

Juries have been an integral part of the United Kingdom's court system for a very long time. The system works by recruiting twelve citizens to hear out the testimony of both the defendant and the crown in a case. The first juror chosen is called the foreman and he or she is in charge of leading the proceedings. The twelve jurors then decide on a verdict of either guilty or not guilty. While deciding on their verdict the jurors stay in a quiet room to deliberate and discuss the facts brought to them by both the defence and the prosecution. The jurors can only come to a verdict if all twelve of them agree. If all twelve do not agree then a "hung jury" is called and another group of twelve is selected to come to a verdict. Most cases in the United Kingdom are settled before they go to trial and some cases do not need a jury. An accused person has a right to trial by jury but can instead agree to a bench trial. In the English Legal system, only a small percentage of cases are tried by jury. They are used in the Crown Courts for criminal trials on indictment, High Court, Queen's Bench Division. The most important is the Crown Court where juries decide whether the defendant is guilty or not guilty. This means that the jury is used in about 20,000 cases each year. Basically, the jury is a panel of lay people, 12 in number, who listen to both sides of a case and arrive at a decision on the facts which are presented to them.

As we take a look into the historical significance of the English jury trial which has developed and evolved between the 8th and 11th centuries in

the medieval Islamic world and shares a number of similarities with the later jury trials in English common law. When we compare the two systems we can observe that like the English jury, the Islamic *Lafif* (Jury) was a body of twelve members drawn from the neighbourhood and sworn to tell the truth, who were bound to give a unanimous verdict, about matters which they had personally seen or heard, binding on the judge, to settle the truth concerning facts in a case, between ordinary people, and obtained as of right by the plaintiff. The only characteristic of the English jury which the Islamic *Lafif* lacked was the judicial writ directing the jury to be summoned and directing the bailiff to hear its recognition.

According to John Makdisi, "no other institution in any legal institution studied to date shares all of these characteristics with the English jury." (Islamic Origins of the Common Law) It is thus likely that the concept of the *Lafif* may have been introduced to England by the Normans after their conquest of England and the Emirate of Sicily, and then evolved into the modern English jury that is in front of us today.

The modern jury trial as it is now understood was later developed in England during the Assize of Clarendon in 1166, a document issued by Henry II of England in 1166. This document when it became law established juries by the hundreds. These juries of presentment were required to declare on oath before visiting justices and sheriffs, who were accused or suspected of serious felonies. The function of a presentment jury was to bring cases,

which had before only been possible by private appeal. Henry 's assize may well have only formalized a system in operation and first referred to in a decree issued by Aethelred at Wantage, which enacted that in every wapentake the twelve leading men together with the reeve shall go out and swear on the relics which are given into their hands, that they will not accuse any innocent man nor shield a guilty one. The concept can also be traced to Normandy before 1066, when a jury of nobles was established to decide land disputes. In this manner, the Duke, being the largest land owner, could not act as a judge in his own case. Many ancient cultures had similar concepts, notably ancient Judea whose panel of judges called the Sanhedrin served a similar purpose. The Athenians by 500 BCE had also invented the jury court, with votes by secret ballot. These courts were eventually granted the power to annul unconstitutional laws, thus introducing judicial review.

Since the average jury is made up of 12 randomly-selected people. Historical analysis indicates twelve was not just a magic number, but a number that was finalized with experience after trying other sizes. The use of the number 15 for Scottish juries appears to be a legacy of that experimentation. The ancient Athenians tried juries of 201 and sometimes 401. Twentieth century law office history seems to hold that the size of the jury is to provide a cross-section of the public. In case of Williams v. Florida, (1970), the U.S. Supreme Court sustained a state jury of less than twelve

persons, finding that six was sufficient to provide a cross-section. But from the experience of lawyers in jurisdictions where they have a choice of jury size, defendants usually choose twelve, which suggests a different dynamic, and that a jury of twelve provides a higher level of protection of rights, not just representation of diverse views. This is one of the most important aspects of having a jury trial because whenever juries are involved in a criminal case a person's liberty is at stake.

Another significant aspect of a jury is the level of secrecy and independence they possess. For juries to fulfill their role to analyse the facts of the case there are strict rules about their use of information during the trial. They are not allowed to learn about the case from any other source except the trial, nor can they conduct their own investigations such as visiting the crime scene themselves. Parties, lawyers, and witnesses are not allowed to speak with a member of the jury, and jurors are not allowed to read news or other accounts of the trial.

