

Juries in the 21st Century: making the bulwark better

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It is an honour and a privilege to have been asked to deliver a lecture in the public lecture series of the Faculty of law of QUT. This series has attracted many eminent speakers from at home and abroad and covered a fascinating range of topics. It has added much to the intellectual life of lawyers in this State and thrown down many intellectual challenges.

Tonight I wish to speak to you about one of the most important institutions of the criminal justice system in a democracy with a common law tradition – the jury. I will be looking at the future of the jury, hence the title ‘Juries in the 21st Century’.

On 7 April 2008, the Attorney-General formally referred to the Queensland Law Reform Commission, of which I am the Chair, a review of the directions, warnings and summings up given by a judge to jurors in criminal trials in Queensland and to recommend any procedural, administrative and legislative changes that may simplify shorten or otherwise improve the current system.

It is my pleasure tonight to launch the Queensland Law Reform Commission’s Issues Paper on that review. In doing so, I pay particular tribute to the work of Mr Ian Davis, a full time Commissioner with the Commission who has the carriage of this reference.

This review is similar to and complements reviews in both New South Wales and Victoria by their respective Law Reform Commissions of jury directions and warnings. The Victorian Law Reform Commission (“VLRC”) published a Consultation Paper in September 2008 and is due to report by 1 June 2009.¹

The New South Wales Law Reform Commission (“NSWLRC”) published its Consultation Paper in December 2008.² That Consultation Paper sought submissions by 13 March 2009. This was preceded by the separate publication of the results of related research conducted by the NSW Bureau of Crime Statistics and Research.³

The NSW Judicial Commission is currently undertaking a survey of appeals against conviction for the period 2001–2007, which is expected to be published in 2009.

The Law Commission of New Zealand has undertaken thorough research and published very useful reports on juries. It published a report on juries in criminal trials in February 2001.⁴ That report has been very influential not only in substantive

¹ VLRC, *Jury Directions*, Consultation Paper 2008; the VLRC also published a short discussion paper summarising key proposals: *Jury Directions – a closer look*, Paper 2008.

² NSWLRC, *Jury Directions*, Consultation Paper 4 (2008).

³ NSW Bureau of Crime Statistics and Research (L Trimboli) ‘Juror understanding of judicial instructions in criminal trials’ *Crime and Justice Bulletin* No 119 (2008).

⁴ Law Commission of New Zealand, *Juries in Criminal Trials*, Report 69 (2001). This was preceded by two discussion papers *Juries in Criminal Trials, Part One*, Preliminary Paper 32

law reform but also in changing traditional practices in criminal trials in New Zealand.

The terms of reference assume the critical role of juries in the Queensland criminal justice system. One might ask why do juries play such a critical role in the justice system here and elsewhere? In my view there is one paramount reason and it is simply because we live in a democracy. Citizens in a democracy are expected to participate in civic life but have few opportunities to do so and even fewer obligations to do so. One obligation that Australians accept as critical to democracy is the obligation to vote. In most other democracies that is a right but not an obligation.

In our democracy, there is also the obligation to be available to serve on a jury. In fact the effect of being on the electoral roll is to create the potential to be called up for jury service; for it is from the electoral roll that jury panels are chosen.⁵ Those entitled to vote in our community cover the complete range of adults of both sexes, all religious beliefs or lack of them, political opinions, education or lack of it, national or ethnic origins, race, age and the whole range of opinions within the community.

Their presence means that the criminal justice system is not a self-enclosed and self-justifying system but that all trials on indictment (with the exception of the very few now able to be tried without jury)⁶ are determined in a courtroom where members of the community make the determination of guilt or innocence within the framework of a fair trial conducted according to law by the judge.

This has a number of practical, as well as theoretical, benefits. It ensures that the criminal law must be comprehensible, that the evidence given must be comprehensible and that the law cannot stray too far from community opinion.

The Queensland Law Reform Commission Issues Paper notes that “juries act as a check against arbitrary or oppressive exercises of authority, lend legitimacy to the criminal justice system, make public acceptance of verdicts more likely, and contribute to the accessibility of proceedings to lay people.”⁷ In *Kingswell v The Queen*⁸ Brennan J quoted from Blackstone’s Commentaries⁹ where he referred to the jury as a “sacred bulwark of the nation”, hence the subtitle of this lecture. Blackstone warned:

“... inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern.”

