An empirical investigation of peremptory challenge

Christopher Salahub

November 22, 2018

1   Introduction

The Gerald Stanley murder trial was noteworthy for all of the wrong reasons. The first reason was the crime itself. The rural region around Biggar, Saskatchewan[8] is not known for crime, indeed, the crime statistics collected by Statistics Canada suggest it is one of the safest in the province[11]. Any murder at all would be worthy of attention and subject to plenty of drama. But beyond the damage this trial has done to the community, this trial is noteworthy because it led to a significant re-examination of the legal jurisprudence surrounding the jury selection process culminating in the proposition of Bill C-75 by the Canadian government in March of 2018[1], less than two months after the trial's verdict[9].

Bill C-75, in part, aims to ameliorate one of the critical points of contention about the Gerald Stanley case: the use of peremptory challenges in jury selection. The outsized impact of the case was due, in large part, to it's racial aspect. Gerald Stanley, a white man, was accused of second degree murder in the killing of Colten Boushie, a First Nations man. Given Canada's troubled history with First Nations groups, this alone would have been enough to make the trial a flash point for race issues, but that was not the worst aspect of the trial. Rather, it was the alleged use of peremptory challenges to strike five potential jurors who "appeared" to be First Nations, resulting in an all-white jury, that proved to be the most controversial and influential facet of the entire affair[5] [7].

With Bill C-75 currently moving through the Canadian parliamentary system, having completed its second reading in June 2018[2], a close re-examination of the practice of peremptory challenge is warranted. A great deal of ink has already been spilled on both sides of the debate [6] [13] [10], but startlingly little of this discussion has been based on any hard evidence on the impact of peremptory challenge in jury selection. This paper aims to provide analysis and evidence to illuminate the topic further by analyzing three separate peremptory challenge data sets collected in the United States [12] [4] [3]. While this data cannot tell us if challenges were racially motivated in the Stanley trial, stepping back from this fraught legal episode to take a wider view of the practice of peremptory challenge provides a more sober place to start the discussion of its place in modern jury trials.

This paper will proceed in five parts. Section 2 provides a brief history of the practice of peremptory challenges in jury trials, in particular explaining their original motivation and past implementations in 2.1 and how they have developed in the United States, the United Kingdom, and Canada in 2.2. Section 3 proceeds to discuss the three data sets obtained, with 3.1 – 3.3 discussing the sources and collection methods before the cleaning and preprocessing are explained in 3.4. Section 4 then provides the details and results of the different analyses performed on the different data sets, before these results are compared to previous works in Section 5. Finally, the results and findings are summarized in 6, and recommendations based on the observations obtained here are provided.

2 Background

2.1 History of Peremptory Challenge

2.2 Modern Practice

3 Data

3.1 Jury Sunshine Project

3.2 North Carolina Data

3.3 Philadelphia Data

3.4 Data Cleaning

Jury Sunshine Data

The data collected in North Carolina proved invaluable to this project [12].

Problem: some columns of the data contained only NA values Solution: `lapply` to remove these uninformative columns

Problem: relational database provided did not have all data in one joined table Solution: creation of `CleaningMerge` function: a wrapper for `merge` which provides information about the mismatches which may be present in the two merged tables

Problem: inconsistently coded levels, e.g. inconsistent case or "?" instead of "U" for unknowns Solution: forcing levels to be uppercase and the replacement of obvious mis-specified levels

Problem: some columns seem to have swapped values, e.g. the gender column should be one of "M", "F", or "U" and the political affiliation column should be one of "D", "R", "I", or "U", but some individuals have the gender recorded as "R" and political affiliation as "M" Solution: the creation of the `IdentifySwap` function, which has two arguments: a data set and the acceptable or correct levels for the variables in the data set. It then identifies rows which have candidate swaps and presents them for review

4 Analysis

		Juror Race					
		Black		White		Other	
		Struck	Kept	Struck	Kept	Struck	Kept
	Black	154	3019	1763	7942	38	384
Defendant Race	White	101	927	968	5693	17	140
	Other	33	442	229	1296	8	63

