Public opinion and the jury: an international literature review

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Ministry of Justice Research Series 1/09
February 2009
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Acknowledgements

This report was written to fulfil a contract with the Department of Constitutional Affairs (now part of the Ministry of Justice). The authors would like to gratefully acknowledge the assistance of Greg Braun, Michelle Diver and Ruth Laughton from the Ministry of Justice, as well as an anonymous reviewer, for their detailed and helpful comments on earlier drafts of the report. We are indebted to Cheryl Thomas for allowing us access to unpublished data emerging from her recent study of the jury in England and Wales. We are also grateful to the following individuals who provided research assistance or who responded to requests for information at various stages of the project:

Maria Christina Dorado, Centre of Criminology, University of Oxford;
Stephen Noguera, Faculty of Law, University of Oxford;
George Hoare, Department of Sociology, University of Oxford;
Nicole Myers, Centre of Criminology, University of Toronto;
Tom Finlay, Centre of Criminology Library Services, University of Toronto;
Valerie Hans, Cornell University;
Rebecca Gray Smith, American Bar Association;
Arie Freiburg, Faculty of Law, University of Melbourne;
Anne Skove, National Center for State Courts;
Tanya Skvortsova, Monash University;
Tom Munsterman, National Center for State Courts;
Rebecca DeSalvo, Judicial Division Justice Center;
Norm Desjardins, Department of Justice, Canada;
Joseph Fletcher, Department of Political Science, University of Toronto;
Michael Rowe, Victoria University Wellington;
Michelle Grossman, Faculty of Law, University of Oxford;
Rhonda Wake, Ipsos-MORI.

Julian V. Roberts and Mike Hough
ICPR
20 August 2008

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Policy briefing

- This report summarises polls that have explored public attitudes towards the criminal jury in England and Wales. Wherever possible and appropriate, comparisons are made between the views of the public here and other jurisdictions. Although the research record is rather limited, a number of conclusions may reasonably be drawn about the state of public attitudes to the criminal jury.

- Polls repeatedly suggest that the public strongly support the concept of the jury. The right to trial by jury is seen as one of the most important rights in a democratic society. The only qualification to this statement is that a significant minority of the public believe that denying the right to trial by jury for people charged with a terrorist-related crime is ‘a price worth paying’ to counter the terrorist threat.

- The jury attracts high confidence ratings from the public; only the police attract higher confidence or performance ratings than the jury.

- The public also believe that juries are representative of the community from which they are drawn.

- The most recent survey of the public in England and Wales found a very positive reaction to serving on a jury. Over three-quarters of respondents expressed an intention to perform jury service out of a sense of civic duty.

- There is some limited research from another jurisdiction (the United States) that serving on a jury promotes civic engagement.

- The public are opposed to recent proposals to limit the right to trial by jury.

- The results of this literature review suggest that legislators contemplating restricting the right to trial by jury need to consider the strength of public support for the institution of the jury.
Summary

There is a large body of scholarship exploring the jury as a legal institution or the reactions of jurors to the experience of serving on a jury but community reaction to the institution and function of the jury has been less well researched. Major reviews of the jury around the world have ignored the question of public reaction to the institution. The present review fills this void by addressing a number of important questions about public attitudes to the jury. The report summarises findings from a literature review of public attitudes towards the criminal jury, drawing upon polls conducted in Western jurisdictions over the past 40 years. The focus is upon public attitudes to the criminal jury in England and Wales, although limited comparisons are made with public opinion in other jurisdictions.

Aims of the review

This review addresses a number of key questions drawing upon the domestic and international literature on public opinion attitudes to the jury, including the following:

- How much do members of the public know about the jury system or the way in which a jury functions?
- How strong is public support for the criminal jury in England and Wales?
- To the extent that comparisons are appropriate, how much variation is there in levels of support for the jury across different jurisdictions within the common law world?
- Do the public believe that juries are representative of the communities from which they are drawn?
- Are there significant differences between the views of majority and minority respondents with respect to issues such as the fairness and representativeness of juries?

Key findings

Confidence in the jury

In recent years, polls in many Western nations have explored public confidence in various branches of criminal justice. Surprisingly, these polls have generally overlooked the jury. However, the few surveys that have explored the issue reveal that in a number of jurisdictions levels of public confidence in the jury are high. When members of the public in England and Wales are asked to rate different components of the criminal justice system such as the judiciary and the police, ratings tend to be higher for the jury than for any other element of criminal justice except the police. In addition, data from Northern Ireland – the only jurisdiction in which polls have tracked the issue over a number of years – suggest that confidence levels have not declined in recent years. The same cannot be said for all other
branches of the criminal justice system. For example, public confidence in the police in England and Wales has declined over the past five years.

**Support for jury trial as a legal right**

One direct way of gauging the level of public support for the jury is to ask people to rate the importance of the right to trial by jury. This approach was adopted in the British Attitudes Survey of 2005. Respondents were asked to rate the importance of six rights in a democratic society, including the right to a jury trial for defendants “charged with a serious crime”. They were asked to use a numerical response scale where 1 connoted “not at all important” and 7 meant “very important”. Almost three-quarters of the sample (72%) responded with a “7”, while a further 15% chose “6”. The right to trial by jury in this context was rated as more important than any of the other rights, including the right to protest against the government, the right not to be detained for longer than a week before being charged, the right to privacy, the right not to be exposed to offensive views in public, and the right to free speech in public.

**Public reaction to proposals to restrict the right to trial by jury**

If the public strongly support the jury, they are likely to oppose any proposals to restrict a defendant’s right to trial by jury. The limited research evidence suggests that this is the case. What about the economic argument against the use of juries in the criminal process? Research on a number of issues in criminal justice has demonstrated that the public are sensitive to cost considerations when evaluating criminal justice options. For example, people oppose prison construction in part because of the high cost of this crime control strategy. Respondents to the 2002 Bar Council survey in England were asked whether they would favour a reduction in the number of jury trials “if it would save taxpayers' money”. The public was clearly unconcerned about cost savings if it meant restricting the right to trial by jury. Thus only approximately one-quarter of the sample (27%) expressed support for reducing the number of jury trials in order to save money. Over two-thirds (69%) endorsed the alternate response, namely that “I would oppose a reduction in the number of trials by jury in order to preserve my current right to trial by jury” (4% responded “don’t know”).

**Representativeness of juries**

Public perceptions of jury representativeness have been explored by surveys conducted in a number of jurisdictions. The general finding is that most people are very confident that juries are representative of the community.
Attitudes to jury service

The most recent and comprehensive analysis of public attitudes to jury service in this country was conducted by the MORI organisation for the recent Ministry of Justice (MOJ) study into the jury in England and Wales (see Thomas, 2007). They reveal a very positive reaction on the part of the public. More than three-quarters of the public expressed an intention to perform jury duty out of a sense of civic duty. When asked about their reaction to the prospect of jury service, attitudes are significantly more positive than negative. Thus over half the sample endorsed the view that they would enjoy jury service; only approximately one-quarter expressed the opposite view. Nor does the public appear to see jury service as a task that would interfere with their family life or result in economic hardship.

Preference for juries over judges

Another way of exploring the nature of public reaction to the jury is to ask members of the public to imagine that they have been charged with a criminal offence and to state whether they would prefer to be tried by a lay jury or a professional judge and two magistrates. When this question was posed to respondents in the Bar Council poll, a clear preference emerged: almost two-thirds of the sample (64%) preferred trial by jury. Only one-quarter of respondents expressed a preference for the judge/magistrate option (4% responded “don’t know”; Bar Council, 2002). This finding constitutes further evidence of public confidence in the institution of the jury in England and Wales. Americans react in a similar way when asked to choose between trial by jury and trial by judge alone.

The report concludes by making a number of suggestions for future polling work regarding public knowledge of, and attitudes towards the criminal jury.
1. Introduction, context and methodology

Introduction

Despite the fact that the jury is a pillar of the common law system of criminal justice, we know less about the nature of public attitudes to this institution than any other element of the criminal process. In light of the volume of research that has accumulated upon public opinion regarding other areas of the criminal justice system such as policing or sentencing, it is surprising that there has been so little research into public attitudes to, or knowledge of the criminal jury. Other stages of the criminal process have been explored in literally hundreds of surveys (for recent reviews see Cullen, Fisher and Applegate, 2000; Roberts and Hough, 2005; Roberts and Stalans, 2000).

The British Crime Survey (BCS) for example, has collected public opinion data relating to criminal justice for over a decade now (Hough and Maxfield, 2007). The BCS measures public attitudes to, and knowledge of the police, magistrates, judges and other components of the justice system, but has never included items about the jury. Only a handful of surveys have explored attitudes to the jury in England and Wales and other common law jurisdictions. Two recent public opinion polls have explored attitudes to the criminal jury in England and Wales. One was conducted on behalf of the Bar Council and the Law Society in 2002, the other by MORI in 2003 and reported by Thomas (2007). The current review will attempt to place the findings emerging from these surveys in an international and historical context.

Jury scholars have also largely ignored public attitudes to the jury. A significant body of research has explored the jury as a legal institution or the reactions of jurors to the experience of serving on a jury (e.g. Hans and Vidmar, 1986; Kalven and Zeisel, 1966), but community reaction to the institution and function of the jury has been largely overlooked. Major reviews of jury research around the world (e.g. Kaplan and Martin, 2006; Vidmar, 2000) fail to discuss the question of public reaction to the institution. Twenty years ago Vodanovich (1986) noted that “there has been no real substantive research into public attitudes about juries” (p. 77). Since then a number of surveys have been conducted in different jurisdictions, although no publication has brought these findings together. The present review fills this void by addressing a number of important questions about public attitudes to the jury. It is important

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1 As noted, this report focuses on public opinion and the criminal jury. Even fewer surveys have explored public knowledge of, and attitudes towards the civil jury. For discussion of the limited research findings in that area, see Hans, 1993; Kritzer, 2001; Horan, 2005. There is also more substantial empirical literature exploring the perceptions and experiences of actual jurors, although that is not the subject of the present review.
to note that this is a report about attitudes to the criminal jury held by members of the general public. We do not explore the perceptions of defendants, offenders, or jurors in the criminal justice system. For example, when we report upon the attitudes of Black and Minority Ethnic (BME) respondents, we are concerned with the opinions of the general BME public, and not ethnic minority individuals who are currently in or who have passed through the criminal justice system.

Aims of the review

This review addresses a number of key questions drawing upon the domestic and international literature on public opinion attitudes to the jury. The primary focus is upon attitudes in England and Wales and the specific questions include the following:

- How much do members of the public know about the jury system or the way in which a jury functions?
- How strong is public support for the criminal jury?
- To the extent that such comparisons are appropriate, how much variation is there in levels of support for the jury across different jurisdictions within the common law world?
- How much confidence do the public in England and Wales have in the jury?
- Do the public believe that juries are representative of the communities from which they are drawn?
- Are there significant differences between the views of majority and minority respondents with respect to issues such as the fairness and representativeness of juries?
- What is the nature of public reaction to recent proposals in England and Wales to limit the right to trial by jury?

Context

Challenges to making international comparisons

The principal focus of this review is upon public attitudes towards the criminal jury in England and Wales. However, we also discuss findings from surveys of the public in other jurisdictions, including the United States (US) and Canada. Trends from these countries place the British findings in a comparative context – although for two principal reasons findings from other countries must be interpreted with caution. First, the nature and history of the criminal jury varies across jurisdictions, and second, survey methodologies can also be quite different. Let us examine these two issues in turn.

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2 The one exception concerns the relationship between jury service and civic engagement, which was part of the original mandate of this review.

3 Polls have repeatedly explored public perceptions of the jury in Northern Ireland, and these are reviewed in the next chapter. We uncovered no relevant surveys of the public in Scotland.
Variability in the criminal jury across jurisdictions

Vidmar (1999a) notes that the common law jury exists in over 25 countries and that considerable variation exists in terms of the nature of the jury in different jurisdictions. According to Chesterman, Chan and Hampton (2001) “while the basic features of common law jury trials do not vary greatly amongst common law jurisdictions, there are sufficiently important differences in their mode of operation to indicate that it is unsafe to transplant findings from one jurisdiction to another without taking account of these differences” (p. 15). Chesterman et al. were reviewing the impact of media publicity on jury trials; variation in the procedural arrangements will obviously have an important effect on this issue. The present context is somewhat different. How variations in procedures, such as the way jurors are empanelled, and the decision-making criteria of the jury affect public attitudes to the jury is unknown. The difference between the common law and civil systems may be more important. The legal culture as well as the role of the jury is quite different in these two systems and this difference will clearly play a role in explaining differential levels of support among members of the public living in common or civil law systems. Prior to discussing findings it is important to give the reader some indication of the variability in jury arrangements in the jurisdictions included in this review.

