

'Not Guilty' Isn't Always 'Innocent'

Bernard Goetz shoots five youths who accost him on a subway in New York. His acquittal of all serious charges brings cheers from some and angry protests from others. After a high-speed chase and resisting arrest, officers severely beat Rodney King to a degree that seems clearly excessive. Riots erupt when a jury acquits the officers, but many others agree with the verdicts. After years of sexual and psychological abuse, Lorena Bobbitt cuts off her husband's penis as he sleeps. Her acquittal is applauded by some and decried by others.

Has the diversity of our society brought a lack of consensus on what constitutes justice? Will expected increases in diversity bring increasing disagreements? In a system like ours, of lay juries, a breakdown in consensus could devastate effective criminal justice. It also could further aggravate relations between races and genders.

My recent research on lay views of criminal liability and blame gives a more optimistic view of the cause of the apparent polarization of opinion. The research suggests that, despite ethnic and gender differences, people have astonishingly similar views of the principle that ought to govern imposition of criminal liability. Further, lay judgments are amazingly sophisticated, taking account of minor fact variations to alter the degree of liability assigned.

So why do jury verdicts cause so much dissension? The fault lies largely with the criminal justice system, and indirectly with the media. The greatest cause of disagreements and, incidentally, of the absence of meaningful debate and education on principles of justice, is the criminal justice system's own poor record in formulating and in accurately communicating its principles of justice to the public. In these three cases, for example, a crucial legal distinction is largely ignored: the distinction between an acquittal that holds the "conduct justified" as opposed to one that holds the "defendant excused."

In each of the three cases—Goetz, King and Bobbitt—the defendants' conduct was probably excused, not justified. Conduct that is right, that we would have repeated again under similar circumstances in the future, is justified; where an offender's conduct is wrong but the offender should not be punished for it, the offender is excused. The distinction is crucial. It tells whether the conduct is condoned or condemned, whether others should follow the example in similar situations or not.

When Goetz was acquitted, did it mean that the law thought it OK to shoot youths who accost you on a subway, that such conduct is justified? Or, did it mean the opposite—that such a shooting is not OK, is a violation of our rules of conduct—but that Goetz was excused because his error was understandable given the fear of the moment, his past history of being robbed, and so on? The difference is key to people's perceptions of the justice of the acquittal and to what the decision means for them.

Unfortunately, the distinction is lost on the news media because it is not emphasized by the lawyers and professors they use as sources. It is not an oversight. Speakers must speak to their audience, not over their heads, and the justification-excuse distinction is said to be too theoretical. But the research suggests that people intuitively understand distinctions more subtle than this and the distinction is central to understanding trial verdicts.

Recall the conflicting reactions to the first King beating trial. Some people were outraged by the acquittals because they saw them as condoning improper conduct. "The verdict tells me that police can do what they want. Everyone in the world saw that man get

whipped and I don't know what the jury was seeing," said David Green, a 32-year-old northeast Washington construction worker. People were offended that the acquittal seemed to justify the conduct.

The reality is that some jurors seemed to have only intended to excuse the officers, not to justify their conduct. Said one, "The cops were . . . afraid King was obviously a dangerous person, massive size and threatening actions . . . They're policemen. They're not angels. They're out there to do a lowdown dirty job."

Because the current American verdict system rarely tells us whether an acquittal is meant to justify conduct or to excuse the offender, we are left to speculate. Persons already disaffected by what they see as racial or gender bias in society naturally see the worst in interpreting the ambiguous acquittal. But if the King beating verdicts had made clear that the jury condemned the officer's conduct, could it have diffused the negative reaction enough to avoid the riots?

As with the officers who beat King, one can only wonder if Goetz did the right thing? Or, did he do the wrong thing but is not to be punished because his error was understandable? Goetz's acquittal does not tell us, so we are left to speculate. Anyone can disagree with an acquittal, if they interpret as the alternative that they disapprove of. In deciding, the jurors are asked only to agree on a verdict; they need not agree on the reasons for it.

Was Bobbitt justified or excused? The insanity verdict is the one instance where the legal verdict system tries to make the answer clear: Insanity is an excuse; the conduct is unjustified. If it were justified, there would be no improper conduct that needs to be excused. Yet the unfamiliarity of the distinction in public debate leaves the issue clouded. Supporters of the verdict explain, "a life is more important than a penis." They note that, "the acquittal will help deter wife beating." These are claims of justification, that the conduct was right and may properly be repeated in similar circumstances in the future.

We as a society do share common intuitions of the rules that ought to guide criminal liability and blame. Lay notions of justice are more than sophisticated enough to understand the distinction between justified conduct, which is right, and excused conduct, which is wrong. If we are to avoid dissension, and worse, juries must decide and trial verdicts must make clear whether an acquitted defendant's conduct is condoned or condemned.