THESIS.

THE INADEQUACY OF THE JURY SYSTEM.

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The Inadequacy of the Jury System.

The stability of society depends to a large extent upon the degree, to which the administration of justice is impartial, immediate, and certain. Under a monarchical form of government there is a necessity for some means to check the arbitrary attempts of the ruler, to delay, pervert, or destroy justice. The most high-minded and rational individual is apt, when unrestrained, to shield his favorites and to destroy his foes. Thus monarchy needs restraint. In a democracy or a republic, where all participate equally in governmental affairs, there is no fear from this source, since the officials are dependent upon the people for the tenure of their office, and dare do nothing arbi-
The danger here is from the people themselves, who, conscious of their power and possessing a rude sense of justice, are led, under the intense excitement of a mob, to do such acts of injustice and violence, from which calmer and more rational minds revolt. Education of the masses and a judiciary, in which they have confidence, is the only remedy. In a monarchy the restraint is needed against the arbitrary will of the despot, for the benefit of the innocent, while in a republic the restraint must be directed against too great leniency and uncertainty, which throws the criminal back upon society or causes certain classes to take the law into their own hands, and thus degrade society by acts of violence.
As the evils needing restraint are different under the various forms of government, the remedies would probably not be the same.

In the past, the monarchs of England have been hindered in their absolute subversion of justice by the jury, an institution, whose annals tell of many battles fought and won for liberty and justice over absolutism and tyranny; but in the light of the nineteenth century civilization, they also reveal many blots of inconsistency, injustice, and prejudice. Many are the theories concerning the origin of this institution. Blackstone considered it a direct development of Anglo-Saxon customs; Torey traced it farther back than the Saxons and makes it a common Germanic institution; while others ascribe its auth-
orship to the Germans, the Celts, and the Romans, respectively. As all these people had customs, from which the jury system might have developed; at all, directly or indirectly, exercised an influence upon English customs; and as the jury, in a definite form, was not detected until all had made their exit from the stage of action, the most plausible way to account for it, it seems, is to call it a reaction of the fusion or amalgamation of all these homogeneous elements. It is, then, not a descendant of any one of these elements, that make up the English people, but a common progeny of all.

It is the product of a primitive state of society, when laws were few and legal processes simple. Law consisted of a few old
customs or general principles that had been recognized for generations. The one most quoted and belogized, in connection with the jury system, is that no man should be convicted of any crime unless adjudged guilty by twelve of his countrymen who were acquainted with the circumstances of the deed. From this principle has developed the present jury system. Although it was afterwards an instrument of restraint to the kings, they at first fostered and defended it as a check against the power and capacity of the barons.

Just after the Norman Conquest, there was so much strife between the races that murder was not infrequent. When a man was found dead, under the Norman law,
the people of that hundred were obliged to, either, pay a fine, discover the murderer, or to prove the murdered man to be an Englishman. As the last was always a difficult task, it became the custom to discover the criminal and to accuse him of the crime; but as the accusers were disposed to be prejudiced against him, it became the custom to choose twelve men from the whole country, who should decide, from personal knowledge, the guilt or innocence of the accused. If the first twelve could not agree, more were added until twelve were found who could agree upon a verdict. Thus arose the custom of unanimity of decision.

The second stage in the development of
This institution was reached in the fifteenth century, during the reign of Henry VI., when
the jury might contain some jurors, who knew
nothing, personally, of the matter in hand, but
formed their decision from evidence given by
the others.

In the reign of Queen Anne, an act was
passed declaring that the want of hundreds
should not be a challenge to the jury. And
the jury was composed of twelve men, not ac-
quainted with the affairs, who rendered their
verdict from the evidence of witnesses, obliged
to give it in open court, in order that all
improper evidence might be withheld from
the consideration of the jury. Strange as it
may seem, the unanimous verdict was still
required. Here the system first took on its
modern form. The introduction of extraneous evidence and the possibility of perverting the
states desired ends, furnished an ample field of activity for the lawyer; and it has been thoro
ughly occupied.

It is true, the jury, like most institutions, at one time met an actual need or at least was the best instrument attainable when it originated; but it does not follow that it will be adapted to the wants of a subsequent civiliza
tion. Society has changed, circumstances are different, new needs have arisen demanding new means of disposal. We have lost the life, the spirit, the soul of this institution and have kept only the lifeless forms, its dry stalks, its dead husks, into which we have attempt ed to breathe a new life.
The complaints against this time-honored institution do not come from disappointed litigants, but from intelligent men, both lay and legal, whose quick eyes take at a glance all the anomalous verdicts of the day; and from men with large business interests, who can not but view with misgivings the occupants of the jury box, who are soon to pass upon their rights.

