A History of the Jury System

A jury is a group of persons selected from the community that is charged with hearing a legal case and delivering a verdict on it. Juries are used in both civil and criminal cases, and they base their decisions on testimony and other evidence that is presented at trial. In death penalty cases, they may be charged with imposing a sentence on a criminal defendant.

The concept of the jury system can be traced to Athens, Greece, around 400 B.C. These earliest juries heard arguments in legal cases but did not apply law. According to author John Guinther, quoting Aristotle, juries in Athens instead decided cases based on their "understanding of general justice." The vast empire of ancient Rome rejected the idea of juries, opting instead for a professional court system in which ordinary citizens had no role. The dark ages that followed the fall of the Roman empire had little use for law, not to mention juries, and the jury system of justice lay dormant until the twelfth century. Around that time, Italian scholars revived the rule of law in Europe with the force of their arguments.

In Great Britain, the jury system was not used until the twelfth century. Prior to that time, the Catholic Church dominated the legal system with its ecclesiastical courts. Judgment and punishment were carried out by the Church through the "ordeal," a form of torture in which a wide variety of physical pains could be inflicted on an accused criminal. Random crimes could be resolved with the "hue and cry," a process in which a person publicly called for a posse to hunt down and thrash a suspected criminal. Civil disputes often were solved by "compurgation," a method that required each party in the case to bring several friends, or "compurgators," for verbal support; the party with the most compurgators won the case. In the twelfth century, English monarch Henry II formulated the earliest British version of the jury system when, after a struggle with the Papacy in Rome, he ordered that a group of regular citizens would decide disputes over land in secular courts. However, Henry II also utilized inquisitions and ordeals and the hue and cry remained the foremost system of justice. It was under the reign of Henry’s son, King John, that the first example of the western world's modern jury system was created.

King John was a rather ruthless monarch who was unpopular with landowners, or "barons." The king was accustomed to seizing the land and families of barons who could not pay their debts on time. The barons, dissatisfied with years of abuse at the hands of King John, banded together and in May of 1215, they confronted King John at Runnymede, a meadow on the bank of the Thames river. At knifepoint, the barons forced King John to sign the Magna Carta, a document which declared that no person was above the law, including the king. Under Chapter 39 of the Magna Carta, "[n]o
freeman, shall be taken or imprisoned or seized or exiled or in any way destroyed...except by the lawful judgment of his peers and by the law of the land." The barons intended that juries would be composed of other barons, and not of commoners, but this did not come to pass. At first, juries in England were comprised partly of noblemen and partly of commoners, but, as the system evolved, jurors were picked without regard to their economic status.

The case against William Penn and William Mead in the late seventeenth century illustrated the importance of the jury and its rise to power within the judicial system. Penn and Mead were religious dissenters who were given to preaching in public. Around this time, Brits were so suspicious of King Charles II's Catholic leanings that they passed laws against preaching in public. Penn and Mead were arrested, and opponents of the king sought to have Penn and Mead prosecuted and imprisoned, which would have embarrassed the king. The court impaneled a jury and, after both sides presented their case, they retired to deliberate, knowing full well that they were expected to deliver verdicts of guilty. Around this time, the judge had a tremendous amount of power over jurors. A judge could keep jurors until they delivered a verdict desired by the judge, and in some cases, a judge could lock the jury in a room and deprive the jurors of food and water and other amenities until they delivered the desired verdict. Several members of the jury led by Edward Bushell, refused to deliver a unanimous guilty verdict. The jury was sent off to deliberate again and again, without food, drink, fire, or tobacco, but it still could not deliver a guilty verdict. It did absolve Mead, but the judge ruled that Mead could not be released because he was charged with conspiring with Penn. Penn, from his cage in the courtroom (Mead likewise was kept in a cage), bellowed that "[i]f not guilty be not a verdict, then you make of the jury and Magna Carta but a mere nose of wax." The Lord Mayor of London threatened to cut Bushell's throat and the jury was sent away for another night without food or drink. The next morning, it returned with not guilty verdicts again, and the judge imposed a fine on each juror. The jurors refused to pay the fine and were sent to jail. Eight jurors eventually relented, but four did not, and they eventually brought their own case against the court from jail. In what became known as Bushell's Case, the Court of Common Pleas declared that the punishment of the jurors was illegal and that no jury could be punished for its verdict. Penn and Mead, both of whom were sent to jail after the fiasco, were released when Penn's father paid their fines. The four jurors were released from jail after the decision in Bushell's Case, and their ultimate success helped to establish the power of the jury system in England.