

**Alchemy and Annulment:
The Power of the Jury as Portrayed in Popular Culture**

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Alchemy and Annulment: The Power of the Jury as Portrayed in Popular Culture

LJH

MSc Applied Criminology - September 2022

This is an exploration into the doctrine of Jury Independence, otherwise known as Annulment by Jury or Jury Nullification. Concentrating on the criminal trial, this study traces the history of the doctrine - the battle for the jury to be left to judge both the facts of a case, and the merits of the law. The study emphasises the conflicting information coming from the legal profession, judges and writers and asks how a jury is to learn of their independence and the power of their role if it is kept from them. The study asks whether popular culture has a role to play in providing the prospective juror with this information. By thematic analysis of two television shows, *Ally McBeal* and *The Jury*, the study searches for the answer to this question and considers whether a potential juror watching these shows would be left with an awareness of the full power of the jury, the standards and moral tests applicable in deliberations and the transformational, or alchemical, nature of jury service.

There are, indeed, representations and allusion to these concepts in the two shows analysed, and the findings of how and why they are portrayed in these shows is of importance to those wishing to increase public awareness of these matters. The study provides a springboard into further interrogation of popular culture for representations of 'Alchemy and Annulment' by jury.

Keywords:

Jury, Juror, Trial, Law, Trial by Jury, Anarchy, Common Law, Natural Law, Annulment, Annulment by Jury, Nullification, Jury Independence, Judiciary, Justice, Judicial, Legislation, Criminal, Judge, Constitution, Rule of Law, Magna Carta, Parliament, Congress, Alchemy, Alchemy by Jury, Alchemical, Transformative, Government, Ally McBeal, Democracy, Democratic, Popular Culture, Court, Verdict, Conscience

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Introduction

The Jury is a most respected and revered institution, held in high regard by the people, certainly in the United Kingdom (Bar Council, 2002; ICM, 2007; Thomas, 2007). Yet, at the same time, the jury is constantly under attack: Jurors are too stupid for the task, they cannot understand complex evidence, they are too white, too unreliable, it is only for people who have nothing better to do, it is too expensive, it is too traumatizing for them, they do not take it seriously, too slow, too unpredictable...the list of criticisms is seemingly endless. Many of these criticisms have been disproved by research (Thomas, 2010; Thomas, 2011; Thomas, 2020 and Vidmar,2005). However, the criticisms continue, in tandem with high praise for the institution.

The Trial by Jury forms the basis of countless films, television shows, books, documentaries and articles. We remain 'manifestly obsessed' with Trial by Jury in film, television and literature (Clover, 1998:390). Yet, only a small number of criminal cases in England and Wales ever come before a jury. Less than 1% of all criminal defendants in 2006 had their cases decided by a jury (Thomas, 2010:1).

Despite the rhetoric from the establishment as to the significance and symbolism of the jury trial (seen in the celebrations of Magna Carta in 2015 and more recently in the proposed (but now abandoned) Bill of Rights, once more espousing jury trial (Gov.uk, 2022), there is a simultaneous deprecation of it: 'The empirical demise of the jury has been accomplished by stealth rather than by denigration or frontal attack. Paradoxically this has been accomplished by constant affirmation of its significance' (Brown and Neal, 1988, 128).

This study will consider the reasons for this dichotomy, and whether it has anything to do with the power of the jury through Annulment by Jury. The study will consider why it may be that 'Jury trial has become one element in the historical struggle between a judiciary claiming pre-parliamentary constitutional authority grounded in the Magna Carta, and parliament exercising its prerogative to create summary jurisdiction by statute' (Brown and Neal 1988: 129).

The Literature Review will explain the meaning of Annulment by Jury, trace the historical and legal commentary on the doctrine and consider why it is that the practice is acknowledged whilst, at the same time, kept from jurors. Jurors, at a very early stage in proceedings recognize their power: 'It was we twelve who had ultimate power in this court. They could boss us about like schoolchildren, but unless the judge stopped the trial prematurely, it was we who held the scales of justice in our

inexperienced hands' (Grove, 1998: 34). The Literature Review will consider how potential jurors may learn of their independence if judges are not routinely telling them. Consideration will be given as to whether this information can be found in popular culture, and it is this aspect which will form the basis of the research in this study.

The Methods chapter will outline the research design, a primary, qualitative study conducted by the thematic analysis of two popular television shows. The reasons for the choice of these shows and the extent and limitations of the study will be discussed in this chapter.

The Discussion chapter will outline the results of the study - whether and how annulment was portrayed in the shows, and whether there is any clue in the shows as to how jury independence should be exercised. The study will predominantly look at annulment in criminal trials and ask what, if anything, the chosen shows have to say about whether jurors can be trusted to perform their task. The study will consider whether the shows portray an inner wisdom upon which jurors can draw as well as what is the source of any such wisdom and whether jury service itself has a transformational effect on jurors. Whether these shows provide sufficient education for future jurors will be considered, as well as whether such external education is even required. After all, as Alexis de Tocqueville said: the jury 'Is both the most effective way of establishing the people's rule and the most efficient way of teaching them to rule' (1969:276). But this is a somewhat 'chicken and egg' situation because, although de Tocqueville described the jury as 'a political institution embodying the sovereignty of the people' and 'the very best way of preparing a people to be free' (1988:273 - 274), if opportunities for jury service are kept so limited, then alternative forms of education will be required if we are to become free and sovereign and establish people's rule.

Literature Review

Definition of Annulment by Jury

Annulment by jury occurs when, despite the evidence clearly showing legislation has been breached, a jury acquits the defendant, thereby, annulling the legislation as it applies to the case at hand. It is defined in Black's Law Dictionary thus: '[A] jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness' (Garner, 2014: Jury Nullification (online)).

In the United States of America, the practice is called Jury Nullification, though the constitutional scholar, Kenn d'Oudney, points out the apocryphal nature of the term – the missing preposition implying the demise of the jury (2016: 103) and prefers the term Annulment by Jury. American lawyer and writer, Clay S. Conrad, prefers the broader term 'Jury Independence' (2014:6). In England and Wales, it is often referred to as a perverse verdict. The word 'perverse' not only belies this immense power but rather implies that the jury is doing something wrong, even immoral. In a 2001 Guardian Article, the title asks whether this practice is 'perverting the course of justice' (Berlins and Dyer, 2001: online), a weighty accusation indeed. In the 1784 case of R - v – Shipley, Lord Mansfield described it thus: 'It is the duty of the judge, in all cases of general justice, to tell the jury how to do right, though they have it in their power to do wrong, which is a matter entirely between God and their own consciences' (1784:824). Note the deliberate 'do wrong,' again implying immorality. Yet, in the debates in parliament during the passing of Fox's Libel Law Lord Camden stated: 'The jury has an undoubted right to form their verdict themselves according to their consciences, applying the law to the fact.... If the opposite doctrine were to obtain, Trial by Jury would be a nominal trial, a mere form; for, in fact, the judge, and not the jury, would try the man' (Conrad,2014:42 – 43). And more recently, Lord Devlin:

'Perverse has come to be a lawyer's word for a jury which offers its own standards instead of those recommended by lawyers. It is an unfortunate, even impertinent word to use about an equal when all you are saying is that you disagree with the conclusions which it is his job to reach and not yours' (Devlin, 1981:141).

Some modern-day instances of Annulment by Jury in England include the 1985 case of Clive Ponting, a civil servant acquitted of charges under the Official Secrets Act — even though there was no doubt that he had leaked secret documents about the sinking of the Argentine cruiser General Belgrano during the Falklands war (Rozenberg, 2020: online).

In 1990, Pat Pottle and Michael Randle were tried for helping the Soviet spy, George Blake to escape from Wormwood scrubs in 1963. The pair wrote a book about it, admitting the offence (as they did in court) and explaining why they had done it. The jury acquitted the pair, in the face of the judge's direction (Berlins and Dyer, 2001: online).

In 2001, Sylvia Boyes and Keith Wright, were found not guilty of the offence of conspiracy to cause criminal damage to nuclear trident submarines. They admitted, in court, that they intended to damage the submarines but pleaded that their actions were necessary to prevent a greater evil, arguing that nuclear weapons were immoral and in breach of international law. The judge directed that these notions did not provide a defence, but, nevertheless, the jury acquitted (Berlins and Dyer, 2001: online).

Since Annulment by Jury clearly occurs and is openly acknowledged it seems strange that the implication is made that the jury is doing something wrong or immoral. Surely, the jury is just 'playing a vital role in the democratic process' (Amlot, 1998:123).

What Lawyers are Taught

Both in the US and in England and Wales lawyers are taught that, in a criminal trial, the judge decides upon matters of law and will direct the Jury accordingly (Omerod and Perry, 2017: 1871 and Flex Your Rights, 2013). The Jury is then obliged to follow the judges directions and apply that law to the facts of the case. The mantra is that the judge decides the law and the Jury decides the facts:

The jury need to be directed that they are responsible for decisions of fact; the judge for decisions of law. Such a direction is not a mere formality. Without it, juries might get the impression that any comments made by the judge were matters to which they were bound to pay heed. It is the duty of the judge to ensure that the jury understand that responsibility for the verdict is theirs and not that of the judge. In Wang, the House of Lords confirmed that there are no circumstances where a judge is entitled to direct a jury to return a verdict of guilty (Judicial College 2021, chapter 4).

This is at odds with the practice of annulment. Also, note the contradiction in the actual words of this direction - the jury must leave the law to the judge, but the responsibility for the verdict is theirs and not that of the judge. This type of contradiction will be explored later.

Most of those involved in the debate in the 807 years since Magna Carta 1215 have acknowledged that the jury can and does decide law and fact, sometimes contrary to the direction of the judge. Geoffrey Robertson, QC states that the jury 'won its laurels in the rhetoric of liberty because of its ability to acquit the guilty - to nullify laws which are unpopular or prosecutions which are perceived as oppressive.' He says: 'The jury, it is said on high authority, may "do justice", whereas a judge, obliged to follow the letter of the law, has no discretion' (Robertson, 1993:339).

Clearly, the jury has the power to annul. Much of the debate has centred around whether this power can be exercised as of right. To find the answer to this question we must take a step back and look at the powers of government. It is necessary to spend some time on this in order to fully understand the power of the jury through annulment.

The Limitations on the Power of the Government

It is widely believed, and the British Government states on its website that parliament is sovereign (Parliament UK website, online). But if no other law stands above that created by parliament, then, surely, we would be living in a tyranny: 'Unless limitations are placed upon the government and more specifically how it creates legislation, that government will eventually write itself into a position of absolute power, because power ultimately lies with those that can deliver punishment' (Keyte, 2021:1).

Some would argue that the limitation exists in the process by which a Bill becomes an Act: debate by the government in power, the opposition, approval by House of Lords and Royal Assent. Though, we are also told that the monarch's role here is symbolic and limited (Parliament UK Website, online) and, if so, Royal Assent provides no protection. (An analysis of the coronation oath and royal assent is beyond the scope of this study but see Spooner (1852) for more on this). It is said that, in Britain we are governed (and policed) by consent. But it is not clear how we withdraw our consent to legislation with which we do not agree, nor how we withdraw our consent to being policed in respect of such legislation. In a Freedom of Information request, the government referred to Peel's 9 Principles of Policing for the answer to this - a somewhat circular argument (West Midlands Police,

2021). Many would say that it is by voting in elections every few years. When one gives this proper consideration, it is blatantly against reason to believe that this is the position:

Suffrage is equally powerless and unreliable. It can be exercised only periodically; and the tyranny must at least be borne until the time for suffrage comes. Besides, when the suffrage is exercised, it gives no guaranty for the repeal of existing laws that are oppressive, and no security against the enactment of new ones that are equally so. The right of suffrage, therefore, and even a change of legislators, guarantees no change of legislation (Spooner, 1852: 13).

The Mechanism of Consent

Spooner makes the case that it is through the Trial by Jury itself that the people keep a check on their government and withdraw their consent to legislation (1852). The Jury of peers was enshrined in Magna Carta 1215 (a constitutional document and not a parliamentary statute (d'Oudney, 2016:68-69)) but was in use throughout Europe and Britain long before. Though some argue that the jury 'only became recognizable as the tribunal of modern times about 200 years after Magna Carta' (Conrad, 2014:20). Originally, jurors were more investigators and witnesses. Indeed, one of the bases for the decision in Bushel's case of 1670 (which established jury independence in the sense that the judge could not direct a conviction and the jury in question commemorated by a plaque in the Old Bailey) was that the jurors may have relevant knowledge gained outside the courtroom (Conrad, 2014:21). Today, we insist on an entirely independent tribunal that comes to the case afresh knowing nothing of the parties or the issues and for whom any independent investigation (on the internet, site visits or otherwise) is strictly forbidden (Harvey, 2014; CPS website, 2022). Later, it will be seen how, in popular culture, the search for truth and justice often requires the breaking of these rules, and much extracurricular activity.

The Right to Trial by Jury and the Problem of the Magistrates' Court

Article 39 of Magna Carta 1215 states: 'No free man shall be seized or imprisoned, or stripped of his rights and possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land' (Chapman, 2009:154). However, it is now widely believed and stated by experts to be the case that there no longer exists a right to trial by Jury for all criminal matters here in England and Wales, though it is acknowledged that the right does still exist much

more fully in the USA (Thomas, 2011; Lloyd-Bostock and Thomas, 1999). Many criminal cases in England and Wales are dealt with in the Magistrates' Court and are not, under current legislation, permitted to come before a Jury (Omerod and Perry, 2017:1439). If one takes the view that Magna Carta 1215 has never been repealed (since it is not a statute, but a constitutional document and can, therefore only be changed by constitutional convention of the people) then trial in the Magistrates' Court is clearly unconstitutional. Article 39 of the 1215 Magna Carta is re-stated in the 1297 'version' at 29, (Legislation.Gov.uk) but the inclusion in a parliamentary statute implies that it is for parliament to grant this right and that, therefore, it may remove the right when it so chooses. Not so if the right remains enshrined in a constitutional document.

