



Trial by Jury

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and we have not been able to properly communicate to others the task we undertake daily. The decisions we make are usually only understood by few people, due to the intricacies of the technical language or else due to the way in which they are explained.

The choice of turning to trials by jury implies a Copernican change in the way we make justice. It is not a panacea and it does not generate clarity, comprehension or a legitimization of decisions if it is not accompanied by an all-embracing unequivocal vision. It means a different way of making justice, and it is linked to a way of thinking other than the inquisitorial one we are used to, heir to the colony and clearly favored by our Constitution (sections 24, 75, sections 12 and 118) since 1853.

According to Mayer (tome I, p. 1206) *"the problem of the trial by jury does not only refer to the way of integrating a court of justice, but especially to the choice for a certain judicial proceeding"*.⁽¹⁾

Alberdi's Constitution project –available in database– did not consider the alternative of trial by jury. It was included in the last Subsection of Section 75, Section 12 of the Constitution as a result of the 1853 Convention, which took place in the city of Santa Fe. The addition was probably influenced by the presence of delegate Gorostiaga, and nothing similar is found in the early versions of the Constitution.⁽²⁾

A precedent for this practice appears in the 1215 Magna Carta⁽³⁾: there is a trial carried out by peers against King John, as a result of a rebellion of the nobility against the never-ending abuses of the monarch against them and their properties. From then on, the idea spread and developed through time, reaching all citizens, without class distinctions.

It is the typical Anglo-Saxon system of England, Wales, Scotland, the United States, Canada, Belgium and Spain, among others.

And all was made without a bloody revolution, as happened in France, and without persecuting nobility and citizens.

Overall, the problem is related to what the Constitution establishes as a constitutional guarantee of the "natural judge": the possibility to opt for a "trial by jury". This is by no means a novel problem for recent jurisprudence, as it has been brought forward many times both at national and provincial levels.

The issue of "trial by jury" has always been in the spotlight for scholars, on one hand because of its presence in the Constitution, and, on the other, for the influence of films' narratives, that usually resort to this practice as a trope used to focus on human conflict.

- 1. This is a very particular time in the history of institutions in the Argentine Republic. Citizens are looking intently at the Judiciary. Trials are under the scrutiny of the mass media, while there are some who decide to take justice on their own hands. These problems must be subject to a critical analysis.**

What is the reason behind this confusion? Why this lack of understanding?

How and when can we begin to understand one another?

We, the judges, usually work in silence,

Four perspectives have been brought forward:

- it is a fundamental right,
- it is a programmatic right,
- it is a guarantee for the accused, which can be waived, and
- it is a proceeding guarantee for federal jurisdiction.

2. Models

2.1 Collegiate Tribunal

It can take two forms: three or more professional judges, or mixed jury, with three judges or lawyers and two ordinary citizens. The right choice would be to have a jury made up of twelve citizens, with three substitutes, selected by the parties: the prosecution, the defense and the plaintiff, whether there is an intervener or not.

The mixed jury variant is particular of Córdoba Province, as I have said repeatedly during my lectures. I am a teacher in Law at the University of Córdoba, in the Graduate Course of Procedure Law, certified by CONEAU. The director of this Course of Studies is Dr Zinny and the Co-Director is Dr Manuel González Castro, also known as "Manolo", a very dear friend of mine.

2.2 Mixed jury

Mixed juries are common to France, Italy, Germany, Switzerland and Portugal, inter alia. However, they differ from the absurd system used in Córdoba, where the President of the Jury must enforce the decision of ordinary jurors, even if he or she does not agree with it.

It is no surprise for us that Dr. Eugenio Raúl Zaffaroni favors mixed juries. We and many others authors, however, favor the classic jury.

3. Selection

The selection of jury members is of great importance for the parties.

3.1 Jury selection: A proper selection of jury members will guarantee that their conclusions are reliable, within a reasonable margin.

