

IS THE JURY TRIAL A LOTTERY ?

An Educational Essay

If history is to be believed, the last supper contained 12 disciples, 12 men good and true, it seems very odd that a part of our criminal justice system relies on a fluke of history, so, if that fateful supper had contained 50 men would we now have juries of that size?. It seems that very little research has been done on the jury, the 1981 Contempt of Court Act actually banned any research on juries, rather the establishment has always confirmed it as democracy in action, and therefore supposedly needs little research, although in recent times trial by jury has been on the decrease specifically in civil cases. This, it could be argued, signals that belief in the jury system is not as widespread as the powers that be would like us to believe.

The English jury system is highly regarded all around the world and seen as the bastion of freedom and liberty where one is judged by ones peers rather than by judges or barristers. Lord Devlin, a former master of the rolls, once said of the jury " a little parliament ...the lamp that shows that freedom lives" (Fitzgerald & Munice 1983).

Juries are operational in crown courts and not in a magistrates court which try about 97% of all criminal cases (Ingman 1983) Jurors are chosen at random from the electoral register, there being certain qualifications and disqualification's covered by the Juries Act 1974, which came from recommendations made in the Morris committee 1965, subsequent amendments were the Juries Disqualification's Act 1984 as well as the Criminal Justice & Public Order Act 1994.

Jury service was until 1974 the ground of the rich and noble, indeed up until the thirteenth century juries were made up of either people who knew the defendant or victim/plaintiff, or had been a witness to the incident. It was not until the Juries Act 1974 that all citizens, with a few exceptions, were eligible to become jurors. prior to this time only householders were considered qualified to sit on a jury, this therefore excluded wives, grown up children and anyone else living in the house such as relatives or lodgers. Also, the household were only considered for jury service if the rateable value of the house was above a certain amount, (£30), these measures therefore excluded the vast majority of women and those from poorer areas

A study by Baldwin & McConville (1979) investigated the social background of 326 people in a study of 3,912 jurors in Birmingham in 1975 and 1976. The study looked at gender, age, race and occupation, and it was found that the shape of juries had changed significantly since the then relatively new Juries Act. Although slightly under represented, working class people were now sitting jury service. The interesting thing is that women were still under represented, 73% of jurors were male, while only 0.7% were from ethnic backgrounds, this showed a disparity with the local population which suggested that the figure should have been more like 7% ethnic minority representation.

Research report No; 19. commissioned by the Home Office in 1992 and carried out by Zander showed that 47% of jurors were female (53% male) and that only 22% of foremen were female, the report also showed that only 5% of jurors came from ethnic minorities and in 65% off all cases there was no ethnic minority representation. Within the process of justice, there has, in recent years, been significant talk around the issue of race, age and gender, and how these areas are represented in the criminal justice process.

Representations of these groups on juries are a difficult matter, and are subject to the random selection of juries, although there is some controversy over this as it is very easy to use an electoral role for selecting the jury from a geographical area that either is over representative or under representative of a specific group pertaining to age, race or gender. When at trial this can be remedied to a certain extent by the process of jury challenges which were all but eliminated in 1988. This, it could be argued, has left the way open for misrepresentation, and still does not allow for those not on the roll, for example; the homeless, and in the 1980's those who did not register over the poll tax fiasco.

In trying to establish the gamble (if any) involved in a jury trial it is important to note that a defendant is given many options before even reaching this stage. If the offence is indictable and is bound to enter the crown court system they still have several options open to them such as pleading guilty, and although not recognised in this country, a plea bargain. This said, Baldwin & McConville (1979) noted that only 15% of serious crimes actually came to court. What is perhaps of more concern is how the jury reach their decisions and on what factors and influences help or hinder the decision process.

The only study available when considering jury decisions is a study performed in the USA by Kalvern & Zeisel (1966). This study looked at judge and jury decisions using a sample of 3,576 trials. Among some of the expected findings were some surprising ones and one very worrying one. Of 1,083 people that juries would have acquitted some 57% (604) of these would have been found guilty if the decision had been in the hands of the judge. In 64% of cases the jury voted to acquit, but judges would have convicted 83% of all cases. When questioned about these differences the judges gave several factors as possible reasons. The biggest of which was, that the judges believed in 54% of cases the jury had made their decision on the basis of evidence. The judges were not surprised by this and suggested that it was due to a lack of formal training in legal issues (Baldwin & McConville 1979). This shows a disparity and calls into question the validity of jury decisions. This shows the small number of defendants that do actually end up in crown court (3%) the figure is actually lower than this at around 0.8% as 72% of defendants plead guilty at crown court and therefore do not need a jury (Judicial statistics 1990).

Because, as mentioned earlier, no research is allowed on juries, the only evidence we can observe is that of "Mock" or "Shadow" juries (McAbe & Purves).

Loftus (1974) found that the evidence of witnesses was very influential in jury decision making, and even if the eye witness was discredited, due to having bad eyesight, and so

not seeing the incident clearly, for example, the jury still placed a lot of faith in their testimony.

Publicity is another area that may effect the juries decision, in some cases, particularly emotive and sensitive cases, the media attention is so great that it is virtually impossible to find 12 people who have not been influenced by the media coverage. It can also be found that personality and behaviour can effect the jury. They are more likely to believe an eye-witness who is of a higher social class and/or has a "respectable" job, such as doctor, government official or clergy. When it comes to the defendant, again the jury is more likely to believe a defendant from a higher socio-economic class and be harsher on those from poorer backgrounds. The physical attractiveness of the defendant may also play a role, juries seem to be far more likely to believe an attractive defendant, the same is also true with witnesses.

When we look at research on female defendants we find a strange pattern, juries tend to treat women differently from men, they either treat them worse or far better, a lot of this seems to depend on the type of offence. It can be argued that women, seen as the fairer sex, must be evil if they kill a child whereas a man would be simply be labelled bad, there are certain crimes that are seen as male or female crimes, and that juries will treat women harder if they commit a "Male Crime".

Research with shadow juries has also found that ethnic minorities are more likely to be found guilty than their white counterparts. Other factors that can effect the jury and it's decision making, are the way the defendant speaks and their accent, the way they dress, the way they stand, i.e. if they stand up straight or if they slouch, as well as their personality and general attitude. The factors listed above show that there are many things that effect a jury other than the facts and evidence of the case itself.

The results of the Kalvern & Ziesel study show that although on the whole judges and juries agree, juries do have a tendency to be more lenient. The study also showed that juries were likely to acquit where the judge raised the question of "reasonable doubt". It seems that too many factors get in the way of, and influence the jury other than the evidence. If we view the statistics from 1966, which we must presume are still acceptable figures, it would be wise for a guilty person to opt for a jury trial whereas if you are not guilty you would be better off avoiding the jury as they do not always base their decisions on the facts alone.

There are many arguments for and against trial by jury. It has been argued that the jury is the representative of society, and if selected properly is a cross section of the population. It has further been suggested that the jury made up of laymen would ensure that unjust laws were not used against society. In contradiction to this it has been argued that juries are unrepresentative of society, that they are unable to deal with complex legal issues and are subject to irrationality. Money is also used against the jury, it being argued that the jury system is expensive and that in civil cases compensation awards are often extreme.

In more recent time it has also been suggested that juries tend not to believe the evidence of the police, perhaps due to highly publicised miscarriages of justice. Because any research figures are now 30 years out of date it is difficult to get a true picture of the effectiveness of the jury, it would therefore be wise to allow research into this pinnacle of democracy before making any drastic changes.