

Critically consider the proposition that trial by jury has outlived its usefulness and that it should, in the interests of justice and as a matter of some urgency, be abolished.

In order to critically evaluate the positive and negative aspects of the jury system it is essential that firstly, the purpose of a jury is established then secondly, we analyse whether the current system is fulfilling that purpose.

The purpose can be segregated into three distinct principles¹. The first is that the jury must decide the facts of the case and based upon those facts, determine guilt. Secondly, the jury adds certainty to the law. This means that when the jury delivers its verdict of either guilty or not guilty, it does so without giving reason and that verdict is not open to dispute. Thirdly, the jury provides what may be termed as the “just face” of the criminal justice system, insofar as the jury can arrive at its decision using any manner it chooses. In particular, the jury has been known to arrive at an acquittal on the basis of its conscience², which will be examined later.

Whilst it is expected that a jury fulfils these functions effectively, it is widely speculated that in fact a jury acquits too many people accused of crime³. This claim, however, is somewhat ambiguous. Since the process of a jury's deliberations is entirely confidential, both during and after the trial, it is inherently difficult in many instances to accurately determine the jury's justification for an acquittal where it

¹ P. Duff and M. Findlay, “The Jury in England: Practice and Ideology” (1982) 10 *International Journal of the Sociology of Law* 253.

² T.A. Green, *Verdict According to Conscience*, 1200-1800 (1985).

³ Zander, *Cases and Materials on the English Legal System*, Butterworths (1993) 6th Edition.

seems obvious that a conviction is clearly required according to another's interpretation of the facts.

The secrecy of the jury room is said to be the basis on which trial by jury continues to exist. Justice McHugh⁴ stated that secrecy ensures (1) freedom of discussion in the jury room; (2) protection of the jury from outside influences; (3) high “public esteem” of the jury system; (4) willingness of citizens to serve as a juror; (5) finality of the verdict; (6) protection of community satisfaction that flows from a unanimous verdict; (7) a jury can deliver an unpopular verdict; (8) prevention of disclosure from jurors; (9) protection of privacy for individual jurors; (10) protection of jurors from having to explain their decisions; (11) prevention of vendetta’s against jurors; and (12) prevents enormous public pressure being placed on jurors.

Arguments have also been raised in contrast to the above, with calls for disclosure of the deliberation process. It is felt that this will make juries more accountable, it would correct inaccuracies within the current system and would allow an analysis and reform (where appropriate) of the legal system.

In response to these claims, it is necessary to determine what factors are presently influencing a jury when they are making a decision. A theory in this debate rests with the issue of conscience and its effect on “perverse” verdicts. If there is true value in involving the public within the criminal process, the jury surely must be allowed to arrive at a decision that may be contrary to the law. This provides an influence of “community conscience” and in fact may be viewed as the jury exercising its constitutional role to arrive at a decision.

⁴ “*Jurors’ Deliberations, Jury Service, Public Policy and the Law of Contempt*” in Findlay and Duff (1988), pp. 62-65.

Whether the juries' verdict may be described as "perverse" depends upon the perception of the role of the jury in the decision making process. If a narrow approach is taken, a verdict is proper if it is reached after an honest, careful and reasonable attempt to apply the law to the facts of the case, taking no other circumstances into account. This will no doubt provide a more certain and consistent outcome but will probably result in a greater number of guilty verdicts. A broader approach would consist of a verdict which has been reached after evaluation of the evidence, which indicated a guilty verdict, provided an acquittal based on a reasonable exercise of discretion in favour of the accused reflecting the jury's sympathy, clemency or disapproval of the prosecution.

In respect to more complex trials, a similar debate is encountered but this is channelled more towards the nature of the trial. Where the trial involves complex statements or evidence, such as fraud trials or trials involving scientific evidence, it is suggested that the jury cannot competently arrive at proper decisions⁵. It is this inherent complexity of some cases that formed part of the justification to abolish the jury in most civil cases. In the context of criminal cases the Roskill Committee on Fraud Trials concluded that "we do not find trial by random jury a satisfactory way of achieving justice in cases as long and complex as many fraud trials. We believe that many jurors are out of their depth." Consequently, the Committee recommended that for complex fraud cases the jury should be abolished in favour of the Fraud Trials Tribunal.

⁵ *Fraud Trials Committee*: Report; Chair: Lord Roskill (1986).

The negative implications of the jury system currently seem to outweigh the positives. Jury trials tend to be considerably more time consuming, thus more expensive. It is possible that a potential jury member may only participate in a trial on one or two occasions during the period for which he serves (normally two weeks). This could result in two or three days actual service, with the rest of the time spent in a waiting area. This seems an incredible strain on resources, particularly when “loss of earnings” is paid to each individual (or their employer) for the duration of the service.

As discussed previously, the variability of the jury verdicts is often considered to be a poor aspect of the jury process, which makes it impossible to promote it as the best mode of trial. The reasons for this unpredictability have been examined, which include the “conscience” of the jury to attain justice and the unrealistic expectations that lay people should listen to complex argument and evidence. It could be recommended that the jury should be required to undertake a competency test in order to determine their suitability for jury service. This can be counteracted by the requirement to obtain a fair representation of society with a wide cross section of people.

Dave Wilcox, an Engineer for the Environment Agency has recently undertaken jury service at Liverpool Crown Court. During his two weeks service he spent three days productive time on cases whilst the remainder was spent in the waiting area. He said “there were approximately three hundred people there at the time. It must have cost a fortune.” Dave spen