

Review

***Juries in the 21st Century* by Jacqueline Horan**
Federation Press, 2012, 244 pp (ISBN 9781862878945)

David Rolph*

Jurors behaving badly make great copy. In 2008, a complex trial of drug offences was aborted when five jurors, including the jury forewoman, admitted to doing Sudoku puzzles during the hearings. The trial had already run for 60 hearing days, with evidence given by 105 witnesses and costs estimated at \$1 million. The jurors were not prosecuted; there was no offence for dealing with bored or lazy or inattentive jurors. Most jurors who feel that way about the proceedings would not manifest their disengagement so publicly (unless they fell asleep in court, which has been known to happen). The story did attract international media attention, so there was a punishment of sorts for the jurors, to the extent that one was required (Ackland 2008; Davies 2008; Jacobsen 2008; Knox 2008; Pelly 2008).

More recently, in early 2013, a jury at the trial of the former head of the United Kingdom's Government Economic Service, Vicky Pryce, was discharged in controversial circumstances. Pryce was charged with perverting the course of justice. The charge related to an allegation that, in 2003, she had claimed to be driving a car and had taken penalty points on her driver's licence for a speeding offence that had in fact been committed by her then husband, Chris Huhne. Pryce had disclosed this to a national newspaper, probably in retaliation for the unpleasant manner in which their marriage had ended. Huhne was charged with perverting the course of justice and resigned his cabinet post as Secretary of State for Climate Change and Energy. At their trial, Pryce pleaded not guilty and raised a defence of marital coercion. The jury was unable to reach a verdict. They submitted a list of 10 questions to the presiding judge, Sweeney J, to help them clarify some difficulties the jurors had encountered. Perhaps the most alarming question was: 'Can a juror come to a verdict based on a reason that was not presented in court and has no facts or evidence to support it either from the prosecution or defence?'

The other questions were better than this, but, in some cases, only marginally so. When the trial judge's answers still could not assist the jury to reach a verdict, he discharged them, citing their 'absolutely fundamental deficits in understanding', claiming that he had not experienced anything like it in 30 years of criminal trials. Needless to say, the jury's questions and the trial judge's criticisms also received international media attention. At the retrial, Pryce was convicted and sentenced to eight months' imprisonment (Bowcott 2013; Delingpole 2013; Grove 2013; Mason 2013; Phillips 2013; Rozenberg 2013).

It is understandable why these stories are widely reported. Their news appeal is self-evident. They do, however, tend to foster negative perceptions about jurors — that jurors are, by turns, lazy, disengaged, derelict in their duty, stupid, recalcitrant or unreliable. Perceptions about juries, their composition and their behaviour are not purely media creations. Those involved in the administration of justice often form their own perceptions about these matters. While these perceptions are based on extensive experience, they are

* David Rolph is an Associate Professor at Sydney Law School, The University of Sydney, specialising in media law.

nevertheless subjective and may not always be borne out by the evidence. Where such perceptions — media or professional, or both — are used as the sole basis for policy development and legal and procedural reforms involving juries there are likely to be problems.

It is important that perceptions about juries are tested against the best evidence available. One of the many strengths of Jacqueline Horan's book, *Juries in the 21st Century*, is that the author acknowledges that these perceptions exist and rigorously tests them against the latest research. In so doing, Horan challenges the validity of many of these perceptions. Some of these perceptions are very long standing and persistent. The notion that jury service is the province of the elderly and the unemployed can be traced back to at least Aristophanes' *The Wasps*. In her first substantive chapter, Horan addresses the question: Who are the jurors? She thoroughly examines who is ineligible to serve and the grounds for ineligibility; the exemptions and excuses that further limit the jury pool; the use of challenges to jurors by legal practitioners at trial; and the resulting demographic profile of juries based on gender, ethnic background, occupation, age and suburb. What Horan concludes is that '[t]here is no strong evidence to suggest that Australian juries are not adequately representative in terms of age, gender and occupation' (p 43). This balanced and nuanced approach to the test and challenging of this perception about juries is characteristic of Horan's approach throughout the book.

Horan frames the book around two interrelated ideas. One of these ideas is explicitly claimed at the outset as an organising theme of the book: the impact of technology on juries and the role they perform. Horan identifies a number of ways in which technology affects the role of juries: 'It alters the capabilities of jurors. It impacts upon the ways in which juries decide cases. It has the potential to prejudice the defendant's right to a fair trial. It also enables us to better understand the way in which our jury system works' (p 3).

The second, related idea, which runs through this book, is the historical development of the role of the jury. Horan effectively emphasises the importance of historical context to an understanding of the role of the jury. She commences her substantive analysis by examining the history of the jury in English law, observing that, over almost nine centuries, the jury has evolved 'from representative of the nobility, to neighbourhood representative, to impartial trier of fact and representative of the general community' (p 14). Juries do not then have a self-evident and immutable role; their role has changed over time, thus can change in the face of the challenges posed by new technologies. The benefit of this insight for advancing Horan's analysis is that she is able to make the compelling case that technological developments might force a rethinking or an adaptation of the jury's function, but it was ever thus. However revolutionary technological changes are to the way in which communications occur, the changes wrought to the jury's role are likely to be more evolutionary. Providing a long-term historical context allows Horan to offer a measured and subtle response to the challenges posed by technological developments and their impact on juries. She is able to recognise the benefits and the disadvantages of technology to jury service.

