

Cambridge University Press

978-1-108-48394-0 — *Juries, Lay Judges, and Mixed Courts*Edited by Sanja Kutnjak Ivković, Shari Seidman Diamond, Valerie P. Hans, Nancy S. Marder
Frontmatter[More Information](#)

ASCL STUDIES IN COMPARATIVE LAW

ASCL Studies in Comparative Law is designed to broaden theoretical and practical knowledge of the world's many legal systems. With more than sixty years' experience, the American Society of Comparative Law has been a leader in the study and analysis of comparative law. By promoting the investigation of legal problems in a comparative light, whether theoretical or empirical, as essential to the advancement of legal science, it provides an essential service to legal practitioners and those seeking reform of the law. This book series will extend these aims to the publication of monographs and comparative studies of specific legal problems.

The series has two series editors. David Gerber is Distinguished Professor of Law and Co-Director of the Program in International and Comparative Law at Chicago-Kent College of Law, Illinois Institute of Technology. He is currently President of the American Society of Comparative Law. Mortimer Sellers is Regents Professor of the University System of Maryland and Director of the Baltimore Center for International and Comparative Law. He is an Associate Member of the International Academy of Comparative Law.

Series Editors

David Gerber *Chicago-Kent College of Law*
Mortimer Sellers *University of Baltimore*

Editorial Board

Richard Albert *University of Texas*
David Clark *Willamette University*
Helge Dedek *McGill University*
James Feinerman *Georgetown University*
Richard Kay *University of Connecticut*
Maximo Langer *University of California Los Angeles*
Ralf Michaels *Duke University*
Fernanda Nicola *American University*
Jacqueline Ross *University of Illinois*
Kim Lane Scheppelle *Princeton University*
Franz Werro *Georgetown University*

External Advisory Board

Josef Drexler *University of Munich*
Diego Fernandez Arroyo *Institut d'etudes politiques de Paris*
Hongjun Gao *Tsinghua University*
Michele Grazidei *University of Turin*
Ko Hasegawa *University of Hokkaido*
Hisashi Harata *University of Tokyo*
Andreas Heinemann *University of Zurich*
Christophe Jamin *Institut d'etudes politiques de Paris*
Yong-Sun Kang *Yonsei University*
Claudia Lima Marques *Federal University of Rio Grande do Sul*
Bertil Emrah *Oder Koc University*
Amr Shalakany *American University of Cairo*

Cambridge University Press

978-1-108-48394-0 — Juries, Lay Judges, and Mixed Courts

Edited by Sanja Kutnjak Ivković , Shari Seidman Diamond , Valerie P. Hans , Nancy S. Marder

Frontmatter

[More Information](#)

Juries, Lay Judges, and Mixed Courts

A GLOBAL PERSPECTIVE

Edited by

SANJA KUTNJAK IVKOVIĆ

Michigan State University, Michigan

SHARI SEIDMAN DIAMOND

Northwestern University Pritzker School of Law and
American Bar Foundation, Illinois

VALERIE P. HANS

Cornell Law School, New York

NANCY S. MARDER

Chicago-Kent College of Law
Illinois Institute of Technology, Illinois



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-108-48394-0 — Juries, Lay Judges, and Mixed Courts
Edited by Sanja Kutnjak Ivković, Shari Seidman Diamond, Valerie P. Hans, Nancy S. Marder
Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India

79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108483940

DOI: 10.1017/9781108669290

© Sanja Kutnjak Ivković, Shari Seidman Diamond, Valerie P. Hans, and Nancy S. Marder
2021

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2021

A catalogue record for this publication is available from the British Library.

ISBN 978-1-108-48394-0 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>Editors</i>	<i>page</i> vii
<i>Contributors</i>	ix
<i>Acknowledgments</i>	xii
1 Introduction	
Sanja Kutnjak Ivković, Shari Seidman Diamond, Valerie P. Hans, and Nancy S. Marder	1
PART I ADVANCES IN LAY PARTICIPATION	23
2 The Rise of the Jury in Argentina: Evolution in Real Time	
Vanina G. Almeida, Denise C. Bakrokar, Mariana Bilinski, Natali D. Chizik, Andrés Harfuch, Lilián Andrea Ortiz, Maria Sidonie Porterie, Aldana Romano, and Shari Seidman Diamond	25
3 Twelve Years of Mixed Tribunals in Argentina	47
María Inés Bergoglio	
4 Lay Participation in the Criminal Trial in Japan: A Decade of Activity and Its Sociopolitical Consequences	69
Dimitri Vanoverbeke and Hiroshi Fukurai	
5 The Korean Jury System: The First Decade	88
Jaihyun Park	
6 The Twenty-Fifth Anniversary of the Spanish Jury	107
Mar Jimeno-Bulnes	

