THE DEMOCRATIC FALLACY OF THE CRIMINAL JURY IN BRAZIL

A FALÁCIA DEMOCRÁTICA DO TRIBUNAL DO JÚRI NO BRASIL

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ABSTRACT

The criminal jury is referred by many as a bulwark of democracy, mainly in view of its historical importance as a response to the dominion of the absolutist state in relation to the Judiciary, being a mean of direct popular participation in this branch of state administration. However, the hypothesis assumed by the present essay is that both in its generic form and in the specific form in which it operates in Brazil, the criminal jury doesn't seem to be in accordance with what currently would be characterized as democratically appropriate. Therefore, the present essay was done via qualitative theoretical research and uses bibliographic content analysis procedure having as aim the examination, through an *ad hoc* theoretical matrix characterized by the interdisciplinary analysis of different areas of the human sciences, of the problem of the compatibility between the criminal jury of Brazil's formal structure with the current nature of democracy that is expected of it, as well as to propose that its present form in the country does not match what nowadays is conceived as democratic.

Keywords: Criminal Jury. Criminal Process. Democracy.

RESUMO

O Tribunal do Júri é tido por muitos como um baluarte da democracia, principalmente em vista de sua importância histórica como resposta ao domínio do Estado absolutista em relação ao Poder Judiciário, sendo um meio de participação direta do povo neste ramo da administração estatal. Porém, a hipótese assumida pelo presente artigo é a de que tanto em sua forma genérica quanto na forma específica em que opera no Brasil, o Tribunal do Júri parece não estar de acordo com o que atualmente se caracterizaria como democraticamente apropriado. Por conseguinte, o presente artigo foi realizado por meio de pesquisa teórica qualitativa e usa o procedimento de análise de conteúdo bibliográfico tendo como objetivo o exame, por intermédio de uma matriz teórica ad hoc caracterizada pela análise interdisciplinar de diferentes áreas das ciências humanas, do problema acerca da compatibilidade da estrutura formal do Tribunal do Júri no Brasil com a atual natureza da democracia que se esperaria dele, assim como propor que sua presente forma no país não condiz com o que hoje se concebe como democrático.

Palavras-chave: *Tribunal do Júri. Processo Penal. Democracia.*

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1 INTRODUCTION

The central theme to be addressed by this article is the adequacy of the Jury Court in Brazil to what is expected of an organ with training and performance guided by the dictates of a democracy in its modern conception, because the popular courts did-if most needed in times and places whose understanding of democracy was not as developed as it is today, since they were essential elements to lessen the reach of absolutist state power. Therefore, in a context where the same problems that caused the need for an organ like the Jury Court are missing, the problem arises: in the face of more recent assumptions of democratic action, the Jury continues to showif appropriate and convenient to the Brazilian judicial administration?

Countries that intend to be truly considered as democratic states under the rule of law have a duty to administer justice based on a "democratic primer"establishing criteria to ensure the hygiene of the system itself and providing protection to an extensive list of guarantees and fundamental rights, generally stipulated by a charter of rights such as a constitution, which must be fully respected in favour of popular sovereignty. However, the hypothesis adopted is that the Court of the Jury in Brazil, despite being ultimately governed by constitutional norms with democratic bias, does not seem to agree with what would currently be characterized as democratically appropriate.

Bearing in mind that a logical fallacy is the expression of a reasoning whose conclusion does not logically follow from its premises and forms propositions merely endowed with verisimilitude, the relevance of this work is due to the analysis about the fallacious potential of the defense of the Brazilian Jury as a fundamental institute for the support of a democracy, so that possibly only seems to be connected to precepts of a democratic regime.

This is a theoretical, qualitative and methodological approach to the analysis of bibliographic content to meet the general objective of by means of an ad hoc theoretical matrix characterized by interdisciplinary analysis of different areas of the human sciences, to ascertain the compatibility of the formal structure of the Court of the Jury in Brazil with the current nature of democracy that would be expected of it, then proposing that the present form it assumes in the country does not match what is now conceived as democratic.

2 THE LUDIC AND AGONAL VISIONS

It is so remarkable the prevalence of gambling in human culture that Johan Huizinga devoted considerable part of his studies to the playful character of culture and the idea that the very established notion of culture, from the beginnings of civilization to the present day, necessarily supports elements of play in its foundation. Following the reasoning, the Jury Court, being a product of human culture, could not be different.

Inspired by the work of Huizinga (1980), Ana Schritzmeyer (2012, p. 49) theorizes that the sessions of the Jury constitute games of manipulation of the imagery dimension about the social rules that concern the killing power of an individual in society, but they do not aim to dwell on the power to kill as an action - which here serves only to constitute the fact that

leads the case to the analysis of lay judges -, but rather to judge the circumstances that make the use of this power legitimate or illegitimate. In other words, depending on how the deaths are reported and made into images during the jury session, the use of the killing power of the individual in question will be legitimized or not by society.

It is necessary to highlight, however, that the playful nature of the procedure does not necessarily prevent serious action during its course. In fact, there is no lack of passion and enthusiasm in the debates, marks of commitment on the part of the members, who are often ravished when they fulfill the roles that have been assigned to them (SCHRITZMEYER, 2012, p. 68).

In turn, Huizinga (1980, p. 77, 78, our translation) exposes how the style and language that permeate modern court proceedings, which often show a sporting passion for the pleasure of arguing and counter-arguing, sometimes in a highly sophistic way, made a magistrate friend of his to remember the Javanese adat, who in their culture uphold the tradition that speakers must stick a small stick to the ground to every argument judged as well performed, so that whoever stuck more rods is had, in the end, as the winner of the contest.

By making a comparison with the jury's procedure, the adat rods would be in the possession of the accuser and the defender, who by his words, gestures, and permitted means of proof, seek to sensitize the sentencing board to agree to their allegations in the metaphorical attempt to stick the rods in the ground. The result of the dispute would only be revealed after the vote of the questions, at which time it will be possible to know who managed to "stick the most" (SCHRITZMEYER, 2012, p. 70).

It is no wonder that the Jury Tribunal can be compared with an archaic tradition of argumentative dispute, because the values that guide plenary debates bear considerable resemblance to those of judicial proceedings of ancient civilizations. At this point it should be pointed out how the structure of the Brazilian popular court, in general, resembles the structure of cultural manifestations that are still present in our society due to the jury, despite being outdated.

