

COMPARATIVE CRIMINAL PROCEDURE SEMINAR
TRIAL BY JURY IN COMPARATIVE PERSPECTIVE
THE ROLE OF PROFESSIONAL AND LAY JUDGES IN DECIDING CRIMINAL CASES

Professor Thaman
Fall 2003
Tuesday: 4:00- 5:50 p.m.
Room

GOALS OF THE SEMINAR

1. *The Problem* Jury trial is perhaps one of the most controversial institutions of the democratic state. It is an ancient institution which preceded the creation of the professional judge as a participant in the resolution of conduct and social conflicts punishable under what we now call the criminal law. It is a local institution, an institution of popular rule even before it became a democratic institution. In the 17th Century in England and the 18th and 19th Centuries in America and on the European Continent it became a symbol of freedom against oppressive monarchies and part of most European systems of criminal justice. But the freedom of juries to reject the law as written, to import into its decisions (for better or worse) its local opinions as to the justice of the case (or the law) rankled the judiciary and theoreticians of democracy who felt that the law should be equally applied to all. Juries were never completely accepted on the European Continent and were eliminated in many countries in the first half of the 20th Century (usually by totalitarian governments). In their place came courts with lay assessors (mixed courts) where lay judges sit with professional judges on unified panels and decide all questions of law, fact, guilt and sentence together. Most European judges prefer this system because they can still usually get the lay judges to follow their recommendations in the secret deliberations. But the battle between professional judges and lay judges over who gets to decide the important issues in criminal cases (questions of fact, questions of law, guilt and sentence) still is alive in Europe, as two countries have returned to trial by jury after earlier totalitarian dictatorships had eliminated it (Russia and Spain) and in the U.S., where legislation and judicial decisions have attempted to limit the importance of the jury in deciding the crucial questions in a criminal case.

2. *Focus of Research* I want us to cover in some detail the following areas of importance. First, the history of lay participation in the beginnings of European criminal procedure is important in understanding how the issues we will address have developed, so we will read some texts on this subject. The development of the criminal jury in England is the most important in this respect, especially because our jury system is based thereon. We should then spend some time on how the criminal jury trial developed in America from Colonial times up to the present. We will then spend some time on the forms of jury trial which were developed on the European Continent in the 19th and early 20th Centuries (and which continue in certain European countries today) and appraise the different approaches taken there (majority verdicts, special verdicts in the form of question lists, appealability of acquittals, requirement of reasons). Finally it is important to explore the plausibility of the main competitors with the Anglo-American jury: the European mixed court, or a trial by one or more professional judges. Finally, students in their papers (and we in our discussions) should try to develop opinions on: (1) whether lay participation in the

decision of criminal cases is an indispensable democratic institution; (2) should lay participation be in the form of the jury and should this form be: (a) completely autonomous (right to nullify the law, non-appealability of acquittals, right to determine the law, etc.); (b) loosely guided by professional judges (no express right to nullify the law, removal of nullifying jurors) or (c) under the strict hand of the judge (right to prevent nullification, appealability of irrational acquittals); (3) should lay participation be in the form of a mixed court, (a) under effective control by the professional judge or judges as in Germany; or (b) with more effective counterbalance to the professional judge, as in France; (4) should juries be able to actually decide the guilt question or should they only decide what facts have been proven and leave the legal characterization of the acts to professional judges; (5) should juries also decide punishment or at least be advised of what punishment faces the defendant; (6) does the nature of the substantive criminal law, i.e., criminalization of human conduct, threatened punishments, effect your opinion as to what form is most appropriate?

3. *Class Participation* In relation to the articles listed for each class session, while it would be excellent for all participants to read each of the listed ones, I will assign one or two students to definitely read and report on the important articles and cases during each session.

4. *Papers* Ideally, I would like each of you to take a different foreign country, discuss that country's approach to lay participation in the criminal trial, and then address the various, political, philosophical and legal problems mentioned above (and others if you wish), comparing that system with the American approach (and other approaches we have discussed, if you wish). I will provide you with English language materials to the best of my ability on other systems you choose. If you can read in a foreign language, then I can also help you find materials in that language. Papers shall be between 20-30 pages, double-spaced, with footnotes.

CLASS ONE (Aug. 19): **The Roots of Lay Participation in Criminal Trials.** JOHN PHILIP DAWSON, *A HISTORY OF LAY JUDGES*. (Harvard 1960): pp. 10-115.

