

The following are excerpts from "**An Essay on the Trial by Jury**" that is a basic synopsis of the book. The book was written by American lawyer Lysander Spooner and entered according to Act of Congress in 1852 at the Clerk's Office of the District Court of Massachusetts. The following excerpts (with EMPHASIS ADDED) from the book makes it crystal clear a **Common Law Trial by Jury** is for the protection of We the People against tyrannical government civil servants:

"FOR more than six hundred years - that is, since Magna Carta, in 1215 - there has been no clearer principle of English or American constitutional law...it is not only the right and duty of juries to judge what are the facts, what is the law, and what was the moral intent of the accused *but that it is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws.*

Unless such be the right and duty of jurors, it is plain that, instead of juries being a "palladium of liberty" - a barrier against the tyranny and oppression of the government - they are really mere tools in its hands, for carrying into execution any injustice and oppression it may desire to have executed.

But for their right to judge of the law, *and the justice of the law*, juries would be no protection to an accused person, *even as to matters of fact*; for, if the government can dictate to a jury any law whatever...it can certainly dictate to them the laws of evidence. That is, it can dictate what evidence is admissible, and what inadmissible, *and also what force or weight is to be given to the evidence admitted.*

And if the government can thus dictate to a jury the laws of evidence, it can not only make it necessary for them to convict on a partial exhibition of the evidence rightfully pertaining to the case, but it can even require them to convict on any evidence whatever that it pleases to offer them. (Pages 5 and 6)

That the rights and duties of jurors must necessarily be such as are here claimed for them, will be evident when it is considered what the trial by jury is, and what is its object.

"The trial by jury" then, is a "trial by the country" - that is, by the people - as distinguished from a trial by the government.

The object of this trial" by the country," or by the people, in preference to a trial by the government, is to guard against every species of oppression by the government. In order to effect this end, it is indispensable that the people, or "the country," judge of and determine their own liberties against the government; instead of the government's judging of and determining its own powers over the people. How is it possible that juries can do anything to protect the liberties of the people against the government, if they are not allowed to determine what those liberties are?

Any government, that is its own judge of, and determines authoritatively for the people, what are its own powers over the people, is an absolute government of course. It has all the powers that it chooses to exercise. There is no other - or at least no more accurate - definition of a despotism than this.

On the other hand, any people, that judge of, and determine authoritatively for the government, what are their own liberties against the government, of course retain all the liberties they wish to enjoy. *And this is freedom.* At least, it is freedom *to them*; because, although it may be theoretically imperfect, it, nevertheless, corresponds to *their* highest notions of freedom.

To secure this right of the people to judge of their own liberties against the government, the jurors are taken, (or must be, to make them lawful jurors,) from the body of the people, *by lot*, or by some process that precludes any previous knowledge, choice, or selection of them, on the part of the government. (Page 6)

This is done to prevent the government's constituting a jury of its own partisans or friends; in other words, to prevent the government's *packing* a jury, with a view to maintain its own laws, and accomplish its own purposes. (Page 7)

But all this" trial by the country" would be no trial at all "by the country," but only a trial by the government, if the government could either declare who may, and who may not, be jurors, or could dictate to the jury anything whatever, either of law or evidence, that is of the essence of the trial.

If the government may decide who may, and who may not, be jurors, it will of course select only its partisans, and those friendly to its measures.

It may not only prescribe who may, and who may not, be eligible to be drawn as jurors; but it may also question each person drawn as a juror, as to his sentiments in regard to the particular law involved in each trial, before suffering him to be sworn on the panel; and exclude him if he be found unfavorable to the maintenance of such a law. (Page 8)

So, also, if the government may dictate to the jury *what laws they are to enforce*, it is no longer a "trial by the country", but a trial by the government; because the jury then try the accused, not by any standard of their own-not by their own judgments of their rightful liberties - but by a standard dictated to them by the government. And the standard, thus dictated by the government, becomes the measure of the people's liberties. If the government dictate the standard of trial, it of course dictates the results of the trial. And such a trial is no trial by the country, but only a trial by the government; and in it the government determines what are its own powers over the people, instead of the people's determining what are their own liberties against the government. In short, if the jury have no right to judge of the justice of a law of the government, they plainly can do nothing to protect the people against the oppressions of the government; for there are no oppressions which the government may not authorize by law.

