

IS MEXICO READY FOR A JURY TRIAL?:
COMPARATIVE ANALYSIS OF LAY JUSTICE
SYSTEMS IN MEXICO, THE UNITED STATES,
JAPAN, NEW ZEALAND, SOUTH KOREA,
AND IRELAND*

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ABSTRACT. This article examines the possible re-establishment of the jury system in Mexico and explores its broader application in criminal trials. Viable options might include: the use of a “verdict questionnaire” in the form of a list of propositions answered by the jury; vigorous strategies to ensure the security and safety of judges and jurors from defendants involved in drug cartels; introduction of lay participation at a state level; and implementation of a mixed tribunal that allows joint deliberations by professional and lay judges, in addition to all-citizen juries.

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RESUMEN. *Este artículo examina el posible reestablecimiento de los juicios or jurado en México, y explora su aplicación en juicios penales. Opciones viables podrían incluir: el uso de un verdict questionnaire en la modalidad de crear una lista de ideas respondidas por el jurado; estrategias para asegurar la seguridad de jueces y jurados en casos de narcotráfico; y la implementación de tribunales mixtos que permitan deliberaciones conjuntas de jueces profesionales, y ciudadanos así como jurados completamente ciudadanos.*

PALABRAS CLAVE: *Jurado, participación ciudadana, reforma judicial, tribunales mixtos, democracia directa.*

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I. INTRODUCTION

This article examines the possible re-establishment of the jury system in Mexico and explores its broader application in criminal trials. Despite a long history of jury trials, the practical use of the oral and adversarial jury trial has virtually disappeared in Mexico. While the Mexican Constitution has a provision for a jury trial on press-related cases (Article 20, Section A (6)),¹ nearly all criminal cases are today adjudicated by judges, not juries.

Recent federal bills in Mexico attempted to transform the criminal justice process and introduce a jury trial in criminal cases.² In 2001, president Vicente Fox proposed a bill which would reform the Code of Criminal Procedures by implementing jury trials in criminal cases.³ While this initiative was not passed, the judicial reform passed in 2008 did introduce oral trials, the presumption of innocence, and the adversarial criminal process in Mexico.

A cross-national empirical analysis of views, attitudes, and sentiments on lay participation in court matters shows that, compared with citizens in other nations, Mexicans are more willing to participate in jury trials and express greater confidence in, and respect for, people's abilities to make fair and just decisions. The great majority of Mexican respondents also support the broader application of lay participation in the administration of justice.

¹ "In all cases, crimes committed by means of the press against the public order, or the foreign or domestic security of the nation, [shall] be judged by a jury." The English translation of the Mexican Constitution is available at <http://historicaltextarchive.com/sections.php?op=viewarticle&artid=93> (last visited: March 1, 2009).

² "Iniciativa de Decreto por el que se Expide el Código Federal de Procedimientos Penales," submitted to the Senate of the Republic by then President Vicente Fox Quesada in March 29 (2004) (hereinafter *Iniciativa* 2004). For more detailed information on this initiative, see Robert Kossick, *The Rule of Law and Development in Mexico*, 21 ARIZ. J. INT'L & COMP. L. 715, 785 (2004). See also *Iniciativa de Reforma al Código de Procedimientos Penales y a la Ley Orgánica del Poder Judicial de la Federación*, Gaceta Parlamentaria, November 22, 2001 (hereinafter *Iniciativa*).

³ See *Id.*

In the actual implementation of popular legal participation, however, new procedural mechanisms must be carefully evaluated due to persistent corruption in Mexico's police system and other public institutions. Viable options for the possible establishment of the lay justice system in Mexico might include: the use of a "verdict questionnaire" in the form of a list of propositions answered by the jury; vigorous strategies to ensure the security and safety of judges and jurors from defendants involved in drug cartels; introduction of lay participation at the state level; and implementation of a mixed tribunal that allows joint deliberations by professional and lay judges, in addition to all-citizen juries. Given the strong public support for a citizen-in legal system, we believe that it is imperative to open the national debate on the introduction of the lay justice system in Mexico which has failed to receive the attention it deserves. The future transformation of Mexico's justice system, therefore, could allow Mexican citizens to directly participate in criminal trials and to make the criminal process even more open and transparent.

The Evolution of Lay Participation Debates in Mexico

On March 6, 2008, Mexico's Senate gave final approval to an historic overhaul of its judicial system by introducing oral trials and an adversarial process, similar to the procedure used in U.S. courts.⁴ The judicial reform also established a new legal standard, by which criminal defendants in court will now be presumed innocent until proven guilty. This historic judicial overhaul, however, stopped short of introducing a jury trial in Mexico.

The switch from an *en camera*, closed, inquisitorial process to an open, oral, and more transparent trial promises to represent a paradigmatic shift in Mexican jurisprudence. Today, judges deliberate in private and base their decisions exclusively on written affidavits prepared by prosecutors and police investigators. Now, not only do lawyers and judges have to become accustomed to making oral statements in public, but also, for the first time, the media and public will have a full view of the evidence. Prominent Mexican legal scholar, Dr. Raúl Carrancá y Rivas, who strongly opposes the introduction of a jury trial in Mexico, recently argued that the introduction of oral arguments and the open presentation of evidence is equivalent to the introduction of a jury trial, and that "this is what I consider risky and critical, since we are not prepared in Mexico to have the jury or trial by jury."⁵

⁴ James C. McKinley, *Mexico's congress passes overhaul of justice laws*, NY TIMES, March 7, 2008, available at: http://www.nytimes.com/2008/03/07/world/americas/07mexico.html?_r=2&oref=slogin.

⁵ Raúl Carrancá y Rivas, *Conferencia: Algunos aspectos de la iniciativa que en materia penal envía el Presidente de la República al H. Congreso de la Unión*, Senado de la República, August

The purpose of this paper, then, is to examine the possible re-establishment of the jury system in Mexico. Reform is definitely possible. By modeling after a citizen jury system currently adopted in more than 60 countries around the world,⁶ the future transformation of Mexico's legal system and criminal procedures may open a path to allow Mexican citizens to directly participate in criminal trials and make criminal justice procedures ever more transparent and resistant to political manipulation and corruption.⁷

This article is structured as follows. Part II of this article examines the historical and political importance of the institution of lay participation in the judicial system. This section also examines why many countries around the world are currently embracing the introduction of the lay justice system in democratizing their own jurisprudence and legal apparatus. Part III then examines Mexico's historical experience with the introduction of lay participation in law.

Part IV examines opinions, attitudes, and perceptions about the lay justice system in six different nations: (1) Mexico, (2) Ireland, (3) Japan, (4) South Korea, (5) New Zealand, and (6) the United States. Cross-national data were obtained from a select group of college students and researchers, *i.e.*, the possible future intelligentsia in those respective countries. They have responded to a set of questions about the lay judge system; its social and political significance; their willingness to serve; confidence in jurors' abilities to make fair and just decisions; jurors' moral and ethical responsibilities; the fear of retaliatory violence from defendants and their families; views on confessionary documents; attitudes on the jury's diversity based on race, ethnicity, and gender; and perceptions of trial fairness and verdict legitimacy.

Part V examines the possible re-introduction of the jury system in Mexico and explores its potential socio-political impact on Mexico's criminal justice system. Part VI offers conclusions about the possible significance of lay participation in the administration of justice in Mexico.

II. THE SOCIO-POLITICAL SIGNIFICANCE OF LAY PARTICIPATION IN LAW

The historic and political foundation for lay participation in criminal jury trials is that it offers an important check on judicial and political power exercised exclusively by the government. The jury's role as a popular body for oversight of government becomes especially important when individual

24, 2004, available at <http://www.derecho.unam.mx/papime/TemasSelectosdeDerechoPenalVol.III/tema12-5.htm>.

⁶ NEIL VIDMAR, *WORLD JURY SYSTEMS* (Oxford University Press, 2000).

⁷ See *Id.*

citizens or groups have been accused of committing serious crimes against their own government.

After the terrorist attacks of 9/11 and the passage of the 2001 Patriot Act in the United States and similar anti-terrorism measures imposed in other nations in the world, serious terrorism charges have been brought against their citizens, political dissidents, and civic activists. In Australia, for instance, after the passage of the Anti-Terrorism Act in 2002, two separate juries examined charges of terrorism. In Australia's first-ever terrorism trial in 2005, the all-citizen jury acquitted Zeky Mallah, 21-year-old supermarket worker, of terrorist charges of preparing to storm government offices and shoot officers in a supposed suicide mission.⁸ In the second highly controversial trial, in which the government's only evidence was the defendant's confession extracted at a Pakistani military prison, the jury found Joseph Thomas guilty of charges for intentionally receiving funds from al-Qaeda. However, soon after the verdict, the appeal's court reversed all of his convictions because it determined his coerced confession at a foreign prison to be inadmissible.⁹

In Russia, where anti-Islamic political fever runs high, many citizens have also been accused of terrorist acts against the government and their cases adjudicated by all-citizen juries. After the passage of the anti-terrorism act in 2004, following the Beslan school attack in which more than 330 child hostages died, the all-citizen jury acquitted three suspected terrorists of the charges of a gas pipeline explosion in the Republic of Tatarstan in September 2005.¹⁰ Two of the defendants, who were among seven Russians released from the Guantanamo Bay prison in 2004, claimed that they were tortured while transferred to and detained in Russia. They criticized the government of false charges of extremism without any substantial evidence.¹¹ Another all-citizen jury acquitted four men of terrorist charges for the murder of the minister for national policy, in which the evidence used to implicate the defendants consisted solely of confessions extracted under torture.¹² In other high profile "terrorism" cases, such as the 2001 bombing of an Astrakhan city market and a December 2004 attack on the headquarters of the anti-drug enforcement agency in Kabardino-Balkaria, all-citizen juries also acquitted all defendants of terrorist charges.¹³

⁸ R v. Mallah [2005] NSWSC 317 (2005).

⁹ Australia's first terrorism conviction quashed, Reuters, August 18, 2006, available at: http://www.redorbit.com/news/international/621900/australias_first_terrorism_conviction_quashed/index.html.

¹⁰ Peter Finn, *Russian homeland no haven for ex-detainees, activists say*, WASHINGTON POST, September 3, 2006, at A14.

¹¹ *Id.*

¹² Nabi Abdullaev, *A jury is a better bet than a judge*, MOSCOW TIMES, June 1, 2006.

¹³ Otto Luchterhandt, *Russia Adopts New Counter-Terrorism Law*, RUSSIAN ANALYTICAL

In New Zealand, after the passage of the Suppression of Terrorism Act in 2002, the government also brought terrorism charges against their own citizens. In one of the most celebrated trials in 2006, an all-citizen jury acquitted freelance journalist and political activist Timothy Selwyn of seditious conspiracy. The government evidence included a political pamphlet, in which the defendant called for “like minded New Zealanders to [commit] their own acts of civil disobedience [against governmental oppression].”¹⁴ The jurors did not accept the governmental arguments and returned a verdict of not-guilty.¹⁵

In the United States, all-citizen juries have also tried suspected terrorists. In December 2005, a Florida jury acquitted former University of South Florida Professor Sami Al-Arian of providing political and economic support to terrorists and being part of a conspiracy to commit murder abroad, money laundering, and obstruction of justice.¹⁶ In this highly celebrated trial, the government produced over 100 witnesses and 400 transcripts of phone conversations obtained through 10 years of investigation. In the post-verdict interviews, one juror expressed that “there was absolutely no evidence of any wrongdoing on the part of Al-Arian.”¹⁷ Similar views were also expressed by the defense counsel who concluded that the prosecution’s case was so weak that there was no need to call defense evidence in the trial.¹⁸ In February 2007, a grocer and a university professor were also acquitted by a Chicago jury of a terrorist conspiracy to finance the Palestinian political organization of Hamas.¹⁹ In October 2007, another jury acquitted five defendants of nearly 200 combined terrorist charges in Dallas, Texas.²⁰ Five defendants were former officials of an Islamic charity and philan-

DIGEST 2006, available at: http://www.res.ethz.ch/analysis/rad/documents/Russian_Analytical_Digest_2_2006.pdf.

¹⁴ John Braddock, *An attack on democratic rights: New Zealand man jailed for sedition*, WORLD SOCIALIST WEB SITE (2006). http://www.wsws.org/articles/2006/jul2006/sedi-j2_5.shtml.

