

Juries, the Government and the Auld Review

As the Government have attempted to limit trial by jury, the question must be asked of what the Auld review has in store for the jury system?

Juries have been around for 800 years, however, during this period their function and composition have changed considerably. One such change was that before 1973 there was an age qualification and a property qualification. A juror had to be aged between 21 and 60 and a house owner or ratepayer. This has changed dramatically. Now jury service is based on the electoral register, which means that an 18 year-old can serve on a jury. The maximum age is 70, and one must have lived in the country for five years or longer.

The point often made about today's juries, was made forcefully, in 1999, by the former Appeal Court judge, Sir Frederick Lawton. He said "that their level of understanding of cases, and perhaps their level of intelligence, are not always up to the task they have to perform. There is no educational qualification. There is not even a language or comprehension requirement to ensure that jurors who are called up at least understand the cases they have to try".

What actually happens in a jury room is supposed to be a secret, and the Contempt of Court Act 1981 makes it very difficult to find out. It is unlawful for a juror to reveal the secrets of the discussion in the jury room, or for a newspaper or anyone else to try and get the information by interviewing a juror. In 1992, the Mail on Sunday was found guilty of contempt of court and fined £75,000 for publishing interviews with jurors in the Blue Arrow fraud trial, in which they revealed how and why they had reached their verdicts.

The truth about juries is that, like judges and magistrates, there are some very good ones and some bad ones - just as one would expect from a random exercise. What matters ultimately is not whether every member of the jury understood every intricate part of the law or factual detail, but that in the end they can use collective common sense to reach a correct and just conclusion.

The police believe that juries often do acquit the guilty – but if this is so, can the jury be held solely culpable? The police and/or the Crown Prosecution Service may have been badly prepared, or the prosecution may have badly presented the case. The number of appeals is not indicative of a bad decision either, as appeals arise generally as a point of law where new evidence arises; there was an irregularity in the proceedings; the judge gave a summing up that was misleading or ambiguous, or where evidence was allowed that should have been ruled inadmissible. A ground for appeal cannot be on the basis that the jury was wrong.

The Government, namely Jack Straw, have tried to put two highly controversial bills through Parliament named the "Mode of Trial Bill". It must be added though that the House of Lords have defeated these bills, however, the bills were intended to eliminate the accused's right to choose trial by jury for the middle-ranking 'either-way' offences. Instead, the decision would be taken by magistrates' themselves.

The accused would have the opportunity to put his case for having a jury trial, and would have the right of appeal to a Crown Court judge if it were refused. Many (including some supporters of the Government) see the proposed law as an attack on the citizen's traditional fundamental rights which, it is argued, would result in more innocent people being convicted. The Government's intention is to save the time and money involved in thousands of defendants' choosing jury trial and then, sometimes at the eleventh hour, pleading guilty anyway.

Lord Justice Auld is currently carrying out a review of the criminal courts to be reported early in 2001, however, until then, the full extent of what the report will entail for the jury system is unknown. Comments based upon speculation have been circulating, such comments including the "three pronged attack" on the jury system which, if implemented, could halve the number of defendants' able to opt for jury trial, thereby hastening the demise of the whole system.

The first attack is to call for the reintroduction of the "Mode of Trial (No1) Bill" which would deny defendants the choice of where they faced their trial. The second is to create a new hybrid magistrates' court comprising a district judge (magistrates' court) and two lay magistrates whose sentencing powers would be quadrupled to a maximum of two years' imprisonment. The third is to remove the right to jury trial for those persons accused of serious and complex offences.

As a supporter of the jury system, arguments that can be put in its favour are enumerated as follows:

- Juries are the direct link between ordinary persons and the administration of justice;
- It is democratic to involve ordinary persons in deciding the fate of their fellow citizens: as if they are acquitted, they have to live with them in society; and if they are found guilty, they will have to pay for them to be kept at Her Majesty's pleasure;
- Juries are an important tool for acting as the barometer of public feeling on the state of the law. They can, and do, express their displeasure about a particular law by refusing to convict. Examples have been in the Clive Ponting case whereby he was prosecuted under the Official Secrets Act of 1911 for leaking information about the background to the Falkland's War. The jury acquitted him in spite of the judge telling them that he had no defence. Similarly, in the Steven Owen case of 1991, a jury acquitted a father for murdering the lorry driver that killed his son.

In conclusion, the question needs to be addressed that no criminal justice process in the world can ever be foolproof; and if the jury system were to be abolished, what would take its place? The above speculative reforms from the Auld review, if adopted, would have to come under severe attack as no real persuasive case has yet been made out as to why time and cost-effectiveness should be paramount to the somewhat inferior degree (it seems) of justice and an individual's liberty.

Before Lord Justice Auld gives his review he would do well to recall the recent decisions of the House of Lords vis-à-vis the Mode of Trial Bills together with the 1966 quotation from Lord Devlin where he said, *"trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives"*.

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