

will then be seen that that government is most stable which is founded on rectitude and independence, which relies for its support on the will of virtue-loving people, and not on tradition or inexorable law. It will then be seen, more clearly than now, that all power vests in the people, whether they chose to use it or to remain bound by superstitious veneration of shadow, that even after law is made and execution provided, the executive has no power except such as is daily and hourly continued to him by the people." (2 Bancroft, 670-1.)

In California the trial judge in jury cases is a mere moderator and is not allowed to advise the jury on any question of fact.

Bancroft points out that Macaulay's prophecy of 1857 as to America's future danger was clearly inspired by San Francisco's two Vigilance Committees:

"Either some Caesar or Napoleon will seize the reins of government with a strong hand, or your republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman Empire was in the fifth; with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without, and that your Huns and Vandals will have been engendered within your country by your own institutions."

The vital features in which the English, Australian and Canadian criminal procedure differs from that of the majority of American criminal courts are the following:

1. The British, Scotch, Canadian, Australian, South African or Indian trial judge is a strong judge, not a mere moderator. He gives the jury the benefit of his experience and skill by advising them in difficult cases respecting the weight and effect of the evidence, what he believes the evidence had shown, but he also informs the jury that they are the sole judges of the facts and are at liberty to disregard his advice. The distinctive feature of Anglo-Saxon jury trials is a strong experienced trial judge aiding and advising the jury, but leaving the ultimate decision of all disputed questions of fact to the jury, instead of acting as a weak and opinionless moderator, as the trial judge must do in three-fourths of our States. In Canada the judge may try most criminal cases without a jury where a jury is waived by defendant.