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Trials by Peers: The Ebb and Flow of the Criminal Jury in France and Belgium

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Trials by Peers: The Ebb and Flow of the Criminal Jury in France and Belgium

Claire M. Germain[1]

Abstract

The participation of lay jurors in criminal courts has known much ebb and flow both in France and in Belgium. These two countries belong to the civil law tradition, where juries are the exception rather than the rule in criminal trials, and they only exist in criminal cases, not civil cases. In spite of some similarities, there are substantial differences between the two countries, and their systems will be examined in turn. In France, the *Cour d'assises* itself was inherited from the French Revolution. Since a law of 1941, it is a mixed jury system, meaning that lay citizens sit together with professional judges, The *Cour* adjudicates severe crimes only, mostly rapes and murders. A pilot program extended lay participation to criminal courts beyond the *Cour d'assises*, but was stopped and resulted in the reduction of the number of lay citizens on the *Cour d'assises*. In Belgium, the institution of the criminal jury in the *Cour d'assises* is enshrined in the Belgian Constitution. Up until 2016, it functioned as a "true" jury, in the sense that only lay citizens sat on the jury, without the participation of professional judges. A 2016 reform allowed for the reclassification of crimes into lesser offenses within the competence of the criminal courts, with very few exceptions. Additionally, from February 2016 on, judges deliberate with lay citizens on the guilt of the accused.

The paper explains the reasons for these changes and evolution of the participation of lay citizens in the criminal jury in France and Belgium, and include a few remarks about the future for lay participation in these two countries, since there are several current proposals on the table, both in France and in Belgium.

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INTRODUCTION

The participation of lay jurors in criminal courts has experienced much ebb and flow in France and Belgium. These two countries belong to the civil law tradition, where juries are the exception rather than the rule in criminal trials, and they only exist in criminal, not civil, cases. In spite of some similarities, there are substantial differences between the two countries, and their systems are examined in turn.

In France, the *Cour d'assises* was inherited from the French Revolution. Originally, jurors sat alone, but the institution became a mixed court with the passage of a law in 1941. Since then, lay citizens sit together with professional judges. The *Cour* adjudicates serious crimes only, mostly rapes and murders. A pilot program, begun in 2011, extended lay participation to criminal courts beyond the *Cour d'assises*. However, the program ended in 2013 and one side effect was a reduction in the number of lay citizens required on the *Cour d'Assises*.

In Belgium, the institution of the criminal jury in the *Cour d'assises* is enshrined in the Belgian Constitution. Until the 2016 reform, the criminal jury functioned as a "true" jury in the sense that only lay citizens sat on the jury and reached a verdict on their own. A 2016 reform allowed for the reclassification of all crimes to be judged by the criminal courts, with very few exceptions. As a result, most criminal cases are now decided by judges in the criminal courts rather than by judges and lay citizens in the *Cour d'assises*. In addition, since February 2016, lay citizens no longer reach a verdict on their own, but instead, work with professional judges to decide the guilt or innocence of a criminal defendant.

This chapter provides a brief history of the French criminal jury and describe its recent reforms, including the pilot program which began in 2011 and ended in 2013.This chapter will then turn to the history of the Belgian criminal jury, its recent reforms, which almost abolished the *Cour d'assises*, and the current situation, which may lead to a resurrection of the jury. It explores what lies behind the constant tweaking of the institution, and how and why the ebb and flow of lay citizen participation has been influenced by political and economic struggles in both countries, as well as the underlying tension between professional judges and lay citizen judges. The chapter provides reasons for these changes and observations about the future for lay participation in these two countries, since there are several current proposals that are being considered in France and Belgium.

FRANCE

I. Background

The French criminal jury system is embodied in the *Cour d'assises*, which adjudicates severe crimes only, mostly rapes and murders. Its composition has changed many times (Hans & Germain, 2011). The French *Cour d'assises* was inherited from the French Revolution as a reaction against the judges of the time who resisted any reform attempts (Etude d'Impact, 2011). At the same time, there was a change in the standard of proof, and the concept of *intime conviction* (inward conviction) replaced the rigid system of legal proofs that had been used previously to convict people. The respective roles of judges and jurors also have evolved over the years. At first, lay jurors sat and decided cases independently. However, in the nineteenth and early twentieth centuries, they were perceived as too lenient; their acquittal rate rose to forty percent because they were afraid that the sentence would be too severe (Salas, 2001). With the Law of 1941, the jury became a mixed court system, consisting of professional judges sitting with lay citizens to determine guilt and sentencing (Hans & Germain, 2011). The *Cour* adjudicates severe crimes only. This mixed court model of lay citizens and professional judges is referred to as *échevinage* (Hans & Germain, 2011).

The *Cour d'assises* is not a permanent court, but sits at regular intervals (Redon, 2013). The procedure for a jury trial begins when the Chamber of Indictment sends an indictment (*mise en accusation*) to the *Cour d'assises* in the department or geographical location in which the offense occurred. The *Cours d'assises*, of which there are 102 in France, hold court sessions every three months (Redon, 2013). They can judge all offenses connected to the principal crimes. The *Cour* judges only the most serious crimes, principally rapes, thefts with violence, and murders. It judges between 3,000 and 3,200 cases every year (Statistiques pénales 2005; Chiffres clés de la justice, 2016). A common practice is the "correctionalization" or reclassification of crimes into lesser offenses which are heard by professional judges only in a criminal court (Hans & Germain, 2011).

The *Cour d'Assises* consists of six jurors, randomly drawn from the general population, and three professional judges (one of whom is the president who has special powers over the file and who presides over the trial). Lay citizens and professional judges deliberate together on the facts and the law and decide both the verdict of guilty or not guilty, as well as the sentence. A decision of

guilt requires a two-thirds majority (six votes) by secret ballot if the decision is unfavorable to the accused. The sentencing decision is made by an absolute majority of the votes (at least five votes), but the maximum sentence can only be given with a majority of six votes (Déroulement, 2018). Unlike the United States where criminal and civil proceedings are entirely separate, in France, the victim can join in the criminal trial as a *partie civile* (Hans & Germain, 2011). After the *Cour d'assises* decides on criminal responsibility, the professional judges, without the jurors, rule on the request for civil damages, if they have been requested by the *partie civile* against the accused, or by the defendant against the *partie civile*
In addition, there is a special *Cour d'assises*, consisting only of professional judges, for terrorist crimes and drug trafficking because of the fear of threats that might be made by the accused against the jurors (Etude d'Impact, 2011).

II. Comparative observations

A. Accusatorial vs. Inquisitorial Procedure

A comparative approach provides some useful perspective and contrast. The French and and U.S. juries are different institutions operating in different contexts (Garapon, 2003). The U.S. jury is embedded in the United States Constitution and is part and parcel of the fabric of U.S. law. The participation of jurors is circumscribed by specific procedures within the context of the adversarial trial. The American jury is used for both civil and criminal trials. The French jury is used only for the *Cour d'assises*. In France, the role of the trial judge is much more active than the role of the trial judge in the United States, in keeping with the inquisitorial tradition. Even though the procedure at the *Cour d'assises* is oral and includes debates (*contradictoire*), the presiding judge (*Président*) has extraordinary powers. He/she is the only one with access to the file and performs much like the conductor of an orchestra. He/she interrogates the accused unlike the trial judge in the United States. A fundamental part of the trial in France is that the accused is interrogated by the presiding judge, and is encouraged to speak freely about his or her background, circumstances, and views (Hans & Germain, 2011). The lawyers for each party have a much more limited and subdued role than their American counterparts.

The *Cour d'assises* needs to be understood in the context of French criminal procedure and the French court system. Whereas the procedure is adversarial in a common law country such as the United States, France has a more inquisitorial system (Procédure Accusatoire, 2018). This different criminal procedure changes the dynamic of the court and the roles of the key actors, including the lawyers for each side, the judge, and the jurors in jury trials. In the United States, the trial belongs to the parties. In contrast, in France, the trial belongs to the court. In the United States, the lawyers control the trial through adversarial techniques, which allows them to put forth evidence, question the other side's evidence, and make opening and closing arguments. . The U.S. judge is more like an "umpire" and plays a more neutral role. In France, there is no grand jury or oversight of indictment by grand jurors. The *Juge d'instruction,* that is, the investigating judge, plays a major role (A Quoi Sert, 2012) in criminal and civil proceedings. The investigating judge must seek evidence in a case brought to his or her attention by the prosecution or a victim, thus beginning a criminal investigation. He/she must determine whether there is sufficient evidence to bring a case to trial either in the *Cour d'assises* or the criminal court (*Tribunal correctionnel),* the regular court staffed by professional judges only. The

investigating judge assigned to the case collects evidence on behalf of both the prosecution and defense (*à charge et à décharge*) before determining if a trial is warranted. By way of comparison, in the United States, the investigation is led by the police and the prosecutor, and only on behalf of the prosecution. Unlike the United States, where criminal and civil proceedings are entirely separate, French procedure allows for victims to join the criminal proceedings as civil parties in the case (*partie civile*). However, the civil verdicts are decided by the professional judges alone. The lay citizens play no part in civil verdicts.

