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# Governance in Córdoba's Mixed Tribunal: A Study on Microphysics of Power

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## Abstract

Córdoba is the first province of Argentina to adopt lay participation for the decision of criminal cases. Since 2005, a mixed tribunal of 8 lays and 3 judges decide some criminal cases by the rule of majority. Drawing on in-depth interviews with judges, other officials and jurors, this thesis explores this unique encounter of legal professionals and lays from the perspective of "microphysics of power" as put forward by Michel Foucault. The analysis first focuses on legal professionals' perceptions of jurors and unveils how these perceptions construct jurors as a problem that needs to be governed. Secondly I discuss the tools of governance put into practice by legal professionals and the Judiciary to direct jurors' conduct and argue that the interaction between lays and professionals is largely demarked by the mutual operation of power relations and knowledge. Next I look to jurors' narratives to unravel their practices of self-governance and finally I trace the possibility of the emergence of resistant discourses by focusing on the narrative of a single juror. All in all this thesis constitutes an important departure from the previous body of work about lay participation in criminal justice by its theoretical approach and methodological advantages. It aims to make, by the theoretically informed analysis of relevant qualitative data, fruitful contributions both to the field of inquiries on jury trials and to more general discussions on how power in its myriad forms shapes subjectivities and governs conducts whilst circulates and is resisted against.

## Key words

Jury trials; Governmentality; Foucault; Power/knowledge; Mixed tribunal; Lay participation in criminal justice; Argentina

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## 1. Background

Córdoba is the first province in Argentina to adopt a system of lay participation for the resolution of criminal cases. Although the Federal Constitution establishes that criminal trials shall be judged by juries since its first version in 1853[1], lay participation had its first application almost 150 years later in 1991, with the introduction of a non-mandatory mixed tribunal with minority of lays to decide some criminal cases in the Province. This system was followed in 2005 by the Law 9182 which established the first tribunal with majority lay participation, mandatory for the judging of aberrant homicides and cases of public corruption[2]. This is the experience my research looks at.

The tribunal in question is composed of two judges and eight jurors who produce verdicts by majority, and a third judge who leads the debate and votes only in case of a tie[3]. After deliberating, each member votes individually for the guilt or innocence of the defendant and each vote is made public in the sentence[4]. Judges alone decide the legal qualification of the crime and the punishment in case of condemn[5]. The Law 9182 grants jurors with 'judicial state', assures them equivalent guarantees and protections with judges' for the undertaking of their function and renders any influence on them as illegal[6].

The system of the mixed tribunal is put forward as an attempt towards the democratization of the Judiciary by allowing lays to form a majority decision disregarding the opinion of judges. However, statistics on jury rulings insinuate a significant gap between lay participation in the law and in practice.

In the first four years of the experience (2005-2008), 91 judgments were enacted, in which verdicts were made about 138 defendants. The prevalence of unanimous decisions is striking: in around 85% of the verdicts the 10 members of the tribunal agreed in convicting or acquitting. If added to unanimous decisions those in which every juror voted with at least one judge, the proportion almost reaches 90% (see Table 1). Moreover, only 3.5% of the jurors –a total number of 39- voted in a different sense than both judges. Just in one case the majority decision was composed exclusively by lays.

| Decision made by | N | % |
|---|---|---|
| Unanimity | 116 | 84,05 |
| Majority of | | |
| two judges and at least 4 lays | 13 | 9,42 |
| one judge and at least 5 lays | 8 | 5,79 |
| only jurors | 1 | 0,72 |
| Total | 138 | 100% |

**Table 1. Results of the voting of mixed tribunals (2005-2008)**
Source: Bergoglio et al 2009:6 (my translation)

[1] Federal Constitution of Argentina, art. 118: "The trial of all ordinary criminal cases (...) shall be decided by jury once this institution is established in the Republic"
[2] Law No. 9182, art. 2
[3] Ibid, arts. 4, 18, 29, 43
[4] Ibid, arts. 37, 41
[5] Ibid, arts. 41, 44
[6] Ibid, arts. 32, 40, 50

This big picture of the outcomes in terms of the way jurors decide is what triggered my interest regarding this particular institutional setting. Machura (2003) and Kutnjak Ivković (2003) already reported lays' low levels of participation in deliberations and influence in final decisions in mixed tribunals. My work aims to go beyond describing this unbalance.

To contribute to the understanding of such outcomes, my thesis examines this unique encounter of lay people and legal professionals from the perspective of microphysics of power (Foucault 1978, 1979). It looks to what happens when legal professionals and jurors –as occasional colleagues in this juncture- interact at the courthouse; how they construct images of each other and how they make sense of themselves and the experience. My work shows how these interactions, meanings and perceptions, marked by relations of power, lead to jurors' governmentalization by legal professionals and to their self-governmentalization which, I argue, account for the results described.

My approach differs in several ways from previous studies into lay participation. This vast field within socio-legal studies can be traced back early as Tocqueville's (1990:280-287) description of the American jury. The first well-known socio-legal study is Kalven and Zeisel's 1966 book *The American Jury* (1993) which focused on levels of disagreement between juries and judges in their decisions.

Most of the previous work on juries remains highly descriptive and analytically limited. Studies have largely encompassed official concerns about jury behaviour and decision-making process, and much research originated from barristers wanting to understand jury decision-making in order to support their cases. Thus, researchers looked at issues such as jurors' selection (Diamond and Rose 2005); deliberation and decision-making process (Gastil et al 2007); and lays' performance as fact finders (Vidmar and Hans 2007). Questions of gender, race and ethnicity (Sommers 2006) and possible biases (Levine 1983) were studied as well.

The importance of power relations is under-researched in jury studies. Most previous work was written from a legal-formalistic point of view and largely focused on diverse influences on jury decisions. For instance, researchers looked at the use of "fact-law" distinction to narrow jury's competence (Hannaford-Agor and Hans 2003), and judges' summaries (Zander and Henderson 1993) and complex questions (Thaman 2007) as devices to influence jurors' decisions. In institutional settings similar to the one this thesis explores, empirical research on mixed tribunals focused on the relative importance of lays' contributions to the final outcomes of the trial and the perception jurors get of the fairness of the process (Machura 2007), and on the influence of differing status of group members (Kutnjak Ivković 2007).

Despite their limitations, previous work has proved useful by suggesting tools to increase the participation of lays and their influence in the decisions (Hans 2008). Likewise, I hope my work will point towards ways of improving lay intervention in judicial decisions. However, it goes deeper and places jury decision-making within a broader theoretical framework of power in its endeavour to understand the ongoing results through the exploration of micro-level interactions.

Beyond issues of theoretical scope, researchers in the field faced limitations in their methodological designs. Mainly due to legal restrictions to approach juries, the most common methods have been mock trials and post-trial surveys; as well as analysis of statistical data from juries' rulings. Such limitations, usually highlighted by researchers themselves, have also been object of specific studies. Thus, questions of validity of simulated trials research (Bornstein 1999); ways to improve these procedures (Diamond 1997); and possible limitations of studies conducted on the basis of statistical data (Vidmar 1994) were the aim of scholars interested in overcoming such methodological constrains.


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My study overcomes these limitations in terms of methodology as well. Through a small scale qualitative study of jury trials in Córdoba, my thesis relies on the actual narratives of both jurors and legal professionals which are collected through in-depth semi-structured interviews[7]. This methodological advantage provides a much richer picture to study the dynamics of jury trials, and helps to understand the lay participation as it is experienced at the courthouse as a result of the power-laden interaction between jurors and legal professionals.

All in all this thesis constitutes an important departure from the previous body of work about lay participation in criminal justice. It aims to make, by the theoretically informed analysis of relevant qualitative data, fruitful contributions both to the field of inquiries on jury trials and to more general discussions on how power in its myriad forms shapes subjectivities and governs conducts whilst circulates and is resisted against.

## 2. Microphysics of Power in Cordoba's Mixed Tribunals

Michel Foucault's work on power relations which he defines as the "microphysics of power" provides the analytical basis for my examination. This model, in contrast to the traditional conceptualization of power as essentially repressive and negative, emphasizes power's positive and productive nature. As described by Foucault, it consists of "humble modalities, minor procedures, as compared with the majestic rituals of sovereignty or the great apparatuses of the state" (1978:170) and "exerts a positive influence on life, which endeavours to administer, optimize, and multiply it, subjecting it to precise controls and comprehensive regulations" (1979:137) Thus positive power emanates from manifold sources rather than from one single locus, and it does not repress in a dominating or constraining fashion but rather produces, shapes and disciplines subjects in order to maximize their capabilities and minimize the risks they might bring to normality. Foucault has called the workings of this power as "governmentality".

Governmentality refers to "the way in which the conduct of individuals or of groups might be directed" and covers "modes of action, more or less considered or calculated (...) destined to act upon the possibilities of action of other people" (1982:790). It entails the ways through which certain problematizations emerge and are targeted by a variety of discourses and techniques. The analysis begins with Chapter 3 which describes how jurors emerge as 'problems' which need to be governed by legal professionals for the aims of protecting the sense of normality that has been built about the decision-making process in a criminal trial.

Microphysics of power relies on specific disciplinary techniques to produce subjects and shape their conduct. Governance is "the regulation of conduct by the more or less rational application of the appropriate technical means" (Hindess 1996:106). Chapter 4 brings into focus mundane workings of power in the engagements of jurors and legal professionals. For analytical purposes these practices are divided into four categories, based on the analysis of the participants' interviews: 1) Teaching the Norms, 2) Correcting Deviances, 3) Governing through Stretching the Boundaries of Law, and 4) Politeness, Respect and Bestowing Status on Jurors.

Another important component of Foucault's conceptualization of power is that "[t]he subjects so created would produce the ends of government by fulfilling themselves rather than being merely obedient, and in Rose's phrase (Rose et al. 1989) would be obliged to be free in specific ways" (Rose et al 2006:89). So subjects are governed not only externally but also they are turned into practitioners of power on themselves and their conduct while keeping their status as free individuals. Chapter 5 focuses on such self-disciplining practices and how jurors' subjection to given rationalities and norms is accompanied by their partaking in their own self-making and subjectivization.

[7] See Appendix 1 "Methodological Framework" for a detailed discussion of the methodology of this work.

Finally, microphysics of power emphasizes that power emerges as never immune from resistance: "[T]here is no relationship of power without the means of escape or possible fight. Every power relationship implies, at least *in potentia*, a strategy of struggle" (1982:794, emphasis in the original). Therefore Chapter 6 concentrates on ways in which power can be taken up by jurors themselves to challenge the prevailing discourse of legal professionals.

