

Putting the Jury System on Trial

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ABSTRACT

The Sixth Amendment guarantees all United States citizens the “right to an impartial jury.” Yet, this is not the case. In this paper, I will focus on examining the racial bias and the prejudice against under-resourced defendants that plague the criminal justice system. However, I will argue that these flaws stem from the execution, not the theoretical basis, of jury trials. Rather, trials by jury are uniquely suited to encourage civic participation while preventing tyranny, which are key pillars of American democracy. Nonetheless, without action, the prejudice that has rendered jury trials unconstitutional will stop real justice from ever being reached. Thus, should a response be prompted against trials by jury, it should be one that reforms its bias and prejudice, instead of abolishment. In this paper, I will first discuss the failings of jury trials, before justifying why they should not be abolished and thereafter providing suggestions for their improvement.

Introduction

The Sixth Amendment guarantees all United States citizens the “right to an impartial jury.”¹ Yet, this is not the case. In November 2021, Kyle Rittenhouse stood before a jury facing three counts of homicide and two counts of reckless endangerment.² The previous August, armed with an illegally acquired AR-15, he had driven to Kenosha, Wisconsin, as part of a militia “defending” the city from Black Lives Matter protests.³ In a chaotic confrontation, Rittenhouse shot three unarmed protestors, killing two of them. The lead-up to the trial generated national attention; hailed as a hero to the conservatives, Rittenhouse received over \$2 million in donations to afford the best defense attorneys, a luxury afforded to few.⁴

During jury selection, 179 potential jurors were narrowed down to 20. Although Kenosha’s population is more than 10% African-American, not one juror was Black.⁵ As Rittenhouse’s trial consultant, Jo-Ellan Dimitrius, said: “In looking at profiles of jurors, it’s looking for individuals who are going to be most receptive to whatever the evidence is that comes out.”⁶ In other words, Rittenhouse’s lawyers wanted a jury that was predominantly white and likely to sympathize with his political beliefs. They succeeded - the final jury consisted of 11 white and 1 Hispanic juror. His subsequent acquittal was unsurprising.

This is not an anomaly but a feature of the criminal justice system in the United States, the only country that still endorses jury trials as an inalienable right no matter the criminal charge.⁷ Within this scope, the trial by jury is flawed. I will focus on examining its racial bias and prejudice against under-resourced defendants, because these partialities are the most significant infringement upon the four tenets of procedural justice.⁸ Additionally, other prejudices can be mitigated by similar reforms as those I propose at the end of this paper. I argue that these flaws stem from the execution, rather than the theoretical basis, of jury trials. Thus, should a response be prompted against trials by jury, it should be one that reforms its bias and prejudice, rather than abolishment. I will discuss the failings of jury trials first, before justifying why they should not be abolished, and thereafter providing suggestions for their improvement.

Bias against Black Defendants

The history of jury trials is intimately bound up with race. During Jim Crow, jury trials, characterized by state-sanctioned racial discrimination in jury selection, became a “reassertion of white supremacy.”⁹ In Alabama, 45% of the population was Black, but “no African American had served on a local jury in living memory.” Thus, despite “overwhelming evidence of their innocence,” many Black people were convicted by all-white juries.¹⁰

In the modern era, race continues to play a major role in jury trials. In 1978, Kevin Strickland was convicted of a triple murder without any evidence linking him to the crime. The jury in his first trial was hung 11-1, with the sole “not guilty” vote coming from the only Black juror; Strickland was subsequently convicted by an all-white jury.¹¹ One might think that this is a trend of the past. However, a study conducted by Duke University in 2012 showed that all-white juries are 16% more likely to convict a Black person than a white person, whereas there is no significant difference in conviction rates between white and Black people when juries have at least one Black member.¹² This bias has contributed to the wrongful conviction rate against Black people, which is now seven times higher than that of white people.¹³

Even in cases where a jury’s verdict agrees with available evidence, its decision is often based on ill-informed prejudice rather than facts. In 1991, evidence established that Keith Tharpe, a Black man, had murdered his white sister-in-law.¹⁴ However, the integrity of his death sentence was questioned during an interview with a juror. Mr. Gattie, the juror, pondered whether “black people have souls,” and testified that “[s]ome of the jurors... felt Tharpe should be an example to other blacks.”¹⁵ Tharpe’s death sentence is part of a disturbing pattern where the race of the victim affects sentencing; Black people are 17 times more likely to receive the death sentence when killing a white person than a Black person.¹⁶ So, not only are Black people more likely to be convicted, they are also more likely to receive harsher sentences.

Prejudice in the jury system is also made worse during the *voir dire*, or jury selection, process. While in theory *voir dire* should act against racial prejudice, in practice it exacerbates it.¹⁷ This is largely due to rule 24 of the Federal Rules of Criminal Procedure, which gives attorneys peremptory challenges.¹⁸ Peremptory challenges were introduced after the Civil War as a mechanism for attorneys to strike jurors without reason, “an insurance policy when a challenge for cause is denied by the judge”.¹⁹ However, they were used mainly by prosecutors to strike Black jurors.²⁰ While precedent from a 1986 case, *Batson v. Kentucky*, allows the defense to object to peremptory strikes that seem racially motivated, prosecutors circumvent this by using vague disqualifiers.²¹ For instance, the prosecutor in *Snyder v. Louisiana* (2019) struck all potential Black jurors because they “appeared very nervous.”²² Instead of producing impartial juries, *voir dire* has become a tug-of-war between defense attorneys and prosecutors to select jurors most likely to sympathize with their case.²³ Unfortunately, this tug-of-war takes place between David and Goliath.

