



Welcome!

Lay Participation in Criminal Proceedings

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Lay Participation in Criminal Proceedings Outline of the Guest Lecture

- Lay participation at Welsh criminal courts
- Lay participation at German criminal courts
 - Criminal court system of Germany
 - Elements of lay participation in Germany
- Benefits of lay participation
 - Benefits of the trial by judge and jury in Wales
 - Benefits of the German system of lay participation





Lay Participation in Wales

Courts with Lay Participation in Wales

- Magistrates' Courts
 - Justices of Peace
- Crown Court
 - Jury
 - Justices of Peace

Lay Participation in Wales

Courts without Lay Participation in Wales

- High Court of Justice (Queens Bench Division)
- Court of Appeal (Criminal Division)
- Supreme Court of the United Kingdom





Lay Participation in Wales Magistrates' Courts

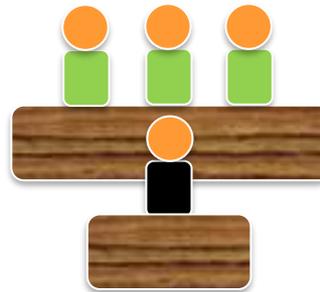
- Summary offences
 - Generally minor offences
- Offences triable either way
 - Offences of medium seriousness



Lay Participation in Wales

Magistrates' Courts

Composition of a Magistrates' Court



Justices' Clerk



Justice of Peace



Lay Participation in Wales Crown Court

- First instance jurisdiction
 - Indictable offences
 - Serious offences
 - Offences triable either way

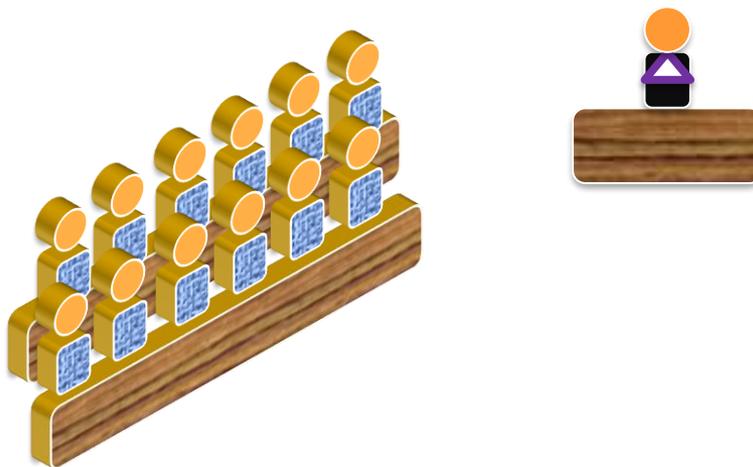
- Appellate jurisdiction
 - By an appeal against the decision of the magistrates' court
 - Complete rehearing



Lay Participation in Wales

Crown Court

Composition of the Crown Court in First Instance



Judge

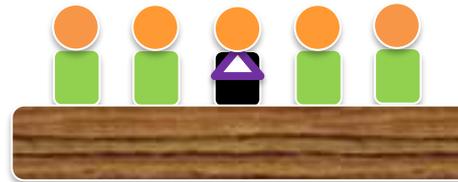


Member of the Jury

Lay Participation in Wales

Crown Court

Composition of the Crown Court as Appellate Court



Judge



Justice of Peace



Lay Participation in Wales

Models of Lay Participation in Wales

- System of sole lay Jurisdiction
 - Lay justices at the magistrates' court
- System of separate responsibilities
 - Trial by judge and jury at the Crown Court
- System of collegial responsibility
 - Appellate jurisdiction at the Crown Court

