

What is the Common Law Trial by Jury?

In his essay of 1852, Lysander Spooner gave us a concise view of the English constitution demonstrating the unconstitutional character of the existing government.

He described how governments have progressively removed the power of the people through Trial By Jury, instead giving us a Jury Trial in which the Judge makes the final ruling.

In a Trial By Jury the people have the power to make the decision, not a judge.

Governments have behaved unconstitutionally and we should know that legislatures have never been invested with any authority to impair the power of the people.

Current legislation is therefore constitutionally subordinate to Common Law Juries.

Spoooner recommends that Trial By Jury should be re-established as a solution to government tyranny.

Magna Carta 1215 was written to stop the tyrannical King John as is a clear principle of English constitutional law.

It gives the people the right and duty to judge the law and the justice of the law and to hold all laws invalid that are oppressive. This means that the people are not guilty if they violate or resist acts and statutes that have been unfairly dictated by the government without the agreement of the people.

Therefore, Magna Carta forms a barrier against the tyranny and oppression of the government and Judges who seek to dictate to the people.

Instead of the government determining its powers over a passive group of people, the people must stand up and determine their own liberties against the government.

Despotism Vs Freedom

Despotism: any government that claims to have all the power serving as its own judge and determining authoritatively over the people with an absolute government. Such a government has all the powers that it chooses to exercise.

Freedom: the people judge and determine authoritatively for the government and retain all the liberties they wish to enjoy. This is the right of the people to judge their own liberties against the government.

A jury would be twelve men and women randomly selected from the local population to ensure no selection on the part of the government.

As well as judging the guilt or innocence of the person on trial, the jury is also to judge the laws and statutes that have been broken and decide whether or not they are fair. Authority is therefore vested in the people and not in the government, which becomes merely the servants and agents of the people

We are currently under a system of Suffrage which means that the people are powerless. There is no guarantee for the repeal of existing laws that are oppressive and no security against the enactment of new ones. Governments can neither be removed from their office nor called to account while in office and are not punished for their tyranny after they leave their office.

Presently, the government is absolute and the people legally speaking are slaves because governments can determine what legislation is authoritative upon the people and can enforce obedience to it via the Police and the Courts. The trial by jury gives individuals the liberty to disregard or resist any government law, protecting the people against oppression

The Trial by jury as defined by Magna Carta gives the people have the right to judge what laws of the government are to be obeyed by the people and to compel the government to keep within the constitutional limits

The bounds set to the power of the government by the trial by jury are that the government shall never touch the property, person, or natural or civil rights of an individual against his consent.

In 1215, the King was constitutionally the entire government; the sole. legislative, judicial, and executive power of the nation. The only legal limitation upon his power was the Common Law, 'the law of the land' which he was bound by oath to maintain.

The Great Charter of English Liberties compelled the King to punish no freeman for a violation of any of his laws unless the people gave their consent. This establishes the right and duty of the jury to judge the justice of the laws

No freeman shall be arrested or imprisoned, or deprived of his freehold or his liberties or free customs or outlawed, or exiled, or in any manner destroyed, nor will we (the King) pass upon him, nor condemn him, unless by the judgement of his peers, or the law of the land.

'Nor will we proceed against him'.

That is 'Know that we have granted to our barons who are opposed to us, that we will neither arrest them nor their men, nor disseize them, nor will we proceed against them by force or by arms, unless by the law of our kingdom, or by the judgement of their peers in our court, until consideration shall be had'.

That is 'The body of a freeman shall not be arrested, nor imprisoned, nor disseized, nor outlawed, nor exiled, nor in any manner destroyed, nor shall the king proceed or send (anyone) against him WITH FORCE, unless by the judgement of his peers, or the law of the land.

Per legume terrae - by the law of the land - the common law.

The common law is sometimes called lex terrae - Magna Carta chap 29.

That legume terrae, the law of the land, mentioned in Magna Carta, was the common, ancient, fundamental law of the land, which the kings were bound by oath to observe;

and that it did not include any statutes or laws enacted by the king himself, the legislative power of the nation.

This imposed restraint upon the power of the King and can restrain tyrannical governments today.