Those writing on this topic skate close to the issue of the enormous power of the jury, but, frequently, do not grasp this nettle. Roy Amlot (when Chairman of the Bar Council) for example, whilst extolling the virtues of the jury in its ability to annul legislation says: 'just imagine what would have happened if poll-tax defaulters had had the right to jury trial?' (Amlot, 1998:123) yet fails to consider why they were denied this right.

The laws that are most likely to be unpopular with the people of England and Wales (and, by extension, the jury as representative of the country) are not the murder, rape, theft, and such which make their way to the Crown Court, but rather the legislation reserved to the magistrates. Some of these 'summary-only' offences carry serious penalties of imprisonment if convicted (Omerod and Perry, 2017). Similarly, offences likely to bring those at odds with the establishment to trial often remain before the magistrates - such as the legislation relating to the Coronavirus measures from 2020, particularly problematic for those wishing to protest against such measures when the government had, ostensibly, removed the right to gather in groups of more than two (Parliament.uk website, 2021: online). These offences are often part of a creeping encroachment on our liberties, and the people must be able to police this boundary. Such breaches of legislation should be coming before a jury to be tested, just as should the poll tax protestors before them, as Amlot should have realized. It is important to note here that one of the complaints in the American Declaration of Independence 1776 was the unlawful transference by the British Crown of many cases from the common law courts to the maritime courts thus: 'Depriving us, in many cases, of the benefits of Trial by Jury' (National Archives website online).

The Jury and the Admissibility of Evidence

The jury cannot protect the people against unjust legislation if only permitted to decide the facts of the case, and not the law.

But for their right to judge of the law and the justice of the law, juries would be no protection to an accused person even as to matters of fact; for, if the government can dictate to a jury any law whatever, in a criminal case, it can certainly dictate to them the laws of evidence. That is, it can dictate what evidence is admissible and what inadmissible, and also what force or weight is to be given to the evidence admitted. If the government can thus dictate to a jury the laws of evidence, it can not only make it necessary for them to convict on a partial exhibition of the evidence rightfully pertaining to the case, but it can even require them to convict on any evidence whatever that it pleases to offer them (Spooner, 1852:5).

Currently, in both the US and England and Wales, laws exist which limit the evidence put before a Jury, with the judge deciding on admissibility (Omerod and Perry, 2017). Jurors express frustration at this, a theme seen frequently in popular culture. Grove speaks of 'Points-of-law fatigue... an affliction to which jurors rapidly succumb when they are repeatedly sent out of courts so that arcane legal matters can be discussed behind their backs - pas devant les jurés' (1998: 29). The evidential rules are 'often implicitly based on assumptions about the limits to jury competence and the likelihood that juries will be unduly prejudiced by certain types of evidence' (Lloyd-Bostock and Thomas, 1999:31). In effect, even the facts upon which the jury is deciding are controlled by the state-employed judge. Some of these rules provide protection for a defendant - such as restricting the jury's knowledge of previous convictions (Criminal Justice Act 2003, ss 98 - 110 and 112) and restrictions regarding identification evidence (R - v Turnbull, 1977). If the jury trial were functioning as described by Spooner, these protections would not be present. Whether today's jurors have the ability to know everything about a defendant and still come to an unbiased verdict is unknown. What is known is that, although Annulment by Jury sometimes happens, it is not being utilized to its full extent because of this control on evidence, the restriction on the availability of jury trial and the failure to tell jurors of their power to annul.

Spooner makes the important point that it is either the people, or the government who judge what the law is, it cannot be both:

The authority to judge what are the powers of the government and what are the liberties of the people, must necessarily be vested in one or other of the parties themselves - the government, or the people; because there is no third party to whom it

can be entrusted. If the authority be vested in the government, the government is absolute, and the people have no liberties except such as the government sees fit to indulge them with. If on the other hand the power be vested in the people, then the people have all liberties (as against the government) except such as substantially the whole people (through a jury) choose to disclaim; and the government can exercise no power except such as substantially the whole people (through a jury) consent that it may exercise (Spooner, 1852: 10).

It is only through this understanding of the jury's role that the description of it as a 'little parliament' (Devlin, 1956:164) begins to make sense.

The Contradictions

Clearly, Annulment by Jury does take place and is acknowledged by judges and writers to be within the power of the jury. However, it is not routinely taught to student lawyers (Flex your Rights, 2013) and, whilst being acknowledged as available to the jury is also said to be perverse. The rhetoric is contradictory and confusing.

This contradiction is apparent throughout the history of the debate. Even in the same judgment there can be contradiction. For example, Lord Mansfield in *Rex v Shipley* 'admitted that it could be admirable for jurors, in an especially egregious prosecution, to exercise this confessed power of rendering an independent verdict, but he would not admit that the power was raised to the level of a right' (Conrad, 2014:40). Whereas if, in fact, the jury can render an independent verdict and there is no remedy or correction for this (absent provable bad faith), then this power must, surely, also be a right.

Here is Judge John Jay confusing the issue in *Georgia v Brailsford* (1794):

It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law it is the province of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy... We have no doubt you will pay there respect, which is due to the opinion of the court: For, as on the one hand, it is presumed, that juries are the best judges of fact; it is on the other hand, presumable, that the court are the best judges of the law. But still both objects are lawfully within your power of decision.

It would have been much simpler to say - your duty is to judge both the facts and the law, but you should pay respect to my direction as to the law. Even more contradictory, the judgment in *Beavers v State* (1957):

The constitution of this state makes the jury the judge of the law as well as the facts. But this does not mean that the jurors may wilfully and arbitrarily disregard the law, nor that they make and judge the law as they think it should be in any particular case. It means that the jurors, under their oaths, should honestly, justly and impartially judge the law as it exists, and as it is found upon the statutes of our state in each particular case. It does not mean that the jurors may so judge the law in any case as to make it null and void and of no force, but they shall judge the laws as to give them a fair and honest interpretation, to the end and to the effect that each and every law, in each and every case, may be fairly and honestly enforced.

The absurdity of all this is summarized perfectly by Conrad:

We are unable to be too clear about when jurors are supposed to judge just the facts, and when they are supposed to conscientiously intervene on behalf of the defendant. The borderline is fuzzy, and the more intently we examine it, the fuzzier it gets. We want juries to intervene on occasion; we just want them to do it on their own initiative, without any guidance, without us telling them about their power to do so, and without their telling us about their decision to do so. Our awareness of the practice is somehow believed to cheapen it, to take away the dignity (2014:5).

These contradictions could be deliberate, to obfuscate the truth, or possibly the result of convoluted reasoning necessary in order to cling to a statist worldview, because 'nearly everyone is raised to believe... that respecting and complying with the "laws" of "government" is what makes us civilized, and that disrespect for "authority" leads only to chaos and violence' (Rose, 2012:3). Therefore, recognizing that the people rule through juries deciding on the morality of the legislation may be hard to bear, for it is impossible to believe in the liberty of the people and, at the same time, insist that a state employee must decide the law. Whatever the reason, it is clear that judges are not allowing the simplicity of the situation to be known to the jury. Many times the judges, when asked by the defence to give a direction to the jury about their power of nullification, acknowledge that it is in the power of the jury to annul, but that, if the jury were to be told this, there would be anarchy. See, for example, the case of Leroy Reed in the fascinating documentary: PBS Frontline Inside the Jury Room (1986) and many other instances in Conrad (2014). The judges seem to be concerned about chaos arising from there being no certain rules, but "anarchy" means the absence of an external ruler and not the absence of rules (Passio, 2015). Ironically, the people ruling themselves through the jury would be a form of anarchy, in the accurate sense of the word.

Of course, the judges may have legitimate concerns for the protection of the defendant. For example, it is alarming in 'A Trial by Jury' that when jury nullification is raised in the deliberations, the jurors discuss whether they can apply a lesser standard of proof than 'beyond a reasonable doubt' (Burnett, 2001:132-157). It is important to note, however, that, after debate, the jurors do retreat from this position. There is also concern that juries have nullified the law for racist reasons, and that they 'cannot be trusted to do justice when a white person is on trial for crimes against a black victim' (Conrad, 2014:167). However, in his detailed analysis of this allegation, Conrad concludes that juries have often been scapegoated (2014). This, he says, is partly due to the protected and secret nature of jury deliberations. For there are 'very few individual cases where we can be absolutely sure the jury did nullify' (2014:203). Indeed, a jury may acquit for a whole host of reasons, including that they did not believe the prosecution witnesses. Furthermore, the individual jurors may all have different reasons for acquitting, and these may never become known by the public. As Conrad summarizes: 'Whatever part the racist actions on the part of judges, police, or prosecutors, may have played in determining it, it is the jury which brings in the final verdict; therefore, it is the jury that takes the blame and condemnation for unpopular trial outcomes' (2014:2013). The Thomas research also dispels much of the concern about juries being racist (2010).

The Colston case

The recent case involving the toppling of the Edward Colston statue in Bristol looks, at first glance, to be one of Annulment by Jury. It is not, but the case raises some interesting points. The four defendants admitted that they toppled the statue, graffitied it and threw it in the river. The four were acquitted by the jury. The case has been referred to the Court of Appeal by the Attorney General. In fact, the jury did not decide against the legal direction of the judge in this case since they were directed to consider whether they 'believed a conviction for criminal damage was a "proportionate interference" with the defendants' rights to freedom of expression, thought and conscience' (Berlins and Dyer, 2022) and/or whether the defendants were acting to prevent a crime (Henry, 2022: online). Katy Watts, a lawyer for the civil rights group, Liberty, cautioned:

The constitutional importance of a jury finding facts in a trial cannot be understated. Jury trials are used in far more complex cases than the ones the Attorney General has referred to the court, often ruling in cases of terrorism or of social policy, so it's an overstatement to say a protest-related case is too complex for them. The Government is sending mixed messages about the role of jury trials, trying to weaken their role in

cases like this which give verdicts they don't agree with, while claiming to strengthen their role as part of the Rights Removal Bill (Liberty website, 2022: online).

It could be argued that defences such as those advanced here, obfuscate the true position of the Jury's power to annul the law in a particular case. These defences give the judge a legal basis to offer to the jury for an acquittal, thus masking occasions when jurors decide in accordance with their consciences or denying them the right to decide simply by conscience. Use of such defences sometimes requires complex mental reasoning rather than a straightforward application of conscience. Clearly, Watts believes the jury to be deciding the facts only, though she does see the mixed messages from the establishment.

Moral Capability of the Jury

Perhaps judges fear that jurors do not have the necessary moral fibre to be able to decide purely in accordance with their consciences, as opposed to following the letter of the law. Maybe this should concern us all. As Spooner pointed out:

It is in the administration of justice, or of law, that the freedom or subjection of a people is tested. If this administration be in accordance with the arbitrary will of the legislator—the government is a despotism, and the people are slaves. If, on the other hand, the rule of decision be those principles of natural equity and justice, which constitute, or at least are embodied in, the general conscience of mankind, the people are free *in just so far as that conscience is enlightened* [emphasis added] (1852:63).

History shows the emphasis on the conscience of the juror. In Zenger's case, Mr. Hamilton: 'A proper confidence in a court is commendable: but as the verdict (whatever it is) will be yours, you ought to refer no part of your duty to the direction of other persons' (Conrad, 2014:35).

This study will consider how jurors find out about their power to nullify if they are not routinely told about this and whether the conscience of our society is such that jurors can be trusted with this power. The study will explore whether popular culture plays a role in educating potential jurors about these matters.

In the Vietnam war case of Dougherty, Judge Leventhal, acknowledging the power of the jury to be independent, but denying that the jury had to be specifically told of this power, said the following:

The jury knows well enough that its prerogative is not limited to the choices articulated in the formal instructions of the court. The jury gets its understanding as to the formal arrangement of the legal system from more than one voice. There is formal communication from the judge. There is the informal communication from the total culture - literature (novel, drama, film and television); current comment (newspapers, magazines and television); conversation and of course history and tradition. The totality of input generally conveys adequately enough the idea of prerogative of freedom in an occasional case to depart from what the judge says (U.S. v Dougherty, 1972:1134 – 1135).

Interestingly, Judge Leventhal did not mention formal education as a source of this information, a silent acknowledgment, maybe, of the fact that jury nullification is not something routinely taught in school or in legal studies.

David C Brody conducted several surveys and found that members of the public were not aware of the power of the jury to annul the law and that it was 'speculative and hopeful' for Leventhal to assume otherwise (Brody and Rivera 1997: 109-110). See also the research of Irwin A Horowitz 1988. As Conrad summarizes: 'counting on jurors to come to court aware of their hidden powers runs counter to what little empirical evidence exists' (Conrad, 2014:133).

Conrad explores the important question of whether, even if jurors do know about their power to annul, they will exercise this power in the face of an authority figure directing them to the contrary. The Milgram experiment (involving participants repeatedly applying electric shocks to fellow human beings for getting the wrong answers, on the say so of a white-coated authority figure) would suggest not (McLeod, 2007; Conrad, 2014). Furthermore, a judge telling the jury that they must follow his direction as to the law, no matter what their consciences dictate is asking them to follow orders - something specifically outlawed at Nuremberg (Alobo, 2012:107). Jurors have been known to leave the court in tears, having rendered a verdict against conscience because they felt they had no choice (U.S. v Span as described in Conrad, 2014:155).

The Brody and Horowitz studies surveyed jurors and the public; they did not look at what 'informal communication from the total culture' exists. This is, therefore, an important area of study. Conrad states, that because of the emergence of organizations such as the Fully Informed Jury Association in America (<https://fija.org>): 'Trying to keep juries in the 1990s from finding out about their power to nullify laws they find morally objectionable is like trying to keep teenagers from finding out about sex. If they do not learn about it from a responsible source, they are increasingly likely to learn about it on the streets' (2014:11). However, there is no such organization in Britain, and it was not the aim

of Conrad 's research to consider whether any of this information comes from popular culture in the form of television shows, films or books.

Popular Culture

Members of the public do not have much to do with the legal system and learn about it indirectly (Hambley, 1993:171). Pointing to movies and television, literature, newspapers and magazines Hambley says we can see how the public is being taught to think about the jury by what features of it are highlighted, and what left out (1993:172). She posits that societal norms reflected in the legal system are also those reflected in popular culture (1993:171). Societal norms, in other words, what level of consciousness exists amongst prospective jurors, is extremely important in the context of Jury Nullification, or independence as has been seen above.

