

## ARTICLE

**THE ESTABLISHMENT OF ALL-CITIZEN JURIES AS A KEY COMPONENT OF  
MEXICO'S JUDICIAL REFORM:**

**CROSS-NATIONAL ANALYSES OF LAY JUDGE PARTICIPATION AND THE  
SEARCH FOR MEXICO'S JUDICIAL SOVEREIGNTY\***

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## I . INTRODUCTION

The American anti-drug aid package to Mexico, termed the “Merida Initiative” (or “Plan Mexico” by its critics), has promised nearly \$400 million worth of military and intelligence assistance to Mexico, becoming one of the key elements in the joint U.S.-Mexico strategy to combat the threat of drug trafficking in Mexico and across its borders.<sup>1</sup> Currently, approximately eighty municipalities are considered to be dominated by the drug cartels.<sup>2</sup> Equipping the Mexican military for the struggle against drug trafficking has nonetheless been viewed as a pretext to label and criminalize protesters, political dissenters, grassroots organizers, and social activists in Mexico.<sup>3</sup> The military involvement in the “drug war” has also increased corruption within governmental institutions,<sup>4</sup> leading to the commitment of unnumbered human rights violations and the failure to effectively deal with the trade in narcotics within Mexico’s own borders.<sup>5</sup> This military solution has also distracted public attention and diverted governmental resources away from the long-term reforms that are necessary to eliminate corruption in the domestic police and law enforcement branches, in order to effectively deal with the inter-related problems of illicit drugs, crime, and violence in Mexico. Dependence on the military, meanwhile, has come at the expense of adopting much needed structural reforms to Mexico’s judicial institutions in order to establish more effective court systems that are free from corruption and are able to identify, prosecute, and punish documented drug traffickers.

This paper proposes that the re-establishment of the jury system in Mexico could lead to important structural reforms to combat political and institutional corruption within the judicial branch of the government. We argue that a restructured jury system would constitute a major judicial reform, strengthening the rule of law and combating police and judicial corruption. Further, the re-introduction of a civic panel guiding legal institutions would strengthen Mexico’s efforts to increase both accountability and transparency of the criminal justice process, and promote the civic oversight function of government institutions.

Mexico has had a long history of jury trials and a legacy of direct participatory democracy since the beginning of the 19<sup>th</sup> century. Yet, since the end of the Mexican Revolution in 1929, the practical use of citizens’ panels in oral and adversarial jury trials has virtually disappeared in Mexico. Though Article 20, Section A(6) of the Mexican Constitution has a provision for a jury

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1. *US Firms Vie for Mexico Drug War Contracts*, BOSTON GLOBE, July 17, 2009, at 2.

2. Manuel Perez Rocha, *The Failed War on Drugs in Mexico*, TRANSNATIONAL INSTITUTE, April 2009, <http://www.tni.org/article/failed-war-drugs-mexico>.

3. *See U.S. Needs to Keep Eye on Mexico’s Drug War*, FLINT J., July 1, 2008, at A9.

4. *A Mexican Army General is Screaming About Corruption, But Is Anyone Paying Attention?* NOW PUBLIC, April 30, 2008, available at <http://www.nowpublic.com/world/mexican-army-general-screaming-about-corruption-anyone-paying-attention>. For analyses of corruption within the Mexican military in the drug war, see S. Brian Willson, *The Slippery Slope: U.S. Military Moves into Mexico* (1997), 14, available at [http://www.channelingreality.com/NAU/US\\_Military\\_in\\_Mexico\\_1997.pdf](http://www.channelingreality.com/NAU/US_Military_in_Mexico_1997.pdf).

5. *See Kristina Sherry, Funds May be Delayed for Mexico’s Anti-Drug Effort; It’s ‘Premature’ to Declare that Conditions on Human Rights Have been Met, Senator Says*, L.A. TIMES, Aug. 6, 2009, at A27.

trial on press-related cases,<sup>6</sup> nearly all criminal cases are today adjudicated by judges, not juries.

Thus, two questions arise: Can these judges retain their independence from the outside influence of powerful political and criminal organizations? And, would randomly chosen juries drawn from the public escape such pressures and, without fear of reprisals, render more equitable decisions?

Recent federal initiatives in Mexico have attempted to transform the criminal justice process and introduce a jury trial in criminal cases.<sup>7</sup> The 2001 Federal Initiative Reform Code of Criminal Procedure proposed the broader application of jury trials in criminal cases.<sup>8</sup> While this initiative was not implemented, on March 6, 2008, Mexico's Senate gave final approval to a historic overhaul of its judicial system and introduced an oral trial and an adversarial process, which are similar to those held in U.S. courts.<sup>9</sup> The judicial reform also established a new legal standard, by which criminal defendants will now be presumed innocent until proven guilty.<sup>10</sup> 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. Until 2008, judges deliberated in private and based 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.

Nonetheless, not everyone supports such reforms. Prominent Mexican legal scholar, Dr. Paul 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."<sup>11</sup>

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6. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS art. 20(A)(VI) (hereinafter, Constitución), *translation available at* <http://historicaltextarchive.com/sections.php?op=viewarticle&artid=93>. It states, "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."

7. *Iniciativa de Decreto por el que Se Expide el Código Federal de Procedimientos Penales*, 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 n.239 (2004); see also, *Iniciativa de Reforma al Código de Procedimientos Penales y a la Ley Orgánica del Poder Judicial de la Federación*, Gaceta Parlamentaria, Nov. 22, 2001 [hereinafter *Gaceta* 2001].

8. *Gaceta* 2001, *supra* note 7.

9. James C. McKinley, *Mexico's Congress Passes Overhaul of Justice Laws*, N.Y. TIMES, March 7, 2008, *available at* [http://www.nytimes.com/2008/03/07/world/americas/07mexico.html?\\_r=2&oref=slogin](http://www.nytimes.com/2008/03/07/world/americas/07mexico.html?_r=2&oref=slogin).

10. *Id.*

11. Raúl Carrancá y Rivas, *Algunos aspectos de la iniciativa que en materia penal envía el Presidente de la República al H. Congreso de la Unión*, TEMAS SELECTOS DE DERECHO PENAL (part of Proyecto PAPIME, La enseñanza de Derecho Penal a

The purpose of this paper is to review several approaches to reform and examine the possible re-establishment of the jury system in Mexico. Reform is definitely possible. By modeling after a popular jury system currently adopted in more than 60 countries around the world,<sup>12</sup> the future transformation of Mexico's classic jury system and criminal procedures may open a path to allow Mexican citizens to directly participate in criminal trials and make the criminal justice proceeding ever more transparent and resistant to political manipulation and corruption.<sup>13</sup> This may well require a deep reorganization of Mexico's socio-political and legal apparatus.

This paper is structured as follows: Part 1 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, especially from early 1990s to the present, are embracing the introduction of the lay justice system in democratizing their own jurisprudence and legal apparatus. Part 2 then examines Mexico's attempt to introduce its own system of lay participation in law.

Part 3 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. As part of the University of California-World Jury Projects (UCWJP), cross-national data were obtained from a select group of college students and researchers, i.e., representing 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; a 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 and their believability; attitudes on the jury's diversity based on race, ethnicity, and gender; and perceptions of trial fairness and verdict legitimacy.

Part 4 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 5 finally offers conclusions about the socio-political significance of lay participation in the administration of justice in Mexico.

## II. PART I. THE DEMOCRATIC FOUNDATION OF LAY PARTICIPATION IN LAW

The historic, political foundation for lay participation in criminal jury trials lies in equity that it offers as 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 citizens or groups have been accused of committing serious crimes against their own government.

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través de las nuevas tecnologías and conference on the topic at the *Senado de la República, México*, Aug. 24, 2004), available at <http://www.derecho.unam.mx/papime/TemasSelectosdeDerechoPenalVol.III/tema12-5.htm>.

12. See generally, NEIL VIDMAR, *WORLD JURY SYSTEMS* (2000).

13. *Id.*

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After 9/11 and the passage of the 2001 Patriot Act in the U.S. 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. Here, we offer a number of case examples.

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, an all-citizen jury acquitted Zeky Mallah, a 21 year-old supermarket worker, of terrorist charges for preparing to storm government offices and shoot officers in a supposed suicide mission.<sup>14</sup> 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 Terrence Thomas guilty of charges for intentionally receiving funds from al-Qaeda.<sup>15</sup> However, soon after the verdict, the appeals court reversed all of his convictions because it determined his coerced confession at a foreign prison to be inadmissible.<sup>16</sup>

In Russia, where anti-Islamic political fever runs high and polemics point towards the nation's war on terrorism, 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.<sup>17</sup> Two of the defendants, who were among seven Russians released from the Guantanamo Bay prison in 2004, claimed that they were tortured while being transferred to and detained in Russia.<sup>18</sup> They criticized the government of false charges of extremism without offering any substantial evidence.<sup>19</sup> 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.<sup>20</sup> In still 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.<sup>21</sup>

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14. R v. Mallah (2005) NSWSC 317.

15. See, *Tougher Terrorism Laws Predicted After Thomas Ruling*, ABC NEWS ONLINE, Aug. 19, 2006, <http://www.abc.net.au/news/newsitems/200608/s1718915.htm>.

16. *Id.*

17. Otto Luchterhandt, *Russia Adopt New Counter-Terrorism Law*, 2 RUSSIAN ANALYTICAL DIGEST 2-4 (2006). See also Peter Finn, *Russian Homeland No Haven for Ex-detainees, Activists Say; Men Freed from Guantanamo Allegedly Face Campaign of Abuse*, WASH. POST, Sept. 3, 2006, at A14.

18. Finn, *supra* note 17.

19. *Id.*

20. See Alexei Trochev, *Fabricated Evidence and Fair Jury Trials*, RUSSIA ANALYTICAL DIGEST, June 20, 2006, at 8. See also, Nabi Abdullaev, *A Jury Is a Better Bet Than a Judge*, MOSCOW TIMES, June 1, 2006.

21. See Trochev, *supra* note 20, at 9.

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 the 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].”<sup>22</sup> The jurors did not accept the government’s arguments and returned a verdict of not guilty.<sup>23</sup>

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.<sup>24</sup> 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.”<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> In October 2007, another jury acquitted five defendants of nearly 200 combined terrorist charges in Dallas, Texas.<sup>28</sup> The five defendants were former officials of an Islamic charity and philanthropic organization that provided financial assistance to the poor in occupied Palestinian territories.<sup>29</sup>

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22. John Braddock, *An Attack on Democratic Rights: New Zealand Man Jailed for Sedition*, WORLD SOCIALIST WEB SITE, July 25, 2006, available at <http://www.wsws.org/articles/2006/jul2006/sedi-j25.shtml>.

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

24. Judith Miller, *Traces of Terror: The Money Trail; A Professor’s Activism Leads Investigators to Look into Possible Terrorism Links*, N.Y. TIMES, July 23, 2002, p.14. See also Alexandra Abboud, *Group Accused of Aiding Terrorists Acquitted in U.S. Court*, AMERICA.GOV (2005), available at <http://www.america.gov/slt/washfile-english/2005/December/20051207144424maduobbA0.1730463.htm>.

25. Joe Kay, *Palestinian Activist Sami Al-Arian Acquitted on Charges in Florida*, WORLD SOCIALIST WEB SITE, December 8, 2005, available at <http://www.wsws.org/articles/2005/dec2005/aria-d08.shtml>.

26. 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.

27. Andrew Stern, *U.S. Jury Acquits Two Men of Hamas Conspiracy*, REUTERS ALERT NET, February 1, 2007, available at <http://www.alertnet.org/thenews/newsdesk/N01356156.htm>.

28. Jason Trahan & Michael Grabell, *Judge Declares Mistrial in Holy Land Foundation Case*, DALLAS MORNING NEWS, October 22, 2007.

29. Greg Krikorian, *Mistrial in Holy Land Terrorism Financing Case*, L. A. TIMES, October 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, November 25, 2008, available at <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/112508dnmetholylandverdicts.1e5022504.html>.