That respect for trial by jury formed the basis of the protection found in s 80 of the Constitution of the Commonwealth of Australia which provides in part that “the trial

⁵ (1998) and *Juries in Criminal Trials Part Two* (Volumes 1 and 2), Preliminary Paper 37 (1999).

⁶ *Jury Act 1995* (Qld) Pt 5 Div 6.

⁷ Criminal Code (Qld) ss 614-615E.

⁸ Chapter 2 paragraph 2.3.

⁹ (1985) 159 CLR 264 at 296.

⁹ (1769), Book IV, page 344.

on indictment of any offence against any law of the Commonwealth shall be by jury
...”

The following have been said by judges and researchers to be some of the advantages of the jury system.

- It is a panel of ordinary and anonymous citizens assembled as representative of the general community;¹⁰
- The powerful cannot expect special treatment;¹¹
- The weak need not fear discriminatory treatment;¹²
- The administration of criminal justice is, and has the appearance, of being unbiased and detached;¹³
- The administration, proceedings and judgments of the criminal law are comprehensible by both the defendant and the general public;¹⁴
- The participating lawyers are constrained to present the evidence and issues in a manner that can be understood by lay people so that the defendant and the public can follow and understand the proceedings;¹⁵
- If the defendant or a witness is being denied a “fair go” the fact that jurors tend to identify and side with a fellow citizen who is being denied a “fair go” tends to ensure observance of the consideration and respect to which ordinary notions of fair play entitle a defendant or a witness;¹⁶
- Because the jury is a body of ordinary citizens called from the community it offers some assurance that the community as a whole will be more likely to accept a jury’s verdict than it would be to accept the judgment of a judge or magistrate who might be, or portrayed as being, over-responsive to authority or remote from the affairs and concerns of ordinary people;¹⁷
- The jury allows for the ordinary experiences of ordinary people to be brought to bear in the determination of factual matters and to determine what evidence is truthful;¹⁸
- Research in Australia has demonstrated that people who have served on juries have significantly more confidence in juries and the criminal justice system than other members of the population who are eligible for jury service but have not been called up to attend for jury service.¹⁹

Even the popular media generally appears to have faith in juries, although a survey of recent headlines suggest that the media in Queensland is particularly impressed if the verdict is returned quickly. Ordinarily reports of juries’ verdicts read something like this report of 11 March 2009 in the *Cairns Post*

**“DAD CLEARED OF STAB CHARGE
JURY’S VERDICT TAKES 30 MINUTES”**

¹⁰ *Brown v The Queen* (1985) 160 CLR 171 at 202.

¹¹ *Brown v The Queen* at 202.

¹² *Brown v The Queen* at 202.

¹³ *Brown v The Queen* at 202.

¹⁴ *Kingswell v The Queen* (1985) 159 CLR 264 at 301.

¹⁵ *Kingswell v The Queen* at 301.

¹⁶ *Kingswell v The Queen* at 301.

¹⁷ *Kingswell v The Queen* at 301.

¹⁸ *Doney v The Queen* (1990) 171 CLR 207 at 214.

¹⁹ Australian Institute of Criminology, *Practices, Policies and Procedures that influence juror satisfaction in Australia*, Research and Public Policy Paper No. 87 (2007) 148.

or the headline on page 1 of the *Toowoomba Chronicle* of 27 February 2009,

JURY TAKES 10 MINUTES TO FREE YOUNG SOLDIER

or the first sentence in a report in the *Innisfail Advocate* of 21 February 2009

“The fate of a 25-year-old accused of murder took just two hours for a jury to decide, with a life sentence being imposed on the young man for killing a 53-year-old during a drunken stoush at Belvedere more than two years ago.”

In my experience, however, jurors usually think long and hard before reaching their verdict so perhaps quick verdicts are newsworthy because they are so unusual.

A more difficult story was told recently by the media in Western Australia. Three men were accused of assaulting a police officer who had been seriously injured. After a six week trial, they were acquitted after having apparently argued self-defence.

