

The Jury System.

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class of '97.

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Like all other great social institutions, our present jury system did not spring into existence all at once, but was a process of gradual evolution.

Consequently authorities differ as regards its origin. Some claim it is of Frankish origin and dates back to 978; others think it developed from the early judicial customs of the Kentonic people; while Blackstone says it was among the earliest Saxon colonies. The Magna Charta provides that no man shall be deprived of his life or property except through a verdict of his peers.

Whatever be its origin the first case we have recorded in English history is during the reign of Henry II. It probably, however, made its appearance in England soon after the Norman Conquest.

During the reign of Henry II we find juries of two kinds: "juries of inquest" and "Grand juries." The juries of inquest had to do only with civil cases. The plaintiff would get four sworn knights from his district, they would choose twelve

more and the sixteen would sit as judges. In case of disagreement new jurors might be chosen until a unanimous decision was rendered.

The "Grand Jurors" were employed only in criminal cases. They were chosen in a similar manner to the "jurors of inquest" and gave no verdict. At first the jurors were also witnesses, and if they gave a wrong verdict they were persecuted and their property confiscated to the king, and they themselves were put in jail.

From a gradual evolution of this system, our present jury system has originated, which is considered by many to be one of the greatest privileges man could enjoy.

De Tocqueville says: "When England adopted trial by jury they were a semi-barbarous people; they have since become one of the most enlightened nations on earth, and their attachment to this institution seems to have increased with their increase in civilization; --- many of its offsprings have founded powerful republics, but everywhere

they have boasted of trial by jury."

Blackstone characterizes the jury system as: "The palladium of English liberty, the glory of English law, the most transcendent privilege - a subject can enjoy or wish for."

The advantages of this system are numerous and that it has been a great source in development of our present high degree of civilization no one can deny. To again quote from Dr. Fouquierville: "It teaches men to practice Equity; every man learns to judge his neighbor as he would himself be judged." The jury system educates the common people. They not only learn the law in regard to the case but it also acts as an educator by making them think; and look at all sides of the case; and to study and investigate the truthfulness of a witness. It not only acts as an educator in this line but it also educates their sentiments.

Again the jury system is democratic in form and is one of our privileges and duties of self government. Bring

Democratic in form it is a guarantee against arbitrary exercise of power, and as such it makes man feel safer and surer that neither his life nor property can be taken from him without due and just consideration.

The jury being composed of twelve men, and each seeing the case through a different pair of eyes insures that all sides and points will be brought forth for consideration.

The juror's period of service is not determined by politics, fear or favor. He has secret deliberations thus insuring full discussion of all the points upon which the merits of the case hang. His actions are consequently not governed or influenced by fear of losing his position or of pleasing or offending his constituents.

Unanimity being required also insures full and free discussion of the testimony which has been presented; from which the jury must declare its verdict.

This system brings men into closer relations with their state and instills into them the higher duties of citizenship, making

them consequently, better citizens with higher ideals. It also educates the sense of self respect and dignity.

Ordinary men can better judge the ordinary affairs of life than could a judge. They can better place themselves in the position of the offender and ask themselves the question "What would I do under similar circumstances and surroundings?"

The jury obviates the rigid application of logical rules of law. Compelling the law to be written in clear, concise language which can readily be understood by ordinary men.

Again we see the jury is chosen from the vicinage in which the crime was committed or the dispute arose. Giving the accused all the benefit of doubt and sympathy.

In the jury neither authority nor precedent affects his conclusions, his reasons are his own and he has to answer to no one except himself and his oath. Thus precedent does not require him to decide in this or that way because of a decision he has

made in the past. It leaves him free to weigh and compare the testimony and draw his own personal conclusions as his conscience dictates and in which testimony will bear him out.

The jury is selected by lot, they must be impartial and to insure this the right of challenge is justly used to purify the body and if possible obtain a fair honest verdict.