Overall this thesis presents a study of microphysics of power, how it works, how it effects and shapes subjects while it circulates through them and gets reproduced or subverted. As my account shows, Córdoba's jury trial provides a vast array of experiences and practices to study these dynamics. In words of Foucault (1980:98), my study empirically shows that

> power (...) is not that which makes the difference between those who exclusively possess and retain it, and those who do not have it and submit to it. Power must be analysed as something which circulates, or rather as something which only functions in the form of a chain. (…) And not only do individuals circulate between its threads; they are always in the position of simultaneously undergoing and exercising this power. They are not only its inert or consenting target; they are always also the limits of its articulation. In other words, individuals are the vehicle of power, not its points of application.

## 3. Jurors in Legal Professionals' View

### *3.1. Introduction*

This chapter focuses on legal professionals' perceptions of jurors and shows how these perceptions construct jurors as a problem which needs to be governed. Thus, it does not aim to be an exhaustive account of legal professionals' views on jurors but rather to provide the basis for the following chapters, which investigate how governance operates in their interactions.

Carol Smart (1989:9) points out Foucault's interest in "discovering how certain discourses claim to speak the truth and thus can exercise power in a society that values its notion of truth". These discourses, which claim to be scientific, diminish the status of others that cannot sustain such claim. Although Smart acknowledges that law does not possess –in Foucault's understanding- the status of those 'scientific' bodies of knowledge, she traces a parallel between them in terms of the power effects that their 'claim to truth' concedes. Smart describes how law, while sustaining its method as the appropriate means to establish the truth of certain events, accords to other forms of discourses less value when they enter its field.

In line with Smart's argument that "[t]hose with legal training distinguish their own knowledge base, and give higher value to their own skills than those of lay people who are inside the legal system" (Ibid:10), legal professionals in my study display a pervasive discourse marked by normative affirmations opposing their own qualification for judging to the incapacity of jurors in this arena. Their proficiency is built on two pillars: their knowledge and their experience. Knowledge on substantive and procedural law is constantly highlighted by legal professionals as indispensable to decide a criminal case. Besides legal knowledge, they claim to have a vast experience in decision-making, both personally and as a group to which the task was exclusively entitled for many years. This expertise is valuable because it bestows them a set of skills, which are deemed as crucial to undertake the task appropriately: isolating reasoning from emotions, avoiding external influences, and identifying what is relevant and what should be dismissed for deciding a case. Contrarily, jurors by definition lack such crucial knowledge and expertise.

This implied opposition casts for the legal professionals doubt on jurors' capacity to perform properly. They express a constant feeling that the *normality* of the decision-making process is at risk, threatened by the presence of lays. To manage


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with this risk, legal professionals attempt to direct the behaviour of jurors in a myriad of ways which will be my focus in the next chapter. The main parameters of these perceived differences –and consequent risks- are described below.

### *3.2. Jurors as Lacking Knowledge and Technical Skills*

The most prevailing perception of legal professionals on jurors relates to their lack of the knowledge and technical skills necessary to judge. Being the first Argentinean magistrates to share 'their' task with lays, all legal professional interviewees refer to this lack in one way or another, often in negative terms. Cecilia, a lawyer who works as a court clerk, states:

> [Judges] saw [the inclusion of lays] as something very negative (...) because they thought that there are many technical issues related to the law that jurors should know, as constitutional guarantees of due process, guarantees of the defendant; and that the citizenry was not prepared to take part in this kind of deals.

Cecilia's account shows the concerns of judges she works for because jurors do not know what somebody "*should know*" to partake in judging. Gustavo, a judge who is openly opposed to lay participation, relies on a more graphic analogy when asked to reflect on jurors' role:

> My personal perception is that if I must have an appendix surgery, I want a surgeon, and if possible one specialized in appendix. I want neither to be operated nor to be judged by an engineering student, a woodman or a biochemist.

The parallel Gustavo draws is striking in two senses: First he reduces judging to be a solely technical matter equating it with an appendix surgery. Secondly he constructs his professional identity on the same ground, making professional specialization the main marker of this identity. Actually, the same analogy of jurors is also spread among officials who claim that they are in favour of lay participation. Roberto, a prosecutor who emphasizes the importance of the inclusion of lays also resorts to the "surgery analogy" to give his opinion about lays' capacity for the task:

> I think it is as any other thing, we cannot leave, disregarding the activity, a surgery in hands of a carpenter, I think this goes beyond common sense, they take part in issues related to our law (...) the contribution they make is very relative, because judges also have experience related to the facts as they have legal education; as I said, for me this is a specialized job (...) for me, this is a profession.

In this account it becomes clear how legal professionals define law as their own space and claim authority in it. This construction results in their unease with leaving the judging activity *in the hands* of jurors, who have neither relevant technical knowledge nor expertise, and thus are not specialized, not *professional* to judge. Under these conditions, the contribution they make can only be *relative*.

Under very limited and specific conditions the *relative* contributions of jurors can become "*very valuable"*. These contributions are done by jurors who are experts in other fields of knowledge, which judges accept, in terms of Smart (1989), as authorized speakers of a certain truth. Susana, a judge, gives an example:

> [A juror] was a physiotherapist, he noticed a detail about the use of an orthopaedic material, the crutch of a defendant, and there he put his knowledge into action, why didn't he use the crutch before? (...) and that because of the stage of his recovery it was not necessary to carry it...

These contributions occurs when jurors draw on other bodies of knowledge that judges accept as alien -the physiotherapist put in action "*his"* knowledge- and whose authority they value. They show the same respect they claim for themselves in 'their' field, namely the law and the legal decision-making process.

### *3.3. Judges as Immune to Emotions and External Influences*

Other than the case described above and similar ones, when referring to the contributions jurors make to the decisions, legal professionals usually resort to the 'common sense' as equated to 'the view of the common people'. They affirm that the overly technical criteria of the judges could be refreshed by the mundane standpoint of lay persons when working together. However, the same 'view of the common citizen' comes to the foreground in legal professionals' interviews more frequently in a much different sense.

Judges, they imply, have forged through their experience in the decision-making process a sort of special reasoning capacity that allows them to dispassionately evaluate the evidence, leaving aside their emotions and any other extra-legal influence. Jurors, whose ignorance of law and lack of expertise couple with their common sense, are not able to make that flawless division. Ricardo is a prosecutor who claims to be in favour of the lay participation and very satisfied with the experience. However, he does not trust lays' capacity to properly analyse a case in terms of distinguishing what is relevant and what is not:

> The common citizen goes there and sits and there are certain influences that the technical judges don't have any more, which are the passion, which is to 'separate the straw from the wheat'[8] I mean the judge has the big possibility to take away everything that surrounds the nucleus. The judge sees the nucleus, not the waffle.

Other important consequence of this lack of training, according to the officials, is another serious risk: jurors making misleading decisions based on prejudices against the accused. They imply that jurors do not know the principles of the criminal procedure aimed to protect the defendant, such as the presumption of innocence or due process. Oppositely, they see them as inclined to behave according to their desires and needs as common citizens. Ricardo affirms he was afraid of a sense of revenge which jurors might reflect in their verdicts. Although he acknowledges that the results changed his view, his narrative seems to maintain his initial representation:

> I mean: What does the man who is judging think of the one who is there accused? 'If this one is in prison that avoids... there is one less in the streets causing harm to me, or to us'. It is the most logical reaction of a common citizen I think, no? (...) Because with the increasing insecurity, that man who belongs to the pure and simple society will react according to his needs, and do you know what his needs are? To be more secure, that is what he wants.

The twist in the narrative is important. The juror who cannot leave emotions aside during the trial is depicted as a citizen who acts logically, in a predictable and almost justified way. This is directly related to the perception of judges of themselves, who are able to judge on a different basis than a "*logical common citizen*", not having the same concern for security or, more precisely, being able to put that concern aside while judging.

Another important feature of the construction of judges' identity –and of jurors by opposition- is indeed that officials see themselves as being immune to any kind of improper influence or external pressures when analysing a case and enacting a verdict. While jurors' criterion could be easily influenced by the media, the opinion of their friends, family, other jurors, lawyers or witnesses, none of these can distort judges' strictly legal reasoning. Although after several trials José, a judge, did not perceive that jurors are influenced, he keeps alert and warns:

> Look, evidently the public opinion is a circumstance that shall be taken into account about any trial, what happens is that supposedly *a judge is a bit immunized, so to say, to public opinion* (...) Evidently when the tribunal is formed by technicians the

[8] This is a popular Argentinean saying, meaning ''to separate the diamonds from the dirt''


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> possibilities of influences or non juridical reasons enormously decrease. (Emphasis added)

Overall, these accounts define the division between legal professionals and jurors. Jurors are swayed by emotions, prejudices and influences whereas judges make decisions based on neutrality and rationality, by drawing on their professional knowledge and vast experience. Emotions or extra-legal influences on judges remain unquestioned because of their identification with the law; whereas jurors are constructed as not being able to leave their emotions aside during the trial because they do not have the necessary education and experience. Either case, law becomes the only arena to act, to learn to act or -as the next chapter demonstrates- to teach how to act dispassionately, as a separate sphere from emotions and external influences.

### *3.4. Conclusion*

The process of legal identity construction and otherization I described above points to the constitution of a space of 'normality' regarding the decision-making in a criminal case. Legal professionals place themselves within this space, and leave jurors out. That sense of 'normality' attached to judges' qualifications and the location of the jurors in the antipodes results in the definition of jurors' incapacity – or incomplete capacity- to make a lawful decision. This incapacity constructs the juror as a 'problem' over which governmental practices shall be applied or otherwise the normality could be broken, with severe consequences.

An important part of this opposition between identities built on images of what judges and jurors are is directly related to power relations. It overlooks the unequal amounts of power that the formally equal members of a tribunal hold, and legitimizes and naturalizes attempts to govern jurors' decisions. The circulation of this discourse which is deployed as if it is neutral and alien to any power relation involved contributes to render those relations scarcely visible. Founded in the knowledge and experience that judges have and jurors lack, a form of truth is produced, spread through discourses that ensure its neutrality and accuracy; and put into action through practices that shape these relationships, and reproduce the power positions of its actors while produces their subjectivities in certain fashions. These governmental practices are the focus of analysis in the next chapter.

