

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

## **Defend the proposition: The deployment of juries as part of this country's criminal trial procedure should be abolished.**

In his 1899 book 'The Principles of Sociology', Herbert Spencer claims that the jury is "a group of twelve people of average ignorance".<sup>1</sup> Proponents of meritocracy and interventionism would support this, arguing that trials nowadays are becoming increasingly complex, and the availability of information demands the abolition of trial by jury in favour of a different system.

During the High Middle Ages, when steps towards justice and civil liberties were necessary, the development of the 12-man jury was a monumental step that redefined English Common Law, since then, juries have arguably become the poster child of British democracy, having been adopted widely across the anglosphere and beyond. However, it is British democracy's ability to accrete and evolve that has prompted advocacy for a fundamental change to be made again. Can an archaic system 850-years in the making, that leans on the shoulders of its citizenry, really be relied on to deliberate and adjudicate in the modern world?

"NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor [condemn him,] but by lawful judgment of his Peers, or by the Law of the Land."<sup>2</sup> One of the most widely recognisable clauses of the Magna Carta states that every man is entitled to a fair trial by his peers before any punishment is imposed. Heralded as the first formal acknowledgement of a right to trial by jury, the term "by lawful judgment of his Peers" is reflected nowadays by the fact that jurors are chosen at random from the electoral register,<sup>3</sup> yet there is no attempt to ensure a jury is representative of society as a whole. Unfortunately, this frequently results in many jurors not being "peers" of those whom they are trying. They are predominantly white, middle class, able-bodied, and heterosexual,<sup>4\*</sup> which is unrepresentative of the population. This is frequently the case concerning those whom they are trying too, because 23% of people prosecuted in the UK are from

---

<sup>1</sup> H. Spencer. (1899). Quote from Herbert Spencer, 1899. H.Y. Levin., J.W. Emerson. (2006) 'Is There a Bias Against Education in the Jury Selection Process?', *Connecticut Law Review*. (Vol. 38). (No. 3). Available at:

[https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1446&context=fac\\_artchop](https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1446&context=fac_artchop). Accessed: 12<sup>th</sup> July 2024.

<sup>2</sup> Legislation.gov.uk. (n.d.). *Magna Carta, 1297, c. 29*. Available at: <https://www.legislation.gov.uk/aep/Edw1cc1929/25/9/section/XXIX>. Accessed: 12<sup>th</sup> July 2024.

<sup>3</sup> Legislation.gov.uk (n.d.) *Juries Act, 1974, s.3,8,17*. Available at: <https://www.legislation.gov.uk/ukpga/1974/23/introduction>. Accessed: 14<sup>th</sup> July 2024.

<sup>4</sup> C. Thomas., N. Balmer. (2007). 'Diversity and Fairness in the Jury System', *Ministry of Justice Research Series 2/07*. pp. 6,13. Available at: <https://www.ucl.ac.uk/judicial-institute/sites/judicial-institute/files/diversity-fairness-in-the-jury-system.pdf>. Accessed: 14<sup>th</sup> July 2024. (\*these groups are more likely to appear on the electoral register.) (\*\*racist comments made by jurors during deliberation in recent years has given credibility to this argument.).

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

BAME backgrounds.<sup>5</sup> Therefore, 23% of cases are not a true trial by one's "peers". Juries that lack representation and diversity have the potential to marginalise those different to themselves. Individual votes during deliberation can be influenced by biases, unconscious or not,<sup>4\*\*</sup> and produce wrongful convictions and unjust sentencing as jurors perceive persons who are different to them, especially peoples of colour, to be more of a threat to society and consequently more deserving of punishment.<sup>6</sup>