It is rare for a jury to have a 'starring role' in films or television (Hambley, 1993: 172), but because of the impact of films such as *12 Angry Men* (1957), we tend to think that juries and, more importantly, their deliberations, are portrayed in popular culture more frequently than they are (Clover, 1998:403 and Papke, 2007). The character of individual jury members tends not to be developed but rather they are a body of people who nod agreeably or listen intently when the camera pans to them. This is seen in many courtroom dramas, such as *Crown Court* (1972 - 1984), *The Exorcism of Emily Rose* (2005), *A Few Good Men* (1992), *My Cousin Vinny* (1992) and *Legally Blonde* (2001). Those producing and directing these works wish for the viewer to be put in the place of the jury: they 'jury-box the audience' (Clover, 1998: 393-4).

This 'jury-boxing' gives the viewer the chance to practice being a juror, but something may be lost in exercising this role alone, without the other eleven. Where deliberations are shown, the 'jury's performance as a whole is portrayed as more responsible and rational than one would expect from even the sum of the individual performers' (Hambley, 1993:206). The jury makes a decision as a collective, but the process emphasizes the importance of each individual within it and the power of the twelve is more than the sum of its parts.

Guilt is individual, not collective, and so in a way is assessment of guilt. The jury is a collective body, and it acts collectively; but the norms that govern it are norms that insist on treating each case, and each defendant, in the most profoundly individual way. Each juror brings his individual conscience to bear on the collective task of the jury' (Friedman, 1989:1594).

In her foray through Popular Culture, Hambley's following examples are of note: *12 Angry Men* (1957), *Suspect* (1987) and *The Verdict* (1982). These three films, she says, show the transformative effect of the process. Of *Suspect*, for example, she says that the characters: 'become more fully human by the process of finding justice' (1993:176). The triumph of the individual over society, the portrayal of one juror as responsible for changing the course of events for the better (and for justice) and that the public's faith in the power of the individual remains unchanged from generation to generation (1993:173). Interestingly, they all show a disregard for rules which jurors today are told to follow - no site visits alone, no individual research (see CPS website, online). In fact, there is a theme in these films, of breaking the rules and the 'law' to find the truth (Hambley, 1993:173). As Quaid's character in *Suspect* says after being admonished for rule-breaking: 'I thought the whole idea was to find the truth'. Of course, the act of jury nullification involves that very thing - departing from the law as told to you by the judge. Hambley points out that in *The Verdict*, the jury, after being told by the plaintiff's lawyer that: 'today... you are the law, not some book, not the lawyers, not a marble statue or the trappings of the court', return a verdict contrary to the judge's legal direction (nullification) and, thus, save the day (1993:177).

The jury is also told in *The Verdict*: 'if we are to have faith in justice, we have only to believe in ourselves and act with justice. You see, I believe there is justice in our hearts' (1993:177). This would accord with the idea that natural law principles are embedded intrinsically within each of us, and is a theme throughout these stand-out movies. The jurors in *12 Angry Men* each go through something of a 'dark night of the soul' (St. John of the Cross, 1578) in order to see their internal lies, prejudices and biases and come to the verdict for which we are all cheering (this shows the transformative, or alchemical, process at work, enabling self-belief, and leading to truth and justice).

Much is written in Jury-in-Popular-Culture literature about *12 Angry Men*, which, interestingly, was not a box-office success, but which is, clearly, embedded within our collective psyche. It is described as portraying the jury as a 'microcosm of a larger democratic process' (Rosenberg, 1994:347). This is the exact point of jury nullification - the citizen jurors as a check on the legislature, though, this film does not actually feature jury nullification. Papke says that this film is 'unique in the way it prompts us to believe in juries, and, by extension, in our fellow man' (Papke, 2007:16).

There are few studies relating to the portrayal of the jury in popular culture and such that there are deal with the same handful of films of the non 'jury-boxing' variety, *12 Angry Men* always featuring prominently. The films receiving more than a glancing blow in these studies are now of some age.

The films studied do show the transformative process or the alchemy of jury service and the finding of justice, the importance of the individual inherent in the process, and the power of the jury, though, not usually the full power of jury nullification.

Where jury deliberations are shown or described in drama, documentary or memoir (for example, 'A Trial by Jury' (Burnett, 2002) there is a sense reminiscent of random strangers being thrown together in a disaster situation, and the struggle to overcome that situation, together; they cannot leave the jury room when the going gets tough and so there is no choice but to take this 'Heros Journey' (Campbell, 2003). Indeed, Trevor Grove describes himself and his fellow jurors as looking like air crash survivors (1998:4). This is part of the life-changing, transformative process that is borne out by academic studies. For example, research studies show people engage more politically following jury service (Gastil et al, 2010 and Thomas, 2020).

The PBS documentary (1986), mentioned above is excellent and shows the deliberations of an actual jury in America. In England and Wales, our law would preclude such filming (Contempt of Court Act, 1981, s.8 and s.20D Juries Act 1974). This documentary portrays a real-life jury nullification case, but the documentary is a rarity and is not well known.

In summary, the existing writings on juries in popular culture find that most films and television shows do not portray the characters of the jury members, nor their deliberations. In the few films where the jury deliberations are shown and characters developed, there is a strong sense of the importance of the jury and the individual, the transformative nature of jury service and the search for justice. The films in these writings are now of some age. There are no studies looking at the prevalence or method of portrayal of jury nullification in popular culture.

We need to look at current popular culture for examples of jury nullification, how this is portrayed and why in this way and in these shows. If the popular culture is really going to pervade the collective psyche, then television is probably more far-reaching, and the most important area for study.

Methods

Broad Context

In order to consider how the jury, and specifically, Annulment by Jury is portrayed in popular culture, this study utilized a primary qualitative research method in order to analyse two television shows – that is, the data was collected for the first time through the personal experience of the sole investigator or coder viewing the material. As Butina et al expand, qualitative research characteristics include: '1) the focus on understanding peoples' experiences with intent to convey experiences into meaning, 2) the researcher is the key instrument for data collection and analysis, 3) the research process is inductive and not deductive, and 4) the product of qualitative research is richly descriptive' and 'sample selection is usually purposeful and small' (2015, 186).

The purpose of the study was to ascertain whether and how Annulment by Jury is portrayed in popular culture and whether any guidance is given therein, to potential jurors (television viewers) as to the existence of the power of a jury to annul the law and be independent from the judge. Also, how would any potential juror know how, and when to exercise this power. The study considered whether and/or how the power of the jury is portrayed in two television shows and how the experience of serving on a jury is seen within this medium. Consideration was given to whether potential jurors would have confidence that they would be able to fulfil their role with their fellow jurors or whether they would feel daunted by the prospect if they were called to serve on a jury.

Data Sampling

The television shows that were chosen to form the basis of this study were as follows:

1. *The Jury* (2002 – 2011 produced by Peter Morgan for Granada Television), and
2. *Ally McBeal* (1997-2002 produced by David E Kelley on Fox).

The study asked whether annulment was shown and, if it was shown, why annulment was shown in the way it was, and why, particularly in that programme. In other words, whether there was any reason for that particular show including the phenomenon. In programmes where it was not shown at all, the study asked whether there was any reason for its absence. The study asked whether the

way in which the jury was portrayed in these shows was helpful, or a hinderance to prospective jurors gaining knowledge about annulment, or about the power of the jury and the importance of the role of the jury.

Since only one researcher, or coder, was to conduct the research, a purposive sample was chosen - the television shows were chosen because they are legal dramas - a 'purposive and small' sample (Butina et al, 2015:186): *Ally McBeal* from the USA (but having an audience in the UK) and *The Jury* being made and set in the legal jurisdiction of England and Wales. It was felt important to represent in the sample both the USA and the UK, being two countries utilizing a common law Trial by Jury model within their legal systems.

Television shows were chosen since television may have a greater reach than film and would possibly, thereby, be more likely to fulfil the vision of Judge Leventhal expressed in *US v Dougherty* (1972) above.

At peak, the *Ally McBeal* viewing figures were an average 13.8 million in the US for series two (Irish News, 2017: online). The show followed an eccentric lawyer and her colleagues and their work, life and loves, it was ground-breaking at the time it was broadcast and won many awards (IMDb, online). The unusual nature of the legal cases depicted in this series made it worthy of interrogation for evidence of jury nullification cases. The series also addressed many contradictions and moral issues faced within society and within the legal system.

The Jury was chosen because it depicts jury deliberations (which, as discussed above, is not common in popular culture). *The Jury* was a serious drama. The first episode of the second series attracted 6.2 million viewers (Rosser, 2011).

Data Analysis

A thematic analysis of the three shows was conducted with selective coding carried out as per Braun and Clarke (2006). The sole researcher and coder viewed the entirety of both shows, looking specifically for examples of the following:

- Annulment by jury and how this was dealt with in the shows
- The experience of serving on a jury and how this was portrayed
- The portrayal of any healing or transformative experience in the process

- What kind of reference was made to the jury by these shows through the eyes and voices of the other characters, or the jurors themselves.
- The power and strength of the jury or, alternatively, the shortcomings of the system.

Other questions that were considered when viewing the material:

- Comparison and consideration of the reasons for different portrayals in different shows,
- Whether or not there is an effort to keep the power of annulment hidden from the viewers and, if so, why is it portrayed at all?
- Is there shown to be something more to the process than just the application of the law as explained by the judge? How is this represented in the drama?
- Do these shows look at the jury as characters in their own right? Are the jurors made to appear inconsequential or bland?

Ethical Considerations

Consideration was given to the British Society of Criminology Statement of Ethics (2015) and the Winchester University RKE Ethics Policy and Procedures document (Scallan, 2019) was followed. All data was in the public domain and so no particular ethical issues arose and a formal ethics review was not required. Nevertheless, the relevant procedure was followed, and the research project was recorded by Winchester University.

Limitations

Sample Size

The sample size was necessarily small due to the parameters of the study (15000 to 17000 words), time scale, and the fact that there was a sole coder. This necessitated purposive sampling and selective coding. These factors obviously increase the possibility of researcher bias. For example, *Ally McBeal* was something of a ground-breaking show and specifically chosen due to the unusual and sometimes eccentric nature of the legal cases portrayed therein. It is not representative of legal dramas in general. However, the fact that jury nullification is portrayed in such a show and not in most legal dramas and films has meaning in itself.

Similarly, the portrayal of actual jury deliberations is not reflective of most legal drama, but it was shown in *The Jury*, and this was one of the reasons for the choice of this show.

Further study of a wider range of shows would be needed to gain a more general picture of the frequency of portrayal of jury deliberation (and any transformative experience taking place in jury service) and jury nullification in popular culture generally.

This study does not purport to provide statistical information as to the prevalence of portrayal of jury nullification, the experience of jury service or the exercise of conscience by the jury in popular legal culture as a whole, but only whether, and how these matters are portrayed in these shows.

Jurisdiction

The two distinct jurisdictions in the shows chosen (USA - specifically the State of Massachusetts, and England and Wales) made the analysis more challenging, but also provided interesting points of contrast for the study.

Discussion

Ally McBeal (AM) is a comedy drama television show which aired in the USA on Fox Network from 1997 until 2002 and was created by David E Kelley, a former attorney. There were 112 episodes over five seasons. The show, which also aired in the UK, featured a mixture of civil and criminal jury trials. Jury nullification, in a criminal trial, features in seven episodes. In two of these episodes, it is actually stated that jury nullification occurred or was attempted. There are many occasions when allusion is made to jury independence. *AM* does not show any jury deliberation, nor does it develop the character of any individual juror. This series very much “jury-boxes” the viewer (Clover, 1998: 393-4).

The Jury (TJ) is a British television drama. Series 1 aired in 2002 and featured 6 episodes; Series 2, in 2011, was five episodes in length. Both series were written by British screenwriter, Peter Morgan. This show is of an entirely different character to *AM*, it being a serious drama, with jury deliberations featuring prominently. The series does not feature any instances of Annulment by Jury, though reference to the concept is made once, but not by name.

Other themes apparent in both shows are the power and independence of the jury, the transformative nature of jury service - and jurors rising to the occasion, appeals to a higher power, love or natural law, and accessing an intrinsic understanding of justice. In both shows there is criticism and praise of the jury which seems to go beyond the airing of different perspectives in that there is a contradiction which may leave the viewer confused (like the contradictory legal judgements and writings discussed in the Literature Review). There is general comment upon the jury which pertains to jurors’ ability to deal with judging the facts of a case and is even more fundamental if they are to be entrusted to judge the law also.

Instances of Annulment by Jury (Jury Nullification)

‘The Promise’ (*AMS1*) concerns a woman on trial for prostitution. The defendant, disappointed with the men she met at work, gave up her legal career to become a prostitute. In her frank testimony the defendant openly admits the offence, explaining that, since she no longer believes men capable of long-term relationships, she chooses to engage in short term relationships and to get paid for this. She says she is discreet and has never claimed to be noble. By contrast, the chief prosecution

witness, her client, is ostensibly, a noble man - a doctor and pillar of society - she highlights the hypocrisy here. When asked whether she trapped him with her feminine ways, she counters that she did not 'slither up to him wearing perfume... he found me in the yellow pages!' To which the prosecutor involuntarily laughs aloud, explaining: 'the Commonwealth sees the humour.'

The titular Ally, and John Cage, the most idiosyncratic of the lawyers at Cage and Fish, are defending. Cage makes the closing speech to the jury, pointing out society's hypocrisy:

Hypocrisy troubles me greatly. Today's biggest film actresses make upwards of ten million dollars per picture. They only rise to that level if they'll simulate sex acts on film. I say simulate. That's merely for the intercourse. Kissing, nibbling on nipples, tongues in ears and mouths, groping of breasts and thighs, hands on penises, groins... that's real. That's actually going on. These actresses may say they do it for some redeeming social value. Well, that and a million bucks. It happens at lesser levels. Women employees sometimes gratify their male superiors in hopes that a promotion ensues. It's not noble, but it happens... sometimes... we don't jail them. Many women don't consider a man marriage material unless his income's in a certain bracket. It happens. Women marry for money. We don't jail them... The truth is, sex has always been a currency for women. Always... Though often at a quid pro-blurry-quo. My client was honest. She told the truth. To that man and to you.

