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# Chasing Democracy: The Development and Acceptance of Jury Trials in Argentina

Caitlyn Scherr

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# Chasing Democracy: The Development and Acceptance of Jury Trials in Argentina

Caitlyn Scherr\*

*Argentina's 1853 National Constitution and the 1994 amendment to the Code of Criminal Procedure both guarantee a right to a trial by jury, yet the Argentine Congress has failed to pass the necessary legislation to establish a national jury system. However, nothing has stopped the individual provinces from creating their own systems for public participation. In the 1990's, the province of Córdoba implemented mixed juries. The Neuquén province successfully implemented an even more advanced jury system in 2011. In recent years, this has created a snowball effect, with Buenos Aires, Chaco, and at least three other provinces following suit in quick succession.*

*The implementation of a trial by jury system has caused mixed reactions in Argentina, which has a historically inquisitorial legal system. This inquisitorial background has historically caused significant resistance to the establishment of jury trials. Critics are concerned that allowing 12 jurors to share responsibilities with the judge will lead to a greater decentralization of power, and more uncertain and unfair trial results. Proponents of the recent legislation argue that the decentralization of power is a positive change that should be embraced, as the judiciary is the only branch of the state government without public participation.*

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*I will argue that, based on Argentina's history and the current public sentiment in the country, as well as a comparison to the jury system of the United States, the establishment of a trial by jury is a step in the right direction, which will lead other provinces, and eventually the national legislature, to follow suit.*

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## I. INTRODUCTION

The classic American movie *12 Angry Men*, set in the 1950's, depicts the story of one brave juror who solely voted not to convict a young defendant, eventually convincing each of the other jurors not to convict as well.<sup>1</sup> In 2014, as part of an effort to familiarize Argentine citizens with the workings of the jury system, the Buenos Aires Ministry of Justice negotiated a deal with MGM Studios that allows it to massively distribute *12 Angry Men* to schools, professional groups, and the general public.<sup>2</sup> Through this initiative, the government hopes to educate the public on the jury system and diminish the foreign nature of the institution.<sup>3</sup>

The jury system is a celebrated aspect of American culture. It is discussed in the news, taught in classrooms nationwide, and guaranteed by the Sixth Amendment of the United States Constitution.<sup>4</sup> In Argentina, however, the mechanics of a jury system are not common knowledge, despite constitutional guarantees that are over 150 years old.<sup>5</sup> Only recently have provincial legislatures begun to provide for trial by jury, necessitating public education on this democratic institution.

Argentina's 1853 National Constitution guarantees a jury trial in three separate sections.<sup>6</sup> Article 24 requires Congress to "promote . . . the establishment of trial by jury."<sup>7</sup> Additionally, Article 75, subsection 12, gives Congress the power to enact any legislation necessary to implement a trial by jury system.<sup>8</sup> Finally, Article 118

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<sup>1</sup> 12 ANGRY MEN (MGM Studios 1957).

<sup>2</sup> Cristian Penna, *Doce Hombres en Pugna Reloaded*, JUICIO POR JURADOS (May 24, 2014), <http://www.juicioporjurados.org/2014/05/juicio-por-jurados-la-utilidad-de-las.html>.

<sup>3</sup> *Id.*

<sup>4</sup> U.S. CONST. amend. VI.

<sup>5</sup> Art. 24, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

<sup>6</sup> *See id.* at art. 24, 75, 119. Those provisions were maintained verbatim by the 1994 amendment to the Constitution. Only the numbering of two of the three provisions were changed: former Article 67 is now Article 75, and former Article 102 is now Article 118.

<sup>7</sup> *Id.* at art. 24.

<sup>8</sup> *Id.* at art. 75.

requires most criminal cases to be “decided by jury once this institution is established in the Nation.”<sup>9</sup> Per Article 118, trials must be “held in the province where the crime has been committed . . . .”<sup>10</sup>

Despite the express constitutional provisions, Argentina has yet to pass the necessary legislation to establish federal jury trials.<sup>11</sup> Though then-Senator Cristina Fernández de Kirchner presented a bill to the federal legislature in 2004 and 2006 in the hopes of sparking progress, neither was successful.<sup>12</sup> In addition, the National Supreme Court has ruled against jury trial rights on several occasions.<sup>13</sup> In 1911, 1932, and 1947, the Court denied defendants’ motions requesting jury trials on the rationale that the constitution “do[es] not require Congress to *immediately* establish” a jury system.<sup>14</sup> In 1991, for the first time, a trial judge in Buenos Aires granted a similar motion, but this decision was emphatically reversed by the Court of Appeals.<sup>15</sup> The court indicated that it could not take action until the legislature passed the necessary laws establishing a jury system.<sup>16</sup> Between denied motions for jury trials and a lack of successful legislation, neither the judiciary nor the legislature has validated the relevant federal constitutional provisions.<sup>17</sup>

Though the national government has not embraced the constitutional guarantee to a jury trial, nothing has stopped the provinces from creating their own systems for public participation. In the 1990’s, the province of Córdoba established and implemented

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<sup>9</sup> *Id.* at art. 118.

<sup>10</sup> *Id.*

<sup>11</sup> Edmundo S. Hendler, *Lay Participation in the Judicial Process: The Situation In Argentina*, 2002 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 81, 81 (2003) [hereinafter Hendler, *The Situation in Argentina*].

<sup>12</sup> Luciana Bertoia, *BA Province Begins Trial by Jury*, BUENOS AIRES HERALD (May 21, 2014), <http://www.buenosairesherald.com/article/159982/ba-province-begins-trial-by-jury>.

<sup>13</sup> Edmundo Hendler, *Lay Participation in Argentina: Old History, Recent Experience*, 15 SW. J.L. & TRADE AMERICAS 1, 9 (2008) [hereinafter Hendler, *Old History, Recent Experience*].

<sup>14</sup> *Id.* (emphasis added).

<sup>15</sup> *Id.* at 10.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

mixed juries, comprised of both laypersons and judges.<sup>18</sup> A more expansive jury system was adopted in Córdoba in 2004, which influenced the Neuquén province to successfully adopt jury legislation in November 2011.<sup>19</sup> Subsequently, the Buenos Aires and Río Negro provinces passed laws, in September 2013 and October 2014, respectively, requiring the establishment of a trial by jury in the province.<sup>20</sup> In 2015, the Chaco province passed its own jury law.<sup>21</sup> Several other provinces are discussing passing similar laws, or have similar laws currently pending in their legislature.<sup>22</sup>

The implementation of a jury system has caused mixed reactions in the country.<sup>23</sup> Argentina's historically inquisitorial system triggers some resistance to jury trials.<sup>24</sup> Critics of jury trials are concerned that allowing laypersons to share responsibilities with the judge will lead to a greater decentralization of power, and more uncertain and unfair trial results.<sup>25</sup> In addition, juries may undermine jurists who have spent years training and preparing for their specialized careers.<sup>26</sup> Proponents of the recent legislation argue that the decentralization of power is a positive change that should be embraced, as the judiciary is the only branch of the provincial government without public participation.<sup>27</sup>

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<sup>18</sup> María Inés Bergoglio, *Metropolitan and Town Juries: The Influence of Social Context on Lay Participation*, 86 CHI.-KENT L. REV. 831, 832 (2011) [hereinafter Bergoglio, *Metropolitan and Town Juries*].

<sup>19</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.); Bertoia, *supra* note 12.

<sup>20</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.); *see also* Law No. 14,543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.); Law No. 5020, RN, Dec. 10, 2014, 5319 B.O. Sup. (Arg.).

<sup>21</sup> Law No. 7661, CHO, Sept. 2, 2015, 9839 B.O. 1 (Arg.).

<sup>22</sup> Skype Interview with Andrés Harfuch, Vice President, Asociación Argentina de Juicio por Jurados (Jan. 1, 2015).

<sup>23</sup> *Id.*

<sup>24</sup> "Argentina was by then a new country, that had recently become independent from Spain and the people were born and raised under Spanish traditions, to which the jury was unknown." E-mail from Francisco Pont Vergés, Judge, Criminal Trib. of San Martín, to author (Jan. 8, 2015, 08:28:15 EST) (on file with author).

<sup>25</sup> Bertoia, *supra* note 12.

<sup>26</sup> Bergoglio, *Metropolitan and Town Juries*, *supra* note 18, at 840.

<sup>27</sup> Bertoia, *supra* note 12.

Despite mixed reactions, it seems the majority of the Argentine public agrees with the institution of jury trials. In 1998, a nationwide survey revealed that 72% of the people interviewed thought jury trials would improve the judiciary.<sup>28</sup> A 2004 study in Buenos Aires indicated that 66% of people interviewed believed implementing jury trials would reduce judicial corruption.<sup>29</sup> These early surveys seem to be validated; in March 2015, a compilation of pre- and post-trial surveys in Buenos Aires revealed that 85.7% of jurors would serve on a jury if they were summoned again, and 93.75% of jurors felt their opinion of the criminal justice system had improved since before serving as a juror.<sup>30</sup>

Legal professionals, on the other hand, were not originally as convinced.<sup>31</sup> A 2003 study in Córdoba showed that only 31% of lawyers (as opposed to 56% of the general population) favored a jury trial.<sup>32</sup> Though he is in strong favor of the jury system, Judge Francisco Pont Vergés believes the system generally lacks the support of judges and state prosecutors.<sup>33</sup> This is likely due to their minimal participation in the legislative process.<sup>34</sup> According to Judge Pont Vergés, these groups were not consulted during the legislation's development, and in the few public hearings that occurred, only a minority of jurists made their voices heard.<sup>35</sup>

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<sup>28</sup> Bergoglio, *Metropolitan and Town Juries*, *supra* note 18, at 838.

<sup>29</sup> *Id.* at 839.

