

**MAY 2010**

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**TRIAL BY  
JURY**

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**DEBATING MATTERS**  
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**MOTION:**

**“TRIAL BY JURY  
IS THE BEST  
GUARANTOR OF  
JUSTICE”**

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## KEY TERMS

Bench Trial

Civil liberties

Diplock Courts

Human Rights Act 1998 (c.42)

Trial by Jury

# INTRODUCTION

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# NOTES

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Jury service is carried out by an average of 390,000 British citizens a year. Famously described as “the lamp that shows that freedom lives”, trial by jury is one of the guiding principles of the UK legal system [Ref: [Guardian](#)]. But in March 2010 four men were convicted of armed robbery in the first criminal trial without a jury to take place in England for over 400 years. The case saw the court use powers bestowed under the Criminal Justice Act 2003 to allow the proceedings to take place in front of a single judge who will consider the evidence, deliver a verdict and enact a sentence [Ref: [OPSI](#)]. The judges in the Court of Appeal were of the opinion that the possibility that the jury would be ‘tampered’ with meant that a fair trial could only be guaranteed if the jury was removed all together. Such trial without jury (known as a bench trial) had only previously been employed in Northern Ireland to try individuals charged with involvement with the IRA, in the Diplock Courts [Ref: [BBC News](#)]. The decision has reignited an age-old debate about the effectiveness of the jury system in administering justice. Indeed, whilst many consider trial by jury to be the paradigm of democratic fairness, others question whether the tradition should, and can, continue in the contemporary context [Ref: [Independent](#)]. The fate of trial by jury raises important questions about our democratic freedoms and the administration of justice [Ref: [BBC News](#)]. Is trial by jury, in the words of Sir Louis Blom-Cooper, ‘a recipe for incompetence and bias’, or in those of Winston Churchill the ‘supreme protection.... for ordinary individuals against the state’?



# THE TRIAL BY JURY DEBATE IN CONTEXT

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## The Fair trial

The right to a fair trial is guaranteed by article 6 of the Human Rights Act [Ref: [OPSI](#)] and as a principle of English law dates back to the Magna Carta [Ref: [UK Statute Law Database](#)]. Since it was first introduced, trial by jury has not only been thought to be the fairest form of justice but has also acted as a powerful safeguard against tyranny [Ref: [Freedom Central](#)]. But in recent years a number of commentators have asked whether this assumption holds water [Ref: [Guardian](#)]. The claimed pervasiveness, especially in high-profile cases [Ref: [Guardian](#)], of jury tampering and human fallibility also continues to pose a threat to the fair trial [Ref: [Guardian](#)]. A number of commentators have suggested that juries are often unrepresentative of the population at large. In particular the disproportionate occurrence of ‘middle class opt-out’ of jury service has caused particular concern [Ref: [The Lawyer](#)], and continues to do so, despite the narrowing of opt-out clauses since the Lord Auld’s review of the justice system in 2001 [Ref: [Criminal Courts Review](#)]. One juror described his experience as “Twelve Stupid Citizens” [Ref: [Independent](#)]. But defenders of trial by jury argue that attacks against the practice reveal an anti-democratic distrust of the people. They argue that one of the great strengths of the jury lies in its independence from government and distance from vested interest. As judges are in the pay of the state and act on behalf of it, the presence of ‘twelve angry men’ drawn from the people is currently the most democratic way to hold the state to account [Ref: [spiked](#)].

## Complex trials

In 2007 MPs voted in favour of introducing, The Fraud (Trials Without A Jury) Bill, which would end trial by jury in complex

fraud trials cases [Ref: [The Stationery Office](#)]. Although scuppered by the defeat of the bill in the House of Lords, many argued that cases too often fail owing to complexity, and ultimately damage justice as a result. Critics argue that juries can no longer be expected to understand, process, and judge the kind of evidence involved in modern cases. The time has come, says journalist Simon Jenkins, to professionalise justice and to do-away with the charade of ‘the real life whodunnit’ that is trial by jury [Ref: [The Times](#)]. But defenders of jury trials, including the Law Society, dismiss these suggestions, arguing that juries’ competence is rarely the problem in complicated trials [Ref: [Barrister Magazine](#)]. Not only, they argue, is it the role of judges, advocates and experts to explain and distil the evidence for jurors - something they are clearly failing to do in some instances - but it is precisely the amateurism of a jury, made up of ‘twelve good men and true’, that ensures that criminal law conforms to what ordinary citizens think is fair and just [Ref: [Guardian](#)]. Leaving the administration of justice to judge alone, they argue, moves society away from the sentiment of ‘for the people, of the people’, and towards a technocratic and anti-democratic system of justice [Ref: [Battle of Ideas](#)].