In the wake of Huizinga (1980, p. 78, 79, our translation), the conception of justice in modern societies cannot dispense with the notion of abstract justness, however weak the conception of what this may be. Moderately, the judicial process is a dispute between assumptions about what is right or wrong, and thus victory or defeat play a secondary role. It is precisely this concern with ethical values that must be abandoned to understand the justice of archaic civilizations, because for them, the idea of right and wrong, in its ethical-juridical conception, lies in the shadow of the idea of victory and defeat, which represents an agonistic vision, combative. The archaic mind does not care about discussions behind abstract themes such as certainty or error, but rather the concrete need to win or lose, to the point of victory to define what will be taken for granted. We are faced with a mentality that states that the decision by oracles, divine judgment, ordeals, divination, or, for example, by game, are fused with the notion of decision by judicial judgment, in a complex network of reasoning that prescribes that the result establishes what justice is.

For the Germans, there is etymological connection between the word for judgment, urteil, and the word for ordeal, gottesurteil (judgment of God). Divine judgment would be given by the ordeal, but it is not easy to determine what the ordeal meant to the archaic mind, although

at first glance it seems that primitive man believed that the gods indicated who was right or in which direction fate should go, which was thought to be the same thing by the result of a test. For the ancients, the idea that proof of truth and right comes with victory in competition causes trials to arise for this purpose, but the ordeal only arises specifically as a means of revealing divine justice in the more advanced phase of religion. Thus, the result of previous competitions was seen as a decision of the gods, and in some way we still follow this same line of reasoning when we establish the majority popular vote as a consecrated means of decision (HUIZINGA, 1980, p. 81, 82, our translation).

The saying Vox Populi, Vox dei (the voice of the people is the voice of God), recorded from the time of ancient Greece and Rome to the present day, indicates very similar thinking to the above, in particular about the broad use of majority decisions in democracy. It is possible that the preference for the representation of a social majority as a means of resolving the questions of the group is precisely an attempt by the ancient peoples to materialize the divine will, making perceptible the influence of teleological determinism based on religious creed, that when viewing the abstract dimension of justice as a value, it always does so in a secondary way, necessarily linked to victory, is of little importance when seen as an end to be achieved because of moral imperatives.

In relation specifically to the judicial process, it remains in essence a verbal battle, even after having totally or partially lost its playful quality thanks to the progress of civilization. However, the main reference to be made to this dispute for words is the way it was taken in its archaic phases, in which the agonal factor presents itself more intensely, and the idealized foundation of justice would be weakened. Here, the confrontation consists almost exclusively in the effort of each party to prevail over its counterpart, resorting mainly to sharp criticism to achieve such a result. Therefore, it was not the best-uttered or well-concatenated legal arguments that had the best chance of winning, but rather the most scorching and stiolante insults directed to opponents (HUIZINGA, 1980, p. 84, our translation).

Once again, we can see the enormous importance given to the result of a contest, in contrast to the little merit given to the definition and fulfillment of basic criteria of what could be considered justice, as a preferable means for the resolution of disputes. In addition, at least judicially, there is a lack of protection of values that would serve to guide conflict resolution procedures with the aim of protecting what would be considered the integrity of the civilization of that time and its citizens. In other words, the obsessive quest for victory allowed a code of conduct for disputes to be settled fairly by today's standards not to be stipulated or enforced.

Sample of this is the example brought by Huizinga (1980, p. 85, our translation), who seeks to demonstrate the intimate connection between culture, game, and society, draws attention to the significance of drum or singing duels for the Eskimos of Greenland. This custom is relevant both because it lasts until today, despite being almost lost (CHEMNITZ, 2017, our translation), and because of the function that for that society when it was described, in which the jurisdiction was not separate from the playful sphere.

An Eskimo who has a complaint against another challenges him to a drum and singing dispute, to which the entire clan or tribe joins on a festive occasion. The participants then proceed to attack each other in shifts by means of infamous songs accompanied by the rhythm of the drum, in which one disapproves the conduct of the other, without making

a distinction between well-founded accusations, satirical statements aimed at entertaining the audience, or pure slander. Verbal hostilities could be accompanied by physical indignities, whose steps of licitness vary between tribes: at one end, some allowed pounding, while at the other, others only allowed the attachment of the opponent. Between these two boundaries, there were tribes with intermediate stages of acceptance of the use of offensive actions, and during pauses, the competitors talked in friendly terms. The sessions of these disputes could last for years, during which the parties always thought of new songs and new reprehensible behaviors to be denounced, with the final decision on the winner being up to the viewers, who generally decided in favor of those who most amused them (HUIZINGA, 1980, p. 85, our translation).

It is quite true that, even in the Classical Age, neither Greeks nor Romans had fully surpassed the stage in which judicial oratory hardly distinguished itself from confrontation of insults. Legal eloquence in the golden age of Athens, despite all cultural and educational development, was still primarily a quality relating to rhetorical dexterity and allowed for any persuasive artifices. In Rome, too, practices aimed at ruining the opposing party in the debates were considered lawful for a long time: the speakers, among other things, appeared covered in mourning garments, burst into tears, loudly invoked goodness-be common, or fill the court with witnesses and clients in order to make the performance more impressive, in short, doing much of what is still done today in the dramatic performances before the Jury Courts. Only when Stoicism came into vogue was there efforts to liberate the legal eloquence of the playful characterization it possessed, purifying it according to the rigid demands of the Stoics in relation to truth and dignity (HUIZINGA, 1980, p. 87, 88, our translation).

Despite the correlation that can be traced between the quoted Stoic values and the principles that permeate the Brazilian criminal legal system in general, apparently the roots of the Jury Court speak louder when the subject of the discussion is the search for truth, then seen as less important than victory, which to be achieved ultimately depends on the ability of tribunes to obtain the consent of jurors.

3 THE PROCEDURE FOR MANIPULATING THE SOCIAL STRUCTURE OF THE JURY

Following the logic of maximum effectiveness for acting in the Jury Court, it is natural that the parties seek to know as much as they can about the jurors soon after their summons, both to draw up the list of peremptory refusals, how much to be able to address intentionally any of the possible components of the ruling council, creating with them a bond of empathy during the performance in plenary (PIMENTEL, 1988, p. 283).

Used by the parties also to create a more favorable configuration of the collegiate body, the immotivated refusal, according to Schritzmeyer (2012, p. 119), is based on a "fulminating psychosocial analysis that promoter and defense make of jurors", which the author called "wild sociology". These actors of the jury, making use of the information obtained and the behavior that the jurors present, ponder for a few seconds about variables such as profession,

gender, ethnicity, age group, appearance, and characteristics of the case in order to decide whether to consent to the jury in question acting in the capacity for which it was summoned.

With this in view, consideration should be given to the permissibility and appropriateness of establishing which prosecution and defense play such a decisive and authoritarian role in the composition of the sentencing board, when they are the most interested in a training that benefits them as much as possible at the time when the judges meet to vote on the issues of the case in question.