B. Mixed Court/Echevinage

The terms *échevinage, assesseurs,* and *jurés* seem to be used interchangeably to define lay assessors (*citoyens assesseurs*), lay jurors, or even *juge citoyen*. Some commentators distinguish between the lay juror who is selected at random from various lists and the *échevin* who is elected and chosen because of a particular specialty or expertise. Some lay citizens are also recruited on a voluntary basis. The term *assesseur* can refer to a professional judge other than the President of the Court. *Echevinage* refers to a panel consisting of non-professional and professional judges. The term comes from the Middle Ages. It is also used to describe the judges in commercial courts (3-5-4-1, Echevinage; Aubert & Savaux, 2012).

In the French criminal courts, *échevinage* began in 1942 with the Tribunal for Children (Etude d'Impact, 2011). In that court, *échevinage* is different from the jury (*jury populaire*). It implies the recruiting of persons who show a certain interest and aptitude to judge minors. They apply for the position, are named for four years, and chosen from a list of candidates presented by the presiding judge of the Court of Appeals. The *échevinage* consists of volunteers, who are reimbursed for the days in which they hear cases.

Lay citizens have also participated in another criminal court since the Law of March 9, 2004 instituted a Chamber of Implementation of Sentences at the appellate level. This court is composed not only of career judges, but also of persons representing associations to assist in the reinsertion of convicted people and associations to help crime victims (CODE DE PROCÉDURE PÉNALE Art. 712-13, Herzog-Evans, 2009).

In New Caledonia, an overseas territory of France in the South Pacific, lay citizens sit on the Criminal Court (*Tribunal correctionnel*) probably because of the small population. They are unpaid volunteers, who are recruited for two-year terms after they have shown that they meet the qualifications to serve and can perform their role impartially (Le Tribunal Correctionnel, 2017).

III. 2001 and 2011 Reforms

Several important relatively recent reforms have changed the procedure of the *Cour d'assises*. One is an appeals process and the other is the need for the *Cour d'assises* to provide "reasoned verdicts." In 2001, France, under pressure from the European Court of Human Rights (ECHR) to meet European fair trial standards, instituted a court of appeals. The court of appeals does not provide an appeal in the sense of a review of the verdict given in the *Cour d'assises*; rather, it provides a new trial before an enlarged appellate *Cour d'assises* (Loi 2000-516). For a long

time, there was no second level of review for crimes because of the presumption of the infallibility of the jury. The jury was seen as infallible because it represented the will of the people. In its reservation (unilateral statement) in the ratification of the Convention, France had declared that review by a higher court could be limited applying the law correctly, like review by the *Cour de cassation* (Redon, 2013; Pradel, 2001). However, this gap seemed to be contrary to Protocol No. 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocol on the right to appeal, which France had ratified in 1988. Art. 2 of this Protocol stipulates: "Everyone convicted of a criminal offense by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal" (European Convention on Human Rights, 2010).

Statistics show that, over a two-year period, some 1,262 appeals were heard. Of those appeals, five percent of them were successful and were acquitted. However, when the prosecution appealed acquittals, fifty-seven percent were overturned. Thus, prosecutors appear to benefit more from the "second chance" offered by the *Cour d'assises d'appel* than criminal defendants (Hans & Germain, 2011).

Again under the influence of the European Court of Human Rights (ECtHR), several cases raised the issue of "reasoned verdicts." (Taxquet, 2010). A reasoned verdict refers to a jury having to give written reasons for its verdict. A traditional jury in a criminal case only provides a verdict as to guilt or innocence without providing a written explanation of how it reached its verdict. The question raised by several cases before the ECHR was whether a fair trial requires that a criminal defendant understand the reasons for his or her conviction. The Law of August 10, 2011 on the participation of lay citizens in criminal justice modified the composition of the *Cour d'assises* and instituted the obligation to provide reasoned verdicts (Redon, 2013; Pradel, 2011a). Furthermore, a decision of March 2, 2018 of the Constitutional Council requires a reasoned decision for the sentence itself (Conseil constitutionnel, 2018).

The Law of 2011 added another change of note, in effect since 2012. The presiding judge now has to summarize the facts, the indictment, and the elements for the prosecution and the defense. This change in practice is designed to make it easier for jurors to understand the case, because they no longer have to listen to the text of the decision to send the case to the *Cour* (*Décision de renvoi),* which can be a very long document with technical terms.

It is thus notable that, under the influence of European human rights law, the *Cour d'assises* has professionalized its procedure in an attempt to make the trial more understandable and transparent, and responsive to international standards of fair trial and intelligible procedure (Conseil constitutionnel, 2018).

The ebb and flow of the participation of lay people has manifested itself in the different numbers of lay citizens on *Cour d'assises*. The number of lay citizens on the *Cour d'assises* has gone up and down over the years. The Law of 1941 had lowered the number of lay citizens from twelve to six, but other laws had raised it to nine. Thus, until 2011, three professional judges along with nine lay jurors worked together to decide both the facts and the law, as well as the sentence. The Law of 2011 changed the previous *minorité de faveur* (minority favor) for lay jurors. It reduced the number of lay citizens (jurors) in the first instance from nine to six, and on appeals courts from twelve to nine. The lay citizens and a three-judge panel deliberate together.

Defendants must be found guilty by at least a majority (six votes) in the first instance and eight on an appeal. The aim of this measure was to expedite the judgment of these cases, and was taken in the context of increasing the use of lay citizens in criminal courts beyond the *Cour d'Assises* (Loi 2011-939).

The reason behind this reduction in the number of lay citizens on the *Cour d'assises* and on the *Cour d'assises d'appel* came out of the high-profile 2009 *Rapport Léger*, commissioned by French President Nicolas Sarkozy. The report undertook a major reexamination of the French legal system (Comite de reforme, 2009). Among the most significant problems it identified were lengthy delays for hearings at the *Cour d'assises*, which resulted in long periods of detention for defendants awaiting trial. As a remedy, the *Rapport Léger* proposed that the *Cour d'assises* be replaced with a new criminal court composed of professional judges and fewer lay jurors than on the *Cour d'assises*, with a more flexible and less formalist procedure than that used by the *Cour d'assises.* In 1996, then Minister of Justice Jacques Toubon proposed to have a departmental *Tribunal d'assises* with three professional judges and five lay citizens. The appeals would have gone to the *Cour d'assises*, consisting of three professional judges and nine lay citizens, and decisions of guilt would have required a qualified majority of eight out of twelve votes. However, the proposal failed (Erhel, 1996). An alternative proposal called for the creation of a new "simplified" *Cour d'assises*, with two lay citizens instead of nine to judge crimes up to twenty years of prison. The hope was to reduce the practice of "correctionalization," which requalifies certain crimes as *delicts*. However, this alternative proposal was defeated (Martinel, 2011). Several recent reports on these developments have been written, such as the Léger and Huyghe reports, as well as a legislative proposal (Loi de programmation 2018-2022, 2018).

IV. Extension of Lay Participation to criminal courts beyond the *Cour d'assises*

In 2011, President Sarkozy proposed extending lay participation to French criminal courts (Pradel, 2011b). This was done in the context of security concerns and a strong political will. President Sarkozy saw it as a way to bring citizens closer to the justice system and to remedy a perceived leniency of judges in the face of high profile scandals, including several murders by criminal defendants who had been released by judges (Brafman, 2012). In August 2011, Parliament voted on the new law which was validated for the most part by the Constitutional Council. The new law provided for a pilot program which extended the participation of lay citizens to criminal courts beyond the *Cour d'assises* (Pradel, 2011b; Huyghe, 2011). This extension of lay citizens was limited to specific cases of serious thefts and violent assaults that were punishable by five to ten years of imprisonment (De Charette, 2010). Lay citizens in the criminal courts could not judge drug crimes, pimping, or less serious thefts. The law provided that two lay citizens (*citoyens assesseurs*) would sit together with three professional judges in the criminal court (*Tribunal correctionnel*) and the Appeals Criminal Court. They were to participate in the determination of the facts, decide on the culpability of the defendant, and determine the sentence (Loi 2011-939). Every year was to be divided into three periods of four months each. The lay citizens could sit ten times during four months. This extended use of lay citizens was significant because it would potentially involve 6,000 to 9,000 lay citizens, and apply to some 40,000 cases (out of 600,000 cases in criminal courts in any given year) (Huyghe, 2011).

