

# Lay Magistrates in England and Wales in International Perspective

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# Arguments to have lay judges

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1. The **principle of democratic rule**.
2. As a **counterweight or supplement** to professional judges.
4. Lay judges allow a **discussion** among judges.
6. Citizens experience the court system better (**legitimation**)

And some arguments more.

(Machura 2016, 239-240)

# US jury, Magistrates, *Schöffen*

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## US jury

- ❑ “trial by judge and jury” – always a presiding professional judge

## Magistrates in England and Wales

- ❑ panel of lay judges
- ❑ supported by a legal advisor

## German lay assessors

- ❑ as side judges with a professional judge = “mixed tribunal”
- ❑ called “Schöffen”, from the German “schaffen” = to make. They “make law”.

# A 3 country comparison: criteria

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Comparing US criminal jury, German court of lay assessors and England and Wales magistrates

- Selection/recruitment
- Length of service and prior experience
- Involvement in main hearing
- Deliberation
- Voting powers, voting rules

	<b>US criminal jury</b>	<b>Magistrates</b>	<b>Schöffen</b>
<b>Times of service per year</b>	jury typically selected for one case	13 days and more, typically with several cases	about 8-10 days, mostly with several cases
<b>Selection</b>	randomized procedure, then challenges	self-recruitment of local elite; responses to public calls	suggested by organizations, or self-application
<b>Prestige of office</b>	citizen duty	a special honour	duty and honour
<b>Decision powers</b>	generally decide on guilt only; death penalty*	comprehensive, including pretrial decisions	comprehensive, but excluding pretrial decisions
<b>Composition</b>	12 lay jurors*	3 (2) lay magistrates, one of them chairperson**	1 presiding professional judge, 2 lay judges (in most common form)
<b>Case investigated by</b>	prosecution and defense	prosecution and defense primarily	professional judge
<b>Deliberation</b>	jury in deliberation room	magistrates on the bench or in deliberation room (may ask legal adviser to join)	professional and lay judges in deliberation room
<b>Feeling of belonging to court</b>	none	strong identification	minimal

Source: adapted from Machura, 2001, p. 51.

\* There is considerable variation between states.

# Status characteristics theory

Is about the status of members in task-related groups.

- ❑ Their status here depends on their task-related contributions.
  - ❑ Or their perception of each other's contributions.
- (Kutnjak Ivkovich, 1999)

This means in a jury, for example,

- ❑ That someone with legal education becomes foreperson.

This usually means in a mixed court:

- ❑ The professional judge has most influence (Kutnjak Ivkovich, 1999).
- ❑ Or perhaps a lay judge with special knowledge.

In the magistrates' court, one of the magistrates presides.

# Conclusion

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**Compared to US jury or German Schöffen, magistrates are most powerful in the cases they handle.**

- They do not rely on the contributions of a professional judge.
- And are not controlled by a presiding professional judge.

**They are the magistrates' court.**

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Thank you!