

RESEARCH FOR THE WORLD

Why it's time to allow researchers access to jury deliberations

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Dr Lewis Ross

Dr Lewis Ross is Assistant Professor in the Department of Philosophy and Scientific Method at LSE. He has broad philosophical interests, but much of his work concerns where epistemology connects to questions about ethics, law and politics.

The secrecy of jury deliberations is regarded as so fundamental to justice that disclosing information about them can be met with a criminal charge. Philosopher **Lewis Ross** argues that there is a moral imperative to allow access for researchers.

"There is an ongoing problem with the criminal justice system in England and Wales," says Dr Lewis Ross, an expert in legal philosophy and Assistant Professor in the Department of Philosophy, Logic and Scientific Method at LSE.

"Juries are the cornerstone of the criminal justice system, and current laws mean that their deliberations must be carried out in absolute secrecy. In fact, to share discussions from within a deliberation room would be in breach of the [Contempt of Court Act 1981](#).

"However, there is a real tension between the secrecy of the jury and the idea that nowadays our institutions should operate in transparent and accountable way."

Dr Ross believes that the issue also goes deeper, where the secrecy around jury deliberations leads to severe limitations on the ability of researchers to assess and evaluate issues of great societal importance. He points out that the secrecy of jury deliberations blocks researchers from studying them, which hinders informed policymaking in criminal justice.



Do personal biases, such as prejudicial or stereotyped beliefs, influence outcomes? How well do juries understand their legal role and responsibilities? ”

“Take as an example the complaint-to-conviction level for sexual crimes, which is below two per cent. There is deep concern that victims of sexual crimes are not getting a fair deal by the legal system. We want to understand why the rate is so low, and how to improve the way these crimes are processed. But we are missing a huge piece of the puzzle when we are blocked from studying real-life jury deliberations to see how and why verdicts are being reached.

“There is no reliable information for researchers on what happens in live jury deliberations. Juries are not required to provide reasons or justifications for their decisions in court - what happens in the deliberation room is a black box.

“The right to be tried by a jury is important – it is democratic, it makes sure that laws are applied in a way that society agrees with, and it can even be a safeguard against state oppression. But I believe there is a moral imperative to provide researchers with some way to study real-life jury deliberations.”



Politically, we expect our governments to provide justice to victims, to deter crime, and to incapacitate the dangerous, without endangering the rights of the accused – none of this can happen if juries aren't equipped to pass reliable verdicts. ”

Concerns around reliability

Dr Ross notes that there are concerns around the probative value of a jury, or how effective and reasonable juries are in decision-making and how likely they are to get to the truth.

“These concerns about reliability range over a number of issues. Do personal biases, such as prejudicial or stereotyped beliefs, influence outcomes? How well do juries understand their legal role and responsibilities? How well do juries made up of lay members of the public understand the evidence presented in sometimes extremely complex cases? Do jurors rely on their own speculations, or even internet research? And can jurors be manipulated by charismatic lawyers or by other members of the jury?

“Anything that is liable to create mistakes in the way that juries make decisions can create a reliability objection.”

Dr Ross points out that these concerns around reliability become of great moral and political significance: "If juries err in their decision making, they are either convicting innocent people, or failing to convict those who are guilty - both of which are significant moral problems. Politically, we expect our governments to provide justice to victims, to deter crime, and to incapacitate the dangerous, without endangering the rights of the accused. None of this can happen if juries aren't equipped to pass reliable verdicts.

"We are seeing these issues of reliability come to the fore in the debate around sexual assault cases. To make progress here we need to be able to examine a body of robust evidence, but while we do not have access to real deliberations, we are having to make do with significantly substandard alternative research methods."



In my work I found that the objections against real jury research always turn out to lack force, and that for each concern there is a solution. ”

Researching jury deliberations

In the face of what Dr Ross calls a "jury-shaped hole", researchers try to build evidence through both "generic" and "tailored" methods, which could be considered broadly complementary.

"Generic methods attempt to draw inferences about real juries by appealing to data that is not specific to the task of being a juror itself. For example, in the study of sexual assault deliberations this could take the form of an attitude survey - a researcher examines attitudes towards sexual assault from a cross section of society. Or it could include psychological studies on how people deliberate and come to decisions in more general circumstances. These studies can provide a 'big picture' for researchers, but they cannot provide specific detail about those tasks which are unique to being a juror, such as considering evidence and making decisions about criminal guilt.

"Tailored methods, such as mock juries, are employed to fill that hole. Mock juries attempt to recreate the experience of sitting on a jury. However, mock jury studies are often significantly abbreviated compared to real criminal trials, and they do not get close to the real courtroom experience. Moreover, participants are usually paid to take part and aren't necessarily representative of the randomly selected group who serve on real juries. Most important of all, mock juries are fundamentally fake - participants in these studies are aware it's a simulation and that they are not making decisions with any real-world impact."

In summary, it appears that no methods match up to real analysis of live jury debates.



Considering solutions, making time for change

As a philosopher, Dr Ross isolates arguments, reconstructs them and evaluates their weight, considering the rationale for conclusions on both sides of a debate and testing their strength.

“In my work I found that the objections against real jury research always turn out to lack force, and that for each concern there is a solution. For example, it might be argued that if juries knew they were being recorded during deliberations, it might put pressure on them to behave differently, or to conform to a certain pattern of behaviour or outcomes. But there are unobtrusive ways to record juries, and even something as simple as taking an anonymised transcript of deliberations could provide invaluable insight whilst minimising the impact on individual cases.”

So why are we yet to allow researchers to access live jury deliberations? Dr Ross is clear on his thoughts.

“The challenge is that changing the law and facilitating robust studies of live juries is a long-term project. It ultimately requires the engagement of politicians, policymakers and those working in law, and it requires changes to a system that has developed over centuries.

“Politicians may want to focus on quick fixes, and some professionals may perhaps be resistant to changes for a number of reasons. But in order to make policy decisions that are truly evidence based, longer-term thinking about the framework for research and evidence-gathering in the criminal justice system is required, and now is the time to start.” ■

Dr Lewis Ross was speaking to Molly Rhead, Media Relations Officer at LSE.

[“The Curious Case of the Jury- Shaped Hole: A Plea for Real Jury Research”](#) By Dr Lewis Ross is published by *The International Journal of Evidence & Proof* (2023).

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