French criminal law distinguishes three categories of offenses. In broad terms, crimes are very serious offenses, such as murder and rape; *délits* are less serious offenses such as theft, fraud, assault, and involuntary homicide; the last category, *contraventions,* include a large range of regulatory offenses that often involve strict liability. The *tribunal de police* has jurisdiction over the *contraventions,* while the *tribunal correctionnel* deals with the *délits*. Appeals from judgments of both these tribunals are heard by the *Chambre des appels correctionnels*. The *Cours d'assises* have jurisdiction over crimes. The *Cour d'assises* consists of three judges and several lay citizens (Pradel, 2010).

In addition to introducing lay citizens in criminal courts, the Law of 2011 also introduced lay citizens in the Criminal Tribunal for minors (*Tribunal correctionnel des mineurs)* and the Criminal Tribunal for Implementation of Sentences (*Tribunal d'application des peines*). In each, two lay citizens would deliberate with three professional judges to examine parole requests or their revocation for all sentences that exceed five years of imprisonment (Loi 2011-939). In the Court of Appeals for Implementation of Sentences (*Chambre d'application des peines de la cour d'appel*), lay citizens were to replace specialized jurors.

The main objective of the law was to associate French citizens to the judging of particular offenses. President Sarkozy stated: "In a *Cour d'assises*, a lay jury pronounces sentences with judges. And when deciding on early releases, it must also be a professional judge surrounded by lay jurors to make that decision. . . . And so there will no longer be any scandals." (Loi 2011-939; Huyghe, 2011). Sarkozy hoped that juries would be stricter than judges. The cost of this reform was estimated to be substantial, about 40 million euros. For that reason, the government decided to implement a pilot program in some jurisdictions before extending the practice throughout the entire French territory (Etude d'Impact, 2011). Thus, some of the provisions of the law were only applicable in certain parts of France from January 1, 2012, to January 1, 2014 as an experiment. The citizens were chosen from a list of citizens registered for voting in the jurisdiction of the competent court; the list was prepared by the mayor of that jurisdiction after a drawing (art. 1). The Law included a provision prohibiting discrimination against the citizens who participate in judging the offenses set forth by the law or who are jurors (art. 9). The experiment started in the region of Dijon and Toulouse and was extended to include Angers and Béthune in January 2013.

The constitutionality of certain provisions of the law were challenged before the Constitutional Council, in particular some of the provisions that pertained to minors.. There were concerns that these provisions violated the fundamental principles of juvenile justice. Those are the use of specialized courts, mitigated criminal responsibility due to age, and priority placed on educational rather than law enforcement measures. The Council found four articles of the law unconstitutional and those articles were deleted from the law (Conseil constitutionnel, 2011).

What were the reactions to the expanded role of lay citizens (*citoyens assesseurs*)? From a study I undertook of national and regional online newspapers and magazines that made references and comments (*Le Monde*, *Nouvel Observateur*, *le Figaro*, and *Libération*, among others) the public was generally in favor of the program. Narratives from lay citizens showed that they were mostly satisfied with their experience, and that they took their responsibilities seriously. The legal profession, judges, and *avocats*, however, were mostly opposed to it (Rastello, 2012). The judges immediately reacted negatively to it and expressed their views through their unions; they saw the expansion of lay participation as evidence of public distrust of their profession (Neuer, 2012).

Some details of the plan for implementation in Béthune in northern France illustrate some of the challenges. The presiding judge estimated the need for eighty lay citizens. Typically, the courts in that area would hear about 1,000 cases per year. For those 1000 cases, about 300 qualified lay citizens, "audiences citoyennes," would be required. The estimate was that three cases per hearing (*audience*) could be heard, which would be two or three times fewer the number of cases than if professional judges were used. It would take a longer amount of time for each case to be heard and fewer cases could be decided because lay citizens need time to learn. One of three judges would need to summarize the case in neutral terms and sift through the expert reports and testimonies to help lay citizens understand the facts and personality of the accused (Mastin, 2012). This is particular to the French legal system, and different from the United States. In between these trials, other cases need to be heard in other courts and there was a concern that the use of lay citizens would add to the delays (Mastin, 2012).

Judges and *avocats* were definitely against the new reform. An opinion poll in April 2012 showed that 82% of 5,000 *avocats* polled were against the reform because they felt that citizens did not have the technical skills needed to decide cases (Lombard-Lathune, 2012). The judges' union also complained about the reform. Christophe Régnard, Head of the major Union (USM), said that it was a luxury to privilege a few cases to the detriment of other cases, and that it would take a long time to choose the lay citizens (Neuer, 2012).

Early in 2013, the pilot program was extended to other courts, including the one in Béthune in northern France, and Angers in the Loire Valley. However, things changed after the election of the Socialist government in May 2012. The new Minister of Justice Christine Taubira requested a report from two prosecutors. The two prosecutors wrote a report that severely criticized the pilot program of lay citizens in criminal courts in two courts of appeals jurisdictions in Dijon and Toulouse (Salvat, 2013). They said that it was extremely burdensome and costly and did not involve citizens in a meaningful way in the justice system. Their arguments were that the sentences were not more severe, that the program had caused numerous difficulties, including the heavy workload of selecting lay citizens, the length of the hearings (3 cases in a lay citizen hearing versus 12-20 cases in a normal hearing conducted by a judge), and their added cost (300 euros or more). They felt that the one-day training was not enough, and that the lay citizens depended too much on the professional judges for technical guidance. The prosecutors' report was highly critical of the pilot program (L'expérimentation, 2013). As a result, the pilot program was not extended to other jurisdictions. Following the report, the Minister of Justice put an end to the experiment and to the participation of lay citizens in criminal courts beyond the *Cour d'assises* (Arrêté, 2013).

The experimentation failed in large part because of bad relations between President Sarkozy and the judges who felt under attack. Christophe Régnard, the President of the Union USM, called the introduction of lay citizens in criminal courts a "mistrust of judges" (Neuer, 2012).

After that experiment ended, the Minister of Justice commissioned four different reports on justice reform, and convened a major meeting in early 2014. The four reports issued did not provide much in the way of lay citizen participation (La justice du 21ème siècle). The reports did contain some proposals to make use of specialized citizens. Specialized citizens, unlike lay citizens, are not selected at random from the general population; rather, they are selected for their expertise. These reports were followed by the Law on the Modernization of Justice, which does not mention the participation of lay citizens in criminal courts (La justice du 21ème siècle).

This raises the question of the attitude of the Socialist party with respect to lay participation in the legal system. In spite of the rhetoric, it seems that the party mistrusts the use of citizens. The Socialists and the leftist parties in general have an ambiguous attitude toward the participation of lay citizens in the justice system. During the nineteenth century, the left fought in favor of the *jurés populaires*, to extend their participation in civil and criminal matters, and to enlarge their representation in the legal system (Faure, 2011). But now, the left has lost so much contact with the *classes populaires*, "the people," that the left tends to mistrust them (Faure, 2011). Only a few socialists have expressed their support for the *jury populaire*, that is, for lay citizen participation. Andre Vallini is the most vocal. He was close to former President Francois Hollande, and was named Secretary of the Territorial Reform during Hollande's presidency. On the topic of the jury, he said: "I have written in a 2008 book that I am favorable to the participation of citizens to the justice process. Not out of mistrust for judges, but to bring justice and the citizens closer to associate citizens to the act of judging is a work of pedagogy" (Réju, 2012). He also observed that "the citizen does not know the procedure or fine points of the law. But the heart of the criminal trial rests on essential questions, such as 'does the accused lie? Is the accused credible? What are the reasons [for] the crime? Are there extenuating circumstances?' It is not with a diploma that one can answer these questions, but with one's conscience. Of course, judging is a profession. But I only see advantages in having a citizen sit together with professional judges in the *Tribunal correctionnel*." (Réju, 2012). However, he also said that the reform was done in haste and was too costly.

Another consideration is the role, attitudes, and culture of judges in France, particularly since the inception of a national school to train judges. The National Centre for Judicial Studies, which was created in 1959, became the French National School for the Judiciary in 1972 (Ecole Nationale). It is located in Bordeaux and has a presence in Paris. It instructs the corps of judges and public prosecutors who serve in all posts on the bench as well as in the public prosecution in first instance courts (first trial level). Judges are civil servants. They are paid during their studies and they form an esprit de corps during their careers. Beginning in 1968, they were permitted to unionize in order to represent their interests. The judges express a strong distrust of citizens interfering with what they perceive to be their functions.