Mexico, by contrast, no longer has the jury trial system to act as a shield against wrongful government criminal charges and abuses. It once had used jury trials to settle disputes in both civil and criminal cases during the 19<sup>th</sup> and early 20<sup>th</sup> centuries. The last jury trial involved Miss Mexico in 1928 as a defendant who allegedly murdered her bigamist husband and was later exonerated by the all-male jury.<sup>30</sup> But the Revolutionary Political Party PRI (Partido Revolucionario Institucional) abolished the jury system in 1929 and deprived people of their right to participate in making legal decisions in Mexico's courts until now.

In June 2008, the U.S. government passed the Merida Initiative and specified that \$73.5 million of the \$400 million in grants for Mexico be used to facilitate judicial reform and institution-building, and to promote human rights and the rule of law agendas. David T. Johnson, the Assistant Secretary of the Bureau of International Narcotics and Law Enforcement Affairs, stated that the program would also support Mexico's development of "new institutions designed to receive and act on citizen complaints."<sup>31</sup> While the Merida Initiative concentrates the majority of governmental funds to purchase intelligence equipment and military hardware, the aid package can be also earmarked for the Mexican Government to promote judicial reforms, including the accountability of federal police forces, facilitating regular consultations with human rights organizations, investigating federal police and armed forces suspected of human right abuses, and ensuring a prohibition on the legal use of testimony obtained through the use of torture.<sup>32</sup> Strengthening the judicial structure might also lead to the possible implementation of the jury system to help restore and guide programs for securing human rights and promoting civic participation in all aspects of Mexican society.

What lessons can we draw from these cases and measures taken in different nations? 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. Trial by jury provides the citizen an important legal shield from governmental oppression and unreasonable prosecution.

### III. PART II. JURY TRIALS IN MEXICO: HISTORICAL BACKGROUND AND REINSTATEMENT

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, as well as to introduce a more transparent and adversarial criminal procedural

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30. Paul J. Vanderwood, *What Historians Can and Cannot Learn from Crime Stories*, *CONTRACORRIENTE* 377, 377 (2009), available at [http://www.ncsu.edu/acontracorriente/fall\\_09/pag\\_3.htm](http://www.ncsu.edu/acontracorriente/fall_09/pag_3.htm).

31. David T. Johnson, Assistance Sec'y, Bureau of Int'l Narcotics and Law Enforcement Affairs, *The Merida Initiative, Address Before Subcomm. on State, Foreign Operations, Related Programs of House Comm. on Appropriations* (March 10, 2009), available at <http://www.state.gov/p/inl/rls/rm/120225.htm>.

32. Adam Thompson, *Welcome for US Aid for Mexico's Drug War*, *FIN. TIMES*, June 21, 2008, available at [http://www.ft.com/cms/s/0/2a951b20-3f37-11dd-8fd9-0000779fd2ac.html?nclink\\_check=1](http://www.ft.com/cms/s/0/2a951b20-3f37-11dd-8fd9-0000779fd2ac.html?nclink_check=1).



system may help improve the perception of the overall proficiency and equity in the administration of justice, increasing the level of confidence that Mexican citizens have in their own legal system. Increased confidence in the judicial system in Mexico will also likely be critically important in the eyes of international communities, because its weak judicial organization has been subject to significant criticisms of corruption in the past.

In fact, Mexico ranked 89<sup>th</sup> out of 180 countries in the Transparency International's Corruption Perceptions Index for 2009.<sup>33</sup> To reverse course in the 21<sup>st</sup> century, the judicial foundations for equitable relations must be shifted to past experience and towards decision-making by all-citizen juries.

Historical research indicates that Mexico extensively used jury trials between 1856 and 1929.<sup>34</sup> Historical records show that, prior to 1856, juries were also used in various provinces and small towns and cities.<sup>35</sup> Mexican juries 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 already mentioned trial of Maria Teresa de Landa, the 1928 Miss Mexico, who allegedly killed her husband.<sup>36</sup> After the end of the Mexican Revolution and the creation of the National Revolutionary Party (a.k.a., PRI or Partido Revolucionario Institucional) in 1929, however, jury trials began to gradually disappear.<sup>37</sup> Today, a jury trial is rarely used in Mexico, and judges are currently empowered to determine legal outcomes of nearly all criminal cases.

#### *A. Jury Trials in the 19<sup>th</sup> Century Mexico*

Mexican history from colonial times has been a contest between the forces of central dictatorship and revolutionary movements. Article 185 of the Constitution of 1825 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 an accusation and was given the task of evaluating or assessing the nature of crimes or disputes. At the time, jurors were named by each city council.

The jury court located in Santiago de Querétaro (hereinafter Querétaro) in the State of Querétaro, México, provides an excellent example of popular participation in both civil and criminal cases. In this municipality, ministers and prosecutors of the Supreme Tribunal of Justice

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33. CORRUPTION PERCEPTIONS INDEX 2009, available at <http://www.ti-bangladesh.org/CPI/CPI2009/CPI-2009-allDocs.pdf>.

34. Kossick, *supra* note 7.

35. See, JUAN RICARDO JIMENEZ GOMEZ, EL SISTEMA JUDICIAL EN QUERÉTARO 1531-1872, 298-299, 415 (1999).

36. Vanderwood, *supra* note 30, at 384-85.

37. Elisa Speckman Guerra, EL JURADO POPULAR PARA DELITOS COMUNES: LEYES, IDEAS Y PRÁCTICAS (DISTRITO FEDERAL, 1869-1929), (Salvador Cárdenas, ed. 2005), *Historia de la justicia en México (siglos XIX y XX)*, México, Suprema Corte de Justicia de la Nación, 743-744.

established the jury.<sup>38</sup> This 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. The city parliament created another list of jury candidates in 1827 and did so again in 1829.<sup>39</sup> To be qualified to be a jury member, potential candidates had to be at least thirty-five years old and not members of the clergy or their employees.<sup>40</sup> The list of candidates was prepared periodically so that a new group of eligible residents could serve in jury trials. The record also shows that jury trials in Querétaro were mostly used in criminal cases involving theft and robbery.<sup>41</sup>

On July 4, 1862, one criminal case by jury trial was held in the rural municipality of Querétaro when two men, Jose Perea and Francisco Salina, were charged with the crime of stealing cattle.<sup>42</sup> A group of local residents was summoned to decide this matter, and a judicial panel of nine male citizens was chosen at random from the list.<sup>43</sup> Once their names were identified and they were summoned, they were legally required to show up the following day for the trial. The record shows that if they failed to respond to the jury summonses and failed to appear in court, they would have been punished and fined.<sup>44</sup>

Early 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 erroneous decisions.<sup>45</sup> Investigating the legal records at Querétaro, Mexican historian, Juan Ricardo Jimenez Gómez stated that it was extremely difficult to find detailed records about jury members or the procedural methods used during trials held there.<sup>46</sup> He suggested that it was because the jury system in Querétaro probably never “prospered” or gained wider public acceptance.<sup>47</sup> Nevertheless, he also indicated that people actively participated in jury trials in other municipalities including San Juan del Rio, the second largest municipality in the State of Querétaro, and made decisions based on their conception of justice and moral principles.<sup>48</sup>

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38. Jimenez Gomez, *supra* note 35, at 298.

39. *Id.* at 298.

40. *Id.* at 298.

41. *Id.* at 415.

42. *Id.* at 473.

43. *Id.* The names of jury members included the following: Licenciado Rodriguez Altamirano, Vicente Ruiz, Vicente Leyva, Florencio Ramirez, Antonio Rodriguez, Dolores Trejo, Atilano Maldonado, José Reyes, and Zacarías Zúñiga.

44. *Id.* at 473.

45. *See id.* at 415.

46. *Id.* at 473 (“Pocos documentos se han localizado en los que se haya plasmado la actuación de estos jurados de ciudadanos” [Few documents have been found in which action has reflected these citizens’ juries]).

47. *See id.* at 298 (In trying to search for additional jury-related materials, the author stated “No localice ningún expediente sobre esta materia, por lo que asumo que nunca funciono” [(I) do not locate any record on this subject; so I assume they [jury trials] never [properly] functioned]).

48. *See id.* at 415. There is another reason for juries’ social insignificance in the 19<sup>th</sup> century Mexico. In the 1830s and

Like historian Jimenez, other experts raise questions about the past and contemporary failings or merits of using juries in criminal cases. The Spanish Constitution of Cádiz of 1812 supported the use of jury trials in Mexico, especially in crimes involving press offenses.<sup>49</sup> The Mexican constitution originally provided that each state was to be responsible for including a provision for individual rights in their respective jurisdictions. In our time, 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.<sup>50</sup> According to Oropeza, Jose Maria 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.”<sup>51</sup>

According to Oropeza, these remained major legal guarantees in Mexico that allowed jury trials to become an indispensable part of the adjudicative system between 1828 and 1883.<sup>52</sup> Jose Maria Luis Mora believed that legal knowledge was an unnecessary component of people’s ability to serve as jurors. Nevertheless, Mora was not successful in moving his jury project forward. When a 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.<sup>53</sup> On November 27, 1856, the Mexican Congress finally voted against the implementation of jury trials, by 42 to 40 votes.<sup>54</sup>

On June 16, 1857, Benito Juárez, an indigenous Zapoteco Indian, who served as the leader of the reform movement, became the first Mexican leader without a military background. He put in place the Constitution of 1857, bringing back the jury in criminal matters for the federal district

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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.

49. Manuel González Oropeza, *El Juicio Por Jurado En Las Constituciones De México*, 2 CUESTIONES CONSTITUCIONALES 73, 74 (1999). 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.

50. *Id.* 73, 75-8.

51. *Id.* at 74 (“Ningún tribunal del Estado podrá pronunciar sentencia en material criminal sobre delitos graves sin previa declaración del jurado mayor (grand jury) de haber lugar a la formación de causa, y sin que certifique el jurado menor (petit jury) el hecho que ha motivado la acusación”).

52. *Id.*

53. *Id.* at 75-78.

54. *Id.* at 78.

court.<sup>55</sup> The jury was then guaranteed protective status by a sequence of legal enactments: El 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.<sup>56</sup> 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.<sup>57</sup>

Other Mexican juries were also destined to follow an uncertain path. The jury for press-related crimes was first introduced on October 22, 1820 to Mexico by the Spanish regulation. By the Rules for the Freedom of the Press on December 13, 1821, the regulatory code was then ratified in full force by the provincial government.<sup>58</sup>

The jury for the 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.<sup>59</sup> The popular jury for official crimes was also introduced in 1917, as well as 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.<sup>60</sup> Today, Mexico only authorizes the 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)).<sup>61</sup>

### *B. Jury Trials in the Federal District*

According to prominent jury historian, Elisa Speckman Guerra, jury trials in Mexico went through several significant transformations in the mid-19<sup>th</sup> century, continuing to the beginning of the 20<sup>th</sup> century. In the Federal District between 1869 and 1919, 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.<sup>62</sup> The judge who presided

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

56. *Gaceta* 2001, *supra* note 7.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Constitución, *supra* note 6. *See also*, *Gaceta* 2001, *supra* note 7. For detailed discussions of the federal judiciary and related discussions on the issues of human rights and constitutional laws, *see* Héctor Fix-Zamudio, *Estudio de la defensa de la Constitución en Ordenamiento Mexicano* [Study of the Defense of the Constitution in Mexican Legislation], *Porrúa-UNAM, Mexico* (2005).