Lay Participation in Germany

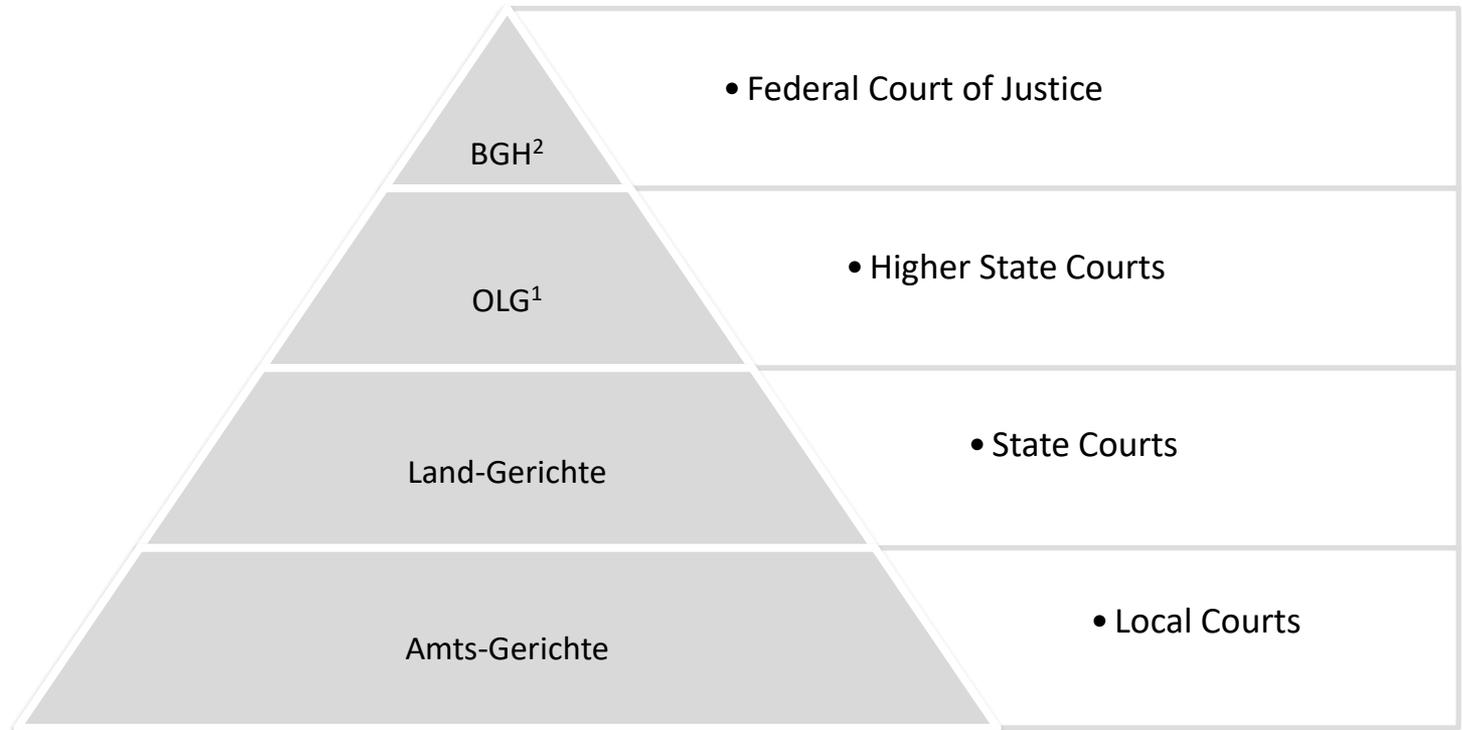
Models of Lay Participation in Germany

- Only a System of Collegial Responsibility
 - Professional judges and laypeople form joint panel
 - The laypeople are called “Schöffen” (lay assessors)
 - No jury courts
 - No courts solely formed by laypeople



