You, The Juror: What Role Does Jury Service Play In Our Democracy?

by Jessica Wickham

Juries, composed of twelve average citizens, are often called to consider complex questions without necessarily having the expertise to do so. An illustrative example is the case of Raphael Golb, the son of University of Chicago Professor Norman Golb. In 2014, Golb launched an internet campaign to severely damage the reputations of numerous scholars at his father's university. Later that year, he was charged with multiple counts of identity theft, criminal impersonation and forgery, among other charges. On May 13th, the jury had reached their decision, and Golb stood in court, facing the twelve men and women that would ultimately decide his fate ("People v. Golb"). Just as that jury had to determine the facts and apply an incredibly complex and sometimes archaic law, so too does every jury in order to reach a verdict. The process is complex and flawed, but the jury system sets us apart from the rest of the world, making it the single most important element of our democracy today.

The jury system must be understood in order to be properly judged. The process of selecting twelve citizens to judge the fate of another has many intricate yet necessary steps. The first of these steps is random selection. State records for registered voters, driver's licenses and people receiving unemployment benefits are all sources for potential jury selection ("How Are Jurors"). Once the notice to appear is sent out, a potential juror is required to report unless he or she can claim undue hardship (Dachis, Streicker). After the potential jurors are selected, they're placed on a panel called the *venire*, which is Latin for "to come." Then the second step can begin: selecting whom to put on the jury. The process of selecting jurors requires as much scrupulousness as the actual trial. This part of the process is called *voir dire*, which is Latin for "to speak the truth." During the *voir dire*, both the judges and lawyers from each side ask potential jurors a series of questions to determine their character, bias and prejudices. Jurors can

be rejected through challenges for cause or peremptory challenges. Lawyers usually have an unlimited number of "for cause" challenges they can make, as these challenges have to do with bias, whether actual or implied (Streicker). The questions asked are designed to detect any possible partiality in a potential juror so he or she doesn't end up on the panel. All of these challenges have to be granted by the presiding judge ("Steps in a Trial"). The second kind of challenge, a peremptory challenge, is less about bias and more about the lawyer's case. If a potential juror appears to favor the opposing side, a lawyer may reject them without reason, so long as it is not based on prejudice like race, religion, or ethnicity (Streicker). Due to the nature of these challenges, a lawyer has a limited number of peremptories, varying with the seriousness of the case.

When twelve jurors are sworn in, the selection process is complete. According to the American Bar Association's article, "Steps in a Trial," the jurors then hear the case from both sides and are instructed by the judge not to discuss the case with outsiders. Optimally, the jury will not make any assumptions before the case is completed, and once the arguments have been made, they will consider all the evidence when making their decision. In criminal cases, all twelve jurors have to agree before reaching a verdict. If they can't, either a mistrial is declared or the deadlocked jury is given an Allen charge – essentially encouraging them to reach a verdict (Dachis; "Deadlocked Jury"). In civil cases, however, only nine of the twelve (three quarters) have to agree to reach a verdict (Dachis). In both cases, it is the sole responsibility of the jury to determine the facts and apply them to the law.

Despite the multiple steps to anticipate possible errors in the entire jury system, there is still room for mistakes, and flaws in the system are found in every step. First, the selection process leaves room for lawyers to accept jurors they want and reject those they don't. As long as their reasoning is not prejudiced, their peremptory challenges cannot be questioned. Knowing this, lawyers look for specific traits in jurors, especially leadership skills. Being open to their

case is another feature lawyers look for, and is generally a good thing, as a juror should be impartial. However, leadership is where shaping the jury comes into play the most. If a lawyer notices a leader among the potential jurors, that juror will probably be selected as he or she can help sway the jury. However, if the leader leans towards the opposing side, he or she will probably be rejected immediately. As such, lawyers could reject possible jurors, like in *12 Angry Men,* who would provide enough doubt to sway the jury to a completely different verdict (Hullinger).