Our fore fathers, the founders of this the greatest republic in existence, rightly considered that every man should be deprived of his life or property only through a just and fair verdict of his peers. They considered the jury system to be the very bulwark of liberty and consequently inserted the following clause in the constitution of this liberty loving people: "The trial of all crimes, except in case of impeachment, shall be by jury."

This we see that this system has many advantages. But we may ask: "Has it no disadvantages? Yrs, like all other systems instituted by man

it has a dark as well as a bright side. In this discussion we will try to treat the case in all fairness and present the other side that we may better understand this system and its workings. From the foregoing we see that this system, in theory is one of the greatest blessings man could expect from his government. But let us turn to practice and examine its workings.

The disadvantages of this system are numerous and daily we hear of discontent upon every hand. Our jury has become degraded until the best and ablest of our business and professional men do not wish to serve in this capacity and are generally excused by the court. Thus our juries are composed of men taken from almost every avocation of life; many of whom are accustomed to outdoor exercise and when compelled to sit and listen to testimony for five or six hours per day, their minds become dull, their actions hasty. The better class serve upon the jury because

they can not avoid it. Their minds are occupied with the cares of their occupations hence they can not properly grasp the conflicting testimony. So quote: "The average jurymen is unaccustomed to continuous thought. He has never learned by practice to weigh and compare evidence, nor to judge of the truthfulness of a witness."

In cases of any importance the jurymen - often a common uneducated laborer - is compelled to carry the conflicting testimony in his mind for weeks, y^es even months and then apply it to the few and simple instructions of law he receives from the judge. He lacks a knowledge of law, and during the case does not know to which part of the testimony he should give the greatest weight or most careful thought.

Often times a jury is influenced by the shrewdness, flattery, or eloquence of the lawyer. He uses all possible means to play upon their sympathies and thus create a feeling in behalf of his client. The facts of history are

filled with cases where the attorney won a verdict by simply making a very sympathetic plea for his client, and in face of the strongest evidence the case would be given to the lawyer who could best and most effectively picture a heart rending scene, and by so doing would create a strong and lasting impression upon an ignorant jury. Much of the success of the effective lawyer of to day is due to the oratory of which he is master. This was illustrated in this country not many years ago in the case of a bank failure. The lawyer for the state made a very sympathetic plea in which he pictured a poor widow saving her money for the purpose of educating her children, and placing it for safe keeping in the hands of this banker. Upon the failure of this bank she was reduced to poverty and an education was denied her children.

This case also illustrates another point, namely; Reasons alone to the merits of a case are likely to decide it. The

charge in this case was receiving deposits while in an insolvent condition. No where in the evidence had such a state as that of the widow been disclosed. It was purely the product of a shrewd and fertile mind and by means of this and similar arguments along with a powerful force of oratory he so worked upon the sympathies of his jurors and listeners as to bring forth tears and so to influence the jury to bring in a verdict in his behalf, although the strongest evidence was against him.

Thus we see a juror's actions may be governed by sympathy and equally true is it that they may be governed by fear or by bribery. Many a juror withholds his views, being afraid of the consequence of expressing himself. And almost daily we read of unprincipled men who defeat the mission of the courts for a few paltry dollars. Many of the "hung" juries, as they are called, are traceable to this cause and no other.

The verdicts of juries are very uncertain,

they involve delay and are expensive. The uncertainty of the verdicts of juries may best be shown by an illustration. For instance a man may steal a horse and statistics show that in most cases the jury has no trouble in rendering a verdict of "Guilty" in the face of fair evidence. But let a man shoot down his fellow man in cold blood and how different the result. A plea of temporary insanity is immediately put forth and in many cases the vilest of criminals are set at liberty and again allowed to run at large. And how can we tell when he will have another attack of this "Temporary insanity" and send a bullet whistling through our bodies? That the jury system involves delay no one can deny. The choosing, impaneling, challenging, of jurors consumes time in every case and just look at the cases of disagreement in our juries. Some cases run for years which ought to be decided at once.

