



# Comparative Empirical Study of Lay Participation in Legal Decision Making

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# Lay citizen participation systems around the world

- ▶ Many countries employ decision making bodies like the jury, or mixed tribunals that include lay citizens.
  - More than 50 countries use **juries**.
    - USA, Russia, Spain, Great Britain, Canada, Australia and New Zealand; other nations in South America and Africa
  - Other countries employ citizens as **lay judges or lay assessors**.
    - Occasionally, lay judges decide individually or in small groups (for example, lay magistrates in England).
    - More commonly, lay citizens decide cases together with law-trained judges in mixed tribunals. Italy, France, Germany, Argentina, and many other nations use lay assessors.



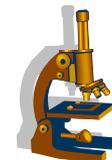
# New lay participation systems

- ▶ There has been a surge of new interest in employing citizens as legal decision makers
  - Russia and Spain introduced jury systems in the 1990s
    - Post-Soviet republics introduced juries into their constitutions; Georgia had its first jury trials in 2011.
  - Korea (below left) introduced an advisory jury in 2008
  - Japan (below right) introduced *Saiban-in seido*, a mixed court of lay and professional judges, in 2009



# Scientific importance of new jury and lay participation systems

- ▶ The experiences in Spain, Russia, Georgia, Japan, Korea, and potentially Taiwan can offer fresh insights into the role of lay persons as legal decision makers.
- ▶ Many other jury and mixed court systems are generations or even centuries old, making it difficult to identify their effects.
- ▶ We can study the immediate and long-term effects of new systems, adding to our knowledge about the contributions of the jury to the rule of law.
- ▶ These new systems (some are flourishing; others floundering) are important to understand fully for theoretical and practical reasons.
  - It helps us to comprehend what procedural elements, legal frameworks, and political contexts are crucial to strong lay participation systems. What works best? How does the context shape the institution?
  - Empirical research on new jury systems can educate the public as well as legal elites and policymakers about their operations.



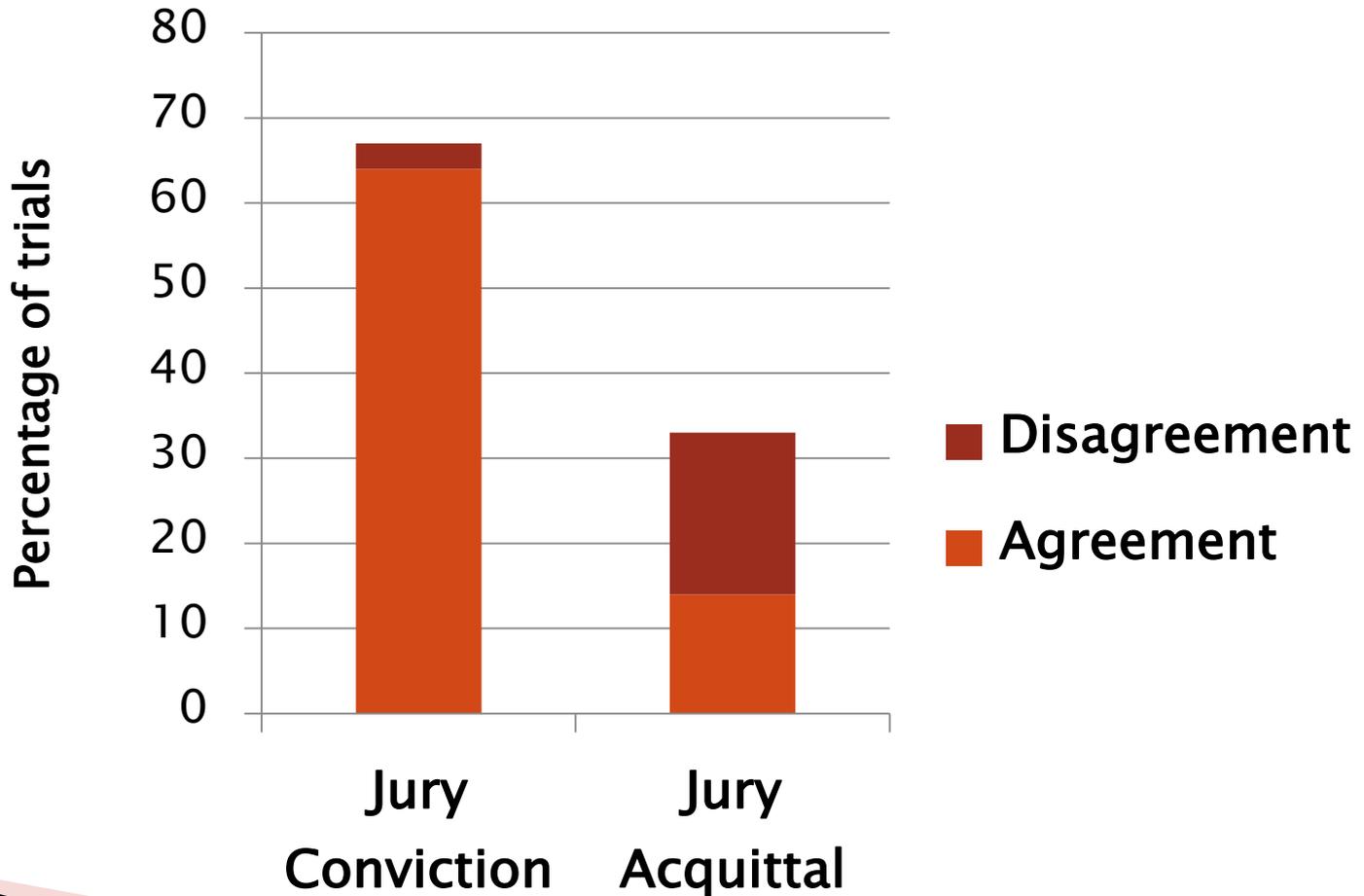
# Methodological challenges for the research community