Consideration should be given to the possibility of the existence of "hatreds, dislikes, or founded or born only of preventions, prejudices that cannot be explained or less proved" that influence or annoy the representatives of the parties, in addition to obscure reasons that should not be externalized by their nature offensive to social interests as reasons for this prerogative to be granted (BUENO, 1922, p. 163 apud BONFIM, 1993, p. 314). The intensity of language may vary among proponents of this type of refusal, but in general, they claim that a person could be prevented from exercising his or her citizenship because of a hunch - probably prejudiced - that his or her performance in trial will be too damaging to any part of the process.

It is also argued that, if exercised appropriately, the right to immotivated refusal has the power to improve the activity of the Jury (BONFIM, 1993, p. 315)but there is no legitimate effort on the part of the legal community to allow some form of immotivated rejection of togated judges. In fact, what occurs is the opposite, judging by the existence of procedural devices, such as the arts. 285 et seq of the Code of Civil Procedure (BRASIL, 2018), with the function of avoiding the possibility of choosing one magistrate over another, who are randomly selected by a system of distribution of demands among competent judges.

According to Schritzmeyer, the manipulation of the composition of the ruling board seeks to perpetuate a simplistic model of society within the Jury Court, in which social groups commonly seen as good jurors (middle-class citizens, housewives, liberal professionals, civil servants, etc.) are called upon to use common sense in the judiciary to deal with complex criminal and social phenomena, often resorting to misconceptions such as that virtually all mulatto or black favela residents are delinquents, or that the police are largely corrupt, violent, and unjust. Thus, the lay judges end up serving as mass maneuver within a persuasive process that reiterates prejudices, orchestrated by promoters and advocates. This form of savage sociology is the basis of the "theatrocracy" of the Jury, more importantly even than the norms laid down in the legislation. In an interview with the author, a lawyer states that the jurors show penalty or fear of defendants with the stereotyped profiles mentioned above, and that while he seeks to explore the aspects that give them pity, the prosecutor explores the aspects that give them fear (SCHRITZMEYER, 2012, p. 168).

Another form of manipulation uses the imagery dimension to appeal to the judges, with which it is possible to construct the idea that there are victims of homicide who did not deserve to have their lives or their values preserved, or that the case in question was dealing with a life definitively withdrawn in an illegitimate way. This procedure would be based on the "production of images, the manipulation of symbols and their organization in a ceremonial framework", instead of the rational justification expected from an environment inserted in a legal context (SCHRITZMEYER, 2007, p. 16, 17).

For the discursive action focused on the need for persuasion of certain subjects and supported in the imagery dimension, it is also useful that the targets are completely immersed in the case under consideration, inserting them not only in the judgment, but also in all the rest that involves it, such as family and social relations, violence and crime, and even religion. This immersion aims to generate illusory degree of closeness between the members of the sentence board and the crime committed, so that it is possible to arouse certain emotions, such as indignation, fear, or guilt, and confuse the perception of the judges between what is real and what is illusion, involving them in a myriad of sensations in order to prevent as much as possible the use of reason and wisdom within the reach of a decision (LIMA, 2006, p. 75-77).

In a trend similar to that of Schritzmeyer, Roberto Lorêa (2003, p. 30) indicates that the trial session in the jury has as its central focus of dispute not the justice or the truth, but the complicity of the jurors. This thought is in conjunction with the work of Pierre Bourdieu (1989, p. 212) on symbolic power, in which he notes the legal field as a field of struggle for the "monopoly of the right to say the Law", in which agents have as their goal the recognition of their interpretation of the juridical order as the legitimate and just interpretation of the world. In this way, they are implicitly placed in a higher hierarchical level than the jurors due to the technical-legal capacity and the social prestige they have, generating in them a sense of complicity, an effect similar to the logical fallacy of the argument of authority.

More than simply acknowledging their particular views on law and society, legal actors also use language to build and reconstruct social values and images by directing jurors in the way that suits them best. Thus, the reality that before was simple and only credible becomes true, endorsed by a certain group of people due to the skilful way in which the proposition was presented by those who act in plenary. This is made possible by the process of crystallizing the worldview very often seen in jurors, who are usually citizens unaware of how their ideological rigidity undermines the rational analysis of a case to be tried, and that such convictions are harmfully exploited from stereotypes, clichés, or other aspects referencing them, in order to generate subsunctive agreement between the ideas presented by the speaker and the set of creeds of the audience to which he addresses. Achieving the agreement of the jurors in this way, instead of exercising their convictions, they begin to repeat the reasoning of the defense or the accusation at the time of voting in the secret room (LIMA, 2006, p. 39, 40).

Lenin Streck brings a more in-depth approach to the dynamics of symbolic power specifically within the Jury Court, stating that the prevailing discourse in legal practice, and in particular in the space of the People's Court, consists of intricate set of symbols, used to gain or maintain a superior position in power relations. However, because this discourse is the result of the imaginary of the agents of the juridical field, it is necessary that the listeners are persuaded to accept it, with the aim of producing relations of mere verisimilitude and construction of a "judicial reality", which does not necessarily agree with the social reality in which both legal actors and jurors are inserted, but is referenced and reiterated as if it were appropriate (STRECK, 2001, p. 126).

One of the reasons he points to the subsistence of such a dynamic is the need that the dogmatic juridical has to perform its function only by means of ceremonial procedures, fertile field so that the complicated ideological sets presented are covered up by mythical discourses, leading society to accept them as necessary for justice to be done. By its mas-

sive ceremonial nature, this is even more evident within the Jury Court (STRECK, 2001, p. 126, 127).

The spontaneous consent of the dominated acts in an auxiliary way in its process of domination, which occurs more easily when the control is exercised in disguise in the form of a service rendered by the dominators, giving it a regular appearance and making the controlled feel they have a duty to collaborate. This consent requires, however, that both parties hold (or appear to hold) similar ideals, so that from this the recognition arises that the dominator is a legitimate representative, and that the power he carries with him is beneficial and necessary. By the process of manipulation of symbolic power, jurors lose their status as judges, leaving them only the role of supporting actors in the judicial process after having their consent extorted (GODELIER, 1981, p. 193).

It is interesting to point out that the more unconscious the connivance of the dominated, the more subtly the consent will be extorted from the targets of manipulation, thus increasing the effectiveness of this influence based on complicity, pointing to a reason why this procedure is so effective to control in a way that is smooth and difficult to detect (BOURDIEU, 1989, p. 243).