The prosecutor, in straightforward terms, explains that the woman had sex for a fee and that is against the law. Nobody argues with this. John's speech merely points out the unfairness of the situation were this woman to go to jail. It aims to make the viewer think. It appears to make the jury think, and they find this defendant not guilty. There is no summing up by the judge in these shows, and so the directions given to the jury cannot be known, but it is clear from the evidence heard that the legislation was breached, and the jury has nullified that legislation in this case.

At the end of his closing speech, John takes one of his famous 'moments.' He pauses, closes his eyes and pinches his nose - one of his many trial stunts. He invites the jury to take a moment with him, and they do. In other episodes, John invites the jury to 'say it with me' - they repeat a phrase or a word with him. In one episode, they even sing. The writer may be telling us that this is not real life. Real lawyers do not behave in this way, and, by extension, they do not ask the jury to annul legislation. It could be that this mechanism makes it 'safe' to show jury nullification taking place - because it is not in real life - in other words, nobody will be left with the idea that this is something they should try. Alternatively, the writer may be using comedy as a safe vehicle to tell truth, a time-honoured tradition.

It is interesting that Ally is saddened by this case because it contradicts her worldview of couples being together for life. John consoles her: 'The world is no longer a romantic place. Some people are still romantic. Therein lies the promise. Don't let the world win Ally McBeal.' This jury decision, though, is also part of the promise - the decision of honesty and fairness over hypocrisy, but Ally does not see this.

'Cro-Magnon', another episode which depicts jury nullification, concerns a nineteen-year-old accused of assault. His date was verbally abused by the complainant. The defendant warned the complainant that he should stop, but was ignored, and so the defendant punched him. The defendant admits that there was no threat of imminent physical assault by the complainant either to the defendant or the girlfriend. The case was not being defended on the basis of self-defence or defence of another. Cage asks the complainant in cross-examination: 'Does it surprise you that a woman, when called a slut would appreciate a little chivalry?' and takes another moment.

After calling an expert witness, a psychologist, whom he asks no questions, Cage makes his closing speech about men being part warriors:

What was he to do? The man was verbally assaulting his date. He could've responded, espousing sticks and stones, or walked away. Remember I was about to put a psychologist on the stand? I intended to introduce evidence about human behaviour. I tell you, as I looked at this doctor, I thought: Does this jury need a specialist to teach them human nature? Because that's what happened at this party. Human nature. Man, any man, is part warrior. Certainly, we've evolved, we have ties, cell phones. But there are primal qualities that will always be there.

He may flatter the jury with his explanation as to why he did not ask any questions of the expert witness, or he may just be stating a truth - he knows that the jury will understand. He concludes:

I'm not here to condone violence. But when a man attacks another man's date with vulgarity what is he to do? Go back to that room and admit a truth to yourselves: You're glad he threw that punch.

The Jury finds the defendant not guilty of misdemeanour battery. In England, battery is a summary-only offence (Omerod and Perry, 2017:251), and, consequently, the defendant would be denied a Trial by Jury, as was discussed in the Literature Review.

Whilst awaiting the verdict, John and Ally discuss the fact that she has hallucinations of a dancing baby. John suggests that she confronts the baby in order to be rid of it, as he did when he agreed to

have tea with his dead aunt. Once again, the viewer is reminded that this is a whimsical situation, with oddball lawyers and none of this could happen in real life. Jury nullification shown against this backdrop does not provide the education and information of which Judge Leventhal spoke (*US v Dougherty*, 1972); it does not provide the information needed for a juror to understand the full power and independence of their role.

Some of the cases in *AM*, though not showing Annulment by Jury, nevertheless comment upon the independence of the jury: the power of the jury to disregard the law. In fact, the impression is that this firm, *Cage and Fish*, makes a practice of taking cases where there is no established cause of action. Billy Thomas, one of the firm's attorneys takes Richard Fish (founding partner) to task over this issue, only to be lectured by Fish on the matter - a lecture which he has pre-recorded and plays from the tape player on his desk:

I am offended by the notion that we'd deny blazing new trails. Where would civil rights be without our willingness to take the law into uncharted territory? The just lawyer doesn't look at the law. He looks at unfairness and says, 'Not Okay.'

These words, placed in the mouth of Richard Fish, who appears predominantly driven by money and fun, leave the viewer wondering whether pushing the boundaries of the law is more a money-making scheme for this firm, rather than noble pioneering, especially since it is delivered through the tape recorder. Later in 'The Inmates' (*AMS1*) Fish explains to the court why it was acceptable for a waiter in a French restaurant to be fired purely because he turned out not to be gay. The Judge explains: 'Since the law does not protect you, you'd be relying solely on a jury.' A clear statement of the jury's power to disregard the law. He goes on to say that there are 'a lot of people like Richard Fish out there,' as if that is a bad thing, but Fish, whilst being the antithesis of political correctness, often speaks the common sense which many are too afraid to voice. Somewhat akin to the Shakespearean fool being the deliverer of profound messages. Indeed, the whole series frames serious matters in comedy.

Later in the life of *Cage and Fish*, when most of their cases have become a comment on the runaway train of sexual harassment or discrimination litigation in the US workplace, Billy says: 'If ever a jury found the right case to take sexual harassment law and say "shove it!" This would be the ideal opportunity.' Again, confirming the ability of the jury to disregard the law.

In a much more serious vein, in Season 1 of *The Jury*, Marion Segal (the wife of the jury foreman) makes an impassioned speech at the dinner table, in favour of the jury, and the importance of instinct (which will be discussed in more detail later) and, in effect, Annulment by Jury, though she does not name it:

Well, instinct and intuition are important things, aren't they... the man who shoots the violent intruder in his house. The woman who stabs to death the husband who has beaten her over many years. Now, both of these would be guilty in the eyes of the law, but most jurors would acquit them.

Of course, there are defences available for the scenarios she describes. Self-defence, for example, in the case of the intruder - the defendant, under correct application of the man-made law, would need to demonstrate that they used only reasonable force (Omerod and Perry, 2017:60-68). However, it is clearly Marion's perception that the jury can disregard the law. This is the only reference to jury nullification in *TJ*. Marion concludes, emotionally: 'I'm a great believer in juries.' Yet at the start of the series, she is somewhat condescending about jury service in the face of her husband espousing the special nature and privilege of it. It may be that the transformational experience her husband has, as the trial progresses, changes her mind, or it may be yet another example of contradiction which leaves the viewer unsure what to think.

A good example of this contradiction is seen in 'Alone Again' (*AMS1*). Ally, much to her displeasure ('I'm scared of criminals'), and Cage are asked to help a convicted prisoner who is being prosecuted for escaping from custody at the very end of his sentence. The lawyer who is asking for their assistance explains: 'we need something unorthodox. Whatever it is you do that makes the jury disregard the law.' This request causes John and Ally to look shocked and offended. They express themselves to be 'troubled,' even though we have seen them employ this tactic on many occasions. Now, it is as if they have been caught red-handed doing something illegal, like the Guardian Article alleged, 'Perverting the Course of Justice' (Berlins and Dyer, 2001).

There follows a heart-warming story of a convict who built a trampoline with rubber bands collected over the many years of his sentence. A story of hope and courage is how Cage portrays it. The prosecutor tells the jury that if they look at it that way, they are a 'bad jury', like the jury 'have it in their power to do wrong' (*R v Shipley, 1784*). The jury acquits.

None of these examples above actually call jury nullification by name. Yet there are two occasions in *AM* when the practice is named. The first of these is an episode early in Season 2 entitled, interestingly, 'The Real World'. Here, a woman in her 30s, Laura Jewell, is accused of having had sex with a boy of sixteen who was a virgin at the time of the offence. The particulars and discussion on the specifics of this legislation is beyond the scope of this study. The 'boy', now eighteen, is a reluctant witness. The defendant admits the affair. Ally sees no defence: 'It's statutory John! If she did it, she did it!' John points out that an element of the crime is intent, to which Ally counters petulantly: 'and what... we gonna say it happened by accident? She went out for some air, stretched a little and his penis fell in!' Having stunned herself (and the client, and Cage) with this outburst, she apologizes, but the viewer is keen to know the answer. John ponders the notion of putting it to the jury on the basis of love being a type of temporary insanity (of course, temporary insanity may well provide a defence to such an accusation but love as insanity is unlikely to fly in the 'real world'). The writer may once again be telling us that this is anything but the real world.

The defendant, in her evidence, tells a beautiful tale of how the affair began and progressed. Everyone in the court is enrapt, including the judge. Ally actually makes an involuntary squeal. The prosecution tries to hammer it home that the defendant had sex with a boy.

In his closing argument to the Jury, Cage points, again, to the hypocrisy of society and man-made laws. In this instance, the double standard of the age of consent versus the age of criminal responsibility: 'If Jason Trisham had picked up a gun and shot a few classmates, we'd have no trouble seeing him as an adult. But to fall in love, to achieve a level of emotional intimacy with a 39-year-old woman... He must be a child.' He focuses on the particulars of this case and not the generality of the age of consent: 'To be able to see into her loneliness and offer her a companionship that could actually leave her more enlightened, well, he must be a child.' He is saying that, in this particular case, there was no harm, no victim. Cage goes on that the District Attorney (DA) will 'beat that drum - the law is the law is the law'. Finally, the appeal to love, and the individual nature of the case: 'but when it comes to love, there really is no law, is there?' The Jury answers: 'No' and the judge asks them not to speak back to the litigants, thereby reminding the viewer that this is not reflective of real life. Once again, this tactic may leave the viewer feeling that what seemed a sensible argument and a reason to judge each case on its own particular merits, could never happen in real life. Whether this is a deliberate attempt to leave the viewer unsure as to whether jury nullification is proper, or is merely using comedy to tell truth, it probably does leave the viewer with

the sense that jury nullification is not a real thing for the real world. For further study, and to establish the likely motive of the writer, it would be interesting to consider his other works in legal drama. For example, *The Practice* (1997 – 2004) and *Boston Legal* (2004 - 2008).

Following the acquittal, there is a ‘blink and you would miss it’ moment where Renee (the DA) puts a name to what just happened. Outside court with Ally, she says: ‘I gotta hand it to the Biscuit [Cage’s nick-name], on basic nullification he’s pretty good.’ They then, seamlessly, and without further comment or acknowledgement, move to discussing their evening arrangements, as if what just occurred is of no significance, which, if it were, there would be no need for organizations such as the Fully Informed Jury Association.

At this point in *AM*, the show takes a very sexualized turn and, although there is much comment on sexual harassment laws, the viewer must wait until towards the end of the final season for another actual mention of jury nullification. By this stage, Cage is semi-retired and working part time as a Mariachi singer in a Mexican restaurant (another caution against taking anything that follows seriously). In ‘Tom Dooley’ (*AMS5*) a woman accused of bigamy admits that she is, indeed, twice married. Her husbands, both of whom love her very much, give evidence on her behalf. Once again, jury nullification is mentioned, almost casually, as if insignificant and every day - when, as discussed in the Literature Review, it is anything but. Here, the prosecutor says, when trying to adduce evidence of the defendant’s lesbian affair: ‘It’s no secret the defence will be arguing jury nullification here.’ The prosecutor makes it plain that the only question here is whether the defendant, Nicole Naples, knowingly married a man whilst legally married to another. He insists the jury must do their ‘Sworn duty to uphold this law’ (appeal to the oath as seen in judgments in the Literature Review and, for example in the case of *United States v Thomas et al 1997*: ‘a refusal to apply the law as set forth by the court [is] an obvious violation of a juror’s oath and duty.’ Yet an analysis of juror’s oaths finds that they say nothing of the sort. For a selection of such oaths see (Conrad,2014:240)). The prosecutor continues, that it matters not whether Nicole is a nice person whom they do not want to imprison - he says this is not the point (according to Lysander Spooner it is very much the point - does the jury believe that this person deserves punishment is the crux of the matter (1852)). The only issue, the prosecutor says, is whether she broke the law. Cage counters with a speech about government overreach in legislating our personal lives: ‘Our choices of who and how many we can commit to.’ He appeals to the natural law principle of no harm - that without a victim there cannot be a crime, when he argues that Nicole has hurt no-one by her actions: ‘She didn’t prosper

financially, she didn't exploit anybody. All she did was formally commit to two men.' He asks whether Nicole Naples is really a criminal. He points to the jury as legislator (a 'microcosm of a larger democratic process' (Rosenburg, 1994:347)) when he says: 'When you decide her fate, you pass judgment on all of us.' In this case, though, the jury, reluctantly (shown by the hard swallow of the foreman when announcing the verdict) convict. Perhaps they were swayed by the prosecutor's talk of them having to follow the man-made legislation in order to uphold their oath, the feeling of no choice as was seen above in the case of *U.S. v Span* (1992), above. Nevertheless, in this case, the judge, who was moved by John's closing speech, sentences Nicole to a short three-month term of imprisonment, which he suspends. Having escaped custody, Nicole and John spend the evening singing in the Mariachi band, and the episode culminates in Cage turning down Nicole's offer to potentially become husband number three.

Portrayal of the Jury

It is important to consider how the jury and the individual jurors are portrayed since this affects the way in which the viewer perceives the jury's ability to decide justice; in other words, whether the viewer will feel that jurors can be trusted with their role.

The Jurors, as characters in their own right, are not developed in *AM*. They are seen looking, nodding and, as we have seen, talking and singing back. Of course, the classic delivering-the-verdict scene is included, but no deliberations are shown. By contrast, *TJ* is very much about the deliberations and the growth of the jurors through their jury service journey.

