

Justice in Strife: Argentina's New Jury Trials and the Meaning of Self-Defense

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Abstract Self-defense cases evince a primal scene of political life because they reveal the vulnerability to violence citizens may feel and highlight the power of discretionary judgment by jurors about which killings are excusable and which carry the liability of punishment by the state. This paper includes an account of a self-defense trial in La Plata, Argentina, which the author attended in May of 2024 and an interpretation of the factors, including the framework of “justifiable homicide,” public distrust in the police, and empathy for the defendant, that led to the surprise acquittal.

Keywords Jury trial, Argentina, self-defense, homicide, jurors, distrust

As a scholarly endeavor, interpreting a jury decision is much like reading tea leaves—it is impossible to test and verify one’s conjectures. Still, jury trials function to expose tensions between competing political ideals and analyzing the verdict, and its possible contributing factors, is a way of furthering public discussion of these tensions. In a country that has not previously given such power to citizens, jury trials are arguably even more revealing about how laypeople understand fair outcomes and their responsibility to the law. This paper begins with a firsthand account of a homicide case in La Plata, Argentina in May of 2024, part of the newly established jury trial system that has become the law in twelve of the country’s provinces. The defendant in the trial did not dispute that he had killed the victim, but stated that his actions were consistent with guidelines for “legitimate defense.” The jury was ultimately persuaded by the defendant’s account and came to a Not Guilty verdict. The paper will explore different interpretive frames to make sense of the acquittal, namely: 1) the legal category of “justifiable homicide” that can be interpreted to see excessive force as an *acceptable* response to aggression rather than a basis for sanction; 2) the lack of trust in the police and acceptance of vigilante justice; and 3) competition between the defendant and victim for claims on the jury’s empathy. Rather than positing the verdict as an error in the rational application of the law, I present the trial within the frame of a one-off

event where the constellation of facts, law, and interpretation produce an outcome during jury deliberation that is coherent to the jury and embedded in their shared collective reality. I draw attention to this jury, and juries at large, not because they consistently get it “right,” but because jurors engage in a process of legal and moral inquiry and societal self-reflection that constitute the work of democracy. Moreover, in this paper I understand the meaning of the trial as the result of an agonistic struggle between multiple understandings of justice as jurors seek a coherent interpretation of the events. It is, to use Robert Burns’s incisive description of a trial, a “form of concrete universal where an event and its meaning are transparent to each other.”¹

The many questions that accompany the Not Guilty verdict in this case—its intrinsic messiness—can be a difficult outcome for proponents of democratic institutions and human rights to celebrate. Yet when viewed in the context of democratic innovation, the picture is perhaps more promising. Transferring power from an elite guild of judges to twelve laypeople represents a substantial transformation of how legal authority is manifested and how violations of the law can be resolved within democratic life. The fact that the trial, and the rigorous deliberation that occurred, happened in the context of a country living in the long shadow of dictatorship that is grappling with contemporary problems of inflation, crime, and authoritarianism, further suggests the trial’s value as a countervailing political force.

This project, which combines fieldwork and normative analysis, was inspired by Bernardo Zacka’s methodology in *Life on the Street*, in which he interviews a variety of low-level bureaucrats to find out what they understand discretion to mean in their jobs.² Contra the idea that a bureaucrat’s maximal compliance is the most desirable goal, he argues that discretion is a necessary and sometimes advantageous aspect of an institutional regime because it allows for fair outcomes and increased legitimacy.³ This parallels my understanding of the discretion given to jurors when they are asked to decide questions of fact and of law, in contrast to that given to judges with professional obligations to the letter of the law and legal precedent. I follow Zacka in thinking that discretion is best studied in its applied form, rather than as an abstract concept. To better understand how the discretion of jurors is shaping legal outcomes, I observed two trials over the course of three trips to Argentina in 2023–2024, interviewing over twenty lawyers and judges, as well as two jurors in this case.

In March 2023, Andrés Harfuch, a defense attorney in San Martín district courthouse and a vocal advocate for jury trials in the country, told me that I was one of the first Americans to be present for a jury trial in Argentina. Other American scholars have helped plan implementation of jury trials and written about their potential for strengthening

democratic institutions, but it is only now, with post-pandemic increases in the numbers of jury trials conducted, that scholars can move from being expert advocates to observing trials and analyzing their verdicts.⁴

From the Dirty War to legal experimentation

During the years 1976–1983, the military dictatorship in Argentina waged what was known as the Dirty War, a campaign of disappearances, torture, and death against those allegedly trying to overthrow the state and promote communism.⁵ While ten thousand disappearances have been officially documented, human rights organizations claim that thirty thousand civilians were captured during this period.⁶ The restoration of democracy in 1983 included a truth commission and trials of the military junta for war crimes (though amnesty and pardons were later offered to many) and these trials of military leaders continued through 2006. The establishment of law and accountability for more everyday violations has been rocky, in part because of the perceived corruption of judges and the fact that judges are routinely impeached for their lack of deference to the wishes of the ruling party.⁷

Following mainland European countries, Argentina's legal system has been characterized as inquisitorial, "in which the public is excluded from the proceedings and the resolution of the conflict engages only the violator and the authority."⁸ In an inquisitorial system, the dominant mode of expression and judgment is written, rather than oral, and the judge is the one to lead investigations and question witnesses, all in the service of gathering evidence for the state and determining the truth before issuing the verdict. A hybrid "accusatorial system" emerged in Argentina after reforms in 1992 and existed as an admixture of inquisitorial and adversarial methods where three parties (instead of two) — namely the prosecution, defense, and judge — all engaged in oral arguments during the trial phase. The ultimate decision was still made by the judge via written correspondence.⁹ However, Argentina's 1853 Constitution enshrined the possibility of trial by jury, giving congress the power to establish such trials in the federal courts. While the federal government has never implemented this part of the Constitution, legal experimentation has happened at the state level. Córdoba was the first province to experiment with lay participation in 2005 when it began convening panels of eight laypeople and two judges (with a third judge acting as a tie-breaker) for criminal trials where "each member votes individually for the guilt or innocence of the defendant and each vote is made public in the sentence."¹⁰ Santiago Abel Amietta found that in 85 percent of the Córdoba cases he examined, consensus was achieved among all ten members of the tribunal. While

including laypeople was a democratic intervention in the legal system, it is hard to see the independence of jurors in the Córdoba example: In only one of the ninety-one cases he examined did laypeople determine the verdict *without* votes from the two judges, an unsurprising outcome given that Amietta finds that judges often “attempt to direct the behavior of jurors in myriad ways.”¹¹