Due to the current stage of development of Law, based on technique and science with the aim of enabling as much as possible impartial and fair decisions, it is natural to resort to rationality and logic so that discourses, objectives, choices and decisions are subject to the limits of what is reasonable for contemporary legal technique and reason. The procedure of the jury, however, it requires contradictory behaviour of accusers and advocates in relation to what is established by society - which establishes specific canons such as those appropriate for the resolution of certain types of conflict - by creating a situation in which tribunes are able to pass the impression of having authority when exploiting the imaging dimension, irrational and symbolic of things, dramatizing and personalizing power relations and social structure for their particular purposes (BALANDIER, 1982, p. 66, 67; SCHRITZMEYER, 2007, p. 26).

Therefore, it can be seen that the use of scientific technique and law was relegated to a subsidiary position of prestige in the cases of the popular court. In order for power to be confused with the figures who wield it, the actors must be able to generate the illusion of complete mastery of the means by which they operate to the point of seeming to be holders of power, and not merely reproducers of it, what the jury can do by resorting to the imagery and linguistic dimension, rather than the legitimacy derived from the law.

Luiz Figueira (2007, p. 218) has the understanding that, if it is the law that prevails in the judiciary as a whole, in the jury such a predominance is morality, having the positive right clearly as its subordinate. This view is shared by Schritzmeyer (2012, p. 198), who states that it can be concluded that in the Jury Court, what is legally prescribed has secondary importance in the face of both the formation of a ruling council with a composition as favorable as possible to the theses to be presented, and the emotional maneuvers used to create alternative realities, in which one is convinced (rather than convincing) any dissenters by erecting an ad hoc social structure that is hierarchically hierarchical in power relations between tribunes and jurors.

In view of this, it is necessary to reflect on the reasons for the political-legislative choice of jurisdiction of the Court of the Jury. If there are serious crimes that also deal with the withdrawal of human lives, such as robbery, that undergo procedure based primarily on the postulates of technique and reason, abolishing the contradictory behavior described above, questions the justification for allowing the continuation of the illusory games of power seen in the debates in the plenary session of the Jury, governed by a procedure that, given the present conditions of legal and judicial action in Brazil, can already be labeled as anachronistic.

4 DEMOCRATIC ORGANIZATION

Although the concept of democracy has existed for so long, Robert Dahl proposes that this fact, instead of having led to the solidification of what is meant by the term, generated greater disagreement about its meaning and scope, since "democracy" has come to mean different things depending on who, at what time and at what place they speak about it. The author cites the example of James Madison (one of the Founding Fathers and President of the United States, having lived during the 18th and 19th centuries), who distinguished a pure democracy of a republic by its size or management model: the first would be a society with few citizens who personally administer the government, and the second would be a government with representation system (DAHL, 2001, p. 13, 26). Today, Madison's differentiation would probably not make sense, as the two definitions are fully embraced by the semantic breadth that the term "democracy" has come to bear.

In an attempt to define in a more specific and current way what a democratic organization would consist of, Dahl (2001, p. 49, 50) begins by stating that it is necessary for at least five criteria to be met in order for all members of a group to be considered equal when conducting an association: 1) effective participation, the equal possibility for all members to have a chance to make others aware of their ideas; 2) equal voting, for which all members' votes have the same value when making a decision; 3) enlightened understanding, the right of members to, within a reasonable period of time, they can learn about the different possibilities and consequences of the decision in question; 4) control of the planning program, the prerogative of all members to decide which matters will be judged and how this will occur; 5) inclusion of adults, permission for all adults to participate in the process, or, given the existence of incapacitating circumstances, at least a considerable majority of them.

By comparing the characteristics of the ruling board of the Jury (also an association that proposes to take collective decisions) with the criteria that Dahl theorized as necessary for equality between participants when conducting a democratic organization, the only aspect fully compatible is equal voting, because for the purpose of counting the result of the vote of the questions there really is equivalence of the arithmetic value of the individual manifestations of its members.

The inclusion of adults is only partially compatible, since the criterion of notorious suitability, provided in art. 436 of the Code of Criminal Procedure (BRASIL, 2017), which guides the formation of the annual jury draw list, allows for arbitrariness during the eligibility process

of possible members, preventing unreasonably a considerable number of people from exercising the right to be part of the state administration.

There is no effective participation in the Brazilian Jury, because jurors do not have a chance to discuss their ideas about the case because they cannot establish communication between themselves. The possibility of enlightened understanding is severely reduced by the fact that lay judges do not have adequate access to the file of the case, and the legal hypotheses dealing with the clarification of the jury's doubts seem to have dubious effectiveness, because in addition to interrupting the trial, lengthening it (something against the will of the participants themselves, who sometimes perform the function for days in a row)It is possible to come across jurors afraid to appear ignorant in an environment where they feel pressured to convey the image that they understand everything that is necessary.

Finally, the control of the planning program does not apply to the popular court, because it exists only to try crimes against life, and the questions formulated about the process, which are specificities of mandatory analysis in each case, are legally established by art. 483 of the Code of Criminal Procedure (BRASIL, 2017). However, it is important to note that the lack of applicability of this criterion is natural in a judicial context and therefore does not appear to cause harm.

When he opines that political institutions are necessary for a country to be considered democratic, Dahl (2001, p. 97-99) admits not to be concerned about the institutions necessary for units much smaller than a country (as a committee or the ruling board of the Jury Court) would need to have so that they could be considered as democratic. However, it states that some of the criteria presented as essential for large-scale democracies (elected officials; free, fair and frequent elections; freedom of expression; diversified sources of information; autonomy for associations; inclusive citizenship) are even to measure the democraticity of a considerably smaller association.

Contrasting such requirements with the characteristics of the Brazilian jury, it is averígua that fully accommodates the existence of elected officials, therefore jurors, judges, lawyers and prosecutors have constitutional backing to participate in the Jury Court by making decisions relevant to the procedure; and reasonably accommodates inclusive citizenship, since in theory any adult can be jured, provided that it presents the requirements established by the law in art. 436 et seq., of the Code of Criminal Procedure (BRASIL, 2017), which, with the exception of the notorious suitability, seems to be reasonable in the face of what is expected of a popular representative.

Partially accommodates free, fair and frequent elections, criterion compromised due to the possibility of unintentional refusal of jurors, but compatible with the form of choice of judge president, prosecutor, public defender (who are sworn in by public competitions tests and titles)legal counsel and assistant prosecutors (authorized to act in the process through the constitutionally legitimized choice of legal professionals).

It does not accommodate freedom of expression, because the Code of Criminal Procedure (BRAZIL, 2017) determines that, after the draw, and until the presiding judge releases them from their commitment, the jurors cannot communicate with anyone about the trial (art. 466, §1º) except the judge who presides the session itself (art. 473 et seq.); nor sources of

diversified information, since to seek more information, jurors can only address the judge in a very limited way (art. 480).

