

Book Review: John Gastil, E. Pierre Deess, Philip J. Weiser, and Cindy Simmons, *The Jury and Democracy: How Jury Deliberation Promotes Civic Engagement and Political Participation* (New York: Oxford University Press, 2010), 268 pages.

A Partial Verdict for Tocqueville Jury Deliberation and Democracy in America (and Beyond?)

Jacques deLisle

The Jury and Democracy blends an empirical study of the impact of jury service on political attitudes and behavior, reflections on the implications of this evidence for broadly Tocquevillian theories of democracy and civic education, and advocacy for protecting and reforming the role of the jury in American law and society and extending the jury's virtues of deliberation more broadly into democratic politics. The book's findings of a generally positive relationship between jury service and democratic participation and values will be of interest in the still-relatively-new democracies that have begun to introduce, or are considering introducing, jury trials into their legal systems. So too, the book's discussion of deliberative democracy has potentially interesting implications for assessing the deliberative-democratic (and other not-strictly-electoral) means for public participation that have precedents in East Asian and other non-Western political traditions and that recently have become the object of much-discussed experiments at the grass-roots level in China.

At the core of *The Jury and Democracy* is a set of qualitative and quantitative inquiries that yield support for the general claim that the jury is, or at least can be, a school for democratic civic engagement. Participation in jury deliberation leads to a durable increase in voting (albeit of a fairly modest scale, primarily among those who previously were not regular voters, and perhaps only for those who serve in criminal cases). Jury participation often leads to increased attention to news media and public affairs and more civic conversation and political participation (at least among those who had relatively positive deliberative experiences and, in the case of attention to public affairs reporting, among those who felt less competent as jurors). Jury participation also has significant effects on jurors' attitudes toward public institutions and

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civic life (ranging from greater faith and confidence in the existing system to disillusion-fueled greater participation in politics).

While these major conclusions are likely to engage scholars and students of comparative politics and comparative law and policymakers and law reformers who seek to learn from foreign models, much of the empirically based part of the book will appeal primarily to a much narrower audience. A large portion of the book focuses on the concrete details of the experience of jurors in the American legal system. It derives prescriptions for reforms that are very small-bore (nicer jury rooms, more respectful court staff, words of thanks from judges for jurors when they conclude their service, permission for jurors to take notes or pose questions during court proceedings, jury instructions that are clearer and that pay more attention to deliberative processes, and so on). It also sets forth calls for radical expansion of deliberative democracy that address political institutions that are distinctively American (adding a “people’s house” to the current structure of government) or, somewhat more broadly, that would expand experiments undertaken in long-established democracies in the English-influenced world (experiments with “public juries” and “deliberative polls” that have applied loosely jury-derived mechanisms to address policy issues in the United States, Canada, and Australia, and so forth).

The study also proceeds in a style of American empirical political science that many readers will find off-putting. Complicated charts posit pathways by which behavioral and attitudinal factors influence one another. Relatively extended discussions address the level of significance of results from regression analyses and the level of confidence in various data sources (although much of this discussion is wisely relegated to a methodological appendix). Careful and cautious correlational analysis supporting some causal claims coexists with ad hoc and speculative discussions of less empirically verifiable causal claims. And the book adopts a meanderingly chronological, consequently bloated and sometimes breathless mode of exposition that recites what the authors first thought they might find before they undertook their study and analyzed the data, offers natural-science-experiment-like “eureka” moments of surprising discoveries and revised hypotheses, and often foreshadows the work that will be done in the next chapter as if the authors did not know where the book was heading.

Some of what is specifically United States-focused in the book, however, should matter to a wider audience. The authors’ analysis of the American jury and its place in the political and legal systems of the United States offers lessons for those contemplating the possible virtues and vices of introducing jury systems elsewhere. Various findings are heartening for advocates of juries and rebut some common criticisms of the jury system in the United States. Jurors very often find their service to be a positive experience. They take their responsibilities as jurors—deliberating upon and deciding the fates of fellow citizens—very seriously. Differences in social, economic, and educational status and background do not appear to lead to much hierarchy and inequality

in the jury room. The “quality” or “accuracy” of verdicts (although difficult, of course, to judge) does not seem in the main run of cases to be inferior to, or at odds with, more expert judgments.