The mode of selecting the jury seems correct in theory. Every fair-minded citizen in "possession of his faculties" and with a fair character may occupy the exalted position of juror. But when the exception is made of all public officers, all active professional men, all teachers, telegraph operators, and firemen; and when the challenges, peremptory and for sufficient reason are made, the remainder constitute a class of less than ordina-
ry ability, and many times of doubtful moral character. One of the requisites of a juror is that he should know nothing about the case in hand, or at least never have expressed or formed an opinion concerning it. In this age of printing presses, daily papers, and news-syndicates what stamp of intelligence would a jury bear, who had neither heard nor formed an opinion of an important case? Often, too, the vacancies made by frequent challenges are filled by professional jury-packers, with worthless court loungers, fit tools for fraud and bribery.

If the advocates are unfortunate enough to fail in packing a jury to their tastes, it will at best be composed of men from the humbler walks of life; men whose hearts and interests and therefore their thoughts, are with their bus
iness. They have no interest in the "doubtful balance of rights and wrongs" and the most important evidence is received and relegated to the realm of forgetfulness, with the utmost in difference. If done are led, by the importance of their position, to forget, for a time, their business affairs and lend their attention, their previous education and training render them unfit to weigh carefully conflicting facts and to ferret out the essential and fundamental points from the mass of confusing and unimportant evidence. Their narrow intellectual horizon make them slaves of religious, political, and individual prejudices, for ignorance and prejudice go hand in hand. The acute advocate is not slow to do this state of circumstances and summon all his power of persuasion and eloquence.
to enlist those prejudices on his side of the case. Thus the jury is responsible for the presence of the pettifogging, roguery, and chicanery, found in that really honorable profession; but, on account of a minority, who are enabled through this system to succeed by small means, it has become a synonym for trickery and chicanery.

The jury system has been defended as an educational institution. Grant the jurors are all that their most enthusiastic admirers claim, what would be the impressions left upon them after serving one term of court? Would they receive high inspiration for mental advancement, by being obliged to leave their business and home associations, to hang about a county seat with nothing to do but to come in contact with vice in its most alluring form, or to occupy the
jury box for days, listening to the ceaseless
and, often, soul-degrading strangle of the ad-
vocates, as they argue intricate questions of law
and fact, whose true bearing the jury rarely
understand? Further, granting, that this process
has an educating influence, is it wise to per-
petuate a system that falls so far short of the
ends for which it exists? Shall we educate
the public at the price of justice and the loss
of confidence in existing institutions, when better
educational institutions can be operated for a low
money value and yet not interfere with
right and justice?

In the light of famous modern verdicts our
ardor to defend the infallibility of the jury sys-
tem must lag. When men are shot down, openly,
in the streets and their murderers are allowed
to go free, through the blundering ignorance and
blind prejudice of a jury, as in the case of
Rev. Hoodeke, of St. Louis, City, Iowa; when after many
months, occupied in legal proceedings, and hundreds of jurors had been summoned, at untold
cost, the members of an infamous and murderous organization were exonerated from the pre-
meditated slaughter of a fellow man (Dr. Cronin); when, as in the Cincinnati cases, men, known to
have willfully disturbed the public peace, cannot be convicted; when the indictments for trans-
gression against the liquor laws are too rare
and the transgressions so frequent everywhere; when
after the mockery of a trial, the enraged public is
forced to degrade society, by taking the law into
its own hands and executing fifteen members
of a secret organization, engaged in the most
carefully planned and coldly executed murders known in the history of crime; in the light of all this there seems sufficient reason for the assertion that the present jury system is inadequate to meet the demands of justice. Men will stake millions upon the outcome of a horse race, a doubtful election, or a toss at dice, but they will not risk one dollar upon the verdict of an American jury, which has become a synonym for irregularity and uncertainty.