Finally, the criterion of autonomy for associations does not apply to the judicial context of the Jury, since it deals with the right of citizens to organise themselves in associations with some degree of independence, such as a political party (DAHL, 2001, p. 100)A scenario foreign to the logic of forming the sentencing board.

While admitting that democracy in small units requires fewer criteria than democracy in a country (DAHL, 2001, p. 105), problems in effective participation and enlightened understanding of jury members, more specifically the absence of freedom of expression (crucial aspect, by the way, for a democratic rule of law) and absence of diverse sources of information, certainly prevent the Court of the Jury from being regarded as a fully democratic institution according to the model taken here as the basis.

5 PROCEDURAL ASPECTS UNDERMINING DEMOCRACY

Although the Jury Court is considered as one of the great institutes representing democratic culture, it cannot be said the same thing as the form taken by its proceedings in the Brazilian legal system. Even after 20 years since the enactment of a constitution that is deeply concerned with maintaining the democratic momentum that the country has been struggling to achieve, the reform carried out in the normative system of this special procedure in 2008 continued to allow the existence of antagonistic particularities to what is considered moderately necessary for the support of the democraticity of an organization.

5.1 SELECTION OF JUDGES: SOCIAL REPRESENTATIVENESS AND REFUSAL WITHOUT MOTIVATION

Since the democratic process is closely linked to the broad and equal participation of the members of an association in its management, it is desirable that all capable stakeholders be eligible to deal with the group's affairs. For this, no discrimination based on personal characteristics of the associate should be a determining factor of its possibility of participation, an understanding adopted with the objective that the defense of the rights and interests of minority groups is not harmed. However, this is not what is observed in the popular court pages.

Streck (2001, p. 100, 101) opposes the method of selection of the jurors who will be drawn for the formation of the sentencing[2] board , with the main problem being that the notorious suitability of the citizen is one of the criteria of choice, because it is a subjective concept that allows personal conceptions of those responsible for the formation of the annual list of judges, listed in the art §2º. 425 of the Code of Criminal Procedure (BRASIL, 2017), arbitrarily

2 Although at the time of his work the procedure was slightly different from the current one, the criticisms made remain pertinent, as the main change in the selection process refers to who will primarily lead to the nomination of citizens to the list of the Jury Court, and not the criteria with which they will be chosen, which is at the heart of the jurist's disagreement.

define the extent of what would be acceptable for popular participation purposes. The consequences of this involve both undue imposition of a specific standard of normality on society (enlisted citizens become nationally approved representatives of the notorious reputation of society) established by mere auxiliaries to the judiciary, how much mistaken influence on the outcome of the conclusion of the process, because the evaluative and axiological beliefs of the selectors change the definition of who is considered compatible for the activity of the lay judge, which in turn affects the possibilities of composition of the ruling council in a different way than would be expected of a democratic and plural state.

The method of selection of the judges of a process influences the result of this, because naturally different people will have different conceptions about the most varied themes and possibly different interpretations about the same fact. According to Alessandro Baratta (2011, p. 177, 178), it is noticeable the influence that the social differentiation between judges and defendants brings to the procedural analysis, informing that judges unconsciously tend to have diversified conceptions about the criminal behavior of the accused according to the social class of the accused. The actions of people of higher layers are routinely valued more positively than those of people of lower layers, because these, according to a common misconception, would naturally be more prone to transgressions, while they would take more appropriate attitudes to the laws in general.

For Streck (2001, p. 130), this does not occur only when the judge is from the higher social strata, since the introduction of values, habits and behaviors produced by the dominant ideology would cause even citizens of lower social strata to protect the values of those who have as their superiors.

However, social differentiation is not limited only to a socioeconomic issue, as reported by Jodelet (2001, p. 60, 61), who points out that this categorization naturally tends to group people with similar characteristics, because our possibilities of world perception are structured in such a way as to highlight the affinity between similar objects and divergence between different objects. This process can generate unwanted understandings for the interpreter when he needs to face situations from a neutral state of reason (such as the analysis of facts related to possible criminal conduct in a judicial context)because it can unreasonably create favorable views to the groups with whom it identifies itself and prejudices unfavorable to the groups with whom it mostly does not share characteristics.

According to the report, the human being tends to value society based on particular biases, which also occurs in the case of the enlistment of the Court of the Jury in Brazil. Those responsible for selecting citizens gravitate around profiles that mirror what is appropriate according to their personal views of normality and fitness, reflecting a particularist and negatively prejudiced view of society. Therefore, it is clear how the criterion of notorious good repute hurts the democratic legitimacy of the decisions of the ruling council, as assigning to civil organizations the choice of jurors arbitrarily segregates the legitimate opinion of social plots devoid of representativeness.

This notion is opposed to the ideal of democracy that is intended to achieve with the maintenance of popular collegiates, because although it allows the people to participate in the administration of justice, their participation is limited by obstacles to the rights of the weakest, precisely when guaranteedIt is necessary to improve the degree of popular expressiveness. Despite the democratic nature attributed to the Jury, its procedure admits the

action of discriminatory and marginalizing conceptions, operating from the listing of eligible individuals to the function, until the time when jurors must reach a resolution.

Bringing example of the law compared, from the late 1960s, with the Jury Selection and Service Act of 1968 (or "Jury Act", compiled in U.S. Code title 28, §1861 [3]and so on), the United States of America abolished the choice of jurors made between "men of recognized intelligence and probity", and began to do so in order to ensure, as a right of those who litigated before the jury, that jurors were elected at random, designated on the basis of representative portion of the community in which the court was. (ABRAMSON, 2000, p. 99, 100, our translation).

United States rules also state that all citizens should be allowed to be considered for this exercise of citizenship, as well as the obligation that all should serve as jurors when summoned to do so. To reinforce the need for social coverage in jury selection, §1862 informs that no citizen should be excluded from jury duty due to his race, color, religion, sex, national origin or economic status. Subsections "a" and "b" of§1863, among other things, determine that each district court shall create written plan for the random selection of judges, which shall be constructed to achieve the objectives of§§\1861and 1862, and that the plan should also specify whether jurors will be selected from electoral registration lists or from real voters in the district, in addition to prescribing additional sources of enlistment if necessary (UNITED STATES, 1968, our translation)[4].

To quote yet another example, section 1 of the British Juries Act has rules on general eligibility for jury service in England and Wales, provided that certain objective requirements are met, such as being over 18 and under 70. Section 3 establishes that the basis of the selection of jurors is made by the registration of voters, which should be sent as soon as possible to the authority responsible for summoning jurors (UK, 1974, our translation).