¹⁵ *Id.* The jury, however, found Selwyn guilty of publishing a statement with seditious intent.

¹⁶ Alexander Abboud, *Group accused of aiding terrorists acquitted in U.S. court* (2005). <http://www.america.gov/st/washfile-english/2005/December/20051207144424maduobbA0.1730463.html>.

¹⁷ Joe Kay, *Palestinian activist Sami Al-Arian acquitted on charges in Florida*, WORLD SOCIALIST WEB SITE (2005), available at <http://www.wsws.org/articles/2005/dec2005/aria-d08.shtml>.

¹⁸ Neil Vidmar, *Trial by jury involving persons accused of terrorism*, DUKE LAW SCHOOL WORKING PAPER SERIES (2006), 20. The jury, however, could not reach consensus on other lesser charges.

¹⁹ Andrew Stern, *U.S. jury acquits two men of Hamas conspiracy*, REUTERS ALERTNET (2007). <http://www.alertnet.org/thenews/newsdesk/N01356156.htm>.

²⁰ Jason Trahan & Michael Grabell, *Judge declares mistrial in Holy Land Foundation Case*, DALLAS MORNING NEWS, Oct. 22, 2007.

thropic organization that provided financial assistance to the poor in occupied Palestinian territories.²¹

What lessons can we draw from these cases? Trial by jury provides citizens with the important legal shield from governmental oppression and unreasonable prosecution. Trial by jury reveals its catalytic power —promoting the importance of lay participation in the community and strengthening the perception of trial fairness and verdict legitimacy. It is thus no surprise that many nations in South and Central America have also adopted contemporary versions of representative all-citizen juries. Mexico's attempt to reinstate the system of all-citizen juries and introduce a more transparent and adversarial criminal procedural system also may help improve the perception of the overall proficiency of the administration of justice and increase the level of confidence that Mexican citizens have in their own legal system. The increased confidence in the judicial system in Mexico is critically important in the eyes of international communities because its weak judicial organization has been subject to significant criticisms of corruption in the past. Mexico, for instance, ranks 72 out of 180 countries in Transparency International's Corruption Perceptions Index for 2008.²²

III. JURY TRIALS IN MEXICO: HISTORICAL BACKGROUND

Research indicates that Mexico extensively used jury trials between 1856 and 1929.²³ Historical records show that, prior to 1856, juries were also used in various provinces and small towns and cities. Mexican juries have played an important political role in the criminal justice system and deliberated on many prominent criminal cases, including the trial of José de León Toral, who murdered then President-Elect Álvaro Obregón, as well as the trial of Maria Teresa de Landa, the 1928 Miss Mexico, who allegedly killed her husband.²⁴ However, after the end of the Mexican Revolu-

²¹ Greg Krikorian, *Mistrial in Holy Land terrorism financing case*, L.A. TIMES, Oct. 23, 2007, available at: <http://www.latimes.com/news/local/la-na-holyland23oct23,0,1540715.story?coll=la-home-center>. In the second jury trial, however, the Holy Land Foundation and five of its former organizers were found guilty of 108 separate charges. See Jason Trahan & Tanya Eiserer, *Holy Land Foundation defendants guilty on all counts*, DALLAS MORNING NEWS, Nov. 25, 2008, available at: <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/112508dmmetholylandverdicts.1e5022504.html>.

²² Johann Graf Lambsdorff and Mathias Nell, *Corruption: Where we stand and where to go*, available at: http://www.icgg.org/corruption.cpi_2008.html (last visited: January 12, 2010).

²³ Robert Kossick, *The Rule of Law and Development in Mexico*, 21 ARIZ. J. INT'L & COMP. L. 715, 785 (2004).

²⁴ ROBERT BUFFINGTON & PABLO PICCATO, TRUE STORIES OF CRIME IN MODERN MEXICO (University of New Mexico Press, 2009).

tion and the creation of the National Revolutionary Party (PRI or *Partido Revolucionario Institucional*) in 1929, jury trials began to gradually disappear. Today jury trials are rarely used in Mexico, and judges are currently empowered to determine legal outcomes of nearly all criminal cases.

1. *Jury Trials in 19th-Century Mexico*

Article 185 of the Constitution of 1824 first authorized the use of a jury trial in Mexico. The jury was responsible for determining whether or not there was a legal foundation for the accusation and was given the task of evaluating or assessing the nature of crimes or disputes. The jurors were named by the corresponding city council.

The case of the state of Querétaro, México, provides an excellent example of popular participation in both civil and criminal cases. Ministers and prosecutors of the Supreme Tribunal of Justice established the jury in Querétaro, Mexico.²⁵ The jury generally consisted of twelve citizens chosen at random by the city parliament. Early records of Querétaro show that, on March 4, 1826, the city parliament first created a list of potential candidates to be summoned for jury duties. To be qualified to be a jury member, potential candidates had to be at least thirty-five years old and not be members of the clergy or their employees.²⁶ Thus the city parliament created an initial list of jury candidates in 1827 and did so again in 1829. The list of candidates was prepared periodically so that a new group of eligible residents could serve on jury trials. The record also shows that jury trials in Querétaro were mostly used in criminal cases involving theft and robbery.²⁷

The following example of a criminal case illustrates how a jury trial was held in a rural municipality in 19th-century Mexico. In Querétaro, on July 4, 1862, two men, José Perea and Francisco Salina, were charged with the crime of stealing cattle. A group of local residents was then summoned to decide this matter, and a judicial panel of nine male citizens was chosen at random from the list.²⁸ Once their names were identified and they were summoned, they were legally required to show up the following day for the trial. If they failed to respond to jury summonses, the record shows that they would be punished and fined for their failure to appear in court.²⁹

²⁵ JUAN RICARDO JIMÉNEZ GÓMEZ, *EL SISTEMA JUDICIAL EN QUERÉTARO 1531-1872*, 298 (1999).

²⁶ *Id.* at 473.

²⁷ *Id.* at 415.

²⁸ See *Id.* The names of jury members were: Licenciado Rodríguez Altamirano, Vicente Ruiz, Vicente Leyva, Florencio Ramírez, Antonio Rodríguez, Dolores Trejo, Atlano Maldonado, José Reyes, and Zacarias Zúñiga.

²⁹ *Id.* at 473.

Justice often did not prevail, however. Average citizens were not familiar with legal principles of criminal proceedings. Jury verdicts were often appealed and reversed by higher courts, as the appeals court often ruled that jurors in Querétaro failed to understand legal principles and thus made inaccurate decisions.³⁰ Mexican historian Juan Ricardo Jiménez Gómez, who investigated legal records of Querétaro, has stated that it was extremely difficult to find detailed records about jury members or the procedural content of trials held in Querétaro. He suggests that it was because the jury system in Querétaro probably never “prospered” or gained wider public acceptance.³¹ Nevertheless, he also indicates that people actively participated in jury trials and made decisions based on their conception of justice and moral principles.³²

Federal judge and legal scholar Manuel González Oropeza argues that one of the most controversial amendments to the Mexican Constitution has been the right to a jury trial.³³ The Mexican Constitution originally provided that each state be responsible for including a provision for individual rights in their respective jurisdictions. According to González Oropeza, José María Luis Mora, an attorney in the state of Texcoco, was a strong advocate for the institution of juries and wrote powerful essays in defense of jury trials in Mexico. He also helped draft jury rules that were later approved under Article 209 of the Mexican Constitution, which stated, “No tribunal of the state can pronounce a sentence in criminal matters for severe crimes without a grand jury and without certification of a petit jury to determine the motivation of the accusation.”³⁴ The Spanish Constitution of Cádiz of 1812 has also influenced jury trials in Mexico, especially in crimes involving press offenses.³⁵

José María Luis Mora believed that legal knowledge was an unnecessary component of people’s ability to serve as jurors. Nevertheless, Mora was

³⁰ *Id.* at 415.

³¹ *Id.* at 298.

³² *Id.* There is another reason for juries’ social insignificance in 19th-century Mexico. In the 1830s and 1840s, Mexico was torn between the rights of the Church to hold land, control the peasantry and dictate local affairs; the oligarchy owning the old silver mines, landed property employing *encomienda* labor to grow cotton, and weaving factories; and the military under Santa Ana who became President in 1833, undermining liberal reforms made by previous generations of urban middle-class leaders. The Church eventually won the battle; anticlerical decrees were largely repealed; and the *hacendados* themselves had the option to pay tithes or not to the Church. In this battle, the power oligarchy, the Church, and the militarized state wanted no citizen juries.

³³ Manuel González Oropeza, *El Juicio por Jurado en las Constituciones de México*, 2 CUESTIONES CONSTITUCIONALES 73-86 (January-June 2000).

³⁴ *Id.*

³⁵ This Constitution of Cádiz was adopted by independent Spaniards in Spain while in refuge and served as a model for liberal constitutions of Mediterranean nations such as Italy and Latin American countries, including Mexico.

not successful in moving his jury project forward. When the Congressional hearing was convened in 1856, Ignacio L. Vallarta, a strong opponent of the use of juries, insisted that the jury should be left for other nations that are more cultured and civically mature. On November 27, 1856, the Mexican Congress finally voted against the implementation of jury trials, with 42 to 40 votes.³⁶

On June 15, 1868, President Benito Juárez, who became the first Mexican leader in 1858 without a military background, brought back the jury in criminal matters for the federal district court. As a Zapoteco Indian, Juárez also became the first indigenous national to serve as President of Mexico after he previously served as the leader of the reform movement that led to the Constitution of 1857.³⁷ The jury was then guaranteed by a sequence of legal enactments: the CPP (Código Procesal Penal, hereinafter CPP) of 1880, the Law on Criminal Juries in 1891, the CPP (in 1894, the Law on Judicial Organization in the Federal District and Territories in 1903, and the Organic Laws of the Ordinary Court in 1919 and 1928.³⁸ However, on October 4, 1929, the Code of Organization, Jurisdiction, and Procedure in Criminal Matters for the District and Federal Territories finally abolished the requirement for the popular jury in judgment of general criminal cases.³⁹

The jury for press-related crimes was first introduced in Mexico by the Spanish regulation on October 22, 1820. The regulatory code was then ratified by the provincial government by the Rules for the Freedom of the Press on December 13, 1821.⁴⁰

The jury for press-related crimes was later regulated by: the Law of 1828, the Regulation of the Freedom of the Press of 1846, the Decree of 1861, and the Law of Freedom of Press of 1868.⁴¹ The popular jury for official crimes was also introduced in 1917, as well as the Laws of Responsibilities of 1939 and 1979, respectively. In the 1982 reform, however, the intervention of the popular jury in the judgment of these types of crimes was suppressed.⁴² Today, Mexico only authorizes a jury at the federal level to intervene in criminal proceedings for press-related crimes against the public order or for internal or external security of the nation (Article 20, Section A (6) of the Constitution).⁴³

³⁶ *Id.*

³⁷ ULICK RALPH BURKE, *A LIFE OF BENITO JUAREZ: CONSTITUTIONAL PRESIDENT OF MEXICO* (Bibliolife, 2009).

³⁸ *Iniciativa supra* note 2.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ The Constitution, *supra* note 1. For detailed discussions of the Constitution, the federal judiciary and related discussions on the issues of human rights and constitutional laws,

2. *Jury Trials in the Federal District*

According to prominent jury historian Elisa Speckman Guerra, jury trials in Mexico went through several significant transformations around the turn of the 20th century. In the Federal District between 1869 and 1880, for example, the jury was given the responsibility to act as judges of fact, determine guilt or innocence, describe the nature of the crime, and resolve the presence of aggravating or extenuating circumstances.⁴⁴ The jury's verdict was determined by a majority vote, which was irrevocable; and the method of jury selection was managed by the city council, which compiled a list of approximately 600 names of qualified males selected at random from local communities. To serve as a juror, an individual had to be a native-born Mexican citizen, at least 25 years of age, and know how to read and write. In the early years, the jury typically consisted of eleven well-educated males.⁴⁵

Interestingly, prior to 1869, foreigners were allowed to serve as jurors for press-related offenses, as there were not enough Mexican born citizens who could satisfy all the qualifications for jury duty. The strict jury qualification eliminated the vast majority of jurors in the Federal District. As a result, due to the significant shortage of qualified Mexican citizens for jury service, foreign jurors constituted five to seven percent of the popular jury.⁴⁶ Nevertheless, foreigners were excluded from jury selection for common criminal offenses throughout most of the jury's existence between 1869 and 1929. The jury law for common criminal offenses also excluded convicted felons for crimes against the common order, "deceiving tricksters," the blind, and anyone who was a government employee or had an occupation that prevented him from having the liberty of time-off without affecting his pay or income necessary for subsistence.

