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Some Myths about the Jury System from the Perspective of American Cinematography

The popularity of the jury in the US legal system makes it, on the one hand, an attractive research subject for many specialists in American Studies, and, on the other, a source of inspiration for Cultural Studies. Many films and TV series create general myths about the structure, operation and character of jury trials in the United States. Among the most typical myths are: the 12-member requirement, the necessity to achieve unanimous verdicts, and vast politicization of the *voir dire* procedure. The topic of law and culture is very attractive among American scholars, as both areas have a significant impact on the everyday life of not only American society, but also other societies around the world. Facing the complexity of popular legal culture, the purpose of the article is to confront the most popular myths of jury trials shaped by specific works of American cinematography, such as *12 Angry Men*, *The Verdict*, *Runaway Jury*, *Murder One*, and *Law and Order*. The most common misunderstandings of how the jury system works shall be revealed by a brief analysis of Supreme Court precedents referring to jury functioning in the contemporary US legal system.

Introduction

In the United States, the jury is one of the most important and significant guarantees of the accused in criminal trials, as well as defendants in civil trials. It is also, along with the principle of the adversary system, one of the two major elements distinguishing the common law litigation from the trials held in continental European states. The popularity of the jury in the U.S. legal system makes it, on the one hand, an attractive research subject of many specialists in American studies (lawyers, political scientists, sociologists), and, on the other, a source of inspiration for cultural studies, as well as contemporary artists and authors of film and literature. It is important to acknowledge that the image of the jury in contemporary societies is slightly different from its legal status, which leads to the creation of various myths concerning its operation and structure. Among the most typical myths are: the 12-member requirement, the necessity to achieve unanimous verdicts, and vast

politicization of the *voir dire* procedure. The jury system relies heavily on social participation in the institutionalized legal world, and thus it often depends on the individual approach of particular jurors to their service. Every year more than thirty million Americans receive jury summons with a few millions of them serving in jury duty (National Center for State Courts, www.ncsc.org), facing a tough and controversial challenge of deciding about the future of the people being parties in criminal and civil trials. High social confidence in the jury system only strengthens scientific interest in that institution, encouraging to study its actual role in criminal and civil litigation, as well as to analyze the phenomenon of its current popularity. The topic of law and culture is very attractive among American scholars, as “popular legal culture has a complex relationship to law, lawyers, and the legal system” (Asimow, Mader 7). Both areas have, by no means, a significant impact on everyday life of American society as well as other societies around the globe. Facing the complexity of popular legal culture, the purpose of the article is to confront the most popular myths of jury trials shaped by the selected works of American cinematography. The most common misunderstandings of how the jury system works shall be revealed by the brief analysis of Supreme Court precedents referring to the functioning of the jury in the contemporary U.S. legal system.

History

Historically, the genesis of the American jury may be traced back to Medieval England with the birth of the common law system, and reforms of legal procedure undertaken by King Henry II. In order to limit the influence of primitive means of evidence such as trial by ordeal of fire and water or trials by battle (cf. Bartlett), the King signed two ordinances, Assize of Clarendon (1166) and Assize of Windsor (1179), which initiated a new model of evidence with knights and freemen serving under oath (Moore 37-40; Devlin 5-9). Additionally, the role of ordinary men participating in the system of justice was shaped in the famous article 39 of The Great Charter (Magna Carta), stating that “no freemen shall be taken or imprisoned or disseized or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land” (Spooner 20-50). The emergence of the jury system is compatible with the establishment of the central system of Westminster courts, which became quickly the main source of solving criminal and civil disputes in the country. According to R.C. van Caenegem, “the fact that the central courts adopted the jury as their ordinary mode of proof strengthened their popularity” (63). Therefore the jury became a crucial element of English legal procedure around 13th-14th century, being at first responsible for assisting the judge in his adjudication (Jost 15), and later using its power to decide about the evidence in civil and criminal cases. In the centuries to follow trials by jury were established in all English counties with three types of juries operating: civil trial jury, criminal trial jury and grand jury. The civil jury was responsible for the determination of the facts of the case and deciding about the issue of liability, criminal jury decided the facts which determined guilt or innocence of the accused, and the grand jury, the only such institution to meet before the trial, determined whether there was sufficient evidence for a person to be charged with a crime (cf. Jonakait, *The American*

Jury System). An analysis of their functioning in English common law allows to find repetitive patterns concerning their form, structure and powers: Medieval criminal juries consisted of twelve members, and reached their verdicts according to the principle of unanimity, whereas most grand juries made their decisions consistent with the prosecution (cf. Levy; Moore; Spooner; Devlin).