CLASS TWO (Aug. 26): **The Development of English Trial by Jury:** Thomas A. Green, *The English Criminal Trial by Jury and the Law-Finding Traditions on the Eve of the French Revolution*, and John H. Langbein, *The English Criminal Trial Jury on the Eve of the French Revolution*, both in *THE TRIAL JURY IN ENGLAND, FRANCE, GERMANY. 1700-1900* (Antonio Padoa Schioppa ed. 1987), at 13-73. Throckmorton's Case, 73 Eng. Rep 215 (K.B. 1554); Rex v. Lilburne, 4 Howell's St. Trials 1270 (1649); Bushell's Case, 6 Howell's State Trials 999 (1670); Penn & Meads' Case, 6 Howell's 951 (1670).

CLASS THREE (Sept. 2): **The Development of American Trial by Jury:** Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, U. CHI. L. REV. 867 (1994). Duncan v. Louisiana, 391 U.S. 145 (1968).

CLASS FOUR (Sept. 9): **History of Jury Nullification in the U.S.** Alan W. Schefflin, *Jury Nullification: the Right to Say No*, 45 SO. CAL. L. REV. 168 (1972). Cases: Georgia v. Brailsford, 3 U.S. (3 Dall.) 1,4 (1794); United States v. Battiste, 24 F.Cas. 1042 (No. 14,545)(C.C.D. Mass. 1835); Commonwealth v. Porter, 10 Metc. 263 (Mass.1845); State v.

Croteau, 23 Vt. 14, 47 (1848); Commonwealth v. Anthes, 5 Gray 185 (Mass. 1855); United States v. Morris, 26 F.Cas. 1323 (No. 15,815 (C.C.D. Mass. 1851); R. v. Dudley and Stephens, 14 Q.B.D. 273 (1884); Sparf and Hansen v. United States, 156 U.S. 51 (1895).

CLASS FIVE (Sept. 16): 19th Century European Jury Systems.

Markus Dirk Dubber, *The German Jury and the Metaphysical Volk: From Romantic Idealism to Nazi Ideology*, 43 AM. J. OF COMP. LAW 227-271 (1995).

Arnd Koch, *C.J.A. Mittermaier and the 19th Century Debate About Juries and Mixed Courts*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 347-53.

Stephen C. Thaman, *Questions of Fact and Law in Russian Jury Trials: The Practice of the Cassational Courts Under the Jury Laws of 1864 and 1993*, *id.*, at 415-50.

CLASS SIX (Sept. 23). Modern European Systems of Mixed Courts

Gerhard Casper & Hans Zeisel, *Lay Judges in the German Criminal Courts*, 1 J. Legal Stud. 135, 189 (1972).

Walter Perron, *Lay Participation in Germany*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 181-95.

Christian Rennig, *Influence of Lay Assessors and Giving Reasons for the Judgement in German Mixed Courts*, *ibid.*, at 481-94.

STEPHEN C. THAMAN, COMPARATIVE CRIMINAL PROCEDURE, pp. 202-15

CLASS SEVEN (Sept. 30) Modern European Jury Systems. Thaman in *World Jury Systems*; Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in *WORLD JURY SYSTEMS* (Neil Vidmar ed.) (2000), at 1-52.

Stephen C. Thaman, *Europe's New Jury Systems: The Cases of Spain and Russia*, in *WORLD JURY SYSTEMS* (Neil Vidmar ed.) (2000), at 318-51.

CLASS EIGHT (Oct. 7): The Modern Nullification Debate

Darryl K. Brown, *Jury Nullification Within the Rule of Law*, 81 MINN. L. REV. 1149 (1997)

Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L. J. 677 (1995)

Nancy J. King, *Silencing Nullification Advocacy Inside the Jury Room and Outside the Courtroom*, 68 U. CHI. L. REV. 433 (1998)

United States v. Spock, 416 F.2d 165, 182 (1st Cir. 1969)

United States v. Dougherty, 473 F.2d 1113 (D.C.Cir. 1972)

United States v. Thomas, 116 F.3d 606 (2d Cir. 1997)

People v. Engelman, 121 Cal.Rptr.2d 862 (Cal. 2002)

CLASS NINE (Oct. 14) Reform?