<sup>30</sup> *Debutó San Isidro con los juicios por jurados: resultados de las encuestas*, JUICIO POR JURADOS (July 2, 2015), <http://www.juicioporjurados.org/2015/07/resultados-de-las-encuestas-los-jurados.html>.

<sup>31</sup> However, now it seems the tide is changing as jury trials become more prevalent. See *El juicio por jurados en Buenos Aires se gana el respeto y la aprobación de jueces, fiscales y defensores*, JUICIO POR JURADOS (Oct. 16, 2015), <http://www.juicioporjurados.org/2015/10/trial-by-jury-in-buenos-aires-gains.html> (for an example of changing opinions in Buenos Aires).

<sup>32</sup> *Id.*; see also María Inés Bergoglio, *New Paths Toward Judicial Legitimacy: The Experience of Mixed Tribunals in Córdoba*, 14 SW. J.L. & TRADE AMERICAS 319, 325 (2008) [hereinafter Bergoglio, *New Paths Toward Judicial Legitimacy*].

<sup>33</sup> Judge Pont Vergés is convinced jury trials are an excellent way to try crimes, and hopes that it will overcome all obstacles and be successful in Argentina. E-mail from Francisco Pont Vergés, *supra* note 24.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

The public view supporting jury trials may have been influenced by a well-known 1996 murder trial in the province of Catamarca.<sup>36</sup> It was suspected that local politicians were involved with the murder, and the case sparked considerable controversy.<sup>37</sup> Citizens passionately followed the proceedings through the media until a three-judge panel forbade televised broadcasts.<sup>38</sup> Citizens fervently protested throughout Argentina, ultimately causing the Supreme Court of Catamarca to, within twenty-four hours, order the broadcasts to resume.<sup>39</sup> This case demonstrated the potential power of public intervention in criminal cases. Citizens recognized that their actions could positively impact the justice system, and their voices could cause substantial change. This mindset may have opened the door for greater acceptance of public participation in the justice system through juries.

This note aims to inform readers of the recent developments of jury trial rights in Argentina, the acceptance of which had stalled for decades but is finally gaining credence. It will discuss the predicted future success of the jury system and offer suggestions for improvement. This note is organized into four sections. The first section will provide a brief historical overview of Argentina, noting the tension between inquisitorial and adversarial methods that distinguish Argentina from the United States, and cause resistance to a federal jury system. Section two will examine the first three Argentine provinces to actually implement jury trials – Córdoba, Neuquén, and Buenos Aires. It will also briefly discuss bills recently passed in the Río Negro and Chaco provinces. Section three will compare the Argentine jury systems, focusing on Neuquén and Buenos Aires, to that of the United States, taking Argentina's constitutional history and influence by the United States Constitution into account. Section four will comment on the direction and eventual success of jury trials in Argentina and provide suggestions for improvement.

Based on Argentina's history and the current public sentiment in the country, the establishment of a trial by jury is a positive, though not flawless, step in the right direction, which will lead other prov-

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<sup>36</sup> Hendler, *Old History, Recent Experience*, *supra* note 13, at 3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

inces, and eventually the national legislature, to follow suit. The experiences in the Córdoba, Neuquén, and Buenos Aires provinces suggest that the jury system will have a mixed, though generally positive reception in other provinces, and in Argentina overall, in the long run.

## II. HISTORICAL BACKGROUND

The 1853 Constitution structured Argentina as a federal country.<sup>40</sup> Thus, the Federal Congress enacts substantive laws that are enforced by the individual provinces.<sup>41</sup> Each province has its own procedural code, so each province decides ordinary criminal cases in its own courts.<sup>42</sup> Generally, a case is processed in two stages—an inquisitorial stage and an adversarial stage.<sup>43</sup> The first Federal Code of Criminal Procedure (established in 1888) incorporated a Spanish-like inquisitorial system.<sup>44</sup> This code remained in place until 1939, when the Córdoba province devised a code that would influence an adversarial-method trend in Argentina.<sup>45</sup>

Though the new code contained some adversarial features, it did not completely eliminate all inquisitorial investigative proceedings, such as the pretrial investigation<sup>46</sup> and the preventative detention of a suspect as a substitute for the punishment of the guilty.<sup>47</sup> However, the revisions permitted oral debate before professional trial judges, inserting an adversarial component that is now common in many

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<sup>40</sup> *Id.* at 11.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Hendler, *The Situation in Argentina*, *supra* note 11, at 82. An inquisitorial system is a method of exposing evidence in which the judge actively investigates and presents the case, as opposed to an adversarial system in which the judge is an impartial mediator between the parties. *Inquisitorial Procedure*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EB-checked/topic/288956/inquisitorial-procedure> (last updated Mar. 12, 2014).

<sup>45</sup> Hendler, *The Situation in Argentina*, *supra* note 11, at 82.

<sup>46</sup> The phase is called “el sumario.” Andrés D’Alessio, *Argentina’s Sluggish Journey Toward A Constitutional Criminal Procedure*, 15 SW. J.L. & TRADE AMERICAS 31, 36 (2008).

<sup>47</sup> *Id.* at 38.

cases.<sup>48</sup> Córdoba's 1939 Code of Criminal Procedure eventually influenced Argentina to modify its federal criminal system in 1992 to include oral debate,<sup>49</sup> bringing it increasingly closer to an adversarial system like that of the United States.

In 2005, the National Supreme Court acknowledged in one of its decisions that the Argentine Constitution aims to establish a "horizontal organization," as opposed to a "vertical" European-Napoleonic structure like some nineteenth century laws had suggested.<sup>50</sup> This is notable because the Court "rarely acknowledge[s] that the Argentine Constitution mandates the United States criminal procedure model, and not the European one."<sup>51</sup> The Court suggested, in dicta, that, not only does the Argentine Constitution require public, oral, and adversarial proceedings in common with the United States' criminal system, but it also orders the establishment of a trial by jury.<sup>52</sup>

### III. CURRENT PROVINCES WITH JURY SYSTEMS

#### A. Córdoba

*[T]he Argentine people demanded justice for they felt they had none; the Argentine people demanded security for they felt none; the Argentine people demanded to believe in their institutions for they no longer believed. So, we legislators in Córdoba must provide answers to the people's demands and create those institutions which will allow us to restore the*

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<sup>48</sup> *Id.* at 40.

<sup>49</sup> Hendler, *The Situation in Argentina*, *supra* note 11, at 83.

<sup>50</sup> Hendler, *Old History, Recent Experience*, *supra* note 13, at 16. Horizontal and vertical are two forms of federalism. Horizontal federalism refers to a structure with separation of powers, with different powers allocated to each equal branch. Vertical federalism refers to the traditional form of federalism; the national government is supreme within certain realms, and the provinces retain the powers that are not given to the national government. *Vertical*, HISTORY LEARNING SITE (May 26, 2015), <http://www.historylearningsite.co.uk/vertical.htm>.

<sup>51</sup> Hendler, *Old History, Recent Experience*, *supra* note 13, at 17.

<sup>52</sup> *Id.* at 16.

*social contract that has been lost, in order to generate a bridge between the people and their leaders; to generate that belief that got lost in time. We must reconstruct the social contract. That is why trial by jury is necessary, because it is an instrument that leads toward the aforementioned goal.*<sup>53</sup>

### 1. Events Preceding Córdoba's Jury System

Though the Córdoba Code of Criminal Procedure of 1939 contained several adversarial aspects, such as “establishing public, oral trials, giving more rights to the defendant during the pretrial phase, and placing the prosecutor in charge of the pretrial investigation of non-serious offenses,” it still included many inquisitorial aspects.<sup>54</sup> It omitted lay participants, valued the rule of compulsory prosecution, and preserved the judge's pretrial investigation duties for serious offenses.<sup>55</sup> Pretrial investigations continued to be written and secret.<sup>56</sup>

Consequently, the oral trials established by this code did not increase the public's faith in the criminal justice system.<sup>57</sup> In fact, most criminal sentences were inherently suspect in the eyes of the Argentine public.<sup>58</sup> In addition, when the public disagreed with the outcome of a trial, it was extremely critical of the judge who made the decision, which led some judges to decide cases according to the reactions of the public rather than the merits of the case.<sup>59</sup>

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<sup>53</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 327.

<sup>54</sup> Máximo Langer, *Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery*, 55 AM. J. COMP. L. 617, 634-35 (2007).

<sup>55</sup> *Id.* at 635.

<sup>56</sup> *Id.*

<sup>57</sup> *Implementing Jury Trials in Argentina: Is it Possible?*, CÁTEDRA HENDLER, [http://www.catedrahendler.org/doctrina\\_in.php?id=31](http://www.catedrahendler.org/doctrina_in.php?id=31) (last visited January 18, 2015).

<sup>58</sup> *Id.*

<sup>59</sup> A suitable example of the dissatisfaction mentioned above can be seen in the events that transpired after a murder trial in Catamarca. “So strong was the pressure of public opinion, that only twenty four hours after the announcement of the prohibition of the television broadcasts, the maximum judicial authority of the Province, the Supreme Court of Catamarca, intervened and ordered they be resumed. The following day, the president of the court that had ordered the suspension quit, thus giving rise to the necessity of a new trial, which could only occur more than one year later with a new panel of judges.” *Id.*

To try to remedy the situation, the Córdoba province replaced its Criminal Procedure Code with a new code in 1991. The 1991 Code aimed to limit the former code's inquisitorial features.<sup>60</sup> Most importantly, the amendments eliminated the investigative judge and established a mixed court, composed of three professional judges and two laypersons.<sup>61</sup> Despite the public's full support, due to the judiciary's "resistance to any sort of innovation within the administration of justice," this new code was not actually implemented until April 1, 1998.<sup>62</sup>

## 2. First Mixed Court (1998)

Mixed courts are juries that consist of both laypersons and judges, as opposed to Anglo-American juries consisting only of laypersons.<sup>63</sup> Here, the three judges and two laypersons deliberated together to reach a verdict.<sup>64</sup> The mixed court established in the 1991 Code could be used only in serious criminal cases.<sup>65</sup> Additionally, Article 369 of the Code required a request by the defendant, the public prosecutor, or the victim in order to use a jury.<sup>66</sup>

In practice, the five court members jointly deliberated and decided issues of both law and fact.<sup>67</sup> They also determined the sentence and the punishment to be given.<sup>68</sup> In order to select the laypersons that would serve on the case, the Supreme Court of Córdoba prepared a list of prospective jurors publicly drawn from a list of registered voters.<sup>69</sup> The prospective jurors needed to be of age, have civil capacity, be capable of exercising political rights, and have at least three years of high school education.<sup>70</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 324.

