Should jury trials be abolished for lesser offences?

In 1179, when Henry II introduced panels of knights to determine land disputes at the *Grand Assize*, it is unlikely he would have foreseen that trial by jury would catch on quite so widely. Trial by battle no doubt had its 12th century adherents and trial by ducking stool persisted as an apparently reliable method for determining certain witchcraft offences until 1750. However, we are now forced to consider whether the jury trial remains fit for purpose or was ever quite as fit we thought it to be. Eligibility for jury service has required surprisingly recent refinement, to include women[1] and remove property ownership qualifications[2]. The UK's socio-economic landscape is increasingly uncertain and post-truth narratives interfere with our ability to make any objective decisions[3]. The jury system is not coping with the volume of adjudications required of it. In March 2025, the Ministry of Justice announced a record Crown Court trial backlog of 76,957 cases[4]. Abolishing this medieval anachronism for less important offences seems like a quick and righteous fix. Yet does it really address the underlying causes of our current difficulty? And what are the consequences of imposing summary justice?

This essay acknowledges the huge drain on resources that jury trials present but will conclude that further change is undesirable and addresses symptoms rather than the cause of the problem. The 'affective' analysis of the courtroom process highlights the centrality of emotion to judicial determination[5]. The jury system is at the heart of community decision making but can't sustain the community by itself.

The Drain on Resources and Criminal Justice System Backlog

The right to fair trial is a fundamental aspect of the Rule of Law. However, when A.V. Dicey[6] was expounding the Rule of Law, the UK's population was estimated to be around

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[1] Sex Disqualification (Removal) Act 1919

[2] Juries Act 1974

[3] Ava Kofman, *Bruno Latour the Post-Truth Philosopher* (New York Times, 2018)

[4] Ministry of Justice, *Criminal court statistics quarterly: January to March 2025* (2025). Report found at: Criminal court statistics quarterly: January to March 2025 - GOV.UK

[5] James w. Harris, *Legal Philosophies* (Lexis, 1997) Chapter 9

[6] Dicey A.V., Introduction to the Study of the Law of the Constitution, 8th edition (London: Macmillan, 1915), originally published in 1885.

27 million[7]. A century and a half later, it stands at just over 69.5 million[8]. The Criminal Justice System is now on its knees from endless budget cuts, compounded by social change and a global pandemic. In 2023, the average cost of a Crown Court sitting day was £3,036[9]. A streamlined service would help accessibility to a fair trial and would free up money, time and human resources.

Sir Brian Leveson has been a vocal advocate for reform. He argues there is a need to step away from any fanciful imaginary we might have of the justice system and realise that this is simply a numbers game – there are too many cases, taking too long, presided over by too few judges. By removing the right to elect trial by jury in cases where the maximum sentence is less than two years imprisonment, creating a new Crown Court Bench Division (CCBD) and moving serious fraud cases to be heard by judges alone, Sir Brian argues 9,000 sitting days could be saved in the Crown Court each year[10]. Law need not always be a quest for justice, sometimes it is purely transactional. The broad success of reforms within the civil courts, guided by the overriding objective and ADR, offers a template for fast track solutions and restorative justice.

Alternatives to Juries

Putting aside the arguments for efficiency, we must consider public perception of change. Taking power away from the jury and handing it to the judiciary creates a symbolic and practical disconnect from community led determination. Decision-making is concentrated in an unrepresentative group, potentially eroding checks and balances upon reflexive guilty verdicts.

There is no shortage of criticism for the lack of racial, gender and socio-economic diversity on the Bench and indeed, at the Bar. Public confidence in the justice system is fragile, with

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[7] Office for National Statistics, *England and Wales Population Estimates 1838 to 2014* (2015) Data found at: England and Wales Population Estimates 1838 to 2014 - Office for National Statistics

[8] Office for National Statistics, *Census* (2021). Data found at: Census - Office for National Statistics

[9] UK Parliament, *Crown Court Costs: Question for Ministry of Justice* (2023) Data found at: Written questions and answers - Written questions, answers and statements - UK Parliament

[10] Gov.uk, *Independent Review of the Criminal Courts* (2025) Report found at: Independent Review of the Criminal Courts - Part 1

some regarding it as still a "[White] Man's Game"[11]. Whilst the argument for reform appears straightforward as an accounting exercise, non-fiscal factors must also be balanced.

It may be argued that judicial selection and training have evolved to be a superior form of justice. Judges can be alert to cognitive bias in all its forms, inoculated to the distraction of hyperbolic advocacy and on top of the lesser offending game. But if efficiency becomes the overriding metric, why permit any human involvement? The computational power of AI is progressing exponentially and will likely come to define the next human epoch[12]. If AI can be trained to read fraud trial documents without confusion (or boredom), detect every vocal inflection and physical gesture in the Courtroom, and ignore the cognitive bias which afflicts all humanity then why should we hesitate to change?