The acquittal was met with shock and then hostility as some recent headlines from the ABC website in Perth show. On 12 March 2009 the headline was “**Jury finds police bash accused not guilty**”, on the following day, “**Not guilty verdict leaves police and family dismayed**”, then “**Shock verdict prompts review of self defence laws**”, and then “**Bashed cop ‘stunned’ by not guilty verdicts.**” By 14 March 2009, there was an attempt to present another point of view under the headline “**No need for law changes’ after bashed cop acquittal**”, followed on the same day by “**Calls for urgent laws to protect police**” and “**Police rally to support mandatory sentencing.**” Of course there were other news websites that had more emotive headlines. *My Community News* on 13 March 2009 headlined “**Officers express outrage over cop assault acquittal.**” On the same day, *The West* rang a story under the headline “**Over 4500 condemn attack on cop.**”

The debate turned to sentencing, in particular the mandatory imposition of imprisonment for assaulting police officers. Of course sentencing is irrelevant if the persons charged are not in fact guilty of the offence.

The most recent addition to the debate which ensued about the criminal justice system came from the Hon. Wayne Martin, Chief Justice of Western Australia. On 21 March 2009, he gave a wide-ranging speech on criminal justice issues to a Rotary Conference in Perth. One of his suggestions was that consideration be given to a system whereby the Judge retires with the jury to assist and guide them in their deliberations. I agree that it is a suggestion that is worthy of consideration. Indeed it is quite inspiring when very experienced lawyers challenge us with new ideas and creative thinking.

But it has, to my mind, two fundamental problems. It assumes that juries do not seek further assistance and guidance from the judge when they need it, whereas they are invited to do so by the judge and, in my experience, very often do so. That advice and assistance is given in open court. So the first fundamental problem is that the judge would be providing advice and assistance to the jury in private not in open court. This would further reduce the public nature of a criminal trial. It would decrease rather than increase transparency.

Secondly, it increases the role of the judge at the expense of ordinary members of the community. A judge is an authority figure who by training, experience and usually

inclination is used to exercising control and making decisions. Discussion with French and Japanese colleagues does not lead to me to think that the judge's authority would change were the judge to retire with the jury. It is likely that many jurors would defer, consciously or unconsciously, to the judge. In short, it would not enhance the democratic legitimacy of the present jury system.

If the idea is to give greater assistance to juries then I agree entirely and it is incumbent upon us to undertake empirical research, find out the needs of jurors and implement practical measures to give that assistance.

An example of how juries exercise practical common sense at present was shown in England earlier this year. Just last week, media commentators in England applauded the acquittal by a jury of a man who killed an intruder trying to break into his house. Frances Gibbs, legal journalist for *The Times*, said in an opinion piece in that newspaper, "Juries sometimes give the verdict they think to be just – even in the face of the evidence." In fact, I suspect from the story that the jury reached the verdict they did because of the evidence in spite of the law.

Given the central role ascribed by legal theorists, legal commentators, the judiciary and the popular media to the role of the jury in a criminal trial it is particularly important that commonsense and comprehensibility prevail in criminal trials.

In its terms of reference, the Queensland Law Reform Commission has been requested to have regard to:

- the view and opinions of jurors about the number and complexity of the directions, warnings and comments given to them by judges, and the timing, manner and approach adopted by judges in their summing up to juries;
- jurors' ability to comprehend and apply the judges' instructions; and
- jurors' information needs.

In order to take account of the views and opinions of jurors the Commission has determined that it is necessary to undertake research amongst people who have served as jurors in Queensland. The *Jury Act* prohibits seeking the disclosure of jury information from a member or former member of the jury,²⁰ prohibits a juror or former juror disclosing any jury information if that person has reason to believe that any of the information is likely to be or will be published to the public,²¹ and prohibits the publication to the public of jury information unless a research project is authorised by the Supreme Court.²² Jury information is defined under s 70(17) to mean:

- "(a) information about statements made, opinions expressed, arguments advanced, or votes cast, in the course of a jury's deliberation; or
- (b) information identifying or likely to identify a person as, or as having been, a juror in a particular proceeding."

²⁰ *Jury Act 1995* s 70(3).

²¹ *Jury Act 1995* s 70(4).

²² *Jury Act 1995* s 70(2).

Accordingly the Attorney-General made an application to the Supreme Court to authorise the conduct of a research project by the Commission involving the questioning of members or former members of juries and the publication of the results of the research. The Chief Justice granted the application and the Commission has put a jury research project out to tender. The Commission will use the results of that empirical research to determine how better to assist juries in performing their important task.