The jury in the US has evolved in ways not found in most other common law jurisdictions. It is important to note that each state has a jury system and one also exists for federal cases. A couple of examples illustrate the variation across the US. First, state felony juries may be composed of as few as six jurors and are not required to reach a unanimous verdict. Indeed, the jury varies considerably across the US, although all states are subject to constitutional protections of the right to trial by jury. Second, jury selection in the American jury can be considerably more time consuming than in other jurisdictions as a result of a voir dire, in which both parties have an opportunity to explore the attitudes of prospective jurors. Compared to their counterparts in other jurisdictions, counsel in the US have greater liberty to probe jurors’ opinions on a range of matters with a view to creating an unbiased panel (see King (1999) and Brigham (2006) for discussion of the history and recent developments of the American jury).

In Canada, juries must always be composed of 12 members. Verdicts of Canadian juries must be unanimous, although a verdict may be reached by only 10 or 11 jurors if there is

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4 One feature common to all countries is the rarity of jury trials. For example, Thomas (2007) reports that less than 1% of all criminal cases resulted in a trial before a jury. King (1999) estimates that approximately 5% of felony cases in the US proceed to trial and in more than one-third of these cases the defendant ultimately elects trial by judge alone.
some reasonable cause to discharge individuals (see Vidmar, 1999b). The jury in New Zealand must reach a unanimous verdict, although protracted deliberation in a number of recent cases has led to calls to permit majority verdicts – as is permitted in several Australian jurisdictions as well as England and Wales. There is no provision in New Zealand which specifies judge-alone trials in particular cases; it is up to the defendant to elect trial by judge alone or by jury. As is the case in other jurisdictions, commentators have called for reforms to permit judge-alone trials in some cases.

The jury in civil law countries: Russia, Spain and Japan

A number of civil law jurisdictions have adopted the criminal jury, although few opinion polls have measured public attitudes to the jury in those countries. However, since this review uncovered some recent and relevant polls of the public in Russia, Spain, and Japan, it is worth noting jury developments in those three countries. The jury was (re)introduced in Russia in 1993. Juries hear a small number of the most serious cases in a court over which a professional judge presides (see Thaman (1999) and Kaplan and Martin (2006) for further discussion). The Russian jury is composed exclusively of laypersons, 12 in number. The criminal jury returned to Spain in 1995 following suspension by the Franco dictatorship. As is the case in Russia, the jury in Spain is composed of laypersons, although 9 rather than 12. An asymmetry exists with respect to the decision rule: guilty verdicts require seven votes while acquittals need only five votes. The jury systems in Russia and Spain differ in many respects from the jury in England and Wales. One of the most critical differences is that juries may influence the nature and severity of sentence imposed (see Kaplan and Martin, 2006). Spain in particular is an interesting jurisdiction in which to explore public attitudes, as it is the only country to introduce or re-introduce the jury in which public attitudes have been surveyed.5

Juries will play a role in the Japanese system of justice beginning in 2009.6 The jury in Japan will more closely resemble juries in most of continental Europe, in the sense that they will be composed of six laypersons and three professional judges. These may be termed ‘mixed’ juries in contrast to the ‘pure’ juries found in common law countries where jurors are all laypersons and legal professionals are often (but by no means always) excluded from participation. In another important departure from the jury in common law jurisdictions, Japanese juries will have the power to sentence offenders as well as decide upon a verdict (see Ohtsubo (2006) for further information).

5 Centro de Investigaciones Sociologicas (2007).
6 The jury had been a feature of Japanese criminal justice until it was suspended in 1943.
Thus the jury does not function in exactly the same way in every jurisdiction, even within the common law system. A report on public opinion cannot provide a comprehensive review of the variability in procedures regulating jury trials in dozens of jurisdictions – the reader seeking to understand this variation is directed to a number of comparative texts (e.g. Kaplan and Martin, 2006). However, the existence of different regimes does not invalidate comparisons in terms of public attitudes. If they did, there would be little purpose in comparing public attitudes to any of a number of stages of the criminal justice system. Moreover, as will be seen, despite differences between jurisdictions in terms of the nature of the jury, there is great consistency between the reactions of the public in diverse common law countries.

Methodological variation
Variation in public attitudes to the jury may also reflect the fact that researchers have employed different ways of measuring public opinion. In this report we have addressed the variability in survey methodologies by restricting our comparisons to surveys that have used the same methodology, namely a large-scale poll that employs a representative sample of the general public. Readers should still exercise caution in drawing inferences about cross-jurisdictional findings, however. Such inferences are best made on the basis of a survey that poses a common question in different jurisdictions and which uses the same timeframe and sampling strategy. To date, no such survey has been conducted with respect to the jury.

Public knowledge of the jury
Very little empirical research has been conducted on public knowledge of the criminal jury. The BCS measures public knowledge of the police, magistrates, judges and other components of the justice system, but has never included items about knowledge of the jury. The consequence is that we know little about the level of public knowledge about the function of the jury, the way that juries are empanelled and so forth. The studies uncovered by this review explored opinion or attitudes towards the jury but did not examine knowledge of how they function. Unfortunately, no survey in this jurisdiction has posed a question exploring public awareness of this issue. The only finding is reported by Banks, Maloney and Willcock (1975) who found that most respondents were aware that higher courts sit with juries, but only a third of the sample was aware of “judge-only” proceedings. Public

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7 The issue that has attracted the most cross-jurisdictional research is sentencing. Comparisons of attitudes to sentencing in a number of countries provide important contextual information and do not require a comprehensive analysis of the highly variable statutory regimes or available sentencing options.

8 The International Crime Victimization Survey is a good example of such an approach (see Mayhew and van Kesteren, 2002).
knowledge of recent proposals in this country to restrict the right to trial by jury is poor, despite the widespread media coverage of and commentary upon the government’s initiative. The survey conducted by the Bar Council in England in 2002 found little evidence of public awareness of the recent proposals to restrict the ambit of the jury: over half the sample (54%) responded that they had heard “nothing at all”, while 24% stated that they had heard “not very much” about the various proposals. Eighteen per cent had heard “something”, while 4% claimed to have heard “a great deal” (see Bar Council, 2002). This finding reflects the generally low levels of public awareness of legal reforms and legislative proposals (Roberts and Stalans, 2000).

Public knowledge of the jury in other jurisdictions
Surveys conducted in other jurisdictions have asked some knowledge questions. One was conducted for the Law Reform Commission of Canada. Respondents were asked about the unanimity requirement in effect in that jurisdiction at the time; fully three-quarters were aware that jury decisions needed to be unanimous (Doob, 1979). In research conducted in the US, approximately four out of five respondents were aware that there was a penalty for failing to report for jury service after receiving a summons (Boatright, 1998). On the other hand, a nation-wide survey of US residents found that almost two-thirds erroneously believed that all courts conducted trials by jury (National Center for State Courts, 1978).

Policy relevance
Why is it important to know about public attitudes to the criminal jury? Several responses may be made. First, there is a clear link to current policy initiatives. The government has proposed to restrict the ambit of the right to trial by jury by permitting non-jury trials in serious fraud cases (see below). It is important therefore to know the nature of public reaction to such proposals, and indeed to any movement to reduce the number of jury trials. If the public was implacably opposed to any restrictions to the right to trial by jury, the proposals may undermine public confidence in criminal justice – whatever benefits may be achieved in ensuring a more effective prosecution of serious fraud cases. Finally, the important symbolic role that the jury plays within an adversarial system of criminal justice itself justifies research that contributes to a better understanding of the nature of public attitudes. It is a paradox that one of the most critical elements of the justice system has attracted such little attention from public opinion researchers.

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9 As will be seen later in this report, a large majority of the polled public in England states that they would have less confidence in the justice system if the right to trial by jury was significantly curtailed.
Proposals in England and Wales to restrict the right to trial by jury

Over the years, numerous proposals have been made to restrict the right to trial by jury in England and Wales.\(^\text{10}\) As Lloyd-Bostock and Thomas (1999) note: “It is ironic that the English jury, which has served as a model for other countries, is in a state of continual decline just as the jury trial is being revived in a number of countries” (p. 40). For example, in 1993 the Royal Commission on Criminal Justice made a proposal to reduce the number of defendants entitled to trial by jury. In 2000, the government proposed to abolish the right of defendants to choose a jury trial if they were charged with crimes such as burglary and theft. The most recent proposal affecting the ambit of the right to trial by jury concerns serious fraud trials and is found in the government Bill, The Fraud (Trials without a Jury) Bill 2006-07. This Bill would have the effect of implementing a provision of the Criminal Justice Act 2003 which permits, on application by the prosecution, for certain cases to be tried by a judge sitting alone without a jury. A judge may order the case to be conducted without a jury if he or she is satisfied that the length or complexity of the case is likely to “make the trial so burdensome upon the jury” (see House of Lords (2007) and Peck (2006) for background to the proposed legislation). The legislation has proved controversial and has attracted a significant amount of commentary.\(^\text{11}\)

The Bill (and the provision in the Criminal Justice Act 2003) is the culmination of a number of reports and consultation exercises. One of these resulted in the Auld Report, Review of the Criminal Courts of England and Wales (Auld, 2001). Lord Auld recognised the difficulties associated with the prosecution of complex and lengthy fraud cases, and recommended that a judge be allowed to try such a case, sitting alone with laypersons.\(^\text{12}\) The subsequent government White paper revised this proposal to allow a court to sit alone in certain cases and without lay members.\(^\text{13}\)

\(^\text{10}\) We also searched for any public opinion research on proposals in the other direction – namely to expand the role of the jury. For example, a recent report of the New South Wales Law Reform Commission examines a proposal to allow juries to discuss the sentencing of an offender in a case that they have just heard, prior to the court imposing sentence (see New South Wales Law Reform Commission, 2006). We did not find any public opinion surveys that have explored such proposals.

\(^\text{11}\) For example the shadow attorney general for the Liberal Democrats was quoted as saying that his political party maintained its “implacable hostility” to the proposed reform. Similarly, the director of the Civil Liberties advocacy group Liberty described the legislation as the “thin edge of the wedge” for the right to trial by jury (both quoted in Dyer, 2007). Extracts from the House of Commons debate may be found at Highlights from the jury debate (www.guardian.co.uk/print/0,3971692-103556,00.html). For evidence of judicial opposition to recent proposals see Julian (2007), while for judicial reaction to earlier proposals to restrict the right to trial by jury see Hadfield and Reeve (1993).

\(^\text{12}\) This recommendation had been made by the Fraud Trials Committee (1986).

\(^\text{13}\) Aside from the specific government initiative affecting serious fraud cases, there is also an economic argument to support restricting the right to trial by jury. It has been argued that the costs of jury trials are too high, and that some less serious cases that are currently heard by a jury could be more effectively heard by a judge sitting alone, resulting in significant cost savings. An important focus of the current review is therefore upon evidence of public reaction to proposals to restrict the right of trial by jury from either perspective.
Method

Approaches to measuring public opinion

Research in the field of public opinion falls into one of two categories: quantitative and qualitative. The former category includes polls using representative samples of the public. This category accounts for the majority of empirical investigations. Qualitative approaches include focus groups, and, more recently, ‘citizen juries’.14 Both approaches have their weaknesses: large scale surveys are expensive and allow the respondent only a very restricted amount of time in which to consider issues that may be very complex. In addition, polls seldom permit the researcher to give the respondent information to consider prior to answering the question. Focus groups overcome these problems: participants generally spend up to 90 minutes discussing issues and responding to questions. In addition, the moderator may provide participants with information to read prior to, or during discussion. However, the principal weakness with focus groups is that the researcher is unable to extrapolate trends emerging from the group to the population from which participants have been drawn. This review encompasses only quantitative surveys using representative samples of the public.15

Literature search

Conducting a review of an issue such as this obviously requires more than simply an electronic search of library holdings. Some research reports do not appear in the scholarly literature, and are instead simply posted on the websites of research institutes or individual academics. Accordingly, a diversity of approaches was adopted. Following a review of holdings at the Centre of Criminology, University of Toronto; the Institute of Criminology at the University of Cambridge; the Centre for Criminology at the University of Oxford; and the Social Science and Bodleian Law Libraries at the University of Oxford, we settled upon the following criteria for inclusion.

Criteria for inclusion

- **Quality**: all publicly available research studies that provided sufficient information to verify the scientific worth of the survey. This means information on sample size and the method of selecting respondents. We have included all polls that used a representative sample of the public, and which were available in English, French or

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14 There is also a ‘hybrid’ approach known as a ‘deliberative poll’ which combines the strengths of both representative polls and focus groups. This method of exploring public opinion is discussed in more detail in the concluding chapter of this report.

15 Polls conducted within a specific jurisdiction over time, or across jurisdictions tend to use different sample sizes and survey methods. This variability does not prevent researchers from conducting a literature review, and drawing general conclusions about public perceptions of juries. However, it did preclude us from conducting a ‘meta-analysis’, in which a single statistic is derived from a series of individual studies, which are then subject to a further statistical analysis.
Spanish. All kinds of research, qualitative and quantitative, were reviewed but ultimately we included only large-scale quantitative surveys.\(^{16}\) We specifically excluded research articles that report the findings from non-systematic interviews with members of the public and/or studies relying on samples of less than five people. Such studies may constitute a rich source of in-depth information, but can tell us little about public opinion trends in the general population.