	PART II ENDURING SYSTEMS OF LAY PARTICIPATION	129
7	“... And My Right”: The Magistrates’ Courts in England and Wales Stefan Machura	131
8	“In the Name of the People”: Lay Assessors in Germany Stefan Machura and Christoph Rennig	152
9	The Jury in Canada: Testing the Comprehensibility of Styles of Jury Instructions and the Effectiveness of Aids Marie Comiskey	174
	PART III CHALLENGES TO LAY PARTICIPATION IN LAW	195
10	Dismissing the Jury: Mixed Courts and Lay Participation in Norway Anna Offit	197
11	Trials by Peers: The Ebb and Flow of the Criminal Jury in France and Belgium Claire M. Germain	218
12	The Russian Jury Trial: An Ongoing Legal and Political Experiment Nikolai Kovalev and Sergei Nasonov	237
13	Trial by Jury in Georgia: A Catalyst for Evolving Independent Courts Nikolai Kovalev and Giorgi Meladze	261
	PART IV GLOBAL PERSPECTIVES ON LAY PARTICIPATION	283
14	What Hollywood, USA, Teaches the World (Incorrectly and Correctly) about Juries Nancy S. Marder	285
15	The Case for a Hybrid Jury in Europe John D. Jackson	304
16	A Worldwide Perspective on Lay Participation Sanja Kutnjak Ivković and Valerie P. Hans	323
	<i>Name Index</i>	346
	<i>Subject Index</i>	354

EDITORS

Sanja Kutnjak Ivković is a professor at Michigan State University, School of Criminal Justice, USA. She holds a doctorate in criminology and a doctorate in law. Her interdisciplinary, comparative, and international research on courts and policing has resulted in numerous presentations at international conferences and publications in social science journals and law reviews. In addition to her book *Lay Participation in Criminal Trials: The Case of Croatia* (1999), Professor Kutnjak Ivković has coauthored or coedited six books on police corruption and police integrity. Her book *Reclaiming Justice: The International Tribunal for the Former Yugoslavia and Local Courts* (2011), coauthored with John Hagan, won the 2014 Academy of Criminal Justice Sciences International Section Book Award. Professor Kutnjak Ivković received the 2017 Mueller Award for Distinguished Contributions to International Criminal Justice from the Academy of Criminal Justice Sciences International Section. She is currently serving as the chair of the *Division of International Criminology*, American Society of Criminology. Professor Kutnjak Ivković is the cofounder and cochair of the Law and Society Association Collaborative Research Network on Lay Participation.

Shari Seidman Diamond is the Howard J. Trienens Professor of Law at Northwestern University Pritzker School of Law and a research professor at the American Bar Foundation, USA. A lawyer and social psychologist, she has authored numerous publications in law reviews and behavioral science journals on the jury process, including research on real jury deliberations, and on legal decision-making, including the use of science by courts. Professor Diamond has been editor of the *Law & Society Review*, served as president of the American Psychology-Law Society, taught as a visiting professor at Harvard University Law School, received the 2010 Harry Kalven, Jr., Award for Contributions to Research in Law and Society, and is an elected member of the American Academy of Arts and Sciences. She has lectured to academic and judicial audiences in the United States and around the world, and her publications have been cited by US state and federal courts, including the US Supreme Court. Professor Diamond helped draft the 2005 American Bar Association's Principles for Juries and Jury Trials.

Valerie P. Hans is the Charles F. Rechlin Professor of Law at Cornell Law School, USA. Trained as a social scientist, she has carried out extensive empirical research, authored numerous articles in social science journals and law reviews, and lectured around the globe on juries and jury reforms as well as the uses of social science in law. In addition to her research on civil and criminal juries in the United States, Professor Hans is studying the introduction of juries and other forms of citizen participation in other countries, including Argentina, Japan, South Korea, Russia, Spain, and Taiwan. Her books on the jury include *Business on Trial: The Civil Jury and Corporate Responsibility* (2000); *The Jury System: Contemporary Scholarship* (2006); and two books coauthored with Neil

Vidmar: *Judging the Jury* (1986) and *American Juries: The Verdict* (2007). Associate editor or coeditor of three law and social science journals, Professor Hans has served as president of the Law and Society Association and as copresident of the Society for Empirical Legal Studies.

Nancy S. Marder is a professor of law at Chicago-Kent College of Law and director of the Justice John Paul Stevens Jury Center, USA. She is a graduate of Yale College, Cambridge University, and Yale Law School, where she was an articles editor of the *Yale Law Journal*. She clerked at every level of the US federal court system, including a two-year clerkship with Justice John Paul Stevens at the US Supreme Court. Professor Marder is currently writing a book, *The Power of the Jury: Transforming Citizens into Jurors*, and has published *The Jury Process* (2005), as well as numerous law review articles, book chapters, and essays on juries, judges, and courts. She has edited or coedited six symposia on lay participation and the courts, organized two conferences on the jury, and presented her work in the United States and abroad. In 2016, Professor Marder became a member of the American Law Institute and an academic fellow of the Pound Civil Justice Institute; in 2017, she received the inaugural Freehling Award, and in 2019, she received a Baldy Fellowship.

Contributors

Vanina G. Almeida is a lawyer in the Federal Court of Criminal Appeal, Argentina. She is secretary of the Asociación Argentina de Juicio por Jurados (AAJJ), Argentine Association of Trial by Jury).

Denise C. Bakrokar works at a criminal federal court in Argentina, and at the Delegación de Asociaciones Israelitas Argentinas (Delegation of Argentine Jewish Associations).

