



## Books

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# Restoring the Power of the Jury

**Juwon W. Adebayo** reviews *The Missing American Jury: Restoring the Fundamental Constitutional Role of the Criminal, Civil, and Grand Juries*

### I recommend this book for:

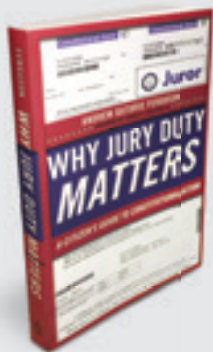
people who are concerned with the declining role of the modern jury.

### My favorite line:

“Restoration [of the missing jury] could support the protection of . . . other essential rights.”

### My top takeaway:

The power of the jury should not be incidental to other procedural mechanisms of the American legal system.



### You may also like:

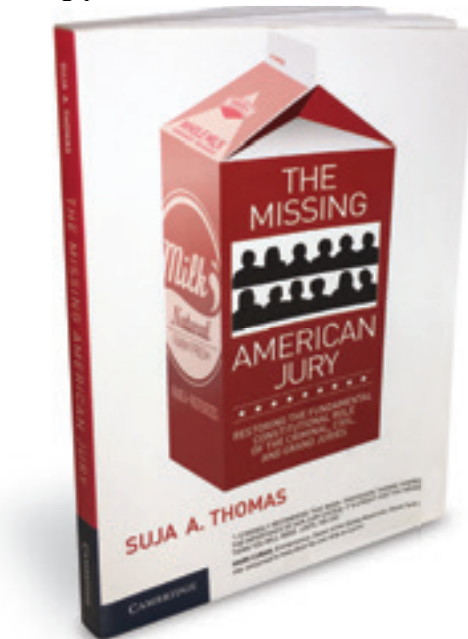
*Why Jury Duty Matters*  
by Andrew Guthrie Ferguson

**T**he *Missing American Jury* takes a compelling look at the declining role of criminal, civil, and grand juries in the American legal system. Illinois College of Law Professor Suja Thomas forcefully advocates for restoring the jury as a check on the other branches of government.

An in-depth analysis of the jury’s historical role is central to the book. By strictly examining the text of the U.S. Constitution, Thomas argues that the framers intended juries to provide a necessary check on the power of traditional actors in the executive, legislative, and judicial branches. Within this historical framework, the book compares the active role of juries in the late eighteenth century—during which juries were used more frequently and given more discretion in, for example, sentencing—to the limited role of juries today.

Thomas dismisses typical arguments against juries—such as increased costs and inefficiency—not by denying these shortcomings, but by arguing that juries are essential to our democracy despite these deficiencies. Juries, she argues, reflect the founders’ intention to keep certain safeguards with the people and to provide avenues for diversity, deliberation, and consensus. In analyzing their decline, Thomas points to tort “reform” and corporate lobbying, both of which have sought to reduce juries’ legitimacy by characterizing jurors as biased or unable to understand complicated issues.


Thomas argues that supplanting the jury’s domain with procedural mechanisms not intended by the Constitution—such as legislative caps on damages, forced plea bargaining, and mandatory sentencing—puts people at a disadvantage. She proposes eliminating procedures such as judicial acquittal and summary judgment. Because juries have no independent



Cambridge University Press  
Suja A. Thomas  
[www.cambridge.org](http://www.cambridge.org)  
262 pp., \$34.99

power to protect their own authority, Thomas recommends restraint from traditional actors when their power competes with the jury’s.

It is difficult, however, to imagine American litigation operating without these commonplace procedures. While Thomas acknowledges that these changes are ambitious, she argues they are necessary—and gives the reader a glimpse into potential reforms. She suggests, for example, requiring agreement from all judges of the courts of appeals—as well as all justices of the U.S. Supreme Court—when affirming orders for summary judgment. She also suggests requiring prosecutors to inform the jury if a criminal defendant had previously been offered a plea bargain.

*The Missing American Jury* unapologetically challenges the marginalization of the American jury, calling for systemic changes that restore the jury to its intended constitutional role. 

**Juwon W. Adebayo** is a senior staff attorney with the AAJ Exchange. She can be reached at [juwon.adebayo@justice.org](mailto:juwon.adebayo@justice.org).