

# Role of the jury in the english legal system



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The jury trial is considered to be one of the most controversial elements of the justice system in the UK. The practice of trial by jury has shown over the years to have many disadvantages that which causes concern to society and must be reconsidered by Parliament. The key issues that have arisen of the years relating to the use of juries are a) the experience and intellect of the jurors making judgements in complex cases; b) the expensiveness and longevity of jury trials; and C) the fairness of jury selection. This essay shall try to critically analyse the role of the jury within the English legal system and explain why the jury trial should no longer play a part in the criminal and civil justice systems of the United Kingdom.

Trial by jury was first introduced into the justice system in the twelfth century, however it was not a guarantee until many years later, when a clause within the Magna Carta stated that “ no free man shall be taken or imprisoned...except by the lawful judgement of his peers or by the law of the land”[1]. The role of the jury has since evolved from the medieval times and was completely formed in the 18<sup>th</sup> century into what it is today[2], with modern juries playing a vital role in assessing the facts of the case and, in the case of a criminal trial, determining whether the defendant is guilty *beyond reasonable doubt* , or in the case of a civil trial, deciding whether the claimant has the right to damages on *the balance of probabilities* .

Towards the end of the 1900s, public attention started to be drawn towards problems arising with jury reliability, selection, experience, and bias. The “ Criminal Courts Review” by Lord Justice Auld in 2001 was a crucial argument in the discussions concerning jury trials. Auld goes on to say that support for the jury system “ is not universal, especially among those who have been

jurors.”[3]This suggests that there is a considerable amount of negative opinion among former juror members about the jury system. The main drawbacks presented within this report were a) lack of experienced jurors who represent different social layers, b) poor ethnic minority representation, and c) the game character of the trial process, where the truth is not as important as victory.[4]The Criminal Justice Act 2003 did however alter the jury system and selection process by stating that a) if the judge ruling the case is satisfied, certain fraud cases and cases where a danger of jury tampering existed are not to be tried by a jury; and b) the jury selection system had to be improved in order to provide more experienced and unbiased people representing different social groups and ethnic minorities. [5]

Statistics have shown that jury trials are actually very rare. Only one in every hundred criminal trials are actually tried by jurors due to restrictions on the use of jury trials.[6]But it is not only the restrictions imposed that make access to jury trial very complicated. What also makes it complicated is the extortionate amount of money and long periods of time that must be put into each case, which puts jury trials at a disadvantage. These problems can make it extremely inconvenient and draining for both the defendant and, in particular, the members of the jury as they will have to spend a lot of their time getting through the necessary procedures and partaking in the actual trial. Jury trials can last from a couple days to many weeks, even months. During that period, members can be on a jury for more than one trial during their service.[7]In one instance, a juror failed to turn up for a trial as she found it “ really boring”, resulting in the trial being suspended before

continuing with 11 jurors.[8]This suggests that sitting on a jury is not what is hyped up to be, and that the negatives vastly outweigh the positives of sitting on a jury.

The qualification rules for jury selection has also been often criticised. According to the Juries Act 1974[9], the criteria to serving on a jury are: 1) the person should be registered as a parliamentary or local elector; 2) the person should not be less than 18 and no more than 65 years old; 3) the jury should have been ordinarily resident in the UK for a period of at least five years since his or her 13<sup>th</sup> birthday. The criterion set out in the Act is quite narrow and should be broadened in order to ensure better quality of juries. Ineligible persons include past and present members of the judiciary, other people who have been concerned with the administration of justice, the clergy and mentally ill people. The Criminal Justice Act 2003 also disqualifies individuals who have served a custodial sentence within the past ten years, received a lifetime custodial sentence, or are released on bail and awaiting trial at the time the jury is summoned.[10]However the issue is not in relation to the qualification of jurors, but the mere fact that jurors are subject to human error. As the selection criteria is very narrow, there will be individuals who are well educated as well as not; some who are very responsible and some who are not; and individuals who are wanting get gain a better understanding of the case while others just wanting to get home as soon as possible. In the case of *R v Litchfield*, [11]it was up to the jury to decide whether or not negligence was gross negligence. As a result, the jury's verdict was confused and instructions from the judge had to be restated. It is clear to say that members of the jury in this case were either

not educated well enough or had no experience at all in dealing a complex judgement, which is presumably the case with all jurors.[12]

Many jurors do encounter problems that are far beyond their training and experience, as the lack of legal knowledge allows prosecutors to easily sway jurors to believe their assertions. But not only are jurors unskilled and inexperienced, they often disregard logic presented by the lawyers because of their prejudices, past experience, or moral sentiment. Some jurors may even follow the majority and make the same verdict as the stronger personalities. But the main problem is that, as jurors do not usually know the law and legal procedures, they are often unable to understand complex evidence or to assess the reliability of a witness or evidence. A research study by Matthews, Hancock and Briggs[13] shows that jurors feel very enthusiastic about their role in the trial process, however one third of jurors feel that it is inconvenient. The report also shows that well-educated skilled people and professionals are under-represented as only skilled manual workers and unskilled workers have enough time to be part of longer trials. From this, it is clearly obvious that the education level of many jurors is comparatively low. Approximately 60% of the respondents were confused and had difficulties while listening to evidence and following instructions. Furthermore, about 30% of jurors face a language barrier and would need a translator. Having a translator would make the evidence unclear as translations are not always presented in the right way. The study also shows that a third of jurors are uncomfortable being in a courtroom, but also 90% of jurors are satisfied with being a member of the jury and realise the meaning and importance of the role. Additionally, 30% of jurors are not well educated

(do not have a degree) and 40% of people have no knowledge of the court process. These statistics are an indication that jury selection must vastly improve. All these issues can be ratified by giving jurors more detailed instructions before trial starts and balancing the number of people with different education levels.

Cheryl Thomas states in her research that there are serious race disproportions in the jury structure and ethnic minorities are truly under-represented.[14]Thomas also agrees that instruction need to be more clear, simpler and broad as many jurors claim they have faced difficulties when studying such instructions. However, she also goes on to report that some of the problems concerning race stereotypes within the jury system are highly exaggerated, and have found no proof that white jurors are likely to be biased and make unfair verdicts. With that in mind, remedies must be made to ensure that it is a fair selection and that individuals from all backgrounds are represented in a jury trials. In 2007, the Ministry of Justice published the findings of the Jury Diversity Project[15]which revealed that most defendants in Crown Courts outside of London will be tried by an all-white jury.

The role of the jury in the English legal system remains a controversial part of the judicial system. Complications have arisen by issues of jury selection; costs and longevity of each trials; and the experience and intellect of jury members summoned to partake as a jury member. With many sources proving that a) jurors lack the required intellect and experience to handle complex trials and make fair judgements; b) individuals from all backgrounds, especially ethnic minorities, are under-represented; and c) the length of time for jury selection and trial being too long for an individual to

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handle suggests that the whole process of jury trials need to be reconsidered. A number of former jurors tend to have more of a negative opinion on the use of juries due to the fact that they did not know much about the law, instructions were not given clearly, they could not tell whether to disregard a piece of evidence or not, along with many other issues. However while juries have been an integral part of the judicial system and being assessed by one's peers and not by the judiciary seems fair, non-jury trials have had the least amount of criticism. It is clear to see that jury trials should no longer be a part of the legal system of England and Wales and that all aspects of a trial including analysing the facts of the case as well as the application of the law should only be the responsibility of the judiciary.

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