The structure and powers of the American jury are based on its English predecessor, which could be visible already during the colonial era. Certain British colonies in North America received statutes which referred to basic rights and freedoms of the people, among which there were provisions concerning the right to a trial by jury¹. Apart from serving simply as institutions solving legal disputes among colonists, juries played also a political role aiming to limit the powers of the British Crown (Solomon 1341), which made them an influential actor in the emancipation process of Americans. One of the best examples of such an approach could be visible in the famous acquittal decision of the colonial jury in John Peter Zenger's trial (cf. Jarrow). Among the Founding Fathers there was clear consensus about the necessity of the application of the jury system to criminal and civil procedures of the new American legal system:

The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government (Hamilton, Madison, and Jay 83).

By calling it "the only anchor ever yet imagined by man, by which a government [could] be held to the principles of its constitution" (Jefferson, qtd. in Gorgoglione 488), the Founding Fathers established the trial by jury as an indispensable and characteristic element of American legal procedure.

The constitution

The federal constitution, signed in 1787 and ratified in 1788, came into force without a catalogue of civil rights and freedoms, which led to its first, and largest up-to-date, amending process. Despite that omission, however, in the main body of the constitution there was one reference to a civil right – the trial by jury. In Article Three, regulating the functioning of the judicial department, the Founding Fathers implemented an important provision regarding criminal procedure:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make (Article III, sec. 2, cl. 3).

Such an exception proved the unique position of the jury within the American legal system, but the main provisions concerning various types of jury trials were to be established in the amendments of the Bill of Rights. Three out of ten amendments

¹ A good example of such documents are *Massachusetts Body of Liberties* (1641) and *Pennsylvania Charter of Rights and Privileges* (1701).

referred to some type of legal procedure involving the operation of the jury. In the Fifth Amendment which concerned the basic procedural guarantees there was a reference to a grand jury:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger (Fifth Amendment, 1791).

Thus, the grand jury became an indispensable element of federal pretrial procedures, forcing the prosecution to present the collected evidence in a case to a collegial body of representatives of the American society, who had power to decide about the future legal status of the suspect. An analysis of the historical use of the American grand jury in criminal proceedings reveals some formal aspects of its functioning. The institution consists of 16 to 23 members chosen for a fixed period of time (most often 18 to 24 months), during which they meet several times in order to determine the evidence collected by prosecution in a large number of cases. The grand jury makes its decision with a simple majority of votes, and that decision is binding for the prosecution (cf. Fairfax).

The next amendment, referring to the rights of the accused in criminal trials established the first type of trial jury:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law (Sixth Amendment, 1791).

The role of the jury in criminal trials concentrates on the determination of the evidence and the decision about the issue of guilt of the accused. It is the most common type of the jury appearing in American courts, and the only one which was found among the most fundamental rights, "essential to [...] ordered liberty" (Cardozo in *Palko v. Connecticut* 302 U.S. 319, 1937).

The last of the three procedural amendments of the Bill of Rights refers to the principles of civil litigation and introduces another type of jury trial:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law (Seventh Amendment, 1791).

The role of the civil jury is to determine the facts of the case, decide which of the two parties presented stronger evidence, and whether the defendant should be held liable for damages. Despite the fact that trial juries are becoming a rarity in contemporary civil trials in many countries, the American civil jury still has an impact on the outcome of legal procedure in state courts (Scott 57-75).

The Jury as a muse of the artists

The popularity of jury trials taking place in both federal and state levels, its significant position within the common law theory, as well as statistics proving that the

