

# The problems with the jury system



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The ethnic composition of juries has long been a controversial issue. This essay will discuss the flaws with the current jury system regarding ethnic composition and racial bias, the proposal for ethnically balanced juries and the debate on whether such proposals are feasible. A jury usually consists of 12 lay people chosen at random from the electoral register. In criminal cases, the jury is required to give a verdict based on the facts, where the judge will direct them on the points of law. Ideally, the jury should consist of different people from different background and trial by jury should be democratic and fair. However, many would agree that this is not the case in reality. In the current system, it is not uncommon that all of the 12 jurors are white, most of them are middle-aged, and from the middle-class. <sup>1</sup> It is therefore not fair to ethnic minorities as the jury may not always represent their ethnical background and there might be a presence of racial discrimination or bias which affects the verdict. The Runciman Commission and Lord Justice Auld support the idea of having ethnically balanced juries<sup>2</sup>, but this can hardly be achieved due to the random selection element of the jury system. The Court of Appeal in *R v Ford* insisted that " fairness is achieved by the principle of random selection", there is no principle of ensuring a jury be racially-balanced and the trial judge does not have the power to enforce a multi-race jury. <sup>3</sup>Racial Bias Lord Justice Auld suggests that " white juries are, or are perceived to be, less fair to black than white", which is proved by Dr Darbyshire's research and other studies. <sup>4</sup> Although we all know that is racial bias in juries is very common, the English courts seemed to have done nothing about it and let it happens. For example, in *Kuldip Sander's* case, although one of the jurors alleged that some of his fellow jurors " have been making openly racist remarks and jokes" and he

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was afraid that the verdict might not be fair to the defendants, the judge did not discharge the jury. 5 Under the Juries Act 1974, up to three jurors may be discharged in case of illness or other necessity, decided by the judge. The European Court of Human Rights ruled that the trial was conducted contrary to Article 6 of the European Convention of Human Rights, which ensures citizens the right to a fair trial. This case shows that the discretion of our judges is very disappointing. If the defendant did not bring the case to the ECtHR, the judiciary will hardly envisage this problem. Therefore, I strongly think that there is a need to reform the British jury system. To Achieve an Ethnic Mix of Juries As mentioned above, the jury system is often seen as unfair which allows institutional discrimination. Therefore, there are quite a number of voices advocating the need for a ethnically-balanced jury. In 1993, the Runciman Commission suggested that either the prosecution or the defence should have the right to request that up to three jurors be from ethnic minorities, with at least one of those be from the same ethnic background as the defendant or the victim. 6 Sir Robin Auld (Lord Justice Auld), in 2001, agreed with the Commission's suggestion and recommended that " a scheme should be devised, along the lines that I (he) have outlined, for cases in which the court considers that race is likely to be relevant to an issue of importance in the case, for the selection of a jury consisting of, say, up to three people from any ethnic minority group."