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An Essay on the Trial by Jury **by Lysander Spooner**

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, than that, in criminal cases, 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 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....

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

It was anciently called "trial *per pais*" — that is, "trial by the country." And now, in every criminal trial, the jury are told that the accused "has, for trial, put himself upon the *country* ; which *country* you (the jury) are."

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. . . .

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 are 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 trusted.

*Lysander Spooner was a 19th-century American lawyer. This is an excerpt from his work **An Essay on the Trial by Jury** , published in 1852.*

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