majority of Americans have participated or know people who have participated in trials as jurors, makes that institution a very rewarding object of admiration for various artists writing books or creating movies in American culture. As M. Asimow and S. Mader observe, "the jury is supposed to be the conscience of the community", as the majority of Americans have "faith that the jury system is the best way to achieve justice" (186). Yet in 1830s A. de Tocqueville noticed a significant social position of the jury and the willingness of the American people to undertake various initiatives, thus constituting an active civil society (de Tocqueville). But it is in the last few decades with the growth of mass-media and the process of Americanization of the cultures around the globe that the popularity of the jury as an element of American culture became so significant. An increasing number of films referring directly or indirectly to the institutions of the U.S. legal system makes the jury one of the most common protagonists of contemporary American popular legal culture. Among movies and series presenting various aspects of the jury system which became known worldwide, some played a significant role in shaping the social understanding of its functioning, and created certain myths about its structure, features and powers. It is important to acknowledge that the titles which became the basis of the analysis were chosen by the Author among several other creations of American cinematography, as they all construct certain myths about the current character and role of the jury in the U.S. legal system. The purpose of the research was to confront the image of the jury created by American films and series with the actual legal provisions and judicial interpretations determining the status of the contemporary jury system in the United States. The Author analyzed the image of the jury presented in nine motion pictures, among which were such movies, or series, as:

- *12 Angry Men* (dir. Sidney Lumet) – a 1957 movie adapted from a television series, in which one could observe an analysis of a trial case from the perspective of jury members whose opinions were evolving under the influence of each other;
- *...And Justice for All* (dir. Norman Jewison) – a 1979 movie presenting the life of a young lawyer fighting with the corrupt system of justice, in which one can observe mechanisms of the functioning of a jury, as well as the relativity of the concept of fair trial;
- *The Verdict* (dir. Sidney Lumet) – a 1982 courtroom drama (being a remake of a 1946 movie) presenting a medical malpractice trial in which the defense lawyer is trying to convince the jury about the innocence of his client;
- *Law and Order* (created by Dick Wolf) – a 1990-2008 legal drama series telling numerous stories about people heading various legal positions within the justice system. In several chapters the jury plays an important role by deciding the outcomes of criminal trials;
- *My Cousin Vinny* (dir. Jonathan Lynn) – a 1992 comedy in which an unexperienced lawyer represents his relative in a murder trial, thus showing some stereotypes and myths about the functioning of courts and operation of the jury;
- *Murder One* (dir. Steve Boccho) – a 1995 TV series, showing a criminal trial from the perspective of law enforcement institutions and their cooperation with the jury;
- *A Time to Kill* (dir. Joel Schumacher) – a 1996 movie based on a novel by John Grisham about a murder trial of an African-American father who killed two

white rapists of his daughter, and the role of the jury to determine the issue of guilt in a Southern state;

- *Runaway Jury* (dir. Gary Fleder) – a 2003 movie based also on Grisham’s novel, showing possible manipulations during the process of jury selection (*voir dire*) and the conduct of a trial during which the jury is under the influence of external actors;
- *Citizen Verdict* (dir. Philippe Martinez) – a 2003 movie concerning a controversial idea of a criminal litigation broadcasted to millions of Americans who could become jury members by voting for or against the death penalty for the one who was accused of murder;

All of the above listed motion pictures directly refer to the functioning of the jury as a whole or to individual role of jurors in the decision-making process of that institution. Apart from cultural legacy and high artistic values of the majority of these titles, it is important to notice that they all have impact on the creation of several myths about the American jury system. Five most important myths shaped by these movies are:

- Myth #1: The jury appears only during the trial;
- Myth #2: Trial by jury is guaranteed in all cases;
- Myth #3: The jury (always) consists of twelve members;
- Myth #4: Jury members must act unanimously in all criminal proceedings;
- Myth #5: The selection procedure of jury members is partisan and unjust.

Myth #1: The jury appears only during the trial

Social knowledge about the role of the jury stemming from motion pictures clearly places the institution in the center of a trial, in the courtroom during civil or criminal litigation. Members of the trial jury are obliged to be present during the evidential proceedings, as they should listen to the testimonies of the witnesses, observe material evidence, and confer with the judge’s instructions. At the end of the procedure, they ought to discuss the facts of the case with other jury members in a special deliberation room, in order to achieve a final verdict in the case. Such a classical picture emerges from most of American films and series about the jury. There is no doubt that due to its attractiveness, it is the trial jury, both criminal and civil, that becomes the most popular reference in Hollywood cinematography.

