

Trial by Jury: An American Expert Tells Us What We're Losing

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By **Valerie P. Hans** | April 20, 2018 at 05:10 PM



Valerie Hans/courtesy photo

High-profile jury trials offer a seemingly endless supply of news and entertainment. We are in the midst of a flurry of stories about the retrial in Bill Cosby's criminal case on charges of sexual assault. Implications of his jury trial are already being debated for what it tells us about the state of the nation: How is the #MeToo movement influencing Cosby's jurors? Do we still blame victims?

If you follow high-profile trials, you might be surprised to learn that the jury system is in serious decline in America. That's a big problem. The jury system's ascendance in the country of Argentina holds lessons for what we are losing and why we need to halt the decline.

This past summer, 5,000 miles away, in San Isidro, Argentina, a remarkable jury trial transfixed the public there. For most of Argentina's history, professional judges, not juries, have resolved criminal cases. Yet its courts and judges suffer from a crisis of legitimacy. In a remarkable response, within the last dozen years, five provinces have introduced jury systems.

Thus it happened that Argentine millionaire businessman Fernando Farré, charged with murdering his wife Claudia Schaefer during bitter divorce proceedings, would be judged by his peers, individuals new to the idea of trial by jury. Most Argentines who receive a jury summons know very little if anything about their country's bold experiment with jury trials. Would these novice jurors be up to the task of resolving Farré's guilt?

The case against Farré was complex. Substantial evidence pointed toward guilt. Farré had been violent to his wife in the past, and witnesses confirmed that Farré stabbed his wife dozens of times. But jurors had to weigh these facts against complicated testimony about Farré's claim that he was not legally responsible because of insanity. Many Argentines feared that a jury would be lenient toward a wealthy businessman, even one accused of a horrific crime. Would a rich man get away with murder?

Farré's jury retired to deliberate, and the nation went on high alert. Two hours later, the jurors emerged saying that they had a verdict. **Argentines gathered in the streets** and crowded around bar televisions to watch the announcement of the jury's verdict. As the foreman declared that the jury unanimously found the defendant guilty as charged, those observing in the courtroom and in the streets erupted in applause. The collective sense was that justice had been done.

The expansion of trial by jury in Argentine courts is having salutary effects on the jurors who serve and on the justice system more broadly. Because trials are decided by regular citizens, judges and lawyers must present the evidence and the law in ways that laypeople can understand, increasing the transparency and accessibility of what goes on in the courtrooms.

My research collaborators and I are studying Argentina's new juries, and we are finding that the vast majority of jurors have very **positive reactions to their experience**. They are proud of their contributions and have become more favorable about juries and about the courts. Case by case, verdict by verdict, Argentine jury trials are helping to increase the legitimacy of the country's legal system.

Back in America, trial by jury is a vanishing institution. In both federal and state courts, there has been **a dramatic decline** in cases resolved by jury trials. On the criminal trial side, sentencing guidelines and mandatory minimum sentences have made going to trial riskier, and growing numbers of defendants accept plea bargains instead. Reforms to the civil justice system such as **changes in legal rules** and **limits on damage awards**, coupled with the mandatory arbitration clauses in many consumer contracts, have combined to decrease the number and percentage of civil disputes resolved through jury trial.

These declines mean that far fewer Americans are serving as jurors, a decline that has negative consequences for democracy. **Jury service boosts voting** and other forms of political participation. As we are discovering in Argentina, in the U.S., people become more favorable toward juries, judges, and the courts as legitimate tools for resolving our disputes. Having fewer citizens serve as jurors robs us of a potent method of civic engagement. **Millenials**, growing up in a period of declining trials, are now

less likely than older Americans to consider jury service as part of being a good citizen. As Preet Bharara, former U.S. attorney in Manhattan concluded, “**When trials vanish, citizenship also suffers.**”

The Argentine experience should remind us here in the United States about the enduring benefits of our democratic experiment with trial by jury and what we are losing as it slips into oblivion. We need to reconsider the rules and practices that have reduced jury trials.

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