62. Elisa Speckman Guerra, *Los jueces, el honor y la muerte. Un análisis de la justicia (ciudad de México, 1871-1931)*, 55 *HISTORIA MEXICANA* 1411, 1423 (2006); Stephen Zamora and José Ramón Cossio, *Mexican Constitutionalism After*

over the jury trial was appointed by popular vote through the system of direct elections, was required to be older than 30 years of age and to have a law degree with at least five years of judicial experience.<sup>63</sup> For major criminal offenses, the jury also determined whether there were sufficient elements to accuse the defendant, to summon witnesses, and to modify the punishment in proportion to the crime.<sup>64</sup> The ability to modify the punishment in proportion with the crime was limited to only those circumstances listed in the penal codes.<sup>65</sup>

The jury's verdict was determined by a majority vote, which was irrevocable. The popular base for jury selection indicated both potential fairness and restrictions. 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. Before each trial, the prosecution and the defense were allowed to challenge up to 12 jury candidates. After remaining juror names were numerically converted to numbers, one day before the trial, in the presence of the judge, a total of thirteen balls were extracted from a spinning wheel ("un globo directorio"), containing corresponding numbers of eleven jurors and two alternates.<sup>66</sup> To serve as a juror, an individual had to be a 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.<sup>67</sup>

Interestingly, prior to 1869, foreigners had been 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 qualifications 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 came to constitute five to seven percent of the popular jury.<sup>68</sup> Nevertheless, throughout most of the jury's existence between 1869 and 1929, foreigners were excluded from jury selection for common criminal offenses. 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 affecting his pay or income necessary for subsistence.

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*Presidencialismo* 4 INT'L J. CONST. L., 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 material administrativa* (2008).

63. *Ley del 17 de enero de 1853* [Law of 17, January, 1853], in Blas Joseph Gutierrez, NUESTRO CÓDIGO DE LA REFORMA: LEYES DE REFORMA, COLECCIÓN DE LAS DISPOSICIONES QUE SE CONOCEN CON ESTE NOMBRE [New Code of Reform: Reform Laws, Collection of the Provisions that are known by that name], published from 1855 to 1858, Mexico, Imprenta de El Constitucional, 107-126.

64. Speckman Guerra, *supra* note 37.

65. *Id.*

66. *Id.* at 752.

67. Elisa Speckman Guerra, Personal Interviews on March 18, 2009, at the National Autonomy University of Mexico (UNAM) (interview tapes on file with the first authors).

68. Speckman Guerra, *supra* note 37.

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In actual trial proceedings, the judge provided instructions on the process and began with the first inquiries. At this point, jurors would listen to inquiries made by the judge, the ratifications, and the extensions made by the witnesses in their declarations, the testimony of new witnesses, the dialogue, and the arguments made by both parties.<sup>69</sup> By the end of the trial, the judge created a questionnaire that directed the jury to establish the guilt or innocence of the accused, to describe the nature of the crime, and to determine the presence of aggravating or extenuating circumstances. After receiving the questionnaire, the jurors were then instructed to leave for another room, and behind closed doors they filled out the questionnaire, either in the affirmative or in the negative. The jury's answers to the questionnaire then determined the verdict, which would then be used by the judge as the basis for sentencing.<sup>70</sup>

Between 1880 and 1903, the High Court of Justice of the Federal District [Tribunal Superior de Justicia del Distrito Federal] proposed that the city council should not be in charge of creating the list of jurors.<sup>71</sup> Although the proposal was denied, there were minor changes in jury selection. The potential jury list was expanded to include 800 individuals and reduced the number of persons chosen by each party.<sup>72</sup> The newly adopted change also introduced the new procedure, in which jurors were to be chosen in front of an audience in order to decrease the likelihood of pressuring or bribing the jurors.<sup>73</sup>

In 1891, however, the original proposal made in 1880 was also resubmitted and accepted. The governor of the Federal District, not the city council, was given the responsibility of creating the jury candidate list.<sup>74</sup> This proposal also changed the way the jurors were selected. One day before the process takes place, one hundred names would be introduced and of those hundred, they would select thirty; of the thirty, each party to the controversy was then allowed to choose six names.<sup>75</sup> The second part of the process took place a day before the trial, in which the thirty people who were initially chosen appeared in court and of them eleven names were chosen at random, constituting the body of the final jury members.<sup>76</sup>

During this time frame, the verdict had to be determined by eight or more votes to become

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69. See *Cartilla de instrucción para jurado del fuero común en el Distrito Federal, México, 1905*, Tipografía de los sucesores de Francisco Díaz de León [Primer of Instruction for Juries in the Ordinary Courts in Mexico City: Mexico, 1905, The Successors of Typography Francisco Diaz de Leon], cited in Speckman Guerra, *supra* note 37.

70. Speckman Guerra, *supra* note 37.

71. *Propuestas del Tribunal Superior de Justicia del Distrito Federal, 27 de abril de 1880* [Proposals of the High Court of Justice of the Federal District, April 27, 1880], en *Memoria que el Secretario de Justicia e Instrucción Pública*, [accent]Lic. Ezequiel Montes... cit, Documento 42, pp. 37-38 [Memorial to the Secretary of Justice and Public Instruction, Ezequiel Montes, Document 42, pp. 37-38].

72. Speckman Guerra, *supra* note 37, at 754.

73. *Id.*

74. *Id.* at 754-755.

75. *Id.* at 755.

76. *Id.*

irrevocable. And yet, in 1891, the size of the jury was reduced from eleven to nine, making it increasingly difficult for the jury to render an irrevocable verdict.<sup>77</sup> Thereby, the power of the jury was restricted. 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.<sup>78</sup> This economic requirement made the city fearful that it might fail to gather enough people, so the city then decided to allow public employees and foreigners with at least five years of residency to participate in jury trials.<sup>79</sup> In 1891, the income requirement was raised to one hundred pesos per month and lowered the age requirement to 21 and three years of residency for foreigners.<sup>80</sup> The purpose of lowering the age and residency requirement once more was done in fear that the new economic restriction would eliminate many potential candidates for jury trials.<sup>81</sup>

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 where the penalty for the crime exceeded six years in prison.<sup>82</sup> By 1919, the city council once again took charge of creating a candidate list with the assistance of the agent of the Public Ministry.<sup>83</sup> In the same year, the final summary given by the judge at the end of the trial was taken away, as it was argued by legal scholars and newspaper editorials that the final summary given by the judge would give him the opportunity to influence the nature of the jury deliberation and verdict.<sup>84</sup> This year also brought a significant change in the jury's responsibilities. The jury was no longer allowed to describe the nature of the crime or determine any aggravating or extenuating circumstances in criminal cases.<sup>85</sup> Between 1922 and 1929, the government abolished the economic requirement, while it added an educational requirement and juror candidates had to have an education above elementary school.<sup>86</sup>

Over time, many other changes over the jury function emerged in the Federal District. From 1869 to 1907, for instance, the jury adjudicated in criminal cases, where the potential sentence could exceed two-and-half years of possible incarceration.<sup>87</sup> Between 1907 and 1919, the jury presided over criminal cases with potential penalties exceeding six and half years of incarceration;

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77. *Id.* at 760.

78. *Id.*

79. *Id.* at 783 (please see "Anexo I: Legislacion en torno al jurado popular (1869-1929)" [Appendix I: Legislation on the Jury (1869-1929)]).

80. *Id.* at 760.

81. *Id.*

82. *Id.* at 758.

83. *Id.* at 755.

84. *Id.* at 766-757.

85. *Id.* at 757-758.

86. *Id.* at 784.

87. *Id.* at 785 (please see "Anexo II: Importancia y atribuciones de juez y jurados (1869-1929)" [Appendix II: Importance and Functions of Judge and Jury (1869-1929)]).

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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.<sup>88</sup> Criminal cases available to 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.<sup>89</sup>

The function and selection of the judge also went through significant transformation. In 1880, the required age for judgeship was lowered from thirty to twenty five years of age and judicial experience from five to three years.<sup>90</sup> After 1904, the judge was no longer elected by popular vote, but was appointed by the executive branch of the government on the proposal of the High Court.<sup>91</sup> Central state controls were infringing on bench decisions made by the judges themselves.

Although the government did allow for jury trials between 1869 and 1928 for common crimes, the eligibility requirements for jury service were never aimed at ensuring a role for the majority of the Mexican citizenry. For example, approximately eighty-percent of the Mexican population did not know how to read or write, let alone at an educational level above elementary school.<sup>92</sup> Nonetheless, Historian Speckman Guerra says that popular arguments in favor of the jury system contended that it was an important institution to be representative of shared sentiments and opinions of the common people.<sup>93</sup> Even though an elemental contradiction remained between the jury's eligibility qualifications and the purpose of jury trials, the jury still represented an important social aspiration towards a democratized form of future legal discourse. The jury as a popular legal institution also represented the manifestation of popular sovereignty and embodied the right of the community to participate in the administration of justice.

Despite the long history of jury trials prior to the end of the Mexican revolution in 1929, however, the practical use of the popular jury in an open and adversarial court had all but disappeared.<sup>94</sup> Yet, the 2008 current reform laid an important foundation for the possible re-establishment of the popular jury system, with use of oral arguments in proceedings, the 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

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88. *Id.*

89. *Id.*

90. Ley de organización de tribunales, 15 de septiembre de 1880 [Courts Organization Act, September 15, 1880].

91. Ley de organización de judicial, 9 de septiembre de 1903 [Judicial Organization Act, September 9, 1903].

92. Speckman Guerra, *supra* note 67.

93. *Id.*

94. See Kossick, *supra* note 7, at 785 ("Mexico used juries between 1856 and 1929").



proceedings. In 2004, the State of Nuevo Leon introduced the oral adversarial criminal procedure in cases of non-serious culpable felonies. In February 2005, in its first oral trial in the city of Morelos, 19 witnesses testified publicly, and documentary evidence was also filed within a period of five hours, showing great judicial speed and efficiency.<sup>95</sup> The government of Nuevo Leon 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.<sup>96</sup>

Zacatecas and Chihuahua similarly introduced their own reform initiatives to introduce open and transparent criminal procedures.<sup>97</sup> Chihuahua courts also introduced plea bargains, mediation, suspended sentences, probation, and other legal tools to effectively process their criminal cases.<sup>98</sup> 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 Juarez, six of 1,253 criminal cases were tried in an open and adversarial court.<sup>99</sup>

On May 16, 2006, the international forum on the relevance and feasibility of establishing Mexico’s popular jury was held at the Siqueiros Polyforum in Mexico City.<sup>100</sup> Many scholars, civil employees, and citizens of diverse countries shared experiences on the challenges and potentialities of the restoration of Mexico’s jury system and held debates on the road to improve the system of justice.<sup>101</sup> The international discussion on the re-establishment of the jury system 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 the 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.<sup>102</sup>

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95. See Ringe Basham & S.C. Correa, *First Oral Trial*, HG.ORG, Feb. 23, 2005, available at [http://www.hg.org/articles/article\\_989.html](http://www.hg.org/articles/article_989.html).

96. See *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.

97. James Cooper, *Slow Road to Legal Reforms in Mexico*, SAN DIEGO UNION-TRIB., Nov. 26, 2006, available at [http://www.signonsandiego.com/uniontrib/20061127/news\\_mz1e27cooper.html](http://www.signonsandiego.com/uniontrib/20061127/news_mz1e27cooper.html)

98. Ken Ellingwood, *In a Mexico State, Openness is the New Order in the Courts* L. A. TIMES, Feb. 6, 2009 available at <http://articles.latimes.com/2009/feb/06/world/fg-mexico-drugs-courtreform6>.

99. *Id.*

100. Guillermo Zepeda, *Jury Trials in Mexico*, EL ECONOMISTA, May 16, 2006.

101. *Id.*

102. Vidmar, *supra* note 12, at 437-444; Stephen Thaman, *Latin America’s First Modern System of Lay Participation*, in STRAFRECHT, STRAFPROZESSRECHT UND MENSCHENRECHTE: FESTSCHRIFT FÜR STEFAN TRECHSEL 765-79 (Andreas Donatsch et al. ed., 2002).

