financial ones. In England and Wales, for instance, the government recently decided to sell local courthouses considered too costly to operate, which has resulted in lay magistrates sitting more than 80 miles from their homes.[117] It is too early to fully appreciate the impact of this change and similar initiatives. However, this Article suggests that attention to these dynamics is essential if lay courts are to function in modern societies while remaining true to their nature.

There remains much work to be done to determine whether the same trends can be observed in other jurisdictions, whether the hybridization of lay courts will continue in the future, and what impact these processes will have on the competence and legitimacy of these institutions. Future studies may also want to look at how these processes of hybridization are justified by lawmakers and justice actors. While this Article has focused on the mechanisms by which lay courts have become hybridized in two jurisdictions and the impact of this process, it would be interesting to explore the rationale behind it and the dynamics at play, including the actors involved and the arguments and interests they advocate for.

117. Donoghue, *supra* note 41, at 937–38, 944, 946; WARD, *supra* note 69, at 30–31, 86–87.