

## RECENT RESEARCH

### EMPIRICAL STUDIES ON JURY SIZE

Saks, M. and Marti, M. (1997) "A Meta-Analysis of the Effect of Jury Size", *Law and Human Behavior* 21: 451-467.

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

smaller juries. The results obtained from 10 studies, however, do not appear to substantiate this hypothesis since no significant differences were observed.

- (6) In civil law cases involving awards, the meta-analysis revealed that the average awarded was greater for smaller juries than for larger ones, which is in line with psychological theory. However, it should be pointed out that the analysis only consisted of the observation and comparison of the means without any statistical tool, and the data were only reliable in 3 studies.

Taking into account that the reduction in jury size significantly influences the decision process, it would seem reasonable to argue in favour of enlarging the jury beyond 12. It would be reasonable to expect that enlarging the jury would optimise its performance by widening the scope of social representation, increasing deliberation times, improving evidence recall, all be it at the expense of increasing the number of hung juries.

However, this is not simply a question of arriving at a magic number, we should note that enlarging the jury size does not automatically entail raising the quality of the decision making process (Steiner, 1972). In other words, the ratio of jury size and efficient decision making has a maximum high.

Though the above mentioned factors shed light on jury performance we should not fail to consider other contextual factors that influence jury decision making.

First, the results of the meta-analysis highlight the consistency among the inter-studies, inter-methods (experimental, correctional, quasiexperimental) and inter-contextual (different trial cases, different settings and trial medium); in other words, they are reliable (Wicker, 1975). Second, these findings have been obtained with unanimous juries (save the 10 juries that had a quorum of 5/6 or the 10 juries of 10/12). This has important implications since it is well known that, in contrast to unanimous decision rules, the deliberations of majority juries are verdict driven. That is, they begin with a vote, the evidence is then discussed in order to support the verdict, and each juror defends only one verdict. In contrast, unanimous juries are characterised by deliberations driven to the evidence i.e., they make more references to the evidence, establish more connections between the evidence and legal issues; are longer; examine in

greater detail the evidence; discuss various possibilities; and carry out a more exhaustive and detailed deliberation.

Moreover, unanimous juries are influenced by a "sense of integration" (that is, they compare and link the evidence), whereas majority juries apply the "principle of exclusion" (e.g., witnesses tend to be classified as credible or not) (Hastie et al., 1983). On these grounds, the U.S. Supreme Court in *Johnson v. Louisiana* (1972), permitted the majority vote. Thus, Saks (1982) has argued that the implementation of these two measures, i.e., reduction in jury size and decision rule, could have drastic results that would eventually lead to the undermining of the jury system. Third, the variables assessed in the studies under consideration focus on pre-trial factors (e.g., representation of minority groups) and the outcomes (e.g., awards or verdicts) but provide few clues as to the factors involved in the deliberation process (content analysis, establishing links between evidence and legal issues, etc.). Hastie et al. (1983) have highlighted how a reduction in the decision rule lead to distortions in the deliberation content. In our empirical study of the content of the deliberation (Fariña et al., in press), 6 and 12 member juries with unanimous decision rules were observed to differ in that the former made fewer references to the evidence i.e., their analysis of the evidence was not as exhaustive, and they made fewer pro-defendant arguments (this was in two cases in which the majority of jury verdicts favoured with guilt). In short, larger juries tend to integrate and analyse both pro-guilty and not guilty evidence to a greater extent than do smaller juries.

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