The expense of juries is very great and in case of a continued trial a

great burden is thrown upon the state to pay the cost of these trials.

In this day and age it is very hard to secure a jury of twelve good men - unless you go to the ignorant class - who have not formed an opinion from reading about the case in a magnified form in the newspapers. The class of men we wish to deliberate upon our cases are just the men who are rendered intelligible to the jury from the fact that they are readers and thinkers.

A jury may be influenced by the personalities of the accused; either for good or for bad. The accused character plays a very important part with some men and if it is shown that his character is of such a kind that would allow him to do such a deed they with little evidence jump at the conclusion and are many times ready to render a verdict without reflection or evidence to back them out in their conclusions.

The corruption in this system has become almost unbearable and many of the leading lawyers and jurists

If all political parties are condemning its workings and endeavoring to formulate some plan to prevent one man from ruling the whole jury. And the question now being asked is: "Should a unanimous decision be required?"

"In Greece and Rome, in the Teutonic and Scandinavian nations and probably among the Normans the agreement of a majority of a jury, or the body which represented a jury was sufficient; but from the earliest times unanimity has been required in an English traverse jury, and the same rule is applied with the same strictness in this country."

In many of the countries of the old world a unanimous decision is not required. In Scotland a majority of fifteen jurors under a verdict. In France, Russia, Greece, Portugal, Spain, Italy, and Brazil a verdict is rendered by a majority. In Sweden two-thirds of a jury under a verdict and the plan works well.

In trial before the English House of Lords a majority is sufficient, provided

twelve at least is on that side, i.e. out of twenty-three, twelve peers can sentence to death. In no countries except England and the United States is a verdict in civil cases required to be unanimous.

In California three-fourths of a jury render a verdict in civil cases; in Louisiana "If nine or more agree upon a verdict it shall be recorded." In Nevada the three fourth rule has been in operation for about twenty five years, and the system proves very satisfactory. Texas and Utah are also among the states which do not require their juries to render unanimous decisions in civil cases. A majority in the House of Representatives may enter articles of impeachment against the highest officer of our land. And it only requires to sustain the impeachment the vote of two thirds of the Senators present. Why then should we require unanimity in our minor cases when we do not in our higher cases?

The unanimity system gives

our man practically as much power in a jury as have the other eleven jurors. For if he does not agree with the other eleven the jury can render no verdict. You may argue against the third fourth rule by saying that the verdict of twelve men is more likely to be right than is that of nine. But carrying the point a step further is not the verdict of nine jurors more likely to be correct than that of three?

Ex-Governor Kossuth of Illinois suggests; "A verdict within six hours should be unanimous and signed by every jurymen; after that time and six hours thereafter a verdict signed by eleven jurors may be given; after twelve hours and within six hours thereafter one signed by ten; after eighteen hours and within six hours thereafter one signed by nine; And after twenty four hours one signed by eight jurors may be returned." This system would insure full and free discussion.

Judge Locke says: "It should not be

necessary for a jury to agree, but that the verdict should be according to the opinion of a majority."

If it was not required that the jurors must all agree upon a verdict many of the disadvantages of the system could be eliminated, for instance in the case of bribery. It would be a far harder task to bribe three or four men of a jury than it would to bribe one. much time and expense could be economized by the three fourth system. This may be illustrated by a hung jury which would necessitate a new trial and consequently would be an extra expense as well as a loss of time. As it now stands our man can cause a jury to hang but under the three fourth rule it would require four dissenting jurors. When we have a hung jury and a new trial is therefore necessary the verdict of the last jury - in the large majority of cases - is the same as the opinion of the majority of the former jurors.

Another great question which the foremost reformers are agitating is: "Shall we abolish the jury system?"

We would notice that the end to be accomplished by any system of courts is to make justice -- so far as we can see, speedy and cheap. In former discussion we have tried to show that the jury system, in practice, is not sure, speedy nor is it cheap. Why then should we not abolish the jury system and put something in its place that will come nearer fulfilling the requirements in the dealing out of justice?

