

Voir Dire Magazine Article

Charles Pinckney and the Seventh Amendment

by Joel W. Collins, Jr.

We members of the American Board of Trial Advocates proudly defend the right of trial by jury as guaranteed by the Seventh Amendment to the United States Constitution. But, some of us are not aware of the historical evolution of this important part of our judicial system. How the Seventh Amendment came to be part of our Bill of Rights is an interesting story. The purpose of this article is to touch a few of the high points and familiarize the reader with an unsung hero, a forgotten founder, who played a role in establishing the right to jury trials in civil and criminal cases..

Several books have been written regarding the history of trial by jury. Historians have traced this institution as far back as 2000 B.C. The ancient Egyptians used the “Kenbet,” a group of eight people, four selected from each side of the river Nile, to decide disputes. Similar institutions also existed many centuries ago in Scandinavian countries. The Danes used the “Tingmaend.” In Jutland, now part of Denmark, the “Sandemaend,” was used. In Iceland, the “Tolftar-quidr” served a similar role. In Sweden, a body known as the “Nambd” was chosen from the people at large to decide matters. A Nambd uniformly consisted of twelve people.

In ancient Greece during the 6th Century, the Athenian statesman Solon used “Dikasts,” a form of jury. Years later, the Athenian statesman Pericles advanced the jury system and even compensated citizens who served as jurors. Much of the finest literature, art, architecture and forms of governance of Western Civilization can be traced back to the “Golden Age of Pericles.” This was the 5th Century, B.C. in Athens. Some believe the jury trial system of the ancient

Greeks was brought to England at the time of the Roman conquest and occupation of the British Isles.

William Blackstone, in his seminal four volume work, Commentaries on the Laws of England, the first great treatise on the Common Law, wrote that some form of the jury system survived through the “lost centuries of the Dark Ages.” The Kings of Kent, Hlothar and Eadrick, utilized a system similar to trial by jury. Emperor Louis the Pious, son of Charlemagne, established the Frankish Inquest, also a body of twelve citizens selected to resolve disputes. Those persons selected to serve were described as “the best and most credible persons in the locality.” After the Norman Invasion in 1066, William the Conqueror used juries to help compile the infamous Domesday Book, the first survey of ownership of land in England.

The historian Maximus A. Lesser, wrote that by the middle of the 13th Century, jury trials had become well established and were routinely used in English courts. Not until 1367 were jury verdicts required to be unanimous. Later refinement under the reign of King Henry IV required that all evidence be received in open court with judges presiding and ruling on the admissibility of evidence. It is from this period we date our concept of modern evidence law. In 1410, a judicial decision was rendered requiring jurors to base their decisions only upon the evidence presented in open court. A statute passed during the reign of King Henry VI required “the trial of the life and death, lands and tenements, goods and chattels of everyone of his subjects ... touching matters of fact ... is to be ... made by the oaths ... of twelve men duly summoned in the courts.” In the years following, witnesses were required to be sworn and were also required to be freeholders, i.e., land owners, of good repute. In 1512, compulsory jury service was enforced in the City of London. Fifty years later, litigants were afforded the right to subpoena witnesses to the trial.

The most important event in the history of trial by jury may be the Magna Carta. In his epic four volume work, The History of the English Speaking Peoples, Winston Churchill wrote about the dramatic events of June 15, 1215. On that day, a group of English barons “on the great meadow at Runnymede” essentially surrounded King John and forced him to sign the Magna Carta. This “handful of resolute men,” according to Churchill, brought about one of the most famous events in the history of Britain. Churchill’s endorsement of trial by jury was as follows:

“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 [and women] defendant and plaintiff alike have a safeguard from arbitrary perversion of the law.”

According to Churchill, within the first 100 years of its existence, there were at least thirty-eight separate occasions when the right to trial by jury, guaranteed by Magna Carta in both civil and criminal cases, was confirmed and thereby strengthened.

Trial by jury made its way into the courts of the American Colonies via the English settlers. On April 4, 1606, the Virginia Colony passed a statute guaranteeing the protection of the Magna Carta to all inhabitants of the Colony. On March 4, 1629, the Charter of Massachusetts Bay guaranteed the same rights to the inhabitants of that Colony. Maryland followed suit on June 20, 1632. Rhode Island and the Providence plantations did likewise on July 8, 1663. The noted philosopher, John Locke, in 1669, authored The Fundamental Constitutions of Carolina which guaranteed the right of trial by jury to the inhabitants of that Colony in both civil and criminal actions. The Constitution of the State of South Carolina, ratified on March 26, 1776, guaranteed the right to trial by jury in all suits in any court of law or equity. Notably, the American Declaration of Independence, signed July 4, 1776, reasserted the right of trial by jury for all citizens of the new nation.

By the time of the Constitutional Convention in Philadelphia in 1787, there was broad support for a provision in the Constitution guaranteeing jury trials in civil cases. People often overlook the important role George Washington played at this Convention. He came out of retirement when asked to preside at the Convention. Many believe his considerable respect, dignity and credibility contributed greatly to the civility of the proceedings and compromises reached during the Convention. In 1788, Washington wrote “There was not a member of the Constitutional Convention who had the least objection to what is contended for by the advocates for a Bill of Rights and trial by jury.”

