

## ***A Jury of Whose Peers? The Cultural Politics of Juries in Australia***

*Kate Auty and Sandy Toussant (eds)*

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174 pp

A jury consists of twelve people chosen to decide who has the better lawyer. (Robert Frost)

This book attempts to shed light on the mystery surrounding the jury system within Australia, in a bid to expose both the strengths and weaknesses associated with the power allocated to juries. *A Jury of Whose Peers* undeniably exposes the difficulties within a legal system that is reliant upon fallible humans, and explores this concept through, for example, the notions attached to the construction of language, the power of silence and the inevitability of prejudice.

The book is split into four parts containing seven chapters. Part 1 (Chapters 1 and 2) examines the concept of 'Being "In" and "Of" the Jury'. Being 'in' the jury is the theme of the first chapter, which contains contributions from three anonymous jurors, and is essentially a 'conversation' from within the jury.

Each of the jurors provides a differing perspective, yet there are common themes running throughout their experiences. Concerns raised by the jurors include the confusion regarding decision-making, and in particular the concept of 'reasonable doubt'. Each juror seemingly acknowledges that the verdict arrived at is more a result of class distinction, difference, confusion and compromise rather than the question of guilt or innocence of the accused:

*Juror 1:* '... was tried and convicted ... by collective jury prejudice and an absence of critical analysis.' (p 15).

*Juror 2:* 'The decision that we made was probably more about class relations than the actual event.' (p 20).

*Juror 3:* 'The end result was possibly a compromise brought about by the jury's confusion about the notion of what constitutes "reasonable doubt".' (pp 22–23)

This chapter provides an important look at the inner workings of a jury, yet the text is consistently interrupted by an editorial subtext. This subtext at times interrupts the flow of the narrative, and casts upon it editorial interpretations of the jurors' own experience, thereby removing the chance for the reader to reach their own conclusions.

The second chapter contains the experiences of Liz Gaynor, a criminal law barrister, and deals with the 'creation' of the jury at the hand of the legal counsel, and ultimately the concern over 'her jury' returning the hoped-for verdict. Whilst this is an entertaining read, it provides insight into the stress

and tension that occurs while waiting for the jury, with Gaynor describing it as a time of 'self-flagellation and self recrimination' (p 25).

Again the notion of difference is explored — this time through the process of jury selection, with Gaynor noting that her 'artificially constructed community' is the product of recognising and discarding potential jurors according to their differences, such as gender, job title, connections with associations and even clothing (p 25).

Part 2 contains only one chapter, which deals with 'Jury Competence and the Questionable Need for Change'. Ivan Vodanovich questions the validity of the jury system, and ultimately concludes that juries are an integral part of the justice system and should not be abolished. However, he maintains that there is a need for greater scrutiny of the jury process in order for the system to work more effectively. This is the most comprehensive analysis of the jury system in this book, and seeks to discuss a myriad of issues such as: the complexity of decision-making; juries' wilful disobedience in producing a verdict contrary to the legal requirements; the onerousness of juries; and the secrecy of jury deliberations. This chapter provides a well-balanced review of the current debate surrounding juries, and reminds us that 'jury decision-making will only be as good as the system of justice ... of which it is a part' (p 40).

Part 3 (Chapters 4 and 5) deals with the theme of 'Outsiders in the Jury System', and explores this notion through the experiences of Indigenous people within our justice system. Chapter 4 is written by Richard Frankland, an Indigenous filmmaker and writer, and passionately explores the historical exclusion of Indigenous people within all sectors of Australian society. He argues that dispossession has provided a climate for 'cultural misinterpretation', and that this is the underlying factor for the continued creation of Indigenous people as 'outsiders' within a system supposedly designed to represent 'peers'.

Chapter 5 is a contribution by one of the editors, Kate Auty, who is a magistrate in Victoria, and once more examines the historical and continued creation of Indigenous people as 'outsiders'. This is explored through cases and policies throughout history, including exclusion at the hands of juries and exclusion in the form of abolishing jury trials and appeals for Indigenous defendants, with Auty concluding that, regardless of the system in place, Aboriginal people will continue to be displaced within 'our' justice system.

Part 4 (Chapters 6 and 7) continues the theme of outsiders in the jury system, and expands this notion to include women. Chapter 6 is co-authored by Auty and Sarah Ford (a solicitor), and the final essay in the book (Chapter 7) is written by Jocelyn Scutt, the Anti-Discrimination Commissioner in Tasmania. Each of these essays examines the role that juries play when 'battered women's syndrome' is raised at trial. Chapter 6 in particular explores the way in which juries may hear and absorb information differently, and its impact upon their decision-making ability. This concept is exemplified through cases, with the interplay between the power of silence and cultural difference forming the thrust of the theme.

Both chapters are concerned with the medicalisation of women who suffer a pattern of abuse, and it is postulated that by confining it to a

'sickness', the defendants are constructed as 'other' or as 'outsiders' in the legal system.

The compilation of essays contained within this book provides us with a successful deconstruction of the jury system and allows us to be placed inside the realm of an otherwise private space. Both strengths and weaknesses of juries are exposed in this collection, with the notion of administration of justice without pride or prejudice fading in the light of this exposé from those entrenched within and outside the system.

The most important attribute of this book is that it does not attempt to categorise the jury system as the best option or as fundamentally flawed, but rather provides the reader with a set of discourses with the aim of fostering a greater understanding of one of the most integral parts our justice system. We are reminded that, in Australia, we are afforded the basic right to be judged by a jury of our peers, but as this book so eloquently questions it: 'A jury of whose peers?'

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