- **Time period:** research conducted between 1960 and 2007. Since the emphasis in this review is on empirical research we did not anticipate finding (and in our preliminary search did not reveal) any such research published earlier than 1960. The earliest public opinion findings in the area of criminal law drawing upon British research appeared in the *Criminal Law Review* in 1961 (see Silvey, 1961). The most recent survey included in the review was published in Belgium in 2007 (Conseil Superieur de la Justice, 2007).

Should all surveys be assigned equal weight? In a statistical meta-analysis, the researcher combines independent studies and then weighs the studies in terms of key characteristics. For example, experiments that used random assignment to condition, or which employ a large sample of participants are assigned a greater weight in determining whether the overall effect exists. This approach represents a level of sophistication that is not possible in the present context. Instead, we have defined the universe of relevant surveys as those that conform to a series of scientific criteria, namely polls which permit extrapolation of specific findings from sample statistics to the general population from which the sample has been drawn.

The search strategy included the following components:

- Searches of all electronic databases available to users at the institutions identified above. The library at the Centre of Criminology, University of Toronto offers a bibliographic search service, and we commissioned a systematic search of all archives.

- Keyword searches of the internet using combinations of the following: jury; public attitudes; public opinion; criminal jury; community views; community reaction; public knowledge; jury system.

- Telephone or email inquiries of key informants in the field of jury research. Personal contacts were initiated with key informants in common law jurisdictions (e.g. Canada; US; Australia) to locate any unpublished research on the subject in these countries. In addition to contacting individuals in government research divisions we also contacted research scholars working on the jury to locate unpublished research.

- Inquiries were made to criminological research centres with substantial hardcopy holdings. Examples of such centres include: the Australian Institute of Criminology; the Crime and Justice Centre in New Zealand; the Institute of Criminology at the University of Cambridge; and the Centre for Criminology at the University of Toronto.

- Internet: a comprehensive search of relevant internet sources was conducted. In previous research on public confidence in criminal justice, researchers found that the internet generated a significant proportion of the existing surveys on the subject (Hough and Roberts, 2004). These were polls conducted by government agencies.

\(^{16}\) Although we had intended to include qualitative research such as focus groups, in the event, no such studies were uncovered.
around the world that had yet to be published in a scholarly journal. Surveys of this nature are included in the final review only if the source is able to supply sufficient information for researchers to establish the scientific validity of the poll.

- Searches were conducted of restricted\textsuperscript{17} public opinion archives maintained by polling companies such as the Gallup Organization in the US, MORI in the United Kingdom, and Ipsos-Reid in Canada.

- In addition to generating specific polls or references to polls, the search also uncovered a number of existing bibliographies of research on the jury and these were searched for any public opinion surveys. We also downloaded and searched all existing bibliographies on related websites such as the \textit{American Judicature Society} website.

- Economic and Social Research Council (ESRC) Database: we conducted a keyword search of the ESRC Question Bank which searches a number of surveys.

\textbf{Surveys of the public in England and Wales and Northern Ireland}

Since the primary focus of the current review is upon attitudes to the jury in England and Wales, it is worth identifying the principal surveys reviewed and noting their sample sizes. All of the following surveys employed representative samples of the public and most if not all of them conducted the interviews in person. Table 1.1 summarises the essential characteristics of these polls. Occasionally we cite findings from representative surveys from other countries, but only when they conform to the criteria for inclusion identified earlier.

\textsuperscript{17} By the term ‘restricted’ we mean that access to these archived surveys is only available to fee-paying subscribers.
Table 1.1: Principal surveys included in the review

<table>
<thead>
<tr>
<th>Source &amp; publication date</th>
<th>Date &amp; location of survey</th>
<th>Sample size</th>
<th>Statistical margin of error</th>
</tr>
</thead>
<tbody>
<tr>
<td>MORI poll conducted in 2003 but published by Thomas (2007)</td>
<td>2003; England &amp; Wales</td>
<td>1,871 adults</td>
<td>Not provided in original research report</td>
</tr>
<tr>
<td>Bar Council Survey (Bar Council 2002)</td>
<td>2002; England &amp; Wales</td>
<td>903 adults</td>
<td>Plus or minus 3% at 95% confidence interval</td>
</tr>
<tr>
<td>Morgan and Russell (Morgan and Russell 2001)</td>
<td>2000; England &amp; Wales</td>
<td>1,753 adults</td>
<td>Not provided in original research report</td>
</tr>
<tr>
<td>BBC (BBC News 2002)</td>
<td>2002; England &amp; Wales</td>
<td>1,576 adults</td>
<td>Plus or minus 3% at 95% confidence interval</td>
</tr>
<tr>
<td>British Social Attitudes Surveys (1998)</td>
<td>1994-1998; England &amp; Wales</td>
<td>1,058 adults</td>
<td>Not provided in original research report</td>
</tr>
<tr>
<td>Community Attitudes Survey (Northern Ireland Statistics &amp; Research Agency, 2007)</td>
<td>1992-1999; Northern Ireland</td>
<td>2,175 adults</td>
<td>Plus or minus 2% at 95% confidence interval</td>
</tr>
</tbody>
</table>

18 This report draws upon a number of questions from administrations of the British Social Attitudes Survey. Data from these surveys are publicly available through the ESRC search engines; the specific questions described in this review are available from the authors of the report.
2. Public confidence in, and support for the jury

Most Western governments have paid increased attention to public confidence in recent years. This is true for all public institutions, but particularly criminal justice. One consequence of this rise of interest in public confidence is that a number of surveys have explored public confidence in the justice system as a whole as well as confidence in various branches of the system (see Hough and Roberts, 2004 for a review). It is curious that almost none of the public opinion polls exploring public confidence in criminal justice have measured confidence in the jury. Even large-scale empirical investigations such as the polls conducted by the American Bar Association (1999; 2004a) or the general MORI survey conducted in Britain in 2003 have overlooked the jury, while including questions about other components of the justice system such as the police, the courts and correctional agencies.

Support for the institution of the jury in the criminal process

Perhaps the most basic issue to be addressed in any review of public attitudes is the level of public support for the institution of the jury. To a large degree this is a relative rather than absolute question: Do members of the public express more support for the jury than for other elements of the justice system such as the judiciary or the parole board? Public support for the jury has been measured in a number of ways. Respondents have been asked to express their level of confidence or trust, or have been asked to rate the performance of juries, or the contribution that the jury makes to the justice system. The general conclusion to be drawn from this research is that the public in different common law jurisdictions express high levels of confidence and trust in the jury.

Jury trial as a legal right

One direct way of gauging the level of public support for the jury is to ask people to rate the importance of the right to trial by jury. This approach was adopted in the British Social Attitudes Survey of 2005. Respondents were asked to rate the importance of six rights in a democratic society, including the right to a jury trial for defendants “charged with a serious crime”. They were asked to use a numerical response scale where 1 connoted “not at all important” and 7 meant “very important”. Almost three-quarters of the sample (72%) responded with a “7”, while a further 15% chose “6”. The right to trial by jury in this context was rated as more important than any of the other rights, including the right to protest against the government, the right not to be detained for longer than a week before being

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The qualification of ‘serious’ may have resulted in somewhat higher levels of ascribed importance. As will be seen later in this report, there is less support for the right to a trial by jury for less serious crimes.
charged, the right to privacy, the right not to be exposed to offensive views in public, and the right to free speech in public (see Johnson and Gearty, 2007). This finding suggests that members of the public in this country consider the right to a trial by jury to be very important.

Further evidence of the strong support for the jury in England and Wales comes from the State of the Nation surveys conducted for the Rowntree Reform Trust on two occasions, in 2000 (ICM Research, 2000a) and again in 2006 (ICM Research, 2007). Respondents were provided with a list of response options and asked to identify the rights that should be included in a possible Bill of Rights. The rights explored in the survey ranged over a variety of public services, including the National Health Service. In addition, some of the rights were arguably among the most fundamental to a democratic society (e.g. “the right of free assembly for peaceful meetings and demonstrations”). Table 2.1 summarises public responses from the 2000 and 2006 administrations. As can be seen, trial by jury was, along with the right to hospital treatment within a reasonable time, the right identified by the highest proportion of respondents as worthy of inclusion in a Bill of Rights. The fact that the right to a trial by jury attracted as much support as the right to expeditious hospital treatment underscores the strong public attachment to trial by jury. Finally, it is worth noting that there was very little demographic variation in responses to the right to trial by jury question. To cite one example, there was very little variation in support for the right to a trial before a jury across different political affiliations, although political affiliation did predict variation in responses to other rights.\textsuperscript{20}

\textsuperscript{20} In the 2006 administration of the survey the right to jury trial was supported by 91\% of Conservative respondents, 88\% of Labour and 92\% of Liberal Democrat respondents.
Table 2.1: Public support for specific rights, England & Wales, 2000 and 2006

<table>
<thead>
<tr>
<th>Specific right</th>
<th>% of respondents endorsing specific right (2000)</th>
<th>% of respondents endorsing specific right (2006)</th>
</tr>
</thead>
<tbody>
<tr>
<td>To a fair trial before a jury</td>
<td>93%</td>
<td>89%</td>
</tr>
<tr>
<td>To hospital treatment on the NHS within a reasonable space of time</td>
<td>94%</td>
<td>88%</td>
</tr>
<tr>
<td>To privacy in phone &amp; mail communications</td>
<td>90%</td>
<td>82%</td>
</tr>
<tr>
<td>To know the reasons for government decisions affecting you</td>
<td>90%</td>
<td>n/a</td>
</tr>
<tr>
<td>To know what information government departments hold about you</td>
<td>89%</td>
<td>85%</td>
</tr>
<tr>
<td>To be able to join or not to join a trade union</td>
<td>87%</td>
<td>n/a</td>
</tr>
<tr>
<td>To free assembly for peaceful meetings &amp; demonstrations</td>
<td>86%</td>
<td>73%</td>
</tr>
<tr>
<td>To equal treatment on entering &amp; leaving the UK irrespective of race or colour</td>
<td>82%</td>
<td>70%</td>
</tr>
<tr>
<td>Of the press to report on matters of public interest</td>
<td>79%</td>
<td>n/a</td>
</tr>
<tr>
<td>Of those who are homeless to be housed</td>
<td>76%</td>
<td>65%</td>
</tr>
<tr>
<td>To secure an abortion</td>
<td>76%</td>
<td>72%</td>
</tr>
</tbody>
</table>

Source: adapted from ICM Research (2000a; 2007)

Reversing the question produces the same positive response to the right to trial by jury. The 2000 State of the Nation survey also asked British respondents to identify any rights which in their view should be specifically excluded from a Bill of Rights. In response to this question only 2% of the sample believed that right to trial by jury should be excluded (ICM Research, 2000a).21

Public confidence in the jury

Another way of measuring public support for the jury is to compare confidence in the jury with confidence ratings of other criminal justice institutions or professions. As noted, most Western nations have conducted confidence surveys in recent years. These polls generally ask respondents to express the level of confidence that they have in the criminal justice system as a whole as well as its constituent components (e.g. the police, the courts, parole boards). Almost none of these surveys have included a specific question about the jury. One exception is a poll conducted for the Bar Council and Law Society in England and

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21 With respect to the constitutional argument, an equally positive response emerges from a public opinion survey conducted in Australia a generation ago. Vodanovich (1986) found that 86% of respondents believed that trial by jury should be a constitutional right of every Australian. These findings suggest that the right to trial by jury is at the heart of public conceptions of a democratic culture in common law countries.
Wales in 2002. Before reviewing these findings, however, it is worth noting that when people are asked to rate the performance of various branches of justice, or express their level of confidence in criminal justice professionals, a clear hierarchy emerges. The police receive the most positive performance ratings and attract the highest levels of public confidence. Courts, probation services and parole boards receive significantly less positive evaluations from the general public. This is true in all jurisdictions in which such surveys have been conducted, including Australia, Canada, Britain and the US. Where does the jury stand in the public’s hierarchy of confidence?

The survey conducted for the Bar Council and the Law Society asked respondents to express their level of confidence in a number of elements of the criminal justice system including the jury. Table 2.2 shows that levels of public confidence in juries is comparable to confidence in the police – further evidence of the high regard in which the jury is held in Britain – and that confidence levels are higher in the jury than in either magistrates or judges (Bar Council, 2002).

<table>
<thead>
<tr>
<th>Institution/Profession</th>
<th>% of respondents expressing a “great deal” or “some” confidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>81%</td>
</tr>
<tr>
<td>Juries</td>
<td>80%</td>
</tr>
<tr>
<td>Magistrates</td>
<td>71%</td>
</tr>
<tr>
<td>Judges</td>
<td>71%</td>
</tr>
<tr>
<td>Barristers</td>
<td>66%</td>
</tr>
<tr>
<td>Government ministers</td>
<td>43%</td>
</tr>
<tr>
<td>Politicians generally</td>
<td>41%</td>
</tr>
</tbody>
</table>

Source: Bar Council (2002)

Public trust in the jury

Researchers in the field often use ‘trust’ as a proxy measure for confidence (see discussion in Hough and Roberts, 2004; Roberts, 2007). The 1994 British Attitudes Survey asked respondents the following question: “How much would you trust a jury of ordinary local people chosen at random to come to the best view?”. Approximately two-thirds of the sample (65%) responded “just about always” or “most of the time”. Twenty-eight per cent responded “only some of the time”, and 5% “almost never”. When the question was

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22 A discussion of why the police fare best in public opinion evaluations is well beyond the ambit of this paper. However, the reasons include the link in the public mind between crime control and the mandate of the police. Members of the public also have more contact with the police (than other criminal justice professionals such as judges) and this may enhance performance ratings or levels of trust (for further discussion see Roberts (2007) and MORI (2004)).