On the other hand, one can rarely watch a movie where the grand jury proceeds. From the legal perspective, it is one of the three types of the jury mentioned in the provisions of the Bill of Rights. It means that whenever a federal prosecutor collects evidence against a suspect, he must present this evidence to a body of laymen whose role is to determine whether criminal charges should be brought. In the process of constitutional interpretation, the Supreme Court did not declare a fundamental character of the grand jury, which means that the states have power to decide about it application in state criminal proceedings. According to its current legal status, the grand jury is employed by almost half of the states, but its use depends on the type of crime investigated (cf. Brenner, Shaw). The lack of a fundamental character of the grand jury does not explain its rare occurrence in American movies. It is rather the way these institutions proceed, as well as the pre-trial stage of procedure which makes

them less attractive for screenwriters and directors. The members of the jury, most often twenty-three, meet face-to-face with the prosecutor and analyze the collected evidence. They may ask questions, but they have no right to confront the defendant, whose fate is in their hands. The grand jury reaches its decision by the majority of votes, and, according to statistics, almost 95% of decisions end in an indictment (Jonakait, *The American Jury System* 3; Doyle 4-8). It may be one of the reasons of rare reference to that institution, if the outcome of its proceedings is so easily predictable.

Paradoxically, from the historical perspective the grand juries served as a main shield and safeguard against the government, and a protection of the defendants from unjust and unfair accusations. Both in the Middle Ages and in the beginning of American statehood it played an important legal and social role, and had been called "the voice of the community", the "Grand Inquisition", as well as "the sword and shield of justice" (cf. Brenner, Shaw). Later, however, it received much criticism, and by the 1880s almost twenty states allowed direct charges by the prosecution (Bodenhamer, Ely, 129). On the one hand, the famous statement made by judge Sol Wachtler, that a "grand jury would indict a ham sandwich in the death of a pig" (qtd. in Cohan 251), confirms small confidence of the grand jury among legal professionals. Lacking a fundamental character, today's grand jury becomes more of a traditional element of the common law than an institution capable of making a significant impact in the criminal justice system. On the other hand, however, the United States are a leader in using grand juries in pre-trial proceedings, and that every year many Americans are called for grand jury duty. In 1991, the U.S. Supreme Court reminded that the grand jury "played a unique role" in the American "criminal justice system" (*U.S. v. R. Enterprises, Inc.* 498, U.S. 292, 1991). Finally, it is the grand jury whose decision determines whether criminal trial jury will have a chance to convene.

Myth #2: Trial by jury is guaranteed in all cases

The United States are an example of a country which has a very broad catalogue of the rights of the accused in criminal trials. The federal constitution in the Fifth, Sixth, and Seventh Amendments enforces various procedural rights which should not be violated by the federal government in order to achieve a just and fair verdict. Since 1930s, the Supreme Court begun the process of interpretation of the due process clause of the Fourteenth Amendment and initiated selective incorporation of selected rights of the accused to the states which meant that these rights received a fundamental character and states were bound to apply them in their respective legal systems (Laidler 411-430). Accordingly, the Court guaranteed the fundamental character of the right to counsel, protection against self-incrimination, the right to speedy and public trial, protection from double jeopardy, protection against unreasonable searches and seizures, ban on cruel and unusual punishments, and the right to trial by jury in criminal cases (Laidler 411-430).

An analysis of many courtroom dramas allows to derive a conclusion that the jury is an indispensable element of any trial that takes place in American courts, and that the guarantee of a trial by jury is an absolute, unlimited right. According to the constitution and its later interpretation by the Court, only criminal trials constitute a fundamental right to a jury. As Justices noted,

The deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement qualifies for protection under the Due Process Clause of the Fourteenth Amendment, and must therefore be respected by the States" (*Duncan v. Louisiana* 391 U.S. 145, 1968).

However, even the right to trial by jury in criminal cases is not absolute. In 1989, the Justices modified the *Duncan* precedent and declared that such right is guaranteed only in trials in which the accused is endangered by a sentence higher than 6 months of imprisonment (*Blanton v. City of North Las Vegas* 489 U.S. 538, 1989). Therefore in the case of petty crimes, the right to a trial by jury depends on the provisions of particular states. As a result, the American system of criminal justice consists of bench trials, with single judges deciding about the outcomes of cases.

At the same time, trials by civil juries are held even more rarely. According to R. Jonakait,

Litigants have a right to jury trial in a minority of civil cases. Today civil juries are typically restricted to matters similar to common-law actions, that is, suits seeking money for harms supposedly caused by the defendant (*The American Jury System* 13).