## 4. Governance in Practice

### *4.1. Introduction*

This chapter studies the narratives of members of mixed tribunals to unfold the practices through which legal professionals –and in some cases the Judiciary in a broader sense- attempt to govern jurors and keep their behaviour as decision-makers under control. Examining these narratives in this regard demonstrates that although legal professionals constantly feel the need to affirm that they avoid influencing jurors in their decisions, they do try to govern lays' behaviour in several ways. Such governmental practices are analysed below according to a set of categories (*Teaching the Norms; Correcting Deviances; Governing through Stretching the Boundaries of Law, Politeness; and Respect and Bestowing Status on Jurors*), although in the narratives of the participants they are not completely separate from each other because of their fluidity and intertwinement. This chapter also indicates how these practices, while absent from official discourses, are normalized and legitimized through the construction of the normality and the need to defend it as described in the previous chapter.

The analysis below derives from Foucault's notions of power, discipline and governmentality. The practices of power observed in the interactions between jurors and legal professionals are highly subtle and scarcely visible rather than

oppressive and dominating. They are closely connected with knowledge, or better put; they cannot be separated from it. This power-knowledge mutuality endeavours to achieve the normality in its subjects through different practices and when diagnoses deviances it intervenes to remove them. Thus they are disciplinary, aiming to produce a specific type of conduct and subjectivity.

In general, through operating in mundane ways such practices constitute governance in the terms Foucault defined it: "guiding the possibility of conduct and putting in order the possible outcome" (1982:789). Besides, they work through "empowerment" and "responsibilisation", both of which are, I argue, an "endeavour to operationalise the self-governing capacity of the governed in the pursuit of governmental objectives" (Dean 1999:67). Next chapter focuses on these self-governance practices of jurors. This one concentrates in legal professionals' narratives and explores jurors' only to see how they reflect the existence of governmental practices in this juncture.

### *4.2. Teaching the Norms*

In their interaction with jurors, legal professionals position themselves in the role of 'teachers'. They consider necessary to transmit to jurors the indispensable know-how to properly undertake their task for them not to break the *normality* of the decision-making process. Some legal professionals refer to this process as "*guidance*", "*orienting*" or "*legal advising*". In some cases this discourse of the mixed tribunal as a field to transmit legal knowledge gets even stronger: a prosecutor defines the whole system as *"an educational issue"* and thus a process of educating and transforming the student-jurors.

Some officials point to the fact that this teaching relationship starts with the very beginning of the interaction of legal professionals and lays, in line with the presupposition of the need to discipline each and every juror. Ricardo says:

> The judges are introduced; and then they themselves have conversations with jurors, without saying anything... I mean just about the procedure, how the process is, what is going to be exposed, what they have to do, what they have to decide.

As the first introduction is used by judges to instruct jurors about some norms of the procedure, it directly positions judges as those who have the necessary knowledge regarding the judging process. Judges are authorized to define and transmit what the law is and how its mechanisms should work.

Gustavo also takes advantage of this first contact to initiate jurors in the legal knowledge he describes as "basic", and underlines that the risk that jurors embody is founded also in their incapacity to avoid improper influences. This is also a field in which judges act as educators from the very first moment:

> We also tell this to the jurors in the preparatory instances 'don't surprise if there is a general crying, shouts, somebody suddenly feels bad' and all this stuff, because sometimes it is a strategy of the defence. 'You shall be objective in what you see and analyse it, don't let yourself be influenced by all these dramatizations during the hearing'.

Other than this introductory meeting, similar informal interactions seem to be suitable circumstances to put lessons about norms of judging into action. These mundane junctures allow the use of rhetorical tools and other ways of addressing jurors which could be considered improper in formal spaces as the deliberation. For instance, Mario, a judge strongly favouring the system of lay participation, recalls a time when he made sure that jurors understand well how they should behave to make a fair decision at a trial:

> I told them an anecdote of Umberto Eco, who is against the death penalty. A journalist asks him: -'but if your daughter is raped?', -'ah, I kill the rapist', -'but


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> weren't you against death penalty?', -'yes, but I'm not the State'. These things make them reflect: stop, stop, you are not the victim here. Here you are as a judge. 'Ah, no, yes, yes, I get it...' The language here is rational. If you have somebody to direct you, who makes you see that; but well... because you also have to be careful with what you say, for you not to influence them.

The anecdote can be considered as a measure to prevent the risk related to the incapacity of jurors to exclude emotions and prejudices from their decision. It makes the juror think of her own position as a judge, but only under the supervision of "*somebody to direct*" and who "*makes jurors see*" the requirement to identify not with the "*victim*" but with the "*State*" and consequently with the rational way of thinking deemed necessary for the judgment. The device appears to be highly effective in the injection of the legal knowledge to the jurors, and thus in their subjectivization according to the established norms. Mario adds about these informal occasions:

> What happens is that in that field, where you can have a conversation hand in hand with the judges, things get progressively put in order.

Here the interviewee shows how he takes for granted the authority that judges represent for jurors who hold the privilege of having "*a conversation face to face with judges"*. But more than that, this face-to-face encounter of the judge and the juror amounts to put "*things progressively in order"*. This mixes with the pervasive reassessment of their intention to sustain jurors' freedom and autonomy; judges shall *"direct"* jurors "*but well... because you have to be careful with what you say, for you to not to influence them*". 'Pedagogical' practices are also intensely recalled by the jurors when narrating their experiences. For instance, Natalia tells:

> And [the judges] explained us everything we wanted to know and if at any moment I had any doubt, I just went to the judges and said: 'I did not understand...' (...) I would just go to the judge and ask her.

Not only do the narratives of the jurors reflect the existence of those practices, but also they show how they felt the permanent availability of judges to supply their lack of knowledge. Natalia positions herself as a student who consults her teacher and thus her account also points to the connection of these practices to self-governance.

### *4.3. Correcting Deviances*

There are circumstances in which correction becomes central to the teaching relationship. These occasions usually take place in the moment of the procedure where deviances must be rectified through other devices as the normality of the process could be put at imminent risk: the deliberation[9]. In this stage of the procedure the teaching relation does not cease but its specificity increases. Judges mention that they "*intervene*" to transmit specific knowledge on the norms of judging to jurors, with aims to prevent misleading decisions at this crucial point. Gustavo depicts in detail how this stage is organized in his court:

> We adopted a method that we consider appropriate [for the deliberation], which is to say: 'Well gentlemen, this is what you have to decide'. 'For us not to influence discuss among yourselves, decide among yourselves'. This, while we do our contributions, for instance: 'Take this into account' –'Ah, yes we had not realized that...' -'And did you notice this other thing?' –'Ah yes you are right, of course this is important'. I mean, we keep doing contributions for them not to leave aside anything that we consider as relevant.

Gustavo's description of their "*method*" as giving jurors the opportunity to decide totally free among themselves without judges' influence, yet at the same time contributing to these discussions in terms of what they shall consider as relevant

[9] Law No. 9182 Art 37: "Immediately after the end of the hearing (...) the judges and jurors who took part shall go to deliberate in secret session"

for not ending in a mistaken decision shows the limits of this "*free*" deliberation: jurors are free to discuss and decide as long as they do not overlook the facts which judges consider relevant. Mario makes a similar point:

> Of course we guide the deliberation, any judge loses it...you cannot lose it. You have to see, and if things deflect, for a legal issue, you have to tell them and have to explain them: 'Don't consider this because this is null, this has this value and not the one you are giving to it', I mean you say all these things... They talk, and when they deflect, you intervene.

In his account judges cannot lose control in guiding the deliberation and to achieve this, they constantly have to stay alert and intervene when necessary: If control is lost, all the process could be lost. In some cases interventions turn to a more direct corrective character. Mario gives the example of a trial in which the defendant, when granted to him the last word, just said *'I am innocent'*:

> Later, jurors were discussing and saying: 'if I'm innocent I fight, I make a mess...' But then we intervened and said: 'No, not like this, because our Constitution says this: he has no need to prove anything, is it clear?'

This intervention closing with a question leaves not much space for a juror to answer in a negative manner. Those who should have learned the adequate lessons but are 'caught' in breaking the normality are properly warned and corrected, while reinforcing the knowledge not properly acquired or put into practice as the norm demands. Thus slight moments of correction also contribute to the reinforcement of previous lessons and, at a time, prevent further deviations. Mario straightforwardly sums up: "*the intervention of judges can save us from the prejudices."*

Jurors perceived these moments of correction of deviating lines of reasoning. Jorge recalls how this kind of remedial opportune intervention by judges influenced the decision of the jurors. Thus, Jorge says:

> We thought that they really were guilty, the guys that were accused. But after... let's say... taking into account things, and with a bit of orientation... let's say... of the judges, they clarified a bit the scene and because of that I say, one sometimes with his lack of knowledge on the process and about certain things... one would convict everybody. But listening and paying attention to how it must actually be...

These narratives in a way show that jurors are not let out of the gaze of judges who constantly watch and asses them, and intervene in the moments when they observe a deviance. In contrast to the permanent mistrust in jurors, legal professionals are confident of themselves and their colleagues' abilities to drive the deliberation in the correct way, and thus achieve decisions which do not break the rational reasoning that the norm imposes. Mario provides a clear example of judges' "*feeling*" in this sense:

> You get the feeling as a judge, I don't know if all the judges can do this, but I particularly have the feeling that you can handle this... No, handle is wrongly said, you can avoid it to burst, to go 'too much there or come too much here'.

While keeping attentive to avoid vocabulary which could imply improper influences -*"No, handle is wrongly said"*-, in Mario's narrative it is clear how judges trust themselves in the task of channelling jurors' decisions and turn their participation from worrying into an inoffensive and even positive factor. At the end this success becomes their achievement and guarantees the continuation of disciplining practices.

### *4.4. Governing through Stretching the Boundaries of Law*

Legal professionals show a constant concern about jurors' unlawful acts, namely leaving legal criteria aside in their decisions, and thus breaking the sense of normality for the decision-making process. However, when professionals construct their stories on the experience of the mixed tribunal, sometimes their practices

appear as also somehow violating the law which they themselves claim to embody. In these moments law becomes not anymore a totemic untouchable set of rules whose break leads to a likely chaos, but is perceived as a more elastic realm whose borders can be or even should be adapted according to the situation. Hence, such situations are depicted by judges in terms that conceal their unlawfulness: the different meanings attached to "guidance" or "orientation" in contrast to "influence" are a clear example.

The aim of this section is neither to denounce illegal practices by legal professionals nor to point out calculated distortions of their narratives. It shows that they can make sense of their own conducts in a different manner than they do of lays'. This "selective registration" operates as an effect of power relations and the discourses that sustain them and get also reproduced and reinforced through its selectiveness (Kogacioglu 2002:87). This section focuses on one of such practices, which appears to have strong governmental effects on jurors, and aims to unravel how these moments when law's boundaries become more flexible can also have to do with my concern to unfold the ways legal professionals attempt to govern jurors' actions.