Horan's book is ambitious in scope. In addition to an analysis of the demographics of jurors, Horan examines whether jurors cope with complex trials and, if so, how; the latest research into juror comprehension; the reception of expert evidence by juries at trials; the problem, to the extent that it is one, of the 'detective juror'; and the problem, again to the extent that it is one, of the effect of prejudicial publicity on jurors. In canvassing these issues, Horan does not appear to have missed any major issue relating to the use of juries in contemporary Australian litigation. In relation to each of these, Horan adopts a sophisticated

critical perspective. For instance, when dealing with juror comprehension, she suggests that the competence of juries is dependent upon the competence of counsel presenting their cases and the competence of judges directing juries. The comprehension of juries cannot be meaningfully assessed in isolation. In a number of places, Horan recognises the artificiality of the way in which adversarial litigation seeks to resolve questions and the way in which it diverges significantly from how ordinary people solve problems in their daily lives. She effectively makes the case that the largely oral presentation of evidence in court, with insufficient use of written and visual aids, hampers the effectiveness of a jury's decision-making; that jurors in their daily lives learn differently than the way in which courts have traditionally operated and that courts have to learn to communicate more effectively with jurors in order to derive benefit from their participation in the administration of justice.

Horan does not merely make these criticisms. Rather, her response is to provide a range of considered, concrete proposals to reform courtroom practice to improve juror comprehension. This indicates another aspect of the ambitious nature of Horan's book. She has written a book that will be of great interest and use to a diverse readership. It will appeal not only to academics and students, but also to judges, barristers and solicitors and those charged with the task of developing and administering policy relating to the use of juries in courts. Horan has produced a book that effectively incorporates the most up-to-date research on juries into an analysis of the most pressing issues currently relating to juries, and presents it in a way that is academically sound and accessible to a wide audience.

No doubt there will be continued media interest in stories about juries getting it wrong. That is understandable. Juries, like judges, get things wrong from time to time. Continued media interest in stories about juries getting it wrong is also desirable: juries, like judges, need to endure a level of scrutiny and accountability in their discharge of this very important public function. A problem only arises when perceptions derived from exceptional, newsworthy cases are taken to be global and representative. Judges and legal practitioners will continue to form their own views, based on their own professional experiences, about the benefits and shortcomings of juries. Jacqueline Horan's *Juries in the 21st Century*, with its nuanced, detailed analysis, should play an important role in challenging and enriching those views.

References

- Ackland Richard (2008) 'Sudoku Squares off with Dozing', *The Sydney Morning Herald* (Sydney), 13 June 2008 <<http://www.smh.com.au/articles/2008/06/12/1212863837123.html>>
- Bowcott Owen (2013) 'Experts Rally to Defend Jury System after Judge Orders Pryce Retrial', *The Guardian* (United Kingdom), 22 February 2013
- Davies Lisa (2008) 'Sudoku Boggles Trial Judge — Case Folds as Jurors Play', *The Daily Telegraph* (Sydney), 11 June 2008
- Delingpole James (2013) 'Are Some People Just Too Stupid to Serve on a Jury?', *The Daily Express* (online), 22 February 2013 <<http://www.express.co.uk/comment/expresscomment/379367/Are-some-people-just-too-stupid-to-serve-on-a-jury>>
- Grove Trevor (2013) 'Is the Jury Out? An Author of a Book on the System, Makes the Case for the Defence', *The Independent* (online), 22 February 2013 <<http://www.independent.co.uk/news/uk/crime/is-the-jury-out-an-author-of-a-book-on-the-system-makes-the-case-for-the-defence-8505712.html>>

Jacobsen Geesche (2008) "'We Did a Good Job': Juror Refuses to go Down for Count', *The Sydney Morning Herald* (online), 19 June 2008 <<http://www.juror.com.au/juror-articles/2008/6/19/we-did-a-good-job-juror-refuses-to-go-down-for-count/>>

Knox Malcolm (2008) 'The Game's up: Jurors Playing Sudoku Abort Trial', *The Sydney Morning Herald* (online), 11 June 2008 <<http://www.smh.com.au/articles/2008/06/10/1212863636766.html>>

Mason Rowena (2013) 'Call to Help Juries after Pryce Farce', *The Daily Telegraph* (London), 22 February 2013

Pelly Michael (2008) 'Call for Reform as Sudoku Trial Ends', *The Australian* (online), 14 November 2008 <<http://www.theaustralian.com.au/business/legal-affairs/sudoku-trial-ends/story-e6frg97x-1111118029463>>

Phillips Melanie (2013) 'Do we Need IQ Tests for Juries? Vicky Pryce Trial has Exposed a Breathtaking Level of Ignorance and Stupidity', *The Daily Mail* (online), 21 February 2013 <<http://www.dailymail.co.uk/news/article-2282001/Do-need-IQ-TESTS-juries-Vicky-Pryce-trial-exposed-breathtaking-level-ignorance-stupidity.html#ixzz2meMltwj0>>

Rozenberg Joshua (2013) 'The Pryce of a Jury's Failure', *The Guardian* (online), 21 February 2013 <<http://www.theguardian.com/law/2013/feb/21/vicky-pryce-case-jury-failure>>