



Governing Through Participation: On Permacrises and the Making of the Argentine Juror

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Abstract

This article relies on the analysis of interviews with legislators and reformers and documentary sources like parliamentary bills to discuss the governance of (perma) crises in context of the recent introduction of lay decision-makers to criminal justice systems in Argentina. The paper proposes a critique of the perennial trust in law as a tool to deal with crises—even in the case of lay people participation in judicial adjudication, which could be thought of as a legal technology that represents a disinvestment in law in as much as it is an investment in ‘common sense’, touted as belonging in the opposite extreme of a continuum of knowledges (especially in the context of a codified civil law system). The paper has a twofold aim: first, it discusses the use of one governmental technology (participation) imagined as a solution to a series of crises. Second, it looks at these reformers as their programmatic work moves from the broader political effects of lay participation to the ethical dimensions of their transformative endeavour, tracing their attempts to devise the proper participant citizen and its conducts, within and beyond the courthouse.

Keywords Lay participation in criminal justice · Governmentality · Crisis · Jurors · Argentina · Latin America

1 Introduction and Background

Modern government, Nikolas Rose and Peter Miller [1] have claimed, is a *problematising* activity. Inherently linked to the workings of expertise and by no means limited to the operation of state agencies, governing entails a variety of epistemological tasks including defining problems to be addressed, providing accounts of those whose con-

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ducts are to be shaped and creating the techniques to target them [1, 2]. To analyse political power through the operation of technologies of governance is "to start by asking what authorities of various sorts wanted to happen, in relation to problems defined how, in pursuit of what objectives, through what strategies and techniques" ([3], p. 20). A *problematization*, in terms of Michel Foucault, responds to difficulties, "but by doing something quite other than expressing them or manifesting them: in connection with them it develops the conditions in which possible responses can be given; it defines the elements that will constitute what the different solutions attempt to respond to" ([4], p. 389). Governmentality scholars have studied such problematisations and the responses they engender, including reformist discourses in which active citizenry and institutional strength are put forth as remedies for multiple social illnesses, from public corruption to political apathy and institutional inefficiency [5]. Substantive and procedural legal reforms, imbued with an underlying trust in law's strength to effect social change, are not the exception. This paper's somewhat idiosyncratic contribution to this special issue lies in its attempt to comprehend the *uses* of 'participation' as a governmental tool to manage multi- and perma-crises, through a situated study of the governance of a particular socio-legal innovation – the introduction of lay decision-makers to criminal justice systems in Argentina.

Mainstream socio-legal research in the field of lay participation in criminal justice has tended to take this problem–solution logic for granted and studies of jury trials and mixed tribunals consequently centre in assessing reforms' goals in terms of their good or ill-intentioned nature or their success or failure [6, 7]. Elsewhere, scholarly debates of discrete 'crises' do, in their turn, tend to assume the value of 'participation' as a governance tool – studies of climate crisis, arguably the most urgent and heavily debated crisis of our times, are a case in point (see, for example, [8, 9]). Both bodies of research are in this sense distributaries of the transdisciplinary drive for expanded public participation in all matters of collective interest, originated in the 1960s and 1970s, from education and school management [10] to urban design [11, 12] and medical care and education [13]. They are complemented by the mirroring trends to lament the participation's very own crises [14, 15], criticize its co-optation and bureaucratization [16] and the institutional drives to limit it, in criminal justice adjudication and elsewhere [17]. A common trait in this vast body of literature is that the creative power-laden activity of reformers remains "black-boxed" [18], concealed under the assumption that participation is indeed a universal value and, as such, as suitable tool to address crises. This article does not challenge the normative value of this assumption – if anything, it upholds it – but it proposes to cast a critical eye on the work of reformers *using* participation as the starting point of a critical dialogue between these bodies of research (lay participation, governance, crises).

Below I will discuss a series of problematisations and political rationales that I have identified as those in relation to which the implementation of lay participation has been advocated for in Argentina – democratisation, courts' legitimacy and insecurity. These, of course, refer to issues that are by no means new or unique to the Argentine context. Seen retrospectively, they relate to problems that had gained notoriety in the decades that preceded the innovations in lay participation, emerging particularly from two defining points of the country's recent history. The last return of constitutional rule to the country after the 1976–1983 dictatorship, self-proclaimed *Proceso*

de Reorganización Nacional [Process of National Reorganisation], marked the return of lay participation to the realm of authorised legal discourse in Argentina. This was enshrined in the provincial constitutional reforms that followed, in a milieu marked by the need to govern the population and state agencies in line with the new dominating discourse of democratisation and related ideas of public participation, responsible citizen involvement and indispensability of strong institutions [19–21]. The transition to constitutional rule did not mean the abandonment but the intensification of neo-liberal economic policies first introduced by the Juntas, and two decades later the deep 2001–2002 socio-economic crisis (marked by the debt, financial system and exchange rates crash) and the collapse of the political system (epitomised by the resignation of President De la Rúa) were accompanied with increased public concern with the lack of transparency and efficiency of the judiciary.¹ The perceived increase in violent urban crime that followed the years of economic duress contributed, as well, to solidify the perception of the criminal justice system's inability to respond to the problem of violent crime and hold criminals properly accountable [25].

These phenomena coalesced into what was by the early 2000s experienced and discussed as a situation of permacrisis *avant la lettre*, with crises having become a persistent trait and defining fact of being Argentine and living in Argentina – rather than a liminal temporary state waiting for its synthetic resolution towards an improved state of affairs [26]). From the vantage point of a further two and a half decades of subsequent instability, ideological and affective polarisation, and economic boom-booster cycles, Sociologists Kessler and Vommario aptly described the cascading of this feeling down to citizens (and voters) as ‘the era of fed-upness’ (*hartazgo*) in Latin America [27]. The period coincides with the ‘era’ of lay participation in criminal justice in Argentina. Despite juries being mentioned in three different provisions of the National Constitution mention the jury since its first version in 1853,² jury trials or other forms of lay participation were not implemented in Argentine criminal justice systems until very recently. The Province of Córdoba had first experimented with a mixed tribunal of two lay members and three professional judges in 1991 and expanded it in 2004 to a lay majority of eight lay persons to three professional judges – which is the basis of the empirical section in this article. This continued with the provinces of Buenos Aires and Neuquén in 2013, Chaco in 2015, Río Negro in 2017, Mendoza and San Juan in 2018, Entre Ríos in 2019, Chubut in 2020 and Catamarca and the Autonomous City of Buenos Aires in 2021 all implementing criminal jury trials in a traditional format of 12 lay members.

The interest in the implications of lay participation systems as *political* institutions, rather than solely *judicial* ones, can be traced back to at least as early as Tocqueville's [28] description of the American jury. In this light participation in adjudication is

¹ On the causes, development and consequences of the last Argentine economic crash see [21, 22]; and for accounts of its effects on the workings and image of the judiciary see [23, 24].