In an era where information is just a few clicks away, the traditional trial by jury system is becoming increasingly challenged by widespread pretrial publicity and the potential for juror bias. Section 8 of the Juries Act 1974 makes it an offence for jurors to research or obtain any information regarding the case following their swearing-in.<sup>3</sup> Even so, the ready availability of the internet make it near on impossible for jurors to come with completely clean minds i.e. with no preconceived ideas or external influences. This is especially difficult if the case is a high profile one. The ease with which one can access information compromises the integrity and impartiality of the jury system, two things on which it fundamentally relies. The traditional model of the jury, one designed for use in the Middle Ages, operates under the assumption that jurors, *ceteris paribus*, will only consider evidence and information provided in court. But realistically, this is not the case. In a digital age where information spreads rapidly, widely, and often alongside strong biases and emotive responses, jurors, being only human, are also subject to these influences. Consciously or unconsciously, jurors can use this information during the trial which effectively undermines the impartiality and fairness of the proceedings. This issue was exemplified by Caroline Mitchell's four-week imprisonment following her internet search for an address spoken of during a trial on which she served as a member of the jury in March 2021. Mitchell understood the requirement for a just and impartial outcome because she was a solicitor of 25 years but chose to breach the trust placed in her. As a result, the entire jury was discharged, and the trial was aborted. The complainant and defendant waited 8 months for a retrial,<sup>7</sup> which was detrimental to the case itself and demanded an extremely costly retrial. As a legal professional, Mitchell was fully aware of the moral and ethical implications her actions would have, and her deliberate disregard of these raises concerns about much lay jurors understand and follow the necessary steps taken to ensure a fair and impartial trial. This instance underpins the inherent vulnerabilities of the jury system in this day and age, and raises a critical question we must ask: how can we expect

---

<sup>5</sup> B. Yasin., G. Sturge. (2020). 'Ethnicity and the criminal justice system: What does recent data say on over-representation?', *House of Commons Library*. Available at: <https://commonslibrary.parliament.uk/ethnicity-and-the-criminal-justice-system-what-does-recent-data-say/>. Accessed: 14<sup>th</sup> July 2024.

<sup>6</sup> M. Lynch., C. Haney. (2011). 'Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the 'Empathic Divide'', *Law & Society Review* 45. (no. 1). pp. 91-92. Available at: [https://socialecology.uci.edu/sites/socialecology.uci.edu/files/users/lynchm/mapping\\_racial\\_bias.pdf](https://socialecology.uci.edu/sites/socialecology.uci.edu/files/users/lynchm/mapping_racial_bias.pdf). Accessed: 14<sup>th</sup> July 2024.

<sup>7</sup> J. Hyde. (2024). 'Solicitor jailed for jury internet search suspended for eight years', *The Law Society Gazette*. Available at: <https://www.lawgazette.co.uk/news/solicitor-jailed-for-jury-internet-search-suspended-for-eight-years/5118483.article>. Accessed: 15<sup>th</sup> July 2024.

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

lay jurors, who might not fully grasp the nuances of legal ethics, to consistently uphold the principle of impartiality in a world where information is easier to obtain than isolate from?

By definition, a jury is “a body of persons sworn to render a verdict in a court of justice or a coroner’s court”.<sup>8</sup> But this begs the question, what are they sworn to? In England, Wales, and Northern Ireland, the Oaths Act 1978 requires jurors to swear/affirm that they “give a true verdict according to the evidence.”<sup>9</sup> However, unconscious social and cognitive biases/prejudices can enormously influence individual decision-making during a trial, especially regarding the evidence provided to them.<sup>10</sup> Despite this, many would claim that when operating as part of the 12-man collective, these inherent biases are often of limited direct effect on the verdict itself.<sup>11</sup> Nonetheless, when certain views are held by verbose jurors they can have significant sway on the direction taken by discussion during deliberation, which can lead to adjudication catalysed by group dynamics rather than an objective analysis of the evidence. Also known as groupthink, whereby the desire for cohesion and a consensus overrules pragmatism and critical evaluation of evidence.<sup>12</sup> This phenomenon becomes especially prevalent upon the presence of more boisterous or vociferous jurors. If jurors are arguing from a place of bias or prejudice, groupthink can be hugely significant in appealing to less vocal jurors’ conformation bias: telling them what they want to hear but are more hesitant to vocalise, and therefore biases and prejudices are reinforced rather than challenged. Even if these more extreme views are not homogenous among the group, groupthink can, again, reinforce rather than challenge these views as less confrontational jurors prioritise cohesion over justice. In essence, the interplay between inherent bias or prejudice and groupthink can lead to the marginalisation of more rational and analytical thinking in favour of ‘whoever can talk the loudest’. This constitutes a failure of the modern jury system as it, not only inhibits justice and what is morally right and just, but makes it near on impossible to overturn or repeal a verdict wherein groupthink has occurred. This is because it is most commonly observed first-hand, by those who are victims of it and so are of limited awareness it is taking place, which is why there are no clear-cut estimates as to how often it happens during jury deliberation despite an acute awareness that it does. The Contempt of Court Act 1981 prevents jurors from discussing deliberation with any third parties who may have the expertise to recognise that

---

<sup>8</sup> J.M. Hawkins. (Ed.) (1986). *The Oxford Reference Dictionary*. (2<sup>nd</sup> ed.). Oxford: Oxford University Press. pp. 448.

