



The Gilder Lehrman Institute & Annenberg Public Policy Center:

The Civic Mission of Nation

The Jury System

by Anna Law, PhD

The American jury system in which citizens participate in the criminal justice system is an essential element of democracy. Democracy entails the rule of the many and not the rule of the few. Decisions about guilt or innocence in a criminal case can be made by elites or by all of us. The positive effects of democratic decision making by layperson juries are many: a) it is a counterweight to the power of government, b) it is a marker of full citizenship, and c) a verdict reached by representative members of a community will be regarded by the public as more legitimate.

The possibility of juries as an effective counterweight to the vast power of the government became evident early in US Revolutionary history. English North American colonial juries repeatedly acquitted criminal defendants who were being targeted by what colonists viewed as unjust English laws such as sedition and libel laws preventing them from criticizing King George III. The Crown responded by moving subsequent trials to England, far from colonial defendants' sympathetic communities, and decided by judges handpicked by the king. The colonists' disagreement with the Crown's abuse of juries appears as two lines in the Declaration of Independence: "For depriving us in many cases of the benefits of Trial by Jury" and "For transporting us beyond Seas to be tried for pretended offenses." *Who* decided guilt or innocence was essential to fairness.

Although jury service is routinely praised as fundamental to US democracy, the institution has fallen short of broad inclusion in practice with past and continuing discrimination based primarily, although not exclusively, on race and sex. Even though a right to jury in criminal trials is stated in the Constitution's Sixth Amendment, it was not until the Supreme Court case *Duncan v. LA* (1968) that the Sixth Amendment's guarantee became required of states, not just the federal government. For over a century, juries routinely excluded racial minorities and women, leaving all-White male juries to decide cases. It was not until 1975, in *Taylor v. Louisiana*, that the Supreme Court required jury selection to reflect a "representative cross section" of communities. Prior to this case, states could systematically exclude women and non-White people from the jury pool.



Even after potential jurors are brought together, other procedures like the use of peremptory challenges could be used to leave out non-Whites and women. Not until *Batson v. Kentucky* (1986) and *J.E.B, ex rel T.B. v. Alabama* (1993) were lawyers prohibited from using peremptory challenges to eliminate jurors based on race or sex. These reforms are improvements but not foolproof.

Eligibility for jury service is a symbol of full citizenship for groups who are included and a badge of inferiority for those left out. It should come as no surprise that verdicts rendered by a representative jury are seen as fairer and more acceptable by the communities affected by a crime than verdicts decided by a jury that barred key constituencies.

Anna Law holds the Herbert Kurz Chair in Constitutional Rights at Brooklyn College, CUNY. Her publications appear in both social science and law journals and investigate the interaction between law, legal institutions and politics. She is the author of *The Immigration Battle in American Courts* (2010) and is a former program analyst at the US Commission on Immigration Reform.