In the last decade, elected representatives’ motivations for passing legislation about jury trials at the state level included the opportunity for greater participation of citizens in democratic processes, the perceived corruption of judges, and a sense that existing institutions no longer served the needs of the country, a sentiment that also propelled Javier Milei to the presidency in 2023.¹² Yet, when understood in relation to the Dirty War, jury service takes on additional symbolic meaning as an important path to establishing actual civic engagement with the rule of law within a democratic society.¹³ Reflecting on the potential of the best types of legal institutions, Albert Dzur writes, “The right kinds of criminal justice institutions do not block or dampen public participation; they incorporate it so that ordinary citizens are brought face-to-face with hard questions and real suffering human beings, so that they share responsibility for the outcome, whatever it is.”¹⁴ The transfer of responsibility from judges to juries for legal verdicts marks a new type of enfranchisement where Argentinian citizens are finally able to determine for themselves how and when punishment is warranted.

Córdoba’s mixed tribunals did not become the preferred reform in other provinces. Rather, as of 2025, thirteen Argentinian provinces’ state legislatures have passed laws implementing *entirely* lay juries for the most serious criminal cases, defined as those carrying penalties of more than fifteen years in prison.¹⁵ The vigorous advocacy and leadership of the INECIP (*Instituto de Estudios Comparados en Ciencias Penales y Sociales*) and the AAJJ (*Asociación Argentina de Juicio por Jurados*) have helped expand the number of states that have made the legislative changes required to implement jury trials, and are currently pushing to expand jury trials for less serious criminal cases and civil matters.¹⁶

While details may vary across provinces, the guidelines for jury service in Argentina are as follows: Each juror in a criminal case must be between twenty-one and seventy-five years old, meet the language requirement, and be mentally and physically competent to serve.¹⁷ To fulfill the ideal of gender representation, there must be six women and six men on the jury with gender parity also represented among the six alternates. These guidelines were designed explicitly to avoid the problems of skewed gender and Indigenous representation common in the United States, making it a case study of great interest to scholars interested in juries.¹⁸

Justice in strife

The theoretical framework of this paper is sees each jury trial as a microcosm of the legal and moral decision-making that citizens must take on in a democracy. While liberalism upholds the conceptual architecture of rule of law as paramount, jury service for laypeople provides an opportunity to directly engage with the law and its implementation. Thinking of the trial as a concrete universal where “an event and its meaning are transparent” brings to the fore its existence as 1) an iterative process requiring a dialectical exchange between the ideals enshrined in the law, its different meanings, and the disputed facts in the case before jurors can reach a verdict, and 2) a psychological process whereby jurors must take responsibility for their collective decision and its meaning. This happens first internally as they analyze the evidence and persuade others to support one conclusion or another, but jurors must later feel confident about the verdict they submit before the judge and courtroom. The public may fault them for their decision, yet the jurors who contributed to the verdict must understand why it represents the most just outcome of the case. They must also live with the decision in the future, knowing, as they did in this case, that the defendant will return to his working and family life, and the victim’s family will likely feel that his death was not adequately recognized by the state.

The strife evoked in the title has many referents, starting with the adversarial volley of narratives presented by the defense and the prosecution as well as the competing testimony of witnesses. The trial also includes the cognitive strife that occurs when any universal concept is meant to capture details that fail to fit neatly into its boundaries. Grappling with the uneasiness of fit between the universal categories of law (e.g., justifiable homicide) and the particularities of the case is a necessary aspect of self-governance and the ethical assessment it requires. There may also be strife among the jurors themselves, who bring a variety of life experiences to the jury room, and whose views on the verdict may clash. In the case I observed, jury room conflict was evident as some jurors left the courthouse in an agitated state, rushing down the hallway while avoiding eye contact with any bystanders.

Yet, what the jurors achieved was an accomplishment of self-governance. Although many aspects of the jury trial are far removed from the scale of democratic life—like the focus on only one case at a time, the fact that the jurors must find some way to communicate with each other and come to a verdict parallels the mandate for citizens in a democracy to engage with the pressing issues of the day, despite their complexity. While opting out is not possible, neither is retreating into ideological abstractions divorced from the case before them. Even when the outcome of the verdict can be seen as an ossification of the

conflict, as in a hung jury, jurors' discussions still required a process of back-and-forth about the evidence, its meaning, and what the law requires for conviction. As a place for *bounded* strife, juries are further significant to democratic life as a place for challenging and debating specific norms and outcomes while still respecting the institutions (e.g., the legal system) that structure collective life. Presumed consensus on social and legal issues can breed public mistrust and resentment, but through the institution of the jury, each juror has the power to shape the debate and impact the final verdict. Consensus in juries must be hard-earned.

On justifiable homicide

Argentina's penal code defines "legitimate defense" or "justifiable homicide" in the following way: "Someone acts in self-defense if she defends herself or her rights provided that: 1) the aggression is illegitimate; 2) it has not been provoked by she who is defending herself; and 3) the means employed for repelling or stopping the aggression is a 'rational' one."¹⁹ On the meaning of rationality, the jury was charged as follows: "The act of defense is considered rational when the danger or harm caused is not manifestly disproportionate to the danger that the defense sought to prevent."²⁰ If the claim of legitimate defense fails, the Argentine criminal code recommends eight to twenty-five years in prison for those convicted of homicide, with life imprisonment as the recommended sentence for "aggravated homicide." There is no data currently available on conviction rates in either cases decided by judges or those decided by jury.

In 2021, Martina Lasalle analyzed four cases in Buenos Aires where the defendant claimed "legitimate defense," whose verdicts were determined by judges in three cases and a jury in one.²¹ She found that understandings of what was considered a "rational" or proportional response to aggression depended, in part, on the identities of the relevant parties. For example, because of the heightened expectations on parents to take care of their children, a son who retaliated against his father's aggression was found to be not culpable for homicide.²² In addition, Lassalle found that while attacks on private property were not supposed to be equivalent in the law to attacks on persons as the basis for legitimate defense, the significance of property as a basis for violence is increasing.

