

The deployment of juries as part of this country's criminal trial procedure should be abolished.

The right to a jury trial (namely the right to be tried by a panel of your peers) has long been seen by common law jurisdictions as constitutionally enshrined and affording the fairest outcome within the criminal justice system (with fairness is defined as being impartial and free from favouritism or discrimination). However, in recent years, the disadvantages plaguing jury trials have become clearer, leading to an increased prevalence of judge trials, for example in complex fraud cases. In this essay it will be argued that jury trials are no longer fit for purpose (in any type of case), as the defects of jury trials can have profound ramifications for society, our criminal justice system, and individuals. Since more complications arise from jury trials, and they are less cost-effective than the alternatives, the burden of proof rests with proponents of jury trials to substantiate the claim that they contribute to the fairness of our justice system and should not be abolished. This essay will analyse the following commonly used arguments in favour of jury trials: 1. they are in the public interest, 2. they allow society to weigh in on the execution of criminal justice, 3. they are less biased than alternative trial procedures and 4. they provide checks on the power of the state. I aim to prove that these arguments are unconvincing in the defence of jury trials, and that the deployment of juries as part of this country's criminal trial procedure should be abolished.

1. Proponents of trials by jury argue that jury trials should not be abolished because it is in the public interest to hold jury trials. Arguably, anonymous public participation in a core aspect of criminal justice instils public confidence in the effectiveness of the system. However, jury secrecy could be seen to undermine public confidence in the system. Since research on jury deliberations is disallowed and juries are not required to give reasons for their verdict, the process of deliberation is shrouded in mystery. Jury secrecy disproportionately affects vulnerable minorities, whose verdicts could have been based on biases held by the jurors, but a lack of understanding of the deliberation process that occurred in each case makes it unclear as to whether discrimination or favouritism occurred, and whether the decision was impartial. Furthermore, jury secrecy makes appeals on these grounds almost impossible to make, as barristers do not have access to the reasons that the jury convicted or acquitted a defendant prove that the decision was unfair.

This argument could be defended with the claim that jury secrecy needs to be maintained for a fair verdict to be reached, because it allows jurors to come to a decision without having to consider the public perception of the reasons for their decision. However, if jurors were only coming to a verdict on the basis of the evidence, then that should be reflected in any reason that the jury could be required to provide, and adverse public reactions to verdicts should not pose a

problem. The adamant maintenance of jury secrecy suggests proponents of jury trials favour acquittals or convictions on the basis of conscience (jury nullification) or bias, which undermines the true function of the jury system (to reach evidence-based verdicts). As a result, jury secrecy is likely to facilitate trials which are partial and involve favouritism and discrimination. Therefore, jury trials are unfair and should be abolished.

2. It could be argued that jury trials should not be abolished because they prove fundamental to the functioning of our criminal justice system by allowing society to weigh in on the interpretation and implementation of laws. For example, terms like 'reasonableness' and 'proportionality' need to be interpreted in a way that is compatible with the expectations that ordinary citizens can and should be held to. This subjective interpretation could arguably be more effectively reached by fellow ordinary citizens. However, this argument assumes that there is a correct definition of reasonable behaviour, for example, and that, among 12 ordinary citizens, a consensus on this definition will eventually be reached. This assumption is unfounded, because the subjectivity of these terms means that there is no consensus on their meaning and so none of the jurors' interpretations of them are likely to be the same, which suggests that jury trials are not effective in reaching unanimous verdicts.

This attack could be defended by the claim that the defects of involving ordinary citizens in verdict deliberations are outweighed by the fact that societies' involvement in the criminal justice system is necessary for the development of the common law. Arguably, jury decisions reflect public opinion of the law, for example acquitting against the weight of the evidence could express disapproval of a law if it is seen as too strict. However, the ability for juries to allow their sympathy to take precedence in the deliberation process can equally be seen as a disadvantage of jury trials, as it means that verdicts are not evidence based. Sympathy towards defendants can vary depending on biases held by the jurors, and so a culture where acquittals on the basis of conscience is seen as a necessary function of jury trials would lead to an unfair implementation of the law. It would also use the criminal justice system as a method of protesting against the state, which uses victims and defendants as a means to an end, and disallows trials from performing their true function, which is to reach solely evidence-based verdicts to serve justice. Therefore, since jury trials promote unfairness by involving society in the deliberation process, they should be abolished.

