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The complexity of race and juries

Even in the absence of overt discrimination, the way we constitute juries in this country may have adverse effects on ethnic minorities



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Cheryl Thomas's fascinating recent research report for the Ministry of Justice, [Are Juries Fair?](#), has rightly attracted [media attention](#). It claims that all-white juries do not discriminate against either non-white defendants or non-white victims of crime. This is welcome news, because the way we constitute juries in this country means that most will be exclusively white – even in towns, like Nottingham, with substantial ethnic minority enclaves. Still, it would be premature to conclude from the findings that all-white juries are fair. On the contrary, what Thomas seems to have uncovered is the complexity of race relations in Britain, and the unpredictable, sometimes puzzling, ways in which race affects jury trials.

Thomas believes that if all-white and mixed race juries acquit ethnic minority defendants at roughly the same rate, we can conclude that juries are fair. But there's a problem: ethnic minorities may actually share some of the same stereotypes of race and crime as the white majority. So, even if all-white juries are no more overtly discriminatory than mixed ones, prejudicial beliefs about race may still taint jury outcomes in all cases.

Thomas tries to examine the role of prejudicial expectations by asking the juries she works with what crimes, if any, they would expect defendants to commit in future. She finds that all-white juries, like mixed juries, generally say that they do not expect defendants to commit any crimes in the future. But it would be surprising if it were otherwise, as over half of the trials in her study ended in a hung jury, and very few ended in convictions. So, unless you had an exceptionally racist population, this is what you would expect.

However, this tells us nothing about more complex and familiar forms of racial prejudice, and its influence on juries. Even if we set aside the difficulties in interpreting self-reported beliefs and expectations, Thomas's study is consistent with race adversely affecting the decisions of jurors, whatever their background.

Indeed, it is possible that Thomas has underestimated the role of race on both all-white and mixed juries. After all, a jury with only one minority member is likely to behave and deliberate quite differently from one in which ethnic minorities make up a substantial proportion of the jury, and openly disagree amongst themselves about the best way to interpret and evaluate the evidence. So it is hard to feel that we have grasped the difference between all-white and ethnically mixed juries until we have examined the dynamics in a variety of mixed juries, including ethnically mixed juries that contain no white people at all.

Moreover, some of Thomas's findings about race and juries are quite troubling. Whether in Nottingham, Winchester or Blackfriars, in London, she found that all-white juries were least likely to convict a black defendant and most likely to convict a white one. In Nottingham, though not in Winchester, 61% of white jurors were likely to convict a white defendant when he was accused of assaulting an ethnic minority victim, as opposed to 4% who were willing to convict when the supposed victim was white. Something similar, though less drastic, occurred in Blackfriars, where the difference was 48% to 32%. Thomas thinks that white jurors living in diverse communities are "more conscious of race and more censorious towards white defendants in cases involving inter-racial conflict compared to white jurors living in predominantly white communities".

This is possible. However, unless her results are an accurate reflection of white tendencies to criminal assault – which would be alarming in itself – Thomas seems to have uncovered some disturbing ways in which the experience of race shapes jury trials in the UK.

Thomas even shows that all-white juries are more likely to convict defendants than mixed ones. So the way in which we constitute juries in this country may have adverse effects on ethnic minorities, even in the absence of overt discrimination. She also shows that male jurors are less likely to change their mind than female jurors, and are therefore slightly more likely to convict than the latter. So the balance of males and females on a jury may affect trial outcomes, and these effects may be exacerbated depending on the racial composition of the jury.

Thomas's study is welcome, then, and I look forward to reading more from her in future. However, we cannot conclude that race has no bearing on the outcome of jury trials in this country, and her study reveals just how difficult it is adequately to describe and explain the effects that it has.

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