There are three main reasons of the smaller popularity of civil juries. Firstly, the Court has never declared them fundamental, leaving the decision about their usage to the states. Despite the fact that most of the states acknowledge the right to jury trial in civil cases, they differ in the scope of that right, depending on the use of the civil jury on the subject matter jurisdiction (cf. Litan). Secondly, the binding character of the Seventh Amendment's guarantees to the federal government was historically limited by the Court, which excluded the civil jury from various types of federal cases. As an example, in the 1940s the Justices declared that when monetary claims against the government were subject of a civil trial, then the trial by jury did not apply (*Galloway v. U.S.* 319 U.S. 372, 1943). Thirdly, according to some analysts, civil juries are becoming a relict today, and even in the United States, where their popularity exceeds other common law jurisdictions, parties more often waive their right to jury trial in civil than criminal cases (cf. Lilly; Scott).

The fact is that bench trials are rarely a subject of analysis of American movies and series, and a single judge presiding over the case may be most often viewed during preliminary hearings procedure. One of the reasons is the type of cases presented in courtroom dramas, as the criminal justice system is more likely to be presented in cinematography than civil lawsuits. The challenges and ambiguities of American criminal law and procedure, such as the scope of the searches and seizure, the ways in which plea bargaining is conducted, the role of attorneys during the trials, the impact of the crimes on people's safety, as well as controversies around verdicts in criminal cases, arouse high social interest. As an important element of that interest, the right to trial by jury increases social confidence in the outcome of the case. American movies create a popular belief that when the case reaches the trial stage, the jury appears as if it was an indispensable element of the scene, or an actor whose appearance, even in the background, fills the missing part of that scene.

Meanwhile, the movies do not promote the basic idea of American justice system, which is to settle the disputes most effectively without entering to the trial stage. As R. Jonakait observes, "most criminal cases [...] never go to trial because they are plea

bargained”, as the defendant “enters a guilty plea in exchange for concessions” (*The American Jury System* 4). A similar situation may be observed in civil trials, which do not occur due to summary judgments, procedural mistakes made by one of the parties, or even overloaded courts, which encourage the parties to reach settlements (*The American Jury System* 10).

Myth #3: The jury (always) consists of twelve members

It is probably the most common myth concerning the American jury. Movies and series presenting jury trials most often show twelve-person juries, sometimes even referring to the magical number twelve in the titles of their works. Observers who are not familiar with the U.S. legal system may be convinced about the formal necessity of the twelve-person juries, but the Constitution is silent on that issue. Moreover, the 20th-century Supreme Court directly rejected the necessity of a mandatory twelve-person jury in criminal cases, despite the fact that as early as in 1898 it declared that criminal prosecutions may only be fair and just when reached by a unanimous verdict of twelve jurors (*Thompson v. Utah* 170 U.S. 343, 1898). However, in 1970 the Justices confirmed the traditional and conventional meaning of number twelve in the English jury system, neglecting its binding legal character in the United States. The Court focused on the functions of the institution which could be also achieved by a six-person jury. According to the majority opinion,

The essential feature of a jury obviously lie[d] in the interposition between the accused and his accuser of the common sense judgment of a group of laymen... The performance of this role [wa]s not a function of the particular number of the body that ma[de] up the jury (*Williams v. Florida* 399 U.S. 78, 1970).

With the course of time it became clear that the number of jury members was once again confronted by the Court, when eight years later it determined the constitutionality of less-than-six-person juries. In a plurality decision the Justices rejected the possibility of a criminal conviction of a jury consisting of five persons. Referring to some studies they noted that larger juries fulfilled more successfully their features, such as broad social representation and effective communication during the deliberation process (*Ballew v. Georgia* 435 U.S. 223, 1978). As a result, contemporary American criminal juries may consist of six to twelve members, similarly to civil juries whose size was determined by the Court in 1973 (*Colgrove v. Battin* 413 U.S. 149, 1973). In practice, however, the number of jury members in criminal cases is bigger than that of their counterparts in civil cases.

When R. Jonakait wrote his important book *The American Jury System*, he used the word “twelve” referring to the functioning of jury more than 350 times! The myth of the twelve-member jury is so deeply rooted within the American society that it is often mentioned while making statements on the operation of the jury system in general, as in the famous criticism of that institution made by Mark Twain, who saw difficulty in “finding twelve men every day who don’t know anything and can’t read” (qtd. in Shapiro 223). There is no doubt that the myth was strengthened by the success of the movie *12 Angry Men*. Even if the exact number of jurors does not play the most significant role in the movie, the process of jury deliberation which

is presented may become effective only in such a collegial body. Furthermore, each hero is known as a Juror with a particular Number, so the viewer quickly becomes attached to the feeling that the jury must consist of twelve members.