Another significant flaw in the jury system is the process of reaching a verdict amongst themselves. After the jury hears both sides, the presiding judge will explain all relevant laws, and how to apply and use all the evidence that was provided. Even so, the judge is not part of the verdict-reaching process; this is all up to the jury, in counsel, amongst themselves. Jury sessions aren't recorded, and though they are instructed to remain impartial and use all the facts, they don't have to use all or any of what they heard in court to reach a verdict (Oginski; Singer 9). Many would like to believe that the jury members are responsible people who essentially block out everything else aside from the case to determine a verdict. The fact of the matter, though, is that each juror brings their own experiences and ideas into the room. In most cases, this variety is a good thing. However, even when a juror isn't biased, he or she can still ignore facts because of their beliefs and opinions.

Psychological studies into this phenomenon have found that many people actually stick up for what they believe in more when facts they hear contradict what they personally believe (Keohane). A 2014 study by the *Journal of Neuroscience* found that the human brain judges a person's trustworthiness almost immediately after seeing just that person's face (Sifferlin). The average person is no deception expert, so the average juror could therefore make very incorrect decisions about the defendant before the defendant even speaks. A 2015 study lead by University of Toronto social psychologist Dr. John Wilson shows exactly how wrong juries can

be about a defendant. The study found that most people judge a person's trustworthiness just by the emotion the person's face most closely resembles (Gregoire).

In other words, if a person's face looks generally pleasant, that person is considered more trustworthy. Criminals can use this to create trust in their favor, whereas the innocent may be unaware of this fact and end up appearing guilty. Once this initial opinion is formed, even the facts have a hard time changing it. Furthermore, the assertive individuals of the jury can convince the minority of those who may not agree through a scenario known as "groupthink." Originating with Irving Janis in 1982, groupthink is when group members are swayed more by the majority opinion, the need to agree and a dynamic leader, than by the realities of the situation (Rathus 372). The jurors can form immediate opinions about the defendant one way or another and ignore the facts when they go against this view, and the assertive members can convince the others. Lawyers know this far more often than jurors do; they can and will select jurors who they believe will sway the jury just this way towards what they want.

With the number of pitfalls in the jury system, it's a wonder the United States hasn't gotten rid of juries or at least limited them like the rest of the world. England, for example, has a jury system, but it is only used in the most serious criminal cases. The right to a trial by jury is not directly in their written constitution. It's a part of the "unwritten" constitution ("The Jury System"). In countries like Japan, Germany and France, there is what is known as a "lay judge" system (Nagano). In this system, lay judges are ordinary citizens selected by a committee to serve in conjunction with professional judges on the same panel ("German Law"). Lay judges can cross-examine witnesses. They deliberate in the same room with the professional judges, and their votes are just as valuable (Nagano). Then there are countries like India, which had a jury system at one time but abolished it. India abolished their jury system after a case known as *K. M. Nanavati Vs. State of Maharashtra*. The defendant, a naval officer, was accused of murder. After the trial, the jury announced a "not guilty" verdict. Soon after, the verdict was

overturned, the jury's decision declared perverse, and the whole jury system was abolished. Juries were removed from India on the grounds that juries were prone to ignorance, misdirection, and erroneous actions ("K. M. Nanavati").

Unlike the rest of the world, we not only held onto our jury system – we improved upon it. Initially, only white men with enough property qualified to serve on a jury. The Fourteenth Amendment, after 1868 ratification, stated that all citizens were entitled to equal protection of the law. In 1880, the Supreme Court case *Strauder v. West Virginia* ruled that such equal protection also included trial by jury, and that service on a jury could not be restricted based on race. The right to serve on a jury was gradually extended to include minorities and women, a process that lasted well into the twentieth century. Unfortunately, another decision that year, known as *Virginia v. Rives,* ruled that the right to be a potential juror was not the same as the right to serve on a jury. The result is that blacks were often excluded from actually serving on juries, resulting in trials like that depicted in Harper Lee's *To Kill a Mockingbird.* This pattern would continue well into the 20th century. It was only during the Civil Rights Movements in the 1960s that change finally began. Women had to wait even longer; though they gained suffrage in 1920, they couldn't serve on juries on equal terms with men until 1975 ("The History" 2, 3, 4). Today, any American citizen older than eighteen can serve on a jury, with a few further qualifications like proficiency in English, mental conditions, and felony charges ("Legal Juries").