The jury are also to judge whether the laws are rightly expounded to them by the court. Unless they judge on this point, they do nothing to protect their liberties against the oppressions that are capable of being practised under cover of a corrupt exposition of the laws.

If the judiciary can authoritatively dictate to a jury any exposition of the law, they can dictate to them the law itself, and such laws as they please; because laws are, in practice, one thing or another, according as they are expounded. (Page 9)

The jury must also "judge whether there really be any such law, (be it good or bad,) as the accused is charged with having transgressed. Unless they judge on this point, the people are liable to have their liberties taken from them by brute force, without any law at all.

The jury must also judge of the laws of evidence. If the government can dictate to a jury the laws of evidence, it can not only shut out any evidence it pleases, tending to vindicate the accused, but it can require that any evidence whatever, that it pleases to offer, be held as conclusive proof of any offence whatever which the government chooses to allege.

It is manifest, therefore, that the jury must judge of and try the whole case, and every part and parcel of the case, free of any dictation or authority on the part of the government.

They must judge of the existence of the law; of the true exposition of the law; *of the justice of the law*; and of the admissibility and weight of all the evidence offered; otherwise the government will have everything its own way; the jury will be mere puppets in the hands of the government; and the trial will be, in reality, a trial by the government, and not a "trial by the country."

By such trials the government will determine its own powers over the people, instead of the people's determining their own liberties against the government; and it will be an entire delusion to talk, as for centuries we have done, of the trial by jury, as a "palladium of liberty," or as any protection to the people against the oppression and tyranny of the government.

The question, then, between trial by jury, as thus described, and trial by the government, is simply a question between liberty and despotism. The authority to judge what are the powers of the government, and what the liberties of the people, must necessarily be vested in one or the other of the parties themselves - the government, or the people; because there is no third party to whom it can be entrusted. If the authority be vested in the government, the government is absolute, and the people have no liberties except such as the government sees fit to indulge them with.

If, on the other hand, that authority be vested in the people, then the people have all liberties, (as against the government.) except such as substantially the whole people (through a jury) choose to disclaim; and the government can exercise no power except such as substantially the whole people (through a jury) consent that it may exercise. (Pages 10 and 11)

THE evidence already given in the preceding chapters proves that the rights and duties of jurors, in civil suits, were anciently the same as in criminal ones; that the laws of the king were of no obligation upon the consciences of the jurors, any further than the laws were seen by them to be just; that very few laws were enacted applicable to civil suits; that when a new law was enacted, the nature of it could have been known to the jurors only by report, and was very likely not to be known to them at all; that nearly all the law involved in civil suits was *unwritten*; that there was *usually* no one in attendance upon juries who could possibly enlighten them, unless it were sheriffs, stewards, and bailiffs, who were unquestionably too ignorant and untrustworthy to instruct them authoritatively; that the jurors must therefore necessarily have judged for themselves of the whole case; and that, *as a general rule*, they could judge of it by no law but the law of nature, or the principles of justice as they existed in their own minds.

The ancient oath of jurors in civil suits, viz., that "*they would make known the truth according to their consciences,*" **implies that the jurors were above the authority of all legislation.** The modern oath, in England, viz., that they "*will well and truly try the issue between the parties, and a true verdict give, according to the evidence.*" implies the same thing.

If the laws of the king had been binding upon a jury, they would have been sworn to try the cases *according to law*, or according to the laws. (Page 110)

IT is a principle of Magna Carta, and therefore of the trial by jury, (for all parts of Magna Carta must be construed together,) that no judge or other officer *appointed by the king*, shall preside in jury trials, *in criminal cases*, or "pleas of the crown."

At the common law, all officers who held jury trials, whether in civil or criminal cases, were chosen by the people. (Page 157)"

Please share this information as it is vital we demand a TRIAL BY JURY in most cases because WE THE PEOPLE retain the power in this country. If the majority of cases were a TRIAL BY JURY we can turn around our country around!