Lay Participation in Germany

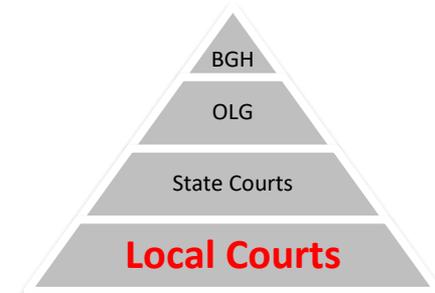
The Four-tier Court System of Germany



¹ OLG = Ober-Landes-Gericht ² BGH = Bundes-Gerichts-Hof

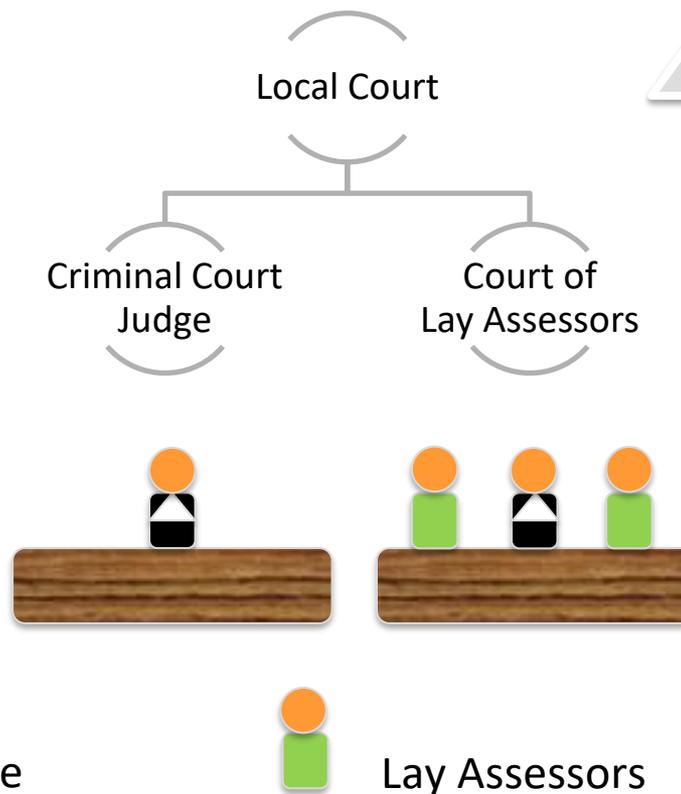
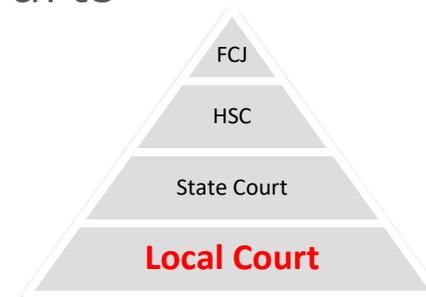
Lay Participation in Germany Local Courts

- Jurisdiction
 - Expected sentence: less than 4 years of imprisonment
 - These are minor offences and offences of medium seriousness



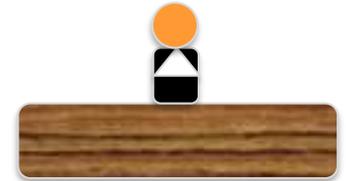
Lay Participation in Germany

Lay Participation at the Local Courts





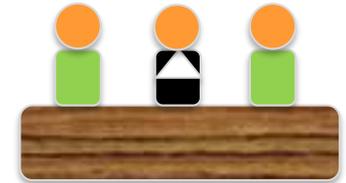
Lay Participation in Germany Lay Participation at Local Courts



- Criminal Court Judge (Amts-Richter)
 - Misdemeanours (Vergehen)
 - Offenses without a minimum penalty
 - Expected sentence does not exceed two years of imprisonment



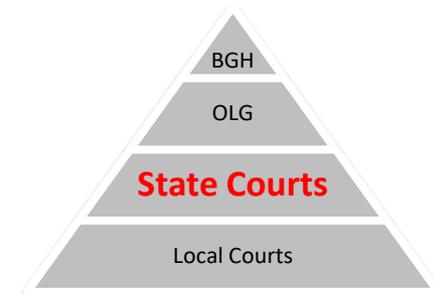
Lay Participation in Germany Lay Participation at Local Courts



- Court of Lay Assessors (Schöffengericht)
 - Misdemeanours (Vergehen)
 - Offenses without a minimum penalty
 - Expected sentence between two and four years of imprisonment
 - Felonies (Verbrechen)
 - Offences with a minimum penalty of at least one year
 - Expected sentence does not exceed four years of imprisonment