Akhil Reed Amar, *Reinventing Juries: Ten Suggested Reforms*, 28 U.C. DAVIS L. REV. 1169 (1995)

John D. Jackson, *Making Juries Accountable*, 50 AM. J. COMP. L. 477 (2002)

Adriaan Lanni, *Jury Sentencing in Noncapital Cases: An Idea Whose Time Has Come (Again)?* 108 YALE L. J. 1775-1803 (1999).

Stephen C. Thaman, *Japan's New System of Mixed Courts: Some Suggestions Regarding Their Future Form and Procedures*, ST. LOUIS-WARSAW TRANSATL. L. J. 89-114 (2001-2002)

Apprendi v. New Jersey, 120 S.Ct. 2348 (2000)

Harris v. United States, 122 S.Ct. 2406 (2002)

Ring v. Arizona, 122 S.Ct. 2428 (2002)

CLASS TEN (Oct. 28) Student Presentations (or writing)

CLASS ELEVEN (Nov. 4) Student Presentations (or writing)

CLASS TWELVE (Nov. 11) Student Presentations (or writing)

CLASS THIRTEEN (Nov. 18) Student Presentations (or writing)

CLASS FOURTEEN (Nov. 25) Student Presentations (or writing).

RECOMMENDED READING

1. The Roots of Lay Participation in Criminal Trials

JOHN PHILIP DAWSON, *A HISTORY OF LAY JUDGES*. (Harvard 1960): pp. 1-115.

WILLIAM FORSYTH, *TRIAL BY JURY* (New York, 1971) (originally published in 1878) (1-43).
Repp.

THORL. GUDM. REPP, *A HISTORICAL TREATISE ON TRIAL BY JURY, WAGER OF LAW, AND OTHER CO-ORDINATE FORENSIC INSTITUTIONS FORMERLY IN USE IN SCANDINAVIA AND ICELAND* (1832).

2. The Development of English Trial by Jury

Morris S. Arnold, *Law and Fact in the Medieval Jury Trial: Out of Sight, Out of Mind*, 18 AM. J. L. HIST. 267 (1974)

JOHN PHILIP DAWSON, *A HISTORY OF LAY JUDGES*. (Harvard 1960): pp. 115-

Thomas A. Green, *The English Criminal Trial by Jury and the Law-Finding Traditions on the Eve of the French Revolution*, in *THE TRIAL JURY IN ENGLAND, FRANCE, GERMANY. 1700-1900* (Antonio Padoa Schioppa ed. 1987), at 41-73. THOMAS ANDREW GREEN, *VERDICT ACCORDING TO CONSCIENCE: PERSPECTIVES ON THE ENGLISH CRIMINAL TRIAL JURY, 1200-1800* (Univ. of Chicago, 1985).

3. The Development of American Trial by Jury

JEFFREY ABRAMSON, *WE, THE JURY. THE JURY SYSTEM AND THE IDEAL OF DEMOCRACY* (Harvard Univ. Paperback 2000), first published 1994 (Cambridge, MA, London) (in bookstore)

Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, U. CHI. L. REV. 867 (1994).

Nancy J. King, *Juror Delinquency in Criminal Trials in America, 1796-1996*, 94 MICH. L. REV. 2673 (1996)

Stanton D. Krauss, *An Inquiry Into the Right of Criminal Juries to Determine the Law in Colonial America*, 89 J. CRIM. L. & CRIMINOLOGY 111-214 (1998)

John M. Murrin, *Magistrates, Sinners, and a Precarious Liberty: Trial by Jury in Seventeenth-Century New England*, in SAINTS & REVOLUTIONARIES: ESSAYS ON EARLY AMERICAN HISTORY 152-206 (David D. Hall, et al. eds. 1984)

4. Nineteenth Century European Jury Systems

Markus Dirk Dubber, *The German Jury and the Metaphysical Volk: From Romantic Idealism to Nazi Ideology*, 43 AM. J. OF COMP. LAW 227-271 (1995).

A. ESMEIN, A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE WITH SPECIAL REFERENCE TO FRANCE (Boston 1913).

Arnd Koch, *C.J.A. Mittermaier and the 19th Century Debate About Juries and Mixed Courts*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 347-53.

Stephen C. Thaman, *Questions of Fact and Law in Russian Jury Trials: The Practice of the Cassational Courts Under the Jury Laws of 1864 and 1993*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 415-50.