- ▶ The questions are difficult to study using traditional jury research methodologies.
  - Systematic analysis of juries in different countries may require research strategies such as **case studies** and **comparative approaches** that are not part of the typical jury researcher's toolbox.
- ▶ There is only a modest amount of empirical research, especially research available in English, about the development and operation of these new lay participation systems.
  - Home country collaborators are essential!

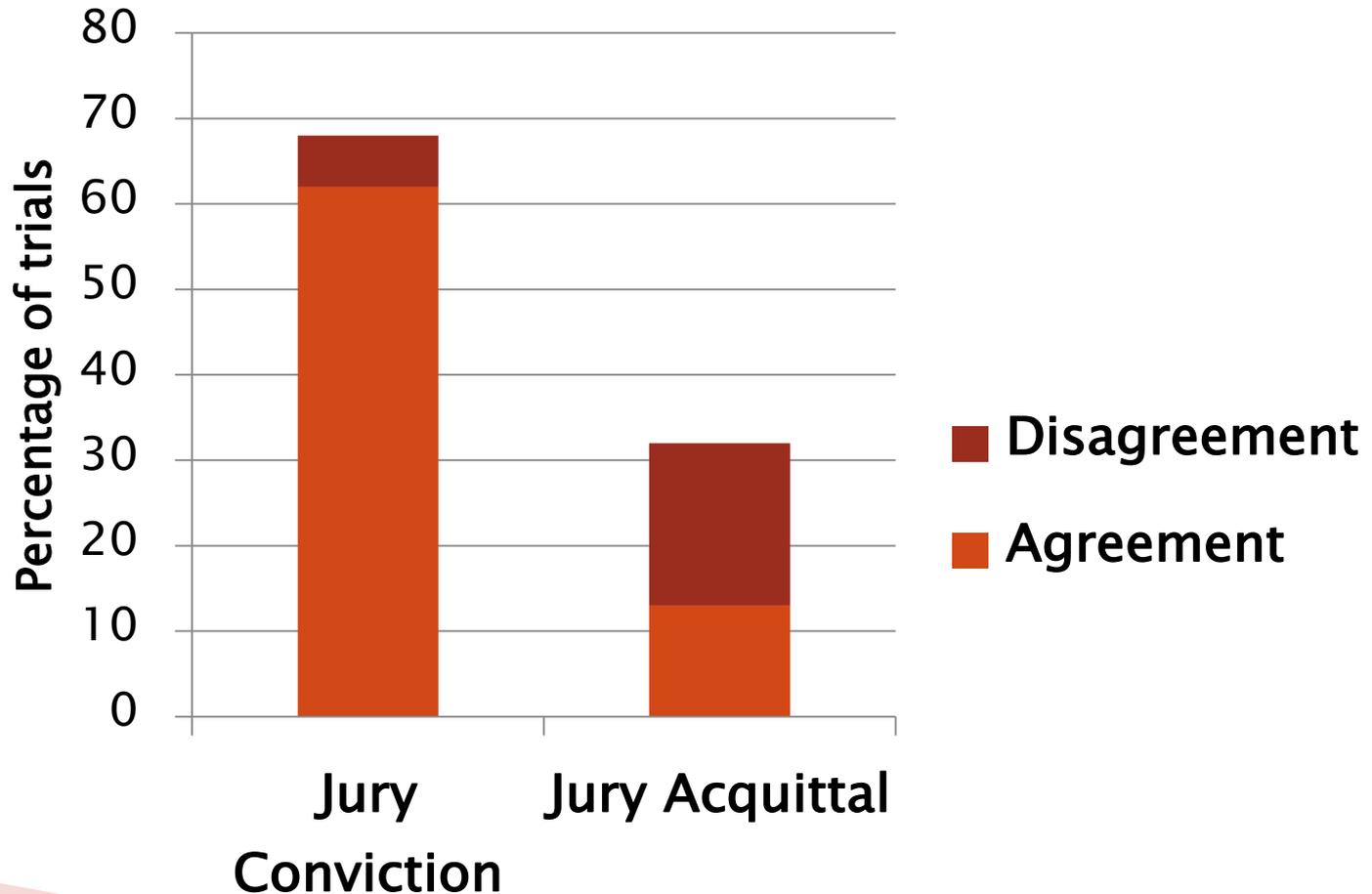
# Coordinated research strategies, questions; methodological approaches

- ▶ We need a set of research questions and methodological approaches that take advantage of these scientifically valuable opportunities to understand the diverse effects of incorporating lay voices into legal systems.
- ▶ Coordinated efforts (using similar questions, studying the same topics) are likely to have the biggest scientific payoff