Between 1880 and 1903, the potential jury list expanded to include 800 individuals; and in 1891, the governor of the Federal District, not the city council, was given the responsibility of creating the jury candidate list. In this period, the verdict had to be determined by eight or more votes to be-

please see HÉCTOR FIX-ZAMUDIO, *ESTUDIO DE LA DEFENSA DE LA CONSTITUCIÓN EN EL ORDENAMIENTO MEXICANO* (Porrúa-UNAM, 2005).

⁴⁴ Elisa Speckman Guerra, *Los jueces, el honor y la muerte: un análisis de la justicia (Ciudad de México, 1871-1931)*, 55 *HISTORIA MEXICANA*, 1411-1466 (2006); Stephen Zamora & José Ramón Cossío, *Mexican Constitutionalism After Presidencialismo*, 4 *INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW*, 411 (2006) (discussing more recent fundamental changes and important legal reforms during the past decade related to Mexico's constitutionalism); JOEL CARRANCO ZÚÑIGA, *EL JUICIO DE AMPARO EN MATERIA ADMINISTRATIVA* (Porrúa, 2008).

⁴⁵ Personal interview with Elisa Speckman Guerra (Mar. 18, 2009) (interview tapes on file with the authors).

⁴⁶ *Id.*

come irrevocable. However, in 1891, the size of the jury shrunk from eleven to nine and made it increasingly difficult for the jury to render an irrevocable verdict. This period also witnessed the imposition of an income requirement on potential jury candidates who had to earn a daily income of at least one peso. This economic requirement made the city government fearful that it might fail to gather enough people, so the government decided to allow public employees and foreigners with at least five years of residency to participate in jury trials. In 1891, the income requirement was raised to one hundred pesos per month and the age requirement was lowered to 21 and three years of residency for foreigners. The age and residency requirement were lowered once more out of fear that the new economic restriction would eliminate many potential candidates for jury trials.⁴⁷

From 1907 to 1919, the economic requirement was eliminated and foreigners were excluded from future jury participation. In 1907, the jury was called to serve only in cases in which the penalty of the crime exceeded six years. By 1919, the city council once again took charge of creating a candidate list. However, the jury was no longer allowed to describe the nature of the crime or determine any aggravating or extenuating circumstances in criminal cases. Between 1922 and 1929, the government also added an educational requirement and juror candidates had to have an education above elementary school.

Over time, many other changes to the jury function emerged in the Federal District. From 1869 to 1907, for instance, the jury adjudicated in criminal cases, in which the potential sentence might exceed two-and-half years of incarceration. Between 1907 and 1919, the jury presided over criminal cases with potential penalties exceeding six and half years of incarceration; between 1919 and 1922, the jury decided on cases exceeding two years of incarceration; and between 1922 and 1929, the jury presided over criminal cases with five years of incarceration.⁴⁸ Criminal cases available for jury adjudication also changed over time. For example, in 1903, juries were no longer allowed to adjudicate a criminal case that involved a breach of trust, fraud, embezzlement, extortion, or bigamy, and in 1928, adultery was added to the list of prohibitions.⁴⁹

Despite the long history of jury trials prior to the end of the Mexican Revolution in 1929, the practical use of the popular jury in an open and adversarial court has all but disappeared today.⁵⁰ Yet, the 2008 judicial re-

⁴⁷ *Id.*

⁴⁸ Elisa Speckman Guerra, *El jurado popular para delitos comunes: leyes, ideas y prácticas (Distrito Federal, 1869-1929)*, in *HISTORIA DE LA JUSTICIA EN MÉXICO (SIGLOS XIX Y XX)* (Salvador Cárdenas ed., Suprema Corte de Justicia de la Nación, 2005).

⁴⁹ *Id.*

⁵⁰ Dave Stoddard, "Why don't we just improve the economy of Mexico," available at: <http://www.newswithviews.com/Stoddard/david1.htm> (last visited: September 23, 2009) (He stated that "[T]here are no jury trials in Mexico.").

form laid an important foundation for the possible establishment of the popular jury system by implementing the use of oral arguments in proceedings, an adversarial system, the presumed innocence of an accused until proven guilty, and the placing of the “burden of proof” on prosecutors.

Several states have already proposed and introduced oral and more transparent criminal proceedings. In 2004, the State of Nuevo León introduced the oral adversarial criminal procedure in non-serious culpable felonies. In February 2005, in its first oral trial in the city of Montemorelos, 19 witnesses testified publicly and documentary evidence was also filed within a period of five hours, showing great judicial speed and efficiency.⁵¹ The government of Nuevo León also won approval of an “access to information” law that allowed public access to governmental records not only in the executive branch, but also in legislative and judicial branches.⁵²

The states of Zacatecas and Chihuahua similarly have introduced their own reform initiatives to introduce open and transparent criminal procedures.⁵³ Chihuahua courts also introduced plea bargains, mediation, suspended sentences, probation, and other legal tools in an attempt to more effectively process their criminal cases.⁵⁴ These legal changes have had a dramatic effect on the efficiency of criminal cases. Of 1,112 cases filed in the City of Chihuahua in 2008, only eight went all the way to an oral trial, and in Ciudad Juárez, six of 1,253 criminal cases were tried in an open and adversarial court.⁵⁵

On May 16, 2006, an international forum on the relevance and feasibility of establishing Mexico’s popular jury was held at the Siqueiros Polyforum in Mexico City.⁵⁶ Many scholars and citizens of diverse countries shared experiences on the challenges and potentialities of the restoration of Mexico’s jury system and held debates on how to improve the system of justice.⁵⁷ The international discussion on the re-establishment of the jury sys-

⁵¹ See “Reforming the Justice System and Enhancing Competitiveness”, José Natividad González Parás, Governor of Nuevo León, http://www.wilsoncenter.org/index.cfm?topic_id=5949&categoryid=357C322F-65BF-E7DC-48004415419DCE89&fuseaction=topics.events_item_topics&event_id=117611. See also Basham Ringe and Correa S. C., *First Oral Trial*, available at: http://www.hg.org/articles/article_989.html.

⁵² *Id.* The article also states that the Federal Attorney General’s Office objected to aspects of the “access to information” law and it is currently under review by the Supreme Court.

⁵³ James Cooper, *Slow road to legal reforms in Mexico*, SAN DIEGO UNION-TRIBUNE, Nov. 26, 2006, available at: http://www.signonsandiego.com/uniontrib/20061127/news_mz1e27cooper.html.

⁵⁴ Ken Ellingwood, *In a Mexico State, Openness is the New Order in the Courts*, L.A. TIMES, Feb. 6, 2009.

⁵⁵ *Id.*

⁵⁶ Guillermo Zepeda, *Los juicios orales en México*, EL ECONOMISTA, May 16, 2006.

⁵⁷ *Id.*

tem in Mexico was extremely timely and symbolic, especially given the fact that many Central and South American nations have already introduced and democratized their criminal justice systems, including Nicaragua, Guyana, Belize, Panama, Brazil, Venezuela, Bolivia, and many Caribbean countries, including British Virgin Islands, Montserrat, Tortola, Anguilla, Antigua, Barbuda, St. Lucia, St. Vincent, the Grenadines and Grenada, Turks and Caicos Islands, Jamaica, Trinidad, and Puerto Rico.⁵⁸

3. *The System of Lay Participation in Law in the United States, Japan, Korea, Ireland, and New Zealand*

This section briefly examines the lay judge system of five nations of which citizens were asked to respond to a set of questions on the popular jury, and opinions are empirically analyzed. Those countries include: (1) the United States, (2) Ireland, (3) New Zealand, (4) Japan, and (5) South Korea. The United States, Ireland, New Zealand, and South Korea have adopted an all-citizen jury system, in which people are selected at random from local communities to make decisions in criminal trials.

The tradition of a jury trial in Ireland, the United States, and New Zealand came from Britain through their colonial history which has been rooted in part in Roman law.⁵⁹ Britain transplanted both grand and petit criminal juries and civil jury trials to their colonies. In recent years, however, the civil jury trial has all vanished in many of the former British colonies. At home, Great Britain has also abolished a tort-related, civil jury trial. The U.S. and New Zealand, however, still retain general civil jury trials, as does Hong Kong, another former British colony in East Asia.

Japan once held criminal jury trials from 1928 to 1943. However, the jury system was suspended by the Japanese military government in 1943, because only men thirty-years-old and over with property were allowed to serve, and no eligible jurors either survived or could afford to serve at the end of the war.⁶⁰ Nevertheless, in May 2004, nearly six decades after the end of WWII, the Japanese Diet passed the Lay Assessor Act and set up two different civic participatory panels for criminal trials.

The fundamental difference between the lay assessor (or mixed tribunal) and the all-citizen jury systems is that, while the latter panel exclusively con-

⁵⁸ Vidmar, *supra* note 6, at 437-444; Stephen Thaman, *Latin America's First Modern System of Lay Participation*, Festschrift für Stefan Trechsel zum 65. Geburtstag 765-79 (Andreas Donatsch et al. ed. 2002).

⁵⁹ Vidmar, *supra* note 6.

⁶⁰ Hiroshi Fukurai, *The Rebirth of Japan's Petit Quasi-Jury and Grand Jury Systems: A Cross-National Analysis of Legal Consciousness and the Lay Participatory Experience in Japan and the U.S.*, 40 *CORNELL INTERNATIONAL LAW JOURNAL* 315 (2007).

sists of local residents chosen at random from a nearby community, the former is composed of a judicial panel of both professional and lay judges. In other words, the mixed tribunal system may be seen as a judicial compromise between all-citizen jury and professional bench trial systems, thereby requiring a joint collaboration of professional trial judges and a select group of local residents acting as assistant adjudicators. Lay judges are either politically chosen from local communities or summoned from registered rolls prepared by local governments.

In Germany, prominent political party members in local communities first create a list of lay judges twice the size of what is actually needed.⁶¹ After the initial list is prepared, it is further reviewed by a special board of political members who then determine the final official list.⁶² German lay judges are then required to serve for a term of four years.⁶³ In Japan, the local government prepares a list of lay judges from registered rolls, and candidates are chosen randomly from the list. Once chosen, they are required to serve only for the duration of a single trial.⁶⁴

For Japan's mixed tribunal system, a panel of both three professional and six lay judges is asked to make decisions in both the conviction and penalty phases of a contested criminal case, whereas a panel of one professional and three lay judges is asked to make a decision in the penalty phase of an uncontested case where the facts and issues identified by pre-trial procedures are undisputed.⁶⁵

In 2007, the South Korean Parliament approved a judicial reform measure and set up the all-citizen jury system in criminal cases. While the decisions are not binding, judges use the jury verdict as an important guidance for determining final trial outcomes.⁶⁶ South Korea's legal transformation has been quite remarkable because, unlike Japan, South Korea never had a

⁶¹ For Germany's lay assessor selection, see Walter Perron, *Lay Participation in Germany*, 71 INTERNATIONAL REVIEW OF PENAL LAW, 181 (1999); Nancy Travis Wolfe, *Lay Judges in German Criminal Courts: The Modification of an Institution*, 138 PROCEEDINGS OF THE AMERICAN PHILOSOPHICAL SOCIETY, 495-515 (1994); C.C. SCHWEITZER ET AL., POLITICS AND GOVERNMENT IN GERMANY, 1944-1994: BASIC DOCUMENTS (Oxford University Press, 1995). Other nations with lay assessor systems or mixed tribunals include France, Italy, Portugal, Sweden, and Norway in Europe, China in East Asia, Nicaragua and Venezuela in the Americas, and South Africa in Africa.

⁶² *Id.* The board consists of one professional judge, one administrative officer, and ten confidants who were then designated by the public administration in each community.

⁶³ Schweitzer et al., *supra* note 61, at 279. After the four year period, the lay assessors can be re-elected a second term.

⁶⁴ Perron, *supra* note 61.