<sup>9</sup> Legislation.gov.uk. (n.d.). *Oaths Act 1978, s.6*. Available at: <https://www.legislation.gov.uk/ukpga/1978/19/contents>. Accessed: 13<sup>th</sup> July 2024.

<sup>10</sup> L. Wrightsman., M. Nietzel., W.H. Fortune. (1998). *Psychology and the legal system*. (4<sup>th</sup> ed.). Monterey, California: Brooks/Cole.

<sup>11</sup> N. L. Kerr., J. Y. Huang. (1986). ‘How much difference does one juror make in jury deliberation.’, *Personality and Social Psychology Bulletin* 12. pp. 325–343.

<sup>12</sup> S.D. Johnson., R.W. Leaver. (1992) Groupthink and the Classroom: Changing Familiar Patterns to Encourage Critical Thought." *Journal of Instructional Psychology* 19. (no. 2). pp. 100,101. Available at: <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1014&context=rhetoric-faculty-publications>. Accessed: 13<sup>th</sup> July 2024.

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

groupthink has occurred,<sup>13</sup> and as a consequence, groupthink is left largely unchecked. When considering this, serious questions regarding the efficacy of the jury system are raised. If juries regularly deliver verdicts that have been verbatim subject to groupthink, it suggests a fundamental flaw in the system that warrants abolition.

In the modern courtroom, the jury's role is arguably devolving into theatrics. The ceremonial attire is testament to this. Lawyers, particularly barristers, relish in the opportunity to play dress up in front of a jury - at least the bishops and academics have stopped wearing wigs.<sup>14</sup> This ritualism underscores how justice has remained more about spectacle than substantive justice.\*\*\* Grandstanding to invite favour from the jury can have an unconscious effect on jurors who are swayed by the persuasive capabilities or bravado of barristers. This only makes the court's job of determining whether the cases raise legitimate legal questions more challenging and time-consuming than necessary. And as yet another way jurors are influenced, grandstanding can cause evidence to be disregarded in favour of whomsoever jurors prefer listening to or like the look of more. This trend is problematic because it can shift the discussion during deliberation away from the credibility of the evidence and onto the merits of the barristers themselves, potentially resulting in jurors voting based on preferential biases or, in short, who had the better lawyer. In contrast, the 'worst' lawyer can also impact the verdict. Discourtesy by a barrister could persuade jurors to take a more unsympathetic approach towards their client's case as jurors associate this lack of professionalism and viability with/as a broader reflection of the client.<sup>15</sup> Given the part that showboating and impressions play during trials, there is valid argument for the abolition of jury trials as it could refocus the process onto the practical aspects rather than the theatre behind it.

Majority verdicts "dilute the principle of reasonable doubt",<sup>16</sup> and this disregard for a necessary safeguard fundamentally jeopardises the fairness of verdicts and thereby the concept of a jury trial. Cases in which they have occurred are often described as miscarriages of justice, this is because they silence the voices of jurors who do not conform to the majority. As late as the 1960s, as diversity blossomed, legal experts and MPs expressed concerns that

---

<sup>13</sup> Legislation.gov.uk. (n.d.). *Contempt of Court Act 1981, s.8*. Available at: <https://www.legislation.gov.uk/ukpga/1981/49/section/8>. Accessed: 13<sup>th</sup> July 2024.

<sup>14</sup> S. Jenkins. (2021). 'Our justice system is in crisis, so why not abolish jury trials?', *The Guardian*. Available at: <https://www.theguardian.com/commentisfree/2021/jan/22/justice-system-crisis-abolish-jury-trials-covid>. Accessed: 15<sup>th</sup> July 2024.

\*\*\* There is an equally credible argument that it is important to preserve tradition as to not lose sight of one's roots.