It is interesting to note the manner in which many verdicts have been decided. After receiving the solemn and learned instruction of the judge, to decide according to the evidence and as their best judgment should dictate, the jury has been known, when unable to
agree, to resort to the fortune of a game of
cards, the tossing of a copper, and like modi-
of chance. Of what value is a verdict ob-
tained in this way? Why not resort to chanc
in the first place and not be obliged to go
through the delaying mockery of a trial?
At least fifty per centum of the verdicts would
be right and that is an improvement over the
system. Besides, three fourths of the time of
the Appellate Courts is consumed in revers-
ing decisions, made reversible through the
ignorance and inability of the jury. Why should
we perpetuate a system whose decisions do not
decide, but simply transfer to a higher court?
Probably the most absurd part of the jury
system, one which all unite in condemning,
is the custom of unanimity in decision. De
have observed that it had its origin when the jurors were witnesses, and has existed ever since. A mere statement of facts will be sufficient to prove its absurdity. Twelve men, with different abilities and occupations, reared under different circumstances, having different opinions and modes of thinking, are expected to render a unanimous decision, while our highest courts, whose members have made a life study of the same speciality and can reasonably be supposed to be more equal, are allowed to render a two-thirds verdict. And the Senate of the United States and the House of Lords of England, the highest and most intellectual assemblies of the two nations, when sitting in a judicial capacity, decide by a majority vote. Says Mr. Bentham "It is dif-
difficult to defend the rule," which he character-
izes as a system of "perjury, enforced by tor-
ture." While Judge Ely says that it is "repu-
gnant to all experience of human conduct, pas-
sions and understandings" and "it could hard-
ly, in any age, have been introduced into prac-
tice by a deliberate act of legislature." Ex-Gov-
ernor Carpenter, of Iowa, declared that it was "an
antique absurdity, which has too long festored
the administration of justice," while another
author calls it "that preposterous relic of barba-
isme." These quotations will show the attitude
of eminent men upon this point, which scarcely
needs further notice.

Another point that will bear noticing is
the item of expense. Every time an important
case is considered, hundreds of men are sum-

moned before a jury can be impanneled. How multiply this indefinite number by the number of cases, and add the salaries of the impannealing officers and you have no small amount, as the nominal cost. To get the real cost you must consider the question of taking all this array of men from their legitimate occupations, which need must suffer in their absence, and setting them to decide questions in which are involved many millions or it may be the life or liberty of a fellow-man. Thus the large nominal expense is really economically enormous.

We have endeavored to show that the present jury system is inadequate to meet the demands of justice, 1st. in that it smacks of a former age and a cruder civilization; 2nd. The meth-
od of choosing jurors renders it possible, to get men, such as indifference, ignorance, and prejudice make incapable to decide the vital questions, which devolve upon a judicial tribunal. And the influence, left upon the jurors, as they return to their various communities, is not the most wholesome; 3rd. the relative value of the verdict is zero, rendered thus by reducing the decision to something little better than a game of chance, and by the unanimity system, one of “perjury enforced by torture.” This fact is evidenced by the ratio of reversions of verdicts by higher courts, causing no small delay. 4th. The system is exceedingly expensive.

Although this system has so many imperfections, what better shall we put in its place? It
it is mere vandalism to destroy and not replace. It is gloomy pessimism to complain and not offer a remedy. No institution should be condemned by a mere consideration of its imperfections. It has been a redeeming trait of our race to look before and after to see the perils and inconveniences of the new before it destroys the old. No new institution can, without trial, be proved better than an existing one, but as we become dissatisfied with the old we naturally incline toward the new. Among the many remedies suggested, the one most natural and in the line of development through which the jury has passed, seems to be the replacement of the twelve uneducated jurors by a body of three judges, chosen from men who have made law their life work.
In this age, it is unnecessary to defend education against ignorance. It must be admitted that the judges are more capable of deciding questions of both law and fact. Bribery becomes a dangerous thing with a breach of three and can be made improbable by paying the judges liberal salaries, making them financially secure, thus taking away the temptation to accept bribes. They can be made independent of all parties by being subject to appointment and serving for life or good behavior.

The reasonable doubt of twelve jurors, plain men of action, accustomed to decide upon quick impressions and not upon acute reasoning, is a different thing from the reasonable doubt of a judicial tribunal of three men of meditative temperaments, trained to an
appreciation of all the possible aspects of evidence and with a true feeling of responsibility. The juror has nothing to lose, has little responsibility for he is but the twelfth part of a tribunal, and should he decide from pique or prejudice no one will be the wiser for it. The judges have reputations to make or to mar. The responsible party is at hand. Each judge can be required to give sufficient reasons for his decisions. Thus everything is done by capable, responsible parties, independent of party prejudices and local feuds, and dependent upon nothing for the tenure of their office but righteous decisions and good behavior.

When we look upon the condition of the judiciary, when we see men steeped in
ignorance, blinded by prejudice, convinced by sophistry, and influenced by bribes and 
chicanery, sit in judgment upon all-important questions, rendering verdicts as pregnant 
with wisdom as the decisions of Sancho Panza, we can but foretell that the time is not far 
distant when the jury of twelve shall have passed away, when the challenges get to the array 
and to the poll, when the senseless wrangle and the eloquent appeals of the advocates, 
and the long, labrious instructions of the judge, will be heard no more forever.