AM raises some criticism of the Jury, (perhaps the talking-back device is a criticism, implying that jurors are too easily persuaded by clever advocacy) but, on the whole, the lawyers at *Cage and Fish* seem to trust the jury to make the right decision. On one occasion, for example, Fish refers to jurors as lazy people with nothing better to do, and who do not understand the concepts - the almost cliched criticisms of the jury dispatched in the Thomas (2010) research. This theme is taken up in *The Jury*, in both series. Again, in contradictory manner, with the same character both espousing and criticizing, sometimes, almost in the same breath. For example, the father-in-law of Peter Segal (later voted foreman of the season 1 Jury because, in a nod to *12 Angry Men* (1957) he looks 'more like Henry Fonda' than the others) tells Peter how lucky he is for getting chosen for the jury, but later that same evening says it is 'only for people with nothing better to do'. Theresa Vesty, a

businesswoman (*TJS2*) feels that she is far too important and busy for the task, and sends her assistant to stand in for her, thus playing to the cliché that members of the public cannot be trusted in this role. Later in the series, as shall be seen, Theresa changes her views.

All the usual criticisms are paraded before the viewer in these shows, including a 'Jury Abolition Bill' going through parliament (*TJS2*), and background radio chatter about this throughout the series. Mostly, these criticisms are put up to be shot down (very much as Cheryl Thomas has done in her research into the Jury (2010, 2011 and 2020)). The radio chat in *TJS2* for example posits the notion that Trial by Jury is 'outdated, exploitative, inefficient, unreliable and prone to corruption and abuse.' There follows a commentator explaining that 'it is an 800-year-old right (referring there to Magna Carta 1215 - which was, at the time of screening, fast-approaching its 800-year anniversary in 2015) which *everyone* has, to be tried by his or her peers, and it's regarded by most people as an absolute pillar of our constitution.' In the Literature Review it was seen that many experts argue that such a right no longer exists for everyone. The screenwriter may be hinting at how things should be, or he may just be unclear about the workings of summary trial. There follows in the radio chatter the often-heard claim that these trials should be in the hands of 'skilled, experienced legal professionals' rather than members of the public. The fictional MP bringing the Bill before parliament puts the fact that Trial by Jury achieves fewer convictions than does the Magistrates' Court, as her front argument. (For actual statistics on this see Thomas (2010:1)) Of course, achieving convictions is not the only purpose of a justice system; it is also crucial to see that no innocent man is punished - an ideal espoused by many people throughout history. One rendition was attributed to King Alfred in the ninth century when he 'is said to have hanged a judge for having executed a defendant "when the jurors were in doubt about their verdict, for in cases of doubt one should rather save than condemn"' (Volokh, 1997:182). Another, from a more recent juror: 'Justice belongs to God; men only have the law. Justice is perfect, but the law can only be careful' (Burnett, 2001:156). Paul's mother (Paul is the first foreman *TJS2*) puts the viewer straight about the MP's criticisms:

It's all above your head apparently. According to her... You're all unemployed, you barely speak English and you're too stupid to understand. Perhaps I should make them aware of your [Paul's] doctorate in optometry.

The viewer is shown jurors who do not take their task seriously, who would rather be elsewhere (Cage on why the Jury has come back (with a verdict) quickly: 'Because they have weekend plans')

(AMS2)) or cannot be trusted to keep to the strict rules of the court. For example, *TJS1* sees Peter being bullied by his father-in-law into disclosing details of the case, visiting a crime scene without the rest of the court and, later (albeit after the trial concludes), dredging the canal with a rake for missing evidence that will give him the certainty he feels he needs, as well as failing to tell the judge that he has been subject to jury interference (his car is daubed with 'GUILTY' by the murder victim's family). In *TJS2* the viewer is presented with an even more unreliable bunch of jurors: a young teacher, pregnant by her seventeen-year-old student, a woman personating a juror by standing in for her boss, a female juror entering into romantic correspondence with the defendant during the trial, a young man with Asperger's (Rashid) who is obsessively researching the case online, and the first foreman becoming close with a woman who is masquerading as the original jury foreman (this case is a re-trial) and telling him about the tainted evidence which led to the original conviction being set aside - information with which he later contaminates his jury.

These flawed jurors do all rise to the occasion, though, as the case progresses. Theresa Vesty is forced by her assistant, Lucy, to have meetings to discuss the evidence in order that Lucy can properly represent Theresa's verdict as the person actually summoned. Still contrary to the juror misconduct rules (CPS website, online) but the viewer does see a transformational effect on Theresa as she does her service at arm's length: In episode 5, she explains that she was awake all-night thinking about her verdict (not guilty, with reasons) and that 'all these articles criticizing jurors, calling them unreliable and irresponsible amateurs... It made my blood boil.' The viewer sees Rashid's research saving the day when he is able to counter Paul's jury contamination by proving that the woman who has been misleading Paul was not the foreman of the original jury. This is similar to Hambley's observations on the film *Suspect* (1987) - the breaking of rules and law to get to the truth. As Lucy says: 'Isn't the point we reach the right verdict, no matter how?' (*TJS2*). This is, perhaps, reminiscent of a time when jurors did conduct their own investigations, as was seen in the Literature Review.

Natural Law, Appeal to a Higher Power and Intrinsic Knowing

If the jury is to be trusted with deciding justice, then it is useful to explore how jurors would know the laws, morals and tests they should apply. It is important to consider whether there is evidence in these shows of the jury knowing what to do, and what standards to apply. In his introduction to 'Lex Populi' William P MacNeil states that the media therein 'reach a much larger audience than

standard legal texts, but potentially, and even more democratically, they also help restore topics of jurisprudential import - justice, rights, ethics - to where they belong: not with the economists, not even with the philosophers, but rather with the community at large' (2007: 1-2). *AM* and *TJ* also achieve this, and in so doing, they provide us with a sense of trust in the ability of the jury and, with an education as to the justice, rights and ethics the viewer, as potential juror, should apply if he is chosen.

Application of letter of the law rules versus intrinsic knowing, head versus heart, the logical evaluation of the evidence versus intuition is a frequent theme of *AM* and *TJ*. In *AMS2*, 'In Dreams', Ally makes application to the court to force the hospital to place her dying ex-teacher in a drug-induced coma because the teacher's dreams are more pleasurable than her waking life. Ally questions the very notion of binding legal precedent (something which would disappear were the jury to be routinely deciding the law as well as the facts): 'Why do we get so fixated on precedent?' she asks. The judge is clearly taken aback by the question: 'Well, that's just kind of the way our justice system works. Were you buffing a nail the day they taught that?' Ally goes on to explain why the application of precedent in this case involving medicine, a constantly developing area, is 'silly', since it is not sufficiently dynamic. Interestingly she concludes her argument with: 'All I hear in this room is fear.' It may be that fear is the reason for the refusal of judges to tell the jury about their power of nullification, citing ensuing anarchy, which was discussed in the Literature Review. The sense conveyed is that it would be a chaotic situation, a free-for-all, if juries could just make up the law as they go along (the irony of the use of the word 'anarchy' to express this is also discussed in the Literature Review).

In *AM*, the viewer is shown where a strict application of the letter of the law, or rules gets us when Ally and her colleague, Georgia, are arguing that their client should be allowed to marry her partner, a prison-lifer, contrary to prison rules. They find a loophole by which the couple would be allowed to marry if their client was pregnant. However, conjugal visits are denied. This rule-following finds the lawyers visiting the prisoner to collect a sample of his sperm so that their client can be artificially inseminated. Of this craziness, Ally remarks: 'We are lawyers, we distort the law out of common sense.'

In a passionate speech to his congregation, after having found himself at the mercy of the letter of the sexual harassment laws, Pastor Mark, a regular in *AM*, exclaims:

They look to see what the law says. They conform their behaviour to legal boundaries. They even extort the law, if need be, to get what they want.

This is an expression of the 'bad man' concept coined by Mr Justice Oliver Wendell Holmes jnr. (1997). The 'bad man' does not care about the reasoning behind the laws. As MacNeil paraphrases, 'he wants to know - and preferably know in advance - just how far he can go in his testing of the rules, all the while avoiding (barely) their breach and the concomitant attraction of judicial sanction' (2007:83). In this way it is the 'bad man' and not the moral man who shapes our laws and society - in other words, when law is codified, it benefits the 'bad man'; when it is left to principle it benefits the moral man. How much simpler, and moral, would it be to accept that it is impossible to legislate for every eventuality, and, instead, to live by the natural law built into the fabric of the universe (and intrinsically known, as is demonstrated in these shows): simply, that a man 'shall abstain from committing theft, robbery, arson, murder or any other crime against the person or property of another' (Spooner, 1882:5). There can only be a crime if there is a victim and the 'sum of a man's legal duty to his fellow men [is] simply this: "To live honestly, to hurt no one, to give to every one his due"' (Spooner, 1882:5). In *AM*, Pastor Mark expresses it as God's Law in the continuation of his speech, above: 'The only law to abide by is His law. His law calls for brotherhood, His law calls for forgiveness, His law calls for a celebration of love.'

In both seasons of *TJ*, the trial is for murder. A jury would not be seeking to nullify this law since most people would agree that murder should be unlawful possibly because it is a crime against natural law and, therefore, intrinsically known to be wrong. The drama in both seasons of *TJ* rather concerns itself with finding truth and whether this should be achieved by a cold, hard analysis of the evidence or by instinct. There is disagreement amongst the jurors about the correct approach, as indeed between the commentators in the background radio chatter about the 'Jury Abolition Bill' in Season 2. A full analysis of the different approaches can be seen in Peter's speech (*TJS1*) when asked for his view during the deliberations. This is a turning point and finally achieves their 10-2 verdict - an example also of one juror changing the course of events for the better (Hambley, 1993:173). Peter explains his analysis of the evidence culminating in the statement that we cannot be sure of the defendant's guilt (or his innocence). He reasons that: 'Strictly speaking we should return a verdict of not guilty, not because we believe in his innocence but simply because we are unable to prove guilt.' But Peter is not content to leave it there since he does not want to 'return a verdict of "I don't know"'. His search for certainty tells him to look to his instincts: 'So I closed my eyes and I listened. Listened to what my heart told me' (reminiscent of *The Verdict* (1982) discussed

above 'I believe there is justice in our hearts'). Another, sceptical, juror, who believes the defendant to be guilty, scoffs at this (interestingly, some months later, this juror apologizes to Peter for this). Peter's heart told him to 'go back to the first moment when I set eyes on [the defendant]... I looked into his eyes, a frightened little boy, shaking.' Peter reasons that this frightened boy could not have inflicted the 28 stab wounds which he describes as 'protracted, wanton carnage'. He concludes: 'My instinct tells me what it told me the first time I set eyes on him - that he's innocent.' Another juror, Jeremy, says a victorious 'Yes!' And juror, Rose, who was leaning to a guilty verdict shuts her eyes and listens to her instincts. The remaining guilty camp protest that the others are 'listening to your hearts and not your heads' and 'voting for a happy ending.' With Rose's change of mind, they have their verdict.

What has occurred is the use of both heart and head: instinct and reason: the different approaches of each of the jurors creating a balance, within the group as a whole, and within each individual juror as they grow and heal through the process. This transformative process enables self-belief and leads to justice. As Jeremy says (*TJS1*):

That's why there are so many of us, from all walks of life. We're bound to disagree. Then we talk it through to make sure we don't make snap judgments.

Lewis Jenkins QC, a commentator on the radio (*TJS2*) says jurors are better able to interpret facts and the law than many give them credit for: 'The jury has the collective instinct. They have the intelligence and life experience of twelve totally different people' - similar to Friedman: 'Each juror brings his individual conscience to bear on the collective task of the jury' (1989:1594).

This all mirrors what is said by Trevor Grove (a man who has served on four juries) in his memoir, 'The Juryman's Tale':

We had become professionalized... They say the office helps to make the man. Even within the much briefer compass of most trials, jury membership does seem to summon up people's civic-mindedness - perhaps for the first and only time in their lives. Although this is a cynical age, honesty, fairness and justice are concepts nearly everyone believes in, even if they do not personally live up to them (1998: 128).

Increased civic mindedness following jury service was discussed in the Literature Review. Grove himself became a magistrate (perhaps missing the issue of summary justice impinging on a person's right to trial by jury). Grove also said his jury:

seemed to have common sense, good humour, scepticism, and patience... And in my view, it was the jury system itself - the fact that we were forced to act together in this rather daunting undertaking - that helped bring these qualities to the fore (1998:129).

Transformative Effect of Jury Service: The Alchemy by Jury

Both seasons of *TJ* (but not *AM*) portray the growth of the juries involved - the jury as a whole and the individual members, as well as the positive effect this has on their friends and family. In both series, the new jurors arrive at court, with varying degrees of apprehension, and some excitement. Peter (*TJS1*) sees immediately the importance: 'to stand in judgment over someone's destiny, justice in your hands. Isn't that special?' Others, like Rose (*TJS1*), see it as a means of escape, or rescue, from her controlling, possessive husband. Theresa Vesty (*TJS2*) initially, not taking it at all seriously, and sending her assistant to personate her. Marcia (*TJS1*) very matter-of-factly doing her duty 'because they asked me, and because it is important.'

Both seasons portray a high-profile trial, with the chaos and noise of a concerned and angry public outside, and disconcerting outbursts from the public gallery. The jurors find themselves in the daunting surroundings of the Old Bailey, with its tannoy announcements, hubbub and impressive Grand Hall with huge dome and murals, all accentuated by the show's haunting musical score (Kent, 2002).

The season 1 jurors arrive in the court room as if into an alien land. The viewer sees it through their eyes: the lawyers, sharing a joke amongst themselves, turn to look at the jurors as if at specimens, the sense of exclusion, being somewhere foreign, is palpable. This sense of exclusion has been discussed in the literature review in relation to legal argument being heard in the absence of the jury, and is again seen in the jurors' dialogue in *TJS2*: 'What was all that about, do you think? In court just now between the defence counsel and the judge?... I know, it felt like something everyone knew about except for us... That's exactly how it felt.' Eventually excluded together in the deliberation room with their mobile phones confiscated and the usher's brisk: 'bell, tea, coffee, good luck' before the door is locked. Later the viewer sees the tables turned, in a memorable scene where the now retired (to consider their verdict) jurors walk past the lawyers and the families involved in the trial. The walk-by is in slow motion with the jurors standing tall and the others looking on in awe, knowing that the power now rests with the jurors (*TJS1*).