IV. PART III. THE SYSTEM OF LAY PARTICIPATION IN LEGAL INSTITUTIONS IN THE  
U.S., JAPAN, KOREA, IRELAND, AND NEW ZEALAND

Mexico is not the only country in the world waging a significant debate on court and criminal justice reforms in order to democratize its judiciary. Many nations around the globe are currently contemplating the manifestation of popular sovereignty by introducing the system of lay participation in the administration of justice. Japan and South Korea, for example, after many years of political debates on judicial reforms, have finally decided to introduce the lay judge system in 2008 and 2009 respectively. Unlike the common law nations with the long history of lay participation in legal institutions, Japan and South Korea had been operating upon a civil law tradition just like Mexico. People's struggles to bring about the changes to install the lay justice system in those nations are of significant importance to Mexico and its effort to create effective government oversight to eradicate judicial corruptions that characterize today's Mexican courts and judiciary.

Court systems in many nations are as varied as the social and political pressures handed down by colonialism, central government rules, and local demands for reform. 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, with their opinions empirically analyzed. Not only do we review Japan and South Korea that successfully introduced the lay judge system in their judicial institutions, we also review several common law nations with a long history of jury trials. The countries examined thus include: (1) the U.S., (2) Ireland, (3) New Zealand, (4) Japan, and (5) South Korea. The U.S., Ireland, New Zealand, and South Korea have adopted an all-citizen jury system, in which people have been selected at random from local communities to make decisions in criminal trials.

The tradition of a jury trial in Ireland, the U.S., and New Zealand came from Britain through their colonial history, which has been rooted in part in Roman law. Britain transplanted both grand and petit criminal juries and civil jury trials to its colonies.<sup>103</sup> In recent years, however, the civil jury trial has all but vanished in many of the former British colonies. At home, England and Wales have also abolished a tort-related, civil jury trial. The Supreme Court Act of 1981 establishes a right to jury trial in only four types of civil cases: libel and slander, fraud, malicious prosecution, and false imprisonment.<sup>104</sup> As a result, less than one percent of all British civil trials are jury trials.<sup>105</sup> 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 first introduced the Sanza (bureaucratic) jury system in 1873. The bureaucratic jury

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103. See generally NEIL VIDMAR & VALERIE P. HANS, *AMERICAN JURIES: THE VERDICT*, 21-39 (2007).

104. Sally Lloyd-Bostock & Cheryl Thomas, *The Continuing Decline of the English Jury*, in *WORLD JURY SYSTEMS*, 53.

105. See C. ELLIOTT & F. QUINN, *ENGLISH LEGAL SYSTEM* 138 (Pearson Education Limited 2d ed. 1998) (1996).

became Japan's first adjudicative body composed of nine lay jurors selected from bureaucratic government officials of various ministries. The function of the Sanza jury was to make final determinations at the guilt phase of the trial, while the presiding and two assistant judges were to make decisions at the penalty phase of the trial.<sup>106</sup> The Japanese government also introduced all-citizen jury trials in 1928. The Jury Act to establish Japan's first system of all-citizen juries was promulgated on April 18, 1923. During the next five-year preparation, the Ministry of Justice, the Supreme Court, and local bar associations actively promoted the all-citizen juries.<sup>107</sup> 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.<sup>108</sup> In May 2004, nearly six decades after the end of World War II, the Japanese Diet finally passed the Lay Assessor Act and set up two different civic participatory panels for criminal trials – the Lay Assessor (mixed tribunal) and the New Grand Jury (Kensatsu Shinsakai) systems.<sup>109</sup>

The fundamental difference between Japan's lay assessor (or mixed tribunal) system and the all-citizen jury system — like the one in the U.S. and Mexico prior to the end of the Mexican revolution — is that, while the all-citizen jury panel exclusively consists of local residents chosen at random from a nearby community, the mixed tribunal is composed of a judicial panel of both professional and lay judges. In other words, the mixed tribunal system is often seen as a judicial compromise lying somewhere between an 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.

In countries with mixed tribunal systems, lay judges are either politically chosen from local communities or summoned from registered rolls prepared by local governments. For example, in Germany's mixed tribunal system, prominent political party members in local communities first create a list of lay judges twice the size of what is actually needed.<sup>110</sup> After the initial list is prepared, it is further reviewed by a special board of political members who then determine the final official list.<sup>111</sup> German lay judges are then required to serve for a term of four years.<sup>112</sup>

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106. Osatake Takeki, *Osatake Takeki Kenkyu [Research by Takeki Osatake]*, (2007).

107. Takashi Maruta, *Baishin Saiban o Kangaeru [Considering the Jury Trial]* 135 (1990).

108. 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 INT'L L. J. 315, 321 (2007).

109. *Id.*

110. For Germany's lay assessor selection, see Walter Perron, *Lay Participation in Germany* 71 INT'L REV. PENAL L. 181, 190-92 (1999); Nancy Travis Wolfe, *Lay Judges in German Criminal Courts: The Modification of an Institution*, 138 PROCEEDINGS OF THE AMERICAN PHILOSOPHICAL SOCIETY 4, 495-515 (1994); C.C. Schweitzer, Detlev Karsten, Robert Spencer, R. Taylor Cole, Donald P. Kommers and Anthony J. Nicholls, *Politics and Government in Germany, 1944-1994: Basic Documents* (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 Americas, and South Africa in Africa.

111. Perron, *supra* note 110. The board consists of one professional judge, one administrative officer, and ten confidants who were then designated by the public administration in each community.

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For Japan's mixed tribunal system, 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.<sup>113</sup> Japan's mixed tribunal system requires two different panels in their adjudicative process. A panel of three professional and six lay judges is asked to make decisions in both 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.<sup>114</sup>

Among nations that have recently introduced all-citizen juries, 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 directive for determining final trial outcomes.<sup>115</sup> South Korea's legal transformation has been quite remarkable because, unlike Japan, South Korea never had a history of jury trials. The introduction of the popular jury also impacted 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.<sup>116</sup> 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.<sup>117</sup> The laws in 2005 also lowered the voting age from 20 to 19, thereby expanding the voting population.<sup>118</sup> The first election under the new law took place on May 31, 2006.<sup>119</sup> 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.

Convergence towards more equitable social relationships is clearly on the international horizon. In all those 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,

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112. Schweitzer et al., *supra* note 110, at 279. After the four year period, the lay assessors can be re-elected a second term.

113. See Saiban-in no sanku suru keiji saiban ni kansuru horitsu, Law No. 63 of 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, 253 (2004). See especially Article 26 (3) (Selection of Lay Assessor Candidates to be Summoned), indicating that "The District Court shall select by lottery the lay assessor candidates to be summoned in a number determined [for a given trial]").

114. *Id.* at 233-283.

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

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

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

118. *See id.*

119. *Id.*

trusted member 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 the footsteps of these nations is the question examined in the following section.

### *A. Methodology*

Both survey and interview methods were used to solicit opinions and attitudes about the possible re-introduction of the jury system in Mexico in 2008 and 2009. Our respondents included law professors, college students, and a select group of citizens. In order to make effective comparisons with the views, attitudes, and opinions of respondents in nations that instituted the lay judge systems, this section also examines systematic comparisons of opinions and attitudes about lay participation.

For numerical comparisons, we examine survey responses collected from college students and university researchers, making up the possible future intelligentsia of six nations, who one day may be expected to lead their respective countries into the 21<sup>st</sup> 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 need and potential operation of 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 U.S., (4) Ireland, (5) South Korea, and (6) New Zealand.

### *B. 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 the 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 U.S., 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) confessions 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 as necessary, and qualitatively analyzed.

### *C.Samples*

#### 1. Mexico

In December 2008, a group of students at the Instituto Tecnológico Superior de la Región de los Llanos in the State of Durango was asked to respond to a jury survey questionnaire.<sup>120</sup> 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 have 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 ( $n=34$ ).<sup>121</sup> Besides survey opinions, many interviews were conducted in Mexico City, Mexico with students from “Facultad de Derecho (Law Faculty)” at UNAM, students in other disciplines, and academic scholars in the area of law, including several prominent law professors at the “Instituto de Investigaciones Jurídicas (Institute of Juridical Investigations)” at UNAM. Other interviewees also included taxi drivers, people at the Zócalo de Coyoacan, and a select group of citizens in Mexico City. The responses to the interviews reflect the differing ideals and views toward a lay judge system in Mexico, by the Mexican citizenry, ranging from ordinary working class people, to those in the law profession. The structure of this analysis began with the type of questions that were asked to all those who participated in the interviews, followed by the major themes derived from the participants responses, and finally the implication of their responses and what it means for Mexico's future in the possible implementation of a lay justice system. The contents of their interview responses were carefully recorded, transcribed, and content-analyzed.

#### 2. 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.

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120. The institute offers the BS in computer science, and other degrees in industrial engineering, food engineering, and mechanical engineering.

121. A total of 7 UNAM students who filled out the questionnaire were enrolled in Professor John Ackerman's class prior to March 2009.

### 3. 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.<sup>122</sup> 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.<sup>123</sup> A total of 90 students have responded to the jury survey questionnaire.

### 4. 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 16,000 students.<sup>124</sup> A total of 114 students responded to the jury survey questionnaire.<sup>125</sup>

### 5. 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.

### 6. The U.S.

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.

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122. For university information, *see* <http://www.otago.ac.nz>. Ms. Madeline Munro assisted the 2008 jury survey in New Zealand.

123. *Id.* *See also* <http://www.otago.ac.nz/research>.

124. For university information, *see* <http://www.nuiGalway.ie/about-us/who-we-are/about-the-university.html>.

125. 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.

### *D. Findings*

Table 1 shows the results of the cross-national analysis, indicating both differences and similarities of the views on lay jury 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 were 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.<sup>126</sup> The majority of Mexican respondents also agreed that it is not difficult for ordinary people to determine a verdict (i.e., guilty/not-guilty) (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 with 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 potential jury candidates and the low overall quality of the deliberations 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.

The great majority (70.4%) of Mexican respondents also indicated their willingness to serve on juries both voluntarily 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% points higher than in Korea, which is second at 34.4% among the six nation respondents. The remaining countries were below 30%. Nearly sixty percent 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

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126. See [1] "Confidence in Jurors' Abilities" in Table 1.



(56.5%).

#### 1. Fear of Serving as Jurors, and the Credibility of Confessions and Believability

Another set of questions were posed about a potential fear of serving as jurors. The great majority of Mexican students indicated that in a gang-related trial where many gang supporters could appear, they believed they could make a fair judgment as jurors (60.7%). The Mexican 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 Mexican response was the highest among the 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 confessional 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 where defendants later contested the content of such confessional 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 similar 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 any political opposition. The South 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.<sup>127</sup>

With respect to the fairness of the court and criminal process, the overwhelming majority of respondents in each of the six nations indicated that the judges in their respective nations are generally more biased than judges in other nations (ranging from 65.5% in New Zealand to 91.4% in Korea). The majority of international respondents also felt that the courts have not been sensitive about the concerns of average citizens (except Ireland (44.7%) and New Zealand (44.5%)).

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127. See generally, CHALMERS JOHNSON, NEMESIS (2008).

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Similarly, the majority of Mexican respondents indicated that fair and equitable criminal procedures were not followed in rendering the final judgment of criminal cases in Mexico (56.6%).

