Political Science
Legal Studies 217
Juries, Lay Judges, and Lay Assessors

Common Justification for Lay Participation in Legal Adjudication
- Independence from executive
  - not employees of government
  - no career ambitions in the judicial hierarchy
- Educates citizenry thru participation
- Legitimates decisions
  - Lay decision makers more representative
  - Lay decision makers communicate more
- Reduces isolation of the law from prevailing moral standards
  - Prevents routinization & cynicism

Putting Responsiveness First
- Responsiveness
- Independence
- Technical expertise/competence
Lay Judges

- U.S.
  - More lay judges than law-trained judges in some states (e.g., NY, TX, WV)
- England and Wales (2000)
  - 3,440 professional judges
  - 26,000 lay magistrates
- Tribunal adjudicators
  - Zoning board of appeals
- Arbitrators

Advantages of Lay Judges

- More in touch with the community
- More representative
- Informality
- Popularity in socialist countries
  - "People's" Courts
- Less corrupted by legal training
  - Bring "common sense" to decision making
- Less costly
  - Available part-time for work in nonurban areas

Disadvantages

- Greater potential for inconsistency
  - More people, more variation
  - Less routinization
- May be overly harsh compared to pros
  - Lay vs. Stipendiary magistrates study
- Less knowledge of the law or of procedure
  - Denial of due process?
- Lay magistrates & law-trained clerk in England
Mixed Tribunals: Lay Assessors

- Used in criminal cases in some civil law countries
  - One judge plus a panel of lay assessors
  - Judge and small number of lay assessors vs. judge and jury
- Used in administrative tribunals in common law countries
  - Mixture of law-trained and lay members
  - Dominance of professionals

Juries

- Petit jury vs. Grand jury
- Juries as embodying the representative ideal
  - Jury as possessors of local knowledge
  - Original jurors were witnesses to facts rather than finders of fact
    - Jurors could be punished for reaching the wrong verdict
- Jury as local enshrined in 6th Amendment
  - "an impartial jury of the state and district wherein the crime shall have been committed"
- Tension between impartial and local

Power of Juries

- Deciders of facts
- Deciders of law?
  - 19th Century
  - Some states today
- Effective deciders of law
  - "General" vs. "Special" verdicts
  - Jury nullification
  - "Fully Informed Jury" movement
Juries and Other Lay Adjudicators

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Jury Selection
- voir dire
  - Challenges for cause
  - Preemptory challenges
    - Limitations
    - Abolition in England
  - Variations in process
  - Goal of voir dire
    - Neutral jury vs. stacked jury
- Scientific jury selection
- Jury pool
  - Jury lists
  - One day, one jury system

Jury Decision Making
- Jury size
- Unanimity rules
  - Criminal vs. civil cases
- Special vs. general verdicts
  - Civil vs. criminal cases
- Small group processes
  - Leadership
  - Pressures to conform
  - Options for compromise

Criminal Juries
- The American Jury
- How much deliberation is there?
  - Verdict was consistent with first ballot in 90% of cases
  - In only 4% of cases did minority on first ballot prevail
- Judge/Jury agreement
  - Agreed 78% of cases
  - 19%, jury for acquittal, judge for guilty
  - 3%, judge for acquittal, jury for guilty
Influences on Criminal Juries
- Jury simulation studies
- Eyewitness testimony
- Confessions
- Characteristics of defendants
- Behavior of lawyers

Is Impartiality Realizable?
- Impartiality vs. *tabula rasa*
- Pretrial publicity
  - Tension between "public" trial and "impartial" jury
  - Free press and access to courtroom
  - Do we want to deselect well-informed citizens?
- Alternative solutions
  - Limiting reporting
  - Recognizing that jurors can set aside pre-existing knowledge (as can judges)

Civil Juries
- *Almost* unique to the U.S.
  - 7th Amendment: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."
- Attacked today as
  - Unreliable
  - Unknowledgeable
  - Excessively generous
  - Jury competence
**Behavior of the Civil Jury**

- **Who wins?**
  - News reports: almost always (~90%) the plaintiff
  - Reality: Plaintiff about half (49%) of the time

- **Typical verdict**
  - News reports: $2-5 million
  - Public perception:
    - Median: $100,000
    - 23% > $1 million
  - Reality (1996):
    - Median: $35,000
    - 5% > $1 million

**Changes in Civil Jury Verdicts**

- **Mixed evidence**
- **Medians**
  - 1992: $51,000
  - 1996: $35,000
- **Means may be increasing**
- **Defendants increasingly prefer juries**
- **Changing mix of cases going to trial**

**Judges v. Juries**

- **American Jury study**
  - 78% agreement between judge & jury
  - 10% judge favored plaintiff and jury defendant
  - 12% jury favored plaintiff and judge the defendant
- **1996 study (tort cases)**
  - Favoring Plaintiff: 48% jury; 57% judge
  - Median awards:
    - Jury: $35,000
    - Judge: $28,000
Future of the Jury

- Will the U.S. follow the rest of the world in ending civil trials by juries?
- Not that different than judges in many ways
- Can’t be readily bound by rules governing awards
- Will the rest of the world follow the U.S. in adopting juries in criminal cases?