² Article 24: "The Congress shall promote [...] the establishment of jury trial". Article 75, Sect. 12: "The Congress shall [...] enact [the general laws] which the establishment of the trial by jury may require". Article 118: The trial of all ordinary criminal cases [...] shall be decided by jury [...] once this institution is established in the Republic". These provisions were maintained in every reform of the Constitution (1860, 1866, 1898, 1957, 1972 and 1994), except for the one undertaken during the government of Juan Domingo Perón in 1949.

understood in a broad sense as the involvement of citizens in affairs of public interest – i.e. beyond the borders of an implied divide from private affairs. Mostly emerging from political scientists or sociologists, the enlisting of common citizens to take part in adjudication has been interrogated in terms of their outcomes for the socio-political body as a whole. Researchers studying lay participation from this point of view have celebrated democratising or legitimating effects [29–32], pointed to their possible limitations [33, 34] and promoted reform projects in the face of lack of confidence in the courts system, its inefficiency or concerns with its punitiveness [35–37]. Recent developments (like the substantial racial injustices that gave origin to the Black Lives Matter movement and US juries' role therein), triggered a rebirth of the jury's own age-old crises and an increased interest in its democratic credentials ([38] being a primary example).

Although the contributions of this body of scholarship have been enormous and greatly enhanced the empirical possibilities of lay participation research, most of this work reproduces a conception of law and its institutions as forming a discrete realm acting upon the separate one of society [39]. As questions revolve around the *effects* of lay participation, an instrumentalist understanding of law pervades and underpins the optimism as regards the possibility of making lay participation the vehicle of social change – one that is in substantial terms not dissimilar to the approach in some of the most influential work on permacrisis [40]. The result is that lay participation research consistently eschews the opportunities provided by lay participation systems to think of novel ways of theorising law's power. This article purportedly sidesteps those forms of normative judgment of programmes and their outcomes and attempts to turn the question upside down, focusing on the study of the creative attempts at bringing lay participation to life in the context of, and as (part of a) solution to, multiple enduring crises. As the analysis that follows will discuss, the story of the introduction of lay decision-makers to criminal trials in Argentina can and has been told in a number of different ways, but a common thread in each discursive field and political logic resorted to is that each of those stories relies on one or more crises to be tackled, problems to be solved, lacks to be filled or failures to be remedied. It is around these perceived failings that the field of the programmatic unfolds, where programmes are conceived, discussed and designed ([1], p. 181).

The empirical analysis thus looks at this level of the programmatic in the implementation of lay participation in the historically professional criminal justice systems of Argentina – in particular to the Province of Córdoba's second system of lay participation, a mixed tribunal with 8 lay members and 3 professional judges.³ In look-

³The empirical analysis in this article relies on 27 interviews with judges, other court staff and judicial officials and administrators, legislators and pro-jury activists and reformers, and systematic observation of routines and proceedings at criminal courthouses. The bulk of data collection took place during a first sweep of ethnographic fieldwork between 2012 and 2013, complemented with further field visits in 2015 and 2023. Data collection took place in four sites of the province of Córdoba, including its Capital city and three smaller towns, and the cities of La Plata and Buenos Aires – in the latter two, only interviews with national-level pro-jury activists were conducted. The selection of participants for interviews followed a purposeful or *nonprobability* sampling method (Maxfield and Babbie 2010). My concern with variety of participants was not, as in neo-positivistic approaches to interviewing, with representativeness, but rather with the chances of eliciting diverse accounts and experiences in relation to lay participation, in line with qualitative approaches (Quinn Patton 2001). To recruit judicial officials, a few weeks before-

ing at this first scale of the governance of lay participation in Argentina, the paper discusses two dimensions of the creative process of introducing lay participants to the assemblage of criminal justice systems. My interest in this article thus lies not on unveiling deep social or historical causes of this legal innovation, but in disentangling the lines of the intellectual work of those who put these problematisations forward by linking them to 'participation' as a governmental technology. The focus is then on language, not as identified with an attempt at studying actual discursively constructed subjects or institutions (as some versions of discourse analysis assume), but as a proper vehicle to understand how participation has been deployed, the types of thought mobilised, the rationalities and the kinds of actions they animated to make possible the emergence in recent history of systems of lay participation in criminal justice in Argentina. In the first section, I analyse law drafts and legislative debates as well as interviews with activists and reformers who have advocated for the introduction of *lay participation* in the search for the social problems they have identified lay participation as a solution to and, in doing so, inquiry into what – I will claim, overlapping and contradictory – political rationales have illuminated their programs.

Rose and Valverde [41] have argued that law plays in contemporary societies a role in normalising processes of subjectification. Interrogating legal governance as a network of constitutive discursive and non-discursive practices of power and knowledge allows me to move from open political discussions of the potential of lay participation to drive changes at a social level to the less apparent transformative endeavour which has as its distinctive aim to devise the proper participant citizen and its conducts, within and beyond the courthouse. Having looked at lay participation as a governmental technology and discussed the political logics underlying its introduction, the second part of this article bridges politics with the constitution of the juror identity and ethics and turns to the much less apparent will to act upon subjects' conducts as discernible from the intellectual task of reformers and activists. I set out to map and discuss representations of *the juror* in this network of legal and quasi-legal discursive practices linked to the programmes for the implementation of lay participation in Argentina. The aim is here to elucidate the lines of the creative process of thinking the juror as a 'participant subject'. I will claim that the imagined juror's mix of authority and responsibility and its multiple imagined roles as target, agent and conductor of power and governance make the newly made juror a unique – if previously under-researched – subject of power [42].

commencing my first round of fieldwork I initiated contacts through personal and professional acquaintances and sent information letters to key participants. Once in Argentina, selection proceeded mostly through snowballing and contacts made during observations in courthouses. Pro-jury activists and legislators were contacted to their official or institutional email addresses, or reached through contacts made during the research process. All interviews took place in the offices of the interviewees during their working hours. Informed consent was obtained for all interviews and only general references to participants' roles are made to protect their anonymity. I conducted participant observation of trial hearings with and without lay participants and of courthouse routines, in both in public (i.e., corridors, halls, cafeterias, and court-counters) and private spaces (i.e., court's offices, waiting and deliberation rooms) at all four sites in the province of Córdoba, Argentina. Favourable ethical opinions for the data collection were provided by the University of Manchester University Research Ethics Committee (project reference 12218) and Keele University's Faculty of Humanities and Social Sciences Research Ethics Committee (review reference 2022-0350-406).

2 Problematisations, Crises, and Lay Participation: Democracy, Legitimacy and Insecurity

My empirical analysis starts with the simple question ‘to which social problems has lay participation been put forward as a solution in Argentina?’. To this end I draw on interviews with pro-jury activists and legal reformers; draft jury trial laws; legislative and constitutional debates as well as NGOs’ websites and statements and media articles. The main theoretical claim underlying this first step of my empirical analysis lies in the usually obscured fact that the tandem political rationalities-governmental technologies is never as straightforward as the advocates of those technologies tend to narrate it. By the contrary, diverse, overlapping and even contradictory problematisations can be defined as suitable to be cured under the rubric of the same governmental technique, which is thus burdened with contradiction as much as with contingency. Inductively identified upon the programmatic texts analysed, I designate these political rationalities here in three analytically created lines: lay participation as a democratising device, as a legitimating technology and as a way to achieve harsher criminal punishments and more efficient crime control in the face of urban insecurity.

