

Should Trial by Jury Be Abolished

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I. Introduction

Trial by jury has been a facet of some human cultures for millennia. The most primitive form of jury trial emerged in ancient Egypt as early as 2000 B.C.E., and since then has gradually evolved and developed (Zeisel and Kalven). When the original Thirteen Colonies of the U.S. drafted the Constitution, the right to trial by jury was directly guaranteed. Article III, Sec. 2 provides: “The trial of all crimes shall be by jury and such trial shall be held in the state where the said crimes have been committed” (The National Archives).

While the development of trial by jury has not gone unchallenged and recent statistics show that trial by jury is a disappearing phenomenon in certain types of cases, there are still many benefits to this form of judicial procedure (Evans). Through a deeper dive into this matter – by looking into the value of jury trials, examining the accuracy of jury trials in criminal and civil cases, and by addressing the common criticisms of jury trials, this essay shall argue that this kind of trial should not be abolished, mainly drawing on examples from the U.S.

II. Value of Jury Trials

Firstly, jury trials have judicial value as a critical component of the checks-and-balance system arresting government tyranny. A jury of one’s peers determining a citizen’s fate, rather than a government official, is essential to many western democracies. In the U.S. the jury trial is a constitutional right, as stated in sixth and seventh Amendment of the Bill of Rights (“Sixth Amendment”). It goes to follow that if one right can be chipped out of the Bill of Rights, then why not others?

The jury trial is also important for upholding social values in many nations. According to a commentator at the University of New South Wales, “juries ensure community representation, inform[ing] the weighing of evidence and allowing everyday perspectives to be incorporated into judging those accused of serious crimes” (Hunter). This argues that a right and more humane verdict may be reached by juries. The broad spectrum of social values, backgrounds, and practical views embodied by a jury cannot be replicated in a single jurist. For instance, as argued by libel and slander expert Kimberly Lau, in the recent Depp v. Heard libel civil trial, a jury of several people weighing the evidence (a civil trial has 6-12 jurors – the jury in Depp v. Heard being comprised of seven) “makes a big difference in the deliberation process.” Lau also

stated that “the jury is comprised of several individuals whose life experiences can have a [positive impact] on how they view and weigh the evidence at a trial” (Peplow).

Finally, juries are valuable because jurors can be significantly more empathetic and understanding than judges. Former U.S. president Barack Obama pointed out that “empathy is an important quality for [legal practitioners], because it enables them to understand the impact of justice upon individuals' circumstances” (Sullivan). A jury comprises a wider range of experiences, ideologies, preferences, and so on. A study done by Kalven and Zeisel from the University of Chicago in 1966 corroborates this. One data analysis shows that juries are roughly four times more likely to acquit a defendant than a judge because they are more forgiving (Farrell and Givelber). Another essay from the Kretzer Firm suggests that jurors are “more susceptible to being influenced by the personal appeal of an argument or testimony” (Kretzer). While this empathy can negatively affect the absolute integrity of a trial, it does allow jurors to consider the long-term impacts of decisions and allow them to arrive at verdicts that are justified by multiple considerations.

III. Accuracy of Jury Trials in Criminal and Civil Cases

In the U.S., there are mainly four types of cases: criminal, civil, juvenile, and traffic cases. To weigh the accuracy of jury trials, it is pertinent to investigate criminal and civil cases, since the other two usually do not involve juries (The United States Courts). In both criminal and civil cases, jury trials have been proven to be relatively accurate.

What defines accuracy in trials entails a “correct” decision made by the jurors. According to the “omniscient viewpoint”, a commonly accepted definition on this matter, “the correct decision is the one that would be reached by an impartial and rational observer with perfect information (including complete and correct evidence) and complete understanding of the law. If the defendant committed the crime, the correct decision is guilt, regardless of the strength of evidence” (Spencer).