What is interesting is that the traditional size of the criminal jury has remained at twelve in other common law countries, such as Canada, New Zealand, Republic of Ireland, and the country which gave birth to the common law jury, England (Vidmar 30). In America, there are studies which prove that the size of the jury has impact on its decisions (cf. Saks; Jonakait "The Supreme Court"; Ferguson 104-105), and there is a conviction that twelve jurors may better safeguard the society "against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge" (*Duncan v. Louisiana*). That conviction is, by no means, confirmed by the movie industry, which either shows serious trials where the presence of a twelve-member jury is mandatory, or simply got used to the historical tradition of common law juries consisting of twelve persons.

Myth #4: Jury members must act unanimously I all criminal proceedings

Similarly to the problem of the jury size, the issue of unanimity of the verdicts of criminal jury is controversial and ambiguous. Having seen Hollywood productions which refer to jury trials one may derive a conclusion that unanimity is a necessary condition of reaching a guilty verdict by the jury. That feeling is intensified by scenes in which one observes tough and long-lasting deliberations among jury members who make numerous efforts to achieve unanimity in their final verdict. For example, as Babcock and Sassoubre note, *12 Angry Men* provides one of the best versions of jury deliberation ever filmed, as "without actual deliberation there can be no fair trial" (638). The essence of that deliberation was the unanimous verdict which had to be reached by the collegial body of jurors. Obviously, such a situation may be observed in real life, as one of the roles of the jury is to "deliberate, free from outside attempts at intimidation, on the question of defendant's guilt" (*Apodaca v. Oregon* 406 U.S 404, 1972). The question arises whether the American legal system provides for unanimity in all jury trials?

Looking generally on all three types of jury operating in the United States, only criminal juries in felony cases are obliged to reach unanimous verdicts, and even not in all jurisdictions, with Louisiana and Oregon serving as an exception (Ferguson 118). Civil juries which determine the strength of the evidence presented during the trial, and decide which party prevails, may reach a non-unanimous verdict. Such a situation occurs in more than thirty states, the federal jurisdiction, however, is obliged to seek unanimity in civil cases (Landsman 401). Majority voting is characteristic of grand jury proceedings, and, as C. Doyle observes, twelve votes of a twenty-three-member jury lead to an indictment, provided that "there is probable cause to believe that the accused committed the crime charged" (2002: 34). Focusing on criminal trials, the issue of unanimity seems deeply rooted in the idea of common law jury as a check on governmental actions. Moreover, it raises such crucial problems as the fair cross-section representation of the community, as well as the concept of reasonable doubt. Both issues were confronted by the Supreme Court in 1972.

In the first case, the defendant claimed that the objections of minority jurors were a sufficient condition to reject the possibility of a non-unanimous jury conviction, as the right to a trial by a socially representative jury would be violated. The Court neglected such an argument, declaring that the jury was not an institution in which people should deliberate and vote according to their affinity to a minority group (*Apodaca v. Oregon*). In the second case, the defendant stated that non-unanimous verdicts were inconsistent with the constitutional necessity of proving guilt beyond reasonable doubt. The Court, once again, allowed the less-than-unanimous conviction, as the majority decision of the jury could also be based on the reasonable doubt standard (*Johnson v. Louisiana* 406 U.S. 356, 1972). Both decisions departed from historical features of English and early American juries, giving the states the power to allow non-unanimous verdicts. In fact, not all majority verdict alternatives were accepted, and today the smallest accepted majority in a twelve-member jury is ten.

Clearly, because movie plots most often show criminal trials of the defendants accused of committing felonies, juries responsible for deciding about their guilt are obliged to reach unanimous verdicts. The other reason is to show the real essence of jury deliberation with jurors discussing, convincing others, and often quarrelling over the evidence and final verdict. As the Court noted in one of its precedents, "with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process" (*Powers v. Ohio* 499 U.S. 400, 1991). Jury decision-making appeals to the ideals of deliberative democracy, which were praised in many movies, like *Verdict*, *Runaway Jury* or *12 Angry Men* serving as the best example:

[...] [I]t is hard to imagine a better dramatization of deliberative process as we hope it will work, in which bias and indifference yield to integrity, in which strangers listen to one another, in which difference is a strength (Babcock, Sassoubre 642).

