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Jury Nullification: A Powerful Position

A New World In Our Hearts

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“If a juror accepts as the law that which the judge states, then that juror has accepted the exercise of absolute authority of a government employee and has surrendered a power and right that was once the citizen’s safeguard of liberty” 1788.

-2 Elliots Debates, 94, Bancroft. *History of the Constitution*, 267.

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If you are chosen to sit on a jury, remember that you are always allowed to vote *guilty* or *not guilty* depending on your conscience. You cannot be coerced or forced to vote a certain way - don't let peer pressure or a judge's instructions change your stance for what you believe is just. You have the right to "hang" the jury if you cannot agree with others, even if you are the only one. You never want to be in the position where you would have to feel apologetic about your verdict. And you have the right to inform other jurors about their power of jury nullification as well. Let the "justice" system know that incarceration is contrary to living in a community in which people are not ruled by coercion to act in certain ways by the fear that their ultimate freedom is at stake.

FOR FURTHER READING

- Butler, Pau. *Let's Get Free: A Hip-Hop Theory of Justice*. 2012. ISBN: 978-148722096
- Alexander, Michelle. *The New Jim Crow*. 2012. ISBN: 978-1595586438
- Spooner, Lysander. "Essay on the Trial By Jury". <https://theanarchistlibrary.org/library/lysander-spooner-an-essay-on-the-trial-by-jury>
- www.FIJA.org
- <https://notabletrials.blogspot.com/2010/10/jurors-regret-prompts-request-for.html>
- www.nytimes.com/2011/12/21/opinion/jurors-can-say-no.html
- www.sfgate.com/crime/article/jury-nullification-can-highlight-the-law-s-flaws-3694716.php

rors today's terrible incarceration rates concerning illegal drug use. In fact, most of today's loudest voices calling for increased awareness of jury nullification are pushing for a legal system that does not continuously lock up mostly people of color for these types of self-inflicted "crimes."

Paul Butler advocates for people to stand up and become "Martin Luther King Jurors" in his book *Let's Get Free: A Hip-Hop Theory of Justice*. He writes "Jury nullification is the new-school form of civil disobedience. American history - from the end of slavery to the end of Jim Crow - teaches us that direct action is one of the best ways to achieve progress for people who have been discriminated against or shut-out." Seen in this way, sitting on a jury can empower community members to make a difference, and judge not only the defendant in a particular case, but the laws themselves and the circumstances surrounding a "crime." Jury nullification is a promising tool in the fight against racist stop-and-frisk policies, outdated drug laws, disruptive immigration policies, and in other situations where the law itself is damaging the communities it is meant to protect.

WHAT TO EXPECT WHEN YOU ARE CALLED TO JURY DUTY

If you receive a letter in the mail, you must appear at the address indicated on your letter. After checking in, you will most likely need to wait in a large room with other potential jurors - bring something to read. Your name may or may not be called. If it is, you will be brought to a courtroom to be interviewed by lawyers and a judge. They will ask your several questions about your beliefs and background. Answer honestly. If you are chosen to sit on a jury, the judge will give you further instructions about when and where to return. If not, you will return to the waiting room to be called again.

"I as you [the judge] to reconsider his trial, or sentence him lightly. I am 100% positive in my heart that he is not guilty [of what is] accused against him." This direct quote from a letter of regret that a juror wrote to a judge after she declared him "guilty" of a crime. How can a thoughtful person believe in their heart the opposite of how they rule in a court of law? The juror explains in the same letter: *"The judge gave us, the jury, many rules to follow after the trial for our deliberation. That is the only reason we came to the guilty verdict."* (see notable trials link for reference)

Unfortunately, this type of jury regret is all too common. In the United States, *freedom* is invoked over and over again as the ultimate value. Freedom is also what is taken away from others when they behave in ways which politicians and lawmakers have deemed "bad." In fact, our country does this so often that the United States has the highest rate of imprisoned citizens in the world. Incarceration takes away freedom in the name of community protection. Yet there are many who would say incarceration hurts communities. It is sad that this is most strongly felt in under-represented communities of majority people of color. Most people are discouraged by the bureaucratic and time-consuming maze needed to change this system that seems so strong and immovable. Yet the framers of the constitution granted one very important power to everyday citizens: that of **Jury Nullification**.

Many people dread jury duty. Maybe it is a hassle or a financial burden to take off work for a day or more, maybe they are uncomfortable in a judicial setting or don't want to feel responsible for putting a person in prison, or maybe they find it just plain confusing. Rather than see jury duty as an inconvenience, we'd like to point out just how much power even one juror has to make a meaningful difference if they are chosen to hear a case. It is a chance to help shape the laws of our country and how they are carried out.

WHAT IS JURY NULLIFICATION

Jury nullification is when a jury cannot (or will not) agree on a *guilty* verdict for a defendant in a case, even though the defendant is technically guilty of breaking a law. This can happen either if the jury finds the defendant *not guilty*, or even if one juror does not agree to call the defendant *guilty* (resulting in a “hung” jury). This last point is particularly important because it is an example of how much power one person can have in the face of the law.

The beauty of jury nullification is that it only works one way: a jury can only nullify, or cancel, a law by finding a defendant *not guilty*, thereby also making a statement about how the law either is unjustly applied to specific case or is an unjust law altogether. A jury could never use jury nullification to find a defendant *guilty* if he or she is technically *not guilty*. Many people strongly believe that jury nullification helps the community by safely reducing the number of incarcerated people while sending the message to lawmakers and prosecutors that we want fundamental change in our criminal justice system.

John Jay, the first Chief Justice of the Supreme Court, noted his agreement with the power of jury nullification with the following instructions: “It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the province of the jury, on questions of law, it is the province of the court of the court to decide. But it may be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy. On this, and on every other occasion, however, we have no doubt, you will pay that respect, which is due to the opinion of the court: For, as on the one hand, it is presumed, that juries are the best judges of facts; it is, on the other hand, presumable, that the court are the best judges of the law. But still both objects are lawfully, within your [the jury’s] power of decision.”

Unfortunately, in 1895, John Jay’s predecessors in the United States Supreme Court ruled that judges that judges do not need to inform juries of their power to nullify the laws in this way. This led to the accepted practice of many states actually punishing lawyers who explain this power to juries. As a result, many people believe that they must interpret laws exactly how a judge explains it to them, and they must not appeal to their own understanding and conscience. This could not be further from the truth. Even John Adams, our second president, said of all jurors, “it is not only his right, but his duty... to find the verdict according to his own best understanding, judgement, and conscience, though in direct opposition to the direction of the court.” The only thing that could be updated about this statement is that now women are allowed to sit on a jury.

SOME HISTORY OF JURY NULLIFICATION

Jury nullification is completely legal and has a long history. The first instance of jury nullification in American actually occurred before the United States was an independent country and it is still being exercised today. Founding fathers of the United States intended jurors to serve as a check on unjust prosecutions and laws. Thomas Jefferson once explained the importance of jury nullification this way: “I consider trial by jury as the only anchor yet imagined by man which a government can be held to the principles of its constitution.”

These principles were not immediately carried out. In the 1850’s, our country upheld the Fugitive Slave Act, which allowed those who helped slaves escape from their slave masters to be punished and incarcerated for breaking federal law. Jury nullification caused people “guilty” of this offense to be acquitted, and helped advance the abolition movement. Jury nullification also helped end Prohibition, which incarcerated anyone found selling alcohol. This mir-