Although the American and British systems for the choice of jurors are open to criticism for a variety of reasons, they have definitely taken further steps towards a more democratic system. The fact that such reforms took place around 40 years before the last restructuring of the jury in Brazil generates the feeling that there was not enough will in the transformation of our procedure into something that privileged popular sovereignty in a clearer way.

The way in which lay judges are chosen in Brazil makes it seem that only those who are considered "normal" are eligible for this service, a concept whose breadth is defined by a small portion of the population. Paulo Rangel (2005, p. 101) even states that this method is unconstitutional because it hurts the fundamental objective of the Republic to promote the good of all without any prejudices regarding personal characteristics, present in art. 3º, IV of the Federal Constitution (BRAZIL, 2017). In contrast, countries said to be of remarkable social development adopt an idea of democracy based on the broadest equality and inclusion that can be offered.

It is also argued that the prerogative of the prosecution and defense to refuse jurors immovably violates democratic precepts, because in addition to violating the constitutional

3 The United States Code (commonly abbreviated to U.S. Code, or U.S.C.) is a consolidation of federal standards in the United States. The symbol § (signum sectionis), used in Brazil to reference a paragraph, is used in the United States to indicate a section.

4 The supplemental source is usually a vehicular record list, as in the Local Civil Rules 47.1 "and" of the State of Oklahoma (2016, our translation) and the Jury Selection Plan, section "B" of the District of Columbia (2012, our translation).

device cited above, it is the exercise of "invisible power", a phenomenon considered by Norberto Bobbio (1997, p. 83-86) as inappropriate to democracy, because nothing relevant to the general public should be operated in a mysterious way. The invisible power being that exercised in secret, without the knowledge of the people, would only be excusable in situations where the immediate publicity put at risk the effectiveness of the action, which must be revealed as soon as the risk disappears. Since the juror can also be refused motivated, as arts. 448 e 449 do Código de Processo Penal (BRASIL, 2017), should not be allowed secrecy to the reason for the refusals.

For Rangel (2005, p. 235), it is common that the profile of the juror - how to join the Armed Forces, profess religious faith that prevents him from convicting another person, or be female in crimes involving women -, his manner of dress and even his appearance are relevant factors to be considered by the tribunes in the choices for the sentencing board. However, in theory they have nothing to do with the characteristics a judge must possess to properly analyze legal facts and make reasonable decisions based on this.

5.2 INCOMMUNICABILITY IN PLENARY

It is not enough for democracy that only a few elected representatives can produce speeches and arguments, which only members of the prosecution and defence are allowed to do in the jury, as it is necessary for all concerned to be adequately covered by this prerogative, but jurors are excluded. The democratic rule of law should not be restricted to legal dictates of dubious democraticity, but should allow the discussion of the widest possible range of ideas concerning topics and facts debated by society, because granting this right only to political agents (or tribunes) could imply tacit acceptance of the thesis that other people's arguments should not even be considered (MENDES; OYARZABAL, 2009, p. 199).

In "The Future of Democracy", Norberto Bobbio states that his arguments could only be valid in a context that presents at least what he called the "minimum definition of democracy", which consists of a group of procedural rules intended for collective decision-making, which must necessarily enable all interested parties to participate as extensively as possible. However, following the reasoning, it indicates that the mere participation of large numbers of individuals and the precision of rules for decision-making are not enough, even if it is a minimum definition. To these characteristics must be added the real possibility of choice among the options put to the table by the democratic regime, guaranteeing decision-makers the power to utter their own convictions in an environment of individual or collective freedom of expression (BOBBIO, 1997, p. 12, 20).

However, it is widely known that the Court of the Brazilian Jury denies jurors free expression during the procedure, a measure established by the law itself in the form of art. 466, §1º of the Code of Criminal Procedure (BRASIL, 2017), which states that after the draw, the members of the sentencing board shall be prohibited from communicating with each other or with other persons, impediment that extends to any form of expression of opinion about the process until the end of the trial session, whose punishment is the exclusion of the board from sentencing and payment of a fine.

For Jürgen Habermas (1997, p. 21), the main aspect of the democratic process, deliberative politics, depends on the establishment of efficient channels of communication and

the opposition of the constitutionalized discourse to public opinion, which arises in an informal way. Faced with this communicative need, restricting the possibility of dialogue between those who need to decide on someone else's life does not seem to match either democracy or a rational group decision-making process.

The incommunicability among the representatives of the people comes from an authoritarian root, because the Code of Criminal Procedure in Brazil was inspired by the reform of its Italian counterpart idealized by Alfredo Rocco, Minister of Justice of the Mussolini regime, that had censorship and silence always present in the background of the exercise of power, in disregard of fundamental rights and guarantees (CARVALHO, A.; CARVALHO, S., 2005, p. 84 apud MENDES; OYARZABAL, 2009, p. 196).

The imposition of silence on jurors affronts the democratic rule of law, mirroring not the modern doctrines of guarantees, but a past reality of times of repression. As a curiosity, ratifying the premise that incommunicability among jurors is the result of a period influenced by totalitarian ideals, it is possible to check that in art. 270 of the Code of Criminal Procedure of the imperial period (BRAZIL, 1832) is allowed to confer among the members of the "Sentence of Justice" to arrive at the answer of the questions of the case. Conceived in 1941, the impossibility of communication between jurors was not removed from the jury nor with the 2008 reform, perpetuating contempt for democratic ideology, which largely depends on the possibility of communication and participation of all in the widest possible way for there to be the legitimization of a popular government.

One of the arguments in favour of popular courts is that a decision taken by a plurality of judges is more difficult to contain errors, but this stems from the discussion of opinions among those present, since the communication allows a better identification of the positive and negative points of the ideas under discussion. However, this does not apply to the Brazilian jury, whose collegiate body delivers seven individual judgments, in which the most repeated ruling prevails instead of a ruling voted in agreement by the majority. Habermas (2003, p. 162) states that a deliberative process only has the ability to self-correct through discursivity, a characteristic through which it produces rationally acceptable results. In a procedure in which there is reduced possibility regarding the merits of decisions, they need to go through a process that gives them the greatest possibility of being right, requiring for this purpose full communication between judges.

5.3 ENCOURAGEMENT OF JUDICIAL SOLIPSISM

For Figueira (2007, p. 219, 220), jurors are targets of ideological domination held so that their decisions are influenced to the maximum by what is passed by the tribunes, in order for the judges to become mere reproducers of the interpretations of the representatives of the parties to the proceedings, an effect worsened by the incommunicability imposed by law. Despite this, there is a possibility that they are entirely unaware of the existence of facts or evidence presented during the submissions in plenary, as well as the requirement to take them into account for legal decision-making, time when they will decide primarily according to their own conscience, as determined by the art oath. 472 of the Code of Criminal Procedure (BRASIL, 2017) provided by citizens at the time of formation of the sentencing board.