2.1 Lay Participation as a Democratising Device

The potential of lay participation to bring about democratisation both to the Argentine courts system and to the country’s governance in general has been a usually deployed rationale, especially among progressive-minded pro-jury activists I interviewed – all of them legal experts involved in academia and public or private professional roles as well. In reformist discourses that deem the implementation of jury trials as the solution for a perceived deficit of democratic governance in Argentina the root of the problem is identified as the long-lasting debt with the very text of the National Constitution. The breach of existing explicit provisions for jury trials is, for jury advocates, problematic in itself as a marker of an unacceptable level of disregard for legal mandates. What follows is an excerpt of the statement of motives of a law draft for the introduction of jury trials in the Federal Justice:

The omission of the regulation of the trial by jury and, even worse, the enactment of procedural systems opposed to the constitutional provisions, resulted in a deformation of the system contained in our Fundamental Law⁴ and in the consequent detriment of specific safeguards for citizens and for the institutional functioning.⁵

The constitutional gap associates, in this construction, current political concerns with historically rooted values. The unfulfilled aspiration of liberal founding fathers reflected in the National Constitution finds a direct correlation with contemporary

⁴As it is the case for other constitutions, *Ley Fundamental* (Fundamental Law) is a common way to name the National Constitution in Argentina.

⁵Law draft for jury trials in the Federal Justice – Statement of Intent, Congresswoman Gambaro, Peronist White and Blue Union, 2012.

struggles to democratise the judiciary in particular and the society and state as a whole. The need for citizen participation links them together. In proposing the establishment of a jury system, democracy and the participation of laypersons as decision makers seem to find similar roots. A law draft presented at the National Congress in 2011 puts it this way:

Even when it is only recently that talk of a democratisation of the National Judiciary began, a trend the 1994 constitutional reform did not remain oblivious to, in truth with this we are not just doing a contemporary interpretation of the National Constitution, given that as early as the passing of the 483 Act⁶ – project presented in 1870 – to establish the trial by jury, congressman Zavallía said: 'I know that the jury is the complement of the democratic system. It is justice administered to the people, by the people themselves.' This means it is the very people in charge of the highest of all duties: help to the establishment of justice.⁷

Law drafts for jury trials have emerged from across the whole ideological range of parties, as has the emphasis on the practical imperative of democratisation. Consider this excerpt from the statement of intent of the project presented by the centre-right PRO party:

The change is not just indispensable but, in line with the democratic winds blowing over the Nation's administration, citizen participation in the justice system must and has provisions and comprehensive expression in the provisions for jury trials in criminal matters first, and then in the rest of the tribunals [...] This project, overall, is a breath in favour of democracy and citizenship, one more step forward towards a real maturity with no paternalistic biases that intend to disregard that the citizenry is ready to commit to elucidate what kind of justice we have and what kind of justice we want.⁸

A theoretical relation constitution-democracy-lay participation is considered straightforward also in the perspective of judicial reform and pro-jury activism. Consider this excerpt from my interview with a lawyer, academician and activist:

[I]n as much as [pro-jury arguments] are democratic they are constitutional, if one believes that finally the spirit of our Constitution is democratic. And I am not doing a formal dogmatic analysis of democracy; I think it contributes, if the democracy has to do with citizen participation in decisions... then it has four

⁶This Act, passed in 1871, established the appointment of two persons for the elaboration of a draft law on criminal procedure and jury trials. The jurists appointed were Florentino González and Victorino de la Plaza, whose 1973 project was never formally discussed by the Congress.

⁷Law draft for jury trials in the Federal Justice – Statement of Intent, Congresswoman Camaño, Popular Front/Peronist Front, 2011.

⁸Law draft for jury trials in the Federal Justice – Statement of Intent, Congresswoman Bertol, PRO—Republican Proposal, 2013.

legs and it is barking... it's a dog... and this is what clearly happens with the jury.⁹

The problem of undemocratic justice administration is embodied, in the view of pro-democratisation activists, in an obsolete courts system that maintains traits from inherited colonial and monarchic structures of power: "The jury will break that centralisation that is the last monarchic aftertaste we keep of the Spanish legacy: the Judiciary."¹⁰ Another activist, with experience as public solicitor, narrates the origins of his own interest in lay participation through an iteration that illustrates this conception of the judiciary and the potential of lay participation systems to provoke a democratic shift therein:

Well, this began as a theoretical issue and then, because I am also a public solicitor, so in the everyday practice of the profession, and seeing how the professional justice is, I said 'Enough, enough of these guys.' They are classist, racist, they are a social class, because judges belong to a social class, the middle class, middle high, but with a deep disdain for lower classes. [...] So I was seeing all that and then I was seeing them opine about the jurors and they would say 'No, please, what is that? How could you give a butcher the decision of a criminal case?' Then as I am, as a tendency, suspicious of everything that comes from power I began researching and slowly I saw this was a very absorbing topic, when I began understanding the ideological issues of why it was so rejected. [...] I understood that the trial by jury means to take away part of the power to decide from this people.¹¹

The informant links biography with history and the judges he comes across in his everyday professional practice epitomise the obsolete judicial bureaucracy where, in his account, the power to judge currently lies in Argentina. "Suspicious of everything that comes from power", the determination emerges to work in shifting this unbalance towards the other end of the dichotomy. On this other, disempowered, side of the divide we find the citizen. The citizen is conceived in liberal arts of government both as an individual holder of rights and as part of a population, 'the people', 'the community' or 'the society' [64]. Embodied in the jury, it carries the potential to take hold of judicial decision making and channel a new form of making justice. In this imaginary the zero-sum conception of power entails a jury that is not an expression of state institutions – in as much as an official, law-backed mechanism to judge criminal cases – but its diametrical counterpart.

2.2 Lay Participation as a Legitimising Device

A second line of the problem-solving logic of lay participation that emerges from reformist discourses in Argentina relates to its potential for the improvement of the

⁹ Pro-jury activist, Case 5.

¹⁰ Pro-jury activist, Case 7.

¹¹ Pro-jury activist, Case 6.

weakened image of the courts system.¹² The *problem* is thus the lack of confidence on court systems, and *legitimacy* the distinctive idiom. Scholars with theoretical or empirical interest on institutional legitimacy set out from a basic premise: every leader, order, set of rules or institution deals with the need for its authority to be seen as appropriate by those submitted to it, for them to feel obligated to defer to such rules or to comply with the authority's decisions [43]. Legitimacy has long been used in social thought to theoretically discuss that need and, more recently, to subject it to empirical tests in varied social settings, from governmental regimes [44] to work organizations [45]. In the field of law, questions of legitimacy have turned to the exercise of legal authority and the compliance with law itself, as well as to the complex relationship between legality and legitimacy. In the classic Weberian sense, in which law is a set of formal rules that rationalises relations of domination and promotes voluntary consent, legitimacy rests upon the dominator's claim to be obeyed and the social action of individuals' submission by their own will [46]. In the complex interplay between legality and institutional legitimacy that this entails, it is clear that "[y]et for the legal system to legitimate domination, it must secure its own legitimacy" ([47], p. 781).

