RECENT RESEARCH

EMPIRICAL STUDIES ON JURY SIZE


Though most people are familiar with the term jury, this does not imply there is a consensus on how the term is defined. Nevertheless, descriptions do share some characteristics in common in terms of type of jury, jury size and decision rule. Two models of jury prevail i.e., the laypeople’s jury and the escabinato jury, the later being composed of laypeople and legal experts. As for jury size, the number of jurors may range from 3 jurors (e.g., in Germany where the jury is composed of two laypeople and a judge) to 15 jurors (as is the case in Scotland). Similarly, we observe a variety of decision rules i.e., simple majority, 2/3 majority, qualified majority (simple majority for a not guilty verdict and 7 out of 9 jurors for a guilty verdict), or unanimity. Thus, a typical definition of the jury might read that it is a number of laypeople, normally 12, who seek to reach a verdict, generally by unanimity, in a trial.

With reference to jury size, in *Williams v. Florida* (1970) the U.S. Supreme Court ruled that juries composed of 6 jurors were equivalent to those composed of 12 jurors in terms of the quality of the deliberation, reliability of the jury’s fact-finding, the verdict ratio, the ability of dissenters on the jury to resist majority pressure to conform, and the jury’s capacity to provide a fair cross-sectional representation of the community. Criticism against this ruling was swift to come, particularly from the social sciences. Surprisingly, the studies cited by the U.S. Supreme Court to support its ruling indicate quite the opposite. Studies undertaken by Asch (1952) reveal that a minority of 1 against 5 is under greater psychological pressure than 2 against 10. Likewise, Zeisel (1971), using standard sampling
theory analysis, has shown that a minority accounting for 10% of the population would be represented by at least 1 juror in 72% of 12 member juries. This percentage falls to 47% in 6 member juries. Furthermore, a series of ad hoc studies (17 in total) were revised by Saks and Marti in order to carry out a meta-analysis. The results have been classified according to the different dependent variables.

(1) With reference to the representation of minority groups, the result is highly consistent and significant i.e., a minority in a small jury would have between 36–37% to 63–64% less of a probability of being represented in a jury.

(2) As for the deliberation time, in 10 of the 11 studies where this variable was measured the deliberations were longer in large as opposed to small juries. Though the differences in deliberation time were not considerable, it is worth pointing out that the deliberation time is not as relevant as the depth and scope of the deliberation i.e., reference to the evidence, ideas, etc.

(3) Another variable to be assessed was memory of evidence though this was only present in two studies. It appears that larger juries are more accurate in their discussions concerning trial testimony than small juries; and the former’s post-deliberation recall of the evidence was significantly greater than in smaller juries.

(4) In relation to the number of hung juries, 15 of the studies that evaluated this variable showed that the number of hung juries was greater for larger juries than smaller ones. However, the difference is not significant if we bear in mind the context under which these results were obtained. In other words, in mock juries 18.6% were hung, whereas in real juries the number was 1.1%, which highlights that the real frequency of hung juries is low. We should stress that, for some authors, the number of hung juries is in effect an indicator of the good performance of the system.

(5) In comparison to smaller juries, statistical sampling theory has shown that there is greater tendency for the verdict of larger juries to coincide with the verdict preference expressed by the wider community. Thus, if larger juries reach a greater number of guilty verdicts in a given study, it would be reasonable to expect a greater number of guilty verdicts in contrast to