In addition, the Issues Paper raised a number of matters on which it seeks submissions from people with knowledge and experience of the criminal justice system.

The Commission's Issues Paper considers the historical and current role of juries in criminal trials in Queensland, the dynamics of the jury's involvement in a trial and compares their role with that of judge and counsel. It then focuses on a judge's directions, warnings and instructions to the jury and summing up of the evidence and legal arguments. Particular reference is made to the model directions in the bench book of the Queensland Supreme and District Courts which has proved an invaluable aid to judges and, as it is publicly available on the court website, to the profession and the public in ensuring the accuracy and comprehensibility of those directions.

The Issues Paper also considers the growing list of specific directions that must be given in particular cases. These directions have proliferated and are often complex and may be given to avoid an obvious ground of appeal rather than because the trial judge really believes that it will assist the jury or is necessary to ensure a fair trial. The Hon. J Eames, formerly a judge of appeal in Victoria, who is acting as a consultant to the Victorian Law Reform Commission in its jury reference, in an article published in 2007, drew attention to the problems arising from the proliferation of directions now regarded as required:²³

“Over the past 20 years²⁴ appellate courts have applied great intellectual skill to the articulation and refinement of the criminal law but, with some notable exceptions, have not attempted to translate their judgments into the language of practical, and brief, directions which trial judges can deliver to lay jurors. That role has fallen to the authors of court bench books or has been left to individual judges when fashioning a jury charge for an individual case. Being fearful of error, judges have tended to couch their charges in language very close to that of the appellate judgments. When in doubt as to the applicability of one or other of the judicial warnings to the case at hand judges have usually included such directions. In the result, directions on a wide range of topics have become longer and more complex.”

The competing demands facing the trial judge in summing up was adverted to in a survey of judicial attitudes to jury communication published in 2008:

“It is at this point that the trial judge endeavours to communicate to the jury the principles of law which they must apply to the facts of the case. It is also

²³ Hon J Eames, “Tackling the complexity of criminal trial directions: What role for appellate courts?” (2007) 29 Aust Bar Review 161 at 165.

²⁴ The authors of “Uniform Evidence Law” 2005, by Australian Law Reform Commission, New South Wales Law Reform Commission and Victorian Law Reform Commission considered, at p 595 [18.26] that “the expansion of the common law judicial warnings began with the decision of the High Court in *Bromley v The Queen*” (1986) 161 CLR 315; 67 ALR 12.

the time at which the trial judge must attempt to straddle the needs of good communication and the scrutiny of the Court of Appeal.”²⁵

Of course it must be added that the overriding duty of the trial judge during the summing up, as well as at all other times during the trial, is to ensure that the defendant has a fair trial.

Specific complex directions mentioned by the Commission include those related to liability as a party to an offence under sections 7 and 8 of the Criminal Code, the defences of self-defence and provocation and a number of evidentiary warnings such as consciousness of guilt, adverse inference, propensity, identification evidence, good and bad character, and, in the context of s 632 of the Criminal Code, unreliable evidence warnings. It also examines warnings commonly given or required to be given in sexual offence trials.

The Commission is seeking submissions on which particular directions, or classes of directions, give rise to particular concern or cause recurrent problems in practice and the basis for those concerns or problems. We ask for submissions on the question of whether or not there are any directions or classes of directions which can or should be simplified or abolished.

The Commission has examined the rate of incidence of appeals in Queensland which involve allegations that a jury was improperly or inadequately directed by the trial judge and compare such statistics with the results of a similar exercise conducted by the Victorian Law Reform Commission.²⁶ In Victoria, the judge’s summing up is referred to as the judge’s charge to the jury. Comparative data has shown that the charge is usually much longer in Victoria than is the judge’s summing up in Queensland. While the two sets of statistics from Victoria and Queensland do not readily admit of easy comparison, they suggest that the frequency with which jury directions feature in judgments in appeals against conviction in Queensland appears to be much lower than the frequency with which they appear as grounds for appeal in Victoria. Moreover, the success rate of appeals against conviction alleging misdirection appears to be much higher in Victoria than in Queensland, being some 26.4% of appeals against conviction filed in Victoria as against only 8.3% of appeals against conviction filed in Queensland.