<sup>63</sup> Langer, *supra* note 54, at 638; *see also* Nancy S. Marder, *An Introduction to Comparative Jury Systems*, 86 CHI.-KENT L. REV. 453, 456 (2011).

<sup>64</sup> Bergoglio, *Metropolitan and Town Juries*, *supra* note 18, at 832.

<sup>65</sup> Hendler, *The Situation in Argentina*, *supra* note 11, at 85.

<sup>66</sup> *Id.* at 84-85.

<sup>67</sup> *Id.* at 85.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

Towards the end of the 1990's, political corruption, economic instability, and an increased crime rate made it increasingly necessary for the Córdoba province to improve its jury system.<sup>71</sup> Citizens were losing faith in their government. "In 2001, Argentina suffered its worst economic collapse in a century."<sup>72</sup> Later that year, the Argentine unemployment rate rose to about twenty percent.<sup>73</sup> The ensuing economic and political chaos led to an increase in crime, especially kidnappings.<sup>74</sup>

In particular, the kidnapping of Axel Blumberg, an engineering student, sparked large demonstrations across Argentina.<sup>75</sup> Much of Argentine society viewed the police as "corrupt and inefficient, political leaders as unsupportive, and penal laws excessively lenient,"<sup>76</sup> which caused citizens to call for many reforms, one of which was the institution of jury trials in cases of homicide involving kidnapping.<sup>77</sup> These protests inspired significant change, and José Manuel de la Sota, Governor of Córdoba, actively supported provincial legislation calling for jury trials for certain crimes.<sup>78</sup> The legislation, named Law 9182, was enacted by Córdoba's legislature on January 1, 2005, and is still valid today.<sup>79</sup>

### 3. The Jury Today (2005)

During the debates before the legislature passed Law 9182, magistrates and lawyers generally approved of the European model mixed court with a lay minority, and they were hesitant to modify it.<sup>80</sup> The jurists were disinclined to leave the deliberation to the jury and the sentencing to the judge, like the Anglo-American, classical model.<sup>81</sup> Their main concern was the average citizen's inability to

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<sup>71</sup> Paul Edwards-Kevin, *The Emergence of Trial by Jury in Argentina*, 11 GONZ. J. INT'L L. 1 (2007).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> More than 400 kidnappings were reported in Argentina in 2003. *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 327.

<sup>81</sup> *Id.*

establish the foundations for the sentence, which is required by constitutional principles.<sup>82</sup> The lack of a provision for waiver of the jury right by the defendant or through plea-bargaining magnified this concern.<sup>83</sup> In other words, if the constitution and legislation provide for trial by jury, a jury must be used.<sup>84</sup>

Law 9182 created a mixed court composed of three professional judges and eight jurors, with four alternates.<sup>85</sup> The jurors must be representative of the community where the defendants are tried.<sup>86</sup> Of the three professional judges, one is appointed as the “President.”<sup>87</sup> The President conducts the trial and answers juror’s questions.<sup>88</sup> However, unlike the other participants, the President only votes on guilt if there is a tie.<sup>89</sup> The judges and jurors are required to jointly deliberate and decide issues of fact by a majority vote.<sup>90</sup> Only the judges vote on issues of law and determine sentencing and punishment.<sup>91</sup> This mixed court is used in cases of aggravated homicide, felony-murder, and those involving public officials.<sup>92</sup> Cases involving economic crimes also qualify for jury trials in Córdoba, though their requirements are slightly different.<sup>93</sup>

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<sup>82</sup> *Id.*

<sup>83</sup> Edwards-Kevin, *supra* note 71.

<sup>84</sup> *Id.*

<sup>85</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 29; *Implementing Jury Trials in Argentina: Is it Possible?*, *supra* note 57; Edwards-Kevin, *supra* note 71.

<sup>86</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 4; Edwards-Kevin, *supra* note 71.

<sup>87</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 29.

<sup>88</sup> *Id.* at art. 29; Edwards-Kevin, *supra* note 71.

<sup>89</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 29; Edwards-Kevin, *supra* note 71.

<sup>90</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 37; Hendler, *Old History, Recent Experience*, *supra* note 13, at 14.

<sup>91</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 44; Hendler, *Old History, Recent Experience*, *supra* note 13, at 14.

<sup>92</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 2; Hendler, *Old History, Recent Experience*, *supra* note 13, at 14; *Implementing Jury Trials in Argentina: Is it Possible?*, *supra* note 57.

<sup>93</sup> See Edwards-Kevin, *supra* note 71 (Explaining that the trial requirements for economic crimes are different. Four jurors are used instead of eight, of which two may be lay jurors, but the other two must have legal training and specialize in economics. Also, the permitted juror age range extends to 70 years of age, instead of 65. “Such procedures ensure that there remains citizen participation in

In an ordinary case, a juror must meet the following requirements: 1) be between 25 and 65 years of age; 2) complete basic educational requirements as mandated by the Argentine government; 3) be an Argentine citizen; 4) be physically and psychologically able to perform as a juror; and 5) be a permanent resident of Córdoba for no less than five years.<sup>94</sup> Several categories of citizens are excluded, such as those employed in branches of the government, lawyers, members of the armed forces, active police or security officials, the clergy of nationally recognized religions, and members of the provincial or municipal accounting offices.<sup>95</sup>

Potential jurors are also disqualified if they are involved in bankruptcy proceedings, have been convicted of certain crimes, or are currently a defendant in cases involving certain crimes.<sup>96</sup> Jurors can be excused if they are sick, if an immediate family member is sick (requiring the potential juror's care), or if they have an economic hardship.<sup>97</sup>

In order to select the jury, the Provincial Electoral Court compiles lists from mandatory voter registrations containing the names of citizens who comply with the above requirements.<sup>98</sup> The lists are valid for one year, after which new potential jurors must be randomly drawn.<sup>99</sup> The potential juror lists are assembled at random and separated by judicial district and gender; one male out of every 1,500 males and one female out of every 1,500 females in a judicial district are selected.<sup>100</sup> The lists are verified and published in the

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trials," as required by the Argentine National Constitution and the Provincial Constitution of Córdoba, "coupled with experts who can understand the complexity of economic issues.").

<sup>94</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 5; Edwards-Kevin, *supra* note 71.

<sup>95</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 6; Edwards-Kevin, *supra* note 71.

<sup>96</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 7; Edwards-Kevin, *supra* note 71.

<sup>97</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 19; Edwards-Kevin, *supra* note 71.

<sup>98</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 8; Edwards-Kevin, *supra* note 71.

<sup>99</sup> E-mail from Andrés Harfuch, Vice President, Asociación Argentina de Juicio por Jurados, to author (Feb. 1, 2015 17:44 EST) (on file with author).

<sup>100</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 8; Edwards-Kevin, *supra* note 71.

Official Bulletin of the province before November 30th each calendar year.<sup>101</sup> Each juror then has fifteen days from the time the list is posted to correct his or her information.<sup>102</sup> After the correct information is confirmed on each potential juror list, that list is randomly narrowed to twenty-four potential jurors, with equal numbers of males and females.<sup>103</sup>

Jurors numbered one through twelve will tentatively serve as jurors, subject to peremptory challenges, challenges for cause, or for any other valid excuse, including sickness.<sup>104</sup> If a juror is excused, the next numbered prospective juror will be called.<sup>105</sup> If jurors are chosen from a prospective juror list, they are taken off the list, and are not eligible to be placed on another prospective juror list for three years.<sup>106</sup>

The jury only has access to evidence presented during trial, and it deliberates in a closed session.<sup>107</sup> Like in the United States, “the court can prohibit the jurors and the alternates from any contact with outside third parties or from reading or viewing media communications during the trial to avoid tampering or the creation of any pre-judgment.”<sup>108</sup> Jurors deliberate all issues before them and must make decisions by at least a majority vote.<sup>109</sup> If both of the professional judges vote contrary to the majority juror decision, the President must review the relevant law and facts with the jurors.<sup>110</sup>

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<sup>101</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 10; Edwards-Kevin, *supra* note 71.

<sup>102</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 13; Edwards-Kevin, *supra* note 71.

<sup>103</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 18; Edwards-Kevin, *supra* note 71.

<sup>104</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 18; Edwards-Kevin, *supra* note 71.

<sup>105</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 18; Edwards-Kevin, *supra* note 71.

<sup>106</sup> E-mail from Andrés Harfuch, *supra* note 99.

<sup>107</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 37; Edwards-Kevin, *supra* note 71.

<sup>108</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 30; Edwards-Kevin, *supra* note 71.

<sup>109</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 44; Edwards-Kevin, *supra* note 71.

<sup>110</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 44; Edwards-Kevin, *supra* note 71.

