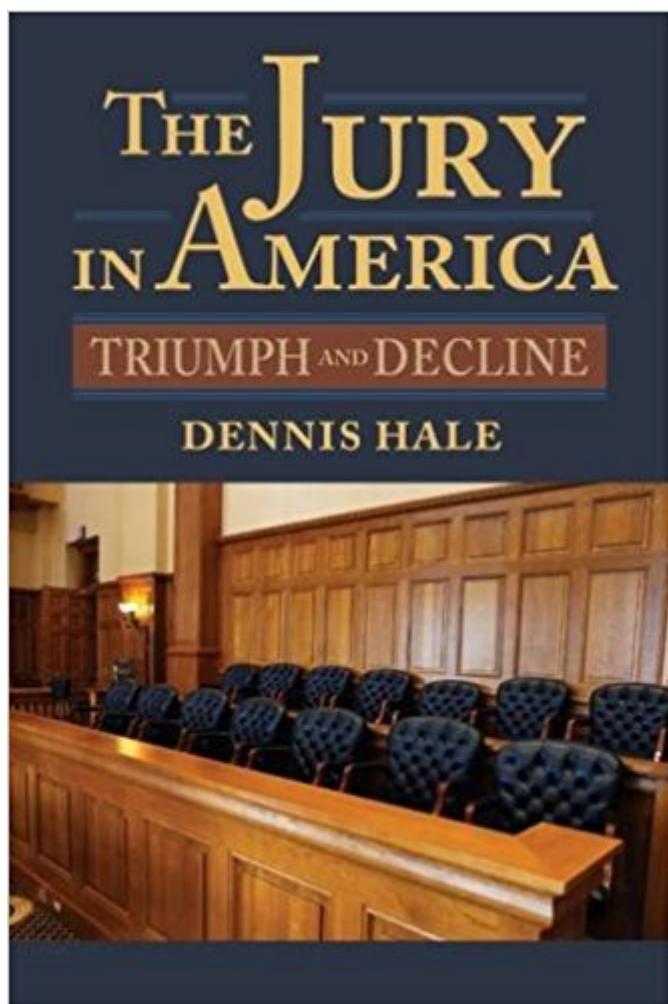


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# The Jury In America: Triumph And Decline (American Political Thought)



## Synopsis

The jury trial is one of the formative elements of American government, vitally important even when Americans were still colonial subjects of Great Britain. When the founding generation enshrined the jury in the Constitution and Bill of Rights, they were not inventing something new, but protecting something old: one of the traditional and essential rights of all free men. Judgment by an à œimpartial juryâ • would henceforth put citizen panels at the very heart of the American legal order. And yet at the dawn of the 21st century, juries resolve just two percent of the nationï¿½s legal cases and critics warn that the jury is à œvanishingâ • from both the criminal and civil courts. The juryï¿½s critics point to sensational jury trials like those in the O. J. Simpson and Menendez cases, and conclude that the disappearance of the jury is no great loss. The juryâ™s defenders, from journeyman trial lawyers to members of the Supreme Court, take a different view, warning that the disappearance of the jury trial would be a profound loss. In *The Jury in America*, a work that deftly combines legal history, political analysis, and storytelling, Dennis Hale takes us to the very heart of this debate to show us what the American jury system was, what it has become, and what the changes in the jury system tell us about our common political and civic life. Because the jury is so old, continuously present in the life of the American republic, it can act as a mirror, reflecting the changes going on around it. And yet because the jury is embedded in the Constitution, it has held on to its original shape more stubbornly than almost any other element in the American regime. Looking back to juries at the time of Americaâ™s founding, and forward to the fraught and diminished juries of our day, Hale traces a transformation in our understanding of ideas about sedition, race relations, negligence, expertise, the responsibilities of citizenship, and what it means to be a citizen who is à œgood and trueâ • and therefore suited to the difficult tasks of judgment. Criminal and civil trials and the jury decisions that result from them involve the most fundamental questions of right, and so go to the core of what makes the nation what it is. In this light, in conclusion, Hale considers four controversial modern trials for what they can tell us about what a jury is, and about the fate of republican government in America today.