Table 1: Cross-National Comparison of Attitudes and Opinions on Lay Participation in Legal Institutions<sup>1</sup>

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

	70.4 (69.8)	88.5 (91.3)	40.3 (44.6)	81.7 (75.5)	73.0 (64.8)	67.9 (67.6)
<b>(4) Moral/Ethical Responsibilities</b>						
I would feel overwhelmed if I had to make a judgment on the defendant and his/her charges.	43.9 (41.8)	47.3 (40.4)	73.2 (61.5)	69.9 (68.9)	61.1 (59.4)	55.3 (43.8)
It would be very difficult for me to never discuss my jury experience.	47.4 (51.6)	67.9 (71.8)	70.9 (66.5)	73.5 (76.6)	68.5 (72.9)	66.6 (67.1)
<b>(5) Confidence in the Jury System</b>						
If I became a defendant in a criminal case, I would prefer a jury trial to a judge trial.	62.2 (65.0)	73.7 (72.3)	32.3 (30.4)	51.6 (52.2)	60.0 (56.7)	61.2 (68.0)
A jury's decision reflects the community's values and judgments.	64.9 (67.3)	73.6 (70.2)	81.0 (76.9)	78.0 (75.6)	72.2 (73.0)	53.9 (51.9)
A jury trial is not the best way to determine a trial outcome.	39.0 (40.4)	29.0 (25.5)	43.0 (41.9)	59.2 (55.5)	35.5 (35.1)	26.9 (28.6)
I support other countries introducing the jury system like ours.	54.7 (53.8)	82.5 (87.2)	44.3 (47.8)	65.1 (62.2)	67.7 (70.2)	65.3 (64.6)
<b>(6) Jury Trials</b>						
In discussing a verdict, jurors should utilize the judge to clarify questions/concerns.	75.4 (73.4)	93.0 (95.7)	86.8 (84.6)	79.0 (82.2)	91.1 (94.6)	83.4 (81.9)
Recording (transcribing or videotaping) is important in all trial proceedings.	86.2 (84.9)	92.1 (93.6)	80.5 (79.4)	97.8 (98.9)	92.2 (94.6)	85.0 (88.1)
Citizens should be encouraged to serve on a civil jury (i.e., medical malpractice, drug poisoning, or negligence cases).	68.2 (66.7)	64.0 (63.8)	52.5 (52.3)	77.3 (77.8)	62.9 (50.0)	68.2 (67.2)
The more diverse the jury's racial and gender background, the fairer the trial.	73.4 (68.7)	65.8 (63.8)	86.2 (82.4)	77.4 (74.4)	71.1 (67.5)	76.0 (70.5)
<b>(7) Fear of Serving as Jurors</b>						
In a trial where many gang supporters may appear, I believe I could make a fair judgment as a juror.	60.7 (60.1)	57.5 (59.6)	21.3 (24.4)	39.8 (40.0)	46.6 (54.0)	54.1 (57.0)
<b>Attitudes</b>	<b>Mexico</b>	<b>Ireland</b>	<b>Japan</b>	<b>Korea</b>	<b>New Zealand</b>	<b>U.S.</b>
If I became a juror, I would be concerned about potential retaliation from the defendant.	63.6 (67.3)	56.1 (57.4)	64.2 (62.8)	80.6 (77.8)	60.7 (51.3)	42.7 (41.6)

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<b>(8) Oversight Function of the Government</b>						
Ordinary people's presence in a jury serves to prevent future crimes in the community.	55.5 (59.1)	31.6 (32.0)	44.9 (47.8)	52.8 (48.9)	32.3 (32.4)	32.7 (34.9)
Ordinary people in a jury can prevent possible overzealous prosecutions or judges' unfair decisions.	67.4 (66.5)	61.0 (57.4)	74.0 (69.9)	81.7 (76.7)	65.2 (62.2)	66.0 (72.2)
<b>(9) Confession and Believability</b>						
Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made.	83.6 (81.8)	91.3 (93.6)	91.3 (91.1)	93.0 (90.0)	85.6 (83.8)	89.2 (87.0)
For the above case, I believe that the defendant was forced to confess.	53.7 (50.9)	34.2 (38.3)	16.9 (18.4)	61.3 (60.0)	36.6 (37.8)	41.1 (41.8)
<b>(10) Race, Gender, Diversity, and Democracy</b>						
It is important to create programs to increase the number of female and minority lawyers.	63.8 (58.5)	73.7 (59.6)	19.5 (29.8)	83.3 (78.7)	62.2 (48.6)	79.9 (66.9)
Every taxpayer including permanent residents (non-citizens) should be allowed to serve on juries.	57.1 (54.8)	70.2 (74.4)	69.1 (64.6)	59.3 (57.3)	60.9 (52.8)	68.1 (64.9)
In criminal court, non-English speakers are more likely to be treated worse than English speakers.	43.4 (45.9)	47.4 (48.9)	54.2 (51.8)	67.8 (63.2)	44.5 (48.6)	71.1 (73.2)
An increase of lawyers will generally lead to a lower quality of legal services.	37.3 (43.4)	21.1 (25.5)	57.0 (55.5)	22.5 (26.7)	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.	43.6 (40.2)	57.9 (48.9)	58.5 (46.1)	54.3 (54.5)	57.3 (54)	63.8 (60)
<b>(11) Fairness of Court &amp; Criminal Process</b>						
In the court process, all people are treated with respect and dignity.	29.7 (33.8)	36.8 (42.5)	22.0 (25.0)	35.5 (38.9)	55.6 (54.0)	27.2 (35.0)
I believe that my country's judges are generally less biased than judges in other countries.	16.7 (20.8)	14.1 (19.5)	13.7 (18.1)	8.6 (13.3)	34.5 (32.4)	15.0 (13.4)
Fair procedures are generally used to make the final judgment on a case.	43.4 (46.8)	67.6 (59.6)	42.6 (45.2)	55.9 (60.0)	66.7 (70.3)	47.8 (51.6)
<b>Attitudes</b>	<b>Mexico</b>	<b>Ireland</b>	<b>Japan</b>	<b>Korea</b>	<b>New Zealand</b>	<b>U.S.</b>
Courts are generally sensitive about the concerns of average citizens.	25.3 (25.8)	55.3 (63.8)	20.2 (21.0)	30.9 (32.1)	55.5 (56.7)	35.9 (39.2)

Note: Figures show percentages of respondents who “strongly” or “somewhat” agreed with respective statements. The analysis relied on the use of a 5 point-Likert scale: (1) strongly agree, (2) somewhat agree, (3) not sure/uncertain, (4) somewhat disagree, and (5) strongly disagree.

1. The figure represents a percentage of male respondents who either “strongly” or “somewhat” agreed with the statement

## 2. Respondents’ Confidence in the Government and Criminal Justice Managers

Table 2 shows respondents’ confidence in the justice administration, 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-point 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 courts also failed to reach a majority in Mexico (45.2%). Mexico is the only nation where respondents’ confidence in prosecutors, the police, and the courts 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%). Consequently, 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 U.S., 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 an integral part of the criminal justice system. Nevertheless, among countries with a long history of a 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 Comparison of People's Confidence in Legal Institutions and the Media<sup>1</sup>

Criminal Justice Institutions	Mexico	Ireland	Japan	Korea	New Zealand	USA
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Police Officers	15.9 (3.46)	53.1 (2.53)	60.7 (2.45)	31.8 (2.87)	77.9 (1.93)	54.4 (2.52)
Professional Judges (The Court)	45.2 (2.92)	88.2 (1.93)	87.3 (1.97)	55.4 (2.50)	87.8 (1.72)	68.4 (2.31)
Prosecutors	27.5 (3.26)	86.8 (2.02)	78.9 (2.16)	42.2 (2.65)	82.0 (2.00)	63.3 (2.36)
Jurors	52.0 (2.85)	75.9 (2.16)	44.4 (2.69)	45.9 (2.66)	63.3 (2.37)	65.1 (2.35)
Defense Attorneys	57.8 (2.60)	89.7 (2.02)	82.9 (2.03)	42.8 (2.71)	79.0 (2.09)	68.2 (2.35)
State (or Federal) Government	42.7 (2.84)	66.7 (2.31)	57.1 (2.52)	29.8 (2.90)	85.0 (2.04)	38.7 (2.76)
Media -- Television/Radio	45.4 (2.77)	46.2 (2.58)	48.3 (2.64)	22.6 (3.06)	41.9 (2.69)	23.0 (3.03)
Media -- Newspapers	52.0 (2.57)	53.3 (2.47)	75.8 (2.16)	32.6 (2.87)	52.3 (2.54)	54.6 (2.52)

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.

1. Figures show percentages of those who responded with "very confident" or "somewhat confident" on respective institutions. Figures in parentheses show the average of responses on a 4 point rating scale.

Table 3 shows the effect of specific attitudinal responses of Mexican students about their confidence in the government, courts, prosecutions, jurors and the mass media. Those who showed a greater fear of retaliation from the defendant tend to show less confidence in prosecutors (26.2%) than those with a less retaliatory fear (35.9%), though the majority of Mexican respondents failed to show much confidence in the prosecutors. With respect to the confidence in the institution of the jury, greater confidence was expressed by those who showed greater willingness to participate in jury service ( $p < .05$ ) and jury's function as an important shield from overzealous prosecution and judges' unfair decisions ( $p < .5$ ). It is also important to note that greater confidence on all-citizen juries are expressed by those who showed a greater concern about feared retaliation from a defendant (58.7%) than those who did not (52.2%). A similar pattern is found among Mexican respondents who showed greater jury support by those who expressed their confidence in fair minded-decision making in trials with gang member defendants (59.8%) than those with less confidence in making a fair decision in jury trials (50.7%). The majority of respondents [percentage?] expressed greater confidence in the institution of juries, and their expressed fear of retaliation from jury service also did not restrain support of the jury.

Table 3 Mexico's Confidence in the Government and Legal Institutions by Attitudinal Measurements<sup>1</sup>

Institutions & Attitudes <sup>2</sup>	Concern with <sup>3</sup> Retaliation	Judgment in <sup>4</sup> Gang Trial	Willing to Serve <sup>5</sup> as Juror	Preference of <sup>6</sup> Jury over Judge	Jury Against <sup>7</sup> Overzealous Prosecutors	Confessional <sup>8</sup> Evidence	Forced <sup>9</sup> Confession
Police Officers	15.1 (16.6)	16.9 (15.1)	15.9 (12.9)	16.0 (22.2)*	17.1 (14.7)	14.2 (27.8)*	11.8 (21.6)**
Professional Judges (The Court)	48.6 (47.1)	48.7 (45.9)	50.4 (40.0)*	44.1 (58.1)	49.5 (50.0)	47.0 (58.9)	44.6 (54.8)
Prosecutors	26.2 (35.9)	29.7 (28.1)	32.5 (23.3)	29.0 (36.2)	29.1 (33.3)	28.6 (40.0)	30.9 (33.8)
Jurors	58.7 (52.2)	59.8 (50.7)	60.7 (40.0)**	55.8 (61.9)	61.4 (48.4)**	56.9 (59.4)	57.7 (58.6)
Defense Attorneys	59.7 (61.6)***	61.5 (51.4)	62.3 (58.0)	57.8 (67.8)	62.7 (48.5)	60.3 (57.2)	57.4 (62.7)
National (Federal) Government	44.3 (41.3)	47.8 (33.8)*	47.7 (32.3)	44.0 (42.8)	43.4 (43.7)	42.6 (30.5)	43.4 (50.6)
Media -- Television/Radio	47.3 (39.1)	45.2 (41.1)	42.6 (50.0)	37.9 (61.9)***	43.9 (44.4)	44.7 (58.4)*	43.6 (40.5)
Media -- Newspapers	55.4 (54.3)	56.0 (50.0)	57.8 (46.6)	54.0 (52.3)**	56.8 (50.0)	56.7 (47.2)	53.6 (48.0)

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.

1: Figures show percentages of those who showed "very confident" or "somewhat confident" in respective institutions. Figures in parentheses show the average of responses on a 4 point rating scale.

2: Figures for Attitudinal measurements show percentages of respondents who either (1) "strongly agreed" or (2) "somewhat agreed" with respective statements. Figures in parentheses show percentages of those who either (3) "strongly disagreed" or (4) "somewhat disagreed" with respective statements.

3: "If I became a juror, I would be concerned about potential retaliation from the defendant."

4: "In a trial where many gang supporters may appear, I believe I could make a fair judgment as a juror."

5: "I am willing to serve as a juror."

6: "If I became a defendant in a criminal case, I would prefer a jury trial to a judge trial."

7: "Ordinary people in a jury can prevent possible overzealous prosecutions or judges' unfair decisions."

8: "Some defendants plead innocent, even if they already confessed. In such a case, I am curious to know how the confession was made."

9: "For the above case, I believe that the defendant was forced to confess."

