

Trial by Jury: The Anchor for Democracy

Zhicheng Wang¹ and Aaron Peterson[#]

¹ Beijing No.4 High School, China

[#]Advisor

ABSTRACT

Trial by jury is a legal proceeding that originated in 12-13 century England. After a series of development and diffusion over the course of history, it has been adopted by several countries today, with the U.S. and Britain the most prominent. Still, the debate about abolishing the trial by jury has always been heated. Many people, such as Tomas Jefferson, regard jury trials as the foundation for democracy and justice because they can prevent the government's abuse of power and have many other benefits. However, critics of trial by jury claim that it should be abolished due to jurors' lack of professional knowledge and other flaws of this system. Such discussion about whether to abolish trial by jury is what the paper addresses on. In addition, this paper discusses trial by jury within its U.S. and Britain contexts and primarily focuses on the United States, since a large proportion of jury trials worldwide take place in America. After analyzing various primary and secondary sources from different time periods and contexts, this paper concludes that trial by jury should not be abolished since it can preserve democracy through checks and balances, instill citizens with civic virtues, and promote social justice. In addition to arguing trial by jury should not be abolished, this paper also examines certain criticisms of jury trials and rebuts these doubts.

Introduction

As an old joke goes, "I'm being judged by twelve people too stupid to get out of their jury duty!" Indeed, many critics of trial by jury argue that the general jurors are often biased, ill-informed, and not clever enough to avoid jury duties. The stature of the jury is in question, and many argue the jury system should be abolished. However, clearly, Thomas Jefferson, one of the designers of the U.S. democratic system, disagrees:

Were I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department, I would say it is better to leave them out of the Legislative. The execution of the laws is more important than the making of them. (1789)

In line with the stance of Thomas Jefferson, in this essay, I will argue that trial by jury should not be abolished. It should not be abolished due to three reasons: first, its irreplaceable function of preserving democracy through checks and balances in the government, second, its cultural and educational significance that instills the citizens with civic virtues, and, third, its ability to promote social justice. I will support my argument by appealing to abundant historical and authoritative sources and rebutting several counterclaims. The analysis of the topic will remain within U.S. and British contexts, focusing mainly on the U.S. since about 80% of jury trials worldwide take place in America (Hans & Vidmar, 2013, p.31).

Before elaborating on the discussion about trial by jury, I will first briefly examine its history. Though commonly believed to be originated around the 13th century England, the predecessors of the jury might have arisen even earlier. Initially, the jury's duty was to bring charges against someone on behalf of the English

Crown, functioning to extend the Crown's authority and power.¹ As time passed, the juries began making verdicts, but they were based on jurors' own knowledge of the case instead of witnesses' testimonies (Stephens, 1896, p. 158). Then, the jury system was gradually altered again, and by the time of Henry IV, the jury had finally transitioned to a form highly similar to that we see today (Stephens, 1896, pp. 159-160). During the colonial period, British colonists brought the jury system to North America, where trial by jury soon became "the inherent and invaluable right of every British subject in these colonies (The Stamp Act Congress, 1765, para. 8)." Ultimately, as reflected by "the guarantee of jury trial in the Federal and State Constitutions" and many other founding documents, trial by jury has become the foundation of today's American judicial system (*Duncan v. Louisiana*, 1968).

Nevertheless, despite this historical legacy and foundation, the jury system is currently at risk in the U.S. According to data from the Administrative Office of the U.S. Courts (2021), only 1.57% (1,064 out of 67,686) of the defendants in federal courts were either acquitted or convicted by juries, while the majority of defendants plead guilty. This low occurrence of trial by jury notwithstanding, critics of the jury system are surprisingly vocal. But this is nothing new. Over centuries, jurors have been constantly criticized as poor fact-finders who often make unsound verdicts with their prejudice, foolishness, and low level of personal responsibility (*Recording of jury deliberations*, 1955).

Yet these critics fail to recognize the greater relevance of the jury system to democracy. As I will illustrate below, a preponderance of evidence demonstrates that the benefits of the jury system extend far beyond just the courtroom. When its full significance is understood, it becomes clear that the United States should not abolish trial by jury.