5. Modern Systems Using Lay Participation in Criminal Trials

5.1 Pure Jury Systems

Australia

Michael Chesterman, *Criminal Trial Juries in Australia: From Penal Colonies to a Federal Democracy*, in Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 125-65.

Belgium

Philip Traest, *The Jury in Belgium*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 27-50.

England and Wales

Sally Lloyd-Bostock & Cheryl Thomas, *The Continuing Decline of the English Jury*, in Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 53-91.

Michael Zander, *England and Wales Report*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 121-58.

Brazil

Luiz Flavio Gomes & Ana Paula Zomer, *The Brazilian Jury System*, in ST. LOUIS-WARSAW TRANSATL. L. J. 75-80 (2001-2002)

British Commonwealth

Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 1-52.

Richard Vogler, *The International Development of the Jury: The Role of the British Empire*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 525-51.

Canada

Neil Vidmar, *The Canadian Criminal Jury: Search For a Middle Ground*, in Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 211-48.

Ireland

John D. Jackson et al, *The Jury System in Contemporary Ireland: In the Shadow of a Troubled Past*, in Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 283-318.

Katie Quinn, *Jury Trial in the Republic of Ireland*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 197-214.

New Zealand

Neil Cameron et al, *The New Zealand Jury: Towards Reform*, in Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 167-210.

Russia

Marina Nemytina, *Trial by Jury: A Western or a Peculiarly Russian Model?*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 365-70.

Sergey A. Pashin, *The Reasons for Reintroducing Trial by Jury in Russia*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 253-57.

Stephen C. Thaman, *Europe's New Jury Systems: The Cases of Spain and Russia*, in Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 318-51.

Stephen C. Thaman, *The Resurrection of Trial by Jury in Russia*, 31 STAN. J. INT'L L. 61 (1995)

Scotland

Peter Duff, *The Scottish Criminal Jury: A Very Peculiar Institution*, in Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 249-82.

Christopher Gane, *The Scottish Jury*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE

XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 259-72.

Spain

CARMEN GLEADOW, *THE HISTORY OF JURY TRIAL IN SPAIN* (2000)

Carmen Gleadow, *Spain's Return to Trial by Jury: Theoretical Foundations and Practical Results*, in ST. LOUIS-WARSAW TRANSATL. L. J. 57-74(2001-2002)

Stephen C. Thaman, *Europe's New Jury Systems: The Cases of Spain and Russia*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 318-51.

Stephen C. Thaman, *Spain Returns to Trial by Jury*. 21 HASTINGS INT'L & COMP. L.REV.241 (1998)

5.2 Mixed Court Systems

Argentina

Edmundo S. Hendler, *Lay Participation in the Judicial Process: The Situation in Argentina*, in ST. LOUIS-WARSAW TRANSATL. L. J. 82-88 (2001-2002)

Edmundo S. Hendler, *Social Integration and Lay Participation: the Situation in Argentina*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 515-23.

China

Liling Yue, *The Lay Assessor System in China*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 52-56.

Croatia

Sanja Kutnjak Ivkovich, *Mixed Tribunals in Croatia*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 57-86.

France

Michel Bonnieu, *The Presumption of Innocence and the Court D'Assises: Is France Ready for Adversarial Procedure?*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 559-77.

Marcel LeMonde, *Specificities of the Court of Assize*, in ST. LOUIS-WARSAW TRANSATL. L. J. 43-56 (2001-2002)

Renee Lettow Lerner, *The intersection of two systems: an American on trial for an American murder in the French Cour d'assises*, 2001 U. ILL. L. REV. 791-856.

Germany

Felix Herzog, *Philosophical and Social View of the Jury: Could It Have a Renaissance in Germany?*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 553-57.

John H. Langbein, *Mixed Court and Jury Court: Could the Continental Alternative Fill the*

American Need?. 1981 AM. BAR FOUNDATION RESEARCH J. 195 (1981)

Stefan Machura, *Interaction Between Lay Assessors and Professional Judges in German Mixed Courts*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 451-79.

Walter Perron, *Lay Participation in Germany*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 181-95.

Christian Rennig, *Influence of Lay Assessors and Giving Reasons for the Judgement in German Mixed Courts*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 481-94.