Whether and under what conditions people consider courts and legal system's claim to authority as legitimate has been the central question of most of the empirical research conducted within this tradition. The "amorphous nature" of the concept, James Gibson argues, troubled empirically oriented scholars, who preferred for its operationalisation notions such as "institutional support" (whether "diffuse" or "specific"), "trust", "confidence", "obedience" or "loyalty" ([48], p. 511). In line with a Habermasian conception of legitimacy as the result of a communicative process, some scholars have moved away from solely exploring whether people do or do not express willingness to obey and shifted the lens to the question of *why* people obey the law [49]. This has resulted in an increasing body of research, mostly from socio-psychological approaches, on *procedural justice*. This work has consistently found that authorities are considered more legitimate when their decisions, disregarding the outcome, are made through processes that are perceived and experienced as fair, through the measurement of indicators of fair treatment such as neutrality, respect or possibility of voicing opinions [45, 49–53].

Through the conceptual lens of *governmentality*, this study takes a different path and the analysis proceeds towards looking at legitimacy nominalistically, as an idiom embodying the will to think and act in the process of institutionalising a particular governmental technique – lay participation in criminal trials. In Argentina, the

¹² Bergoglio (2012) presents a comprehensive summary of the available measures of courts system legitimacy in Argentina, including Gallups's periodical evaluation through population surveys (Turner and Carballo 2010), the Latinobarometro reports for the cycle 2005–2011 (www.latinobarometro.org), the Justice Trust Index published by the University Torcuato Di Tella (available at http://www.utdt.edu/ver_contenido.php?id_contenido=521andid_item_menu=1601) and her own population surveys. Bergoglio's longitudinal analysis shows a relatively high level of confidence in the judiciary in the early days of the return to democracy (58% in 1984), a steady but moderate fall until the mid-1990s (33% in 1995) and a sharp fall at the peak of the economic crisis, when "less than one out of ten Argentines expressed trust in the judiciary" (Cf. Bergoglio 2012: 7–10). Following visible moves like the renovation of the Supreme Court, in 2010 34.5% of respondents of the Latinobarómetro survey showed some or much confidence in Argentine courts.

political relevance of lay participation as a device to gain legitimacy for the justice system was present since as early as the post-dictatorship mid-1980s in Córdoba's constitutional reform,¹³ and persisted to be found in much of the 2000's reformist talk and programmes. Consider the following excerpt from a jury trials law draft for the Federal Justice:

The direction of our Constitution orientates towards a legitimating base through the direct and operative presence of a group of citizens to whom it assigns the function of legitimating the jurisdictional decision with their presence, intervention and verdict. [...] [Nowadays] we see a situation of crisis of the criminal courts system which, it cannot be hidden, is immersed in delay and discredit; this obliges us more than ever before to pay attention to new guiding ideas – certainly not novel, by the way [...] on the path of democratic opening and of a popular legitimacy of every public function. And the justice cannot remain apart.¹⁴

My interest lies here in unveiling the translation operation that works to mobilise the concern about the image of the judiciary into the desirable configuration of a particular governmental technology as lay participation, and the conception of the jury that undergirds such translation. A prosecutor, active in promoting the introduction of lay participation in Córdoba, describes the centrality of the preoccupation with the judiciary's image at the moment of devising, implementing and evaluating the Province's mixed tribunal:

The comment one can do spontaneously is that, knowing the idiosyncrasy of those who operate, we who are operators of the judicial system, in the criminal sphere in particular, I believe this model, this system is a breath of fresh air to what we do and is not only a way to make the citizen participate responsibly in a system about a question that affects her directly, but also a way to allow the criminal justice system's sentencing rules to be known. I mean it's a very good way of giving diffusion to something that otherwise is sometimes not understood or misunderstood and that has brought about problems of image, prejudices about the quality or transparency of justice administration.¹⁵

In rendering it thinkable as an idealised outcome, reformist discourse puts legitimization's relationship to lay participation as an at least threefold phenomenon featuring complex cause-effect relations. Reformers describe lay participation as, first, underpinning the legitimacy of judicial decisions per se. By direct reference to 'the people' as embodied in the group of jurors summoned to deliver a verdict, that very verdict is more solidly justified. Second, through the direct contact with the truth of the judicial procedure, participation shall affect jurors' image of the judicial system and judges,

¹³ Interview with legal reformer, politician and lawyer, Case 4.

¹⁴ Law Draft for jury trials in the Federal Justice – Statement of Intent, Congresswoman Camaño, Peronist/Popular Front, 2011.

¹⁵ Prosecutor and reformer, Case 8.

by virtue of a more enlightened perspective freed from distortions, prejudices and the scratches of rumours. Third, through laypersons who serve as jurors this improved image would transpire broadly to the society. Jurors are thus conceived as preachers of positive experiences who would spread the revealed true face of judicial practices to the rest of the citizenry.

Looking back to the image of the judiciary in the democratisation discussion above, this line of thought presents a different diagnosis of the current situation of the courts system and of its relationship to the citizenry. Moreover, it conveys a different understanding of the logic of lay participation as a governmental technique, a different assessment of the problem to be addressed, a diverse set of claims to knowledge and a consequently different articulation of the technique – as a response to that problem – and of its virtues. The judiciary needs not, in this view, go through deep transformation to cure backward and anti-democratic structures and practices. The problem is first and foremost one of image; its causes are then not to be found within the very judiciary but in distortions and prejudices that result in the gap that distances the courts and the citizens. If 'image' is the problem, 'knowledge' is the keyword to the solution, and lay participation the artefact to bring it about. It is, in the participant's words, "not only a way to make the citizen participate responsibly", but "a very good way of giving diffusion to something that otherwise is sometimes not understood or misunderstood". One point, however, emerges as coincidental from these first two political logics: the arrival of common people to the courthouse is, in words of the quoted participant, "a breath of fresh air" that breaks with judicial officials' bureaucratised ways of operating by carrying with them – just like pro-democratisation activists claimed – a renovated way of doing justice.

2.3 Lay Participation, Punitiveness and Socio-Economic Crisis

The competing, if somehow compatible, *democratic* and *legitimising* problem–solution logics have seen an awkward companion in the recent journey of Argentina towards lay participation in criminal trials. Jury trials have also been suggested as a way to bring into the courthouse representatives of a society that needs to put a halt to high levels of crime and violence citizens suffer daily, and to the lack of response of excessively light-handed rights-centred judges. The jury is, in this programmatic construction, a device to contribute to the effective punishment of criminals and the key idiom is *insecurity*, an amorphous notion usually related to increasing fear of violent urban crime. However vague and polysemic the term may be, insecurity is in the forefront of public opinion concern measures and political and media agendas in Argentina. Kessler ([25], p. 12) quotes a survey prior to Argentina's general elections in 2009. After more than a lustrum of recovery following the socio-economic crash of 2001–2002 and with unemployment under control, 59% of the respondents chose insecurity as the main demand to the elected Congress.