The trial of Claudio Aquino

On May 29, 2024, I arrived at the courthouse in La Plata, a city of nearly 800,000 people located 60km from Buenos Aires. That blustery

morning, the waiting room of the courthouse was filled with families. Every so often an individual would walk in, stopping at the front desk to show their summons and a form of identification. The clerk then took their identification card and cell phone, gave them a necklace with a number placard, and directed them to a room reserved for jurors. This was the beginning of jury duty, a civic obligation that only became law in recent years. Soon the judge and lawyers arrive, and the process of *voir dire* begins. The judge sits at an ornate wooden dais with a maroon curtain and crucifix behind her. The forty-eight members of the jury pool are asked to raise their hands in response to questions about their familiarity with the parties, the case, law enforcement, legal training, etc. The judge and lawyers only know them by the numbers on their shirts. If anything could prevent a juror from serving, such as a medical condition, the juror was encouraged to raise their hand to speak with the judge privately. Next, the judge ruled which jurors should be removed for cause, and the prosecution and defense each had four peremptory challenges to use to excuse jurors they did not think would be favorable to their position. The court clerk then read out the numbers of the jurors that were to go sit in the jury box. The atmosphere in the room for the final jury selection was one of anticipation; some dismissed jurors looked disappointed to leave, while others were relieved. All twelve jurors and six alternates receive a daily stipend equal to approximately US\$50.

Shortly thereafter, the prosecution gave their opening statement, setting the scene for the crime that happened in April 2020, at the height of the pandemic. The homicide took place in San Lorenzo, a neighborhood on the outskirts of La Plata marked by unpaved roads and lack of reliable access to household gas, where neighbors had gathered outdoors for a celebratory pig roast. One of the residents, Nestor Aquino (age 30), was drunk and belligerent, waving a stick around and repeatedly threatening to steal the van of another resident, Celso Aquino (no relation). Celso then called his brother, Claudio Aquino (the defendant, age 28) for help. Claudio and his wife quickly got into their car and drove the three or four blocks to the gathering. What happened next would make up the bulk of the legal dispute.

According to Celso's testimony, Nestor, now wielding a machete (in addition to the stick), began threatening to stab Claudio as soon as he arrived on the scene. Claudio then grabbed his hunting rifle from the back of his car, stepped outside, and fired multiple shots at Nestor. According to the autopsy report, Nestor died from a gunshot wound to his side shortly thereafter. The prosecution contended that while Nestor was drunk and had a stick, there was no knife, so the defendant's account of deadly threat was exaggerated. Moreover, the prosecution claimed that the defendant had no reason to escalate the conflict

by using his .22 caliber rifle because the van had not been stolen and the threat had dissipated. Both the prosecution and defense had three witnesses each to corroborate their accounts, although inconsistencies abounded about the order of events and the distance between Claudio and Nestor when the shots were fired. Other than the autopsy report, there was no physical evidence (no rifle, no stick, no photos from the scene) and it was difficult for the jury to get a clear pattern of facts from the arguments presented.

The most emotional testimony came from Maria Machado, the wife of the defendant and mother to their two children (eight and nine years old). She spoke about being at home with her children and their grandmother when her husband received a phone call from his brother. She accompanied him, not realizing there was a hunting rifle in the car's back seat. She said that she did not witness the shooting, using the rest of her time on the witness stand to describe their domestic life since that fateful day. Machado said that her husband used to work in construction but has been under house arrest since 2020 when the incident happened. Crying, she spoke of the financial and emotional stress because of the phone call "that ruined [her] life." When the defense rested its case, I did not think it looked particularly promising for Claudio Aquino. He had declined to testify, and called no character witnesses to attest to his decency and self-discipline, practices effective at evoking compassion for the defendant in the jurors and myself, as I had observed in other cases. In addition, Claudio brought a gun to a knife fight, which appeared to conflict with the proportionate use of violence as a requirement for legitimate self-defense. My translator and I predicted a quick Guilty verdict.

The judge explained that the defendant was charged with "homicide in excess of self-defense," and the jury must determine whether the defendant met the criteria for legitimate defense, including the provisions that the threat to the defendant was ongoing at the time of the response, that the defendant did not initially provoke the victim, and that the reaction was proportional to the threat. Then we all stood as the jury filed into the deliberation room.

In the province of Buenos Aires, unanimity is not necessary for the verdict, rather ten of the twelve jurors must vote Guilty for a guilty verdict and eight or fewer votes for guilt results in a Not guilty verdict (some other provinces require unanimity). In contrast, a split of ten Guilty to two Not Guilty votes in an American courtroom would result in a hung jury.²³ In this jurisdiction, it is solely when nine jurors vote guilty and three vote not guilty that the jury is considered gridlocked (*estancado*) resulting in a mistrial. Instead of a quick Guilty verdict, after a prolonged and seemingly anguished period of jury deliberation which nearly resulted in a hung jury, the judge announced an acquittal

early that evening. Ultimately, eight voted Guilty and four Not Guilty, thus the threshold for conviction of ten Guilty votes was not met.

My translator and I waited in the hallway for the jurors to be dismissed hoping we might talk to them or gather contact information for a future meeting. Two jurors were willing to speak with us, including the foreperson, but several jurors quickly walked past us, visibly distressed, and eager to leave the courthouse as soon as possible. We heard later that one of the jurors was afraid to encounter the victim's relatives as she left the area and asked to be escorted by another juror or member of the court staff.

