

Scottish Jury Research: findings from a large-scale mock jury study

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Background and aims

This paper summarises the key findings of a large-scale mock jury study, conducted on behalf of the Scottish Government by Ipsos MORI Scotland and researchers from the Universities of Glasgow and Warwick.

The Scottish jury system differs from most English language jurisdictions in three main ways:

- **There are three verdicts:** guilty, not guilty and not proven (most major English language jurisdictions only have two verdicts: guilty and not guilty).
- **Each jury has 15 members** (rather than the typical 12).
- **Verdicts are returned by a simple majority** (eight out of 15 jurors, rather than requiring juries to reach unanimity or near unanimity).

The study addressed two overarching questions:

- **What effects do the unique features of the Scottish jury system have on jury reasoning and jury decision making?**
- **What are jurors' understandings of the not proven verdict and why might they choose this verdict over another verdict?**

Methods

The study was the largest of its kind ever undertaken in the UK, involving 64 mock juries and 969 individual participants. The research team staged jury deliberations between May and September 2018, in venues in central Glasgow and Edinburgh. Jurors were recruited to be broadly representative of the Scottish population eligible for jury service in terms of gender, age, education and working status.

In order to assess the effect of the Scottish jury system's unique features on decision-making, juries varied in terms of the number of verdicts available to them (two or three), jury size (12 or 15) and the size of majority they were required to reach (simple majority or unanimity).

Each jury watched a video of a fictional but realistic Scottish trial (either a mock rape trial or a mock assault trial) lasting approximately one hour. Jurors completed a brief questionnaire recording their initial views on the verdict, before deliberating as a group for up to 90 minutes and returning a verdict (if the jury had been able to arrive at one). After returning their verdict, jurors completed a final questionnaire covering their beliefs about the not proven verdict and views about the deliberation process, as well as their final views on the verdict.

Both mock trials were deliberately finely balanced, in order to encourage debate about guilt and acquittal, and to maximise the likelihood that jurors would consider the difference between the not guilty and not proven verdicts.

A note on the findings

Although 64 mock juries is a substantial undertaking, there were no statistically significant differences in the number of guilty versus acquittal verdicts at jury level due to the relatively small number of juries in each condition (in statistical terms). However, there were a number of significant differences in the verdicts at the level of individual jurors. These results are described below.

As juries reach decisions collectively, rather than individually, the translation from juror-level findings to jury-level implications is not straightforward. However, differences in the verdicts favoured by individual jurors can tell us whether or not particular features of the jury system might incline jurors in one direction or another. This may, therefore, indicate whether changes to the jury system, if applied across a larger number of finely balanced trials, might affect the likelihood of juries returning a particular verdict.

Key Findings

The overarching finding is that verdicts were affected by how the jury system was constructed. **The research found that the number of jurors, the number of verdicts available, and the size of majority required do have an effect on verdict choice.** In other words, jurors' verdict preferences are not simply a reflection of their assessment of the evidence presented, but can also be affected by features of the jury system within which this evidence is considered.

Taken together, the main findings from this study suggest that:

- **Reducing jury size from 15 to 12** might, in some trials, lead to more individual jurors switching their position towards the majority view (whether to acquit or convict) to facilitate a verdict.
- **Asking juries to reach a unanimous** or near unanimous verdict, rather than a simple majority verdict, might tilt more jurors in favour of acquittal – and might, therefore, lead to more acquittals over a larger number of finely balanced trials.
- **Removing the not proven verdict** might incline more jurors towards a guilty verdict in finely balanced trials – and might, therefore, lead to more guilty verdicts over a larger number of trials.

In terms of the impact of potential changes on how juries reach their decisions:

- **Reducing jury size from 15 to 12** might lead to more jurors participating more fully in the deliberations and is unlikely to have much impact on deliberation length or the range of evidential or legal issues discussed.
- **Requiring juries to reach a unanimous** or near unanimous verdict, rather than a simple majority verdict as they do currently, is likely to increase the average deliberation time, and may result in jurors being more likely to feel they have had the opportunity to put their views across before a verdict is reached. However, this may not lead to any improvement in the range of evidential or legal issues discussed.
- **Removing the not proven verdict** is unlikely to have much impact on key aspects of the jury decision-making process, such as deliberation length or juror participation, but may be associated with a slight increase in juror dissatisfaction.
- **The combination of features that produced the most jurors in favour of a guilty verdict** after deliberating was 15-person, simple majority, two-verdict juries. In contrast, the combination which produced the lowest number of individual guilty verdicts was 12-person, unanimous, three-verdict verdict juries.
- **There were inconsistent views on the meaning of not proven and how it differed from not guilty.** Although the not proven verdict was seldom discussed during deliberations, when it was discussed those who favoured it tended to base this on a belief that the evidence did not prove guilt beyond reasonable doubt, or on the difficulty of choosing between two competing accounts. Jurors choosing the not guilty verdict (where not proven was also an option), on the other hand, tended to attribute this to a belief that the accused was innocent.