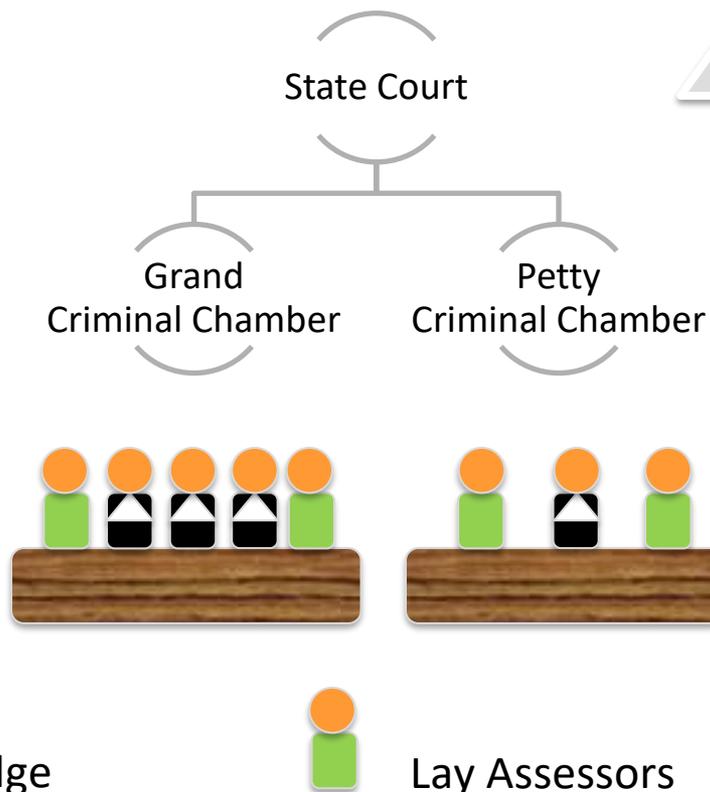
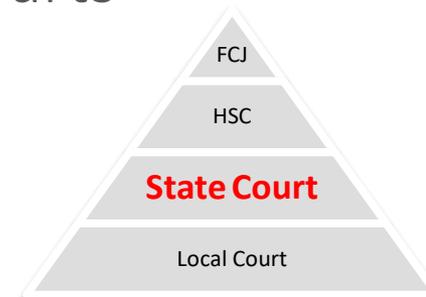
Lay Participation in Germany State Courts

- Jurisdiction
 - First instance jurisdiction
 - Expected sentence: more than 4 years of imprisonment
 - Crimes resulting in death
 - These are Serious offences
 - Appellate jurisdiction
 - Appeals against Local Court decisions (complete rehearing)



Lay Participation in Germany

Lay Participation at the State Courts





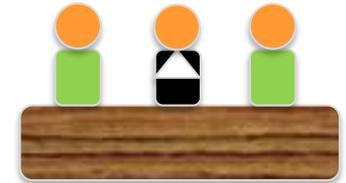
Lay Participation in Germany

Lay Participation at State Courts



- Grand Criminal Chamber (Grosse Straf-Kammer)
 - Court of first instance
 - Misdemeanours (no minimum penalty) and felonies (minimum penalty of at least a year), if the expected sentence exceeds four years of imprisonment
- “Jury Court” (Schwur-Gericht)
 - A Grand Criminal Chamber with three professional judges mandatory
 - Offences resulting in death

Lay Participation in Germany Lay Participation at State Courts

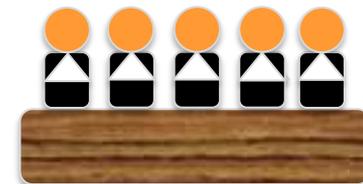


- Petty Criminal Chamber (Kleine Straf-Kammer)
 - Appellate Court
 - Appeals from the Local Court (Criminal Court Judge and Court of Lay Assessors)
 - Appeal on law and fact

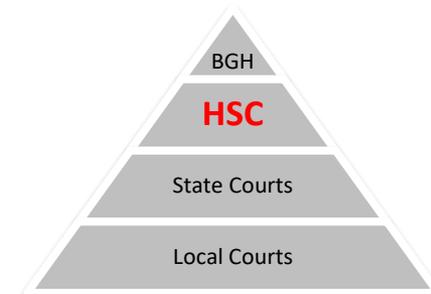




Lay Participation in Germany Higher State Courts

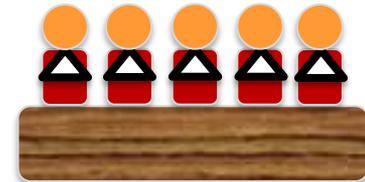


- Appeals on law alone against local court decisions
 - “leapfrog”-appeal directly from the local court
 - Appeals against the appellate judgement of the state courts
- Rarely: First instance jurisdiction on serious political crimes
- No lay participation