The foreperson speaks

When we approached jurors to interview them, we said we would not ask how they had voted or anything that would violate the confidentiality of the process; rather we wanted to hear about their experiences more broadly.²⁴ The foreman of the jury, a neatly dressed, soft-spoken engineer in his fifties, agreed to our request. He told us that he thought he was nominated to be the foreperson by his fellow jurors precisely because he had been very quiet at the beginning of the discussions and had not volunteered his opinion about the case, though he was inclined towards Not Guilty from early on in the process. The foreperson was familiar with the neighborhood of San Lorenzo, an impoverished area that housed many Paraguayans working in construction, as did Claudio himself. Ultimately, the foreperson thought that the threat to Claudio's life was plausible and that the police could not be counted on to help in these types of situations. Moreover, he noted that during the 2020 pandemic lockdown, the police were reluctant to show up at any social gatherings, particularly those in a rough neighborhood like that one. In response to a question about whether impartiality was a difficult standard for him to follow, the foreperson confidently said that it was not difficult for him because he was able to see the facts for what they were, and did not fall into the trap of "imagining what you would do in the situation" that other jurors did. I took this to mean that others talked about how they might have retreated or used a different tactic, while the foreperson saw reasonableness in Claudio's actions, even if he would not have done the same. The foreperson did not seem to see the verdict as a way to settle scores with the police or the government; he was concerned with the particular details of this case and the law. He seemed to have a paternalistic sympathy for the defendant's predicament, but not one that overwhelmed his ability to appreciate the facts of the case. He exuded a sense of calm about the verdict and some pride at being the one to consolidate the votes necessary for an acquittal when many jurors felt frustrated that they would not be able to reach a verdict.

The second juror

I was able to speak with another juror, a woman in her twenties. She was initially unfamiliar with the jury process in Argentina, saying, "I had no idea that you entered the draw from a certain age, but it was good. Because the truth is, that if you had no idea how a trial worked, we learned a lot . . . it was a good experience, just very time-consuming." As she was committed to being a fair and impartial juror, she participated earnestly in the deliberation process, really trying to understand the evidence:

Being impartial means trying to be as objective as possible, trying not to be influenced by your emotions and without having any favoritism for one side or the other. But honestly, I feel it's difficult, especially if it's the first time you're serving as a juror. Yes, it's complicated. I tried to be as objective as possible, but I changed my mind about the verdict many times.

She was also acutely aware that a slightly different group (perhaps with a foreperson more inclined to Guilty) could have reached a different outcome. In contrast to the foreperson, this juror was ambivalent about the acquittal, perhaps appreciating more acutely the tragic choice that the jurors faced between being persuaded by Claudio's fear of theft and assault but also believing that Nestor should not have been shot to preserve the peace. Julian Extabe has described the process of good judgment as requiring attention to "multiple shifts and engagements with the characters and their worldviews," including the impasses that arise.²⁵ The judgment that arises from such a deliberative process can be tragic, in Extabe's view, if the values and worldviews of the various characters are incommensurable and a decision must nonetheless be made. The juror we spoke with seemed to have experienced this incommensurability in her reflections on the case.

She was confused about the decision rules for the verdict, saying, "The verdict was given with eight jurors against four, and many asked why the final verdict was based on the minority opinion." The combination of the contingency of who was on the jury, coupled with the requirements for determining guilt gave her pause about the effectiveness of jury trials to produce similar outcomes for similar crimes. If the foreperson took pride in his leadership through the deliberations, this juror was proud of the work she had done paying attention during the trial and deliberating thoughtfully about the evidence afterward.

The fact that the judge in the case, along with three of her clerks, all felt that the verdict was wrong — one even said that, "Argentina might not be ready for jury trials" — raises the question of how frequently judges and juries disagree, and under what circumstances. While

data about this in Argentina does not yet exist, in their seminal 1966 study of over three thousand jury cases in the US, Harry Kalven and Hans Zeisel found that judges would have arrived at the same verdict as juries in almost 80 percent of cases.²⁶ In those where the verdicts differed, juries were more likely to acquit, but the judges often agreed with the acquittals, even if they did not think the law permitted them to decide in that way. These findings lead Kalven and Zeisel to see the divergence of jury decisions from judge-based ones not as “errors” and reasons for concern, but as useful counterweights to the norms governing judicial decisions, and as a means of injecting leniency and mercy into the legal system. Kalven and Zeisel argue that when the evidence is close, juries feel “liberated” to allow sentiment and values to sway their decision.²⁷ In such acquittals, jurors do not see themselves as disregarding evidence (and participating in the controversial power of jury nullification), but deciding in accordance with law, while also including their perceptions about what a just outcome means, an addition that is arguably one of the reasons for having lay jurors in the first place.²⁸ The foreperson seemed to understand the verdict as both according with the law and rendering the fairest outcome, an opinion the second juror was willing to endorse. They did not see themselves as offering Claudio exceptional mercy, an act outside what the law expected of them. Yet, the fact that eight other jurors thought Claudio Aquino failed to meet the standard for legitimate defense demonstrates how close the evidence was in the case and how it only *narrowly* ended up as an example of the small number of cases where the judge and jury diverge.

From excusable to justifiable homicide

While juries have historically been important in deciding when a homicide should be considered self-defense and should thereby carry a lesser punishment or none at all, the conditions for such a defense have changed in dramatic ways. Understanding the evolution of the concept of “justifiable homicide” might best explain the logic of the Claudio Aquino verdict. From the twelfth century, Susan Liebell notes, juries in England found “*se defendendo*” [done in self-defense] homicides to be murders, but, under certain circumstances, the slayer was excused from punishment by the sovereign.²⁹ This conception of *excusable homicide* had a number of stipulations, including that the killing could not be punitive, preemptive, or retaliatory. The governing assumption was that when one was faced with a threat, the best course of action was to remove oneself from the situation so as not to be injured, nor injure the other person or bystanders. Edward Coke’s (1644) writing on self-defense laws at the time clarify this position:

Excusable homicide rested on two complementary assumptions: 1) humans have an interest in self-preservation such that few will martyr themselves in a "kill or be killed" situation, especially given that the English common law does not require such a sacrifice, and 2) killing another person is a last resort in the absence of state protection. To be excused from punishment, a slayer must have retreated to a wall or a ditch and resorted to killing only when he had no further options.³⁰

Liebell also recounts that those pardons by the bench or the jury based on excusable homicide implied a type of mercy toward the defendant amidst an undesirable outcome.³¹

