

BY ROBERT J. BARRO

PLEADING THE CASE FOR A PAID-JURY SYSTEM



VERDICT:
As with civil servants and judges, decent pay for jurors would help attract qualified candidates

I have often wondered why we rely on conscription to staff our juries. Why not use the market and pay competitive wages to attract willing workers, as we do for judges and other government employees?

Admittedly, my interest was sparked by my recent call for jury duty in Cambridge, Mass. I was first rejected by the lawyers in a personal-injury case involving an automobile accident. Comparing notes later, we potential jurors discovered that anyone who knew anything about costs or the medical profession had been screened out—an economist, an accountant, and two nurses.

Later, I qualified for a jury in an assault case. After we had been seated, the judge's first words were: "Mr. Barro, I would like you to serve as foreman of this jury." My initial reaction was that the judge had magically perceived my qualities of intellect and leadership, but then he said: "It really doesn't mean anything, you just happen to be sitting in the foreman's seat. All you have to do is sign the form for the verdict." After this fine start, my jury experience went satisfactorily, but I think the national product would have been higher and I would have been happier if I had stuck with my day job.

Jury conscription is similar to the military draft, which we had in the U.S. until 1973. At that time, there was a great debate about the benefits and costs of eliminating the draft. The benefits are similar to those of free markets in any sector. Notably, if the military pays competitive wages, then the people who serve are the most willing and able, taking account of their alternative occupations and the government's willingness to pay. The government, in turn, sees the budgetary costs of having a larger and better military and appropriately weighs these costs when determining the number and qualifications of its recruits. In contrast, the courts see little cost in conscripting hundreds of potential jurors, many of whom waste their valuable time by sitting around without ever being empaneled.

One concern was that the elimination of the military draft would result in poorly qualified personnel who came disproportionately from minority groups. Of course, if the military wants highly qualified people—for example, with college degrees or specific skills—then it has only to pay the appropriate wages. I am unsure why the representation by race or ethnicity should be a concern, but this issue seems also to disappear when military wages are satisfactory.

Another fear was that the budgetary cost

would be excessive. However, the draft did not lower the true costs—it just taxed the persons who were drafted. This tax is especially burdensome when it affects only a minority of the population in a random manner. In any event, the abolition of the draft—President Richard M. Nixon's finest hour—has worked out well. Few would advocate a return to conscription.

The jury system raises the same set of issues. Proponents of the current setup argue that it ensures a "jury of one's peers," whereas a paid system would result in overrepresentation by the poorly educated and unemployed. However, as is the case with judges and civil servants, a paid system would get people with the qualifications the government wants to attract. For instance, if we want some jurors to have college degrees, then we could pay the necessary wages.

There may be some benefits from selecting juries through random procedures, although these benefits are partly eliminated in the present system by allowing peremptory challenges by attorneys. For example, randomness may help to create heterogeneity with respect to socioeconomic characteristics, depending on how the pool of potential jurors is determined. However, nothing in a market system prevents random selection among persons who offer to serve at an attractive wage.

Another view is that there is something wrong with the people who would voluntarily work as paid jurors. But it is hard to see why this argument applies more to jurors than to judges or civil servants. There is also the claim that jury service is a part of citizenship, yet I cannot see why this applies less to teachers or postal workers, who have not been subject to conscription. Finally, juries have been argued to be a check on the power of government, represented by prosecutors and judges, but I am not convinced that competitively paid jurors would be less effective in this role.

My suggestion is that some jurisdictions experiment with paid systems for jury service. Within a jurisdiction, those who enlist for juries would be paid market wages. The system could be financed within the jurisdiction or, alternatively, through the states or Washington. Different lengths of service would likely be offered, with a maximum tenure of perhaps one year out of every three. Another idea is the elimination of juries for civil proceedings. As with the abolition of the military draft, the elimination of the jury draft is likely to be sound policy. ■

Robert J. Barro is a professor of economics at Harvard University and a senior fellow of the Hoover Institution (rjbweek@harvard.edu).