

ORIGINAL ARTICLE

A Grand Jury Exhortation

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Abstract

This essay brings to light a rare feature of the Stewart legal system. Grand jury charges remain understudied, partly for want of primary source materials. The brief historical and biographical sketches of the essay are appended by a unique and relevant artifact of the time: a preamble or exhortation to a grand jury charge, ostensibly delivered by a Justice of the King's Bench, John Dodderidge.

This article presents a previously unpublished document housed in the Cambridge University Library. The document is a preamble or exhortation to an assize charge. The reporter is unknown, and it is surprising that the six-folio text is not longer, which may have been conventional.¹ It has not been cited before, save its entry in a catalog of legal manuscripts.² The speech is unique for a second reason: it was likely authored by Justice of the King's Bench, John Dodderidge (1555–1628). As a prominent antiquarian, author, and counselor in the Postnati litigation, Dodderidge was one of the most influential English lawyers of his age.³ It is therefore not surprising that a manuscript of his speech was recorded and thoughtfully placed beside a jury charge by Francis Bacon.⁴

¹ For an example of another exhortation, see Cornelia D. Smith, "A Seventeenth-Century Judge Views the Law: Oliver St. John's Introduction to His Charge at the Thetford Assizes in 1658," *Proceedings of the American Philosophical Society* 130, no. 1 (1986): 37–78.

² John H. Baker and Jayne S. Ringrose, *A Catalogue of English Legal Manuscripts in Cambridge University Library* (Woodbridge: Boydell Press, 1996).

³ See generally, Chantal Stebbings, *A Man of Great Knowledge: The Life of Sir John Dodderidge* (Exeter: University of Exeter, Faculty of Law, 1989).

⁴ I must add the caveat for the reader, however, that this collection of speeches refers to Dodderidge in a quasi-contents page but not in the text of the speech itself. I note this because two different hands recorded the three speeches. There is a chance that the attribution was made in error, although this precarity is common with manuscript work. That the several eyes that have seen it have all attributed it to Dodderidge leads me confidently to do the same in publishing it.

Francis Bacon's Charge at the Sessions of the Verge was first printed in 1662. Cambridge University Library, MS Gg.3.26, 136r–148r.

According to one seventeenth-century account, Assize courts were rooted in the tenth century Shiregemotes of King Edgar, where Bishops and Ealdorman instructed communities biannually in divine and secular law.⁵ This antiquarian myth reflected the genuinely public nature of assizes and jury charges: they were opportunities for the ritual-like promulgation and recapitulation of law. Their infrequency and pageantry can be compared to modern-day parades, complete with large crowds, music, and pomp.⁶ They were unquestionably potent political tools, used to transmit and subdue political agendas.⁷

Henry II created the assizes in 1166 that, by Magna Carta and other reforms, eventually transformed into six regional circuits.⁸ Bearing a royal commission, assize judges—Justices of the King’s Bench and Common Pleas, Serjeants-at-Law, and Barons of the Exchequer—travelled to these circuits to hear civil pleas and some criminal trials before local juries.⁹ What judges said at the assize sessions was observed closely and sometimes published to controversial effect.¹⁰

Grand jurors were “charged” by the assize judges in a very public environment. The jury assisted prosecutors but also wielded inquisitorial power, meaning the jurors were able to “present” and indict those whom they independently suspected of offenses from their vicinage.¹¹ When Dodderidge’s speech was delivered around 1620 (probably though not certainly in what would become Old Bailey), a jury charge was a formal, oral, event that resembled the recitation of and assent to a contract. The charge prepared jurors for their presentment and indictment duties by outlining the laws and crimes of relevance. Jurors were frequently reminded that a breach of the oath that concluded the charging process could lead to criminal prosecution.¹²

Forensic rhetoricians referred to “preambles” and “exhortations” when they spoke of introductions to orations.¹³ Aristotle described preambles as

⁵ James Tyrrell, *The General History of England* (London: for Henry Rhodes [and 3 others], 1696), 389; also William Lambarde, *Eirenarcha* (London: Thomas Wight and Bonham Norton, 1599), 389.

⁶ James S. Cockburn, *A History of English Assizes 1558–1714* (Cambridge: Cambridge University Press, 1972), 65.