The sense of mutual preservation and the responsibility to retreat are later lost in the move to a more capacious category of self-defense called *justifiable homicide*. The framework for justifiable homicide finds theoretical grounding in John Locke's *Second Treatise of Government* and gave rise to what is known at the "Castle doctrine" in the United States, the precursor to the "Stand Your Ground" laws authorizing the use of force for the purpose of self-defense in places beyond one's home. In the sixteenth century, "justifiable homicide removed the requirement of retreat and reduced the threshold of threat: the danger must be 'reasonably' believed by the slayer to be real (rather than an actual threat). After a full acquittal, the 'justified killer' was absolved of fault."³² Full acquittal also erased the responsibility to forfeit goods to the state or to the victim's family, as was the case with excusable homicide. While acquittal by jury based on excusable homicide implied jurors' acceptance that the defendant lived in a state governed by law and formal legal intervention was preferable after a violation, acquittal on the basis of justifiable homicide evokes fears of a rapid descent into a war of all against all, where the protections of the law become distant and unreliable. Under the aegis of justifiable homicide, individuals must make their own subjective assessments of threat because collectively agreed-upon norms of behavior cannot be enforced. In contrast to aspirations for a safe society where all lives should be valued, even amidst conflict (as present in "excusable homicide"), the social vision captured in justifiable homicide celebrates the heroism of violent confrontation. Rather than naming retreat as the best option, the legal guidelines for justifiable homicide offer a type of unspoken promise to those engaged in vigilantism: that their use of excessive force in the name of self-defense will likely be overlooked.

The cynicism the judge's clerk felt about the appropriateness of trial by jury for Argentine citizens might have been better directed toward a critique of the law of justifiable homicide *itself*. While the legal conditions articulated by the judge for legitimate defense were meant to encourage the jury's analysis of whether or not the violence

done in self-defense was necessary, the overarching spirit of justifiable homicide as a legal concept is that of defiance and aggression toward violations of person and property. Firstly, without a duty to retreat, the concept of self-defense supported by the law ends up emphasizing the subjective assessment of threat made by the person who was originally provoked. Removing the necessity to retreat also removes from the agent as a moral issue the necessity of considering the value of the other person's life while protecting their own. H.L.A Hart writes, "In the case of 'justification' what is done is regarded as something which the law does not condemn or even welcomes."³³ Secondly, without an emphasis in the legal code about what the standard of proportional response should be, there is the danger that any action will be permitted in response to a threat to the body or property. That is to say, death will come to be seen as a legally justifiable response not only to property theft, but even its dissipated threat, as it appeared in Claudio Aquino's case.

To trust that the trial achieved what Burns described as transparency between the meaning of theory and event is to trust that the jurors in this case grappled with the different interpretations of what happened and considered what that law required for a Not Guilty verdict. The verdict suggested that they were convinced that the killing was done in self-defense: not in the abstracted form of self-defense that lawyers and legal theorists would like to see, but rather what self-defense looks like in the haze of drunkenness and threats during a pandemic lockdown. I am reminded of a remark by patriarch Logan Roy of *Succession*, the much-celebrated TV show: "Life's not knights on horseback . . . It's a fight for a knife in the mud."³⁴ Like Roy, the jurors in this case did not fixate on the most noble form or restrained form of self-defense, but rather took to heart the volatility and gravity of the situation—the proverbial fight for the knife in the mud—as the existential core of the event to be adjudicated. Immersed in that reality, four jurors were persuaded that Claudio acted in self-defense.

The trial of the butcher

The case I observed in 2024 has resonances with the 2018 high-profile jury trial of Daniel Oyarzún, a butcher in the city of Zarate, in the province of Buenos Aires. The ordeal began when Oyarzún's shop was robbed by two armed men who then raced off on motorcycles.³⁵ Oyarzún jumped in his car to pursue the thieves, who engaged by shooting at him from their motorcycles. When one of the thieves, Brian González, fell off his motorcycle, Oyarzún proceeded to drive over him, get out of the car, and beat him with a stick. González died several hours later. Oyarzún was charged with manslaughter and pleaded "legitimate

defense” in the killing of González. After his arrest, supporters took to the streets advocating for his release. Garnering national attention, the jury trial lasted four days and resulted in Oyarzún’s acquittal. An article on the website of the AAJJ, a jury-focused legal organization, contains a collection of reactions to the verdict. For example, Carolina Píparo, a representative for the province of Buenos Aires, emphasized that the butcher “did not get up with the intention of killing anyone and the jury understood it that way. Common sense prevailed. Justice was served.” At the same time, Domingo Rondina, a lawyer specializing in human rights law, said, “I don’t like this verdict at all, but the jurors who participated in the case have the same ability as a judge to find the facts after a real deliberation. On the other hand, this case does not differ in any way from certain terrible verdicts of bench judges.”³⁶

These two cases suggest that widespread public support for defendants in self-defense cases may evince an emerging fusion between acquittals and the perceived legal value of a jury. There is an implicit understanding that judges may have decided the case differently, though not necessarily (as the human rights lawyer notes), but that the people should rightly prevail when they are persuaded that an act was done in self-defense, even if others might disagree. From this perspective, the jury system is valuable because it allows the people—who have become increasingly vulnerable to the fear of crime in their lives—to decide the fate of the victim-turned-offender in these types of cases. This, of course, is not the only value of a jury to democratic life. Other tasks, such as safeguarding the rights of all members of the community, must perhaps be sacrificed to achieve these acquittals, an issue not addressed by the jurors we spoke with.³⁷

Distrust of the police and law enforcement

Another interpretive frame for understanding the acquittal lies in public perceptions of the police and the legal system. Notably, the police role in Claudio Aquino’s trial was marked more by their absence than their presence, supporting broader public perceptions of their inefficacy in Argentina. In data gathered from 2004 to 2023, the Americas Barometer survey posed the following question to eleven thousand Argentines: “If you were the victim of a crime, how much faith would you have that the justice system would punish the guilty?” Thirty-six percent of respondents answered, “No Faith,” while 33 percent answered “A little faith.”³⁸ The survey also found that 27 percent of Argentinian respondents said they had been victims of a crime. Lucía Dammart has argued that the language of the fear of crime expressed in Latin America is “the most visible aspect of a more diffuse apprehension characterized by being afraid of losing one’s individual identity, social

roots, and collective being.”³⁹ In her writing on post-dictatorship policing and security, Yanilda María González chronicles an uptick in vigilantism during that era that seems consistent with the killing of Nestor Aquino. She writes that “citizens ‘taking the law into their own hands’ also became an increasingly common phenomenon throughout the 1990s, with one prominent newspaper going so far as to declare ‘a virtual war of all against all.’”⁴⁰ Additionally, she describes the practice of *recaudación* where police officers extract fees from both legal and illegal economic transactions, using this money to fund their own operations or support political candidates.⁴¹ Given such police corruption, serving on a jury presents an unusual opportunity for laypeople to directly confront their fear of crime as well as their lack of confidence that crimes will be adjudicated through formal channels. Self-defense cases thus act as a way for jurors to exercise discretion on a legal issue deeply intertwined with their perceptions of police effectiveness.

