The Inefficiency of the Jury System: A Thesis for Degree of B. L.

By Geo. H. Morgan

1884.
Introduction.

Whenever a principle becomes interwoven in a person's habit, no matter how erroneous that principle may in time come to be, it requires effort; some violent exertion, to rid himself of it. Still higher in the plane of the world's action we find in the institutions of government that systems prevail under certain conditions and implant themselves deeply into the form of State. When, by a sudden revolution of ideas, an established system is found inadequate for its designed purpose it is immediately laid aside and a substitution of something more appropriate is brought about; but when by a gradual alteration of circumstances the
same change is produced, the needed innovation is only effected by a difficult, laborious and even extended process.

Progress demands new institutions and new plans of action with each new exigency of the times; this arises from the universal imperfections of the creations of man, and man will never attain to perfection, yet the constant tendency is for advancement and improvement; for, as soon as a defect is perceived in any matter of vital interest to National welfare, action is forthwith instituted against said defect and a remedy provided; whereas, in the case of a gradual deterioration of a principle of action, it is difficult to find at what point it ceases to be beneficial and, on account of custom, doubly difficult to remedy. Often it is found so nearly an insusceptible to change an
accepted rule, that--it must be long past the line of good effects before it can be attended.
For this reason can it especially be required in all systems at all times.
With the jury system as it is carried on at present, the case seems to demand and is obtaining considerable attention. It has reached a point when its effectiveness and once grand system of representation of the people has diminished in efficiency until it seems essential, that at least a careful surveillance be kept upon its workings, and that the attention of the public be directed toward a plan better adapted to serve this desired purpose.
We do not by any means purpose to advocate the iconoclastic principle that the jury system should be abolished. We
with simply to take a cursory glance at its
rier and progress, tracing its causes by the prominent landmarks in its history, noting the important changes down to the present, showing when and under what conditions the system has been most efficient and where most deficient; then we desire to observe some of the principal defects in our present mode of jury trial and a few of the manifold ways in which it is subject to corruption; to note some of the disfigure effects of its subservience and to find if feasible the causes of its deficiencies and finally to offer some suggestions for a system less susceptible of corrupt machinations by unprincipled men.
The jury.

"The origin of the jury" range of noted French writer "lacks itself in the night of time." In spite of the numerous theories as to its origin this seems to be in one serious comet; for in all the ancient tribunals of the Germans, of the Norwegians, of the Swedes, of the entire people of the entire continent in fact, we discover resemblances to our modern jury trial. Yet we can not fail to perceive many differences. In all cases of ancient courts the jury was judge but of facts and of law while our modern system, in theory at least, has to do simply with facts. In many instances, particularly among the Germans they were merely judicial, while in early Saxon times they partly took more of the character of witnesses. No third party appeared between the witnesses and the accused as our present jury, but their tes-
timely stood as judgment.

A very prevalent idea is that sometime in the ninth century, Alfred the Great reinstituted the present English jury, but it is certain that the jury attained its definite form as that which now exists, before the twelfth century or in the second century after the Norman conquest. It is also evident that the jury system is not the offspring of any preconceived theory, but that it grew up, step by step, with the experience and necessities of the English people.

After passing through the exercises of various forms of trial, the English Parliament by a statute in the reign of Henry second established what is known as the great accise. This, in form and manner of selection, resembles very closely our jury, but the jurors were able to decide according to their own personal...
Evidence; soon, however, outside testimony was admitted, but no amount of extraneous evidence could force the jurors to change their opinions. For a long time the trial by ordeal was retained in the three forms, of water, of fire, or of the accused wore a cord, sometimes designated as covered. This method was gradually abandoned and the jury grew in importance as intelligence increased. Such a substitution was certainly an advance in the science of government.

Of the Grand Jury we shall say little. It grew out of the early custom of accusations by individuals and became an established law in the reign of Edward the Third. This is the great stronghold of justice and a shield of suspected innocence from the hurtful effects of public suspicion.

The jury, by degrees, came to be judge
of reliance only outside their own personal knowledge and for a time to have any knowledge of the affair became of sufficient cause for objection to him. In that state it has remained, with slight local variations, to the present.