Other cross-cutting key findings on how juries reach decisions include:

- **Several potential misunderstandings of legal concepts arose relatively frequently** across the mock juries. For example, there was a belief that the accused needed to prove their innocence, a belief that the accused can be retried following a not proven verdict but not a not guilty verdict, and misunderstanding of the fact that self-defence is a legitimate defence to an assault charge, even when the fact the accused inflicted the injury is not in dispute. This raises important questions about what can be done to support jurors' understanding of legal issues, including their understanding of the meaning and effects of the not proven verdict.
- **Additional guidance** such as written routes to verdict or written reminders of key legal principles may be helpful to aid jurors' discussion. Methods for improving juror understanding are discussed more fully in J Chalmers and F Leverick, [*Methods of Conveying Information to Jurors: An Evidence Review*](#) (2018).

Main Results

What difference does the size of the jury make?

Jurors in 15-person juries were less likely to change their minds on the verdict than jurors in 12-person juries.

After deliberation, jurors in 15-person juries were more likely than jurors in 12-person juries to think the final verdict should be guilty. However, this does not necessarily indicate that 15-person juries would be more likely to return guilty verdicts across a larger number of differently balanced trials. Rather, it may reflect the fact that, where a 15-person jury is split, more people (on average) need to change their position to facilitate a verdict than would be the case for a 12-person jury.

This, in turn, may mean that 'minority' jurors in a 15-person jury have less motivation to shift their position to bring deliberations to a close. In this study, those supporting a guilty verdict were generally in the minority, but this will not always be the case. Therefore, this finding may indicate that individuals on larger juries are more likely to stick with their initial view, rather than indicating a greater propensity for larger juries to convict.

15-person juries were associated with somewhat lower levels of juror participation than 12-person juries across a number of measures.

For example, in 15-person juries: jurors were more likely to be observed wanting to contribute, but being unable to do so; there were more dominant jurors (who contributed substantially more than other jurors) and more minimally contributing jurors (who made fewer than three verbal contributions); and jurors gave lower ratings of their own influence over the verdict.

However, the higher participation level in 12-person juries was not associated with longer deliberations. Similarly, there was no difference between 12 and 15-person juries in the number of evidential issues discussed, or the extent or accuracy of discussion of legal issues.

What difference does the size of the majority required make?

Jurors who were asked to reach a simple majority were more likely to favour a guilty verdict than jurors who were asked to reach a unanimous verdict.

This does not necessarily mean that requiring jurors to reach a unanimous verdict would result in fewer guilty verdicts. It might simply reflect a greater tendency for jurors to change from agreeing with the minority view to agreeing with the majority view when they have to reach a unanimous verdict. However, there is some evidence to suggest that jurors who are in the the minority at the start of deliberations in a unanimity jury may be less willing to shift their view towards a majority preference for guilty than they would towards a majority preference for acquittal: the research found that five of the six unanimity juries that started with a majority for guilty could not reach a unanimous decision and ended up hanging, compared with only one of the 25 unanimity juries that started with a majority for acquittal.

Jurors asked to reach a unanimous verdict took substantially longer over their deliberations than did those required to reach a simple majority.

There were no significant differences between unanimity juries and simple majority juries in observed levels of juror participation. However, jurors asked to reach a unanimous verdict were a little more likely to say they felt they had been fully involved and had influenced the jury's decision.

These findings suggest that requiring juries to reach a unanimous verdict may provide greater opportunity for everyone to feel that they have been able to put their views across before a verdict is reached. This was not, however, associated with any increase in the range of evidential issues discussed or the extent or accuracy of discussion of legal issues.

What difference does the not proven verdict make?

Juries almost always chose not proven over not guilty when they wanted to acquit the accused.

26 out of the 32 juries where not proven was available returned acquittals, and of those 26 acquittals, 24 were returned as a not proven verdict and only two were returned as a not guilty verdict. This suggests that, in finely balanced trials, juries have a preference for acquitting via not proven rather than not guilty.

Individual jurors were also significantly less likely to favour a guilty verdict when the not proven verdict was available.

This difference was apparent both before and after deliberating, indicating that, in finely balanced trials, the availability of not proven may tip more jurors towards acquitting even before they have discussed the evidence.

The presence or absence of the not proven verdict had little impact on the length of deliberations; the number of evidential issues raised; the extent or accuracy of the discussion of legal issues (other than discussion of the not proven verdict itself); or on levels of juror participation across various measures.