Integrity of a Democratic System

As mentioned above, we can see the importance of trial by jury at the birth of British colonies in North America, as it secures the public's "just and rightful controul [*sic*] in the judicial department" and represents the "common-law ideal of limited state power" (*Blakely v. Washington*, 2004; Lee, 1788).

And yet still, as said, many critics, ignoring the jury's vital significance in preserving democracy, criticize it by claiming jurors are biased, "stupid," and ill-informed (*Recording of jury deliberations*, 1955). Hence, they argue that seasoned and well-educated judges should replace juries to render verdicts, as the judges are much more professional and competent in interpreting the law, assessing witnesses' credibility, and seeking facts in sophisticated cases.

However viable such a stance may initially appear, it is flawed, and I will highlight four reasons why this stance is invalid. Firstly, that argument undermines the very idea of representational democracy. If these critics doubt the public's intelligence and ability to participate in the judicial branch of government through jury, why do they trust the public when it comes to electing the legislators? If the potential jurors, the major public, are biased and not intelligent, as assumed by those critics of trial by jury, surely, they cannot make much contribution when it comes to the legislature, and their proposals or votes would also seem unwise to the experts or politicians. In that case, why do we need to preserve democracy instead of having a group of elites run the entire nation? Clearly, the critics' main argument is not self-consistent.

Secondly, the stance ignores the fact that the judges still play an essential role during a trial—through instructing the jury,² ruling on the admission of specific evidence and motions in a trial, and sentencing.

¹ To that end, Henry II had already made the jury "a nationwide phenomenon" in the Assize of Clarendon early as 1166. For more detailed description and analysis, please refer to *Before the law: An introduction to the legal process*, by Bonsignore et al., 1994.

² In fact, the jury instruction from the judge impacts jurors significantly, as it is their only guidance. For more information, please visit Legal Information Institute established by Cornell Law School.

Thirdly, even if the stance were correct, that a few jurors are, in fact, not up to the task, this concern can still be resolved by a real benefit from deliberations in the jury rooms. As stated by Sobol (1971, 07:38),³ “group deliberation by jury.....requires them to put their impressions of the evidence to a test, and has historically been recognized as a very important safeguard in weeding out erroneous or misunderstandings of the evidence”.

Finally, what those critics of the jury system ignored was the jury’s vital role in checks and balances. Unlike electing the president or representatives in the legislature, American citizens cannot decide who becomes their judge. While being a judge requires at least a bachelor’s degree and a law degree, about 83% of Americans claim they cannot afford college, suggesting a gap in wealth and social class between commoners and elite law practitioners (LawRank, 2020; Levaux, 2015). Without trial by jury, the elites can easily monopolize the discourse in the judiciary, which threatens democracy since the public would no longer be represented in that branch of government. But with the jury system, the jury can function like a “circuit breaker” to prevent the abuse of power—jurors can use their verdict to “block” the laws that are against the public’s view (*Blakely v. Washington*, 2004). Thus, the jury system is the cornerstone for preserving both the idea and practice of democracy.

Fostering Civic Duties and Virtues

In addition to its significance in ensuring democracy, the jury system can act as a form of school that teaches citizens about rights and responsibilities, helping them to establish their sense of participation in governance at local and higher levels. Through the articulation of legal arguments during jury deliberation and the judge’s explanation of specific legal clauses, the jury system instills the citizens with the rule of law and other civic virtues. As Tocqueville points out (2012, p. 448), “the practical intelligence and good political sense of the Americans must be attributed principally to the long use that they have made of the jury in civil matters.” In such institution, citizens from all social classes can learn about the law very practically and develop a sense of responsibility for their actions, as their decisions determine the defendant’s fate.