- Number of members: Traditionally, the choice is for literate people, who vote on elections. Their race, political views and age are disregarded.
- People with problems regarding drugs, alcoholism, mental illness, to name a few, cannot be selected as jury members.
- At least three substitutes must be selected, as the main jurors may fall ill or even die.
- The Prosecutor's criteria. The prosecutor only pursues the case if the evidence collected allows him or her to anticipate a conviction.

3.2 The Defense's criteria: The defense will seek the absolution of the defendant/s.

3.3 After the presentation of evidence, the parties will present their conclusions, so that the evidence may turn into legal proof. This proof will be the basis for the decision reached by the jurors as they should not resort to any other means in order to come to a decision.

- a) First, the evidence must be brought forward by the prosecution to sustain their hypothesis about what happened.
- b) Then, the complainant or plaintiff must also provide testimony about the evidence, which may sustain the prosecutor's hypothesis or a different one.
- c) Finally, the defense attorney will provide their own hypothesis.
- d) This part of the process ends when the judge asks the defendant their personal data, education level, name of their parents and whether or not they are deceased, their profession, if they are married and have children, and any other circumstance that may serve to get acquainted with this person, for the benefit of the jury.

4. Judge's Instructions.

Before the jurors retire to deliberate, the judge has to provide them with instructions about the discussion itself and the numbers necessary to obtain a conviction or an absolution.

If the judge indicates how the evidence has to be weighted, the jury members will be able to access certain resources that may or may not be presented by the affected party, depending on the strategy used.

Concerning the way in which the evidence presented by the parties may be weighted: "It is necessary to keep in mind the criteria of appreciation of the proof in whole, which the judge may use to reach a complete sense of conviction about the case.

It must not be empirical or partial and the proofs are not to be considered in isolation, separated from the rest of the process. Each element must be understood individually and as a part of an ensemble, an 'ensemble of proof' which emerges from the investigation. If each proof is examined in isolation, this may lead to a wrong or biased weighting of the evidence, as it does not provide an integral view of the problem. What matters in criminal proceedings is a joint and organic examination of all proof and all evidence". (3rd Room, Court of Law of Santa Fe, 12-10-06, Cáceres, Walter, file 419/06)

5. Necessary majorities

This matter is very important, as it is not the same to have "a simple majority" than "an absolute majority". Seven jurors agreeing on an absolution is enough to achieve it; but the twelve jurors must agree to assure a conviction (let us recall the plot of the film 12 Angry Men).

There are some who question these numbers, but they do not seem to provide any grounds for it.

5.1 According to the Merriam Webster Dictionary, "*deliberation*" means "*careful thought or discussion done in order to make a decision*" or "*a discussion and consideration by a group of persons (as a jury or legislature) of the reasons for and against a measure*".

5.2 Deliberation as a constitutional guarantee: The process of deliberation has a constitutional value and it is a significant part of due process. A decision cannot be considered legitimate in a democratic country if it is not the result of an exhaustive, inclusive and representative discussion, in a context of equal opportunities.

5.3 The Anglo-Saxon jury and its political function: In Anglo-Saxon countries, the trial by jury has a very relevant political function, as it acts as a filter for the power of the State. Only the members of the jury, after finding the defendant guilty, may authorize the State, through the action of a professional judge, to pass sentence. If the verdict is "not guilty", the State is prevented from punishing the defendant, as it does not have the role of the prosecutor or the judge.

This is one of the criticisms that modern criminal procedure codes face today in this country, as they have introduced the idea of oral communication, for instance, in Santa Fe Province. This allows the complainant to appeal, which may lead to another trial. (In this instance if the defendant is found not guilty for the second time, a new appeal would not be possible).

As a result, defendants may only be deprived of their freedom if that decision is preceded by genuine and intense discussions about the facts and the evidence carried out by the jurors, who represent the People.

6. Mechanisms that favor jury's deliberation.

6.1 Make-up of the jury and quorum

The number of twelve members and three substitutes typically used in classic juries guarantees a heterogeneous group, and thus a variety of opinions. This is supposed to produce a positive effect when there is conflict in decision-making.

