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Foreign Spectator XXII

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REMARKS *on the Amendments to the Federal Constitution, proposed by the Conventions of Massachusetts, New-Hampshire, New-York, Virginia, South and North-Carolina, with the minorities of Pennsylvania and Maryland, by a FOREIGN SPECTATOR.*

NUMBER XXII.

The loud complaints, respecting trial by jury in civil cases, have led many into a misapprehension that it was not even stipulated in criminal cases; for such is the gross inattention of some people, that they have not even perused the constitution. Alas, how dangerous is ignorance in republics! In the event of insurrections, which heaven forbid, many honest men would fight and die to revenge such imaginary wrongs. I have, in the 12th number, among the amendments that respect personal rights, considered those that relate to this important subject, reserving only one, in order to review it under the judicial department. The minority of Maryland suggest, *that there shall be a trial by jury in all criminal cases, according to the course of proceeding in the state where the offence is committed; and that there shall be no appeal from matter of fact, or second trial after acquittal*, 2d am. If the clause, *no appeal* from matter of fact, means to exclude new trial after conviction, it seems inconsistent with humanity to venture the life and fortune of men, on the verdict of one jury; especially as their personal knowledge is deemed a supplement to weak external evidence. Reversion of judgment, by a superior court, cannot always restore the character of the innocent; nor is it reasonable, in cases when the law is clear and just, without a reexamination of the fact. The whole process, both in criminal and civil cases, ought to be uniform throughout the federal system, and the best that wisdom and philanthropy can devise. It cannot be formed on the model of any particular state, because it is a matter of general interest. By the usual course of proceeding, crimes are tried in the county where they were committed; but this would confine the federal jurisdiction, and is equally improper as binding the state judiciaries to townships. States and counties are in the union, what counties and townships are in a state. The constitution has therefore given full satisfaction, by appointing the "trial of all crimes in the state where they shall have been committed," 2d art. 2d sec. The judicious Blackstone condemns a narrow locality of trial, and thinks the restriction to counties an object of amendment in the English system. "A jury coming from the neighbourhood is, in some respects, a great advantage; but is often liable to strong objections; where the question in dispute has an extensive local tendency; where a cry has been raised, and the passions of the multitude have been inflamed; or where one of the parties is popular, and the other a stranger or obnoxious. In these cases, to summon a jury labouring under local prejudices, is laying a snare for their consciences," &c.^(a)

Every reflecting person must allow, that when a general federal harmony reigns through the states, yet a spirit of discord may infatuate one or two counties; and that a trial of criminal actions may not there be practicable.

Finally, as the mode of trial is essentially the same in all the states, a corrupt government could have no pretext for dangerous innovations.

The convention of New-York propose, *that persons aggrieved by any judgment, sentence, or decree of the supreme court of the United States, in any causes in which that court has original jurisdiction, with such exceptions, and under such regulations as Congress shall make concerning the same, shall, upon application, have a commission, to be issued by the president of the United States, to such men learned in the law, as he shall nominate, and, by and with the consent of the senate, appoint not less than seven, authorising such commissioners, or any seven or more of them, to correct the errors of such judgment, or to review such sentence, and decree, as the case may be, and to do justice to the parties in the premises*, 26th am. I cannot help regarding this amendment as a fruitless effort of extreme jealousy. If the principal seat of federal justice is filled with knaves or blockheads, I shall *despair of the commonwealth*. There ought not to be any seven men in the union more learned in the law, than the judges of the supreme court. But suppose there were, will the president and senate know them? Will they be better judges of merit than their predecessors who chose these men? May not the president and senate themselves be as liable to party spirit, and personal influence, as this judicial body which is permanent and independent? Does not the convention, by the next foregoing amendment,^(b) give these judges, with others, the confidential trust of trying impeached senators? Upon the same principle of diffidence to any body of men, we might call a convention to annul every detrimental law which may be enacted by the Congress. How can the supreme court be entrusted with the extensive and important appellate jurisdiction, if it must be checked in the original, which only extends to cases that affect public ministers, and those in which a state shall be a party? Moreover, trial by jury in all criminal cases must be observed by the supreme as the inferior courts, which is an additional security.

(a) [Blackstone], *Comm vol. 3. p. 383*.

(b) *See Number 16*.

✍ *In our last number, 17th line, for “establish or ordain,” read, establish and ordain. And in the last paragraph but one, 22d and 23d lines, for “and both in the original and appellate, county courts are of excellent use”—read, “and, both in the original and appellate county courts, are of excellent use.”*

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