South Africa

Milton Seligson, *Lay Participation in South Africa from Apartheid to Majority Rule*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 273-84.

Tracy Gilstrap Weiss, Comment. *The great democratizing principle: the effect on South Africa of planning a democracy without a jury system*, 11 TEMP. INT'L & COMP. L.J. 107-130 (1997).

Sweden

Christian Diesen, *Lay Judges in Sweden: Short Introduction*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 313-15.

Christian Diesen, *The Advantages and Disadvantages of Lay Judges from a Swedish Perspective*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 354-63.

Venezuela

Stephen C. Thaman, *Latin America's First Modern System of Lay Participation*, FESTSCHRIFT FÜR STEFAN TRECHSEL ZUM 65. GEBURTSTAG 765-79 (Andreas Donatsch et al ed, 2002)

5.3 Both Jury and Mixed Court Systems

Denmark

Stanley Anderson, *Lay Judges and Jurors in Denmark*, 38 AM. J. OF COMP. LAW 839 (1990)

Peter Garde, *The Danish Jury*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 87-120.

Eva Smith, *The Danish Jury and Mixed Court System*, in ST. LOUIS-WARSAW TRANSATL. L. J. 29-42 (2001-2002)

Norway

Asbjorn Strandbakken, *Lay Participation in Norway*, in LAY PARTICIPATION IN THE CRIMINAL

TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 225-51.

5.4 Systems Undergoing Reform

Japan

Lester W. Kiss, *Reviving the Criminal Jury in Japan*, in Neil Vidmar, *A Historical and Comparative Perspective on the Common Law Jury*, in WORLD JURY SYSTEMS (Neil Vidmar ed.) (2000), at 353-79.

Richard O. Lempert, *Citizen Participation in Judicial Decision Making: Juries, Lay Judges and Japan*, in ST. LOUIS-WARSAW TRANSATL. L. J. 1-14 (2001-2002)

Takashi Maruta, *The Criminal Jury System in Imperial Japan and the Contemporary Argument for its Reintroduction*, in LAY PARTICIPATION IN THE CRIMINAL TRIAL IN THE XXIST CENTURY, 72 REVUE INTERNATIONALE DE DROIT PENAL (2001), at 215-24.

Recommendations of the Justice System Reform Council--For a Justice System to Support Japan in the 21st Century, in ST. LOUIS-WARSAW TRANSATL. L. J. 119-224 (2001-2002)

6. The Modern Nullification Debate

Darryl K. Brown, *Jury Nullification Within the Rule of Law*, 81 MINN. L. REV. 1149 (1997)

Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L. J. 677 (1995)

Cohen, *Should a Jury Say What It Believes or What it Accepts?* 13 CARDOZO L. REV. 465 (1991).

David N. Dorfman & Chris K. Iijima, *Fictions, Fault, and Forgiveness: Jury Nullification in a New Context*, U. MICH. J. L. REF. 861 (1995)

Irving A. Horowitz, *The Effect of Jury Nullification Instruction on Verdicts and Jury Functioning in Criminal Trials*, 9 LAW & HUM. BEHAV. 25 (1985)

Nancy J. King, *Silencing Nullification Advocacy Inside the Jury Room and Outside the Courtroom*, 68 U. CHI. L. REV. 433 (1998)

Andrew D. Leipold, *Rethinking Jury Nullification*, 82 VA. L. REV. 253 (1996)

Alan W. Schefflin & Jon M. Van Dyke, *Jury Nullification: Contours of a Controversy*, 43 LAW & CONTEMP. PROBS. 51 (1980)

Schopp, *Verdicts of Conscience: Nullification and Necessity as Jury Responses to Crimes of Conscience*, 69 S. Cal. L. Rev. 2039 (1996)

7. Reform of Lay Participation

Akhil Reed Amar, *Reinventing Juries: Ten Suggested Reforms*, 28 U.C. DAVIS L. REV. 1169 (1995)

John D. Jackson, *Making Juries Accountable*, 50 AM. J. COMP. L. 477 (2002)

Adriaan Lanni, *Jury Sentencing in Noncapital Cases: An Idea Whose Time Has Come (Again)?* 108 YALE L. J. 1775-1803 (1999).

Kristen K. Sauer, *Informed Conviction: Instructing the Jury About Mandatory Sentencing Consequences*, 95 COLUM. L. REV. 1232 (1995).

