

ment for the education of the people: that it contributes powerfully to form the judgment and increase the natural intelligence of the people. It may be regarded as a gratuitous public school, ever open, in which every juror learns his rights, enters into daily communication with the most learned and enlightened members of the upper classes, and becomes particularly acquainted with the laws, which are brought within the reach of his capacity by the efforts of the bar, the advice of the judge, and even by the passions of the parties; that the practical intelligence and political good sense of the Americans are mainly attributable to the long use which they have made of the jury in civil causes.

These are weighty reasons in favor of the jury system. And they are borne out by the advancement and experience of other nations. The Danish Jurist, Repp, well expresses his views when he says: "All modern nations, (European and American at least), in so far as they dare express their political opinions, though disagreeing in many other points in politics, seem to agree in this: that they consider trial by jury as a *palladium*, which, lost or won, will draw the liberty of the subject along with it. In the many constitutions which have been projected or established in the nineteenth century, most other things were dissimilar and local; this alone was a vital point, a *punctum saliens*, from which it was expected that the whole fabric of a liberal constitution would be spontaneously dated." And, in all revolutionary movements in the nations of the continent, this mode of trial has been put in the van of their demands.

Trial by jury makes the law plain to the comprehension of, and popular with, the people, whom it most concerns. It was said of Socrates that he first drew philosophy from the clouds, and made it walk upon the earth. And of the civil jury it may also be said that it is an institution which draws the law from the clouds of technicality and abstraction, in which it is prone to hide, and makes it walk upon the earth, and familiarize itself with the unlearned and poor, and teach them, as well as the more favored, the nature and extent of their legal rights and remedies.

The object of all judicial investigation is the discovery of truth. Suppose the jury were abolished; what shall we substitute in its place? Shall we place upon the judge the burden of

deciding both the law and the fact? Forsyth, in his "History of Trial by Jury," says: "To say nothing of the exhaustion of mind which would be felt by a judge called upon in the rapid succession of causes tried at *nisi prius* to weigh contradictory evidence and balance opposing probabilities, although it may sound paradoxical, it is true that the habitual and constant exercise of such an office tends to unfit a man for its due discharge. Every one has a mode of drawing inferences in some degree peculiar to himself. He has certain theories with respect to the motives that influence conduct. Some are of a suspicious nature, and prone to deduce unfavorable conclusions from slight circumstances. But each is glad to resort to some general rule by which, in cases of doubt and difficulty, he may be guided. And this is apt to tyrannize over the mind when frequent opportunity is given for applying it. But in the ever-varying transactions of human life, amid the realities stranger than fiction that occur, where the springs of action are often so different from what they seem, it is very unsafe to generalize, and assume that men will act according to a theory of conduct which exists in the mind of the judge. These views are just, and will be confirmed by every lawyer of capacity and experience.

But to all this it is often answered, the fault of the jury system consists in this: that it is a system of humbug and, frequently, of perjury. The jury are set apart in a box and told that they are judges. The lawyers address them as judges. The judge addresses them as judges. To be sure, he tells them flatly they must not meddle with the law, and that they must take it from his mouth; but he tells them, also, they are the judges of the fact, although he may probably annul their verdict because they have misjudged the fact. This mode of treating them as judges flatters their vanity, and flatters the vanity of the populace, who are told they are judged by their country—meaning thereby that they are judged by each other; whereas, in reality, their transactions are judged of according to law as expounded by professional lawyers. Some jurymen think themselves judges, occasionally try to judge for themselves, but, oppressed by the law of unanimity, and their own want of experience in business, they are compelled to yield after an ineffectual struggle, and to give way to a majority of their brethren, who usually