

Litan, Robert E., ed. *Verdict: Assessing the Civil Jury System*. Washington, D.C.: Brookings Institution, 1993.

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## JURY COMPOSITION AND SIZE

**Description:** Composition and number of members in a jury, a group of citizens brought together to hear testimony and determine a verdict in a trial.

**Relevant amendment:** Sixth

**Significance:** The Supreme Court shapes how the right to trial by jury occurs in practice, addressing key issues such as jury selection procedures, composition, size, and decision rule.

The right to trial by jury is guaranteed by Article III of the U.S. Constitution as well as by the Sixth, Seventh, and Fourteenth Amendments. Although the right to jury trial is largely immune to legislation, the particulars, including jury size, selection, and composition, are not as firmly fixed, and therefore, have been the subject of legislation and challenges in the Supreme Court.

A common method of jury selection before 1968 was the “key man” system, relying on prominent citizens in the community to serve. This meant many citizens were excluded from jury duty, despite being legally eligible. As early as 1880 in *Strauder v. West Virginia*, the Court had struck down a state law excluding African American men from jury duty as a violation of equal protection. Nonetheless, the practice of excluding minorities from jury service continued unacknowledged by the Court, as illustrated by its decision in *Swain v. Alabama* (1965) allowing exclusion of potential jurors on the basis of race. Similarly, although women became eligible for jury duty between 1870 and 1940 (depending on locale), most states continued to exclude women from jury pools (the groups from which jurors are drawn). The Court addressed this in *Taylor v. Louisiana* (1975), striking down the practice of including women in jury pools only if they volunteered.

In 1968 Congress enacted the Jury Selection and Service Act, requiring that federal jury pools be made up of citizens drawn at random “from a representative cross section of the community.” In *Taylor*, the Court ex-

tended this requirement to states. The random selection requirement substantially changed the methods used to create jury pools but did not address how individual jurors were selected during jury questioning.

However, the new focus on inclusiveness raised new jury selection and composition questions for the Court, leading it to revise its earlier position in *Swain* on the use of peremptory challenges. In a series of cases, the Court ruled that peremptories cannot be used to exclude potential jurors solely on the basis of race (*Batson v. Kentucky*, 1986) or gender (*J. E. B. v. Alabama ex rel. T. B.*, 1994). In *Holland v. Illinois* (1990), the Court clarified that it is the process of selecting the jury pool that must be representative rather than the juries themselves.

The Court noted that the use of twelve-person juries and the unanimous decision rule are simply historical customs rather than legal requirements. Nonetheless, it supported the tradition of jury unanimity until 1972, when it allowed majority verdicts in state criminal trials (*Apodaca v. Oregon; Johnson v. Louisiana*). States can also use majority decision rules in civil cases; however, federal criminal and civil cases retain a unanimity requirement.

In *Williams v. Florida* (1970), the Court allowed six-person juries in state criminal cases, provided they use a unanimous decision rule. The Court's reasoning noted the lower costs of smaller juries but misconstrued the implications of research examining the influence of jury size on deliberations. The Court set the minimum jury size by rejecting five-person juries in *Ballew v. Georgia* (1978).

### Further Reading

Abramson, Jeffrey. *We, the Jury*. New York: Basic Books, 1994.

Fukurai, Hiroshi, E. Butler, and R. Krooth. *Race and the Jury*. New York: Plenum, 1993.

Hans, Valerie, and Neil Vidmar. *Judging the Jury*. New York: Plenum, 1987.

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## LIBEL

**Description:** Printed or broadcast defamation, which entails false statements holding an individual up to ridicule, contempt, or hatred, or causing an individual to be avoided by others.

**Relevant amendment:** First