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Trials, Civil

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A civil trial is a set of rule-bound procedures for gathering evidence in civil cases. The latter is a residual category of all cases outside of the criminal jurisdiction and more specialized jurisdictions such as bankruptcy or admiralty. Administrative adjudications and arbitrations, a numerically large category, are also generally not considered civil trials. Civil cases can yield a range of possible remedies, including money damages, civil penalties, restitution, and injunctive relief.

The dominant jurisprudence implicit in Western legal systems envisions the civil trial as the institutional device for establishing the rule of law, understood as the “law of rules,” in situations where there are disputes of fact. Broadly liberal and dominantly positivist regimes elevate the importance of preexistent standards, allowing citizens to determine whether a contemplated action will trigger the coercive effects of state power and what those effects will be. This means citizens can both avoid those coercive effects—by avoiding civil tort liability, for example—and harness state power to assist their purposes, in the enforcement of contracts, for example.

Positive law can accomplish none of these goals, however, without an institutional device for (1) accurately determining the nature, context, and effects of the citizen's action and (2) assuring that this action will be assessed by precisely the norms that are prescribed in the positive law. This is what the modern trial is thought to provide. Its rules and practices are justified as (1) providing the tribunal with an accurate picture of a past event and (2) framing that event in a form relevant to the substantive law known to the judge or communicated to the jury in instructions. In the Anglo American world, jurists understand rules of evidence to further these goals. Authenticating exhibits, screening expert testimony, and excluding some forms of hearsay evidence are thought to increase the likelihood that the evidence will be reliable in contexts where the jury is thought to be unable to determine reliability. Rules requiring testimony “in the language of perception” (the non-opinion rule) and the materiality of evidence (the commonsense or scientific link between each unit of evidence and an officially sanctioned norm in the substantive law) are designed to increase the likelihood that the trial will preserve the rule of law in situations where there are disputes of fact. By constricting the evidentiary base in this way, the trial's rules restrict the power of “life-world” norms elicited by legally irrelevant evidence to determine the outcome. In civil trials on the European mainland (called the continental system), the jury is replaced by a professionally

socialized judge, with the result that such rules are thought less necessary. Continental inquisitorial systems generally adhere to a system of “free proof” relatively unstructured by evidentiary rules.

In the United States, several of the underpinnings of this “received view” of the trial have been challenged as inconsistent with the constitutional status of the jury and with the actual operations of jury trials. The received view is consistent with a discredited empiricism, holding that determinations of fact can be built up from reports of normatively unvarnished perceptions. It relies on a distinction between fact and norm that is more rigid and less provisional than warranted. It ignores the historically and constitutionally well-rooted political and moral dimensions of trial decision making. It ignores the normative significance of the narrative and performative aspects of the trial. Of course, the normative and political questions concerning the legitimacy of these more political and holistic modes of social ordering are contested.

There are illuminating, but quite complex, relationships between the procedural structure of civil trials and the nature of the society within which those trials take place. The civil trial in the United States can be fairly described as the most adversarial, most democratic, most empiricist, and most individualist in the world. The parties retain the largest amount of control of the evidence presented and the mode of proof. The judge is relatively the most passive. Continental trials can be fairly described as more inquisitorial, more authoritarian, more professional, more embedded in a hierarchical set of processes. They tend to be viewed more as a first step in a sequence of processes in which appellate review is usual. The judge has a much larger responsibility for the development of evidence. Trials in Great Britain fall closer to the American extreme. The common law trial, especially the jury trial, tends to be a temporally compressed event, a “day in court,” whereas the continental trial is more of an inquiry that evolves over time at the trial level, to the extent that “there is no such thing as a ‘trial' in continental civil procedure” if a trial is understood as “a single, dramatic, concentrated and uninterrupted presentation of everything that bears on the dispute” (Schlesinger, et al. 1998: 460, 446).

The procedural structure of civil trials has often evolved to reflect changes in the structure and dominant self-understandings of societies. For example, consistent **[p. 1523 ↓]** with a dawning liberal ideology, French civil trials in the era after the Revolution

changed to allow for a somewhat higher level of citizen control over the issues tried. Likewise, as American society became structured by large-scale finance capitalism after the Civil War, conservative federal judges created a larger range of procedural devices by which to control populist juries, which were considered unable to understand norms necessarily embedded in the more technical rules appropriate for managing a complex economic system.

The nature of the American civil trial has become quite controversial. It still actualizes a highly contextual form of commonsense moral judgment, only somewhat constrained to different degrees and in different contexts by legal rules. These modes of evaluation are incongruent with more highly instrumental modes of thought embedded in the steering mechanisms that dominate important social spheres. They are likewise in tension with both the formalism and the instrumentalism that are characteristic of bureaucratic organizations.

Procedural mechanisms available in modern legal systems allow the court to determine that a trial is unnecessary because there are no substantial questions of material fact. Such summary dispositions in civil trials may have increased in the United States, according to disputed evidence. There appears to be a very sharp recent decline in the percentage of civil cases going to trial within the last decade in both federal and state courts for several reasons still under investigation. Explanatory hypotheses include changes in legal doctrine allowing for more summary dispositions and in the economics of bringing a case to trial.

The use of the jury in civil trials varies quite widely. In the American federal system, the right to a trial by jury, highly valued in colonial times, is embedded in the Seventh Amendment to the U.S. Constitution and the constitutions of most states. During the debates over the adoption of the Constitution, the anti-Federalists insisted on a provision allowing juries in civil cases as a condition for ratification. Alexander Hamilton conceded in *Federalist No. 83* that the absence of a civil jury was the most effective argument deployed against the original constitution. Alexis de Tocqueville (1805–1859) famously celebrated the civil jury as a distinctively American institution and one where citizens absorbed the spirit and methods of democratic responsibility. The use of the civil jury is now almost nonexistent in England, where it was once quite widely employed. It has never found wide acceptance in the rest of Europe.

In American civil jury trials, judges may enter judgments as a matter of law (formerly called directed verdicts or judgments notwithstanding the verdict) in civil cases where the evidence supporting the plaintiff's claim is legally insufficient. This action is sometimes impermissible in criminal cases, where the law protects the jury's traditional political and moral role to a larger extent than in civil cases. The historical development of doctrine has made it somewhat easier for the judge to enter such judgments, although it happens in the distinct minority of cases. Judges may also grant new trials where there has been legal error in the trial court, such as an erroneous jury instructions or serious evidentiary determinations. Most civil jury verdicts are general verdicts, ruling for one party or the other without specific findings on each element of the plaintiff's claim. In the United States, since 1963 in the federal system, judges have had available special interrogatories, which require specific factual findings on each element of the plaintiff's claim, something often thought consistent with the higher levels of formalism and predictability necessary in a contemporary economy.

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See also

- Civil Court Procedures, Doctrinal Issues in
- Evidence and Proof, Doctrinal Issues in
- Juries
- Litigiousness, Civil
- Rule of Law
- Tocqueville, Alexis de

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