‘Trial by jury is outdated, expensive and ineffective in ensuring justice’
Analyse arguments for and against this statement in relation to the recent changes proposed and the relevant literature

Jury trials have become a contentious point within the English legal system since the Royal Commission on Criminal Justice, or the Runciman Commission, made its report in 1993 (James & Raine, 1993:40). The history of trial by jury can be traced back to the county assize courts and the county quarter sessions of the eighteenth century, where jury trial was used in addition to the presence of judiciary. They were there for the purpose of active participation – interrupting proceedings to ask questions and so on. Since the 1700’s however, the jury have gradually become an ‘audience’ who, despite the entitlement to ask questions at any time, generally do not exercise the right (Emsley, 1997:75). The courts of the time were notoriously corrupt, and juries were a means of the public holding an element of control in the criminal justice system. Trial by jury has changed little in format since its introduction over two centuries ago. It is still a panel of twelve lay-persons, made up of those who are willing to sit on the jury. Under English law:

> ‘..the jury system gives ordinary persons a part to play in the administration of justice.’
>
> (Keenan, 1998:95).

At present, ‘ordinary persons’ are those eligible under three separate Acts of Parliament – the Juries Act 1974, the Juries (Disqualification) Act 1984, and the Criminal Justice and Public Order Act (CJPOA) 1994 (Davies, Croall & Tyrer, 1998:209, Keenan, 1998:94, Sanders & Young, 2000:559). The Juries Act 1974 states that people registered on the electoral roll – the ‘Register of Electors’ for local and governmental election purposes are those who are suitable for jury service. As with any Act governing criminal proceedings, there are exceptions to this rule. The prospective jurors must have resided in the UK, the Channel Islands or the Isle of Man for at least five years since they were thirteen years of age. They also ought to be between the ages of eighteen and seventy (Keenan, 1998:94). There are three ways in which a person otherwise eligible can be excluded from serving, namely ineligibility, disqualification or excusal. Ineligibility covers members of the judiciary, legal profession and the police – this is because they may then be in a position to exercise ‘undue influence on a jury’s deliberations’ (Sanders & Young, 2000:559). It also

includes members of the clergy and people who are registered as having a mental disorder, who are not necessarily in a position to make a decision as would be required of them as a juror. Automatic disqualification includes anyone who has been on probation in the preceding five years, as well as those who have served a community service penalty or a custodial sentence in the previous ten years (Davies et al, 1998:209). Those who have served a custodial sentence of more than five years are disqualified for their entire lives under the Juries (Disqualification) Act 1984 (Keenan, 1998:94). The CJPOA 1994 then added the disqualification of anyone currently on bail from the police or courts (Davies et al, 1998:209). Some of those who wish to be excused from jury duty may be given it as of right, such as members of the medical professions, the Armed Services, MPs or those who are over sixty-five. People have the entitlement to request excusal on such grounds as a holiday which was pre-booked, that they know people involved in the case – perhaps causing prejudice – or for reasons which may cause personal hardship such as difficulties with childcare or wage-loss (Sanders & Young, 2000:559).

This method of selection from the members of the general public was designed with the intention of creating random selection from the local population. Jury selection has also become a focal point for the government in the last fifteen years. The Royal Commission on Criminal Justice 1993, also known as the Runciman Commission, was set up to look at the criminal justice system and make recommendations for a reformation of the existing system in place (Cavadino & Dignan, 2002:116). The proposals which were made in the 1993, two years after the research was commissioned, were radical, and caused a lot of debate in the legal community. The scope of the recommendations went from plans for the removal of the defendants' right to choose trial by jury in triable either-way (TEW) cases (James & Raine, 1998:42), to allowing judiciary to 'engineer' racially mixed juries (Sanders & Young, 2000:565), to a reformation of committal proceedings in Magistrates' courts (Davies et al, 1998:198). Since the Commission submitted its' report to the government in 1993, some of the recommendations have been implemented, and others ignored. Runciman's suggestions regarding committal proceedings were executed in 1997, meaning committal hearings have been reduced from what was described as 'running the trial twice', to being carried out solely on documentary evidence, with committal proceedings being abolished for indictable only offences by the Crime and Disorder Act 1998 (Davies et al. 1998:198).

