

safely trusted in criminal cases—especially in prosecutions for political offenses, where the whole power of the Executive is arrayed against the accused party. All history proves that public officers of any government when they are engaged in a severe struggle to retain their places, become bitter and ferocious, and hate those who oppose them even in the most legitimate way, with a rancor which they never exhibit towards actual crime. This malignity vents itself in prosecutions for political offenses, sedition, conspiracy, libel and treason, and the charges are generally founded upon the information of hireling spies and common delators, who make merchandize of their oaths, and trade in the blood of their fellow men. During the civil commotions in England, which lasted from the beginning of the reign of Charles I. to the revolution of 1688, the best men and the purest patriots that ever lived, fell by the hand of the public executioner. Judges were made the instruments for inflicting the most merciless sentences on men, the latches of whose shoes the ministers that prosecuted them were not worthy to stoop down and unloose. Let me say here, that nothing has occurred in the history of this country to justify the doubt of judicial integrity which our forefathers seem to have felt. On the contrary, the highest compliment that has ever been paid to the American bench is embodied in this simple fact; that if the executive officers of this Government have ever desired to take away the life or the liberty of a citizen contrary to law, they have not come into the courts to get it done; they have gone outside of the courts, and stepped over the Constitution, and created their own tribunals, composed of men whose gross ignorance and supple subservience could always be relied on for those base uses to which no judge would ever lend himself. But the framers of the Constitution could act only upon the experience of that country whose history they knew most about, and there they saw the brutal ferocity of Jeffreys and Scroggs, the timidity of Guilford, and the base venality of such men as Saunders and Wright. It seemed necessary, therefore, not only to make the judiciary as perfect as possible, but to give the citizens yet another shield against the wrath and malice of his Government. To that end they could think of no better provision than a public trial before an impartial jury.

I do not assert that the jury trial is an infallible mode of ascertaining truth. Like every thing human, it has its imperfections. I only say that it is the best protection for innocence and the surest mode of punishing guilt that has yet been discovered. It has borne the test of a longer experience, and borne it better than any other legal institution that ever existed among men. England owes more of her freedom, her grandeur, and her prosperity to that, than to all other causes put together. It has had the approbation not only of those who lived under it, but of great thinkers who looked at it calmly from a distance, and judged it impartially; Montesquieu and DeTocqueville speak of it with an admiration as rapturous as Coke and Blackstone. Within the present century, the most enlightened States of continental Europe have transplanted it into their countries; and no people ever adopted it once and were afterwards willing to part with it. It was only in 1830 that an interference with it in Belgium provoked a successful insurrection which permanently divided one kingdom into two. In the same year, the revolution of the Barricades gave the right of trial by jury to every Frenchman.

Those colonists of this country who came from the British Islands, brought this institution with them, and they regarded it as the most precious part of their inheritance. The emigrants from other places where trial by jury did not exist, became equally attached to it as soon as they understood what it was. There was no subject upon which all the inhabitants of the country were more perfectly unanimous than they were in their determination to maintain this great right unimpaired. An attempt was made to set it aside and substitute military trials in its place, by Lord Dunmore, in Virginia, and General Gage, in Massachusetts, accompanied with the excuse which has been repeated so often in late days, namely; that rebellion had made it necessary; but it excited intense popular anger, and every colony from New Hampshire to Georgia made common cause with the two whose rights had been especially invaded. Subsequently the Continental Congress thundered it into the ear of the world, as an unendurable outrage, sufficient to justify universal insurrection against the authority of the

Government which has allowed it to be done.

If the men who fought out our revolutionary contest, when they came to frame a government for themselves and their posterity, had failed to insert a provision making the trial by jury perpetual and universal they would have covered themselves all over with infamy as with a garment; for they would have proved themselves basely recreant to the principles of that very liberty of which they professed to be the special champions. But they were guilty of no such treachery. They not only took care of the trial by jury, but they regulated every step to be taken in a criminal trial. They knew very well that no people could be free under a government which had the power to punish without restraint. Hamilton expressed in the *Federalist* the universal sentiment of his time, when he said, that the arbitrary power of conviction and punishment for pretended offenses had been the great engine of despotism in all ages and all countries. The existence of such a power is utterly incompatible with freedom. The difference between a master and a slave consists only in this; that the master holds the lash in his hands and he may use it without legal restraint, while the naked back of the slave is bound to take whatever is laid on it.