Insecurity thus defined, and the quality of the institutional responses to violent crime were central concerns amidst the discussion surrounding the passing and implementation of the most significant expression of lay participation to date in Argentina – Córdoba's 2005 lay-majority mixed tribunal. Understanding the mobilisation of fear to bridge insecurity, public opinion and participation necessitates, as

a first step, the introduction of Juan Carlos Blumberg, a businessman from metropolitan Buenos Aires whose son Axel was kidnapped and murdered in March 2004.¹⁶ Immediately afterwards, Blumberg became a public figure demanding legal and institutional reforms in the fight against violent crime. Blumberg created the *Fundación Axel Blumberg – Por la Vida de Nuestros Hijos* [Axel Blumberg Foundation – For the Lives of Our Children] and, with the council of the Manhattan Institute for Social Policy, advanced his claims and achieved some long-reaching legal reforms such as harsher punishments for violent crimes, abolition of incarceration term limits and reduction of prisoners' benefits. He garnered support from political, social and religious organisations and his demands to the legislative, executive and judicial branches of the national government were signed by more than five million persons and hundreds of thousands attended the silent candle-light demonstrations he organised to submit them to the National Congress and the Supreme Court. Blumberg's demands included the introduction of jury trials in the criminal justice system as a means of direct citizen control and intervention in the punishment of criminals.¹⁷

Six months after the murder of his son, Juan Carlos Blumberg was a guest in the Legislature of the Province of Córdoba when, in September 2004, the law draft for the implementation of the mandatory lay-majority mixed tribunal currently in force was discussed. Normalised as core to the problem-solving endeavour of lay participation, insecurity featured prominently in the legislative debate as an undisputed social problem concerning the whole population. What follows is the closing remark of the spokesperson for the majority party's speech presenting the project:

A philosopher said that one talks about health when one is ill, that one speaks about happiness when love agonises and that happy people do not talk about happiness. I say just peoples don't talk about justice and Argentine people claimed for justice because it didn't have it; it demanded justice because it didn't have it; the Argentine people asked for security, because it was not feeling it; the Argentine people demanded to believe in its institutions because it did not believe anymore. Then we, the legislators of the Province of Córdoba, must give an answer to the popular claim and create the institutions that allow us to reinstate a social pact that has been lost to create a bridge between the people and its rulers; to generate that belief that was lost in time. We have to reconstitute the social pact. Because of that jury trials are necessary, because they take us to that aim.¹⁸

The identification of public opinion with lay participation operates in a straightforward manner. The general amorphous concern with insecurity had been mobilised and transpired into the debate in the form of "the people" demanding the Leviathan

¹⁶ See *La Nación* 23/03/2004 (<http://www.lanacion.com.ar/585134-hallan-muerto-a-un-joven-que-habia-sido-secuestrado-en-martinez>).

¹⁷ For analyses of Blumberg and his foundation's role in both the public discourse on crime and in legal and institutional reform, see [54–57].

¹⁸ Legislator Cid, Union for Córdoba, stenographic transcription of the 36th Session of the Legislature of the Province of Córdoba, 22/09/2004.

to fulfil its side of the Hobbesian pact and ensure their security. "The people", once more, shall not be passive onlookers and the panel of jurors shall come to embody the justice-eager community and reflect its "feelings" by making justice within the courthouse: "We want the formation of a committee of citizens that means the synthesis or the average of the feeling that the society has in the judging of the incidents that it has to decide."¹⁹

The debate at the Legislature gave evidence of the strength of (in)security as a ubiquitous political rationale to advance governmental projects. The law was passed and the system put in practice since the first day of 2005. By this time Blumberg was identified with the claim for right-wing heavy-handed reactions to crime and the fight against insecurity and fear of crime has resounded since then as a theme when lay participation is talked about. In March 2013, well after the decline of Blumberg's popularity, the arguably most significant landmark for lay participation in Argentina to date occurred when the law reforming the criminal procedure to introduce jury trials was passed in the biggest district of the country, the Province of Buenos Aires. The governor of the province once more linked lay participation and insecurity in a public speech regarding the passing of the law: "Jury trials will help to avoid criminals simply 'entering through one door and leaving through the other', it's a tool that in many countries has worked to fight insecurity."²⁰

3 Imagining the Juror: Legal Governmentality, Participation and subjectivity

The intellectual efforts of reformers, activists and judicial officials seeking to introduce lay participation did not entail only the pursuit of changes at institutional level or imagined just the societal-level effects of reforms. Their governmental attempts also involved the much less openly debated demand for previously unseen conducts by individuals and populations. In this section I set out to map and discuss representations of the juror in the network of legal and quasi-legal discursive practices linked to the programmes for the implementation of lay participation in Argentina. I draw once more on the array of texts that contain the imagined configurations of lay participation – interviews with activists, reformers and law makers, legislative debates and law drafts – in order to delineate the creative process of thinking the juror as a 'participant citizen'. The discussion will show how the superimposition of the juror identity with a powerless society vis-à-vis a powerful state imaginary gets coupled with an interest in empowering society through the figure of the juror, shaping the legitimate space of participation and the desirable contours of the participant citizen.

¹⁹ Legislator Carbonetti, Union for Córdoba, stenographic transcription of the 36.th Session of the Legislature of the Province of Córdoba, 22/09/2004.

²⁰ Daniel Scioli, Governor of the Province of Buenos Aires and presidential candidate in 2015, *La Voz del Interior* 13/09/2013.

3.1 Diagnosis: Powerlessness Between Enthusiasm and Apathy

In talks with experts and stakeholders in the introduction of lay participation it is common to hear them speaking openly of power, a rare idiom in legal milieus. This usually starts with references to the double nature of the jury as a judicial and political institution, a point already made by Tocqueville almost two hundred years ago [28]. The former is based on the right to be judged by peers and dates back to the origins of the English jury, and the latter – deeply rooted in the thought of the Enlightenment – conceives the jury as a form of citizen participation in matters of public concern, with consequences at personal, institutional and societal levels. As early as 1987, at Córdoba's constitutional reform convention, the majority party's spokesperson described the resistance to the introduction of lay participation within the legal profession in the following terms:

And the controversy [over lay participation] perhaps originates in that it is a matter of power – the power of judging. And here the topic connects to the historic discussion about the *ownership* of the application of the norms in which an antithetic game has emerged, between an elitist aristocratic theory and a democratic theory of justice administration.²¹

Power appears as a commodity over which an agonistic struggle confronting opposed positions occurs – in the excerpt, over the "ownership" of the authority to apply the laws. The creation of the dichotomy that presents a clear-cut distinction between power and powerlessness is the first step in the putting into action of what Barbara Cruikshank has termed the *will to empower* of reformers [5]. Consider the following excerpt from my interview with an activist:

There is a culture of justice administration that remains obscure, that remains a place where the common citizen has few or no participation at all, but also because the officials, especially judges, resist this kind of incorporation. And they resist this incorporation due to a certain caste-related belief, as a belonging to a certain caste which has certain access to certain truths and this looks like a religious discourse, in a sense [...] Then at the moment of deciding the fate of persons, which is what a judge does when passing a decision in the criminal sphere [...] the trial by jury appears as absolutely inconvenient and resisted for this idea of caste and of access to knowledge of certain truths which seem to be exclusive of the judges and not of the common citizen.²²

The previous discussion about the problematisations hinted at the powerful/powerless dyad that features, on one side, an obsolete courts system that maintains traits from an inherited colonial and monarchic structure of power and, on the other, the disempowered citizen. Each of the problematising logics in some way enshrined

²¹ April 1987, Province of Córdoba Constitutional Reform Convention, reproduced in Ferrer and Grundy 2005:79, my emphasis.