23 The exception would appear to be Singapore, where courts and the police attract equally high ratings from the public (see Roberts and Hough, 2005).
repeated in 1998 and 2000, almost exactly the same percentages of respondents held the view that juries generally came to the best view. Unfortunately this question was not asked about judges so we cannot make a comparison between the two. Data are available from a survey reported by Morgan and Russell (2001). Respondents in England and Wales were asked to express their level of confidence that various criminal justice bodies “do their job properly”. The percentage of respondents expressing confidence was slightly higher for juries (68%) than the police (66%), judges (64%), magistrates (65%), or lawyers (61%).

To summarise, all comparisons between the jury and other components of criminal justice in this jurisdiction suggest that people have a relatively high opinion of the criminal jury. At this point we turn to levels of public confidence in the jury in other countries.

**Northern Ireland**

As many readers will be aware, the role of the criminal jury has changed significantly in recent years in this jurisdiction. One of the government’s responses to the terrorist threat involved the creation of so-called ‘Diplock courts’ in which cases previously heard by a jury were tried before a judge sitting alone. These courts were created in 1973 to hear cases involving suspected paramilitary activity. As part of the normalisation process in Northern Ireland, the legislation permitting these courts is being repealed (see Northern Ireland Office, 2006). The experience with these courts represents a unique development in the evolution of criminal justice in the United Kingdom. Understanding the unique history and the restricted role of the jury in this jurisdiction might therefore be relevant to understanding the nature of public attitudes to the jury. In the event, however, such an exercise is unnecessary; public evaluations of the jury in Northern Ireland are quite similar to those held by the public in England and Wales.

Public opinion data from Northern Ireland reveal a positive public response to the jury. This jurisdiction provides a unique public opinion record because public confidence in the jury has been measured repeatedly over the period 1992-2003. During this time, polls asked how much confidence the public had in the contribution that different components made to the fairness of the criminal justice system, a slightly different question from the one used on the British Attitudes Survey. The response options were also slightly different from those used in the British Attitudes Survey: respondents were asked if they were “very confident”; “fairly confident”; “not very confident”; or “not at all confident”. In the most recent year for which data are available (2003), approximately three-quarters of the sample (74%) stated that they were very or fairly confident in the contribution that the jury made to the fairness of the criminal justice system. Only 18% of respondents were not very or not at all confident, while
8% responded “don’t know”. Table 2.3 summarises trends over the decade 1992-2003. As can be seen, public confidence in the jury in this jurisdiction is high and has generally remained high over this period.

Table 2.3: Public levels of confidence in the jury, Northern Ireland

<table>
<thead>
<tr>
<th>Year</th>
<th>Very or fairly confident</th>
<th>Not very or not at all confident</th>
<th>Don’t know or refused</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992/1993</td>
<td>64%</td>
<td>18%</td>
<td>8%</td>
</tr>
<tr>
<td>1993/1994</td>
<td>74%</td>
<td>17%</td>
<td>10%</td>
</tr>
<tr>
<td>1994/1995</td>
<td>76%</td>
<td>17%</td>
<td>7%</td>
</tr>
<tr>
<td>1995/1996</td>
<td>76%</td>
<td>16%</td>
<td>8%</td>
</tr>
<tr>
<td>1996/1997</td>
<td>77%</td>
<td>15%</td>
<td>7%</td>
</tr>
<tr>
<td>1997/1998</td>
<td>75%</td>
<td>18%</td>
<td>7%</td>
</tr>
<tr>
<td>1999</td>
<td>79%</td>
<td>16%</td>
<td>6%</td>
</tr>
<tr>
<td>2000</td>
<td>76%</td>
<td>17%</td>
<td>7%</td>
</tr>
<tr>
<td>2001</td>
<td>77%</td>
<td>18%</td>
<td>6%</td>
</tr>
<tr>
<td>2002</td>
<td>78%</td>
<td>15%</td>
<td>7%</td>
</tr>
<tr>
<td>2003</td>
<td>74%</td>
<td>18%</td>
<td>8%</td>
</tr>
</tbody>
</table>


Demographic variation

Although space limitations on this report prevent a thorough exploration of demographic variation in attitudes towards the jury, it is clear from the data available from the surveys in Northern Ireland that confidence in the jury exists across a wide range of demographic profiles. Unlike some other criminal justice issues, such as fear of crime, there is little variation across variables such as age or gender with respect to levels of confidence in the jury. For example, in the most recent year for which data are available (2003), 78% of male and 79% of female respondents were very or fairly confident in the contribution that juries make to the fairness of the justice system. With respect to religion of respondent, differences were also minimal. Thus 79% of Protestants and 80% of Catholics expressed this level of confidence in the jury. Eight per cent of Protestant and 9% of Catholic respondents expressed the view that they were not very, or not at all confident in the jury. Indeed, the attitudes of respondents of the two principal religions have been similar over the entire decade: in 1992, 72% of Protestants and 77% of Catholics were very or fairly confident in the contribution of juries to the fairness of the justice system.24

The Northern Ireland Omnibus surveys25 also permit comparisons between public perceptions of the jury and other components of criminal justice. As can be seen in table 2.4, confidence

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24 Larger differences do emerge when respondents are asked about the fairness of the police, however. In 2001, 86% of Protestant respondents but only 57% of Catholics expressed this level of confidence in the police (Northern Ireland Statistics and Research Agency, 2002).

25 The Omnibus surveys employ variable sample sizes although always in excess of 1,000 respondents (see Amelin et al., 2000 for further information).
levels in the jury and the police are quite comparable (as was the case in England, see table 2.2). Since respondents were also asked to express their level of confidence in the system we can also note that residents of Northern Ireland have somewhat more confidence in juries than the criminal justice system as a whole (Amelin, Willis and Donnelly, 2000). Thus 75% of the sample responded that they were very or fairly confident in juries, compared to 70% who expressed this level of confidence in the criminal justice system as a whole (see table 2.4).

Table 2.4: Confidence in the fairness of the criminal justice system, Northern Ireland

<table>
<thead>
<tr>
<th></th>
<th>Very confident</th>
<th>Fairly confident</th>
<th>Not very confident</th>
<th>Not at all confident</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal justice system as a whole</td>
<td>9%</td>
<td>61%</td>
<td>20%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Police</td>
<td>13%</td>
<td>61%</td>
<td>20%</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Juries</td>
<td>12%</td>
<td>63%</td>
<td>18%</td>
<td>3%</td>
<td>7%</td>
</tr>
<tr>
<td>Lawyers</td>
<td>11%</td>
<td>61%</td>
<td>20%</td>
<td>4%</td>
<td>7%</td>
</tr>
<tr>
<td>Judges and magistrates</td>
<td>17%</td>
<td>60%</td>
<td>13%</td>
<td>5%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Source: Amelin, Willis and Donnelly (2000)

Levels of public confidence in other jurisdictions

How do these trends in public opinion in England and Wales, and Northern Ireland compare to responses in other common law jurisdictions? Table 2.5 summarises performance ratings of a number of branches of criminal justice derived from a 1999 survey of the general public in New Zealand (see appendix 1 of Paulin, Searle and Knaggs (2003) for further information). As can be seen, once again ratings of juries were almost as positive as those of police officers: almost two-thirds of the sample (63%) rated juries as “excellent” or “good” (compared to 74% who provided this rating for the police). Moreover, juries attracted the lowest percentage of “poor” or “very poor” ratings (5%; see table 2.5). Table 2.6 summarises findings from a 2006 survey from the same jurisdiction and reveals essentially the same pattern of results: public evaluations of juries and the police were equally positive and both institutions were rated more positively than the other components of criminal justice (Mayhew and Reilly, 2007).

26 Rating the performance of an institution or profession is a slightly different question from being asked to express a level of confidence. However, the empirical literature demonstrates a high correlation between confidence ratings and performance ratings with the consequence that one may reasonably be taken as a proxy for the other. The concepts of performance evaluation and confidence must be related; it would be inconsistent to express a high level of confidence in an institution which one rated as performing poorly.

27 The response options are somewhat different from the previous surveys. However, the specific question should be seen simply as a way of establishing the hierarchy of trust or confidence among the various components of criminal justice.
Table 2.5: Public ratings of branches of criminal justice, New Zealand (1999)

<table>
<thead>
<tr>
<th>Branch</th>
<th>Excellent or Good</th>
<th>Fair</th>
<th>Poor or very poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police officers</td>
<td>74%</td>
<td>19%</td>
<td>7%</td>
</tr>
<tr>
<td>Juries</td>
<td>63%</td>
<td>32%</td>
<td>5%</td>
</tr>
<tr>
<td>Probation officers</td>
<td>50%</td>
<td>39%</td>
<td>11%</td>
</tr>
<tr>
<td>Criminal lawyers</td>
<td>45%</td>
<td>42%</td>
<td>13%</td>
</tr>
<tr>
<td>Judges</td>
<td>42%</td>
<td>37%</td>
<td>21%</td>
</tr>
<tr>
<td>Prison service</td>
<td>39%</td>
<td>39%</td>
<td>23%</td>
</tr>
</tbody>
</table>

Source: adapted from Paulin et al. (2003)

Table 2.6: Public ratings of elements of criminal justice, New Zealand (2006)

<table>
<thead>
<tr>
<th>Element</th>
<th>Excellent or Good</th>
<th>Fair</th>
<th>Poor or very poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police officers</td>
<td>60%</td>
<td>27%</td>
<td>13%</td>
</tr>
<tr>
<td>Juries</td>
<td>59%</td>
<td>35%</td>
<td>7%</td>
</tr>
<tr>
<td>Judges</td>
<td>47%</td>
<td>36%</td>
<td>17%</td>
</tr>
<tr>
<td>Criminal lawyers</td>
<td>44%</td>
<td>41%</td>
<td>15%</td>
</tr>
<tr>
<td>Probation officers</td>
<td>41%</td>
<td>42%</td>
<td>17%</td>
</tr>
<tr>
<td>Prison service</td>
<td>40%</td>
<td>40%</td>
<td>21%</td>
</tr>
</tbody>
</table>

Source: adapted from Mayhew and Reilly (2007)

To conclude, the surveys reviewed to this point were conducted in disparate jurisdictions with different judicial systems (and jury arrangements) and at different points in time (although they all employed the same general methodology including use of a representative sample of the public). Despite this variability, there is a remarkable consistency of outcome: the public response to the jury is positive, particularly when considered in relation to evaluation of other components of the criminal justice system.

The one international exception to this generally positive perception of the jury comes from a single poll conducted in the state of California. In 1995, a representative sample of the state’s residents was asked a number of questions about the jury system. This survey revealed low levels of confidence in the jury system. Thus only 13% of the sample stated that they had a great deal of confidence in the jury system while almost half the sample said that they did not have much confidence in juries (Holding, 1995). However, at the time that the survey was conducted a number of high profile acquittals had recently occurred in California. The verdicts in these cases attracted considerable media attention and may well have undermined public confidence in the jury. This anomalous finding underscores the need to examine findings from polls conducted over a sustained period of time, and indeed of the need to conduct repeated polls. With respect to other issues such as judicial leniency at sentencing or the death penalty, surveys have been replicated over many years, permitting time series analyses of changes in public attitudes.
Public reaction to proposals to restrict the right to a jury trial

If the public strongly support the jury, they are likely to oppose any proposals to restrict the option of trial by jury and this appears to be the case. In 2002, respondents to the Bar Council survey in England were asked about a proposal to restrict the option of trial by jury to accused persons charged with the more serious offences. Specifically, they were asked the following question: “As you may know, there is a proposal under consideration by the government to change the jury system in this country. The changes would affect a variety of what are known as ‘middle ranking’ offences and would mean that many people who now have the right to trial by jury would no longer have that right. Would you favour or oppose such a change in the jury system?”. Approximately two-thirds of the sample expressed opposition to the proposal, while about one-quarter supported the proposition (Bar Council, 2002).28 In addition, as will be seen later in this report (see table 3.1), over two-thirds of the Bar Council survey respondents agreed that they would have less confidence in a justice system that reduced the number of cases tried by juries by two-thirds.