In Argentina, public distrust of the police is still shaped by their role as abductors and torturers during the military dictatorship (1976–1983). While the process of democratization has redefined their role as protectors of the Constitution and human rights, Guillermina Seri has found that the repeated occurrences of arbitrary deaths and detentions connect contemporary policing with the earlier era.⁴² More broadly, Seri finds that police define criminality by making distinctions between the citizens in their charge, separating people worthy of protection — *la gente* (the people) — from those who are seen as threats — *delinquentes* (criminals). Her description of which citizens police think fit the criminal profile hews closely to the victim and defendant in the case I observed: “poor, male, young, guilt determined by clothes, skin color, location.”⁴³ If police officers are highly attuned to these markers of perceived delinquency, perhaps some jurors also were in ways they might not have admitted to or discussed explicitly during deliberation. For some jurors, a sense of injustice may have seemed evident in the unfortunate lack of government protection for this neighborhood, along with a fatalistic assessment that justice for those on the margins of society will always look different from justice in other communities.

During the trial, no police officers testified about evidence in the case. This contrasts with trials in the US, where officers almost always testify while wearing their uniform as a powerful display of authority, and jurors have been known to defer to their testimony.⁴⁴ The fact that police officers were not part of the trial at all speaks to how the events seemed to have unfolded in a society without police, and this was the society recreated for the jury in the courtroom. Based on my interview, the foreperson lacked confidence that the police would have responded to a call reporting threats at a social event, particularly during the pandemic. His lack of confidence in the state’s capacity to maintain a

monopoly on the use of violence in the neighborhood was the backdrop against which he made all findings about the facts. Thus, it is the *interaction* of the first two factors in my analysis – the language of justifiable homicide and distrust in the police – that may best explain the verdict. The framing of justifiable homicide invites jurors to allow the defendant's subjective assessments of danger to predominate, while the jury's lack of trust in the police gave further credence to this assessment of fear and a *carte blanche* to retaliate.

Jurors and empathy for the defendant

Intertwined with jurors' perception of certain crime victims as less worthy of empathy is the sense that certain offenders are more deserving of it. Judging the actions of the defendant in self-defense cases requires jurors to understand the circumstances causing the conditions of the defendant's vulnerability, while remaining cognizant of the other life that was lost. Sharon Krause has posited that forming empathy, which she defines as the "affective-cognitive communication of sentiments between persons that transpires through perspective-taking," is a critical task for jurors and aides in the process of good judgment.⁴⁵ In the case of self-defense cases, empathy must exist with *both* the victim and the defendant to an even more intense degree than in other legal trials. She writes that a juror's openness to compassion toward defendants and witnesses is desirable because it "may enable the decisionmaker to see other 'right' answers, or a continuum of answers. Or it may simply make the decisionmaker aware that what once seemed like no choice or a clear choice is instead a tragic one."⁴⁶ In Krause's mind, empathy for the defendant claiming self-defense would not automatically lead to acquittal, and a conviction should be seen as one of the "tragic" outcomes that jurors must consider. Yet, self-defense cases may also involve another type of tragic outcome, one understood by the juror I spoke with – that is, when the public can easily see a defendant's acquittal as disregard for the loss of life.

Although neither of the jurors I spoke with mentioned their empathy for the defendant explicitly, they seemed amenable to being persuaded by his narrative of the events and less sympathetic to the victim, who was repeatedly characterized as drunk and hostile. The victim came from the same socio-economic class as Claudio Aquino: Both were working class and ethnically Paraguayan, a minority group in the province. During the trial and in subsequent conversations with lawyers and judges, it was difficult for me as an outsider to see what identity prejudices, including those of class, ethnicity, and skin color, may have been at work in the case. While the Not Guilty verdict was arguably in tension with the guidelines for "legitimate defense,"

it fulfilled part of the jurors' mandate to be appropriately wary of overreach by the state. Sherman Clark writes that the presumption of innocence foundational to the adversarial trial fosters a number of important sentiments in the juror, including "the capacity to see others as fundamentally like ourselves, and in particular to see this kinship in those whose circumstances and conduct are very different from our own."⁴⁷ The foreperson's support of a Not Guilty verdict seemed based partly on his experiences of the defendant's neighborhood and partly on the witnesses' accounts of a drunk and belligerent neighbor; he may have thought many would have acted in the way the defendant did, and that the law would support them. To punish the defendant beyond the house arrest he had already experienced would be too harsh. While the foreperson did not describe his perspective as an outpouring of sympathy for Claudio, the fact that he was convinced that the defendant's narrative met the legal standards for legitimate defense (i.e., ongoing threat and proportional violence) suggests that he afforded the defendant a high level of credibility, which is itself a type of sympathetic fellow feeling.

The meaning of the verdict

The factors leading to Claudio Aquino's acquittal, against the backdrop of Daniel Oyarzún's trial, make salient how much public support there can be for the victim-turned-defendant whose property was threatened, even when they end up causing the death of the offender. To an outsider, such reasoning may seem unprincipled and haphazard. Yet, the jurors' debate in the deliberation room is consistent with the agonistic struggle in societies governed by the rule of law between the legitimacy of a citizen's self-defense and the state's need to punish those who take the law into their own hands. This clash of values should be adjudicated not only by judges, but citizens should also be asked to grapple with the tradeoffs inherent in coming to a verdict. As anthropologist Clifford Geertz famously wrote, "Whatever it is the law is after, it is not the whole story."⁴⁸ In the case of Claudio Aquino, the jury perhaps recognized important parts of the story that neither the judge nor observers like me could identify, but which were relevant to understanding the context of the crime.