The requisite of unanimity favors the representative spirit of this approach, and scientific findings from all around the world show that this allows a better weighing of the proof. In addition, the longest the time given for deliberation, the deepest the understanding and examination of the facts and the law. Unanimity is also better for achieving satisfaction as regards the verdicts and its trustworthiness.

Research has also shown that the more extensive the requirements for getting a quorum are, the longer the debates for jury's deliberation take.

This conclusion has been reached after observing juries' deliberation. Twelve-member juries' deliberation takes longer than those of juries with fewer members.

6.2 "Voir dire" Hearing

This kind of hearing has a fundamental role in determining who will eventually be selected to act as main jurors and substitute jurors in a trial.

Before the trial begins and in presence of a judge, the parties will pose questions to the people assigned from the electoral register, who meet all the requirements stated by procedural law. These questions aim at revealing their concerns, religious orientation, sexual orientation, social criteria, racial and political opinions, among others, in order to detect any bias or interest to reach a particular verdict.

For a juror to be accepted or dismissed, legal challenges are used, and these can be for a cause or peremptory. The final composition of the jury will be crucial to achieve a more epistemological value during the deliberation process. This is why subjects from different groups of society are selected.

That is to say, young people, men, women, unemployed, etc., deliberate and decide providing different views and perspectives. This plural contribution during the definition of the process is quite opposite to the current federal procedure. The latter

supposes decisions made by members of a professional bureaucracy, generally coming from a single sector of society.

This hearing has been regulated not only by Buenos Aires province but also by Neuquén province.

6.3 Role of Litigants

Litigants in a trial perform a specific and delimited function which consists in providing their version of the facts as well as evidence, which may be deemed trustworthy after being assessed. Therefore, it is expected that litigant parties have a strategic plan, that is to say, that they work and elaborate theories for the case which enable them to deal with facts, law and evidence.

It is also expected that they can acquire the ability to state the information regarding the case they have to present, and be clear about the way they will try to achieve their objectives.

Moreover, it is also one of their functions to prove the supportive evidence they managed to collect during their investigation and present it, as they have to demonstrate the jury it is not a simple narrative but has criminal content. They have to demonstrate that the evidence presented is sufficient proof to obtain a decision favoring their interests.

Therefore, they have to use tools to produce information, such as experts and witnesses' assessments, introduction of material evidence, graphical support, previous statements for reminding the witnesses of specific information, among other proofs. In addition, they have to execute strict control over the information provided by the counterpart with the aim of preventing any irrelevant or illegal information from being considered.

To achieve this, the parties will have to be strict in their control of the information provided by the counterpart.

7. Role of the Jury

7.1 How the law is applied.

7.2 What can and cannot be considered as evidence.

7.3 The scope of presumptions, clues and constitutional guarantees.

7.4 How the evidence is assessed.

7.5 Applicable substantive law (the elements of an alleged crime, defenses, misdemeanors included in the impeachment and proposals of possible verdicts), investigation, cautionary investigation (e.g. having a strong warning significance) and rules for deliberation.

8. The majorities needed to issue a valid decision

8.1 Whether the defendant is declared guilty or not guilty.

8.2 The crime or crimes the defendant must answer to, and, if necessary, the indemnity stipulated; although we thought that complainants should claim it at a civil court or else, as my father –a former judge– used to say, “We will end up dealing with succession proceedings at criminal courts”.

9. The secret of deliberations

The majority of the systems are particularly interested in keeping jury's deliberations secret. The reason of this principle consists mainly of avoiding an encroachment of freedom of conscience or speech that would result in an impartial decision.

The purpose of the rule of secret is informing each jury that, even after finishing their service they cannot reveal the secrets of deliberation, under penalty stated by the crime of violating the secret which is a public action for our Criminal Code.

10. Minimum time frame of deliberation

Section 17 Great Britain's Law states that a jury must spend at least two hours deliberating for a majority verdict to be accepted.

The need to establish a minimum time frame has the purpose of promoting deliberation itself, thus trying to attain the fairest result possible.

10.1 Organization

In Common Law countries, after having given the necessary instructions regarding the Law, the judge provides the jury with some rules of deliberation.

