

TrialByJuryWhatIsItAndWhatIsItsPurposeFromCitizensRuleBookAndOtherSources

1. **God's word the original source of our "Trial by Jury"'s elements and purposes:** Christianity is part and parcel of the common law. God's word which teaches the concept of covenant and consent of the governed also powerfully illustrates an effective trial by where the people involved judged both facts and law and overruled a king (Israel's king Saul) in **I Samuel 14**. There the people dispensed with Saul's unrighteous law/order and effected what we would call jury nullification of Saul's finding Jonathan guilty of violating his will/law/order and of his judicial sentencing of his son to death.

2. In the list of complaints and grievances against King George and Britain's government the **Declaration of Independence** justified breaking away from that government having written: "for depriving us in many cases of the benefits of Trial by Jury"

3. **Founder's quotes on the vital imperative of Trial by Jury** (at <http://famguardian.org/subjects/politics/thomasjefferson/jeff6.htm> 8-2-2016)

"I consider trial by jury as the only anchor ever yet imagined by man by which a government can be held to the principles of its constitution." --Thomas Jefferson to Thomas Paine, 1789.

"It is left... to the juries, if they think the permanent judges are under **any bias whatever** in any cause, to take on themselves to judge the law as well as the fact. They never exercise this power but when they suspect partiality in the judges; and by the exercise of this power they have been the firmest bulwarks of English liberty." --Thomas Jefferson to Abbe Arnond, 1789. [emphasis added]

"If the question [before justices of the peace] relate to any point of public liberty, or if it be one of those in which the judges may be suspected of bias, the jury undertake to decide both law and fact." --Thomas Jefferson: Notes on Virginia, 1782.

4. **Citizen's Rule Book: A Palladium of Liberty** (at <http://www.apfn.org/pdf/citizen.pdf> 11-8-2016)

SEC. II GIVE ME LIBERTY OR GIVE ME DEATH!

PATRICK HENRY SHOCKED!

Young Christian attorney Patrick Henry saw why a JURY of PEERS is so vital to FREEDOM! It was March 1775 when he rode into the small town of Culpeper, Va. He was totally shocked by what he saw! There, in the middle of the town square was a minister tied to a whipping post, his back laid bare and bloody with the bones of his ribs showing. He had been scourged like JESUS, with whips laced with metal.

Patrick Henry is quoted as saying: "When they stopped beating him, I could see the bones of his rib cage. I turned to someone and asked what the man had done to deserve a beating such as this."

SCOURGED FOR NOT TAKING A LICENSE!

The reply given him was that the man being scourged was a minister who refused to take a license. He was one of twelve who were locked in jail because they refused to take a license. A license often becomes an arbitrary control by the government that makes a crime out of what ordinarily would not be a crime. IT TURNS A RIGHT INTO A PRIVILEGE!

Three days later they scourged him to death.

This was the incident, which sparked Christian attorney Patrick Henry to write the famous words which later would become the rallying cry of the Revolution. "What is it that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, GIVE ME LIBERTY OR GIVE ME DEATH!" Later he made this part of his famous speech at St. John's Episcopal Church in Williamsburg, Va.

JURY OF PEERS

Our forefathers felt that in order to have JUSTICE, it is obvious that a JURY of "PEERS" must

be people who actually know the defendant. How else would they be able to judge motive and intent?

“PEERS” of the defendant, like RIGHTS of the JURY have also been severely tarnished. Originally, it meant people of “equals in station and rank,” (Black’s 1910), “free-holders of a neighborhood,” (Bouvier’s 1886), or “A companion; a fellow; an associate. (Webster’s 1828). WHO HAS THE RIGHT TO SIT ON A JURY?

Patrick Henry, along with others, was deeply concerned as to who has a right to sit on a JURY. Listen to our forefathers wisdom on the subject of “PEERS.”