Furthermore, the diversity of a typical jury’s members makes each jury a microcosm of American society. In a way, it is just as important as citizenship and suffrage. As Tocqueville (2012, p. 445) states, “the man who judges in a criminal court is really the master of society.” By providing certain citizens the power of a judge, such group of people is endowed with the leadership of society and a sense of being a true American citizen. Consequently, the jury system can promote national unity by providing more people a sense of social belonging and a shared national identity—all people eligible for jury duties belong to the common identity called “Americans.” Vice versa, the exclusion of a given demographic of citizens from the jury pool suggests their marginalization in American society and degradation of their civil rights. While critics might argue that such diversity leads to unpredictability and inconsistency of verdicts, researchers Kalven and Zeisel found that the judge-jury agreement was as high as 78%, disproving the previous counterclaim (Cecil et al., 1991).⁴

In general, to seek unity out of the diverse American society, “there must be a procedure for decision by vote of a majority or prescribed plurality in accordance with democratic philosophy,” and that procedure for decision is trial by jury (*United States v. Dougherty et al.*, 1972).

³ As an attorney, Mr. Robert B. Sobol made this statement during the oral argument at the U.S. Supreme Court when he was representing petitioner Apodaca (and others). The quotation of his claim is from the audio recording of that oral argument, retrieved from the website “Oyez”. This case is *Apodaca v. Oregon*, 406 U.S. 404 (1972).

⁴ The experiment conducted by Kalven and Zeisel lasted for years and involved thousands of judges all across the United States. For more information about their methodology and results, please read their book “The American Jury”.

Promoting Social Justice

Finally, fairness and social justice are to be considered. The jury system is crucial to promoting social justice, because it effectively reduces the damages of systematical discrimination, which has harmed several races of Americans over the course of history. For example, when slavery prevailed, enslaved African Americans' access to education was often denied. This systematical denial of education rights put them in a disadvantaged position to participate in the judiciary compared to others who could receive an education, as it has been a requirement for legal practitioners (Foner, 2010). Even today, African Americans, taking up 13.4% of the U.S. population, are still underrepresented in the legal profession, as only 5% of all lawyers are African Americans; in fact, "nearly all people of color are underrepresented in the legal profession compared with their presence in the U.S. population" (American Bar Association, 2020). Since the jury system provides everyone a fair chance to participate in the execution of the law regardless of race or social class, it can substantially promote social equality.

Still, critics might argue that juries cannot be a reliable means of upholding social justice, since they have been making improper verdicts—which might seem unwise or counterintuitive for many people—due to bias or other factors from time to time. These improper verdicts might arouse quarrels or even riots among the public, but, though counterintuitive, they can promote civil rights movements. The sense of humiliation and shame they bring will raise public awareness about a particular issue, spur more people to re-examine their behavior, and, eventually, cause more people to start fighting against the unjust and devote themselves to civil rights movements—for example, the "acquittal by bigoted juries of whites who commit crimes (lynching, for example) against blacks" in Southern America during reconstruction after the Civil War⁵ and the exclusion of African Americans from juries at that time lead to a pushback resisting "the Jim Crow Jury" (Frampton, 2018; *United States v. Dougherty et al.*, 1972). Moreover, the biases reflected in these improper verdicts do not merely belong to the jurors but also exist as prevailing phenomena in society. Thus, simply altering the way to judge a case would make no difference. What is truly necessary is a profound social reform that changes the public's view, which can, in turn, be facilitated by the application of jury trials.

In short, when jury decisions are seen to uphold the perception of justice, the rule of law is reaffirmed. When jury decisions are seen as unjust, it raises public scrutiny of the environment and phenomenon that led to these results, spurring future social change and progress.

Conclusion

As Thomas Jefferson (1789) once wrote, "I consider [the jury system] as the only anchor, ever yet imagined by man, by which a government can be held to the principles of it's [*sic*] constitution." Ultimately, as it was plain for Jefferson to see, the jury system is crucial for democracy. Therefore, by no means should we abolish it.

Acknowledgments

I would like to thank my advisor for the valuable insight provided to me on this topic.

References

⁵ This is written by Chief Judge Bazelon from the United States Court of Appeals for the District of Columbia in his opinion for the case *United States v. Dougherty et al.* (1972).