A thoughtful book by a well-known *avocat* reflects on the roles of lay citizens and professional judges (St Pierre, 2013). The author does not generally favor the role of lay citizens for a variety of reasons, but St. Pierre accepts their participation as a way to legitimize the exercise of justice when there are crimes that emotionally disturb a large number of citizens (St. Pierre, 2013). St. Pierre's suggestion for improvement includes a separation between the judges and prosecutors (*magistrats du siège* et *magistrats du parquet*). The public does not necessarily understand that these two groups' functions are different because they are trained in the same school and belong to the same profession (and are represented by the same unions). Another suggestion is to make the presidents of the *Cour d'assises* more legitimate, to have their nomination approved by the bar, and to make the hearings more objective by suppressing the president's role as grand inquisitor who pushes the criminal defendant to his/her limits and then presides over the deliberations of the lay citizens. St. Pierre regrets that the debates are not transcribed or taped, and that there is no camera in the court, as contrasted with the International Criminal Court. St. Pierre offers ten concrete proposals to preserve the role of lay participants inherited from the Revolution. He proposes modernizing the procedural rules and giving the lay citizens additional responsibilities vis à vis the professional judges, without removing the power they now hold of refusing to render a guilty verdict when such a verdict seems unjust to them.

V. Situation in 2019

In the spring of 2018, Justice Minister Nicole Belloubet introduced a legislative proposal that included taking a substantial number of cases away from the *Cour d'assises* (Jacquin, 2018). Currently, the *Cour* judges hear severe felonies, murders, and rapes which incur a minimum of ten years to perpetuity. The criminal court (*Tribunal correctionnel*) adjudicates *délits*, such as theft, moral harassment, and involuntary homicide. The *Cour d'assises* is composed of three professional judges and six lay citizens (nine on appeal). The *Tribunal correctionnel* consists only of three professional judges.

The current proposal is to have a *Tribunal criminel départemental* as an intermediate criminal tribunal that is distinct from the long established *tribunal correctionnel* (which is the regular criminal court). This new *Tribunal criminel départemental* would consist of five professional judges.

The proposal starts from the observation that certain crimes, such as rapes, are reclassified as sexual assaults, that is, a lesser offense, so that they can be heard by a criminal court and result in a quicker judgment than if the case were heard by a *Cour d'assises*. The length of a *Cour d'assises* trial can exceed eighteen months, from the time the inquiry starts to the time the trial commences. If there is an appeal, and the criminal defendant was put in preventive detention since the beginning, the wait can extend beyond the maximum duration of preventive detention, which is four years. The criminal defendant would need to be released, which raises the possibility that he or she might flee (Égré & Raisse, 2016). The delays are so long that France has been condemned several times by the European Court of Human Rights for violation of the rights of the accused. This new departmental criminal tribunal would judge crimes punishable from fifteen to twenty years of prison, such as rapes or theft with a weapon. These cases would be adjudicated by professional judges only, without any lay citizens. The appeals would go to the *Cour d'assises* Appeals Court. The most severe crimes would continue to be heard by the *Cour d'assises.* It is estimated that some sixty percent of the cases would be taken away from the *Cour d'assises* docket (Pradel, 2018). This new court will used on an experimental basis beginning on January 1, 2019, and will continue for three years, in test departments, before being expanded to other departments. The Ministry of Justice estimates that close to six out of ten cases would be affected. The legislative proposal has been the subject of an *étude d'impact*, and was reviewed by the *Conseil d'Etat* (Conseil d'Etat, 2018).

The reaction to this proposal has been mixed. The judges are happy. One judges' union favors the proposal, but the other union does not. The lawyers are unhappy. Parliamentary debates were held in October, 2018 and the new court, named the "*Cour criminelle départementale*," was approved by the Senate and National Assembly in November 2018, as part of a comprehensive law on justice reform, and voted into Law No. 2019-222 on March 23, 2019 (Loi de programmation 2018-2022, 2018). This seems to be a reasonable decision, especially if one considers that rape cases are not currently handled in the best way for the victim. The cases need to be heard by an appropriate court for the level of the offense, and adjudicated in a timely manner. It is also good to keep the appeals at in the Cour d'assises.

BELGIUM

I. History of the Belgian Criminal Jury

The situation in Belgium is different from France. Belgium inherited the jury by way of Napoleon, the French emperor who wrote the French Civil Code with a team of lawyers, and who exported it to countries under his dominion. The Belgian criminal jury was suppressed in 1814 by King William I of the Netherlands, but then, after Belgian independence, the Belgian Congress inscribed it into the Belgian Constitution in 1831, to make it harder to undo (Goffinon, 2011). Belgian judges and legislators have never liked the jury much, but the institution remains enshrined in the Belgian Constitution. Art. 150 of the Belgian Constitution provides: "[T]he jury is established in all criminal matters and for political and press offenses, with the exception of those inspired by racism and xenophobia" (2007 CONST.)

Beginning in the nineteenth century, and similar to the situation in France, the notion of extenuating circumstances has allowed courts to reclassify crimes into *délits* to prevent the use of the *Cour d'assises* and to send these cases to the criminal courts, which do not use juries. This practice began with a law in 1838, and was extended over the years and has been even sometimes used for crimes punishable by life imprisonment, forced labor, or even the death penalty (Chambre des représentants de Belgique, 2015). At the same time, other laws lengthened the sentences allowed in criminal courts to ten, twenty, and even more years of imprisonment (Chambre des représentants de Belgique, 2015). The justification by the Council of State legislative section was that the application of extenuating circumstances was part of the legislature's criminal public policy to individualize sentencing and to give judges discretion in deciding the sentence within the limits of the law (Chambre des représentants de Belgique, 2015).

With regard to the provision in Article 150 of "political and press offenses," the categories are so narrowly defined by case law that in practice hardly any political or press offenses have been brought to the *Cour d'assises* (Bourlet, 3). Press offenses inspired by racism or xenophobia were removed from the competence of the *Cour d'assises* by a 1999 law; instead, these cases go to the criminal courts (Loi du 7 Mai 1999; Centre Permanent pour la Citoyenneté, 2016).

Until the 2016 reform, the criminal jury functioned as a traditional jury in the sense that twelve lay citizens participated and decided the verdict on their own and without the participation of professional judges. The judges only joined the jury for deliberation on the sentence. There are eleven *Cour d'assises* in Belgium. The number of criminal cases brought to the *Cour d'assises* is very low. Between the years 2000-2013, the *Cour d'assises* heard eighty-three cases per year, in contrast with the criminal courts, which held 50,000 to 55,000 criminal trials per year (Centre Permanent pour la Citoyenneté , 2016). However, the *Cours d'assises* cases are usually sensational cases that receive extensive media coverage.

The *Cour d'assises* in Belgium, like the *Cour d'assises* in France, is not a permanent court. It sits any time a criminal defendant is sent there by the Chamber of Indictment. It normally sits in the provincial seat of the different provinces and in Brussels. The jury consists of twelve jurors randomly drawn from the community. A maximum of two thirds of the jurors can be of the same sex. To be a juror, one must be between twenty-eight and sixty-five years old, be able to read and write, and to have had no criminal sentence longer than four months, and to enjoy the restoration of civil and political rights (Bourlet).

In the Belgian jury system, unlike in the French system where a two-thirds majority is necessary, a simple majority is enough for a verdict, but the judge in the Belgian *Cours d'Assises* can send the case to another court if he/she feels that the jury erred (CODE D'INSTRUCTION CRIMINELLE). With respect to the jury instructions, there is a major difference between the French and Belgian practices. The 2009 reform in Belgium replaced the notion of "intime conviction" with the standard of "beyond a reasonable doubt" (Goffinon, 2011). Article 327 of the Belgian *Code d'Instruction Criminelle* replaced the old article 342, and is thus closer to the U.S standard of proof for guilt (Reasonable Doubt).

Until 2016, the Belgian jury determined on its own the culpability of the criminal defendant. After the jury had delivered its verdict, it would work with the professional judges (of which there were three, including a president and two judges) to establish the sentence (Bourlet) and to provide a "reasoned verdict" (Bourlet, 19). The reasoned verdict is a recent development in Belgium. In a way similar to France, Belgium took this step so that its jury trial would conform to the European Convention on Human Rights for for a fair trial. Belgium does not have an appeals court yet for the *Cour d'assises*, unlike France which does.