The access of jurors to the prosecution file of the case is strictly prohibited by the law. However, in narratives of officials and much more in jurors', it appears as a regular practice[10]. Ricardo describes the intense use he does of this device:

> [T]o gain time and for [the jurors] to progressively understand the successive steps, I try to incorporate all the important documental evidence as soon as possible, for what? For them to be able to get a copy, do you understand? ... so they are not 'naked'. I mean the documents, where I see there is a gap: there I ask for the incorporation (...) and ask also for the photocopies to be made for each member of the jury. Because you give the guy the autopsy, and he is already seeing what is the reality of the issue we are talking about.

This practice is portrayed again in terms of helping the jurors to build a clearer picture of the circumstances on which they shall make a decision. Thus, it appears as an effective complement for the lessons given by judges and the corrective moments they enact. This "*seeing what is the reality of the issue*" on the documents has disciplinary aspects. In line with Smart's argument (1989), it constructs 'the truth' about a case based on evidences and accounts established by legal professionals and imposes it to jurors. Because of the assumed objectivity attached to the files and their writer, the questions about that these documents are produced by specific subjects, and that they are not exempt from power relations remain unquestioned.

In jurors' narratives this practice appears more repeatedly and with no leaks that legal professionals may apply to show compliance with the rules. Cristian says:

> We had the files, we read them all, they were very long files and they gave it to us, all of it, all of it, all for us to read it, the doubts we had, absolutely all the files.

Mariana tells her experience in this sense in a similar way:

[10] Law No. 9182, art. 34: "The members of the jury shall not know the files of the preparatory prosecution and they will just gain access to the evidence produced or added during the hearing" A clarifying comment should be done about this point: The mixed tribunal of Córdoba is a step towards the full oralization of the criminal procedure. The objective of the law is that jurors make their decision only according to the evidence presented in the hearings. However, Córdoba's Criminal Procedure allows what is called the incorporation of evidence from the files 'by its reading': reading a document from the file in the hearing as if it was a testimony. As this is considered too time consuming, usually copies of that part of the file are done and given to the judges. The Law 9182 did not repeal that provision for mixed tribunals, and if used intensely, with most of the evidence, it may be the device used to ensure jurors' 'legal' contact with the files. I qualify this as an 'unlawful but tolerated' practice for different reasons: 1) It is a clear violation to the intention of the legislation that officials claim to strictly respect in other fields; 2) it appears as not used as an 'exception' but as a tool to make jurors read as much of the files as possible; and 3) more importantly, according especially to jurors' testimonies usually they simply are given the whole expedient, and the limits between the 'legal' and 'illegal' access gets blurry. Pablo, a prosecutor, openly complains about the violation of this rule: "as far as I know [this provision] is not respected, a clear infraction to this clear rule that points to the dynamics of the full orality."

> The second day we already could have the files, where we began to see how the thing was, we could read, see the photos. Of course to know the case was, because there you have your head in the clouds, you don't know what way to take.

Both of the jurors not only affirm the existence and widespread of the practice, but their narratives also reaffirm the aim stated by the legal professionals: the file as a necessary tool to get into contact with "*how the thing was"* and to overcome a situation of having *"your head in the clouds"*. As such it becomes another way of injecting the necessary norms into the jurors and putting them closer to the desired fashion as they are exposed to a rich source of representations, idioms and notions of law, and of how it should work in the case they have to decide.

### *4.5. Politeness, Respect and Bestowing Status on Jurors*

As the discussion so far demonstrates, legal professionals see jurors as a danger to the normality of decision-making task; and consequently treat them as being in need for their assistance and instruction to perform and decide properly. In their narratives jurors are never depicted as colleagues with an equal –or at least similar- position as members of a tribunal. However, these perceptions do not seem to reflect in the way jurors were treated.

Both legal professionals' and jurors' accounts point to a different dynamic: while attempts to govern jurors are put in practice, lays are also exposed to tiny mundane practices of showing them equal status with judges. On part of legal professionals this unfolds through showing respect and courtesy to jurors, and distinguishing them from other lay people. Jurors' narratives acknowledge this, and along it they depict other more material practices –derived rather from the Judiciary as an institution- which seem to matter very much for them to feel 'as judges'.

The practices that surround jurors since the very first day of their experience and persist even after it finishes might be due to the compliance with the law, which grants jurors an equal status with judges while they serve as part of a mixed tribunal. However, this section argues that their meaning goes beyond: They constitute an important aspect of the governance of jurors, operating as a more subtle device to direct their conduct and shape them as "empowered" and "self-responsible" jurors.

Ricardo describes how he begins the presentation of his case as a prosecutor:

> I always begin the trials telling them 'gentlemen, members of the jury, you are going to accomplish one of the higher and more sacred functions that a man can have, which is to judge your peers who have broken the social peace'.

Besides showing very eloquently his conception on the nature of the judging activity, Ricardo seems to elevate jurors to "*the higher and more sacred*" level of law through this ceremonial opening. As such he distinguishes jurors from their "*peers*" and grants them authority over them. Mario refers to a formal instance that the law establishes: when jurors have to take an oath after which they acquire 'judicial state':

> They take the oath before us (...) and we tell them that since that moment they are judges and are granted with all our prerogatives and responsibilities.

Taken together with the oath itself, Mario's explanation to jurors about their prerogatives and responsibilities aims to make jurors feel themselves at the level of the law that judges embody. These invitations to law are at the same time a form of empowerment and responsibilization, making jurors feel the privilege but also the burdens of judging.

The discursive practices described by the officials that raise jurors' status and 'make' them judges are complemented by pervasive gestures of respect and

politeness along the experience. Mario mentions how in his court they "have very much respect with the juror" several times during his interview. Even Raquel, a judge openly against lay participation, describes the treatment as always "cordial and respectful". Jurors recall these expressions of courtesy, linking them usually with the recognition of their status as equals. Manuel says: "They treated us as equals, they respected us"; and Ramón reaffirms: "they received us very, very well, very well (...) we were the same; they were as much as us".

Their 'becoming judges' seems to have left an important mark in the understanding that jurors forged of their status during their experience. Manuel describes this way the feeling after taking the oath:

> Well, that is something... like feeling with some power, no? And with more tranquillity, because you know you have the attributes of a judge, as they commented to us, that we could not be pressured by anybody, and nobody could come and say anything to us.

Manuel's feeling of "*power*" is cast as a consequence of holding the "*attributes of a judge*" at the courthouse. Legal professionals' attitudes towards them - put into practice together with their pedagogical inclinations-, certainly aid this feeling. Some other more material experiences also help jurors to feel 'like judges'. Manuel continues where he finished:

> We even used the park lots of the judges... 'Yes, yes', they said: 'when you come you leave your car here inside, ok?' It was the car of the judge here, and next to it, my car.

Manuel's account reveals some of the features of his conception of what being a judge means. A judge is an authority, and someone granted with 'power'. By being given the status of a judge he perceived to have been granted with -some of- that power. Yet there are some other qualities that he attaches to a judge's image especially in terms of privileges granted to them: a special parking lot, which he could also share. This is just one of those practices that come rather from the Judiciary as an institution and shape jurors' experience and self-perception. Pedro and Catalina point to another experience during a focus group, when asked how their arrival to the court house was:

> Pedro: I hadn't gone before, everything was new for me. You arrive to the courthouse... they frisk you, you go through the metal detector, you open your bag, you show your ID... Catalina: After that we began to come in through the backdoor, they gave us a card and we came in through the... Pedro: Yes, VIP entrance. Catalina: And we could leave the cars in the judges' park lot. Pedro: Yes, yes, the treatment was excellent, on an equal footing.

Here the parking lot theme appears together with another 'privilege' given to judges. Whereas on the first day jurors had to pass a control at the front door as any other lay visiting the courthouse, then they were granted the benefit given to officials. These narratives lead attention again to micro-practices which count for jurors as central components of their experience. These practices overall serve to distinguish jurors from other lay people and hence responsibilize them to do their task in the desired fashion, 'like judges'. They are very relevant in displaying that governmentality is not a negative, oppressive force but is mainly about governing through positive actions which shape subjects in a productive manner.

### *4.6. Conclusion*

This chapter showed the ways in which legal professionals put tools of governance into practice to direct jurors' conduct and, thus, their decision. The interaction between them can be seen as a pedagogical relationship, largely demarked by the mutual operation of power relations and knowledge. Legal professionals position themselves as persons who have the necessary knowledge and experience to judge

and who must transmit this knowledge to the jurors, and correct them when they behave against the norms of objectivity and impartiality established by it.

These 'pedagogical' dynamics are accompanied by demonstrations of respect and recognition of the status of jurors 'as judges' by legal professionals. Other practices unfolding at the courthouse couple them in order to reinforce jurors' self-perception as judges. Educating jurors in line with specific aims and underpinning this through empowering them with particular gestures and more mundane materializations of the 'judge status' have the effect of creating disciplined but also self-responsible jurors that adjust themselves to the desired fashion. The examination of this self-governing process is the main aim of the next chapter.

## 5. Constructions of the Juror Identity: Self-Governance in Practice

### *5.1. Introduction*

The previous chapter displayed the awareness of the existence of governmental practices in jurors' narratives. It hinted to some ways in which they perceive and construct themselves, the legal professionals and the law in general throughout the process; and finally also to the existence of their self-governing practices. To examine each of these in detail, this chapter focuses on the narratives of jurors and the meanings they attach to their experiences as members of a mixed tribunal.

In their interviews, jurors make sense of their experience usually by[11]: 1) making reference to their ignorance of judicial decision-making, and by pointing to the shifts in this self-perceptions as they become more informed; 2) contrasting their previous perceptions to their new understanding of law and legal professionals; and 3) constructing a 'juror identity' for themselves outside the courthouse against lay people who did not have the same experience. Whilst they sustain their views of legal professionals as bearers of the necessary legal knowledge and thus as an authority, the diverse governance practices, ranging from instilling norms to bestowing status upon them, lead jurors to put similar governmental practices into action to discipline themselves. This is what Foucault called practices of self-governance.

Governmentality entails not only subjects who are governed but at the same time who govern themselves as particular kinds of subjects through practices of self-governance as they do not perceive constrain upon themselves. In other words, self-governance refers to those governmentality practices which subjects deploy exerting power and enforcing normative ideals over themselves. I argue that gaining legal knowledge, partaking in a criminal trial as a judging subject equalized by judges and practically being treated in a polite and respectful manner accommodates power over jurors. This empowerment turns them into self-governing, self-disciplining responsible subjects. The discussion below shows different instances of this complex process, and depicts dynamics that exist in a permanent transitivity along the stories that actors construct in their narratives.