The system grew up under a monarchy and then it is most beneficial in securing freedom of the people from the tyranny of a judge-appointed crown, yet soon it has become subject to violent abuse. In the time of the Zidore, particularly it was made a tool of the public through the influence of the sheriff who selected jurors to decide as hidden and inscrutable as justice became the exception instead of the rule. A liberty-loving people could not long brook such gross injustice and the state of affairs was done away with and the jury system regained its destined place.
intelligence becomes universal the system may become what it is often theorized to be; by unnatural emancipation, but as long as long as a portion of the people remain in the darkness of ignorance and no discrimination is made in the selection of jurors the system is a fortune wheel where at turn may or may not indicate the gallowe.

The English system was adopted, almost completely, by the United States, and engrafted in her constitution; it served its purpose well as long as government was simple and men retained the sterling character of our Puritan ancestors; but then appeared a class of men who cared for pain and who would not scruple to want justice for gold or for reputation and a change became necessary.

Let me examine briefly the process of
obtaining a jury to try a cause.
A certain number of men are selected by
lot to act as jurors for a term of court.
Lumber of them are empaneled to try a
case. On account of the many technical-
ities of the law there is scarcely any limit
to the number of challenges which may be
made; when a complicated or skilful
case is at stake a skilful attorney will
desire a jury as low in the scale of being
as possible, in order to have a less hor-
deneous task in working their shallow
minds by harangue. It may be, to in-
fluence them by the accused method of
libraries. In practice this point has
been reached. Are we willing to trust
our male lives and the security of our
property and our rights to such a process?
If has been said and with present cause,
that one of the anomalies of our courts of justice is in selecting the wisest and best men as judges and attorneys and then making up our juries of those who are below average intelligence.

A most weighty objection to the system is the requirement of unanimity in a jury of twelve men; this is not merely geteed but to a certain degree, forced. When the case has been heard, the judge sums up the evidence according to his own understanding and directs the jury what verdict to give; to his opinion it be usual for them to adhere; for his judgment is more likely correet than that of twelve men ignorant alike of facts and law, which in some cases as intimately blend as be ent-irably inseparable; he also can be a bit-
ter judge if the just deserts of given testimony. But let a small number dissent from the decision of the majority; they merely discuss the question until worn out with hunger or cold, or perhaps by the minority, contrary to the promptings of conscience and to their oath, give in to the majority! In an almost evenly balanced question, the most skillful debater often wins the case.

A minority may, however, on account of men physical endurance away the majority; and here is a great difficulty, particularly in civil suits where the matter is but a few paltry dollars of little exceeding moment to a jury, but thrilling all. If a greedy and inured plaintiff, an opulent litigant may write the minority, and pain an undeterred suit.
The requirement of unanimity furnishes a means of oppression of the poor by the rich; a principle which should always be jealously guarded against in our laws. Often has the minority, for the very sake of such prevalent corruption and libeling, in order to prevent suspicion which invariably falls upon a jurymen decently girt their verdict against their will. Why do you require a unanimity in this case when in all others, even in the case of making the identical law, only a majority is required? The commissions appointed by the crown of England in 1830 to investigate the laws of the realm, reported against this plan of unanimity. Their opinion has been echoed twice and again by the highest jurists of both hemispheres. Too great a tenacity...
to established usage is sometimes seen in its effects as a violent revolution of principles.

Whenever a verdict does not conform with the opinion of the judge, he may grant a new trial; also in case of any error in the proceedings, errors often occur in jury-trials on account of greater technicalities. Thus it happens that in a large proportion of law-cuits a poor man must yield a just cause on account of his inability to carry proceedings further.

To leave the case of intricate and conflicting testimony to a jury not versed in matters of law is too much for their capabilities and lawyers are appointed or employed for their assistance. The jury in many cases have no other cause but to take the judgment of their men, a lawyer...
building up a reputation wishes to succeed and that one who presents his side in the most convincing manner usually wins.

The unlearned who are incapable of forming a well-balanced opinion, susceptible to bribery, trick and lawyer chicanery are selected for weighty trials which involve the welfare of the whole Nation.

We are told by some of the warmest supporters of the system that it is an excellent means of education among the people. We think that the amount of learning disseminated throughout a community, when two or three or even a dozen men are chosen once a year as jurors, is but an indeterminate quantity and by far too expensive. To educate the masses at the risk of life and the cost of an incalculable amount of property and our civil
right is an experiment, so dear to be tried
by the American people, especially, since the
demand for education is so very questionable.
In the United States no discrimination
is made on the lower side of the scale of
humanity; in the selection of jurors; but
the first mover is maintained and the
teacher, lawyer, minister and physician
in fact all the classes of intelligence are
exempt from jury service. In England
and Scotland this is in part remedied by
a requirement of property qualifications
a man capable of accumulating wealth and possessing property is certainly more interested
in the law and the rights of citizenship
than the one who has none but personal
care.
If, on account of ignorance or corrup-
tion, innocence is often unjustly dealt with,
on the other hand an intelligent jury is more liable to be swayed by prejudice of mercy for the accused and to allow crime to go unpunished. Men taken from the peaceful avocations of life when they are accustomed to principles of equality and kindness are shocked at the idea of condemning a fellow man to death and ruled by compassionate feelings often allow the guilty to escape. When a trained judge suddenly realizing the stern necessities of justice would condemn.

