Federal Farmer: *An Additional Number of Letters to the Republican*, New York, 2 May 1788

As the trial by jury is provided for in criminal causes, I shall confine my observations to civil causes—and in these, I hold it is the established right of the jury by the common law, and the fundamental laws of this country, to give a general verdict in all cases when they chuse to do it, to decide both as to law and fact, whenever blended together in the issue put to them. Their right to determine as to facts will not be disputed, and their right to give a general verdict has never been disputed, except by a few judges and lawyers, governed by despotic principles. Coke, Hale, Holt, Blackstone, De Lome, and almost every other legal or political writer, who has written on the subject, has uniformly asserted this essential and important right of the jury. Juries in Great-Britain and America have universally practised accordingly. Even Mansfield, with all his wishes about him, dare not directly avow the contrary. What fully confirms this point is, that there is no instance to be found, where a jury was ever punished for finding a general verdict, when a special one might, with propriety, have been found. The jury trial, especially politically considered, is by far the most important feature in the judicial department in a free country, and the right in question is far the most valuable part, and the last that ought to be yielded, of this trial. Juries are constantly and frequently drawn from the body of the people, and freemen of the country; and by holding the jury's right to return a general verdict in all cases sacred, we secure to the people at large, their just and rightful controul in the judicial department. If the conduct of judges shall be severe and arbitrary, and tend to subvert the laws, and change the forms of government, the jury may check them, by deciding against their opinions and determinations, in similar cases. It is true, the freemen of a country are not always minutely skilled in the laws, but they have common sense in its purity, which seldom or never errs in making and applying laws to the condition of the people, or in determining judicial causes, when stated to them by the parties. The body of the people, principally, bear the burdens of the community; they of right ought to have a controul in its important concerns, both in making and executing the laws, otherwise they may, in a short time, be ruined. Nor is it merely this controul alone we are to attend to; the jury trial brings with it an open and public discussion of all causes, and excludes secret and arbitrary proceedings. This, and the democratic branch in the legislature, as was formerly observed, are the means by which the people are let into the knowledge of public affairs—are enabled to stand as the guardians of each others rights, and to restrain, by regular and legal measures, those who otherwise might infringe upon them. I am not unsupported in my opinion of the value of the trial by jury; not only British and American writers, but De Lome, and the most approved foreign writers, hold it to be the most valuable part of the British constitution, and indisputably the best mode of trial ever invented.

It was merely by the intrigues of the popish clergy, and of the Norman lawyers, that this mode of trial was not used in maritime, ecclesiastical, and military courts, and the civil law proceedings were introduced; and, I believe, it is more from custom and prejudice, than for any substantial reasons, that we do not in all the states establish the jury in our maritime as well as other courts.

In the civil law process the trial by jury is unknown; the consequence is, that a few judges and dependant officers, possess all the power in the judicial department. Instead of the open fair proceedings of the common law, where witnesses are examined in open court, and may be cross examined by the parties concerned—where council is allowed, &c. we see in the civil law process judges alone, who always, long previous to the trial, are known and often corrupted by ministerial influence, or by parties. Judges once influenced, soon become inclined to yield to temptations, and to decree for him who will pay the most for their partiality. It is, therefore, we find in the Roman, and almost all governments, where judges alone possess the judicial powers and try all cases, that bribery has prevailed. This, as well as the forms of the courts, naturally lead to secret and arbitrary proceedings—to taking evidence secretly—exparte, &c. to perplexing the cause—and to hasty decisions:—but, as to jurors, it is quite impracticable to bribe or influence them by any corrupt means; not only because they are untaught in such affairs, and possess the honest characters of the common freemen of a country; but because it is not, generally, known till the hour the cause comes on for trial, what persons are to form the jury.

But it is said, that no words could be found by which the states could agree to establish the jury-trial in civil causes. I can hardly believe men to be serious, who make observations to this effect. The states have all derived judicial proceedings principally from one source, the British system; from the same common source the American lawyers have almost universally drawn their legal information. All the states have agreed to establish the trial by jury, in civil as well as in criminal causes. The several states, in congress, found no difficulty in establishing it in the Western Territory, in the ordinance passed in July 1787. We find, that the several states in congress, in establishing government in that territory, agreed, that the inhabitants of it, should always be entitled to the benefit of the trial by jury. Thus, in a few words, the jury trial is established in its full extent; and the convention with as much ease, have established the jury trial in criminal cases. In making a constitution, we are substantially to fix principles.—If in one state, damages on default are assessed by a jury, and in another by the judges—if in one state jurors are drawn out of a box, and in another not—if there be other trifling variations, they can be of no importance in the great question. Further, when we examine the particular practices of the states, in little matters in judicial proceedings, I believe we shall find they differ near as much in criminal processes as in civil ones. Another thing worthy of notice in this place—the convention have used the word equity, and agreed to establish a chancery jurisdiction; about the meaning and extent of which, we all know, the several states disagree much more than about jury trials—in adopting the latter, they have very generally pursued the British plan; but as to the former, we see the states have varied, as their fears and opinions dictated.

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