The Commission has asked for submissions on what, if any, conclusions can be drawn from the statistics it has gathered relating to appeals in criminal matters in Queensland and if the frequency of appeals in Queensland where a misdirection by a judge is alleged created any practical problems or problems in principle. So far as re-trials are concerned, the Commission asks whether the financial costs and other burdens associated with re-trials are an acceptable cost of ensuring as far as possible that no one is convicted without a fair trial.

The Commission has looked at areas in which problems with jury directions that have been identified by academic and legal writings as well as decided cases. The problem

²⁵ E Najdovski-Terzioski, J Clough and J Oglaff, “In your own words: A survey of judicial attitude to jury communication” (2008) 18 *Journal of the Judicial Administration* 65, 78.

Also, JB Bishop, *Criminal Procedure* (2nd ed, 1998) 517.

²⁶ See Victorian Law Reform, *Jury Directions*, consultation paper (2008), Appendix A.

areas include the length and number of directions, the complexity of directions with regard to the legal concepts contained in them and the style and range of language used to convey them to the jury.

Two areas of specific concern that have arisen in more complicated cases are the concatenation of directions in cases of multiple or alternative charges and cases involving multiple defendants; and whether judges should give directions on alternative or lesser verdicts that may be available on the evidence but which have not been raised specifically by either side during the trial itself.

The Commission has looked at the available empirical research into the way in which juries respond to the directions, instructions and advice given to them by judges. In light of the empirical evidence which raises doubt about the efficacy of some directions the Commission is seeking submissions on whether any particular jury directions, or jury directions generally, can be restyled to work more effectively. In particular we ask:²⁷

- Is it necessary or desirable to re-cast any of the jury directions given in criminal trials in Queensland?
- If so, how might that be done? Would it involve any reduction or simplification of, or other change in, the directions as currently formulated?
- Is it necessary or desirable to consider a reform of the law concerning the admissibility of prejudicial or other evidence for certain limited purposes only?
- Is it necessary or desirable to consider a reform of the law concerning limited-use directions?
- Are there ways in which the language used in jury directions can be changed to make them more comprehensible to jurors?

The Victorian Law Reform Commission has proposed in its Discussion Paper that the law with regard to jury directions be reformed by way of a statute in the form of a Code to consolidate, simplify and organise the law. One of the purposes of the proposed reform is to identify those few directions which should be mandatory such as the burden and standard of proof, elements of the offences charged and any defences raised and otherwise restore the discretion of the trial judge to give relevant and appropriate directions. The wording of a small number of the more problematic directions would be set out in the new legislation.

In light of these proposals, the Commission in Queensland asks:

- Is it necessary or desirable to find mechanisms to preserve or reinforce the trial judge's discretion in relation to jury directions?
- If so, what form might those mechanisms take?
- Would it be necessary or desirable to do so by way of statute?
- Would the statutory changes proposed by the Victorian Law Reform Commission, or some similar scheme, be necessary or desirable in Queensland?

The Issues Paper also considers a range of approaches that may assist juries in reaching their verdicts which, although not jury directions as such, may well go some

²⁷ Chapter 8 para 8.36.

way to providing juries with their information needs. The Issues Paper looks at some means of improving jury directions themselves and identifies some other procedural, technological and documentary techniques which may assist juries during the course of trials and in their deliberations.

The tradition of the criminal trial is of an oral trial. Evidence is given orally in open court and traditionally few, if any, written or other means of communication have been used. But times are changing. Much evidence is now presented in form of audio or video tapes of interviews with an accused person or with an affected child witness or it may be tapes gathered as a result of covert surveillance or telephone intercepts. Not only are photographs common, there may be a video or even a computer programme created to show the alleged crime scene.

Yet it is still the case that, like any other witness, experts usually give their evidence orally rather than the jurors receiving that evidence by way of a written report as is common for the evidence in chief of an expert before a judge.

Jurors in Queensland are rarely given access to the transcript of the evidence even in a long trial although this is now an everyday and unremarkable practice in New Zealand; but must instead rely on their memories, any notes they have made during the trial and the summary of the evidence by the judge.

Counsel's address and the summing up by the judge are normally delivered entirely orally and may take many hours in which complex legal concepts and evidentiary warnings may have to be given and explained.