However, the availability of not proven was associated with slightly lower levels of dissatisfaction with the experience of serving on a jury.

Are there any differences in the impact of jury size, majority required and the number of verdicts between the rape and assault trial?

This research included two types of trial – a rape trial and an assault trial. In both types of trial, requiring unanimity was associated with more jurors favouring acquittal after deliberation.

The general pattern of differences in verdicts by both jury size and number of verdicts was similar across both trial types – in other words, individual jurors were less likely to shift their views in 15-person than in 12-person juries, and less likely to favour guilty when the not proven verdict was available. However, these differences were only statistically significant for the assault trial.

How do jury size, majority required and the number of verdicts available interact with each other?

The combination of features that produced the most convictions after deliberating was 15-person, simple majority, two-verdict juries. In contrast, the combination which produced the lowest number of convictions was 12-person, unanimous, three-verdict verdict juries.

Each unique feature of the Scottish jury system was independently and significantly related to the likelihood of individual jurors favouring a particular verdict in this research, in the ways described above. However, these features are also likely to interact in particular ways. Analysis of these interactions indicates that:

- The size of the majority required (simple majority or unanimous) is the feature that has the biggest impact on the likelihood of individual jurors changing their view on which verdict should be returned. Jurors were more likely to change their view in juries asked to reach a unanimous verdict.
- The combination of features that produced the most convictions after deliberating was 15-person, simple majority, two-verdict juries. In contrast, the combination which produced the lowest number of convictions was 12-person, unanimous, three-verdict verdict juries. Neither combination currently exists in practice, but the first combination (in which jurors were most likely to prefer a guilty verdict) is how the Scottish system would look if the not proven verdict were to be abolished without any other reforms taking place at the same time.

How do jurors understand the not proven verdict?

Although the not proven verdict was seldom discussed during deliberations, when it was discussed there were inconsistent views on what the verdict meant. In particular, jurors were unsure how a not proven verdict differed from a not guilty verdict.

Across the 64 mock juries conducted for this research, the meaning and consequences of the not proven verdict were rarely discussed at any length during deliberations, even in juries where that verdict was returned. Where the not proven verdict was discussed, however, there was evidence of jurors holding inconsistent understandings of what the verdict meant, along with some confusion over its effect. In particular, jurors expressed uncertainty as to how it differed (if at all) from a not guilty verdict. Although not proven and not guilty verdicts have the same effect in law, jurors tended to give different reasons for choosing them. Those who favoured the not proven verdict tended to base this on a belief that the evidence did not prove guilt beyond reasonable doubt, or on the difficulty of choosing between two competing accounts. Jurors choosing the not guilty verdict (where not proven was also an option), on the other hand, tended to attribute this to a belief that

the accused was innocent or on some aspect of the complainer's or witness' evidence that suggested that they were not giving a truthful account.

The idea that the not proven verdict should be used when jurors think that the accused is probably guilty but that this has not been proven to the necessary standard arose frequently, albeit briefly, in deliberations. It was also the issue on which there was the clearest agreement in questionnaire responses. Jurors also expressed the view that there would be a lingering stigma attached to receiving a verdict of not proven.

It should be stressed however, that while there was some uncertainty over the meaning of the not proven verdict, jurors relatively rarely expressed beliefs about the verdict that were definitively incorrect. This is in part because the not proven verdict does not have a specific definition beyond it being one of two verdicts of acquittal, which leaves room for a number of different understandings of its meaning and purpose. An exception was that it was incorrect for some mock jurors to believe that not proven opens up the possibility of retrial, but not guilty does not.

Other implications: supporting juror understanding

Several potential misunderstandings of legal issues arose relatively frequently across the mock juries, suggesting a need to consider whether additional guidance would be helpful to aid jurors' discussions.

There is no evidence from this study that changing one or more of the unique features of the Scottish jury system would have an impact on the number of evidential issues or on the extent or accuracy of legal issues discussed during deliberations.

However, the findings do raise important questions about what can be done to support jurors' understanding of legal issues, including their understanding of the meaning and effects of the not proven verdict. Several potential misunderstandings on the part of individual jurors arose relatively frequently across the mock juries – for example, a belief that the accused should prove his innocence, or a belief that the accused can be retried following a not proven verdict but not a not guilty verdict, and misunderstanding of the fact that self-defence is a legitimate defence to an assault charge, even when the fact the accused inflicted the injury is not in dispute. This suggests a need to consider whether additional guidance (such as written routes to verdict or written reminders of key legal principles) would be helpful to aid jurors' discussion. Another strand of this research involved an extensive evidence review of ways in which juror communication methods might be improved: see J Chalmers and F Leverick, [*Methods of Conveying Information to Jurors: An Evidence Review*](#) (2018).

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