⁶⁵ Saiban-in no sanku suru keiji saiban ni kansuru horitsu, Law No. 63/2004 (hereinafter the Lay Assessor Act). See Kent Anderson & Emma Saint, *Japan's Quasi-Jury: Annotated Translation of the Act Concerning Participation of Lay Assessors in Criminal Trials*, 6 ASIAN-PAC. L. & POL'Y J., 233, 233-283 (2004).

⁶⁶ Jon Herskovitz, *South Korea to Try Jury System for First Time*, REUTERS, May 3 2007.

history of jury trials. The introduction of the popular jury also had an impact on another branch of the South Korean government. In 2005, the Ministry of Defense announced that it would adopt a jury system in which officers, noncommissioned officers, and rank-and-file soldiers could participate as jurors in an effort to increase public trust in military tribunals.⁶⁷

Prior to the introduction of lay participation, South Korea also revised its election law in 2005 and granted the right to vote in local elections to permanent foreign residents living there for three years or more, including ethnic Japanese, Chinese, Americans, Latinos, including Mexicans, and other minority groups.⁶⁸ The 2005 law also lowered the voting age from 20 to 19, thereby expanding the voting population.⁶⁹ The first election under the new law took place on May 31, 2006.⁷⁰ Changes in the electoral system and the expanded political franchise are seen as another sign of South Korea's movement towards the development of a fairer and more balanced democracy in East Asia.

In all of these nations, jurors are selected at random from local electoral rolls. There is no specific requirement as to gender, race, ethnicity, education, or economic background to be eligible to serve. Thus, in theory, every citizen in these nations is treated equally and considered as an able, trusted element of society, capable of making fair and just decisions in criminal trials, thereby contributing to the judicial governance of the society in which he/she lives. Whether or not Mexico will be ready to follow in the footsteps of these countries is the question examined in the following section.

IV. METHODOLOGY

This section examines the views, attitudes, and opinions of college students and university researchers, i.e., the possible future intelligentsia of six nations, who one day may be expected to lead their respective countries into the 21st century. Between 2005 and 2008, two thousand respondents from ten private, state, and/or national colleges and universities in six different nations were contacted and asked to provide their views and opinions on the popular jury. Both closed-ended and open-ended questions were used in the opinion surveys. The six nations examined include the following: (1) Mexico, (2) Japan, (3) the United States, (4) Ireland, (5) South Korea, and (6) New Zealand.

⁶⁷ Joo Sang-min, *Military Seeks to Revise Martial Laws*, KOREA HERALD, Jul. 20, 2005. In 2012, the South Korean jury system will be reviewed and permanently implemented with or without major changes.

⁶⁸ See Cho Chung-un, *Elections Expand Voting Rights for Foreigners, Younger Citizens*, KOREA HERALD, May 25, 2006.

⁶⁹ *Id.*

⁷⁰ *Id.*

1. *Survey Questions*

More than 70 questions were asked of our respondents. The questionnaire was translated into the following four languages to maximize the response rate from college students and researchers: (1) Hangul for Korean respondents; (2) Spanish for Mexican students; (3) Japanese for respondents in Japan; and (4) English for the United States, Ireland, and New Zealand respondents.

The questions were classified into the following eleven categories: (1) confidence in jurors' abilities; (2) willingness for legal participation; (3) perceived obstacles to jury service; (4) moral/ethical responsibilities; (5) confidence in the jury system; (6) procedural suggestions for jury trials; (7) fear of serving as jurors; (8) jury's oversight function of the government; (9) confession and believability; (10) race, gender, diversity, and jury representation; and (11) fairness of court and the criminal process.

Respondents were asked to rate their agreement on a five-point Likert scale: (1) strongly agree, (2) somewhat agree, (3) uncertain/neutral, (4) somewhat disagree, and (5) strongly disagree. We also asked for narrative responses about their views and opinions on lay participation, including any suggestions to improve the system of popular legal participation in their country. A select group of respondents was also contacted in a person-to-person and/or telephone interview. Finally, their responses were transcribed, translated into English, and qualitatively analyzed.

2. *Samples*

A. *Mexico*

In December 2008, a group of students at Instituto Tecnológico Superior de la Región de los Llanos in the State of Durango was asked to respond to a jury survey questionnaire.⁷¹ Mexican students who responded to the survey questionnaire were enrolled in the following two seminar courses: (1) ethics and administration and (2) the development of human potential. A total of 278 students filled out survey questionnaires. In March 2009, a group of law students at the National Autonomous University of Mexico (Universidad Nacional Autónoma de México (UNAM)) was also asked to respond to the same questionnaires (n=34).⁷²

⁷¹ The institute offers the BS in computer science, and other degrees in industrial engineering, food engineering, and mechanical engineering. See <http://www.itsrl.edu.mx> (last visited: September 23, 2009).

⁷² 7 of these UNAM students filled out the questionnaire earlier, December 2008.

B. *Japan*

Between October and December 2005, undergraduate students at three private universities in a Tokyo metropolitan area filled out the same jury questionnaire in Japanese (n=607). Those universities included: (1) International Christian University (ICU), (2) Senshu University, and (3) Toyo University. The survey questionnaire was distributed to undergraduate students enrolled in lower division sociology and psychology courses during the time of survey.

C. *New Zealand*

In July 2008, the jury questionnaire was distributed to both undergraduate and graduate students at the University of Otago in Dunedin, New Zealand.⁷³ The university has been the South Island's largest employer and demonstrated New Zealand's highest research excellence, only second to the University of Auckland.⁷⁴ A total of 90 students responded to the jury survey questionnaire.

D. *Ireland*

In October 2006, the jury questionnaire was distributed to undergraduate and graduate students at the National University of Ireland, Galway. The university is one of the oldest educational institutions in Ireland. The university first opened for teaching in 1849, and currently it has approximately 15,000 students.⁷⁵ A total of 114 students responded to the jury survey questionnaire.⁷⁶

E. *South Korea*

In April 2008, a group of undergraduate students at Chungbuk National University in the City of Cheongju was asked to participate in the survey. A group of students enrolled in an introductory psychology course provided their responses in Hangul. A total of 186 students responded to the jury survey questionnaire.

⁷³ For university information, please see <http://www.otago.ac.nz> (last visited: March 1, 2009). Ms. Madeline Munro assisted the 2008 jury survey in New Zealand.

⁷⁴ *Id.* See also <http://www.otago.ac.nz/research> (last visited: March 1, 2009).

⁷⁵ For university information, please see http://en.wikipedia.org/wiki/National_University_of_Ireland_Galway (last visited: March 1, 2009).

⁷⁶ The survey was assisted by Paul Gavin, a former undergraduate student at the National University of Ireland, Galway. At the time of survey, he was enrolled at Kings College London, studying Criminology and Criminal Justice for his Master's degree.

F. *The United States*

In the fall quarter of 2005 and the winter quarter of 2006, a group of undergraduate students at two University of California campuses in Santa Cruz and Davis participated in the opinion survey. A total of 623 students in undergraduate sociology and psychology courses provided their responses in the survey questionnaire.

3. *Findings*

Table 1 shows the results of the cross-national analysis, indicating differences and similarities of the views on lay participation among the respondents of six nations. The first set of questions examined the respondents' confidence in jurors' overall abilities. One significant way in which Mexico stood out was the response to the questions on jurors' abilities to reach a fair, just, and equitable decision, as well as their capacity to separate facts and evidence from prejudicial publicity.

The overwhelming majority of Mexican respondents felt confident that they could make fair and just decisions as jurors (75.9%) and that they are more likely to base their decisions solely on facts and evidence presented in court (72.8%). The latter figure shows the highest confidence level among six nation respondents (see [1] "Confidence in Jurors' Abilities" in Table 1). The majority of Mexican respondents also agreed that it is not difficult for ordinary people to determine a verdict (*i.e.*, guilty/not-guilty) (only 46.6% of them felt that it is "extremely" difficult). The majority of Mexican respondents also did not agree that jurors are incapable of separating actual evidence from media coverage and prejudicial information in highly publicized criminal cases (48.1%). On the other hand, the majority of respondents in the other five nations felt that jurors would be unable to escape from prejudicial information on criminal cases. Those results show that Mexican respondents tend to hold greater faith and respect for the popular jury and people's abilities to engage in deliberation and determine a fair and equitable verdict based on factual evidence and information.

Mexico's high confidence in lay participation starkly contrasts to the confidence expressed by Japanese respondents, in which only 27% felt confident in making a fair and just decision. While Japan's lay justice system began in May 2009, many scholars and citizens have already expressed their concerns about the low confidence among jury candidates and the overall quality of the deliberation and trial outcomes in Japan. Despite the fact that Mexicans today do not have the opportunity to participate in jury trials in general criminal cases, empirical results suggest that Mexicans are more willing to accept the jury system as an important form of adjudication and they certainly expressed their willingness to participate in the trial process.

TABLE 1. CROSS-NATIONAL ANALYSIS OF PERCEPTIONS
AND OPINIONS ON LAY PARTICIPATION IN LAW*

<i>Attitudinal Questions</i>	<i>Ireland</i>	<i>Japan</i>	<i>Korea</i>	<i>Mexico</i>	<i>New Zealand</i>	<i>United States</i>
<i>(1) Confidence in Jurors' Abilities</i>						
I am confident that, if I became a juror, I could make a fair and just judgment	86.0 (93.6)	27.3 (35.2)	66.7 (64.4)	75.9 (72.9)	70.0 (72.9)	77.1 (79.0)
It is extremely difficult for ordinary people to determine the verdict (<i>i.e.</i> , guilty/not-guilty)	51.8 (55.3)	55.9 (53.4)	70.5 (66.7)	46.6 (45.9)	48.9 (54.0)	36.5 (38.3)
In high profile cases, jurors are incapable of separating actual evidence from media coverage	63.1 (59.6)	80.9 (77.1)	66.7 (72.2)	48.1 (49.4)	68.9 (72.9)	53.5 (57.7)
It is difficult for ordinary citizens to determine an appropriate penalty in a criminal trial	78.1 (83.0)	41.1 (40.3)	87.1 (83.1)	53.0 (53.4)	82.2 (83.7)	62.2 (65.7)
A jury has a potential risk of acquitting the guilty and convicting the innocent	79.0 (72.3)	79.9 (77.3)	84.4 (80.0)	74.3 (72.3)	85.6 (86.4)	82.4 (84.8)
Jurors are most likely to make decisions based solely on facts and evidence	64.9 (68.1)	70.8 (60.0)	49.5 (47.7)	72.8 (73.6)	55.6 (43.2)	44.8 (37.3)
<i>(2) Willingness for Legal Participation</i>						
I am willing to serve as a juror	88.5 (91.3)	40.3 (44.6)	81.7 (75.5)	70.4 (69.8)	73.0 (64.8)	67.9 (67.6)
I feel it is my duty to serve as a juror when needed	85.1 (76.6)	74.3 (72.4)	71.4 (62.2)	71.9 (69.8)	73.3 (75.7)	64.0 (58.1)
<i>(3) Perceived Obstacles to Jury Service</i>						
If I could pick the date of jury service 6 months in advance, I could easily serve	74.5 (76.6)	69.8 (72.3)	61.8 (55.5)	56.5 (57.2)	67.8 (67.5)	64.6 (64.8)
My employer would not be resentful of my jury duty	53.6 (50.0)	27.4 (29.6)	43.8 (42.2)	39.4 (40.5)	51.1 (63.9)	41.1 (39.6)
The importance of jury duty is widely advocated in my community	29.8 (34.0)	7.8 (11.4)	34.4 (37.8)	49.9 (54.7)	26.7 (27)	26.2 (31.3)

TABLE 1. CROSS-NATIONAL ANALYSIS OF PERCEPTIONS
AND OPINIONS ON LAY PARTICIPATION IN LAW* (continued...)

