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# Jury Trial

Lucian Minor

# JURY TRIAL.

Why should twelve jurors be required? And why require them to be unanimous in their verdict?

The sole reason that I ever have heard for insisting upon twelve, is the following twaddle of my Lord Coke, [the capitals, italics, figures and spelling are his]:

"The Law, in this case, delighteth herself in the number of 12; for there must not only be 12 jurors, for the tryall of matters of fact, but 12 judges of ancient time, for tryall of matters of law *in the Exchequer Chamber.* Also, for matters of State, there were in ancient time 12 counsellors of State, &c. He that wageth his law must have *eleven others* with him which thinke he sayes true. And that *number of twelve* is much respected in holy writ as 12 *apostles*, 12 *stones*, 12 *tribes*, &c."* [Mr. Hargrave's note on this passage, however, cites divers cases in which fewer than twelve jurors, and divers in which more, are required: showing that it is not always the "law delighteth herself in the number of twelve."

Such are the reasons for which my Lord Coke and his echoes would entail upon suitors, the manifold inconveniences of *hung* juries—upon the Public, the wasting of a dozen men's time with what five or seven would do better—and upon jurors themselves, the hardship of compelling so many minds, under pain of imprisonment for days, to think alike upon the most debatable questions!

Of such reasons as Lord Coke gives for twelve jurors, twenty times the number might be given for seven jurors. There were 7 days (including the Sabbath) at Creation; fixing 7 days for the week; 7 pairs of clean beasts, and 7 pairs of birds, taken into Noah's Ark; 7 days from the Ark's completion to the commencement of the Deluge; 7 lean, and 7 fat kine in Pharoah's dream; 7 years of plenty, and 7 of scarcity; 7 days of unleavened bread; 7 priests, with 7 trumpets of ram's horns, who went 7 times round the wall of Jericho before it fell; 7 green withs, and 7 locks of his his hair, by which Samson was vainly bound; 7 branches of the golden candlestick in Revelations; 7 seals to the awful book; 7 lamps before the Throne, "which are the 7 spirits of God;" 7 Wise Men; 7 Wonders of the World; 7 sleepers; 7 stars; 7 folds to the shield of Ajax; 7 cities that claimed each to be Homer's birth place; and innumerable other instances which prove that SEVEN, far more than twelve, "is much respected in holy writ," and is, pre-eminently, THE MYSTIC NUMBER.

The common-sense preferableness of seven jurors, is yet more clear than its mystical superiority.

It is much easier to find seven men every way well qualified than to find twelve. Then, five farmers, mechanics, or merchants, will have been left to mind their own business, instead of being confined, perhaps long and painfully, in a jury-box or jury-room. In a busy country like ours, where labor is so dear, and where, more than in other countries, "time is money," it would materially increase the public wealth to redeem those five captives from their imprisonment. When jurors are paid for their service (as they are in some states, and ought to be everywhere)—to diminish their number would sensibly lighten the burthen upon the Treasury, or the party's pocket; whichever may have to bear it. And if the absurd rule of unanimity is to be still adhered to, the smaller number can more easily be unanimous than the greater number.

But why require them to be unanimous? The Legislature, by a bare majority, can tax us at any time to the amount of millions. Congress can declare war, and has often passed momentous laws, sometimes involving hundreds of millions, by majorities of one or two, or four or five. Out of the nine judges who constitute the Supreme Court at Washington, five may settle rights to principalities, or questions of freedom or slavery, life or death. Three out of five judges in the Virginia Court of Appeals, do the like about property, freedom and slavery; and in the Virginia General Court, three out of five decide upon life or death. Our Reports are full of such majority judgments; and they settle not only (as juries do) the rights of the parties in that particular case; but (as a jury does not) the rights of all parties similarly situated, through all time. The decision is a rule—a law—for the future, forever; unless altered by the Legislature, or reconsidered or revised by the Court itself.

To talk, then, about the importance of a jury's unanimity, in a dispute about money or property to the amount of a hundred, or five thousand dollars; and about the dissatisfaction of parties, if a bare majority gave the verdict; is a twaddle, sillier even than my Lord Coke's twaddle.

Two or three kindred absurdities, or hardships, in laws (as Montesquieu* shows) may sometimes neutralize and even rationalize one another. The absurdity of requiring a jury to be unanimous, which we borrowed from England,—was there relieved, and made less shocking, by a twin absurdity: *confining the jury in their room, without food or drink, till they agreed.*

* Coke on Littleton, 155. a.

* Spirit of Laws, Book 29, chap. 11.

It seldom took more than a few hours to starve them into harmony. The two absurdities mitigated, and almost neutralized each other: making a *hung* jury nearly impossible; and thus producing a speedy decision, which was in the main right; but which, even when wrong, was better than no decision—as a *delay* of justice is often equal to a *denial* of justice; quick *injustice* being often better than slow *justice*.

The requirement of unanimity continually produces in our courts the most grinding aggravationsto the hardship which, at the best, is almost inseparable from litigation. In a few cases, a jury's inability to agree prevents an unjust verdict: but it fifty times as often prevents a just one; and frequently leads to permanent wrong. Sometimes, before a verdict can be gotten, one or more witnesses die; and with them die their summoner's chances for justice. Sometimes the expenses of attending court, with the legal costs, and loss of time, exceed the amount in controversy. Sometimes, the party who is at last defeated, becomes insolvent before the suit ends; so that neither debt nor costs can be recovered from him.

Lately, within twenty yards of where I write, a case was tried in which the parties, and five or six witnesses, had been three days at court. The question was, whether a hire for eight months and a half, should be *three* or *five* dollars a month? The jury could not agree; and after much wrangling among themselves were discharged: and the battle had to be fought over again, three months afterwards, about those seventeen dollars. In the same "temple of Justice," two months before, a suit was dismissed in despair of a verdict, after four hung juries, and several years duration: the plaintiff being a poor and aged woman, suing for nearly all her property, which had been destroyed by the defendant's misconduct. In the same "temple" are now pending two suits, each for less than $50, in which there have been three hung juries: and there is yet no decision. In the old woman's case, the expenses had exhausted her means, and the delays and vexations had broken her spirit. The neighbor and kinsman who attended to the suit for her, declared to me (what was obvious), that a verdict against her in the outset, would have been less grievous than a verdict for her at last! Defeat, at first, better than victory at at last! So *eating* a thing is delay, in lawsuits! Such cases are perpetually occurring.

Really, those who in the face of such facts, would cling to unanimity as a feature of jury-trial in civil cases, are the slaves of an ignoble superstition, unworthy of this age, and of this country.

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