Prejudice against Under-Resourced Defendants

Due to the typically unaffordable costs of private legal counsel, most criminal defendants exercise their right to a state-assigned public defender, who is almost always overworked, underpaid, and thus ineffective.²⁴ While data shows that most jurors are ‘clever’ enough to understand individual pieces of evidence and testimonies, they still rely on attorneys to interpret the case as a whole.²⁵ The perceived preparedness of an attorney has been found to greatly influence a juror’s judgment. A study in Iowa asked 572 jurors to rate this perception on a scale of 1-5 and discovered that every one-unit increase in an “attorney’s preparedness” increased the probability of a juror favoring that side by a factor of 3.23.²⁶ However, public defenders simply lack sufficient time to prepare. In 2009, public defenders in Louisiana had, on average, seven minutes to get ready for a case.²⁷ In addition to the lack of time, public defenders are at the mercy of a system that allocates vastly more resources to prosecutors. Even in progressive California, they receive just 53% of the funding given to prosecutors, resulting in the inability to “obtain experts that match the district attorney’s.”²⁸ Without good legal counsel, jury trials are stacked against defendants.

As a result, defendants are frequently pressured by harried public defenders into a plea bargain - confessing guilt in exchange for a lighter sentence.²⁹ In 2018, around 97% of cases have been settled in this manner.³⁰ While some argue that jury trials “[keep] the system honest,” the jury trial—extremely long, exceedingly expensive, and prone to prejudice against the defendant—is more often used as a threat, rather than an instrument of justice.³¹

Jury trials, for one, threaten defendants with longer time spent in legal purgatory. Since 2019, the average time between arrest and verdict is 256 days for felony cases and 193 days for misdemeanor cases, which is around twice the time of a bench trial.³² As such, many innocent people would rather go to jail than to trial. For example, in 2015, Lavette Mayes was charged with aggravated battery against her mother-in-law. Unable to afford the \$250,000 bail, Mayes was detained for 14 months before she pleaded guilty. Afterward, she explained that although she thought she could win the case, she did not want to spend more time away from her children while awaiting trial.³³

Additionally, defendants frequently face prosecutors who use minimum sentencing laws, which accompany any jury conviction, to manipulate the defendant into taking a plea bargain instead.³⁴ Thus, it has become all too common for defendants to accept a plea bargain instead of undergoing an unfair trial.³⁵ A study conducted by a former federal judge estimated that more than 20,000 people are in prison for crimes they pleaded guilty to but did not commit.³⁶ There is now even a plea called the Alford, which allows defendants to plead guilty while maintaining their innocence.³⁷

Why Not Abolish Jury Trials?

Given these realities, the jury system may seem like it needs to be abolished. However, the root cause of these prejudices lies in the execution of the jury trial, such as *voir dire*, where not enough measures are in place to ensure impartiality. Therefore, I argue that jury trials should not be abolished because if reforms are applied properly, they have the unique potential to uphold two fundamental pillars of American democracy: civic participation and the prevention of tyranny.³⁸ Firstly, in a democratic system, jury trials are essential because the judicial branch, like the executive and legislative branches, should reflect the views of the people.³⁹ The Supreme Court proclaimed that “with the exception of voting, for most citizens... jury duty is their most significant opportunity to participate in the democratic process.”⁴⁰ While in practice juries are prejudiced, this should in theory be mitigated by mandating decisions through the consensus of a heterogeneous 12-person panel.⁴¹ These 12 jurors are meant to represent the population’s racial, gender, and socio-economic diversity.⁴² A study by Cornell confirms that diverse juries typically render racially equal outcomes because the jurors are inclined to self-monitor biases.⁴³ Therefore, it is the execution of jury trials that prompts prejudice, like how exploitation of *voir dire* results in defendants frequently facing all-white juries in counties that are 40-50 percent Black.⁴⁴

Secondly, jury trials are used to prevent tyranny.⁴⁵ Specifically, tyranny transpires when decisions are monopolized, such as in bench trials, the only widely-practiced alternative to jury trials in the United States. Similar to jurors, judges can be prejudiced, but judges are more powerful. Judges serve year-round and for most bench trials are the sole authority in their courtroom, while jurors can only serve at most annually and must rule by consensus.⁴⁶ Thus, a judge violating the code of conduct creates more negative impacts than a prejudiced juror. For instance, Judge Les Hayes presided over misdemeanor cases for 20 years before being investigated by authorities.⁴⁷ He subsequently admitted to having failed to “respect and comply with the law”. Hundreds of people were victims of his excessively severe punishments, including a single mother who spent 496 days in jail for failing to pay a speeding fine. Of these, 90% were Black.⁴⁸ So far, most of the racial prejudice that has been examined in this paper has been against Black people. Crucially, however, the reverse is also true – “Black judges are more likely than white judges to sentence white defendants to prison.”⁴⁹ In fact, over five thousand cases were decided by judges who had been disciplined for misconduct between 2008 to 2018.⁵⁰

Thus, jury trials, due to their ability to encourage civic participation while preventing tyranny, are central to American democracy. So, rather than abolishing it, we should instead look to mitigate jury prejudice by reforming the execution of jury trials.

Suggestions and Conclusion

Real reform will require us to admit that the execution of modern jury trials has become the antithesis of “impartial”. Change can then be facilitated through the United States’ federalist system, which gives states a large degree of autonomy over their policies. Different reforms should therefore be concurrently evaluated, piloted, and then analyzed to arrive at optimal solutions. These may include enforcing quotas to ensure racially diverse jury pools, abolishing peremptory challenges, increasing the payroll of public defenders, and creating independent committees to oversee the integrity of plea bargains.⁵¹

Would these suggestions fix the prejudice of the current system? Certainly not all of it. However, the daily toll of delay is too severe to defer decisions on this any longer - this is a system that decides the fate of 18 million people a year.⁵² Without action, the prejudice that has rendered jury trials unconstitutional will stop real justice from ever being reached.

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