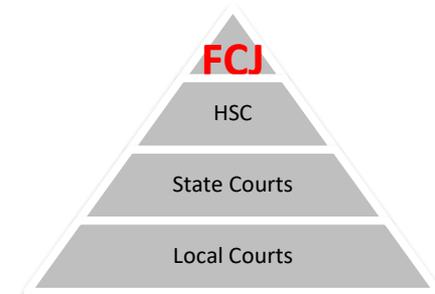




Lay Participation in Germany Federal Court of Justice



- One of the five equal-ranking Supreme Federal Courts
- Not *the* Supreme Court; Not a Constitutional Court
- Jurisdiction
 - Appeals on law alone against first instance decisions of the State Courts
- No lay participation





Lay Participation in Germany Summery

- Four panels of first instance
 - Criminal Court Judge (Local Court)
 - Court of Lay Assessor (Local Court) 
 - Grand Criminal Chambers (State Court) 
 - Including the “Jury Court” and other specialized chambers
 - Criminal Senate (Higher State Court)



Lay Participation in Germany Summery

■ Three appellate courts

- State Court (Petty Criminal Chamber) 

- Appeal on law and fact

- Higher State Court

- Appeal on law only

- Federal Court of Justice

- Appeal on law only

Lay Participation in Germany No Systematics in the Lay Participation

- Not in all courts of first instance
- Not in all courts acting as triers of fact
- Not only by minor offences





Lay Participation in Germany Inquisitorial Criminal Procedure

- Accused and prosecution are not parties
- Judge during the trial more than an umpire
- Judge has the power to investigate a case during the trial; therefore he
 - examines the evidence presented to him
 - takes new evidence
 - has the full control of the hearing of evidence

Lay Participation in Germany

Rights of the Lay Assessors During the Trial

- Lay assessors exercise the judicial office in full
 - They have the same rights as the professional judges
 - Right to question the accused
 - Right to question the witnesses
 - Right to question the experts
 - Right to examine the evidence
 - Right to ask questions can be revoked by the presiding judge by misuse





Lay Participation in Germany Lay Assessors and Justices of Peace

- Not really comparable
- Created with different functions
- Lay Assessors are more powerful
- Rather comparable to the jury



Lay Participation in Germany

Rights of the Lay Assessors During the Voting

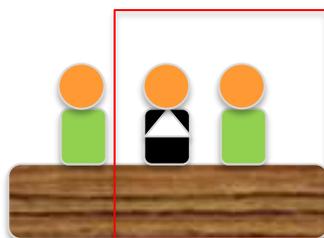
- Conviction requires two-thirds majority
- Lay assessors have the same voting as professional judges
- Together the lay assessors always have a blocking minority



Lay Participation in Germany

Rights of the Lay Assessors During the Voting

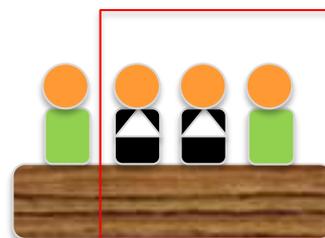
Blocking minorities



Court of Lay Assessors

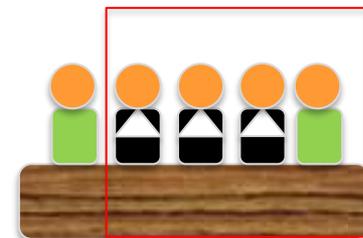
Petty Criminal Chamber

$$2/3 \text{ of } 3 = 2$$



Grand Criminal Chamber

$$2/3 \text{ of } 4 = 2,66 \text{ (3)}$$



Grand Criminal Chamber with three Judges

„Jury Court“

$$2/3 \text{ of } 5 = 3,33 \text{ (4)}$$

Lay Participation in Germany Summary

- Lay assessors exercise the judicial office in full
- They have the right to question the accused, the witnesses and the experts
- They have the right to examine evidence
- Together, the lay assessors at a court can prevent a conviction





Lay Participation in Germany

No Logic in the Lay Participation

- No lay participation in the case of minor offences
 - Criticism: Lay assessors could understand the issues discussed in these cases without effort
- No lay participation in cases of serious political offenses
 - Criticism: Lay assessors could prevent an overreaction of the state

