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# The English Jury on Trial

By

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# **The English Jury on Trial**

## **Introduction**

Within the English criminal justice system, trial by jury remains the gold standard means of delivering justice. The complex mix of evidence against those accused, alongside testimony, which challenges the police interpretation of the facts, is thought to be resolved simply through exposure to a jury of our peers. Of course in practice, things are unlikely to be so simple. In fact, discussing jury decisions with any police officer typically results in the same opinion being expressed: that the only predictable feature of the jury – is their unpredictability.

Nonetheless, in the aftermath of a verdict being returned, the typical response from the public and the press alike, is one of unwavering acceptance. Irrespective of the media's portrayal of a defendant pre-trial (often rooted in a presumption of guilt), once the jury has decided otherwise, rarely will this be challenged. Public opinion polls consistently display high levels of support for trial by jury, with more than 80% of British citizens strongly advocating use of the system. Likewise, those working within the judiciary, appear to share such a view. The previous Attorney General Dominic Grieve, responsible for all prosecutions brought in England until mid-2014, stated the jury system to be an essential feature of British justice, "deeply ingrained in our national DNA".

Despite this, over recent year's critics of the jury system have steadily begun to grow, particularly within the academic community (cf. Willmott, 2016; Willmott & Sherretts, 2016) and appearing to be the result of an increasing number of cases where questionable verdicts were returned. Cases that police officers describe as 'nailed shut' routinely fail to obtain guilty verdicts and those generating strong public opinion appear most susceptible to bias, leaving many involved asking, what other factors may influence the decision to vote guilty – or not?

## **English Jury Trials**

Within England and Wales trial by jury takes place when an individual pleads not guilty to a serious crime and, if found guilty, they face a possible sentence of considerable years' prison. Around 30,000 cases progress to full trial each year, resulting in approximately 400,000 jurors being summoned to take part. Interestingly, unlike in other countries where those selected are questioned extensively before the trial begins, within England the law prevents jurors from being asked almost anything related to the case. The reasoning for this being that the random selection of jurors, without the need for qualifying features (except for age, sound mental health, and a lack of criminal convictions), is highly regarded within the English system and, in fact, considered to be fundamental to the fairness of verdicts. This broad inclusion criteria is thought to ensure varied and representative members of the community are present within different cases. As such, huge value (and trust) is placed in the random composition of 12 people from the local community, each of whom bring alternative views and opinions on the case. Yet with such a wide spectrum of people acting as jurors, comes a whole host of associated biases. Biases which bring the assumption of juror impartiality, into question.

Research, emerging largely out of the United States, has shown that the personal characteristics of jurors themselves may have a bearing on the verdicts they return. Factors such as the variation in juror age across the jury panel, as well as racial and gender composition, have all been shown to have some influence upon the final judgements made. In fact, more recently, research has shown that - irrespective of the evidence presented at trial - attitudes that jurors hold towards specific aspects of a case may themselves be able to predict the decisions that individual jurors will make (Willmott & Oostinga, 2017). For example, jurors who hold strong attitudes towards drug use, were shown to be much more likely to vote guilty, when presented with defendants accused of drug related crimes, regardless of the level of evidence implicating them for such. Whilst this seems somewhat obvious, consideration of the likely ramifications

of such juror attitudes upon death penalty verdicts within the United States, highlights the problems therein. Clearly, evidence of a relationship between juror attitudes and the verdict decisions they make, raises serious questions surrounding how impartial and fair juror decision making truly is (Willmott, 2017).

### **Rape Trials: Time for an Overhaul?**

One offence that generates fierce public opinion and debate is the crime of rape. Despite police figures revealing that false allegations represent just a small proportion of all reported rapes, the common public view towards those reporting such crimes remains one of disbelief and discontent. Substantial evidence exists which displays how widespread inaccurate beliefs surrounding how a ‘real rape victim’ behaves, alongside misconceptions of the typical motivations for claiming rape, are in society (Debowska et al, 2015; Debowska, Boduszek & Willmott, 2017). These attitudes are so profound that judges must now routinely warn jurors against drawing upon these false beliefs when making decisions during the trial. However, the extent to which these instructions are taken into consideration remains questionable.

In an attempt to test whether juror bias affects the fairness of decision making, a new approach was devised. Members of the public were invited to take on the role of the jury in much the same way as real juries are selected. In total, 108 individuals responded to the mock summonses and took part in nine separate mock trials. The research began by examining not only juror attitudes, but their psychological make-up too. Every ‘juror’ completed attitudinal and personality assessments, some of which have never before been applied to jurors in this context. For example, Psychopathic Personality Traits Scale (Boduszek, Debowska, Dhingra & DeLisi, 2016; Boduszek, Debowska & Willmott, 2017). Then, with the participation of real lawyers and professional actors, the jurors observed a reconstruction of a genuine rape case over the

course of an entire day. The case used was selected as it had equal evidence in favour of both the complainant's and defendant's version of events. Alongside this, there was also little other objective evidence for jurors to go on, something that is commonplace within 'acquaintance' rapes, which tend to take place in private and between people in some way known to one another.

So far, the findings have led to some important insights. For example, results displayed that juror attitudes were significantly associated with who they believed to be telling the truth, with those scoring high in rape supportive attitudes shown to be much more likely to disbelieve the complainant and believe the defendant. In fact, despite the alleged victim and perpetrator accounts being equally matched in terms of the evidence, all nine trials resulted in not guilty verdicts. Whilst it is of course possible that some of these verdicts were the result of jurors simply feeling they were not sure beyond a reasonable doubt, evidence of high levels of rape bias appear to suggest overall this was not the case. More importantly, advanced analytical procedures also displayed that scores on factors such as affective responsiveness, cognitive responsiveness, egocentricity, and interpersonal manipulation, (cf. Debowska *et al*, 2017) were significantly associated with juror decision making and appear to be predictive of the verdicts jurors will choose.

So what does this mean for the fairness of jury decision making? Well, if a relationship exists between a jurors' psychological makeup, attitudes towards rape and ultimate verdict returned, this would strongly suggest preconceived biases have much more of a direct influence upon the fairness of rape trials than has previously been portrayed. Should the jury system in England therefore be overhauled and abolished? We argue not. Should it be modernised and reviewed based upon scientific evidence? Most definitely, which in turn will make for fairer verdicts. Not just for defendants. But for complainants and victims as well (Willmott, 2017; Willmott & Oostinga, 2017).

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