Scholars have long argued that a jury decision emerges from the gestalt of the trial and the deliberations afterward when logic, narrative, and the law's specifications come together in ways persuasive to the jurors.⁴⁹ The time jurors spend together and the subtle ways that trust develops between them shape the salient aspects of the case leading to the verdict. In opposition to those who think that the quintessential legal decision is one where the jury must decide on a

complicated set of facts, but always maintains a clear sense of what the law entails, Roberts Burns argues for the importance of complicated and legally messy decisions where not only the facts but also the law, and its meaning, are contested. The closing arguments I observed at the trial, where the prosecutor emphasized that Nestor had been unjustly killed while attending a raucous barbecue, and the defense attorney highlighted how scared Claudio was that Nestor would kill him, evinced an agonistic spirit of contestation very different from what would have occurred in the previous inquisitorial system, where a judge undertook the inquiry predominantly in writing. Everyone in the courtroom that day, including the jury and members of the public audience, felt the clash of the two accounts and how much they relied on perceptions of the characters involved. Both sides felt aggrieved and pushed to an emotional limit. As Burns writes,

[T]he constitutive rules of the trial put those agonistic virtues at the service of a justice that is strife by creating a fair contest between or among real values where the appropriate balance or tension can only be fought out. . . . A legal system where decisions flow easily from the "sort" of situation it is, because of relatively generalized and abstract features of situations, is a system where there will be relatively little internal strife and correspondingly little justice.⁵⁰

The "real values" Burns mentions as applied to this case are 1) the value of the legal mandate not to kill, and 2) the long-standing exception to this mandate in the case of self-defense. The justice emerging from a particular verdict comes from the strife of the adversarial trial and, in cases like this, the genuine disagreement that occurred during the deliberations that nearly resulted in a hung jury. That the four jurors who voted Not Guilty ultimately ruled the day does not mean that the other set of values and arguments was completely forgotten by the jurors or the public. Those arguments and evidence were part of the jury's accounting of the meaning of crime and the aspirations of the law.

This instance of meaning-making by the people benefits democratic life, even if it causes concern about, for example, the acceptance of vigilante justice, violent retribution, and the use of guns to settle interpersonal disputes. The hope is that the verdict's publicity will lead to conversations about these issues in families, the media, and public life, all of which make up the substance of a democratic society's culture of law and punishment. The distress I observed on the faces of jurors as they rushed by me on their way out of the courthouse (several of whom favored a guilty verdict) may indicate that the questions of this trial caused them agitation, anger, or some other reaction. The case might come up in conversation with friends and family, or

become a catalyst for political engagement. Later, these jurors may find themselves more sympathetic to another interpretation of the events as their own life experiences change or they learn more about a particular issue. Critics of the verdict—and I count myself among them—could still bemoan the jury’s decision and the missed opportunity for the state to hold an offender accountable, yet we add to these losses if we remain willfully blind to what the verdict might mean to the jurors who supported it.

Still, the verdict is what Burns calls a “real-time interpretation of human action,” part of the synthesis between a concrete event and universal concepts of justice forged through a trial, which allows society to create an image of itself at a particular moment.⁵¹ Burns continues, “What it was that occurred, what story we accept about it, defines us insofar as that was something which happened to us, and we further define ourselves in the judgment we enter about it.”⁵² In this trial, we see a coherent picture of the event and its meaning to the jury and thus a potent commentary on the fears animating life in La Plata in 2024.

To examine and appreciate the act of meaning-making that occurred with the acquittal does not equate to celebrating it. One can critique the verdict on many dimensions, including those that see the possibility of a different pairing of event and meaning that could have emphasized the value of a defendant’s restraint from lethal violence even in the face of a serious threat. Yet, the uncertainty of the outcome and the possibility of a verdict going against legal experts’ idea of what the law requires is part of what makes the jury such an important political institution. Citizens must be co-creators in the meaning of justice and then live with the outcomes. The Not Guilty verdict belies a tension that is at the crux of our collective understandings of violence, the law, and punishment and can never be fully resolved. It is meaningful that it was not only professional judges and lawyers who had to reckon with these ongoing questions as they appeared in the case. Now, ordinary Argentinian citizens, many of whom never thought that they would have the responsibility of adjudicating such a case, were asked to decide the defendant’s future liberty. This deepens the democratic project in the respect it affords to citizens and their presumed competence.

Claudio Aquino’s acquittal for the killing of Nestor Aquino, the neighbor who threatened to steal his brother’s truck, came as a surprise to me, my translator, the judge, and her clerks. None of us felt the defense had met the standard required for a “legitimate defense,” which required the threat to the defendant be ongoing, and the response to the threat to be proportional. Still, through examining a number of the factors that may have led to the verdict including 1) the

spirit of “justifiable homicide” that understands proportional reaction to aggression in a capacious way, 2) the lack of trust in the police and the acceptance of vigilantism, and 3) an outpouring of empathy for the defendant’s predicament, I have provided a possible account of how the jury made sense of the case for themselves, and revealed their self-conception as people highly attuned to the threats of violence and burglary that punctuate their existence.

