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Juries

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The jury is one of the cornerstones of the judicial system in the United States. Although it has varied historically, an ideal jury today consists of twelve citizens drawn from a panel representing a fair crosssection of the community. The jury's tasks are to observe the trial, to engage in deliberations behind closed doors, and to reach a verdict. The jurors have been selected to serve on the jury because they can be impartial, which means that they do not have a fixed view of the case but can decide it either way, depending on the evidence. In addition, they do not have any stake in the outcome of the case or any familial relationship with the participants in the trial. The ideal of the impartial juror applies to the jury whether it is hearing a civil or criminal case or sitting in a state or federal court. Although the American jury today depends on impartial jurors, this is a modern requirement; juries in medieval times, for example, sought to be just the opposite.

The modern American jury provides benefits to the parties to the trial, the community, and the jurors. From the parties' perspective, the jury, which consists of ordinary citizens, is beneficial because it introduces the commonsense judgment of the community into the decision-making process. From the community's perspective, the jury is beneficial because it consists of a group of citizens who serve for only one case and then return to their private lives, resulting in a system that is unlikely to be manipulated. From the juror's perspective, jury duty is beneficial because it provides a first-hand opportunity to participate in selfgovernance and to learn about the judicial system. In the words of Alexis de Tocqueville (1805–1859), who visited America over 170 years ago, the jury is invaluable because it serves as a “free school,” training citizens in the responsibilities of citizenship.

Although the jury provides all of these benefits, its main function has traditionally been fact-finding. The idea is that a group of twelve citizens, coming from different backgrounds and having different perspectives, will be able to recollect, challenge, and evaluate the evidence at trial to provide accurate fact-finding.

The jury plays several important roles other than fact finder, but it is the fact-finding function that the judge emphasizes to the jury. Although the jury has always played a fact-finding role, this role has changed over time. The medieval jury exercised greater independence in its fact-finding than today's jury does, and the early American jury

exercised both fact-finding and law-judging roles that today's jury does not have, at least not explicitly.

Medieval Jurors

The medieval juror had a different role than today's impartial juror. The medieval juror was selected to serve precisely because he *knew* the facts of the case and the parties involved in the dispute. If there were facts that the medieval juror did not know, he was expected to go out and uncover them, either on his own or by consulting others. In this sense, then, the medieval jury was self-informing; it undertook whatever investigation it needed to decide the case before it.

This arrangement was beneficial to the British Crown in at least two ways. First, the investigation of facts was time-consuming and expensive. Rather than having judges investigate facts, jurors were given this responsibility. The British Crown was spared the expense of this labor-intensive work. Second, by having the jury, rather than the judge, decide disputes, in which there would inevitably be a winner and a loser, judges were spared the displeasure of the loser. Instead, the jury was responsible for the decision and had to bear the brunt of the losing side's dissatisfaction.

The medieval jury enjoyed power that today's modern jury does not have. Because the medieval jury carried out its own investigations, outside of the courtroom and beyond the supervision of the judge, the jury could make factual findings that could not be questioned by a judge who was unfamiliar with facts that the jury had uncovered.

American Colonial Jurors

By the time the jury reached colonial America, several features had changed. One change was that jurors were no longer chosen because they knew the facts **[p. 860 ↓]** and the parties. Another change was that the presentation of the facts took place inside the courtroom, before the jury and the judge. One difference between the colonial judge and today's judge is that the colonial judge did not typically have legal training. Therefore, his understanding of the law was not entitled to deference. His main role was

to keep order in the courtroom. Accordingly, the jury was instructed by the judge that it must decide both the facts *and* the law. Today; the jury is told that its job is to decide the facts and to apply the law as the judge gives it to the facts as the jury finds them.

By the mid-1800s, judges typically had legal training and were responsible for enforcing certain rules in the courtroom relating to the presentation of evidence by lawyers. Professionally trained judges did not instruct the jury to decide the law; rather, the judge assumed that responsibility. The jury's function was to find the facts. The jurors were limited to facts that were presented by the lawyers in the courtroom, and these were facts with which the judge would be familiar as well.

The juror's role by the late 1800s had become more passive than that of the medieval juror and more limited than that of the early colonial juror. Unlike medieval jurors, jurors could no longer investigate facts on their own; they were supposed to use only those facts presented in court. Unlike early colonial jurors, jurors could no longer decide the law, only the facts. Their world had become more circumscribed and their function more constrained.

By the late 1800s, the jury had also become a more diverse body. In the past, only white men with property had been able to serve as jurors. By the late 1800s, the U.S. Supreme Court had held that states could no longer exclude African American men from jury service. Although women were still excluded from serving as jurors in many states, that eventually changed. In addition, with the passage of the Civil Rights Act of 1957, women could serve as jurors in federal court regardless of whether they could serve in their own state's court. The opening up of the jury to African American men and all women meant that the jury could become a more egalitarian institution and more representative of the larger community. This transformation took time, however, and for many years lawyers used a variety of devices to keep African American men and women of all races from actually serving on juries.