⁷ Both Cardinal Wolsey and Thomas Cromwell used assize judges to collect information about local politics. What judges emphasized in the charges, similarly, was thought to influence what offenses the grand jury would *sua sponte* present. See John H. Baker, *The Oxford History of the Laws of England*, Vol. 6, 1483–1558 (Oxford: Oxford University Press, 2003), 415.

⁸ Cockburn, *A History of English Assizes 1558–1714*, 17.

⁹ Assize judges were themselves charged by the Lord Keeper, but this practice fluctuated during the British Civil Wars. For an example of such a charge, see Thomas G. Barnes, “A Charge to the Judges of Assize, 1627/8,” *Huntington Library Quarterly* 24, no. 3 (1961): 251–56; See also Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2009), 13.

¹⁰ Without his consent, Edward Coke’s Norwich Assize charge of 1606 was recorded and published, causing a scandal. He refused to verify its accuracy. See Edward Coke, *A Charge Delivered to the Grand Jury at the Assizes Holden at Norwich: 4th August 1606* (London: J.J. Stockdale, 1813).

¹¹ Cockburn, *A History of English Assizes 1558–1714*, 111.

¹² The exhortation itself alludes to this. See also, Brooks, *Law, Politics and Society in Early Modern England*, 88.

¹³ One early modern example is Philip Melanchthon, whose works were translated into English by Leonard Cox. In *Elementorum Rhetorices* Melanchthon refers to *exordia* (exhortations) and *proemia* (preambles) as introductions to forensic speeches that “settle or prepare” the mind for hearing by

supplements to an audience's inadequate or lacking judgment.¹⁴ A Greek orator expressing his purposes in a preamble would have thought he was making his audience "well disposed" and attentive to the oration that followed.¹⁵ Preambles were long thought to be pedagogical tools of teachers and authors. The term "exhortation" comes from the Latin *exordia* and Roman rhetoricians such as Cicero gave it oratorical meaning. They built on Aristotle's rhetoric in meaningful ways. As a part of a general *technē* of speechcraft, exhortations belong to a genus of deliberative oratory associated with command: they persuade or dissuade a public audience from doing or forbearing from something.¹⁶ This reveals why exhortations to jury charges (what judges *exhort* jurors to do) is apposite. Drawing from this rhetorical tradition, a contemporary of Dodderidge, William Lambarde (1536–1601), suggested that judges add exhortations to jury charges.

As a Justice of the Peace, Lambarde delivered many charges himself.¹⁷ In *Eirenarcha*, he suggests that judges use nine themes in their exhortations to enhance the profundity of their orations (and of law generally).¹⁸ Eight of these topics—what Lambarde calls the "chief substance" of jury business—are referenced here by Dodderidge:¹⁹ (1) the decalogue; (2) the relationship between God, the prince, and the subject; (3) the cardinal virtues; (4) that laws draw men toward good and away from evil; (5) that jurors investigate secular and ecclesiastical issues; and that one can break the law (6) intentionally or negligently, (7) by doing nothing, or (8) by doing too much or too little. These themes, or "heads," are almost mechanically recited near the end of the manuscript, either representing a lazy recitation of Lambarde's prescriptions or a confident deference to their efficacy.

Of greater interest, perhaps, is the discussion that precedes Lambarde's heads. From the first line of the speech, the urgency of the jury's performance is justified by a historical, political, and theological narrative that is intended to reinforce the political and social orientation of the audience. Dodderidge weaves a historical thread from Creation and the fall from Eden to the divine right of English kings. From here, he links the presumed benevolence of the king—which cannot thoughtfully be dispensed everywhere without "Deputyes"—with the motivations the jury should have in executing their duty. All of Anglo-Christian history is collapsed into several sentences and culminates in the honor and duty of grand jurors.

rendering the audience "benevolent, attentive, and docile" ("*beneuolum, attentum, & docilem*"). See Philip Melancthon, *Elementorum Rhetorices Libri Duo* (Basil: Ex Officina Oporiniana, 1570), 88, 92.

¹⁴ Aristotle, *Art of Rhetoric*, (trans. John Henry Freese and rev. Gisela Striker), (The Loeb Classical Library 193) (London: Harvard University Press, 2020), 3.1415b8–9, 433.