MR. HENRY

“By the bill of rights of England, a subject has a right to a trial by his peers. What is meant by peers? Those who reside near him, his neighbors, and who are well acquainted with his character and situation in life.” Patrick Henry (Elliot, “The Debates in Several State Conventions on the Adoption of the Federal Constitution, 3: 579)

Patrick Henry also knew that originally the JURY of PEERS was designed as a protection for Neighbors from outside governmental oppression. Henry states the following, “Why do we love this trial by jury? Because it prevents that hand of oppression from cutting you off . . . THis gives me comfort—that, as long as I have existence, my neighbors will protect me.” (Elliot, 3: 545, 546).

MR. HOLMES

Mr. Holmes, from Massachusetts, argued strenuously that for JUSTICE to prevail, the case must be heard in the vicinity where the fact was committed by a JURY of PEERS. “. . . a jury of peers would, from their local situation, have an opportunity to form a judgement of the CHARACTER of the person charged with the crime, and also to judge of the CREDIBILITY of the witnesses.” (Elliot, 2: 110).

MR. WILSON

Mr. Wilson, signer of “The unanimous Declaration,” who also later became a supreme Court Justice, stressed the importance of the JURORS knowing personally both the defendant and the witnesses. “Where jurors can be acquainted with the characters of the parties and the witnesses—where the whole cause can be brought within their knowledge and view—I know no mode of investigation equal to that by a trial by jury: they hear every thing that is alleged; they not only hear the words, but they see and mark the features of the countenance; they can judge of weight due to such testimony; and moreover, it is a cheap and expeditious manner of distributing justice. There is another advantage annexed to the trial by jury; the jurors may indeed return a mistaken or ill-founded verdict’ but their errors cannot be systematical.” (Elliot, 2: 516)

FREEDOM FOR WILLIAM PENN

“Those people who are not governed by GOD will be ruled by tyrants.” William Penn Edward Bushnell and three fellow JURORS learned this lesson well. They refused to bow to the court. They believed in the absolute power of the JURY, though their eight companions cowered to the court. The four JURORS spent nine weeks of torture in prison, often without food and water, soaked with urine, smeared with feces, barely able to stand, and even threatened with fines, yet they would not give in to the judge. Edward Bushnell said, “My liberty is not for sale,” though he had great wealth and commanded an international shipping enterprise. These “bumble heads”, so the court thought, proved the power of the people was stronger than any power of government. They emerged total victors.

THE FIRST AMENDMENT

The year was 1670, and the case Bushnell sat on was that of William Penn, who was on trial for violation of a “Conventicle Act.” This was an elaborate Act which made the Church of England the only legal church. The Act was struck down by their not guilty vote. Freedom of Religion was established and became part of the English Bill of Rights and later it became the First Amendment to the U.S. Constitution. In addition, the Right to peaceful assembly was founded, Freedom of Speech, and also habeas corpus. The first such writ of habeas corpus ever issued by the Court of Common Pleas was issued to free Edward Bushnell. Later this trial gave birth to the concept of Freedom of the press.

Had Bushnell and his colleagues yielded to the guilty verdict sought by the judge and prosecutor, William Penn most likely would have been executed as he clearly broke the law. HE BROKE THE LAW!

There would have been no Liberty Bell, no Independence Hall, no city of Philadelphia, and no state called Pennsylvania, for young William Penn, founder of Pennsylvania, and leader of the Quakers, was on trial for his life. His alleged crime was preaching and teaching a different view of the Bible than that of the Church of England. This appears innocent today, but then, one could be executed for such actions. He believed in freedom of religion, freedom of speech and the right to peaceful assembly. He had broken the government's law, but he had injured no one. The four heroic JURORS knew that only when actual injury to someone's person or property takes place is there a real crime. No law is broken when no injury can be shown. Thus there can be no loss or termination of rights unless actual damage is proven. Many imposter laws were repealed as a result of this.

IT IS ALMOST UNFAIR!

The trial made such an impact that every colony but one established the jury as the first liberty to maintain all other liberties. It was felt that the liberties of people could never be wholly lost as long as the jury remained strong and independent, and that unjust laws and statutes could not stand when confronted by conscientious JURORS. JURORS today face an avalanche of imposter laws. JURORS not only still have the power and the RIGHT, but also the DUTY, to nullify bad laws by voting "not guilty." At first glance it appears that it is almost unfair, the power JURORS have over government, but necessary when considering the historical track record of oppression that governments have wielded over private citizens.