#### 4. Reception

Jury participation began slowly in Córdoba. In the first year, laypersons participated (in accordance with Law 9182) in only two cases.<sup>111</sup> However, by 2011, forty-three cases were decided with help from juries.<sup>112</sup> In the beginning, Argentines generally had mixed feelings about the institution. An influential Córdoba newspaper expressed skepticism toward the law.<sup>113</sup> Some believed the effects of Law 9182 were more “symbolic and aimed toward legitimizing the judiciary”; only a limited number of jury cases had been resolved in the first few years, and a small number of jury trials meant a small amount of judicial power shared with the citizens.<sup>114</sup>

After juries participated in a few cases, however, it seemed that the tide was changing. Córdoba’s experiences are said to have “awakened enthusiasm about public participation” in Argentina.<sup>115</sup> The same newspaper that had disapproved of the jury system expressed wholehearted approval after seeing juries in action: “Today, members of the jury, you have been approved; congratulations.”<sup>116</sup> It appeared that the institution was “being embraced in the Córdoba province and [was] gaining momentum around the country . . . .”<sup>117</sup>

Interestingly, not only did Argentine citizens favorably perceive the jury system, but they also favorably perceived “the performance of the criminal justice system in general, and also of the judges and officers of the judiciary in particular.”<sup>118</sup> In light of this positive reception, and to encourage acceptance of the system, the Provincial Secretary of Justice and the Provincial Superior Courts of Justice organized courses to educate Argentines on juror duties and the advantages of the jury system.<sup>119</sup>

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<sup>111</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 329.

<sup>112</sup> *Informe Estadístico-Jurados Populares en la Provincia de Córdoba (2005-2014)*, PENSAMIENTO PENAL (Aug. 6, 2015), <http://www.pensamiento-penal.com.ar/doctrina/41646-informe-estadistico-jurados-populares-provincia-cordoba-2005-2014>.

<sup>113</sup> Hendler, *Old History, Recent Experience*, *supra* note 13, at 28.

<sup>114</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 329.

<sup>115</sup> Hendler, *The Situation in Argentina*, *supra* note 11, at 85.

<sup>116</sup> Hendler, *Old History, Recent Experience*, *supra* note 13, at 28.

<sup>117</sup> Edwards-Kevin, *supra* note 71.

<sup>118</sup> Hendler, *Old History, Recent Experience*, *supra* note 13, at 28.

<sup>119</sup> However, individuals need not have completed such a course to serve as jurors. Edwards-Kevin, *supra* note 71.

Of course, not everyone felt positively about the system. Defense lawyers and many judges generally disliked the jury system under Law 9182, usually either because they felt the law was unconstitutional or that it was applied incorrectly.<sup>120</sup> One study revealed that of all the cases decided in the first two years of enacting Law 9182, attorneys objected to the constitutionality of the law in half of them.<sup>121</sup> Generally, attorneys objected to the compulsory nature of the jury system and the fact that jurors had a majority over the professional judges.<sup>122</sup> They questioned whether it was within Córdoba's jurisdiction to create jury laws or pass Law 9182.<sup>123</sup> Attorneys were also concerned that the law might be applied retroactively, imposing jury trials for crimes committed before the law came into effect.<sup>124</sup>

The judicial response to Law 9182 varied.<sup>125</sup> In lower-level courts, judges sustained attorneys' objections (like those described above) in nine out of twelve cases, agreeing that the jury system was unconstitutional.<sup>126</sup> The Provincial High Court of Justice, on the other hand, "supported the innovation with determination."<sup>127</sup> It immediately created a Jury Office, which aimed to resolve issues related to the implementation of the jury system.<sup>128</sup> In the *Navarro* case, the High Court rejected each objection to Law 9182 put forward by attorneys.<sup>129</sup> The Court supported the *Navarro* decision in later cases, securing the jury system's place in Córdoba's criminal justice system.<sup>130</sup>

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<sup>120</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 330.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Tribunal Superior de Justicia [Trib. Sup.] [High Court of Justice], 12/10/2006, "Navarro, Mauricio Orlando / recurso de inconstitucionalidad" (Arg.), available at <http://www.justiciacordoba.gob.ar/consultafallos-net/Pages/Preview.aspx?Id=98162973>.

<sup>130</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 331.

Overall, Law 9182 has been positively received in Córdoba, though most agree the law is not perfect. Edmundo Hendler, a leading expert in jury trials in Argentina, observed in 2008 that “despite its shortcomings and inconveniences,” Córdoba’s mixed courts showed “a great deal of approval by the people,” giving hope to the idea of further improvements in the future.<sup>131</sup> Additionally, though it is a significant step forward, Law 9182 does not exactly establish the jury system the Founders had in mind.<sup>132</sup> The Córdoba Constitution calls for juries in “all ordinary criminal trials,” but Law 9182 limits the offenses that qualify for jury trials.<sup>133</sup>

In addition, juries are not made entirely of one’s peers, but include three professional judges—one of whom writes the opinion that expresses the jury’s decision, and all of whom may sway the laypersons’ opinions.<sup>134</sup> However, these “shortcomings are insignificant” considering that “this change [was] the closest Argentina [had] come in 155 years to reaching the constitutional ideals” contemplated by the Founders.<sup>135</sup>

### B. Neuquén

Córdoba’s success with mixed juries caused the Neuquén province to consider implementing a jury system as well. In 2011, the province passed Law 2784 establishing an Anglo-American jury system,<sup>136</sup> as opposed to Córdoba’s mixed court system, and the first jury trial in Neuquén occurred in April 2014.<sup>137</sup> This was the first Anglo-American jury system of its kind in Argentina.<sup>138</sup> In 2014,

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<sup>131</sup> Hendler, *Old History, Recent Experience*, *supra* note 13, at 29.

<sup>132</sup> D’Alessio, *supra* note 46, at 42.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.).

<sup>137</sup> *Sesión: Destacan Primer Juicio por Jurados en la Provincia*, DIPUTADOS MPN (Apr. 16, 2014), <http://www.diputadosmpn.com/sesion-destacan-primer-juicio-por-jurados-en-la-provincia>.

<sup>138</sup> *Id.*

Neuquén completed seventeen jury trials, which were a huge success.<sup>139</sup> The jury trials were well received by defendants, victims, and the public—an unexpected reaction.<sup>140</sup>

### 1. Law 2784

According to Law 2784, juries in Neuquén are used for cases involving death, serious injury, or sex crimes, provided that the prosecutor is requesting a sentence of 15 years or more in prison.<sup>141</sup> Within the ten days before trial, the Judicial Office must pull the names of potential jury members from the voter registration lists previously compiled.<sup>142</sup> The Judicial Office must select no less than twice the number of required jurors, and it also must select the judge.<sup>143</sup> Then, the judge must conduct a hearing to determine the potential jurors' fitness and hear proffered reasons for being unable to serve.<sup>144</sup>

At this time, each party may challenge potential jurors for cause if it feels there is an issue that affects their impartiality.<sup>145</sup> Then, the defense and the prosecution can each exercise one challenge without cause, the equivalent of a peremptory strike in the United States.<sup>146</sup> After this hearing, jurors numbered one through twelve in the raffle are seated, and they cannot be excused after the trial has begun.<sup>147</sup>

Twelve people must compose each jury, and there must be four alternates.<sup>148</sup> Law 2784 requires each jury to be diverse.<sup>149</sup> It must be comprised of half men and half women, with at least half the jury from the same cultural and social environment as the accused.<sup>150</sup>

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<sup>139</sup> *Hacen Positivo Balance de los Juicios por Jurados*, DIARIO RIO NEGRO (Dec. 15, 2014), <http://www.rionegro.com.ar/diario/hacen-positivo-balance-de-los-juicios-por-jurados-5409376-9701-nota.aspx>.

<sup>140</sup> *Id.*

<sup>141</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 35.

<sup>142</sup> *Id.* at art. 197.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at art. 198.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at art. 35.

<sup>149</sup> *Id.* at art. 198.

<sup>150</sup> *Id.*

Young and old people must both participate.<sup>151</sup> When it is not possible to meet these requirements, the Judicial Office must perform another raffle to fill the extra spots in accordance with the diversity rules.<sup>152</sup>

When each side finishes presenting evidence, the judge, who determines the applicable law, meets with all parties outside of the presence of the jury to discuss which jury instructions are appropriate.<sup>153</sup> Once this is complete, under Article 206 of Law 2784, the judge must present the instructions to the jury and clearly explain the applicable law and the legal issues.<sup>154</sup> Immediately thereafter, the full jury must deliberate in a secret session, without the judge.<sup>155</sup> No person may enter the room other than the jury members, or the jury may be nullified.<sup>156</sup> The deliberation cannot last for more than two days.<sup>157</sup> However, the jury may be suspended if a juror becomes ill, but if the suspension lasts longer than three days, the parties must perform a new trial.<sup>158</sup>

The jurors' individual votes must remain secret.<sup>159</sup> Law 2784 requires only an eight-to-four majority to deliver a guilty verdict, even in life imprisonment cases.<sup>160</sup> In contrast to the system in Córdoba, Neuquén's system specifically does not require a written opinion disclosing the reasons for the verdict at the end of a trial.<sup>161</sup> Instead, for appeal purposes, the court must attach a transcript of the judge's

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<sup>151</sup> In addition, the minimum and maximum ages for a juror are 21 and 75 years. *Id.* at art. 43-44.

<sup>152</sup> *Id.* at art. 199.

<sup>153</sup> *Id.* at art. 205.

<sup>154</sup> *Id.* at art. 206.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at art. 207; *Hacen positivo balance de los juicios por jurados*, *supra* note 139.

