

Singapore Management University

Institutional Knowledge at Singapore Management University

Research Collection Yong Pung How School Of Law

Yong Pung How School of Law

11-2008

Legitimizing Criminal Justice through Community Engagement: Lessons from the Jury Experience

Mark FINDLAY

Singapore Management University, markfindlay@smu.edu.sg

Follow this and additional works at: https://ink.library.smu.edu.sg/sol_research



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

Citation

FINDLAY, Mark. Legitimizing Criminal Justice through Community Engagement: Lessons from the Jury Experience. (2008). *Current Issues in Criminal Justice*. 20, (2), 303-306.

Available at: https://ink.library.smu.edu.sg/sol_research/2046

This Journal Article is brought to you for free and open access by the Yong Pung How School of Law at Institutional Knowledge at Singapore Management University. It has been accepted for inclusion in Research Collection Yong Pung How School Of Law by an authorized administrator of Institutional Knowledge at Singapore Management University. For more information, please email cherylds@smu.edu.sg.

Legitimizing Criminal Justice through Community Engagement: Lessons from the Jury Experience

Abstract

Fundamentally justifying the jury is the opportunity it provides for community participation in criminal justice and the legitimization function that offers. Indeed, a strong political motivation for the recent introduction of jury trial in several transitional jurisdictions is the public confidence it transfers to the system at large. Recent research on juror comprehension and satisfaction suggests the possibility of interrogating the participation/confidence nexus more intricately. This note argues that it is the quality of the participation and the participant satisfaction which eventuates that predicts juror confidence. Where the legitimacy of criminal justice through juror participation is to be maximised then the factors effecting satisfaction and confidence are influential variables.

In recent years several jurisdictions have either reintroduced a form of jury verdict delivery, or adopted a jury system for the principal purpose of more widely legitimating formal criminal justice institutions. For example, Japan has experienced a deteriorating public confidence in the court system. The response of government has been to create a structure of lay participation in criminal court judging. The new system for 2009 will let a range of ordinary citizens share in judicial responsibility to determine guilt or innocence in serious criminal cases, and consider sentence. The government expects that the introduction of lay judges will help shorten trials and human rights groups say the reforms will bring fairness and more transparency to the Japanese justice system.

The wider involvement of citizens in criminal justice in Japan can be placed against the background of civil liberties concerns about police and prosecutors interrogating suspects without the presence of defence lawyers. The Japanese civil liberties union has criticised this practice because verdicts often hinge on a suspect's written confession and around 99% of criminal cases brought to trial in Japan end with a conviction.

Public opinion websites such as 'Japan Forum' contain views on the new jury initiative that are largely supportive, while at the same time expressing reservations about the capacity of untrained lay judges who might produce unjustified acquittals or lenient sentences.

Professor Kent Anderson (ANU College of Law) says of the new initiative, 'I think involving regular people in delivering criminal justice will have a major impact on how the idealised version of justice is realised and that the results of the road to getting to the new system will be more reflective of society and more satisfying for all' (ANU Reporter 1996).

Anderson's response to criticism regarding the capacity of jurors to participate in verdict delivery and sentencing emphasises the potential for wider citizen participation to generate community confidence and respect for the judiciary and the courts.

In New South Wales Chief Justice Spigelman has invited consideration of juror involvement in sentencing more than verdict delivery alone. A justification for his position was that community confidence in the sentencing process may be enhanced through wider citizen participation. The NSW Law Reform Commission, while not supporting the proposed initiative, recognised that increased community engagement in the trial process would more likely than not positively influence confidence in criminal justice more generally.

In an effort to rebrand the largely discredited criminal justice system in the old Soviet Union the new Supreme Court of the Russian Federation supported a legislative reintroduction of juries for certain criminal trials in Russia. The empowering Act went so far as to specifically provide the opportunity for jurors to bring back verdicts which while contrary to law may rather reflect wider community notions of a just outcome. Legislating for the wayward verdict revealed just how far Russian criminal justice would go in employing community participation to further objectives of wider public confidence and legitimacy.¹

These recent developments in enhancing the legitimacy of criminal justice through wider community engagement have been based on aspirations rather than empirical foundations. However, there is in the research literature on juror opinions a long-standing appreciation of just how influential participation can be in the construction of confidence.