JEFFERSON'S WARNINGS!

In 1789 Thomas Jefferson warned that the judiciary if given too much power might ruin our REPUBLIC, and destroy our RIGHTS!

"The new Constitution has secured these [individual rights] in the Executive and legislative departments: but not in the Judiciary. It should have established trials by the people themselves, that is to say, by jury."

The Judiciary of the United States is the subtle corps of sappers and miners constantly working under ground to undermine the foundations of our confederated fabric." (1820)

"... the Federal Judiciary; an irresponsible body (for impeachment is scarcely a scarecrow), working like gravity by night and by day, gaining a little to-day and a little to-morrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one.

... when all government ... in little as in great things, shall be drawn to Washington as the centre of all power, it will render powerless the checks provided of one government on another and will become as venal and oppressive as the government from which we separated. (1821)

"The opinion which gives to the judges the right to decide what laws are constitutional and what are not, not only for themselves in their own sphere of action, but for the legislative and executive also in their spheres, would make the judiciary a despotic branch.

"... judges should be withdrawn from the bench whose erroneous biases are leading us to dissolution. It may, indeed, injure them in fame or fortune; but it saves the Republic. ..."

And from www.kjensenlaw.com on "**HOW IMPORTANT IS THE RIGHT TO A TRIAL BY JURY TO THE VERY EXISTENCE OF AMERICA**":

"Representative government and trial by jury are the heart and lungs of liberty." John Adams (1774)

"I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." Thomas Jefferson (1801)

"Trial by jury must and shall be preserved! Amidst the throng of crude sacrilegisms . . . that assail us nowadays in the legal sanctuary, none is more shortsighted, none more dangerous, than the proposal to abolish trial by jury." John Henry Wigmore (1925)

"Trial by jury is essentially a child of freedom. . . . It is the greatest safeguard of liberty, and the greatest protector of its privileges." Sam M. Wolfe, *A Defense of the Jury* (1911)

"All attempts to tinker or tamper with trial by jury in civil causes should be discouraged as disastrous to the public welfare." ABA President Joseph Coate (1898)

"Trial by jury is part of that bright constellation which has gone before us and guided our steps through an age of revolution and reformation." Thomas Jefferson (1801)

"Law and justice are from time to time inevitably in conflict. . . . The jury . . . adjusts the general rule of law to the justice to the particular case. Thus the odium of inflexible rules of law is avoided, and popular satisfaction is preserved . . . That is what jury trial does. It supplies that flexibility of legal rules which is essential to justice and popular contentment." John Henry Wigmore (1929)

"Trial by jury in civil cases is as essential to secure the liberty of the people as any one of the pre-existent rights of nature." James Madison (1789)

"The wisdom of our sages and the blood of our heroes has been devoted to the attainment of trial by jury. It should be the creed of our political faith." Thomas Jefferson First Inaugural Address (1801)

"The jury system is the handmaid of freedom. It catches and takes on the spirit of liberty, and grows and expands with the progress of constitutional government. Rome, Sparta and Carthage fell because they did not know it, let not England and America fall because they threw it away." Charles S. May (1875)

"The friends and adversaries of the plan of the convention . . . concur . . . in the value they set upon the trial by jury; the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government." Alexander Hamilton (1788)

....

". . . Trial by jury cannot be corrupted unless the whole body of the people be corrupt. . . . Instances of perverse or dishonest verdicts there will be, because the attribute of perfection does not belong to any human institution. . . . [Reformers] see only those blemishes which are the casual specks of a glorious institution." J. Sydney Taylor (1838)

"Trial by jury must be preserved. It is the best system ever invented for a free people in the world's history." John Henry Wigmore (1929)

"Illegitimate and unconstitutional practices get their footing . . . by silent approaches and slight deviations from legal modes of procedure . . . It is [our] duty . . . to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon . . ." Justice Bradley (1886)

"Trial by jury is part of the bright constellation which leads to peace, liberty and safety." President Thomas Jefferson (1801)