<sup>161</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 211; Edmundo Hendler, Lay Participation in Argentina: Recent Experience and New Trends 3 (unpublished manuscript), available at [http://www.lawschool.cornell.edu/research/lay\\_participation\\_in\\_law/upload/LayparticipationinArgentina\\_Edmundo-Hendler.pdf](http://www.lawschool.cornell.edu/research/lay_participation_in_law/upload/LayparticipationinArgentina_Edmundo-Hendler.pdf) [hereinafter Hendler, Recent Experience and New Trends].

jury instructions.<sup>162</sup> Once the guilty or not guilty verdict is rendered, the judge determines the penalty.<sup>163</sup> In a catchall provision, Law 2784 instructs judges to use rules of “common judgment” when the law has not provided guidance on a particular issue.<sup>164</sup>

## 2. Reception

Neuquén’s jury system has been in force since March 2014, and nearly thirty jury trials have been performed and, thus far, the general opinion is very favorable.<sup>165</sup> Interestingly, prosecutors and defenders alike approve of the institution.<sup>166</sup> Pablo Vignaroli, a chief prosecutor who has participated in some of Neuquén’s jury trials, reported that he was skeptical at first, but now believes that the jury system is a very positive step for the province.<sup>167</sup> Juan Manuel Coto, a defense attorney, also reported a positive response, and noted that it is a welcome democratic experience, one that follows the mandates of the Constitution and is the first of its kind in Argentina.<sup>168</sup>

Both attorneys recognized the need for certain reforms, such as more training for the judges and the jury members.<sup>169</sup> Coto also noted that the province might change its requirement for the number of votes needed to secure a guilty verdict in the near future; more people now believe that a unanimous verdict is the best choice because it helps ensure full deliberation among the jury members.<sup>170</sup>

Jurors have reported that they also perceive the jury system favorably.<sup>171</sup> In a study conducted by the Neuquén province in 2014, 93.62% of jurors in the first six jury trials felt that it was a positive experience.<sup>172</sup> Additionally, over 70% of the 94-person sample

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<sup>162</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 211; Hendler, *Recent Experience and New Trends*, at 3.

<sup>163</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 211; Hendler, *Recent Experience and New Trends*, at 3.

<sup>164</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 212.

<sup>165</sup> *Hacen positivo balance de los juicios por jurados*, *supra* note 139.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Encuesta a jurados neuquinos*, JUICIO POR JURADOS (Aug. 30, 2014), <http://www.juicioporjurados.org/2014/08/encuesta-jurados-neuquinos.html>.

<sup>172</sup> *Id.*

never considered giving an excuse to avoid serving on the jury, and over 90% of the sample had no trouble understanding the evidence presented.<sup>173</sup> It is worth noting that after the jurors served, over 87% of those surveyed had a positive view of the criminal justice system.<sup>174</sup> Some jurors, anonymously questioned after they served, reported that they felt an extreme sense of responsibility during deliberations and took their duties seriously.<sup>175</sup> One man who was selected as the jury's president added that he felt the jury was well blended and that, regardless of their differences, they were all equals during deliberations.<sup>176</sup>

Though the public may not be as familiar with the jury system as the attorneys and the jurors,<sup>177</sup> most community members still feel that jury trials are a positive step.<sup>178</sup> In a survey of its readers by *Minuto Uno Neuquén* in May 2014, over 70% of respondents reported agreeing with the implementation of jury trials in the province.<sup>179</sup> Overall, though legislators most likely expected some resistance initially, as in Córdoba, jury trials have been well received thus far by the attorneys, jury members, and the community. This reaction is likely influenced in part by the success experienced in Córdoba, as well as the fact that Neuquén's jury systems are more

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<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Los jurados populares neuquinos relataron sus experiencias*, DIARIO RIO NEGRO (Aug. 17, 2014), <http://www.rionegro.com.ar/diario/los-jurados-populares-neuquinos-relataron-sus-experiencias-3912797-9525-nota.aspx>.

<sup>176</sup> *Id.*

<sup>177</sup> The province is providing training to help inform people of the system. *Neuquén: 2º Jornadas de Capacitación en Juicio por Jurados*, JUICIO POR JURADOS (OCT. 16, 2014), <http://www.juicioporjurados.org/2014/10/neuquen-2-jornadas-de-capacitacion-en.html>; see also *Falbo abrió el curso de capacitación en juicio por jurados*, JUICIO POR JURADOS (June 27, 2014), <http://www.juicioporjurados.org/2014/06/falbo-abrio-el-curso-de-capacitacion-en.html> [hereinafter *Falbo abrió el curso de capacitación*].

<sup>178</sup> *Más del 70% de los neuquinos apoya al juicio por jurados*, JUICIO POR JURADOS (May 9, 2014), <http://www.juicioporjurados.org/2014/05/mas-del-70-de-los-neuquinos-apoya-al.html>.

<sup>179</sup> *Id.*

similar to a traditional republican system, which legitimizes the criminal justice system in the eyes of the public.<sup>180</sup>

### C. Buenos Aires

The Buenos Aires province established jury trials through Law 14.543, passed in September 2013.<sup>181</sup> As of December 2015, thirty-five trials have been conducted in the province.<sup>182</sup> The dispositions include nineteen guilty verdicts and sixteen not guilty verdicts.<sup>183</sup>

The drafters chose the English-American classical jury, like Neuquén's system, rather than the mixed court system that is used in Córdoba.<sup>184</sup> This is a remarkable decision. While instituting a classical jury in Neuquén was a significant step forward, Buenos Aires' system has the ability to make a more substantial impact. Its population alone is nearly half the size of the population of Argentina, as opposed to Neuquén's population, which is 1/28th the size of Buenos Aires.<sup>185</sup> As such, Buenos Aires is capable of influencing more of Argentina's citizens.

#### 1. Law 14.543

The jury requirements of Law 14.543 are similar to those in Neuquén. Juries will only be used for cases that have a minimum penalty of fifteen years in prison.<sup>186</sup> A list of forty-eight jurors in the

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<sup>180</sup> *Ministerio Público Fiscal del Neuquén: ESPECIAL JUICIO POR JURADOS*, JUICIO POR JURADOS (Aug. 2, 2014), <http://www.juicioporjurados.org/2014/08/ministerio-publico-fiscal-del-neuquen.html>.

<sup>181</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.).

<sup>182</sup> *Juicios por jurados en Buenos Aires: Informe 2015*, JUICIO POR JURADOS (Dec. 2, 2015), <http://www.juicioporjurados.org/2015/12/juicios-por-jurados-en-buenos-aires.html>.

<sup>183</sup> *Id.* (citing *INFORME Y ENCUESTAS – JUICIO POR JURADOS*, MINISTERIO DE JUSTICIA, [https://drive.google.com/file/d/0B2yvs\\_8DQr4dcXk1VWxia2R2aWs1djd1djJFbjZlcDZ2bnZv/view](https://drive.google.com/file/d/0B2yvs_8DQr4dcXk1VWxia2R2aWs1djd1djJFbjZlcDZ2bnZv/view) (last visited February 9, 2015)).

<sup>184</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2.

<sup>185</sup> *Mapas temáticos Censo 2010*, INSTITUTO NACIONAL DE ESTADISTICA Y CENSOS (Nov. 8, 2012), <http://www.sig.indec.gov.ar/censo2010/>.

<sup>186</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2; *El juicio por jurados llega a la Provincia de Buenos Aires*, INFONEWS (May 23, 2014), <http://www.infonews.com/2014/05/23/politica-145616-el-juicio-por-jurados-llega-a-la-provincia-de-buenos-aires.php>.

particular jurisdiction is created through a lottery.<sup>187</sup> After holding a meeting with the judge and parties to determine if the potential jurors are impartial, twelve jurors are chosen, plus six as alternates, and there must be an equal number of men and women.<sup>188</sup>

Each juror must be between twenty-one and seventy-five years old, meet the language requirement, and be mentally and physically competent to serve.<sup>189</sup> He or she must be Argentine natives or naturalized citizens who have lived in Argentina for at least five years.<sup>190</sup> Members of government, security forces, prison workers, lawyers, public notaries, religious leaders, political leaders, those convicted of “intentional” crimes, and those currently indicted of a criminal offense pending prosecution are exempted from jury duty.<sup>191</sup> The jurors deliberate in secrecy.<sup>192</sup> In most cases, a supermajority of ten votes is required to have a guilty verdict.<sup>193</sup> In life imprisonment cases, however, the vote must be unanimous for a guilty verdict.<sup>194</sup> If the jurors reach a guilty verdict, the professional judge determines the sentence.<sup>195</sup>

## 2. Reception

Perhaps because of the more substantial impact this legislation has on the country relative to other provinces, more professionals seem to be expressing their opinions regarding jury trials in Buenos Aires. In an article in the Buenos Aires Herald in September 2013, the late Supreme Court Justice Carmen Argibay said, “Now is not the time to have trial by jury. We have no guarantee that people are going to understand the vision behind it; we have no guarantees of

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<sup>187</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*; *El juicio por jurados llega a la Provincia de Buenos Aires*, *supra* note 186.

<sup>190</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*; *El juicio por jurados llega a la Provincia de Buenos Aires*, *supra* note 185.

<sup>194</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2; *El juicio por jurados llega a la Provincia de Buenos Aires*, *supra* note 186.

