The Jury System.

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Contracts

Origin.
Development.
Advantage of the jury system.
Disadvantages of the jury system.
Should a unanimous decision be required?
Shall we abolish the jury system?
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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 Lutitic 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 thirteen would sit as judges.
In case of disagreement new jurors might be chosen until a unanimous decision was reached.
The "Grand Jury" was employed only in criminal cases. They were chosen in a similar manner to the "Juries of Inquest" and gave no verdict. At first the jurors were also witnesses, and if they gave a wrong verdict they were prosecuted 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.

Dr. 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 offerings 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
sacred and English law, the most transcendental
prerogative a subject can enjoy or wish for.”
The advantages of this system are
impressive 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. Southerland: “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 sure 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 jury's period of service is not determined by politics, fear or favor. It is an act of deliberation, thus insuring full discussion of all the points upon which the merits of the case hang. His actions are consequently not formed 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 neighborhood in which the crime was committed or the dispute arose. Giving the accused all the benefit of doubt and sympathy.

In the jury rather 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 forefathers, 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?" Yes, 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 cannot avoid it. This mind is occupied with the cares of their occupations, hence they cannot properly grasp the conflicting testimony. To quote: "The average juryman 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 juryman, after a common uneducated laborer is compelled to carry the conflicting testimony in his mind for weeks, years, 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 a jury is influenced by the shrewdness, flattening, 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 pages 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 moving scene, and
by so doing would create a strong and
lasting impression upon an ignorant
jury. Much of the success of the
effective lawyer today is due to the
oratory of which he is master.
This was illustrated in this county 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 bank.
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 alrine to the suits
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 worked upon the sympathetic 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 jurymen's actions may be governed by sympathy and equally true is it that they may be governed by fear or by bribes. Many a juror withholds his vote, 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 petty dollars. Many of the hang jurors, as they are called, are faceable to this cause and no other.

The verdicts of juries are mountains
they involve delay and are expensive. The uncertainty of the verdict of justice 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. After a trial for temporary insanity is immediately set 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, summoning, challenging, if jurors consume time in every case and just look at the cases of disagreement in our jury. Some cases run for years which ought to be decided at once.

The expense of justice 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. On 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 magnified form in the newspapers. The class of men we wish to deliberate upon our cases are just the men who are rendered ineligible to the jury from the fact that they are readers and thinkers.

A jury may be influenced by the personalitute 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 will little evidence pump 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 unbravable and many of the leading lawyers and jurists
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 Romans 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 twelve-man 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 plain workmen. In trials 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 years 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 under 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 make unanimous decisions in civil cases. A majority in the House of Representatives may try articles of impeachment against the highest officers 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 fourth rule by saying
that the verdict of twelve
men is more likely to be right than is that of
mine. But carrying the point a step further is not the verdict of
mine jurors more likely to be
correct than that of theirs?

Ezra Stowe Chittenden of Illinois
suggests: "A verdict within six hours
should be unanimous and signed
by all the jurors; after that time
and six hours there after a verdict signed
by eleven jurors may be given: After
twelve hours and within six hours
dtherafter our signed by ten; After
eighteen hours and within six hours
then after our signed by nine; And
after "twenty four hours our signed
by eight jurors may be returned." This system would interm 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 third 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 one man can cause a jury to hang but under the third fourth rule it would require four dissenting jurors. When we have a hung jury and a new trial is therefore necessitating the verdict of the last jury—in the large majority of cases—to 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 have, speedy and cheap. In former discussion we have tried to show that the jury system, in justice, is not long, speedy, nor is it cheap. Why then should we not abolish the jury system and put some thing in its place that will come more fulfilling the requirements in the dealing out of justice?

The jury may well be compared to the cypress in life. Just as its origin, the time of development, and 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 jury in civil cause; 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 juries quit shops for courts of justice, march straight from the weighing of coppers to the weighing of testimony, from measuring out to the measuring out of fate, from dealing in bacon and cheese to the dealing with lives, liberty, and property of men."

Eckhomor Normor calls it the illogical masculinity system, which has become a great source of corruption and consequent denial of justice.

Judge Cooley, 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 ancientity. 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 jujusystem; if it no longer serves our purpose as it should, we should look for something better and when this is found our present jujusystem should be abolished and the new reform established.

We all must agree that crime does not merit its justice in our present system and we should all be willing and ready to establish a new system - by
making a jury'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 arise: If we do away with the jury system what will we substitute in its place? Do 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, housekeeper, 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, promiscuously to juralmen 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 when the time is drawn. Would it not
be far refer to submit our trial to man of long years experience and study than to those totally unacquainted with the workings of law?

Baron Broumwell 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 alone, but the manner, the tone, the gesture; the countenance, her 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 mar 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 of 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-three 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 satisfaction. Why then should we not...
carry this principle down to our minor courts and put justice within the reach of all. Give the poor man an equal chance with his more fortunate brother and make our judicial system the justest, fairest and cheapest in existence.