Another Look at Social Psychological Aspects of Juror Bias

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Two trials were constructed by tape recording verbatim reports taken in court. One was a case of theft, the other of rape, involving two defendants and varying the amount of incriminating evidence. Subjects were recruited to listen to the trials and reach a verdict after deliberation. The recruitment of subjects was done by door-to-door survey methods aiming at producing a series of juries whose composition was representative of the adult population of Greater London. Thirty-four juries considered the theft case, and 26 the rape case, respectively 319 and 257 subjects. The results indicate that few variables correlate with the verdict, either before or after the verdict. In general, there was a slight tendency for younger (up to 25) and older (above 40) jurors to prefer to acquit. In terms of attitudes and personality, the only general finding was that people with most favorable views towards the jury system tended to wish to convict.

INTRODUCTION

Recent controversies in the British Courts about the “vetting” of potential jurors suggest that it is useful to reconsider the evidence about juror bias and at the same time look at the general problem of identifying bias in social judgements and decisions. Four particular cases have attracted public notice. One involved the vetting and rejection of potential jurors in a case related to the Official Secrets Act, and a second was the so-called “anarchists’ trial.” Two others involved an application by the defense to remove people from the jury panel and an appeal against conviction on the grounds that the jury had been “vetted.”

Four issues are involved. The first is the checking of the jury panel to see that it does not include disqualified persons, that is anyone who has had a conviction leading to a prison sentence of 10 years or more, or who has had one sentence of 3 months im-

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1For a review, see The Times, 4 June 1980.
prisonment or more in the previous five years. The second issue is the checking of jurors for another previous criminal record that might be particularly relevant in a given case. The third aspect of vetting of the jury panel is for people whose general behavior or membership of particularly “sensitive” groups might lead to partiality in a given case. The fourth aspect concerns the challenging of jurors once empanelled, either peremptorily or for cause (see Cornish, 1968).

Looking at these situations from a psychological point of view there are three main themes, granted that the formal disqualification is assumed. First, there is the specific question of whether court convictions, for lesser sentences than disqualifying ones, result in substantial bias. The second is whether other identifiable individual characteristics may produce bias, either generally or in specific cases. The third is whether such bias is normally maintained through deliberation with others who may have equally powerful but different prejudices.

Jurors are selected in the English system from people eligible to vote. The actual mechanism of how names are selected from this list of voters is shrouded in mystery, but it probably has some fairly random basis. Having been summoned for jury service, that is, having in many cases failed to register an acceptable excuse for not attending, juries are then empanelled from a group of people, allowing both defense and prosecution the right to challenge. Challenges may be peremptory (up to three for each side) or with cause. This process is described in more detail elsewhere (Cornish, 1968). The practical implications, in terms of who is invited, chosen and challenged, are unknown. The process of becoming a juror is not altogether clear, either to observers or to jurors (see Hilgendorf, 1980).

The method of jury selection in the United Kingdom is and always has been somewhat ad hoc. In the United States the process of challenging jurors either peremptorily or for cause is rather more systematic and has been described by some American writers as a “growth industry.” In Britain, prior to the 1972 Criminal Justice Act, juries were selected from a list of rate-payers (that is, by and large, owners of property). Hence they tended to be largely male and, as Devlin (1956) claimed with some satisfaction, “middle aged, middle class and middle minded.” Since 1972 juries have been selected from the electoral register and hence become open to a wider range of people in terms of age and social class, as well as becoming equally open to men and women. This legislative change, as well as earlier de facto changes (see Cornish, 1968, p. 23) in jury composition, represents a possible “naturally occurring” experiment (Cronbach, 1957), that might establish the effects of changing the criteria of eligibility on the decisions made by juries. No clear evidence exists. Zander (1974, 1975) has examined the general statistical evidence relating to jury verdicts and this shows no particular change in overall verdicts as a result of changing eligibility. His evidence is tangential as far as the question of individual

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2It should be noted that a distinction must be drawn between “random” and “representative” (see Marshall, 1975). A jury drawn randomly from voters in Bournemouth, for example, will be different in composition, in terms of major demographic features, from one drawn randomly from the electorate of Burnley, and neither will probably be representative of the electorate of the U.K. as a whole. Furthermore, seldom will either a randomly chosen or representatively selected jury really mean that a defendant is tried by his peers, whether “peerdom” is defined by age, ethnic affiliation, social status, or whatever. Only in the broadest and most attenuated sense can a representative of the electorate be regarded as a person’s “peer.”