

Preface

Over the past twenty years, I have studied and written about aspects of the history of trial by jury in England and America. Most of these studies were published, although in diverse journals and books, both English and American. They were never designed to be parts of a coordinated history, but they nonetheless fell into two broad categories. One was the historical use of juries of experts, and the other was the preservation of the civil jury in the United States by the Seventh Amendment to the Constitution. This book brings together in a single volume edited and updated versions of these prior writings, augmented by new material.

What prompted my initial interest in jury history was the popular use in English common-law courts in the eighteenth and nineteenth centuries of what was called the “special jury.” By the late eighteenth century, the most common form of the special jury was a jury of merchants impaneled to decide a commercial case, and the merchants customarily relied on their own commercial expertise as much as on the evidence produced in court. These were clearly juries of experts, but also they were juries of peers whenever, as was typical, the parties to the litigation were businessmen.

The Chief Justice of England’s leading common-law court in the late eighteenth century (the Court of King’s Bench) was Lord Mansfield, a judge of formidable intelligence and influence. Mansfield was famous for his instrumental use of special juries in articulating and developing principles of commercial law. In the early stages of my research on Lord Mansfield’s judicial career, I became curious to know the origins of the special jury, and this led to a long article on the subject. Later I looked ahead to the nineteenth century and wrote about the continuing popularity of the special jury into and beyond the reform era, after which it fell subject to abuse and was largely abandoned. The third and last part of

the work that I have done on the history of the special jury was an examination of its trajectory in the United States, where in a number of states variations of the special jury—or, as it is sometimes called, the “struck jury”—yet survive.

Two additional examples of juries composed of jurors with particular knowledge or expertise were the so-called self-informing jury and the jury of matrons. Edited and updated versions of published studies of these types of juries, together with the special jury articles, make up chapters 5 through 9 in this book.

The first four chapters address the scope of the civil jury-trial guarantee embodied in the Seventh Amendment to the U.S. Constitution. Chapters 1 and 2 first appeared in a *festschrift* for Brian Simpson, and part of chapter 3 was published in a review essay of Tom Green’s book, *Verdict According to Conscience*. The remainder of chapter 3 and all of chapter 4 are new.

I am grateful to the following publishers and journals for permission to present in this book edited, updated, and reconfigured versions of the various earlier studies:

- Oxford University Press (chapters 1 and 2, adapted from “The Seventh Amendment Right to Jury Trial: Late Eighteenth-Century Practice Reconsidered,” in Katherine O’Donovan and Gerry R. Rubin, eds., *Human Rights and Legal History: Essays in Honour of Brian Simpson*, Oxford University Press [2000]).
- Greenwood Publishing Group (part of chapter 3, from “The Jury: Perspectives on Thomas Andrew Green’s *Verdict According to Conscience*,” VIII *Criminal Justice History* 163 (1987); chapter 5 from “On Pleading the Belly: A History of the Jury of Matrons,” VI *Criminal Justice History* 1 [1985]).
- The Selden Society (chapter 6, part of the pamphlet version of my lecture at the Annual General Meeting in London in July 2004, “The Varied Life of the Self-Informing Jury” [2005]).
- *University of Chicago Law Review* (chapter 7, from “The Origins of the Special Jury,” 50 *University of Chicago Law Review* 137 [1983]).
- *Journal of Legal History* (part of chapter 8, from “Special Juries in England: Nineteenth Century Usage and Reform,” 8 *Journal of Legal History* (London) 148 [1987]).

- Hart Publishing (part of chapter 8, from “Jury Research in the English Reports in CD-ROM,” in John Cairns and Grant McLeod, eds., *“The Dearest Birth Right of the People of England”: The Jury in the History of the Common Law*, Hart Publishing [2002]).
- *William and Mary Bill of Rights Journal* (chapter 9, from “The History of the Special (Struck) Jury in the United States and Its Relationship to Voir-dire Practices, the Reasonable Cross-Section Requirement, and Peremptory Challenges,” 5 *William and Mary Bill of Rights Journal* 623 [1998]).

Certain editorial conventions have been followed in the preparation of this book. The general citation format for primary and secondary printed sources corresponds to *The Chicago Manual of Style*, except that I follow the New York University Press convention of not naming publishers of books published before the twentieth century. For printed case reports, I use the standard “Bluebook” citation form for American cases, and for English cases, I follow the standard conventions and abbreviations for citations to the nominative reports, as reflected in the full reprint of the *English Reports*. Parallel citations to the nominative reports and to the *English Reports* reprints are given. When original documentary sources are quoted, I modernize spelling, capitalization, and punctuation to the extent necessary for comprehension or clarity.

I am indebted to my institution, Georgetown University Law Center, for research grants that facilitated archival work in London for several of the previous studies, as well as for chapter 4. In the task of editing the prior publications and conforming them to the guidelines followed by the Press, I have had indispensable help from Faculty Assistant Diane Hedgecock and Faculty Manuscript Editor Anna Selden. For library and bibliographical queries, Special Collections Librarian Laura Bédard, as always, has provided invaluable help. With meticulous care, Barbara Wilcie Kern provided the detailed index, the tables of statutes and cases, and essential proofreading. Finally, I am grateful to Deborah Gershenowitz, at New York University Press, for her strong support of the concept of this book and for her patience and guidance.

