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The President's Page

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THE PRESIDENT'S PAGE

Does the jury need to be saved from its friends? In the days of monarchical tyranny, it is easily conceivable that this institution was the greatest bulwark of the people's rights; and today, when that particular danger is past, it is a bulwark against the tyranny of law. Law in its nature must be a strict and rather iron-bound thing, else it would not be law at all, but anarchy. Fortunately, men are bigger and broader than their institutions, laws and doctrines; and the province of making exceptions to fit hard cases is particularly suitable for the jury, who can more easily perform that function than can a technically trained judge.

For many years, and today in England and our own federal courts, the jury was an all-powerful trier of questions of fact, but under the supervision of an unbiased expert, the judge. The superintending power of the judge has disappeared in most states, and the one unprejudiced man of experience in the court room is absolutely disqualified from giving any help to the jury in their determination of questions of fact. The judge has become little more than a time-keeper, and must, as one jurist remarked, learn to model his conduct on the meek and lowly oyster.

This change has apparently been caused by two things which are almost one, democratic dislike of even the semblance of authority, and suspicion of experts. Democracy has many virtues, and some undoubted faults; among which its unwillingness to use experts is possibly the greatest. Yet democracy is the very form of government which most needs experts; and in our complicated modern life it perhaps cannot survive permanently unless it learns to make use of them and place a certain amount of confidence in them.

The suggestion is frequently heard that a substitute for jury trial must be found. Those of us who believe that the institution has a vital part in our civilization wish it preserved, and to that end desire that it be given the most efficient form. The subject is a large one, meriting careful study, but two main features easily suggest themselves; the formation of the jury, and expert aid to it.

The theory of the jury is that it should be a cross-section of the body politic; but if the better citizens endeavor to escape jury service, the less desirable court it, and mere newspaper acquaintance with a case of public concern, such as intelligent men generally have, is to be treated as a disqualification, then we will get in practice sub-standard juries. A selective system, it would seem, might well be applied to the panel.

It is indeed sometimes said that if the judge may comment on the evidence, he will exercise too great an influence on the minds of jurymen; but such a statement is calculated to provoke a smile from those acquainted with our democratic fellow-citizens. Bowing too low to expert opinion is not a fault of Americans.

Unless a sincere effort is made to make the jury more efficient, its existence may well be endangered.—JOHN H. LEWIS, President.

JURY TRIALS

Beginning this month we publish, in three installments, the gist of an article by John H. Wigmore in the April issue of the Journal of the American Judicature Society, in which he voices his opinion con-