A few Constitutional Convention delegates, including Elbridge Gerry (of “gerrymandering” fame) refused to sign the final document partly because it did not guarantee the right to trial by jury in civil cases. The Bill of Rights was not made part of the Constitution until it was adopted by Congress on September 25, 1789 and then sufficiently ratified by the states on December 15, 1791. This was more than four years after the Constitutional Convention.

A self-proclaimed leader of the effort to make the right to trial by jury a part of the originally drafted Constitution was Charles Pinckney, one of the four South Carolina delegates to the Convention. A wonderful biography entitled Forgotten Founder The Life and Times of Charles Pinckney was written by Marty D. Matthews and published by the University of South Carolina Press in 2004. Born into one of the most elite Charleston Lowcountry families in 1757, Pinckney’s life resembles a Thomas Hardy novel. Unpopular and nearly destitute at the time of his death, he was buried in an unmarked grave at either Christ Church or St. Phillips Church in Charleston, South Carolina. No one knows for certain.

Although most in his family were staunch Federalists, Pinckney broke ranks and supported Thomas Jefferson in the crucial election of 1800. Jefferson's victory led to the first transition of power from one political party to another in American history. Pinckney's decision to back Jefferson earned him the nickname "Blackguard Charlie."

Although he was only 29 years old when he arrived at the Constitutional Convention, Pinckney presented one of the few comprehensive plans for a government. He proceeded to play a leading role in the debates and discussions as documented in James Madison's book. In later years, Pinckney claimed to have been only 24 years old at the time and therefore the youngest delegate. According to his biographer, Pinckney "frequently spoke of the deep diffidence and solemnity which he felt, being the youngest member of the body." Pinckney's draft Constitution contained a bill of rights to protect citizens from an overbearing federal government. It included the guaranteed right to trial by jury.

On the first day of the Convention, Charles Pinckney moved to form a committee to prepare standing rules and orders. His motion carried. He along with Virginian George Wythe and New York's Alexander Hamilton, were appointed to that committee. As soon as their rules were adopted, James Madison notes "Mr. Pinckney laid before the house the draught of a federal government which he had prepared to be agreed upon between the free and independent states of America." Pinckney was therefore one of the delegates who steered the Convention toward the idea of creating a whole new form of government instead of merely revising the Articles of Confederation which had proven to provide insufficient powers to the national government. Under the Articles, the states retained all the power. Sufficient means to defend the nation and a means to uniformly regulate commerce were not provided for under the Articles.

Although he was criticized by others, including James Madison, as being vain and arrogant (human traits which still can be found on occasion in Charleston), it appears Charles Pinckney was a leader. His efforts to guarantee the right of trial by jury in civil proceedings are well documented.

In his book about Pinckney, Marty Matthews wrote:

“Pinckney was also worried about trial by jury in civil cases. Most delegates generally accepted that such a right would be protected in a criminal matter. But not all agreed to such a right in civil proceedings. On the last full day of the proceedings, Sunday, 16 September, Pinckney and Elbridge Gerry of Massachusetts, attempted to insert the clause, ‘And a trial by jury shall be preserved as usual in civil cases.’ The addition met with opposition from others, including Pinckney’s cousin, Charles Coatesworth [Pinckney], who averred that such a clause would be ‘pregnant with embarrassment.’ The proposal lost by unanimous vote, but the Seventh Amendment in the Bill of Rights eventually protected the right.”

Charles Pinckney wrote and spoke eloquently about the importance of trial by jury. Referring to the jury, he stated “Neither the Rich, the Honoured, or the Humble being without its influence or above its control.” Pinckney believed only in cases of contempt of court should a judge have the right to usurp a trial by jury. He believed judges should have little discretion regarding sentencing in criminal cases, arguing instead, the legislature should be as specific as possible when enacting criminal statutes. His opinions about the judiciary were likely shaped by the arbitrary rulings and abuses of English judges suffered during the Colonial Era. Pinckney posed the rhetorical question whether it would be better for citizens to have their laws determined by their own regularly elected representatives in the legislature or by judges accountable to no one.

Although he spoke in favor of jury trials and stated “no government can too highly praise their rights,” he also supported the idea verdicts of a jury should only require three-fourths of them to agree.

At a speech given on January 31, 1800, where he proclaimed his support to Jefferson, Pinckney spoke about jury selection. He noted no uniform method existed for choosing jurors in federal court trials. He further noted some states allowed sheriffs or marshals to impanel juries from whomever they chose. Pinckney explained this arbitrary system threatened the right to trial by jury of one’s peers. In his speech to the South Carolina Legislature, Pinckney stated:

“Viewing as I do impartial juries as among the most indispensable ingredients of a free government, it is my duty to declare – and I solemnly do deliver it as my opinion – that in those states in which the federal marshals have a right to summon jurors as they please, the people *are not free!* That in those states the impartiality of your judicial tribunals and the purity of the administration of justice must depend not on the laws but on the integrity and honest independence of a marshal.”

Charles Pinckney died October 29, 1824 of what was described at the time as “dropsy,” most likely heart or kidney disease. This was three days after he turned 67 years of age. In his lifetime, he did not receive recognition for his leadership in ensuring the “precious right” which we members of ABOTA are sworn to utilize, preserve and protect.