The judge explains to the jury: that they have to appoint a president; that they are entitled to ask for the material evidence if they want to; that there are rules of majority or unanimity, depending on current law; what they are supposed to do when in doubt; and what they are supposed to do in case of hung jury or "deadlocked jury" (when a jury does not agree on a particular point and the deliberation remains stuck). In some cases, they are even given some guidelines on how to continue the debate.

11. Jury's behavior on the deliberation room

11.1 in some jurisdictions, the judge appoints the President of the jury.

11.2 in other jurisdictions, the jury itself appoints a president.

11.3 in some other jurisdictions, the first person entering the room automatically becomes the president.

12. The judge must inform the method to be employed in trial

12.1 The Role of the President.

The president is in charge of conducting and organizing the deliberation and must give each and every member the opportunity to state their views.

The president must promote the debate while conducting it and control that every member vote. For this purpose, the president can ask members to take turns giving their opinions as regards the organization of the debate and the voting method, so that everyone is heard.

The debate must be made in a receptive spirit, exchanging ideas freely, therefore, allowing them to reflect during the debate and even eventually change their minds.

The debate must be based on the evidence and the law applicable specifically to the case. The jury must inform the judge of any questions or difficulties it may have. The jurors also have to inform the judge when they have reached a verdict and have to read it in open court.

13. Custody and safety of the court and the jury

Once the Jury started deliberating, it is no longer authorized to communicate with anyone else.

In Common Law countries, there is a police officer who safeguards the debate room so as to prevent any irregularity or interference.

14. The jury will read the verdict.

Reached observing the majorities *ut supra* stated, in a public court so that the People can be present and support or criticize the appointed jurors' performance.

This stage shows the maturity achieved by the peoples ruled by this legislation.

15. Then, if applicable:

The judge will pass sentence, which will be immediately communicated to the parties. Arguments can be presented up to two or three business days after the trial takes place. This way, the reasons that lead to appealing the sentence can be explained, thus allowing the counterpart to reply.

If such reasons have no grounds, a new prosecutor or defense attorney will be appointed. However, the plaintiff will remain the same, without prejudice to their subsequent responsibilities before both the Disciplinary Committee and Civil Courts for misconduct.

16. The parties may lodge well-founded appeals:

Immediately and orally or they can ask for a period of five to ten business days, in which case, all parties should be informed according to principles of procedural economy and celerity, stated in every modern Procedural Code, such as the one of Santa Fe.

17. Higher Court

It has to be made up of three or more professional judges. Five of them are needed for complex cases or cases of public significance.

The Higher Court –which can be the Criminal Court, the provincial Supreme Court of Justice the national Supreme Court of Justice or the Inter-American Court of Human Rights, appointed by the Pact of San José and based in New York City–may allow the appeal.

As regards the certainty required by a technical Higher Court either to pronounce preventive custody, sentence or acquittal, a former member of the Court of Appeals in Criminal Matters of the second jurisdiction, Prof. Dr. Guillermo Fierro states while referring to the Zalazar case of the Fourth Room: "When trying to confirm or reverse the definitive sentence, certainty depends on the degree of conviction the procedural system imposes on the judge and on the legal imperative to fully understand the situation. The current legal system instructs judges to acquit the defendant when in doubt."

However, it is worth asking what "certainty" actually means. According to the current doctrine I have been referencing, certainty cannot be based on an assertion of absolute truth since mankind cannot attain that kind of statements, and both the law and the legal apparatus created to impose it are human inventions.

We should not ignore that any procedural activity, especially the evidential one, can fail and is subject to multiple conditions. If, as stated, the truth is the correct

ideological representation of an ontological reality (Hessen, Johannes, "Tratado de filosofía", Ed. Sudamericana, Bs. As. 1976, Book II, from page 223), the certainty of truth a judge can attain is therefore relative and subjective since it is a psychological and intellectual state of the cognitive subject, as it was already stated.

18.Renvoi

Takes place when of any of the above mentioned Courts reverses a sentence. In this case, a new trial is scheduled as well as a new jury and judge appointed. The trial may even take place in another province and juries may come from a different jurisdiction. The aim is to prevent juror bias. This is normally done in the United States.