²² Pro-jury activist, Case 5.

jurors' belonging to the realm of the society as opposed to that of law and state institutions, an association materialised in tropes like 'the people' or 'common sense' and linked to them necessarily carrying into the courthouses a novel way of making justice, 'a breath of fresh air'. Disempowerment is coupled with a second trait of the modern liberal subject: an immanent interest in participation. The drive for participation in issues of public concern, to have a say and make a difference are an integral part of the way humanist intellectual traditions and committed reformers alike construct their subjects [5]. This interest, however, does not necessarily appear as evident for people themselves. In my conversations with activists and reformers a recurring theme was a diagnosis of the population's current awareness of their entitlement to serve in the decision of criminal trials and their willingness to do so. Their conclusions are often optimistic:

The moment has changed. The social conditions have changed and what used to be a total closing off, which was above all from judges and practitioners, against the jury trial, today has reverted. I go all over the Republic, and go all over the Province of Buenos Aires which is a country in itself. And everywhere people wants to go and hear. The interest of the people in hearing is progressively more. 'Jury trial, jury trial', the media, from radio and TV broadcasting to the press, they all want to know about the jury trial.²³

The participant perceives a claim from the society for more participation; everywhere "the people" have already realised their disenfranchised situation and transmit their will to participate to the activists. The diagnosis reflects commonplace optimism on the entrepreneurial nature of the (neo)liberal subject as well as the reproduction of Western liberal forms of democracy as a coveted aim: Argentines are ready and eager to participate, and participation in criminal trials is necessarily harnessed to this enthusiasm. The entitled citizen that claims her right to be part of the judicial process can be glimpsed behind the narrative of the activist. This enthusiastic diagnosis is not shared by other pro-jury activists, who sustain a view of an apathetic alienated citizenry disinterested in its own subjection:

We have the idea that the society hasn't got a clue of what happens there [in the criminal justice] and that they care very little. If you measure that, for instance, with luck, only the relatives of the defendant go to public trials, you say: what happens within the justice is not an issue the common citizen cares about, they don't care. [...] there is, let's say, an apathy. And this, I think, is not by chance, this generalised apathy, because this is installed as any other discourse. [...] But [democratisation of the justice] is a discourse that nobody wants to install politically, because it's not in the interest of no one that exercises power to install the democratisation of justice.²⁴

²³ Pro-jury activist, Case 7.

²⁴ Pro-jury activist, Case 5.

The disagreement between both activists serves as an illustration of the opposing liberal versus social-deterministic viewpoints as to the starting point of the participant subject-to-be and her relation to the state. The value of both views (and of the intellectual traditions that underlie them) notwithstanding, my interest is in highlighting the assumptions and silences that both narratives are coincidental in: the very interest in participation – whether people are aware and willing or oblivious and apathetic – remains taken for granted. Whether this interest is openly shown and the eagerness to participate is tangible (like in the first narrative) or it is concealed from people by means of the ideological "installation of discourses" (like in the second one), the interest is never a created historical trait of an equally historically produced citizen; it is immanent in the liberal subject and as such it does not need to be discussed [58]. This very interest and its making are central to the process of imagining the desirable juror. Brought to law's role in processes of normalisation and subjectification, the argument resonates with Ewick and Silbey's claim that the law is not "simply a tool used to adjudicate disputes between persons with opposing interests; legality actually operates to constitute the interests (as well as the obligations and privileges) sought by citizens" ([59], p.134). Just as the law not only adjudicates but creates interests and conflicts, legal experts in their role as activists create the bridge between the everyday and the legal system by taking the interest in participating as given and pre-existent.

The assumption precludes any discussion of a further crucial point: people's participation is, and needs to be for (neo)liberal governmental techniques to make sense, always *in their own interest*. For technologies of participation to be truly disruptive of power people need to be at their origin, cause and final *telos*. Both activists quoted above build their diagnoses upon these assumptions, differing only as to whether the citizenry has realised its own disempowerment and is demanding its part or remains confounded by the masquerades created by the real power. I suggest turning the logic around as a useful point of departure to study legal reforms: It is the creation of the interest in participation, I claim, that makes it possible to be acted upon; it predates the subject and forms part of the knitting of its very creation – giving way to the intellectual task of defining certain subjective configuration of it – as a *power effect* of the definition of that interest ([5], p. 68).

The initial step in the subjectification line within the socio-legal apparatus of lay participation in criminal justice is, thus, to define a) the interest as such, as pre-existent and as essentially belonging to a subject that precedes it; and b) the subject/citizen as disempowered and offered the opportunity and encouragement to actively participate. This also marks the first parallel between the avenue of the 'political' (the democratising, legitimising or even punitive potential of lay participation) and the related subjectification line given by law's efforts to shape the participating citizens. The *diagnosing* stage that entailed discussions on interests, powerlessness, enthusiasm and apathy is followed by the more openly *prescriptive* one in which the desired ethical baggage and comportments of the juror are defined – these revolve, I will claim, along threads of *authorisation* and *responsibilisation*.

3.2 Prescription: Defining the Decision-Maker

A central argument of this article is that the task of experts imagining the incorporation of lay persons to the machinery of criminal justice involved simultaneously enabling and constraining forms of the operation of power. On the one hand, programmes for lay participation – whatever the problem they are seen as coming to resolve – consider the needed reforms feasible only by empowering people, maximising their participation and making them the main actors of the desired transformation. The resulting empowerment is a real and hardly debatable one, consisting of no less than the direct intervention in the decisions of one of the government branches. On the other hand, this will to redistribute power implies that such subject cannot be any subject, but needs to assume certain ethical traits. As a result, answers to the question *how is the juror supposed to be?* are commonplace in reformist talk and texts, whether it is formulated explicitly (as in an introductory talk for summoned jurors) or implicitly (as in a draft law).

In the heterogeneous set of utterances that I analysed the most usual idiom to define the juror's ideal traits is *responsibility*, in turn a crucial notion of the governance of neo-liberal subjects [3, 60, 61]. Within the appraisal of the wonders of lay participation for enhanced institutional legitimacy and democratic governance in his thought provoking book *Punishment, Participatory Democracy and the Jury*, political theorist Albert Dzur highlights what we could call the process of *responsibilisation* as a reason for the centrality of jury service to democratic citizens:

Lay participation in criminal justice is needed because it brings otherwise attenuated people into contact with suffering human beings, draws attention to the ways laws and policies and institutional structures prolong that suffering, and makes possible – though does not guarantee – greater awareness among participants of their own responsibility for laws and policies and structures that treat people humanely. I see this as an argument about responsibility ([16], p. 14).