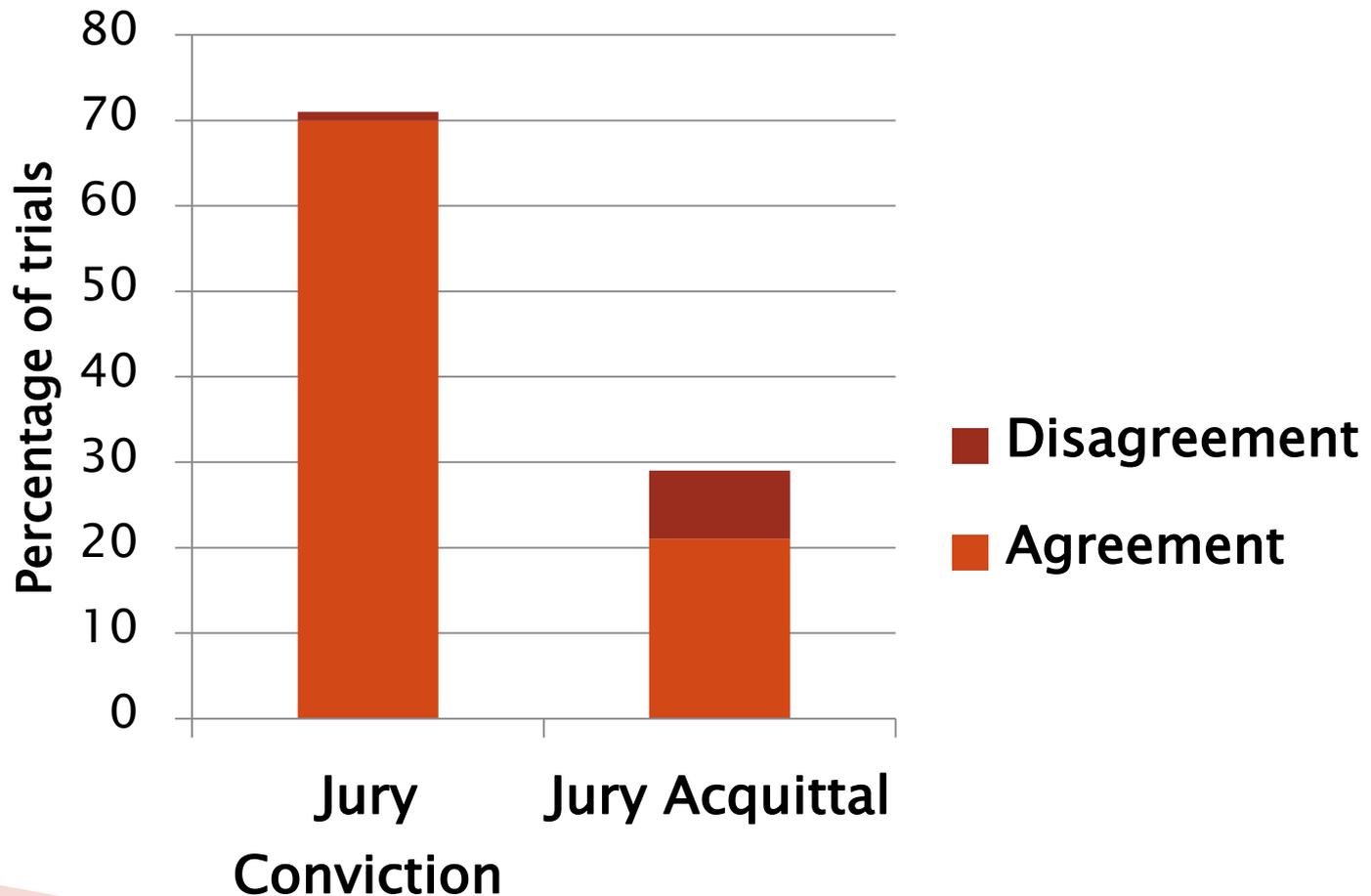
# Example: Judge–Jury Agreement, Chicago Jury Project Study (USA, 1950s)