<i>Attitudinal Questions</i>	<i>Ireland</i>	<i>Japan</i>	<i>Korea</i>	<i>Mexico</i>	<i>New Zealand</i>	<i>United States</i>
<i>(4) Moral/Ethical Responsibilities</i>						
I would feel overwhelmed if I had to make a judgment on the defendant and his/her charges	47.3 (40.4)	73.2 (61.5)	69.9 (68.9)	43.9 (41.8)	61.1 (59.4)	55.3 (43.8)
It would be very difficult for me to never discuss my jury experience	67.9 (71.8)	70.9 (66.5)	73.5 (76.6)	47.4 (51.6)	68.5 (72.9)	66.6 (67.1)
<i>(5) Confidence in the Jury System</i>						
If I became a defendant in a criminal case, I would prefer a jury trial to a judge trial	73.7 (72.3)	32.3 (30.4)	51.6 (52.2)	62.2 (65.0)	60.0 (56.7)	61.2 (68.0)
A jury's decision reflects the community's values and judgments	73.6 (70.2)	81.0 (76.9)	78.0 (75.6)	64.9 (67.3)	72.2 (73.0)	53.9 (51.9)
A jury trial is not the best way to determine a trial outcome	29.0 (25.5)	43.0 (41.9)	59.2 (55.5)	39.0 (40.4)	35.5 (35.1)	26.9 (28.6)
I support other countries introducing the jury system like ours	82.5 (87.2)	44.3 (47.8)	65.1 (62.2)	54.7 (53.8)	67.7 (70.2)	65.3 (64.6)
<i>(6) Procedural Suggestions for Jury Trials</i>						
In discussing a verdict, jurors should utilize the judge to clarify questions/concerns	93.0 (95.7)	86.8 (84.6)	79.0 (82.2)	75.4 (73.4)	91.1 (94.6)	83.4 (81.9)
Recording (transcribing or videotaping) is important in all trial proceedings	92.1 (93.6)	80.5 (79.4)	97.8 (98.9)	86.2 (84.9)	92.2 (94.6)	85.0 (88.1)
Citizens should be encouraged to serve on a civil jury (<i>i.e.</i> , medical malpractice, drug poisoning, or negligence cases)	64.0 (63.8)	52.5 (52.3)	77.3 (77.8)	68.2 (66.7)	62.9 (50.0)	68.2 (67.2)
The more diverse the jury's racial and gender background, the fairer the trial	65.8 (63.8)	86.2 (82.4)	77.4 (74.4)	73.4 (68.7)	71.1 (67.5)	76.0 (70.5)

TABLE 1. CROSS-NATIONAL ANALYSIS OF PERCEPTIONS
AND OPINIONS ON LAY PARTICIPATION IN LAW* (continued...)

<i>Attitudinal Questions</i>	<i>Ireland</i>	<i>Japan</i>	<i>Korea</i>	<i>Mexico</i>	<i>New Zealand</i>	<i>United States</i>
<i>(7) Fear of Serving as Jurors</i>						
In a trial where many gang supporters may appear, I believe I could make a fair judgment as a juror	57.5 (59.6)	21.3 (24.4)	39.8 (40.0)	60.7 (60.1)	46.6 (54.0)	54.1 (57.0)
If I became a juror, I would be concerned about potential retaliation from the defendant	56.1 (57.4)	64.2 (62.8)	80.6 (77.8)	63.6 (67.3)	60.7 (51.3)	42.7 (41.6)
<i>(8) Oversight Function of the Government</i>						
Ordinary people's presence in a jury serves to prevent future crimes in the community	31.6 (32.0)	44.9 (47.8)	52.8 (48.9)	55.5 (59.1)	32.3 (32.4)	32.7 (34.9)
Ordinary people in a jury can prevent possible overzealous prosecutions or judges' unfair decisions	61.0 (57.4)	74.0 (69.9)	81.7 (76.7)	67.4 (66.5)	65.2 (62.2)	66.0 (72.2)
<i>(9) Confession and Believability</i>						
Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made	91.3 (93.6)	91.3 (91.1)	93.0 (90.0)	83.6 (81.8)	85.6 (83.8)	89.2 (87.0)
For the above case, I believe that the defendant was forced to confess	34.2 (38.3)	16.9 (18.4)	61.3 (60.0)	53.7 (50.9)	36.6 (37.8)	41.1 (41.8)
<i>(10) Race, Gender, Diversity, and Democracy</i>						
It is important to create programs to increase the number of female and minority lawyers	73.7 (59.6)	19.5 (29.8)	83.3 (78.7)	63.8 (58.5)	62.2 (48.6)	79.9 (66.9)
Every taxpayer including permanent residents (non-citizens) should be allowed to serve on juries	70.2 (74.4)	69.1 (64.6)	59.3 (57.3)	57.1 (54.8)	60.9 (52.8)	68.1 (64.9)

TABLE 1. CROSS-NATIONAL ANALYSIS OF PERCEPTIONS
AND OPINIONS ON LAY PARTICIPATION IN LAW* (continued...)

<i>Attitudinal Questions</i>	<i>Ireland</i>	<i>Japan</i>	<i>Korea</i>	<i>Mexico</i>	<i>New Zealand</i>	<i>United States</i>
In criminal court, non-English speakers are more likely to be treated worse than English speakers	47.4 (48.9)	54.2 (51.8)	67.8 (63.2)	43.4 (45.9)	44.5 (48.6)	71.1 (73.2)
An increase of lawyers will generally lead to a lower quality of legal services	21.1 (25.5)	57.0 (55.5)	22.5 (26.7)	37.3 (43.4)	27.8 (32.4)	19.1 (23.4)
If a wife kills her partner who physically abused her, wives should be included in the jury	57.9 (48.9)	58.5 (46.1)	54.3 (54.5)	43.6 (40.2)	57.3 (54)	63.8 (60)
<i>(11) Fairness of Court & Criminal Process</i>						
In the court process, all people are treated with respect and dignity	36.8 (42.5)	22.0 (25.0)	35.5 (38.9)	29.7 (33.8)	55.6 (54.0)	27.2 (35.0)
I believe that my country's judges are generally less biased than judges in other countries	14.1 (19.5)	13.7 (18.1)	8.6 (13.3)	16.7 (20.8)	34.5 (32.4)	15.0 (13.4)
Fair procedures are generally used to make the final judgment on a case	67.6 (59.6)	42.6 (45.2)	55.9 (60.0)	43.4 (46.8)	66.7 (70.3)	47.8 (51.6)
Courts are generally sensitive about the concerns of average citizens	55.3 (63.8)	20.2 (21.0)	30.9 (32.1)	25.3 (25.8)	55.5 (56.7)	35.9 (39.2)

NOTE: The analysis relied on the use of a 5 point Likert scale: (1) strongly agree, (2) somewhat agree, (3) unsure/uncertain, (4) somewhat disagree, and (5) strongly disagree.

* The first figure in the box shows an overall percentage of respondents (*i.e.*, both male and female students) who either strongly or somewhat agreed with the statement. The second figure in parenthesis shows a percentage of male respondents who either strongly or somewhat agreed with the statement.

The great majority of Mexican respondents also indicated their willingness to serve on juries both voluntarily (70.4%) and even as required by law (71.9%). When they were asked whether or not the importance of jury duty and popular participation was espoused in their communities, almost half of Mexican students responded affirmatively (49.9%). The response is nearly 20% higher than Korea, which is the second at 34.4%. All the rest of countries were below 30%. Nearly 60% of Mexican students also indicated that if they could pick the date of jury service six months in advance, they could easily serve as jurors (56.5%).

A. Fear of Serving as Jurors and Credibility of Confession

Another set of questions was asked about a potential fear of serving as jurors. The great majority of Mexican students indicated that in a trial where many gang supporters could appear, they believed they could make a fair judgment as jurors (60.7%). The response was the highest among the six nations. Japanese respondents had the lowest confidence, where only one in five expressed confidence in making a fair decision in a gang-related trial (21.3%).

With respect to socio-political ramifications of the popular jury, the majority of Mexican respondents felt that ordinary people's presence in a jury could serve to prevent future crimes in their local communities (55.5%). The response was the highest among six nations. The great majority of Mexican respondents also felt that the popular jury could prevent possible overzealous prosecution or judges' unfair decisions (67.4%). Those results suggest that lay participation in Mexico will play an important watchdog function in local communities, as well as in the courtroom.

The next set of questions was asked about the views on the credibility of confessionary documents and their ability to stand as evidence in court. The overwhelming majority of Mexican respondents felt that they needed to understand how confessions were being extracted, especially in criminal trials in which defendants later contested the content of such confessionary documents (83.6%). Over half of Mexican respondents also felt that defendants must have been coerced to make confessions in such situations (53.7%). South Korea is the only nation that showed a higher response than Mexico (61.3%). This is perhaps because until recently, South Korea was run by a powerful, dictatorial government that used the military and the courts to control political opposition. The Korean government and its military agencies (including the Korean Central Intelligence Agency or KCIA), for instance, long relied on the illegal confinement and torture of many political dissenters and civic activists to extract coerced and falsified confessions to ensure their convictions.⁷⁷

⁷⁷ See generally CHALMERS JOHNSON, *NEMESIS* (Henry Holt and Company, 2008).

With respect to the fairness of the court and criminal process, the overwhelming majority of the respondents indicated that the judges in their respective nations are generally more biased than judges in other nations, and that the courts have not been sensitive about the concerns of average citizens. Similarly, the majority of Mexican respondents felt that the final judgment of criminal cases in Mexico did not follow fair and equitable criminal procedures.

B. People's Confidence in the Government and Criminal Justice Managers

Table 2 shows people's confidence in the central government, the administration of justice, prosecutors, the police, jurors, and the media. Mexican respondents' confidence in the police was the lowest among the six nation respondents (15.9%), a large percentage below any figures of other countries. Not only did it show the lowest confidence among six countries by a large margin, but it also had the lowest confidence in the prosecutors (27.5%). South Korea is next by a significant margin (42.2%).

Confidence in the court also failed to reach a majority in Mexico (45.2%). Mexico is the only nation where respondents' confidence in prosecutors, the police, and the court failed to reach the majority. With respect to the confidence in defense attorneys, slightly more than half of Mexican respondents have shown confidence in them (57.8%). The majority of Mexican respondents also showed confidence in juries (52.0%). Japan showed the lowest level of confidence in juries (44.4%), followed by South Korea (45.9%).

The 2008 judicial reform in Mexico guaranteed the legal representation of criminal defendants by public defenders when defendants failed to appoint their own attorneys. Public defenders can play an important role in the administration of justice in Mexico because confidence in both defense attorneys and the jury is much higher than confidence in the police, prosecutors, or the court. It is also important to note that confidence in the jury in Mexico is relatively lower than in the United States, New Zealand, or Ireland, the nations that have had a long history of common law tradition. In those nations, the use of jury trials has also been considered as an integral part of the criminal justice system. Nevertheless, among countries with a long history of civil law tradition and an inquisitorial and non-adversarial criminal justice system, such as in Japan and South Korea, Mexico showed the highest level of confidence in jurors.

TABLE 2. CROSS-NATIONAL ANALYSIS OF PEOPLE'S CONFIDENCE
IN THE GOVERNMENT AND LEGAL INSTITUTIONS*

<i>Attitudinal Questions</i>	<i>Ireland</i>	<i>Japan</i>	<i>Korea</i>	<i>Mexico</i>	<i>New Zealand</i>	<i>United States</i>
National (Federal) Government	66.7 (2.31)	57.1 (2.52)	29.8 (2.90)	42.7 (2.84)	85.0 (2.04)	38.7 (2.76)
Defense Attorneys	89.7 (2.02)	82.9 (2.03)	42.8 (2.71)	57.8 (2.60)	79.0 (2.09)	68.2 (2.35)
Police	53.1 (2.53)	60.7 (2.45)	31.8 (2.87)	15.9 (3.46)	77.9 (1.93)	54.4 (2.52)
The Court (Judges)	88.2 (1.93)	87.3 (1.97)	55.4 (2.50)	45.2 (2.92)	87.8 (1.72)	68.4 (2.31)
Prosecution	86.8 (2.02)	78.9 (2.16)	42.2 (2.65)	27.5 (3.26)	82.0 (2.00)	63.3 (2.36)
Jurors	75.9 (2.16)	44.4 (2.69)	45.9 (2.66)	52.0 (2.85)	63.3 (2.37)	65.1 (2.35)
Television/Radio	46.2 (2.58)	48.3 (2.64)	22.6 (3.06)	45.4 (2.77)	41.9 (2.69)	23.0 (3.03)
Newspapers	53.3 (2.47)	75.8 (2.16)	32.6 (2.87)	52.0 (2.57)	52.3 (2.54)	54.6 (2.52)
Internet News	28.7 (3.01)	n/a	20.7 (3.19)	n/a	40.0 (2.81)	48.4 (2.62)

NOTE: People's confidence is measured by using the following 4 point rating scale: (1) very confident, (2) some confidence, (3) little confidence, and (4) no confidence.