However, warns Streck (2013, p. 25-27) that the Law is not and cannot be the result of a particular perspective of its interpreters, because the contrary would lead to the relegation of the importance of tradition, coherence and integrity of the Law, thus establishing the possibility of a "zero degree of meaning" in the legal interpretation, in which nothing that was built prior to the decision on screen would have the capacity to influence it, generating undesirable judicial discretion.

It should be noted that the discretionary criticism in the legal field should not be seen as an attempt to prohibit the natural interpretative process of law, as a way of avoiding the idea that the legal rule produced by the judicial decision is the result of the mere opinion of the judge. The judgment of the judge cannot be dependent on the partiality to which he belongs, because such activity is characteristic of the Legislative Power, not of the Judiciary, and the permission for this phenomenon to occur indicates collusion with a form of violation of the separation of powers - one of the consequences of the democratic rule of law -, by authorizing judges to act effectively as legislators (STRECK, 2013, p. 95).

Criticism of "decisions according to the conscience of the judge" therefore takes as a basis the notion that the legal decision should not result merely from a choice of the judge among the possible alternatives for the conflict to be resolved, because necessarily the decision maker needs to develop its verdict in order to take into account the precepts of the legal order in which it participates, resulting from a complex web of subjectivities, and not from a single interpreter (STRECK, 2013, p. 108, 117).

Although judicial solipsism is not the exclusive trademark of the Jury Court, and is also a recurring phenomenon in judgments handed down by togated judges, the fact that it is a legally stimulated behavior to the sentencing board creates the need that, at least in relation to this collegiate body, be combated more vehemently, because the State should not foster a set of attitudes that contradicts its own legal structure, let alone instituting them in its own laws.

5.4 IN DUBIO PRO REO DISRESPECT

As Aury Lopes Jr. (2014) , the prevalence of the defendant's interest in the existence of doubt over his conviction is a pragmatic criterion for resolving judicial uncertainties, reinforcing the requirement that the accused should be acquitted when on his guilt there rests certainty. It is a corollary of the presumption of innocence, a guarantee established by art. 5th, LVII of the Federal Constitution (BRAZIL, 2017), which determines that the guilt of the accused is only decreed from the moment that sentence condemning in his disadvantage becomes final. The consequence arises from the idea that if someone cannot be found guilty before the end of his trial, he should be presumed innocent until the last trial decides otherwise, which requires proof of the accused's guilt beyond all uncertainty.

In a similar thought, Gustavo Badaró (2003, p. 285) states that the presumption of innocence can be observed by a technical-legal, in that it functions as a procedural commandment to be invoked in favor of the accused at any time that there is dubiousness about a fact pertinent to the conviction. Therefore, in view of the existence of a democratic rule of law which considers an accused innocent until proven guilty, there is a need for the certainty of

the condemnatory decree to be fully established during the judicial proceedings, beyond a reasonable doubt.

Because it has central importance within the Brazilian criminal justice system, its preservation in the proceedings of an organ considered to represent popular sovereignty should be seen as an objective of great importance. However, the art. 489 of the Code of Criminal Procedure (BRASIL, 2017) informs that the decisions of the sentencing board will be taken by means of a simple majority, constituting violation of the benefit of the doubt in favor of the defendant in cases where they are given in a non-unanimous way to condemn, since such a hypothesis does not respect the need for certainty of the judge as to the punishment ordered.

For his part, Marcelo Barazal (2012, p. 582) added that, for example, in a conviction by four votes in favour and three against, the defendant would be convicted because he was found slightly more guilty than innocent, and the violation of the presumption of innocence was clear. It is important to note that in this hypothesis four out of seven votes represent little more than 57% of the total, only slightly above half of the numerical representativeness of the judging body. The plaintiff argues that when the jury's decision does not reflect the certainty expected of the decision in a criminal case, the accused should be released, as it would only be "almost guilty"a victim of a state that has not even been able to produce sufficiently convincing evidence to demonstrate beyond a doubt its guilt to all members of the sentencing board.

Regardless of the procedural aspect of the violation, both in dubio pro reo and the presumption of innocence are necessary parts of a fair and democratic process, and the violation of these precepts characterizes serious injury to the criminal procedural system and the Federal Constitution.

6 CONCLUSION

Considering its historical importance and the fact that it is a body through which the people can participate directly in the judicial administration, most of the population and jurists of Brazil seem to affirm that the Jury Court is a great representative of democracy. However, the allegation is misleading when attributed to the body of this country, because it suggests that it is structured in a way that corresponds to modern democratic theories, or that at least it would respect the Federal Constitution originated in the most recent period of Brazilian democracy, which turned out to be untrue.

For these and other reasons the Jury can be easily compared to archaic forms of judicial probation, inadequate to the current stage of development of law or democracy. Its playful and agonistic aspects originate from the period before the advent of democratic states under the rule of law, and therefore, seeking the truth in plenary session or ending a just decision under the eyes of the law are secondary goals in the face of victory, which is normally obtained through the subtly extorted legitimization or otherwise of jurors as to a criminal act.

Based on a study on democracy, it is concluded that the Court of the Brazilian Jury does not present a suitable structure to provide what is currently considered to be an appropriate

process of collective decision-making among members of an association, as it does not (or only partially) present various characteristics that are deemed necessary for an institution to be appropriate to the modern democratic character.

The affronts to democracy are also present in the Jury's own procedure, as it allows eligible citizens to be selected for a citizenship duty by means of the arbitrary criterion of notorious suitability; prevents effective communication between judges after being selected, disregarding that democracy is a management method based on the establishment of dialogical relations between participants; introduces in its own normative system the prerogative of judges to use their own conceptions about what the Law should be, being able to go against what was built historically in the legal sphere without at least raising the reasons for it; and authorizes, for example, that in a normal way in its action are violated fundamental guarantees as the rule of in dubio pro reo, which stems from the presumption of innocence, a rule of constitutional nature.

It is hoped that this work has clearly shown these problems, as there will be better possibilities to resolve them in the legislative field after the precise finding that the current form of the jury in Brazil affronts modern notions of democracy, in addition to violating the Federal Constitution itself.

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REFERENCES

ABRAMSON, Jeffrey. *We, the Jury:* The Jury System and the Ideal of Democracy. Cambridge: Harvard University Press, 2000.

