



# **The Ohio State Jural Assembly Grand Jury Commission**

**Summary, for inclusion in  
Jurist Training**

**By Beverly Welbourne, Commissioner  
October 2025**

subject to periodic update

Lysander Spooner: An essay on the trial by jury: excerpts:

(full essay available at <https://oll.libertyfund.org/titles/spooner-an-essay-on-the-trial-by-jury-1852>)

---

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 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.

*“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.

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.\*

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.

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.

---