### *5.2. Perceptions of the Self and of Judges as Helpful Guides*

Jurors usually depict an image of themselves which to a great extent reflects the construction of legal professionals about lays (see Chapter 3). This self-perception is, as well, contrasted to the image they have of judges as the bearers of the necessary know-how for judging. Accordingly, they construct themselves as needing the help of judges and take legal professionals' offers for guidance as a constructive factor. They try to produce their own conduct in line with the parameters transmitted by legal professionals and, besides, assess other jurors' performance according to the standard they built this way.

[11] These categories are, again, created with analytical aims drawing on jurors' interviews.

It is complex to separate jurors' self-perceptions between the images they had before and the ones they acquired during the process. However, my discussion shows that they merge each other in a way that leads jurors to evaluate their own performance constantly according to the normative criteria established by legal professionals. This usually results, once more paralleling judges' opinion, in a shift from the fear of not being able to fulfil those criteria to the tranquillity and proud of having acted properly.

Most jurors tell how from the moment of their appointment they considered themselves limited in their capacity to undertake the judging task, and were afraid of behaving in a wrong way. Manuel describes his feeling once he got the citation:

> I thought maybe I could not be qualified for something like this... a trial... something new, and I never thought of getting to... (...) and you think you are not prepared, no, I didn't even go to a common trial before, to see it I mean; I didn't know, the only trials I know are those in the movies (...) we were not well prepared... we were not prepared at all.

Manuel's account does not differ much from the image of jurors offered by officials. Jurors describe themselves as being "*not prepared*" because of their ignorance of the way the legal process should be. Legal professionals' concern about jurors being guided by prejudices or emotions appears in the interviews with jurors as well. In this sense, Jorge tells:

> Not having been presented enough evidence, not having been proved the guilt, in the face of the doubt, we acquitted; we were guided also, of course, by the judges... they oriented us I mean. Because undoubtedly as common and ordinary people, in my case for example, there were things that escaped to our understanding, because we don't know about laws and we do not have studies... let's say... related to the legal system. They oriented us a bit for us to face the issue... first we [the jurors] gathered to discuss and then the judges came and according to what we said they oriented us... because it's necessary to use a logical and reasonable criterion. Because people is really furious, I mean, we see a person accused of an homicide and he is there, and without any inquiry, we consider him guilty... just like that, because we are in anger due to things that are going on. But if it is like that the trial has no reason to exist, if there is a trial it has to be as it has to be, isn't it? That is like that because of the indignation we have, but if we turn to the reasonable and fair way there is a trial, that is what justice decides. You learn there that it's not easy to say 'put him in prison forever'. (Emphasis added)

Jorge's narrative is significant in different ways. It contains traces of the technical language of legal professionals which suggests he internalized judges' discourse at a quite big extent. He naturally identifies himself and the rest of the jurors – through the repeated "*we*"- with the common citizen who almost by definition bears prejudices and lets passions become an obstacle for the "*logical and reasonable*" criteria that should be applied. Thus, as a common citizen -parallel to Ricardo's description of the common citizen and her logical prejudices (see Chapter 3)- he defines himself as embodying a risk of taking away all the reason d'être of the trial. This self-perception accounts for the normalization and legitimatization of the use of governance practices on jurors. Indeed, the image of being a threat to the norm of judging comes up in Jorge's narrative alongside the need for governance practices: they were *"of course"* guided by judges. As put forward before, these practices of judges are usually described as an attentive gesture rather than as an attempt to discipline them. Jorge continues:

> It is a very positive relationship, a very good attention, very wide availability of judges for us to ask and for explaining us all the things that were difficult for us to understand or we had doubts about. Very good.

Jorge defines his relationship with judges in line with the role as teachers they assumed by providing jurors with the proper knowledge; and assesses that relationship in very satisfactory terms because of the availability judges offered them. Natalia was very pleased with her experience and performance as a juror as

well, and that was to a great extent due to the guidance and other tools provided by judges:

> They showed us the files, they lend it to us and we stayed seeing some evidence. (...) And judges said: 'we are here in the room next door, please let us know any doubt you have' (...) we stayed as long as we wanted and we could have more information for the day we had to decide, they gave us that possibility. They couldn't lend us the files... because we, in our ignorance, asked: 'can we take it home and read it?' –'No, you cannot take it, but stay here' –'And if we have doubts? –'No problem, begin to read whatever you want'. They were excellent (...), everything in a very pleasant environment of very much cordiality from them, always with... the pedagogy to our disposal. (Emphasis added)

Natalia's story unveils many devices of subtle governmental practices as those described before: the access to the files, the openness of judges to provide their advice, their small lessons and their permanent gaze not to control but to help and guide, as well as the respect and politeness in the treatment. They all are essential parts of her positive assessment of the experience and of its actors. In a less visible way, they accounted for her self-disciplining according to the norm. In another moment of the interview, however, Natalia shows the limits of legal professionals to offer their help, along her own criteria of how a juror should behave:

> Some jurors asked things really unrelated, when all the evidence was already clear... what they asked actually made no sense, it was really an out-of-place attitude, somebody who is not following what is going on... I think judges should, within their possibilities, try to put those people in their place (...) they were going backwards and the judge saying 'well, let's go forward because we already treated this'. Sometimes there are people who cannot, can you see? While other stay totally silent and extremely respectful all the time (...) Sometimes people do not contribute with their questions and I think that also delays everything. I think it made me feel embarrassed for them. (Emphasis added)

Here Natalia's narrative points to an instance when not only does she consider proper the exercise of disciplining practices by judges, but she asks them to be more severe and visible, in order to correct those other jurors who made her feel "*embarrassed*". In that sense, Natalia seems to have a clear perception of what it means to be a good juror, who remains respectful to judges and does not raise improper "*out-of-place*" issues; in a clear contrast to the ones whom judges should put "*in their place*". This sense of improperness and being out-of-place has clear implications in practices of self-governance in line with norms established by the judges' discourse. The norm is internalized and finally also reflected to other jurors to assess them.

For Manuel, whose words opened this section, his contact and intense interaction with legal professionals who granted him with the necessary training and also restrained his potential improper conducts helped him to overcome the fears about *himself*. His low opinion about his own possibilities as a juror changed and he managed to feel much more confident but especially relaxed after that interaction began:

> [The judges] made us feel more at ease, to be more confident, do you see? We came a bit afraid because we did not know what to do, and well, they took us along that way, for us to feel more relaxed, because they would solve all the doubts we had.

All in all, jurors' narratives show that with the help of legal professionals they managed to overcome their fears and felt more confident to perform the task of judging. For most jurors this confidence is largely related to their acquirement of certain knowledge on the way of judging. These perceptions of the self, the judges, and other jurors interwoven together with practices of power and discourses of legal knowledge result in jurors' self-government in a parallel fashion to the intentions of legal professionals: towards a juror that does not break with the normal reasoning of the decision-making process, who assimilates *herself* the legal

discourse and tries to apply certain norms on how to decide and on what basis. A sort of one-case-judge, not necessarily predictable but never random, that disciplines herself and, if necessary, contributes to discipline the others. On top of that she perceives herself as free and sovereign when deciding, and would not feel forced when making that decision.

### *5.3. Shifting Perceptions on Legal Professionals*

The participation in a mixed tribunal turns out to be an event intensely influential in shaping jurors' understandings and images of legal institutions and actors, notably of judges and also of the Judiciary as a whole. The narratives of jurors generally point to radical changes in their images of judges as they re-built them along their experiences as jurors. In line with the discussion of the previous section, this one examines the shape these perceptions take and their relation to governmental practices.

Jurors usually mention how the satisfactory interactions with judges and other members of the judiciary changed their previous views on them. Moreover, they usually qualify, after their experience, such previous views as unfair and prejudiced. Josefina says:

> They came to our room, 'Hi, how are you?' We had lunch together before the verdict, mainly talking about the case; and they were always offering if we had any doubt, offering their help. That gave me a big satisfaction, because there is something socially installed about judges being 'there' and us 'here', and that made me feel happy.

Josefina's narrative shows the pervasive relationship between those analysed as 'governmental practices' and the shift in the image of judges, in unceasing dynamics of knowledge-meaning-power-(self)governance: the judge, who was once constructed as being "*there*", visiting jurors in their room, the availability to solve their doubts in person, the lunch before the verdict for '*mainly talking about the case*' –an illegal conduct-, and at the time the satisfaction that gives to the narrator because it destroys the socially installed perceptions on judges who overall she evaluates in very positive terms.

The image of judges relates also to their proficiency and 'humanity' in the exercise of their function. Natalia says about the magistrates she worked with:

> I realized [judges] were not missing anything, they were not taking this lightly, It was not just to give a verdict and that's it (...) much more humane (...) I thought it was not like that, I had an image of them, of the judges, maybe rather as a working day... 'well, ok, yes, how much do we have to give to this one?', but no, they are really committed with each case until it finishes (...) I had that bad image and I realized it's not like that, not even close.

These narratives repeatedly appear in interviews of jurors who did not have any previous experience with courts. Yet in a focus group Graciela, who was once a defendant at a trial, shows how radical this reassessing of past meanings can be:

> I had the experience of having been on the other side; because of a trial where I was accused by a worker... and I felt so bad, so bad, it was a situation.... (...) they sued me and I finished in a court on labour law and *they made me feel so bad, it looked like if I was a criminal, how they made me questions, but well, now I can see that it is the way they have to exercise their authority and to try to elucidate, to shed light on a situation*. (Emphasis added)

These renewed conceptions on judges and their work get so deeply internalized after the interaction in the mixed tribunal to the extent of making jurors reassess their past experiences with legal institutions; even in cases as Graciela's, who had a very clear and apparently fixed negative perception. Some jurors do not hesitate in extending their praises to the Judiciary as an institution, which usually assumes the

shape of the blurry expression *'la justicia'* (the justice), and exclaim their willingness to spread this new image among 'the society'. Thus, Andrés says:

> It is very nice; you come out with a different point of view on the justice. And the story begins doing the round... and it spreads it for the society as a whole to have a different image of the justice.

This improved image of judges and of the system of justice is unanimously noticed by judges and officials in their interviews. In their view, jurors disseminate this new understanding outside the courthouse in a process that Ricardo qualifies as "*exponential*". This dissemination is closely related with the constitution of a new kind of lay identity that jurors acquire at the courthouse.

