

Juries, Democracy and the European Union

*When it becomes serious, you have to lie. Jean-Claude Juncker
President, European Commission*

Whilst we recognise the role of juries in dispensing justice – namely establishing the truth and working together with the state, their role in facilitating democracy is less well known. Without juries and jury trials our understanding of democracy, especially the concept of the sovereignty of the people, would be very different. Perhaps our ‘democracy’ would have already come to resemble the European Union’s version – a figment of the ruling establishment’s imagination under which the sovereignty of the people something that, if it is recognised at all, can be ignored when inconvenient to their aims.

Alexis de Tocqueville wrote about the influence of jury service on the education of citizens in social responsibilities towards society in his book in *Democracy in America*. Yet jury service goes further because it is an acknowledgement that the state cannot operate alone. The citizenry are required to participate actively and the collective decision of the jury (about truth and therefore, guilt) is the correct one. The state in particular recognises the skills (listening, analysis and consensus evaluation), trustworthiness (honesty and integrity) and commitment (to justice and the rule of law) of the people.

The electorate is a somewhat larger jury, whose ability to determine the right political party (or parties) to form the government is largely accepted by everyone. Without this longstanding tradition of an active, participatory citizenry forming juries, whose collective judgement is ‘truth’ (hopefully based on factual evidence) and respect for the rule

of law, there can be no functioning democracy as we understand it.

Historically there is also a close connection between a 'jury' and the limitation of state power. In *Magna Carta* (1215), in the forerunner of a rudimentary Parliament we find a council of 25 nobles established to keep the sovereign in check. There was also a real jury (of fellow men) to prevent abuse of absolute power through imprisonment of freemen. In time, as jury trials evolved, the need to review evidence and establish the facts became the foundation of determining guilt or innocence and therefore of dispensing justice.

The Roman law, which had considerably more influence on the Continent, was somewhat different from our common law in establishing guilt or otherwise. It amounted to listening to the rhetoric of the 'for' and 'against' orators (lawyers etc.) and accepting the better presented argument. The classical definition of rhetoric was 'the art of pleading well'. Establishing 'facts' as such did not come into it. Our modern understanding of 'facts' became commonplace only after 1660 with the founding of the Royal Society. Previously 'facts' were deeds, derived from the Latin *facio* 'I do', and this older usage of the word still occurs in expressions such as 'accessory after the fact'.

Currently, the electorate cannot operate as a jury in determining the most appropriate form of government and rule of this country in the EU Referendum (UK-based democracy or Brussels-based authoritarian corporatism) because it is being denied the necessary factual evidence. The state, in the form of the government apparatus has prejudiced its judgement by distorting the evidence, instead of working with the jury (the electorate) to further democracy,. Consequently we are left, as in Shakespeare's, works to establish the truth for ourselves through tokens or signs and the rhetoric or claims being proposed by the advocate, as in the Roman law tradition.

In summary, our view of democracy, sovereignty of the people and the need for the electorate to be able to judge on the basis of facts is not necessarily shared in the ruling establishment of the EU because of their different historical evolution and precedence. Part of this difference comes from the world of Roman law and the reduced role of trial by jury which, where they exist, is much more limited. Electorates can in the EU's strange world be legitimately misled by rhetoric (or deceived by lies) since the most eloquent are the final arbiters of truth. And as we regularly see, the will or sovereignty of the people can be ignored in a way that is naturally alien to us arising from our longstanding traditions.

Could we ever change this different EU vision to more closely align with ours? In effect, to achieve a paradigm shift of assumptions, objectives, knowledge and experience amongst the ruling elite? Mr Cameron's brilliant Oxford-educated rhetorical skills (the triumph of style and superficiality over logic and substance) have failed so far. So he, his cronies, fellow travellers and the ruling elite have turned on us, spreading fear and despondency in order to get their way and in doing so are prejudicing the operation of democracy. The jury can no longer have any reasonable doubt – the facts so far don't speak for remaining.