Therefore, the role of popular legal culture, apart from creating such myths as the necessity of unanimous verdicts in criminal proceedings of the jury, rests on the presentation of the core ideals of the jury system. The conclusion one can derive from watching courtroom dramas is that even if the criminal justice system is imperfect, it is the jury and its deliberation process which increases chances to reach a fair and just verdict. Unanimity, according to many screenplays, is an obvious guarantee of such a verdict.

The issue of unanimity raises a lot of concerns and disputes among legal scholars who analyze advantages and disadvantages of the current judicial interpretation of jury verdicts. The proponents of non-unanimity stress the problem of hung juries, when the jury is unable to reach the verdict, and the judge declares a mistrial. They notice that the state systems permitting non-unanimous juries work properly, and that "perfect unanimity is not consistent with human nature", as "twelve people rarely think the same way". As a good example, in their opinion, may serve American courts, with the Supreme Court at the top of the system, which do not provide unanimous verdicts in crucial constitutional cases (cf. Tanzer 24-27). At the same time, the opponents of the less-than-unanimous verdicts point out that when jurors are obliged to reach unanimous verdicts, the deliberation about the case is longer and of higher-quality. According to such an approach, unanimous decision is an effect of the successful process of reasoning and persuading jury members by each

other. Furthermore, it leads to greater public confidence in such verdicts, and the institution as a whole (cf. Abramson 28-37). Without determining whose arguments are more accurate, one should observe that the above-mentioned discussion is not present within the American society, as the majority of Americans are convinced about the necessity of jury unanimity promoted by Hollywood productions.

Myth #5: The selection procedure of jury members is partisan and unjust

The majority of movies or series do not focus on the presentation of the selection of jury members, which obviously is a very important formal element of civil and criminal pretrial procedures, when the defendants decide to exercise their right to jury trial. If that procedure is presented, however, it is portrayed as a politicized, partisan and controversial event during which lawyers fight a duel in order to achieve the final success, that is to create a jury consisting of persons whose views are consistent with the interest of the party they represent. Such a picture leads to a conviction that jury selection is the most unjust and unfair element of the whole system, thus making it corrupt, imperfect, and ineffective. Elements of such an approach may be viewed in the movie *Runaway Jury*, as well as in the TV series *Murder One*.

Jury selection is a complex, but rather transparent procedure. The court sends summons to prospective jurors based on different registration sources, such as licensed drivers lists or voter registration. Main qualifications to become a juror include 18 years of age, U.S. citizenship, residency requirement, sufficient knowledge of English, no felony conviction, exemptions for certain officers, excuses of physical/mental disability, but also due to economic hardship, transportation difficulties or prior jury service in 12 months (Fukurai, Krooth 5). Candidates for the jury service are questioned by the legal representatives of both parties who seek to find whether they would constitute good jurors. That procedure is called *voir dire* and it enables both parties to strike candidates who are biased or illegible of participating in the trial. The role of the judge is to approve or reject the challenge of the parties, and it is important to acknowledge that the judge's decision is final and irreversible. There are two types of strikes, challenges for a cause, which are exercised by stating reasons of striking out potential jurors, and peremptory challenges, by virtue of which the party does not have to explain the real reason of the strike. When the last member of the jury is chosen, the trial may officially begin (cf. Fukurai, Krooth 2-4; Jonakait, *The American Jury System* 128-155).

Most of *voir dire* procedures are short and do not produce any controversies. If there are any disputable elements, it is rather the peremptory challenge stage than the problem of partisanship and politicization of the whole selection system. Peremptory challenges are limited to few strikes per jury selection and have been restricted by the Supreme Court, as historically they were often used to exclude potential African-American jurors. Such tendency was criticized by the Justices in *Batson v. Kentucky* in which they found the use of racially discriminatory peremptory challenges unconstitutional (476 U.S. 79, 1986). From that moment, whenever a judge is convinced that the real reason of peremptory strike has basis in any kind of discrimination, he must reject the possibility of using that challenge. Even if

racial discrimination is a topic of a courtroom drama, as in *A Time to Kill*, it rarely refers to the jury selection, focusing on the attitude of individual jurors to the racially-based case.