The viewer sees the Juror, Elsie Beamish, realizing her power when she visits the doctor, a Sikh locum, who will ultimately tell her that she is dying, in this telling exchange:

Doctor: I suppose you've been reading the newspapers - suddenly everyone is writing about Sikhs, TV crews and journalists pouring over our texts. Suddenly, it's a hot topic.

Elsie: For what it's worth, I think the boy's innocent.

Doctor: really, based on what?

Elsie: Instinct.

Doctor: (Pausing) A very Sikh response..... I only wish your opinion counted for something.

(Elsie has a knowing look - it is dawning on her) (*TJS1*)

The viewer sees the bravery of Marcia and Peter (*TJS1*) when they refuse to be cowed by the serious intimidation (window smashed, dead rat in the post and car daubed) from the victim's family, and which they are forced to keep from their fellow jurors. The viewer sees how seriously the jurors take the proceedings in both seasons: such intent listening, note-taking and, at times, staring at the witnesses and defendant as if attempting to see into their very souls to find the truth.

The jurors become protective of one another. For example, in *TJS1*, when Charles stands up for Elsie, who has been denied a tea break by the overbearing first foreman:

Look, you're the foreman. Since when do you decide on tea breaks? I want you to stand up in court and say guilty or not guilty. I don't need you to tell me when we can have tea breaks.

This protectiveness is also seen in *12 Angry Men* (1957) and 'A Trial by Jury' (Burnett, 2002).

The healing effect of jury service is seen in both seasons of *TJ*. The friendship between Charles and Elsie, with her confiding in him that she gave up her own son for adoption years ago, and the grief that she has borne consequently. This friendship, in which he cares for her as she is dying, leads him, finally, to commit to the priesthood (*S1*).

In *TJS1* the viewer sees the repairing of the relationship between Marcia and her estranged mother, between Jeremy and his wife, as well as Peter (and his wife) finally standing up to his father-in-law. One juror confides in his fellow jurors that he was bullied in his youth - this is the first time he has ever told a soul, having kept this truth from his wife and children. He thanks the others for listening.

In *TJS2*, Katherine explains to her headmistress why she has decided to go through with her pregnancy:

Until recently, I would probably have agreed with you [about the importance of career] but having seen and having heard what I have in this trial: the pain, the loss, the regret - above all, the waste, you realize that life, and giving life, not taking it. Creating life, not snuffing it out, celebrating life, is the greatest thing you can do.

Peter (*TJS1*) finds purpose in what he is doing: 'I wake up in the morning excited, you know, blood pumping through my veins. I feel more alive than I have in years.' Rose finally has the courage to leave her controlling husband and we see her blossoming romance with fellow juror, Jimmy (*TJS1*). Similarly, the friendship between Tahir (a refugee) and Geoffrey, with Geoffrey providing Tahir assistance to help him become a US Citizen (though ultimately, the jury experience and this friendship culminates in Tahir becoming a British citizen instead - the ceremony attended by his fellow jurors) (*TJS2*). They are healing and 'becoming more fully human' (Hambley, 1992:173) because of their jury service – Alchemy by Jury has taken place.

Father Charles's speech at Elsie's funeral (with all the jurors in attendance) (*TJS1*) sums up the transformative effect of jury service. He explains how Elsie had seen injustice in her life, yet she did not succumb to this. Instead: 'She came to the trial every day in order to make a difference to someone else's life while her own life was slipping away before our eyes, and this sacrifice did make a difference... to all our lives.'

Season 2 concludes with the news that the 'Jury Abolition Bill', which had been passed in the commons, was defeated in the Lords. Paul, the ex-foreman, is quietly pleased with this decision, as the writer clearly intends for the viewer to be. Overall, the writer's aim seems to be to leave the viewer with the sense that, despite all the drama, the breaking of rules, the unsuitable jurors and their unsuitable actions, the jurors rose to the occasion, they were vulnerable with each other, they were able to draw on their intrinsic knowledge, they have grown as human beings and there has been healing as a result of this duty that they were chosen to fulfil; that they are to be trusted after all. *The Jury*, just as Papke said of *12 Angry Men*: 'prompts us to believe in juries and, by extension, in our fellow man' (2007:16).

Conclusion

It was discovered in the literature review that annulment by jury occurs in England and Wales and in the USA, it is acknowledged to be happening and acknowledged to be within the power of the jury. This would be expected by those with an understanding of the English constitution such as Spooner (1852), d'Oudney (2016) and Keyte (2022). However, the Literature Review exposed the fact that judges routinely refuse to tell jurors about their power to annul, and popular media confuses the issue by asking whether jury independence is 'perverting the course of justice' (Berlins and Dyer, 2001). Judge Leventhal indicated that potential jurors come to the role knowing of their independence from other sources - 'the total culture' (US v Dougherty, 1972:1135). Yet, previous studies based on analysis of surveys of jurors found that they did not know of their power to nullify (Brody and Rivera, 1997 and Horowitz, 1988).

This study set out to consider whether there was information within popular culture to provide the education which Leventhal envisaged.

The thematic analysis of *Ally McBeal* and *The Jury* found the following:

Annulment by jury was portrayed in seven episodes of *Ally McBeal*, and was specifically mentioned (fleetingly) in two of these episodes. However, it was shown against a comedic and surreal backdrop which may have meant that the viewer did not see what occurred in the drama as indicative of real life. It is not known whether this was the intention of the writer, or whether he was merely using comedy as a safe place to tell truth; further study to ascertain his view should consider his other works. Whatever the writer's intention, though, the result is probably the same - the viewer, if he had noticed that the drama portrayed jury nullification would probably put it down to the quirks of the show and not appreciate it to be something fundamental to the strength of trial by jury.

The phenomenon of Annulment by Jury was discussed, but not named in one episode of *The Jury*. This scene was intense, and the concept of jury independence would have been clear to the viewer. Neither season directly concerned Annulment by Jury.

There is some criticism of the jury in both *Ally McBeal* and *The Jury*. However, the overall impression of the jury given in these shows is supportive of jury trial, it 'prompts us to believe in the jury and, by extension, our fellow man' (Papke, 2007:16).

The flawed behaviour of individual jurors is portrayed in *The Jury* - the rule-breaking and weaknesses of character, but the alchemical process, by which the twelve come together and become more than the sum of their parts is clear to see. The jurors grow in stature and power both as individuals and as a body, a jury, as each of these fictional trials progresses. This alchemical transformation affects the progress of their deliberations, their own lives and the lives of those around them for the better. Those involved 'become more fully human in the process of finding justice' (Hambley, 1992:176).

The concern as to the moral-fibre of individual jurors is clearly shown in the flawed characters in both series of *The Jury*, reflecting Spooner's concern ('just so far as that conscience is enlightened' (1852:146). However, *The Jury* jurors demonstrate their ability to draw on an inner wisdom, showing that 'honesty, fairness and justice are concepts nearly everyone believes in, even if they do not personally live up to them' (Grove, 1998:128). Natural law concepts are also explored in *Ally McBeal*, though not through development of the jurors as characters in their own right.

This Study does not demonstrate that there is sufficient evidence of information in the 'total culture' which would provide jurors with the knowledge Judge Leventhal suggested in Dougherty (1972). It is a start, but a wider study of film, television and literature would be necessary to prove or disprove whether sufficient information exists therein. Such a study would be interesting, and it may be that the people need to keep alive these concepts in their own art (popular culture), to ensure, for themselves, that the full power of trial by jury is never lost. However, there is no justifiable reason for judges and writers on the subject to be anything other than transparent in advising jurors of their power of independence and nullification. Indeed, the reader may, by now, feel that a judge stating, aloud, that there is no need for jurors to be told of their power to annul because the information is available in the 'total culture' is patently absurd. Even if they doubt the ability of the jurors to exercise this power, it is not the place of the judges or other members of the establishment to keep this knowledge from the people, by failing to inform them fully, and, in many instances, actively misleading them with the direction that the judge decides the law and the jury, the facts. As the authors of the American Declaration of Independence did, it is high time people began asking why they are often being denied trial by jury, and why jurors are not being told of their full power of independence. Trial by jury, in its full power, is the very way in which the people rule themselves and keep their government (should they choose to have one) in check. The words of de Toqueville bear repeating once more - the jury 'is both the most effective way of establishing the people's rule and the most efficient way of teaching them to rule' (1969: 277). When the power which trial by jury

can wield is properly understood, it, perhaps, becomes obvious why the people can never rely on the establishment to educate them about its full extent. The people must tell each other, through their writing, by word-of mouth, through organizations such as the Fully Informed Jury Association, through documentary and through their art – their popular culture. Therefore, this interrogation of popular culture must continue, in order that representations of full jury independence - the alchemy and the annulment, can be identified and shared widely, as one prong of attack in the war to educate the people about how they rule.

References

- A Few Good Men* (1992) Directed by Rob Reiner [film], Westwood, LA, Columbia Pictures.
- 12 Angry Men* (1957) Directed by Sidney Lumet [film] United States, United Artists
- Alobo, E.E. (2012) Developmental Trends of the Defence of Superior Order: Acritical Appraisal of the Statute of the International Criminal Court. *Lwati: A Journal of Contemporary Research*, 9(3).
- Ally McBeal* (1997 – 2002) Kelley, D.E. [DVD] Fox
- Amlot, R. (1998) Leave the Jury Alone. *Med. Sci. & L.*, 38, p.123
- Baldwin, J. & McConville, M. (1979) *Jury Trials*. Oxford: Clarendon Press.
- Bar Council (2002) *Public backing for jury 'rock solid, new poll shows*. Bar Council Press Release, 30 January 2002
- Beavers v State (1957) Supreme Court of Indiana 236 Ind.549
- Berlins, M and Dyer, C (2001) Perverting the Course of Justice. *The Guardian* available at (<https://www.theguardian.com/world/2001/jan/22/law.jurytrials>) Accessed 21.09.22
- Boston Legal* (2004 - 2008). [tv programme] Fox for ABC
- Braun, V. and Clarke, V. (2006) Using Thematic Analysis in Psychology. *Qualitative research in psychology*, 3(2), pp.77-101
- British Society of Criminology (2015) British society of Criminology Statement of Ethics.
- Brody, D.C. and Rivera, C. (1997) Examining the Dougherty" All-Knowing Assumption": Do Jurors Know About Their Jury Nullification Power? *CRIMINAL LAW BULLETIN-BOSTON*, 33, pp.151-167
- Brown, D. and Neal, D. (1988) Show trials: The media and the gang of twelve. *The Jury under Attack*, p.126
- Burnett, D.G. (2002) *A Trial by Jury*. Vintage.
- Butina, M., Campbell, S. and Miller, W. (2015) Conducting Qualitative Research Introduction. *Clinical Laboratory Science*, 28(3), pp. 186-189
- Campbell, J. (2003) *The Hero's Journey: Joseph Campbell on his life and work* (Vol. 7). New World Library.
- Chapman, V (2009) *Freedom is more than just a Seven letter word* FMOTL.com
- Clover, C.J. (1998) Movie juries. *DePaul L. Rev.*, 48, p.389.
- Conrad, C.S. (2014) *Jury nullification: The evolution of a doctrine*. Cato Institute.

Contempt of Court Act 1981, s.8. <https://www.legislation.gov.uk/ukpga/1981/49/section/8> (accessed 21st September 2022)

Criminal Justice Act 2003, ss98 – 110 and 112 available at <https://www.legislation.gov.uk/ukpga/2003/44/section/98> (accessed 21st September 2022)

Crosby, K. (2012) Bushell's case and the juror's soul. *The Journal of Legal History*, 33(3), pp.251-290.

Crown Court, (1972) – 1984 ITV.

Crown Prosecution Service website, *Juror Misconduct Offences* (updated 2022) available at <https://www.cps.gov.uk/legal-guidance/juror-misconduct-offences> (Accessed on 22nd September 2022)

Darbyshire, P (2015) *Jury Reform in England & Wales* – Unfinished Business Kingston University Research Repository online at <https://core.ac.uk/reader/74394293> (Accessed 14th May 2022)

De Tocqueville, A. (1969) *Democracy in America* 277 (George Lawrence translation, 1969)

De Tocqueville, A. (1988) *Democracy in America*, ed J.P. Mayer, trans. George Lawrence (NY:Harper Collins,1988)

Declaration of Independence, 4th July, 1776 available at <https://www.archives.gov/founding-docs/declaration-transcript> (Accessed on 22nd September 2022)

Demos, R. (1960) Lying to oneself. *The Journal of Philosophy*, 57(18), pp.588-595.

Devlin, P. (1956) *Trial by jury*. London: Stevens.

Devlin, P. (1981) *The Judge*. Oxford: Oxford University Press.

d'Oudney, K. (2016) *Democracy Defined: The Manifesto*. Second Edition. SRC Publishing.

Estlund, D. (2007) On following orders in an unjust war. *Journal of Political Philosophy*, 15(2).

Fully Informed Jury Association website at FIJA <https://fija.org> (Accessed 19th September 2022)

Flex Your Rights, (2013) *Panel: How to use Jury Nullification to Quell the War on Drugs* (available at <https://www.youtube.com/watch?v=OofDALmyKk8&t=4188s>) (Accessed 22nd September 2022)

Freckelton, I, Goodman-Delahunty, J, Horan, J & McKimmie, B (2016), *Expert evidence and criminal jury trials*. 1st edn, Oxford University Press, United Kingdom.

Friedman, L.M. (1989) Law, Lawyers, and Popular Culture, 98 Yale L.J. 1579 - 1606)

Garner, B.A. (2014) Black's Law Dictionary, 10. *Eagan, MN: Thomson West*.

Gastil, J., Deess, E. P., Weiser, P. J., and Simmons, C. (2010) *The Jury and Democracy: How Jury Deliberation Promotes Civic Engagement and Political Participation*. New York: Oxford University Press.

Gayle, D (2022) Colston Four Acquittal to be referred to Court of Appeal. *The Guardian* available at guardian <https://www.theguardian.com/law/2022/apr/13/colston-four-acquittal-to-be-referred-to-court-of-appeal>. (Accesses on 22nd September 2022)

Georgia v Brailsford, (1794) *United States Supreme Court* 3.U.S. (3 Dall.) 1 (1794)

Gov.uk website <https://www.gov.uk/government/publications/bill-of-rights-bill-documents>. (Accessed on 23rd September 2022)

Grove, T. (2000) *The Juryman's Tale*. Bloomsbury Publishing.