# Judge-Jury Agreement, National Center for State Courts Project (USA, 2000-01)

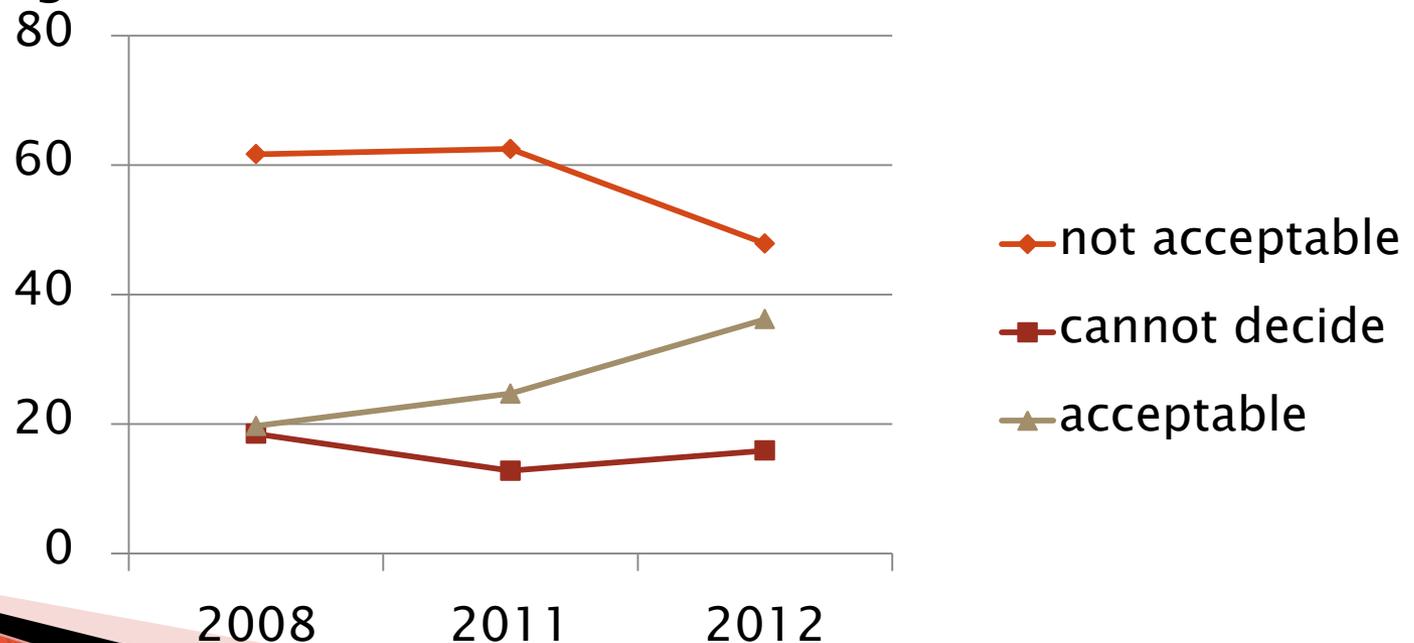


# Judge–Jury Agreement, Korean Advisory Jury (Kim et al., *Journal of Empirical Legal Studies* 2013)



# Example: different approaches to asking about willingness to serve

- ▶ Rose et al. US survey of Texas adults: measured willingness to serve = 4.78 on a 1–7 scale (not at all to very willing) (*Journal of Empirical Legal Studies* 2012)
- ▶ Manako Kinoshita presented data yesterday showing increases over time in Japanese citizens' willingness to serve as lay judges



# Different approaches to asking about support for lay participation

- ▶ Kinoshita measured support for lay judge trials in Japan by asking people whether they were pro or con, or could not decide
- ▶ Rose et al. measured support for the jury by asking participants whether they preferred a judge or a jury in different types of cases and with different goals (sued or being sued; desire for accuracy; accused of a crime)

# Proposed subjects for our common set of questions about lay participation in law across different countries.

- ▶ Characterize different systems of lay participation
  - **Legal context**; civil versus common law
  - **Trial procedures**
  - What is the degree to which systems allow lay judges to engage in **independent decision making** (versus collaborative decision making with professional judges)?
  - What is the **finality** accorded to lay decisions?
- ▶ **Study**
  - the **support** for lay participation among the public and legal and political elites
  - **Case selection**
  - **Similarities and differences** between lay and professional judge decision making (for example, through judge–jury agreement studies)
  - Impact on lay judges and jurors

# Example: Recommendations I made for Taiwan's proposed introduction of a lay observer system

- ▶ Identify key research questions for all the stakeholders
- ▶ Introduce a period of mock trial experimentation (to familiarize legal actors and citizens with procedures; training; identify procedural effects & need for modification)
- ▶ Introduce lay observer system in some jurisdictions; identify control jurisdictions
- ▶ Study impact of lay observers through before–after analyses of case screening and selection, public opinion polling, trial observations, judge–lay observer agreement study, interviews, analysis of press coverage, study of trial outcomes





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## Lay Participation in Law International Research Collaborative

The "Lay Participation in Law International Research Collaborative" is a transnational collaborative team dedicated to research on the phenomenon of lay participation in court systems and the fundamental sociolegal issues that it raises. The IRC, comprised of members from Argentina, Canada, England, Germany, Ireland, Japan, Korea, Spain and the USA, shares information vital to the creation of jury systems, mixed tribunals and other ways of citizen involvement in legal systems worldwide. The IRC is organized by Professor Valerie Hans of Cornell University Law School under the auspices of the Law and Society Association.

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