<sup>195</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2; *El juicio por jurados llega a la Provincia de Buenos Aires*, *supra* note 186.

a serene trial uncontaminated by media coverage: we have no guarantee that there will not be pressures on the part of the victim or the accused.”<sup>196</sup>

Some members of the National Supreme Court shared these concerns.<sup>197</sup> For example, Chief Justice Ricardo Lorenzetti said the system has not been completely successful, is expensive, and should be introduced gradually.<sup>198</sup> Additionally, Justice Eugenio Zaffaroni said that he prefers the mixed court system as in Córdoba, and does not believe that juries operate properly “in any part of the world.”<sup>199</sup> He believes “no judge can explain to a lay person what is taught in two or three years of Law School.”<sup>200</sup>

On the other hand, one Buenos Aires newspaper suggested that “there is more than enough proof that Argentine society—urged daily to value things which have no value—is enthused by the proposal of legal instruments which clearly improve justice,” referring to the jury system as an “instrument of justice.”<sup>201</sup> Andrés Harfuch, a leading expert on Argentine jury trials and the Vice President of the Asociación Argentina de Juicio por Jurados (AAJJ), agrees.<sup>202</sup> He challenged Justice Argibay’s position by asking if it was guaranteed that professional judges themselves would not succumb to the pressures she mentioned.<sup>203</sup> He recognized that some members of the judiciary are against juries because they want to monopolize the power, whereas the Constitution of Argentina divides it.<sup>204</sup> Harfuch values the independence and impartiality that juries give the judges, and he believes in the competence of citizen juries.<sup>205</sup> María del Carmen Falbo, the Attorney General of Buenos Aires, believes that the jury system strictly complies with guiding criminal principles such as equality between the parties, immediacy, and oral

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<sup>196</sup> Mempo Giardinelli, *Considering Trial by Jury*, BUENOS AIRES HERALD (May 18, 2014), <http://buenosairesherald.com/article/159699/considering-trial-by-jury>.

<sup>197</sup> Bertoia, *supra* note 12.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> Giardinelli, *supra* note 195.

<sup>202</sup> *El juicio por jurados llega a la Provincia de Buenos Aires*, *supra* note 186.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

argument.<sup>206</sup> It accomplishes this while challenging the various models and practices that have been part of Argentina's legal culture for years.<sup>207</sup>

Hernan Gullco, an Argentine scholar, raised the question of whether the National Supreme Court may be able to overrule the jury system because the juries are not required to express the reasons for their decisions.<sup>208</sup> Without a basis for the jury's decision, an appeals court would not be able to assess which evidence the jury used to reach the conviction and whether that evidence was properly valued.<sup>209</sup> He believes that, to avoid paralyzing questions of unconstitutionality, the legislators should have included a clause that requires the jury to list the legal evidence it considered in making its decision, so that reviewing courts would be able to reference it.<sup>210</sup> He noted, however, that this could be criticized for giving a judge the same arbitrary power that the law aims to limit.<sup>211</sup>

#### D. *Río Negro*

In October 2014, the Río Negro legislature passed a new Code of Criminal Procedure that included a mandate to establish jury trials in the province.<sup>212</sup> The Code will become effective in March 2017, except for the jury trial system, which will become effective in January 2018.<sup>213</sup> The Code provides for a British-style jury made of

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<sup>206</sup> *Falbo abrió el curso de capacitación*, *supra* note 177.

<sup>207</sup> *Id.*

<sup>208</sup> Memorandum from Hernán Víctor Gullco, Professor, Universidad Torcuato di Tella, to author 2 (on file with author).

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* at 5.

<sup>211</sup> *Id.*; see *Para la Casación bonaerense, el juicio por jurados no tiene vuelta atrás*, *Juicio por Jurados* (Oct. 28, 2015), <http://www.juicioporjurados.org/2015/11/there-is-no-turning-back-on-trial-by.html> (In November 2015, the Buenos Aires High Court of Appeals confirmed, for the first time, a jury verdict. Additionally, it addressed issues of (1) the authority to review judicial error in instructing the jury and (2) the authority to set aside a verdict on the ground that it is unreasonable in light of the evidence presented at trial.).

<sup>212</sup> Law No. 5020, RN, Dec. 10, 2014, 5319 B.O. Sup. (Arg.); COMUNICADO: Sobre la Reforma del Código Procesal Penal de Río Negro, que incluye jurados, *Juicio por Jurados* (Nov. 5, 2014), <http://www.juicioporjurados.org/2014/11/comunicado-sobre-la-reforma-del-codigo.html>.

<sup>213</sup> Law No. 5020, RN, Dec. 10, 2014, 5319 B.O. Sup. (Arg.), at art. 2.

only citizens, and it requires a unanimous vote as a default rule.<sup>214</sup> However, an important difference from the other provinces is that if the jury does not come to a unanimous vote within a certain period of time, the court is allowed to accept a supermajority vote to convict.<sup>215</sup>

The drafters designed two separate models for different crimes.<sup>216</sup> If the penalty requested by the prosecutor is between twelve and twenty-five years of imprisonment, the jury will consist of seven jury members and at least one alternate.<sup>217</sup> If the penalty requested by the prosecutor is more than twenty-five years of imprisonment, the jury will consist of twelve members, and a minimum of two alternates.<sup>218</sup> Twelve years is a smaller threshold to require a jury trial than the threshold in Neuquén and Buenos Aires, which is fifteen years. With the introduction of a unanimous jury in all criminal cases, as opposed to in only capital cases, it seems that this next phase of legislation in Argentina will be an improvement on the previous three.

#### E. Recent Developments

In September 2015, Chaco became the fifth province to adopt a law incorporating trial by jury.<sup>219</sup> Legislators were able to combine the experiences of Neuquén and Buenos Aires to create Law 7661.<sup>220</sup> However, there are a couple of important distinctions. First, the system is most similar to that of the United States, as it incorporates a “classic model” with a unanimous verdict.<sup>221</sup> Second, the law

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<sup>214</sup> *Id.* at art. 202.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at art. 26.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> Law No. 7661, CHO, Sept. 2, 2015, 9839 B.O. 1 (Arg.); *CHACO TIENE LEY DE JUICIO POR JURADOS*, JUICIO POR JURADOS (Sept. 2, 2015), <http://www.juicioporjurados.org/2015/09/chaco-tiene-ley-de-juicio-por-jurados.html> (last visited February 9, 2016).

<sup>220</sup> *CHACO TIENE LEY DE JUICIO POR JURADOS*, *supra* note 219.

<sup>221</sup> Law No. 7661, CHO, Sept. 2, 2015, 9839 B.O. 1 (Arg.), at art. 86; *CHACO TIENE LEY DE JUICIO POR JURADOS*, *supra* note 219.

creates a separate jury specifically for indigenous people.<sup>222</sup> In this respect, it is the first of its kind.<sup>223</sup>

In addition to the five provinces that have approved jury legislation, at least three other provinces (La Rioja, Chubut, and the City of Buenos Aires) have introduced or plan to introduce similar projects for debate in their respective legislatures.<sup>224</sup>

#### IV. COMPARISON TO THE UNITED STATES

In both Argentina and the United States, trial by jury is a constitutional right, highly valued by the Framers.<sup>225</sup> Even still, Argentine provinces authorize fewer types of cases to qualify for jury trials than the United States. Juries in the United States can be used in both criminal and in civil cases.<sup>226</sup> In Argentina, juries can generally only be used in criminal cases.<sup>227</sup> Jury duty in Argentina is limited to cases involving public officials or the most serious and violent crimes, such as rape, kidnapping, or murder.<sup>228</sup> In the United States, juries are constitutionally required for any crime that has a potential penalty of six months or more.<sup>229</sup> Interestingly, neither country's constitution limits the types of crimes that may be tried by jury trials, yet both countries limit them through legislation. Argentina's constitution calls for jury trials "in all ordinary criminal cases,"<sup>230</sup> while the constitution of the United States gives the right "[i]n all criminal prosecutions."<sup>231</sup>

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<sup>222</sup> Law No. 7661, CHO, Sept. 2, 2015, 9839 B.O. 1 (Arg.), at art. 4.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> Skype Interview with Andrés Harfuch, *supra* note 22 (explaining that Argentina uses only trial juries, not grand juries).

<sup>226</sup> *Types of Juries*, UNITED STATES COURTS, <http://www.uscourts.gov/FederalCourts/JuryService/about-jury-service.aspx> (last visited January 18, 2015).

<sup>227</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 3; Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 1. However, the province of La Rioja is currently discussing a bill that would permit jury trials in civil cases for the first time in Argentina. Skype Interview with Andrés Harfuch, *supra* note 22.

<sup>228</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 3; Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 1.

<sup>229</sup> *Baldwin v. New York*, 399 U.S. 66, 69 (1970).

<sup>230</sup> Art. 118, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

<sup>231</sup> U.S. CONST. amend. VI.

### A. *Juror Qualifications*

The required qualifications for jurors in both the Argentine provinces and the United States federal system show similar values, but some technical differences. For example, the minimum age requirements are much lower in the United States (eighteen as opposed to twenty-one or twenty-five), and fewer professions are exempt from jury duty in the United States.<sup>232</sup> The United States exemptions are limited to military, firefighters, police officers, and active “public officers.”<sup>233</sup>

Additionally, educational requirements do not exist in the United States federal system.<sup>234</sup> Some believe that the educational requirements such as those in Argentina’s provinces “may conflict with a court’s goal of creating a jury panel that is drawn from a fair cross-section of society, which is a well settled principle of American law.”<sup>235</sup> However, it is likely that Argentina’s primary concern is ensuring the jury members are competent and understand their role in the criminal system. This is especially true since the layperson jury is a relatively new development to which most Argentine citizens are not yet accustomed, something with which the United States is not as concerned. In any event, some of the Argentine provinces have other safeguards, such as requiring a certain amount of diversity in each jury, to ensure a fair cross-section of society.<sup>236</sup>

### B. *Juror Selection and Deliberation*

The United States does not have a method for ensuring a particular level of diversity on a jury, and a jury is acceptable if the method

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<sup>232</sup> *Juror Qualifications*, UNITED STATES COURTS, <http://www.uscourts.gov/services-forms/jury-service/juror-qualifications> (last visited Jan. 18, 2015).

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> Edwards-Kevin, *supra* note 71.