"The grand solid merit of jury trial is that the jurors . . . are selected at the last moment from the

multitude of citizens. They cannot be known beforehand, and they melt back into the multitude after each trial." John Henry Wigmore (1924)

"The Bill of Rights should contain the general principles of natural and civil liberty. It should be to a community what the eternal laws and obligations of morality are to the conscience. It should be unalterable by any human power . . . " Thomas Paine (1777)

"We may never have tyrants, . . . but if we should have them, they will seek to accomplish the downfall of free government, not by directly overriding the Constitution, but by using the forms of law to strangle and subvert its spirit." Charles S. May (1875)

No single institution that the wisdom of man has ever devised is so well calculated to preserve a people free, or make them so, as trial by jury." J. Sydney Taylor (1838)

"Trial by jury must be preserved: not as a mere formality, stripped of its discretion by arbitrary and inflexible rules dictated by the captains of commerce and industry for the furtherance of their own selfish interest, but free to search out and find the truly essential justice of each individual case." J. Kendall Few, In Defense of Trial by Jury (1992)

". . . The popular attitude toward the administration of justice should be one of respect and confidence. Bureaucratic, purely official justice, can never receive such confidence. The one way to secure it is to give the citizen-body itself a share in the administration of justice. And that is what jury-trial does." John Henry Wigmore (1929)

". . . Progress, reform, judicial reform - these are good and admirable things, but we should take care to know what we do in their name. . . . To abolish the trial by jury . . . would be a terribly destructive and radical measure, a direct impeachment of the wisdom of the past and a bold and hazardous experiment upon the future." Charles S. May (1875)

"For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time." Justice George Sutherland (1937)

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." Justice Brandeis (1928)

"We are good friends of jury trial. We believe in it as the best system of trial ever invented for a free people in the world's history." John Henry Wigmore (1924)

"The first ten amendments to the Constitution safeguard [those] fundamental rights . . . [that] the framers of the Bill of Rights regard[ed as] certain liberties . . . so vital that legislative denial of them should be specifically foreclosed . . . " Justice George Sutherland (1937)

"[Trial by jury is] a privilege of the highest and most beneficial nature [and] our most important guardian both of public and private liberty. The liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from all open attacks, . . . but also from all secret machinations, which may sap and undermine it." Justice William Blackstone (1765)

"You ought to be extremely cautious, watchful, jealous of your liberty; for instead of securing your rights, you may lose them forever . . . " Patrick Henry (1788)

"The jury system has come to stand for all we mean by English justice, because so long as a case has to be scrutinized by twelve honest men, defendant and plaintiff alike have a safeguard from arbitrary perversion of the law." Sir Winston Churchill (1956)

"The right of trial by jury cannot be guarded with too much vigilance, nor defended with too much ardor. If the people surrender it, their other rights will inevitably follow." Joseph Towers (1764)

"Trial by jury is our fence and protection against all frauds and surprises and against all storms of power." Sir John Maynard, Sergeant at Law (1689)

"The mountain of so-called 'tort reform' legislation sponsored each year by the captains of commerce and industry is 'but the forerunner of a system of dangerous attacks upon the free institutions and ancient rights of [Americans in order to] rob the people of the best and firmest securities for the due administration of justice'." J. Kendall Few (1993), quoting J. Sydney Taylor (1839)

"Trial by jury is a wise distribution of power which exceeds all other modes of trial." Edward Coke, Chief Justice of Common Pleas (1628)

". . . They select instances of verdicts of a perverse or absurd character, and present them to the public as specimens of the working of the jury system. They prove nothing so conclusively as their own incapacity to take a more comprehensive view of a great subject . . . Yet such is the sort of logical process by which the deprecators of trial by jury arrive at the conclusion, that the administration of justice would be reformed . . ." J. Sydney Taylor (1838)

"Those who serve upon our juries have maintained a standard of fairness and excellence and demonstrated a vision toward the administration of justice that is a wellspring of inspiration." U.S. Supreme Court Chief Justice Earl Warren (1962)

"Trial by jury is the most rational and effective method for discovering the truth." Sir John Fortescue, Chief Justice of the King's Bench (1468)