The jury may well be compared to the cycle in life. First its origin, then its development, next comes the mission it was to fulfill, now it has passed its time of usefulness and is on the decline and only awaits the death blow to pass away and be forgotten for ever.

"Our little systems have their day, they have their day and cease to be."

France and Scotland lead in this reform they have no juries in civil cases; and France has juries only in

case of felony.

Many of the leading newspapers, the periodicals and even the novelists are condemning the system and pleading for a better system of justice in which corruption and ignorance do not stand out as bold landmarks, and to which men can submit their disputes with the assurance that they will be fairly dealt with.

An English writer says: "Our juryman quit shops for courts of justice, march straight from the weighing of candles to the weighing of testimony, from measuring out of loaf to measuring out of fate, from dealing in bacon and cheese to the dealing with lives, liberty, and property of men."

Ex-Governor Hornum calls it the illogical unanimity system, which has become a great source of corruption and consequent denial of justice.

Judge Coolidge, the great authority on constitutional law characterizes the jury system as: "Repugnant to all experience of human conduct, passion and understanding."

And further says: "It could hardly in any age have been introduced into practice by a deliberate act of the legislature".

Another reason often given for its retention is its antiquity.

But because a thing has been a source of good in the past should we retain it when it becomes a burden to us? We do not hesitate to discard our personal belongings when they have served their purpose and no longer satisfy our wants as they should or did in the past.

Just so it should be in our jury system; if it no longer serves our purpose as it should, we should look for something better and when this is found our present jury system should be abolished and the new reform established.

We all must agree that crime does not meet its justice in our present system and we should all be willing and ready to either reform our present system - by

making a juror's qualifications higher - or institute and uphold something that is in our opinions better adapted to serve our needs in this capacity of dealing out justice.

But the question may rise: "If we do away with the jury system what will we substitute in its place? To this we would answer a tribunal of judges would be far superior. Would any person wish to ride upon a train that was run by an inexperienced Engineer, for instance a physician, shoemaker, or common laborer? No! man and law demand that an engineer be an able mechanic of long years experience. He must know his machine and its workings thoroughly. Yet, men submit their disputes, their property, for even their lives to jurymen who are totally unfamiliar with the complex mechanism of law who may well be compared to the inexperienced engineer. For my part I am unable to see where the line is drawn. Would it not

be far safer to submit our trials to men of long years experience and study than to those totally unfamiliar with the workings of law?

Baron Broughwell on examination before the courts of Scotland, said: "If I wanted nothing but the truth in a particular case I would prefer the verdict of a judge and it seems to me impossible to doubt he is the preferable tribunal".

The judge is disciplined by long years of experience, study and practice. An authority puts it thus: "Practice has taught him to read witnesses; for him, not words only, but the manner, the tone, the gesture, the countenance bear force and meaning. The duty of his office is his work". His mind is not distracted by outside cares. He has a character to maintain or man making him careful and reflective.

If we are sick we do not consult a lawyer or common laborer; but we go straight way to a physician. If we want a suit of clothes, we do not go to the

physician, but to a tailor. Why then do we call together all such men to settle our disputes instead of taking them to men, who by long years study and experience have risen to places of honor and authority in the profession of law? In all our other wants we go to the specialist and do not call in men who know nothing of the case at hand.

This tribunal of judges is not a new experiment, the highest judicial power in our land is vested in a tribunal of judges. The New York Appellate Court is composed of seven judges and in ninety-five out of every hundred cases they render an unanimous decision. Many of the countries of the old world practice this system and everywhere it gives the best of satisfaction. Why then should we not

carry this principle down to our
minor courts and get
justice within the reach of all.
Give the poor man an
equal chance with his more
fortunate brother and make
our judicial system the
greatest, surest, and cheapest
in existence.