II. 2016 Reform

In 2016, Justice Minister Koens Geens orchestrated a transformative reform in Belgium, fundamentally changing the *Cour d'assises* and leading to its suppression in practical terms (Centre Permanent pour la Citoyenneté, 2016). The reform allows for the "correctionalization" of all crimes with very few exceptions, meaning that all crimes would be heard by professional judges only in the criminal courts, unless the prosecutor or the Chamber of Indictment decided that because of the extreme gravity of the facts, the criminal defendant must go before a *Cour d'assises.* No criteria were specified for this choice of court.

Since February 2016, there has been another significant change in the Belgian jury. The three professional judges deliberate with the twelve lay citizens on culpability (Loi modifiant le droit penal, 2016), thus making the traditional jury in Belgium into a mixed court as in France. The judges' participation is deemed to be passive, as they do not vote on the verdict, only the jurors do. This is an interesting contrast with France, where the judges deliberate and vote with the lay citizens on the the guilt. However, the Belgian judges deliberate and vote with the lay citizens on the sentence. Since Art. 150 of the Belgian Constitution has a specific wording for the jury, the Council of State was asked to advise on the matter. Its interpretation is that it is up to the legislature to define criminal matters (Chambre des représentants de Belgique, 2015). The reform also lengthened the maximum sentences to be given by criminal courts to forty years or life imprisonment. The rationale for this reform of the jury was budgetary reasons. The first

deliberations reserved some cases for the *Cour d'assises*, such as crimes against the police or minors. However, the Council of State decided that reserving certain types of cases to the *Cours d'assises* would be discriminatory. In the end, Justice Minister Geens decided that all crimes should be within the jurisdiction of the criminal courts (Le Tribunal correctionnel).

Not surprisingly, this reform was controversial and as recent developments show, the situation is still fluid. There were some strong negative reactions to the announced suppression of the *Cour d'assises*, particularly from lawyers and others concerned by the potential unconstitutionality of this reform. Critics argued that Art. 150 of the Belgian Constitution needed to be revised before these changes could occur. Critics also argued that the jury is a democratic institution and a protection against the abuse of the powerful. They pointed out that it guarantees citizens' rights and that the public is in favor of the jury for serious crimes. However, the Justice Minister, the Judges' Union, and the High Council of Justice all support the quasi-suppression of the *Cour d'assises*. Their reasons include the high cost of the *Cours d'assises* (five times more expensive than the criminal court), the complexity of cases, and the difficulty that juries have in providing a reasoned verdict (citation….).

In the summer of 2016, the Belgian Bar Francophone and Germanophone sections introduced an action before the Constitutional Court against some articles of the Law Pot Pourri II. They argued that the quasi-suppression of the *Cour d'assises* violated Art. 150 of the Belgian Constitution (Ordre des barreaux, 2016). In September, 2016, Justice Minister Geens, faced with strong negative reactions, announced plans to end the *Cour d'assises* after December 2016 and to replace it with a new *Cour d'assises* model, called "*assises* 2.0," which would consist of a criminal court with six jurors (rather than twelve), along with experts (psychologists, criminologists) who would sit next to the professional judges and assist them. The trial would be shorter, but would include open debates and testimony by witnesses and experts, in a way similar to the current *Cour d'assises*. The decisions could be appealed, which is still not the case in Belgium for *Cour d'assises* verdicts. This project was debated in commission during the legislative process, but then other events intervened (Wauters, 2016).

III. Situation in 2019

The Constitutional Court ruled in December 2017 on the request from the Bar, and annulled several provisions of the new law Pot-Pourri II as unconstitutional, notably those that provided for almost all crimes to be adjudicated by criminal courts, rather than the *Cour d'assises* (Cour constitutionnelle, 2017). The Constitutional Court indicated that the government could not circumvent the Constitution. The Constitutional Court also annulled the creation of sentences up to forty years in prison, as well as the practice of criminal courts sentencing criminal defendants to prison for more than twenty years (Cour constitutionnelle, 2017).
In the Fall of 2017, Justice Minister Koen Geens proposed a new form of jury, consisting of three professional judges and four lay citizens drawn randomly (Geens, 2017). A major change would be that the members of the jury would be named for a set time, for instance for one year. Thus, a panel of lay citizens would be drawn at random and these would be one of the seven members of the jury, one or several times during the set time. This proposal sparked controversy again. Professor Benoit Frydman, President of the Perelman Center of Law

Philosophy at the Université Libre de Bruxelles, argued that the proposed jury would no longer be a jury, , but a new form of jurisdiction, and a way to circumvent the Constitution that would probably be annulled by the Constitutional Council the following year (Benoit Frydman, 2018).

Analysis and Future Prospects

As my co-author Valerie P. Hans and I wrote in *The Jury at a Crossroads*, historically the French and Belgian juries emerged as a product of the French Revolution (Hans & Germain, 2011). As such, they were seen as a way to fight arbitrary justice. In today's world, even though France and Belgium follow the rule of law, and have professionally trained judges and an independent judiciary, the participation of lay citizens retains an important symbolic and practical value. It allows citizens to have a direct voice in the resolution of criminal trials. Public opinion largely favors the jury and the public is attached to the institution. The jury provides a good way for citizens to be involved in the justice system so that they understand the issues better.

The various reform proposals and options presented in France and Belgium could lead either to the practical suppression of the *Cour d'assises* and its replacement with professional judges, or toward a modernization and simplification of the procedure, or even a reappearance of the jury, albeit in a different form.

The most significant obstacle to abandoning the jury in Belgium is that the jury is inscribed in the Belgian Constitution. The efforts of Minister of Justice Geens to abolish the jury in almost all crimes led to a sanction by the Constitutional Court in December 2017, showing the difficulty of modifying the constitutional provision for jury trials without a constitutional amendment. It is very difficult to modify the Constitution. This is not the situation in France, where the jury is not mentioned in the Constitution or even considered a fundamental principle of the Republic. However, the obstacle in France is that public opinion is largely in favor of the institution of the jury. In both countries, most people agree that the cost of a jury trial is very high, that the hearings are interminable because of the orality of the debates and the number of witnesses. In Belgium, several commentators and the Minister of Justice have called for an appeals court.

Some of the recent developments in France lead me to suggest that the participation of lay citizens has been manipulated by political parties both on the right and the left. There was also collateral damage as a result of the Law of 2011, in that jurors are now less well represented at the *Cour d'assises* because their number has been reduced and they no longer have a qualified minority to render verdicts.

The *Cour d'assises* in France has been tweaked over the years. Several measures have already been taken in France to improve the procedure and to conform to the European requirements for a fair trial. One change was to require a reasoned verdict both for the judgment and the sentence; another change was to include an appeals process to another *Cour d'assises*. In addition, the Law of May, 2014 implemented a Directive of the European Union concerning the right to information in criminal proceedings. With that law, the defendant is allowed to remain silent

during the trial (as well as to speak and to answer questions), and has a right to an interpreter; the parties now have the right to obtain documents from the file; and the proceedings have to be recorded. This obligation to record became optional with the law of 2016 (Loi 2016-731), which left the decision to the discretion of the presiding judge; however, the obligation to record became compulsory at the appellate level. All of these reforms make sense in today's age, and are consistent with contemporary European standards of fair trial procedure and the rights of the defense.

In both countries, some practical steps might help modernize and streamline the proceedings of the *Cour d'assises*. These steps should include sharing more information with the lay citizens before the trial, permitting greater use of the written dossier (including written documents prepared ahead of the trial, and testimony), and permitting fewer oral testimonies. In addition, the testimony by witnesses could be shortened and the number of witnesses could be reduced. The parties could rely on the written dossier. Several commentators have suggested that lay citizens have access to the files. However, this recommendation has been curiously set aside by the current French government. The government argues that lay citizens do not have time to read the entire file after they are selected because the trial starts right away, and in any event, they may not have the competence to understand the legal arguments (Etude d'Impact, 2018).

Some French judges experienced in *Assises* cases provided some advice in a 2015 report (Durançon, 2015). They recommended less reliance on the oral questioning, explaining that this emphasis on oral proceedings came about when lay citizens were illiterate in the past, but that is no longer the case today. They feel that access to the file enables lay citizens to provide a reasoned verdict more readily. Currently, lay citizens must provide a reasoned verdict without access to the file (*dossier d'instruction*). Lay citizens would like to verify information but they are unable to do so. Even the judges are unable to see the file; only the presiding judge can see it. Judges also recommend a "lighter" procedure, which, with the agreement of all parties, could lead to expedited proceedings. For example, limiting the testimony of witnesses and experts would result in some cases being decided in one-day hearings. In contrast, the current *Cour d'assises* proceedings (hearings) last a minimum of two days for simple cases due to oral questioning and witnesses' testimony.