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## Customer Reviews

"This book is a superb contribution to the study of the jury system and breaks new ground in our understanding of the success and failure of the revered institution of jury trial in America. . . . All those who are interested in the jury system should read this extraordinary work, as well as anyone who wishes to engage in serious debates on the jury system's democratic functions, its impact on the justice system, and its sociopolitical influences in society." *H-Net Reviews* "The Jury in America is an excellent historical examination of American juries. The book does an excellent job of examining how the political role of juries has changed." *Law and Politics Book Review* "Hale has written an extensive, thorough volume on the an institution important enough to the founders that it is mentioned numerous times in the original US Constitution and Bill of Rights. Hale examines the origins of juries in English common law and their evolution during the Colonial period up and through the modern and postmodern periods. The combination of history, political science, and law here is masterful and the book is highly recommended." *Choice* "The Jury in America is an indispensable contribution to understanding a vital institution, one that once embodied real responsibilities in the hands of the governed as an antidote to a stifling centralization of democracy. Dennis Hale's compelling work bears out Tocqueville's fear that a more administrative, less political regime would curtail the people's ability to make defensible judgments on matters that are inherently uncertain." *Norma Thompson, author of Unreasonable Doubt: Circumstantial Evidence and the Art of Judgment* "Dennis Hale brings the broad vision of a gifted political theorist to assess the significance of the jury in American life, both its past centrality and its more recent marginalization. This important book provides an acute, detailed, and balanced judgment on all the central issues." *Robert P. Burns, author of A Theory of the Trial and The Death of the American Trial* Dennis Hale calls to our attention the American jury, an institution that has endured for centuries. In spite of its robust democratic credentials, the American jury is too often overlooked by democratic theorists, dismissed by legal scholars, and discredited by political leaders. Hale's

account explains how trial by jury could wither in the US, even while new jury systems bloom in countries as disparate as South Korea and Argentina. The American jury could rise again, however, if we read *The Jury in America* to better understand our nation's legal and cultural history, which shaped how jurors are chosen, how evidence gets presented and weighed, and how juries deliberate and reach verdicts. If Hale and others who have recently celebrated the American jury fall in this respect, a nation will have discarded an institution that our founders placed not only in the original US Constitution but also in three of its first ten amendments.<sup>12</sup> "John Gastil, Director, McCourtney Institute for Democracy, Penn State University

Dennis Hale is associate professor of political science at Boston College.

Professor Hale's history of the American jury system is well organized and expressed in layman's language. If you question whether our government serves the citizenry and wish to support those institutions that will strengthen our democracy, this is required reading. We take for granted that all citizens are equal under the law, that the executive branch diligently executes the laws faithfully and that criminals will be energetically prosecuted but we see examples that those time-honored principles are ignored when the well-connected are found out. At a time when there is no draft, a small percentage of citizens actually vote, less than half pay taxes and the media is mistrusted, the jury is an effective institution, populated by ordinary citizens. Jury verdicts affect not only particular cases, but often ripple throughout the polity and have an impact far beyond the particular case. The power of the ordinary citizen sitting on a jury cannot be ignored and the decline of the use of the jury must be monitored. Professor Hale explains how the jury came to be, how it developed into a crucial portion of our governance and why it must be protected. Professor Hale clearly traces the sources and history of issues influencing the use of juries and explains why the jury system is important to Americans. The basis for intelligent analysis and debate is presented. Indeed, most of us may not become alarmed when we read that our appellate courts are asked to consider foreign law when the issues are purely American nor is there a general outcry when there is a movement to avoid American law by permitting residents to use non-state tribunals like religious courts that apply religious principles at odds with American values; but those who recognize what is at stake are alarmed. At a time when the Federal government operates through a vast bureaucracy; administering thousands of pages of detailed regulations, levying huge fines and deciding issues that impose substantial costs that cascade through the economy, the small businessman is rolled over. Only a jury of his or her peers can empathize with that predicament and make a decision

based on community concepts of justice. The jury is thus a fundamental part of the political process and it has the last word; the courts may not ignore its findings of fact and verdicts. From its inception a critical issue was whether the jury was a mere finder of facts and bound to accept the law as instructed by the judge or whether the jury also had the right to apply the facts to a legal principle as the jurors may believe is more fair and just. When I took a course in the Development of Legal Institutions at Columbia Law School in 1963 I was disappointed in its failure to cover the history and importance of the jury. This book answered all of my questions. I recommend the book to all who love reading about our wonderful nation and I also recommend that Columbia Law School adopt the book as part of program.

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