During the appeal, once the appealing party has made its objections and once the counterpart has replied, the right to reply would be exercised only when the counterpart had presented new evidence. Otherwise, the process would turn into an informal talk instead of an equal argumentative debate between the parties as stated by constitutional laws.

18.1 In Ancient Greece, it was an Athenian jury that sentenced Cimon to ostracism, Photios to death and Socrates to poisoning. Juries were called Heliea, and they were popular Courts whose members were appointed by draw.

18.2 In Ancient Rome there were also juries. Any citizen could be sentenced to death if they did not have civitatis, libertae and propietae status.

The person could be sentenced to death in Centuriate Assemblies. In Tribal Assemblies, the person could be given a fine. Praetors were in charge of appointing judges from the equestrian and senatorial orders. Those who had already served as judges were preferred.

18.3 German peoples also had juries. It was in popular assemblies that sentences were decided and the King could chair these meetings. Sentences were carried out when the people approved of them, and they were mainly war councils. They aimed at organizing the military.

18.4 In England, juries were known since the times of the Angles and the Saxons. Such institution was established in the Magna Carta, which reads: "mullus liber homo capiatur aux eusuei, aut aliquo modo destinatur, nisi per legale iudicium parium suorum". There were two kinds of juries: Grand and Petty juries. The latter charged the defendant with a crime and were chaired by a Colonel, who was generally a prominent citizen, a member of the nobility or a landlord. They served as juries for free.

18.5 In the United States, a system similar to the British one was established. Both have two juries:

18.5.1 The Grand Jury is responsible for hearing the Prosecutor and the Defense. The debate is directed by a judge.

18.5.2 The Ordinary Jury (Petty Jury) carries out the trial against the defendant. What is the difference between a Jury and a Grand Jury?

18.5.3 Grand Jury: The Fifth Amendment of the U.S. Constitution establishes that a person cannot be prosecuted by intentional murder without having been

accused by a grand jury. A grand jury protects the suspects by checking the evidence to decide whether there should be a trial or not.

The Constitution's Fifth Amendment states that a person cannot be tried for a serious crime without being indicted by a grand jury. A grand jury protects suspects by reviewing the evidence against them and deciding whether or not there should be a trial. Grand juries developed in 12th century England when King Henry II made a proclamation called the Assize of Clarendon. Under the proclamation, a person couldn't be tried unless a group of citizens, called the Assize, accused him in court. However, the grand jury didn't protect suspects' rights until the 17th century. In 1681, the grand jury refused to indict two Protestants King Charles II accused of treason for resisting his attempt to reestablish the Roman Catholic Church. In colonial America, grand juries frequently sided with people who resisted British rule⁽⁴⁾.

19. Modern Grand jury

In the United States, federal and most state courts use grand juries. At the federal level, grand juries consist of 23 citizens. Twelve votes are required for an indictment. At the state level, grand juries consist of between five and 23 members. Grand juries are chosen from legal residents who are not biased against the person under investigation and who've never been convicted of a crime. The prosecutor may function as the grand jury's legal adviser but the grand jury also has the right to seek advice directly from the court. The prosecutor questions witnesses but, in many jurisdictions, the grand jury can exclude the prosecutor if they wish. The court cannot require the grand jury to make an indictment but, in many jurisdictions, it can require it to examine certain evidence in the interest of justice.

19.1 In France, the jury as we know it in modern times was implemented during the revolution. The law that passed it on the 16th September 1791 only limited to some crimes as regards "criminal issues". The jury was only in charge of felonies or defamation.

Judges or professional judges determined the penalty and lay judges issued the verdict. In many cases they issued acquittals without justification, fearing the judge imposed a very high punishment.

Therefore, in 1832 the Anglo- Saxon jury introduced the extenuating circumstances of criminal responsibility. However, it was not enough since judges could still impose rather high punishments. Juries then evolved to mixed juries.

Mixed juries were installed in France by late 1932, and are still used in some European States, as Germany, since 1934.

