

Review of Niamh Howlin, *Juries in Ireland: Laypersons and Law in the Long Nineteenth Century*

(Dublin: Four Courts Press, 2017)

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In *Juries in Ireland*, Niamh Howlin presents a comprehensive view of the institution's nineteenth-century history. She skilfully draws out both the political questions which are so often at the heart of analyses of the jury, and the detailed points of procedure which can only really be grasped by a painstaking process of archival research. This book refuses to see the jury in our twenty-first century terms, and insists on reminding us that it was not merely a way of resolving criminal trials. Rather, the jury in nineteenth-century Ireland, as in England during the same period, was also responsible for administrative matters and for the processing of indictments via the grand jury, for delivering verdicts in civil trials and at coroners' inquests, and for determining whether women convicted of capital offences should be granted a reprieve owing to pregnancy. And, in an Irish context, the jury also had an important set of responsibilities regarding the regulation of local markets and the compulsory purchase of properties earmarked for clearance for the purpose of civic improvements.

This insistence on taking the jury system on its own terms extends beyond the mere choice of subject-matter: throughout this book there is a serious commitment to understanding how the institution actually worked. We are not only told, for example, that the realities of juror summoning were quite different in different places, but that the average attendance of those who were summoned in 1832 was as high as 93% in County Limerick, and as low as 13% in Galway City; or that in the 1860s one man in 138 was qualified for jury service in the counties, while in towns the average was one in 48, and that in Carrickfergus as many one in every 30 men were liable for jury service.¹ And this kind of analysis is also used in order to better understand the headline political issues which are more commonly explored in historical reflections on jury trial. By exploring reported uses of the Crown's power to ask jurors to "stand by", and the similar defence power to peremptorily challenge

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¹ N. Howlin, *Juries in Ireland: Laypersons and Law in the Long Nineteenth Century* (Dublin: Four Courts Press, 2017) at 105-111 [hereinafter Howlin].

jurors – both of which allowed jurors to be challenged without cause, although the Crown unlike the defence had unlimited challenges – Howlin is able to show that the Crown and the defence challenged roughly equal numbers of jurors off criminal juries until the 1880s, at which point the Crown started to make much greater use of its own powers.² The consequence of all this is that the Crown does appear to have been engaged in “packing” juries, but that its decision to do so forms part of the general political history of the 1880s, rather than being a necessary feature of the Irish jury system. An analysis of this sort would not be possible if this book merely offered an account of the political debates about the issue.

It is in these institutional, bureaucratic details that Howlin’s book suggests new comparative possibilities for scholarship on the history of jury trial. The political context of jury trial in Ireland can initially make it difficult to compare it to the English version of the institution; and it might also be suggested that the constitutional debates about jury lawfinding in nineteenth-century America make the American jury too unusual to form part of a meaningful historical comparison with other nineteenth-century jury systems.³ But by drawing attention to the practical life of the jury system – how juror misconduct was handled, how jurors were selected, how jurors made their voices heard – Howlin approaches the institution in a way which makes detailed historical comparisons more feasible, and probably also more likely. In fact, one effect of this book should be to make the Irish jury – surveyed here in so much detail – the starting point for any such comparative analysis.

By exploring the nineteenth-century Irish jury system systematically, Howlin is able to suggest that its popularity among politicians for example may have been driven in part by the fact that it allowed decisions to be taken cheaply (the Crown did not pay jurors at this time) and to be taken by propertied elites who, nonetheless, had a greater claim than government officials to be making decisions which could carry local support. The judges, moreover, seem to have seen value in using a trial system which ensured, in the words of one Chief Justice of Common Pleas, that “the bulk of the citizens, with minds unwarped by legal rules and unfettered by technicality, take their full share of the important duty of deciding the ultimate issue of the lawsuit”.⁴ Many of these points could have been made in the context of

² *Ibid.* at chapter 10.

³ *E.g.* A. Alschuler & A.G. Deiss, “A Brief History of the Criminal Jury in the United States” (1994) 61 *University of Chicago Law Review* 867.

⁴ Howlin, *supra* note 1 at 221.

the English or American jury systems of the nineteenth century, but it is only in the context of the Irish jury that we have such a detailed study to draw on as this one.

Contemporaries often presented Irish juries as more corrupt, and less just, than their English counterparts. But Howlin is keen to emphasise that “during politically tranquil periods, both civil and criminal trial juries operated effectively and uncontroversially”.⁵ By studying the jury systematically, she argues, it is possible to get past the high-profile, politically charged circumstances which tend to overwhelm historical analyses of the Irish jury’s history. But this point does not have to be restricted to Ireland, nor indeed to a historical approach: studies of jury systems more generally can easily pass over into hyperbole. This excellent book does much to correct such problems, and to insist that we take the time to understand the detailed workings of the institution we are exploring. It would be of interest to anyone studying jury systems generally, or to anyone studying any aspect of nineteenth-century trial processes in any country which used some variety of the common law.

⁵ *Ibid.* at 215.