## Either you’re with us, or against us?

One of the strengths of trial by jury, says Oliver Letwin MP (and former Shadow Home Secretary), is that it represents public participation in the justice system [Ref: [Telegraph](#)]. Here, justice is not imposed from above, but emanates from ‘the community’. Criminal law, some suggest, is founded on the idea that society as a whole is calling an individual to account for their actions. It is precisely because the defendant has transgressed society’s



## THE TRIAL BY JURY DEBATE IN CONTEXT CONTINUED...

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norms in allegedly committing a crime that they can be called up by a court of law. The jury, in their breadth and diversity of interests, represent that society. But, say others, one of the central premises of the law - that the majority of people hold the same views about what conduct is dishonest - is erroneous. Far from being representative of society as a whole, juries tend to be swayed by one or two vocal individuals. Far better, they suggest, that the expertise and rationalism of a seasoned judge decides innocence or guilt, than a noisy few [Ref: [Flatrock](#)].



## ESSENTIAL READING

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### Trial by no jury

Simon Jenkins vs Michael Mansfield *BBC Radio 4's Today Programme* 11 January 2010

### Do juryless trials risk obscuring the transparency of justice?

Mark Hughes *Independent* 4 January 2010

### The Jury's out on Judge only trials

Afua Hirsh *Guardian* 19 June 2009

## FOR

### 'Twelve angry men' are better than one judge

Rob Lyons *spiked* 14 January 2010

### Twelve angry calm sympathetic hostile but above all human... men

Victoria Coren *Observer* 15 November 2009

### The jury's out: juries and the future of justice

Luke Gittos *Battles in Print* 29 October 2009

### We must fight for the right to trial by jury of our peers

Oliver Letwin *Daily Telegraph* 15 July 2003

## AGAINST

### Non-jury trials: a regrettable, but sometimes necessary, break with 400 years of wisdom

Michael White *Guardian* 1 April 2010

### Judiciously dropping the jury

Fergal Davis *Guardian* 23 June 2009

### Ladies and gentleman of the jury, you have had your day

Simon Jenkins *The Times* 12 February 2006

### The depressing reality of jury service

Matthew Lewin *Independent* 4 February 2004

## IN DEPTH

### Trial By Jury struggling to survive

Peter Thornton *The Barrister* 2007

### Judge and jury

Jon Robbins *The Lawyer* 23 August 2004

### Trial by jury: an essential safeguard for a free society

Darren Andrews *Freedom Central* 2004

### Three herring gull chicks... the reason juries don't work

Richard Dawkins *Observer* 16 November 1997



## BACKGROUNDEERS

Lifting the veil

Clare Dyer *Guardian* 3 May 2005

Special report: Trial by Jury

*Guardian* 2005

Jurors' perceptions, understanding, confidence and satisfaction  
in the jury system

*Home Office, Research, Development and Statistics Directorate*  
2004

The English jury: 'the lamp that shows freedom lives'

Peter Rook QC *British Council Paper* July 2003

A Review of the Criminal Courts of England and Wales

The Right Honourable Lord Justice Auld *Ministry of Justice*  
September 2001

Fraud (Trials without a Jury) Bill

*Home Office*

Article Six: Right to a Fair Trial

*Human Rights Act* 1998

Criminal Justice Act 2003 (Part 7 Trials on indictment without a  
jury)

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## ORGANISATIONS

Judiciary of England and Wales

Liberty

The Law Society



## IN THE NEWS

Guantanamo damages claimants win secrecy ruling  
*BBC News* 4 May 2010

Jury-free court case makes history in England  
*BBC News* 31 March 2010

Heathrow raid accused 'let down' by justice system  
*BBC News* 24 February 2010

Trial by jury returns to Japan  
*Guardian* 3 August 2009

TV licence rebel seeks trial by jury  
*Daily Telegraph* 5 July 2009

First criminal trial without a jury for 400 years  
*The Times* 19 June 2009

£1.75 million robbery suspect to face trial without jury  
*Guardian* 18 June 2009

First criminal trial without jury gets go ahead  
*London Evening Standard* 18 June 2009

Blogs threatened Baby P case  
*BBC News* 22 May 2009

Heathrow robbery accused face first trial without jury  
*BBC News* 12 January 2009

No-jury trial request is rejected  
*BBC News* 12 February 2008

Muslim juror listened to iPod under hijab  
*The Times* 10 July 2007

MPs debate plans for trial without jury  
*Politics.co.uk* 29 November 2006

Juries to return as Diplock courts axed  
*Daily Telegraph* 12 August 2006

Jury trials 'intolerable' in major fraud cases  
*The Times* 21 June 2005

Goldsmith defends jury-free trials move  
*Independent* 21 June 2005

Jury protest forces fraud trial to collapse after 2 years  
*Guardian* 23 March 2005

Scrap the right to trial by jury, says Met chief  
*Independent* 9 July 2003

Jury trial support 'rock solid'  
*BBC News* 30 January 2002

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- I am a sixth form student and would like further details about events in my area
- I am interested in becoming a Debating Matters judge
- I am interested in sponsoring/supporting Debating Matters
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**“TEENAGE CITIZENS  
THINKING DEEPLY  
ABOUT...SOCIAL  
ISSUES”**

**IAN GRANT, CEO, BRITANNICA**