Currently, the Angle-Saxon system is still in force in the United States, Australia, Russia, Spain, and in the English High Court. The mixed jury, on the other hand, is applied in Belgium, Austria, Norway, the English "Magistrate Court", France, Italy, Switzerland, Portugal and Greece, among other European States. It is the predominant system adopted in Europe. Netherlands is the only European State that lacks trial by jury.

19.2 The jury in Spain

Section 125 of the 1978 Spanish Constitution adopts juries. The purpose is that citizens can take part in the administration of justice. This is what our hypothesis holds, and what we want to prove with our thesis.

According to constitutional provisions, Law 5/1995 –the one ruling Juries– was modified by Organic Law 8/1995 on 16th November. The latter explains this institution by describing its role in Section 6. It states “Jury service is a right that may be exercised by all citizens for whom there is no reason that might prevent them and its performance is a duty for whoever is not subject to any incompatibility or ban or who is unable to excuse themselves in accordance with this law”⁽⁵⁾.

In Spain, the system in force is the Angle-Saxon one, or “pure”. The jury is made up of nine members drawn from the electoral census every two years.

After the election for each trial, a complex process of selection is carried out. First, 36 laymen citizens are chosen. Then at least 20 citizens are chosen, and they have to select the defense lawyer and the prosecutor. Those people who are deemed biased are dismissed from the interrogation. At the end of the trial, the jury determines whether the accused is innocent or guilty.

20. Argentina

In the 1813 Assembly (31th January to 8th September), the trial by jury was taken into account as a system to adopt.

The 1819 unitary Constitution, Section 114, stated “It is the interest and right of all the members of the State to be tried and judged by judges the most free, independent and impartial that are compatible with the condition of human affairs. The Legislative Body will take care to prepare and put in practice the establishment of Trials by Jury, as much as is consistent with existing circumstances”⁽⁶⁾.

The 1826 Constitution, also unitary, reproduced the aforementioned text.

In his “Bases and Starting Points for the Political Organization of the Argentine Republic”, Section 67 Subsection 5, among the attributes of the National Congress, Juan Bautista Alberdi mentions its inherence in the civil, commercial and criminal affairs.

The Supreme Court of Justice, in Loveira’s case ^(Verdicts: 115:92), states that “*The National Constitution has imposed the Congress the duty of immediately proceeding to establish trials by jury*”.

It has been argued that we are facing a so-called “programmatic clause”, which cannot justify in any case non-compliance with the constitutional provisions effective 162 years ago. This is a serious legislative anomie.

21. Provincial Constitutions which behold it.

21.1 Constitution of Córdoba Province, Section 24, Subsection 23.

21.2 New Constitution of Corrientes province, Section 193.

21.3 Constitution of Entre Ríos province, Section 22, Subsection 23.

21.4 Constitution of La Rioja province, Section 156.

22. Proposed draft Bills.

22.1 Chaco province has proposed a bill, which adopts a classical model of trial for serious crimes and crimes committed by public servants in duty, 3004/2013; it has the distinctive feature of including native peoples in its composition:

22.1.1 Section 4. Jury Composition and Aboriginal Equality:

When the accused was a Qom, Wichí or Mocoví native, half of twelve members (12) of the jury shall be compulsory made up of men and women of his/her same native community.

22.1.2 Section 5. Jury's total composition of Aboriginal peoples:

When both accused and victim were members of the same native community, Qom, Wichí or Mocoví, the twelve (12) members of the jury and substitutes shall compulsory be men and women of his/her native community in its totality.

We believe that this Bill is much advanced and seeks to make positive native peoples' rights.

Santa Fe province has three draft Bills, although one of them is not longer before Parliament.

23. Hispanic Constitutions that behold it:

23.1 El Salvador Republic in its 1883 Constitution, Section 112

24. Constitutions in the world that behold it:

24.1 United States of America Constitution.

24.2 Azerbaijan Republic Constitution.

25. Conclusions

By previously developing our thesis, we consider we have succeeded in proving our hypothesis.