Administrative Office of the U.S. Courts (2021). *U.S. district courts—Criminal defendants terminated, by type of disposition and offense—During the 12-month period ending December 31, 2021* (D-4) [Data set]. Administrative Office of the U.S. Courts. <https://www.uscourts.gov/statistics/table/d-4/statistical-tables-federal-judiciary/2021/12/31>

American Bar Association. (2020). ABA profile of the legal profession. American Bar Association. Retrieved June 13, 2022, from <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>

Blakely v. Washington, 542 U.S. 296 (2004). <https://supreme.justia.com/cases/federal/us/542/296/>

Cecil, J. S., Hans, V. P., & Wiggins, E. C. (1991). *Citizen comprehension of difficult issues: Lessons from civil jury trials*. Cornell Law Faculty Publications. Retrieved May 19, 2022, from <http://scholarship.law.cornell.edu/facpub/414>

Duncan v. Louisiana, 391 U.S. 145 (1968). <https://supreme.justia.com/cases/federal/us/391/145/>

Foner, E. (2010). *Give me liberty!: An American history*. W. W. Norton & Company.

Frampton, T. W. (2018). The Jim Crow jury. *Vanderbilt Law Review*, 71(5). Retrieved May 21, 2022, from <https://scholarship.law.vanderbilt.edu/vlr/vol71/iss5/4>.

Hans, V. P., & Vidmar, N. (2013). *Judging the jury*. Springer.

Jefferson, T. (1789, July 11). [Letter to Thomas Paine]. *Founders Online*. National Archives. Retrieved June 12, 2022, from <https://founders.archives.gov/documents/Jefferson/01-15-02-0259>.

Jefferson, T. (1789, July 19). [Letter to Abbé Arnoux]. *Founders Online*. National Archives. Retrieved May 21, 2022, from <https://founders.archives.gov/documents/Jefferson/01-15-02-0275>

LawRank. (2020, January 24). *What are the qualifications for becoming a judge?* Lawyers Weekly Jobs. Retrieved May 13, 2022, from <https://www.lawyersweeklyjobs.com/what-are-the-qualifications-for-becoming-a-judge/>

Lee, R. H. (1788). The Federal Farmer letter XV. In *An additional number of letters from the Federal Farmer to the Republican; leading to a fair examination of the system of government, proposed by the late Convention; to several essential and necessary alterations to it; and calculated to illustrate and support the principles and positions laid down in the preceding letters* (pp. 130–142). essay, New York Journal.

Levaux, J. (2015, May 13). *83% of Americans say they can't afford college: Edward Jones poll*. ThinkAdvisor. Retrieved May 23, 2022, from <https://www.thinkadvisor.com/2015/05/13/83-of-americans-say-they-cant-afford-college-edward-jones-poll/#:~:text=83%25%20of%20Americans%20Say%20They%20Can%E2%80%99t%20Afford%20College%3A,preserve%20wealth%20with%20our%20Financial%20Planning%20Insider%20newsletter.>

Recording of jury deliberations: Hearings before the subcommittee to investigate the administration of the Internal Security Act and other internal security laws of the committee on the judiciary, United States Senate,

84th Cong. (1955). https://books.google.com.hk/books?id=z_s2xwEACAAJ&redir_esc=y&hl=zh-CN&sourceid=cnr

Sobol, R. B. (1971, March 1). *Apodaca v. Oregon, oral argument at the U.S. Supreme Court* [Speech audio recording]. Oyez. <https://www.oyez.org/cases/1971/69-5046#:~:text=Apodaca%20v.%20Oregon%20Apodaca%20and%20two%20other%20defendants,the%20other%20was%2010-2%20in%20favor%20of%20conviction.>

Stephens, J. E. R. (1896). The growth of trial by jury in England. *Harvard Law Review*, *10*(3), 150–160. <https://doi.org/10.2307/1321755>

The Stamp Act Congress. (1765). *The declaration of rights*. US Constitution. Retrieved June 21, 2022, from <https://www.usconstitution.net/stamp.html>

Tocqueville, A. de. (2012). *Democracy in America*. (J. T. Schleifer, Trans., E. Nolla, Ed.) (Vol. 1). Liberty Fund.

United States v. Dougherty et al., 473 F.2d 1113 (D.C. Cir. 1972). <https://law.justia.com/cases/federal/appellate-courts/F2/473/1113/226019/>