

Richard Henry Lee to Edmund Randolph, New York, 16 October 1787

DEAR SIR, I was duly honored with your favor of September 17th, from Philadelphia, which should have been acknowledged long before now, if the nature of the business that it related to had not required time...

...Yet there is no restraint in form of a bill of rights, to secure (what Doctor Blackstone calls) that residuum of human rights, which is not intended to be given up to society, and which indeed is not necessary to be given for any good social purpose.—The rights of conscience, the freedom of the press, and the trial by jury are at mercy. It is there stated, that in criminal cases, the trial shall be by jury. But how? In the state. What then becomes of the jury of the vicinage or at least from the county in the first instance, for the states being from 50 to 700 miles in extent? This mode of trial even in criminal cases may be greatly impaired, and in civil causes the inference is strong, that it may be altogether omitted as the constitution positively assumes it in criminal, and is silent about it in civil causes.—Nay, it is more strongly discountenanced in civil cases by giving the supreme court in appeals, jurisdiction both as to law and fact. Judge Blackstone in his learned commentaries, art. jury trial, says, it is the most transcendent privilege which any subject can enjoy or wish for, that he cannot be affected either in his property, his liberty, his person, but by the unanimous consent of 12 of his neighbours and equals. A constitution that I may venture to affirm has under providence, secured the just liberties of this nation for a long succession of ages.—The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society. But if that be entirely *entrusted* to the magistracy, a select body of men, and those generally selected by the prince, or such as enjoy the highest offices of the state, these decisions in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity. It is not to be expected from human nature, that the few should always be attentive to the good of the many. The learned judge further says, that every tribunal selected for the decision of *facts*, is a step towards establishing aristocracy; the most oppressive of all governments. The answer to these objections is, that the new legislature may provide remedies!—But as they may, so they may not, and if they did, a succeeding assembly may repeal the provisions.—The evil is found resting upon constitutional bottom, and the remedy upon the mutable ground of legislation, revocable at any annual meeting. It is the more unfortunate that this great security of human rights, the trial by jury, should be weakened in this system, as power is unnecessarily given in the second section of the third article, to call people from their own country in all cases of controversy about property between citizens of different states and foreigners, with citizens of the United States, to be tried in a distant court where the Congress may sit. For although inferior congressional courts may for the above purposes be instituted in the different states, yet this is a matter altogether in the pleasure of the new legislature, so that if they please not to institute them, or if they do not regulate the right of appeal reasonably, the people will be exposed to endless oppression, and the necessity of submitting in multitudes of cases, to pay unjust demands, rather than follow suitors, through great expence, to far distant tribunals, and to be determined upon there, as it may be, without a jury...

...I will conclude with assuring you, that I am with the sincerest esteem and regard, dear Sir,
your most affectionate and obedient servant, RICHARD HENRY LEE.

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009.
Canonic URL: <http://rotunda.upress.virginia.edu/founders/RNCN-02-08-02-0001-0045-0001>
[accessed 14 Jan 2013]
Original source: Ratification by the States, Volume VIII: Virginia, No. 1