Runciman also made the suggestion that the right to peremptory challenge of prospective jurors should be extended for the judge in order to accommodate a better mix of people

sitting on the panel. This was primarily to be used in respect of trials where race might be an issue, so permitting the presiding judge to create a jury which included a number of people from ethnic minority backgrounds (Sanders & Young, 200:565). This suggestion, however, was never used as it was felt that race was not the only issue affecting juries, so there was no need to single out one issue over many.

> 'There is no power to create specifically a racial or gender balance or indeed imbalance, on a jury, other than by the random selection process itself'
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> (Davies et al, 1998:209).

It has been declared by many academics that random jury selection will never 'guarantee a *representative* jury' (Sanders & Young, 2000:564). The use of the electoral roll as the means of selecting people for jury service naturally means that some of the population will be excluded, as not everyone is entitled to vote, let alone taking into account the various exceptions under the Juries Acts and so on. The claims of Lord Devlin in the 1970's that juries were primarily made up of white, middle-aged men from middle-class backgrounds was absolutely justified, as at the time, the majority of people registered to vote were exactly that. Research believes that up to twenty percent of black and Asian people never actually register to vote here in the UK (Darbyshire, Maughan & Stewart, 2001:8 – See Appendix A). Denning in turn also pointed out that these twelve people chosen from a list are expected to be able to represent the view of the country as a whole in addition to the local community as well (Sanders & Young, 2000:560). Recent suggestions that jurors be selected from amalgamated lists, such as exist in the USA, have not yet borne fruit as I will show later, in the Auld Report (Darbyshire, Maughan & Stewart, 2001:8&9).

Trial by jury is a very expensive mode of trial. The cost for a case to go to the Crown Court in 1999 stood at around £8.600 (Harries, 1999:1 – See Appendix B). With around ninety thousand cases being tried by the Crown Courts annually, that is a substantial cost to the government (Harries, 1999:3). However, less than one percent of all criminal cases ever come before a jury, with ninety-five percent being dealt with by the Magistrates courts (Sanders & Young, 200:552). The Auld Review of the criminal justice system, which reported in September 2001, made recommendations that if implemented, would change the fundamental structure of the courts as we have them at present (Cavadino & Dignan, 2002:89). At present we have a two-tier court system, but under proposals made by Lord Justice Auld, that would be turned into a three-tier system. In his summary of his Review,

Auld outlined his recommendations, which made suggestions which covered every aspect of the criminal justice system, excepting arrest and police procedure (Auld, 2001 – See Appendix C). In this review, instigated by the Lord Chancellor's Department, Auld proposed a new structure to the criminal courts, making it into a unified system with three courts in place of the current Magistrates and Crown (Auld, 2001:para4). This would see cases currently defined as TEW either being reduced to summary offences and being tried in the Magistrates Division, or remaining the same and being tried in the new District Division. Under this scheme, the workload and therefore the cost of trial at the Crown Division should be dramatically less than at present, with the judges at the District Division gearing cases with a maximum penalty of up to two years' custody (Auld, 2001:para4). Another plan which would work alongside this unification of the courts is the loss of the defendants' right to choose trial by jury – the decision would either be made by a Magistrate or a District judge.

The justification for such dramatic changes is the reduction in cost to the government, in addition to speeding up the process of justice – something to worry any advocate of due process. Due process seeks to protect the rights of all defendants, whatever they are accused of and regardless of whether or not they are guilty. It also says that the removal of such procedures such as the right to choose trial by jury is putting too much power back into the hands of the state whilst taking away the right to choose from the defendant. Crime control on the other hand, seeks an answer to the problem of crime by convicting someone for an offence (Davies et al, 1998:199). Whilst due process can be admired for the notion that it is better to acquit the guilty rather than convict the innocent (Sanders, 1997:1051), the crime control view is that jury trial is expensive and inefficient (Sanders & Young, 2000:555).

> '..the jury is a key battleground for the due process and crime control models'
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> (Sanders & Young, 2000:559).