BADARÓ, Gustavo Henrique Righi Ivahy. *Burden of proof in criminal proceedings*. São Paulo: Revista dos Tribunais, 2003

BALANDIER, Georges. *Power in Scene.* Translated by Luiz Tupy Caldas de Mouras. Brasília: University of Brasília, 1982.

BARATTA, Alessandro. *Critical Criminology and Criticism of Criminal Law.* Translated by Juarez Cirino dos Santos. 6. ed. Rio de Janeiro: Revan, 2011.

BARAZAL, Marcelo Garcia. *Controversial issues in the jury court. In:* TAYAH, José Marco; ROMANO, Leticia Danielle; ARAGÃO, Paulo (Org.). Reflections on Latin America. v. 7. Buenos Aires: Quorum, 2012. p. 577-588.

BONFIM, Edílson Mougenot. *The selection of jurors, the question of "notorious good repute" and the proper formation of the ruling board in the jury court. In:* Revista dos Tribunais, São Paulo, Editora Revista dos Tribunais n. 693, p. 309-316, jul. 1993.

BOURDIEU, Pierre. Symbolic power. Translation by Fernando Tomaz. Rio de Janeiro: Bertrand Brasil, 1989.BRASIL. *Código de processo criminal*. Lei do império. Rio de Janeiro, 29 nov. 1832. Disponível em: http://www.planalto.gov.br/ccivil_03/Leis/LIM/LIM-29-11-1832.htm. Acesso em: 13 jul. 2019.

BOURDIEU, Pierre. *Code of civil procedure and Federal Constitution. 47*. ed. São Paulo: Saraiva, 2018.

BOURDIEU, Pierre. *Penal Code, Code of Criminal Procedure, Federal Constitution. 18.* ed. São Paulo: Revista dos Tribunais, 2017.

BOBBIO, Norberto. *The future of democracy:* a defense of the rules of the game. Translated by Marco Aurélio Nogueira. Rio de Janeiro: Paz e Terra, 1997.

CHEMNITZ, Mia. *Greenland's music history, part 1. Greenland, 2017.* Available at: https://visitgreenland.com/articles/greenlands-music-history-part-1/. Accessed on: 13 Jul. 2019.

DAHL, Robert Alan. On democracy. Translation by Beatriz Sidou. Brasilia: University of Brasilia, 2001.

DISTRICT OF COLUMBIA. *Jury Selection plan*. Oct. 2012. Available at: https://www.dcd.uscourts.gov/sites/dcd/files/JurySelectionPlan2016.pdf. . Accessed: 13 Jul. 2019.

UNITED STATES OF AMERICA. *Jury Selection and Service Act of 1968*. U.S. Code, Title 28, Part V, Chapter 121. Washington, 27 Mar. 1968. Available at http://uscode.house.gov/view.xhtml?path=/prelim@title 28/part5/chapter121&Edition=Prelim. Accessed on 13 Jul. 2019.

FIGUEIRA, Luiz Eduardo de Vasconcellos. *The judicial ritual of the jury court: the case of bus 174.* Rio de Janeiro: UFF, 2007. Available on: http://ppgantropologia.sites.uff.br/wp-content/sites/16/2016/07/LUIZ-EDUARDO-DE-VASCONCELLOS-FIGUIRA.pdf. Accessed on: 13 Jul. 2019.

GODELIER, Maurice. *The ideal part of the real. In:* Carvalho, Edgar de Assis (Org.) Godelier. São Paulo: Ática, 1981.

HABERMAS, Jürgen. *Law and democracy*: between facticity and validity. v. 2. Translation by Flavio Beno Siebeneichler. Rio de Janeiro: Brazilian Weather, 1997.

HABERMAS, Jürgen. *Era of Transitions*. Translation by Flavio Beno Siebeneichler. Rio de Janeiro: Brazilian Time, 2003.HUIZINGA, Johan. Homo ludens. London: Redwood Burn Ltd. Trowbridge & Esher, 1980.

JODELET, Denise. *The Psychosocial Processes of Exclusion. In:* SAWAIA, Bader (Org.). The tricks of exclusion. 2. ed. Petrópolis: Vozes, 2001.

LIMA, Helcira Maria Rodrigues de. *In the context of the Criminal Procedure*: the arguments in the Jury Court. Belo Horizonte: Federal University of Minas Gerais, 2006.

LOPES JR., Aury. *Criminal procedural law.* 11. ed. São Paulo: Saraiva, 2014.

LORÊA, Roberto Arriada. *The "lay" jurors: an anthropology of the jury*. Porto Alegre: Federal University of Rio Grande do Sul, 2003. Available at: http://www.lume.ufrgs.br/handle/10183/3730. Accessed on: 13 Jul. 2019.

MENDES, Silvia de Freitas; OYARZABAL, Tatiana Sovek. *The incommunicability between the jurors at the Jury Court and democracy as a communication process.* Justice and Criminal System Magazine, Curitiba, v.1, n.1, p. 193-202, Jul-Dec. 2009.

OKLAHOMA. *Local civil rules*. 17 ago. 2016. Disponível em: https://www.oknd.uscourts.gov/docs/27ac6e56-0243-40c5-8385-71647442fb8b/Local_Civil_Rules.pdf . Acesso em: 13 jul. 2019.

PIMENTEL, Manoel Pedro. *Oratory before the Jury. In:* Revista dos Tribunais, São Paulo, Editora Revista dos Tribunais, n. 628, pp. 281-290, Feb. 1988.

RANGEL, Paulo. *The unconstitutionality of the incommunicability of the ruling board in the Brazilian jury.* Curitiba: Federal University of Paraná, 2005. Available at: http://dspace.c3sl.ufpr.br/dspace/bitstream/handle/1884/2619/paulorangel.pdf. Accessed on: 13 Jul. 2019.

UNITED KINGDOM. *Juries Act 1974. London, 9 jul. 1974.* Available at: http://www.legislation.gov.uk/ukpga/1974/23. Accessed: 13 Jul. 2019.

SCHRITZMEYER, Ana Lúcia Pastore. *Game, ritual and theatre*: an anthropological study of the Jury Tribunal. São Paulo: Terceiro Nome, 2012.

SCHRITZMEYER, Ana Lúcia Pastore. *Jury Court*: Dramatizations of Life through Complex Narrative Games. *In:* BITTAR, Walter Barbosa (Coord.). Criminology in the 21st century. Rio de Janeiro: Lumen Juris, 2007. p. 7-34.

STRECK, Lênio Luiz. What is this - I decide according to my conscience? 4. ed. Porto Alegre: Livraria do Advogado, 2013.

STRECK, Lênio Luiz. *Jury Tribunal:* symbols and rituals. 4. ed. rev. Porto Alegre: Livraria do Advogado, 2001.

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