The delays so prevalent in our courts are in great measure occasioned by the mode of jury trial. Justice to be efficient must be quick, cheap and speedy. Take away the one element of promptness and let a trial drag out an extended existence and the other two elements of cheapness and effectiveness are
impaired. When twelve individuals of ordinary intelligence are required to weigh
evidence and remember it, particularly the testimony which it takes or weeks to hear
and are compelled to decide in a very lim-
ited time, more are indeed likely to occur
and appeals are taken causing extra delay.
Delay is expensive; crime loses its ridicule.
made in part in a long lapse of time and
rank criminals are acquitted. Men be-
come disdained in the prosecution of a
just cause and abandon it; because it is
tedious, expensive, and uncertain.
Another, and by no means small, item to
be considered is the disagreeable interruption
of business all over the country. The loss
of time taken at random out of a man's
occupation can not be compensated. Then
are occasions not to be valued in money and
his excess is incalculable.

In theory the system of justice is an embodiment of justice, purity, and liberty, but in practice, from legal subtlety and biased manipulations, it is most faulty. Indeed, around us every day we behold the effects of corruption in our courts: Malice, lynchings, and midnight burnings by an enraged populace warn us for the safety of our government to guard their strings.

A remedy is desired; how shall it come? All essential changes are now gradual, hasty, and ill-understood legislation may be erroneous. Lord Mansfield, that English Patriarch of law principles, has said "Small alterations in the course of administration of justice ought to begin and by degree and rather by
court itself than by the legislature. This must, in practice, be adhered to, their must gradually be brought about a change remedy. We need not fear that it will not come; practice already tends in the direction of a change in the jury system. In civil suits trial by jury may be waived. In one at least of the territories, Wyoming, whose government in all respects is a model one, a jury must even be paid by the parties deciding them and are only obtained by special permission. The change is approaching and we doubt not that the jury system as it now exists will soon pale away forever. We cannot afford to hazard our welfare on the mere prospect of raising the intelligence of the people to our equality with the responsibilities of jury duties.
We now have, as a final, true, trustworthy, and most infallible resort, the courts of appeals which is composed of learned judges. Why may they not be placed at the beginning in order to avoid this intermediate delay and expense? It seems to be a practicable plan. In such a case there would enter for consideration the three prominent questions, of expense, of political intrigue and of error, as compared with our present system. The expense required to maintain judges, as you more perhaps than our now necessary, would, in the direct outlay of salaries, be increased, but the element of speed in trials and the lessening of the general expense consequent upon the neglect of business would, it seems, more than make up.
able, overbalance the economy in favor of the judge. An arrangement might be made for one judge to decide and hear less important cases and three or even more for weightier matters.

As to the matter of political intrigues the case needs scrutinizing examination. The judge should be on no means be hampered by a constituency; their term of office should be during good behavior. Their appointment should be made by the people and not by any individual.

The other point, that of errors must be considered, for learning and experience will not perfect a man though it bring him in great measure near perfection. In simple cases requiring merely simple judgment there would be less liability of errors but in higher
were where complexity of evidence arises, then would be more than one judge to weigh and determine the matter, and the element of speed would be accomplished and certainty attained within a small degree of error by the principle of accepting the decision of a majority, instead of regressing unanimously.

Men whom the people will select and place upon the bench of arbitration,端正 and unshackled, entrusting them with their dearest rights will not fail in their high duties; corruption would, like the slinking monster it typifies, vanish away. A tricky lawyer without the principle of integrity, and with no pure patriotic love for his country's laws which he is supposed to expound, would undoubtedly fail to sway a
learned and experienced arbitr.

With a more stable form of ad-
ministering justice and a more secure
means of protecting intellec our Nation
would bound onward, in her alnady
brilliant career, with a new injustvke;
business would be less liable to injury,
enterpries encouraged, and above all the
moral and social, so prevalent in recent
times, would be no more scant.