### *5.4. Construction of the Juror Identity outside the Courthouse*

In close relation with the dynamics studied above, there is an ongoing process through which jurors forge a new identity for themselves. I described pervasive but subtle mechanisms of power that surround jurors along their experience in the courthouse, which –most of the times- render them docile and shape their behaviour according to certain standards, while keeping them comfortable and satisfied with the experience. However, not only do jurors very seldom feel constraints to their freedom, but also they feel empowered in different ways. The experience of having taken part as decision makers grants jurors a different status once they are back to their daily lives as well, a new identity that they proudly exhibit. This identity, which positions them in a privileged situation over other lays, is part of the whole economy of power relations and subjectivizing mechanisms this thesis attempts to map.

As judges in their narratives repeatedly traced the limits that distinguished them from jurors –basically legal knowledge and expertise in judging-; the jurors largely use the rhetorical tool of 'having been there' and 'seen how things really work' to separate themselves from other common persons in their everyday relationships with other 'lays'. They refer to a symbolic line that, seemingly, defines those who have been on the side of the law in contrast to those who remain 'on the other side'. Fernando tells about his conversations with friends:

> People always see this from the other side, and they never were on judges' side. Sometimes you were not understanding why there were things that were so evident (...) So we saw that from a different point of view (...) I always tell them: 'when they appoint you, you will see how this is', (...) *I was on the other side, on the side they are now;* they never did it but well, they see from the same point of view I was seeing it before (...) My experience was very good, and you can see things from the other point of view, that is what I took from it. (Emphasis added)

Fernando's story has another ingredient that usually appears in jurors narratives: he clarifies that those 'others' remain in the place he himself used to be, thus depicting his position as evolved or improved in relation to a past one, while showing clearly how constructing of a new image through the experience reshapes meanings of past situations. Moreover, he disseminates his experience and new perception to make those 'on the other side' understand 'judges' side'.

This new identity is not only recognized in the letter of the law and experienced in respectful and egalitarian everyday treatment. It also acquires materialization and textualization through simple and mundane practices. The actual 'power' conferred by such material practices is quite limited in terms of time and space but they are full of meaning in terms of the new status jurors are granted. Jurors give them paramount importance, not only in narratives but also in practices. Manuel, proudly, tells:

> Now I have my diploma. I put it in a frame. I was a member of a popular jury, and of a popular jury that was the first, not the first but in political issues it was the first

> case[12]. (...) yes, a diploma where it is stated that I was a juror, with the case and the date.

This reminds Ewick and Silbey's (1998:102) comments about de Certeau's observations on the textualization as a means through which law makes individuals and certain of their status intelligible: "inscription and textuality do not simply register discontent or validate accounts of past actions or agreements. They are also seen as the basis for validating identity claims. Papers, documents, identity cards, and permits represent material evidence of social existence". Similar to the VIP card described in the previous chapter, the diploma is for Manuel a materialization of the new status he claims for himself; it is the documental evidence of his belonging to a group. Manuel keeps other material proofs of his performance and, thus, of his re-shaped identity: "*I kept everything, even the notebook where I took notes, I kept them, because it's something... a new experience, do you see?*" As these materials lend power and authority to the once-jurors, taken together with the governance and self-governing practices at the courthouse, they also maintain the continuation of both practices out of the courthouse while jurors go on disciplining themselves but also attempt to discipline other lay people in the line they got taught as jurors.

### *5.5. Conclusion*

The present chapter looked at a variety of issues drawing on jurors' narratives. They ranged from the perception of their own capacity to judge to the deployment of their brand-new status in regard to the realm of 'the law'. It showed how jurors assess material and discursive practices aimed to control their behaviour, emphasizing how those pervasive and interwoven small practices have accounted for jurors' self-governance. As they in turn repeatedly emphasize the lack of explicit pressures but on the contrary the freedom and autonomy given to them, the mixed tribunal for criminal cases of Córdoba appears to be a fruitful field for the positive and behaviour-shaping fashion of the exercise of power which result in individuals who govern and produce themselves in line with established norms.

## 6. Building Spaces of Resistance

### *6.1. Introduction*

Foucault's conceptualization of power as working through shaping subjects in a creative way that leads to their self-governance has another central component: the resistance. In a different fashion than the rest of this thesis, this chapter focuses on the narrative of a single juror who claims to have challenged the authority of the judges and resisted against their attempts to achieve his conformity with norms as a juror.

Foucault (1982:780) underlines the centrality that forms of resistance should have in the empirical study of power relations. Famously, he asserts that "[w]here there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power" (1978:95). This means an emphasis on the positive aspect of power which should be thought of as a set of relations distributed among social actors unevenly, yet which, at the same time, always entails the possibility of resistance through its multiple nodal points. Hunt and Wickham also point in their understanding of 'law as governance' how "all instances of law as governance contain elements of incompleteness/failure in the sense that the law is always chasing at least one objective that it cannot catch" (Hunt and Wickham 1994:103).

[12] The interviewee means that his case was the first one in the province where a crime of corruption of a public servant was put on trial, what is actually not the case as there were others before.

Acts of resistance seem to be scarce in the field I study. This is probably related to the effective governance and self-governance practices accompanied with the complex of self-perceptions and perceptions on judges and feelings of empowerment described before. Thus both the "consciousness of being less powerful in a relationship of power" and the "claims about justice and fairness" that Ewick and Silbey (2003:1336) consider as necessary components for an act of resistance rarely appear; in a juncture which seems to adapt more to the scheme of a win-win game.

Still, narratives of some jurors provide a discussion of the incompleteness of governance and of how power can be deployed by the jurors in ways to subvert or challenge it. Below, I focus in one of these narratives. Miguel is a juror who, during the trial and subsequent stages of deliberation and decision, openly identified himself with the commonsensical identity largely attributed to jurors in the narratives of legal professionals (See Section 3.3) and he claimed for the rightness of his position against the judges and their technical view. With his accommodation to power in an unexpected way and challenging the authority of judges, his narrative is an appealing site to trace some of the ways resistance occurs within the economy of power relations in the mixed tribunal of Córdoba's Criminal Justice. Furthermore, it also unveils the shape that governance attempts of judges can acquire when facing resistance and losing control of the process.

### *6.2. Resisting from 'the view of the ordinary people'*

Miguel took part of the tribunal which decided the case of a young woman who killed her baby immediately after she was born. The defendant, a domestic worker, had been since her childhood victim of regular rapes by her boss, one of which ended in that pregnancy. The woman was acquitted, in the only decision of the history of Córdoba's mixed tribunals in which lay members managed to make a majority decision by themselves against the opinion of the judges. Miguel, defining himself as lays' "*spokesperson*", claims to have led that majority group, and to have made the decision drawing on his commonsense.

Miguel clearly states how he perceived the reason for the incorporation of lays to the tribunal, and how much determined he was to embody those aims from the very beginning:

> What I understood in that moment was that if we [the jurors] were there it was basically to provide a view, an interpretation, or a fresher vision of the technicalities... do you understand? Let's say... I think the justice has a shape, a method, and the common citizens maybe have another view, a different point of view... call it ingenuous if you want, but I did not feel shy to say my opinion as a citizen (...) each one makes her contribution from her place: some from the cognitive and others from the existential.

It was the idea of his commonsensical identity which Miguel leaned against in his decision, and the basis of his resistance against judges and their technical view. He demarcates a strict line between the "*technicalities*" of judges and his "*opinion as a citizen*". Both of them belong in his view to different spheres and draw on different sources in their constitution. Miguel underlines the importance of this distinction as the advantage of the mixed tribunal:

> That is why this issue of the jury is good, because the judge is educated on the basis of a law, while the juror is formed on the basis of the sociology (sic) of the place where the fact happened, just that (...) the judge comes with a different idiosyncrasy, he comes with the formation that a university gives to you; but the idiosyncrasy of the juror is acquired every day.

In the trial where Miguel was a juror, this 'commonsensical' view assumed a specific form. Miguel defines the view of the common citizen as he believes it should have been in the case he decided:

> I tried from the very beginning to defend the woman (...) I said this is simple: if we see it through a view... I said 'there is a person who was a victim for so many years: How am I –common man- going to be the one who puts a garrotte on her, a punishing stone on a person who is already a victim?' I mean, that is why I talked about the common sense (...) I felt the need for a stance like: 'well, let's try to see this woman as a victim, to see her real situation. Let's not be us who punish a person who is already a victim'.

Before the deliberation began, Miguel perceived the existence of some of the practices described above as aimed to govern jurors' decisions, and consciously or not, he also resisted them. For instance, when offered by the judges access to the files of the case, he disregarded them and kept his criteria, in contrast to the widespread perception of jurors who depict it as a helpful tool for them to solve the case: "*yes, they let us see it if we wanted, yes... but we basically... what we basically did was to listen to the testimonies*". Thus he and other jurors who rejected the offer in a way resisted the normalizing attempts of the judges through what can be considered by itself as a tiny mundane act of resistance.

During the deliberation, Miguel was explicitly against the conviction of the defendant and he succeeded in getting five more jurors on his side, thus forming a majority decision. His narrative is also relevant in as much he tells about the reactions of the judges to his stance and the decision he achieved. The first reaction of the judges, who opposed to the acquittal of the defendant, was according to Miguel, one of surprise: "*[the judges] stared at us even disconcerted; they said 'How can this be?'*" While trying to comprehend how this can be, the next step of the judges' reaction was to put in action some of those slight practices of governance: "*we had already made a decision, and they come back and say: 'well, guys, don't you want to think of it? (...) are you sure? Maybe you want to see...'*"

Miguel continued: "*We had been discussing, we talked, and each exposed her criterion; and as we did not reach a consensus, I suggested: let's vote; we voted and that's it. And when the verdict is done, they say: 'don't you want to take half an hour more to think?*". Even after the verdict is emitted, the judges persist in attempting not to 'lose it', through suggesting another voting which, with the intervention of Miguel, could not be realized: "*I said: 'No, we already voted, do you think we will go back on what we said? Are we going to think different? We've been talking about this for five days'.*"

This respond of Miguel made the judges shift their discourse from one of helpfulness and guidance to another one: "*their arguments were the technicalities, that never in any other place of Argentina there was such a decision, and if we did it we were going to set a precedent...*" The judges openly show jurors the sound consequence in terms of breaking a settled normality in the field of law their decision would have. However Miguel insisted on his commonsensical identity which opposes legal technicalities:

> ...but I cannot be thinking of that, I see that picture, that reality, that I know, a place I know... I'm in charge of that, the rest is not my business, they didn't call us to reform the Criminal Code, they called us for this case. And to this case, with this woman, in this picture, in that situation, in that place, it fits with this extraordinary fact.

