

A Planter, *Gazette of the State of Georgia*, 3 April 1788

In a letter published in your paper of the 20th ultimo from a gentleman of this state to his friend in Virginia, on the subject of the new Federal Constitution, I observe a train of reasoning tending to prove that this Constitution is the best system that can be formed for the present situation of the United States. The sentiments, generally, of this letter I think just and patriotic, and many of the arguments I am much pleased with; but, when they are taken in the detail, some of them prove, in my opinion, the justice of the old observation which the author has, by his own objections, tacitly applied to some parts of the Constitution—"that perfection is not reasonably to be expected in the productions of human wisdom." His doctrine of juries struck me most forcibly in this sense. He supposes that juries are not necessary in civil, though indispensably so in criminal cases. As I do not possess those sources of knowledge which would enable me to make a satisfactory inquiry into the principles or movements of that extraordinary machine, the feudal system, I will not contend with Mr. P[ierce] as to the origin of juries; yet, had not he given us direct authority for his position, I should have supposed that juries, as we now have them, rather had their origin in the fall, than in the rise or the meridian, of the feudal system; and that it was more to guard against the corruption, the partiality, or the weakness of the judges, than the tyranny of feudal lords; that they were instituted because, under the complete feudal system, the distance between lord and vassal, or lord and slave, which were synonymous, appears to have been too great to have admitted of a legal equality of condition between the two ranks, which equality the very nature of a jury most fully implies; and because, in that rude and semi-barbarous age which immediately succeeded the abolition of the feudal system, the minds of the most enlightened were not sufficiently expanded by education, nor corrected by the moral principle, to withstand pecuniary temptations, nor to guard against the private biases of the heart. Mr. P. thinks that juries in civil cases derive their respectability from that prejudice which generally gives a weight to ancient customs, but that they are in the eye of reason rather ridiculous than necessary in such cases; and that a judge would be more equal to a just determination of all matters between neighbors litigant than any jury of the vicinage could be, but that in criminal cases they are indispensably necessary. In criminal cases, where the life of a human being is immediately concerned, that a jury should be more eminently expedient than it might and ought to be in civil cases, I will readily grant; but yet, I do not think that there is that infinite distance between their expedience that he thinks there is. For the history of all free nations, and particularly those of England and America, evince that liberty and property are as dear, or nearly so, to human nature, as life itself; else, why, we might justly inquire, should so many myriads of lives, and millions of money, have been in both countries sacrificed at their shrine?

The superior advantage that a criminal case has of a civil one, in being investigated as it were by a double jury, or, if I may be allowed to speak figuratively, of being passed twice through the fire, fixes a very sufficient distinction between the importance of the two

cases, but is by no means an argument against the expediency of a single jury in the civil case. A judge, who has probably resided only in one particular part of a country, and whose knowledge of the individuals who compose the collected community must be very confined, cannot possibly be so well acquainted with the causes and motives of action of those individuals as their neighbors who reside in their vicinity, and are personally acquainted with "the parties litigant," must be. He, therefore, in equity, is not competent to so fair a judgment between them as a jury of the vicinage. Besides, a judge, being the servant of the whole community, and a character of high public responsibility, might be so much under the influence of political considerations as to engraft them, perhaps insensibly, on his judicial decisions between individuals, which ought to be abstracted from every principle except those founded on the direct merits of the particular case. Another argument in favor of the necessity of juries in civil cases is the influence of party and faction in all governments, but more particularly in a republican one, where they often rage with such fury as to subvert every idea of reason and justice. Can, then, any one member of such government be so disinterested and uninfluenced by the views or the passions of such parties and factions as to administer justice with equal impartiality with a jury of twelve men drawn indiscriminately out of the body of a county, and consequently composed, if not of uninfluenced persons, at least of such whose different passions or prejudices will serve as a counterpoise to the views and designs of each other? Surely not.

But after all, who will say that, even in our enlightened age, when the principles of moral rectitude are so well established, and the ideas of true honor so clearly defined, the frail constitution of human nature may not, even in the most exalted characters, be, in particular cases, subject to the baleful influence of self-interest? And if so, then a jury in civil cases is, without any manner of doubt, the only sure palladium of the rights, the liberties, and the property of society.

With respect to the tacit rejection of juries in particular cases in the new Constitution, the foregoing arguments do not generally apply, as some of those cases, whenever they occur, will, I conceive, be ruled by the laws and customs of nations, and others are so defined as to make a trial by a jury of the vicinage impossible; yet I think that this ought not to lessen our respect and attachment to the established doctrine of juries in all cases where they prevail under the British constitution, of which they are, in my opinion, the great principle of life and energy.

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