<sup>15</sup> T. Wilson. (2012). 'Legal grandstanding does more harm than good', *The Globe and Mail*. Available at: <https://www.theglobeandmail.com/report-on-business/small-business/sb-growth/legal-grandstanding-does-more-harm-than-good/article4502878/>. Accessed: 15<sup>th</sup> July 2024.

<sup>16</sup> Research by Appeal. H. Siddique. (2024) 'Majority verdicts facilitated 56 miscarriages of justice in England and Wales, charity says.', *The Guardian*. Available at: [https://www.theguardian.com/uk-news/article/2024/may/07/majority-verdicts-facilitated-56-miscarriages-of-justice-in-england-and-wales-charity-says?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/uk-news/article/2024/may/07/majority-verdicts-facilitated-56-miscarriages-of-justice-in-england-and-wales-charity-says?CMP=Share_iOSApp_Other). Accessed: 15<sup>th</sup> July

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

migrant, racialised, and working-class citizens would be inadequate to serve on juries across the country.<sup>17</sup> And subsequently, the Criminal Justice Act 1967<sup>18</sup> passed majority verdicts into law, reaffirmed by the Juries Act 1974.<sup>3</sup> Consequently, ending a centuries old practice, the law since 1967 has not required unanimity among jurors. A resounding issue that arose from the requirement for unanimity was that if a jury could not reach a consensus on the defendant's guilt or innocence after deliberation, it would lead to a hung jury and necessitate a retrial. This led to wasted time and increased costs to the judiciary. By permitting majority verdicts, it was argued a system was created for reaching decisions even with divided opinion, thus enhancing the efficiency of the courts. Nonetheless, the passage of these two acts, and the politics surrounding them, was a suggestion that these migrant groups were inherently 'not up for the job', undermining the principle of equality and fairness in jury service. When voices are disregarded as of the collective, the will of society as a whole is not exercised if one or two jurors disagree with the rest of their peers. Additionally, unanimity ensures thorough deliberation and a higher standard of certainty before conviction. Researchers from Appeal, the UK's miscarriage of justice charity, suggest that the Contempt of Court Act 1981,<sup>13</sup> by making it a criminal offense to discuss the details of jury deliberation, "is an enormous impediment to the study of the impacts of majority verdicts in real cases".<sup>15</sup> This lack of transparency undermines the accountability and responsibility held by each juror when swearing in and allows discrimination to go under the radar. Considering this, the abolition of trial by jury is an imperative to ensure that those who are denied a voice, even when included in the current jury system, are not denied rights or a say given to other people.

My considered view, taking account of the issues highlighted above, is that jury trials have outlived their effectiveness, and a modern fit-for-purpose criminal justice system requires that they should be abolished.

## **Bibliography**

T. Bigham. (2010). *The Rule of Law*. London: Penguin Books.

J.A.G Griffith. (1997). *The Politics of the Judiciary*. (5th e.d.). London: Fontana Press.

H. Spencer. (1899). Quote from Herbert Spencer, 1899. H.Y. Levin., J.W. Emerson. (2006) 'Is There a Bias Against Education in the Jury Selection Process?', Connecticut Law Review. (Vol. 38). (No. 3). Available at:

---

<sup>17</sup> D. Clague. (2024). 'Calls to end 'majority jury verdicts' after research into wrong convictions.', *Islington Verdicts*. Available at: <https://www.islingtontribune.co.uk/article/calls-to-end-majority-jury-verdicts-after-research-into-wrong-convictions>. Accessed: 15<sup>th</sup> July 2024.

<sup>18</sup> Legislation.gov.uk. (n.d.). *Criminal Justice Act 1967, s. 13*. Available at: <https://www.legislation.gov.uk/ukpga/1967/80/section/13>. Accessed: 15<sup>th</sup> July 2024.

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

[https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1446&context=fac\\_artchop](https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1446&context=fac_artchop). Accessed: 12th July 2024.

Legislation.gov.uk. (n.d.). Magna Carta, 1297, c. 29. Available at: <https://www.legislation.gov.uk/aep/Edw1cc1929/25/9/section/XXIX>. Accessed: 12th July 2024.

Legislation.gov.uk (n.d.) Juries Act, 1974, s.3,8,17. Available at: <https://www.legislation.gov.uk/ukpga/1974/23/introduction>. Accessed: 14th July 2024.