3. It can be argued that jury trials should not be abolished because they are less biased than alternative criminal trial procedures, such as having a judge, or a

small panel of judges reach the verdict. Since there are 12 jurors involved in deliberation, some might say that the biases of the minority of jurors would be mitigated by having the rest of the jurors involved in the decision-making process, as they would not agree on the verdict reached by the biased few, and so a unanimous or majority verdict would not be reached. However, the fact that the jury are randomly selected does not ensure that it will be representative of the population, and most of the time juries are not representative. This means that there could be cases where most, if not all jurors are influenced by same biases, be they tacit or conscious. Thus, a unanimous or majority verdict could be reached without much conflict on the basis of biases. On the other hand, judges have been trained to forgo biases when considering a case, and can act with a degree of professionalism, making decisions independent of their opinions, which jurors cannot be universally and consistently trusted to do. This suggests that judge trials are fairer than some jury trials, suggesting that jury trials are not fit for purpose.

Proponents of this attack could claim that judges can be plagued by unconscious biases which could influence their verdicts without their knowledge. Judges handle all evidence submitted during a case, as they are responsible for labelling evidence as inadmissible. Arguably, the inadmissible evidence that judges have knowledge of could unconsciously influence their verdict, when in fact it is not pertinent to the case. This would mean that judge trials have the potential to reach verdicts which are not solely evidence based. However, this problem can be circumvented by having another actor handle all evidence submitted during a case, so that the judges involved in deliberation do not handle inadmissible evidence. This may require appointing a greater number of judges, but the cost of the increased appointments would arguably be less than the costs involved in holding jury trials, and therefore this can be seen as a practical solution to retain impartiality and eradicate favouritism and discrimination in criminal trial procedures. Therefore, jury trials should be abolished because they can lead to unfair verdicts, as they are potentially more biased than the judge trials which would replace them.

4. It can be argued that juries should not be abolished as they are a constitutional necessity, providing checks on the power of judges and the state and ensuring that power is not completely concentrated with one individual or institution. By involving society in the criminal justice system, it ensures that judges do not have total power over the implementation of laws in criminal trials. However, judges' understanding of the letter of the law is consistent with how the law is, because judges are highly skilled and knowledgeable in the law. Therefore, where societal representation is truly needed is in the House of Commons, which is where the

law is made, and this representation exists through the democratic process by which MPs are elected. Therefore, Parliament provides all the necessary checks on the power of the state and of judges, diminishing the role of the jury in providing this function.

However, it could be argued that parliamentary checks on the power of the government are insufficient, as a government with a majority in the House of Commons can usually rely on the support of their party, so laws proposed by the government will usually be passed. This would necessitate the existence of juries, to provide the secondary check on the Executive's power. However, if jury trials were abolished, the media could play a more pivotal role in scrutinising the power exercised by judges when reaching their verdict. This is because judge trials would be more transparent, as judges would provide reasons for their verdicts in the form of a judgement, which could be broadcast to the public and analysed by ordinary citizens to ensure that judges are not exercising inordinate amounts of discretion when implementing and interpreting the law. Media cannot act as a sufficient check on the power of criminal courts for trials by jury because jury secrecy makes the deliberation process inaccessible and opaque. This means that currently, there is no way to check that juries are not abusing their power. As a result, it can be argued that judge trials would allow for an increased level of checks on the power of the state and judges than there currently is on the power of the jury. Therefore, jury trials should be abolished, because there is no way being certain that jury trials are fair.

In conclusion, while jury trials have historically been a constitutionally enshrined right afforded in common law jurisdictions to provide the fairest outcome within the criminal justice system, the defects of jury trials seem to outweigh the benefits of maintaining them. Jury trials are arguably not in the public interest because the principle of jury secrecy undermines the notion that the criminal trial procedure should be transparent. The fact that jury trials allow society to weigh in with regards to the implementation of law can be seen as undermining the purpose of trials, which is to reach solely evidence-based verdicts. Juries can be seen as more biased than the alternative trial procedures because it is more difficult to prevent the biases of jurors from impacting the verdict than it is for judges to forgo bias. Juries are also not a necessary check on the power of the state and judges, because parliament and the media fulfil that role. Therefore, proponents of jury trials fail to establish a convincing case for the continuation of this procedure. This essay concludes that jury trials should be abolished, because they promote unfairness as they do not uphold the principle of impartiality, or provide safeguards against favouritism and discrimination. The upshot is that trials by a judge or a panel of judges could be seen as a more effective method of promoting fairness within this country's criminal trial procedures.