Try rounding to make the patterns clearer:

		Juror Race					
		Black		White		Other	
		Struck	Kept	Struck	Kept	Struck	Kept
	Black	200	3000	1800	7900	0	400
Defendant Race	White	100	900	1000	5700	0	100
	Other	0	400	200	1300	0	100

Rearrange the table to put large numbers first and remove extra zeros:

		Juror Race						
		White		Black		Other		
		Kept	Struck	Kept	Struck	Kept	Struck	Total
	Black	79	18	30	2	4	0	133
Defendant Race	White	57	10	9	1	1	0	78
	Other	13	2	4	0	1	0	21
	Total	149	30	44	3	6	1	

Now for the prosecution:

		Juror Race						
		White		Black		Other		
		Kept	Struck	Kept	Struck	Kept	Struck	Total
Defendant Race	Black	90	7	26	6	4	1	133
	White	61	6	9	1	1	0	78
	Other	14	1	4	1	1	0	21
	Total	165	14	39	8	6	1	

5 Comparison to Previous Work

6 Conclusions and Recommendations

7 Ideas

- look at the CSI from StatsCan, or an analogous US value, to assess the severity of a crime

- Kullback-Leibler divergence of accepted jury distribution to the venire distribution

- Look at guilty verdict tendencies based on jury race vs. defendant race

References

[1] 42nd Parliament of Canada. Bill C-75: An Act to Amend the Criminal Code, Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, March 2018. http://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c75.html.

[2] 42nd Parliament of Canada. Bill C75. LEGISinfo, November 2018. http://www.parl.ca/LegisInfo.

[3] D. C. Baldus, G. Woodworth, D. Zuckerman, and N. A. Weiner. The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis. *University of Pennsylvania Journal of Consitutional Law*, 3(1), 2001.

[4] C. M. Grosso and B. O'Brien. A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials. *Iowa Law Review*, 97:1531, 2012.

[5] K. Harris. Liberals review jury selection process after Boushie case uproar. CBC News, February 2018. https://www.cbc.ca/news/politics/jury-selection-diversity-indigenous-1.4531792.

[6] N. R. Hasan. Eliminating peremptory challenges makes trials less fair. The Star, April 2018. https://www.thestar.com/opinion/contributors/2018/04/10/eliminating-peremptory-challenges-make-trials-less-fair.html.

[7] C. MacLean. Gerald Stanley acquittal renews calls for justice reform 27 years after Manitoba inquiry. CBC News, February 2018. https://www.cbc.ca/news/canada/manitoba/aboriginal-justice-inquiry-colten-boushie-gerald-stanley-jury-1.4532394.

[8] G. Quenneville. What happened on Gerald Stanley's farm the day Colten Boushie was shot, as told by witnesses. CBC News, February 2018. https://www.cbc.ca/news/canada/saskatoon/what-happened-stanley-farm-boushie-shot-witnesses-colten-gerald-1.4520214.

[9] G. Quenneville and J. Warick. Shouts of 'murderer' in courtroom after Gerald Stanley acquitted in Colten Boushie shooting. CBC News, February 2018. https://www.cbc.ca/news/canada/saskatoon/gerald-stanley-colten-boushie-verdict-1.4526313.

[10] K. Roach. Ending peremptory challenges in jury selection is a good first step. The Ottawa Citizen, April 2018. https://ottawacitizen.com/opinion/columnists/roach-ending-peremptory-challenges-in-jury-selection-is-a-good-first-step.

[11] Statistics Canada. Table 35-10-0061-01: Crime severity index and weighted clearance rates, police services in Saskatchewan, November 2018.

[12] R. F. Wright, K. Chavis, and G. S. Parks. The Jury Sunshine Project: Jury Selection Data as a Political Issue. *University of Illinois Law Review*, 2018(4):1407, October 2018.

[13] B. Zinchuk. Both sides wrong about Stanley trial. Prince George Citizen, March 2018. https://www.princegeorgecitizen.com/opinion/editorial/both-sides-wrong-about-stanley-trial-1.23199321.