In criminal cases, examining statistics and referencing relevant analyses show that jurors have a high probability of making the correct decision. The accuracy of juries in such cases can be measured by two numbers. The first is to look at the agreement rate between the judges and the jury in past cases (Hare et al.). To be more specific, researchers would ask judges their verdicts for the selected cases, before the juries' verdicts were returned, and then compare the results to see if the verdicts matched. Generally, the higher the agreement rate, the better. In 1966, Kalven and Zeisel first attempted to measure this rate of agreement in their paper *The American Jury*. The judge and the jury agreed in approximately 80% of criminal cases, and the judges found the jury verdict unreasonable in only 9% of cases (Hare et al.). This indicates a relative precision of jury decision-making. Another pair of numbers to examine are the

respective incorrect rates for juries and judges. Northwestern University statistician Bruce Spencer performed a pair of data analyses on existing datasets. Based on his calculations, juries have a 25% probability of wrongfully convicting someone. Although this probability is not low, Spencer found that the incorrect rate for judges is a shocking 37% in his dataset (Spencer). One can see, at least through this study, that juries may even be more accurate in certain data sets.

In civil cases, it is more difficult to use data to illustrate the accuracy of juries. However, it is arguable that civil juries enhance the quality of fact-finding in the trial. Civil juries can more effectively avoid the confirmation bias that can be present in judges, a single individual. Confirmation bias refers to the “unconscious psychological process in which people look for evidence that confirms their previous views [and] experiences, interpreting evidence in ways that are consistent with their existing views” (Casad). It is a problem especially in civil cases, where different trials and pieces of evidence need different methods of interpretation and the consideration of many real-life factors. Judges are more prone to have this bias because as they sit in case after case for years, judicial fact-finding becomes routinized, making them less accurate in examining evidence that varies in nature (Yarritu and Matute). Jurors, on the other hand, do not view the process as daily rote, and come from various backgrounds and walks of life, enabling them to look at evidence with fresh eyes. As a result, the verdicts they render in civil trials can be more accurate and thought-through.

IV. Addressing Criticisms of Jury Trials

There are several notable points of criticism of jury trials that deserve addressing.

Firstly, compared to the selection of a single judge, people argue that the jury selection process, namely *voir dire*, contains problems that lead to pitfalls. For example, when questioned, many people chose to lie about their background and other crucial determining factors to serve on the jury (The Judicial Educational Center). Attorneys can also disagree substantially on what information to rely on and which jurors to select. A bench trial does not pose such problems, as any qualified judge understands the law and can often make decisions quickly. However, judges certainly still bear their own biases.

However, such issues related with the *voir dire* process can be plausibly solved. As demonstrated in parts of Connecticut, to partially solve the issue of dishonesty of potential jurors in the questioning phase, each potential juror could be questioned individually outside the presence of other related people, and with longer time limits on the questioning process (Kretzer). By doing so, it is feasible that the attorneys and the court will learn enough about potential jurors to lower the risk of any negative consequences derived from deceptive candidates.



Secondly, another widespread criticism is that jurors are more likely to possess biases than judges. While this claim is almost certainly true, due to sheer weight of numbers, it is possible to prevent biases from seriously affecting the final ruling. The best way to negate bias in a jury trial is during jury selection. According to the Sydney Criminal Lawyers, one effective way to do so is to make it a more prevalent right for each defendant's lawyer to challenge up to three jurors if they believe that they will be biased (Ugur Nedim). This criticism has some merit but does not otherwise take away from the value of jury trials. And, as mentioned before, judges are not immune to harboring their own prejudice.

V. Would a Bench Trial be Better?

Notwithstanding the criticisms of trial by jury, abolishing the option would not improve judicial fairness.

In a bench trial, the judge has significantly more power to decide. This fact can pose a problem which the jury trial avoids. It is a risk to rely on one individual's judgment, and data has proven that judges are not impeccable. They can make unjustified decisions, and the rate of their convictions being overturned can be greater in some statistical samples (Spencer).

Furthermore, a bench-trial-only system poses a great problem: in nations that are accustomed to juries, how can it be justified to disallow the requesting of a jury of one's peers? True or not, the jury trial in these jurisdictions is inalienable from the concept of judicial fairness in the minds of the citizens. The essence of any trial is to determine whether one's actions violates the rules created by the entire society. To achieve this, a cross-section of that society sharing in the power of a judicial decision, rather than a single elite individual, grants the procedure a strong appearance of justice.

Overall, jury trials possess notable value – analysis shows they help to arrest government tyranny, ensure the inclusion of social values, and imbue the court with empathy. Additionally, they usually arrive at accurate verdicts, counter the prevalent criticisms of bench trials, and give the parties a sense of fairness that cannot be embodied by a single jurist. Thus, trial by jury should not be abolished.



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