Modern Jurors

Juror Impartiality

Today's jurors, unlike their medieval predecessors, are supposed to be impartial and passive. The jury selection process is supposed to eliminate jurors who cannot be impartial. Before jurors are selected to serve on a jury, they must answer a series of questions. This process of questioning jurors is known as *voir dire.* It can be conducted either by the judge, as is typical in federal court, or by the attorneys, as is typical in some state courts. The jurors are usually questioned as a group. Jurors who say they cannot be impartial are excluded by the judge through for cause challenges, which require the judge to explain why a juror cannot serve. The lawyers are given a certain number of peremptory challenges, which allow them to remove a certain number of jurors without having to give a reason. (If a lawyer seems to be excluding someone on an impermissible basis, such as race, ethnicity, or gender, however, the lawyer may have to give a reason for the challenge and it may be disallowed.) The idea behind both the judge's for cause challenges and the attorneys' peremptory challenges is that jurors who say they cannot be impartial or who give the appearance of partiality should not be permitted to serve. Only jurors who can be impartial are allowed to serve. This requirement comes from the Sixth Amendment to the U.S. Constitution, which provides that in a criminal case a defendant is to be tried by an impartial jury. The U.S. Supreme Court has extended this requirement to civil juries as well.

Passive Model versus Active Model of Jurors

In addition to being impartial, the juror has traditionally played a passive role during the trial. The juror's role has long been understood to include sitting through the trial, no matter how lengthy or complex, and retaining **[p. 861 ↓]** information, much as a sponge absorbs water. Jurors were supposed to be active only when they entered the jury room

and began their deliberations. Only recently has this view of the passive juror been challenged. Now, a number of state courts have recognized that jurors simply cannot absorb all of the information that is presented over a long period of time. Jurors may need to take notes or ask questions, much as students do to learn new material in the classroom.

One debate concerns the proper role of the juror. Should the juror's role be based on the traditional passive model or the new, but more controversial, active model? Proponents of the passive model see jurors as people who sit through the trial quietly and retain all of the information presented without using any aids or tools. Proponents of the active model believe that jurors must be engaged in the trial and given tools to assist in their learning. One of the most basic tools is taking notes. Juror note taking had not been allowed in most courtrooms until the late 1990s. Many judges and lawyers believed that jurors would be distracted by taking notes. They worried that jurors might be so absorbed in taking notes that they would fail to observe witnesses as they testified and miss crucial body language that would help them assess witness credibility. Gradually, however, courtrooms around the country began to allow jurors to take notes during trial and consult them during deliberations.

Other tools that help jurors to be actively engaged in the trial have been tried with success in some state courts but have not been widely adopted. One new practice is allowing jurors to submit written questions to the judge, who then decides, after consultation with the lawyers, whether to ask the questions of the witness. Judges who have had experience with this practice have generally been satisfied with it. They have found that jurors tend to ask reasonable questions and only a limited number of questions, so that the questions do not lengthen the trial significantly. Lawyers who have had experience with the practice have also favored it. Lawyers who have not had experience with the practice worry that jurors will ask too many questions, become advocates for a particular point of view, resent the lawyers if their questions are not answered, and interrupt the flow of the trial with their questions.

Arizona is one state in which jurors are allowed to submit written questions to the judge. One advantage of this practice is that jurors do not have to remain confused throughout the trial. Instead, they can seek clarification as soon as they have questions. Another advantage is that jurors no longer have to speculate about answers during

deliberations. They can turn to the judge and the witnesses and have them answer their questions during the trial.

Questions about allowing jurors to take notes or ask questions raise the issue of whether jurors are being given the tools they need to perform their job effectively. Although the debate about note taking is fairly well settled, it is an open question as to which other tools jurors need to perform their tasks. Do they need laptop computers to take notes or calculators or spreadsheets to determine damage awards? Although not all technological devices have a place in the courtroom, courtrooms should not be so bereft of such devices that the commonly accepted tools that every student or employee depends on are noticeably absent. If this were to be the case, jurors would be deprived of basic tools that they depend on in other settings to organize information, communicate ideas, and make decisions.

Future Directions

The jury is the bedrock of the U.S. judicial system, and yet, the number of jury trials has been dwindling, both in federal and state courts. This has become a cause for concern. One worry is that with so few jury trials, trial lawyers and trial judges will lose the skills they now have to try such cases. Another worry is that jury trials will cease to be a genuine protection for the average citizen.

Although these issues continue to be of concern, jury trials continue to play a crucial role in our society. Jury trials occupy the front pages of newspapers and are the top stories on news programs. Jury trials are reserved for the truly hard cases, the ones for which there are no right answers. Although there may not be many jury trials, they are closely watched and their outcomes are widely reported. The importance of these cases extends far beyond their numbers, so **[p. 862 ↓]** perhaps the *number* of jury trials is not the best way to measure their influence. In addition, citizens who serve as jurors continue to describe their experiences in positive terms. Those who actually serve as jurors think more highly of the jury and the judicial system. Tocqueville's description of the jury as a “free school” remains as apt today as it was 170 years ago.

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See also

- Courts
- Juries, Psychology of
- Procedural Justice
- Trials, Civil
- Trials, Criminal
- Zeisel, Hans

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