¹⁵ *Ibid.*

¹⁶ See Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996), 43–44.

¹⁷ A collection of his extant charges was published in *William Lambarde & Local Government: His "Ephemeris" and Twenty-Nine Charges to Juries and Commissions*, ed. Conyers Read (Ithaca: Cornell University Press, 1962).

¹⁸ Lambarde, *Eirenarcha*, 310–11.

¹⁹ *Ibid.*, 394–95.

A rather pithy discussion of Truth, Judgment, and Justice follow the historical gloss, and are backed up by threats of divine condemnation and legal recourse if the jurors perjure themselves. Coercion was probably a common tactic in these speeches, and its use here reminds one of the unsteady but subtle differences between the words awful and awesome.²⁰

Dodderidge's speech is ultimately both threatening and instructive. We learn that out of history and theology are born the duties and necessity of jurors. The text offers a rare window into the talents of a professional judge in a domain of the profession from which we have little record.

An Exhortation to the Jury at the Sessions

Allmighty God determininge to make a Creature by whom he would sett forth his wonderful worke before his Creation and so prepared whatsoever might been necessary for the use of this creature he first [created] heaven and Earth.²¹ Secondly divided the light from the darkness. Thirdly made a firmament, gathered together the Waters. Fourthly made all Greene things within gender seed. Fily: Sunne Moone and starres. Sixlye the fishes of the sea and foules of the aiyr and all manner of Cattell gaue the[m] yonder to [increase] and gaue them [Lawes] not them all [obserus] arrow thew finde when God but see that all these things were good[.] He framedd man and giued him ponder on all things he had made and put him unto the garden of paradise[.] [He] gaue him [Liberty] to eat of [every] tree but the [t]ree of the knowledge of good & evill[.] gave him Eve ffor a Comforter[.] Sathan envyinge this blessed of hate tempted the woman to eate the forbidden fruite & she gaue the [fruit] to her husband then their eies wert opened[.]

Thus you haue heard that god Created all things and all obserue the Lawes appointed in their first Ortation. Saveing man for whose [use] he Created all things and gaue him power over them; and so whome He gaue [much] Reason & understandinge therefor most bounden & ought to hand him most obedient, yet of all others his Creatures most disobedient and unthankfull wheretofore he was soo offended draws from out of the garden [sending] to the man in the Foreste of thy bones shalt thou eate the bread and to the woman with sorrow shalt thou bringe fforth thy Children then peopls bed multiplies & more guided in the first age of the world by the Lawe of Nature then wickednesse and iniquitie did so much abound that God repented He had made man & the[n] bring things of the darke and therefore so punish mans great unthankffullnes he destroyed the world with water, Saved Noa & his familes & the male[s] & ffemales of every living being preserved in the Arke[.] yet god blessed Noa & his sonnes[.]

²⁰ Cockburn, *A History of English Assizes 1558-1714*, 68.

²¹ Cambridge University Library, MS Gg.3.26, 149r-157v. I leave the manuscript nearly as it would be found, occasionally expanding contractions where it is useful. I include bracketed additions where language is either particularly unintelligible or where a guess as to the meaning is useful. Probably written in late secretary, this manuscript is particularly elusive because it also lacks proper punctuation in significant areas.

soe people & kindred againe increased and more governd after the fflood by the Lawes of Nature many yeares till god knowing by his wisdom how necessary good Lawes Should be gaved the Lawes of the ten Commandm[ents] in Mount Sinay wherein is Contayned ffirst our duty to god next unto our neighbours and after to gaue Divers other Lawes & Statutes & ordayne Ruleres & governers and gaue them power & authorisid to punishe suchas should transgresse against the lawe And in hall gaue an authority to Kings & princes to make good Lawes for the goverment of this Country and Subjects & Comandment to ssubjects touchminge there Dutyes & obedients to their Kings & Princes Chertors [given] to the you by what authoritie wi bee here assembled & to what end that you may the better regard what belongeth to you therein[,] it hath pleased his Magesty who under god is the head & founder of all Lawes & [Fortune] in this Land whom god Long preserved himselfe being sworne at his Coronation for the mayntenance of his Lawes and Desireth truly to administer Justice to all his Subiecte[s] & for that it is impossible for himselfe to p[er]forme[,] who can in his owne p[er]son bee but in one place at one tyme, and his Justice is to be administared in many places, eye of Necissety is to Comand and appoynt others as his Deputyes and Substitutes for the oper[a]cion of his Justice and amongst the rest in the Commission here hath appoynted & Comitted the Charge of this Countrie to us here present & giuen us authoritie to operate his Lawes & Statutes for the goverment of his Subjects and ffor that we cannot of ourselues take knowledge of offences w[ith]out Informacon of others[.]