C. Thomas., N. Balmer. (2007). 'Diversity and Fairness in the Jury System', Ministry of Justice Research Series 2/07. pp. 6,13. Available at: <https://www.ucl.ac.uk/judicial-institute/sites/judicial-institute/files/diversity-fairness-in-the-jury-system.pdf>. Accessed: 14th July 2024.

B. Yasin., G. Sturge. (2020). 'Ethnicity and the criminal justice system: What does recent data say on over-representation?', House of Commons Library. Available at: <https://commonslibrary.parliament.uk/ethnicity-and-the-criminal-justice-system-what-does-recent-data-say/>. Accessed: 14th July 2024.

M. Lynch., C. Haney. (2011). 'Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the 'Empathic Divide'', Law & Society Review 45. (no. 1). pp. 91-92. Available at: [https://socialecology.uci.edu/sites/socialecology.uci.edu/files/users/lynchm/mapping\\_racial\\_bias.pdf](https://socialecology.uci.edu/sites/socialecology.uci.edu/files/users/lynchm/mapping_racial_bias.pdf). Accessed: 14th July 2024.

J. Hyde. (2024). 'Solicitor jailed for jury internet search suspended for eight years', The Law Society Gazette. Available at: <https://www.lawgazette.co.uk/news/solicitor-jailed-for-jury-internet-search-suspended-for-eight-years/5118483.article>. Accessed: 15th July 2024.

J.M. Hawkins. (Ed.) (1986). The Oxford Reference Dictionary. (2nd ed.). Oxford: Oxford University Press. pp. 448.

Legislation.gov.uk. (n.d.). Oaths Act 1978, s.6. Available at: <https://www.legislation.gov.uk/ukpga/1978/19/contents>. Accessed: 13th July 2024.

L. Wrightsman., M. Nietzel., W.H. Fortune. (1998). Psychology and the legal system. (4th ed.). Monterey, California: Brooks/Cole.

N. L. Kerr., J. Y. Huang. (1986). 'How much difference does one juror make in jury deliberation.', Personality and Social Psychology Bulletin 12. pp. 325-343.

S.D. Johnson., R.W. Leaver. (1992) Groupthink and the Classroom: Changing Familiar Patterns to Encourage Critical Thought." Journal of Instructional Psychology 19. (no. 2). pp. 100,101. Available at: <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1014&context=rhetoric-faculty-publications>. Accessed: 13th July 2024.



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

Legislation.gov.uk. (n.d.). Contempt of Court Act 1981, s.8. Available at: <https://www.legislation.gov.uk/ukpga/1981/49/section/8>. Accessed: 13th July 2024.

S. Jenkins. (2021). 'Our justice system is in crisis, so why not abolish jury trials?', The Guardian. Available at: <https://www.theguardian.com/commentisfree/2021/jan/22/justice-system-crisis-abolish-jury-trials-covid>. Accessed: 15th July 2024.

T. Wilson. (2012). 'Legal grandstanding does more harm than good', The Globe and Mail. Available at: <https://www.theglobeandmail.com/report-on-business/small-business/sb-growth/legal-grandstanding-does-more-harm-than-good/article4502878/>. Accessed: 15th July 2024.

Research by Appeal. H. Siddique. (2024) 'Majority verdicts facilitated 56 miscarriages of justice in England and Wales, charity says.', The Guardian. Available at: [https://www.theguardian.com/uk-news/article/2024/may/07/majority-verdicts-facilitated-56-miscarriages-of-justice-in-england-and-wales-charity-says?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/uk-news/article/2024/may/07/majority-verdicts-facilitated-56-miscarriages-of-justice-in-england-and-wales-charity-says?CMP=Share_iOSApp_Other). Accessed: 15th July

D. Clague. (2024). 'Calls to end 'majority jury verdicts' after research into wrong convictions.', Islington Verdicts. Available at: <https://www.islingtontribune.co.uk/article/calls-to-end-majority-jury-verdicts-after-research-into-wrong-convictions>. Accessed: 15th July 2024.

Legislation.gov.uk. (n.d.). Criminal Justice Act 1967, s. 13. Available at: <https://www.legislation.gov.uk/ukpga/1967/80/section/13>. Accessed: 15th July 2024.

**Word Count (excluding footnotes and bibliography): 1994.**