Dzur's comment well summarises this expected first trait of Argentine lay decision makers as imagined by reformers. To illustrate the thrust for citizens taking responsibility as it happens at different stages of jurors' incorporation, I will take momentary diversion and move to the first stage of actual implementation of lay participation as it takes place in the Province of Córdoba's courthouses. Jurors, once summoned for a case, are called for a first appearance in court where they get basic instructions and explanations. As part of my fieldwork in Córdoba's courthouses I attended some of these explanatory meetings. The following is an excerpt from the introductory speech given by the representative of the judiciary to a group of jurors who would serve in a trial some weeks later:

As there are permanently demonstrations and complaints from the citizenry demanding faster, more efficient and more agile justice, for this to work, that demand needs you, needs a commitment from the society for the judiciary to be able to deliver that fast and efficient justice. What do I mean with this? I mean that you must have been witnesses or know someone who was the witness of a

crime. And what is the first reaction? 'No, to appear as a witness no, that means going to the police, going to the courthouse, leaving my job', so you step aside. Well, that way of acting of the society is what causes evidence not to exist many times; so for this to work it requires commitment from all the society.²⁵

The comment stroke me and I asked the official about it in a further conversation. He explained that he needed to be this straightforward to take advantage of the first contact to make people understand the dimension of the responsibility they need to assume and the severe consequences of what they will do; he wants, he said, to make them "feel the burden of participation" by emphasizing how people usually fail to take charge of their part in issues of public relevance. Responsibilisation, thus, means entitled citizens with an ingredient of personal repentance for failure to participate; guilt, capacity for memory and remorse that are central to criminal law – and especially to the making of other of its central subjects, the defendant, as, Mariana Valverde emphasizes, was already noted by Nietzsche in his *Genealogy of Morality* [62]. The style of thought links to the starting point of the debates on the introduction of lay participation described in the previous section as the payment of a long-standing constitutional debt. This sort of objective debts (from and to society) and the individuals' capacity to recognise themselves as debtors are deployed to pursue governmental aims that harness the institutional level to the problematisation of the ethical configuration of individuals – and will be deployed soon after once more by the criminal law apparatus, in relation to the defendant.

The burden of responsibilisation for jurors has a flip side that is as essential to liberal and neoliberal governmental technologies of the self as well, what I will term *authorisation*. A very different juncture will help me illustrate it. Pro-jury activism in Argentina has put into practice innovative techniques for advocacy favouring the implementation of jury trials. One of them has been the organisation of public mock trials where common citizens perform as members of a jury while activists and other expert guests play judges, prosecutors, lawyers and witnesses' roles. The descriptions of activists convey the sense of authorisation as already observed in these theatrical experiences:

It is incredible how the people adopt the position with their duty of delivering a verdict, how they take possession of their constitutional rights and of the participative form that the republic is. We have a judiciary that is monarchic, with no meddling or participation at all to date, except in Córdoba, of the people of the republic and what is the republic if the people do not participate?²⁶

Being a juror implies not only responsibility but empowerment, authority: "Since the day you take the oath", the judicial official quoted above followed in his speech to jurors, "you are judges, and have their attributions and immunities".²⁷ Authority and authorisation thus comes to be nodal in understanding how questions of politics and

²⁵ Field notes, November 2012.

²⁶ Pro-jury Activist, Case 7.

²⁷ Field notes, November 2012.

government link or "come to be hooked" to problems of the self, subjectivity, identity and ethics ([63], p. 212). The question is not here how authority is constituted and endowed to jurors but how authority comes to inscribe itself into the ethical configuration of these individuals. Jurors are not simply passive receivers of the experts' assignments, but authorised entities entitled to undertake a task of moral and political relevance that involves body and intellect.

3.3 Reinvesting Selves, Transforming Others: Thinking the Juror Beyond the Courthouse

Liberal arts of government not only are eminently transformative endeavours [64], their governmental programmes also navigate through different spaces and temporalities imagining them inhabited in different ways by the governed individuals and objects [65]. The intellectual task of conceiving lay participation as a democratising, legitimising or punitive artefact necessitates, I argue, a conception of the juror fit to serve to the operation of such deep transformative effects that go well beyond their time at the courthouse. As such, the double nature of target and agent of government, the responsibility and authority that coexist in serving as a juror are conceived in this process of legal governance as not limited to their experience as decision makers. The civism-making effects need to operate durable changes that will reverberate beyond the courthouse and expand to other individuals. The first dimension in which the transformative aim is emphasised in devising the juror in Argentina is found in the view of the experience at the courthouse as fostering a drive towards future democratic participation in other settings, through a sort of "education for participation."²⁸ The importance of this transformative dimension of participation is underlined in draft laws: "this originates an educative function, promoting respect for legality, development of equality and the raise of awareness of one's own rights."²⁹ Increased interest in future participation is, activists agree, a desired effect:

One wishes, intuitively, that it should happen. Because, let's see, if in high school you were going to a school where there was students union, and there were elections (I say this from my own experience) and they voted and taught you how to vote, to choose, to decide; well, it is much more likely that one will be determined to participate and have a public life than if you were all your life locked in a study. [Lay participation] I think works like this, and it has to do also with an education of participation, so it is to be expected.³⁰

In the narrative of the quoted activist, the experience of participation becomes the individual's own capital to be reinvested in future participation, increased regard for

²⁸ This belief is not exclusive to Argentine reformers' discussions and has originated a rich stream of empirical jury research, especially in the USA. This work has focused on intending to measure these effects, usually by comparing pre- and post-service voting behaviour (see [66] for an example).

²⁹ Draft law for jury trials in the Federal Justice, Congresswoman Carrió et al., UNEN – Union and Encounter, 2013.

³⁰ Pro-jury activist, Case 5.

the law and for her own rights. There is one more dimension in which the transformative effects of participation are imagined, in reformist discourses, to operate upon remote times and spaces. A prosecutor involved in the planning and implementation of lay participation in Córdoba linked the concern with responsabilisation and the legitimising potential of lay participation:

But we are not used to assume responsibilities, to give responses to the things that happen, and I think in this sense [serving as a juror] is something that makes us feel that we've helped to make an important decision. As I said, it makes [jurors] feel important. And they share it, I have no doubt, in their everyday family, work and social environments they share the experience [...] And I refer to the surveys we've given to jurors... regarding the change of the image of the Judiciary, the change was radical.³¹

A dimension often overlooked by socio-legal research attempting measures of legitimacy is that power, as David Garland noted in his critical account of governmentality studies, does not only operate through the imposition of a sovereign will, but instead as "a process of enlisting the cooperation of chains of actors who 'translate' power from one locale to another" ([67], p 182). In this light the legitimating potential of lay participation appears necessarily associated to the moulding of the juror as a legal subject and to its enrolling in the legitimating endeavour. The authorisation and empowerment shall not cease after helping "to make an important decision". Trials will be over, defendants will be sentenced or exonerated, and in the courthouses files will circulate and new hearings will take place. Distant in space and time, the imagined juror of reformists will continue to exercise their governing role over others' and their own conducts, thoughts and desires by sharing their experiences of participation.

