

Gazette of the State of Georgia, 20 March 1787 (excerpt)

Extract of a letter from the Honorable William Pierce, Esquire to St. George Tucker, Esquire dated New York, September 28, 1787.

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A defect is found by some people in this new Constitution, because it has not provided, except in criminal cases, for trial by jury. I ask if the trial by jury in civil cases is really and substantially of any security to the liberties of a people. In my idea the opinion of its utility is founded more in prejudice than in reason. I cannot but think that an able judge is better qualified to decide between man and man than any twelve men possibly can be. The trial by jury appears to me to have been introduced originally to soften some of the rigors of the feudal system, as in all the countries where that strange policy prevailed, they had, according to Blackstone, "a tribunal composed of twelve good men, true boni homines, usually the vassals or tenants of the lord, being the equals or peers of the parties litigant." This style of trial was evidently meant to give the tenants a check upon the enormous power and influence of their respective lords; and, considered in that point of view, it may be said to be a wise scheme of juridical polity; but applied to us in America, where every man stands upon a footing of independence, and where there is not, and I trust never will be, such an odious inequality between lord and tenant as marked the times of a Regner or an Egbert is useless, and I think altogether unnecessary; and, if I was not in the habit of respecting some of the prejudices of very sensible men, I should declare it ridiculous. An Englishman, to be sure, will talk of it in raptures; it is a virtue in him to do so, because it is insisted on in Magna Charta (that favorite instrument of English liberty) as the great bulwark of the nation's happiness. But we in America never were in a situation to feel the same benefits from it that the English nation have. We never had anything like the Norman trial by battle, nor great lords presiding at the heads of numerous tribes of tenants whose influence and power we wished to set bounds to.

As to trial by jury in criminal cases, it is right, it is just, perhaps it is indispensable; the life of a citizen ought not to depend on the fiat of a single person. Prejudice, resentment, and partiality are among the weaknesses of human nature and are apt to pervert the judgment of the greatest and best of men. The solemnity of the trial by jury is suited to the nature of criminal cases, because, before a man is brought to answer the indictment, the fact or truth of every accusation is inquired into by the grand jury, composed of his fellow citizens, and the same truth or fact afterwards (should the grand jury find the accusation well founded) is to be confirmed by the unanimous suffrage of twelve good men, "superior to all suspicion." I do not think there can be a greater guard to the liberties of a people than such a mode of trial on the affairs of life and death. But here let it rest.

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