The number of professional judges and lay citizens on a mixed court also matter, as do their respective roles. A larger number of lay citizens, for instance, is more costly, but a smaller number means that they have less influence. Another recommendation is that lay citizens be appointed for a set time, e.g., one year, rather than just one session, and that some be drawn from the general population, and others could be specialists, such as experts or criminologists. In Belgium, the proposal by the Minister of Justice Koen Geens of four lay citizens and three professional judges is an example of this. The *assises 2.0* model recently presented in Belgium offers a potentially useful alternative, with a mix of lay citizens, experts, and professional judges who can benefit from each other's perspectives and experience (Geens, 2017).

The proposal by French Minister of Justice Nicole Belloubet would do away with lay citizen participation in a substantial number of cases. She explained that it would provide better and faster justice, particularly in cases of rape. Because of the delays at the *Cour d'Assises*, many rape cases are currently downgraded to the regular criminal courts. The *Cour criminelle départementale* would be different from the *Tribunal correctionnel* (criminal court) in its

procedure (which still needs to be determined), and with more judges than is the current practice (five judges rather than three). It might be useful to permit the victim to choose between the *Cour d'assises* or the new *Cour criminelle*. The new court decisions could be appealed to a *Cour d'assises*, which involves lay citizens. The most serious crimes would still be within the competence of the *Cour d'assises*. It is a reasonable proposal, particularly if it is tried as a pilot project (Pradel, 2018).

One potential source of controversy is the guilty plea (plea bargain) (*Plaider coupable*), which was recently introduced in France and Belgium. In France, it can only be used for *délits*, and certain *délits* are excluded, specifically crimes of violence, threats, sexual aggressions, involuntary homicides, and press and political offenses. At least one commentator wrote about the fear that one day it might be applied to rapes, and other violent crimes (Pradel, 2018). In the United States many criminal trials end up with a plea bargain rather than a jury trial. In France, however, guilty pleas are not yet part of the French culture where there is a feeling that justice cannot be rendered properly without a full trial.

Conclusion

In sum, in recent years in both France and Belgium, the jury has been a moving target. Both countries have struggled with questions about who should judge, and how much citizens should participate in the criminal justice system. In both countries, there is a consensus that there is a need for lay citizens What is constant is the continuing debate about the role of lay citizens and professional judges. The participation of lay citizens in the criminal justice system is costly and time consuming, yet it enhances deeply held values, such as checking the power of professional judges and teaching citizens about their justice system.

If one can draw lessons of comparative law research, it is important to consider the context in which the institution has arisen. To answer the question asked in the introduction, there are two main considerations in reducing the role of lay citizen juries: cost and the underlying tension between professional judges and lay citizen judges. The latter is a particularly strong obstacle. If one compares the situation to the USA, in France, there is a strong corps of professional judges, trained in a special school, who become civil servants, with regular promotions. In the United States, judges often are lawyers before they become judges, and in some states, they are elected, not appointed. It is therefore not the same profession. Another difference is that juries are part and parcel of the fabric of the United States. There are not in civil law countries. The current turmoil in France and Belgium is caused by the recognition that lay citizens need to participate in the justice process, as part of the democratic government. But the cost question is paramount. Justice budgets are insufficient both in France and Belgium. Europe addresses this issue like the U.S. does on many other issues, akin to crisis management. If there is a big crime, a scandal, it is seen suddenly as a governance issue (see the Sarkozy example that led to the extension of lay citizens). This is due to cultural differences. Lay citizen juries are not ingrained in the French and Belgian culture. They do exist, but they are not a dominant factor in the legal culture. Everyone recognizes that the jury has a certain utility, but the perception has changed over time, driven by politics, economics and scandals. Governance values are weighted

differently in terms of absolute necessity. The responsibility for governance in the US rests with citizens, in France, it rests with the government.

References

AFP. (2012, January 3). Jurés populaires: les “citoyens assesseurs” étrennent la réforme [Video file]. Retrieved from https://www.youtube.com/watch?v=cseE9dMFqDE

A Quoi Sert le Juge d’Instruction? (2012, August 31). Retrieved from http://www.vie-publique.fr/decouverte-institutions/justice/fonctionnement/justice-penale/quoi-sert-juge-instruction.html

Annuaire statistique de la Justice: Édition 2007. Ministère de la Justice. (2007, November 26). Retrieved from http://www.justice.gouv.fr/statistiques-10054/annuaires-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-13743.html

Arrêté du 2 mai 2012 fixant le nombre de citoyens assesseurs devant figurer sur les listes annuelles de certaines juridictions expérimentant les dispositions relatives à la participation de citoyens assesseurs au fonctionnement de la justice pénale [Order of 2 May 2012 fixing the number of assessors' citizens to appear on the annual lists of certain jurisdictions experimenting with the provisions relating to the participation of citizen assessors in the functioning of the criminal justice system], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], May 8, 2012, p. 8266.

Arrêté du 18 mars 2013 mettant fin à l'expérimentation des dispositions prévoyant la participation de citoyens assesseurs au fonctionnement de la justice pénale [Order of 18 March 2013 ending the experimentation of the provisions providing for the participation of citizen assessors in the functioning of the criminal justice system], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 22, 2013, p. 4897.

Aubert, J.L. & Savaux, E. (2012), Introduction au droit, 14e éd. Paris, Sirey.

Benoit Frydman sur la réforme de la cour d’assises. (2018, January 10). Retrieved from http://www.vivreici.be/commune/5000/les-gens-d-ici/detail_benoit-frydman-sur-la-reforme-de-la-cour-d-039-assises-10-01-2018?videoId=90318

Boëton, M. (2018, April 19). Vers une réduction du rôle des jurés en cours d’assises**.** Retrieved from https://www.la-croix.com/France/Justice/Vers-reduction-role-jures-cours-dassises-2018-04-19-1200933068

Bourlet, A. (Ed.). (n.d.). *La Cour d’Assises*. Retrieved from https://justice.belgium.be/sites/default/files/downloads/La%20cour%20d%27assises.pdf

Brafman, J. (2012, April 9). Justice: Nicolas Sarkozy Table sur l’Appel au Peuple. *Slate*. Retrieved from http://www.slate.fr/story/52901/justice-sarkozy-programme

Cahuc, P. & Carcillo, S. (2012, December). Les Juges et l’économie : une 19efiance française. Retrieved from http://www.institutmontaigne.org/ressources/pdfs/publications/etude_juges_et_economie.pdf

Caze, M. (1853). *Aperçus historiques et pratiques sur le jury en matière criminelle*. Toulouse, France: Typographie de Bonnal et Gibrac.

Centre Permanent pour la Citoyenneté et la Participation (2016, June). *Vers la fin du jury d'assises?.* Retrieved from www.cpcp.be/medias/pdfs/publications/cour_assise.pdf

Chambre des représentants de Belgique. (2015). *Projet de loi, modifiant le droit pénal et la procédure pénale et portant des dispositions diverses en matière de justice*.. Retrieved from http://www.dekamer.be/flwb/pdf/54/1418/54K1418001.pdf

Chapar, F. (1959). Les modifications apportées par le Code de procédure pénale au fonctionnement des cours d'assises, *Recueil Dalloz, VII,* 35-40.

Chekroun, D. et al. (2012). Pour un État de Justice. Retrieved from https://jean-jaures.org/sites/default/files/etat_justice.pdf

Chiffres Clés de l'activité judiciaire: Données 2010-15 (2016, October) Belgium. Service d'appui de Collége des cours et tribunaux Retrieved from https://www.tribunaux-rechtbanken.be/sites/default/files/public/content/download/files/kc_2010-2015_fr.pdf

CODE DE PROCÉDURE PÉNALE [C. PR. PÉN.] [CRIMINAL PROCEDURE CODE] art. 712–13, al. 2 (Fr.).

CODE D' INSTRUCTION CRIMINELLE [C.I. CR.] [CRIMINAL PROCEDURE CODE] (Belg.).

