“Juries are appropriate for every type of case, including complex medical cases.” Discuss. – Shreyan Kottala

Introduction

The jury occupies a unique constitutional position within the English legal system. While many countries use trained judges to decide legal questions, England has long recognised the value of public participation in the administration of justice. Blackstone referred to trial by jury as "the glory of the English law".[1] Lord Devlin wrote that the jury is "the lamp that shows that freedom lives".[2] Both writers emphasised that the jury's primary constitutional purpose is to ensure that the administration of justice remains accountable to the public rather than solely to lawyers, politicians or other officials.

However, advances in medicine have produced a constitutional dilemma. Most modern medical negligence litigation turns upon disagreements between experts concerning fields such as genetics, epidemiology and clinical practice. Although juries are capable of weighing highly complex forensic and financial evidence, complex medical litigation increasingly requires courts to determine disputes that depend upon evaluating competing bodies of specialist knowledge. This raises an important constitutional question about the proper limits of jury decision-making.

This essay argues that judicial decision-making derives legitimacy from two constitutional sources. First, democratic legitimacy, represented by the jury, reflects community values and helps maintain public confidence in the legal system. Secondly, epistemic legitimacy, derived from specialist knowledge, promotes the accurate resolution of technically complex disputes. These two forms of legitimacy usually complement one another, but medical litigation presents the rare circumstances in which they conflict. This essay, therefore, examines how far democratic legitimacy should extend when it comes into conflict with epistemic legitimacy.

1. The Constitutional Function of the Jury

The constitutional value of the jury is not based upon expertise but upon ensuring that the administration of justice remains subject to public participation. If expertise alone justified judicial authority, every legal dispute would be determined by judges or specialist tribunals.

Instead, the jury provides an important safeguard against abuses of state power.[2] It also ensures that the administration of justice remains accountable to the public.[1]

This constitutional function is particularly significant in criminal proceedings, where jurors determine questions of dishonesty, intention and reasonableness. These issues depend as much upon community standards as legal doctrine, making jury participation an essential constitutional safeguard against excessive reliance upon judges and experts. A wholly professional judiciary may achieve greater technical consistency, but it also risks eroding public confidence if the administration of justice no longer reflects the values of the society it serves.

There is little empirical evidence to support the claim that jurors are incapable of evaluating complex evidence. Cheryl Thomas concluded that jurors generally follow judicial directions and engage carefully with technical testimony.[3] The Auld Review found little evidence to justify restricting jury trial solely because of technical complexity.[4] The constitutional issue is therefore not whether jurors can understand medicine, but whether evaluating competing bodies of specialist expertise falls within their proper institutional function. The distinction between determining disputed facts and evaluating expert methodology underpins the argument developed throughout this essay.

2. Technical Difficulty and Competing Views of Science

Technical difficulty alone is not enough to bar juries from hearing medical negligence claims. If technical complexity were determinative, juries would also be ill-suited to hear cases involving DNA analysis, digital forensic evidence and complex financial fraud. However, English courts continue to entrust such cases to juries through the use of expert witnesses, vigorous cross-examination and judicial directions to assist jurors in evaluating technically complex evidence.[4] Technical difficulty, therefore presents a practical challenge rather than a constitutional objection to jury trial.

Jurors' principal role is to determine facts rather than to function as an expert panel. They are not required to decide whether a scientific theory is objectively correct; rather, they determine whether the evidence satisfies the applicable legal standard. Cheryl Thomas found that jurors generally understand judicial directions and engage carefully with technical evidence.[3] The Law Commission similarly concluded that expert evidence can assist lay jurors when it is properly presented.[5] The suggestion that laypeople are inherently incapable of evaluating complex evidence is therefore unconvincing.

Medical negligence litigation, however, presents a distinct constitutional challenge. Unlike most criminal proceedings, it frequently requires courts to determine which body of professional opinion should be preferred. The issue is no longer simply what happened, but which body of scientific knowledge should be accepted. Jurors are constitutionally entrusted with resolving disputed facts; evaluating competing specialist methodologies is a fundamentally different task.

