

“Trial by Jury in the United States Considered as a Political Institution”

Alexis de Tocqueville, *Democracy in America*

It is understandable to think of the jury primarily as a legal or judicial institution—a mechanism for protecting people’s rights and applying laws to concrete cases. Yet, in Democracy in America, the French writer Alexis de Tocqueville famously makes the somewhat counterintuitive case that, beyond the jury’s legal function, it “is above all a political institution, and it must be regarded in this light in order to be duly appreciated.” Tocqueville explains that juries constitute an important part of the people’s self-governance, and that they provide a valuable civic education for citizens. The following excerpt is taken from Democracy in America (1835), Volume 1, translated by Henry Reeve.¹

. . . To look upon the jury as a mere judicial institution is to confine our attention to a very narrow view of it; for however great its influence may be upon the decisions of the law courts, that influence is very subordinate to the powerful effects which it produces on the destinies of the community at large. The jury is above all a political institution, and it must be regarded in this light in order to be duly appreciated.

. . . Trial by jury, as applied to the repression of crime, appears to me to introduce an eminently republican element into the government upon the following grounds:—

The institution of the jury . . . always preserves its republican character, inasmuch as it places the real direction of society in the hands of the governed, or of a portion of the governed, instead of leaving it under the authority of the Government . . .

. . . The jury is pre-eminently a political institution; it must be regarded as one form of the sovereignty of the people . . .

. . . In whatever manner the jury be applied, it cannot fail to exercise a powerful influence upon the national character . . . The jury, and more especially the jury in civil cases, serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. It imbues all classes with a respect for the thing judged, and with the notion of right. If these two elements be removed, the love of independence is reduced to a mere destructive passion. It teaches men to practice equity, every man learns to judge his neighbor as he would himself be judged; and this is especially true of the jury in civil causes, for, whilst the number of persons who have reason to apprehend a criminal prosecution is small, every one is liable to have a civil action brought against him. The jury teaches every man not to recoil before the responsibility of his own actions, and impresses him with that manly confidence without which political virtue cannot exist. It invests each citizen with a kind of magistracy, it makes them all feel the duties which they are bound to discharge towards society, and the part which they take in the Government. By obliging men to turn their attention to affairs which are not exclusively their own, it rubs off that individual egotism which is the rust of society.

The jury contributes most powerfully to form the judgement and to increase the natural intelligence of a people, and this is, in my opinion, its greatest advantage. It may be regarded as a gratuitous public school ever open, in which every juror learns to exercise his rights, enters into daily communication with the most learned and enlightened members of the upper classes, and becomes practically acquainted with the laws of his country, which are brought within the reach of his capacity by the efforts of the bar, the advice of the judge, and even by the passions of the parties. I think that the practical intelligence and political good sense of the Americans are mainly attributable to the long use which they have made of the jury in civil causes. I do not know whether the jury is useful to those who are in litigation; but I am certain it is highly beneficial to those who decide the litigation; and I look upon it as one of the most efficacious means for the education of the people which society can employ.

[Note: In the following paragraphs, Tocqueville describes how juries enhance the influence of judges in a beneficial way.]

. . . [Judges'] influence extends beyond the limits of the courts; in the recreations of private life as well as in the turmoil of public business, abroad and in the legislative assemblies, the American judge is constantly surrounded by men who are accustomed to regard his intelligence as superior to their own, and after having exercised his power in the decision of causes, he continues to influence the habits of thought and the characters of the individuals who took a part in his judgment.

The jury, then, which seems to restrict the rights of magistracy, does in reality consolidate its power, and in no country are the judges so powerful as there, where the people partakes their privileges. It is more especially by means of the jury in civil causes that the American magistrates imbue all classes of society with the spirit of their profession. Thus the jury, which is the most energetic means of making the people rule, is also the most efficacious means of teaching it to rule well.