NOTES

1. Robert Burns, *A Theory of the Trial* (Princeton University Press, 1999), 5.
2. Bernardo Zacka, *When the State Meets the Street: Public Service and Moral Agency* (Harvard University Press, 2018).
3. Zacka, *When the State Meets the Street*, 200.
4. Valerie P. Hans, “Trial by Jury: Story of a Legal Transplant,” *Law & Society Review* 51, no. 3 (2017); Denise C. Bakrokar Vanina G. Almeida, Mariana Bilinski, Natali D. Chizik, Andrés Harfuch, Lilián Andrea Ortiz, Maria Sidonie Porterie, Aldana Romano, and Shari Seidman Diamond, “The Rise of the Jury in Argentina: Evolution in Real Time,” in *Juries, Lay Judges, and Mixed Courts: A Global Perspective*, ed. Sanja Kutnjak Ivković et al. (Cambridge University Press, 2021); Caitlyn Scherr, “Chasing Democracy: The Development and Acceptance of Jury Trials in Argentina,” *University of Miami Inter-American Law Review* 47 (2016).
5. Antonius C.G.M. Robben, “From Dirty War to Genocide: Argentina’s Resistance to National Reconciliation,” *Memory Studies* 5, no. 3 (2017).
6. Robben, “From Dirty War to Genocide.”
7. Gretchen Helmke, “Enduring Uncertainty: Court-Executive Relations in Argentina During the 1990s and Beyond,” in *Argentine Democracy: The Politics of Institutional Weakness*, ed. Steven and María Victoria Murillo. Levitsky (Penn State University Press, 2005), 141.
8. Edmundo S. Hendler, “Social Integration and Lay Participation: The Situation in Argentina,” *Revue internationale de droit pénal* 72, no. 1 (2001): 1.
9. Hendler, “Social Integration and Lay Participation,” 4.
10. Santiago Abel Amietta, “Governance in Córdoba’s Mixed Tribunal: A Study on Microphysics of Power,” *Oñati Socio-Legal Series* 1, no. 1 (2011): 3.
11. Amietta, “Governance in Córdoba’s Mixed Tribunal,” 15.
12. Jon Lee Anderson, “Javier Milei Wages War on Argentina’s Government,” *New Yorker*, Dec 2, 2024.
13. Amietta also reports on a “representativity crisis” where elected channels have fallen short. Santiago Abel Amietta and Leticia Barrera, “‘It’s in the law’: An ethnographic account of the effects of the introduction of lay participation on judicial bureaucracies in Greater Buenos Aires,” *Oñati Socio-Legal Series* 13, no. 1 (2023): 202.
14. Albert Dzur, *Punishment, Participatory Democracy, and the Jury* (Oxford University Press, 2012), 243.

15. <https://inecip.org/areas-de-trabajo/juicio-por-jurados/>.
16. <https://www.juicioporjurados.org/>.
17. Scherr, "Chasing Democracy," 318.
18. Hans, "Trial by Jury: Story of a Legal Transplant."
19. Martina Lassalle, "Non-Criminal Murders: A Sociological Essay about the use of Self-Defence in Argentina," *Oñati Socio-Legal Series* 11, no. 6 (2021): 1.
20. Translation of the jury charge provided by the court, La Plata, Argentina, May 2025.
21. Lassalle, "Non-Criminal Murders: A Sociological Essay," 3.
22. The racial identity of the victim is very influential for outcomes of self-defense claims in the US. A study by the *Marshall Project* of over 400,000 cases in the US that involved a claim of self-defense found that less than two percent of homicides were deemed justifiable by prosecutors, but "approximately seventeen percent of these cases are categorized as justifiable when the killer is a non-Hispanic white person and the victim is a Black man." Daniel Lathrop and Anna Flag, "Killings of Black Men by Whites are Far More Likely to be Ruled 'Justifiable,'" *The Marshall Project* (2017).
23. Rebecca K. Helm, *How Juries Work: And How They Could Work Better* (Oxford University Press, 2024).
24. Based on notes from author interviews with jurors, May 29 and May 30, 2025.
25. Julen Etxabe, *The Experience of Tragic Judgment* (Routledge, 2012), 191.
26. Harry Kalven and Hans Zeisel, *The American Jury* (University of Chicago Press, 1966).
27. This is known as the "liberation hypothesis" with jury decisions. See Kalven and Zeisel, *The American Jury*.
28. Sonali Chakravarti, "The Practice of Nullification," *Chicago-Kent Law Review* 95, no. 2 (2021); David C. Brody, "Sparf and Dougherty Revisited: Why the Court Should Instruct the Jury of Its Nullification Right," *American Criminal Law Review* 33 (1995); Paul Butler, "Racially Based Jury Nullification: Black Power in the Criminal Justice System," *Yale Law Journal* 105 (1995).
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30. Quoted in Liebell, "Retreat from the Rule of Law," 956.
31. Liebell, "Retreat from the Rule of Law," 956.
32. Liebell, "Retreat from the Rule of Law," 957.
33. H.L.A. Hart, "Prolegomenon to the Principles of Punishment," *Meeting of the Aristotelian Society* (1959): 13.
34. *Succession*, Season 3, Episode 8. HBO, 2021.
35. <https://www.juicioporjurados.org/2018/09/the-revolution-of-trial-by-jury-in.html>
36. <https://www.juicioporjurados.org/2018/09/the-revolution-of-trial-by-jury-in.html>

37. Commonsense is often evoked in American self-defense cases such as that of Bernhard Goetz in 1987 where it served as a justification for anti-Black racism. Norman J. Finkel, *Commonsense Justice: Jurors' Notions of the Law* (Harvard University Press, 2009); Justin Mann, "The 'Vigilante Spirit': Bernhard Goetz, Batman, and Racial Violence in 1980s New York," *Surveillance & Society* 15, no. 1 (2017).
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40. Yanilda María González, "The Endurance of the 'Damned Police' of Buenos Aires Province," in *Authoritarian Policing in Democracy: Contested Security in Latin America* (Cambridge University Press, 2020), 133.
41. González, "The Endurance of the 'Damned Police'," 124.
42. Guillermina Seri, *Seguridad: Crime, Police Power, and Democracy in Argentina* (Continuum, 2012).
43. Quoted in Michelle D. Bonner, "Violence, Policing, and Citizen Insecurity," *Latin American Research Review* 49, no. 1 (2014): 264.
44. Amy Farrell, Liana Pennington, and Shea Cronin, "Juror Perceptions of the Legitimacy of Legal Authorities and Decision Making in Criminal Cases," *Law and Social Inquiry* 38, no. 4 (2013).
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46. Krause, "Empathy, Democratic Politics, and the Impartial Juror."
47. Sherman J. Clark, "The Juror, the Citizen, and the Human Being: The Presumption of Innocence and the Burden of Judgment," *Criminal Law and Philosophy* 8, no. 2 (2014): 422.
48. Clifford Geertz, *Local Knowledge* (Basis Books, 2008), 173.
49. Jerome Bruner, "The Narrative Construction of Reality," *Critical Inquiry* 18, no. 1 (1981); Ralph Grunewald, "The Narrative of Innocence, or, Lost Stories," *Law & Literature* 25, no. 3 (2013); Nancy Pennington and Reid Hastie, "Explaining the Evidence: Tests of the Story Model," *Journal of Personality and Social Psychology* 62, no. 2 (1992).
50. Burns, *A Theory of the Trial*, 183.
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52. Burns, *A Theory of the Trial*, 224.