Most recently in Australia, O'Brien, Goodman-Delahunty, Cluff and Pratley surveyed over 600 empanelled jurors and more than 1000 non-empanelled jurors in New South Wales, Victoria and South Australia.² By comparing the attitudes to confidence in the trial process against the degree to which respondents had been actively involved as jurors the study sought to substantiate the assumption that more participation meant more satisfaction and hence more confidence. While the study was also interested in juror satisfaction with material conditions such as remuneration and physical comfort, satisfaction measures were also clearly directed to the nature of juror service and confidence in criminal justice as a consequence. The results of the study demonstrate that degrees of jury participation, comfort of jury facilities and satisfaction with the level of remuneration significantly influenced satisfaction with jury service. This overall satisfaction then, influences confidence in criminal justice to a greater extent than degrees of participation alone, although both independently predict general confidence in the criminal justice system.

The comparison of three groups of jurors (non-empanelled, empanelled who did not deliberate to a verdict, and empanelled who deliberated to a verdict) revealed that a failure to be empanelled did not produce a significant decrease in confidence. In turn, more in-depth participation in the jury system (as indicated through deliberating to a verdict) produced the greatest increase in confidence in the system as a whole.

The study further analysed the relationship between satisfaction and confidence, clarifying that jurors with low satisfaction and high participation were most likely to report a decrease in confidence in the criminal justice system following jury service. Conversely, jurors who were most satisfied with the experience were those most likely to report an increase in confidence in the criminal justice system, irrespective of whether they were empanelled or participated in deliberations.

In summary, the conclusions about the study of the nexus between participation satisfaction and confidence confirmed that satisfaction rather than the extent of participation alone exerted more influence on confidence in the criminal justice system. Even so, where participation levels were high and satisfaction otherwise apparent, then confidence levels were also at their most significant.

The study refers to other empirical work (such as Kritzer & Voelker 1998) that shows improvements in people's perception of the courts following contact with the court system are responsive to specific positive experiences, whereas specific negative experiences

¹ For a more detailed discussion of the Russian experiment see Findlay 2001.

² For a summary of the research see O'Brien et al 2008.

diminish such perceptions of the courts. Nothing surprising in this! From here it is important to drill down into the issues and relationships which impact on participation, satisfaction and confidence.

The early analysis of this most recent juror study in Australia has not drawn an interesting trend commentary about the participation, satisfaction, and confidence nexus for NSW jurors at least. Almost 15 years back now I surveyed 881 jurors called but not empanelled and 637 empanelled jurors in 57 criminal trials (Findlay 1994). While testing the participation, satisfaction and confidence nexus was not a key aspiration of this study, I employed a methodology similar to that used by O'Brien et al and produced data which gives depth to the more recent analysis of confidence indicators. My study interrogated in detail the sorts of information given to jurors during a trial which would enhance their comprehension and enable them more successfully to perform what they appreciated as their functions. Juror comprehension, and the issues which impacted upon it, were central to the survey. An underlying research assumption was, that if jurors were unclear or uncertain about their functions, and felt they had not been provided with sufficient information to perform these, then their comprehension would be lessened. Attached to this hypothesis was the belief that low levels of concentration for jurors would also have a negative impact on comprehension.