But our fathers were not absurd enough to put unlimited power in the hands of the ruler and take away the protection of law from the rights of individuals. It was not thus that they meant to "secure the blessings of liberty to themselves and their posterity." They determined that not one drop of the blood which had been shed on the other side of the Atlantic, during seven centuries of contest with arbitrary power, should sink into the ground; the fruits of every popular victory should be garnered up in this new Government. Of all the great rights already won they threw not an atom away. They went over *Magna Charta*, the *Petition of Rights*, the *Bill of Rights*, and the rules of the common law, and whatever was found there to favor individual liberty they carefully inserted in their own system, improved by clear expression, strengthened by heavier sanctions, and extended by a more universal application. They put all those provisions into the organic law, so that neither tyranny in the Executive, nor party rage in the Legislature could change them without destroying the Government itself.

Look for a moment at the particulars and see how carefully every thing connected with the administration of punitive justice is guarded.

1. No *ex post facto* law shall be passed. No man shall be answerable criminally for any act which was not defined and made punishable as a crime by some law in force at the time when the act was done.

2. For an act which is criminal he can not be arrested without a judicial warrant founded on proof of probable cause. He shall not be kidnapped and shut up on the mere report of some base spy, who gathers the materials of a false accusation by crawling into his house and listening at the key-hole of his chamber door.

3. He shall not be compelled to testify against himself. He may be examined before he is committed, and tell his own story if he pleases; but the rack shall be put out of sight, and even his conscience shall not be tortured; nor shall his unpublished papers be used against him, as was done most wrongfully in the case of Algernon Sydney.

4. He shall be entitled to a speedy trial; not kept in prison for an indefinite time without the opportunity of vindicating his innocence.

5. He shall be informed of the accusation, its nature and grounds. The public accuser must put the charge into the form of a legal indictment, so that the party can meet it full in the face.

6. Even to the indictment he need not answer unless a grand jury, after hearing the evidence, shall say upon their oaths that they believe it to be true.

7. Then comes the trial, and it must be before a regular court, of competent jurisdiction, ordained and established for the State and district in which the crime was committed; and this shall not be evaded by a legislative change in the district after the crime is alleged to be done.

8. His guilt or innocence shall be determined by an impartial jury. These English words are to be understood in their English sense, and they mean that the jurors shall be fairly selected by a sworn officer from among the peers of the party, residing within the local jurisdiction of the court. When they are called into the box he can purge the

panel of all dishonesty, prejudice, personal enmity and ignorance, by a certain number of peremptory challenges, and as many more challenges as he can sustain by showing reasonable cause.

9. The trial shall be public and open, that no underhand advantage may be taken. The party shall be confronted with the witnesses against him, have compulsory process for his own witnesses, and be entitled to the assistance of counsel in his defense.

10. After the evidence is heard and discussed, unless the jury shall upon their oaths, *unanimously* agree to surrender him up into the hands of the court as a guilty man, not an hair of his head can be touched by way of punishment.

11. After a verdict of guilty he is still protected. No cruel or unusual punishment shall be inflicted, nor any punishment at all, except what is annexed by the law to his offense. It can not be doubted for a moment that if a person convicted of an offense not capital were to be hung on the order of a judge, such judge would be guilty of murder as plainly as if he should come down from the bench, tuck up the sleeves of his gown, and let out the prisoner's blood with his own hand.

12. After all is over, the law continues to spread its guardianship around him. Whether he is acquitted or condemned he shall never again be molested for that offense. No man shall be twice put in jeopardy of life or limb for the same offense.

These rules apply to all criminal prosecutions. But, in addition to these, certain special regulations were required for *treason*—the one great political charge under which more innocent men have fallen than any other. A tyrannical government calls every body a traitor who shows the least unwillingness to be a slave. The party in power never fails, when it can, to stretch the law on that subject by construction, so as to cover its honest and conscientious opponents. In the absence of a constitutional provision, it was justly feared that statutes might be passed which would put the lives of the most patriotic citizens at the mercy of the basest minions that skulk about under the pay of the Executive. Therefore a definition of treason was given in the fundamental law, and the legislative authority could not enlarge it to serve the purpose of partizan malice. The nature and amount of evidence required to prove the crime was also prescribed, so that prejudice and enmity might have no share in the conviction. And lastly, the punishment was so limited that the property of the party could not be confiscated and used to reward the agents of his persecutors, or strip his family of their subsistence.