These findings are consistent with earlier polls in this country. In a poll commissioned by the Guardian newspaper in 2000, respondents were asked the following question: “The government is proposing to abolish the right of defendants to choose a jury trial if they are charged with crimes such as burglary and theft. Do you think that defendants in such cases should have the right to choose a jury trial or not?”. Support for the status quo was somewhat lower, but a larger percentage of respondents opposed rather than favoured the proposal. Thus over half the sample (57%) believed that such defendants should retain the right to trial by jury; 35% held the opposite opinion and 8% responded “don’t know” (ICM Research, 2000b). A poll conducted in 1990 generated a similar outcome. The British Social Attitudes survey that year asked respondents to state which of the following two statements came closest to their own view: (i) “People charged with serious crimes should always have the right to a jury trial” or (ii) “There should not always be a right to a jury trial”. Fully 86% of respondents supported the first statement (Dowds, 1999).

One poll found some public support for restricting the right to trial by jury, but only in the context of the least serious offences. In 1993, the Gallup Organization in Britain asked respondents whether they agreed with the recommendation of the 1993 Royal Commission on Criminal Justice to remove the right to a jury trial from “alleged minor offenders”.29 Half

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28 The breakdown was 32% strongly oppose; 34% somewhat oppose; 20% somewhat favour; 8% strongly favour; 5% don’t know/refuse.
29 The Commission proposed that defendants should no longer have the right to elect Crown Court trial in ‘either way’ cases.
the sample agreed with this recommendation, 30% disagreed and 20% expressed no opinion on the matter (Gallup Organization, 1993). Finally, the British Social Attitudes\textsuperscript{30} survey in 1994 asked respondents to state which of three positions came closest to their own. The three positions were: (1) all accused persons should always have the right to trial by jury; (2) only a person accused of a serious offence should have the right; (3) no accused person should always have the right to trial by jury. Given these three choices, 56% supported the first option, 35% supported ensuring the right to trial by jury only to defendants charged with a serious offence, with 9% choosing the third option.

**Reaction to cost of a jury trial**

What about the economic argument against the use of juries in the criminal process? Research on a number of issues in criminal justice has demonstrated that the public are sensitive to cost considerations when evaluating criminal justice options.\textsuperscript{31} For example, people oppose prison construction in part because of the high cost of this crime control strategy. Respondents to the 2002 Bar Council survey in England were asked whether they would favour a reduction in the number of jury trials “if it would save taxpayers’ money”. The public was clearly unconcerned about cost savings if it meant restricting the right to trial by jury. Thus only approximately one-quarter of the sample (27%) expressed support for reducing the number of jury trials in order to save money. Over two-thirds (69%) endorsed the alternate response, namely that “I would oppose a reduction in the number of trials by jury in order to preserve my current right to trial by jury” (4% responded “don’t know”; see Bar Council, 2002).\textsuperscript{32}

**Right to trial by jury and the threat of terrorism**

There is evidence that public support for some legal rights declines when people are asked to consider defendants charged with terrorist offences, or if they are asked questions about the scope of these rights in the context of the threat of terrorism. The latest British Social Attitudes Survey explored public support for a number of civil liberties and legal rights. Johnson and Gearty (2007) note that there has been a “marked decline in societal commitment to civil liberties in the course of the past twenty-five years” although they add that “The extent to which this decline has been influenced by a growing fear of a terrorist attack is difficult to gauge accurately in the absence of figures from earlier surveys” (p. 168).

\textsuperscript{30} This and all subsequent British Social Attitudes survey findings were retrieved from the ESRC search engine. The exact statistical breakdowns summarised here are available from the authors.

\textsuperscript{31} The exception to this generalisation involves serious violent offenders. If the public are asked about sentencing options for this group, the relative costs of different penal responses become unimportant.

\textsuperscript{32} Using the formulation “my current right to trial by jury” may have resulted in somewhat higher public support than if they had been asked about “accused persons’ current right”.

21
Public support for permitting police more surveillance powers has increased. Thus eight out of ten respondents in a 2002 public opinion survey agreed that the use of electronic tags, curfews and other such measures represented a “price worth paying” to promote the security of the state. Similarly, the percentage of the public objecting to the use of identity cards has declined in recent years (Johnson and Gearty, 2007). In addition, if respondents are asked about civil liberties in the context of terrorism, public support for some liberties declines. For example, of all the respondents who thought it was important for democracy that people have the right to say whatever they think in public, 43% also believed that banning people from saying whatever they wished was a price worth paying to respond to the threat of terrorism (Johnson and Gearty, 2007).

To what extent might the threat of terrorism affect levels of public support for the jury? It is possible that public support for the right to trial by jury is lower in the context of terrorist offences. In fact there is some evidence to support this conclusion. It would be surprising if, in the context of terrorist offences, public support for all other legal rights diminished but remained constant for the right to trial by jury. In 2002, the British Social Attitudes survey found that almost half the sample agreed that denying the right to trial by jury was “a price worth paying” to counter the terrorist threat. Three years later (in 2005) respondents were asked about “measures that have been suggested as ways of tackling the threat of terrorism in Britain”. One of the ways of tackling terrorism was “denying the right to trial by jury to people charged with a terrorist-related crime”. The sample was again relatively evenly divided in response to this question: 45% believed that denying the right to trial by jury was a “price worth paying” while 50% responded that the proposal was an unacceptable restriction on liberties (5% responded “don’t know”; see Johnson and Gearty, 2007). The level of public support for the right to trial by jury may weaken in the face of a protracted war on terror. However, this tendency is likely to be restricted to a very specific profile of defendant, and there is no evidence that concern about the trials of people charged with terrorist crimes will affect public support for the right to a jury trial in general.

Taken together, these trends constitute strong evidence of the public’s desire to retain the institution of the jury in its current form. However, in our view, to date the question has been approached in a rather simplistic manner. With the exception of the last question which identified the objective of cost savings, none of these polls provided respondents with any context, or explanation for why the government might believe it is necessary to restrict the right to trial by jury. A better way of approaching the issue would be to offer respondents arguments on both sides, and then to give them sufficient time in which to decide upon their response. This is not possible with a standard ‘omnibus’ survey in which researchers have a
very restricted amount of respondent time. In order for people to answer a question such as whether the right to trial by jury should be curtailed respondents should be given an adequate opportunity to reflect upon the issue.33

Public reaction to proposals to restrict the right to trial by jury in other jurisdictions

Results from a poll conducted in Northern Ireland in 1990 reveal a somewhat different pattern from England. The Northern Ireland Social Attitudes Survey asked respondents whether they thought that people charged with serious crimes “should always have the right to trial by jury”. Overall, the sample was relatively equally divided: 42% believed that the right should always exist, 46% disagreed with this view, while 10% responded “can’t choose” and 2% failed to respond (Northern Ireland Social Attitudes Survey, 1990). However, a large difference emerged between respondents of different religions. Approximately two-thirds of Catholic respondents but 28% of Protestants subscribed to the view that persons charged with serious crimes should always have a right to trial by jury (Northern Ireland Social Attitudes Survey, 1990). The public in Australia and Canada34 appear opposed to any movement to restrict or abolish the right to a trial by jury. In the first empirical exploration of this issue, Doob (1979) found that four-fifths of his sample of Canadian respondents supported retaining the jury for the more serious offences. In 1984 another representative survey of the public in Canada found that almost nine out of ten respondents supported the continued presence of the jury (Angus Reid, 1984). Vodanovich (1986) asked Australians if they thought that Australia should follow the example of Singapore and abolish trial by jury, and almost nine out of ten respondents (87%) rejected this proposal.

33 We do not know whether the public’s position in this regard reflects a careful consideration of the reform options, or rather a more ‘top of the head’ desire to retain a traditional feature of the adversarial system. As noted earlier, it has been argued that in a serious and complex fraud case, the length and complexity of the case may make the experience so onerous for a jury that this adds to the risk that such trials will collapse (see Peck, 2006). This issue is therefore an example of one in which public attitudes have been measured without giving respondents much information on which to form their response.

34 It is surprising that in the US where there is a constitutional right to trial by jury (the sixth amendment), no survey has explored public reaction to restricting this right.
3. General perceptions of the jury

This chapter explores public reaction to a number of issues relating to the jury. We begin by reviewing polls that have asked the public to respond to general statements about the jury. We then turn to a number of specific issues, including the important question of the extent to which juries are seen to be representative of the community from which they are drawn.

First, however, we present a direct comparison of public attitudes in two common law jurisdictions. Table 3.1 summarises the level of public agreement with a number of statements about the criminal jury, drawing upon two relatively recent public opinion surveys, one conducted in Britain and the other in the US. The two surveys adopted a comparable methodology: both used large, representative samples of the general public with comparable margins of error, and were conducted within two years of each other. The US survey was commissioned by the American Bar Association, employed a nationally representative survey of 1,029 adults and has a margin of error of plus or minus 3% (see American Bar Association, 2004b). The survey of residents in England was commissioned by the Bar Council, employed a sample of 903 adults and also has a margin of error of plus or minus 3% (see Bar Council, 2002).

As can be seen in table 3.1, despite differences in the nature of jury arrangements between the two countries, there appears to be considerable agreement between the two publics concerning these statements about the jury. Moreover, it is important to bear in mind that when members of the public are asked to agree or disagree with statements relating to criminal justice, with the exception of the police, attitudinal agreement is usually quite negative, particularly with respect to the courts. This makes the very positive responses to these statements about the jury even more striking.
### Table 3.1: Perceptions of the jury, England & Wales (E&W) and United States (US)

<table>
<thead>
<tr>
<th>Statement</th>
<th>% of respondents expressing agreement with the statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jury duty is an important civic duty I should meet even if it is inconvenient</td>
<td>84% (US)</td>
</tr>
<tr>
<td>On the whole I trust juries to come to the right decision</td>
<td>85% (E&amp;W)</td>
</tr>
<tr>
<td>I think I would be more likely to get a fairer trial if I was tried by a jury rather than by a judge alone</td>
<td>82% (E&amp;W)</td>
</tr>
<tr>
<td>I think we get better quality justice when the system includes juries as often as possible</td>
<td>81% (E&amp;W)</td>
</tr>
<tr>
<td>The jury system is the most fair way to determine the guilt or innocence of a person accused of a crime</td>
<td>78% (US)</td>
</tr>
<tr>
<td>Reducing citizen access to trial by jury erodes confidence</td>
<td>77% (E&amp;W)</td>
</tr>
<tr>
<td>Juries are the most important part of our judicial system</td>
<td>69% (US)</td>
</tr>
<tr>
<td>I would have less confidence in a justice system that reduced the number of cases tried by juries by two-thirds</td>
<td>68% (E&amp;W)</td>
</tr>
</tbody>
</table>

Sources: adapted from American Bar Association (2004a); Bar Council (2002)

At this point we turn to review public attitudes to a number of specific issues.

### Representativeness

One of the most important functions of a jury is to represent the community from which it is drawn.\(^\text{36}\) Doran (2002) notes that trial by jury “brings the ordinary citizen into the professional world of the courtroom and gives representatives of the public a decisive voice” (p. 380). If juries are perceived to be unrepresentative of the community, public confidence in the institution – and indeed the criminal justice system in general – may decline.

Accordingly, the extent to which people perceive the jury as representative of the community may be taken as an alternate index of public confidence in the institution. Public perceptions of jury representativeness have been explored by surveys conducted in a number of jurisdictions. The general finding is that most people are very confident that juries are representative of the community, although one survey in England found that ethnic minorities were more concerned (than were White respondents) about the composition of the jury and this may reflect concern about the extent to which juries are representative.

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\(^{35}\) This includes respondents who chose “strongly” or “somewhat” agree. For all items, a higher proportion of respondents endorsed “strongly agree” than “somewhat agree”.

\(^{36}\) The American public appears aware of this central function of the jury. For example, a survey of US respondents found that 87% agreed with the statement that “juries should reflect the racial and ethnic makeup of the community” (Nebraska Minority and Justice Task Force, 2003). Unfortunately the question has yet to be posed to the public in Britain.
Respondents in other jurisdictions have been asked a direct question about the representativeness of juries, but this is not the case in England and Wales. However, some insight into the public’s view on the question in this country comes from some related questions. Presumably, if people believe that juries are representative of society, they are also likely to believe that jurors will hold views and endorse values held by society in general. Asking about this issue can therefore be seen as another way of measuring public perceptions of the representativeness of the jury.

The 2002 Bar Council survey asked respondents the following comparative question: “Who do you think is more likely to reflect your own views and values, a jury of 12 individuals or a judge and two magistrates?”. The jury was clearly regarded as being closer to respondents’ views and values. Thus approximately three-quarters of the sample (73%) endorsed the jury in this regard while less than one-quarter of the sample (24%) believed that a judge sitting with two magistrates was more likely to reflect their own values (4% responded “don’t know”; Bar Council, 2002). The pattern is more striking when respondents were asked whether a jury or a judge sitting with two magistrates was more likely to reflect the views of “society at large”. In response to this slightly different question, fully four-fifths of the sample chose the jury, 16% chose the judge and magistrates option while 4% responded “don’t know” (Bar Council, 2002). Thus the public in England and Wales most likely see juries as being more representative of the community than are judges.