Other messages are more cautionary. The role of the jury as an institution of civic education and democratic participation depends, of course, on the equal and widespread inclusion of citizens. As the more historical and doctrinal sections in *The Jury and Democracy* succinctly remind us, achieving this has been a protracted and fragile process in the United States. Although jury trials are firmly embedded in the Bill of Rights of the Constitution of the United States and are an inheritance from English law, it required a long line of Supreme Court cases, continuing into the 1990s, to strike down rules and practices that led to the disproportionate exclusion of minorities and women from jury service. And only a relatively late-emerging theme in the Supreme Court’s analysis (most prominently championed by Justice Anthony Kennedy) has cast jury service fully as a right of a citizen to serve as a juror, rather than as primarily a right of a criminal defendant to be judged by a jury of his or her peers. On the other hand, relatively elite members of society also have been underrepresented on juries. They have been disproportionately able to win individual or, in some jurisdictions, professional status-based exemptions from jury duty. Some of the evidence reported in the book indicates that lawyers often strike more highly educated potential jurors from the pool. In addition, there has been a downward trend in the use of juries in the United States which, of course, reduces their impact as a force for civic education and democratic engagement. The apparent causes include the unpopularity of jury service (among the public *ex ante*, if not, the book suggests, among jurors *ex post*), the cost of jury trials, and beliefs (largely unwarranted, in the authors’ account) that juries are not up to the task of handling complicated cases or that “runaway juries” make outrageous damages awards.

With its extensive qualitative and quantitative data and social science analysis, *The Jury and Democracy* is on relatively firm ground in arguing that the American jury promotes some democratic behavior (such as increased voting and attention to or participation in public affairs) and attitudes (such as confidence in public institutions and fellow citizens and a sense of having participated in an important civic act or duty of citizenship). But the study also makes clear that the magnitudes of key behavioral effects are generally small, with serving on a jury leading, for example, to a roughly 5 percent increase in voting rates. Moreover, the attitudinal effects are complex and in some respects ambivalent. For example, relatively positive and challenging jury experiences often lead to greater faith in institutions and fellow citizens and a stronger sense of the legitimacy of the system, while more negative experiences lead to dimmer views—and also sometimes to greater political activism, presumably in part to address perceived shortcomings.

The normative arguments for deliberative democracy that come near the end of the book have shakier foundations. The empirical work on the experience

and impact of jury service cannot do much to establish that the deliberative virtues that are associated with the jury will, if extended into the broader sphere of public and political life, lead to better or more fully democratic politics. The problems here are deeper than the limits of what can be inferred from the empirical studies that are the basis for much of the book. The arguments favoring deliberative democracy from political and legal theorists and would-be institutional reformers that the authors embrace are influential, but they are less widely accepted and more deeply contested in intellectual and policy circles in the United States (and elsewhere) than one might think from reading the relevant passages in *The Jury and Democracy*.

Moreover, the authors' efforts to cross platforms are problematic. The authors rightly note that the common feature of "voting" on juries and in democratic politics does not mean that the democratic virtues of jury service lie in jury voting. So too, however, there is reason for more caution than the authors appear to accept in suggesting that the common feature of "deliberation" in juries and in broader democratic politics means that deliberation is a definitive or positive feature of broader democratic politics. If it is indeed the case, as *The Jury and Democracy* argues, that jury deliberation (or at least good jury deliberation) can help produce better democratic citizens, it still does not follow that deliberative democracy is better democracy or a feasible route to better democracy.

Finally, *The Jury and Democracy* raises interesting questions about the implications of extending the jury, and the authors' arguments about the jury system and its democratic significance, to other national or cultural contexts. These issues are largely, and understandably, beyond the focus of the book (which includes only a couple of brief passages noting the issues raised by the recent wave of adopting jury systems, particularly in states that have undergone relatively fundamental and often democratic political changes). Can the democratic virtues that the jury serves in the peculiar American context be extended to other settings? Are they replicable in countries where the jury lacks the deep historical and cultural significance that it enjoys in the Anglo-American legal world? Will they be achievable in environments where norms of full and equal participation regardless of social and economic status, race, and gender may be less likely to be more honored in the jury room than they are in the wider society and polity? Do the authors' findings and arguments about the jury's potency as school for democratic citizenship resonate with, and provide a possible concrete means, for those who would pursue gradual democratization (or Sun Yat-sen-like tutelary democracy) in undemocratic or incompletely democratic states? Does the book's implicit call for paying attention to the quality of democracy (specifically, but not necessarily limited to, deliberative discourse among citizens, in the jury room and potentially beyond) offer a powerful critique—or at least a compelling call for balance—in the study of democratization and comparative democratization that has tended to focus heavily on voting and elections? Do the recent examples of

experiments in China with citizen participation in public policy deliberation—through grass-roots meetings between government officials and local citizens or citizen representatives to discuss local finance, or through public forums to discuss prospective laws and rules—pose a challenge to *The Jury and Democracy*'s assumption that deliberation (even of a meaningful sort) and meaningful electoral democracy may be substitutes as well as complements?

There are intriguing and important questions for comparativists and prospective reformers outside the United States and the West, ones for which *The Jury and Democracy*, its careful empirical analysis of the American jury, and its arguments about deliberation and democracy offer valuable insights and food for thought.