<sup>236</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 43; Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2. Additionally, 97.7% of Argentine citizens are literate, and Argentina has a high school retention rate of 94.35%. *Argentine or Argentinian Education Stats*, NATIONMASTER, <http://www.nationmaster.com/country-info/profiles/Argentina/Education/All-stats> (last visited February 8, 2015). If these statistics are accurate, it is unlikely that the education level of the jury pool is much different than that of the Argentine population.

for choosing it is not discriminatory.<sup>237</sup> Argentine provinces, on the other hand, have gender requirements, and each jury must be made of exactly half males and half females.<sup>238</sup> Ironically, it can be argued that Argentina's potential juror lists represent a fairer cross-section of society than those of the United States. Voter registrations and drivers licenses, from which potential juror lists are pulled, are voluntary in the United States.<sup>239</sup> In Argentina, voter registration is mandatory, and the potential juror lists are pulled from the registrations, so the lists encompass a broader representation of citizens.<sup>240</sup>

In the United States, the jury right is a right of the defendant, and can be waived with permission of the court and prosecution.<sup>241</sup> In Argentina, the provinces of Córdoba, Neuquén, and Río Negro mandate a trial by jury for certain crimes, and this right cannot be waived, in accordance with their constitutional principles.<sup>242</sup> The criminal jury trial is not a right of the accused, but a right of the citizenry in general to participate in the administration of justice.<sup>243</sup> In Buenos Aires, however, Law 14.543 made it possible for the defendant to waive the right to a jury trial.<sup>244</sup> The Asociación Argen-

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<sup>237</sup> See *Holland v. Illinois*, 493 U.S. 474, 480-81 (1990).

<sup>238</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 198; Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2. This generally reflects the actual population of the provinces. *Neuquén-Masculinity Index*, KNOEMA, <https://knoema.com/atlas/Argentina/Neuquén/Sex-Ratio> (last visited Feb. 8, 2015); *Buenos Aires-Masculinity Index*, KNOEMA, <https://knoema.com/atlas/Argentina/Buenos-Aires/Sex-Ratio> (last visited Feb. 8, 2015).

<sup>239</sup> *FAQs: Juror Information*, UNITED STATES COURTS, <http://www.uscourts.gov/services-forms/jury-service/faqs-juror-information#faq-How-are-jurors-contacted-for-service-in-federal-court?> (last visited Jan. 18, 2015).

<sup>240</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 45; Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2.

<sup>241</sup> FED. R. CRIM. P. 23(a).

<sup>242</sup> Skype Interview with Andrés Harfuch, Vice President, Asociación Argentina de Juicio por Jurados (Jan. 4, 2015).

<sup>243</sup> Edwards-Kevin, *supra* note 71; Skype Interview with Andrés Harfuch, *supra* note 242.

<sup>244</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2.

tina de Juicio por Jurados is against this clause because it is “unconstitutional”—the jury right is not the defendant’s to waive.<sup>245</sup> But, the main reason for this belief is cultural: if this important right is able to be waived, in an environment where many fear juries as an unknown institution, the courts may not have the opportunity to conduct enough jury trials for them to gain acceptance in the province.<sup>246</sup>

In United States federal court, any decision by the jury must be unanimous.<sup>247</sup> In Neuquén, if the eight votes to secure a guilty verdict are not reached, it is considered an acquittal.<sup>248</sup> In the Buenos Aires province, however, if eight or nine votes to convict are obtained, the jury is hung.<sup>249</sup> Less than eight votes allow a verdict of not guilty, and ten or more votes allow a verdict of guilty (in non-life imprisonment cases).<sup>250</sup>

### C. Procedural Comparisons

An important similarity between the two countries is that there is no appeal against a jury verdict of not guilty.<sup>251</sup> This is evidence that both countries value finality in the criminal process. It is remarkable because, historically, the prosecution in Argentina has always had the ability to appeal an acquittal, but the recent reforms of the provinces’ criminal procedure codes remove that possibility.<sup>252</sup> Understandably, this was a point of contention in Argentina during debates over Law 14.543.<sup>253</sup> In fact, after the first acquittal by jury in Neuquén, the prosecution wanted the court to declare a mistrial, but was unsuccessful.<sup>254</sup>

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<sup>245</sup> The jury right belongs to the community, the members of which have the right to participate in the administration of justice. Skype Interview with Andrés Harfuch, *supra* note 242.

<sup>246</sup> *Id.*

<sup>247</sup> FED. R. CRIM. P. 31(a).

<sup>248</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 207.

<sup>249</sup> The prosecutor has the option to continue presenting his case; if he chooses not to, and the victim does not object, the judge will acquit the defendant. Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2.

<sup>250</sup> *Id.*

<sup>251</sup> Skype Interview with Andrés Harfuch, *supra* note 22.

<sup>252</sup> *Id.*

<sup>253</sup> Skype Interview with Andrés Harfuch, *supra* note 242.

<sup>254</sup> *Id.*

In his memo to the Buenos Aires legislature, Gullco addressed the issue of acquittal appeals.<sup>255</sup> He believed that, though it may not be an issue for the government to be unable to appeal, it might be an issue for the victim, who has a constitutional basis to “promote the prosecution,” regardless of the government’s wishes.<sup>256</sup> Accordingly, he believed the victim should be allowed to appeal a jury verdict of not guilty.<sup>257</sup> This was not ultimately accepted by the legislature, which solidified the juries’ power to determine the outcome of the case.<sup>258</sup>

The Argentine provinces included peremptory challenges in the new legislation, though it is slightly different than in the United States. During *voir dire*, prosecutors in the United States can use up to twenty peremptory challenges for capital cases, six for ordinary felony cases, and three for misdemeanor cases.<sup>259</sup> Defendants generally have the same amount of peremptory challenges as prosecutors, except in felony cases where the defendants have ten, as opposed to the prosecutor’s six.<sup>260</sup> Attorneys in Córdoba<sup>261</sup> and Neuquén<sup>262</sup> can use one peremptory challenge. Buenos Aires’ attorneys have four.<sup>263</sup> Both the United States and the provinces of Argentina allow unlimited challenges for cause.<sup>264</sup> The provinces’ decisions to include peremptory challenges demonstrate the United States jury system’s impact on Argentine laws and its influence in Argentina.

#### D. United States’ Influence on Argentina

The idea of America influencing Argentina’s legal system is not novel. In fact, the 1853 Argentine Constitution is nearly a copy of

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<sup>255</sup> Memorandum by Hernán Victor Gullco, *supra* note 208, at 6-7.

<sup>256</sup> *Id.* at 6.

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> FED. R. CRIM. P. 24(b).

<sup>260</sup> *Id.*

<sup>261</sup> Law No. 9182, CBA, Sept. 22, 2004, 173 E.D.L.A. 986 (Arg.), at art. 24; Edwards-Kevin, *supra* note 71.

<sup>262</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 198.

<sup>263</sup> Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2.

<sup>264</sup> Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 198; Law No. 14.543, BA, Sept. 12, 2013, 27187 B.O. Sup. (Arg.), at art. 2; FED. R. CRIM. P. 47; Edwards-Kevin, *supra* note 71.

the United States Constitution—except with regard to jury trials.<sup>265</sup> Nonetheless, Argentina's 1853 Constitution derived many of its rules concerning lay participation from the United States Constitution.<sup>266</sup> The United States probably also helped influence Argentine citizens' acceptance of jury trials, as Argentines likely experienced juries mostly through American media before juries were established in Argentina.<sup>267</sup> However, European systems have "traditionally had a strong influence upon the legal profession in general" in Argentina,<sup>268</sup> which explains some of the conflict between the different jury models of the provinces.<sup>269</sup>

Additional evidence of American influence on the local legal culture is the United States embassy's financial support in developing Law 9182 at the federal level in Argentina.<sup>270</sup> In 2004, the Office

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<sup>265</sup> Skype Interview with Andrés Harfuch, *supra* note 242; *see also* Alexander W. Weddell, Ambassador to the Argentine Republic, Address at the College of William and Mary: A Comparison of Executive and Judicial Powers Under the Constitutions of Argentina and the United States 5 (Apr. 23, 1937), *available at* <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1018&context=cutler>. The Chairman of the Committee on Constitutional Amendments to the Buenos Aires Convention of 1860 said, "The committee has been guided in its recommendations by the provisions of a similar constitution, recognized as the most perfect, viz., that of the United States." *Id.* at 6 (internal citation omitted). The United States Constitution "served as the basis for the formation of the Argentine Confederation." *Id.* Some notable similarities include vesting the executive power in the President, electing the President and Vice-President "by presidential electors from each province chosen by direct votes of the people," and vesting the judicial power in a supreme court and other inferior courts established by Congress. *Id.* at 8, 10, 16.

<sup>266</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 328.

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> Miguel Ángel Ciuro Caldani, *NUEVAMENTE SOBRE LOS EFECTOS DE LA RECEPCIÓN JURÍDICA EN LA CULTURA JURÍDICA ARGENTINA* 29 *REVISTA DEL CENTRO DE INVESTIGACIONES DE FILOSOFÍA JURÍDICA Y FILOSOFÍA SOCIAL* 49, 56 (2006), *available at* <http://www.cartapacio.edu.ar/ojs/index.php/centro/article/view/900/719> ("Materially speaking, having our Constitution based on the American model, Civil Law modeled after the French paradigm, Procedural Law influenced by the Spanish, Administrative Law also influenced by the French, and Labor Law akin to the Italian model while having a predominantly Italo-Hispanic population, obliges us to seek an adaptation, a synthesis, as yet unattained.").

<sup>270</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 326.

of International Information Programs of the United States Department of State funded a trip through the United States Speaker and Specialist grant, so that Cornell University professor and American jury expert Valerie Hans could meet with representatives in Argentina.<sup>271</sup> This program aimed to support Argentina's effort to incorporate juries by increasing knowledge about United States processes and providing Argentine legal professionals and the public with greater exposure to the jury system.<sup>272</sup> *Voir dire*, including peremptory challenges discussed above, is a topic of discussion in this program. American scholars and lawyers are guiding these discussions and helping Argentines appreciate the value of certain institutions, such as *voir dire*.