we haue by his Highnes authoritie Called you hither out of diuers & sundry townes & p[la]ces of this shire wher[e] by Comon intentment Cannot be ignorent of the [] offences comitted in the townes & p[la]ces where you liue; And to [this] end you may with more indifferencie inquire theriof & present the same we gaue [ad]ministr[e]dd unto you an oath w[ith] [faith] & you well to Considdreth.

The pro[o]fes therioth be 3:

- Truth
 - Judgment &
 - Justice.
1. Truste that you may present nothing but trueth and leaue nothing of the truth unrepresented
 2. W[ith] Judgment that you present all things w[ith] good advisement & that you do not neglect the inquiringe out of the truth in all things which you ought to pr[e]sent
 3. With Justice that neither for favour[,] feare[,] or ill-pleasure[,] or private p[ro]fite to your selves[,] or malice to any others that you present any thing but truth.

And these 3 things you ought Cheifly toe strive in your oath for no avoydinge of willfull Perjurie not if you do not regard, you Condemne your selues and procure to your selves the high displeasure of allmighty god whoe saith in his Prophet Malechi that he will be a swift wittnes against falce testertres[.]

besides the punishment to your selves in this world, note a mighty disgrace to your posteritye ffor if not [timid] you negligent or Careless herein no one may by the Lawe imediatly Charge another Jury to inquire of your Conccalment & perjuries with being found may punishe you by fines & imprisonment[.] but if you truly respect your oath and Dutyes herein you shall thereby obtaine great profite for wrongs shal be redressed rights & peace maynteynedd, and in this place where you liue god shal be glorified[,] Sathan suppressed[,] & the servivil of this Nation & peace of this Countrie preserued with the saffitie of your selues & whatsoeuer you haue ffor where Lawe & Justice is not there is noorder but all thing & runs into Confusion and where they be not executed[.] euill members aboude to the displeure of god[,] offence to his Majesty and great hurt to his Subiects w[hi]ch Desire to live in the feare of god and obedience of his highnes Lawes who would that all his subiects should liue in gods feare & rest in peace and satefed under him.

I will now enter into your Charges which I will reduce into a few heads being either Ecclesiasticall or Temporall which Doe Concerne ffirst god secondly your Prince [and] Thirdly the Subiects the breath thereof be either against the ffirst or Second tabbe of the ten Commandementes, Inquireable heare either by virtue of the Comission of the Peace or by power of the of the Statutes not Comprehended in the Comission.

All these lawes doe either Comannde or prohibite thinge agreeing or repugnant to some of the 4 Cardinall Virtues.

Viz.

1. Prudence
2. Justice
3. ffortitude
4. Temporance

All offences be either

1. Voluntarie
2. Involuntariloe
3. Inepte

Drawing be either to good or with drawing be from evill either of mynd or body [.] men offend either in doing nothing Comannded or doing amisse that which is Comannded or by doing to much or too Litle.

And firste will begins with Ecclesiasticall causes wherein I pray you ffirst let me exhort you to regard and obseue the seruice of god & keeping of his Sabbeth and therefore if you know any abuses Comitted in your Canonships or other places within this our shire to the dishonour of god & breach of his Sabbeth either by flipping Alehouse haunting or any other misdemeanor or neglect in gods service Let it be you special care to present it knowing that where god is not honordd all all other blessings are withdrawne ffrom the kingdome or countrie.

Author bio/acknowledgements. Benjamin Keener is a Juris Doctor candidate at the University of Pennsylvania Carey Law School. He has an MPhil in Political Thought and Intellectual History from the University of Cambridge where he specialized in early modern law and legal theory. The author is grateful to Dr. Paul Cavill for his advice and encouragement.

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