

## **Extended History of the Civil Jury Trial in the United States**

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When the right to trial by jury was incorporated into the 1816 and 1851 Indiana Constitutions, it was hardly a novel concept. Some scholars trace this right as far back as ancient Greece and the Athenian statesman Solon. Richard S. Arnold.<sup>1</sup> Other scholars trace this right only to the Middle Ages and the reign of William the Conqueror. Regardless of its origins, at least by the eleventh century, the right to trial by jury was firmly established in England. The Magna Carta, signed by King John on June 15, 1215 at Runnymede, guaranteed the right to a jury trial. And during the next one hundred years, the English kings reaffirmed the Magna Carta thirty-eight times. By the 1600s, when the thirteen colonies were founded, the right to trial by jury “had become one of the great palladiums of English liberty.” The English regarded this right “as a bulwark of liberty, and as a means of preventing oppression by the Crown.”<sup>2</sup>

The colonists brought the right to trial by jury with them from England. The 1606 charter given by James I to the Virginia Company incorporated the right to a jury trial, and by 1624 all trials in Virginia, both civil and criminal, were by jury. In 1628, the Massachusetts Bay Colony introduced jury trials, and the right to a jury trial was later codified in the Massachusetts Body of Liberties in 1641. The Colony of West New Jersey implemented trial by jury in 1677, as did New Hampshire in 1680 and Pennsylvania, under William Penn's proprietorship, in 1682.<sup>3</sup> Eventually, all colonies embraced trial by jury.

Nevertheless, through various measures, the King of England tried to dilute the right to a jury trial. Beginning in the mid-1770s, the colonists held a series of congresses to address the King's oppressive behavior. The work of the congresses culminated in the Declaration of Independence signed on July 4, 1776. Indeed, The Declaration of Independence lists the denial of “the benefits of trial by jury” as one of the grievances that led to the creation of a new nation.<sup>4</sup>

Considering the actions the colonists took to safeguard and preserve the right to trial by jury, it is no surprise that this right was exceedingly popular with the drafters of the first constitutions of the newly independent states. Virginia set precedent in 1776 by specifically including the right to both civil and criminal jury trials in its bill of rights. The majority of other states quickly followed suit.<sup>5</sup>

By 1788, eight of the eleven states had incorporated the right to trial by jury in civil cases into their constitutions: Pennsylvania, New Jersey, Georgia, Massachusetts, Maryland, New Hampshire, Virginia, and New York.<sup>6</sup> Today, the vast majority of states guarantee the right to trial by jury in civil cases in their constitutions.<sup>7</sup>

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<sup>1</sup> *Trial by Jury: The Constitutional Right to a Jury of Twelve in Civil Trials*, 22 Hofstra L.Rev. 1, 6 (1993)

<sup>2</sup> *Stephan Landsman, The Civil Jury in America: Scenes from An Unappreciated History*, 44 Hastings L.J. 579, 591 (1993) (quoting Austin W. Scott, *Trial by Jury and the Reform of Civil Procedure*, 31 Harv. L.Rev. 669, 676 (1918))

<sup>3</sup> Arnold, *supra*, at 13; Landsman, *supra*, at 592

<sup>4</sup> Arnold, *supra*, at 14; Landsman, *supra*, at 596 (both quoting *The Declaration of Independence* para. 19 (U.S. 1776))

<sup>5</sup> Landsman, *supra*, at 596.

<sup>6</sup> Rachael E. Schwartz, “Everything Depends on How You Draw the Lines”: *An Alternative Interpretation of the Seventh Amendment*, 6 Seton Hall Const. L.J. 599, 617–18 (1996).

<sup>7</sup> See Ora Fred Harris, Jr., *Complex Product Design Litigation: A Need for More Capable Fact-Finders*, 79 Ky. L.J. 477, 482 (1991). *Jordan ex rel. Jordan v. Deery*, 778 N.E.2d 1264, 1268-69, 25 NDLR P 13, 2002 WL 31655850 (Ind. 2002)