Comite de reforme du code penal et du code de procedure penale. (2009, September). *Rapport du Comité de réflexion sur la justice pénale.* Retrieved from https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/094000401.pdf

Commission de réflexion sur la justice. (1997). *Rapport de la commission de réflexion sur la Justice, rapport au président de la République*. Retrieved from https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/974072100.pdf

Commission de réforme de la Cour d'assises (2005). *Rapport définitif de la « Commission de réforme de la Cour d'assises » remis à madame la Ministre de la Justice le 23 décembre 2005*. Retrieved from http://www.philodroit.be/IMG/pdf/B._FRYDMAN_R._VERSTRAETEN_-_Rapport_definitif_de_la_Commission_de_reforme_de_la_Cour_d_assises.pdf

Commission Justice pénale et Driots de l'homme. (1991). *La Mise en état des affaires pénales.* Retrieved from https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/914059500.pdf

Conseil constitutionnel [CC] [Constitutional Court] decision No. 2011-625 DC, Mar. 10, 2011, Rec. 122 (Fr.).

Conseil constitutionnel [CC] [Constitutional Court] decision No. 2017-694 QPC, Mar. 2, 2018 (Fr.).

Conseil d'Etat. (2018, April 3). Projet de loi pour la justice 2018-2022 [Online Advisory Opinion]. Retrieved from http://www.conseil-etat.fr/Decisions-Avis-Publications/Avis/Selection-des-avis-faisant-l-objet-d-une-communication-particuliere/Projet-de-loi-pour-la-justice-2018-2022

Coulon, J. M., Teiller, M. N., & Serrand, E. (1997). *Réflexions et propositions sur la procédure civile*. Retrieved from https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/974024100.pdf

Council of Europe. (2018). European Commission for the Efficiency of Justice. Retrieved from https://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp

Cour Constitutionelle [CC] [Constitutional Court] decision no 148/2017, Dec. 21, 2017, , http://www.const-court.be/public/f/2017/2017-148f.pdf (Belg.)

Dalloz Actualités. December 11, 2013. https://www.dalloz-actualite.fr/edition/2013-12-11

Darrois, J. M. (2009). *Vers une grande profession du droit.* Retrieved from http://www.ladocumentationfrancaise.fr/rapports-publics/094000152/index.shtml

De Charette, L. (2010). Les jurés siégeront en cours d'appel. Retrieved from http://www.lefigaro.fr/actualite-france/2010/12/02/01016-20101202ARTFIG00729-les-jures-siegeront-en-cours-d-appel.php

Déroulement d'un procès devant la cour d'assises (2018). Retrieved from https://www.service-public.fr/particuliers/vosdroits/F1487

Direction de l'information légale et administrative (Premier ministre), Ministère chargé de la justice. (2018, Sep. 7). Comparution sur reconnaissance préalable de culpabilité (CRPC). Retrieved from https://www.service-public.fr/particuliers/vosdroits/F10409

Durançon, D. (2015). *La Cour d'assises: Une juridiction séculaire et atypique en perpétuelle quête de renovation* (Unpublished doctoral dissertation). University of Paris-Saclay, Paris.

ECOLE NATIONALE DE LA MAGISTRATURE. Retrieved from www.enm.justice.fr/

Égré, P. & Raisse, T. (2016). Délais d'audiencement : les assises attendent le verdict. Retrieved from http://www.leparisien.fr/espace-premium/actu/les-assises-attendent-le-verdict-14-03-2016-5623943.php

Erhel, C. (1996). La réforme des assises passe à la trappe. Jacques Toubon recule devant les critiques venues de la majorité parlementaire. Retrieved from http://www.liberation.fr/france-archive/1996/02/05/la-reforme-des-assises-passe-a-la-trappe-jacques-toubon-recule-devant-les-critiques-venues-de-la-maj_163755

Etude d'Impact. (2011). *Projet de Loi Sur la Participation des Citoyens au Fonctionnement de la Justice Pénale et le Jugement des Mineurs*. (2011). Retrieved from http://www.senat.fr/leg/etudes-impact/pjl10-438-ei/pjl10-438-ei.pdf

European Commission for the Efficiency of Justice. (2014). *European Judicial Systems Edition 2014 (2012 data): Efficiency and quality of justice: An overview*. Retrieved from https://rm.coe.int/european-judicial-systems-edition-2014-2012-data-efficiency-and-qualit/1680785d95

European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 221.

Faure, S. (2011, July 7). La loi sur les jurés populaires est paradoxale du point de vue de l'histoire. Retrieved from http://www.liberation.fr/societe/2011/07/07/la-loi-sur-les-jures-populaires-est-paradoxale-du-point-de-vue-de-l-histoire_747679

Garapon, A. & Papadopoulos, I. (2003). Juger en amérique et en france. Paris: Odile Jacobs.

Geens, K. (2017, September 22). Assises « Trois juges et quatre jurés ». Retrieved from https://jubel.be/fr/assises-trois-juges-et-quatre-jures/

Gel de l'Extension de la Réforme des Jurés Populaires en Correctionnelle. (2012). Retrieved from https://www.nouvelobs.com/societe/20120611.AFP9062/gel-de-l-extension-de-la-reforme-des-jures-populaires-en-correctionnelle.html

Germain, C.M. (2014). *The Rise and Fall of Lay Participation in French Criminal Courts.* Paper presented at the 2014 Conference on Juries and Mixed Tribunals Across the Globe: New Developments, Common Challenges and Future Directions.

Germain, C.M. (2017). Lay Participation in the Criminal Jury: France and Belgium. *RCSL Newsletter*, 7–9. Retrieved from http://rcsl.iscte.pt/rcsl_nl_2017_1_.pdf

Goffinon, J. (2011, May 11). *Le jury populaire: véritable juge ou simple expression de la démocratie*. Retrieved from http://www.philodroit.be/IMG/pdf/colloqueliegetexte.pdf

Guinchard, S. (2008). *L'Ambition raisonnée d'une justice apaisée*. Retrieved from https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000392.pdf

Hans, V. P. & Germain, C. M. (2011). The French Jury at a Crossroads. *Chicago-Kent Law Review*, *86*(2), 737–768. Retrieved from https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3799&context=cklawreview

Herzog-Evans, M. (2012). Juridictions supérieures. In *Droit de l'exécution des peines*. France: Dalloz Action.

Huyette, M. (2009, May 20). La motivation des décisions de la cour d'assises. Retrieved from http://www.huyette.net/article-29711072.html

Huyghe, S. (2011, June 15). Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l'administration générale de la république sur le projet de loi (No. 3452), adopté par le sénat après engagement de la procédure accélérée sur la participation des citoyens au fonctionnement de la justice pénale et le jugement des mineurs. Retrieved from http://www.assemblee-nationale.fr/13/rapports/r3532.asp

Jacquin, J.B. (2018, March 9). Nicole Belloubet veut un « tribunal criminel » à la place des assises. Retrieved from https://www.lemonde.fr/police-justice/article/2018/03/09/un-tribunal-criminel-a-la-place-des-assises_5268210_1653578.html

Jean, J., Cavrois, M.-L. & Dalle, H. (2002). *La Qualité de la justice*. Paris: La Documentation française.

Jeanclos, Y. (2016). *Droit pénal nouveau: Pratique criminelle, dynamique décisionnelle*. Paris: Economica.

Jeanclos, Y. (2017, July 25). Dix propositions pour une justice du XXIe siècle. Retrieved from http://www.lemonde.fr/idees/article/2017/07/25/dix-propositions-pour-une-justice-du-xxie-siecle_5164775_3232.html#xCQ9cMXdoH8V0OFR.99

Jurés populaires dans les tribunaux correctionnels —Gaz. Pal. [2011], 198.

La justice du 21e siècle. (2018, November 26). Retrieved from https://www.gouvernement.fr/action/la-justice-du-21e-siecle

Le Club des juristes. (2012, May 12). Pour une administration au service de la justice [Online Announcement]. Retrieved from http://www.leclubdesjuristes.com/les-commissions/pour-une-administration-au-service-de-la-justice/

L'expérimentation des citoyens assesseurs évaluée. (2013, March 1). Retrieved from http://www.justice.gouv.fr/la-garde-des-sceaux-10016/archives-2013-c-taubira-12869/lexperimentation-des-citoyens-assesseurs-evaluee-30038.html

Le Tribunal correctionnel renouvelle ses assesseurs (2017, July 24). *Les Nouvelles Calédonniennes*. Retrieved from http://www.lnc.nc/breve/le-tribunal-correctionnel-renouvelle-ses-assesseurs

Loi de programmation 2018-2022 et de réforme pour la justice. http://www.senat.fr/dossier-legislatif/pjl17-463.html

Loi du 25 novembre 1941 sur le jury [Law of Nov. 25, 1941 on the Jury], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 12, 1941, p. 5355.

Loi du 7 Mai 1999 Modification à la Constitution [Law of May 7, 1999 on Modifying the Constitution], MONITEUR BELGE [M.B.] [Official Gazette of Belgium], May 29, 1999, 19310.