Jurors are generally required to keep their findings strictly confidential. Whether this non-disclosure requirement extends after the verdict has been rendered depends on the jurisdiction. In English law, the jury's deliberations must never be disclosed outside the jury, even years after the case; to repeat parts of the trial or verdict is considered to be contempt of court, a criminal offence and can result in imprisonment. On the other end of the

spectrum in the United States, this rule does not apply, and sometimes jurors have made remarks that called into question whether a verdict was properly sought. Because of the desire to prevent undue influence on a jury, jury tampering is a serious crime, whether attempted through bribery, threat of violence or any other means like extortion. Jurors themselves can also be held liable if they deliberately compromise their stance on a case. For example, in 1995 case a juror in Vancouver, Canada named Gillian Guess slept with a defendant during his murder trial and voted to acquit him. Guess was subsequently convicted of obstruction of justice for her actions, and was sentenced to 18 months in prison. The role of juries in common law countries such as England and the United States, is often described as a finder of facts, while the judge is seen as having the sole responsibility of interpreting the appropriate law and directing the jury accordingly. The jury will render a verdict on the defendant's guilt in a criminal case or his liability in a civil case. Occasionally, if jurors find the law to be invalid or unfair, they may acquit the defendant, regardless of the evidence that the defendant violated the law. This is commonly referred to as jury nullification. When there is no jury (bench trial), the judge makes rulings in addition to legal ones. In most European jurisdictions, the judges have more power in a trial and the role and powers of a jury are often restricted to an extent lesser than the judge. Jury law and trial procedures differ between countries of course.

In the United States, some juries are also entitled to make factual findings on particular aggravating circumstances which will be used to elevate the defendant's sentence, if the defendant is convicted. This practice is now required in all death penalty cases as a result of Blakely v. Washington, where the Supreme Court ruled that allowing judges to make such findings unilaterally violates the Sixth Amendment right to a jury trial. In Canada, juries are also allowed to make suggestions for sentencing periods and at the time of sentencing; the suggestions of the jury are presented before the judge by the Crown before the sentence is handed down. However, this is not the practice in most other legal systems based on the English tradition, in which judges retain sole responsibility for deciding sentences according to law. The exception is the award of damages in English law cases, although a judge is now obliged to make a recommendation to the jury as to the appropriate amount. In the United Kingdom the concept of jury equity resides. This enables a jury to reach a decision in direct contradiction with the law if they feel the law is unjust. This can create a persuasive precedent for future cases, or render prosecutors reluctant to bring a charge – thus a jury has the power to influence the law. That is an important distinction that juries possess in the English Legal System which is quite well preserved by the system as it evolved over time. An example of recent jury equity in England and Wales was the acquittal of Clive Ponting, on a charge of revealing secret information, under s.2 of the

Official Secrets Act, 1911 in 1985. Mr Ponting's defence was that the revelation was in the public interest. The trial judge directed the jury that "the public interest is what the government of the day says it is" –effectively a direction to the jury to convict. (Law Teacher) Nevertheless, the jury returned a verdict of not guilty. In Scotland which has a separate legal system from that of England and Wales although technically the "not guilty" verdict was originally a form of jury nullification, over time the interpretation has changed so that now the "not guilty" verdict has become the normal one when a jury is not persuaded of guilt and the "not proven" verdict is only used when the jury is not certain of innocence or guilt. It is absolutely central to Scottish/UK law that there is a presumption of innocence. It is not a trivial distinction since any shift in the burden of proof is a significant change which undermines the safeguard for the citizen.

In the justice system of Canada, juries are used for some criminal trials but not others. For less serious offences that come to trial, a judge alone makes the ruling. In some more serious offences, the accused person can choose to be judged by either a judge or a judge and jury. In the most serious offences, such as murder a judge and a jury are always used. In Canada, a jury does not make a recommendation as to the length of sentence. Juries are selected according to a specific selection of criteria. Prospective jurors may only be asked certain questions, selected for direct significance to impartiality or other relevant matters; any other questions

must be approved by the judge. Juries are only rarely used in civil trials in Canada. Juries have no power to award damages, as they do in the United States, making the incentive to call for a trial with a jury to be less attractive. In England and Wales all trials are under common law. Jury trials are used for serious criminal cases and some civil cases. Trial by Jury is the vital part of The United Kingdoms' Constitution, which places the liberties of the people within their own keeping. Sir William Blackstone said:

"The Trial by Jury is that trial by the peers [i.e. equals] of every Englishman which, as the grand bulwark of his liberties, is secured to him by the Great Charter. The liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from all open attacks, which none will be so hardy as to make, but also from all secret machinations which may sap and undermine it." (Blackstone's Analysis of the Laws of England)

The Jury and its relevance today is quite important because we need to understand the composition of the modern jury. The racial and cultural background of the community is changing which is bound to have an impact on the future composition of juries. That impact will not be limited to problems of language. It will extend to different attitudes to authority, to the individual and society that will need to be taken into account in communicating with modern jurors. It is appropriate to reflect upon the



enduring capacity of the jury of citizens to adapt and change. The advocate and the judiciary will adapt and change in order to fulfil their tasks, so important to a free society. Whilst juries remain part of the UK court system, it will be the duty and privilege of advocates and judges to speak to them. It will surely not be beyond the skills of advocates and judges of today to adapt to the changes which I have mentioned.

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