Chi-square test statistic: \* p<.10 \*\* p<.05 \*\*\* p<.01

#### V. PART IV. DISCUSSIONS: MEXICO AND DEMOCRACY IN NORTH AMERICA

Past research shows that Mexico once had a progressive history and long tradition of social

and political efforts to advance the democratic ideals of equality and direct citizen participation in politics and law. Indeed, for the last two centuries, Mexico may have been one of the most important political advocates of democracy in North America.

The U.S. media proudly boasts that in 2009, newly-elected Barack Obama had become the first African President to lead the nation in the western hemisphere.<sup>128</sup> Of course, this assertion is clearly false. Nearly two hundred years ago, Mexico became the first nation in North America to choose an African as President, Vincente Ramón Guerrero Saldaña, who lived during a crucial period of Mexican history and became the second President of Mexico on April 1, 1829.<sup>129</sup> 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.<sup>130</sup> He was an ardent defender of Indian rights and a harsh opponent of social and economic inequities.<sup>131</sup> While his tenure was cut short by political unrest and his untimely death in 1831, his accomplishments and historical legacy will never be forgotten.<sup>132</sup> President Guerrero Saldaña signed a decree on September 15, 1829 that abolished the system of slavery in Mexico and emancipated all slaves.<sup>133</sup> Guerrero Saldaña also helped write Mexico's constitution and took various steps to educate and elevate its poor and people of color. The Mexican state of Guerrero was dedicated in his honor.<sup>134</sup> The foundation for Mexico's expansion of human and political rights was thereby laid.

The jury became 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 powerful checks on the potentially prejudicial attitudes and behavior of European-American prosecutors and judges.

It all began in 1846, when the U.S. 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 it became the 47<sup>th</sup> state.<sup>135</sup> In the politically "colonized" Southwest, Mexicans exerted significant political and judicial power over the territorial American government through their active participation in criminal proceedings. In Territorial New Mexico, Mexican women were not allowed to serve as jurors. Mexican women,

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128. *Pan-African Scholar Ali Mazrui on the Election of Barack Obama as the First Black President in the Western World*, DEMOCRACY NOW, February 16, 2009 available at <http://www.indybay.org/newsitems/2009/02/16/18571196.php>.

129. STACY LEE, *MEXICO AND THE UNITED STATES*, 384 (2002).

130. *Id.*

131. *See generally*, THEODORE G. VINCENT, *THE LEGACY OF VINCENTE GUERRERO, MEXICO'S FIRST BLACK INDIAN PRESIDENT* (Univ. Press of Florida 2001) (biography focusing on Guerrero's political career).

132. *Id.* at 204-07.

133. EUGENE C. BARKER, *MEXICO AND TEXAS, 1821-1835*, 77-79 (Russell & Russell, 1965) (1928).

134. *See id.*

135. *See generally*, HOWARD LAMAR, *THE FAR SOUTHWEST, 1846-1912: A TERRITORIAL History* (1966).



however, were permitted to testify as witnesses in court. As Legal historian Laura Gomez documents: "Mexican women . . . testified quite regularly as general witnesses for either the prosecution or defense and in either grand jury proceedings or trials."<sup>136</sup>

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 U.S.,<sup>137</sup> Mexican men and women in New Mexico routinely testified against European-American defendants.<sup>138</sup> In the politically "colonized" Southwest, Mexicans exerted significant political and judicial power over the territorial American government through their active participation in criminal proceedings. Historical records show that they dominated more than 80% of both grand and petit trial juries.<sup>139</sup> 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 rightful ownership of both legal and cultural space. Predominantly Mexican juries effectively functioned as significant overseers of white judges and other law enforcement officials.<sup>140</sup>

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. Through their high degree of active participation in the popular jury, Mexicans in New Mexico successfully resisted European-American legal controls and political domination.

In fact, political power exercised by the popular jury is observed in many countries around the world, as they have recently tried to adopt the lay decision-making process and democratized their own jurisprudence and legal systems. These nations include Japan,<sup>141</sup> South Korea,<sup>142</sup> China,<sup>143</sup> and Thailand<sup>144</sup> in East Asia; Venezuela,<sup>145</sup> Bolivia,<sup>146</sup> and Argentina<sup>147</sup> in South America;

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136. 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).

137. For a detailed history of the relationship between race and the jury in the U.S., see generally, HIROSHI FUKURAI & RICHARD KROOTH, *RACE IN THE JURY BOX: AFFIRMATIVE ACTION IN JURY SELECTION* (Austin T. Turk, ed., State University of New York Press 2003).

138. Gomez, *supra* note 136.

139. *Id.* at 1192

140. *Id.*

141. See Fukurai, *supra* note 108.

142. Jae-Hyup Lee, Getting Citizens Involved: Civil Participation in Judicial Decision-Making in Korea, 4 E. Asia L. Rev. 177 (2009).

143. Hiroshi Fukurai and 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, July 28, 2007.

144. Frank Munger, Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand, 40 Cornell Int'l L.R. 455 (2007).

Russia, Uzbekistan, Kazakhstan, Latvia, and other former Soviet republics<sup>148</sup> in Central and Western Asia; and Spain<sup>149</sup> 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.<sup>150</sup>

In 1993, Russia successfully reinstated jury trials after a break of more than seven decades. Recent Russian studies showed that the acquittal rate by the all-citizen jury was much higher (18%) than by professional judges (3.6%).<sup>151</sup> 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.<sup>152</sup> The higher acquittal rate by 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 lengthy detention and torture; and juries have expressed their skepticism about the credibility of evidence.<sup>153</sup> The verdicts of all-citizen juries in Russia have thus demonstrated the application of higher evidentiary standards in evaluating the legal validity and reliability of confessionary documents.<sup>154</sup> 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.<sup>155</sup> Now the Russian judge has the exclusive jurisdiction over terrorism cases, a grim reminder of past inequities.

The current wave of judicial reforms in world communities is so similar to the kind of political and judicial changes in the 19<sup>th</sup> century, triggered by the 1789 French Revolution and political unrest in Europe – progressive forces which, in turn, strengthened the petit jury in

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145. On November 12, 2001, the Venezuelan legislature stopped the jury court. However, the mixed court system is still operating in Venezuela. See Thaman, *supra* note 102.

146. Diego Rijas, Ariel Morales and Mario Kempff, *Latin Lawyer: Litigation Bolivia* (2010), available at <http://www.latinlawyer.com/reference/article/25524/litigation/>.

147. María Ines Bergoglio, *New Paths Toward Judicial Legitimacy: The Experience of Mixed Tribunals in Córdoba*, 14 Sw. J.L. & Trade Am. 319 (2008).

148. Nikolai Kovalev, *Trial by Jury and Mixed Court in Transitional Criminal Justice Systems of the Former Soviet Union: In Search of Independent and Impartial Courts* (manuscript accepted for publication by Mellen Press in 2011) (Manuscript on file with the first author). See also Stephen Thaman, *The Nullification of the Russian Jury: Lessons for Jury-Inspired Reform in Eurasia and Beyond*, 40 *Cornell Int'l L.J.* 355 (2007).

149. Stephen Thaman, *Europe's New Jury Systems: The Cases of Spain and Russia*, 62 *Law & Contemp. Probs.* 233 (Spring 1999).

150. Munger, *supra* note 144.

151. See Trochev, *supra* note 20, at 7.

152. Nabi Abdullaev, *A Jury is a Better Bet Than a Judge*, *Moscow Times*, June 1, 2006 (“Only 26 percent said they would advise against a jury.”).

153. *Id.*

154. Trochev, *supra* note 20, at 7-8.

155. 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.

England. Trial by jury also became an integral part of the emerging judicial system of American society and of other nations on the European Continent.<sup>156</sup> 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 19<sup>th</sup> century, as was done in almost all other European nations.<sup>157</sup>

The recent institution and re-introduction of trial by jury in many countries around the globe has followed comparable dramatic shifts in the balance of political power and eroding social order—exemplified by the collapse of the Soviet Union in 1991. Since then, the U.S. has emerged as the lone global power and has begun to exert its military muscle and greater political influence in the rest of the world. After 9/11, the U.S. 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.<sup>158</sup> As other foreign governments began to follow America's footsteps in the prosecution of suspected terrorists, advocates of trial by jury have appealed to the liberal thoughts of progressive citizens and insurgent intellectuals to prevent the government's abuse of power and authority. Indeed, citizens in these nations have begun to arm themselves with the democratic force to resist political oppression exercised by their own government. This has followed largely because political institutions of third world nations, as well as developed countries in Asia, have become increasingly vulnerable to the material force and military influence of the United States and other developed nations in Europe.

#### *A. 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 general 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 susceptibility to corruption in the judicial system. As an example of such judicial corruption in 1993, the Mexican government issued an arrest

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156. Stephen Thaman, *Japan's new system of mixed courts: Some suggestions regarding their future form and procedure*, 2002 ST. LOUIS-WARSAW TRANSATLANTIC L. J. 89, 90 (2003).

157. *Id.*

158. *See generally*, AMY GOODMAN AND DAVID GOODMAN, *STATIC: GOVERNMENT LIARS, MEDIA CHEERLEADERS, AND THE PEOPLE WHO FIGHT BACK* (2006).

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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.<sup>159</sup> The dismissal of tenured federal judges was unprecedented in modern Mexico.<sup>160</sup>

The perception of judicial corruptions is widespread in Mexico, as the United Nations Special Rapporteur recently reported: “50%-70% of the federal judiciary is corrupt.”<sup>161</sup> One scholar also has argued that low judicial salaries feed even greater corruptions 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.”<sup>162</sup>

One significant concern about the introduction of jury trials in Mexico involves the socio-legal impact of unsubstantiated votes rendered by the jury. United States 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 U.S. In the case of Mexico, however, juror 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 the U.S., then, the Mexican jury system should consider the possible implementation of the deliberative process similarly 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. The Spanish jury, for instance, 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 the crimes charged.<sup>163</sup> 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.<sup>164</sup>

The Mexican jury system may also consider another important safeguard to eliminate jury

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159. U.S. Department of State, *1993 Human Right Report: Mexico Human Rights Practices*, (1994), available at [http://dosfan.lib.uic.edu/ERC/democracy/1993\\_hrp\\_report/93hrp\\_report\\_ara/Mexico.html](http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_ara/Mexico.html).

160. *Id.*

161. U.N. ESCOR, 58<sup>th</sup> Sess., Provisional Agenda Item 11(d), at 25, U.N. Doc. E/CN.4/2002/72/Add.1 (2002) (“UNSR”), at 18.

162. Kossick, *supra* note 7, at 742.

163. Thaman, *supra* note 148, at 249.

164. *Id.* at 250.

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 U.S., the family-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 in their pleadings they may allege the facts that they believe will be proven, and likely verdicts or sentences that they believe will be appropriate and just.<sup>165</sup> They can also propose the hearing of new evidence.<sup>166</sup>

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 will increase the legitimacy of the jury trial and make the trial proceeding even more open and transparent in the eyes of the public. They also provide both professional judges and the public the opportunity to examine the jurors' reasoned judgment and possibly challenge it if deemed necessary.

#### *B. Protecting Jurors and Judges*

In the case of Mexico, many residents and legal practitioners have been intimidated by drug trafficking cartels linked to the 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.<sup>167</sup> In June 2007, due to corruption concerns, President Felipe Calderón also dismissed 284 federal police commanders, including federal commanders of all 31 state and federal districts.<sup>168</sup> In August 2009, a Mexican judge 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.<sup>169</sup> They were arrested for their alleged links to the murders of a police coordinator and a civilian.<sup>170</sup> 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 U.S., 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

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165. *Id.* at 245.

166. *Id.*

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

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

169. *18 Mexican Police Put on Trial for Drug Trafficking Links*, LATIN AMERICAN TRIB., Sept. 1, 2009, available at <http://laht.com/article.asp?ArticleId=342597&CategoryId=14091>.

170. *Id.*

public in order to preserve the democratic insularity 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.<sup>171</sup> 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.<sup>172</sup> As a result, jurors' identities were only known to the court and to the related parties in the case.