Legal Realism

The partition between law and emotion is a deeply entrenched paradigm. Hobbes noted that the ideal judge is divested "of all fear, anger, hatred, love and compassion"[13]. This clean separation stems from Cartesian ideals of Mind-Body dualism; the rational mind should be detached from the irrational and messy body. Alex Jeffrey states "one of the key achievements of law is its ability to produce stability, to perform a sense of legal spaces as timeless, ordered and rational"[14]. Courtrooms are thought of as spaces of impartiality, candour and objective truth. The phrase 'Sine ire et studio' - without anger or passion – has long been used to describe proper practice in the court of law[15]. This reality is enforced by the court itself – "the emotive-cognitive judicial frame systematically silences emotions"[16]. Indeed, Terry Maroney states that "to call a judge emotional is a stinging insult, signifying

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[11] Kimberly Jade Norwood, *Gender Bias as the Norm in the Legal Profession: It's Still a [White] Man's Game* (Washinton University Journal of Law & Policy, 2020) p.25

[12] James Lovelock, *Novacene: The Coming Age of Hyperintelligence* (Penguin Books, 2019)

[13] Thomas Hobbes, *Leviathan* (1651)

[14] Alex Jeffrey, *Legal Geography 1: Court Materiality* (Progress in Human Geography, 2019) p.571

[15] Stina Bergman Blix and Asa Wettergren, *Professional Emotions in Court: A Sociological Perspective* (Taylor & Francis 2018) Chapter 5

[16] Stina Bergman Blix and Asa Wettergren, *Professional Emotions in Court: A Sociological Perspective* (Taylor & Francis 2018) Chapter 5, p.163

a failure of discipline, impartiality and reason"[17]. Those who would abolish jury trials for lesser offences see the courtroom through a lens which is dispassionate and sterile[18].

The 20th century Critical Legal Studies Movement argued that this is all a long con. From the perspective of the layman, law is a distant notion, clouded by "jargon designed to bamboozle and impoverish the average citizen"[19]. They attempted to unpack this jurisprudential scam, attacking "the conception of law as a brooding omnipresence in the sky"[20]. When we distinguish – or seek to distinguish - between serious and lesser crime, we add another layer of obfuscation, decided under the smoke and mirrors of judicial misdirection.

A climate protestor with Insulate Britain has recently been acquitted of contempt of court for holding a placard to inform jury members of their ancient right to acquit a defendant based on their conscience, regardless of directions from the judge[21]. An appeal to the conscience of the jury seems to have been behind the acquittal of Just Stop Oil protesters for throwing orange dyed powder at Stonehenge, causing £620 of damage[22]. Self-determination according to conscience is the canary in the coal mine of our criminal justice system, which would be snuffed out by the abolition of juries in 'lesser' cases. Who holds the sorting hat which determines their importance?

The sensations, compulsions and restraints involved in the exercise of law should be understood as a networked process. Notions of 'affect' are not limited to the whims of a judge or jury, nor to their written or spoken language. They are present in the relations between courtroom actors, in the material experience of the environment, and in the 'affects' of individual and collective emotion which percolate. It is this essay's submission

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[17] Terry Maroney, *The Persistent Cultural Script of Judicial Dispassion* (California Law Review, 2011) p.629

[18] Stina Bergman Blix and Asa Wettergren, *Professional Emotions in Court: A Sociological Perspective* (Taylor & Francis 2018) Chapter 5

[19] James W. Harris, *Legal Philosophies* (Lexis, 1997) Second Edition Chapter 9.

[20] James W. Harris, *Legal Philosophies* (Lexis, 1997) Second Edition Chapter 9. p.98

[21] BSB Solicitors, *Jury Equity – A Verdict of Conscience* (2024) Article found at: Jury Equity - A verdict of conscience - BSB Solicitors

[22] Just Stop Oil, *Three Just Stop Oil Supporters Acquitted of all Charges for Stonehenge Action* (2025) Article found at: Three Just Stop Oil supporters acquitted of all charges for Stonehenge action – Just Stop Oil

that those who would abolish jury trials for lesser offences fail to appreciate this delicately balanced system or why it is that our focus should be upon the messy systemic whole.

Budget cuts in the justice system have been burning the candle down at both ends. The Courts cannot cope with increasing numbers of jury trials, and the police lack the resources to investigate offending. The high-profile shoplifting trials of the 1990s are long gone[23]. The reality is that shoplifting, domestic violence and anti-social behaviour are now rarely charged, let alone triable either way. For the victims of these crimes, for whom the impact may not be lesser at all, justice is a non-starter.

It is vital to think about how we got here. Housing, education, youth engagement and employment are the key controls upon lesser offending. Prisons operating at 97% of capacity[24] are unlikely to offer much by way of rehabilitation. Closure of Court Buildings leave us in seemingly permanent deficit. None of this is a function of jury trial election.

Conclusion

In his lecture "The English Criminal Trial: Credits and Debits", Lord Bingham references Oliver Cromwell's instructions to his portrait painter[25]. His instructions were candid and simple; to be in his likeness, including all the "roughness, pimples, warts and everything else you see"[26]. Much like Cromwell's face, Lord Bingham continues, the English Criminal Justice System has its imperfections. This essay has not sought to conceal these blemishes. However, abolishing jury trials for lesser offences is not the answer. In the courtroom, affective atmospheres do not have a simple hierarchy of cause and effect, nor are they self-contained. They continually shape procedural mechanisms and are also shaped by them. Once communities give up making their own emotional decisions, they cease to be communities. To regard emotion as capable of extraction from the judicial process is

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[23] Emma Wilson, *Richard Madeley Discusses Shoplifting Arrest as he Claims 'It's easy to forget to pay for things'* (The Mirror, 2024) Article found at: Richard Madeley discusses shoplifting arrest as he claims 'it's easy to forget to pay for things' - The Mirror

[24] Ministry of Justice, *Annual Statement on Prison Capacity: 2024* (2024) Report found at: Ministry of Justice – Annual Statement on Prison Capacity: 2024

[25] Tom Bingham, *The English Criminal Trial: The Credits and the Debits* (The Business of Judging: Selected Essays and Speeches, 2000)

[26] Tom Bingham, *The English Criminal Trial: The Credits and the Debits* (The Business of Judging: Selected Essays and Speeches, 2000) p.253

shortsighted and fundamentally flawed – we should instead look to the externalities and political lifestyle choices which have resulted in the impasse.

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