David U. Strawn & G. Thomas Munsterman, *Helping Juries Handle Complex Cases*, in IN THE JURY BOX, 180, 180-82 (Lawrence S. Wrightsman et al, eds. 1987).

RECOMMENDED BOOKS (on reserve)

JEFFREY ABRAMSON, *WE, THE JURY. THE JURY SYSTEM AND THE IDEAL OF DEMOCRACY* (Harvard Univ. Paperback 2000), first published 1994 (Cambridge, MA, London) (in bookstore)
JOHN PHILIP DAWSON, *A HISTORY OF LAY JUDGES*. (Harvard 1960)
WILLIAM FORSYTH, *TRIAL BY JURY* (New York, 1971) (originally published in 1878).
THOMAS ANDREW GREEN, *VERDICT ACCORDING TO CONSCIENCE: PERSPECTIVES ON THE ENGLISH CRIMINAL TRIAL JURY, 1200-1800* (Univ. of Chicago 1985)
HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* (Univ. of Chicago, Chicago and London) (1966), Phoenix Ed. of 1971)
STEPHEN C. THAMAN, *COMPARATIVE CRIMINAL PROCEDURE: A CASEBOOK APPROACH* (Carolina Academic Press 2002) (in bookstore)(pp. 14-16; 165-215).
WORLD JURY SYSTEMS (Neil Vidmar ed.) (Oxford 2000).

RECOMMENDED ARTICLES

Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, U. CHI. L. REV. 867 (1994).
Akhil Reed Amar, *Reinventing Juries: Ten Suggested Reforms*, 28 U.C. DAVIS L. REV. 1169 (1995)
Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L. J. 677 (1995)
Morris S. Arnold, *Law and Fact in the Medieval Jury Trial: Out of Sight, Out of Mind*, 18 AM. J. L. HIST. 267 (1974)
Cohen, *Should a Jury Say What It Believes or What it Accepts?* 13 CARDOZO L. REV. 465 (1991).
Thomas A. Green, *The English Criminal Trial by Jury and the Law-Finding Traditions on the Eve of the French Revolution*, in *THE TRIAL JURY IN ENGLAND, FRANCE, GERMANY. 1700-1900* (Antonio Padoa Schioppa ed. 1987), at 41-73.
John D. Jackson, *Making Juries Accountable*, 50 AM. J. COMP. L. 477 (2002)
Nancy J. King, *Juror Delinquency in Criminal Trials in America, 1796-1996*, 94 MICH. L. REV. 2673 (1996)
Nancy J. King, *Silencing Nullification Advocacy Inside the Jury Room and Outside the Courtroom*, 68 U. CHI. L. REV. 433 (1998)
Adriaan Lanni, *Jury Sentencing in Noncapital Cases: An Idea Whose Time Has Come (Again)?* 108 YALE L. J. 1775-1803 (1999).
Andrew D. Leipold, *Rethinking Jury Nullification*, 82 VA. L. REV. 253 (1996)
John M. Murrin, *Magistrates, Sinners, and a Precarious Liberty: Trial by Jury in Seventeenth-Century New England*, in *SAINTS & REVOLUTIONARIES: ESSAYS ON EARLY AMERICAN HISTORY 152-206* (David D. Hall, et al. eds. 1984)
Kristen K. Sauer, *Informed Conviction: Instructing the Jury About Mandatory Sentencing Consequences*, 95 COLUM. L. REV. 1232 (1995).
Alan W. Schefflin & Jon M. Van Dyke, *Jury Nullification: Contours of a Controversy*, 43 LAW & CONTEMP. PROBS. 51 (1980)

Schopp, Verdicts of Conscience: Nullification and Necessity as Jury Responses to Crimes of Conscience, 69 S.Cal. L. Rev. 2039 (1996)

David U. Strawn & G. Thomas Munsterman, Helping Juries Handle Complex Cases, in *IN THE JURY BOX*, 180, 180-82 (Lawrence S. Wrightsman et al, eds. 1987).

Wigmore, *A Program for the Trial of a Jury*, 12 AM. JUD. SOC. 166 (1929)

RECOMMENDED CASES

Throckmorton's Case, 73 Eng. Rep 215 (K.B. 1554)

Rex v. Lilburne, 4 Howell's St. Trials 1270 (1649)

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