American judges are also not immune to violence due to their rulings and opinions. The 2005 murders 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<sup>173</sup>. He later made a death threat and solicited Lefkow's murder after she ruled against him in a civil case.<sup>174</sup>

Despite Hale's death threat against her, it was later revealed that her family members were killed by another litigant whose medical malpractice suit was dismissed by Judge Lefkow.<sup>175</sup> Meanwhile she was closely guarded by a detail of the U.S. Marshals Service. In recent years, threats made to the judiciary have increased exponentially. In 2008, 1,278 threats were made against judges, and the number of threats was estimated to exceed 1,500 in 2009.<sup>176</sup>

In Mexico, similar security methods may be necessary to provide secure protection to jurors and judges. In order to protect jurors and create a democratic shield for the jury trial, improved security measures such as home intrusion security systems, coordinated intelligence among security agencies, and threat analysis may be necessary. 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 may have to 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

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

172. *Id.*

173. Jodi Wilgoren, *White Supremacist is Held in Ordering Judge's Death*, N.Y. Times, January 9, 2003, at 16.

174. *Id.* ("he (Matthew Hale) asked another person to 'forcibly assault and murder' Judge Lefkow."). See also Michael Higgins, *Internet Leaves an Open Window on Lives of Judges*, DAILY PRESS, March 3, 2005, <http://www.dailypress.com/news/national/chi-0503030272mar03,0,2954630.story>.

175. *Judge Lefkow Discusses Tragedy, Security*, Chicago Breaking News Center, Aug. 1, 2001, <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.)

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

also serve as a political force and offer 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 leverage exerted by Mexican jury trials in the American Southwest in the late 19<sup>th</sup> 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.

### *C. Introduction of Jury Trials at State Levels*

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

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 trace their transformative origins at sub-national levels. In Canada, for example, the so-called “single payer” or universal healthcare system was first introduced in the Province of Saskatchewan in 1962.<sup>177</sup> This health care reform guaranteed hospital care for all provincial residents. The rest of the country soon followed province-by-province, as the new system gained popular support from the general public. The federal government then passed the medical legislation in 1966, enacted it in 1968, and thereafter by the end of 1971, all provinces in Canada introduced the universal health care system.

Russians also witnessed similar transformative changes in its step towards 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 today comprised of a total of eighty-three federal subjects or regions, and each subject possesses equal federal rights, political representation, and judicial autonomy. 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 where Moscow militarily dominated. 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.<sup>178</sup>

In Córdoba, Argentina, a mixed tribunal, not an all-citizen jury, was first established in criminal cases in 1987.<sup>179</sup> 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

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177. MICHAEL RACHLIS, *PRESCRIPTION FOR EXCELLENCE: HOW INNOVATION IS SAVING CANADA’S HEALTH CARE SYSTEM* 29 (Chris Bucci, ed., HarperCollins) (2004).

178. *Introduction of Jury Trials in Chechnya Delayed*, Radio Free Europe Radio Liberty, Dec. 8, 2006, available at <http://www.rferl.org/content/article/1073304.html>. See also, Grigory Tumanov, *Jurors Tried Their Way to Chechnya*, *RusData Dialine-Russian Press Digest*, April 27, 2010.

179. Constitución de la Provincia de Córdoba, §3, ch.1, art. 162.

civil law tradition of the Spanish and Portuguese Empires 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.<sup>180</sup> Trial by jury was also a constitutional right guaranteed by the Constitution of 1853.<sup>181</sup> Ironically, however, the jury trial has never been established by the legislative body in Argentina.<sup>182</sup>

Córdoba, as one of twenty three provinces of Argentina, became the first to introduce the lay justice system in the country. The 1991 code of criminal procedure 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.<sup>183</sup>

While the national debate on the possible introduction of all-citizen juries continues in Argentina, other provinces and municipal governments have already begun 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 a constitutionally-guaranteed jury trial.<sup>184</sup> Another national debate was begun by a social movement whose leader has submitted a petition that included demands for trial by jury.<sup>185</sup> 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 a sufficient and necessary legal foundation for the possible reintroduction of the jury system. In addition, more modern criminal procedures have already been adopted in a number of individual Mexican states; and some of them may even consider the introduction of popular legal systems such as mixed

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180. RICARDO CAVALLERO AND EDMUNDO HENDLER, *JUSTICIA Y PARTICIPACIÓN -- EL JUICIO POR JURADO EN MATERIA PENAL* (1988).

181. 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).

182. Edmundo Hendler, *The Inquisitor: Latin America's Criminal Procedure Revolution: Lay Participation in Argentina: Old History, Recent Experience*, 15 SW. J. L. & TRADE AM. 1, 9 (2008).

183. 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).

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

185. The social movement was led by Juan Carlos Blumberg whose son was murdered by his kidnappers. On April 2004, he assembled in Buenos Aires along with over 150,000 people who 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. Many other cities and towns in Argentina, similar demands were submitted by movement supporters. For more detailed discussion of this social movement in Argentina, see Juan Pegarano, *Resonancias y silencios sobre la inseguridad*, REVISTA ARGUMENTOS, No. 4, Oct (2004), available at <http://argumentos.fsoc.uba.ar/n04/articulos4.htm>.



tribunals and/or all-citizen jury trials. As the Mexican student survey indicates, the younger generation is more inclined to accept lay justice proceeding which offers a promising alternative to the traditional bench trial system.

Like Argentina, Venezuela suffered under a central dictatorship and went through a similar transformative period, ultimately adopting 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.<sup>186</sup> 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.”<sup>187</sup> 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.”<sup>188</sup> Still another claim has been made by the United Nations, indicating that the Venezuelan judiciary was one of the least “credible” in the world.<sup>189</sup> 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.”<sup>190</sup>

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).<sup>191</sup> 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.<sup>192</sup> 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.<sup>193</sup> Although the two party adversarial system – that of the accuser and the accused – was present in previous procedural codes, the actual impartiality of the judge as a third party effectively was only ensured by the new adversarial system.

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186. Thaman, *supra* note 102, at 766.

187. CODE OF CRIMINAL PROCEDURE, Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition,” *Organization of American Studies* (2007), available at [http://www.oas.org/juridico/MLA/en/ven/en\\_ven-int-des-codepenal.html](http://www.oas.org/juridico/MLA/en/ven/en_ven-int-des-codepenal.html).

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

189. *Id.*

190. *Id.*

191. Thaman, *supra* note 102, at 767.

192. *Id.*

193. *Id.*

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.<sup>194</sup> 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:<sup>195</sup> (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.<sup>196</sup> 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.<sup>197</sup>

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 impacting their legal traditions, social and political evolution, and persistent problems of political and judicial corruptions. Like Mexico, Venezuela had had jury trials and oral procedures until the beginning of the twentieth century.<sup>198</sup> However, the authoritarian regime of General Juan Vincente Gomez later unified the legal procedure and suppressed jury trials.<sup>199</sup> When Hugo Chavez 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.<sup>200</sup>

#### *D. Strict Eligibility Standards*

Lastly, we wish to make critical comments on the jury eligibility standards in Mexico. The 2001 federal initiative attempted to re-introduce the popular jury in criminal trials in Mexico. The proposal also suggested a strict standard on jury eligibilities, in which people with legal knowledge

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194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. Pablo Han, Jesus Enrique Parraga, and Jorge Morales Manssur, *La participación ciudadana en la justicia penal Venezolana [The Civic Participation in the Venezuelan Penal Justice: Theoretical Formulation vs. Practical Reality]*, REVISTA CENIPEC, Jan.-Dec. 254-256 (2006) (hereinafter *La participación*), available at <http://www.saber.ula.ve/handle/123456789/23576/>.

199. ROGELIO PEREZ PERDOMO, LA JUSTICIA PENAL EN VENEZUELA AL FINAL DEL PERIODO COLONIAL: EL CASO DE GUAL Y ESPARA, 6 *Anales de la Universidad Metropolitana* 1, 175, 180-196 (2006).

200. *La participación supra* note 199 at 254-255.

would be given an exclusive right to participate in criminal jury trials.<sup>201</sup> Specifically, this proposal requires that jury candidates consist of law graduates who are then nominated by municipal presidents before the Federal Judicial Council.<sup>202</sup>

Mexico's initiative to restrict the jury opportunity to those with privileged educational backgrounds is neither new nor 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.<sup>203</sup> Article 4 of the 2004 Chinese Lay Assessor Act indicated that assessors must have diplomas of college or a higher educational status.<sup>204</sup> 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.<sup>205</sup> 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 the Subsection 2 of Article 33 of the Chinese Constitution, which states, "all citizens of the People's Republic of China are equal before 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 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."<sup>206</sup> 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 clearly 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 candidates must be citizens of Venezuela, more specifically, residents of the jurisdiction where the trial is to be held; at least 25 years of age—though those 70 years of age or older may exonerate themselves if they so choose; without a criminal record; possess sound body

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201. Gaceta 2001, *supra* note 7.

202. 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 and David A. Shirk, eds., 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).

203. Fukurai & Wang, *supra* note 143.

204. *Id.* 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 been long criticized by lack of institutional support, insufficient funding, infrequent use of lay assessors, and people's resistance to participate.

205. *Id.*

206. *Id.*

and mind; and have an “average, diversified” education.<sup>207</sup> Individuals affiliated with law enforcement, the military, legal professions, and politicians are prohibited from serving.<sup>208</sup>

In the U.S., 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.<sup>209</sup> 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.<sup>210</sup> To ensure equitable jury representation from socially and economically disenfranchised segments of population, jury reform has been a contested political issue in the U.S., where racial and ethnic minorities such as African Americans and Hispanics have been systematically excluded from jury service.<sup>211</sup>

The U.S. Supreme Court has recognized minority populations as forming special and distinct groups that need judicial protection against discrimination in jury selection.<sup>212</sup> Since the large proportion of criminal defendants come from the same racial or ethnic backgrounds, 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-neutral investigative preparation and trial presentation of such evidence – have become critical concerns of both police and prosecutors.<sup>213</sup> For in the minds of minority jurors, these matters may raise reasonable doubt that the accused may not be guilty.

#### *E.Mexican Sovereignty and Judicial Independence*

Throughout its existence in Mexico, the jury was considered an important political and legal institution and has had both supporters and detractors. In the early 19<sup>th</sup> century, Jose Maria Luis Mora unequivocally supported the introduction of the jury system, arguing that jurors were less likely to act on bribes and influence, which made them more independent of corruptive influence, thereby guaranteeing the autonomy of the judicial as a whole.<sup>214</sup> Another Mexican legal

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207. Thaman, *supra* note 102, at 768.

208. *Id.*

209. *See generally*, HIROSHI FUKURAI, EDGAR W. BUTLER, & RICHARD KROOTH. RACE AND THE JURY: RACIAL DISENFRANCHISEMENT AND THE SEARCH FOR JUSTICE (1993).

210. *See id.*

211. *See id.*

212. *See id.*

213. *See generally*, FUKURAI & KROOTH, *supra* note 137.

