

This Day in History... September 12, 1787

The Right to Trial by Jury

On September 12, 1787, it was proposed that trial by jury in civil cases be included America's Constitution. There was extensive debate over the topic, and it was ultimately left out of the Constitution. It was finally made law as part of the Bill of Rights in 1791.

Trial by jury has been in practice for centuries, likely dating back to about 2000 BC in ancient Egypt. The Greeks and Romans had juries, and the Romans likely brought this practice to England with their Roman Conquest.

A major event occurred in 1215, with the signing of the Magna Carta. England's "Great Charter," it guaranteed a trial by jury: "No mal shall be taken, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land." When

British subjects sailed for America in the 1600s,

they included many of the rights granted in the Magna Carta into their colonial charters, including the right to trial by jury.

In 1734, John Peter Zenger published a column that criticized New York's royal governor in the *New York Weekly Journal*. The governor had him arrested and imprisoned for seditious libel. Zenger was then tried by a jury of his peers who found in him not guilty because he printed the truth. It was a landmark decision – newspapers had the right to criticize the crown. As Justice Lewis Morris recalled, "The trial of Zenger in 1735 was the germ of American Freedom, the morning star of liberty that subsequently revolutionized America."

The right to a jury trial in America largely stems from the Magna Carta.

As Revolution began to brew, the British rulers attempted to suppress the right to trial by jury, and the colonists grew only more emboldened. The South Carolina General Assembly declared that anyone who deprived them of the right was an enemy. The 1765 Stamp Act Congress wrote "trial by jury is the inherent and invaluable right of every British subject in these colonies." The right was cited by the First Continental Congress in 1774 and identified as one of the causes of the Revolution in the Declaration of Causes and Necessity of Taking Up Arms. It was also cited in the Declaration of Independence, and it was included in every state constitution that followed.

In 1787, representatives met in Philadelphia to draft a new Constitution to replace the Articles of Confederation. They debated the contents for months and submitted a draft on September 12, 1787. It allowed for trial by jury in criminal cases, but not civil cases. Massachusetts representative Elbridge Gerry pointed out the omission: "The jury is adapted to the investigation of truth beyond any other system the world can produce. A tribunal without juries would be a Star Chamber in civil cases." George Mason seconded his idea and said the Constitution needed a Bill of Rights to guarantee trial by jury and freedom of the press.

Some of the delegates attempted to add trial by jury in civil cases to the Constitution, but others said it wasn't necessary because the right was included in state constitutions. When the Constitution was signed on September 17, the right to a jury in civil cases wasn't included. When Congress convened in 1789, they drafted the Bill of Rights, the first 10 Amendments to the Constitution. It became law on December 15, 1791, when Virginia became the 11th state to ratify it. The 6th Amendment grants the right to a speedy, impartial jury trial in criminal cases and the 7th gives the right to a jury trial in civil cases.

Today, many states celebrate Juror Appreciation Week in May, to coincide with Law Day, and September 5th is Jury Appreciation Day. That date marks a historic case involving Pennsylvania founder William Penn. In that case, the jury was unable to reach a unanimous verdict and were imprisoned for two days without food. When they did give a unanimous decision, the court disagreed, fined the jurors, and imprisoned them until they paid the fine. A higher court then overturned that punishment and declared that juries must decide cases on their own understanding, and not under threat of punishment.



This stamp was issued on the 220th anniversary of this event.



The right to a jury trial in criminal cases was included in Article III, Section 2 of the Constitution.



The Bill of Rights includes the right to a jury trial in criminal cases (6th amendment) and civil cases (7th amendment).

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