María Inés Bergoglio is Professor Emerita of Sociology of Law at the National University of Córdoba, Argentina, and a member of the National Academy of Law and Social Sciences.

Mariana Bilinski works at a criminal federal court in Argentina, and is a member of the board of directors of the Asociación Argentina de Juicio por Jurados.

Natali D. Chizik is a lawyer and a graduate student at the Peter A. Allard School of Law, University of British Columbia, Canada, and a member of the board of directors of the Asociación Argentina de Juicio por Jurados, Argentina.

Marie Comiskey is a senior counsel with the Public Prosecution Service of Canada and a sessional instructor in the graduate department at the Centre for Criminology and Sociolegal Studies at the University of Toronto, Canada.

Shari Seidman Diamond is the Howard J. Trienens Professor of Law at Northwestern University Pritzker School of Law and a research professor at the American Bar Foundation, USA.

Hiroshi Fukurai is a professor of sociology at the University of California, Santa Cruz, USA, and president of the Asian Law and Society Association (ALSA).

Claire M. Germain is the Clarence J. TeSelle Professor of Law (retired) at the University of Florida Levin College of Law, USA, and a professor of law (retired) at Cornell Law School, USA.

Valerie P. Hans is the Charles F. Rechlin Professor of Law at Cornell Law School, USA.

Andrés Harfuch is the chief public defender in San Martín district, Province of Buenos Aires, Argentina, and an associate professor at the Law School of Buenos Aires University, Argentina.

John D. Jackson is a professor of comparative criminal law and procedure at the School of Law, University of Nottingham, UK, and is a qualified barrister.

Mar Jimeno-Bulnes is a professor of procedural law at the University of Burgos, Spain.

Nikolai Kovalev is an associate professor of criminology at Wilfrid Laurier University, Canada, and a licensed barrister in Ontario.

Sanja Kutnjak Ivković is a professor of criminology and criminal justice at Michigan State University, School of Criminal Justice, USA.

Stefan Machura is a professor of criminology and criminal justice at Bangor University, UK.

Nancy S. Marder is a professor of law at Chicago-Kent College of Law and director of the Justice John Paul Stevens Jury Center, USA.

Giorgi Meladze is an associate professor at the Ilia State University, Georgia, and serves as the director of the Center for Constitutional Research affiliated with the law school of Ilia State University.

Sergei Nasonov is an associate professor of criminal procedure law at Kutafin Moscow State Law University, Russia, and a barrister in the Moscow City Bar Association.

Anna Offit is an assistant professor of law at Southern Methodist University, Dedman School of Law, USA.

Lilián Andrea Ortiz works at a criminal federal court in Argentina. She is a member of the board of directors of the Asociación Argentina de Juicio por Jurados, Argentina.

Jaihyun Park is a professor of psychology at Baruch College of the City University of New York, USA.

Maria Sidonie Porterie is a political scientist member of the board of directors of the Institute for Comparative Studies in Political and Social Sciences and director of the Criminal Policy Program of the same organization, Argentina.

Christoph Rennig is a presiding judge at the High Court Frankfurt am Main, Germany.

Cambridge University Press

978-1-108-48394-0 — *Juries, Lay Judges, and Mixed Courts*

Edited by Sanja Kutnjak Ivković, Shari Seidman Diamond, Valerie P. Hans, Nancy S. Marder
Frontmatter

[More Information](#)

List of Contributors

xi

Aldana Romano is a political scientist and the executive director of the Institute for Comparative Studies in Political and Social Sciences and a consultant for the Buenos Aires City Legislature, Argentina.

Dimitri Vanoverbeke is a professor at Katholieke Universiteit (KU) Leuven, Belgium, and director of the Department of East Asian and Arabic Studies.

Acknowledgments

The editors are grateful to their spouses, Zoran Ivković, Stewart Diamond, Michael Bend, and Jeremy Eden, who have continuously provided encouragement, support, and exceptional patience as we disrupted their lives with this book. In addition, all of the editors have enjoyed the generous support of their respective institutions: for Sanja Kutnjak Ivković from Michigan State University, for Shari Seidman Diamond from Northwestern University Pritzker School of Law and the American Bar Foundation, for Valerie P. Hans from Cornell Law School (including the Milton and Eleanor Gould Research Fund and the Eisenberg Empirical Legal Studies Memorial Fund), and for Nancy S. Marder from Chicago-Kent College of Law.

The editors also wish to acknowledge the critically important support of the National Science Foundation. NSF grant number SES-1446070, Expanding Law and Social Science Research by International Research Collaboration, to Valerie P. Hans, Lawrence M. Friedman, Manuel A. Gómez, and Masayuki Murayama, provided essential travel funding for a number of the contributors whose chapters are included in this book. The Law and Society Association's financial and logistical support, and our colleagues in the International Research Collaborative on Lay Participation in Legal Decision-Making, were key factors to the success in bringing a diverse group of scholars from around the globe to annual meetings in New Orleans, Mexico City, and Washington, DC, to join in international collaborative exchanges. This book is one of the products of that collaboration.