Visible minority opinions about jury representativeness

Despite a considerable number of studies of ethnic minority defendants in England and Wales, few of these surveys have explored attitudes to the jury held by the general BME public. In 2005, MORI conducted research into BME communities’ expectations of fair treatment by the criminal justice system. That research found an expectation among some, but not all, participants that Black people would be treated more unfairly than others by the criminal justice system (MORI, 2005, p. 8).37

Similarly, research by the same organisation in 2002 found “deeply rooted” negative attitudes to the criminal justice system (MORI, 2002, p. 24). However, none of this research explored participants’ views of the fairness of the jury per se, so it can shed no light on the issue explored in this report.

37 This study used a series of focus groups, which as noted in the introduction, makes it impossible to make generalisations to the BME population as a whole.
One relatively recent survey conducted by ICM Research for the BBC in 2002 (BBC Race Survey, 2002) asked a somewhat different, but related question and found a significant discrepancy between majority and minority ethnic views. Samples of Black, White and Asian respondents were asked the following question: “If you found yourself on trial, would you be concerned about the racial makeup of the jury?”. As can be seen in table 3.2, one-quarter of the White respondents expressed concern about the racial makeup of a jury. In contrast, the proportion of respondents expressing concern about the composition of the jury was approximately twice as high for Black respondents (49%) and almost twice as high for Asian respondents (46%; BBC Race Survey, 2002).

Table 3.2: Public concern about racial makeup of jury by ethnic status, England & Wales

<table>
<thead>
<tr>
<th></th>
<th>White</th>
<th>Black</th>
<th>Asian</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>25%</td>
<td>49%</td>
<td>46%</td>
</tr>
<tr>
<td>No</td>
<td>66%</td>
<td>35%</td>
<td>39%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>9%</td>
<td>16%</td>
<td>15%</td>
</tr>
</tbody>
</table>


If half of the visible minority population is concerned about the racial composition of the jury, this suggests some unease among members of that community regarding jury representativeness.38 Another question on the same survey explored respondents’ expectations about the likelihood of receiving a fair trial and again a significant difference emerged between ethnic groups: the proportion of respondents who expected to receive a fair trial was much lower among Black and Asian respondents. Thus 79% of White respondents expected to receive a fair trial, compared to 53% of Black respondents and 61% of Asians (BBC, 2002). Since the ‘fair trial’ question was not linked directly to the racial composition of the jury, we cannot necessarily conclude that concern about receiving a fair trial was based upon apprehension about an unrepresentative jury.

If members of the BME communities have concerns about the composition of juries, they may be less willing to serve as jurors. However, it is reassuring to note that recent research conducted for MOJ found no differences between BME and White respondents in terms of their willingness to do jury service or indeed their level of support for the jury system. Moreover, ethnic minorities were not under-represented among those doing jury service39 (Thomas, 2007). In addition, a number of empirical investigations into the experiences of

38 The wording of the question does not include the term ‘representative’; however, it seems unlikely that respondents would express concern about the composition of the jury, and simultaneously believe that juries are representative of their communities. Why else would respondents be concerned about the composition of the jury unless they were apprehensive that the jury would not represent their community?
BME defendants reveal low levels of perceived or actual discrimination. However, we point out once again that the focus of this report is upon the perceptions of the general public, not those of people who are actually in the criminal justice system. Since the views of the public are more likely to reflect media and other second-hand accounts of the justice system, it is possible that people expect a more negative outcome – based on what they learn from the media – but that when they have contact with criminal justice personnel, their experiences are more positive. However, ethnicity related difference in attitudes to the jury requires further attention from researchers, one that we could consider to be a priority.

Public perceptions of jury representativeness in other jurisdictions

Table 3.3 summarises a number of polls conducted in the US that have asked respondents whether, in their view, juries are representative of the community at large. The survey literature in the US (and elsewhere) on this question reveals a generally positive picture, but with a couple of anomalous findings. As can be seen in table 3.3, when people were asked to agree or disagree with the statement that juries are representative of the community, in all polls the majority of respondents agreed that juries are representative.

<table>
<thead>
<tr>
<th>#</th>
<th>Jurisdiction</th>
<th>% Agreeing</th>
<th>% Disagreeing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Minnesota (2000)</td>
<td>78%</td>
<td>18%</td>
</tr>
<tr>
<td>2</td>
<td>Nebraska (2003)</td>
<td>63%</td>
<td>37%</td>
</tr>
<tr>
<td>3</td>
<td>National survey (1999)</td>
<td>56%</td>
<td>41%</td>
</tr>
<tr>
<td>4</td>
<td>National survey (2000)</td>
<td>60%</td>
<td>24%</td>
</tr>
<tr>
<td>5</td>
<td>California (2005)</td>
<td>80%</td>
<td>20%</td>
</tr>
</tbody>
</table>

Note: percentages do not sum to 100% due to omission of “don’t know” responses

Data sources:
1. Minnesota Supreme Court (2000);
2. Nebraska Minority and Justice Task Force (2003);
3. Office of the Administration for the Courts (1999);
4. National Center for State Courts (2000);

39 The main factor affecting non-response to a jury summons was high residential mobility, not the ethnicity of the respondent (see Thomas, 2007).
40 Shute, Hood and Seemungal (2004) interviewed ethnic minorities in the courts, and found that while some Black defendants believed that the jury had been unfair in their case, none of them felt that the treatment had been motivated by racial bias which might have arisen from an unrepresentative jury.
41 Parallels exist with attitudes towards, and experience with health care. The public in a number of countries are quite critical of their health care system, but nevertheless rate the system and the professionals within it quite positively after having received treatment (see discussion in Roberts, 2007).
42 A number of other BME public opinion surveys suggest that people from ethnic minority groups are concerned about the fairness of the courts. For example, a MORI poll conducted in 2000 asked an ethnic minority sample to state how good or poor 18 public services were at recognising the “needs of people from different ethnic, religious or cultural groups”. The courts attracted the poorest ratings of all 18 services (see MORI, 2000).
The discrepancy between Black and White respondents found in the BBC poll referred to above also emerges from several surveys conducted in the US. A number of polls have found that visible minorities are less likely than White respondents to perceive juries as being representative. For example, in a poll conducted in Minnesota in 2000, 78% of the total population – but only approximately half of the African American sample – believed that juries were representative of the community at large (Minnesota Supreme Court, 2000). Similarly, according to a poll conducted by the Association of Trial Lawyers of America published in 1996, a significantly lower percentage of African American respondents held this view of the jury.

Public opinion research conducted by the Nebraska Minority and Justice Task Force also revealed a number of important minority-majority differences. First, Black Americans in that state were significantly more likely than White respondents to hold the view that juries should reflect the racial makeup of the community. Thus almost half of the Black Americans in Nebraska but less than one-third of Whites held this view (Nebraska Minority and Justice Task Force, 2003). The second important finding is that Black Minority respondents were also more likely to believe that juries were unrepresentative of the community. Thus 61% of Black respondents held this view of juries compared to only 31% of Whites in that state (Nebraska Minority and Justice Task Force, 2003).

Taken together, with the exception of some polls using ethnic minority samples, these findings demonstrate a high level of public confidence in the ability of the jury to perform the core function of representing the views of the community from which it is drawn.43

**Attitudes to serving as a juror**

The most recent and comprehensive analysis of public attitudes to jury service in this country was conducted by the MORI organisation for the recent MOJ study into the jury in England and Wales (see Thomas, 2007). They reveal a very positive reaction on the part of the public. The responses are summarised in table 3.4. As can be seen, more than three-quarters of the public express an intention to perform jury duty out of a sense of civic duty.

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43 Public reaction to the controversial verdict in the criminal trial of O. J. Simpson provides further evidence of the strength of public support for the jury in the US. It will be recalled that in the criminal trial, Simpson was acquitted despite what appeared to be a wealth of incriminating evidence. Gallup conducted a number of polls asking the public whether they approved of the jury’s verdict in this case. These surveys repeatedly showed a majority of the public to be critical of the jury’s verdict. For example, in October 1996, 58% of the polled public took the view that the jury had reached the wrong decision, 25% believed it had taken the right decision, with the remainder of the sample being “undecided” (Gallup, 2008). Despite these views, when asked about the performance of the jury in general, the public remained positive. When asked, in the wake of this verdict, whether the jury system should be changed or remain as it was, 58% of the sample favoured retaining the status quo, and only 38% favoured changing the jury.
When asked about their reaction to the prospect of jury service, attitudes are significantly more positive than negative. Thus over half the sample endorsed the view that they would enjoy jury service; only approximately one-quarter expressed the opposite view. Nor does the public appear to see jury service as a task that would interfere with their family life or result in economic hardship. Table 3.4 reveals that almost two-thirds of the sample disagreed with the statement that “I would not be able to afford to do jury service”.

<table>
<thead>
<tr>
<th>Statement</th>
<th>% agreeing</th>
<th>% disagreeing</th>
<th>Neither agree nor disagree/don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>I would do jury service because it is my duty as a citizen</td>
<td>76%</td>
<td>11%</td>
<td>12%</td>
</tr>
<tr>
<td>I would enjoy the responsibility of serving on a jury</td>
<td>54%</td>
<td>27%</td>
<td>19%</td>
</tr>
<tr>
<td>I would look forward to serving on a jury</td>
<td>50%</td>
<td>33%</td>
<td>17%</td>
</tr>
<tr>
<td>I would not be able to do jury service because it would interfere with my work life</td>
<td>15%</td>
<td>68%</td>
<td>17%</td>
</tr>
<tr>
<td>I would not be able to do jury service because it would interfere with my home life</td>
<td>14%</td>
<td>72%</td>
<td>15%</td>
</tr>
<tr>
<td>I would not be able to afford to do jury service</td>
<td>14%</td>
<td>63%</td>
<td>20%</td>
</tr>
<tr>
<td>I would not want to do jury service because I don’t have confidence in the jury system</td>
<td>14%</td>
<td>69%</td>
<td>17%</td>
</tr>
</tbody>
</table>

Source: adapted from unpublished data provided to the authors by Cheryl Thomas

BME attitudes to jury service in England and Wales

In the absence of a comprehensive analysis of BME attitudes towards the jury we do not know whether ethnic minorities hold different views of the institution. On the question of attitudes to serving as a juror, however, this MORI poll revealed no significant variation in terms of the ethnicity of respondent (Thomas, 2007). Additional, unreported data analysed by Cheryl Thomas also demonstrated that BME and White respondents were equally likely to agree that the composition of juries should reflect a mixture of ethnicities. Research upon actual jurors also reveals positive attitudes towards jury service. Thus Mathews, Hancock and Briggs (2004) report that over half the 361 jurors interviewed in their research indicated that they would be happy to do jury service again, while a further 19% said that they would not object to serving again.

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44 These data are drawn from a MORI poll with a sample size of 1,871 and cited in Thomas (2007). We are grateful to Cheryl Thomas for allowing us to publish them in this report.
45 Unpublished analyses provided to, and available from the authors of the present report.
Attitudes to jury service in other jurisdictions

United States

When a sample of Americans was asked whether they agreed or disagreed with the proposition that “jury duty is a privilege I look forward to fulfilling”, over half agreed, and only one-third disagreed (American Bar Association, 2004a). These findings confirm those from research commissioned by the American Bar Association a decade earlier in 1995. When asked how they would respond if they were to receive a jury summons tomorrow, 40% of the sample stated that they would “eagerly agree” to serve as a juror. The authors of the survey report describe these and related findings as indicating “a rock-solid belief that the jury system is a good thing” (American Bar Association, 1995, p. 32). Similarly, people without jury experience have a positive response to the prospect of serving on a jury. In a recent survey conducted in the US, over two-thirds of respondents stated that they were very or somewhat interested in serving as a juror (Shapiro and Associates, 2006). Civic responsibility seems central to this positive attitude to serving as a juror. Respondents in a survey reported by Boatwright (1998) were asked to identify the best aspect of serving as a juror, and the most frequent response by far involved performing a civil duty.

Responses to a related question on another American survey suggest that people are quite comfortable with the idea of participating on a jury. When asked to respond to the statement “I don’t want to serve as a juror”, almost two-thirds of the U.S. sample expressed disagreement (American Bar Association, 2004a). Similarly, almost three-quarters disagreed with the statement that “I don’t know enough about the law or the legal system to be a good juror” (American Bar Association, 2004a). An often-heard anecdotal objection to jury service invokes the lost income that jurors incur as a result of serving on a jury.

However, when a systematic survey addressed this issue, approximately two-thirds of the sample disagreed that serving on a jury would hurt their income (American Bar Association, 2004a). Nor did respondents feel that serving on a jury might attract unwelcome publicity: three-quarters disagreed that this would be the case (American Bar Association, 2004a).