In the face of the reactions of judges, Miguel made clear his challenge: "I said 'you will not make me change my mind (...) I cannot stay in the technicality, I have to use the reason, I have to be logical, anything else'." As Miguel raised his voice against the judges, he tells how judges' tone also became stronger, to the point that their attitudes are identified by the interviewee as actual pressures to make up their minds: "yes, yes, they did; yes, of course (...) but we said 'no, no, no'". Miguel's couple was in the courthouse at the moment of the deliberation, and also during the interview. She illustrates clearly the moment from a different point of view: "You could listen them shouting from two corridors away". The situation

shows the limits of slight disciplining techniques, which can shift to visible attempts to impose a criterion in situations of explicit and effective resistance.

At this point it is relevant to trace how this particular act of resistance is interpreted by the judges in the face of the result of the trial. One of the judges that partook in the decision of the same case, quite differently to the 'resistant juror's account, tells:

> It was as it was, as it was natural the agreement in previous cases. I mean, it was something absolutely genuine and natural; there was not any kind of influence; neither for the unanimity of the other cases, or for the dissidence of this case.

The judge's narrative takes away all the epic of Miguel's tale of resistance. As there are no special reasons for the usual unanimities, there was nothing out of common in the only case where jurors made a majority. A prosecutor goes beyond in his account about this case:

> Disregarding all the legal justification that there could have been to condemn, the popular sovereignty is expressed in a so clear way; (...) I think something of such a paramount importance, so important in the building of a system.

The moment of resistance disappears as such in legal professional's narratives. Overlooking the struggle given for the decision, this resistant act is deployed as something anyone could do in further –unlikely- expressions of the "*popular sovereignty*". Thus the only moment when jurors openly opposed and subverted judges' authority is deployed as a legitimizing device for the whole system.

Finally, Miguel assesses his experience in the same positive terms that most of his colleagues; and as them he also claims to have learnt about the law. But he goes further in these ideas: "*you learn from the law, because you are there and listen and read; but you also don't see anymore the law as something abstract but as something you do every day, and you are doing it*". So the transcendentalism attained to law in legal professionals' and other jurors' narratives cease in Miguel's, and law becomes something that is done by actors involved in the process, not something above and distinct from them. This shows, in the line of this work's argument, another failed attempt of governance.

### *6.3. Conclusion*

It is relevant to parallel the scarcity of moments of resistance observed in the narratives of participants with the ongoing results of the mixed tribunal of Córdoba in terms of the decisions made, as shown in Chapter 1: moments of resistance seem to have been even more unusual than the opposition of jurors to judges' criteria when voting. Thus, the observation of the micro-level of interactions triggered by peculiarities of the big picture of outcomes in turn proves relevant to offer potential explanations to those outcomes, as previous chapters already suggested.

The complex of discourses and practices of governance and self-governance and the exercise of power in its positive and creative ways result as well in being effective in directing jurors' actions in their most visible ways: the final decisions they make in the trials. Despite this clear trend, this chapter demonstrated the existence of ways in which power is not only applied 'from above' but rather circulates in a myriad ways along the interactions of the different actors involved in relations of power and knowledge. Miguel's story is relevant since he is not only a 'resistant' in the sense of leading a dissenting opinion against the position of the judges; but also in that he disregarded judges' practices to control their behaviour, and triggered in them reactions that were not habitually observed. On top of that, he did it by performing precisely the role that judges –and other sources of 'official' discourse- attributed to jurors: the one of contributing from the 'view of the common person'; but unexpectedly deploying it to challenge their criteria.


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As such, Miguel managed to open up a space for him to manoeuvre and stay against the judges, but he did it by resorting to a form of knowledge that claims to legitimately talk its truth against the one of the law, whose authority remained so far unchallenged. Miguel's moment of resistance, although being isolated, proved effective, and entailed unseen ways of the exercise of power, evidencing once more its multifarious and circulating character.

## 7. Conclusions

This study looked at the ways in which jurors and legal professionals perceive and recall their experiences and interactions at the courthouse in the mixed tribunal of Córdoba. Drawing on Michel Foucault's notions on microphysics of power, which emphasizes its productive and positive working through mundane modalities, I argued that these power-laden interactions are marked by certain practices and discourses which in turn lead not only to the governmentalization of jurors but also to their self-disciplining in line with the normality established by the legal discourse –and those who handle it- about the decision-making process.

The examination began with the construction by legal professionals of jurors as a problem over which governmental practices shall be applied. In line with Smart's (1989) discussion, it showed how legal professionals in Córdoba's mixed tribunals define themselves as bearers of a body of knowledge able to properly establish the truth, which in the field of criminal justice is to say for judging. Thus, they identify themselves with norms, and jurors become their 'others' as in their view they lack the legal knowledge and the necessary experience for judging. Jurors then get identified with a risk of deviance from that sense of normality that shall be governed.

The devices put into action for the control of this problem appeared to be multifarious and expand to different instances of jurors' experience. The narratives of the participants showed how, besides teaching them the norms of judging, judges also observe, control and, if necessary, correct jurors' conduct. I described this relationship as a pedagogical one, reproducing and reinforcing power relations largely demarked by knowledge: the possessors of a legitimate body of knowledge become legitimate educators and evaluators in the face of those who lack it. My work also showed how these practices are accompanied and supported by demonstrations of courtesy and respect to jurors and, relevantly, by bestowing on them small signs of the privileged status they hold 'as judges'.

This account overall demonstrated how power should be understood as a complex which works through positive and productive actions. As such, as it shapes, disciplines and creates subjects, it does not confront freedom. On the contrary, this specific form of power "is exercised only on free subjects, and only insofar as they are free" (Foucault 1982:790). Surrounded by practices of governance which amount to jurors' empowerment and self-responsibilization, jurors did not feel constrains or pressures. They gladly received the lessons and guidance of judges, and proudly undertook their task thus responsibly exercising their function 'as judges', internalizing the norms they were subjected to. Thus they often operated as agents in their own governance and in the disciplining of other jurors.

Yet as I showed the circulation of discourses and practices of power goes beyond and jurors leave the courthouse with a new identity which grant them a particular authoritative baggage of knowledge and experience in the face of those who were not 'on the other side'. This process overall actually reminds of Valverde's argument in her "'Which Side Are You On?' Uses of the Everyday in Sociolegal Scholarship" (2003): That lines, which divide law and society and the actors assumed to be located in their terrains, are actually drawn and re-drawn according to the power relations of each context and "there are no lines except the ones we draw" (*ibid*: 97).

In the last chapter the thesis had a turn in line with Foucault's emphasis that "relations of power-knowledge are not static forms of distribution, they are 'matrices of transformation'" (Foucault 1979:99) and, thus, are never exempt from resistance. In the economy of power relations of Córdoba's mixed tribunals, this kind of spaces of resistance emerged but only occasionally and proved largely difficult to unravel. Still I showed the possibility of competing discourses through a juror's resistance to judges' authority and normalizing practices. What is more, this moment of resistance subverted a whole array of practices and discourses and struggled with the argument of being the bearer of another certain body of knowledge, or better put, of a way to know, which in that juncture was the appropriate to define the truth of the events.

Turning back to the initial concerns that triggered the questions of this research, the argument offers one explanation –undoubtedly among several others- for the queries about the inclinations of jurors to attach to judges' decisions, in contrast to the democratizing aims that the design of the tribunal seems to endeavour. It shows that the statistics about the outcomes can be understood basically as an effect of power relations which operate in a mundane and scarcely visible but also positive and productive manner, resulting in adjusting jurors' behaviour –and their decisions- to a predictable pattern aligned with the established norms about decision-making: namely that derived from the objective, neutral and unbiased legal reasoning that judges claim to embody and to be responsible to transmit to jurors.

However, the findings of my research go beyond presenting a likely explanation for the outcomes of the experience. My study can be considered as an empirical analysis of relations of power which "is never localised here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth" (Foucault 1980:98). It takes this understanding of power and places it within the institutional setting of Cordoba's mixed jury trials; and tries to unveil some of the dynamics of its circulation and the consequences of the multiple ways of its positive operation. It unravels some of the ways in which such dynamics produce and shape actors involved in them and their images of themselves and the others.

In that exploration, it unveils ways in which legal discourse is deployed as a legitimate speaker of the truth in its field, thus diminishing the value of other alternative ones. It found how that discourse can be challenged and its prevalence subverted in moments of effective resistance. It explored how dynamics of governance and self-governance account –as a consequence of the operation of power in its positive, creative fashion- for the creation of identities closely related to experiences in the face of the law and legal institutions. It depicted how those practices result as well in the shaping and re-shaping of the images of such institutions; and that all of these dynamics interweave in the unceasing circulation of power in and around social interactions.

Despite being a small scale work, limited in terms of time and space, this thesis represents relevant contributions also for the field of jury research. It applies a methodology rarely seen in the studies of jury trials and a theoretical approach on whose basis no research on lay participation had been conducted before. As such, other than the contributions to the field in general, it especially has the potential –in itself and in several likely paths it opens for further research- to provide relevant insights for those studying the possibility of expanding lay participation in the decision-making process in particular. In this line, not only does my thesis show how attempts to democratise the powers of the state are limited, but also endeavours to understand why.

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## Appendix 1. Methodological Framework

*Introduction*

This Appendix describes the methodological approach, the methods deployed, as well as decisions made during planning and conducting this study. The aim is to reply to the *how* question of my field research; by explaining the "rationale behind research design and data analysis" (Silverman 2005:304). It shows the strengths of my work whilst reflecting upon its limitations.

My research draws to a great extent on existing quantitative and qualitative data sets. I actively partook in the collection of this data between 2007 and 2009 as a member of the research project "*Processes of Change in Legal Culture: Analysis of the Experience of Jury Trials*" (PCL). As the quantitative data triggered my research questions; my study relies mainly on qualitative methods and data.

*Quantitative Dataset*

The quantitative dataset –some of whose results I show in Chapter 1- was elaborated on the basis of the content of the 91 rulings (145 defendants) of mixed tribunals enacted during the first four years of the experience (2005-2008). The data was collected using a structured coding sheet and includes types of crime, votes of every judge and juror, verdict, punishment in cases of conviction, and information about participants. The Juries Office of the Judiciary of the Province of Córdoba provided the judgments, which are public.

The importance this quantitative dataset constitutes for my thesis is threefold: Firstly, it presented a fuller picture of the outcomes of Cordoba's ongoing experience in jury trials and helped me to situate my results in a broader scenario. Secondly, it allowed me to gain information about the details of the trials and characteristics of the participants and their decisions; and provided useful guidance for the selection of informants and interpretation of the qualitative data. Finally, with some the specificities of the big picture that the dataset shows –namely the high level of agreement of jurors and judges in their verdicts- it inspired my interest in exploring the micro-level of interactions between lays and professionals and the dynamics of this specific encounter. Nevertheless, apart from these concerns, and in line with the theoretical orientation of my work, I do not attempt to deeply analyse this data.

