

THE COMMON LAW JURY

(adapted from the article The Jury by Herb Titus, *The Forecast*, 1996.)

Part One - ORIGINS

Deuteronomy 17:6 – *Whoever is deserving of death shall be put to death on the testimony of two or three witnesses; he shall not be put to death on the testimony of one witness.*

Proverbs 11:14 – *...in the multitude of counselors there is safety.*

Matthew 18:15-17 – *...if your brother sins against you, go and tell him his fault between you and him alone. If he hears you, you have gained your brother*

1st Corinthians 6:1-8 – *...are you unworthy to judge the smallest matters? ...things that pertain to this life? ...is it so, that there is not a wise man... not even one, who will be able to judge between his brethren?*

“Some authors have endeavored to trace the original of juries up as high as the Britons themselves, the first inhabitants of our land; but certain it is, that they were in use among the earliest Saxon colonies.”

(Blackstone, *Commentaries*, Vol. III, 1769, Chapter 23 – *Of the Trial by Jury*, page 349)

Part Two – DEFINITION

“Blackstone defined ‘the trial by jury’ to require the ‘unanimous decision of twelve of his equals and neighbors, indifferently chosen, and superior to all suspicion.’ This ‘palladium,’ Blackstone wrote, must ‘remain... sacred and inviolate’ lest ‘the liberties (of the people)... be lost.’”

(Herb Titus, *The Jury, The Forecast*, Vol. 3, No. 10, July, 1996, p. 2)

It is **sacred** (*proceeding from God and containing religious precepts*) and **inviolable** (unprofaned)

It is the **palladium** (*effectual defense, protection and safety; as when we say, the trial by jury is the palladium of our civil rights.*) of justice

The jury has **twelve** participants

So universal was the number twelve, that the trial by jury of twelve men was called at common law ‘the trial per pais, or by the country.’ (Titus, p. 3; Blackstone Vol. III, p. 349)

The system of trial by jury composed of twelve persons representative of the community... was rooted in the very history of the civil polity of nations. And nowhere is the evidence more explicitly found than in the civil polity of Old Testament Israel. Under her civil covenant, the people retained certain rights to rule themselves, and in particular, to pass judgment on certain causes... In Numbers 35, there is the detailed distinction between murder and manslaughter and the explicit command that ‘the congregation shall judge... As E.C. Wines has written, ‘the congregation’ referred to the people of Israel. How did they act in their judicial capacity? Undoubtedly, through their representatives, for that is how they acted in their legislative and executive capacities. Being composed of twelve tribes, what would be more representative of the congregation than a body of twelve men! (Titus, p. 3)

The jury is to be **unanimous**

In Exodus 19, Moses brought the civil covenant between God and the nation of Israel to ‘the elders of the people.’ The elders, in turn and as representatives of the people, consented to the covenant. And their consent was ‘unanimous.’ Exodus 19:7-8.... Unanimity, then, is essential because a vote short of consensus would be illegitimate. One’s life, liberty, and property could not be denied unless one’s own peers concluded without dissent that they should be forfeited.

The jury is to be composed of **neighbors**

A jury, to be a jury, must be composed of one’s neighbors, either the neighbors of the plaintiff or victim or the neighbors of the defendant or of both. The purpose of this requirement is clearly accountability...

This personalization of the judicial process has its roots in the Bible as well... Moses had created a judicial structure diffusing jurisdiction among the rulers of thousands, hundreds, fifties, and tens. (Exodus 18:13-26) Justice in the smallest matters were to be handled in the most neighborly of courts; in the largest matters the more magisterial. Jurors would, therefore, be drawn accordingly. (Exodus 18:22,26) (Titus, p. 5)

The jury is to be **knowledgeable**

At common law, prospective jurors were expected to know something about a case before they were chosen to sit in judgment. Because they were neighbors of either the plaintiff (or victim) or defendant or both, they would know something of the character of the parties. Since the event took place in the vicinity, they would also likely know something about the facts relevant to the case. Neither knowledge of a party's character, reputation, or family, nor knowledge of the event disqualified a potential juror... (but) Evidence of partiality or bias did. Such evidence, however, was not presumed, but was to be uncovered through questions put to the prospective juror before he could be seated. (Titus, p. 5)

A jury makes its ruling on both the **facts** and the **law** itself

Because the jury normally returned a general verdict, it became commonplace to say that the jury was judge as to both law and fact. This statement, however, has been hotly contested over the years... (This) did not mean that the jury could decide without regard to the law, but only that it was not bound by the court's opinion of what the law was... This understanding of the role of the jury is also rooted in the Scriptures. In both instances where the 'congregation' has authority to decide an individual cause, the law that governs the decision is not the opinion of a judge, but the true law of the case... All of this is consistent with the Blackstonian doctrine that the opinion of a judge is not law, but only evidence of law, although evidence deserving of great respect and attention. (Blackstone, Vol. 1, page 71; Titus, pgs. 5-6)

Part Three – SIGNIFICANCE OF RECIPROCITY

The common law jury has the ultimate goal of true justice, with no respect of persons and where all play by the same rules. The average citizen will desire to make sure that the victim is satisfied by the law or restitution (where the punishment fits the crime) as exhorted in Deuteronomy 19:21 – Your eye shall not pity – life shall be for life, eye for eye, tooth for tooth, hand for hand, foot for foot.

Yet, as Jesus instructed (Matthew 5:38-39), this must not be done with an attitude of revenge (making a small matter larger when it was merely an offense – *you have heard it said, 'an eye for an eye and a tooth for a tooth'. But I say to you not to resist an evil person. But whoever slaps you on the your cheek, turn the other to him also.* (note: Jesus did not abrogate punishment fitting the crime, but elaborated on the condition of our hearts so that we were not desiring 'to get even' in a spirit of revenge)

- There is no greater defense of self-government and liberty than the common law jury
- It inspires the average citizen to know the law and how it should be applied in a certain case
 - It produces a bond among neighbors when deliberating together seeking unanimity
- By having 12 individuals have such intense discussions requiring a unanimous verdict, it protects the premise that one is *innocent until proven guilty*.
- Consider this; where might you find, other than a common law jury, the fact that individual citizens can rule in favor of someone's innocence based on the facts (and even at times rejecting an unrighteous law) when one of the parties is the *government itself*?
- The common law jury, as an illustration of the principle of **reciprocity**, *strengthens the bonds of community and the sense of mutual concern as a highly valued concept in decision-making*