* Figures show percentages of respondents who were very confident or somewhat confident in respective institutions. Figures in parentheses show the mean of 4 point rating scales.

V. DISCUSSION: MEXICO AS THE LEADER OF DEMOCRACY IN NORTH AMERICA

Research shows that Mexico once had a long tradition of social and political efforts to advance the democratic ideals of equality and direct citizen participation in politics and law. Indeed, Mexico has been one of the most important political leaders of democracy in North America for the last two centuries.

The U.S. media proudly boasts that in 2009, newly-elected Barack Obama has become the first African President to lead the nation in the Western hemisphere.⁷⁸ But this assertion is patently false. Nearly two hundred years ago, Mexico became the first nation in North America to choose an African

⁷⁸ Via Democracy Now, *Pan-African Scholar Ali Mazrui on the Election of Barack Obama as the First Black President in the Western World*, INDYBAY (2009), <http://www.indybay.org/newsitems/2009/02/16/18571196.php> (last visited March 15, 2009).

as President, Vicente Guerrero Saldaña, who lived during a crucial period of Mexican history and became the second President of Mexico on April 1, 1829. He was born in 1783 as a son of former African slaves in the town of Tixtla near Acapulco, became one of the main rebel leaders of the Mexican Revolution, and fought against Spain in the Mexican War of Independence.⁷⁹ He was an ardent defender of Indian rights and a harsh opponent of social and economic inequities.⁸⁰ While his tenure was cut short by political unrest and his untimely death in 1831, his accomplishment and historical legacy will never be forgotten. President Guerrero Saldaña signed a decree on September 15, 1829 that abolished the system of slavery in Mexico and emancipated all slaves.⁸¹ He also helped write Mexico's first Constitution and took various steps to educate and elevate its poor and people of color. The Mexican state of Guerrero was also named in his honor.⁸²

The jury was also a very important political institution for Mexicans in the American Southwest, when the U.S. government claimed its jurisdiction following the Mexican-American War. Mexican juries in the newly "occupied territory" served as a powerful check on the potentially prejudicial attitudes and behavior of European-American prosecutors and judges.

In 1846, the United States declared war against Mexico and occupied Mexico's northern territories, now called the American Southwest. From 1850, New Mexico then became a federal territory and continued its colonial status until 1912 when New Mexico became the 47th state. In Territorial New Mexico, Mexican women were not allowed to serve as jurors. However, Mexican women were permitted to testify as witnesses in court. Legal historian Laura Gomez stated that "Mexican women... testified quite regularly as general witnesses for either the prosecution or defense and in either grand jury proceedings or trials."⁸³

Despite the fact that blacks and other racial and ethnic minorities were prohibited from testifying against whites in criminal trials in other parts of the United States,⁸⁴ Mexican men and women in New Mexico routinely testified against European-American defendants.⁸⁵ In the politically "colonized" Southwest, Mexicans exerted significant political and judicial power over the territorial American government through their active participation

⁷⁹ STACY LEE, *MEXICO AND THE UNITED STATES* 384 (Marshall Cavendish, 2002).

⁸⁰ See generally THEODORE G. VINCENT, *THE LEGACY OF VICENTE GUERRERO: MEXICO'S FIRST BLACK INDIAN PRESIDENT* (University Press of Florida, 2001).

⁸¹ EUGENE C. BAKER, *MEXICO & TEXAS, 1821-1835, 77-79* (Russell & Russell, 1965).

⁸² *Id.*

⁸³ Laura E. Gomez, *Race, Colonialism, and Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico*, 35 *LAW & SOC'Y REV.* 1129, 1172 (2000).

⁸⁴ For a detailed history of the relationship between race and the jury in the United States, see generally, HIROSHI FUKURAI & RICHARD KROOTH, *RACE IN THE JURY BOX: AFFIRMATIVE ACTION IN JURY SELECTION* (SUNY Press, 2003).

⁸⁵ Gomez, *supra* note 83.

in criminal proceedings. Historical records show that they dominated more than 80% of both grand and petit trial juries.⁸⁶ Since the majority of residents in the Southwest were Mexicans, the centrality of the Spanish language in trial proceedings also created a strong sense of ownership of both legal and cultural space among Mexicans. Predominantly Mexican juries then functioned as significant oversight of white judges and other law enforcement officials.⁸⁷

In the legal environment where judges, prosecutors, and law enforcement officials were almost exclusively selected from European-American communities, Mexican juries served as a powerful check on the potentially prejudicial attitudes and discriminatory behavior of white prosecutors and judges. Mexicans in New Mexico successfully resisted the European-American legal control and political domination through the high degree of participation in the popular jury.

In fact, such an important political power of the popular jury is observed in many countries around the world. As stated earlier, many countries have recently adopted the lay justice system and democratized their own jurisprudence and legal system. Those nations include Japan, South Korea, China, and Taiwan⁸⁸ in East Asia; Venezuela,⁸⁹ Bolivia, and Argentina in South America; Uzbekistan, Kazakhstan, Latvia, and other former Soviet republics in Central Asia; and Spain in Western Europe. In Thailand, with no history of jury trials prior to the September 2006 coup, the Thai government also considered and debated the possible introduction of popular participation in their legal system.⁹⁰

In 1993, Russia also successfully reinstated jury trials after a break of more than seven decades. Recent Russian studies show that the acquittal rate by the all-citizen jury is much higher (18%) than by professional judges (3.6%).⁹¹ The 2006 Russian national survey also indicated that 44% of citizens would encourage friends and relatives to opt for a jury trial in criminal cases, including the allegation of terrorism.⁹² The higher acquittal rate of Russian juries is partly due to the fact that the bulk of evidence against defendants in Russia has mainly consisted of their confessions extracted under

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ The Taiwanese government has been debating the possible introduction of the Japanese-style mixed court system.

⁸⁹ On November 12, 2001, the Venezuelan legislature stopped the creation of a jury court. However, the mixed court system is still operating in Venezuela.

⁹⁰ Frank Munger, *Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand*, 40 CORNELL INTERNATIONAL LAW JOURNAL 455-476 (2007).

⁹¹ Alexei Trochev, *Fabricated Evidence and Fair Jury Trials*, RUSSIA ANALYTICAL DIGEST, 7 (2006).

⁹² Peter Finn, *Russia Homeland No Haven for Ex-Detainees, Activists Say*, WASHINGTON POST, Sept. 3, 2006, at A14.

lengthy detention and torture, and the jury has expressed their skepticism about the credibility of evidence. The verdicts of all-citizen juries in Russia thus demonstrate the application of higher evidentiary standards in evaluating the legal validity and reliability of confessionary documents.⁹³ On December 17, 2008, however, Russia's Parliament approved a bill to abolish the use of all-citizen jury trials to adjudicate criminal cases involving terrorist acts, treason, espionage, coup attempts, and other serious offenses against the government.⁹⁴ Now the Russian judge has the exclusive jurisdiction over terrorism cases.

The current wave of judicial reforms in the world is similar to the kind of political and judicial changes in the 19th century, triggered by the 1789 French Revolution and political unrest in Europe—which in turn strengthened the petit trial jury in England. Trial by jury also became an integral part of the emerging judicial system of the American society and of other nations on the European Continent.⁹⁵ France, for example, introduced trial by jury in 1789 and it became an important political tool in the hands of the insurgent bourgeoisie against the absolute French monarchy. Germany introduced trial by jury in 1848, Russia in 1864, Spain in 1872, Italy by the end of the 19th century, as was done in almost all other European nations.⁹⁶

The recent institution and re-introduction of trial by jury in many countries around the world follows comparable dramatic shifts in the balance of political power and order—exemplified by the collapse of the Soviet Union in 1991. Since then, the United States has emerged as the lone global power and has begun to exert its military muscle and greater political influence in the world. After the attacks of 9/11, the United States assumed world leadership against terrorism and began to engage in legally questionable intelligence operations and activities, including warrantless surveillance, extra-ordinary rendition of prisoners of war, lengthy detention of suspects in secret prisons, and torture of alleged terrorists, including foreign nationals.⁹⁷

As other foreign governments began to follow America's footsteps in the prosecution of suspected terrorists, trial by jury has become an important

⁹³ *Id.*

⁹⁴ Nick Holdsworth, *Russia Scraps Right to Jury Trial*, TELEGRAPH, Dec. 12, 2008, available at: <http://www.telegraph.co.uk/news/worldnews/europe/russia/3725300/Russia-scraps-right-to-jury-trial.html>. The law gave three judges, not the jury, the power to exercise the right to rule on terrorism cases.

⁹⁵ Stephen Thaman, *Japan's new system of mixed courts: Some suggestions regarding their future form and procedure*, SAINT LOUIS-WARSAW TRANSATLANTIC LAW JOURNAL, 89-90 (2001-2002).

⁹⁶ *Id.*

⁹⁷ AMY GOODMAN & DAVID GOODMAN, *STATIC: GOVERNMENT LIARS, MEDIA CHEERLEADERS, AND THE PEOPLE WHO FIGHT BACK* (Hyperion, 2006).

liberal cause as a way to defend against the government's abuse of power and authority. Through jury trials, citizens in these nations have begun to arm themselves with the force to resist political oppression from their own government. Political institutions of third world nations and developed countries in Asia have become increasingly vulnerable to the material force and military influence of the United States and developed nations in Europe.

1. *Is Mexico Ready for a Jury Trial?*

As academic researchers and consultants, we believe that Mexico is ready to set up the jury system and promote active citizen participation in making judgments in criminal cases. Lay participation in Mexico will also lead to civic oversight of activities of the Mexican government, including the judiciary.

The Mexican judiciary is already structured to be constitutionally independent and judges are appointed for life (unless dismissed for cause). However, serious allegations have recently been raised that judges are often partial to the government's executive branch or business elites; and low pay and high caseloads are said to contribute to the susceptibility to corruption in the judicial system. As a recent example of such judicial corruption, in 1993, the Mexican government issued an arrest warrant against a former Supreme Court Justice (Suprema Corte de Justicia de la Nación (SCJN)) for the obstruction of justice and bribery, and three federal judges were later dismissed for obstructing justice.⁹⁸ In this bribery case, the SCJN Minister fled Mexico in 1988 after being charged with accepting a half million-dollar bribe to pressure a lower court magistrate to release an affluent Mexico City businessman who was convicted of raping and murdering a child.⁹⁹

The perception of judicial corruption is widespread in Mexico, as the United Nations Special Rapporteur recently reported: "50%-70% of the federal judiciary is corrupt."¹⁰⁰ One scholar also has argued that low judicial salaries feed even greater corruption because such salaries "left the best-trained and most capable young law graduates inclined to pursue careers in private practice... [A]n average of 83.15% of Mexico's federal judges and magistrates graduate from what are generally considered to be inferior quality law programs."¹⁰¹

⁹⁸ "1993 Human right report: Mexico," available at: http://dosfan.lib.uic.edu/ERC/democracy/1993_hrpt_report/93hrpt_report_ara/Mexico.html (last visited: March 16, 2007).

⁹⁹ Sallie Hughes, *Law and Disorder*, MEXICAN BUSINESS JOURNAL, April (1995), at 8.

¹⁰⁰ U.N. ESCOR, 58th Sess., Provisional Agenda Item 11(d), at 25, U.N. Doc. E/CN.4/2002/72/Add.1 (2002) ("UNSR"), at 18.

¹⁰¹ Kossick, *supra* note 23, at 742.

One significant concern about the introduction of jury trials in Mexico involves the socio-legal impact of unsubstantiated votes rendered by the jury. American jurors, for example, are not required to provide the rationale or logical reasoning for the deliberative content of the final vote. The declaration of the final verdict in the form of either "guilty" or "not guilty" represents a sufficient deliberative condition in the United States. In the case of Mexico, however, votes which are unsubstantiated or "unreasoned" may be seen to increase or even promote the notion of arbitrariness and corruption. Given the widespread corruption in the judiciary, unsubstantiated verdicts may even make it difficult for defendants to challenge the rulings because litigants or courts would not have any legal basis to make an appeal.