If we as a nation have made such great effort to hold onto and improve upon the jury system, it would stand to reason the jury system is doing something right after all. The truth of the matter is, that despite all its shortcomings, the jury system does far more good than harm. Jury cases are invaluable to both criminal and civil cases. Despite possible bias, the jury is far less biased than the lawyers on either side are, and impartiality is crucial to finding the truth. Charles J. Ogletree, Professor of Law at Harvard Law School, put it best: "Jurors have a wide range of life experiences that help provide them with the insight to fairly assess the particular

facts of each case" (xi). A jury, functioning as it should, is the best way to ensure proper deliberations for the defendant, as well as creating a citizenry that is properly informed. Other countries abolished jury systems because juries tended to lack the expertise needed to make proper judgments. Jurors, it is true, are not as educated on the facts of the laws as lawyers and judges. However, the solution is not to stop using them; the solution is to keep using them as much as possible. The unpredictability of a person serving on jury duty is apt to encourage citizens to be more informed, ready if and when they do get called.

Beyond the individual, the jury system protects us all as citizens. The very idea of a jury has been rooted in our country since its founding. In 17th and 18th-century England, juries acted as the citizens' protectors against harsh laws. Most crimes at that time were punishable by death and, as such, juries were reluctant to render a guilty verdict. Juries continued to be a protector of individual rights in cases in the colonies, acting to resist harsh British laws. The most famous of these cases was the 1735 case of John Peter Zenger. After being put on trial for printing articles criticizing an unpopular governor, a New York jury acquitted Zenger. England tried to restrict the colonists' right to a jury trial after many such cases, especially regarding the British Navigation Acts. The British Navigation Acts exerted control over colonial trade, making the colonists view them as harmful to their own economy. As a result, juries in the colonies would rarely convict those charged with violating these laws. In response, England instated courts that did not use jury trials. This only angered the colonists more and, after that, the lack of a jury system was a further symbol of authoritarian rule ("The History" 2, 3).

Once the United States was free from British control, the next task was ratifying a constitution. At first, jury trials in civil cases weren’t going to be in the Constitution, but Anti-Federalists insisted that it had to be ratified to include criminal and civil cases ("The History" 3). To meet such demands, the Sixth and Seventh Amendments were added to the Constitution. These amendments ensured that a right to trial by jury wasn’t just implied for civil cases; it was

an explicit right guaranteed in writing. Democracy is meant to be a government that places the power in its people, not those that govern it. In this way, the jury system is a further application of democracy in America. The people holding the power are jurors – regular citizens – not those that hold jurisdiction, like lawyers and judges. In America, we believe in the power of the individual to decide the fate of others. If we didn't have juries, the power would reside in far fewer people with far more power, and power is more apt to corrupt when there is no check on it. Juries stop governments from overstepping their bounds, and can even call out unjust laws in the process known as nullification.

Even though juries are not usually made aware of it anymore, juries have held and still hold the right to nullification. Nullification occurs when a jury declares a defendant "not guilty," even though they believe the defendant broke the law, because the law itself was immoral or wrong. Jury nullifications have been shown throughout history to have a real effect on reversing or changing unjust laws. During the mid-19th-century, juries in the north frequently practiced nullifications in cases involving individuals accused of harboring slaves in violation of the Fugitive Slave Laws. Prohibition also gave way to numerous nullifications in cases with individuals accused of violating alcohol control laws. There have been times where nullification has backfired, as was the case of all-white southern juries who refused to convict white supremacists for killing blacks or civil rights workers during the 1950s and 1960s. However, just like the jury system itself, nullification is effective if the power is used wisely (Linder).

Herein lies the solution to any problems within the jury system: the jurors themselves. The government can do its part by guaranteeing jury rights, but that is only half the battle. Trial by jury is the best justice system to ensure protection of individual rights, so long as those called to serve understand their power and the responsibility it requires. When it seems those in power let us down everywhere else, the jury is the best place to get some of that power back.

The jury system has come a long way from its colonial beginnings, but there is still room for improvement. Despite its shortcomings, the jury system is the best way to ensure protection of individual rights and proper justice for defendants. Perhaps it does seem strange that twelve average citizens would be entrusted with such a large responsibility, but the jury has proved its worth as the most important part of the justice system. Without it, Raphael Golb and others like him wouldn't receive a fair trial. The scholars who fell victim to Golb's scheme are undoubtedly grateful to the jury, who convicted Golb of 30 of the 31 counts brought against him ("People v. Golb"). Even with a complicated system, justice found a way.

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