## V. THE JURY'S FUTURE IN ARGENTINA

*"I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its Constitution."*

*-Thomas Jefferson*<sup>273</sup>

As discussed above, the reactions of the public in the provinces where jury trials have been implemented are overwhelmingly positive, despite the controversial setting.<sup>274</sup> Research generally shows that community members are genuinely interested in serving on a jury and take their duties very seriously.<sup>275</sup> Jury members have little trouble following the trials and feel comfortable expressing their views in a deliberation setting.<sup>276</sup> Most jury members rate their experience as positive, and their views of the criminal justice system improve dramatically after serving.<sup>277</sup> The National Supreme Court of Argentina has twice supported the constitutional notion that

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<sup>271</sup> Martin Mbugua, *UD Prof in Argentina as Expert on Juries*, UDAILY (Aug. 31, 2004, 2:22 PM), <http://www.udel.edu/PR/UDaily/2005/jul/jury083104.html>.

<sup>272</sup> *Id.*

<sup>273</sup> Edwards-Kevin, *supra* note 71.

<sup>274</sup> Bergoglio, *New Paths Toward Judicial Legitimacy*, *supra* note 32, at 331.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> *Id.* This result mirrors the findings in the United States. *Id.*

judges should be impartial during trials,<sup>278</sup> which is easier when juries determine the verdict. Additionally, Judge Cristian Requena, who presided over the first jury trial in Córdoba, stated, “At the beginning, I had reservations, but today, I am convinced that the [jury] system is extremely useful and opens a path of popular participation where it did not previously exist.”<sup>279</sup>

Still, jury trials in Argentina would benefit from a few adjustments. First, the circumstances in which jury trials are warranted are not always clearly defined by the current laws.<sup>280</sup> By listing definite criteria for which types of cases qualify for a jury trial, the legislature would help further legitimize the institution and avoid confusion. It would also avoid allegations of prosecutorial wrongdoing where a prosecutor alters a sentence or charge to avoid a jury trial. With more specific guidance from the legislature, prosecutors would not have as much discretion in determining when a jury trial is warranted.

In addition, evidence rules do not currently exist in Argentina.<sup>281</sup> Without evidence rules, it is difficult to properly instruct a jury and keep track of which evidence should be shown so as not to confuse or muddle the issues. For example, a jury may not understand that character evidence is not substantive evidence, or that hearsay is not as reliable as direct testimony, without proper rules and instructions. In the years to come, Argentina would want to, and most likely will, consider incorporating basic evidence rules such as those regarding character evidence and hearsay.

Finally, the current jury systems in Argentina would benefit from increased training and informational sessions for both attorneys and for the public. As Judge Pont Vergés has noted, implementing the jury system requires “a reeducation of judges, public prosecutors, attorneys, the police, and even the people.”<sup>282</sup> Many

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<sup>278</sup> D’Alessio, *supra* note 46, at 44.

<sup>279</sup> Edwards-Kevin, *supra* note 71.

<sup>280</sup> D’Alessio, *supra* note 44, at 47. For example, the Neuquén province calls for juries in crimes against persons or sexual integrity, or crimes causing serious injury, provided that the prosecutor requests a sentence of at least 15 years. Law No. 2784, N, Nov. 24, 2011, 3277 B.O. 3 (Arg.), at art. 35.

<sup>281</sup> Skype Interview with Andrés Harfuch, *supra* note 242.

<sup>282</sup> E-mail from Judge Francisco Pont Vergés, *supra* note 24.

people still “have no idea what trial by jury means, or that it even exists.”<sup>283</sup>

Granted, the Ministry of Justice has taken steps to create more exposure to jury trials. For example, the Supreme Court of Buenos Aires has held training sessions for attorneys, taught by local experts.<sup>284</sup> In addition, as mentioned above, the Buenos Aires Ministry of Justice recently negotiated with MGM for distribution rights to *12 Angry Men* so it can be used as an educational tool in schools, universities, and for the general public.<sup>285</sup> Finally, and perhaps most importantly, the Buenos Aires Ministries of Justice and Education have made an agreement allowing information on jury trials to be included in the curriculum of secondary schools.<sup>286</sup> Minister Ricardo Casal remarked that, “this is an initiative that aims to train those who in a few years can become potential jurors.”<sup>287</sup> Additional actions such as these will hopefully lead to increased acceptance of the jury system, confidence in juror competence, and legislation establishing federal and provincial jury systems.<sup>288</sup>

## VI. CONCLUSION

One scholar has suggested that in places “where lay participation has not been established, the influence of the citizenry is greater than where it has.”<sup>289</sup> It follows that, in order for judges to resist making

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<sup>283</sup> *Id.*

<sup>284</sup> *La Suprema Corte de Justicia de la Pcia. de Bs. As. inicia capacitación junto a la AAJJ*, JUICIO POR JURADOS, <http://www.juicioporjurados.org/2014/08/la-suprema-corte-de-justicia-de-la-pcia.html> (last visited Jan. 18, 2015).

<sup>285</sup> Penna, *supra* note 2.

<sup>286</sup> Fernando Soriano, *Juicios por jurados en Buenos Aires: más condenas que absoluciones*, CLARIN (July 27, 2015), [http://www.clarin.com/policiales/Juicios-Buenos-Aires-condenas-absoluciones\\_0\\_1401459955.html](http://www.clarin.com/policiales/Juicios-Buenos-Aires-condenas-absoluciones_0_1401459955.html).

<sup>287</sup> *Id.*

<sup>288</sup> Neuquén province has signed an agreement to carry out the first empirical research on juries in Latin America, which will likely be instrumental in discovering which other programs will be effective. *See Neuquén: convenio de investigación sobre jurados*, JUICIO POR JURADOS (Dec. 20, 2015), <http://www.juicioporjurados.org/2015/12/neuquen-jury-research-agreement-between.html>.

<sup>289</sup> Hendler, *Old History, Recent Experience*, *supra* note 13, at 4.

legal determinations based solely on the voice of the public, Argentina must “strengthen the participation of citizens in criminal procedures where it already exists or to establish it” where it does not.<sup>290</sup> With jury systems now established in five provinces, and with draft bills introduced in several others, the provinces of Argentina are well on their way to doing just that.

Following this trend, Senator Eugenio “Nito” Artaza proposed a revised version of the Argentine federal Criminal Procedure Code in June 2014 that includes a jury clause.<sup>291</sup> The more Argentine provinces that implement jury systems and realize its benefits, the more likely it is that this national bill will pass, and that Article 75 of the National Constitution’s requirements will finally be met. With each new step, the provinces of Argentina come closer to their constitutional ideals, and the response so far is encouraging.

Meanwhile, provinces that have yet to introduce formal legislation are coming ever closer to a system similar to that of the United States,<sup>292</sup> and for good reason: the American jury system is one of the “oldest and most elaborate in the world.”<sup>293</sup> The United States has spent years tweaking the jury selection and deliberation processes, and Argentina is taking advantage of that knowledge.<sup>294</sup> By referencing juries in the United States, Argentina will find valuable aspects it wants to emulate and flaws that it wants to avoid. Either way, it can use the United States system as a framework from which to “adapt the institution to the unique context and setting of Argentina.”<sup>295</sup>

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<sup>290</sup> *Id.*

<sup>291</sup> This bill would make jury systems mandatory both in the federal and provincial courts. E-mail from Andrés Harfuch, Vice President, Asociación Argentina de Juicio por Jurados, to author (Feb. 1, 2015 18:01 EST) (on file with author).

<sup>292</sup> With one particularly important distinction: it is proposed in Chubut that if there is a hung jury, the prosecution can have one chance to retry the case. Skype Interview with Andrés Harfuch, *supra* note 242.

<sup>293</sup> Valerie P. Hans & John Gastil, *Preface to El Juicio por Jurados: Investigaciones Sobre la Deliberación, el Veredicto y la Democracia* 1 (2014) (on file with the author).

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

From Córdoba, the country learned how to “construct a smoothly functioning system.”<sup>296</sup> From Neuquén and Buenos Aires, Chaco learned the benefits of a classical style jury.<sup>297</sup> Now, with Senator Artaza’s proposal, the country is likely to follow and implement a system of its own. Provinces currently with jury laws may further modify their systems regarding evidence rules and other technical rules.<sup>298</sup> One can see from the affirmative reception, increased trust in the criminal justice system, and expanding use of juries, that the new systems implemented in Argentina are a positive experience. These are just the first steps of many on Argentina’s journey to meeting the ideals conveyed in its Constitution.

Not only are juries a way to comply with the Argentine Constitution, but they are also a way to achieve fairness.<sup>299</sup> The current justice system is said to be “partial,” as well as “slow and obsolete.”<sup>300</sup> Instituting juries is a way to improve this.<sup>301</sup> Classical juries bring increased transparency, better fact-finding, and more legitimacy to a legal system, without the potential distortion of a professional judge on the jury.<sup>302</sup> They can help depart from the delays and inefficiencies that have plagued Argentina’s criminal justice system for years.<sup>303</sup> Instituting widespread jury systems would conform to the clear wishes of the drafters of Argentina’s Constitution to remove the Spanish inquisitorial influence—memorialized in Articles 24, 75, and 118.<sup>304</sup>

The jury offers more than a mechanical way to manage trials.<sup>305</sup> It provides citizens with the opportunity to “learn the responsible exercise of power,” and to realize the democratic republic’s full potential.<sup>306</sup>

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<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

<sup>299</sup> *El juicio por jurados llega a la Provincia de Buenos Aires, supra* note 185.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> Hans & Gastil, *supra* note 293, at 1.

<sup>303</sup> Skype Interview with Andrés Harfuch, *supra* note 22.

<sup>304</sup> See arts. 24, 75, 118, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

<sup>305</sup> Hans & Gastil, *supra* note 293, at 2.

<sup>306</sup> *Id.*