*Qualitative Approach, Methods and Data*

The theoretical orientation of my thesis concerns meanings and power relations which are produced and reproduced through the interaction of legal professionals and jurors, the way in which such dynamics build subjectivities and fix identities, and their effects upon the outcomes of the decision making process. This orientation leads me to take on an *interpretivist approach*, which focuses on "meanings and interpretations given by the social actors to their actions, other people's actions, social situations..." (Blaikie 2000:115). In a nutshell, my research attempts to understand, through such approach and deriving from the narratives of the participants, how practices of power in its productive and positive way play out and get contested in the particular exchange between legal professionals and jurors in and around the institutional context of Cordoba's jury trials.

Interviews and Focus Groups

Considering the scope of my research, the primary method deployed is semi-structured in-depth interviewing. It appears as one of the main methods for interpretivist approaches as they are the only way to gain access to people's understandings, experiences and interactions through their own narratives (Mason

2002:63). Compared with structured or non-structured interviewing, it provides sufficient latitude for participants to respond to the interview questions and to reflect upon other themes while allowing the interviewer to keep the focus on the research questions.

The main portion of these interviews was conducted by members of the PCL. These are 2 researcher-convened focus groups, each including 8 jurors, and individual interviews with 6 persons who acted as jurors and 10 legal professionals -6 judges, 3 prosecutors and 1 court clerk- who work in criminal courts of the Province of Córdoba and have experience in mixed tribunals. I added to this dataset 3 more interviews to jurors which I conducted for the exclusive aims of this work in June 2010. Overall the qualitative data that forms the basis of my analysis consists of 19 semi-structured in-depth interviews and 2 focus groups involving a total number of 35 research participants who actively took part in jury trials since 2005. Conducted on the basis of the same guidelines, the individual interviews and focus groups aimed to explore participants' perceptions and the way they depict their experiences; incentivising in the focus groups the exchange between participants, thus taking advantage of the collective setting of the social network created in the site of the interview (Barbour and Kitzinger 1999:5).

The jurors and judges participants were chosen according to different criteria, although in general it can be said that the selection mainly depended on the accessibility of the participants. In the case of jurors, the 50% quota gender that the law establishes was taken into account: from 25 jurors 12 were women and 13 men. For the last 3 interviews, I paid particular attention to include into my research jurors who were part of non-unanimous decisions and dissented or voted in a different sense than judges; although not necessarily respecting with exactitude the proportions that the quantitative dataset showed in this sense (rate of dissent among jurors). This aimed to trace 1) the resistant practices which although I do not identify with 'dissent' I thought could more easily appear in jurors who did not vote like the judges[13], 2) the effects of governmental practices upon those jurors who opposed to judges in terms of the decision finally made, and 3) judges' reactions to them.

The interviews with officials were done firstly with some key informants: the judges who lead both the positive and the negative public positions about the implementation of the system during the legislative discussions. Then, the snowball contacting provided some more participants, who were contacted in their public offices. Finally the random selection of functionaries and their availability determined the final set of interviewees; which took part in officials' public offices, with the exception of one prosecutor who received me at his house.

The jurors were contacted by phone –data provided by the Jurors Office of the Judiciary of Córdoba-, and interviewed face-to-face mainly in public places such as cafes; as well as in rooms provided by the Socio-Legal Research Center of the University of Córdoba.

Both jurors and officials interviews were composed of a series of pre-formulated guidelines and open-ended questions. They were carried out in a relatively flexible basis, privileging the freedom of the interviewer to formulate the questions and introduce the topics according to the march of the conversation, and especially to unburden the participant and let her speak at length about any topic that came out. The interviews followed a different structure and set of questions and themes for each kind of participants (lays and professionals).

[13] During my research I found out that dissenting opinions cannot be taken –by definition- as resistant acts, providing that those votes include also dissenting jurors who rely on the same hegemonic discourse of legal normality which judges use and spread. Although I acknowledge that the distinction itself is problematic, for this study I consider resistance as acts which subvert the governance attempts target jurors and, thus, somehow challenge the authority of judges and their discourse of neutral and rational legal reasoning.

Although having been designed with diverse aims[14] that did not include specifically the objective of my thesis, this qualitative dataset provided rich insights on the dynamics of my interest. In my view, the fact of not having been designed –nor conducted- with the aims of this work in mind, but attempting to obtain a full-range narrative of the participants' experiences, might even represent a strength of my thesis. By the design of the interviews, which mainly go along the chronology of the experience and, thus, recall the formal and informal interactions between officials and jurors in their own view along the whole process, the dynamics I explore came about with no necessity to be asked about in a more straight way. So the informants whose rich narratives nurtured my thesis did not necessarily tell stories of power and resistance, neither talked about the construction of their subjectivities in line with any governmental rationality. They told their experiences as members or collaborators in mixed tribunals trials. In the task of interpreting their stories I sifted them through the filter of my theoretical notions and the aims of my thesis; but also of my own background and ideas about them, my work and myself as a beginner researcher. Thus I tried to remain loyal to my participants' stories and their actual views as they narrated and described them.

In interviews with jurors, the questions mainly followed a chronological order. They were asked about their previous perceptions on and experiences with law, their feelings when they learned about their appointment, their overall experience at the courthouse and their opinions after they left it. The interviews with officials were slightly different. While also following a chronological order, they began by asking the participant about her position and experiences along the application of lay participation since the first system of 1991 and their opinion on the ongoing system that started in 2005. Then judges were asked about the performance of jurors, the changes they bring to the procedure, and their perceptions of the functioning of the system, since the constitution of the jury until the verdict.

I acknowledge that the number of interviewees as well as the method for choosing the participants may not provide a representative sample. Yet the validity of my research derives from the depth of the data collected, in line with my methodological and theoretical approach. They prioritize the exploration of people's perceptions and the meanings they attach to their experiences and how that affects their actions and identities; rather than aiming a vast generalizable set of empirical data. After all, one of the main strengths of my study is the direct involvement of jurors and the possibility to examine their narratives about actual experiences. This overcomes the limitations of the methods mainly used in the field, which largely relied on statistical data, mock trials or post-trial surveys of judges and lawyers and more rarely of jurors, because of the restrictions for accessing them in most jurisdictions[15].

### Data Analysis

The analysis of the data was the more complex and time consuming stage of this study. It began –with no other reason than my personal preference- with reading jurors' interviews, made with no previous categorizations of any kind, and led just by my research questions oriented on the basis of previous knowledge of the quantitative data. Along the first reading I identified general themes related to my research questions, and did a general codification on these interviews. The process of analysis went on with reading legal professionals' interviews, which at the

[14] The different members of the research group have drawn on this database for their studies related to issues of gender, roughness of the punishments, procedural justice, issues of the selection of jurors, case studies, etc.

[15] It is worth mentioning that the whole universe of persons who took part in mixed tribunals in Córdoba is still relatively small. In the period 2005-2009, 809 persons acted as jurors, and they were accompanied by 62 judges; distributed among the 11 Judicial Districts the province is divided in. Still, sampling according to criteria such as socio-economic status, age or education would have been a much more difficult task taking into account the limitations in terms of time and scale of my thesis, and, more important, not indispensable given its theoretical and methodological approach.

beginning I coded on the basis of the same categories. As expected, new themes appeared in judges' narratives, so I elaborated a second set of codes.

After several readings of the interviews, while simultaneously getting a finer understanding of my theoretical approach, some of the codes that formed the first two sets merged with each other, disappeared or became a new one, as totally original ones were introduced as well. Gradually, these codes became, in general terms, the sections in which Chapters 3, 4, 5 and 6 are divided: 1) Differences judges/jurors in terms of: a. knowledge, b. experience and judging skills. 2) Definition of jurors as a problem over which governmental practices shall be applied. 3) Governmental practices: a. Teaching the Norms, b. Correcting Deviances, c. Governing through Stretching the Boundaries of Law, and d. Demonstration of respect and recognition of jurors' status. 4) Self-perception of jurors and shifts on this perception after governance practices/ Self-governance. 5) Perception of judges and their practices in jurors' views. 6) Construction of the juror identity outside the courthouse. 7) Spaces of resistance/Commonsense in practice.

I did all the coding task by hand on the printed version of the transcripts of the interviews, and created, in text processing software, a file for each code were I pasted the whole excerpts from the digital version of the interviews referred to it, distinguishing jurors and officials. Just the excerpts included as textual references in the final version of the thesis were translated into English. I did all translations by myself.

*Ethical Issues and Concluding Remarks*

In the interviews and the focus group I conducted personally I obtained orally at the beginning the informed consent of the participants to record the interview and use the data for the aims of the research; as every other interviewer of the research group did. I explained the participants that their identities will be protected and that they have the right to withdraw participation, and provided them electronic mailing addresses and telephone numbers to communicate in case they want to withdraw. Also upon informants' consent, the interviews were taped and later transcribed. The data was anonymized and the names mentioned in textual references are pseudonyms. Both the voice recordings and their transcripts are kept in password protected drives. The trials about which details are given were held in open court and the data is publicly available.

Overall my research drawn on the data I describe above and relied in the methods and decisions I outlined. I have to admit that I have overlooked some other important sources of data on the interactions I observe. For instance, it could not examine differences, tensions and thus power relations occurring within the same groups, between jurors and legal professionals themselves. Other sources of meanings and dynamics of construction of the identities, as varied as the spatial design of the courthouse and the brochure that jurors receive before the trial (devices likely to aid to the studied issues of knowledge/power) or the judgments, where dissenting votes of jurors are written by the presiding judge (thus translating a discourse originated in an implied 'commonsensical' logic to a 'legal' one) were not studied as well. However I think these limitations can be considered as possibilities and paths for further research, whilst my study constitutes a step towards more comprehensive examinations in the field.

I believe that, despite its limitations, my methodological design helped me to gain insight into the issues of my interest and made it possible for me to reflect on them. I wanted to look at a unique experience that occurs for the first time in the history of my country. I was interested, rather than in the figures and the big picture of the outcomes, in the mundane and scarcely perceivable practices that unfold in this unique site of interaction of lays and judges, which in turn also lead to

those outcomes, as my study shows. Thus I relied on and interpreted the narratives of participants as the main source of data. I do not disregard issues of power that may have been at stake in my relation with the participants –especially jurors- and, whilst acknowledging the existence of biases and prejudices that can have influenced my observation, analyses and conclusions, I hope I, at the end of the day, did justice to their stories with my interpretations.