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THE WOMAN JUROR

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Are women to be jurors or not to be? That is a question now confronting many state legislatures.

If there is one subject which all the women's organizations are agreed upon, it is, probably, jury service by women. So with the Women's City Clubs, the Women's Bar Associations, the Woman's Party and many other feminine regiments camping on their trail, the law makers may as well prepare for a battle royal.

The establishing of the right of trial by jury started a rumpus between old King John and the English people in the year 1215. Had the famous charter of liberties – the Magna Charta, which in that year was wrung from King John – provided for jury service by men and women, the present battle might have been avoided. But apparently the women were overlooked, and now the battle is on.

Since the adoption of woman suffrage, women have arrived, so to speak, and are demanding the why and wherefore of their exclusion from jury service. Evidently they are not satisfied with the reasoning of the great English jurist, Sir William Blackstone. He held that the common law requires jurors to be free and trustworthy "human beings," and that while the term "human beings" means man and women, the female is, however, excluded on account of the defect of sex. If it be, as Blackstone says, a "defect of sex" that bars women from the jury box, the women claim that the defect lies in the masculine, not the feminine ranks. Anyway, in these modern days, women always take what Blackstone said with a grain of salt. They remember that when expounding the common law – a law which actually bristled with injustices to womankind, and which even permitted a man to beat his wife, Blackstone remarked that under it, a female is "so great a favorite."

As women are dissatisfied with Blackstone's reasoning, so they are dissatisfied with the reasoning of the United States Supreme Court. That court has decided that a state can not bar colored men from jury service because the debarment would brand them as an inferior class of citizens, and deprive them of the equal protection of the law which is guaranteed by the National Constitution. Since the Constitution guarantees that protection to persons and not merely to negroes, that doctrine should apply to women as well. However, with the curious ability which judges of the male persuasion have manifested to regard women as persons at one time, and not as persons at another, the court in this case said that certain restrictions might legally be put upon jury service – such as limiting it to males!

In nineteen states women are serving on juries. These states are Arkansas, California, Delaware, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Nevada, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Washington and Wisconsin. In Utah women are eligible jurors but are exempt and hence not called for service.

The states which thus far have not succumbed to the invasion of a woman juror number twenty-nine. Despite considerable agitation, there had not been an addition to the ranks of the woman juror states since 1921, until a bill providing for service on jurors by women of the District of Columbia was signed by the President on March 3, 1927. While disqualifications for jury service by reason of sex have been removed by this act women may not be compelled to serve, being excused upon their request.

It is interesting to observe the history of the recognition of woman in the position of juror. In 1870, women were called for duty in outlaw settlements in Wyoming albeit under the law they were not eligible. They were drafted because of the necessity for reliable citizens. Later the practice was discontinued. Although first to grant woman suffrage and first to elect a woman governor, Wyoming still disqualifies her daughters from the jury box.

As early as 1911, Washington removed her ban on women jurors and Kansas did likewise in 1912. The laws in some states declare that a person qualified to vote is also qualified for jury duty. So as soon as women were accorded the right to vote in such states, their right to serve on juries, as a general rule, was automatically established. That was what happened in Nevada in 1914, in Michigan in 1918, and in Delaware, Indiana, Iowa, Kentucky, Ohio and Pennsylvania in 1920. On the other hand, it was by specific enactments that women were qualified for the jury in California in 1917, and in Arkansas, Louisiana, Maine, Minnesota, New Jersey, North Dakota, Oregon and Wisconsin, in 1921.

For a time women served on juries in Idaho. They were extremely popular with the prosecution in prohibition violations. But a year or so ago, a convicted man resentfully pointed out that Idaho statutes require jurors to be "male" citizens. The highest state court agreed with him that only a male jury is lawful. Illinois and New York are also states which have sustained the disqualification of women jurors by court decrees. Moreover, the New York legislature has persistently "killed" woman juror bills for several successive sessions. According to the law makers, New York is not ready for such "experimental legislation." In other words, the empire state will hesitate about the matter until jury service by women is a well-established and respectable fact.

One picture which is often conjured up is of a mother being dragged off for jury duty while nubby sings to the crying baby:

Nice little baby, don't get in a fury,
Mama, it may be, must sit on the jury."

But it is found that the custom of all courts is to excuse woman from jury duty if she has small children who need her attention. In New Jersey, the laws goes so far as to direct the excusing of every woman who has a minor child regardless of the minor's age. But the women's club do not approve of such sweeping exemptions, and are insisting that the ballot the jury box are as much a part of a woman's duty to her children as the stew-pan and feather duster. In other words, they maintain that the mother should protect her babies without as well as within the home, and that this she can not do if she takes no part in the outside world.

To convince the law makers of the desirability of women jurors, the women have obtained testimonials from judges and other officials bearing witness to the capability, fairness, sincerity and strong sense of civic duty of the woman juror.