Within the context of juror comprehension and the enhancement of understanding and concentration, jurors were asked to comment on their personal and collective experience of the trial. In addition they were given an opportunity to indicate the positive and negative influences over their experience including such things as prior jury service, group dynamics, inconvenience, and whether too much was expected of jurors. Almost 80% of juror respondents who had been empanelled and served indicated a positive response to the question about their experience. Of the 20% who had served on juries previously most indicated the experience this time around was either more rewarding or as rewarding as before. These results could be placed against the fact that almost 30% serving jurors registered inconvenience as a consequence of service, 10% believed that too much was expected of jurors, and almost 40% felt that the experience of jury service had not drawn their jurors closer together as a group. When comparing the responses to 'collective experience' with factors such as the length of trial, it seems that as trials get longer the positive experience of jury service decreases. Trials which ran between 2 and 4 days seemed to evoke a greater negative response and from 5 days on the trend remained in the negative. Interestingly, there did not in the studies, seem to be any necessary association between the collective experience of jury service and the negative feelings of individual jurors. This was not the case however, when one compares negative feelings about jury service to the overall rating by respondents of the jury system as a whole. Clearly those who had a negative feeling about their experience as jurors were less likely to rate the jury highly as did those who saw the experience as a positive one. Again, not a surprising correlation.

Jurors empanelled were asked to rate the jury system overall on a scale of very good through to very poor. The vast majority indicated good or very good as their rating. Only 2% used the poor or very poor rating. Bearing in mind the small number of jurors who were negative in their view of the jury system overall or ambivalent (over 10%) of these most also believed that their colleagues did not cope well with jury service and this influenced the decision-making task of the jury. It could be drawn from this that negative group experiences will also impact on the evaluation of the jury system as a whole.

This survey did not interrogate non-empanelled jurors in detail about their confidence in criminal justice being affected by their limited experience in the jury process. However,

non-empanelled jurors were asked after having been called for jury service what was their impression of juries. In a similar scale structure (favourable or unfavourable, or more favourable or less favourable), the non-empanelled jurors presented a more negative assessment of the jury than did those who had been called to serve. In addition, non-empanelled jurors were less likely to positively approach the opportunity for future jury service than empanelled jurors.

It would seem from this that one could say the greater the participation by respondents in the trial process the more likely it would be that their experience of jury service would be positive and their attitude to future engagement would be enhanced.

The O'Brien (et al) study suggests there is room for more detailed interrogation of the relationship between satisfaction, participation and confidence. Findlay's data explored a wider range of influences over juror satisfaction. These included a positive relationship between the juror and the judge, a good working relationship between jurors, and more specifically the functionality of collaborative decision-making in juries and a positive evaluation of the experiences. From this data it would seem clear:

- the greater the degree of engagement for jurors the more positive will be their evaluation of the experience;
- the more positive the relationship with the judge and the more engaged is the comprehension of lawyerly argument, the higher will be the positive evaluation of the experience; and
- where juries functioned successfully in collaborative decision-making, the higher would be the evaluation of the experience.

From the O'Brien (et al) and the Findlay studies there can be little doubt that quality engagement and participation with criminal justice in situations where citizens are well informed and satisfied with their responsibilities and environment, produces positive evaluations. This means that engagement alone may have an influence on confidence and consequent legitimacy but more so if the engagement is actual, constructive and communitarian.

Professor Mark Findlay

Professor of Criminal Justice, University of Sydney; Professor of International Criminal Justice, Law School University of Leeds

References

ANU Reporter 1996 'Trialling a Jury' ANU Reporter Autumn 1996 http://info.anu.edu.au/mac/Newsletters_and_Journals/ANU_Reporter/097PP_2006/02PP_Autumn/jury.asp

Findlay M 1994 *Jury Management in NSW* AIJA Melbourne

Findlay M 2001 'Juror Comprehension and Complexity: Strategies to Enhance Understanding' *British Journal of Criminology* vol 41 no 1 pp 56-76

Kritzer H & Voelker J 1998 'Familiarity Breeds Respect: How Wisconsin Citizens View Their Courts' *Judicature* vol 82 pp 59-56

O'Brien Kaye, Goodman-Delahunty J, Cluff J & Pratley J 2008 'Factors Affecting Juror Satisfaction and Confidence in New South Wales, Victoria and South Australia' *Trends & Issues in Criminal Justice* No 354