Loi modifiant le droit pénal et la procédure pénale et portant des dispositions diverses en matière de justice [Law amending Criminal Law and Criminal Procedure and Providing Miscellaneous Provisions on Justice] of Feb. 5, 2016, MONITEUR BELGE [M.B.] [Official Gazette of Belgium], Feb. 19, 2016, 13130.

Loi 2011-939 du 10 août 2011 sur la participation des citoyens au fonctionnement de la justice pénale et le jugement des mineurs [Law 2011-939 of Aug. 10, 2011 on the Participation of Citizens in the Functioning of Criminal Justice and the Adjudication of Minors], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 11, 2011, p. 13744.

Loi 2000-516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victims [Law 2000-516 of June 15, 2000 on Strengthening the Protection of the Presumption of Innocence and the Rights of Victims], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], June 16, 2000, p. 9038.

Loi 2014-535 du 27 mai 2014 portant transposition de la directive 2012/13/UE du Parlement européen et du Conseil, du 22 mai 2012, relative au droit à l'information dans le cadre des procédures pénales [Law 2014-535 of 27 May 2014 transposing Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings] JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], May 28, 2014 p. 8864.

Loi 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale [LAW 2016-731 of June 3, 2016 strengthening the fight against organized crime, terrorism and their financing, and

improving the effectiveness and guarantees of criminal proceedings] JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], June 4, 2016.

Lombard-Latune, M. A. (2012). Présidentielle: les attentes des avocats. Retrieved from http://www.lefigaro.fr/actualite-france/2012/04/04/01016-20120404ARTFIG00819-presidentielle-les-attentes-des-avocats.php

Magendie, J.-C. (2004, June 15). *Célérité et qualité de la justice: La gestion du temps dans le proces.* Retrieved from http://www.presse.justice.gouv.fr/art_pix/rapport-magendie.pdf

Magendie, J.-C. (2008, May 24). *Célérité et qualité de la justice devant la cour d'appel.* Retrieved from http://www.justice.gouv.fr/art_pix/1_rapport_magendie_20080625.pdf

Martinel, A. & Natali, F. (2011, July 12). Jurés populaires et justice pénale : une occasion manquée. Retrieved from http://tnova.fr/system/contents/files/000/000/976/original/110712_-_Jur_s_populaires_et_justice_p_nale_une_occasion_manqu_e_-_Martinel_Natali.pdf?1437665466

Mastin, I. (2012, January 8). Trois semaines hors du temps: dans la peau d'un juré d'assises. *La Voix du Nord*, p. 8.

Mayaud, Y. (Ed.). (2018). *Répertoire de droit pénal et de procedure pénale pour la cour d'assises* (Vols. 1-8. Paris, France: Dalloz.

Modernisation de la Justice du 21è Siècle. (2016). Retrieved from http://www.justice.gouv.fr/modernisation-de-la-justice-du-21e-siecle-12563/

Neuer, L. (2012, May 5). "Jurés Populaires" en correctionnelle: Premier Bilan en Demi Teinte. *Le Point*. Retrieved from http://www.lepoint.fr/chroniqueurs-du-point/laurence-neuer/jures-populaires-en-correctionnelle-premier-bilan-en-demi-teinte-05-05-2012-1458403_56.php

[Omb]. (2014). *Etre un citoyen juré* [Video file]. Retrieved from https://www.youtube.com/watch?v=aYv4P113WH8

Ordre des barreaux Francophones et Germanophone de Belgique. (2016, September 8). *La Tribune*. Retrieved from http://us2.campaign-archive2.com/?u=d552fd66716b81b8fb8f922cc&id=c62332842c

Pradel, J. (2001). L'appel contre les arrêts d'assises: un apport heureux de la loi du 15 juin 2000. *Recueil Dalloz*, 1964-1972.

Pradel J. (2010). Procédure Pénale. *Recueil Dalloz, 34*, 2254-2263.

Pradel, J. (2011). La Cour de Strasbourg n'impose finalement qu'une motivation minimale aux cours d'assises statuant avec des jurés. *Recueil Dalloz, 1*, 48-50. (Pradel, 2011a).

Pradel, J. (2011, September 5). Le citoyen comme juge pénal: à propos de la loi de 10 août 2011. *La Semaine Juridique - Edition générale, 1534.* (Pradel, 2011b).

Pradel, J. (2018, April 2) Plaidoyer pour la création d'un tribunal criminel sans jurés. *La Semaine Juridique - Edition Générale, 377*.

Procédure Accusatoire-Procédure Inquisitoire: deux modeles pour la justice pénale. (2018, July 7) Retrieved from http://www.vie-publique.fr/decouverte-institutions/justice/approfondissements/procedure-accusatoire-procedure-inquisitoire-deux-modeles-pour-justice-penale.html

Projet de loi sur la participation des citoyens au fonctionnement de la justice pénale et le jugement des mineurs. (2000, June 15). Retrieved from http://www.senat.fr/rap/l10-489/l10-4891.html

Projet de loi sur la participation des citoyens au fonctionnement de la justice pénale et le judement des mineurs. (2011). Retrieved from http://www.assemblee-nationale.fr/13/dossiers/fonctionnement_justice_penale.asp

Rastello, C. (2012, January 4). Jurés populaires en correctionnelle: une fausse bonne idée? *L'Obs*. Retrieved from https://www.nouvelobs.com/societe/20120102.OBS7867/jures-populaires-en-correctionnelle-une-fausse-bonne-idee.html.

Reasonable Doubt. (n.d.). In *Black's Law Dictionary* (2nd ed.). Retrieved from https://thelawdictionary.org/reasonable-doubt/

Redon, M. (Dalloz, 2013). Cour d'assises. In *Répertoire de Droit pénal et procédure pénale*

Réju, E. (2012, January 1). « Associer les Citoyens, C'est faire oeuvre de pédagogie ». *La Croix*. Retrieved from http://www.la-croix.com/Actualite/S-informer/France/Associer-les-citoyens-c-est-faire-aeuvre-de-pedagogie-_EP_-2012-01-01-752937

Rousseaux, X. (1998). L'histoire de la justice en Belgique: états des recherches d'un domaine en gestation. *Belgisch Tijdschrift voor Nieuwste Geschiedenis, 1-2*, 247-277.

Salas, D. (2001). « Juger en démocratie ». In *La Cour d'assises: bilan d'un héritage démocratique* (pp. 7-21). Paris: La Documentation française.

Salvat, X. & Boccon-Gibod, D. (2013, February). *L'expérimentation des citoyens assesseurs dans les resorts des cours d'appel de Dijon et Toulouse*. Retrieved from http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/134000144/0000.pdf

Secrétariat general, Service support et moyens du ministère, Sous-direction de la Statistique et des Études. (2016). *Les chiffres-clés de la Justice 2016*. Retrieved from http://www.justice.gouv.fr/art_pix/stat_CC%202016.pdf

Service d l'Information et de la Communication du Ministère de la Justice. (2001, June). *Rapport de la commission d'accès au droit et à la justice*. Retrieved from https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/014000368.pdf

St. Pierre, F. (2013). *Au nom du people francais: Jury populaire ou juges professionnels?* Paris: Odile Jacobs.

Statistiques pénales. Paris, Ministère de la justice (2005).

Taxquet v. Belgique [G.C.], 2010-VI Eur. Ct. H.R. 105.

3-5-4-1 — Echevinage. Etudes Générales. in Bibliographie de l'Histoire de la Justice Francaise, (1789-2011). (2014). Retrieved from https://criminocorpus.org/fr/outils/bibliographie/consultation/themes/13483/

3-6-4-3-4 — Jury. Débats et réformes depuis 1945 in Bibliographie de l'Histoire de la Justice Francaise, (1789-2011). (2014). Retrieved from https://criminocorpus.org/fr/outils/bibliographie/consultation/themes/13535/

2007 CONST. (Belg.).

Vansiliette, F. (2016, September 30). La Cour d'Assises: vers une lente agonie? *Justice en Ligne*. Retrieved from http://www.justice-en-ligne.be/article919.html

Vergès, E. (2011). La justice pénale citoyenne: derrière une volonté politique, l'élaboration d'une catégorie juridique. (loi no. 2011-939 du 10 août 2011 sur la participation des citoyens au fonctionnement de la justice pénale et le jugement des mineurs). *Revue de science criminell et de droit pénal comparé (RSC), 3*, 667-680.

Wauters, L. (2016, October 8). Koen Geens Veut Ressusciter les Assises. Retrieved from https://www.koengeens.be/fr/news/2016/10/08/koen-geens-veut-ressusciter-les-assises