Attitudes to jury service in Spain

Spain is the only civil law jurisdiction in which attitudes to serving on a jury have been measured. As noted in chapter 1, the criminal jury was reinstated in Spain in 1995. A number of public opinion surveys were conducted shortly afterwards. Table 3.5 shows that unlike the public in the common law countries in which the question has been researched, the public in Spain was less enthusiastic about the prospect of jury service. A similar finding emerged from a survey of respondents in Japan: almost two-thirds of respondents (62%) expressed opposition to participating as a juror (Daily Yomiri, 2003).
Table 3.5: Public attitudes to jury service, Spain

<table>
<thead>
<tr>
<th></th>
<th>June 1996</th>
<th>March 1997</th>
<th>April 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Would very much/somewhat like to serve on a jury</td>
<td>24%</td>
<td>17%</td>
<td>17%</td>
</tr>
<tr>
<td>Neither wish to serve or wish to not serve on a jury</td>
<td>15%</td>
<td>11%</td>
<td>13%</td>
</tr>
<tr>
<td>Would somewhat or very much like not to serve on a jury</td>
<td>60%</td>
<td>69%</td>
<td>67%</td>
</tr>
<tr>
<td>No response/don’t know</td>
<td>1%</td>
<td>3%</td>
<td>3%</td>
</tr>
</tbody>
</table>

Source: Centro de Investigaciones Sociologicas (2007)

Public preferences for the jury as a fact-finder

Another way of exploring the nature of public reaction to the jury is to ask members of the public to imagine that they have been charged with a criminal offence and to state whether they would prefer to be tried by a lay jury or a professional judge and two magistrates. When this question was posed to respondents in the Bar Council poll, a clear preference emerged: almost two-thirds of the sample (64%) preferred trial by jury. Only one-quarter of respondents expressed a preference for the judge/magistrate option (4% responded “don’t know”; Bar Council, 2002). This finding constitutes further evidence of public confidence in the institution of the jury in England and Wales.

Public preferences for jury or judge alone in other jurisdictions

**United States**

Americans react in a similar way when asked to choose between trial by jury and trial by judge alone. A survey conducted for the American Bar Association in 2004 asked respondents to agree or disagree with the following statement: “If I were a participant in a trial I would want a jury to decide my case, rather than a judge”. Fully three-quarters of the sample agreed with the statement, thus favouring the jury by a significant margin (American Bar Association, 2004b). Respondents to an earlier poll were asked the following question: “In most criminal cases, the judge conducts the trial and a jury decides guilt or innocence. Instead of the jury, would it be better if the judge alone decided innocence or guilt?”. In response, four-fifths of the sample was opposed to this proposal – further evidence that the public reposes more faith in juries than judges.

**Australia**

Australians also appear to share this preference for a jury. A nation-wide survey reported by Vodanovich (1986) found that fully 86% of respondents expressed a preference to have a trial by a jury rather than by a judge sitting alone. In 1992 the Australian Rights Project (1992) asked respondents the following question: “Should a person charged with a serious...
crime be tried by a jury or is it okay if a judge decides the case without a jury?”. Given this choice, approximately four-fifths of the sample favoured trial by jury. Only 14% agreed that it was “okay” to have a trial by judge alone, while 7% of the sample expressed no opinion. This survey is unique in that the question was also posed to a sample of professionals defined by the researchers as “the political and legal élite”. It is interesting to note that support for the jury was significantly higher among members of the public than members of the élite (Australian Rights Project, 1992). The Australian Rights Project survey asked a follow-up question in which respondents were asked whether their support for trial by jury would change if the person charged wanted the case tried by a judge alone. The fact that the defendant preferred a trial by judge alone did not change the views of the majority of respondents. Thus 59% said that they would feel the same, namely they would still prefer the case to be tried by a jury (Australian Rights Project, 1992).

**Civil law jurisdictions**

Surveys of the public in civil law countries reveal a mixed pattern of findings regarding preferences for a jury. The preference to be tried by a jury rather than a judge expressed by respondents in several countries is therefore not necessarily universal. When asked whether they would prefer to be tried by the new jury system or under the current system, 49% of Japanese respondents preferred the status quo; 37% favoured the jury system (Daily Yomiuri, 2003). A recent survey of the public in a civil law system (Belgium) found that respondents preferred to be tried by a professional judge rather than a jury of their peers (Conseil Superieur de la Justice, 2007). This different outcome may reflect the more visible role that juries play within the adversarial common law system of justice.

Survey data from Spain illustrate both the volatility of public opinion as well as the gap between public reactions to the jury in common law and civil law countries with respect to this issue. When a survey was conducted in Spain one year after the lay jury was re-introduced (in 1996), respondents expressed a preference to be tried by a jury rather than a judge: 49% favoured trial by jury, 37% trial by a judge alone (14% were undecided; Centro de Investigaciones Sociologicas, 2007). However, a year later in 1997, the question was repeated twice, with significant shifting of public preferences away from the jury to trial by a professional judge. As can be seen in table 3.6, on both polls conducted in 1997, the majority of Spanish respondents expressed a preference for trial by a judge rather than a jury. The explanation for the striking change in public preferences may be found in the so-called ‘Otegi’ affair. This was one of the first jury decisions following reinstatement. It resulted in a highly controversial acquittal of a defendant charged with the murder of two
police officers. Thaman noted that the case “riveted the Spanish public's attention to the new jury courts” (1999, p. 28), albeit not in a positive way.

We cannot say whether these preferences remain the same in 2008, as the question has not been posed since. Responses to another question posed on the same three occasions suggest that the change in preferences for jury trial may reflect a change in attitudes to juries. As can be seen in table 3.7, in 1997 the Spanish public was more likely to believe that judges rather than juries were better able to arrive at a just verdict. If the Otegi case did cause these changes – and there appears to be no other plausible alternative explanation of such an abrupt shift in views – the Spanish polls illustrate the power of a single case to transform public attitudes, at least in a jurisdiction without an established history of trial by jury.

Table 3.6: Preference for trial by a judge or jury, Spain

<table>
<thead>
<tr>
<th></th>
<th>June 1996</th>
<th>March 1997</th>
<th>April 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prefer to be tried before a judge</td>
<td>37%</td>
<td>53%</td>
<td>54%</td>
</tr>
<tr>
<td>Prefer to be tried before a jury</td>
<td>49%</td>
<td>34%</td>
<td>32%</td>
</tr>
<tr>
<td>No response/don’t know</td>
<td>14%</td>
<td>13%</td>
<td>14%</td>
</tr>
</tbody>
</table>

Source: Centro de Investigaciones Sociologicas (2007)

Table 3.7: Public attitudes to the jury, Spain

<table>
<thead>
<tr>
<th></th>
<th>June 1996</th>
<th>March 1997</th>
<th>April 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>On account of their experience and training, decisions by judges are more just</td>
<td>41%</td>
<td>56%</td>
<td>55%</td>
</tr>
<tr>
<td>A jury comprised of members of the public with better experience of the problems of everyday life is better able to arrive at a more just verdict than a judge</td>
<td>48%</td>
<td>32%</td>
<td>34%</td>
</tr>
<tr>
<td>No response/don’t know</td>
<td>11%</td>
<td>12%</td>
<td>11%</td>
</tr>
</tbody>
</table>

Source: Centro de Investigaciones Sociologicas (2007)

Perceptions of fairness: judge versus jury

No survey in England and Wales has compared public ratings of the fairness of judges versus juries, so for this issue we must rely exclusively on findings from other jurisdictions – but with the caution to the reader expressed in chapter 1 regarding the variability of jury systems across the common law world. Public opinion research carried out for the review of the criminal justice system in Northern Ireland explored public preferences for trial by jury after direction from a judge or judge sitting alone. The specific question was “Who do you think would be better at deciding questions of guilt in the Crown Court?”. Fully 77% of respondents endorsed juries compared to only 13% who chose judges (10% responded “don’t know; see Amelin et al., 2000).
Research conducted for the Law Reform Commission of Canada some years ago sustains the view that members of the public regard juries as more likely to arrive at a just verdict. Specifically, respondents to a nationwide survey in Canada were asked the following question: “Which is more likely to arrive at a just and fair verdict: a judge, a jury or are they both equally likely to arrive at a just and fair verdict?”. Although approximately half the sample responded “both equally”, of those with a preference, responses indicated significantly more confidence in the jury: 37% of respondents chose the jury, compared to only 10% who believed a judge was more likely to arrive at a just verdict (Doob, 1979). It is also worth noting that respondents who had served on a jury were more likely to express support for juries in this regard.

In 1970 the Gallup Organization asked a representative sample of Americans to identify the proportion of jury trials which “end up with the true verdict”. Over half the sample chose “all or most of them”; while 13% responded “less than half” (excludes “don’t know” responses). This suggests a rather positive view of jury trials, but in the absence of a similar question regarding trials by a judge it is hard to estimate the comparative advantage in the public’s mind of a jury trial. In 1995 the Gallup Organization in the US posed a related question that raises the issue of fairness: “Is it true that Black jurors are more likely to convict a defendant if he is white rather than if he is black?”. Only one-third of the sample agreed that Black jurors would be more likely to convict a White defendant.

In 1970, the Gallup Organization asked respondents to identify the most serious problem facing the criminal justice system (Gallup, 2007, question 27a). Respondents were provided with a list that included items such as “judges appointed for political reasons” and “prison overcrowding” and were able to select multiple responses. In light of the fact that polls in all Western nations reveal deep public concern about lenient sentencing, it is unsurprising that the item which attracted the highest percentage of respondents was “convicted criminals are let off too easily” (cited by 76% of the sample). “Incompetent or biased juries” was the criminal justice problem that was least likely to be identified by the public (Gallup, 2007, question 10). This is further evidence that the public regard juries as fair and unbiased.46

Further evidence of the strength of public views about juries comes from an older survey of American attitudes to due process rights in the US (McClosky and Brill, 1983). One question asked respondents to choose between two opposing views regarding the jury: “The right to trial by jury is still the best way for someone accused of a crime to receive a fair judgment” or “The right to trial by jury is overrated because juries can so often be swayed by a clever lawyer”. Fully four-fifths endorsed the first view and only 14% took the negative view of jury trials (8% responded “undecided”). A subsequent question simply asked people how important the right to trial by jury was to them: 79% chose “very important”, 17% “important” and 2% “somewhat important” (McClosky and Brill, 1983).
Research by MacCoun and Tyler (1988) – also in the US - sustains the more positive image of juries compared to judges. Respondents were asked whether judges or juries were best able to achieve a number of important attributes. The results are summarised in table 3.8. As can be seen, large differences emerged between the judge and jury for all dimensions except the question of the degree of thoroughness. The most striking difference was with respect to the issue of being representative of minorities – a result consistent with the previously discussed findings relating to representativeness in general. Thus 91% of respondents believed that a jury would be more representative of minorities; only 8% endorsed the view that judges would be more representative in this respect.

<table>
<thead>
<tr>
<th>Attribute</th>
<th>% favouring judge</th>
<th>% favouring jury</th>
<th>% expressing no preference for judge or jury</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accuracy</td>
<td>31%</td>
<td>66%</td>
<td>3%</td>
</tr>
<tr>
<td>Thoroughness</td>
<td>46%</td>
<td>50%</td>
<td>5%</td>
</tr>
<tr>
<td>Least amount of bias</td>
<td>33%</td>
<td>65%</td>
<td>2%</td>
</tr>
<tr>
<td>Representative of minorities</td>
<td>8%</td>
<td>91%</td>
<td>1%</td>
</tr>
<tr>
<td>Expensive</td>
<td>14%</td>
<td>85%</td>
<td>1%</td>
</tr>
<tr>
<td>Fairest</td>
<td>23%</td>
<td>85%</td>
<td>1%</td>
</tr>
</tbody>
</table>

Source: adapted from MacCoun and Tyler (1988)

It is also worth noting that respondents in this same survey were asked to identify the criminal cases for which a jury trial was most desirable. Consistent with previous findings, participants perceived a jury to constitute a preferable fact-finder for the more serious offences. Fully 93% agreed that a jury was most desirable for a murder trial, compared to only 44% for a trial for shoplifting. In short, when the potential consequences of a trial are particularly serious, the public look to a jury rather than a professional judge (MacCoun and Tyler, 1988). Doob (1979) reports comparable findings from a survey of Canadians. Thus 90% of the sample believed that a person accused of murder should have the option of a jury trial. When asked about less serious offences (such as assault and drunk driving), the percentage favouring retention of the jury option was significantly lower. Less than half the sample held the view that an accused should have the option of a jury trial in cases of theft or drunk driving, while 54% believed that the jury option should be retained for the crime of common assault (Doob, 1979). Finally, the generally positive view about the fact-finding ability of juries compared to judges is confirmed by surveys conducted in Russia, another jurisdiction in which juries have only recently been re-introduced. In Russia, respondents were more likely to respond affirmatively when asked whether trials were more reliable when a jury was involved (Public Opinion Foundation, 2006). Subsequent research conducted in 2005 asked respondents to specify why they believed that decisions by juries were more
reliable. The most frequently cited reason was that the jury reflected a community perspective or opinion (Public Opinion Foundation, 2006).