Hambley, G.E. (1993) The image of the jury in popular culture. *Legal Reference Services Quarterly*, 12(2-3), pp.171-216.

Hansard (1982) Adjournment debate in the House of Commons on "Selection of Jurors", 18 October 1982. *Hansard*, vol. 29, cc. 205–10.

Harvey, D. (2014) The Googling Juror: The fate of the jury trial in the digital paradigm. *New Zealand Law Review*, 2014(2), pp.203-238;

Henry, E (2022) Colston 4 – a jury may do justice <https://www.lawgazette.co.uk/practice-points/colston-four-a-jury-may-do-justice/5111209.article>

Holmes, O.W. (1997) The path of the law. *Harvard Law Review*, 110(5), pp.991-100

Horowitz, I.A., (1988) Jury nullification. *Law and Human Behavior*, 12(4), pp.439-453.)

Irish News, (2017) 'Humanity of Ally McBeal keeps show relevant 20 years on' <https://www.irishnews.com/magazine/entertainment/2017/09/06/news/-humanity-of-ally-mcbeal-keeps-show-relevant-20-years-on-1129368/>

ICM Research (2007) *State of the Nation 2006. Summary Results*. London: ICM Research. Available at: www.icmresearch.co.uk.

IMDb, Ally McBeal (TV Series 1997–2002) - Awards – IMDb available at: https://m.imdb.com/title/tt0118254/awards/?ref_=tt_awd (Accessed on 25th September 2022)

Josie Outlaw (2013) The True Duty of the Jury, online at <https://www.youtube.com/watch?v=l7nqdV7wV2k> (Accessed 21st September 2022)

Judicial College (2021) *Crown Court Compendium* available at <https://www.judiciary.uk/wp-content/uploads/2020/12/Crown-Court-Compendium-Part-I-August-2021.pdf> (accessed 22nd September 2022)

Juries Act 1974 available at <https://www.legislation.gov.uk/ukpga/1974/23> (Accessed 22nd September 2022)

Kent, R (2002) *The Jury* CD Polydor

Keyte, W (2022) *The Occulted Powers of the British Constitution* available at <https://www.newchartistmovement.org.uk/resources/the-occulted-powers-of-the-british-constitution> (accessed 24th September 2022)

Lagnado, D. (2013). *Thinking about Evidence*1. Evidence, Inference and Enquiry. 171. 10.5871/bacad/9780197264843.003.0007.

Legally Blonde (2001), Directed by Robert Luketic [film] United States, MGM and Fox.

Liberty website, (2022) *Liberty Warns protest Freedoms at Risk Under Attorney General's Proposals* available at <https://www.libertyhumanrights.org.uk/issue/liberty-warns-protest-freedoms-at-risk-under-attorney-generals-proposals/> (Accessed 22nd September 2022)

Lloyd-Bostock, Sally, and Cheryl Thomas. (1999) Decline of the 'Little Parliament: Juries and Jury Reform in England and Wales. *Law and Contemporary Problems*, vol. 62, no. 2, 1999, pp. 7–40, <https://doi.org/10.2307/1192251>. Accessed 15 May 2022.

MacNeil, W.P. (2007) *Lex populi: The jurisprudence of popular culture*. Stanford University Press.

Magna Carta 1215, The Great Charter

Magna Carta 1297 <https://www.legislation.gov.uk/aep/Edw1cc1929/25/9> accessed 23rd September 2022

McLeod, S.A. (2007) The Milgram Experiment. *Simply Psychology*.

Merriam, S.B. and Tisdell, E.J. (2015) *Qualitative research: A guide to design and implementation*. John Wiley & Sons.

Ministry of Justice (2016) *Your Role as Juror* online at <https://www.youtube.com/watch?v=yQGekF-72xQ&t=29s> (Accessed 22nd September 2022)

Newburn, T (2017) *Criminology* Third edition, Routledge

My Cousin Vinny (1992), Directed by Jonathan Lyn [film], United States, Fox.

National Archives website *Declaration of Independence: A Transcription* (available at <https://www.archives.gov/founding-docs/declaration-transcript>) (Accessed 23rd September 2022)

Ormerod, D. and Perry, D. eds. (2017) *Blackstone's criminal practice 2018*. Oxford University Press.

Papke, D.R. (2007) 12 Angry Men Is Not an Archetype: Reflections on the Jury in Contemporary Popular Culture. *Chi.-Kent L. Rev.*, 82, p.735.

Parliament UK website *Parliamentary Sovereignty* <https://www.parliament.uk/site-information/glossary/parliamentary-sovereignty/> (Accessed 22nd September 2022)

Parliament UK Website *Royal Assent* <https://www.parliament.uk/site-information/glossary/royal-assent/> (Accessed 22nd September 2022)

Passio, M (2015) *Mark Passio on Anarchy* (available at www.youtube.com/watch?v=cpcgS0G7Xj0) (Accessed on 22nd September 2022)

Prest, W. (2006) *The Letters of Sir William Blackstone 1744-1780*/WR Prest (ed.).

PBS Frontline Inside the Jury Room (1986) available at <https://www.youtube.com/watch?v=Enkf4OXZa0A&t=14s> (Accessed 19th September 2022)

R - v - Shipley (1784) 99 *Eng.Rep.*774

R - v Turnbull (1977) *Law Reports Queens Bench* 224

Rex v Zenger (1735) US Supreme Court, How.St.Tr.17:675 (1735)

Robertson, G, (1993) *'Freedom, the individual and the law'* Penguin Books, London. 7th ed.

Rose, L., (2012) *Most Dangerous Superstition*. Larken Rose.

Rosenberg, N. (1994) Hollywood on trials: Courts and films, 1930–1960. *Law and History Review*, 12(2), pp.341-367.

Rosser, M (2011) <https://www.broadcastnow.co.uk/the-jury-opens-with-62m/5034404.article> (Accessed 24th September 2022)

Rozenberg, J (2020) *Sacred Cows* The Critic available at <https://thecritic.co.uk/issues/october-2020/trial-by-jury/> accessed 23rd September 2022

Scallan, S. (2019) RKE Ethics policy and procedures. *Winchester, UK: University of Winchester*.

Sparf et al. v. United States, 156 U.S. 51 (1895) at 139, quoting 29 Parl. Hist.,1535, 1536

Spooner, L. (1852) *Trial by Jury*. Boston, MA. (Quoted by chapter and section from *Free Political Institutions: Their Nature, Essence and Maintenance. An Abridgement and Rearrangement of Lysander Spooner's "Trial by Jury" (Boston, 1852)*).

Spooner, L. (1882) *Natural Law, Or, The Science of Justice: A Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society: Showing that All Legislation Whatsoever is an Absurdity, a Usurpation, and a Crime*. A. Williams.

St John of the Cross (1578) – *Dark Night of the Soul* – translated by E. Allison Peers for Dover Publications inc., Mineola New York 2003 Paul Negri

State v McClanahan, 212 Kan.208, 216 (1973)
<https://www.leagle.com/decision/1973420212kan2081390>

Suspect (1987) Directed by Peter Yates [film] United States, Tri-Star Pictures

The Exorcism of Emily Rose, (2005) [film] Directed by Scott Derrickson. Screen Gems through Sony Pictures Releasing

The Jury (2002 and 2011) Peter Morgan [DVD] Granada television

Parliament.uk website, (2021) The law governing protest during the pandemic 19th March 2021 available at <https://publications.parliament.uk/pa/jt5801/jtselect/jtrights/1328/132807.htm> (accessed 22nd September 2022)

The Practice (1997 –2004) [tv programme] Fox

The Verdict (1982) Directed by Sidney Lumet [film] United States, Fox

Thomas, C. (2007) *Diversity and Fairness in the Jury System*. Ministry of Justice Research Series 02/07

Thomas, C. (2008) Exposing the myths of jury service. *Criminal Law Review-London*, 6, p.415

Thomas, C (2010) *Are Juries Fair?* Ministry of Justice online at <https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf> (Accessed 12th May 2022)

Thomas, C (2011) *Sex, Drugs, the Internet and Juries* (10 March 2011) UCL Minds Lunch Hour lectures online at <https://www.youtube.com/watch?v=c7Uoetud3zc&t=1617s> (Accessed 14th May 2022)

Thomas, C. (2020) The 21st century jury: Contempt, bias and the impact of jury service. *Criminal Law Review*, (11), pp.987-1011

Thomas, M.A. (2013) Representations of justice and human rights in literature, drama and popular culture. *ISAA Review*, 12(1), pp.51-65

United States v. Dougherty (1972) United States Court of Appeals for the District of Columbia Circuit 473 F.2d 1113 (1972)

United States v. Thomas, (1997) *US Court of Appeals for the second Circuit* 116 F.3d 606 (2d Cir. 1997)

Unites States v Span (1992), *US Court of Appeals for the Ninth Circuit* 970F.2d 573

Vidmar, N. (2005) Expert evidence, the Adversary System, and the Jury. *American Journal of Public Health*, 95(S1), pp. S137-S143.

Volokh, A. (1997) N guilty men. *University of Pennsylvania Law Review*, 146(1), pp.173-216.

West Midlands Police (2021) FOI Request https://foi.west-midlands.police.uk/wp-content/uploads/2021/03/298A_ATTACHMENT_01.pdf 26/02/2021 (accessed 22nd September 2022)

Zander, M. and Henderson, P. (1993) The Royal Commission on Criminal Justice: Crown Court Study. *Research Study*, (19), pp.203-44.

Appendices

Appendix 1

RESEARCH ETHICS FORM 1 WHAT LEVEL OF REVIEW DO I NEED?

GUIDELINES

This form is for staff and students. It will help you identify the level of review needed for your project. Before completing it, you need to:

1. Read *The University Research Ethics Policy*.
2. If you are a student, discuss the ethical aspects of your project with your supervisor.

It is your responsibility to follow the University's Policy on the ethical conduct of research and to follow any relevant academic guidelines or professional codes of practice pertaining to your study when answering these questions.

The questions and checklist in this proforma are intended to guide your reflection on the ethical implications of your research. Explanatory notes and further details can be found in the Policy document.

SECTION 1

DETERMINING WHETHER YOU REQUIRE ETHICS REVIEW

YOUR RESEARCH
Project title: Alchemy and Annulment: The Power of the Jury as Portrayed in Popular Culture. (Working title)

Your name: **LJH**

1.	Is the proposed activity classified as Research or Audit /Service Evaluation or similar?	
	Research YES	Audit or Service Evaluation
	<p><i>Use the Policy to help you answer this question. If the proposed activity meets the definition of research (see the policy), CONTINUE.</i></p> <p><i>If the activity is an audit or a service evaluation, STOP. You do not need to seek ethics approval, but you do need to formally register your project with UREC, along with a project outline. To do this complete Form 2.</i></p> <p><i>If you are unclear what type of activity you are undertaking, please refer to the Policy for additional types.</i></p>	
2.	Does the research involve living human participants, human samples or data derived from individuals who may be identifiable through that data?	
		No
	<p><i>Use the Policy to help you answer this question.</i></p> <p><i>If you answer NO, SKIP to QUESTION 6 and CONTINUE. If you answer YES, CONTINUE.</i></p>	
3.	Is the research being conducted for a medicinal purpose?	
	Yes	No

<p><i>Use the Policy to help you answer this question. See Appendix 2 - FAQs and definitions.</i></p> <p><i>If you answer YES, and think your research comes under the definition of 'for a medicinal purpose,' it will need to be scrutinised by the Committee. Please email the Committee Chair (ethics1@winchester.ac.uk) for further guidance on what to do.</i></p> <p><i>If you answer NO, CONTINUE.</i></p>	
<p>4. Does your research require external ethics approval or review?</p>	
Yes	No
<p><i>For example, from the NHS or another overseeing body. Use the Policy to help you answer this question. If you answer NO, CONTINUE.</i></p> <p><i>If you answer YES, you need to formally register your project with UREC, along with the relevant external ethics approval. To do this complete Form 2.</i></p>	
<p>5. Is the project underway and, the researcher or PI, has moved institution to Winchester?</p>	
Yes	No
<p><i>If you answer YES, please read the following:</i></p> <p><i>If the research began when the PI was employed at another institution but has subsequently moved to Win-</i></p>	

<p><i>chester, and the project has previously been subjected to ethics scrutiny at that institution, then it need not go through ethics review again. The outcome of ethics review by that institution should be communicated to UREC for formal recording. To do this complete Form 2 and include evidence of the previous ethics approval.</i></p>	
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	<p><i>HOWEVER, if there have been significant changes to the original research design which have ethical implications or recruitment of a cohort of participants will be undertaken through Winchester, then the project will require ethics review and you should apply for approval, CONTINUE.</i></p> <p><i>If you answer NO, CONTINUE.</i></p>	
6.	Is the research collaborative?	
		No
	<p><i>If you answer YES:</i></p> <ul style="list-style-type: none"> • <i>where the Principal Investigator (PI) of the research is located at another institution, it is their responsibility to seek ethics approval, including partner research sites. The outcome of ethics review by that institution should be communicated to UREC for formal recording. To do this complete Form 2 and include evidence of the previous ethics approval.</i> • <i>where the PI is located at Winchester, then the project will undergo scrutiny as per Winchester's</i> <p><i>Ethics Policy, CONTINUE.</i></p> <p><i>If you answer NO, CONTINUE.</i></p>	
7.	Is the research being conducted in another country?	
		No
	<p><i>If you answer YES, please read the following:</i></p> <p><i>Where a project is conducted in another country, the researcher should consider if it is possible to obtain ethics review by a local research ethics committee or other relevant body. The outcome of such a review by that institution should be communicated to UREC for formal recording, along with a project outline. To do this complete Form 2.</i></p> <p><i>If this is not possible, the project should be reviewed by the University of Winchester, either at Faculty level or Committee depending on the nature of the proposed work, so CONTINUE.</i></p>	

8.	Does the research involve the use of documentary material, papers, literary works or archive documents <u>in the public domain</u>?	
	Yes	
	<p><i>Use the Policy to help you answer this question.</i></p> <p><i>If you answer NO because the works are in a private archive or closed collection, do the following: complete Form 2, including details of the nature of the private /closed collection and provide evidence of the permission to use this material for research purposes.</i></p> <p><i>If you answer YES, you need to formally register your project with UREC, along with a project description. To do this complete Form 2.</i></p>	
9.	Does the research involve the animals?	
		No
	<p><i>If you answer NO, CONTINUE.</i></p> <p><i>If you answer YES, you need to formally register your project with UREC, along with a copy of the relevant licence (if required). To do this complete Form 5.</i></p>	
10.	Does the research involve environmental interventions?	

