

after in one form or another protected the right to jury trial in criminal cases.⁵¹ “Those who emigrated to this country from England brought with them this great privilege ‘as their birthright and inheritance, as a part of that admirable common law which had fenced around and interposed barriers on every side against the approaches of arbitrary power.’”⁵²

“The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. . . . [T]he jury trial provisions . . . reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power . . . found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.”⁵³

Because “a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants,” the Sixth Amendment provision is binding on the states through the Due Process Clause of the Fourteenth Amendment.⁵⁴ But, as it cannot be said that every criminal trial or any particular trial that

⁵¹ *Duncan v. Louisiana*, 391 U.S. 145, 153 (1968).

⁵² *Thompson v. Utah*, 170 U.S. 343, 349–50 (1898), quoting 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 1773 (1833).

⁵³ *Duncan v. Louisiana*, 391 U.S. 145, 155–56 (1968). At other times the function of accurate factfinding has been emphasized. *E.g.*, *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971). Although federal judges may comment upon the evidence, the right to a jury trial means that the judge must make clear to the jurors that such remarks are advisory only and that the jury is the final determiner of all factual questions. *Quercia v. United States*, 289 U.S. 466 (1933).

⁵⁴ *Duncan v. Louisiana*, 391 U.S. 145, 157–58 (1968).