Jurors are thus not only deemed to represent the people's views at criminal trials and bring their 'everyday' perspectives to deliver more democratic, legitimate or commonsensical verdicts. They are also enlisted to operate as linkages between the legislators, activists, judicial officials and public agencies and their own families, friends, neighbours, classmates, co-workers and a myriad of other groups and individuals well beyond the courthouse. Importantly, in doing so jurors are not at all conceived as passive entities simply bridging the exercise of authority over others. This entails activity on the part of these subjects of power and, as such, the possibility of unexpected outcomes and transformations best captured by the Latourian idea of *translation*: we can imagine the jurors as nodal points of a network, as links that make "governing at a distance" possible by acting as magnifiers of the desired changes, disseminating knowledge, spreading the real face of criminal justice and the virtues of participation [1, 68, 69].

The creative intellectual task of putting forward lay participation conceives itself as the transformation of jurors-to-be from mere objects of power vis-à-vis the state towards their entitlement as fully fledged participant citizens that responsibly govern their own conduct and guide those of others. The scholarly acceptance of such an

³¹ Prosecutor and reformer, Case 8.

understanding of power has curtailed the investigation of the power effects of that very creative array of proceedings. In this section I have tried to account for the will to power – in its creative, positive fashion, aimed at reforming and improving rather than at imposing and oppressing, as famously put forward by Michel Foucault [42, 70, 71] –, embedded in the very practices of the advocacy of those pursuing the empowerment of 'the people' through lay participation in criminal justice decision making.

4 Conclusions

This article proposes an approach to permacrisis that is slightly different in style to other contributions – it presents a discrete contextual study of the governance of a particular socio-legal technology and its imagined use as a tool to address a series of long-standing coexisting crises. The paper thus pursues *how* questions that are proper of an analytics of government of a specific, located legal juncture [1, 41]. I set out to this task through the study of the creative programmatic activity involved in the intellectual endeavour of legal reformists and activists seeking to achieve the incorporation of lay decision makers to criminal trials. Efforts were thus devoted to disentangle the assemblage of discourses and practices deployed by authorities who have sought to have a voice in devising lay participation systems and their participants. We have seen how these *authorities of truth* [63] have put forward their multiform programmes and investigated the language through which the jury and the juror were configured and accorded institutional significance and individual ethics.

Several findings are of note. First of all, the analysis showed that 'participation' is inherently less homogeneous in its meaning and more contradictory in its political conception than it seems when experts articulate the notion or politicians and policy makers brandish it. Governmental rationalities put forward in rendering lay participation thinkable have been multiple and burdened with contradictions as much as with coincidences. The thrust to democratise the judiciary by enabling enhanced citizen participation overlapped with the will to utilise participation to improve the deteriorated image of the courts system and its officials. Both are at odds with discourses putting it forward as one among other devices to strengthen the war on urban insecurity in the face of violent crime. They coexisted and competed, and accident, contingency and volatile political junctures strengthened or weakened their visibility and influence throughout the ongoing implementation of lay participation in criminal trials in Argentina.

The intertwinement of different rationales is a marker of the almighty nature of participation as an idiom in a crisis-ridden, post-dictatorial context, fostering support from all over the range of ideological milieus and put forward as a solution to multiple problematisations. This fact, puzzling for ideologically committed and politically laden interpretations, is central to providing an account that departs from a question as *what is being done in the name of participation?* Such an interrogation allows us to conceive participation as a canopy, not simply a polysemic or polymorphic notion but – as Valverde has proposed in looking at 'security' – as an umbrella term that gives shelter to multiple discursively constructed programmes legitimised in its name

which are perhaps all we can know about it [72]. Rather than what it brings about, the interest lies then on how lay participation takes form in programmes as an *effect* of seemingly mutually excluding or competing lines of action and thought.

Connection points were yet discernible between the opposing rationalities we saw in the first empirical discussion of this article. As Cruikshank illustrated with her discussion of the coincidental use of the "empowerment" logic by both right-wing and progressive-minded reformists in the United States to deal with poverty ([5], p. 60 ff), the same *strategy* can be put forward as serving people's interests even when those interests are defined, there lies the difference, in opposed senses. Most interestingly for a perspective like analytics of government is that they share a strategy with germane identifiable steps in the process or rendering this portion of the reality governable: problematisation and definition of political logics, establishment of dichotomies, need for the self-understanding of "the people" or "the community" as being in a disempowered situation, and finally application of the technology to serve those interests. What this perspective shows is (i) that those interests did not necessarily exist as such prior to their formulation by reformers, activists and social scientists and (ii) that the implementation of these technologies entails creative power and knowledge relations – a claim that by no means denies their properly empowering effects [5]. Political logics and institutional design thus connect to a line of *subjectification* as a governmental apparatus like lay participation is assembled. We saw that the imagined making of the juror as a legal subject involved a complex mix of desired ethics within jury service, mostly marked by the notion of responsabilisation, with genuine authorisation and empowerment and, in turn, with the encouragement of positive transformations of jurors themselves and their enrolment in the transformation of others.

The creative discursive and non-discursive practices studied in this article are also powerful in contributing to shaping the legitimate space of participation and the desirable contours of the participant subject. Reformists help constitute what is possible to do and think about lay participation in criminal justice and what is acceptable to do, say and feel as a lay participant in the decision of criminal trials. But defining is limiting, and as such these undeniably empowering exercises also limit the imagined shapes of participation and curtail alternative ones. They occur, moreover, in realms that are rarely scrutinised and whose legitimacy lies in the knowledge and experience of experts. Participation of ordinary citizens, that powerful legitimating rationale, may have multiple expressions but not all of them have enjoyed the same visibility throughout this process. Foregrounding a question like *what is being done in the name of participation* allows us to inquire into what has not been done in its name. Imagining silenced discussions that can or could have been brought to attention is worthwhile: no activist, lawmaker or judicial official, for instance, mentioned moving participation forward to earlier stages of the operation of crime control agencies, like in setting prevention and detection priorities for policing. Neither did they suggest that laypersons could have a direct say in the design of lay participation systems. Technologies popular elsewhere such as *citizen juries* involving the participation of untrained citizens in policy making were not mentioned in programmatic documents or activists' talk. During the fieldwork for this article, only one judge (paradoxically, one that is signalled as a detractor of lay participation) mentioned restorative justice

community programmes as what he sees as a more meaningful model of laypersons' participation in criminal justice.³² What constitutes an urgent democratic imperative and reason for much-needed legal reforms (participation) remains invisible in other forums, and this is so in an unproblematic way.³³ The point is, I believe, a modest but relevant contribution to intellectual discussions on permacrisis and our ways out of it, as it sheds light on how the ways in which systems of participation and participant citizens are devised simultaneously limit the possibilities of laypersons to inhabit expert-led spaces.

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³² Judge, Case 28.

³³ See Mariana Valverde's similar discussion on the presences and absences of 'diversity' in municipal governance [65, 73].

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