Unlike their counterparts in North America, thus, the Mexican jury system should consider the possible implementation of the deliberative process adopted in Spain and Russia, where all-citizen juries are instructed to respond to a pre-arranged question list for the deliberation of their final verdict. For instance, the Spanish jury is required to fill out a verdict questionnaire in the form of a list of propositions that are restricted to facts presented by various parties and only related to basic elements of crimes charged.¹⁰² Russia's verdict questionnaire similarly requires the posing of three inquiries: (1) whether the body of crime (*corpus delicti*) has been proven; (2) whether the defendant as perpetrator of the crime has been proven; and (3) whether the defendant is guilty of having committed the crime.¹⁰³

The Mexican jury system may also consider another important safeguard to eliminate jury arbitrariness in the eyes of the public and legal experts. Active participation by crime victims and their families in the trial process should be considered to make the jury trial and verdict transparent and even more responsive to public sentiments. In the United States, the related parties, including victims, are not allowed to make an opening statement in the jury trial. In Spain's jury trial, however, victims and related parties are allowed to make an opening statement, including their pleadings, the facts that they believe will be proven, and likely verdicts or sentences that they believe will be appropriate and just.¹⁰⁴ They can also propose the hearing of new evidence.¹⁰⁵

In Mexico, victims' active participation in the trial process and the use of verdict questionnaires in the form of a list of questions to be answered by the jury could increase the legitimacy of the jury trial and make the trial proceeding even more open and transparent in the eyes of the public. They

¹⁰² Stephen Thaman, *Europe's New Jury Systems: The Cases of Spain and Russia*, 62 LAW AND CONTEMPORARY PROBLEMS, 233 (1999).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

also provide both professional judges and the public the opportunity to examine the jurors' reasoned judgment and possibly challenge it if deemed necessary.

2. *Protecting Jurors and Judges*

In the case of Mexico, many residents and legal practitioners have been intimidated by drug trafficking cartels because of deep collusions between influential members of the government and the drug traffickers. In April 2007, due to the extensive police corruption and their alleged ties to drug cartels, over 100 state police officers in the northern state of Nuevo León were suspended.¹⁰⁶ In June 2007, due to corruption concerns, President Felipe Calderón also dismissed 284 federal police commanders, including federal commanders from all 31 states and the federal district.¹⁰⁷ In August 2009, a Mexican judge also decided to bring to trial eighteen municipal police chiefs and officers for their presumed links to the brutal enforcement arm of the Gulf drug cartel.¹⁰⁸ They were arrested for their alleged links to the murders of a police coordinator and a civilian.¹⁰⁹ Given the extensive collusion between police and drug cartels, prosecutors and law enforcement agencies are faced with enormous difficulties in effectively securing the privacy and safety of judges and related parties in drug-related trials.

In the United States, in order to protect jurors from a threat of possible retaliation by defendants and/or their families in high profile cases, the identity of jurors has been routinely hidden from the public in order to preserve the democratic quality of jury trials. For example, after the 1995 bombing of the federal building in Oklahoma City, which resulted in the deaths of 168 people, jury selection in the trial of Timothy McVeigh began with the screening of jury candidates who were completely hidden from the press. No cameras were even allowed in court. Presiding Judge Richard Matsch determined that the case be tried by an anonymous jury and sealed all records that otherwise could reveal the identity of local residents summoned for jury selection.¹¹⁰ As a result, jurors' identities were only known to the court and to the related parties in the case.

¹⁰⁶ *Mexico: Congress Summons Defense Minister*, LATIN AMERICAN WEEKLY REPORT, April 19, 2007.

¹⁰⁷ *Mexico Shakes Up Federal Police*, EFE NEWS SERVICE, Jun. 25; Sam Enriquez, *Mexico Purges Federal Police Chiefs*, FINANCIAL TIMES, Jun. 26, 2007.

¹⁰⁸ *18 Mexican Police Put on Trial for Drug Trafficking Links*, LATIN AMERICAN TRIBUNE, Sept. 1 2009, available at: <http://laht.com/article.asp?ArticleId=342597&CategoryId=14091>.

¹⁰⁹ *Id.*

¹¹⁰ Jane Kirtley, *Hiding the Identity of Potential Jurors*, AMERICAN JOURNALISM REVIEW (1997), available at: <http://www.ajr.org/article.asp?id=1778>.

American judges are also not immune to violence due to their rulings and opinions. The 2005 murder of U.S. District Court Judge Joan Lefkow's husband and mother rekindled an ongoing debate on how to secure the privacy and safety of American judges. Judge Lefkow presided over the enforcement of a high profile trademark infringement case against an organization run by white supremacist leader Matthew F. Hale. He later made a death threat and solicited Lefkow's murder after she ruled against him in a civil case.¹¹¹

Despite Hale's death threat against her, it was later revealed that her family members were killed by another litigant whose medical malpractice suit has been dismissed by Judge Lefkow.¹¹² Meanwhile, she was closely guarded by a detail from the U.S. Marshals Service. In recent years, the number of threats made to the judiciary has increased exponentially. In 2008, 1,278 threats were made against judges, and the number of threats was estimated to exceed 1,500 in 2009.¹¹³

In Mexico, a similar security service may be necessary to provide competent protection to jurors and judges. Improved security measures such as home protection security systems, coordinated intelligence among security agencies, and threat analysis could be introduced in Mexico in order to protect the democratic quality of the jury trial. The identity of jurors also needs to remain closely guarded during the jury selection process. Like the Timothy McVeigh trial, high profile defendants in Mexico can be tried by an anonymous jury, where the identity of individual jurors is kept secret from the public.

Once those mechanisms and precautionary measures are installed, the all-citizen jury can also serve as a political force and significant oversight of police, prosecutors, and other governmental officials. The potential ramification of the all-citizen jury in Mexico thus would be similar to the political influence exerted by Mexican jury trials in the American Southwest in the late 19th century, in which Mexican residents who dominated the composition of both grand and petit juries exerted significant political power over the territorial U.S. government and public officials through their active participation in the criminal process.

¹¹¹ Michael Higgins, *Internet Leaves an Open Window on Lives of Judges*, DAILY PRESS, Mar. 3, 2005, available at: <http://www.dailypress.com/news/national/chi-0503030272mar03,0,2954630.story>.

¹¹² Associated Press, *Judge Lefkow discusses tragedy, security*, CHICAGO BREAKINGNEWS CENTER, Aug. 1, 2001, available at: <http://www.chicagobreakingnews.com/2009/08/judge-lefkow-discusses-tragedy-security.html>. He left a note confessing to the crime and both DNA evidence and spent shells confirmed that he was the killer.

¹¹³ Terry Frieden, *Marshals Honor Lefkow as Threats against Federal Judges Climb*, CNN, Mar. 24, 2009, available at: <http://www.cnn.com/2009/CRIME/03/24/judges.marshals/index.html>.

3. *Introduction of Jury Trials at the State Level*

Any significant social and political changes rarely begin at a national level. Politically testy, yet innovative and transformative changes usually occur at a smaller territorial level.

In other countries, the major political reforms such as an introduction of a jury trial or major welfare initiatives including a universal healthcare program typically traces its transformative origin at sub-national levels. For example, in Canada, the so called “single payer” or universal healthcare system was first introduced in the Province of Saskatchewan in 1962.¹¹⁴ This health care reform then guaranteed the hospital care for all provincial residents. The rest of the country soon followed province-by-province, as the new system gained support from the general public. The federal government then passed the medical legislation in 1966, enacted it in 1968, and then all provinces in Canada introduced the universal health care system by the end of 1971.

Russians also witnessed similar transformative changes in its judicial reform. After the collapse of the Soviet Union in 1991, the jury system was reintroduced as a pilot project in nine regions of the Russian Federation in 1993. Russia is comprised of a total of eighty-three federal subjects or regions, and each subject possesses equal federal rights and political representation. Soon after the pilot project’s introduction, the rest of Russia then followed republic-by-republic, and by 2004, trial by jury became available for criminal defendants in all regions, except Chechnya. In 2006, the introduction of jury trials in Chechnya was finally approved by Russian lawmakers and the first jury trial is set to begin in Chechnya in 2010.¹¹⁵

In Córdoba, Argentina, a mixed tribunal, not an all-citizen jury, was first established in criminal cases in 1987.¹¹⁶ As stated earlier, the criminal justice system in nearly all of Central and South American nations began with the inquisitorial, non-adversarial criminal process due to the civil law tradition of the Spanish Empire during their colonial periods. Thus, similar to Mexico’s historical experience with jury trials, the first introduction of jury trials in Argentina was also found in the Constitution, when drafts were first proposed in 1813, as well as in the Constitutions of 1819 and 1826.¹¹⁷ Trial by jury was also a constitutional right guaranteed by the Constitution of

¹¹⁴ MICHAEL RACHLIS, *PRESCRIPTION FOR EXCELLENCE: HOW INNOVATION IS SAVING CANADA’S HEALTH CARE SYSTEM* (Harper Collins, 2004).

¹¹⁵ *Introduction of Jury Trials in Chechnya Delayed*, RADIO FREE EUROPE RADIO LIBERTY (2006), <http://www.rferl.org/content/article/1073304.html>.

¹¹⁶ Constitución de la Provincia de Córdoba, §3, Ch.1, Art. 162.

¹¹⁷ RICARDO CAVALLERO & EDMUNDO HENDLER, *JUSTICIA Y PARTICIPACIÓN - EL JUICIO POR JURADO EN MATERIA PENAL* (Ed. Universidad, 1988).

1853.¹¹⁸ Ironically, however, the jury trial has never been established by the legislative body in Argentina.¹¹⁹ Córdoba is one of twenty-three provinces of Argentina and became the first to introduce the lay justice system in the country. The 1991 Code of Criminal Procedure then specified that a mixed judicial panel be composed of three professional judges and two lay citizens, called “*escabinos*” to adjudicate serious criminal cases, but only on request by the defendant, the public prosecutor, or the victim.¹²⁰

While the national debate on the possible introduction of all-citizen juries continues in Argentina, other provinces and municipal governments have been already engaged in examining the future introduction of the lay judge system. In 1991, a trial judge in the city of Buenos Aires granted a defendant’s motion requesting trial by jury, annulled the criminal proceeding, and urged Congress to enact legislation implementing the constitutionally-guaranteed jury trial.¹²¹ Another national debate was begun by a social movement whose leader has submitted a petition that included demands for trial by jury.¹²² The people’s movement is considered essential in continuing the national debate on judicial reforms at the national level.

In Mexico, recent judicial reforms at both national and state levels have created the sufficient and necessary legal conditions for the possible reintroduction of the jury system. Similarly, more modern criminal procedures have already been adopted in a number of individual states in Mexico and some of them may even consider the introduction of the popular legal system such as mixed tribunals and/or all-citizen jury trials. As the Mexican student survey indicates, the younger generation is more inclined to accept

¹¹⁸ Edmundo Hendler, “Implementing Jury Trials in Argentina: Is it possible?” Paper presented at the annual meeting of the Law & Society in Denver, Co (2009) (the manuscript on file with the first author).

¹¹⁹ Edmundo Hendler, *The Inquisitor: Latin America’s Criminal Procedure Revolution: Lay Participation in Argentina: Old History, Recent Experience*, 15 SOUTHWESTERN JOURNAL OF LAW AND TRADE IN THE AMERICAS 1 (2008).

¹²⁰ María Inés Bergoglio, “Jury and Judge Decisions: The Severity of Punishments in Cordoba Mixed Tribunals,” presented at the 2009 Law & Society Meeting in Denver (2009) (the manuscript on file with the first author).

¹²¹ *Proceso Penal*, 44.542 CN Crim. y Correc., Sala I, 148 E.D. 589 (1991) (discussing the implementation of the penal process in Argentina).

¹²² The social movement was led by Juan Carlos Blumberg whose son was murdered by his kidnappers. In April 2004 in Buenos Aires, he and over 150,000 people assembled and marched to the Congressional building to submit a petition that contained a demand for harsher punishment for criminals. On April 22, he also submitted a list of other demands to the Department of Justice, which included an introduction of trial by jury. In many other cities and towns in Argentina, similar demands were submitted by movement supporters. For a more detailed discussion of this social movement in Argentina, see Juan Pegoraro, *Resonancias y silencios sobre la inseguridad*, 4 REVISTA ARGUMENTOS (2004), available at: <http://argumentos.fsoc.uba.ar/n04/articulos4.htm>.

the lay justice system which offers a promising alternative to a traditional bench trial system.