In this overhaul, Auld also wanted to see many changes to jury selections. He felt there was a need to ensure the jury picked for a trial was representative of the local community, as well as the nation, and to see the numerous exclusions we saw earlier to be reduced solely to two – criminal history and mental illness (Auld, 2001:para7). The amalgamation of lists already available to the government should be used to select jurors, like the American system, using public records such as the DVLA lists, housing lists and so on, so as to make the potential number of jurors as large and as representative as possible. Auld also recommended that

changes be made to permit a judge to provide 'ethnic representation' if a case has a racial issue. This was, of course, also recommended by Runciman in his 1993 Commission, but has again been rejected (Sanders & Young, 200:565). Indeed, it can be said that:

> 'To seek a specially composed jury for certain cases suggests that the ordinary random jury is not able to perform its task in the required way'
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> (Davies et al, 1998:212).

Jury trial, for many years, has been called 'the cornerstone' of the British system of criminal justice (Davies et al, 1998:196, Sanders & Young, 2000:552). It is a respected mode of trial which as we have seen, has been around for centuries. The use of juries allows the British public a hand in the criminal justice system, which many of them may never otherwise have any experience of. This can be seen as a benefit, but it can also be called part of the downfall of trial by jury in that, putting twelve people with no training or experience in criminal justice matters into a jury box might be expecting too much of some people, as they are asked to leave all their experiences outside the courtroom (Sanders & Young, 2000:551). There are many argument against juries – poor representation of gender, race and class, lack of skill in dealing with complex cases, their subjective opinions, the cost of the trials and their apparent tendency to be swayed by strong counsel are but examples (Davies et al, 1998:212, Keenan, 1998:85). The benefits of juries however, may be the reason we still have them in practice despite the glaring problems and costs of them. The opportunity for the public to have their say in justice is essential to British justice. The symbolic function of the jury is key to legitimising the criminal justice system – it keeps the state from having an absolute power over the actions of its citizens and ensures a confidence in the adversarial system of justice (Sanders, 1997:1051, Sanders & Young, 2000:559).

> 'Jury trial is the public face of the criminal justice system'
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> (Sanders & Young, 2000:559).

The ability of a jury to allow defendants to walk free even if they are guilty of a crime, is another of their advantages. This is not something they are supposed to do, of course, and whilst this is something Auld also recommended should be made into a statutory declaration (Auld, 2001:para8), it is not yet law. If a jury feels a case has not been adequately made by the prosecution or that a law is unjust, they can acquit without explaining their reasons (Davies et al, 1998:212). Researching what goes on in the jury room is another topic which came up in both the Runciman Commission and the Auld Report. Runciman felt that

provision should be made in order to research the conduct of jury deliberations in order to ensure the decision was made in a just manner, taking into account all the evidence (Davies et al, 1998:213). Auld, however, felt there was no compelling reason to do this, and in his report, clearly stipulated that there was no need to make legal provision for such a thing (Auld, 2001:para8). The Home Office is currently trying to eradicate the right of election of trial by jury for TEW cases, making it into a decision solely for Magistrates. This would also see the reclassification of offences to summary offences as well. It is believed this would create a saving of £128 million annually, removing fourteen thousand cases from the dockets of the Crown Courts (Cavadino & Dignan, 2002:91). There is another Mode of Trial Bill in consideration in Parliament at present – the previous two in 1999 and 2000 were thrown out by the House of Lords. (Cavadino & Dignan, 2002:116). These are proposing the changes to the criminal justice system as recommended by Auld, but it remains to be seen how well it will be received in the House of Lords this time.

So, is trial by jury 'outdated, expensive and ineffective at ensuring justice'? Expensive it certainly is, as has already been made clear, but whether it is outdated is difficult to answer. The system has not been dramatically changed for a long time, but since the Auld Report was released, there have been many new recommendations made for modification to the present system. As with any system of justice, there is a need to maintain the confidence of the public in order for there to be a legitimacy of the system. Trial by jury cannot be said to be ineffective if it maintains that confidence, even if that is not the intended primary function. So, whilst it is probably a little outdated, it is in the process of an overhaul which will rectify the problem. Our criminal justice system has always been respected world-wide, and the incorporation of the European Convention on Human Rights (ECHR) into British law by the implementation of the 1998 Human Rights Act (HRA) indicates there are no grave problems with our jury system. This is because we are not required by the HRA to amend our criminal justice system in any way, because we are adhering to Article Eight of the ECHR – a fair trial by an independent and impartial tribunal (Sanders & Young, 2000:566).

Word count, excluding references & bibliography: 2553

Word count, excluding bibliography: 2653