

OPINION

Justice requires a tougher standard than 'guilty enough:' Editorial

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In federal courts and in almost every state in the nation, juries find defendants guilty of felony charges only if the entire jury votes to convict. That longstanding tradition of unanimity, incorporated in the 6th Amendment, makes sense in a justice system that demands the government prove guilt "beyond a reasonable doubt."

But jury unanimity isn't the law in Oregon and Louisiana. The two outlier states require that only 10 of 12 jurors agree to a guilty verdict for defendants facing most state felony charges, including manslaughter, arson and rape. That watered-down standard, which enables the majority to disregard the concerns of holdout jurors, reflects the racist and xenophobic mentality that thrived at the time of their passage decades ago.

In Oregon and Louisiana, "guilty enough" is apparently good enough.

Critics of the law hope that may soon change. The U.S. Supreme Court is to decide next week whether to consider a case challenging Louisiana's non-unanimous jury law and, by extension, Oregon's. While Oregonians should support the critics' cause, they also should start the difficult work themselves of rescinding the state's non-unanimous jury law and encouraging prosecutors to voluntarily seek unanimous verdicts. It's long past time for Oregon to abandon a practice that can silence minorities, racial and otherwise, and embrace a higher standard of diligence.

Oregon wasn't always this way. Voters approved [Measure 302-03](#) in 1934 that amended the state constitution to allow verdicts based on 10 of 12 jurors for felonies short of murder. The vote came amid a tide of racist, anti-Semitic and anti-immigrant emotion, as [The Oregonian/OregonLive's Shane Dixon Kavanaugh reports](#). A recent [opinion by Multnomah County Circuit Judge Bronson James](#) also concludes the 10-2 system is inherently discriminatory and based in the racist attitudes of the time. Editorials from The Morning Oregonian in that era blame "mixed-bloods," "natives" and immigrants for failing their roles and responsibility as jurors. Such attitudes in 1934 aren't shocking for a state that by constitution had forbidden African Americans from living in Oregon.

This law is indefensible for other reasons. Consider that the state requires unanimous juries for murder verdicts and death sentence recommendations. It also requires unanimity in misdemeanor verdicts, (though those lesser offenses are decided by smaller juries). That raises the logical question of why non-murder felonies - many of which carry mandatory prison terms - should be treated any differently. The answer, of course, is that they shouldn't.

Oregon and Louisiana have both kept their non-unanimous juries due to a bizarre [three-way split in opinion](#) among Supreme Court justices in 1972 that determined states did not have to adhere to the federal standard of unanimous jury verdicts.

Some defenders of the system argue that the 10-2 system allows for more efficiency and fewer hung juries. They also contend that defendants have an easier path to acquittal by securing 10 not-guilty votes instead of all 12. None of these reasons are compelling.

A justice system's "efficiency" should come from streamlining processes and adequately funding public defenders and prosecutors alike so that cases can move more quickly. It shouldn't come from short-circuiting defendants' rights to make it easier for the government to secure a conviction.

Similarly, hung juries aren't a sign that the justice system has failed or that unanimity is unreasonable. Rather, the inability to reach a verdict is a sign that the prosecutor's case fell short of meeting its burden of proof. That happens sometimes, and we expect juries to be independent enough to say so.

Oregonian editorials

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The potential for acquittal on fewer votes also is not persuasive. Not only are acquittals rare, but such arguments distract attention from where it should be - demanding that the government prove guilt, not that the defense prove innocence.

Even prosecutors are showing discomfort. Deschutes County District Attorney John [Hummel told The Bend Bulletin](#) that letting jurors ignore the voices of one or two people in the jury box compromises the integrity of the verdict. And Multnomah County District Attorney Rod Underhill wrote in an email to The Oregonian/OregonLive Editorial Board that he believes it's "time for a thoughtful review of this law," noting that the criminal justice system "is and should continue to be a reflection of our shared values."

Our justice system is built on noble principles and high standards. In reality, it falls short. National and local data show racial disparities in those who are arrested, prosecuted and convicted. Racial, religious and ethnic minorities comprise a small percentage of juries - a percentage that Oregon's non-unanimous jury protocol allows to be ignored.

We should take pride in what our justice system strives for, and we should act with humility in how our justice system underperforms. A unanimous jury doesn't guarantee justice but it is a step toward that goal. Guilty enough should no longer be good enough.

- The Oregonian/OregonLive Editorial Board





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