Necessity of Lay Participation in Wales Reasons for the Trial by Judge and Jury

- Jury equity
- Jury as a democratic element
- Jury as a constitutional institution



Necessity of Lay Participation in Wales Reasons for the Trial by Judge and Jury

- Jury equity
 - The jury can refuse to apply the law as it does not need to give reasons for its decisions
 - Possibility to react to the unique character of the case in front of the court
 - Jury equity does not create case law
 - Possibility to circumvent the boundaries set by the supremacy of parliament



Necessity of Lay Participation in Wales Reasons for the Trial by Judge and Jury

- Jury as a democratic element
 - Democratic element within the judiciary
 - Prevents a judiciary led by an elite class of judges
 - Prevents a judiciary which acts solely in the interests of the sovereign
 - Jury as a “little parliament”





Necessity of Lay Participation in Wales Reasons for the Trial by Judge and Jury

- Jury as constitutional institution
 - *Thoburn* [2002] states Magna Charta is a constitutional statute
 - Only Art. 1, 9 and 29 of Magna Carta 1297 are still in effect

Necessity of Lay Participation in Wales Reasons for the Trial by Judge and Jury

- Jury as constitutional institution
 - Art. 29 states:
No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, **but by lawful judgment of his Peers**, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.



Necessity of Lay Participation in Wales Reasons for the Trial by Judge and Jury

- Jury as constitutional institution
 - The last revision of Magna Carta 1297 took place in 1969
 - Hence, the 1969 parliament wanted Art. 29 to stay in effect
 - A parliament of 1969 can only have understood the trial by judge and jury under the expression “lawful judgment of his Peers”
 - Thoburn [2002] turned Art. 29 Magna Carta constitutional





Necessity of Lay Participation in Germany Equity through the Participation of Laypeople

- Lay Assessors have the same rights and obligations as professional judges
- Therefore, there is no room for equity in criminal law
- Deliberately ignoring the provisions of the law is a felony and can be punished with one to five years of imprisonment

Necessity of Lay Participation in Germany Alleged benefits

- Expression of popular supremacy
- Quality assurance for the judiciary
- Improves the legal knowledge of ordinary people





Necessity of Lay Participation in Germany Expression of popular supremacy

- A democracy does not need the direct involvement of the people in state actions
- Art. 20 par. 2 of the German Constitution
 - “All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.”



Necessity of Lay Participation in Germany Quality Assurance for the Judiciary

- Fusion of legal knowledge of the judges and the common sense of the lay assessors shall produce a better judgement
- They shall prevent the technocratic blindness of the learned judges
- Lay assessors shall bring the view of the ordinary citizen in to the court, because judges allegedly belong to a social elite



Necessity of Lay Participation in Germany Quality Assurance for the Judiciary

- Not the social background, but solely the grades during the law studies decide, if a person can become a judge
- There are no elite law schools
- There are no tuition fees at the universities
- Not the law schools, but the state ministries of justice take the final exams

Necessity of Lay Participation in Germany Quality Assurance for the Judiciary

- Quality assurance cannot work without profound knowledge of the controlled field
- Especially at the specialized chambers of a State Court lay assessors usually are overwhelmed with the law in question





Necessity of Lay Participation in Germany Improvement of The Legal Knowledge of the People

- Lay assessors achieve basic knowledge of the law and judiciary during their service
- They shall pass this knowledge along to other fellow citizens



Necessity of Lay Participation in Germany Improvement of The Legal Knowledge of the People

- Court deliberations are confident
- Lay assessors can only report about the publicly accessible part of the proceedings
- Also the mass media can report about these parts

Lay Participation in Criminal Proceedings Conclusion

- The elements of lay participation in Germany are unsystematic and illogical
- The reasons usually put forward in favour of lay participation cannot convince
- The lay participation in Germany can be regarded as pure symbolism





“[...] a learned man [is] formed by his education to a whole other feeling than a simple man [...]. A nasty disorder, an injury, a brawl [or] a crudity will seem to him a thousand times more disgusting and repulsive than it seems to an ordinary man who grew up with the cattle; and this must necessarily have such an influence on his judgement that he hardly can be unbiased.”

Justus Möser (14.12.1720 – 8.1.1794),
German jurist and social theorist,

An argument pro lay participation in
Patriotische Phantasien I (1780), p. 340