Moreover, although few Constitutions behold trials by jury, especially in Ibero-America, the fact that our Magna Carta and the Constitution of the United States of America mention this kind of trial is useful for the purpose of our thesis.

However, as our judges and public servants are not directly elected, as the members of the Legislative and Executive branches, trials by jury would be one of the ways of making Justice more democratic since it involves citizens in it.

Moreover, those in charge of choosing the members of the jury are duly educated to be part of it. This kind of trial represents a guarantee for the accused party, who can therefore reject it and ask to be tried by professional judges.

Either in the United Kingdom or the United States, very few cases are taken to trial. The objective is to avoid the money raised from taxes so they implement several forms of avoiding trials, as the plea bargaining. Another important aspect is that prosecutors only make accusations if they consider the evidence very likely to give a guilty verdict.

This would be a multiple system, brought about by modern a Criminal Procedure Code, as the ones ruling Santa Fe province. It becomes the only alternative to economize the available resources, human, technical or budgetary.

The main aspects are:

- 1) Promotion of people's participation in Justice.
- 2) Democratization of Justice.
- 3) The countries where it already applies show a more mature attitude.
- 4) Higher quality due to the way of applying legal procedures.
- 5) The accused are tried by peers.

- 6) They are public, except for the cases established in International Pacts for Human Rights, which promotes its public aspect.
- 7) Judges are more focused, since they do not have to pay attention to the debate and controlling the evidence at the same time.
- 8) The number of people involved is higher compared to single trials. Although in many cases a Collegiate Court is established, the judges' tasks are distributed since the President votes first and the other two generally agree on that sentence.
- 9) A true deliberation process takes place, a guarantee almost forgotten in our Courts.
- 10) The distance between society and State narrows.
- 11) It is a way of representing people's direct participation in accusatory matters.
- 12) It is an expression of people's direct participation in the fundamental act of government, which implements the state *ius puniendi*.
- 13) It helps fighting the bureaucratization of Justice.
- 14) In general, it would have a more pedagogic role for society.
- 15) It allows a more strict control over the Judicial Branch.
- 16) It encourages citizens' involvement in these matters.
- 17) It reveals the difficulties Justice is going through as there are few available resources.
- 18) It helps reducing social tension.
- 19) Judicial decisions would fit social consideration. Therefore, the way of solving social conflicts would be more equal.
- 20) The setting of trials by jury represents a communicative process addressed to society.
- 21) It represents an alternative to counteract inquisitorial practices.
- 22) Among others, Francesco Carrara, Edgardo Donna, and Carlos Alberto Chiara Díaz support trials by jury.

26. References

- (1) Mayer, Tome I, p. 1206.
- (2) Joaquín V. González (Nonogasta, March 6th, 1863 - Buenos Aires, December 21st, 1923) prominent Argentine politician, historian, teacher, Mason, philosopher, jurist and man of letters, served as governor of La Rioja, his native province, and was a minister in many occasions. Founded the University of La Plata and the Instituto Superior del Profesorado in Buenos Aires. He was also an appointed member of the Royal Spanish Academy. At the time of his death, he was senator. He once said: "To have trials by jury is one of the boldest proposals of change in the principles of government. As the Argentine people participate in the process of decision-making exerting their right to vote and elect their representatives, the Jury would exert the same right serving justice".
- (3) Prunotto Laborde, Adolfo; Principio de Legalidad, Alcance y precisiones; in Revista de Derecho Penal, Garantías constitucionales- I, Director Edgardo Alberto Donna, Rubinzal Culzoni Editors.
- (4) T.N.: Quoted from the English version "What Is the Difference Between a Jury & a Grand Jury? Written by Frank B. Chavez III, in http://www.ehow.com/info_8644285_difference-between-jury-grand-jury.html.
- (5) T.N.: Quoted from "Organic Law on Jury Court, Section 6 (L.O.T.J. by its Spanish acronym).
- (6) T.N.: Quoted from "Constitution of the United Provinces of South America", Walton, William, edited by Hay and Turner, Newcastle Street, Strand. England, 1819.