It is my firm view that jurors should be assisted by as many written and visual materials as possible to assist them in their own onerous task of determining the guilt or innocence of a fellow citizen. Such assistance might be in the form of a PowerPoint presentation during the judge's summing up, the provision of factual questions to assist the jury in reaching a verdict in which the legal concepts are embedded rather than requiring a lengthy explanation of the law from the judge. I will give on the PowerPoint display an example provided by Chambers JA from the Court of Appeal in New Zealand at a Jury Direction Symposium held in Melbourne on 5-6 February 2009, but note the different wording as to proof.

COUNT 1: AGGRAVATED ROBBERY

Note: On all issues, the burden of proof beyond reasonable doubt lies on the Crown

Not in dispute:

Mr Brown committed an aggravated robbery of the ANZ Bank on 3 February 2008.

1.1 Are you sure that Mr Smith was the driver of the car into which Messrs Brown and Menzies got after robbing the bank?

If "yes", go to question 1.2.

If "no", find Mr Smith "not guilty" on this count and go to count 2.

1.2 Are you sure that, prior to the robbery, Mr Smith knew that Mr Brown intended to rob the ANZ Bank and to threaten violence, if necessary, to ensure the success of the operation?

If “yes”, go to question 1.3.

If “no”, find Mr Smith “not guilty” on this count and go to count 2.

1.3 Are you sure that, prior to the robbery, Mr Smith had agreed to assist by driving the get-away car?

If “yes”, find Mr Smith “guilty” on this count and go to count 2.

If “no”, find Mr Smith “not guilty” on this count and go to count 2.

I will also give an example from a very recent trial, over which I presided. The defendant was charged with multiple counts of producing dangerous drugs and trafficking. The factual questions were framed as per the following example.

1.1 Are you satisfied beyond reasonable doubt that Mr Bloggs took part in the cooking of methylamphetamine in the chook pen at Mr Bloggs’ property on the occasion described by Ms Jones?

If yes, go to question 1.2;

If no, not guilty of count 2 and go to count 3.

1.2 Are you satisfied beyond reasonable doubt that the amount of methylamphetamine produced was in excess of 2 grams?

If yes, guilty of count 2 with a circumstance of aggravation and now go to count 3;

If no, guilty of count 2 without a circumstance of aggravation and now go to count 3.

Preparing and disclosing the PowerPoint presentation and the factual questions during the trial made the summing up in that trial a much more collaborative process between judge and counsel. The only part of the summing up that the jury asked to be repeated was a short summary of the evidence relevant to one of the five counts. I had not put the summary of the evidence on the PowerPoint slides. And they asked for a copy of one of the PowerPoint slides as to what “produce” means in the *Drugs Misuse Act*, as its meaning in that Act is wider than its usual meaning.

Why can’t the jury be given a copy of the transcript of evidence or a copy of an expert’s report, a copy of the indictment, the witness list, or the exhibit list? Would they not be assisted if the defence was required to make an opening statement after the prosecution opening so the jury is aware of what the real issues are that need to be determined by them? Should the jury be given access to the transcript of the trial in hard copy or electronically or by way of the digital video recording?

The questions on which the Commission seeks submissions are:

- What procedural or other reforms might be introduced to allow for a better exploration of the real issues in a criminal trial in advance of the trial or before the jury is empanelled or starts to hear the evidence?
- What if any, advantage is there to a jury in maintaining the current practice of summarising the evidence, and what, if any, advantage might be gained by reducing these summaries and replacing them, at least in part, by the provision of a transcript of the evidence, or other written aids, to juries?

- What other techniques might be used to assist juries in their understanding of the evidence and the law, and in their deliberations?
- Should any such techniques be mandated in statute, regulations, court rules, practice notes or in any other way? If so, how?
- If any such formal rules are to be promulgated, should they include any express statement about the trial judge's discretion about the application of any of these techniques in any given criminal trial? If so, what should that statement say?
- Should any such techniques be the subject of mandatory or optional professional development for criminal trial lawyers (counsel and solicitors), judges or other judicial officers?

The closing date for submissions is 31 May 2009.

I urge you to read the Issues Paper and send us your ideas, views, opinions and suggestions. Such a deeply democratic institution will benefit from ideas and submissions from as many informed members of our community as possible.