Like Argentina, Venezuela went through a similar transformative period and ultimately adopted two distinct forms of popular legal participation in recent years. The jury system was constitutionally guaranteed in Venezuela, and the right to trial by jury was included in the Constitutions of 1811, 1819, 1821, 1830, and 1858, but the enactment of the jury system has never occurred.¹²³ Like Mexico, the legal system became so ineffective in the administration of justice that prominent South American lawyer Raúl Eugenio Zaffaroni once claimed that the situation “downgrades the country’s judicial branch to the status of a mere accessory of the executive branch represented by the police.”¹²⁴ Another report by the World Bank in early 1990s similarly found the judicial system of Venezuela to be in a state of “absolute crisis” at the hands of “politicization and bureaucratic incompetence.”¹²⁵ Another claim has been made by the United Nations, indicating that the Venezuelan judiciary was one of the least “credible” in the world.¹²⁶ Venezuelan people also shared similar views, in which a 1995 national survey concluded that 78% of respondents believed that the Supreme Court was “inefficient and untrustworthy.”¹²⁷

While recent judicial reforms in other nations of Central and South America are by no means identical, they primarily consist of the same shift from a closed and inquisitorial to an accusatorial, oral, and more transparent criminal procedure. In Venezuela, such a transition came with the publication of the Código Orgánico Procesal Penal in 1998 (hereinafter COPP).¹²⁸ With help from the German Adenauer Fund, the Max-Planck-Institute for Foreign and International Criminal Law and progressive North American jurists, the old criminal code was replaced with a system of contemporary legal processes more comparable to the systems of developed democracies.¹²⁹ No longer was a single judge responsible for the oversight of the police’s investigative gathering of evidence, approving of encroachments of constitutional rights, setting the case for trial, and serving as presiding judge at the trial.¹³⁰ Although a two party adversarial system —that of the accuser and

¹²³ Thaman, *supra* note 58, at 766.

¹²⁴ “Code of Criminal Procedure,” Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition, ORGANIZATION OF AMERICAN STATES (2007), available at http://www.oas.org/juridico/MLA/en/ven/en_ven-int-des-codepenal.html.

¹²⁵ JULIA BUXTON, THE FAILURE OF POLITICAL REFORM IN VENEZUELA 32 (Ashgate Publishing, 2001).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Thaman, *supra* note 58, at 767.

¹²⁹ *Id.*

¹³⁰ *Id.*

the accused— was present in previous procedural codes, the actual impartiality of the judge as a third party was effectively ensured in the new adversarial system.

On July 1, 1999, the Venezuelan government enacted the COPP, finally replacing the old inquisitorial system with an adversarial procedure. The system also allowed the establishment of both mixed tribunal and all-citizen jury systems.¹³¹ Venezuelan legislator Luis Enrique Oberto originally proposed the judicial reform in 1995 that established three types of trial courts dependent upon the severity of crimes:¹³² (1) a single judge trial with crimes punishable by up to four years of incarceration, (2) mixed tribunals with crimes punishable from four to sixteen years of imprisonment, and (3) a jury trial for crimes punishable by more than sixteen years of imprisonment.¹³³ The mixed tribunal court is composed of one professional judge and two lay assessors, while a jury panel consists of nine residents selected from voter registrations.¹³⁴

Despite widespread corruption in police and public officials, Venezuela was able to successfully introduce two distinct forms of lay participatory systems. The dramatic shift in its criminal procedure in Venezuela can offer an important lesson for Mexico because of similar historical backgrounds in their legal tradition, social and political evolution, and persistent problems of political and judicial corruption. Like Mexico, Venezuela had jury trials and oral procedures until the beginning of the 20th century.¹³⁵ However, the authoritarian regime of General Juan Vicente Gómez later unified the legal procedure and suppressed jury trials.¹³⁶ When Hugo Chávez became President in January 1999, he immediately called the Constituent Assembly and created a new Constitution that recognized many of the principles of new criminal procedures, including the adoption of mixed tribunals and all-citizen juries. While an amendment of November 14, 2001 (Act No. 5558) suppressed the nine-member jury, the mixed tribunal continues to remain a viable form of lay participation in Venezuela and there has been an increase in the citizens' awareness and commitment to the process of popular decision-making.¹³⁷

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Organization of American States, Code of Criminal Procedure, available at: <http://oas.org/JURIDICO/mla/en/ven>.

¹³⁶ Rogelio Pérez Perdomo, *La justicia penal en Venezuela al final del Periodo Colonial: el caso de Gual y Espara*, 6 ANALES DE LA UNIVERSIDAD METROPOLITANA 175, 180-196 (2006), at 175, 180-96.

¹³⁷ Pablo Han et al., *La participación ciudadana en la justicia penal venezolana*, REVISTA CENIPEC 254-255 (2006), available at <http://www.saber.ula.ve/revistacenipec>.

4. *Strict Eligibility Standards*

Lastly, we wish to make critical comments on the jury eligibility standards in Mexico. The 2004 federal bill attempted to re-introduce the popular jury in criminal trials in Mexico. The proposal also suggested a strict standard for jury eligibilities, in which people with legal knowledge would be given an exclusive right to participate in criminal jury trials.¹³⁸ Specifically, this proposal requires that jury candidates consist of law graduates who are then nominated by municipal presidents before the Federal Judicial Council.¹³⁹

Mexico's initiative to restrict the jury opportunity to those with privileged educational backgrounds is neither new nor is it an anomaly in other nations. In 2004, for instance, the Chinese government promulgated the law to set a strict eligibility standard for the lay assessor system.¹⁴⁰ Article 4 of the 2004 Chinese Lay Assessor Act indicated that assessors must have college diplomas or a higher educational status.¹⁴¹ According to the report of the National Population and Family Planning Commission of China in 2005, only 5.4% of the total population had a college education.¹⁴² If Article 4 were to be strictly enforced, 94.6% of the total population would be ineligible to serve as lay assessors.

Such a representative disparity is in direct conflict with the spirit of Subsection 2 of Article 33 of the Chinese Constitution, which states, "all citizens of the People's Republic of China are equal before the law." Article 34 of the Constitution also provides that "all citizens of the People's Republic of China who have reached the age of 18 have the right to vote and to stand

¹³⁸ *Iniciativa, supra* note 2.

¹³⁹ The jury candidacy to only individuals with legal education, however, creates another problem in terms of how much broader education they have received in their preparation to become a lawyer. See Héctor Fix-Fierro, *The Role of Lawyers in the Mexican Justice System*, in *REFORMING THE ADMINISTRATION OF JUSTICE IN MEXICO* 251-272 (Wayne A. Cornelius & David A. Shirk eds., University of Notre Dame Press, 2007) (discussing that Mexican lawyers need not obtain a graduate degree in order to practice law and that there is significant lack of oversight of students with legal knowledge).

¹⁴⁰ Hiroshi Fukurai & Zhuoyu Wang, *Civic Participatory Systems in Law in Japan and China*, a paper presented in a session, IRC East Asian Legal Professionalism: Judiciary in Transition, at the Law and Society Association Meeting in Berlin, Germany, in July 28 (2007).

¹⁴¹ The translation of the act was the "Decision on the Perfection of People's Assessors Institution of the Standing Committee of the People's Congress" (*Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Wanshan Renmin Peishenyuan Zhidu De Jueding*). Hereinafter it is referred as the "Chinese Lay Assessor Act." The act was designed to correct shortcomings of the lay assessor system that has long been criticized for the lack of institutional support, insufficient funding, the infrequent use of lay assessors, and people's resistance to participate.

¹⁴² *Id.*

for election, regardless of ethnic status, race, gender, occupation, family background, religion, education, property status, or length of residence, except persons deprived of political right according to law.”¹⁴³ In an egalitarian sense, “standing for election” herein should include all the rights of being elected to participate in the administration of national affairs, including the right to serve as assessors. The new provision thus creates a skewed representation of lay assessors, thereby possibly violating the essential democratic rights of citizens in China.

In Venezuela, the requirement for both lay assessors and jurors is much broader than that of the Chinese system. The candidate must be citizens of Venezuela, more specifically, residents of the jurisdiction where the trial is to be held; at least 25 years of age —those 70 years of age or older may exonerate themselves if they so choose; without a criminal record; possession of sound body and mind; and with “average, diversified” education.¹⁴⁴ Individuals affiliated with law enforcement, the military, legal professions, and politicians are prohibited from serving.¹⁴⁵

In the United States, despite the fact that there is no educational requirement for jury duty, the jury tends to be dominated with people with higher education. For example, past research has shown that jury candidates with less education are less likely to respond to jury summonses.¹⁴⁶ Even when they may appear at a courthouse, many are likely to request to be released from jury service due to economic hardship and personal excuses, resulting in their significant underrepresentation on final juries.¹⁴⁷ To ensure equitable jury representation from socially and economically disenfranchised segments of population, jury reform has been a contested political issue in the United States, where racial and ethnic minorities such as African Americans and Hispanics have been systematically excluded from jury service.¹⁴⁸ The U.S. Supreme Court has recognized minority populations to form special and distinct groups that need judicial protection against discrimination in jury selection.¹⁴⁹ Since the large proportion of criminal defendants come from the same racial or ethnic background, active participation of their peers in the popular jury is likely to place greater pressures on the government to behave properly and equitably in the prosecution of criminal defendants with minority backgrounds. In trials “monitored” by minority jurors, credibility of evidence and strength of testimony —as well as race-

¹⁴³ *Id.*

¹⁴⁴ Thaman, *supra* note 58, at 768.

¹⁴⁵ *Id.*

¹⁴⁶ See generally HIROSHI FUKURAI ET AL., RACE AND THE JURY: RACIAL DISENFRANCHISEMENT AND THE SEARCH FOR JUSTICE (Plenum Press, 1993).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

neutral investigative preparation and trial presentation of such evidence—have become critical concerns of both police and prosecutors.¹⁵⁰ For in the minds of minority jurors, these matters may raise reasonable doubt that the accused may not be guilty.

VI. CONCLUSIONS

This paper has examined the question of whether or not Mexico is ready to re-establish the jury system. We have attempted to examine whether or not the system of popular civic participation might be effective in democratizing the criminal process and building broader public confidence in the system of justice in Mexico. While the 2001 federal proposal to re-introduce the popular jury in judging general criminal cases failed, the 2008 judicial reform introduced the legal principles of oral arguments during trials, the presumption of innocence, and the adversarial criminal process in Mexico. The switch from a closed, inquisitorial process to an open, oral, and more transparent trial represented a paradigmatic shift in the Mexican legal system. Today judges execute their deliberations in private and base their decisions exclusively on written affidavits prepared by prosecutors and police investigators. Now, not only do lawyers and judges have to become accustomed to making oral statements in public, but also for the first time, the media and public will have a full view of the evidence.

A cross-national empirical analysis of views, attitudes, and sentiments regarding lay participation reveals that, compared with citizens in other nations, Mexican respondents are more willing to participate in jury trials and express greater confidence in and respect for jurors' abilities to make a fair and just decision. The great majority of Mexicans have also supported the broader application of lay participation in the administration of justice. Given such strong support for a popular jury, both federal and state governments might advantageously explore the potential establishment of the jury system in Mexico.

In the case of Mexico, several new features of lay participation should be considered. The use of a "verdict questionnaire" in the form of a list of propositions answered by the jury, various strategies to ensure the security and safety of professional and lay judges, possible introduction of lay participation at a state level, and implementation of a mixed tribunal that allows joint deliberations by professional and lay judges would provide important options for the possible establishment of the lay justice system in Mexico. We also believe that it is imperative to open national debate on the introduction of the lay justice system which has failed to receive the national attention it deserves. By modeling it after a popular jury system currently

¹⁵⁰ Fukurai & Krooth, *supra* note 84, x.

adopted in more than 60 countries around the world,¹⁵¹ the future transformation of Mexico's classic jury system and criminal procedure will allow Mexican citizens to directly participate in criminal trials, make the criminal justice proceeding evermore open and transparent, and help build a strong democratic foundation for the creation of civil society in Mexico.

¹⁵¹ Vidmar, *supra* note 6.