**Effect of jury service on civic engagement**

One of the goals of this report was to evaluate the evidence to support the proposition that serving as a juror increases an individual's degree of democratic engagement. The idea here is that civic participation – in this case through the experience of serving as a juror – will have an impact upon more general attitudes towards, and commitment to, the community. Few explicit tests of the hypothesis exist. Research has been conducted into the perceptions and experiences of jurors in Britain (e.g. Mathews, Hancock and Briggs, 2004; Green and White, 2005; Thomas, 2007) and a number of studies have examined the impact of jury service on attitudes to the administration of justice or confidence in the courts, but none have explored the specific question of whether jury service enhances civic engagement. There is however literature from the US which has explored the issue.

This research is part of the “Jury and Democracy” Project, and explores the links between jury service and levels of civic engagement. A number of empirical studies have now been published (e.g. Gastil, Deess and Weiser, 2002; Gastil and Weiser, 2006; Gastil, Deess, Leightner and Black, 2007; Gastil, Deess, Weiser and Larner, 2007). The results are mixed, but do demonstrate a link between jury service and some measures of civic engagement. Although all this research has been conducted in the US, there is no a priori reason why the underlying relationship – between jury service and civic engagement – is unique to that country, and for this reason we summarise recent findings in this report. This research is relevant to developments in England and Wales and other common law jurisdictions: if jury service promotes civic engagement, this constitutes another argument against proposals to reduce the number of jury trials.

This research has tested the relationship between serving on a jury and measures of civic engagement, but principally the question of whether jury service increases the likelihood that people will subsequently vote. In one of the first studies conducted, Gastil, Deess and Weiser (2002) hypothesised that serving on a jury would promote civic engagement and that this would result in a greater likelihood that the juror would vote in subsequent elections.

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47 Most studies of actual jurors find that the experience of jury service increases confidence in the court system (e.g. Rottman, 2005).
48 For further information see: http://depts.washington.edu/jurydem/index.html.
49 Gastil, Dees, Leightner and Black (2007) argue that their findings “aid the cause of preserving the jury itself…discovering a genuine civic benefit from jury service could restore luster to a tarnished institution” (p. 39).
These researchers found some support for the hypothesis drawing upon jury and voting records in a single county in Washington: people who had served on criminal juries which reached a verdict had a 10% higher turnout rate in subsequent elections than individuals who had served on an ‘inconclusive’ jury.\textsuperscript{50} However, the ‘engagement’ effect was not strong. Moreover, a variable totally unrelated to civic engagement – the number of charges facing the defendant was an even better predictor of voter turnout. Finally, a replication study by Gastil, Deess, Weiser and Larner (2007) found that the ‘enhanced voting effect’ emerged only for individuals who were inactive voters prior to serving on a jury. Subsequent research by Gastil, Deess, Leighter and Black (2007) found that the experience of deliberating in the context of the jury resulted in changes in civic attitudes. Gastil and Weiser (2006) explored the impact of jury service on a wider range of measures of civic engagement. They measured ex-jurors’ rates of participation in political activities as well as community group involvement. These researchers found that individuals who found the jury experience to be rewarding were more likely to report participating in political activities but no effects emerged for the non-political community activities.

The wider ‘civic engagement’ effect may therefore be somewhat limited in scope. These studies demonstrate an empirical link between jury service and civic engagement. The strength of the relationship between jury service and civic engagement, and the extent to which it is present in other jurisdictions such as England and Wales awaits the findings from additional research.

\textsuperscript{50} By comparing voting rates before and after individuals performed their jury service the researchers were able to control for ‘selection effects’, namely that civic minded members of the public were more likely to participate in a jury having been empanelled, and also to vote.
4. Conclusions and future research directions

This report has reviewed the limited survey evidence pertaining to public attitudes to the jury in England and Wales. Wherever possible, we have placed these trends in an international context. It is striking that despite differences in the nature of the jury – as well as differences in the wording of specific survey questions – the positive reaction to the jury in England and Wales also emerges from surveys conducted in other common law countries. This suggests that the strong support for the jury is a cross-jurisdictional phenomenon (at least within the common law world) and probably reflects an underlying support for the concept of trial by jury that transcends local variation in the way that the jury functions. In addition, there is clear opposition in this country to proposals to restrict the right to trial by jury. Where do we go from here?

The basis for the strong public support for the institution of the jury is unclear. Since levels of public knowledge have not been tested, it is hard to know whether people favour the retention of jury trials because they appreciate the role that the jury plays in the criminal justice system, or rather simply out of adherence to the general notion of community input. McClosky and Brill (1983) found in their survey of American attitudes to civil liberties and constitutionally-guaranteed rights that these tend to “be supported by the public more often in the abstract than in their concrete application” (p. 147). It is possible that to a degree the public’s enthusiasm for trial by jury reflects this abstract attraction rather than concrete evidence relating to the effectiveness of the jury.

Some future research priorities

This review has demonstrated strong support among members of the public for the institution of the jury in the criminal process. This level of support explains the opposition to proposals to restrict the right to trial by jury. The weakness of the literature is clearly the absence of a comprehensive analysis of public attitudes to juries. Without such a study, our knowledge of public attitudes will have to be based on the composite approach that has been adopted in this review. Research of this nature would give us important insight into attitudes to the jury relative to other components of the criminal justice system such as the lay magistracy or the judiciary.

Earlier in this report we described competing methods of measuring public attitudes, including representative surveys and small scale studies such as focus groups. Which approach should be adopted in the current context? We believe that the highest priority
should be for a large-scale, dedicated survey employing a representative sample of the public. Such research might usefully be preceded by some focus groups conducted in different parts of the country. These sessions would serve as a kind of pre-test for the main survey, to identify issues and themes that emerge spontaneously from discussions among members of the public. This material could then be developed into specific questions placed on the main survey. A comprehensive survey of public opinion and the jury has yet to be conducted in any jurisdiction.

What would such a survey include? First, it would need to measure levels of public knowledge of the institution. To what extent are people aware of the purpose of the jury, the proportion of cases involving a jury trial, as well as issues such as the threshold to reach a verdict? Previous research has revealed that most people know little about the criminal process, and it is possible that little is known about the jury. Posing questions about knowledge would also permit researchers to determine whether knowledge predicts opinions, as is the case for some other issues in criminal justice. Having asked questions to measure knowledge, the survey would then pose questions measuring attitudes to a range of issues, including the representativeness of juries and their contribution to a fair justice system. As noted in this report, a number of different arguments have been advanced over the years to justify reducing the number of trials by jury. A comprehensive survey of public attitudes would be able to systematically explore community reaction to these various justifications; to date they have been explored only by single questions on individual polls.

The survey should also explore respondents’ direct and indirect experiences with the jury by posing a number of questions about jury service, attitudes to jury service and so forth. These questions would permit comparisons between the attitudes of citizens who have served on juries with those of people without such direct experience. Questions about indirect experience would include items exploring respondents’ knowledge derived from news media coverage of jury trials or conversations with other people. Finally, the survey would include questions exploring perceptions of the legitimacy of the justice system, social cohesion and other broader issues to determine the extent to which attitudes towards the

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51 These are: (i) juries are expensive, and therefore a waste of criminal justice resources for some less serious offences; (ii) juries are less able (than judges) to follow and evaluate the evidence in complex fraud cases; (iii) juries are liable to react erratically or to ignore inculpatory evidence if they feel great sympathy for the defendant – often referred to as ‘jury nullification’ or ‘jury equity’; (iv) juries hearing cases involving organised crime or political violence may be subject to threats or intimidation. As Cameron, Potter and Young (1999) note, "there is a strong argument that some cases are simply unsuited to the jury process" (p. 118).

52 Although it goes beyond the remit of this report, the issue of news media treatment of jury stories needs further research. It is well-known that media, or tabloid newspaper coverage is responsible for much public criticism of sentencers and sentencing patterns. We do not know whether media coverage of jury decision-making plays a role in sustaining the positive image of the criminal jury held by many members of the public.
jury (and experiences serving as a juror) predict broader social responses to justice and society. Until such a survey is conducted, our knowledge of public opinion and the jury will have to be based upon the ‘one-off’ polls conducted over the past few years.53

One innovative approach to exploring public opinion is the so-called ‘deliberative poll’. This consists of inviting a representative sample of the public to attend a weekend seminar on the issue under scrutiny. Attitudes are measure before and after the event, and responses in the post-event phase are deemed to represent the reactions of a thoughtful public. The only criminal justice deliberative poll conducted to date contained but a single question regarding juries, one which generated inconsistent results (see Green, 2005; Hough and Park, 2002, for discussion). An analogy may be made between attitudes to the jury and attitudes to sentencing. When surveys ask the public their view of sentencing trends or the judiciary, there is a consensual, negative response. Most people believe that sentencing trends are too lenient and that judges are out of touch with ‘what ordinary people think’ (see Roberts and Hough, 2005a). However, when given more information, public attitudes to sentencing decisions and sentencers become more positive. The same phenomenon may occur with attitudes to the jury – but in the opposite direction. People may become less positive about the jury and more accepting of limits on the right to trial by jury if they are provided with more information about the issue. The deliberative poll approach to measuring informed attitudes may therefore be useful in the context of public attitudes to the jury. A number of specific issues remain to be explored.

Perceptions of ethnic minorities

As noted, the BBC poll conducted in 2002 found that almost half the Black respondents stated that in the event that they were on trial they would be concerned about the racial composition of the jury. Visible minority respondents were also less likely to believe that they would receive a fair trial and this may be related to their concern about the jury. These trends emerge from a single poll, but the finding is worth exploring further to establish whether they can be replicated or are simply anomalous. A number of issues should be examined in further research. For example, do members of BME communities have less confidence in jury verdicts?

53 It is worth noting that no survey of public attitudes to the criminal justice system as a whole has been conducted in England and Wales. Such a survey would explore public knowledge of and reactions to all stages of the criminal process. Comprehensive surveys of this scope exist in other jurisdictions (e.g. American Bar Association, 2004a). The closest survey to this ideal is possibly the MORI survey of 2003 (MORI, 2003), which remains unpublished, although a number of publications draw upon some of its findings.
Comparisons between public and political/legal élite

It would be interesting to know whether the public’s views are shared by other groups in society. Specifically, are public attitudes towards the jury shared by criminal justice professionals or the political élite? Only one survey that we found (Australian Rights Project, 1992) provided comparative data. On the few questions exploring attitudes to the jury, support for the institution was higher among members of the public than among political or legal élites.

Need for more cross-jurisdictional comparisons

Many people believe that the jury is a feature of criminal justice exclusive to the adversarial, common law systems. This is an oversimplification. As noted in the introduction to this report, a number of civil law jurisdictions also employ the jury. For example, in France and Italy, the most serious criminal cases are tried before a jury composed of professional judges and laypersons. On the other hand, in the Netherlands, juries play no role in the justice system, although recently there has been interest in creating some form of jury. It would be interesting to compare public attitudes to the jury across different countries, some with a strong tradition of the jury and others with little or no experience in this respect. Such comparisons would shed important light on the role that community input – through a jury – may play.

One critical variable which distinguishes juries in different jurisdictions is their decision-making powers. In common law countries juries do not determine sentence, although limited jury input exists in some jurisdictions. However, juries in other countries do have the power to impose sentence. In light of the intense public interest in sentencing (and public mistrust of sentencing by professional judges), it would be interesting to know whether the public are more supportive of the criminal jury in those jurisdictions where they play a role in the sentencing process.

Comparisons in public evaluations of jury versus ‘judge-alone’ verdicts

One of the goals of the jury system is to promote the legitimacy of the administration of justice by infusing the criminal process with community input. This perspective suggests that verdicts

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54 Italian criminal juries are composed of six members of the public and two professional judges. They pass judgment in the most serious criminal cases. In France, the jury is composed of nine citizens and three lay magistrates (see Ginet, Guimond and Greffeullie, 2006).

55 As noted in the introduction some countries are considering allowing some jury input into sentencing. In addition, jurors in the US play a role in the sentencing in capital cases. Jurors in Canada may make recommendations with respect to the sentencing of cases of second degree murder and they also play a role in determining the parole eligibility date for prisoners serving life terms with a parole ineligibility date in excess of 15 years (on application by the prisoner – see Roberts, 2002).
reached by juries are viewed as being more legitimate than verdicts reached by judges or magistrates. The hypothesis has yet to be tested, however. Acquittals in cases in which media coverage points strongly towards a guilty defendant often arouse public ire. Whether the nature of the fact-finder affects the acceptability of the verdict could be easily tested by means of an experimental study. This would involve asking members of the public to read accounts of criminal trials resulting in acquittals. Some subjects would be told that the verdict was reached by a jury, others that a judge was responsible for the decision. Both groups would then be asked a number of questions about the acceptability of the verdict, the legitimacy of the decision-making process and so on. The results of such a study would provide useful information for any government contemplating restricting the right to trial by jury.
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Ministry of Justice Research Series 1/09

Public opinion and the jury: an international literature review

There is substantial literature on the legal institution of the jury and on the experiences of jurors. However less is known about public attitudes to juries. This report sought to help address this knowledge gap. It draws together findings from the small number of quantitative surveys that have asked the general public questions on this subject. It focuses on survey findings from England and Wales, but also considers international research. The report indicates high levels of confidence in the jury amongst the general public.

ISBN 978 1 84099 221 2

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