		No
	<i>If you answer NO, CONTINUE.</i>	

	<i>If you answer YES, you need to formally register your project with UREC, along with a copy of the relevant licence (if appropriate). To do this complete Form 2</i>	
11.	Does the data you will collect contain <i>any</i> information that could be linked back to participants or that might identify them (e.g. name, address, photo, email)?	
		No
	<i>If you answer NO, you need to formally register your project with UREC. To do this complete Form 2. If you answer YES, CONTINUE.</i>	

- Reaching the end of these questions, **either** you will have been directed to complete a specific additional form **or** you should continue to section 2.

If you are still unsure whether you need ethics review or not, please re-read The Policy and email your query to ethics1@winchester.ac.uk with details of your project.

SECTION 2

DETERMINING THE LEVEL OF ETHICS REVIEW REQUIRED

<i>Please mark with an as appropriate</i>	Y E S	N O
Does the research involve individuals who are vulnerable?		

<p><i>For example: vulnerable children, over-researched groups, people with learning difficulties, people with mental health problems, young offenders, people in care facilities, including prisons. For a note on research with children, see Appendix 2 of the Policy.</i></p>		
<p>Does the research involve individuals in unequal relationships e.g. your own students?</p> <p><i>Please note:</i></p> <ol style="list-style-type: none"> 3. <i>students recruited via SONA are not considered 'your own students.' If you intend to re-cruit widely across the University or your Faculty (e.g. through snowball sampling or a mail shot) you do not need to consider such students as your own, even if some participants may be students you are directly involved with. Only tick "yes" if you are targeting your own students specifically.</i> 4. <i>if you are an undergraduate or postgraduate student carrying out research with children in either a school or early years setting, these DO NOT come under the category of your 'own students.'</i> 		
<p>Will it be necessary for participants to take part in the study without their knowledge and consent at the time?</p> <p><i>For example: covert observation of people in non-public places, use of deception. See Appendix 2 of the Policy.</i></p>		
<p>Will the study involve discussion of sensitive or personal topics?</p> <p><i>For example: (but not limited to) participants' relationships, emotions, sexual behaviour, experience of violence, mental health, gender, race / ethnicity status or experience, political or religious affiliations. Please refer to the Policy.</i></p>		

<p>Is there a risk that the highly sensitive nature of the research topic might lead to disclosures from the participant concerning their own involvement in illegal activities or other activities that represent a threat to themselves or others which may need onward reporting?</p> <p><i>For example: sexual activity, drug use, illegal activities or professional misconduct.</i></p>		
<p>Might the research involve the sharing data or confidential information beyond the initial consent given?</p>		
<p>Might participant anonymity be compromised at any time during or after the study?</p> <p><i>For example: will the research involve respondents using the internet, social media, or other visual /vocal methods where respondents may be identified?</i></p>		
<p>Is the study likely to induce severe physical harm or psychological distress?</p>		
<p>Does your research involve tissue samples covered by the Human Tissue Act (2004)?</p>		
<p>Is there a possibility that the safety of the researcher may be in question?</p>		

<p><i>For example: research in high risk locations or with high risk groups.</i></p>		
<p>Does the research involve creating, downloading, storing or transmitting material that may be considered to be unlawful, indecent, offensive, defamatory, threatening, discriminatory or extremist?</p> <p><i>If you answer YES to this question, you must also contact the Director of IT Services, who must provide approval for the use of such data.</i></p>		

Answering **NO** to **all** these questions means your project is eligible for Faculty level ethics review. You now need to complete Form 3.

Answering **YES** to **any** of these questions means your project will require Committee ethics review. You now need to complete Form 4.

Appendix 2

RESEARCH ETHICS FORM 2

REGISTERING MY PROJECT

GUIDELINES

This form is for staff and students and you will be completing it as a result of working through Form 1. Form 1 has indicated your project does not need ethics review, but you do need to register your project with UREC. Before completing this form, you need to:

1. Re-read *The Research Ethics Policy*.
2. If you are a student, confirm your supervisor agrees that ethics review is not needed for your project.

It is your responsibility to follow the University's Policy on the ethical conduct of research and to follow any relevant academic guidelines or professional codes of practice pertaining to your study when answering these questions.

The questions in this form are intended to gather information to record your project.

If any aspect of your project changes during the course of the research, you must notify the Chair of UREC.

SECTION 1

YOUR DETAILS

	Your name: LJH		
	Your department: Department of Applied Social Sciences, Forensics and Politics		
	Your Faculty: Humanities and Social Sciences		
	Your status:		
		Undergraduate Student	Staff (Professional Services)
		Taught Master YES	Staff (Academic)
		Research Degree Student	Other (please specify below)

	Your university email address: *****
	Your telephone number: *****
	<u>For students only:</u>
	Your degree programme: MSc Applied Criminology
	Your supervisor's name: C
	Your supervisor's department: Department of Applied Social Sciences, Forensics and Politics
	Your supervisor's email: *****

SECTION 2

SPECIFIC PROJECT RECORDING REQUIREMENTS	
	Based on your answers from Form 1, select the relevant category for your research:
	My project is Audit or Service Evaluation. N/a
	My project required external ethics review or approval. n/a In your project description in the next section, please include a copy of the relevant external ethics approval.
X	My project involves the use of documentary material EITHER in the public domain OR in a private /closed archive to which I have been granted access. In your project description in the next section, please indicate the nature of the contract with the owner /curator of the documentary material and provide evidence of the permission to use this material for research purposes if not in the public domain. YES – public domain

	<p>My project involves environmental interventions. n/a</p> <p>In your project description in the next section, please indicate the procedures in place for the restoration of the site on completion of the research.</p> <p>Licence details (if appropriate):</p>
	<p>My project is collaborative and the Principal Investigator (PI) is based at another institution. n/a</p> <p>Please include details of the ethics approval /opinion given with this form.</p>
	<p>My project is underway and I have moved institutions to Winchester. n/a</p> <p>Please include details of the ethics approval /opinion by original institution.</p>
	<p>My project is being conducted in another country and I have obtained approval there. n/a</p> <p>Please include details of the ethics approval /opinion by a local research ethics committee or other relevant authority.</p>
	<p>My project is not gathering any data or information that could be linked back to participants or that might identify them (e.g. name, address, photo, email).</p> <p>Please ensure you fully describe the nature of the data you will collect. Yes</p>
<p>If none of these apply, you need to complete Form A DIFFERENT FORM.</p>	

SECTION 3

YOUR RESEARCH	
2.1.	Project title: The Jury: Alchemy and Annulment
2.2.	Start date:
2.3.	Expected completion date:
2.4.	Expected location of data collection: (e.g. school, workplace, public place, University premises etc.)

PROJECT DESCRIPTION

Alchemy and Annulment: The Power of the Jury as Portrayed in Popular Culture. (Working title)

Introduction

This will be a study of the Jury as portrayed in popular culture – looking at annulment by jury and how this is portrayed, and the transformative

(alchemical) nature of jury service – is this necessary for any annulment to occur?

Definition of Annulment by Jury

This is also known (USA) as jury nullification and sometimes a perverse verdict (UK). Annulment occurs when juries, despite the evidence clearly showing legislation has been breached, acquit and, thereby, annul the legislation, at least as it applies to the case at hand (as I have defined in my quantitative research proposal 16th May 2022).

Aims of the research

I will consider the representation of annulment by jury in two television shows: *Ally McBeal* (1997-2002 produced by David E Kelley on Fox) and *The Jury* (2002 – 2011 produced by Peter Morgan for Granada Television) thus covering portrayal in the USA and here in the UK. I will consider the way that the power of the jury to annul is, at once, hidden and also blatantly obvious. Hidden, because judges will always direct a jury that the judge is to decide the law and the jury is to decide the facts. Furthermore, the judge has enormous control over the evidence which the jury will even see during the trial whereas Lysander Spooner (1852), Kenn d'Oudney (2016) and others will argue that the jury should be deciding what evidence they get to see.

I say blatantly obvious because, since jury deliberations are private and they do not explain their reasons for reaching their verdict, they can, obviously, disregard the law if they wish. In a discussion of pros and cons of the jury in "Criminology", Tim Newburn states (in the pro column) that 'Juries are a barrier to the enforcement of unpopular laws' (2017:686). This, an acknowledgment, surely, of annulment by jury. Ever since *Bushell's case* (*Bushell's Case*, 124 Eng. Rep. 1006 (C.P))

this power of the jury and its independence from the Judge has been recognized and there is a plaque in the Old Bailey to commemorate the case and the principle. However, juries are not routinely told about this power.

We all know that juries are frequently under attack for various reasons (accusations of racial bias, not understanding complex evidence, not representative etc etc). The work of Cheryl Thomas and the UCL Jury project (<https://www.ucl.ac.uk/laws/research/ref-2014/trial-jury>) has gone a long way to disprove many accusations. However, there is little research into the concept of annulment by jury. This is partly because, at least in this country, it is a criminal offence to ask the jury questions about their deliberations.

This enormous power which the jury has may well be the reason for the attack and proliferation of untruths by the policy-makers (cheered on by the media) about juries.

My study aims to look at how and/or if the question of annulment by jury is dealt with in popular culture. Is popular culture trying to keep this knowledge from us? of course, looking at this in the context of popular culture means that there are no issues of transgressing the law by trying to speak with actual juries, nor issues arising from setting up mock juries.

There have been studies on the image of Jury in popular culture, such as Hambley (1993), but they do not deal specifically with annulment by jury and present a broader sweep of the popular sources than is proposed here.

The information available on annulment by jury tends to be from essays examining the history of the phenomenon – such as ‘Decline of the ‘Little Parliament: Juries and Jury Reform in England and Wales.’ Lloyd-Bostock, Sally, and Cheryl Thomas (1999), Books such as ‘Verdict according to Conscience’ by Thomas Andrew Green and of course ‘Trial by Jury’, Lysander Spooner. However, they do not address how the phenomena is currently at play, nor how

those purporting to govern us wish us to see the phenomena. Hence the reason for this study.

Method

I will conduct a thematic review of 'Ally McBeal' and 'The Jury'. I will consider the representation of annulment by jury in these two series. I will be considering the following questions:

1. How is (or is) this power portrayed in these tv shows?
2. What are the reasons for different portrayals?
3. Is there an effort to keep this power hidden from the people? Or to make it seem the stuff of fantasy/ a utopian ideal?
4. Are we placed in the role of the juror in these shows – thereby forcing us to make the decisions in isolation and, thereby, keeping us unaware of the power of the jury as a whole?
5. Is there shown an alchemical, healing process that occurs when these 12 strangers come together?
6. Is there shown to be something more to the process than just the application of the law as explained by the Judge? How is this represented in the drama?
7. What is the dynamic at play between the Judge and the Jury in these shows? Is the Judge hampering the power of the Jury?
8. Do these shows look at the jury as characters in their own right? Are the jurors made to appear inconsequential/ bland?

Summary

The study will focus on annulment by jury as portrayed in these shows and the personal growth (occurring within the process of jury service) which may be necessary in order to wield this power. The study will be a detailed, thematic analysis, of the two tv shows. The questions I have raised are all pertinent to the main issue of annulment and will be the factors in mind when conducting the

research. The final scope will obviously be dependent upon the results of the research.

References

Burnett, D.G., 2002. *A trial by jury*. Vintage.

Green (1998) *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* University of Chicago Press

Hambley, G.E., 1993. The image of the jury in popular culture. *Legal Reference Services Quarterly*, 12(2-3), pp.171-216.

Josie Outlaw (2013) The True Duty of the Jury, online at <https://www.youtube.com/watch?v=l7nqdV7wV2k> (accessed 16th May 2022)

Lloyd-Bostock, Sally, and Cheryl Thomas. Decline of the 'Little Parliament: Juries and Jury Reform in England and Wales. *Law and Contemporary Problems*, vol. 62, no. 2, 1999, pp. 7–40, <https://doi.org/10.2307/1192251>. Accessed 15 May 2022.

Newburn, T (2017) *Criminology* Third edition, Routledge

D'Oudney, K (2016) *Democracy Defined: The Manifesto* SCORPIO RECORDING COMPANY (PUBLISHING) LTD.; 2nd edition

Spooner, L., 1852. TRIAL BY JURY. *Boston, MA.*(Quoted by chapter and section from *Free Political Institutions: Their Nature, Essence and Maintenance. An Abridgement and Rearrangement of Lysander Spooner's "Trial by Jury"*(Boston, 1852).

Thomas, C (2010) *Are Juries Fair?* Ministry of Justice online at <https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf> (Accessed 12th May 2022)

Thomas, C *Sex, Drugs, the Internet and Juries* (10 March 2011) UCL Minds Lunch Hour lectures online at <https://www.youtube.com/watch?v=c7Uoetud3zc&t=1617s> (Accessed 14th May 2022)

SECTION 4

DECLARATION

I have read and understood the University of Winchester Research Ethics Policy.

I understand my responsibilities as a researcher as described in the University of Winchester Research Ethics Policy.

I declare that the answers above accurately describe the research as presently designed and that a new application will be submitted should the research design change in a way which would alter any responses given in Form 1 or here.

Researcher's signature: L.J. H

Date: 26/05/22

For **students** (undergraduates, masters, postgraduate) only:

The student has the skills to carry out the proposed research. I undertake to monitor the student's adherence to the relevant research guidelines and codes of practice.

Supervisor's signature: C	Date: 26/05/22

Please submit this form along with Form 1 to the University Research Ethics Committee via email to Ethics1@winchester.ac.uk.