214. JOSÉ MARÍA LUIS MORA, *Disertación ante el Supremo Tribunal de Justicia del Estado de México, para examinarse de abogado* [Lecture before the Supreme Court of the State of Mexico, to train as a lawyer], 1827, en *Obras Sueltas*, México at 528 (1963).

scholar, Laglois, also argued that the jury represented the people's court and "the most effective bulwark of civil liberties."<sup>215</sup>

However, there were those who equally contested those ideas. In 1856, Ignacio Vallarta once insisted that the jury was not inherent in democracy because in modern democracies, individuals participate through representatives, and judges are seen as a lawful representative of the judiciary; jurors are randomly chosen, not through a representative electoral process, thereby lacking democratic legitimacy.<sup>216</sup> He also argued that the jury needed a special type of societal milieu to flourish, especially in a society which is more open to diverse political ideas, conscious of their rights, keenly interested in public affairs, and with enough enlightenment and morality; however, he argued that those pre-requisite conditions neither existed nor were widely shared among the citizenry in Mexico.<sup>217</sup>

Such a skeptical view on the jury was similarly shared by prominent law professor and contemporary legal critic Sergio Garcia Ramirez at the Institute of Juridical Investigations at UNAM. Citing the deep public distrust in legal institutions and existent corruptions in the government, Dr. Garcia stated, "Mexico once stood as a prominent nation in Latin America. But we are no longer seen as a big brother [in the Western Hemisphere] and I say this with great pain."<sup>218</sup> He added that the people who study the justice system and those who practice law do not favor the jury system, arguing that "Mexico needs to make their decisions [on legal reforms] according to their [socio-political] circumstances, and I do not see [the possibility of re-introducing lay participation in legal institutions] at this time."<sup>219</sup> His view, however, was not shared by one of his students. Julia Trejo Martinez, a student at the Facultad de Derecho at UNAM stated, "[as] the educational system here in Mexico is not excellent . . . people [should] participate in [making] important decisions of community."<sup>220</sup> Nevertheless, of the 18 people we interviewed, most people felt that education was a necessary requirement for jury service. One exception came from Francisco, a taxi driver who insisted, "it is not necessary to have education, like a university

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215. Discurso de Laglois en el Congreso Constituyente, sesión del 18 de agosto de 1856, en Zarco, Francisco [Laglois Speech at the Constitutional Convention meeting of 18 August, 1856, at Zarco, Francisco, *Historia del Congreso Constituyente, México, 1987* [History of Constitutional Congress, Mexico, 1987], Inehrm "Gobierno del Estado de Puebla [Puebla State Government], at.206-207.

216. Discurso de Ignacio Vallarta en el Congreso Constituyente, sesión del 19 de agosto de 1856, en Zarco, Francisco. [Ignacio Vallarta Speech at the Constitutional Convention meeting of 19 August, 1856, at Zarco, Francisco]. *Historia del Congreso Constituyente, México, 1987* [History of Constitutional Congress, Mexico, 1987], Inehrm "Gobierno del Estado de Puebla [Puebla State Government], at 200-210.

217. *Id.* at 217-224.

218. Interview with Dr. Sergio Garcia Ramirez at el Instituto de investigaciones jurídicas [Institution of Juridical Investigation], UNAM (March 18, 2009). The interview transcript is on file with the first author.

219. *Id.*

220. Interview with Julia Trejo Martinez, a student at Facultad de Derecho, UNAM (March 17, 2009). The interview transcript is on file with the first author.

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education. The common people can intervene [and participate in jury trials].”<sup>221</sup>

Dr. Jorge Ulises Carmona Tinoco, the Coordinator of the Unit of the Planning and Institutional Relations in UNAM, also questioned the ability of jurors to engage in competent deliberative discussion. As the investigation of crimes is becoming more and more technical and scientific, Dr. Carmona asked whether or not technical and scientific questions can be adequately understood by the jury, and concluded that “technical or scientific . . . [discussions should not] be left to the decision of a jury.”<sup>222</sup> He was even surprised to find out that the possible implementation of jury trials was a subject considered to be progressing instead of digressing.<sup>223</sup>

Dr. Garcia also claimed that the lay judge system, not to mention oral and adversarial procedures, was perhaps too costly at this time, providing the following analogy. “Here is a big and beautiful bowl for some really good soup. You would say the bowl is very beautiful, but where is the soup? . . . [The introduction of jury trials] is too costly. We have to modify the structure of the tribunals, we have to modify the architecture of the tribunals, we have to modify the preparation and mentality of the judges, who are [even] less favorable of this type of justice system, of defense attorneys, [and] of the university and the public ministry.”<sup>224</sup> Dr. Garcia’s skepticism resonates with the political view expressed by another politician, Emilio A. Martinez, who, in 1897 stated, “For this institution [of the jury] to take root in the soil needs a politically independent country and [the citizenry who are] open to long term political ideas, knowing your rights, determine to hold and fortify [your rights], . . . always eager to distrust all institutions that could facilitate attacks against the freedom of citizens, keenly interested in public affairs, who can understand the value of the independence of judges.”<sup>225</sup> He stated that in nearly one hundred years ago, such conditions were nowhere to be found in Mexico.

The introduction of the jury system is not seen as the effective strategy to combat the deep-rooted judicial or police corruption, while the corruption in the government was widely recognized, and the extent and enormity of corruption and impunity was keenly critiqued by all of our Mexican interviewees. Our interviews also revealed that one dominant theme was the amount of corruption that goes on in Mexico. Most of the people that participated in our interviews expressed in their response at least once if not more times, that corruption was, and continues to be, a major issue in Mexico. One interviewee stated, “unfortunately the juridical system. . . is really corrupt and that is why a lot of innocent people [are] in jail.”<sup>226</sup> One of the gentlemen we briefly interviewed gave us a

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221. Interview with Francisco, a taxi driver (March 19, 2005). The interview transcript is on file with the first author.

222. Interview with Dr. Jorge Ulises Carmona Tinoco, Coordinador de la Unidad de Planeación y Relaciones Institucionales (March 18, 2009). The interview transcript is on file with the first author.

223. *Id.*

224. Garcia, *supra* note 218.

225. Emilio A. Martínez. *El jurado en materia criminales una forma de procedimiento inconveniente en el país*, El Foro, Año XVII, XLVIII (números 32-35), 21 a 25 de febrero de 1897, número 32, at 34.

226. Francisco, *supra* note 221.

very short but memorable response as to his opinion to the corruption of the government, stating, “I don’t have confidence in anyone, not even in my own shadow.”<sup>227</sup>

Many UNAM students also shared the view that the implementation of a jury system as a method of combating corruptions and impunity is too foreign and abstract. For them, it was difficult to imagine the jury actually making a difference in the criminal justice system. Dr. Garcia also stated that “at this moment, sincerely I think that it [the introduction of the jury system] is not a topic of first priority for justice in Mexico. The system of first priority is how to ameliorate the police, how to better the public ministry, how to solve the problems with jails, how to combat impunity, how to find corruption, which is what is truly a gigantic problem.”<sup>228</sup>

Despite the fact that establishing the jury system in Mexico was not seen to eradicate the on-going corruption in the government, many interviewees preferred to be adjudicated by the jury, rather than the judge. As nearly two thirds of our survey respondents, including the majority of our interviewees, preferred the jury trial over the bench trial (see Table 1).<sup>229</sup> One of our interviewees indicated that he would prefer to be tried by a jury of his peers rather than a judge “because it is a lot easier to pay a judge.”<sup>230</sup> This view resonated with the opinions of prominent politicians, Jose Maria Luis Mora and Jose Maria Mata, of the early 19<sup>th</sup> century political activists. They argued that jurors are less likely to act on bribes and influence, which made them more independent, thereby guaranteeing the autonomy of the judiciary as a whole.<sup>231</sup> In 1880, politician Alberto Lombardo also postulated the view that the administration of justice should not be entrusted to professional judges because public jobs were not distributed or allocated on the basis of the ability and merit, but [due to favoritism of ministers].<sup>232</sup> In 1934, another scholar Francisco Duarte Pochas reported that judges obtained the job by political influence and friends for his collaboration in the choice of who appoints them, and as a result, his decisions were always “subject to the whim of the person to whom they owe their appointment.”<sup>233</sup>

The jury embodies the right of the community to participate in the administration of justice and thus firmly establishes the principle of popular sovereignty in Mexico. The institutional

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227. Interview with Jorge, Centro de Coyoacan, (March 19, 2009). He stated, “No tengo confianza en nadie, ni en mi propia sombra.” The interview transcript is on file with the first author.

228. *Id.*

229. 62.6% of Mexican students preferred a jury trial to a judge trial. For male respondents, the figure (65.0%) was even higher than woman (see Table 1, under Mexico and (5) Confidence in the jury system).

230. Interview with Angel, an older gentleman in a bus from Mexico City to Teotihuacan (March 16, 2009). The transcript is found in the report, Susan Lopez, *Person to Person Interview and Analysis: Mexico City, Mexico, March 16 2009-March 19, 2009*, (2009). The interview transcript is on file with the first author.

231. Discurso de José María Mata en el Congreso Constituyente, sesión del 19 de agosto de 1856, en Zarco, Francisco, *Historia del Congreso Constituyente, México, 1856*, Inehrm: Gobierno del Estado de Puebla, at 225.

232. Alberto Lombardo, “El jurado,” in *El Foro*, Año VIII, VII (número 80), 29 de abril de 1880, at 1.

233. Francisco Duarte Pochas, *Jurado Popular. Sugerencias para restablecerlo en los delitos del Orden Común, México*, Tesis de licenciatura, UNAM, (1934), at 48.

establishment of the jury thus reconstitutes a key feature of institutional building strategies designed to eliminate governmental corruption and combat against organized criminal activities in Mexico. The installation of the jury system in Mexico also fits the Merida Initiative requirement because the extra funding was made available to further promote judicial reforms, institutional building for anti-corruption, and the establishment of the rule of law activities. Specifically, the Economic Support Fund (ESF) of the Merida Initiative states that the funding be expedited to promote the rule of law and human rights by supporting "Mexico's justice sector reforms and respect for human rights."<sup>234</sup> The fund must also be used to expand the utilization of alternative case resolutions such as first offender's programs, mediation, and restorative justice.<sup>235</sup> The important legal foundation has already been introduced by the 2008 judicial reform, including the re-assertion of the principle criminal justice concepts, such as the presumption of innocence, the burden of proof for conviction upon the prosecution, not upon the suspect or criminal defendants to prove their innocence, and the guarantee for oral and adversarial legal proceeding in open court. The re-introduction of jury trial is thus the next logical step of Mexico's judicial reform. The installation of the jury system also represents an effective political strategy to eradicate the public reliance on the corrupt judiciary and promote the rule of law and human rights by democratizing its own judicial institutions.

#### VI. PART IV. CONCLUSIONS

As the drug violence has spread in Mexico and along the U.S. border, the American Government has approved, in the first phase of the \$1.4 billion Merida Initiative, \$400 million for Mexico to provide funding for anti-drug operations, intelligence assistance, and police training. Additional governmental assistance has also been earmarked to further promote institution-building and structural reforms aimed at strengthening the rule of law and combating governmental corruption. We argue that governmental institutional reform is necessary to strengthen Mexico's efforts to increase the transparency, accountability, and professionalization of both its law enforcement agencies and judicial institutions.

On this foundation, this paper has examined the possible re-establishment of the jury system in Mexico as an important structural, judicial reform. We have examined whether or not the system of popular civic participation is effective in democratizing the criminal justice system, creating greater transparency and accountability in criminal proceedings, and building broader public confidence in the system of Mexican justice. While the 2001 federal proposals failed to re-introduce the popular jury in judging general criminal cases, the 2008 judicial reform introduced the legal principles of an oral argument during trials, the presumption of innocence, and the adversarial criminal process in Mexico.

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234. Merida Initiative Funding, Government Accountability Office, Pub. GAO-10-253R 22 (December 3, 2009) *available at* <http://www.gao.gov/new.items/d10253r.pdf>.

235. *Id.*



The switch from a closed, inquisitorial process to an open, oral, and more transparent trial clearly represents a paradigmatic shift in Mexican jurisprudence. Until 2008, judges executed their deliberations in private and based their decisions exclusively on written affidavits prepared by prosecutors and police investigators. Reform requires something fundamental to equity in our time. 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 regards 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 also support 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, besides the need for all-citizen juries – these together would provide important options for the possible establishment of the lay justice system in Mexico.

We also believe that it is imperative to open the national debate covering the introduction of the lay justice system, which has failed to receive the national attention it deserves. By modeling after a popular jury system currently adopted in more than 60 countries around the world,<sup>236</sup> the future transformation of Mexico's classic jury system and criminal procedures will allow Mexican citizens to directly participate in criminal trials, make criminal justice proceeding ever-more open and transparent, and help build a strong democratic foundation for supporting and extending civil society in Mexico.

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236. Vidmar, *supra* note 12.