Bolam v Friern Hospital Management Committee illustrates this distinction. McNair J held that a doctor would not be negligent if acting in accordance with a responsible body of medical opinion.[6] *Bolam* therefore gave priority to professional expertise by allowing the medical profession largely to determine its own legal standard of care. Although this recognised the limits of judicial expertise, it reduced external accountability by making liability largely dependent upon professional consensus.[7]

The House of Lords modified this approach in *Bolitho v City and Hackney Health Authority* by holding that medical opinion could be rejected if it lacked a logical basis.[8] Medical opinion, therefore, continued to carry significant weight, but only where it could withstand independent judicial scrutiny.

Finally, in *Montgomery v Lanarkshire Health Board*, the Supreme Court held that doctors must disclose material risks according to what a reasonable patient would wish to know before consenting to treatment.[9] Authority therefore shifted from professional custom towards patient autonomy. Because informed consent reflects community standards concerning dignity and personal autonomy, it falls more naturally within democratic judgment than specialist expertise.

Together, these decisions demonstrate that the debate is not whether medicine is too complex for juries, but whether evaluating scientific expertise should displace community judgment. *Bolam* prioritised professional expertise.[6] *Bolitho* reaffirmed judicial oversight.[8] *Montgomery* restored democratic values where the legal standard depends upon community expectations rather than medical opinion.[9] The constitutional question is therefore not whether jurors can understand medicine, but whether determining competing scientific methodologies falls within the jury's proper constitutional function.

3. The Limits of Democratic Legitimacy

The contention that juries should be competent to try every case overlooks an important distinction between criminal and civil litigation. Criminal proceedings best illustrate the constitutional importance of the jury because they protect individuals against coercion by the state. Civil litigation, including medical negligence claims, seeks to determine whether a doctor has breached a duty of care and, if so, the appropriate compensation. The constitutional justification for jury trial is therefore less compelling.

This distinction is reflected in English law. Civil juries became relatively uncommon following the *Administration of Justice (Miscellaneous Provisions) Act 1933*.[11] Medical negligence claims are ordinarily determined by judges under the *Senior Courts Act 1981*.[12] Parliament has therefore recognised that consistency and legal expertise generally outweigh the benefits of lay participation in technically complex civil litigation. However, democratic legitimacy remains important where disputes concern informed consent, patient autonomy and reasonable disclosure, as illustrated by *Montgomery*.[9].

The criminal-civil distinction, however, is not ultimately decisive. The more fundamental constitutional question concerns the nature of the issue before the court. Traditionally, juries determine disputed facts by assessing credibility, weighing evidence and deciding whether the burden of proof has been satisfied. Expert witnesses assist this process but do not replace it. Medical negligence litigation often requires something fundamentally different. Where respected experts disagree over clinical methodology or statistical evidence, the issue is no longer which witness is more credible but which body of scientific reasoning should be preferred. Determining disputed facts falls within the jury's constitutional function; evaluating competing specialist methodologies does not.

Replacing juries with judges does not resolve this constitutional difficulty. Judges are institutionally better placed to scrutinise expert reasoning because they produce reasoned judgments capable of appellate review and contribute to the development of coherent legal precedent.[13] Nevertheless, they remain dependent upon expert evidence in disciplines beyond their own expertise. The challenge, therefore, concerns the limits of judicial knowledge rather than the competence of juries alone.

Nor does replacing juries with judges eliminate bias. Kahneman demonstrates that experts remain vulnerable to cognitive biases.[14] Guthrie, Rachlinski and Wistrich likewise found that judges frequently rely upon intuitive reasoning when deciding complex cases.[15] Medical professionals may also favour established practices or prevailing professional norms.

Replacing juries with judges, therefore, changes the source of potential bias rather than eliminating it.

The constitutional challenge is therefore not to choose between democracy and expertise, but to determine which should predominate according to the nature of the dispute. Juries remain indispensable where courts apply community standards of honesty, reasonableness and autonomy. However, where liability depends primarily upon evaluating competing scientific methodologies rather than resolving disputed facts, specialist expertise provides the stronger constitutional foundation.

4. Alternatives, Counterarguments and Conclusion

No comparative jurisdiction has successfully reconciled democratic participation with specialist expertise in resolving complex scientific disputes. New Zealand's Accident Compensation Corporation replaced most medical negligence litigation with a no-fault compensation scheme, improving both efficiency and access to compensation without requiring proof of fault.[16] However, it also removed the courts' role in publicly determining whether legal duties have been breached, prioritising administrative efficiency over democratic accountability.