Judge George Rossman, of the Fourth Judicial District of Oregon, reports: "The quality of the women jurors has been very good. While many men seek to be excused from jury service, the contrary is true of the women. They seem to want to serve. This is especially true with some of the better women. They regard it as a high privilege which they ought to avail themselves of, and when the term of the court is over, I have heard several state to me that they have found their service quite an education."

As to the notion that woman subordinates her reason to emotions, Circuit Judge Quinlan, of Marinette, Wisconsin, says: "I was afraid women might be too sympathetic to sit in criminal cases. I have tried a great number of criminal cases where women have sat with men on the juries, and in some instances I have found women who had courage and backbone enough to stand up and say that they did not feel they could give the defendant and the state a fair trial. In one instance one woman stated she had a son about the same age as the defendant on trial and she would be reluctant to bring in a verdict of guilty."

Further, writes, Judge Quinlan, "I have become firmly convinced that women jurors are all right and will assist materially in the administration of justice. I have tried murder cases where they have sat on the juries with men, and in one case which was a long trial and occupied three weeks, the defendant was charged with poisoning his wife, which resulted in her death. The jury after being out twenty hours brought in a verdict of murder in the first degree. I think there were seven men and five women on that jury, so whatever apprehension the bench and bar had with reference to the women being reluctant to convict in criminal cases I think rather fanciful, as the results show the opposite."

Along the same line is the testimony of the Attorney General of Minnesota. He says: "In a murder case which I recently assisted in prosecuting, in a country district, the jury was half and half. The wife of the defendant had a small baby in court, of which much was made. I noticed that the women jurors were visibly affected by the exhibition and that their emotions and sympathies were strongly aroused and engaged. At least two were in tears when they retired, but a verdict of guilty was promptly returned. On the whole situation with men and women average up about the same, in results obtained."

"In my county which is almost wholly rural," adds the Minnesota Attorney General, "the largest city having a population on about 5000, no difficulty has been met in obtaining women jurors. The farmers' wives seem quite willing to serve. I have talked with many of them. Perhaps the \$4 per day and mileage has something to do with it – in view of the low prices received for farm produce."

An argument oftentimes pressed in favor of the woman juror is that juries consisting of both sexes are better balanced and more stable. It is a well known fact that where a pretty woman is the plaintiff or defendant, and the jury consists exclusively of the male of the species, she usually gets the best of it. The opinion of an Ohio juror is that "The women upon the jury understand the woman litigant better than the men and are seldom swayed in their judgement by the personal charm or attractiveness of a woman plaintiff or defendant, which often affects the verdict of male juries."

A Philadelphia judge writes that he "had one Woman on a murder jury last winter that brought in a verdict of first degree in the case of another woman. She had deliberately shot her sweetheart, and the woman juror served notice on her eleven male companions that the time for such practices had passed."

In this country, so it seems, there has been no case where an all woman jury has tried a male defendant of the sheik variety. It remains to be seen whether the limit in generosity will be broken in such cases. A North Dakota judge declares that he "has not been able to discover any false sympathy" on the part of women jurors for men. But from Germany, word has come that the Attorney General of Saxony has forbidden the trial of soldiers before a woman jury on the ground that "women jurors are entirely too soft on military offenders and thereby endanger the discipline of the army."

The mixed jury may be the solution of any problem of excessive leniency. According to a circuit judge of Michigan, such a jury brings to the consideration of a case a broader general experience and a greater understanding than could be expected from a jury composed entirely of members of one sex. He states: "The women have brought to the juries an element of sincerity, honesty and righteousness which was not present in the same extent before. I would no more think of going back to the exclusive men jury system of the past than I would of advising that home out to be managed and run without the influence of women. The change has been greatly beneficial and what is more remarkable is that it has worked no inconvenience nor harm."

One of the objections most earnestly urged is that there are salacious and revolting cases dealing with sex offenses which would shock the moral sensibilities of women serving on juries. If such cases exist, says Judge George Buck of San Mateo, California, "respectable women should hear of them, judge of the guilt or innocence of the parties, and then go out into the world to better conditions and to prevent like cases."

Another problem about which there has been much ado is the keeping of the jurors together while a long trial is in progress and during the jury's deliberations. However, it has been found practicable to place a woman bailiff over the women jurors, a man bailiff in charge of the men, and to provide separate rooms for sleeping quarters, or else arrange partitions between the two sexes in the same room. The friends of the woman juror movement direct attention to the fact that for years men and women on trains have occupied the same pullman car with only curtains to separate the sleeping quarters of one person from those of another, and yet there has been no cry of impropriety, or that thereby women were contaminated.

Jury service is an important part of the administration of justice, and women lawyers everywhere should give their active support to movements in behalf of women jurors.

"But we know that the law is good, if a man use
it lawfully;

"Knowing this, that the law is not made for a
righteous man, but for the lawless and dis-
obedient, for the ungodly and for sinners, **"

[Timothy, Chap. 1: 89.