On the other hand, the problem of partisanship in jury selection presented in *Runaway Jury* or *Murder One*, had not been confronted by federal or state judiciary. In the American adversarial system it is not only obvious but even necessary that opposing parties have different trial strategies and expectations towards the jury. Both parties are seeking to advance from *voir dire* with a jury consisting of people who ensure, in their opinion, the most fair verdict, excluding at the same time the ones whose bias could ruin their case. However, it is the role of the judge who actually controls the whole procedure and provides for limiting any controversies. Therefore, the picture of jury selection derived especially from *Runaway Jury* should not lead to a conclusion that interest groups and institutions willing to control the jury have almost unlimited possibility to lead the selection process. The judges are, in that perspective, the last, and most important instance.

Conclusions

As N.J. King rightly observes,

Some citizens experience juries as defendants, witnesses, attorneys, or court officers. A far greater number of Americans learn about criminal juries second-hand, schooled about the criminal jury through media accounts of jury trials. Criminal jury trials continue to be front-page, box-office, best-seller material year after year, and now are even available on their own cable channel, Court TV. This endless supply of dramatic highlights of real and imaginary prosecutions is, for much of America, the only source of information about the criminal jury (King 117).

For members of foreign societies, especially from the civil law countries, who in the globalized world watch the same movies and TV series as the Americans, the knowledge about jury functioning is even more limited. They cannot serve on a jury and experience advantages or disadvantages stemming from its size, the way of reaching verdicts, or the proper meaning of the reasonable doubt standard. They learn how the jury works from courtroom dramas, strengthening their beliefs in the high frequency of jury trials in criminal and civil cases, unanimity requirement in jurors' decision-making process, or the existence of the magical number twelve deeply rooted in the functioning of the jury.

The fascination of American popular culture towards the institution of the jury is understandable when one takes into consideration the role played by that institution in the U.S. legal system, as well as its esteem within the American society. According to public opinion polls, more than eighty percent of respondents believe that jury duty is an important civil duty, despite the inconvenience it produces to individuals serving on that institution, whereas almost eighty percent of them declare that jury system is the most fair way to determine guilt or innocence of the defendant (Harris Pole for American Bar Association). There is a direct link between social confidence in the jury, and its appearance in courtroom dramas. Most of the analyzed movies do not show a false picture of the jury system, but they choose some elements of its

functioning which causes that the image of trial by jury becomes incomplete and imperfect. As a result, one receives a repetitive pattern of how the American jury works: chosen in an unfair procedure, appearing only during the trial, guaranteed in every case, consisting of twelve members, and reaching unanimous verdicts. The better the movie, the more convincing portrait of a jury it offers. The more convincing portrait, the stronger belief that certain myths are the reality.

Chief Justice Warren Burger, one of the most important Supreme Court leaders in history, reminded once that “the twofold aim of criminal justice is that guilt shall not escape or innocence suffer” (*U.S. v. Nixon* 418 U.S. 683, 1974). Although his words referred to the necessity of relevant evidence which should be collected in every trial in order to reach a just verdict, for the majority of Americans the main guarantee of the principles set out in Burger’s statement is the trial by jury. Similarly, the phrase engraved on the Supreme Court building, “equal justice under law”, refers to the main principles of the U.S. legal system, among which a central place is occupied by the jury system. From the social perspective, the most important feature of American common law is not the lawmaking ability of the judges or the rule of precedent, but the ability of individuals to participate in the process of determining guilt in criminal cases, or the facts in civil cases. And that picture is truthfully reflected in most of Hollywood movies and TV series which present the jury as a crucial institution of the judicial system, deciding about freedoms and lives of the people. Jury is also viewed as a forum of exchanging ideas and values, a perfect model of deliberative democracy which allows people who do not actively participate in public life to become meaningful participants of American social and political reality.

The commonness of jury appearance in many courtroom dramas corresponds with the desirable image of that institution, as an enduring element of the American way of living. According to Ferguson, the jury should be celebrated as it connects local farm towns and urban metropolises, strives for fairness and equality, remaining local and democratic, thus shaping a model of how citizens of the United States should behave (6). Despite various divisions rooted deeply within American society (cf. Grabowski, Kozak, and Toth), the jury system seems to play a unifying role, at least as a potential social check on the government. “Pop culture is likely to reflect the dominant ideologies of the society” (Asimow, Mader 7), therefore, regardless of how many myths were created about jury deliberation in *12 Angry Men*, relations between the defendant and the jury in *Murder One*, or the *voir dire* procedure in *Runaway Jury*, these myths do not harm the essence and spirit of the right to trial by jury exercised by millions of Americans every year.

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