Similarly, proposals for specialist health courts seek to improve consistency by combining judicial oversight with independent medical expertise. The Law Commission has emphasised the importance of reliable expert evidence in technically complex litigation.[5] Academic commentators likewise argue that specialist adjudicators are better equipped than generalist judges or jurors to evaluate competing scientific methodologies.[17] These models strengthen epistemic legitimacy but risk reducing public confidence if litigants perceive that professionals are effectively judging members of their own profession. Every institutional model, therefore, involves a constitutional trade-off rather than providing a complete solution.

The strongest defence of juries lies in recognising that medicine involves moral judgment as well as scientific knowledge. Questions concerning informed consent, reasonable disclosure and patient autonomy reflect community standards rather than purely clinical practice. *Montgomery* itself demonstrates that legal standards may depend more upon societal expectations than professional opinion.[9] Furthermore, experts frequently disagree, and excessive deference to professional consensus risks insulating medicine from independent legal scrutiny. Brazier and Cave argue that medical law must balance respect for professional

expertise with the protection of patient autonomy.[7] Public participation, therefore, remains an important constitutional safeguard.

Nevertheless, this argument does not establish that juries are appropriate for every type of case. It is strongest where disputes concern values rather than methodology. A jury is well placed to determine whether a patient received sufficient information before consenting to treatment because that question reflects community standards. However, it is less well placed to determine whether one epidemiological model or surgical technique is scientifically preferable. Where litigation depends primarily upon evaluating competing scientific methodologies rather than resolving disputed facts, specialist expertise provides the stronger constitutional foundation.

Ultimately, complex medical litigation demonstrates that constitutional legitimacy cannot derive exclusively from either democratic participation or specialist expertise. Instead, the appropriate source of legitimacy depends upon the nature of the dispute before the court. Jury trial remains indispensable where courts apply community standards of honesty, reasonableness and autonomy. However, where litigation turns upon evaluating competing scientific expertise rather than resolving disputed facts, specialist expertise—subject to independent judicial oversight—provides the stronger constitutional foundation. As scientific evidence becomes increasingly central to litigation, striking the correct balance between these competing sources of legitimacy will become one of the defining constitutional challenges of the twenty-first-century legal system.

Endnotes

1. William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1765–69), vol. 3.

2. Patrick Devlin, *Trial by Jury* (Stevens & Sons, 1956).

3. Cheryl Thomas, *Are Juries Fair?* (Ministry of Justice Research Series 1/10, Ministry of Justice, 2010).

4. Lord Justice Auld, *Review of the Criminal Courts of England and Wales* (The Stationery Office, 2001).

5. Law Commission, *Expert Evidence in Criminal Proceedings in England and Wales* (Law Com No 325, 2011).

6. *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582.

7. Margaret Brazier and Emma Cave, *Medicine, Patients and the Law* (7th edn, Manchester University Press, 2023).

8. *Bolitho v City and Hackney Health Authority* [1998] AC 232 (HL).

9. *Montgomery v Lanarkshire Health Board* [2015] UKSC 11, [2015] AC 1430.

10. Jonathan Herring, *Medical Law and Ethics* (9th edn, Oxford University Press, 2023).

11. *Administration of Justice (Miscellaneous Provisions) Act 1933*.

12. *Senior Courts Act 1981*.

13. Civil Procedure Rules 1998, Part 35 (Expert Evidence).

14. Daniel Kahneman, *Thinking, Fast and Slow* (Penguin Books, 2012).

15. Chris Guthrie, Jeffrey J Rachlinski and Andrew J Wistrich, 'Blinking on the Bench: How Judges Decide Cases' (2007) 93 *Cornell Law Review* 1.

16. Accident Compensation Act 2001 (New Zealand); Geoffrey Palmer, *Compensation for Incapacity: A Study of Law and Social Change in New Zealand and Australia* (Oxford University Press, 1979).

17. Michelle M Mello, Allen Kachalia and David M Studdert, 'Administrative Compensation for Medical Injuries: Lessons from Three Foreign Systems' (The Commonwealth Fund, 2011).