If these provisions exist in full force, unchangeable and irrevocable, then we are not hereditary bondsmen. Every citizen may safely pursue his lawful calling in the open day; and at night, if he is conscious of innocence, he may lie down in security and sleep the sound sleep of a freeman.

I say they are in force and they will remain in force. We have not surrendered them, and we never will. If the worst comes to the worst, we will look to the living God for his help, and defend our rights and the rights of our children to the last extremity. Those men who think we can be subjected and abjected to the condition of mere slaves are wholly mistaken. The great race to which we belong has not degenerated so fatally.

But how am I to prove the existence of these rights? I do not propose to do it by a long chain of legal argumentation, nor by the production of numerous books with the leaves dog-eared and the pages marked. If it depended upon judicial precedents, I think I could produce as many as might be necessary. If I claimed this freedom, under any kind of prescription, I could prove a good long possession in ourselves and those under whom we claim it. I might begin with Tacitus and show how the contest arose in the forest of Germany more than two thousand years ago; how the rough virtue and sound common sense of that people established the right of trial by jury, and thus started on a career which has made their posterity the foremost race that ever lived in all the tide of time. The Saxons carried it to England, and were ever ready to defend it with their blood. It was crushed out by the Danish invasion; and all that they suffered of tyranny and oppression during the period of their subjugation resulted from the want of trial by jury. If that had been conceded to them, the reaction would not have taken place which drove back the Danes to their frozen homes in the North. But these ruffian sea-kings could not understand that, and the reaction came.

Alfred, the greatest of revolutionary heroes, and the wisest monarch that ever sat on a throne, made the first use of his power, after the Saxons restored it, to re-establish their ancient laws. He had promised them that he would, and he was true to them because they had been true to him. But it was not easily done; the courts were opposed to it, for it limited their power—a kind of power that everybody covets—the power to punish without regard to law. He was obliged to hang forty-four judges in one year for refusing to give his subjects a trial by jury. When the historian says that he hung them, it is not meant that he put them to death without a trial. He had them impeached before the Grand Council of the nation, the Whittenagemote, and the Parliament of that time. During the subsequent period of Saxon domination no man on English soil was powerful enough to refuse a legal trial to the meanest peasant.

[TO BE CONTINUED.]

## Correspondence.

LOGAN, CACHE CO.,  
August 9, 1866.

EDITOR DESERET NEWS:—

Haying and harvesting have come upon us all at once this season and, as a necessary consequence, entail double work upon the farmer. A few trains have made their appearance from Virginia City, and have generally loaded with flour. Our new harvest bids fair to yield plentiful crops, and I presume this will be the best market for produce this fall that freighters can purchase in.

Election returns have not all come in yet, but so far as known the results stand as follows:—Commissioners to locate University Lands, Chester Loveland, A. J. Moffat, Israel Barlow. Representatives to the Legislature, Peter Maughan, C. C. Rich. Selectmen, William Maughan and William Budge.

County Surveyor, James H. Martineau. County Superintendent of Public Schools, William Budge.

Our progress is onward. The march of improvement finds us in the van, and our motto is "UNION."

Truly yours,

H. W. I.

SPRING LAKE VILLA,  
August 12, 1866.

DEAR NEWS:—

Yesterday a fatal accident occurred in the death of Josiah Perin, a boy about 16 years old, who accidentally shot himself through the head at Santaquin, while on his way from this place to the cedars for a load of wood.

He emigrated from London two years ago, leaving all his kindred, and it is supposed that his parents are now on their way to the valley.

Respectfully,

B. F. JOHNSON.

THE grasshoppers have done immense damage in Gallatin valley, Jefferson, Prickly Pear, Bitter Root, Jocko, Missoula, Hellgate and Deer Lodge, Montana.

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